

Calendar No. 60

105TH CONGRESS
1ST Session

S. 610

A BILL

To implement the obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as "the Chemical Weapons Convention," and opened for signature and signed by the United States on January 13, 1993.

MAY 22, 1997

Reported with an amendment and an amendment to the
title

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IN THE SENATE OF THE UNITED STATES

APRIL 17, 1997

Mr. LUGAR (by request) (for himself and Mr. BIDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 22, 1997

Reported by Mr. HATCH, with an amendment and an amendment to the title
[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To implement the obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as “the Chemical Weapons Convention” and opened for signature and signed by the United States on January 13, 1993.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Chemical Weapons
3 Convention Implementation Act of 1997.”

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Congressional findings.
- Sec. 4. Congressional declarations.
- Sec. 5. Definitions.
- Sec. 6. Severability.

TITLE I—NATIONAL AUTHORITY

Sec. 101. Establishment.

TITLE II—APPLICATION OF CONVENTION PROHIBITIONS TO
NATURAL AND LEGAL PERSONS

- Sec. 201. Criminal provisions.
- Sec. 202. Effective date.
- Sec. 203. Restrictions on scheduled chemicals.

TITLE III—REPORTING

- Sec. 301. Reporting of information.
- Sec. 302. Confidentiality of information.
- Sec. 303. Prohibited acts.

TITLE IV—INSPECTIONS

- Sec. 401. Inspections pursuant to article VI of the Chemical Weapons Convention.
- Sec. 402. Other inspections pursuant to the Chemical Weapons Convention and lead agency.
- Sec. 403. Prohibited acts.
- Sec. 404. Penalties.
- Sec. 405. Specific enforcement.
- Sec. 406. Legal proceedings.
- Sec. 407. Authority.
- Sec. 408. Saving provision.

6 **SEC. 3. CONGRESSIONAL FINDINGS.**

7 The Congress makes the following findings:

- 8 (1) Chemical weapons pose a significant threat
- 9 to the national security of the United States and are
- 10 a scourge to humankind.

1 (2) The Chemical Weapons Convention is the
2 best means of ensuring the nonproliferation of chem-
3 ical weapons and their eventual destruction and for-
4 swearing by all nations.

5 (3) The verification procedures contained in the
6 Chemical Weapons Convention and the faithful ad-
7 herence of nations to them, including the United
8 States, are crucial to the success of the Convention.

9 (4) The declarations and inspections required
10 by the Chemical Weapons Convention are essential
11 for the effectiveness of the verification regime.

12 **SEC. 4. CONGRESSIONAL DECLARATIONS.**

13 The Congress makes the following declarations:

14 (1) It shall be the policy of the United States
15 to cooperate with other states parties to the Chemi-
16 cal Weapons Convention and to afford the appro-
17 priate form of legal assistance to facilitate the imple-
18 mentation of the prohibitions contained in title II of
19 this Act.

20 (2) It shall be the policy of the United States,
21 during the implementation of its obligations under
22 the Chemical Weapons Convention, to assign the
23 highest priority to ensuring the safety of people and
24 to protecting the environment, and to cooperate as

1 appropriate with other states parties to the Conven-
2 tion in this regard.

3 ~~(3)~~ It shall be the policy of the United States
4 to minimize, to the greatest extent practicable, the
5 administrative burden and intrusiveness of measures
6 to implement the Chemical Weapons Convention
7 placed on commercial and other private entities, and
8 to take into account the possible competitive impact
9 of regulatory measures on industry, consistent with
10 the obligations of the United States under the Con-
11 vention.

12 **SEC. 5. DEFINITIONS.**

13 (a) ~~IN GENERAL.~~—Except as otherwise provided in
14 this Act, the definitions of the terms used in this Act shall
15 be those contained in the Chemical Weapons Convention.
16 Nothing in paragraphs 2 or 3 of article II of the Chemical
17 Weapons Convention shall be construed to limit verifica-
18 tion activities pursuant to parts X or XI of the Annex
19 on Implementation and Verification of the Convention.

20 (b) ~~OTHER DEFINITIONS.~~—

21 (1) The term “Chemical Weapons Convention”
22 means the Convention on the Prohibition of the De-
23 velopment, Production, Stockpiling and Use of
24 Chemical Weapons and on Their Destruction,
25 opened for signature on January 13, 1993.

1 (2) The term “national of the United States”
2 has the same meaning given such term in section
3 101(a)(22) of the Immigration and Nationality Act
4 (8 U.S.C. 1101(a)(22)).

5 (3) The term “United States,” when used in a
6 geographical sense, includes all places under the ju-
7 risdiction or control of the United States, including
8 (A) any of the places within the provisions of section
9 101(41) of the Federal Aviation Act of 1958, as
10 amended (49 U.S.C. 40102(41)), (B) any public air-
11 craft or civil aircraft of the United States, as such
12 terms are defined in sections 105 (36) and (18) of
13 the Federal Aviation Act of 1958, as amended (49
14 U.S.C. 40102(37) and 40102(17)), and (C) any ves-
15 sel of the United States, as such term is defined in
16 section 3(b) of the Maritime Drug Enforcement Act,
17 as amended (46 U.S.C. App. 1903(b)).

18 (4) The term “person,” except as used in sec-
19 tion 201 of this Act and as set forth below, means
20 (A) any individual, corporation, partnership, firm,
21 association, trust, estate, public or private institu-
22 tion, any State or any political subdivision thereof,
23 or any political entity within a State, any foreign
24 government or nation or any agency, instrumentality
25 or political subdivision of any such government or

1 nation, or other entity located in the United States;
 2 and (B) any legal successor, representative, agent or
 3 agency of the foregoing located in the United States.
 4 The phrase “located in the United States” in the
 5 term “person” shall not apply to the term “person”
 6 as use in the phrases “person located outside the
 7 territory” in sections 203(b) and 302(d) of this Act
 8 and “person located in the territory” in section
 9 203(b) of this Act.

10 (5) The term “Technical Secretariat” means
 11 the Technical Secretariat of the Organization for the
 12 Prohibition of Chemical Weapons established by the
 13 Chemical Weapons Convention.

14 **SEC. 6. SEVERABILITY.**

15 If any provision of this Act, or the application of such
 16 provision to any person or circumstance, is held invalid,
 17 the remainder of this Act, or the application of such provi-
 18 sion to persons or circumstances other than those as to
 19 which it is held invalid, shall not be affected thereby.

20 **TITLE I—NATIONAL AUTHORITY**

21 **SEC. 101. ESTABLISHMENT.**

22 Pursuant to paragraph 4 of article VII of the Chemi-
 23 cal Weapons Convention, the President or the designee of
 24 the President shall establish the “United States National
 25 Authority” to, inter alia, serve as the national focal point

1 for effective liaison with the Organization for the Prohibi-
 2 tion of Chemical Weapons and other states parties to the
 3 Convention.

4 **TITLE II—APPLICATION OF CONVENTION**
 5 **PROHIBITIONS TO NATURAL AND**
 6 **LEGAL PERSONS**

7 **SEC. 201. CRIMINAL PROVISIONS.**

8 (a) IN GENERAL.—Part I of title 18, United States
 9 Code, is amended by—

10 (1) redesignating chapter 11A relating to child
 11 support as chapter 11B; and

12 (2) inserting after chapter 11 relating to brib-
 13 ery, graft, and conflicts of interest the following new
 14 chapter:

15 **“CHAPTER 11A—CHEMICAL WEAPONS**

“Sec.

“227. Penalties and prohibitions with respect to chemical weapons.

“227A. Seizure, forfeiture, and destruction.

“227B. Injunctions.

“227C. Other prohibitions.

“227D. Definitions.

16 **“SEC. 227. PENALTIES AND PROHIBITIONS WITH RESPECT**
 17 **TO CHEMICAL WEAPONS.**

18 “(a) IN GENERAL.—Except as provided in subsection
 19 (b), whoever knowingly develops, produces, otherwise ac-
 20 quires, stockpiles, retains, directly or indirectly transfers,
 21 uses, owns, or possesses any chemical weapon, or know-
 22 ingly assists, encourages, or induces, in any way, any per-

1 son to do so, or attempts or conspires to do so, shall be
2 fined under this title or imprisoned for life or any term
3 of years, or both.

4 “(b) **EXCLUSION.**—Subsection (a) shall not apply to
5 the retention, ownership, or possession of a chemical weap-
6 on, that is permitted by the Chemical Weapons Convention
7 pending the weapon’s destruction, by any agency or de-
8 partment of the United States. This exclusion shall apply
9 to any person, including members of the Armed Forces
10 of the United States, who is authorized by any agency or
11 department of the United States to retain, own, or possess
12 a chemical weapon, unless that person knows or should
13 have known that such retention, ownership, or possession
14 is not permitted by the Chemical Weapons Convention.

15 “(c) **JURISDICTION.**—There is jurisdiction by the
16 United States over the prohibited activity in subsection (a)
17 if (1) the prohibited activity takes place in the United
18 States or (2) the prohibited activity takes place outside
19 of the United States and is committed by a national of
20 the United States.

21 “(d) **ADDITIONAL PENALTY.**—The court shall order
22 that any person convicted of any offense under this section
23 pay to the United States any expenses incurred incident
24 to the seizure, storage, handling, transportation, and de-

1 struction or other disposition of property seized for the
 2 violation of this section.

3 **“SEC. 227A. SEIZURE, FORFEITURE, AND DESTRUCTION.”**

4 **“(A) SEIZURE.—**

5 **“(1) Except as provided in paragraph (2), the**
 6 **Attorney General may request the issuance, in the**
 7 **same manner as provided for a search warrant, of**
 8 **a warrant authorizing the seizure of any chemical**
 9 **weapon defined in section 227D(2)(A) of this title**
 10 **that is of a type or quantity that under the cir-**
 11 **cumstances is inconsistent with the purposes not**
 12 **prohibited under the Chemical Weapons Convention.**

13 **“(2) In exigent circumstances, seizure and de-**
 14 **struction of any such chemical weapon described in**
 15 **paragraph (1) may be made by the Attorney General**
 16 **upon probable cause without the necessity for a war-**
 17 **rant.**

18 **“(b) PROCEDURE FOR FORFEITURE AND DESTRUC-**
 19 **TION.—Except as provided in paragraph (2) of subsection**
 20 **(a), property seized pursuant to subsection (a) shall be**
 21 **forfeited to the United States after notice to potential**
 22 **claimants and an opportunity for a hearing. At such a**
 23 **hearing, the government shall bear the burden of persua-**
 24 **sion by a preponderance of the evidence. Except as incon-**
 25 **sistent herewith, the provisions of chapter 46 of this title**

1 relating to civil forfeitures shall extend to a seizure or for-
2 feiture under this section. The Attorney General shall pro-
3 vide for the destruction or other appropriate disposition
4 of any chemical weapon seized and forfeited pursuant to
5 this section.

6 “(e) AFFIRMATIVE DEFENSE.—It is an affirmative
7 defense against a forfeiture under subsection (b) that—

8 “(1) such alleged chemical weapon is for a pur-
9 pose not prohibited under the Chemical Weapons
10 Convention; and

11 “(2) such alleged chemical weapon is of a type
12 and quantity that under the circumstances is con-
13 sistent with that purpose.

14 “(d) OTHER SEIZURE, FORFEITURE, AND DESTRUC-
15 TION.—

16 “(1) Except as provided in paragraph (2), the
17 Attorney General may request the issuance, in the
18 same manner as provided for a search warrant, of
19 a warrant authorizing the seizure of any chemical
20 weapon defined in section 227D(2) (B) or (C) of
21 this title that exists by reason of conduct prohibited
22 under section 227 of this title.

23 “(2) In exigent circumstances, seizure and de-
24 struction of any such chemical weapon described in
25 paragraph (1) may be made by the Attorney General

1 upon probable cause without the necessity for a war-
2 rant.

3 ~~“(3) Property seized pursuant to this sub-~~
4 ~~section shall be summarily forfeited to the United~~
5 ~~States and destroyed.~~

6 ~~“(e) ASSISTANCE.—The Attorney General may re-~~
7 ~~quest assistance from any agency or department in the~~
8 ~~handling, storage, transportation, or destruction of prop-~~
9 ~~erty sized under this section.~~

10 ~~“(f) OWNER LIABILITY.—The owner or possessor of~~
11 ~~any property seized under this section shall be liable to~~
12 ~~the United States for any expenses incurred incident to~~
13 ~~the seizure, including any expenses relating to the han-~~
14 ~~dling, storage, transportation, and destruction or other~~
15 ~~disposition of the seized property.~~

16 **~~“SEC. 227B. INJUNCTIONS.~~**

17 ~~“(a) IN GENERAL.—The United States may obtain~~
18 ~~in a civil action an injunction against—~~

19 ~~“(1) the conduct prohibited under section 227~~
20 ~~of this title;~~

21 ~~“(2) the preparation or solicitation to engage in~~
22 ~~conduct prohibited under section 227 of this title; or~~

23 ~~“(3) the development, production, other acquisi-~~
24 ~~tion, stockpiling, retention, direct or indirect trans-~~
25 ~~fer, use, ownership, or possession, or the attempted~~

1 development, production, other acquisition, stock-
2 piling, retention, direct or indirect transfer, use,
3 ownership, or possession, of any alleged chemical
4 weapon defined in section 227D(2)(A) of this title
5 that is of a type or quantity that under the cir-
6 cumstances is inconsistent with the purposes not
7 prohibited under the Chemical Weapons Convention,
8 or the assistance to any person to do so.

9 “(b) **AFFIRMATIVE DEFENSE.**—It is an affirmative
10 defense against an injunction under subsection (a)(3)
11 that—

12 “(1) the conduct sought to be enjoined is for a
13 purpose not prohibited under the Chemical Weapons
14 Convention; and

15 “(2) such alleged chemical weapon is of a type
16 and quantity that under the circumstances is con-
17 sistent with that purpose.

18 **“SEC. 227C. OTHER PROHIBITIONS.**

19 “(a) **IN GENERAL.**—Except as provided in subsection
20 (b), whoever knowingly uses riot control agents as a meth-
21 od of warfare, or knowingly assists any person to do so,
22 shall be fined under this title or imprisoned for a term
23 of not more than ten years, or both.

24 “(b) **EXCLUSION.**—Subsection (a) shall not apply to
25 members of the Armed Forces of the United States. Mem-

1 bers of the Armed Forces of the United States who use
 2 riot control agents as a method of warfare shall be subject
 3 to appropriate military penalties.

4 “(c) JURISDICTION.—There is jurisdiction by the
 5 United States over the prohibited activity in subsection (a)
 6 if (1) the prohibited activity takes place in the United
 7 States or (2) the prohibited activity takes place outside
 8 of the United States and is committed by a national of
 9 the United States.

10 **“SEC. 227D. DEFINITIONS.**

11 “As used in this chapter, the term—

12 “(1) ‘Chemical Weapons Convention’ means the
 13 Convention on the Prohibition of the Development,
 14 Production, Stockpiling and Use of Chemical Weap-
 15 ons and on Their Destruction, opened for signature
 16 on January 13, 1993;

17 “(2) ‘chemical weapon’ means the following, to-
 18 gether or separately—

19 “(A) a toxic chemical and its precursors,
 20 except where intended for a purpose not prohib-
 21 ited under the Chemical Weapons Convention,
 22 as long as the type and quantity is consistent
 23 with such a purpose;

24 “(B) a munition or device, specifically de-
 25 signed to cause death or other harm through

1 toxic properties of those toxic chemicals speci-
2 fied in subparagraph (A), which would be re-
3 leased as a result of the employment of such
4 munition or device; or

5 “(C) any equipment specifically designed
6 for use directly in connection with the employ-
7 ment of munitions or devices specified in sub-
8 paragraph (B);

9 “(3) ‘toxic chemical’ means any chemical which
10 through its chemical action on life processes can
11 cause death, temporary incapacitation or permanent
12 harm to humans or animals. This includes all such
13 chemicals, regardless of their origin or of their meth-
14 od of production, and regardless of whether they are
15 produced in facilities, in munitions or elsewhere.
16 (For the purpose of implementing the Chemical
17 Weapons Convention, toxic chemicals which have
18 been identified for the application of verification
19 measures are listed in schedules contained in the
20 Annex on Chemicals of the Chemical Weapons Con-
21 vention.);

22 “(4) ‘precursor’ means any chemical reactant
23 which takes part at any stage in the production by
24 whatever method of a toxic chemical. This includes
25 any key component of a binary or multicomponent

1 chemical system. (For the purpose of implementing
2 the Chemical Weapons Convention, precursors which
3 have been identified for the application of verifica-
4 tion measures are listed in schedules contained in
5 the Annex on Chemicals of the Chemical Weapons
6 Convention.);

7 “(5) ‘key component of a binary or multicompo-
8 nent chemical system’ means the precursor which
9 plays the most important role in determining the
10 toxic properties of the final product and reacts rap-
11 idly with other chemicals in the binary or multi-
12 component system;

13 “(6) ‘purpose not prohibited under the Chemi-
14 cal Weapons Convention’ means—

15 “(A) industrial, agricultural, research,
16 medical, pharmaceutical, or other peaceful pur-
17 poses;

18 “(B) protective purposes, namely those
19 purposes directly related to protection against
20 toxic chemicals and to protection against chemi-
21 cal weapons;

22 “(C) military purposes not connected with
23 the use of chemical weapons and not dependent
24 on the use of the toxic properties of chemicals
25 as a method of warfare; or

1 ~~“(D) law enforcement purposes, including~~
2 ~~domestic riot control purposes;~~

3 ~~“(7) ‘national of the United States’ has the~~
4 ~~same meaning given such term in section 101(a)(22)~~
5 ~~of the Immigration and Nationality Act (8 U.S.C.~~
6 ~~1101(a)(22));~~

7 ~~“(8) ‘United States,’ when used in a geographi-~~
8 ~~cal sense, includes all places under the jurisdiction~~
9 ~~or control of the United States, including (A) any of~~
10 ~~the places within the provisions of section 101(41)~~
11 ~~of the Federal Aviation Act of 1958, as amended~~
12 ~~(49 U.S.C. 40102(41)), (B) any public aircraft or~~
13 ~~civil aircraft of the United States, as such terms are~~
14 ~~defined in sections 101 (36) and (18) of the Federal~~
15 ~~Aviation Act of 1958, as amended (49 U.S.C.~~
16 ~~40102(37) and 40102(17)), and (C) any vessel of~~
17 ~~the United States, as such term is defined in section~~
18 ~~3(b) of the Maritime Drug Enforcement Act, as~~
19 ~~amended (46 U.S.C. App. 1903(b));~~

20 ~~“(9) ‘person’ means (A) any individual, cor-~~
21 ~~poration, partnership, firm, association, trust, estate,~~
22 ~~public or private institution, any State or any politi-~~
23 ~~cal subdivision thereof, or any political entity within~~
24 ~~a State, any foreign government or nation or any~~
25 ~~agency, instrumentality or political subdivision of~~

1 any such government or nation, or other entity, and
2 (B) any legal successor, representative, agent or
3 agency of the foregoing; and

4 “(10) ‘riot control agent’ means any chemical
5 not listed in a schedule in the Annex on Chemicals
6 of the Chemical Weapons Convention, which can
7 produce rapidly in humans sensory irritation or dis-
8 abling physical effects which disappear within a
9 short time following termination of exposure.

10 Nothing in paragraphs (3) or (4) of this section shall be
11 construed to limit verification activities pursuant to part
12 X or part XI of the Annex on Implementation and Ver-
13 ification of the Chemical Weapons Convention.”.

14 (b) CLERICAL AMENDMENTS.—The table of chapters
15 for part I of title 18, United States Code, is amended by—

16 (1) in the item for chapter 11A relating to child
17 support, redesignating “11A” as “11B”; and

18 (2) inserting after the item for chapter 11 the
19 following new item:

“11A. CHEMICAL WEAPONS 227.”

20 **SEC. 202. EFFECTIVE DATE.**

21 This title shall take effect on the date the Chemical
22 Weapons Convention enters into force for the United
23 States.

1 **SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.**

2 (a) SCHEDULE 1 ACTIVITIES.—It shall be unlawful
3 for any person, or any national of the United States lo-
4 cated outside the United States, to produce, acquire, re-
5 tain, transfer or use a chemical listed on schedule 1 of
6 the Annex on Chemicals of the Chemical Weapons Conven-
7 tion, unless—

8 (1) the chemicals are applied to research, medi-
9 cal, pharmaceutical or protective purposes;

10 (2) the types and quantities of chemicals are
11 strictly limited to those that can be justified for such
12 purposes; and

13 (3) the amount of such chemicals per person at
14 any given time for such purposes does not exceed a
15 limit to be determined by the United States National
16 Authority, but in any case, does not exceed one met-
17 ric ton.

18 (b) EXTRATERRITORIAL ACTS.—

19 (1) It shall be unlawful for any person, or any
20 national of the United States located outside the
21 United States, to produce, acquire, retain or use a
22 chemical listed on schedule 1 of the Annex on
23 Chemicals of the Chemical Weapons Convention out-
24 side the territories of the states parties to the Con-
25 vention or to transfer such chemicals to any person
26 located outside the territory of the United States;

1 except as provided for in the Convention for transfer
2 to a person located in the territory of another State
3 Party to the Convention.

4 (2) Beginning three years after the entry into
5 force of the Chemical Weapons Convention, it shall
6 be unlawful for any person, or any national of the
7 United States located outside the United States, to
8 transfer a chemical listed on schedule 2 of the
9 Annex on Chemicals of the Convention to any person
10 located outside the territory of a state party to the
11 Convention or to receive such a chemical from any
12 person located outside the territory of a state party
13 to the Convention.

14 (e) JURISDICTION.—There is jurisdiction by the
15 United States over the prohibited activity in subsections
16 (a) and (b) if (1) the prohibited activity takes place in
17 the United States or (2) the prohibited activity takes place
18 outside of the United States and is committed by a na-
19 tional of the United States.

20 **TITLE III—REPORTING**

21 **SEC. 301. REPORTING OF INFORMATION.**

22 (a) REPORTS.—The Department of Commerce shall
23 promulgate regulations under which each person who pro-
24 duces, processes, consumes, exports or imports, or pro-
25 poses to produce, process, consume, export or import, a

1 chemical substance subject to the Chemical Weapons Con-
2 vention shall maintain and permit access to such records
3 and shall submit to the Department of Commerce such
4 reports as the United States National Authority may rea-
5 sonably require pursuant to the Chemical Weapons Con-
6 vention. The Department of Commerce shall promulgate
7 regulations pursuant to this title expeditiously, taking into
8 account the written decisions issued by the Organization
9 for the Prohibition of Chemical Weapons, and may amend
10 or change such regulations as necessary.

11 (b) COORDINATION.—To the extent feasible, the
12 United States National Authority shall not require any re-
13 porting that is unnecessary, or duplicative of reporting re-
14 quired under any other Act. Agencies and departments
15 shall coordinate their actions with other agencies and de-
16 partments to avoid duplication of reporting by the affected
17 persons under this Act or any other Act.

18 **SEC. 302. CONFIDENTIALITY OF INFORMATION.**

19 (a) FREEDOM OF INFORMATION ACT EXEMPTION
20 FOR CERTAIN CHEMICAL WEAPONS CONVENTION INFOR-
21 MATION.—Any information reported to, or otherwise ob-
22 tained by, the United States National Authority, the De-
23 partment of Commerce, or any other agency or depart-
24 ment under this Act or under the Chemical Weapons Con-

1 vention shall not be required to be publicly disclosed pur-
2 suant to section 552 of title 5, United States Code.

3 (b) PROHIBITED DISCLOSURE AND EXCEPTIONS.—

4 Information exempt from disclosure under subsection (a)
5 shall not be published or disclosed, except that such infor-
6 mation—

7 (1) shall be disclosed or otherwise provided to
8 the Technical Secretariat or other states parties to
9 the Chemical Weapons Convention in accordance
10 with the Convention, in particular, the provisions of
11 the Annex on the Protection of Confidential Infor-
12 mation;

13 (2) shall be made available to any committee or
14 subcommittee of Congress of appropriate jurisdiction
15 upon the written request of the chairman or ranking
16 minority member of such committee or subcommit-
17 tee, except that no such committee or subcommittee,
18 or member thereof, shall disclose such information
19 or material;

20 (3) shall be disclosed to other agencies or de-
21 partments for law enforcement purposes with regard
22 to this Act or any other Act, and may be disclosed
23 or otherwise provided when relevant in any proceed-
24 ing under this Act or any other Act, except that dis-
25 closure or provision in such a proceeding shall be

1 made in such manner as to preserve confidentiality
2 to the extent practicable without impairing the pro-
3 ceeding; and

4 (4) may be disclosed, including in the form of
5 categories of information, if the United States Na-
6 tional Authority determines that such disclosure is
7 in the national interest.

8 (e) NOTICE OF DISCLOSURE.—If the United States
9 National Authority, pursuant to subsection (b)(4), pro-
10 poses to publish or disclose or otherwise provide informa-
11 tion exempted from disclosure in subsection (a), the Unit-
12 ed States National Authority shall, where appropriate, no-
13 tify the person who submitted such information of the in-
14 tent to release such information. Where notice has been
15 provided, the United States National Authority may not
16 release such information until the expiration of 30 days
17 after notice has been provided.

18 (d) CRIMINAL PENALTY FOR WRONGFUL DISCLO-
19 SURE.—Any officer or employee of the United States or
20 former officer or employee of the United States, who by
21 virtue of such employment or official position has obtained
22 possession of, or has access to, information the disclosure
23 or other provision of which is prohibited by subsection (a),
24 and who knowing that disclosure or provision of such in-
25 formation is prohibited by such subsection, willfully dis-

1 closes or otherwise provides the information in any man-
2 ner to any person, including persons located outside the
3 territory of the United States, not entitled to receive it,
4 shall be fined under title 18, United States Code, or im-
5 prisoned for not more than five years, or both.

6 (c) INTERNATIONAL INSPECTORS.—The provisions of
7 this section on disclosure or provision of information shall
8 also apply to employees of the Technical Secretariat.

9 **SEC. 303. PROHIBITED ACTS.**

10 It shall be unlawful for any person to fail or refuse
11 to (a) establish or maintain records, (b) submit reports,
12 notices, or other information to the Department of Com-
13 merce or the United States National Authority, or (c) per-
14 mit access to or copying of records, as required by this
15 Act or a regulation thereunder.

16 **TITLE IV—INSPECTIONS**

17 **SEC. 401. INSPECTIONS PURSUANT TO ARTICLE VI OF THE**
18 **CHEMICAL WEAPONS CONVENTION.**

19 (a) AUTHORITY.—For purposes of administering this
20 Act—

21 (1) any duly designated member of an inspec-
22 tion team of the Technical Secretariat may inspect
23 any plant, plant site, or other facility or location in
24 the United States subject to inspection pursuant to
25 the Chemical Weapons Convention; and

1 (2) the National Authority shall designate rep-
2 representatives who may accompany members of an in-
3 spection team of the Technical Secretariat during
4 the inspection specified in paragraph (1). The num-
5 ber of duly designated representatives shall be kept
6 to the minimum necessary.

7 (b) NOTICE.—An inspection pursuant to subsection
8 (a) may be made only upon issuance of a written notice
9 to the owner and to the operator, occupant or agent in
10 charge of the premises to be inspected, except that failure
11 to receive a notice shall not be a bar to the conduct of
12 an inspection. The notice shall be submitted to the owner
13 and to the operator, occupant or agent in charge as soon
14 as possible after the United States National Authority re-
15 ceives it from the Technical Secretariat. The notice shall
16 include all appropriate information supplied by the Tech-
17 nical Secretariat to the United States National Authority
18 regarding the basis for the selection of the plant site,
19 plant, or other facility or location for the type of inspection
20 sought, including, for challenge inspections pursuant to
21 article IX of the Chemical Weapons Convention, appro-
22 priate evidence or reasons provided by the requesting state
23 party to the Convention with regard to its concerns about
24 compliance with the Chemical Weapons Convention at the
25 facility or location. A separate notice shall be given for

1 each such inspection, but a notice shall not be required
2 for each entry made during the period covered by the in-
3 spection.

4 (c) CREDENTIALS.—If the owner, operator, occupant
5 or agent in charge of the premises to be inspected is
6 present, a member of the inspection team of the Technical
7 Secretariat, as well as, if present, the representatives of
8 agencies or departments, shall present appropriate creden-
9 tials before the inspection is commenced.

10 (d) TIMEFRAME FOR INSPECTIONS.—Consistent with
11 the provisions of the Chemical Weapons Convention, each
12 inspection shall be commenced and completed with reason-
13 able promptness and shall be conducted at reasonable
14 times, within reasonable limits, and in a reasonable man-
15 ner. The Department of Commerce shall endeavor to en-
16 sure that, to the extent possible, each inspection is com-
17 menced, conducted and concluded during ordinary work-
18 ing hours, but no inspection shall be prohibited or other-
19 wise disrupted for commencing, continuing or concluding
20 during other hours. However, nothing in this subsection
21 shall be interpreted as modifying the timeframes estab-
22 lished in the Chemical Weapons Convention.

23 (e) SCOPE.—

24 (1) Except as provided in paragraph (2) of this
25 subsection and subsection (f), an inspection con-

1 ducted under this title may extend to all things with-
2 in the premises inspected (including records, files,
3 papers, processes, controls, structures and vehicles)
4 related to whether the requirements of the Chemical
5 Weapons Convention applicable to such premises
6 have been complied with.

7 (2) To the extent possible consistent with the
8 obligations of the United States pursuant to the
9 Chemical Weapons Convention, no inspection under
10 this title shall extend to—

11 (A) financial data;

12 (B) sales and marketing data (other than
13 shipment data);

14 (C) pricing data;

15 (D) personnel data;

16 (E) research data;

17 (F) patent data;

18 (G) data maintained for compliance with
19 environmental or occupational health and safety
20 regulations; or

21 (H) personnel and vehicles entering and
22 personnel and personal passenger vehicles
23 exiting the facility.

24 (f) FACILITY AGREEMENTS.—

1 (1) Inspections of plants, plant sites, or other
2 facilities or locations for which the United States
3 has a facility agreement with the Organization for
4 the Prohibition of Chemical Weapons shall be con-
5 ducted in accordance with the facility agreement.

6 (2) Facility agreements shall be concluded for
7 plants, plant sites, or other facilities or locations
8 that are subject to inspection pursuant to paragraph
9 4 of article VI of the Chemical Weapons Convention
10 unless the owner and the operator, occupant or
11 agent in charge of the facility and the Technical
12 Secretariat agree that such an agreement is not nec-
13 essary. Facility agreements should be concluded for
14 plants, plant sites, or other facilities or locations
15 that are subject to inspection pursuant to para-
16 graphs 5 or 6 of article VI of the Chemical Weapons
17 Convention if so requested by the owner and the op-
18 erator, occupant or agent in charge of the facility.

19 (3) The owner and the operator, occupant or
20 agent in charge of a facility shall be notified prior
21 to the development of the agreement relating to that
22 facility and, if they so request, may participate in
23 the preparations for the negotiation of such an
24 agreement. To the extent practicable consistent with
25 the Chemical Weapons Convention, the owner and

1 the operator, occupant or agent in charge of a facil-
2 ity may observe negotiations of the agreement be-
3 tween the United States and the Organization for
4 the Prohibition of Chemical Weapons concerning
5 that facility.

6 (g) SAMPLING AND SAFETY.—

7 (1) The Department of Commerce is authorized
8 to require the provision of samples to a member of
9 the inspection team of the Technical Secretariat in
10 accordance with the provisions of the Chemical
11 Weapons Convention. The owner or the operator, oc-
12 cupant or agent in charge of the premises to be in-
13 spected shall determine whether the sample shall be
14 taken by representatives of the premises or the in-
15 spection team or other individuals present.

16 (2) In carrying out their activities, members of
17 the inspection team of the Technical Secretariat and
18 representatives of agencies or departments accom-
19 panying the inspection team shall observe safety reg-
20 ulations established at the premises to be inspected,
21 including those for protection of controlled environ-
22 ments within a facility and for personal safety.

23 (h) COORDINATION.—To the extent possible consist-
24 ent with the obligations of the United States pursuant to
25 the Chemical Weapons Convention, the representatives of

1 the United States National Authority, the Department of
2 Commerce and any other agency or department, if
3 present, shall assist the owner and the operator, occupant
4 or agent in charge of the premises to be inspected in inter-
5 acting with the members of the inspection team of the
6 Technical Secretariat.

7 **SEC. 402. OTHER INSPECTIONS PURSUANT TO THE CHEMI-**
8 **CAL WEAPONS CONVENTION AND LEAD**
9 **AGENCY.**

10 (a) OTHER INSPECTIONS.—The provisions of this
11 title shall apply, as appropriate, to all other inspections
12 authorized by the Chemical Weapons Convention. For all
13 inspections other than those conducted pursuant to para-
14 graphs 4, 5, or 6 of article VI of the Convention, the term
15 “Department of Commerce” shall be replaced by the term
16 “Lead Agency” in section 401.

17 (b) LEAD AGENCY.—For the purposes of this title,
18 the term “Lead Agency” means the agency or department
19 designated by the President or the designee of the Presi-
20 dent to exercise the functions and powers set forth in the
21 specific provision, based, inter alia, on the particular re-
22 sponsibilities of the agency or department within the Unit-
23 ed States Government and the relationship of the agency
24 or department to the premises to be inspected.

1 **SEC. 403. PROHIBITED ACTS.**

2 It shall be unlawful for any person to fail or refuse
3 to permit entry or inspection, or to disrupt, delay or other-
4 wise impede an inspection as required by this Act or the
5 Chemical Weapons Convention.

6 **SEC. 404. PENALTIES.**

7 (a) CIVIL.—

8 (1) (A) Any person who violates a provision of
9 section 203 of this Act shall be liable to the United
10 States for a civil penalty in an amount not to exceed
11 \$50,000 for each such violation.

12 (B) Any person who violates a provision of sec-
13 tion 303 of this Act shall be liable to the United
14 States for a civil penalty in an amount not to exceed
15 \$5,000 for each such violation.

16 (C) Any person who violates a provision of sec-
17 tion 403 of this Act shall be liable to the United
18 States for a civil penalty in an amount not to exceed
19 \$25,000 for each such violation. For purposes of
20 this subsection, each day such a violation of section
21 403 continues shall constitute a separate violation of
22 section 403.

23 (2) (A) A civil penalty for a violation of section
24 203, 303 or 403 of this Act shall be assessed by the
25 Lead Agency by an order made on the record after
26 opportunity (provided in accordance with this sub-

1 paragraph) for a hearing in accordance with section
2 554 of title 5, United States Code. Before issuing
3 such an order, the Lead Agency shall give written
4 notice to the person to be assessed a civil penalty
5 under such order of the Lead Agency's proposal to
6 issue such order and provide such person an oppor-
7 tunity to request, within 15 days of the date the no-
8 tice is received by such person, such a hearing on
9 the order.

10 (B) In determining the amount of a civil pen-
11 alty, the Lead Agency shall take into account the
12 nature, circumstances, extent and gravity of the vio-
13 lation or violations and, with respect to the violator,
14 ability to pay, effect on ability to continue to do
15 business, any history of prior such violations, the de-
16 gree of culpability, the existence of an internal com-
17 pliance program, and such other matters as justice
18 may require.

19 (C) The Lead Agency may compromise, modify
20 or remit, with or without conditions, any civil pen-
21 alty which may be imposed under this subsection.
22 The amount of such penalty, when finally deter-
23 mined, or the amount agreed upon in compromise,
24 may be deducted from any sums owing by the Unit-
25 ed States to the person charged.

1 ~~(3)~~ Any person who requested in accordance
2 with paragraph ~~(2)~~(A) a hearing respecting the as-
3 sessment of a civil penalty and who is aggrieved by
4 an order assessing a civil penalty may file a petition
5 for judicial review of such order with the United
6 States Court of Appeals for the District of Columbia
7 Circuit or for any other circuit in which such person
8 resides or transacts business. Such a petition may be
9 filed only within the 30-day period beginning on the
10 date the order making such assessment was issued.

11 ~~(4)~~ If any person fails to pay an assessment of
12 a civil penalty—

13 ~~(A)~~ after the order making the assessment
14 has become a final order and if such person
15 does not file a petition for judicial review of the
16 order in accordance with paragraph ~~(3)~~; or

17 ~~(B)~~ after a court in an action brought
18 under paragraph ~~(3)~~ has entered a final judg-
19 ment in favor of the Lead Agency;

20 the Attorney General shall recover the amount as-
21 sessed (plus interest at currently prevailing rates
22 from the date of the expiration of the 30-day period
23 referred to in paragraph ~~(3)~~ or the date of such final
24 judgment, as the case may be) in an action brought
25 in any appropriate district court of the United

1 States. In such an action, the validity, amount and
2 appropriateness of such penalty shall not be subject
3 to review.

4 (b) CRIMINAL.—Any person who knowingly violates
5 any provision of section 203, 303, or 403 of this Act, shall,
6 in addition to or in lieu of any civil penalty which may
7 be imposed under subsection (a) for such violation, be
8 fined under title 18, United States Code, imprisoned for
9 not more than two years, or both.

10 **SEC. 405. SPECIFIC ENFORCEMENT.**

11 (a) JURISDICTION.—The district courts of the United
12 States shall have jurisdiction over civil actions to—

13 (1) restrain any violation of section 203, 303 or
14 403 of this Act; and

15 (2) compel the taking of any action required by
16 or under this Act or the Chemical Weapons Conven-
17 tion.

18 (b) CIVIL ACTIONS.—A civil action described in sub-
19 section (a) may be brought—

20 (1) in the case of a civil action described in sub-
21 section (a)(1), in the United States district court for
22 the judicial district wherein any act, omission, or
23 transaction constituting a violation of section 203,
24 303, or 403 of this Act occurred or wherein the de-
25 fendant is found or transacts business; or

1 (2) in the case of a civil action described in sub-
2 section (a)(2), in the United States district court for
3 the judicial district wherein the defendant is found
4 or transacts business.

5 In any such civil action process may be served on a defend-
6 ant wherever the defendant may reside or may be found,
7 whether the defendant resides or may be found within the
8 United States or elsewhere.

9 **SEC. 406. LEGAL PROCEEDINGS.**

10 (a) WARRANTS.—

11 (1) The Lead Agency shall seek the consent of
12 the owner or the operator, occupant, or agent in
13 charge of the premises to be inspected prior to the
14 initiation of any inspection. Before or after seeking
15 such consent, the Lead Agency may seek a search
16 warrant from any official authorized to issue search
17 warrants. Proceedings regarding the issuance of a
18 search warrant shall be conducted ex parte, unless
19 otherwise requested by the Lead Agency. The Lead
20 Agency shall provide to the official authorized to
21 issue search warrants all appropriate information
22 supplied by the Technical Secretariat to the United
23 States National Authority regarding the basis for
24 the selection of the plant site, plant, or other facility
25 or location for the type of inspection sought, includ-

1 ing; for challenge inspections pursuant to article IX
2 of the Chemical Weapons Convention; appropriate
3 evidence or reasons provided by the requesting state
4 party to the Convention with regard to its concerns
5 about compliance with the Chemical Weapons Con-
6 vention at the facility or location. The Lead Agency
7 shall also provide any other appropriate information
8 available to it relating to the reasonableness of the
9 selection of the plant, plant site, or other facility or
10 location for the inspection.

11 (2) The official authorized to issue search war-
12 rants shall promptly issue a warrant authorizing the
13 requested inspection upon an affidavit submitted by
14 the Lead Agency showing that—

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

17 (B) the plant site, plant, or other facility
18 or location sought to be inspected is subject to
19 the specific type of inspection requested under
20 the Chemical Weapons Convention;

21 (C) the procedures established under the
22 Chemical Weapons Convention and this Act for
23 initiating an inspection have been complied
24 with; and

1 (D) the Lead Agency will ensure that the
2 inspection is conducted in a reasonable manner
3 and will not exceed the scope or duration set
4 forth in or authorized by the Chemical Weapons
5 Convention or this Act.

6 (3) The warrant shall specify the type of in-
7 spection authorized; the purpose of the inspection;
8 the type of plant site, plant, or other facility or loca-
9 tion to be inspected; to the extent possible, the
10 items, documents and areas that may be inspected;
11 the earliest commencement and latest concluding
12 dates and times of the inspection; and the identities
13 of the representatives of the Technical Secretariat, if
14 known, and, if applicable, the representatives of
15 agencies or departments.

16 (b) SUBPOENAS.—In carrying out this Act, the Lead
17 Agency may by subpoena require the attendance and testi-
18 mony of witnesses and the production of reports, papers,
19 documents, answers to questions and other information
20 that the Lead Agency deems necessary. Witnesses shall
21 be paid the same fees and mileage that are paid witnesses
22 in the courts of the United States. In the event of contu-
23 macy, failure or refusal of any person to obey any such
24 subpoena, any district court of the United States in which
25 venue is proper shall have jurisdiction to order any such

1 person to comply with such subpoena. Any failure to obey
2 such an order of the court is punishable by the court as
3 a contempt thereof.

4 (c) INJUNCTIONS AND OTHER ORDERS.—No court
5 shall issue an injunction or other order that would limit
6 the ability of the Technical Secretariat to conduct, or the
7 United States National Authority or the Lead Agency to
8 facilitate, inspections as required or authorized by the
9 Chemical Weapons Convention.

10 **SEC. 407. AUTHORITY.**

11 (a) REGULATIONS.—The Lead Agency may issue
12 such regulations as are necessary to implement and en-
13 force this title and the provisions of the Chemical Weapons
14 Convention, and amend or revise them as necessary.

15 (b) ENFORCEMENT.—The Lead Agency may des-
16 ignate officers or employees of the agency or department
17 to conduct investigations pursuant to this Act. In conduct-
18 ing such investigations, those officers or employees may,
19 to the extent necessary or appropriate for the enforcement
20 of this Act, or for the imposition of any penalty or liability
21 arising under this Act, exercise such authorities as are
22 conferred upon them by other laws of the United States.

23 **SEC. 408. SAVING PROVISION.**

24 The purpose of this Act is to enable the United States
25 to comply with its obligations under the Chemical Weap-

1 ons Convention. Accordingly, in addition to the authorities
 2 set forth in this Act, the President is authorized to issue
 3 such executive orders, directives or regulations as are nec-
 4 essary to fulfill the obligations of the United States under
 5 the Chemical Weapons Convention, provided such execu-
 6 tive orders, directives or regulations do not exceed the re-
 7 quirements specified in the Chemical Weapons Conven-
 8 tion.

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the “Chemical Weapons Con-*
 11 *vention Implementation Act of 1997”.*

12 **SEC. 2. TABLE OF CONTENTS.**

13 *The table of contents for this Act is as follows:*

- Sec. 1. Short title.*
- Sec. 2. Table of contents.*
- Sec. 3. Definitions.*

TITLE I—GENERAL PROVISIONS

- Sec. 101. Designation of United States National Authority.*
- Sec. 102. No abridgement of constitutional rights.*
- Sec. 103. Civil liability of the United States.*

**TITLE II—PENALTIES FOR UNLAWFUL ACTIVITIES SUBJECT TO
THE JURISDICTION OF THE UNITED STATES**

Subtitle A—Criminal and Civil Penalties

- Sec. 201. Criminal and civil provisions.*

Subtitle B—Revocations of Export Privileges

- Sec. 211. Revocations of export privileges.*

TITLE III—INSPECTIONS

- Sec. 301. Definitions in the title.*
- Sec. 302. Facility agreements.*
- Sec. 303. Authority to conduct inspections.*
- Sec. 304. Procedures for inspections.*
- Sec. 305. Warrants.*
- Sec. 306. Prohibited acts relating to inspections.*

- Sec. 307. *National security exception.*
 Sec. 308. *Protection of constitutional rights of contractors.*
 Sec. 309. *Annual report on inspections.*
 Sec. 310. *United States assistance in inspections at private facilities.*

TITLE IV—REPORTS

- Sec. 401. *Reports required by the United States National Authority.*
 Sec. 402. *Prohibition relating to low concentrations of schedule 2 and 3 chemicals.*
 Sec. 403. *Prohibition relating to unscheduled discrete organic chemicals and coincidental byproducts in waste streams.*
 Sec. 404. *Confidentiality of information.*
 Sec. 405. *Recordkeeping violations.*

TITLE V—ENFORCEMENT

- Sec. 501. *Penalties.*
 Sec. 502. *Specific enforcement.*
 Sec. 503. *Expedited judicial review.*

TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. *Repeal.*
 Sec. 602. *Prohibition.*
 Sec. 603. *Bankruptcy actions.*

1 **SEC. 3. DEFINITIONS.**

2 *In this Act:*

3 (1) *CHEMICAL WEAPON.—The term “chemical*
 4 *weapon” means the following, together or separately:*

5 (A) *A toxic chemical and its precursors, ex-*
 6 *cept where intended for a purpose not prohibited*
 7 *under this Act as long as the type and quantity*
 8 *is consistent with such a purpose.*

9 (B) *A munition or device, specifically de-*
 10 *signed to cause death or other harm through*
 11 *toxic properties of those toxic chemicals specified*
 12 *in subparagraph (A) which would be released as*
 13 *a result of the employment of such munition or*
 14 *device.*

1 (C) Any equipment specifically designed for
2 use directly in connection with the employment
3 of munitions or devices specified in subpara-
4 graph (B).

5 (2) *CHEMICAL WEAPONS CONVENTION; CONVEN-*
6 *TION.—The terms “Chemical Weapons Convention”*
7 *and “Convention” mean the Convention on the Prohi-*
8 *bition of the Development, Production, Stockpiling*
9 *and Use of Chemical Weapons and on Their Destruc-*
10 *tion, opened for signature on January 13, 1993.*

11 (3) *KEY COMPONENT OF A BINARY OR MULTI-*
12 *COMPONENT CHEMICAL SYSTEM.—The term “key com-*
13 *ponent of a binary or multicomponent chemical sys-*
14 *tem” means the precursor which plays the most im-*
15 *portant role in determining the toxic properties of the*
16 *final product and reacts rapidly with other chemicals*
17 *in the binary or multicomponent system.*

18 (4) *NATIONAL OF THE UNITED STATES.—The*
19 *term “national of the United States” has the same*
20 *meaning given such term in section 101(a)(22) of the*
21 *Immigration and Nationality Act (8 U.S.C.*
22 *1101(a)(22)).*

23 (5) *ORGANIZATION.—The term “Organization”*
24 *means the Organization for the Prohibition of Chemi-*
25 *cal Weapons.*

1 (6) *PERSON*.—The term “person”, except as oth-
2 erwise provided, means any individual, corporation,
3 partnership, firm, association, trust, estate, public or
4 private institution, any State or any political sub-
5 division thereof, or any political entity within a
6 State, any foreign government or nation or any agen-
7 cy, instrumentality or political subdivision of any
8 such government or nation, or other entity located in
9 the United States.

10 (7) *PRECURSOR*.—

11 (A) *IN GENERAL*.—The term “precursor”
12 means any chemical reactant which takes part
13 at any stage in the production by whatever
14 method of a toxic chemical. The term includes
15 any key component of a binary or multicompo-
16 nent chemical system.

17 (B) *LIST OF PRECURSORS*.—Precursors
18 which have been identified for the application of
19 verification measures under Article VI of the
20 Convention are listed in schedules contained in
21 the Annex on Chemicals of the Chemical Weap-
22 ons Convention.

23 (8) *PURPOSES NOT PROHIBITED BY THIS ACT*.—
24 The term “purposes not prohibited by this Act”
25 means the following:

1 (A) *PEACEFUL PURPOSES.*—Any peaceful
2 purpose related to an industrial, agricultural,
3 research, medical, or pharmaceutical activity or
4 other activity.

5 (B) *PROTECTIVE PURPOSES.*—Any purpose
6 directly related to protection against toxic
7 chemicals and to protection against chemical
8 weapons.

9 (C) *UNRELATED MILITARY PURPOSES.*—
10 Any military purpose of the United States that
11 is not connected with the use of a chemical weap-
12 on and that is not dependent on the use of the
13 toxic or poisonous properties of the chemical
14 weapon to cause death or other harm.

15 (D) *LAW ENFORCEMENT PURPOSES.*—Any
16 law enforcement purpose, including any domestic
17 riot control purpose and including imposition of
18 capital punishment.

19 (9) *TECHNICAL SECRETARIAT.*—The term “Tech-
20 nical Secretariat” means the Technical Secretariat of
21 the Organization for the Prohibition of Chemical
22 Weapons established by the Chemical Weapons Con-
23 vention.

1 (10) *SCHEDULE 1 CHEMICAL AGENT.*—*The term*
 2 “*Schedule 1 chemical agent*” *means any of the follow-*
 3 *ing, together or separately:*

4 (A) *O-Alkyl* ($\leq C_{10}$, *incl. cycloalkyl*) *alkyl*

5 *(Me, Et, n-Pr or i-Pr)-*

6 *phosphonofluoridates*

7 *(e.g. Sarin: O-Isopropyl*

8 *methylphosphonofluoridate Soman: O-*

9 *Pinacolyl methylphosphonofluoridate).*

10 (B) *O-Alkyl* ($\leq C_{10}$, *incl. cycloalkyl*) *N,N-*

11 *dialkyl*

12 *(Me, Et, n-Pr or i-Pr)-*

13 *phosphoramidocyanidates*

14 *(e.g. Tabun: O-Ethyl N,N-dimethyl*

15 *phosphoramidocyanidate).*

16 (C) *O-Alkyl* (*H or* $\leq C_{10}$, *incl. cycloalkyl*) *S-*

17 *2-dialkyl*

18 *(Me, Et, n-Pr or i-Pr)-aminoethyl*

19 *alkyl*

20 *(Me, Et, n-Pr or i-Pr)*

21 *phosphonothiolates and corresponding*

22 *alkylated or protonated salts*

23 *(e.g. VX: O-Ethyl S-2-*

24 *diisopropylaminoethyl methyl phosphono-*

25 *thiolate).*

- 1 (D) Sulfur mustards:
- 2 2-Chloroethylchloromethylsulfide
- 3 Mustard gas: Bis(2-chloroethyl)sulfide
- 4 Bis(2-chloroethylthio)methane
- 5 Sesquimustard: 1,2-Bis(2-
- 6 chloroethylthio)ethane
- 7 1,3-Bis(2-chloroethylthio)-n-propane
- 8 1,4-Bis(2-chloroethylthio)-n-butane
- 9 1,5-Bis(2-chloroethylthio)-n-pentane
- 10 Bis(2-chloroethylthiomethyl)ether
- 11 O-Mustard: Bis(2-
- 12 chloroethylthioethyl)ether.
- 13 (E) Lewisites:
- 14 Lewisite 1: 2-Chlorovinylchloroarsine
- 15 Lewisite 2: Bis(2-
- 16 chlorovinyl)chloroarsine
- 17 Lewisite 3: Tris (2-chlorovinyl)arsine.
- 18 (F) Nitrogen mustards:
- 19 HN1: Bis(2-chloroethyl)ethylamine
- 20 HN2: Bis(2-chloroethyl)methylamine
- 21 HN3: Tris(2-chloroethyl)amine.
- 22 (G) Saxitoxin.
- 23 (H) Ricin.
- 24 (I) Alkyl (Me, Et, n-Pr or i-Pr)
- 25 phosphoryldifluorides

- 1 *e.g. DF: Methylphosphonyldifluoride.*
- 2 (J) *O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl)O-*
- 3 *2-dialkyl*
- 4 *(Me, Et, n-Pr or i-Pr)-aminoethyl*
- 5 *alkyl*
- 6 *(Me, Et, n-Pr or i-Pr) phosphonites*
- 7 *and corresponding alkylated or protonated*
- 8 *salts*
- 9 *e.g. QL: O-Ethyl O-2-diisopropyl-*
- 10 *aminoethyl methylphosphonite.*
- 11 (K) *Chlorosarin: O-Isopropyl methyl-*
- 12 *phosphonochloridate.*
- 13 (L) *Chlorosoman: O-Pinacolyl*
- 14 *methylphosphonochloridate.*
- 15 (11) *SCHEDULE 2 CHEMICAL AGENT.—The term*
- 16 *“Schedule 2 chemical agent” means the following, to-*
- 17 *gether or separately:*
- 18 (A) *Amiton: O,O-Diethyl S-[2-*
- 19 *(diethylamino)ethyl]*
- 20 *phosphorothiolate and corresponding*
- 21 *alkylated or protonated salts.*
- 22 (B) *PFIB: 1,1,3,3,3-Pentafluoro-2-*
- 23 *(trifluoromethyl)-1-propene.*
- 24 (C) *BZ: 3-Quinuclidinyl benzilate*

1 (D) Chemicals, except for those listed in
2 Schedule 1, containing a phosphorus atom to
3 which is bonded one methyl, ethyl or propyl
4 (normal or iso) group but not further carbon
5 atoms,

6 e.g. Methylphosphonyl dichloride Di-
7 methyl methylphosphonate

8 Exemption: Fonofos: O-Ethyl S-phenyl
9 ethylphosphonothiothionate.

10 (E) N,N-Dialkyl (Me, Et, n-Pr or i-Pr)
11 phosphoramidic dihalides.

12 (F) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-
13 dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates.

14 (G) arsenic trichloride.

15 (H) 2,2-Diphenyl-2-hydroxyacetic acid.

16 (I) Quinuclidine-3-ol.

17 (J) N,N-Dialkyl (Me, Et, n-Pr or i-Pr)
18 aminoethyl-2-chlorides and corresponding
19 protonated salts.

20 (K) N,N-Dialkyl (Me, Et, n-Pr or i-Pr)
21 aminoethane-2-ols and corresponding protonated
22 salts

23 Exemptions: N,N-Dimethylaminoeth-
24 anol and corresponding protonated salts

1 *N,N*-Diethylaminoethanol and correspond-
2 ing protonated salts.

3 (L) *N,N*-Dialkyl (Me, Et, *n*-Pr or *i*-Pr)
4 aminoethane-2-thiols and corresponding
5 protonated salts.

6 (M) Thiodiglycol: Bis(2-hydroxyethyl)sul-
7 fide.

8 (N) Pinacolyl alcohol: 3,3-Dimethylbutane-
9 2-ol.

10 (12) SCHEDULE 3 CHEMICAL AGENT.—The term
11 “Schedule 3 chemical agent” means any the following,
12 together or separately:

13 (A) Phosgene: carbonyl dichloride.

14 (B) Cyanogen chloride.

15 (C) Hydrogen cyanide.

16 (D) Chloropicrin: trichloronitromethane.

17 (E) Phosphorous oxychloride.

18 (F) Phosphorous trichloride.

19 (G) Phosphorous pentachloride.

20 (H) Trimethyl phosphite.

21 (I) Triethyl phosphite.

22 (J) Dimethyl phosphite.

23 (K) Diethyl phosphite.

24 (L) Sulfur monochloride.

25 (M) Sulfur dichloride.

1 (N) *Thionyl chloride.*

2 (O) *Ethyldiethanolamine.*

3 (P) *Methyldiethanolamine.*

4 (O) *Triethanolamine.*

5 (13) *TOXIC CHEMICAL.—*

6 (A) *IN GENERAL.—The term “toxic chemi-*
7 *cal” means any chemical which through its*
8 *chemical action on life processes can cause death,*
9 *temporary incapacitation or permanent harm to*
10 *humans or animals. The term includes all such*
11 *chemicals, regardless of their origin or of their*
12 *method of production, and regardless of whether*
13 *they are produced in facilities, in munitions or*
14 *elsewhere.*

15 (B) *LIST OF TOXIC CHEMICALS.—Toxic*
16 *chemicals which have been identified for the ap-*
17 *plication of verification measures under Article*
18 *VI of the Convention are listed in schedules con-*
19 *tained in the Annex on Chemicals of the Chemi-*
20 *cal Weapons Convention.*

21 (14) *UNITED STATES.—The term “United*
22 *States” means the several States of the United States,*
23 *the District of Columbia, and the commonwealths, ter-*
24 *ritories, and possessions of the United States and in-*

1 *cludes all places under the jurisdiction or control of*
 2 *the United States, including—*

3 *(A) any of the places within the provisions*
 4 *of paragraph (41) of section 40102 of title 49,*
 5 *United States Code;*

6 *(B) any civil aircraft of the United States*
 7 *or public aircraft, as such terms are defined in*
 8 *paragraphs (17) and (37), respectively, of section*
 9 *40102 of title 49, United States Code; and*

10 *(C) any vessel of the United States, as such*
 11 *term is defined in section 3(b) of the Maritime*
 12 *Drug Enforcement Act, as amended (46 U.S.C.,*
 13 *App. sec. 1903(b)).*

14 *(15) UNSCHEDULED DISCRETE ORGANIC CHEMI-*
 15 *CAL.—The term “unscheduled discrete organic chemi-*
 16 *cal” means any chemical not listed on any schedule*
 17 *contained in the Annex on Chemicals of the Conven-*
 18 *tion that belongs to the class of chemical compounds*
 19 *consisting of all compounds of carbon, except for its*
 20 *oxides, sulfides, and metal carbonates.*

21 **TITLE I—GENERAL PROVISIONS**

22 **SEC. 101. DESIGNATION OF UNITED STATES NATIONAL AU-** 23 **THORITY.**

24 *(a) DESIGNATION.—Pursuant to paragraph 4 of Arti-*
 25 *cle VII of the Chemical Weapons Convention, the President*

1 *shall designate the Department of State to be the United*
2 *States National Authority.*

3 (b) *PURPOSES.*—*The United States National Author-*
4 *ity shall—*

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

9 (2) *implement the provisions of this Act in co-*
10 *ordination with an interagency group designated by*
11 *the President consisting of the Secretary of Commerce,*
12 *Secretary of Defense, Secretary of Energy, the Attor-*
13 *ney General, and the heads of agencies considered nec-*
14 *essary or advisable by the President.*

15 (c) *DIRECTOR.*—*The Secretary of State shall serve as*
16 *the Director of the United States National Authority.*

17 (d) *POWERS.*—*The Director may utilize the adminis-*
18 *trative authorities otherwise available to the Secretary of*
19 *State in carrying out the responsibilities of the Director set*
20 *forth in this Act.*

21 (e) *IMPLEMENTATION.*—*The President is authorized to*
22 *implement and carry out the provisions of this Act and the*
23 *Convention and shall designate through Executive order*
24 *which agencies of the United States shall issue, amend, or*
25 *revise the regulations in order to implement this Act and*

1 *the provisions of the Convention. The Director of the United*
2 *States National Authority shall report to the Congress on*
3 *the regulations that have been issued, implemented, or re-*
4 *vised pursuant to this section.*

5 **SEC. 102. NO ABRIDGEMENT OF CONSTITUTIONAL RIGHTS.**

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

11 **SEC. 103. CIVIL LIABILITY OF THE UNITED STATES.**

12 *(a) CLAIMS FOR TAKING OF PROPERTY.—*

13 *(1) JURISDICTION OF COURTS OF THE UNITED*
14 *STATES.—*

15 *(A) UNITED STATES COURT OF FEDERAL*
16 *CLAIMS.—The United States Court of Federal*
17 *Claims shall, subject to subparagraph (B), have*
18 *jurisdiction of any civil action or claim against*
19 *the United States for any taking of property*
20 *without just compensation that occurs by reason*
21 *of the action of any officer or employee of the Or-*
22 *ganization for the Prohibition of Chemical*
23 *Weapons, including any member of an inspec-*
24 *tion team of the Technical Secretariat, or by rea-*
25 *son of the action of any officer or employee of the*

1 *United States pursuant to this Act or the Con-*
2 *vention. For purposes of this subsection, action*
3 *taken pursuant to or under the color of this Act*
4 *or the Convention shall be deemed to be action*
5 *taken by the United States for a public purpose.*

6 (B) *DISTRICT COURTS.*—*The district courts*
7 *of the United States shall have original jurisdic-*
8 *tion, concurrent with the United States Court of*
9 *Federal Claims, of any civil action or claim de-*
10 *scribed in subparagraph (A) that does not exceed*
11 *\$10,000.*

12 (2) *NOTIFICATION.*—*Any person intending to*
13 *bring a civil action pursuant to paragraph (1) shall*
14 *notify the United States National Authority of that*
15 *intent at least one year before filing the claim in the*
16 *United States Court of Federal Claims. Action on any*
17 *claim filed during that one-year period shall be*
18 *stayed. The one-year period following the notification*
19 *shall not be counted for purposes of any law limiting*
20 *the period within which the civil action may be com-*
21 *menced.*

22 (3) *INITIAL STEPS BY UNITED STATES GOVERN-*
23 *MENT TO SEEK REMEDIES.*—*During the period be-*
24 *tween a notification pursuant to paragraph (2) and*
25 *the filing of a claim covered by the notification in the*

1 *United States Court of Federal Claims, the United*
2 *States National Authority shall pursue all diplomatic*
3 *and other remedies that the United States National*
4 *Authority considers necessary and appropriate to seek*
5 *redress for the claim including, but not limited to, the*
6 *remedies provided for in the Convention and under*
7 *this Act.*

8 (4) *BURDEN OF PROOF.—In any civil action*
9 *under paragraph (1), the plaintiff shall have the bur-*
10 *den to establish a prima facie case that, due to acts*
11 *or omissions of any official of the Organization or*
12 *any member of an inspection team of the Technical*
13 *Secretariat taken under the color of the Convention,*
14 *proprietary information of the plaintiff has been di-*
15 *divulged or taken without authorization. If the United*
16 *States Court of Federal Claims finds that the plaintiff*
17 *has demonstrated such a prima facie case, the burden*
18 *shall shift to the United States to disprove the plain-*
19 *tiff's claim. In deciding whether the plaintiff has car-*
20 *ried its burden, the United States Court of Federal*
21 *Claims shall consider, among other things—*

22 (A) *the value of proprietary information;*

23 (B) *the availability of the proprietary in-*
24 *formation;*

1 (C) the extent to which the proprietary in-
2 formation is based on patents, trade secrets, or
3 other protected intellectual property;

4 (D) the significance of proprietary informa-
5 tion; and

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

8 (b) *TORT LIABILITY.*—The district courts of the United
9 States shall have exclusive jurisdiction of civil actions for
10 money damages for any tort under the Constitution or any
11 Federal or State law arising from the acts or omissions of
12 any officer or employee of the United States or the Organi-
13 zation, including any member of an inspection team of the
14 Technical Secretariat, taken pursuant to or under color of
15 the Convention or this Act.

16 (c) *WAIVER OF SOVEREIGN IMMUNITY OF THE UNITED*
17 *STATES.*—In any action under subsection (a) or (b), the
18 United States may not raise sovereign immunity as a de-
19 fense.

20 (d) *AUTHORITY FOR CAUSE OF ACTION.*—

21 (1) *UNITED STATES ACTIONS IN UNITED STATES*
22 *DISTRICT COURT.*—Notwithstanding any other law,
23 the Attorney General of the United States is author-
24 ized to bring an action in the United States District
25 Court for the District of Columbia against any for-

1 *eign nation for money damages resulting from that*
2 *nation's refusal to provide indemnification to the*
3 *United States for any liability imposed on the United*
4 *States by virtue of the actions of an inspector of the*
5 *Technical Secretariat who is a national of that for-*
6 *eign nation acting at the direction or the behest of*
7 *that foreign nation.*

8 (2) *UNITED STATES ACTIONS IN COURTS OUT-*
9 *SIDE THE UNITED STATES.—The Attorney General is*
10 *authorized to seek any and all available redress in*
11 *any international tribunal for indemnification to the*
12 *United States for any liability imposed on the United*
13 *States by virtue of the actions of an inspector of the*
14 *Technical Secretariat, and to seek such redress in the*
15 *courts of the foreign nation from which the inspector*
16 *is a national.*

17 (3) *ACTIONS BROUGHT BY INDIVIDUALS AND*
18 *BUSINESSES.—Notwithstanding any other law, any*
19 *national of the United States, or any business entity*
20 *organized and operating under the laws of the United*
21 *States, may bring a civil action in a United States*
22 *District Court for money damages against any for-*
23 *eign national or any business entity organized and*
24 *operating under the laws of a foreign nation for an*
25 *unauthorized or unlawful acquisition, receipt, trans-*

1 *mission, or use of property by or on behalf of such*
2 *foreign national or business entity as a result of any*
3 *tort under the Constitution or any Federal or State*
4 *law arising from acts or omissions by any officer or*
5 *employee of the United States or any member of an*
6 *inspection team of the Technical Secretariat taken*
7 *pursuant to or under the color of the Convention or*
8 *this Act.*

9 *(e) RECOUPMENT.—*

10 *(1) POLICY.—It is the policy of the United*
11 *States to recoup all funds withdrawn from the Treas-*
12 *ury of the United States in payment for any tort*
13 *under Federal or State law or taking under the Con-*
14 *stitution arising from the acts or omissions of any*
15 *foreign person, officer, or employee of the Organiza-*
16 *tion, including any member of an inspection team of*
17 *the Technical Secretariat, taken under color of the*
18 *Chemical Weapons Convention or this Act.*

19 *(2) SANCTIONS ON FOREIGN COMPANIES.—*

20 *(A) IMPOSITION OF SANCTIONS.—The sanc-*
21 *tions provided in subparagraph (B) shall be im-*
22 *posed for a period of not less than ten years*
23 *upon—*

24 *(i) any foreign person, officer, or em-*
25 *ployee of the Organization, including any*

1 *member of an inspection team of the Tech-*
2 *nical Secretariat, for whose actions or omis-*
3 *sions the United States has been held liable*
4 *for a tort or taking pursuant to this Act;*
5 *and*

6 *(ii) any foreign person or business en-*
7 *tity organized and operating under the laws*
8 *of a foreign nation which knowingly as-*
9 *sisted, encouraged or induced, in any way,*
10 *a foreign person described in clause (i) to*
11 *publish, divulge, disclose, or make known in*
12 *any manner or to any extent not authorized*
13 *by the Convention any United States con-*
14 *fidential business information.*

15 (B) SANCTIONS.—

16 (i) ARMS EXPORT TRANSACTIONS.—
17 *The United States Government shall not sell*
18 *to a person described in subparagraph (A)*
19 *any item on the United States Munitions*
20 *List and shall terminate sales of any de-*
21 *fense articles, defense services, or design and*
22 *construction services to a person described*
23 *in paragraph (2) under the Arms Export*
24 *Control Act.*

1 (ii) *SANCTIONS UNDER EXPORT ADMIN-*
2 *ISTRATION ACT OF 1979.*—*The authorities*
3 *under section 6 of the Export Administra-*
4 *tion Act of 1979 shall be used to prohibit*
5 *the export of any goods or technology on the*
6 *control list established pursuant to section*
7 *5(c)(1) of that Act to a person described in*
8 *subparagraph (A).*

9 (iii) *INTERNATIONAL FINANCIAL AS-*
10 *SISTANCE.*—*The United States shall oppose*
11 *any loan or financial or technical assist-*
12 *ance by international financial institutions*
13 *in accordance with section 701 of the Inter-*
14 *national Financial Institutions Act to a*
15 *person described in subparagraph (A).*

16 (iv) *EXPORT-IMPORT BANK TRANS-*
17 *ACTIONS.*—*The United States shall not give*
18 *approval to guarantee, insure, or extend*
19 *credit, or to participate in the extension of*
20 *credit to a person described in subpara-*
21 *graph (A) through the Export-Import Bank*
22 *of the United States.*

23 (v) *PRIVATE BANK TRANSACTIONS.*—
24 *Regulations shall be issued to prohibit any*
25 *United States bank from making any loan*

1 or providing any credit to a person de-
2 scribed in subparagraph (A).

3 (vi) *BLOCKING OF ASSETS.*—*The Presi-*
4 *dent shall take all steps necessary to block*
5 *any transactions in any property subject to*
6 *the jurisdiction of the United States in*
7 *which a person described in subparagraph*
8 *(A) has any interest whatsoever, for the*
9 *purpose of recouping funds in accordance*
10 *with the policy in paragraph (1).*

11 (vii) *DENIAL OF LANDING RIGHTS.*—
12 *Landing rights in the United States shall be*
13 *denied to any private aircraft or air carrier*
14 *owned by a person described in subpara-*
15 *graph (A) except as necessary to provide for*
16 *emergencies in which the safety of the air-*
17 *craft or its crew or passengers is threatened.*

18 (3) *SANCTIONS ON FOREIGN GOVERNMENTS.*—

19 (A) *IMPOSITION OF SANCTIONS.*—*Whenever*
20 *the President determines that persuasive infor-*
21 *mation is available indicating that a foreign*
22 *country has knowingly assisted, encouraged or*
23 *induced, in any way, a person described in*
24 *paragraph (2)(A) to publish, divulge, disclose, or*
25 *make known in any manner or to any extent not*

1 *authorized by the Convention any United States*
2 *confidential business information, the President*
3 *shall, within 30 days after the receipt of such in-*
4 *formation by the executive branch of Govern-*
5 *ment, notify the Congress in writing of such de-*
6 *termination and, subject to the requirements of*
7 *paragraphs (4) and (5), impose the sanctions*
8 *provided under subparagraph (B) for a period of*
9 *not less than five years.*

10 *(B) SANCTIONS.—*

11 *(i) ARMS EXPORT TRANSACTIONS.—*

12 *The United States Government shall not sell*
13 *a country described in subparagraph (A)*
14 *any item on the United States Munitions*
15 *List, shall terminate sales of any defense ar-*
16 *ticles, defense services, or design and con-*
17 *struction services to that country under the*
18 *Arms Export Control Act, and shall termi-*
19 *nate all foreign military financing for that*
20 *country under the Arms Export Control*
21 *Act.*

22 *(ii) DENIAL OF CERTAIN LICENSES.—*

23 *Licenses shall not be issued for the export to*
24 *the sanctioned country of any item on the*

1 *United States Munitions List or commercial*
2 *satellites.*

3 (iii) *DENIAL OF ASSISTANCE.*—*No ap-*
4 *propriated funds may be used for the pur-*
5 *pose of providing economic assistance, pro-*
6 *viding military assistance or grant military*
7 *education and training, or extending mili-*
8 *tary credits or making guarantees to a*
9 *country described in subparagraph (A).*

10 (iv) *SANCTIONS UNDER EXPORT AD-*
11 *MINISTRATION ACT OF 1979.*—*The authori-*
12 *ties of section 6 of the Export Administra-*
13 *tion Act of 1979 shall be used to prohibit*
14 *the export of any goods or technology on the*
15 *control list established pursuant to section*
16 *5(c)(1) of that Act to a country described in*
17 *subparagraph (A).*

18 (v) *INTERNATIONAL FINANCIAL ASSIST-*
19 *ANCE.*—*The United States shall oppose any*
20 *loan or financial or technical assistance by*
21 *international financial institutions in ac-*
22 *cordance with section 701 of the Inter-*
23 *national Financial Institutions Act to a*
24 *country described in subparagraph (A).*

1 (vi) *TERMINATION OF ASSISTANCE*
2 *UNDER FOREIGN ASSISTANCE ACT OF*
3 *1961.—The United States shall terminate all*
4 *assistance to a country described in sub-*
5 *paragraph (A) under the Foreign Assistance*
6 *Act of 1961, except for urgent humanitarian*
7 *assistance.*

8 (vii) *PRIVATE BANK TRANSACTIONS.—*
9 *The United States shall not give approval*
10 *to guarantee, insure, or extend credit, or*
11 *participate in the extension of credit*
12 *through the Export-Import Bank of the*
13 *United States to a country described in sub-*
14 *paragraph (A).*

15 (viii) *PRIVATE BANK TRANSACTIONS.—*
16 *Regulations shall be issued to prohibit any*
17 *United States bank from making any loan*
18 *or providing any credit to a country de-*
19 *scribed in subparagraph (A).*

20 (ix) *DENIAL OF LANDING RIGHTS.—*
21 *Landing rights in the United States shall be*
22 *denied to any air carrier owned by a coun-*
23 *try described in subparagraph (A), except*
24 *as necessary to provide for emergencies in*

1 *which the safety of the aircraft or its crew*
2 *or passengers is threatened.*

3 (4) *SUSPENSION OF SANCTIONS UPON*
4 *RECOUPMENT BY PAYMENT.—Sanctions imposed*
5 *under paragraph (2) or (3) may be suspended if the*
6 *sanctioned person, business entity, or country, within*
7 *the period specified in that paragraph, provides full*
8 *and complete compensation to the United States Gov-*
9 *ernment, in convertible foreign exchange or other mu-*
10 *tually acceptable compensation equivalent to the full*
11 *value thereof, in satisfaction of a tort or taking for*
12 *which the United States has been held liable pursuant*
13 *to this Act.*

14 (5) *WAIVER OF SANCTIONS ON FOREIGN COUN-*
15 *TRIES.—The President may waive some or all of the*
16 *sanctions provided under paragraph (3) in a particu-*
17 *lar case if he determines and certifies in writing to*
18 *the Speaker of the House of Representatives and the*
19 *Committee on Foreign Relations of the Senate that*
20 *such waiver is necessary to protect the national secu-*
21 *rity interests of the United States. The certification*
22 *shall set forth the reasons supporting the determina-*
23 *tion and shall take effect on the date on which the cer-*
24 *tification is received by the Congress.*

1 (6) *NOTIFICATION TO CONGRESS.*—Not later
2 than five days after sanctions become effective against
3 a foreign person pursuant to this Act, the President
4 shall transmit written notification of the imposition
5 of sanctions against that foreign person to the chair-
6 men and ranking members of the Committee on Inter-
7 national Relations of the House of Representatives
8 and the Committee on Foreign Relations of the Sen-
9 ate.

10 (f) *SANCTIONS FOR UNAUTHORIZED DISCLOSURE OF*
11 *UNITED STATES CONFIDENTIAL BUSINESS INFORMA-*
12 *TION.*—The Secretary of State shall deny a visa to, and
13 the Attorney General shall exclude from the United States
14 any alien who, after the date of enactment of this Act—

15 (1) is, or previously served as, an officer or em-
16 ployee of the Organization and who has willfully pub-
17 lished, divulged, disclosed, or made known in any
18 manner or to any extent not authorized by the Con-
19 vention any United States confidential business infor-
20 mation coming to him in the course of his employ-
21 ment or official duties, or by reason of any examina-
22 tion or investigation of any return, report, or record
23 made to or filed with the Organization, or any officer
24 or employee thereof, such practice or disclosure having
25 resulted in financial losses or damages to a United

1 *States person and for which actions or omissions the*
2 *United States has been found liable of a tort or taking*
3 *pursuant to this Act;*

4 (2) *traffics in United States confidential busi-*
5 *ness information, a proven claim to which is owned*
6 *by a United States national;*

7 (3) *is a corporate officer, principal, shareholder*
8 *with a controlling interest of an entity which has*
9 *been involved in the unauthorized disclosure of United*
10 *States confidential business information, a proven*
11 *claim to which is owned by a United States national;*
12 *or*

13 (4) *is a spouse, minor child, or agent of a person*
14 *excludable under paragraph (1), (2), or (3).*

15 (g) *UNITED STATES CONFIDENTIAL BUSINESS INFOR-*
16 *MATION DEFINED.—In this section, the term “United States*
17 *confidential business information” means any trade secrets*
18 *or commercial or financial information that is privileged*
19 *and confidential—*

20 (1) *including—*

21 (A) *data described in section 304(e)(2) of*
22 *this Act,*

23 (B) *any chemical structure,*

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

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

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

6 (2) as described in section 552(b)(4) of title 5,
 7 United States Code,

8 and that is obtained—

9 (i) from a United States person; or

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

13 **TITLE II—PENALTIES FOR UN-**
 14 **LAWFUL ACTIVITIES SUBJECT**
 15 **TO THE JURISDICTION OF**
 16 **THE UNITED STATES**

17 **Subtitle A—Criminal and Civil**
 18 **Penalties**

19 **SEC. 201. CRIMINAL AND CIVIL PROVISIONS.**

20 (a) *IN GENERAL.*—Part I of title 18, United States
 21 Code, is amended by inserting after chapter 11A the follow-
 22 ing new chapter:

23 **“CHAPTER 11B—CHEMICAL WEAPONS**

“Sec.

“229. Prohibited activities.

“229A. Penalties.

“229B. Criminal forfeitures; destruction of weapons.

“229C. Individual self-defense devices.

“229D. Injunctions.

“229E. Requests for military assistance to enforce prohibition in certain emergencies.

“229F. Definitions.

1 **“§229. Prohibited activities**

2 “(a) *UNLAWFUL CONDUCT.—Except as provided in*
 3 *subsection (b), it shall be unlawful for any person know-*
 4 *ingly—*

5 “(1) *to develop, produce, otherwise acquire,*
 6 *transfer directly or indirectly, receive, stockpile, re-*
 7 *tain, own, possess, or use, or threaten to use, any*
 8 *chemical weapon; or*

9 “(2) *to assist or induce, in any way, any person*
 10 *to violate paragraph (1), or to attempt or conspire to*
 11 *violate paragraph (1).*

12 “(b) *EXEMPTED AGENCIES AND PERSONS.—*

13 “(1) *IN GENERAL.—Subsection (a) does not*
 14 *apply to the retention, ownership, possession, transfer,*
 15 *or receipt of a chemical weapon by a department,*
 16 *agency, or other entity of the United States, or by a*
 17 *person described in paragraph (2), pending destruc-*
 18 *tion of the weapon.*

19 “(2) *EXEMPTED PERSONS.—A person referred to*
 20 *in paragraph (1) is—*

21 “(A) *any person, including a member of the*
 22 *Armed Forces of the United States, who is au-*
 23 *thorized by law or by an appropriate officer of*

1 *the United States to retain, own, possess, trans-*
 2 *fer, or receive the chemical weapon; or*

3 *“(B) in an emergency situation, any other-*
 4 *wise nonculpable person if the person is attempt-*
 5 *ing to destroy or seize the weapon.*

6 *“(c) JURISDICTION.—Conduct prohibited by subsection*
 7 *(a) is within the jurisdiction of the United States if the*
 8 *prohibited conduct—*

9 *“(1) takes place in the United States;*

10 *“(2) takes place outside of the United States and*
 11 *is committed by a national of the United States;*

12 *“(3) is committed against a national of the*
 13 *United States while the national is outside the United*
 14 *States; or*

15 *“(4) is committed against any property that is*
 16 *owned, leased, or used by the United States or by any*
 17 *department or agency of the United States, whether*
 18 *the property is within or outside the United States.*

19 **“§ 229A. Penalties**

20 *“(a) CRIMINAL PENALTIES.—*

21 *“(1) IN GENERAL.—Any person who violates sec-*
 22 *tion 229 of this title shall be fined under this title,*
 23 *or imprisoned for any term of years, or both.*

24 *“(2) DEATH PENALTY.—Any person who violates*
 25 *section 229 of this title and by whose action the death*

1 of another person is the result shall be punished by
2 death or imprisoned for life.

3 “(b) *CIVIL PENALTIES.*—

4 “(1) *IN GENERAL.*—*The Attorney General may*
5 *bring a civil action in the appropriate United States*
6 *district court against any person who violates section*
7 *229 of this title and, upon proof of such violation by*
8 *a preponderance of the evidence, such person shall be*
9 *subject to pay a civil penalty in an amount not to*
10 *exceed \$100,000 for each such violation.*

11 “(2) *RELATION TO OTHER PROCEEDINGS.*—*The*
12 *imposition of a civil penalty under this subsection*
13 *does not preclude any other criminal or civil statu-*
14 *tory, common law, or administrative remedy, which*
15 *is available by law to the United States or any other*
16 *person.*

17 “(c) *REIMBURSEMENT OF COSTS.*—*The court shall*
18 *order any person convicted of an offense under subsection*
19 *(a) to reimburse the United States for any expenses in-*
20 *curred by the United States incident to the seizure, storage,*
21 *handling, transportation, and destruction or other disposi-*
22 *tion of any property that was seized in connection with*
23 *an investigation of the commission of the offense by that*
24 *person. A person ordered to reimburse the United States*
25 *for expenses under this subsection shall be jointly and sever-*

1 *ally liable for such expenses with each other person, if any,*
2 *who is ordered under this subsection to reimburse the Unit-*
3 *ed States for the same expenses.*

4 **“§229B. Criminal forfeitures; destruction of weapons**

5 *“(a) PROPERTY SUBJECT TO CRIMINAL FORFEIT-*
6 *URE.—Any person convicted under section 229A(a) shall*
7 *forfeit to the United States irrespective of any provision of*
8 *State law—*

9 *“(1) any property, real or personal, owned, pos-*
10 *sessed, or used by a person involved in the offense;*

11 *“(2) any property constituting, or derived from,*
12 *and proceeds the person obtained, directly or indi-*
13 *rectly, as the result of such violation; and*

14 *“(3) any of the property used in any manner or*
15 *part, to commit, or to facilitate the commission of,*
16 *such violation.*

17 *The court, in imposing sentence on such person, shall order,*
18 *in addition to any other sentence imposed pursuant to sec-*
19 *tion 229A(a), that the person forfeit to the United States*
20 *all property described in this subsection. In lieu of a fine*
21 *otherwise authorized by section 229A(a), a defendant who*
22 *derived profits or other proceeds from an offense may be*
23 *fined not more than twice the gross profits or other proceeds.*

24 *“(b) PROCEDURES.—*

1 “(1) *GENERAL.—Property subject to forfeiture*
2 *under this section, any seizure and disposition there-*
3 *of, and any administrative or judicial proceeding in*
4 *relation thereto, shall be governed by subsections (b)*
5 *through (p) of section 413 of the Comprehensive Drug*
6 *Abuse Prevention and Control Act of 1970 (21 U.S.C.*
7 *853), except that any reference under those subsections*
8 *to—*

9 “(A) *‘this subchapter or subchapter II’ shall*
10 *be deemed to be a reference to section 229A(a);*
11 *and*

12 “(B) *‘subsection (a)’ shall be deemed to be*
13 *a reference to subsection (a) of this section.*

14 “(2) *TEMPORARY RESTRAINING ORDERS.—*

15 “(A) *IN GENERAL.—For the purposes of for-*
16 *feiture proceedings under this section, a tem-*
17 *porary restraining order may be entered upon*
18 *application of the United States without notice*
19 *or opportunity for a hearing when an informa-*
20 *tion or indictment has not yet been filed with re-*
21 *spect to the property, if, in addition to the cir-*
22 *cumstances described in section 413(e)(2) of the*
23 *Comprehensive Drug Abuse Prevention and Con-*
24 *trol Act of 1970 (21 U.S.C. 853(e)(2)), the Unit-*
25 *ed States demonstrates that there is probable*

1 *cause to believe that the property with respect to*
2 *which the order is sought would, in the event of*
3 *conviction, be subject to forfeiture under this sec-*
4 *tion and exigent circumstances exist that place*
5 *the life or health of any person in danger.*

6 “(B) *WARRANT OF SEIZURE.*—*If the court*
7 *enters a temporary restraining order under this*
8 *paragraph, it shall also issue a warrant author-*
9 *izing the seizure of such property.*

10 “(C) *APPLICABLE PROCEDURES.*—*The pro-*
11 *cedures and time limits applicable to temporary*
12 *restraining orders under section 413(e) (2) and*
13 *(3) of the Comprehensive Drug Abuse Prevention*
14 *and Control Act of 1970 (21 U.S.C. 853(e) (2)*
15 *and (3)) shall apply to temporary restraining*
16 *orders under this paragraph.*

17 “(c) *AFFIRMATIVE DEFENSE.*—*It is an affirmative de-*
18 *fense against a forfeiture under subsection (b) that the prop-*
19 *erty—*

20 *“(1) is for a purpose not prohibited under the*
21 *Chemical Weapons Convention; and*

22 *“(2) is of a type and quantity that under the*
23 *circumstances is consistent with that purpose.*

24 “(d) *DESTRUCTION OR OTHER DISPOSITION.*—*The At-*
25 *torney General shall provide for the destruction or other ap-*

1 *appropriate disposition of any chemical weapon seized and*
 2 *forfeited pursuant to this section.*

3 “(e) *ASSISTANCE.*—*The Attorney General may request*
 4 *the head of any agency of the United States to assist in*
 5 *the handling, storage, transportation, or destruction of*
 6 *property seized under this section.*

7 “(f) *OWNER LIABILITY.*—*The owner or possessor of*
 8 *any property seized under this section shall be liable to the*
 9 *United States for any expenses incurred incident to the sei-*
 10 *zure, including any expenses relating to the handling, stor-*
 11 *age, transportation, and destruction or other disposition of*
 12 *the seized property.*

13 **“§ 229C. Individual self-defense devices**

14 “*Nothing in this chapter shall be construed to prohibit*
 15 *any individual self-defense device, including those using a*
 16 *pepper spray or chemical mace.*

17 **“§ 229D. Injunctions**

18 “*The United States may obtain in a civil action an*
 19 *injunction against—*

20 “(1) *the conduct prohibited under section 229 or*
 21 *229C of this title; or*

22 “(2) *the preparation or solicitation to engage in*
 23 *conduct prohibited under section 229 or 229D of this*
 24 *title.*

1 **“§229E. Requests for military assistance to enforce**
2 **prohibition in certain emergencies**

3 *“The Attorney General may request the Secretary of*
4 *Defense to provide assistance under section 382 of title 10*
5 *in support of Department of Justice activities relating to*
6 *the enforcement of section 229 of this title in an emergency*
7 *situation involving a chemical weapon. The authority to*
8 *make such a request may be exercised by another official*
9 *of the Department of Justice in accordance with section*
10 *382(f)(2) of title 10.*

11 **“§229F. Definitions**

12 *“In this chapter:*

13 *“(1) CHEMICAL WEAPON.—The term ‘chemical*
14 *weapon’ means the following, together or separately:*

15 *“(A) A toxic chemical and its precursors,*
16 *except where intended for a purpose not prohib-*
17 *ited under this chapter as long as the type and*
18 *quantity is consistent with such a purpose.*

19 *“(B) A munition or device, specifically de-*
20 *signed to cause death or other harm through*
21 *toxic properties of those toxic chemicals specified*
22 *in subparagraph (A), which would be released as*
23 *a result of the employment of such munition or*
24 *device.*

25 *“(C) Any equipment specifically designed*
26 *for use directly in connection with the employ-*

1 *ment of munitions or devices specified in sub-*
2 *paragraph (B).*

3 “(2) *CHEMICAL WEAPONS CONVENTION; CONVEN-*
4 *TION.—The terms ‘Chemical Weapons Convention’*
5 *and ‘Convention’ mean the Convention on the Prohi-*
6 *bition of the Development, Production, Stockpiling*
7 *and Use of Chemical Weapons and on Their Destruc-*
8 *tion, opened for signature on January 13, 1993.*

9 “(3) *KEY COMPONENT OF A BINARY OR MULTI-*
10 *COMPONENT CHEMICAL SYSTEM.—The term ‘key com-*
11 *ponent of a binary or multicomponent chemical sys-*
12 *tem’ means the precursor which plays the most im-*
13 *portant role in determining the toxic properties of the*
14 *final product and reacts rapidly with other chemicals*
15 *in the binary or multicomponent system.*

16 “(4) *NATIONAL OF THE UNITED STATES.—The*
17 *term ‘national of the United States’ has the same*
18 *meaning given such term in section 101(a)(22) of the*
19 *Immigration and Nationality Act (8 U.S.C.*
20 *1101(a)(22)).*

21 “(5) *PERSON.—The term ‘person’, except as oth-*
22 *erwise provided, means any individual, corporation,*
23 *partnership, firm, association, trust, estate, public or*
24 *private institution, any State or any political sub-*
25 *division thereof, or any political entity within a*

1 *State, any foreign government or nation or any agen-*
2 *cy, instrumentality or political subdivision of any*
3 *such government or nation, or other entity located in*
4 *the United States.*

5 “(6) *PRECURSOR.*—

6 “(A) *IN GENERAL.*—*The term ‘precursor’*
7 *means any chemical reactant which takes part*
8 *at any stage in the production by whatever*
9 *method of a toxic chemical. The term includes*
10 *any key component of a binary or multicompo-*
11 *nent chemical system.*

12 “(B) *LIST OF PRECURSORS.*—*Precursors*
13 *which have been identified for the application of*
14 *verification measures under Article VI of the*
15 *Convention are listed in schedules contained in*
16 *the Annex on Chemicals of the Chemical Weap-*
17 *ons Convention.*

18 “(7) *PURPOSES NOT PROHIBITED BY THIS CHAP-*
19 *TER.*—*The term ‘purposes not prohibited by this*
20 *chapter’ means the following:*

21 “(A) *PEACEFUL PURPOSES.*—*Any peaceful*
22 *purpose related to an industrial, agricultural,*
23 *research, medical, or pharmaceutical activity or*
24 *other activity.*

1 “(B) *PROTECTIVE PURPOSES.*—*Any pur-*
2 *pose directly related to protection against toxic*
3 *chemicals and to protection against chemical*
4 *weapons.*

5 “(C) *UNRELATED MILITARY PURPOSES.*—
6 *Any military purpose of the United States that*
7 *is not connected with the use of a chemical weap-*
8 *on or that is not dependent on the use of the*
9 *toxic or poisonous properties of the chemical*
10 *weapon to cause death or other harm.*

11 “(D) *LAW ENFORCEMENT PURPOSES.*—*Any*
12 *law enforcement purpose, including any domestic*
13 *riot control purpose and including imposition of*
14 *capital punishment.*

15 “(8) *TOXIC CHEMICAL.*—

16 “(A) *IN GENERAL.*—*The term ‘toxic chemi-*
17 *cal’ means any chemical which through its chemi-*
18 *cal action on life processes can cause death, tem-*
19 *porary incapacitation or permanent harm to hu-*
20 *mans or animals. The term includes all such*
21 *chemicals, regardless of their origin or of their*
22 *method of production, and regardless of whether*
23 *they are produced in facilities, in munitions or*
24 *elsewhere.*

1 “(B) *LIST OF TOXIC CHEMICALS.*—*Toxic*
2 *chemicals which have been identified for the ap-*
3 *plication of verification measures under Article*
4 *VI of the Convention are listed in schedules con-*
5 *tained in the Annex on Chemicals of the Chemi-*
6 *cal Weapons Convention.*

7 “(9) *UNITED STATES.*—*The term ‘United States’*
8 *means the several States of the United States, the Dis-*
9 *trict of Columbia, and the commonwealths, territories,*
10 *and possessions of the United States and includes all*
11 *places under the jurisdiction or control of the United*
12 *States, including—*

13 “(A) *any of the places within the provisions*
14 *of paragraph (41) of section 40102 of title 49,*
15 *United States Code;*

16 “(B) *any civil aircraft of the United States*
17 *or public aircraft, as such terms are defined in*
18 *paragraphs (17) and (37), respectively, of section*
19 *40102 of title 49, United States Code; and*

20 “(C) *any vessel of the United States, as such*
21 *term is defined in section 3(b) of the Maritime*
22 *Drug Enforcement Act, as amended (46 U.S.C.,*
23 *App. sec. 1903(b)).”.*

24 (b) *CONFORMING AMENDMENTS.*—

1 (1) *WEAPONS OF MASS DESTRUCTION*.—Section
2 2332a of title 18, United States Code, is amended—

3 (A) by striking “**§2332a. Use of weap-**
4 **ons of mass destruction**” and inserting
5 “**§2332a. Use of certain weapons of**
6 **mass destruction**”;

7 (B) in subsection (a), by inserting “(other
8 than a chemical weapon as that term is defined
9 in section 229F)” after “weapon of mass destruc-
10 tion”; and

11 (C) in subsection (b), by inserting “(other
12 than a chemical weapon (as that term is defined
13 in section 229F))” after “weapon of mass de-
14 struction”.

15 (2) *TABLE OF CHAPTERS*.—The table of chapters
16 for part I of title 18, United States Code, is amended
17 by inserting after the item for chapter 11A the follow-
18 ing new item:

 “**11B. Chemical Weapons** **229**”.

19 (c) *REPEALS*.—The following provisions of law are re-
20 pealed:

21 (1) Section 2332c of title 18, United States Code,
22 relating to chemical weapons.

23 (2) In the table of sections for chapter 113B of
24 title 18, United States Code, the item relating to sec-
25 tion 2332c.

1 **Subtitle B—Revocations of Export**
2 **Privileges**

3 **SEC. 211. REVOCATIONS OF EXPORT PRIVILEGES.**

4 *If the President determines, after notice and an oppor-*
5 *tunity for a hearing in accordance with section 554 of title*
6 *5, United States Code, that any person within the United*
7 *States, or any national of the United States located outside*
8 *the United States, has committed any violation of section*
9 *229 of title 18, United States Code, the President may issue*
10 *an order for the suspension or revocation of the authority*
11 *of the person to export from the United States any goods*
12 *or technology (as such terms are defined in section 16 of*
13 *the Export Administration Act of 1979 (50 U.S.C. App.*
14 *2415)).*

15 **TITLE III—INSPECTIONS**

16 **SEC. 301. DEFINITIONS IN THE TITLE.**

17 *(a) IN GENERAL.—In this title, the terms “challenge*
18 *inspection”, “plant site”, “plant”, “facility agreement”,*
19 *“inspection team”, and “requesting state party” have the*
20 *meanings given those terms in Part I of the Annex on Im-*
21 *plementation and Verification of the Chemical Weapons*
22 *Convention. The term “routine inspection” means an in-*
23 *spection, other than an “initial inspection”, undertaken*
24 *pursuant to Article VI of the Convention.*

1 **(b) DEFINITION OF JUDGE OF THE UNITED STATES.**—
2 *In this title, the term “judge of the United States” means*
3 *a judge or magistrate judge of a district court of the United*
4 *States.*

5 **SEC. 302. FACILITY AGREEMENTS.**

6 **(a) AUTHORIZATION OF INSPECTIONS.**—*Inspections by*
7 *the Technical Secretariat of plants, plant sites, or other fa-*
8 *cilities or locations for which the United States has a facil-*
9 *ity agreement with the Organization shall be conducted in*
10 *accordance with the facility agreement. Any such facility*
11 *agreement may not in any way limit the right of the owner*
12 *or operator of the facility to withhold consent to an inspec-*
13 *tion request.*

14 **(b) TYPES OF FACILITY AGREEMENTS.**—

15 **(1) SCHEDULE TWO FACILITIES.**—*The United*
16 *States National Authority shall ensure that facility*
17 *agreements for plants, plant sites, or other facilities*
18 *or locations that are subject to inspection pursuant to*
19 *paragraph 4 of Article VI of the Convention are con-*
20 *cluded unless the owner, operator, occupant, or agent*
21 *in charge of the facility and the Technical Secretariat*
22 *agree that such an agreement is not necessary.*

23 **(2) SCHEDULE THREE FACILITIES.**—*The United*
24 *States National Authority shall ensure that facility*
25 *agreements are concluded for plants, plant sites, or*

1 *other facilities or locations that are subject to inspec-*
2 *tion pursuant to paragraph 5 or 6 of Article VI of*
3 *the Convention if so requested by the owner, operator,*
4 *occupant, or agent in charge of the facility.*

5 *(c) NOTIFICATION REQUIREMENTS.—The United*
6 *States National Authority shall ensure that the owner, oper-*
7 *ator, occupant, or agent in charge of a facility prior to the*
8 *development of the agreement relating to that facility is no-*
9 *tified and, if the person notified so requests, the person may*
10 *participate in the preparations for the negotiation of such*
11 *an agreement. To the maximum extent practicable consist-*
12 *ent with the Convention, the owner and the operator, occu-*
13 *pant or agent in charge of a facility may observe negotia-*
14 *tions of the agreement between the United States and the*
15 *Organization concerning that facility.*

16 *(d) CONTENT OF FACILITY AGREEMENTS.—Facility*
17 *agreements shall—*

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

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

23 *(3) describe the timeframes for inspections; and*

1 (4) *detail the areas, equipment, computers,*
2 *records, data, and samples that are not subject to in-*
3 *spection.*

4 **SEC. 303. AUTHORITY TO CONDUCT INSPECTIONS.**

5 (a) *PROHIBITION.*—*No inspection of a plant, plant*
6 *site, or other facility or location in the United States shall*
7 *take place under the Convention without the authorization*
8 *of the United States National Authority in accordance with*
9 *the requirements of this title.*

10 (b) *AUTHORITY.*—

11 (1) *TECHNICAL SECRETARIAT INSPECTION*
12 *TEAMS.*—*Any duly designated member of an inspec-*
13 *tion team of the Technical Secretariat may inspect*
14 *any plant, plant site, or other facility or location in*
15 *the United States subject to inspection pursuant to*
16 *the Convention.*

17 (2) *UNITED STATES GOVERNMENT REPRESENTA-*
18 *TIVES.*—*The United States National Authority shall*
19 *coordinate the designation of employees of the Federal*
20 *Government to accompany members of an inspection*
21 *team of the Technical Secretariat and, in doing so,*
22 *shall ensure that—*

23 (A) *a special agent of the Federal Bureau*
24 *of Investigation, as designated by the Federal*

1 *Bureau of Investigation, accompanies each in-*
2 *spection team visit pursuant to paragraph (1);*

3 *(B) no employee of the Environmental Pro-*
4 *tection Agency or the Occupational Safety and*
5 *Health Administration accompanies any inspec-*
6 *tion team visit conducted pursuant to paragraph*
7 *(1); and*

8 *(C) the number of duly designated rep-*
9 *resentatives shall be kept to the minimum nec-*
10 *essary.*

11 (3) *OBJECTIONS TO INDIVIDUALS SERVING AS IN-*
12 *SPECTORS.—*

13 (A) *IN GENERAL.—In deciding whether to*
14 *exercise the right of the United States under the*
15 *Convention to object to an individual serving as*
16 *an inspector, the President shall give great*
17 *weight to his reasonable belief that—*

18 (i) *such individual is or has been a*
19 *member of, or a participant in, any group*
20 *or organization that has engaged in, or at-*
21 *tempted or conspired to engage in, or aided*
22 *or abetted in the commission of, any terror-*
23 *ist act or activity;*

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

4 (iii) the participation of such individ-
 5 ual as a member of an inspection team
 6 would pose a risk to the national security or
 7 economic well-being of the United States.

8 (B) NOT SUBJECT TO JUDICIAL REVIEW.—
 9 Any objection by the President to an individual
 10 serving as an inspector, whether made pursuant
 11 to this section or otherwise, shall not be
 12 reviewable in any court.

13 **SEC. 304. PROCEDURES FOR INSPECTIONS.**

14 (a) TYPES OF INSPECTIONS.—Each inspection of a
 15 plant, plant site, or other facility or location in the United
 16 States under the Convention shall be conducted in accord-
 17 ance with this section and section 305, except where other
 18 procedures are provided in a facility agreement entered into
 19 under section 302.

20 (b) NOTICE.—

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

1 (2) *TIME OF NOTIFICATION.*—*The notice for a*
2 *routine inspection shall be submitted to the owner*
3 *and to the operator, occupant, or agent in charge*
4 *within six hours of receiving the notification of the*
5 *inspection from the Technical Secretariat or as soon*
6 *as possible thereafter. Notice for a challenge inspec-*
7 *tion shall be provided at any appropriate time deter-*
8 *mined by the United States National Authority. No-*
9 *tices may be posted prominently at the plant, plant*
10 *site, or other facility or location if the United States*
11 *is unable to provide actual written notice to the*
12 *owner, operator, or agent in charge of the premises.*

13 (3) *CONTENT OF NOTICE.*—

14 (A) *IN GENERAL.*—*The notice under para-*
15 *graph (1) shall include all appropriate informa-*
16 *tion supplied by the Technical Secretariat to the*
17 *United States National Authority concerning—*

18 (i) *the type of inspection;*

19 (ii) *the basis for the selection of the*
20 *plant, plant site, or other facility or loca-*
21 *tion for the type of inspection sought;*

22 (iii) *the time and date that the inspec-*
23 *tion will begin and the period covered by*
24 *the inspection; and*

1 (iv) the names and titles of the
2 inspectors.

3 (B) *SPECIAL RULE FOR CHALLENGE IN-*
4 *SPECTIONS.—In the case of a challenge inspec-*
5 *tion pursuant to Article IX of the Convention,*
6 *the notice shall also include all appropriate evi-*
7 *dence or reasons provided by the requesting state*
8 *party to the Convention for seeking the inspec-*
9 *tion.*

10 (4) *SEPARATE NOTICES REQUIRED.—A separate*
11 *notice shall be provided for each inspection, except*
12 *that a notice shall not be required for each entry*
13 *made during the period covered by the inspection.*

14 (c) *CREDENTIALS.—The head of the inspection team*
15 *of the Technical Secretariat and the accompanying employ-*
16 *ees of the Federal government shall display appropriate*
17 *identifying credentials to the owner, operator, occupant, or*
18 *agent in charge of the premises before the inspection is com-*
19 *menced.*

20 (d) *TIMEFRAME FOR INSPECTIONS.—Consistent with*
21 *the provisions of the Convention, each inspection shall be*
22 *commenced and completed with reasonable promptness and*
23 *shall be conducted at reasonable times, within reasonable*
24 *limits, and in a reasonable manner.*

25 (e) *SCOPE.—*

1 (1) *IN GENERAL.*—*Except as provided in a war-*
2 *rant issued under section 305 or a facility agreement*
3 *entered into under section 302, an inspection con-*
4 *ducted under this title may extend to all things with-*
5 *in the premises inspected (including records, files, pa-*
6 *pers, processes, controls, structures and vehicles) relat-*
7 *ed to whether the requirements of the Convention ap-*
8 *plicable to such premises have been complied with.*

9 (2) *EXCEPTION.*—*Unless required by the Conven-*
10 *tion, no inspection under this title shall extend to—*

11 (A) *financial data;*

12 (B) *sales and marketing data (other than*
13 *shipment data);*

14 (C) *pricing data;*

15 (D) *personnel data;*

16 (E) *research data;*

17 (F) *patent data;*

18 (G) *data maintained for compliance with*
19 *environmental or occupational health and safety*
20 *regulations; or*

21 (H) *personnel and vehicles entering and*
22 *personnel and personal passenger vehicles exiting*
23 *the facility.*

24 (f) *SAMPLING AND SAFETY.*—

1 (1) *IN GENERAL.*—*The Director of the United*
2 *States National Authority is authorized to require the*
3 *provision of samples to a member of the inspection*
4 *team of the Technical Secretariat in accordance with*
5 *the provisions of the Convention. The owner or the op-*
6 *erator, occupant or agent in charge of the premises to*
7 *be inspected shall determine whether the sample shall*
8 *be taken by representatives of the premises or the in-*
9 *spection team or other individuals present. No sample*
10 *collected in the United States pursuant to an inspec-*
11 *tion permitted by this Act may be transferred for*
12 *analysis to any laboratory outside the territory of the*
13 *United States.*

14 (2) *COMPLIANCE WITH REGULATIONS.*—*In carry-*
15 *ing out their activities, members of the inspection*
16 *team of the Technical Secretariat and representatives*
17 *of agencies or departments accompanying the inspec-*
18 *tion team shall observe safety regulations established*
19 *at the premises to be inspected, including those for*
20 *protection of controlled environments within a facility*
21 *and for personal safety.*

22 (g) *COORDINATION.*—*The appropriate representatives*
23 *of the United States, as designated, if present, shall assist*
24 *the owner and the operator, occupant or agent in charge*

1 *of the premises to be inspected in interacting with the mem-*
2 *bers of the inspection team of the Technical Secretariat.*

3 **SEC. 305. WARRANTS.**

4 (a) *IN GENERAL.*—*The United States Government*
5 *shall seek the consent of the owner or the operator, occupant,*
6 *or agent in charge of the premises to be inspected prior to*
7 *any inspection referred to in section 304(a). If consent is*
8 *obtained, a warrant is not required for the inspection. The*
9 *owner or the operator, occupant, or agent in charge of the*
10 *premises to be inspected may withhold consent for any rea-*
11 *son or no reason. After providing notification pursuant to*
12 *subsection (b), the United States Government may seek a*
13 *search warrant from a United States magistrate judge. Pro-*
14 *ceedings regarding the issuance of a search warrant shall*
15 *be conducted ex parte, unless otherwise requested by the*
16 *United States Government.*

17 (b) *ROUTINE INSPECTIONS.*—

18 (1) *OBTAINING ADMINISTRATIVE SEARCH WAR-*
19 *RANTS.*—*For any routine inspection conducted on the*
20 *territory of the United States pursuant to Article VI*
21 *of the Convention, where consent has been withheld,*
22 *the United States Government shall first obtain an*
23 *administrative search warrant from a judge of the*
24 *United States. The United States Government shall*
25 *provide to the judge of the United States all appro-*

1 *appropriate information supplied by the Technical Sec-*
2 *retariat to the United States National Authority re-*
3 *garding the basis for the selection of the plant site,*
4 *plant, or other facility or location for the type of in-*
5 *spection sought. The United States Government shall*
6 *also provide any other appropriate information avail-*
7 *able to it relating to the reasonableness of the selection*
8 *of the plant, plant site, or other facility or location*
9 *for the inspection.*

10 (2) *CONTENT OF AFFIDAVITS FOR ADMINISTRA-*
11 *TIVE SEARCH WARRANTS.—The judge of the United*
12 *States shall promptly issue a warrant authorizing the*
13 *requested inspection upon an affidavit submitted by*
14 *the United States Government showing that—*

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

17 (B) *the plant site, plant, or other facility or*
18 *location sought to be inspected is required to re-*
19 *port data under title IV of this Act and is sub-*
20 *ject to routine inspection under the Convention;*

21 (C) *the purpose of the inspection is—*

22 (i) *in the case of any facility owned or*
23 *operated by a non-Government entity relat-*
24 *ed to Schedule 1 chemical agents, to verify*
25 *that the facility is not used to produce any*

1 *Schedule 1 chemical agent except for de-*
2 *clared chemicals; quantities of Schedule 1*
3 *chemicals produced, processed, or consumed*
4 *are correctly declared and consistent with*
5 *needs for the declared purpose; and Schedule*
6 *1 chemicals are not diverted or used for*
7 *other purposes;*

8 *(ii) in the case of any facility related*
9 *to Schedule 2 chemical agents, to verify that*
10 *activities are in accordance with obligations*
11 *under the Convention and consistent with*
12 *the information provided in data declara-*
13 *tions; and*

14 *(iii) in the case of any facility related*
15 *to Schedule 3 chemical agents and any*
16 *other chemical production facility, to verify*
17 *that the activities of the facility are consist-*
18 *ent with the information provided in data*
19 *declarations;*

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

22 *(E) in the case of a facility related to*
23 *Schedule 2 or Schedule 3 chemical agents or un-*
24 *scheduled discrete organic chemicals, the plant*
25 *site has not been subject to more than 1 routine*

1 *inspection in the current calendar year, and, in*
2 *the case of facilities related to Schedule 3 chemi-*
3 *cal agents or unscheduled discrete organic chemi-*
4 *cals, the inspection will not cause the number of*
5 *routine inspections in the United States to ex-*
6 *ceed 20 in a calendar year;*

7 *(F) the selection of the site was made in ac-*
8 *cordance with procedures established under the*
9 *Convention and, in particular—*

10 *(i) in the case of any facility owned or*
11 *operated by a non-Government entity relat-*
12 *ed to Schedule 1 chemical agents, the inten-*
13 *sity, duration, timing, and mode of the re-*
14 *quested inspection is based on the risk to the*
15 *object and purpose of the Convention by the*
16 *quantities of chemical produced, the charac-*
17 *teristics of the facility and the nature of ac-*
18 *tivities carried out at the facility, and the*
19 *requested inspection, when considered with*
20 *previous such inspections of the facility un-*
21 *dertaken in the current calendar year, shall*
22 *not exceed the number reasonably required*
23 *based on the risk to the object and purpose*
24 *of the Convention as described above;*

1 (ii) in the case of any facility related
2 to Schedule 2 chemical agents, the Technical
3 Secretariat gave due consideration to the
4 risk to the object and purpose of the Conven-
5 tion posed by the relevant chemical, the
6 characteristics of the plant site and the na-
7 ture of activities carried out there, taking
8 into account the respective facility agree-
9 ment as well as the results of the initial in-
10 spections and subsequent inspections; and

11 (iii) in the case of any facility related
12 to Schedule 3 chemical agents or unsched-
13 uled discrete organic chemicals, the facility
14 was selected randomly by the Technical Sec-
15 retariat using appropriate mechanisms,
16 such as specifically designed computer soft-
17 ware, on the basis of two weighting factors:
18 (I) equitable geographical distribution of in-
19 spections; and (II) the information on the
20 declared sites available to the Technical Sec-
21 retariat, related to the relevant chemical,
22 the characteristics of the plant site, and the
23 nature of activities carried out there;

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

1 (H) *the duration of inspection will not ex-*
2 *ceed time limits specified in the Convention un-*
3 *less agreed by the owner, operator, or agent in*
4 *charge of the plant.*

5 (3) *CONTENT OF WARRANTS.—A warrant issued*
6 *under paragraph (2) shall specify the same matters*
7 *required of an affidavit under that paragraph. In ad-*
8 *dition to the requirements for a warrant issued under*
9 *this paragraph, each warrant shall contain, if known,*
10 *the identities of the representatives of the Technical*
11 *Secretariat conducting the inspection and the observ-*
12 *ers of the inspection and, if applicable, the identities*
13 *of the representatives of agencies or departments of*
14 *the United States accompanying those representatives.*

15 (4) *CHALLENGE INSPECTIONS.—*

16 (A) *CRIMINAL SEARCH WARRANT.—For any*
17 *challenge inspection conducted on the territory of*
18 *the United States pursuant to Article IX of the*
19 *Chemical Weapons Convention, where consent*
20 *has been withheld, the United States Government*
21 *shall first obtain from a judge of the United*
22 *States a criminal search warrant based upon*
23 *probable cause, supported by oath or affirmation,*
24 *and describing with particularity the place to be*
25 *searched and the person or things to be seized.*

1 (B) *INFORMATION PROVIDED.*—*The United*
2 *States Government shall provide to the judge of*
3 *the United States—*

4 (i) *all appropriate information sup-*
5 *plied by the Technical Secretariat to the*
6 *United States National Authority regarding*
7 *the basis for the selection of the plant site,*
8 *plant, or other facility or location for the*
9 *type of inspection sought;*

10 (ii) *any other appropriate information*
11 *relating to the reasonableness of the selection*
12 *of the plant, plant site, or other facility or*
13 *location for the inspection;*

14 (iii) *information concerning—*

15 (I) *the duration and scope of the*
16 *inspection;*

17 (II) *areas to be inspected;*

18 (III) *records and data to be re-*
19 *viewed; and*

20 (IV) *samples to be taken;*

21 (iv) *appropriate evidence or reasons*
22 *provided by the requesting state party for*
23 *the inspection;*

1 (v) any other evidence showing prob-
2 able cause to believe that a violation of this
3 Act has occurred or is occurring; and

4 (vi) the identities of the representatives
5 of the Technical Secretariat on the inspec-
6 tion team and the Federal Government em-
7 ployees accompanying the inspection team.

8 (C) CONTENT OF WARRANT.—The warrant
9 shall specify—

10 (i) the type of inspection authorized;

11 (ii) the purpose of the inspection;

12 (iii) the type of plant site, plant, or
13 other facility or location to be inspected;

14 (iv) the areas of the plant site, plant,
15 or other facility or location to be inspected;

16 (v) the items, documents, data, equip-
17 ment, and computers that may be inspected
18 or seized;

19 (vi) samples that may be taken;

20 (vii) the earliest commencement and
21 latest concluding dates and times of the in-
22 spection; and

23 (viii) the identities of the representa-
24 tives of the Technical Secretariat on the in-
25 spection teams and the Federal Government

1 *employees accompanying the inspection*
2 *team.*

3 **SEC. 306. PROHIBITED ACTS RELATING TO INSPECTIONS.**

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

7 **SEC. 307. NATIONAL SECURITY EXCEPTION.**

8 *Consistent with the objective of eliminating chemical*
9 *weapons, the President may deny a request to inspect any*
10 *facility in the United States in cases where the President*
11 *determines that the inspection may pose a threat to the na-*
12 *tional security interests of the United States.*

13 **SEC. 308. PROTECTION OF CONSTITUTIONAL RIGHTS OF**
14 **CONTRACTORS.**

15 *(a) The Office of Federal Procurement Policy Act (41*
16 *U.S.C. 403 et seq.) is amended by adding at the end the*
17 *following:*

18 **“SEC. 39. PROTECTION OF CONSTITUTIONAL RIGHTS OF**
19 **CONTRACTORS.**

20 *“(a) PROHIBITION.—A contractor may not be re-*
21 *quired, as a condition for entering into a contract with the*
22 *Federal Government, to waive any right under the Con-*
23 *stitution for any purpose related to Chemical Weapons Con-*
24 *vention Implementation Act of 1997 or the Chemical Weap-*
25 *ons Convention (as defined in section 3 of such Act.)*

1 “(b) *CONSTRUCTION.*—Nothing in subsection (a) shall
 2 be construed to prohibit an executive agency from including
 3 in a contract a clause that requires the contractor to permit
 4 inspections for the purpose of ensuring that the contractor
 5 is performing the contract in accordance with the provi-
 6 sions of the contract.”.

7 (b) *The table of contents in section 1(b) of such Act*
 8 *is amended by adding at the end the following:*

“Sec. 39. *Protection of constitutional rights of contractors.*”.

9 **SEC. 309. ANNUAL REPORT ON INSPECTIONS.**

10 (a) *IN GENERAL.*—Not later than one year after the
 11 date of enactment of this Act, and annually thereafter, the
 12 President shall submit a report in classified and unclassi-
 13 fied form to the appropriate congressional committees on
 14 inspections made under the Convention during the preced-
 15 ing year.

16 (b) *CONTENT OF REPORTS.*—Each report shall contain
 17 the following information for the reporting period:

18 (1) *The name of each company or entity subject*
 19 *to the jurisdiction of the United States reporting data*
 20 *pursuant to title IV of this Act.*

21 (2) *The number of inspections under the Conven-*
 22 *tion conducted on the territory of the United States.*

23 (3) *The number and identity of inspectors con-*
 24 *ducting any inspection described in paragraph (2)*

1 *and the number of inspectors barred from inspection*
2 *by the United States.*

3 (4) *The cost to the United States for each inspec-*
4 *tion described in paragraph (2).*

5 (5) *The total costs borne by United States busi-*
6 *ness firms in the course of inspections described in*
7 *paragraph (2).*

8 (6) *A description of the circumstances surround-*
9 *ing inspections described in paragraph (2), including*
10 *instances of possible industrial espionage and mis-*
11 *conduct of inspectors.*

12 (7) *The identity of parties claiming loss of trade*
13 *secrets, the circumstances surrounding those losses,*
14 *and the efforts taken by the United States Govern-*
15 *ment to redress those losses.*

16 (8) *A description of instances where inspections*
17 *under the Convention outside the United States have*
18 *been disrupted or delayed.*

19 (c) *DEFINITION.—The term “appropriate congres-*
20 *sional committees” means the Committee on the Judiciary,*
21 *the Committee on Foreign Relations, and the Select Com-*
22 *mittee on Intelligence of the Senate and the Committee on*
23 *the Judiciary, the Committee on International Relations,*
24 *and the Permanent Select Committee on Intelligence of the*
25 *House of Representatives.*

1 **SEC. 310. UNITED STATES ASSISTANCE IN INSPECTIONS AT**
2 **PRIVATE FACILITIES.**

3 (a) *ASSISTANCE IN PREPARATION FOR INSPEC-*
4 *TIONS.—At the request of an owner of a facility not owned*
5 *or operated by the United States Government, or contracted*
6 *for use by or for the United States Government, the Sec-*
7 *retary of Defense may assist the facility to prepare the facil-*
8 *ity for possible inspections pursuant to the Convention.*

9 (b) *REIMBURSEMENT REQUIREMENT.—*

10 (1) *IN GENERAL.—Except as provided in para-*
11 *graph (2), the owner of a facility provided assistance*
12 *under subsection (a) shall reimburse the Secretary for*
13 *the costs incurred by the Secretary in providing the*
14 *assistance.*

15 (2) *EXCEPTION.—In the case of assistance pro-*
16 *vided under subsection (a) to a facility owned by a*
17 *person described in subsection (c), the United States*
18 *National Authority shall reimburse the Secretary for*
19 *the costs incurred by the Secretary in providing the*
20 *assistance.*

21 (c) *OWNERS COVERED BY UNITED STATES NATIONAL*
22 *AUTHORITY REIMBURSEMENTS.—Subsection (b)(2) applies*
23 *in the case of assistance provided to the following:*

24 (1) *SMALL BUSINESS CONCERNS.—A small busi-*
25 *ness concern as defined in section 3 of the Small*
26 *Business Act.*

1 (2) *DOMESTIC PRODUCERS OF SCHEDULE 3 OR*
 2 *UNSCHEDULED DISCRETE ORGANIC CHEMICALS.*—*Any*
 3 *person located in the United States that—*

4 (A) *does not possess, produce, process,*
 5 *consume, import, or export any Schedule 1 or*
 6 *Schedule 2 chemical; and*

7 (B) *in the calendar year preceding the year*
 8 *in which the assistance is to be provided, pro-*
 9 *duced—*

10 (i) *more than 30 metric tons of Sched-*
 11 *ule 3 or unscheduled discrete organic chemi-*
 12 *cals that contain phosphorous, sulfur, or*
 13 *fluorine; or*

14 (ii) *more than 200 metric tons of un-*
 15 *scheduled discrete organic chemicals.*

16 **TITLE IV—REPORTS**

17 **SEC. 401. REPORTS REQUIRED BY THE UNITED STATES NA-** 18 **TIONAL AUTHORITY.**

19 (a) *REGULATIONS ON RECORDKEEPING.*—

20 (1) *REQUIREMENTS.*—*The United States Na-*
 21 *tional Authority shall ensure that regulations are pre-*
 22 *scribed that require each person located in the United*
 23 *States who produces, processes, consumes, exports, or*
 24 *imports, or proposes to produce, process, consume, ex-*

1 *port, or import, a chemical substance that is subject*
2 *to the Convention to—*

3 *(A) maintain and permit access to records*
4 *related to that production, processing, consump-*
5 *tion, export, or import of such substance; and*

6 *(B) submit to the Director of the United*
7 *States National Authority such reports as the*
8 *United States National Authority may reason-*
9 *ably require to provide to the Organization, pur-*
10 *suant to subparagraph 1(a) of the Annex on*
11 *Confidentiality of the Convention, the minimum*
12 *amount of information and data necessary for*
13 *the timely and efficient conduct by the Organiza-*
14 *tion of its responsibilities under the Convention.*

15 *(2) RULEMAKING.—The Director of the United*
16 *States National Authority shall ensure that regula-*
17 *tions pursuant to this section are prescribed expedi-*
18 *tiously.*

19 *(b) COORDINATION.—*

20 *(1) AVOIDANCE OF DUPLICATION.—To the extent*
21 *feasible, the United States Government shall not re-*
22 *quire the submission of any report that is unneces-*
23 *sary or duplicative of any report required by or*
24 *under any other law. The head of each Federal agency*
25 *shall coordinate the actions of that agency with the*

1 *heads of the other Federal agencies in order to avoid*
2 *the imposition of duplicative reporting requirements*
3 *under this Act or any other law.*

4 (2) *DEFINITION.*—*As used in paragraph (1), the*
5 *term “Federal agency” has the meaning given the*
6 *term “agency” in section 551(1) of title 5, United*
7 *States Code.*

8 **SEC. 402. PROHIBITION RELATING TO LOW CONCENTRA-**
9 **TIONS OF SCHEDULE 2 AND 3 CHEMICALS.**

10 (a) *PROHIBITION.*—*Notwithstanding any other provi-*
11 *sion of this Act, no person located in the United States shall*
12 *be required to report on, or to submit to, any routine in-*
13 *spection conducted for the purpose of verifying the produc-*
14 *tion, possession, consumption, exportation, importation, or*
15 *proposed production, possession, consumption, exportation,*
16 *or importation of any substance that contains less than—*

17 (1) *10 percent concentration of a Schedule 2*
18 *chemical; or*

19 (2) *80 percent concentration of a Schedule 3*
20 *chemical.*

21 (b) *STANDARD FOR MEASUREMENT OF CONCENTRA-*
22 *TION.*—*The percent concentration of a chemical in a sub-*
23 *stance shall be measured on the basis of volume or total*
24 *weight, which measurement yields the lesser percent.*

1 **SEC. 403. PROHIBITION RELATING TO UNSCHEDULED DIS-**
2 **CRETE ORGANIC CHEMICALS AND COINCI-**
3 **DENTAL BYPRODUCTS IN WASTE STREAMS.**

4 (a) *PROHIBITION.*—Notwithstanding any other provi-
5 sion of this Act, no person located in the United States shall
6 be required to report on, or to submit to, any routine in-
7 spection conducted for the purpose of verifying the produc-
8 tion, possession, consumption, exportation, importation, or
9 proposed production, possession, consumption, exportation,
10 or importation of any substance that is—

11 (1) *an unscheduled discrete organic chemical;*
12 *and*

13 (2) *a coincidental byproduct of a manufacturing*
14 *or production process that is not isolated or captured*
15 *for use or sale during the process and is routed to, or*
16 *escapes, from the waste stream of a stack, incinerator,*
17 *or wastewater treatment system or any other waste*
18 *stream.*

19 **SEC. 404. CONFIDENTIALITY OF INFORMATION.**

20 (a) *FREEDOM OF INFORMATION ACT EXEMPTION FOR*
21 *CERTAIN CONVENTION INFORMATION.*—Except as provided
22 in subsection (b) or (c), any confidential business informa-
23 tion, as defined in section 103(g), reported to, or otherwise
24 acquired by, the United States Government under this Act
25 or under the Convention shall not be disclosed under section
26 552(a) of title 5, United States Code.

1 (b) *EXCEPTIONS.*—

2 (1) *INFORMATION FOR THE TECHNICAL SEC-*
3 *RETARIAT.*—*Information shall be disclosed or other-*
4 *wise provided to the Technical Secretariat or other*
5 *states parties to the Chemical Weapons Convention in*
6 *accordance with the Convention, in particular, the*
7 *provisions of the Annex on the Protection of Confiden-*
8 *tial Information.*

9 (2) *INFORMATION FOR CONGRESS.*—*Information*
10 *shall be made available to any committee or sub-*
11 *committee of Congress with appropriate jurisdiction*
12 *upon the written request of the chairman or ranking*
13 *minority member of such committee or subcommittee,*
14 *except that no such committee or subcommittee, and*
15 *no member and no staff member of such committee or*
16 *subcommittee, shall disclose such information or ma-*
17 *terial except as otherwise required or authorized by*
18 *law.*

19 (3) *INFORMATION FOR ENFORCEMENT AC-*
20 *TIONS.*—*Information shall be disclosed to other Fed-*
21 *eral agencies for enforcement of this Act or any other*
22 *law, and shall be disclosed or otherwise provided*
23 *when relevant in any proceeding under this Act or*
24 *any other law, except that disclosure or provision in*
25 *such a proceeding shall be made in such manner as*

1 to preserve confidentiality to the extent practicable
2 without impairing the proceeding.

3 (c) *INFORMATION DISCLOSED IN THE NATIONAL IN-*
4 *TEREST.*—

5 (1) *AUTHORITY.*—*The United States Government*
6 *shall disclose any information reported to, or other-*
7 *wise required by the United States Government under*
8 *this Act or the Convention, including categories of*
9 *such information, that it determines is in the na-*
10 *tional interest to disclose and may specify the form*
11 *in which such information is to be disclosed.*

12 (2) *NOTICE OF DISCLOSURE.*—

13 (A) *REQUIREMENT.*—*If any Department or*
14 *agency of the United States Government proposes*
15 *pursuant to paragraph (1) to publish or disclose or*
16 *otherwise provide information exempt from disclosure*
17 *under subsection (a), the United States National Au-*
18 *thority shall, unless contrary to national security or*
19 *law enforcement needs, provide notice of intent to dis-*
20 *close the information—*

21 (i) *to the person that submitted such infor-*
22 *mation; and*

23 (ii) *in the case of information about a per-*
24 *son received from another source, to the person to*
25 *whom that information pertains.*

1 *The information may not be disclosed until the expi-*
2 *ration of 30 days after notice under this paragraph*
3 *has been provided.*

4 (B) *PROCEEDINGS ON OBJECTIONS.—In the*
5 *event that the person to which the information per-*
6 *tains objects to the disclosure, the agency shall*
7 *promptly review the grounds for each objection of the*
8 *person and shall afford the objecting person a hearing*
9 *for the purpose of presenting the objections to the dis-*
10 *closure. Not later than 10 days before the scheduled or*
11 *rescheduled date for the disclosure, the United States*
12 *National Authority shall notify such person regarding*
13 *whether such disclosure will occur notwithstanding*
14 *the objections.*

15 (d) *CRIMINAL PENALTY FOR WRONGFUL DISCLO-*
16 *SURE.—Any officer or employee of the United States, and*
17 *any former officer or employee of the United States, who*
18 *by reason of such employment or official position has ob-*
19 *tained possession of, or has access to, information the disclo-*
20 *sure or other provision of which is prohibited by subsection*
21 *(a), and who, knowing that disclosure or provision of such*
22 *information is prohibited by such subsection, willfully dis-*
23 *closes or otherwise provides the information in any manner*
24 *to any person (including any person located outside the ter-*
25 *ritory of the United States) not authorized to receive it,*

1 *shall be fined under title 18, United States Code, or impris-*
2 *oned for not more than five years, or both.*

3 (e) *CRIMINAL FORFEITURE.*—*The property of any per-*
4 *son who violates subsection (d) shall be subject to forfeiture*
5 *to the United States in the same manner and to the same*
6 *extent as is provided in section 229C of title 18, United*
7 *States Code, as added by this Act.*

8 (f) *INTERNATIONAL INSPECTORS.*—*The provisions of*
9 *this section shall also apply to employees of the Technical*
10 *Secretariat.*

11 **SEC. 405. RECORDKEEPING VIOLATIONS.**

12 *It shall be unlawful for any person willfully to fail*
13 *or refuse—*

14 (1) *to establish or maintain any record required*
15 *by this Act or any regulation prescribed under this*
16 *Act;*

17 (2) *to submit any report, notice, or other infor-*
18 *mation to the United States Government in accord-*
19 *ance with this Act or any regulation prescribed under*
20 *this Act; or*

21 (3) *to permit access to or copying of any record*
22 *that is exempt from disclosure under this Act or any*
23 *regulation prescribed under this Act.*

TITLE V—ENFORCEMENT**2 SEC. 501. PENALTIES.****3 (a) CIVIL.—****4 (1) PENALTY AMOUNTS.—**

5 (A) PROHIBITED ACTS RELATING TO IN-
6 SPECTIONS.—*Any person that is determined, in*
7 *accordance with paragraph (2), to have violated*
8 *section 306 of this Act shall be required by order*
9 *to pay a civil penalty in an amount not to ex-*
10 *ceed \$25,000 for each such violation. For pur-*
11 *poses of this paragraph, each day such a viola-*
12 *tion of section 306 continues shall constitute a*
13 *separate violation of that section.*

14 (B) RECORDKEEPING VIOLATIONS.—*Any*
15 *person that is determined, in accordance with*
16 *paragraph (2), to have violated section 405 of*
17 *this Act shall be required by order to pay a civil*
18 *penalty in an amount not to exceed \$5,000 for*
19 *each such violation.*

20 (2) HEARING.—

21 (A) IN GENERAL.—*Before imposing an*
22 *order described in paragraph (1) against a per-*
23 *son under this subsection for a violation of sec-*
24 *tion 306 or 405, the Secretary of State shall pro-*
25 *vide the person or entity with notice and, upon*

1 *request made within 15 days of the date of the*
2 *notice, a hearing respecting the violation.*

3 *(B) CONDUCT OF HEARING.—Any hearing*
4 *so requested shall be conducted before an admin-*
5 *istrative law judge. The hearing shall be con-*
6 *ducted in accordance with the requirements of*
7 *section 554 of title 5, United States Code. If no*
8 *hearing is so requested, the Secretary of State's*
9 *imposition of the order shall constitute a final*
10 *and unappealable order.*

11 *(C) ISSUANCE OF ORDERS.—If the adminis-*
12 *trative law judge determines, upon the prepon-*
13 *derance of the evidence received, that a person or*
14 *entity named in the complaint has violated sec-*
15 *tion 306 or 405, the administrative law judge*
16 *shall state his findings of fact and issue and*
17 *cause to be served on such person or entity an*
18 *order described in paragraph (1).*

19 *(D) FACTORS FOR DETERMINATION OF PEN-*
20 *ALTY AMOUNTS.—In determining the amount of*
21 *any civil penalty, the administrative law judge*
22 *shall take into account the nature, cir-*
23 *cumstances, extent, and gravity of the violation*
24 *or violations and, with respect to the violator,*
25 *the ability to pay, effect on ability to continue*

1 to do business, any history of prior such viola-
2 tions, the degree of culpability, the existence of
3 an internal compliance program, and such other
4 matters as justice may require.

5 (3) *ADMINISTRATIVE APPELLATE REVIEW.*—The
6 decision and order of an administrative law judge
7 shall become the final agency decision and order of
8 the head of the United States National Authority un-
9 less, within 30 days, the head of the United States
10 National Authority modifies or vacates the decision
11 and order, with or without conditions, in which case
12 the decision and order of the head of the United
13 States National Authority shall become a final order
14 under this subsection.

15 (4) *OFFSETS.*—The amount of the civil penalty
16 under a final order of the United States National Au-
17 thority may be deducted from any sums owed by the
18 United States to the person.

19 (5) *JUDICIAL REVIEW.*—A person adversely af-
20 fected by a final order respecting an assessment may,
21 within 30 days after the date the final order is issued,
22 file a petition in the Court of Appeals for the District
23 of Columbia Circuit or for any other circuit in which
24 the person resides or transacts business.

1 (6) *ENFORCEMENT OF ORDERS.*—*If a person*
2 *fails to comply with a final order issued under this*
3 *subsection against the person or entity—*

4 (A) *after the order making the assessment*
5 *has become a final order and if such person does*
6 *not file a petition for judicial review of the order*
7 *in accordance with paragraph (5), or*

8 (B) *after a court in an action brought*
9 *under paragraph (5) has entered a final judg-*
10 *ment in favor of the United States National Au-*
11 *thority,*

12 *the Secretary of State shall file a suit to seek compli-*
13 *ance with the order in any appropriate district court*
14 *of the United States, plus interest at currently pre-*
15 *vailing rates calculated from the date of expiration of*
16 *the 30-day period referred to in paragraph (5) or the*
17 *date of such final judgment, as the case may be. In*
18 *any such suit, the validity and appropriateness of the*
19 *final order shall not be subject to review.*

20 (b) *CRIMINAL.*—*Any person who knowingly violates*
21 *any provision of section 306 or 405 of this Act, shall, in*
22 *addition to or in lieu of any civil penalty which may be*
23 *imposed under subsection (a) for such violation, be fined*
24 *under title 18, United States Code, imprisoned for not more*
25 *than one year, or both.*

1 **SEC. 502. SPECIFIC ENFORCEMENT.**

2 (a) *JURISDICTION.*—*The district courts of the United*
3 *States shall have jurisdiction over civil actions to—*

4 (1) *restrain any violation of section 306 or 405*
5 *of this Act; and*

6 (2) *compel the taking of any action required by*
7 *or under this Act or the Convention.*

8 (b) *CIVIL ACTIONS.*—

9 (1) *IN GENERAL.*—*A civil action described in*
10 *subsection (a) may be brought—*

11 (A) *in the case of a civil action described in*
12 *subsection (a)(1), in the United States district*
13 *court for the judicial district in which any act,*
14 *omission, or transaction constituting a violation*
15 *of section 306 or 405 occurred or in which the*
16 *defendant is found or transacts business; or*

17 (B) *in the case of a civil action described in*
18 *subsection (a)(2), in the United States district*
19 *court for the judicial district in which the de-*
20 *fendant is found or transacts business.*

21 (2) *SERVICE OF PROCESS.*—*In any such civil ac-*
22 *tion process may be served on a defendant wherever*
23 *the defendant may reside or may be found, whether*
24 *the defendant resides or may be found within the*
25 *United States or elsewhere.*

1 **SEC. 503. EXPEDITED JUDICIAL REVIEW.**

2 (a) *CIVIL ACTION.*—Any person or entity subject to a
3 search under this Act may file a civil action challenging
4 the constitutionality of any provision of this Act. Notwith-
5 standing any other provision of law, during the full cal-
6 endar year of, and the two full calendar years following,
7 the enactment of this Act, the district court shall accord
8 such a case a priority in its disposition ahead of all other
9 civil actions except for actions challenging the legality and
10 conditions of confinement.

11 (b) *EN BANC REVIEW.*—Notwithstanding any other
12 provision of law, during the full calendar year of, and the
13 two full calendar years following, the enactment of this Act,
14 any appeal from a final order entered by a district court
15 in an action brought under subsection (a) shall be heard
16 promptly by the full Court of Appeals sitting en banc.

17 **TITLE VI—MISCELLANEOUS**
18 **PROVISIONS**

19 **SEC. 601. REPEAL.**

20 Section 808 of the Department of Defense Appropria-
21 tion Authorization Act, 1978 (50 U.S.C. 1520; relating to
22 the use of human subjects for the testing of chemical or bio-
23 logical agents) is repealed.

1 **SEC. 602. PROHIBITION.**

2 (a) *IN GENERAL.*—Neither the Secretary of Defense
3 nor any other officer or employee of the United States may,
4 directly or by contract—

5 (1) *conduct any test or experiment involving the*
6 *use of any chemical or biological agent on a civilian*
7 *population; or*

8 (2) *use human subjects for the testing of chemical*
9 *or biological agents.*

10 (b) *CONSTRUCTION.*—Nothing in subsection (a) may
11 be construed to prohibit actions carried out for purposes
12 not prohibited by this Act (as defined in section 3(8)).

13 (c) *BIOLOGICAL AGENT DEFINED.*—In this section, the
14 term “biological agent” means any micro-organism (includ-
15 ing bacteria, viruses, fungi, rickettsiae or protozoa), patho-
16 gen, or infectious substance, or any naturally occurring,
17 bio-engineered or synthesized component of any such micro-
18 organism, pathogen, or infectious substance, whatever its
19 origin or method of production, capable of causing—

20 (1) *death, disease, or other biological malfunc-*
21 *tion in a human, an animal, a plant, or another liv-*
22 *ing organism;*

23 (2) *deterioration of food, water, equipment, sup-*
24 *plies, or materials of any kind; or*

25 (3) *deleterious alteration of the environment.*

1 **SEC. 603. BANKRUPTCY ACTIONS.**

2 *Section 362(b) of title 11, United States Code, is*
3 *amended—*

4 *(1) by striking paragraphs (4) and (5); and*

5 *(2) by inserting after paragraph (3) the*
6 *following:*

7 *“(4) under paragraph (1), (2), (3), or (6) of sub-*
8 *section (a) of this section, of the commencement or*
9 *continuation of an action or proceeding by a govern-*
10 *mental unit or any organization exercising authority*
11 *under the Convention on the Prohibition of the Devel-*
12 *opment, Production, Stockpiling and Use of Chemical*
13 *Weapons and on Their Destruction, opened for signa-*
14 *ture on January 13, 1993, to enforce such govern-*
15 *mental unit’s or organization’s police and regulatory*
16 *power, including the enforcement of a judgment other*
17 *than a money judgment, obtained in an action or*
18 *proceeding by the governmental unit to enforce such*
19 *governmental unit’s or organization’s police or regu-*
20 *latory power;”.*

Amend the title to read as follows: “A bill to imple-
ment the obligations of the United States under the
Chemical Weapons Convention.”.