

SUBCHAPTER I—GENERAL PROVISIONS

§ 6711. Designation of United States National Authority**(a) Designation**

Pursuant to paragraph 4 of Article VII of the Chemical Weapons Convention, the President shall designate the Department of State to be the United States National Authority.

(b) Purposes

The United States National Authority shall—

(1) serve as the national focal point for effective liaison with the Organization for the Prohibition of Chemical Weapons and other States Parties to the Convention; and

(2) implement the provisions of this chapter in coordination with an interagency group designated by the President consisting of the Secretary of Commerce, Secretary of Defense, Secretary of Energy, the Attorney General, and the heads of agencies considered necessary or advisable by the President.

(c) Director

The Secretary of State shall serve as the Director of the United States National Authority.

(d) Powers

The Director may utilize the administrative authorities otherwise available to the Secretary of State in carrying out the responsibilities of the Director set forth in this chapter.

(e) Implementation

The President is authorized to implement and carry out the provisions of this chapter and the Convention and shall designate through Executive order which agencies of the United States shall issue, amend, or revise the regulations in order to implement this chapter and the provisions of the Convention. The Director of the United States National Authority shall report to the Congress on the regulations that have been issued, implemented, or revised pursuant to this section.

(Pub. L. 105-277, div. I, title I, §101, Oct. 21, 1998, 112 Stat. 2681-860.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2), (d), and (e), 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.

EX. ORD. NO. 13128. IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION AND THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT

Ex. Ord. No. 13128, June 25, 1999, 64 F.R. 34703, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Chemical Weapons Convention Implementation Act of 1998 [22 U.S.C. 6701 et seq.] (as enacted in Division I of Public Law 105-277) (the Act), the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code, and in order to facilitate implementation

of the Act and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (the “Convention”), it is hereby ordered as follows:

SECTION 1. The Department of State shall be the United States National Authority (the “USNA”) for purposes of the Act and the Convention.

SEC. 2. The USNA shall coordinate the implementation of the provisions of the Act and the Convention with an interagency group consisting of the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Energy, and the heads of such other agencies or departments, or their designees, I may consider necessary or advisable.

SEC. 3. The Departments of State and Commerce, and other agencies as appropriate, each shall issue, amend, or revise regulations, orders, or directives as necessary to implement the Act and U.S. obligations under Article VI and related provisions of the Convention. Regulations under section 401(a) of the Act [22 U.S.C. 6741(a)] shall be issued by the Department of Commerce by a date specified by the USNA, which shall review and approve these regulations, in coordination with the interagency group designated in section 2 of this order, prior to their issuance.

SEC. 4. The Secretary of Commerce is authorized:

(a) to obtain and execute warrants pursuant to section 305 of the Act [22 U.S.C. 6725] for the purposes of conducting inspections of facilities subject to the regulations issued by the Department of Commerce pursuant to section 3 of this order;

(b) to suspend or revoke export privileges pursuant to section 211 of the Act [18 U.S.C. 229 note]; and

(c) to carry out all functions with respect to proceedings under section 501(a) of the Act [22 U.S.C. 6761(a)] and to issue regulations with respect thereto, except for those functions that the Act specifies are to be performed by the Secretary of State or the USNA.

SEC. 5. The Departments of State, Defense, Commerce, and Energy, and other agencies as appropriate, are authorized to carry out, consistent with the Act and in accordance with subsequent directives, appropriate functions that are not otherwise assigned in the Act and are necessary to implement the provisions of the Convention and the Act.

SEC. 6. The Departments of State, Defense, Commerce, and Energy, and other agencies, as appropriate, are authorized to provide assistance to facilities not owned or operated by the U.S. Government, or contracted for use by or for the U.S. Government, in meeting reporting requirements and in preparing the facilities for possible inspection pursuant to the Convention.

SEC. 7. The USNA, in coordination with the interagency group designated in section 2 of this order, is authorized to determine whether disclosure of confidential business information pursuant to section 404(c) of the Act [22 U.S.C. 6744(c)] is in the national interest. Disclosure will not be permitted if contrary to national security or law enforcement needs.

SEC. 8. In order to take additional steps with respect to the proliferation of weapons of mass destruction and means of delivering them and the national emergency described and declared in Executive Order 12938 of November 14, 1994 [listed in a table under section 1701 of Title 50, War and National Defense], as amended by Executive Order 13094 of July 30, 1998, section 3 of Executive Order 12938, as amended, is amended to add a new subsection (e) to read as follows:

“(e) the Secretary of Commerce shall impose and enforce such restrictions on the importation of chemicals into the United States as may be necessary to carry out the requirements of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.”

SEC. 9. Any investigation emanating from a possible violation of this order, or of any license, order, or regulation issued pursuant to this order, involving or revealing a possible violation of 18 U.S.C. section 229 shall be referred to the Federal Bureau of Investigation

(FBI), which shall coordinate with the referring agency and other appropriate agencies. The FBI shall timely notify the referring agency and other appropriate agencies of any action it takes on such referrals.

SEC. 10. Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

SEC. 11. (a) This order shall take effect at 12:01 a.m. eastern daylight time, June 26, 1999.

(b) This order shall be transmitted to the Congress and published in the Federal Register.

WILLIAM J. CLINTON.

§ 6712. No abridgement of constitutional rights

No person may be required, as a condition for entering into a contract with the United States or as a condition for receiving any benefit from the United States, to waive any right under the Constitution for any purpose related to this chapter or the Convention.

(Pub. L. 105-277, div. I, title I, §102, 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.

§ 6713. Civil liability of United States

(a) Claims for taking of property

(1) Jurisdiction of courts of the United States

(A) United States Court of Federal Claims

The United States Court of Federal Claims shall, subject to subparagraph (B), have jurisdiction of any civil action or claim against the United States for any taking of property without just compensation that occurs by reason of the action of any officer or employee of the Organization for the Prohibition of Chemical Weapons, including any member of an inspection team of the Technical Secretariat, or by reason of the action of any officer or employee of the United States pursuant to this chapter or the Convention. For purposes of this subsection, action taken pursuant to or under the color of this chapter or the Convention shall be deemed to be action taken by the United States for a public purpose.

(B) District courts

The district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any civil action or claim described in subparagraph (A) that does not exceed \$10,000.

(2) Notification

Any person intending to bring a civil action pursuant to paragraph (1) shall notify the United States National Authority of that intent at least one year before filing the claim in the United States Court of Federal Claims. Action on any claim filed during that one-year

period shall be stayed. The one-year period following the notification shall not be counted for purposes of any law limiting the period within which the civil action may be commenced.

(3) Initial steps by United States Government to seek remedies

During the period between a notification pursuant to paragraph (2) and the filing of a claim covered by the notification in the United States Court of Federal Claims, the United States National Authority shall pursue all diplomatic and other remedies that the United States National Authority considers necessary and appropriate to seek redress for the claim including, but not limited to, the remedies provided for in the Convention and under this chapter.

(4) Burden of proof

In any civil action under paragraph (1), the plaintiff shall have the burden to establish a prima facie case that, due to acts or omissions of any official of the Organization or any member of an inspection team of the Technical Secretariat taken under the color of the Convention, proprietary information of the plaintiff has been divulged or taken without authorization. If the United States Court of Federal Claims finds that the plaintiff has demonstrated such a prima facie case, the burden shall shift to the United States to disprove the plaintiff's claim. In deciding whether the plaintiff has carried its burden, the United States Court of Federal Claims shall consider, among other things—

(A) the value of proprietary information;

(B) the availability of the proprietary information;

(C) the extent to which the proprietary information is based on patents, trade secrets, or other protected intellectual property;

(D) the significance of proprietary information; and

(E) the emergence of technology elsewhere a reasonable time after the inspection.

(b) Tort liability

The district courts of the United States shall have exclusive jurisdiction of civil actions for money damages for any tort under the Constitution or any Federal or State law arising from the acts or omissions of any officer or employee of the United States or the Organization, including any member of an inspection team of the Technical Secretariat, taken pursuant to or under color of the Convention or this chapter.

(c) Waiver of sovereign immunity of United States

In any action under subsection (a) or (b), the United States may not raise sovereign immunity as a defense.

(d) Authority for cause of action

(1) United States actions in United States district court

Notwithstanding any other law, the Attorney General of the United States is authorized to bring an action in the United States District Court for the District of Columbia