

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 obliga-

tions 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.

(3) Content of warrants

A warrant issued under paragraph (2) shall specify the same matters required of an affidavit under that paragraph. In addition to the requirements for a warrant issued under this paragraph, each warrant shall contain, if known, the identities of the representatives of the Technical Secretariat conducting the inspection and the observers of the inspection and, if applicable, the identities of the representatives of agencies or departments of the United States accompanying those representatives.

(4) Challenge inspections

(A) Criminal search warrant

For any challenge inspection conducted on the territory of the United States pursuant to Article IX of the Chemical Weapons Convention, where consent has been withheld, the United States Government shall first obtain from a judge of the United States a criminal search warrant based upon probable cause, supported by oath or affirmation, and describing with particularity the place to be searched and the person or things to be seized.

(B) Information provided

The United States Government shall provide to the judge of the United States—

- (i) 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;
- (ii) any other appropriate information relating to the reasonableness of the selection of the plant, plant site, or other facility or location for the inspection;
- (iii) information concerning—
 - (I) the duration and scope of the inspection;
 - (II) areas to be inspected;
 - (III) records and data to be reviewed; and
 - (IV) samples to be taken;
- (iv) appropriate evidence or reasons provided by the requesting state party for the inspection;
- (v) any other evidence showing probable cause to believe that a violation of this chapter has occurred or is occurring; and
- (vi) the identities of the representatives of the Technical Secretariat on the inspection team and the Federal Government employees accompanying the inspection team.

(C) Content of warrant

The warrant shall specify—

- (i) the type of inspection authorized;
- (ii) the purpose of the inspection;
- (iii) the type of plant site, plant, or other facility or location to be inspected;
- (iv) the areas of the plant site, plant, or other facility or location to be inspected;
- (v) the items, documents, data, equipment, and computers that may be inspected or seized;

- (vi) samples that may be taken;
- (vii) the earliest commencement and latest concluding dates and times of the inspection; and

(viii) the identities of the representatives of the Technical Secretariat on the inspection teams and the Federal Government employees accompanying the inspection team.

(Pub. L. 105-277, div. I, title III, §305, Oct. 21, 1998, 112 Stat. 2681-875.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(4)(B)(v), 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.

Executive Documents

DELEGATION OF FUNCTIONS

For authority of Secretary of Commerce to obtain and execute certain warrants pursuant to this section, see section 4 of Ex. Ord. No. 13128, June 25, 1999, 64 F.R. 34703, set out as a note under section 6711 of this title.

§ 6726. Prohibited acts relating to inspections

It shall be unlawful for any person willfully to fail or refuse to permit entry or inspection, or to disrupt, delay, or otherwise impede an inspection, authorized by this chapter.

(Pub. L. 105-277, div. I, title III, §306, Oct. 21, 1998, 112 Stat. 2681-878.)

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§ 6727. National security exception

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.

(Pub. L. 105-277, div. I, title III, §307, Oct. 21, 1998, 112 Stat. 2681-878.)

§ 6728. Annual report on inspections

(a) In general

Not later than one year after October 21, 1998, and annually thereafter, the President shall submit a report in classified and unclassified form to the appropriate congressional committees on inspections made under the Convention during the preceding year.

(b) Content of reports

Each report shall contain the following information for the reporting period: