

Department of State

§ 103.7

inspection, may take wipes, air, soil or effluent samples where either:

- (1) There is consent; or
- (2) Such activity is authorized by a search warrant obtained pursuant to section 305(b)(4) of the CWCIA.

Subpart C—Recordkeeping and Inspection Requirements

§ 103.4 General.

This subpart implements the enforcement of the civil penalty provisions of section 501 of the Chemical Weapons Convention Implementation Act of 1998 (CWCIA), and sets forth relevant administrative proceedings by which such violations are adjudicated. Both the Department of State (in this subpart), and the Department of Commerce (in part 719 of the CWCIA at 15 CFR parts 710 through 722) are involved in the implementation and enforcement of section 501.

§ 103.5 Violations.

(a) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the CWCIA.

(b) *Failure to establish or maintain records.* No person may willfully fail or refuse:

- (1) To establish or maintain any record required by the CWCIA or the Chemical Weapons Convention Regulations (CWCIA, 15 CFR parts 710 through 722) of the Department of Commerce; or
- (2) To submit any report, notice, or other information to the United States Government in accordance with the CWCIA or CWCIA; or
- (3) To permit access to or copying of any record that is exempt from disclosure under the CWCIA or the CWCIA.

§ 103.6 Penalties.

(a) *Civil penalties.* (1) *Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have willfully disrupted, delayed or otherwise impeded an authorized inspection, as set forth in § 103.5(a), shall pay a civil penalty in an amount not to exceed \$25,000 for each violation. Each day the violation

continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record, or to submit any report, notice, or other information required by the CWCIA or the CWCIA, or to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCIA as set forth in § 103.5(b), shall pay a civil penalty in an amount not to exceed \$5,000 for each violation.

(b) *Criminal penalties.* Any person that knowingly violates the CWCIA by willfully failing or refusing to permit entry or inspection; or by disrupting, delaying or otherwise impeding an inspection authorized by the CWCIA; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information; or by willfully failing or refusing to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCIA, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, or be imprisoned for not more than one year, or both.

(c) *Other remedial action.* (1) *Injunction.* The United States may, in a civil action, obtain an injunction against:

- (i) The conduct prohibited under 18 U.S.C. 229 or 229C; or
- (ii) The preparation or solicitation to engage in conduct prohibited under 18 U.S.C. 229 or 229D.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or section 405 of the CWCIA, or compel the taking of any action required by or under the CWCIA or the Convention.

§ 103.7 Initiation of administrative enforcement proceedings.

(a) *Issuance of Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Export Administration, Department of Commerce, may request that the Secretary initiate an administrative enforcement proceeding under this section and 15 CFR 719.5. If the request is in accordance with applicable law, the

Secretary will initiate an administrative enforcement proceeding by issuing a Notice of Violation and Assessment (NOVA). The Office of Chief Counsel for Export Administration, Department of Commerce shall serve the NOVA as directed by the Secretary.

(b) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to paragraph (e) of this section and the CWCR (15 CFR parts 710 through 722) at 15 CFR 719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and unappealable on signature of the Secretary of State, and provide payment instructions. A copy of the regulations that govern the administrative proceedings will accompany the NOVA.

(c) *Proposed order.* A proposed order shall accompany every NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(d) *Notice.* The Secretary shall notify, via the Department of Commerce, the respondent (or respondent's agent for service of process or attorney) of the initiation of administrative proceedings by sending, via first class mail, facsimile, or by personal delivery, the relevant documents.

(e) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary, the respondent must request a hearing in writing within 15 days from the date of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 days from the date of the request for hearing. The request for hearing and answer must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA and proposed order, and served on the Office of Chief Counsel for Ex-

port Administration, Department of Commerce, and any other address(es) specified in the NOVA, in accordance with 15 CFR 719.8.

(f) *Content of answer.* The respondent's answer must be responsive to the NOVA and proposed order, and must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(g) *English required.* The request for hearing, answer, and all other papers and documentary evidence must be submitted in English.

(h) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA and proposed order. If no hearing is requested and no answer is provided, the Secretary will sign the proposed order, which shall, upon signature, become final and unappealable.

(i) *Administrative procedures.* The regulations that govern the administrative procedures that apply when a hearing is requested are set forth in the CWCR at 15 CFR part 719.

§ 103.8 Final agency decision after administrative proceedings.

(a) *Review of initial decision.* (1) *Petition for review.* Any party may, within 7 days of the Administrative Law Judge's (ALJ) certification of the initial decision and order, petition the Secretary for review of the initial decision. A petition for review shall be addressed to and served on the Executive Director of the Office of the Legal Adviser, U.S. Department of State, 2201 C Street, N.W., Room 5519, Washington D.C. 20520, and shall also be served on