105th Congress, 2d Session – – – – – – – – – – – – – House Document 105–276

# VETO OF H.R. 2709

## MESSAGE

FROM

# THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

HIS VETO OF H.R. 2709, THE "IRAN MISSILE PROLIFERATION SANCTIONS ACT OF 1998"

JUNE 24, 1998.—Message and accompanying papers referred to the Committee on International Relations and ordered to be printed

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*To the House of Representatives:*

I am returning herewith without my approval H.R. 2709, the "Iran Missile Proliferation Sanctions Act of 1998."

H.R. 2709 would require sanctions to be imposed on foreign individuals and companies if there is "credible information indicating that" they transferred certain items or provided certain types of assistance that contributed to Iran's missile program, or attempted more than once to transfer such items or provide such assistance. These sanctions would last at least 2 years and would prohibit sales of defense articles and services; exports of certain duel-use items; and United States Government assistance.

My Administration unequivocally supports the critical objectives of fighting terrorism and taking steps to halt the transfer of missile technology to nations whose foreign policy practices and nonproliferation policies violate international norms. This legislation, however, is indiscriminate, inflexible, and prejudicial to these efforts, and would in fact undermine the national security objectives of the United States. Taken together, the flaws in H.R. 2709 risk a proliferation of indiscriminate sanctioning worldwide.

Such indiscriminate sanctioning would undermine the credibility of U.S. nonproliferation policy without furthering U.S. nonproliferation objectives. Indeed, the sweeping application of sanctions likely would cause serious friction with many governments, diminishing vital international cooperation across the range of policy areas—military, political, and economic—on which U.S. security and global leadership depend.

Specifically, H.R. 2709 would require the imposition of sanctions based on an unworkably low standard of evidence: "credible information indicating that" certain transfers or attempted transfers had occurred. Such a low standard of evidence could result in the erroneous imposition of sanctions on individuals and business entities worldwide—even in certain instances when they did not know the true end user of the items. The bill would also hinder U.S. efforts to enlist the support of other countries to halt the objectionable activities by imposing an unreasonable standard for waiving the bill's sanctions. In addition, the sanctions proposed by the legislation are disproportionate. A minor violation (e.g., the transfer of a few grams of aluminum powder) would carry the same penalty as a transfer of major proliferation significance. This, too, undermines U.S. credibility and increases foreign opposition to U.S. policy.

H.R. 2709 does not specifically refer to Russia, but it will affect that country. The legislation does not allow flexibility sufficient to reflect the progress made by the Russian government in formulating policies and processes whose goal is to sever links between Russian entities and Iran's ballistic missile program. At the urging of

the United States, President Yeltsin, the Prime Minister, Russian security services Chief Kovelev, and Russian Defense Minister Sergeyev have all made clear that proliferation of missiles and weapons of mass destruction is a serious threat to Russia's security. They have called for strict control of sensitive technologies and stressed the strict penalties that will be imposed for violations of Russian law. On January 22 of this year, the Russian government issued a "catch all" executive order providing authority to stop all transfers of dual-use goods and services for missiles and weapons of mass destruction programs, and on May 15 published detailed regulations to implement that order. They have recently developed and circulated a list of end users of concern in Iran, Libya, North Korea, and Pakistan. In the course of regular and active discussion of this issue with the Russian government, the United States has raised problem cases involving cooperation between Russian entities and the Iranian missile program. We have seen progress in this area, and a number of these cases are no longer active concerns.

Precisely because Russia needs to take effective enforcement steps to control the flow of technology, the United States needs to be able to work cooperatively with the Russian government to assure further progress. H.R. 2709 would undercut the cooperation we have worked to achieve with the Russian government without helping us solve the problem of technology transfer. The legislation's unilateral nature could also hurt our increasing cooperation with Russian government agencies in other vital areas such as law enforcement, counter-narcotics, and combating transnational crime. Furthermore, Russia would interpret this law as an infringement of its sovereignty, affecting our ability to work with Russia on broader U.S. policy goals and on regional and global issues.

Finally, Title I of H.R. 2709 is not needed. Existing law, such as the missile technology control provisions of the Arms Export Control Act, provides a sufficient basis for imposing sanctions to prevent missile proliferation to Iran and elsewhere.

I also note that it is disappointing that the Congress attach Title II, the "Chemical Weapons Convention Implementation Act of 1997," to this problematic and counterproductive bill. Because Chemical Weapons Convention (CWC) implementation legislation has not been enacted, the United States has not yet fully carried out its obligations under the CWC. The CWC implementing legislation has strong bipartisan support, and should be passed by the Congress as a free-standing bill without further delay. I note, however, that sections 213(e)(2)(B)(iii), 213(e)(B)(v), and 213(f) of Title II could interfere with certain of my exclusive constitutional powers, and I urge the Congress to correct these constitutional deficiencies.

For the reasons stated, I am compelled to return H.R. 2709 without my approval.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 23, 1998.*

H.R. 2709

ONE HUNDRED FIFTH CONGRESS OF THE UNITED STATES OF AMERICA AT THE SECOND SESSION BEGUN AND HELD AT THE CITY OF WASHINGTON ON TUESDAY, THE TWENTY-SEVENTH DAY OF JANUARY, ONE THOUSAND NINE HUNDRED AND NINETY-EIGHT

(c) EXCEPTIONS.—Any foreign person who—

(1) was identified in a previous report submitted under subsection (a) on account of a particular transfer, transaction, or attempt;

(2) has engaged in a transfer or transaction that was the basis for the imposition of sanctions with respect to that person under section 73 of the Arms Export Control Act or section 1604 of the Iran-Iraq Arms Non-Proliferation Act of 1992;

(3) may have engaged in a transfer or transaction, or made an attempt, that was the subject of a waiver under section 104; or

(4) has engaged in a transfer or transaction, or made an attempt, on behalf of, or in concert with, the Government of the United States,

is not required to be identified on account of that same transfer, transaction, or attempt in any report submitted thereafter under this section.

(d) SUBMISSION IN CLASSIFIED FORM.—When the President considers it appropriate, reports submitted under subsection (a), or appropriate parts thereof, may be submitted in classified form.

**SEC. 103. IMPOSITION OF SANCTIONS.**

(a) REQUIREMENT TO IMPOSE SANCTIONS.—

(1) REQUIREMENT TO IMPOSE SANCTIONS.—The sanctions described in subsection (b) shall be imposed on—

(A) any foreign person identified under subsection (a)(1) of section 102 in a report submitted under that section; and

(B) any foreign person identified under subsection (a)(2) of section 102 in a report submitted under that section, if that person has been identified in that report or a previous report as having made at least 1 other attempt described in subsection (a)(2) of that section.

(2) EFFECTIVE DATE OF SANCTIONS.—The sanctions shall be effective—

(A) 30 days after the report triggering the sanction is submitted, if the report is submitted on or before the date required by section 102(b);

(B) 30 days after the date required by section 102(b) for submitting the report, if the report triggering the sanction is submitted within 30 days after that date; and

(C) on the date that the report triggering the sanction is submitted, if that report is submitted more than 30 days after the date required by section 102(b).

(b) DESCRIPTION OF SANCTIONS.—The sanctions referred to in subsection (a) that are to be imposed on a foreign person described in that subsection are the following:

(1) ARMS EXPORT SANCTION.—For a period of not less than 2 years, the United States Government shall not sell to that person any item on the United States Munitions List as in effect on August 8, 1995, and shall terminate sales to that person of any defense articles, defense services, or design and construction services under the Arms Export Control Act.

(2) DUAL USE SANCTION.—For a period of not less than 2 years, the authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit the export to that

person of any goods or technology on the control list established under section 5(c)(1) of that Act.

(3) UNITED STATES ASSISTANCE.—For a period of not less than 2 years, the United States Government shall not provide any assistance in the form of grants, loans, credits, guarantees, or otherwise, to that person.

**SEC. 104. WAIVER ON BASIS OF ADDITIONAL INFORMATION.**

(a) IN GENERAL.—The President may waive the imposition of any sanction that would otherwise be required under section 103 on any foreign person 15 days after the President determines and reports to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that, on the basis of information provided by that person, or otherwise obtained by the President, the President is persuaded that the person did not, on or after January 22, 1998—

(1)(A) transfer items on the MTCR Annex, or items that the United States proposes for addition to the MTCR Annex, that contributed to Iran's efforts to acquire, develop, or produce ballistic missiles; or

(B) provide technical assistance or facilities which the President deems to be of concern because of their direct contribution to Iran's efforts to acquire, develop, or produce ballistic missiles; or

(2) attempt on more than one occasion—

(A) to transfer items on the MTCR Annex, or items that the United States proposes for addition to the MTCR Annex, that would have contributed to Iran's efforts to acquire, develop, or produce ballistic missiles; or

(B) to provide technical assistance or facilities described in paragraph (1)(B).

(b) WRITTEN JUSTIFICATION.—The determination and report of the President under subsection (a) shall include a written justification describing in detail—

(1) the credible information indicating that the person—

(A) transferred items described in section 102(a)(1)(A), or provided technical assistance or facilities described in section 102(a)(1)(B); or

(B) attempted to transfer items described in section 102(a)(1)(A), or attempted to provide technical assistance or facilities described in section 102(a)(1)(B);

(2) the additional information which persuaded the President that the person did not—

(A) transfer items described in section 102(a)(1)(A), or provide technical assistance or facilities described in section 102(a)(1)(B); or

(B) attempt to transfer items described in section 102(a)(1)(A), or attempt to provide technical assistance or facilities described in section 102(a)(1)(B); and

(3) the analysis of the information supporting the President's conclusion.

(c) SUBMISSION IN CLASSIFIED FORM.—When the President considers it appropriate, the determination and report of the President under subsection (a) and the written justification under subsection (b), or appropriate parts thereof, may be submitted in classified form.

**SEC. 105. WAIVER ON BASIS OF NATIONAL SECURITY.**

(a) IN GENERAL.—The President may waive the imposition of any sanction that would otherwise be required under section 103 on any foreign person 15 days after the President determines and reports to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that such waiver is essential to the national security of the United States.

(b) WRITTEN JUSTIFICATION.—The determination and report of the President under subsection (a) shall include a written justification describing in detail the facts and circumstances supporting the President's conclusion.

(c) SUBMISSION IN CLASSIFIED FORM.—When the President considers it appropriate, the determination and report of the President under subsection (a) and the written justification under subsection (b), or appropriate parts thereof, may be submitted in classified form.

**SEC. 106. ADDITIONAL INFORMATION REGARDING ACTIONS BY GOVERNMENT OF PRIMARY JURISDICTION.**

As part of each report submitted under section 102, the President shall include the following information with respect to each foreign person identified in that report:

(1) A statement regarding whether the government of primary jurisdiction over that person was aware of the activities that were the basis for the identification of that person in the report.

(2) If the government of primary jurisdiction was not aware of the activities that were the basis for the identification of that person in the report, an explanation of the reasons why the United States Government did not inform that government of those activities.

(3) If the government of primary jurisdiction was aware of the activities that were the basis for the identification of that person in the report, a description of the efforts, if any, undertaken by that government to prevent those activities, and an assessment of the effectiveness of those efforts, including an explanation of why those efforts failed.

(4) If the government of primary jurisdiction was aware of the activities that were the basis for the identification of that person in the report and failed to undertake effective efforts to prevent those activities, a description of any sanctions that have been imposed on that government by the United States Government because of such failure.

**SEC. 107. PURCHASE OF WEAPONS TECHNOLOGY.**

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that the President should exercise the authority granted to him under section 504 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5854)—

(1) to prevent the transfer of weapons-related material and delivery systems to Iran through the purchase, barter, or other acquisition of such material and delivery systems; and

(2) to prevent the transfer to Iran of scientific and technical expertise with respect to such weapons-related material and delivery systems.

(b) AVAILABILITY OF AMOUNTS.—Amounts hereafter made available, subject to the availability of appropriations, to carry out chapter 11 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2295 et seq.; relating to assistance for the independent states of the former Soviet Union) may be used to carry out subsection (a).

**SEC. 108. DEFINITIONS.**

For the purposes of this title—

(1) the terms "foreign person" and "person" mean—

(A) a natural person that is an alien;

(B) a corporation, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group, that is organized under the laws of a foreign country or has its principal place of business in a foreign country;

(C) any foreign governmental entity operating as a business enterprise; and

(D) any successor or subsidiary of any entity described in subparagraph (B) or (C);

(2) the term "government of primary jurisdiction" means—

(A) in the case of a natural person, the foreign government of the country of which the person is a citizen or national;

(B) in the case of an entity described in subparagraph (B) of paragraph (1), the foreign government of the country in which the entity has its principal place of business, or the foreign government under whose laws that entity is organized; and

(C) in the case of a foreign governmental entity described in subparagraph (C) of paragraph (1), the foreign government of which that entity is a part; and

(3) the term "MTCR Annex" has the meaning given that term in section 11B(c)(4) of the Export Administration Act of 1979 (50 U.S.C. 2410b(c)(4)).

# TITLE II—CHEMICAL WEAPONS CONVENTION IMPLEMENTATION

**SEC. 201. SHORT TITLE.**

This title may be cited as the "Chemical Weapons Convention Implementation Act of 1998".

**SEC. 202. TABLE OF CONTENTS.**

The table of contents for this title is as follows:

Sec. 201. Short title.
Sec. 202. Table of contents.
Sec. 203. Definitions.

Subtitle A—General Provisions

Sec. 211. Designation of United States National Authority.
Sec. 212. No abridgement of constitutional rights.
Sec. 213. Civil liability of the United States.

Subtitle B—Penalties for Unlawful Activities Subject to the Jurisdiction of the United States

CHAPTER 1—CRIMINAL AND CIVIL PENALTIES

Sec. 221. Criminal and civil provisions.

CHAPTER 2—REVOCATIONS OF EXPORT PRIVILEGES

Sec. 222. Revocations of export privileges.

Subtitle C—Inspections

Sec. 231. Definitions in the subtitle.
Sec. 232. Facility agreements.
Sec. 233. Authority to conduct inspections.
Sec. 234. Procedures for inspections.
Sec. 235. Warrants.
Sec. 236. Prohibited acts relating to inspections.
Sec. 237. National security exception.
Sec. 238. Protection of constitutional rights of contractors.
Sec. 239. Annual report on inspections.
Sec. 240. United States assistance in inspections at private facilities.

Subtitle D—Reports

Sec. 251. Reports required by the United States National Authority.
Sec. 252. Prohibition relating to low concentrations of schedule 2 and 3 chemicals.
Sec. 253. Prohibition relating to unscheduled discrete organic chemicals and coincidental byproducts in waste streams.
Sec. 254. Confidentiality of information.
Sec. 255. Recordkeeping violations.

Subtitle E—Enforcement

Sec. 261. Penalties.
Sec. 262. Specific enforcement.
Sec. 263. Expedited judicial review.

Subtitle F—Miscellaneous Provisions

Sec. 271. Repeal.
Sec. 272. Prohibition.
Sec. 273. Bankruptcy actions.

**SEC. 203. DEFINITIONS.**

In this title:

(1) CHEMICAL WEAPON.—The term "chemical weapon" means the following, together or separately:

(A) A toxic chemical and its precursors, except where intended for a purpose not prohibited under this title as long as the type and quantity is consistent with such a purpose.

(B) A munition or device, specifically designed to cause death or other harm through toxic properties of those toxic chemicals specified in subparagraph (A), which would be released as a result of the employment of such munition or device.

(C) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in subparagraph (B).

(2) CHEMICAL WEAPONS CONVENTION; CONVENTION.—The terms "Chemical Weapons Convention" and "Convention" mean the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993.

(3) KEY COMPONENT OF A BINARY OR MULTICOMPONENT CHEMICAL SYSTEM.—The term "key component of a binary or multicomponent chemical system" means the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system.

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

(5) ORGANIZATION.—The term "Organization" means the Organization for the Prohibition of Chemical Weapons.

(6) PERSON.—The term "person", except as otherwise provided, means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

(7) PRECURSOR.—

(A) IN GENERAL.—The term "precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system.

(B) LIST OF PRECURSORS.—Precursors which have been identified for the application of verification measures under Article VI of the Convention are listed in schedules contained in the Annex on Chemicals of the Chemical Weapons Convention.

(8) PURPOSES NOT PROHIBITED BY THIS TITLE.—The term "purposes not prohibited by this title" means the following:

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

(B) PROTECTIVE PURPOSES.—Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons.

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

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

(9) TECHNICAL SECRETARIAT.—The term "Technical Secretariat" means the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons established by the Chemical Weapons Convention.

(10) SCHEDULE 1 CHEMICAL AGENT.—The term "Schedule 1 chemical agent" means any of the following, together or separately:

(A) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates (e.g. Sarin: O-Isopropyl methylphosphonofluoridate Soman: O-Pinacolyl methylphosphonofluoridate).

(B) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidocyanidates (e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate).

(C) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl

(Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts

(e.g. VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate).

(D) Sulfur mustards:

2-Chloroethylchloromethylsulfide

Mustard gas: (Bis(2-chloroethyl)sulfide

Bis(2-chloroethylthio)methane

Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane

1,3-Bis(2-chloroethylthio)-n-propane

1,4-Bis(2-chloroethylthio)-n-butane

1,5-Bis(2-chloroethylthio)-n-pentane

Bis(2-chloroethylthiomethyl)ether

O-Mustard: Bis(2-chloroethylthioethyl)ether.

(E) Lewisites:

Lewisite 1: 2-Chlorovinyldichloroarsine

Lewisite 2: Bis(2-chlorovinyl)chloroarsine

Lewisite 3: Tris (2-clorovinyl)arsine.

(F) Nitrogen mustards:

HN1: Bis(2-chloroethyl)ethylamine

HN2: Bis(2-chloroethyl)methylamine

HN3: Tris(2-chloroethyl)amine.

(G) Saxitoxin.

(H) Ricin.

(I) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides

e.g. DF: Methylphosphonyldifluoride.

(J) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl)O-2-dialkyl

(Me, Et, n-Pr or i-Pr)-aminoethyl alkyl

(Me, Et, n-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts

e.g. QL: O-Ethyl O-2-diisopropylaminoethyl methylphosphonite.

(K) Chlorosarin: O-Isopropyl methylphosphonochloridate.

(L) Chlorosoman: O-Pinacolyl methylphosphonochloridate.

(11) SCHEDULE 2 CHEMICAL AGENT.—The term "Schedule 2 chemical agent" means any of the following, together or separately:

(A) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl]

phosphorothiolate and corresponding alkylated or protonated salts.

(B) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene.

(C) BZ: 3-Quinuclidinyl benzilate

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

e.g. Methylphosphonyl dichloride Dimethyl methylphosphonate

Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphonothiolothionate.

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

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

(G) arsenic trichloride.

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

(I) Quinuclidine-3-ol.

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

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

Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts N,N-Diethylaminoethanol and corresponding protonated salts.

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

(M) Thiodiglycol: Bis(2-hydroxyethyl)sulfide.

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

(12) SCHEDULE 3 CHEMICAL AGENT.—The term "Schedule 3 chemical agent" means any of the following, together or separately:

(A) Phosgene: carbonyl dichloride.

(B) Cyanogen chloride.

(C) Hydrogen cyanide.

(D) Chloropicrin: trichloronitromethane.

(E) Phosphorous oxychloride.

(F) Phosphorous trichloride.

(G) Phosphorous pentachloride.

(H) Trimethyl phosphite.

(I) Triethyl phosphite.

(J) Dimethyl phosphite.

(K) Diethyl phosphite.

(L) Sulfur monochloride.

(M) Sulfur dichloride.

(N) Thionyl chloride.

(O) Ethyldiethanolamine.

(P) Methyldiethanolamine.

(Q) Triethanolamine.

(13) TOXIC CHEMICAL.—

(A) IN GENERAL.—The term "toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

(B) LIST OF TOXIC CHEMICALS.—Toxic chemicals which have been identified for the application of verification measures under Article VI of the Convention are listed in schedules contained in the Annex on Chemicals of the Chemical Weapons Convention.

(14) UNITED STATES.—The term "United States" means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States and includes all places under the jurisdiction or control of the United States, including—

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

(B) any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (17) and

(37), respectively, of section 40102 of title 49, United States Code; and

(C) any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(b)).

(15) UNSCHEDULED DISCRETE ORGANIC CHEMICAL.—The term "unscheduled discrete organic chemical" means any chemical not listed on any schedule contained in the Annex on Chemicals of the Convention that belongs to the class of chemical compounds consisting of all compounds of carbon, except for its oxides, sulfides, and metal carbonates.

## Subtitle A—General Provisions

**SEC. 211. DESIGNATION OF UNITED STATES NATIONAL AUTHORITY.**

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

(b) PURPOSES.—The United States National Authority shall—

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

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

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

(d) POWERS.—The Director may utilize the administrative authorities otherwise available to the Secretary of State in carrying out the responsibilities of the Director set forth in this title.

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

**SEC. 212. NO ABRIDGEMENT OF CONSTITUTIONAL RIGHTS.**

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

**SEC. 213. CIVIL LIABILITY OF THE UNITED STATES.**

(a) CLAIMS FOR TAKING OF PROPERTY.—

(1) JURISDICTION OF COURTS OF THE UNITED STATES.—

(A) UNITED STATES COURT OF FEDERAL CLAIMS.—The United States Court of Federal Claims shall, subject to subparagraph (B), have jurisdiction of any civil action or claim against the United States for any taking of property without just compensation that occurs by reason of the action of any officer or employee of the Organization for

the Prohibition of Chemical Weapons, including any member of an inspection team of the Technical Secretariat, or by reason of the action of any officer or employee of the United States pursuant to this title or the Convention. For purposes of this subsection, action taken pursuant to or under the color of this title or the Convention shall be deemed to be action taken by the United States for a public purpose.

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

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

(3) INITIAL STEPS BY UNITED STATES GOVERNMENT TO SEEK REMEDIES.—During the period between a notification pursuant to paragraph (2) and the filing of a claim covered by the notification in the United States Court of Federal Claims, the United States National Authority shall pursue all diplomatic and other remedies that the United States National Authority considers necessary and appropriate to seek redress for the claim including, but not limited to, the remedies provided for in the Convention and under this title.

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

(A) the value of proprietary information;

(B) the availability of the proprietary information;

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

(D) the significance of proprietary information; and

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

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

(c) WAIVER OF SOVEREIGN IMMUNITY OF THE UNITED STATES.—In any action under subsection (a) or (b), the United States may not raise sovereign immunity as a defense.

(d) AUTHORITY FOR CAUSE OF ACTION.—

(1) UNITED STATES ACTIONS IN UNITED STATES DISTRICT COURT.—Notwithstanding any other law, the Attorney General of the United States is authorized to bring an action in the United States District Court for the District of Columbia against any foreign nation for money damages resulting from that nation's refusal to provide indemnification to the United States for any liability imposed on the United States by virtue of the actions of an inspector of the Technical Secretariat who is a national of that foreign nation acting at the direction or the behest of that foreign nation.

(2) UNITED STATES ACTIONS IN COURTS OUTSIDE THE UNITED STATES.—The Attorney General is authorized to seek any and all available redress in any international tribunal for indemnification to the United States for any liability imposed on the United States by virtue of the actions of an inspector of the Technical Secretariat, and to seek such redress in the courts of the foreign nation from which the inspector is a national.

(3) ACTIONS BROUGHT BY INDIVIDUALS AND BUSINESSES.—Notwithstanding any other law, any national of the United States, or any business entity organized and operating under the laws of the United States, may bring a civil action in a United States District Court for money damages against any foreign national or any business entity organized and operating under the laws of a foreign nation for an unauthorized or unlawful acquisition, receipt, transmission, or use of property by or on behalf of such foreign national or business entity as a result of any tort under the Constitution or any Federal or State law arising from acts or omissions by any officer or employee of the United States or any member of an inspection team of the Technical Secretariat taken pursuant to or under the color of the Convention or this title.

(e) RECOUPMENT.—

(1) POLICY.—It is the policy of the United States to recoup all funds withdrawn from the Treasury of the United States in payment for any tort under Federal or State law or taking under the Constitution arising from the acts or omissions of any foreign person, officer, or employee of the Organization, including any member of an inspection team of the Technical Secretariat, taken under color of the Chemical Weapons Convention or this title.

(2) SANCTIONS ON FOREIGN COMPANIES.—

(A) IMPOSITION OF SANCTIONS.—The sanctions provided in subparagraph (B) shall be imposed for a period of not less than ten years upon—

(i) any foreign person, officer, or employee of the Organization, including any member of an inspection team of the Technical Secretariat, for whose actions or omissions the United States has been held liable for a tort or taking pursuant to this title; and

(ii) any foreign person or business entity organized and operating under the laws of a foreign nation which knowingly assisted, encouraged or induced, in any way,

a foreign person described in clause (i) to publish, divulge, disclose, or make known in any manner or to any extent not authorized by the Convention any United States confidential business information.

(B) SANCTIONS.—

(i) ARMS EXPORT TRANSACTIONS.—The United States Government shall not sell to a person described in subparagraph (A) any item on the United States Munitions List and shall terminate sales of any defense articles, defense services, or design and construction services to a person described in subparagraph (A) under the Arms Export Control Act.

(ii) SANCTIONS UNDER EXPORT ADMINISTRATION ACT OF 1979.—The authorities under section 6 of the Export Administration Act of 1979 shall be used to prohibit the export of any goods or technology on the control list established pursuant to section 5(c)(1) of that Act to a person described in subparagraph (A).

(iii) INTERNATIONAL FINANCIAL ASSISTANCE.—The United States shall oppose any loan or financial or technical assistance by international financial institutions in accordance with section 701 of the International Financial Institutions Act to a person described in subparagraph (A).

(iv) EXPORT-IMPORT BANK TRANSACTIONS.—The United States shall not give approval to guarantee, insure, or extend credit, or to participate in the extension of credit to a person described in subparagraph (A) through the Export-Import Bank of the United States.

(v) PRIVATE BANK TRANSACTIONS.—Regulations shall be issued to prohibit any United States bank from making any loan or providing any credit to a person described in subparagraph (A).

(vi) BLOCKING OF ASSETS.—The President shall take all steps necessary to block any transactions in any property subject to the jurisdiction of the United States in which a person described in subparagraph (A) has any interest whatsoever, for the purpose of recouping funds in accordance with the policy in paragraph (1).

(vii) DENIAL OF LANDING RIGHTS.—Landing rights in the United States shall be denied to any private aircraft or air carrier owned by a person described in subparagraph (A) except as necessary to provide for emergencies in which the safety of the aircraft or its crew or passengers is threatened.

(3) SANCTIONS ON FOREIGN GOVERNMENTS.—

(A) IMPOSITION OF SANCTIONS.—Whenever the President determines that persuasive information is available indicating that a foreign country has knowingly assisted, encouraged or induced, in any way, a person described in paragraph (2)(A) to publish, divulge, disclose, or make known in any manner or to any extent not authorized by the Convention any United States confidential business information, the President shall, within 30 days after the receipt of such information by the executive branch of

Government, notify the Congress in writing of such determination and, subject to the requirements of paragraphs (4) and (5), impose the sanctions provided under subparagraph (B) for a period of not less than five years.

(B) SANCTIONS.—

(i) ARMS EXPORT TRANSACTIONS.—The United States Government shall not sell to a country described in subparagraph (A) any item on the United States Munitions List, shall terminate sales of any defense articles, defense services, or design and construction services to that country under the Arms Export Control Act, and shall terminate all foreign military financing for that country under the Arms Export Control Act.

(ii) DENIAL OF CERTAIN LICENSES.—Licenses shall not be issued for the export to the sanctioned country of any item on the United States Munitions List or commercial satellites.

(iii) DENIAL OF ASSISTANCE.—No appropriated funds may be used for the purpose of providing economic assistance, providing military assistance or grant military education and training, or extending military credits or making guarantees to a country described in subparagraph (A).

(iv) SANCTIONS UNDER EXPORT ADMINISTRATION ACT OF 1979.—The authorities of section 6 of the Export Administration Act of 1979 shall be used to prohibit the export of any goods or technology on the control list established pursuant to section 5(c)(1) of that Act to a country described in subparagraph (A).

(v) INTERNATIONAL FINANCIAL ASSISTANCE.—The United States shall oppose any loan or financial or technical assistance by international financial institutions in accordance with section 701 of the International Financial Institutions Act to a country described in subparagraph (A).

(vi) TERMINATION OF ASSISTANCE UNDER FOREIGN ASSISTANCE ACT OF 1961.—The United States shall terminate all assistance to a country described in subparagraph (A) under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance.

(vii) PRIVATE BANK TRANSACTIONS.—The United States shall not give approval to guarantee, insure, or extend credit, or participate in the extension of credit through the Export-Import Bank of the United States to a country described in subparagraph (A).

(viii) PRIVATE BANK TRANSACTIONS.—Regulations shall be issued to prohibit any United States bank from making any loan or providing any credit to a country described in subparagraph (A).

(ix) DENIAL OF LANDING RIGHTS.—Landing rights in the United States shall be denied to any air carrier owned by a country described in subparagraph (A), except as necessary to provide for emergencies in which the safety of the aircraft or its crew or passengers is threatened.

(4) SUSPENSION OF SANCTIONS UPON RECOUPMENT BY PAYMENT.—Sanctions imposed under paragraph (2) or (3) may

be suspended if the sanctioned person, business entity, or country, within the period specified in that paragraph, provides full and complete compensation to the United States Government, in convertible foreign exchange or other mutually acceptable compensation equivalent to the full value thereof, in satisfaction of a tort or taking for which the United States has been held liable pursuant to this title.

(5) WAIVER OF SANCTIONS ON FOREIGN COUNTRIES.—The President may waive some or all of the sanctions provided under paragraph (3) in a particular case if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that such waiver is necessary to protect the national security interests of the United States. The certification shall set forth the reasons supporting the determination and shall take effect on the date on which the certification is received by the Congress.

(6) NOTIFICATION TO CONGRESS.—Not later than five days after sanctions become effective against a foreign person pursuant to this title, the President shall transmit written notification of the imposition of sanctions against that foreign person to the chairmen and ranking members of the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

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

(1) is, or previously served as, an officer or employee of the Organization and who has willfully published, divulged, disclosed, or made known in any manner or to any extent not authorized by the Convention any United States confidential business information coming to him in the course of his employment or official duties, or by reason of any examination or investigation of any return, report, or record made to or filed with the Organization, or any officer or employee thereof, such practice or disclosure having resulted in financial loses or damages to a United States person and for which actions or omissions the United States has been found liable of a tort or taking pursuant to this title;

(2) traffics in United States confidential business information, a proven claim to which is owned by a United States national;

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

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

(g) UNITED STATES CONFIDENTIAL BUSINESS INFORMATION DEFINED.—In this section, the term "United States confidential business information" means any trade secrets or commercial or financial information that is privileged and confidential—

(1) including—

(A) data described in section 234(e)(2) of this Act;

(B) any chemical structure;

(C) any plant design process, technology, or operating method;

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

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

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

and that is obtained—

(i) from a United States person; or

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

# Subtitle B—Penalties for Unlawful Activities Subject to the Jurisdiction of the United States

## CHAPTER 1—CRIMINAL AND CIVIL PENALTIES

**SEC. 221. CRIMINAL AND CIVIL PROVISIONS.**

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 11A the following new chapter:

## "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.

### "§ 229. Prohibited activities

"(a) UNLAWFUL CONDUCT.—Except as provided in subsection (b), it shall be unlawful for any person knowingly—

"(1) to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, any chemical weapon; or

"(2) to assist or induce, in any way, any person to violate paragraph (1), or to attempt or conspire to violate paragraph (1).

"(b) EXEMPTED AGENCIES AND PERSONS.—

"(1) IN GENERAL.—Subsection (a) does not apply to the retention, ownership, possession, transfer, or receipt of a chemical weapon by a department, agency, or other entity of the United States, or by a person described in paragraph (2), pending destruction of the weapon.

"(2) EXEMPTED PERSONS.—A person referred to in paragraph (1) is—

"(A) any person, including a member of the Armed Forces of the United States, who is authorized by law

or by an appropriate officer of the United States to retain, own, possess, transfer, or receive the chemical weapon; or

"(B) in an emergency situation, any otherwise nonculpable person if the person is attempting to destroy or seize the weapon.

"(c) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if the prohibited conduct—

"(1) takes place in the United States;

"(2) takes place outside of the United States and is committed by a national of the United States;

"(3) is committed against a national of the United States while the national is outside the United States; or

"(4) is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States.

**"§ 229A. Penalties**

"(a) CRIMINAL PENALTIES.—

"(1) IN GENERAL.—Any person who violates section 229 of this title shall be fined under this title, or imprisoned for any term of years, or both.

"(2) DEATH PENALTY.—Any person who violates section 229 of this title and by whose action the death of another person is the result shall be punished by death or imprisoned for life.

"(b) CIVIL PENALTIES.—

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

"(2) RELATION TO OTHER PROCEEDINGS.—The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

"(c) REIMBURSEMENT OF COSTS.—The court shall order any person convicted of an offense under subsection (a) to reimburse the United States for any expenses incurred by the United States incident to the seizure, storage, handling, transportation, and destruction or other disposition of any property that was seized in connection with an investigation of the commission of the offense by that person. A person ordered to reimburse the United States for expenses under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered under this subsection to reimburse the United States for the same expenses.

**"§ 229B. Criminal forfeitures; destruction of weapons**

"(a) PROPERTY SUBJECT TO CRIMINAL FORFEITURE.—Any person convicted under section 229A(a) shall forfeit to the United States irrespective of any provision of State law—

"(1) any property, real or personal, owned, possessed, or used by a person involved in the offense;

"(2) any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such violation; and

"(3) any of the property used in any manner or part, to commit, or to facilitate the commission of, such violation.

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

"(b) PROCEDURES.—

"(1) IN GENERAL.—Property subject to forfeiture under this section, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by subsections (b) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except that any reference under those subsections to—

"(A) 'this subchapter or subchapter II' shall be deemed to be a reference to section 229A(a); and

"(B) 'subsection (a)' shall be deemed to be a reference to subsection (a) of this section.

"(2) TEMPORARY RESTRAINING ORDERS.—

"(A) IN GENERAL.—For the purposes of forfeiture proceedings under this section, a temporary restraining order may be entered upon application of the United States without notice or opportunity for a hearing when information or an indictment has not yet been filed with respect to the property, if, in addition to the circumstances described in section 413(e)(2) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(e)(2)), the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and exigent circumstances exist that place the life or health of any person in danger.

"(B) WARRANT OF SEIZURE.—If the court enters a temporary restraining order under this paragraph, it shall also issue a warrant authorizing the seizure of such property.

"(C) APPLICABLE PROCEDURES.—The procedures and time limits applicable to temporary restraining orders under section 413(e)(2) and (3) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(e)(2) and (3)) shall apply to temporary restraining orders under this paragraph.

"(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense against a forfeiture under subsection (b) that the property—

"(1) is for a purpose not prohibited under the Chemical Weapons Convention; and

"(2) is of a type and quantity that under the circumstances is consistent with that purpose.

"(d) DESTRUCTION OR OTHER DISPOSITION.—The Attorney General shall provide for the destruction or other appropriate disposition of any chemical weapon seized and forfeited pursuant to this section.

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

"(f) OWNER LIABILITY.—The owner or possessor of any property seized under this section shall be liable to the United States for any expenses incurred incident to the seizure, including any expenses relating to the handling, storage, transportation, and destruction or other disposition of the seized property.

**"§ 229C. Individual self-defense devices**

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

**"§ 229D. Injunctions**

"The United States may obtain in a civil action an injunction against—

"(1) the conduct prohibited under section 229 or 229C of this title; or

"(2) the preparation or solicitation to engage in conduct prohibited under section 229 or 229D of this title.

**"§ 229E. Requests for military assistance to enforce prohibition in certain emergencies**

"The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10 in support of Department of Justice activities relating to the enforcement of section 229 of this title in an emergency situation involving a chemical weapon. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10, United States Code.

**"§ 229F. Definitions**

"In this chapter:

"(1) CHEMICAL WEAPON.—The term 'chemical weapon' means the following, together or separately:

"(A) A toxic chemical and its precursors, except where intended for a purpose not prohibited under this chapter as long as the type and quantity is consistent with such a purpose.

"(B) A munition or device, specifically designed to cause death or other harm through toxic properties of those toxic chemicals specified in subparagraph (A), which would be released as a result of the employment of such munition or device.

"(C) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in subparagraph (B).

"(2) CHEMICAL WEAPONS CONVENTION; CONVENTION.—The terms 'Chemical Weapons Convention' and 'Convention' mean

the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993.

"(3) KEY COMPONENT OF A BINARY OR MULTICOMPONENT CHEMICAL SYSTEM.—The term 'key component of a binary or multicomponent chemical system' means the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system.

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

"(5) PERSON.—The term 'person', except as otherwise provided, means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

"(6) PRECURSOR.—

"(A) IN GENERAL.—The term 'precursor' means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system.

"(B) LIST OF PRECURSORS.—Precursors which have been identified for the application of verification measures under Article VI of the Convention are listed in schedules contained in the Annex on Chemicals of the Chemical Weapons Convention.

"(7) PURPOSES NOT PROHIBITED BY THIS CHAPTER.—The term 'purposes not prohibited by this chapter' means the following:

"(A) PEACEFUL PURPOSES.—Any peaceful purpose related to an industrial, agricultural, research, medical, or pharmaceutical activity or other activity.

"(B) PROTECTIVE PURPOSES.—Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons.

"(C) UNRELATED MILITARY PURPOSES.—Any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm.

"(D) LAW ENFORCEMENT PURPOSES.—Any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

"(8) TOXIC CHEMICAL.—

"(A) IN GENERAL.—The term 'toxic chemical' means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere.

"(B) LIST OF TOXIC CHEMICALS.—Toxic chemicals which have been identified for the application of verification measures under Article VI of the Convention are listed in schedules contained in the Annex on Chemicals of the Chemical Weapons Convention.

"(9) UNITED STATES.—The term 'United States' means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States and includes all places under the jurisdiction or control of the United States, including—

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

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

"(C) any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(b)).".

(b) CONFORMING AMENDMENTS.—

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

(A) by striking "**§ 2332a. Use of weapons of mass destruction**" and inserting "**§ 2332a. Use of certain weapons of mass destruction**";

(B) in subsection (a), by inserting "(other than a chemical weapon as that term is defined in section 229F)" after "weapon of mass destruction"; and

(C) in subsection (b), by inserting "(other than a chemical weapon (as that term is defined in section 229F))" after "weapon of mass destruction".

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

**"11B. Chemical Weapons ..... 229".**

(c) REPEALS.—The following provisions of law are repealed:

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

(2) In the table of sections for chapter 113B of title 18, United States Code, the item relating to section 2332c.

## CHAPTER 2—REVOCATIONS OF EXPORT PRIVILEGES

### SEC. 222. REVOCATIONS OF EXPORT PRIVILEGES.

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

## Subtitle C—Inspections

**SEC. 231. DEFINITIONS IN THIS SUBTITLE.**

(a) IN GENERAL.—In this subtitle, the terms "challenge inspection", "plant site", "plant", "facility agreement", "inspection team", and "requesting state party" have the meanings given those terms in Part I of the Annex on Implementation and Verification of the Chemical Weapons Convention. The term "routine inspection" means an inspection, other than an "initial inspection", undertaken pursuant to Article VI of the Convention.

(b) DEFINITION OF JUDGE OF THE UNITED STATES.—In this subtitle, the term "judge of the United States" means a judge or magistrate judge of a district court of the United States.

**SEC. 232. FACILITY AGREEMENTS.**

(a) AUTHORIZATION OF INSPECTIONS.—Inspections by the Technical Secretariat of plants, plant sites, or other facilities or locations for which the United States has a facility agreement with the Organization shall be conducted in accordance with the facility agreement. Any such facility agreement may not in any way limit the right of the owner or operator of the facility to withhold consent to an inspection request.

(b) TYPES OF FACILITY AGREEMENTS.—

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

(2) SCHEDULE THREE FACILITIES.—The United States National Authority shall ensure that facility agreements are concluded for plants, plant sites, or other facilities or locations that are subject to inspection pursuant to paragraph 5 or 6 of Article VI of the Convention if so requested by the owner, operator, occupant, or agent in charge of the facility.

(c) NOTIFICATION REQUIREMENTS.—The United States National Authority shall ensure that the owner, operator, occupant, or agent in charge of a facility prior to the development of the agreement relating to that facility is notified and, if the person notified so requests, the person may participate in the preparations for the negotiation of such an agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or agent in charge of a facility may observe negotiations of the agreement between the United States and the Organization concerning that facility.

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

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

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

(3) describe the timeframes for inspections; and

(4) detail the areas, equipment, computers, records, data, and samples that are not subject to inspection.

**SEC. 233. AUTHORITY TO CONDUCT INSPECTIONS.**

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

(b) AUTHORITY.—

(1) TECHNICAL SECRETARIAT INSPECTION TEAMS.—Any duly designated member of an inspection team of the Technical Secretariat may inspect any plant, plant site, or other facility or location in the United States subject to inspection pursuant to the Convention.

(2) UNITED STATES GOVERNMENT REPRESENTATIVES.—The United States National Authority shall coordinate the designation of employees of the Federal Government to accompany members of an inspection team of the Technical Secretariat and, in doing so, shall ensure that—

(A) a special agent of the Federal Bureau of Investigation, as designated by the Federal Bureau of Investigation, accompanies each inspection team visit pursuant to paragraph (1);

(B) no employee of the Environmental Protection Agency or the Occupational Safety and Health Administration accompanies any inspection team visit conducted pursuant to paragraph (1); and

(C) the number of duly designated representatives shall be kept to the minimum necessary.

(3) OBJECTIONS TO INDIVIDUALS SERVING AS INSPECTORS.—

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

(i) such individual is or has been a member of, or a participant in, any group or organization that has engaged in, or attempted or conspired to engage in, or aided or abetted in the commission of, any terrorist act or activity;

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

(iii) the participation of such individual as a member of an inspection team would pose a risk to the national security or economic well-being of the United States.

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

**SEC. 234. PROCEDURES FOR INSPECTIONS.**

(a) TYPES OF INSPECTIONS.—Each inspection of a plant, plant site, or other facility or location in the United States under the Convention shall be conducted in accordance with this section and section 235, except where other procedures are provided in a facility agreement entered into under section 232.

(b) NOTICE.—

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

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

(3) CONTENT OF NOTICE.—

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

(i) the type of inspection;

(ii) the basis for the selection of the plant, plant site, or other facility or location for the type of inspection sought;

(iii) the time and date that the inspection will begin and the period covered by the inspection; and

(iv) the names and titles of the inspectors.

(B) SPECIAL RULE FOR CHALLENGE INSPECTIONS.—In the case of a challenge inspection pursuant to Article IX of the Convention, the notice shall also include all appropriate evidence or reasons provided by the requesting state party to the Convention for seeking the inspection.

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

(c) CREDENTIALS.—The head of the inspection team of the Technical Secretariat and the accompanying employees of the Federal Government shall display appropriate identifying credentials to the owner, operator, occupant, or agent in charge of the premises before the inspection is commenced.

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

(e) SCOPE.—

(1) IN GENERAL.—Except as provided in a warrant issued under section 235 or a facility agreement entered into under section 232, an inspection conducted under this subtitle may extend to all things within the premises inspected (including records, files, papers, processes, controls, structures and vehicles) related to whether the requirements of the Convention applicable to such premises have been complied with.

(2) EXCEPTION.—Unless required by the Convention, no inspection under this subtitle shall extend to—

(A) financial data;

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

(C) pricing data;

(D) personnel data;

(E) research data;

(F) patent data;

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

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

(f) SAMPLING AND SAFETY.—

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

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

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

**SEC. 235. WARRANTS.**

(a) IN GENERAL.—The United States Government shall seek the consent of the owner or the operator, occupant, or agent in charge of the premises to be inspected prior to any inspection referred to in section 304(a). If consent is obtained, a warrant is not required for the inspection. The owner or the operator, occupant, or agent in charge of the premises to be inspected may withhold consent for any reason or no reason. After providing notification pursuant to subsection (b), the United States Government may seek a search warrant from a United States magistrate judge. Proceedings regarding the issuance of a search warrant shall be conducted ex parte, unless otherwise requested by the United States Government.

(b) ROUTINE INSPECTIONS.—

(1) OBTAINING ADMINISTRATIVE SEARCH WARRANTS.—For any routine inspection conducted on the territory of the United States pursuant to Article VI of the Convention, where consent has been withheld, the United States Government shall first obtain an administrative search warrant from a judge of the United States. The United States Government shall provide to the judge of the United States all appropriate information supplied by the Technical Secretariat to the United States

National Authority regarding the basis for the selection of the plant site, plant, or other facility or location for the type of inspection sought. The United States Government shall also provide any other appropriate information available to it relating to the reasonableness of the selection of the plant, plant site, or other facility or location for the inspection.

(2) CONTENT OF AFFIDAVITS FOR ADMINISTRATIVE SEARCH WARRANTS.—The judge of the United States shall promptly issue a warrant authorizing the requested inspection upon an affidavit submitted by the United States Government showing that—

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

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

(C) the purpose of the inspection is—

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

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

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

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

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

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

(i) in the case of any facility owned or operated by a non-Government entity related to Schedule 1 chemical agents, the intensity, duration, timing, and mode of the requested inspection is based on the risk to the object and purpose of the Convention by the quantities of chemical produced, the characteristics of

the facility and the nature of activities carried out at the facility, and the requested inspection, when considered with previous such inspections of the facility undertaken in the current calendar year, shall not exceed the number reasonably required based on the risk to the object and purpose of the Convention as described above;

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

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

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

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

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

(4) CHALLENGE INSPECTIONS.—

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

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

(i) all appropriate information supplied by the Technical Secretariat to the United States National Authority regarding the basis for the selection of the

plant site, plant, or other facility or location for the type of inspection sought;

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

(iii) information concerning—

(I) the duration and scope of the inspection;

(II) areas to be inspected;

(III) records and data to be reviewed; and

(IV) samples to be taken;

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

(v) any other evidence showing probable cause to believe that a violation of this title has occurred or is occurring; and

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

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

(i) the type of inspection authorized;

(ii) the purpose of the inspection;

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

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

(v) the items, documents, data, equipment, and computers that may be inspected or seized;

(vi) samples that may be taken;

(vii) the earliest commencement and latest concluding dates and times of the inspection; and

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

**SEC. 236. PROHIBITED ACTS RELATING TO INSPECTIONS.**

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

**SEC. 237. NATIONAL SECURITY EXCEPTION.**

Consistent with the objective of eliminating chemical weapons, the President may deny a request to inspect any facility in the United States in cases where the President determines that the inspection may pose a threat to the national security interests of the United States.

**SEC. 238. PROTECTION OF CONSTITUTIONAL RIGHTS OF CONTRACTORS.**

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

**"SEC. 39. PROTECTION OF CONSTITUTIONAL RIGHTS OF CONTRACTORS.**

"(a) PROHIBITION.—A contractor may not be required, as a condition for entering into a contract with the Federal Government,

to waive any right under the Constitution for any purpose related to Chemical Weapons Convention Implementation Act of 1997 or the Chemical Weapons Convention (as defined in section 203 of such Act).

"(b) CONSTRUCTION.—Nothing in subsection (a) shall be construed to prohibit an executive agency from including in a contract a clause that requires the contractor to permit inspections for the purpose of ensuring that the contractor is performing the contract in accordance with the provisions of the contract.".

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

"Sec. 39. Protection of constitutional rights of contractors.".

**SEC. 239. ANNUAL REPORT ON INSPECTIONS.**

(a) IN GENERAL.—Not later than one year after the date of enactment of this Act, and annually thereafter, the President shall submit a report in classified and unclassified form to the appropriate congressional committees on inspections made under the Convention during the preceding year.

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

(1) The name of each company or entity subject to the jurisdiction of the United States reporting data pursuant to subtitle D of this title.

(2) The number of inspections under the Convention conducted on the territory of the United States.

(3) The number and identity of inspectors conducting any inspection described in paragraph (2) and the number of inspectors barred from inspection by the United States.

(4) The cost to the United States for each inspection described in paragraph (2).

(5) The total costs borne by United States business firms in the course of inspections described in paragraph (2).

(6) A description of the circumstances surrounding inspections described in paragraph (2), including instances of possible industrial espionage and misconduct of inspectors.

(7) The identity of parties claiming loss of trade secrets, the circumstances surrounding those losses, and the efforts taken by the United States Government to redress those losses.

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

(c) DEFINITION.—The term "appropriate congressional committees" means the Committee on the Judiciary, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary, the Committee on International Relations, and the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 240. UNITED STATES ASSISTANCE IN INSPECTIONS AT PRIVATE FACILITIES.**

(a) ASSISTANCE IN PREPARATION FOR INSPECTIONS.—At the request of an owner of a facility not owned or operated by the United States Government, or contracted for use by or for the United States Government, the Secretary of Defense may assist the facility to prepare the facility for possible inspections pursuant to the Convention.

(b) REIMBURSEMENT REQUIREMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the owner of a facility provided assistance under subsection (a) shall reimburse the Secretary for the costs incurred by the Secretary in providing the assistance.

(2) EXCEPTION.—In the case of assistance provided under subsection (a) to a facility owned by a person described in subsection (c), the United States National Authority shall reimburse the Secretary for the costs incurred by the Secretary in providing the assistance.

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

(1) SMALL BUSINESS CONCERNS.—A small business concern as defined in section 3 of the Small Business Act.

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

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

(B) in the calendar year preceding the year in which the assistance is to be provided, produced—

(i) more than 30 metric tons of Schedule 3 or unscheduled discrete organic chemicals that contain phosphorous, sulfur, or fluorine; or

(ii) more than 200 metric tons of unscheduled discrete organic chemicals.

# Subtitle D—Reports

## SEC. 251. REPORTS REQUIRED BY THE UNITED STATES NATIONAL AUTHORITY.

(a) REGULATIONS ON RECORDKEEPING.—

(1) REQUIREMENTS.—The United States National Authority shall ensure that regulations are prescribed that require each person located in the United States who produces, processes, consumes, exports, or imports, or proposes to produce, process, consume, export, or import, a chemical substance that is subject to the Convention to—

(A) maintain and permit access to records related to that production, processing, consumption, export, or import of such substance; and

(B) submit to the Director of the United States National Authority such reports as the United States National Authority may reasonably require to provide to the Organization, pursuant to subparagraph 1(a) of the Annex on Confidentiality of the Convention, the minimum amount of information and data necessary for the timely and efficient conduct by the Organization of its responsibilities under the Convention.

(2) RULEMAKING.—The Director of the United States National Authority shall ensure that regulations pursuant to this section are prescribed expeditiously.

(b) COORDINATION.—

(1) AVOIDANCE OF DUPLICATION.—To the extent feasible, the United States Government shall not require the submission of any report that is unnecessary or duplicative of any report required by or under any other law. The head of each Federal agency shall coordinate the actions of that agency with the heads of the other Federal agencies in order to avoid the imposition of duplicative reporting requirements under this title or any other law.

(2) DEFINITION.—As used in paragraph (1), the term "Federal agency" has the meaning given the term "agency" in section 551(1) of title 5, United States Code.

**SEC. 252. PROHIBITION RELATING TO LOW CONCENTRATIONS OF SCHEDULE 2 AND 3 CHEMICALS.**

(a) PROHIBITION.—Notwithstanding any other provision of this title, no person located in the United States shall be required to report on, or to submit to, any routine inspection conducted for the purpose of verifying the production, possession, consumption, exportation, importation, or proposed production, possession, consumption, exportation, or importation of any substance that contains less than—

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

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

(b) STANDARD FOR MEASUREMENT OF CONCENTRATION.—The percent concentration of a chemical in a substance shall be measured on the basis of volume or total weight, which measurement yields the lesser percent.

**SEC. 253. PROHIBITION RELATING TO UNSCHEDULED DISCRETE ORGANIC CHEMICALS AND COINCIDENTAL BYPRODUCTS IN WASTE STREAMS.**

(a) PROHIBITION.—Notwithstanding any other provision of this title, no person located in the United States shall be required to report on, or to submit to, any routine inspection conducted for the purpose of verifying the production, possession, consumption, exportation, importation, or proposed production, possession, consumption, exportation, or importation of any substance that is—

(1) an unscheduled discrete organic chemical; and

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

**SEC. 254. CONFIDENTIALITY OF INFORMATION.**

(a) FREEDOM OF INFORMATION ACT EXEMPTION FOR CERTAIN CONVENTION INFORMATION.—Except as provided in subsection (b) or (c), any confidential business information, as defined in section 213(g), reported to, or otherwise acquired by, the United States Government under this title or under the Convention shall not be disclosed under section 552(a) of title 5, United States Code.

(b) EXCEPTIONS.—

(1) INFORMATION FOR THE TECHNICAL SECRETARIAT.—Information shall be disclosed or otherwise provided to the Technical Secretariat or other states parties to the Chemical Weapons Convention in accordance with the Convention, in

particular, the provisions of the Annex on the Protection of Confidential Information.

(2) INFORMATION FOR CONGRESS.—Information shall be made available to any committee or subcommittee of Congress with appropriate jurisdiction upon the written request of the chairman or ranking minority member of such committee or subcommittee, except that no such committee or subcommittee, and no member and no staff member of such committee or subcommittee, shall disclose such information or material except as otherwise required or authorized by law.

(3) INFORMATION FOR ENFORCEMENT ACTIONS.—Information shall be disclosed to other Federal agencies for enforcement of this title or any other law, and shall be disclosed or otherwise provided when relevant in any proceeding under this title or any other law, except that disclosure or provision in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding.

(c) INFORMATION DISCLOSED IN THE NATIONAL INTEREST.—

(1) AUTHORITY.—The United States Government shall disclose any information reported to, or otherwise required by the United States Government under this title or the Convention, including categories of such information, that it determines is in the national interest to disclose and may specify the form in which such information is to be disclosed.

(2) NOTICE OF DISCLOSURE.—

(A) REQUIREMENT.—If any Department or agency of the United States Government proposes pursuant to paragraph (1) to publish or disclose or otherwise provide information exempt from disclosure under subsection (a), the United States National Authority shall, unless contrary to national security or law enforcement needs, provide notice of intent to disclose the information—

(i) to the person that submitted such information; and

(ii) in the case of information about a person received from another source, to the person to whom that information pertains.

The information may not be disclosed until the expiration of 30 days after notice under this paragraph has been provided.

(B) PROCEEDINGS ON OBJECTIONS.—In the event that the person to which the information pertains objects to the disclosure, the agency shall promptly review the grounds for each objection of the person and shall afford the objecting person a hearing for the purpose of presenting the objections to the disclosure. Not later than 10 days before the scheduled or rescheduled date for the disclosure, the United States National Authority shall notify such person regarding whether such disclosure will occur notwithstanding the objections.

(d) CRIMINAL PENALTY FOR WRONGFUL DISCLOSURE.—Any officer or employee of the United States, and any former officer or employee of the United States, who by reason of such employment or official position has obtained possession of, or has access to, information the disclosure or other provision of which is prohibited by subsection (a), and who, knowing that disclosure or provision

of such information is prohibited by such subsection, willfully discloses or otherwise provides the information in any manner to any person (including any person located outside the territory of the United States) not authorized to receive it, shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both.

(e) CRIMINAL FORFEITURE.—The property of any person who violates subsection (d) shall be subject to forfeiture to the United States in the same manner and to the same extent as is provided in section 229C of title 18, United States Code, as added by this title.

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

**SEC. 255. RECORDKEEPING VIOLATIONS.**

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

(1) to establish or maintain any record required by this title or any regulation prescribed under this title;

(2) to submit any report, notice, or other information to the United States Government in accordance with this title or any regulation prescribed under this title; or

(3) to permit access to or copying of any record that is exempt from disclosure under this title or any regulation prescribed under this title.

## Subtitle E—Enforcement

**SEC. 261. PENALTIES.**

(a) CIVIL.—

(1) PENALTY AMOUNTS.—

(A) PROHIBITED ACTS RELATING TO INSPECTIONS.—Any person that is determined, in accordance with paragraph (2), to have violated section 236 of this Act shall be required by order to pay a civil penalty in an amount not to exceed $25,000 for each such violation. For purposes of this paragraph, each day such a violation of section 306 continues shall constitute a separate violation of that section.

(B) RECORDKEEPING VIOLATIONS.—Any person that is determined, in accordance with paragraph (2), to have violated section 255 of this Act shall be required by order to pay a civil penalty in an amount not to exceed $5,000 for each such violation.

(2) HEARING.—

(A) IN GENERAL.—Before imposing an order described in paragraph (1) against a person under this subsection for a violation of section 236 or 255, the Secretary of State shall provide the person or entity with notice and, upon request made within 15 days of the date of the notice, a hearing respecting the violation.

(B) CONDUCT OF HEARING.—Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. If no hearing is so requested, the Secretary of State's imposition of the order shall constitute a final and unappealable order.

(C) ISSUANCE OF ORDERS.—If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated section 236 or 255, the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (1).

(D) FACTORS FOR DETERMINATION OF PENALTY AMOUNTS.—In determining the amount of any civil penalty, the administrative law judge shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, the ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(3) ADMINISTRATIVE APPELLATE REVIEW.—The decision and order of an administrative law judge shall become the final agency decision and order of the head of the United States National Authority unless, within 30 days, the head of the United States National Authority modifies or vacates the decision and order, with or without conditions, in which case the decision and order of the head of the United States National Authority shall become a final order under this subsection.

(4) OFFSETS.—The amount of the civil penalty under a final order of the United States National Authority may be deducted from any sums owed by the United States to the person.

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

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

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

(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the United States National Authority,

the Secretary of State shall file a suit to seek compliance with the order in any appropriate district court of the United States, plus interest at currently prevailing rates calculated from the date of expiration of the 30-day period referred to in paragraph (5) or the date of such final judgment, as the case may be. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(b) CRIMINAL.—Any person who knowingly violates any provision of section 236 or 255 of this Act, shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) for such violation, be fined under title 18, United States Code, imprisoned for not more than one year, or both.

**SEC. 262. SPECIFIC ENFORCEMENT.**

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

(1) restrain any violation of section 236 or 255 of this Act; and

(2) compel the taking of any action required by or under this title or the Convention.

(b) CIVIL ACTIONS.—

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

(A) in the case of a civil action described in subsection (a)(1), in the United States district court for the judicial district in which any act, omission, or transaction constituting a violation of section 236 or 255 occurred or in which the defendant is found or transacts business; or

(B) in the case of a civil action described in subsection (a)(2), in the United States district court for the judicial district in which the defendant is found or transacts business.

(2) SERVICE OF PROCESS.—Any such civil action process may be served on a defendant wherever the defendant may reside or may be found, whether the defendant resides or may be found within the United States or elsewhere.

**SEC. 263. EXPEDITED JUDICIAL REVIEW.**

(a) CIVIL ACTION.—Any person or entity subject to a search under this title may file a civil action challenging the constitutionality of any provision of this title. Notwithstanding any other provision of law, during the full calendar year of, and the two full calendar years following, the enactment of this Act, the district court shall accord such a case a priority in its disposition ahead of all other civil actions except for actions challenging the legality and conditions of confinement.

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

## Subtitle F—Miscellaneous Provisions

**SEC. 271. REPEAL.**

Section 808 of the Department of Defense Appropriation Authorization Act, 1978 (50 U.S.C. 1520; relating to the use of human subjects for the testing of chemical or biological agents) is repealed.

**SEC. 272. PROHIBITION.**

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

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

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

(b) CONSTRUCTION.—Nothing in subsection (a) may be construed to prohibit actions carried out for purposes not prohibited by this title (as defined in section 203(8)).

(c) BIOLOGICAL AGENT DEFINED.—In this section, the term "biological agent" means any micro-organism (including bacteria, viruses, fungi, rickettsiae or protozoa), pathogen, or infectious substance, or any naturally occurring, bio-engineered or synthesized component of any such micro-organism, pathogen, or infectious substance, whatever its origin or method of production, capable of causing—

(1) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(2) deterioration of food, water, equipment, supplies, or materials of any kind; or

(3) deleterious alteration of the environment.

**SEC. 273. BANKRUPTCY ACTIONS.**

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

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

(2) by inserting after paragraph (3) the following:

"(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;".

NEWT GINGRICH,
*Speaker of the House of Representatives.*
STROM THURMOND,
*President pro tempore of the Senate.*

[Endorsement on back of bill:]
I certify that this Act originated in the House of Representatives.
ROBIN H. CARLE, *Clerk.*

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