103D CONGRESS 2D SESSION

# H. R. 4849

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

## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 1994

Mr. Hamilton (by request) (for himself, Mr. Gilman, Mr. Lantos, Mr. Berman, Mr. Swift, and Mr. Oxley) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, the Judiciary, and Energy and Commerce

## A BILL

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

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the "Chemical Weapons
- 5 Convention Implementation Act of 1994".

## 1 SEC. 2. TABLE OF CONTENTS.

- 2 The table of contents for this Act is as follows—
  - Sec. 1. Short title.
  - Sec. 2. Table of contents.
  - Sec. 3. Congressional findings.
  - Sec. 4. Congressional declarations.
  - Sec. 5. Definitions.
  - Sec. 6. Severability.

## TITLE I—NATIONAL AUTHORITY

Sec. 101. Establishment.

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

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

#### TITLE III—DECLARATIONS BY CHEMICAL INDUSTRY

- Sec. 301. Reporting of information.
- Sec. 302. Disclosure of information or materials.
- Sec. 303. Prohibited acts.

#### TITLE IV—INSPECTIONS

- Sec. 401. Inspections of chemical industry.
- Sec. 402. Other inspections and lead agency.
- Sec. 403. Prohibited acts.
- Sec. 404. Penalties.
- Sec. 405. Specific enforcement.
- Sec. 406. Legal proceedings.
- Sec. 407. Authority.

## 3 SEC. 3. CONGRESSIONAL FINDINGS.

- 4 The Congress makes the following findings:
- 5 (1) Chemical weapons pose a significant threat
- 6 to the national security of the United States and are
- 7 a scourge to humankind.
- 8 (2) The Chemical Weapons Convention is the
- 9 best means of ensuring the nonproliferation of chem-
- ical weapons and their eventual destruction and for-
- swearing by all nations.

- 1 (3) The verification procedures contained in the 2 Chemical Weapons Convention and the faithful ad-3 herence of nations to them, including the United 4 States, are crucial to the success of the Convention.
- 5 (4) The declarations and inspections required 6 by the Chemical Weapons Convention are essential 7 for the effectiveness of the verification regime.

## 8 SEC. 4. CONGRESSIONAL DECLARATIONS.

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- The Congress makes the following declarations:
  - (1) It shall be the policy of the United States to cooperate with other States parties to the Chemical Weapons Convention and afford the appropriate form of legal assistance to facilitate the implementation of the prohibitions contained in title II of this Act.
  - (2) It shall be the policy of the United States, during the implementation of its obligations under the Chemical Weapons Convention, to assign the highest priority to ensuring the safety of people and to protecting the environment, and to cooperate as appropriate with other States parties to the Convention in this regard.
  - (3) It shall be the policy of the United States to minimize, to the greatest extent practicable, the administrative burden and intrusiveness of measures

- 1 to implement the Chemical Weapons Convention
- 2 placed on commercial and other private entities, and
- 3 to take into account the possible competitive impact
- 4 of regulatory measures on industry, consistent with
- 5 the obligations of the United States under the Con-
- 6 vention.

### 7 SEC. 5. DEFINITIONS.

- 8 (a) In General.—Except as otherwise provided in
- 9 this Act, the definitions of the terms used in this Act shall
- 10 be those contained in the Chemical Weapons Convention.
- 11 (b) OTHER DEFINITIONS.—(1) The term "Chemical
- 12 Weapons Convention" means the Convention on the Prohi-
- 13 bition of the Development, Production, Stockpiling and
- 14 Use of Chemical Weapons and on Their Destruction,
- 15 opened for signature on January 13, 1993.
- 16 (2) The term "national of the United States" has the
- 17 same meaning given such term in section 101(a)(22) of
- 18 the Immigration and Nationality Act (8 U.S.C.
- 19 1101(a)(22)).
- 20 (3) The term "United States", when used in a geo-
- 21 graphical sense, includes all places under the jurisdiction
- 22 or control of the United States, including—
- 23 (A) any of the places within the provisions of
- section 101(41) of the Federal Aviation Act of 1958,
- as amended (49 U.S.C. App. Sec. 1301(41)),

- (B) any public aircraft or civil aircraft of the 1 2 United States, as such terms are defined in sections 101 (36) and (18) of the Federal Aviation Act of 3 1958, as amended (49 U.S.C. App. Secs. 1301(36) and 1301(18)), and 5 (C) any vessel of the United States, as such 6 7 term is defined in section 3(b) of the Maritime Drug 8 Enforcement Act, as amended (46 U.S.C. App. Sec. 9 1903(b)). (4) The term "person", except as used in section 201 10 of this Act and as set forth below, means— 12 (A) any individual, corporation, partnership, 13 firm, association, trust, estate, public or private in-14 stitution, any State or any political subdivision 15 thereof, or any political entity within a State, any 16 foreign government or nation or any agency, instru-17 mentality or political subdivision of any such govern-18 ment or nation, or other entity located in the United 19 States; and 20 (B) any legal successor, representative, agent or agency of the foregoing located in the United States. 21 22 The phrase "located in the United States" in the term
- 24 in the phrase "person located outside the territory" in sec-

"person" shall not apply to the term "person" as used

- 1 tions 203(b), 203(c), and 302(c) of this Act and "person
- 2 located in the territory" in section 203(b) of this Act.
- 3 (5) The term "Technical Secretariat" means the
- 4 Technical Secretariat of the Organization for the Prohibi-
- 5 tion of Chemical Weapons established by the Chemical
- 6 Weapons Convention.

### 7 SEC. 6. SEVERABILITY.

- 8 If any provision of this Act, or the application of such
- 9 provision to any person or circumstance, is held invalid,
- 10 the remainder of this Act, or the application of such provi-
- 11 sion to persons or circumstances other than those as to
- 12 which it is held invalid, shall not be affected thereby.

## 13 TITLE I—NATIONAL AUTHORITY

#### 14 SEC. 101. ESTABLISHMENT.

- Pursuant to paragraph 4 of Article VII of the Chemi-
- 16 cal Weapons Convention, the President or the designee of
- 17 the President shall establish the "United States National
- 18 Authority" to, inter alia, serve as the national focal point
- 19 for effective liaison with the Organization for the Prohibi-
- 20 tion of Chemical Weapons and other States Parties to the
- 21 Convention.

## 1 TITLE II—APPLICATION OF CON-

- 2 VENTION PROHIBITIONS TO
- 3 NATURAL AND LEGAL PER-
- 4 **SONS**
- 5 SEC. 201. CRIMINAL PROVISIONS.
- 6 (a) IN GENERAL.—Part I of title 18, United States
- 7 Code, is amended by—
- 8 (1) redesignating chapter 11A relating to child
- 9 support as chapter 11B; and
- 10 (2) inserting after chapter 11 relating to brib-
- ery, graft and conflicts of interest the following new
- 12 chapter:
- 13 "CHAPTER 11A—CHEMICAL WEAPONS

## 14 "SEC. 227. PENALTIES AND PROHIBITIONS WITH RESPECT

- 15 TO CHEMICAL WEAPONS.
- 16 "(a) IN GENERAL.—Except as provided in subsection
- 17 (b), whoever knowingly develops, produces, otherwise ac-
- 18 quires, stockpiles, retains, directly or indirectly transfers,
- 19 uses, owns or possesses any chemical weapon, or know-
- 20 ingly assists, encourages or induces, in any way, any per-
- 21 son to do so, or attempts or conspires to do so, shall be

<sup>&</sup>quot;Sec.

<sup>&</sup>quot;227. Penalties and prohibitions with respect to chemical weapons.

<sup>&</sup>quot;227A. Seizure, forfeiture, and destruction.

<sup>&</sup>quot;227B. Injunctions.

<sup>&</sup>quot;227C. Other prohibitions.

<sup>&</sup>quot;227D. Definitions.

- 1 fined under this title or imprisoned for life or any term
- 2 of years, or both.
- 3 "(b) Exclusion.—Subsection (a) shall not apply to
- 4 the retention, ownership or possession of a chemical weap-
- 5 on, that is permitted by the Chemical Weapons Convention
- 6 pending the weapon's destruction, by any agency or de-
- 7 partment of the United States. This exclusion shall apply
- 8 to any person, including members of the Armed Forces
- 9 of the United States, who is authorized by any agency or
- 10 department of the United States to retain, own or possess
- 11 a chemical weapon, unless that person knows or should
- 12 have known that such retention, ownership or possession
- 13 is not permitted by the Chemical Weapons Convention.
- 14 "(c) Jurisdiction.—There is jurisdiction by the
- 15 United States over the prohibited activity in subsection (a)
- 16 if—
- 17 "(1) the prohibited activity takes place in the
- 18 United States, or
- 19 "(2) the prohibited activity takes place outside
- of the United States and is committed by a national
- of the United States.
- 22 "(d) Additional Penalty.—The court shall order
- 23 that any person convicted of any offense under this section
- 24 pay to the United States any expenses incurred incident
- 25 to the seizure, storage, handling, transportation and de-

- 1 struction or other disposition of property seized for the
- 2 violation of this section.
- 3 "SEC. 227A. SEIZURE, FORFEITURE, AND DESTRUCTION.
- 4 "(a) Seizure.—(1) Except as provided in paragraph
- 5 (2), the Attorney General may request the issuance, in the
- 6 same manner as provided for a search warrant, of a war-
- 7 rant authorizing the seizure of any chemical weapon de-
- 8 fined in section 227D(2)(A) of this title that is of a type
- 9 or quantity that under the circumstances is inconsistent
- 10 with the purposes not prohibited under the Chemical
- 11 Weapons Convention.
- 12 "(2) In exigent circumstances, seizure and destruc-
- 13 tion of any such chemical weapon described in paragraph
- 14 (a)(1) may be made by the Attorney General upon prob-
- 15 able cause without the necessity for a warrant.
- 16 "(b) Procedure for Forfeiture and Destruc-
- 17 TION.—Property seized pursuant to subsection (a) shall
- 18 be forfeited to the United States. Except as inconsistent
- 19 herewith, the provisions of chapter 46 of this title relating
- 20 to civil forfeitures shall extend to a seizure or forfeiture
- 21 under this section. The Attorney General shall provide for
- 22 the destruction or other appropriate disposition of any
- 23 chemical weapon seized and forfeited pursuant to this sec-
- 24 tion.

1	"(c) Affirmative Defense.—It is an affirmative
2	defense against a forfeiture under subsection (b) that—
3	"(1) such alleged chemical weapon is for a pur-
4	pose not prohibited under the Chemical Weapons
5	Convention; and
6	"(2) such alleged chemical weapon is of a type
7	and quantity that under the circumstances is con-
8	sistent with that purpose.
9	"(d) Other Seizure, Forfeiture, and Destruc-
10	TION.—
11	"(1) Except as provided in paragraph (2), the
12	Attorney General may request the issuance, in the
13	same manner as provided for a search warrant, of
14	a warrant authorizing the seizure of any chemical
15	weapon defined in section 227D(2) (B) or (C) of
16	this title that exists by reason of conduct prohibited
17	under section 227 of this title.
18	"(2) In exigent circumstances, seizure and de-
19	struction of any such chemical weapon described in
20	paragraph (1) may be made by the Attorney General
21	upon probable cause without the necessity for a war-
22	rant.
23	"(3) Property seized pursuant to this sub-
24	section shall be summarily forfeited to the United

States and destroyed.

- 1 "(e) Assistance.—The Attorney General may re-
- 2 quest assistance from any agency or department in the
- 3 handling, storage, transportation or destruction of prop-
- 4 erty seized under this section.
- 5 "(f) OWNER LIABILITY.—The owner or possessor of
- 6 any property seized under this section shall be liable to
- 7 the United States for any expenses incurred incident to
- 8 the seizure, including any expenses relating to the han-
- 9 dling, storage, transportation and destruction or other dis-
- 10 position of the seized property.
- 11 "SEC. 227B. INJUNCTIONS.
- 12 "(a) IN GENERAL.—The United States may obtain
- 13 in a civil action an injunction against—
- 14 "(1) the conduct prohibited under section 227
- of this title;
- 16 "(2) the preparation or solicitation to engage in
- conduct prohibited under section 227 of this title; or
- 18 "(3) the development, production, other acquisi-
- tion, stockpiling, retention, direct or indirect trans-
- fer, use, ownership or possession, or the attempted
- development, production, other acquisition, stock-
- 22 piling, retention, direct or indirect transfer, use,
- ownership or possession, of any alleged chemical
- weapon defined in section 227D(2)(A) of this title
- 25 that is of a type or quantity that under the cir-

- cumstances is inconsistent with the purposes not
- 2 prohibited under the Chemical Weapons Convention,
- or the assistance to any person to do so.
- 4 "(b) AFFIRMATIVE DEFENSE.—It is an affirmative
- 5 defense against an injunction under subsection (a)(3)
- 6 that—
- 7 "(1) the conduct sought to be enjoined is for a
- 8 purpose not prohibited under the Chemical Weapons
- 9 Convention; and
- 10 "(2) such alleged chemical weapon is of a type
- and quantity that under the circumstances is con-
- sistent with that purpose.
- 13 "SEC. 227C. OTHER PROHIBITIONS.
- 14 "(a) IN GENERAL.—Except as provided in subsection
- 15 (b), whoever knowingly uses riot control agents as a meth-
- 16 od of warfare, or knowingly assists any person to do so,
- 17 shall be fined under this title or imprisoned for a term
- 18 of not more than ten years, or both.
- 19 "(b) EXCLUSION.—Subsection (a) shall not apply to
- 20 members of the Armed Forces of the United States. Mem-
- 21 bers of the Armed Forces of the United States who use
- 22 riot control agents as a method of warfare shall be subject
- 23 to appropriate military penalties.

1	"(c) Jurisdiction.—There is jurisdiction by the
2	United States over the prohibited activity in subsection (a)
3	if—
4	"(1) the prohibited activity takes place in the
5	United States, or
6	"(2) the prohibited activity takes place outside
7	of the United States and is committed by a national
8	of the United States.
9	"SEC. 227D. DEFINITIONS.
10	"As used in this chapter, the term—
11	"(1) 'Chemical Weapons Convention' means the
12	Convention on the Prohibition of the Development,
13	Production, Stockpiling and Use of Chemical Weap-
14	ons and on Their Destruction, opened for signature
15	on January 13, 1993;
16	"(2) 'chemical weapon' means the following, to-
17	gether or separately:
18	"(A) a toxic chemical and its precursors,
19	except where intended for a purpose not prohib-
20	ited under the Chemical Weapons Convention,
21	as long as the type and quantity is consistent
22	with such a purpose;
23	"(B) a munition or device, specifically de-
24	signed to cause death or other harm through
25	the 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; or
  - "(C) any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in subparagraph (B);
  - "(3) '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. This 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;
  - "(4) 'precursor' means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system;
  - "(5) '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;

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1	"(6) 'purpose not prohibited under the Chemi-
2	cal Weapons Convention' means—
3	"(A) industrial, agricultural, research,
4	medical, pharmaceutical or other peaceful pur-
5	poses;
6	"(B) protective purposes, namely those
7	purposes directly related to protection against
8	toxic chemicals and to protection against chemi-
9	cal weapons;
10	"(C) military purposes not connected with
11	the use of chemical weapons and not dependent
12	on the use of the toxic properties of chemicals
13	as a method of warfare; or
14	"(D) law enforcement purposes, including
15	domestic riot control purposes;
16	"(7) 'national of the United States' has the
17	same meaning given such term in section 101(a)(22)
18	of the Immigration and Nationality Act (8 U.S.C.
19	1101(a)(22));
20	"(8) 'United States,' when used in a geographi-
21	cal sense, includes all places under the jurisdiction
22	or control of the United States, including—
23	"(A) any of the places within the provi-
24	sions of section 101(41) of the Federal Aviation

1	Act of 1958, as amended (49 U.S.C. App. Sec.
2	1301(41)),
3	"(B) any public aircraft or civil aircraft of
4	the United States, as such terms are defined in
5	sections 101 (36) and (18) of the Federal Avia-
6	tion Act of 1958, as amended (49 U.S.C. App.
7	Secs. 1301(36) and 1301(18)), and
8	"(C) any vessel of the United States, as
9	such term is defined in section 3(b) of the Mar-
10	itime Drug Enforcement Act, as amended (46
11	U.S.C. App. Sec. 1903(b));
12	"(9) 'person' means—
13	"(A) any individual, corporation, partner-
14	ship, firm, association, trust, estate, public or
15	private institution, any State or any political
16	subdivision thereof, or any political entity with-
17	in a State, any foreign government or nation or
18	any agency, instrumentality or political subdivi-
19	sion of any such government or nation, or other
20	entity; and
21	"(B) any legal successor, representative
22	agent or agency of the foregoing; and
23	"(10) 'riot control agent' means any chemical
24	not listed in a Schedule in the Annex on Chemicals
25	of the Chemical Weapons Convention, which can

1	produce rapidly in humans sensory irritation or dis-
2	abling physical effects which disappear within a
3	short time following termination of exposure."
4	(b) CLERICAL AMENDMENTS.—The table of chapters
5	for part I of title 18, United States Code, is amended by—
6	(1) in the item for chapter 11A relating to child
7	support, redesignating "11A" as "11B"; and
8	(2) inserting after the item for chapter 11 the
9	following new item:
	"11A. CHEMICAL WEAPONS
10	SEC. 202. EFFECTIVE DATE.
11	This title shall take effect on the date the Chemical
12	Weapons Convention enters into force for the United
13	States.
	States.  SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.
14 15	SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.
14 15 16	SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.  (a) SCHEDULE 1 ACTIVITIES.—It shall be unlawful
14 15 16 17	SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.  (a) SCHEDULE 1 ACTIVITIES.—It shall be unlawful for any person or any national of the United States lo-
14 15 16 17	SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.  (a) Schedule 1 Activities.—It shall be unlawful for any person or any national of the United States located outside the United States to produce, acquire, retain, transfer or use a chemical listed on Schedule 1 of
14 15 16 17	SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.  (a) Schedule 1 Activities.—It shall be unlawful for any person or any national of the United States located outside the United States to produce, acquire, retain, transfer or use a chemical listed on Schedule 1 of
14 15 16 17 18	SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.  (a) SCHEDULE 1 ACTIVITIES.—It shall be unlawful for any person or any national of the United States located outside the United States to produce, acquire, retain, transfer or use a chemical listed on Schedule 1 of the Annex on Chemicals of the Chemical Weapons Conven-
14 15 16 17 18 19 20	SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.  (a) Schedule 1 Activities.—It shall be unlawful for any person or any national of the United States located outside the United States to produce, acquire, retain, transfer or use a chemical listed on Schedule 1 of the Annex on Chemicals of the Chemical Weapons Convention, unless—
14 15 16 17 18 19 20	SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.  (a) SCHEDULE 1 ACTIVITIES.—It shall be unlawful for any person or any national of the United States located outside the United States to produce, acquire, retain, transfer or use a chemical listed on Schedule 1 of the Annex on Chemicals of the Chemical Weapons Convention, unless—  (1) the chemicals are applied to research, medi-
14 15 16 17 18 19 20 21	sec. 203. Restrictions on scheduled chemicals.  (a) Schedule 1 Activities.—It shall be unlawful for any person or any national of the United States located outside the United States to produce, acquire, retain, transfer or use a chemical listed on Schedule 1 of the Annex on Chemicals of the Chemical Weapons Convention, unless—  (1) the chemicals are applied to research, medical, pharmaceutical or protective purposes;

- 1 (3) the amount of such chemicals per person at
- any given time for such purposes does not exceed a
- 3 limit to be determined by the United States National
- 4 Authority, but in any case, does not exceed one met-
- 5 ric ton.
- 6 (b) Extraterritorial Acts.—(1) It shall be un-
- 7 lawful for any person or any national of the United States
- 8 located outside the United States to produce, acquire, re-
- 9 tain or use a chemical listed on Schedule 1 of the Annex
- 10 on Chemicals of the Chemical Weapons Convention out-
- 11 side the territories of the States Parties to the Convention
- 12 or to transfer such chemicals to any person located outside
- 13 the territory of the United States, except as provided for
- 14 in the Convention for transfer to a person located in the
- 15 territory of another State Party to the Convention.
- 16 (2) Beginning three years after the entry into force
- 17 of the Chemical Weapons Convention, it shall be unlawful
- 18 for any person or any national of the United States lo-
- 19 cated outside the United States to transfer a chemical list-
- 20 ed on Schedule 2 of the Annex on Chemicals of the Con-
- 21 vention to any person located outside the territory of a
- 22 State Party to the Convention or to receive such a chemi-
- 23 cal from any person located outside the territory of a State
- 24 Party to the Convention.

- 19 (c) JURISDICTION.—There is jurisdiction by the 1 United States over the prohibited activity in subsections (a) and (b) if— 3 4 (1) the prohibited activity takes place in the United States, or 5 6 (2) the prohibited activity takes place outside of the United States and is committed by a national of 7 8 the United States. TITLE III—DECLARATIONS BY 9 CHEMICAL INDUSTRY 10 SEC. 301. REPORTING OF INFORMATION. (a) Reports.—The Department of Commerce shall promulgate regulations under which each person who produces, processes, consumes, exports or imports, or pro-
- 12 (a) Reports.—The Department of Commerce shall promulgate regulations under which each person who pro14 duces, processes, consumes, exports or imports, or pro15 poses to produce, process, consume, export or import, a 
  16 chemical substance subject to the Chemical Weapons Con17 vention shall maintain and permit access to such records 
  18 and shall submit to the Department of Commerce such 
  19 reports as the United States National Authority may rea20 sonably require pursuant to the Chemical Weapons Con21 vention. The Department of Commerce shall promulgate 
  22 regulations pursuant to this title expeditiously, and may 
  23 amend or change such regulations as necessary.
- (b) Coordination.—To the extent feasible, the

United States National Authority shall not require any re-

- 1 porting that is unnecessary, or duplicative of reporting re-
- 2 quired under any other Act. Agencies and departments
- 3 shall coordinate their actions with other agencies and de-
- 4 partments to avoid duplication of reporting by the affected
- 5 persons under this Act or any other Act.

## 6 SEC. 302. DISCLOSURE OF INFORMATION OR MATERIALS.

- 7 (a) IN GENERAL.—Any information or materials re-
- 8 ported to, or otherwise obtained by, the United States Na-
- 9 tional Authority or the Department of Commerce, or any
- 10 other agency or department under this Act or the Chemi-
- 11 cal Weapons Convention may be withheld from public dis-
- 12 closure or provision only to the extent permitted by law.
- 13 Information or materials obtained from declarations or in-
- 14 spections required by the Chemical Weapons Convention,
- 15 that are not already in the public domain, shall be with-
- 16 held from public disclosure or provision and shall not be
- 17 required to be disclosed pursuant to section 552 of title
- 18 5, United States Code, except that such information or
- 19 material—
- 20 (1) shall be disclosed or otherwise provided to
- 21 the Technical Secretariat or other States Parties to
- the Chemical Weapons Convention in accordance
- with the Convention, in particular, the provisions of
- 24 the Annex on the Protection of Confidential Infor-
- 25 mation;

- 1 (2) shall be made available to any committee or 2 subcommittee of Congress of appropriate jurisdiction 3 upon the written request of the chairman or ranking 4 minority member of such committee or subcommit-5 tee, except that no such committee or subcommittee, 6 or member thereof, shall disclose such information 7 or material;
  - (3) shall be disclosed to other agencies or departments for law enforcement purposes with regard to this Act or any other Act, and may be disclosed or otherwise provided when relevant in any proceeding under this Act or any other Act, 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; and
  - (4) may be disclosed, including in the form of categories of information, if the United States National Authority determines that such disclosure is in the national interest.
- 21 (b) NOTICE OF DISCLOSURE.—If the United States 22 National Authority, pursuant to subsection (a)(4), pro-23 poses to publish or disclose or otherwise provide informa-
- 24 tion or materials exempted from disclosure in subsection
- 25 (a), the United States National Authority shall, where ap-

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- 1 propriate, notify the person who submitted such informa-
- 2 tion or materials of the intent to release such information
- 3 or materials. Where notice has been provided, the United
- 4 States National Authority may not release such informa-
- 5 tion or materials until the expiration of thirty days after
- 6 notice has been provided.
- 7 (c) Criminal Penalty for Wrongful Disclo-
- 8 SURE.—Any officer or employee of the United States or
- 9 former officer or employee of the United States, who by
- 10 virtue of such employment or official position has obtained
- 11 possession of, or has access to, information or materials
- 12 the disclosure or other provision of which is prohibited by
- 13 subsection (a), and who knowing that disclosure or provi-
- 14 sion of such information or materials is prohibited by such
- 15 subsection, willfully discloses or otherwise provides the in-
- 16 formation or materials in any manner to any person, in-
- 17 cluding persons located outside the territory of the United
- 18 States, not entitled to receive it, shall be fined under title
- 19 18, United States Code, or imprisoned for not more than
- 20 five years, or both.
- 21 (d) International Inspectors.—The provisions of
- 22 this section on disclosure or provision of information or
- 23 materials shall also apply to employees of the Technical
- 24 Secretariat.

## SEC. 303. PROHIBITED ACTS.

2 It shall be unlawful for any person to fail or refuse	e
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- 3 to—
- 4 (a) establish or maintain records,
- 5 (b) submit reports, notices, or other information 6 to the Department of Commerce or the United
- 7 States National Authority, or
- 8 (c) permit access to or copying of records, as 9 required by this Act or a regulation thereunder.

## 10 TITLE IV—INSPECTIONS

- 11 SEC. 401. INSPECTIONS OF CHEMICAL INDUSTRY.
- 12 (a) AUTHORITY.—For purposes of administering this
- 13 Act—
- 14 (1) any duly designated member of an inspec-
- tion 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 Chemical Weapons Convention; and
- 19 (2) any duly designated representative of an
- 20 agency or department may accompany members of
- an inspection team of the Technical Secretariat dur-
- ing the inspection specified in paragraph (1).
- 23 (b) Notice.—An inspection pursuant to subsection
- 24 (a) may be made only upon issuance of a written notice
- 25 to the owner and to the operator, occupant or agent in
- 26 charge of the premises to be inspected, except that failure

- 1 to receive a notice shall not be a bar to the conduct of
- 2 an inspection. The notice shall be submitted to the owner
- 3 and to the operator, occupant or agent in charge as soon
- 4 as possible after the United States National Authority re-
- 5 ceives it from the Technical Secretariat. The notice shall
- 6 include all appropriate information supplied by the Tech-
- 7 nical Secretariat to the United States National Authority
- 8 regarding the basis for the selection of the plant site,
- 9 plant, or other facility or location for the type of inspection
- 10 sought, including, for challenge inspections pursuant to
- 11 Article IX of the Chemical Weapons Convention, appro-
- 12 priate evidence or reasons provided by the requesting
- 13 State Party to the Convention with regard to its concerns
- 14 about compliance with the Chemical Weapons Convention
- 15 at the facility or location. A separate notice shall be given
- 16 for each such inspection, but a notice shall not be required
- 17 for each entry made during the period covered by the in-
- 18 spection.
- 19 (c) Credentials.—If the owner, operator, occupant
- 20 or agent in charge of the premises to be inspected is
- 21 present, a member of the inspection team of the Technical
- 22 Secretariat, as well as, if present, the representatives of
- 23 agencies or departments, shall present appropriate creden-
- 24 tials before the inspection is commenced.

- 1 (d) Time Frame for Inspections.—Consistent
- 2 with the provisions of the Chemical Weapons Convention,
- 3 each inspection shall be commenced and completed with
- 4 reasonable promptness and shall be conducted at reason-
- 5 able times, within reasonable limits, and in a reasonable
- 6 manner. The Department of Commerce shall endeavor to
- 7 ensure that, to the extent possible, each inspection is com-
- 8 menced, conducted and concluded during ordinary work-
- 9 ing hours, but no inspection shall be prohibited or other-
- 10 wise disrupted for commencing, continuing or concluding
- 11 during other hours. However, nothing in this subsection
- 12 shall be interpreted as modifying the time frames estab-
- 13 lished in the Chemical Weapons Convention.
- (e) Scope.—(1) Except as provided in paragraph (2)
- 15 of this subsection and subsection (f), an inspection con-
- 16 ducted under this title may extend to all things within the
- 17 premises inspected (including records, files, papers, proc-
- 18 esses, controls, structures and entering and exiting vehi-
- 19 cles) related to whether the requirements of the Chemical
- 20 Weapons Convention applicable to such premises have
- 21 been complied with.
- 22 (2) To the extent possible consistent with the obliga-
- 23 tions of the United States pursuant to the Chemical
- 24 Weapons Convention, no inspection under this title shall
- 25 extend to—

1 (A) financial data; 2 (B) sales and marketing data (other than shipment data): 3 (C) pricing data; 4 (D) personnel data; 6 (E) research data; 7 (F) patent data; or 8 (G) data maintained for compliance with envi-9 ronmental or occupational health and safety regula-10 tions. 11 FACILITY AGREEMENTS.—(1) Inspections of plants, plant sites, or other facilities or locations for which 12 the United States has a facility agreement with the Organization for the Prohibition of Chemical Weapons shall be 15 conducted in accordance with the facility agreement. 16 (2) Facility agreements shall be concluded for plants, plant sites, or other facilities or locations that are subject to inspection pursuant to paragraph 4 of Article VI of the Chemical Weapons Convention unless the owner and the 19 operator, occupant or agent in charge of the facility and 21 the Technical Secretariat agree that such an agreement is not necessary. Facility agreements should be concluded for plants, plant sites, or other facilities or locations that 23 are subject to inspection pursuant to paragraphs 5 or 6 of Article VI of the Chemical Weapons Convention if so

- 1 requested by the owner and the operator, occupant or
- 2 agent in charge of the facility.
- 3 (3) The owner and the operator, occupant or agent
- 4 in charge shall, to the extent practicable consistent with
- 5 the obligations of the United States under the Chemical
- 6 Weapons Convention, participate in the negotiation of all
- 7 facility agreements concluded pursuant to the Convention.
- 8 (g) Sampling and Safety.—(1) The Department of
- 9 Commerce is authorized to require the provision of sam-
- 10 ples to a member of the inspection team of the Technical
- 11 Secretariat in accordance with the provisions of the Chem-
- 12 ical Weapons Convention. The owner or the operator, oc-
- 13 cupant or agent in charge of the premises to be inspected
- 14 shall determine whether the sample shall be taken by rep-
- 15 resentatives of the premises or the inspection team or
- 16 other individuals present.
- 17 (2) In carrying out their activities, members of the
- 18 inspection team of the Technical Secretariat and rep-
- 19 resentatives of agencies or departments accompanying the
- 20 inspection team shall observe safety regulations estab-
- 21 lished at the premises to be inspected, including those for
- 22 protection of controlled environments within a facility and
- 23 for personal safety.
- 24 (h) COORDINATION.—To the extent possible consist-
- 25 ent with the obligations of the United States pursuant to

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

## 8 SEC. 402. OTHER INSPECTIONS AND LEAD AGENCY.

- 9 (a) OTHER INSPECTIONS.—The provisions of this
- 10 title shall apply, as appropriate, to all other inspections
- 11 authorized by the Chemical Weapons Convention. For all
- 12 inspections other than those conducted pursuant to para-
- 13 graphs 4, 5, or 6 of Article VI of the Convention, the term
- 14 "Department of Commerce" shall be replaced by the term
- 15 "Lead Agency" in section 401.
- 16 (b) LEAD AGENCY.—For the purposes of this title,
- 17 the term "Lead Agency" means the agency or department
- 18 designated by the President or the designee of the Presi-
- 19 dent to exercise the functions and powers set forth in the
- 20 specific provision, based, inter alia, on the particular re-
- 21 sponsibilities of the agency or department within the
- 22 United States Government and the relationship of the
- 23 agency or department to the premises to be inspected.

## 1 SEC. 403. PROHIBITED ACTS.

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

## 6 SEC. 404. PENALTIES.

- 7 (a) CIVIL.—(1) Any person who violates a provision
- 8 of section 203, 303, or 403 of this Act shall be liable to
- 9 the United States for a civil penalty in an amount not
- 10 to exceed \$50,000 for each such violation. For purposes
- 11 of this subsection, each day such a violation of section 403
- 12 continues shall constitute a separate violation of section
- 13 403.
- 14 (2)(A) A civil penalty for a violation of section 203,
- 15 303, or 403 of this Act shall be assessed by the Lead
- 16 Agency by an order made on the record after opportunity
- 17 (provided in accordance with this subparagraph) for a
- 18 hearing in accordance with section 554 of title 5, United
- 19 States Code. Before issuing such an order, the Lead Agen-
- 20 cy shall give written notice to the person to be assessed
- 21 a civil penalty under such order of the Lead Agency's pro-
- 22 posal to issue such order and provide such person an op-
- 23 portunity to request, within fifteen days of the date the
- 24 notice is received by such person, such a hearing on the
- 25 order.

- 1 (B) In determining the amount of a civil penalty, the
- 2 Lead Agency shall take into account the nature, cir-
- 3 cumstances, extent and gravity of the violation or viola-
- 4 tions and, with respect to the violator, ability to pay, effect
- 5 on ability to continue to do business, any history of prior
- 6 such violations, the degree of culpability, and such other
- 7 matters as justice may require.
- 8 (C) The Lead Agency may compromise, modify or
- 9 remit, with or without conditions, any civil penalty which
- 10 may be imposed under this subsection. The amount of
- 11 such penalty, when finally determined, or the amount
- 12 agreed upon in compromise, may be deducted from any
- 13 sums owing by the United States to the person charged.
- 14 (3) Any person who requested in accordance with
- 15 paragraph (2)(A) a hearing respecting the assessment of
- 16 a civil penalty and who is aggrieved by an order assessing
- 17 a civil penalty may file a petition for judicial review of
- 18 such order with the United States Court of Appeals for
- 19 the District of Columbia Circuit or for any other circuit
- 20 in which such person resides or transacts business. Such
- 21 a petition may be filed only within the thirty-day period
- 22 beginning on the date the order making such assessment
- 23 was issued.
- 24 (4) If any person fails to pay an assessment of a civil
- 25 penalty—

- 1 (A) after the order making the assessment has 2 become a final order and if such person does not file 3 a petition for judicial review of the order in accord-
- 4 ance with paragraph (3); or
- 5 (B) after a court in an action brought under 6 paragraph (3) has entered a final judgment in favor 7 of the Lead Agency;
- 8 the Attorney General shall recover the amount assessed
- 9 (plus interest at currently prevailing rates from the date
- 10 of the expiration of the thirty-day period referred to in
- 11 paragraph (3) or the date of such final judgment, as the
- 12 case may be) in an action brought in any appropriate dis-
- 13 trict court of the United States. In such an action, the
- 14 validity, amount and appropriateness of such penalty shall
- 15 not be subject to review.
- 16 (b) Criminal.—Any person who knowingly violates
- 17 any provision of section 203, 303, or 403 of this Act, shall,
- 18 in addition to or in lieu of any civil penalty which may
- 19 be imposed under subsection (a) for such violation, be
- 20 fined under title 18, United States Code, imprisoned for
- 21 not more than two years, or both.
- 22 SEC. 405. SPECIFIC ENFORCEMENT.
- 23 (a) JURISDICTION.—The district courts of the United
- 24 States shall have jurisdiction over civil action to—

- 32 (1) restrain any violation of section 203, 303, 1 2 or 403 of this Act; and (2) compel the taking of any action required by 3 or under this Act or the Chemical Weapons Convention. 5 6 (b) CIVIL ACTION.—A civil action described in subsection (a) may be brought— 8 (1) in the case of a civil action described in subsection (a)(1), in the United States district court for 9 the judicial district wherein any act, omission, or 10
- section (a)(1), in the United States district court for the judicial district wherein any act, omission, or transaction constituting a violation of section 203, 303, or 403 of this Act occurred or wherein the defendant is found or transacts business; or
- (2) in the case of a civil action described in subsection (a)(2), in the United States district court for the judicial district wherein the defendant is found or transacts business.
- 18 In any such civil action process may be served on a defend-
- 19 ant wherever the defendant may reside or may be found,
- 20 whether the defendant resides or may be found within the
- 21 United States or elsewhere.
- 22 SEC. 406. LEGAL PROCEEDINGS.
- 23 (a) WARRANTS.—(1) The Lead Agency shall seek the
- 24 consent of the owner or the operator, occupant or agent
- 25 in charge of the premises to be inspected prior to the initi-

- 1 ation of any inspection. Before or after seeking such con-
- 2 sent, the Lead Agency may seek a search warrant from
- 3 any official authorized to issue search warrants. Proceed-
- 4 ings regarding the issuance of a search warrant shall be
- 5 conducted ex parte, unless otherwise requested by the
- 6 Lead Agency. The Lead Agency shall provide to the offi-
- 7 cial authorized to issue search warrants all appropriate in-
- 8 formation supplied by the Technical Secretariat to the
- 9 United States National Authority regarding the basis for
- 10 the selection of the plant site, plant, or other facility or
- 11 location for the type of inspection sought, including, for
- 12 challenge inspections pursuant to Article IX of the Chemi-
- 13 cal Weapons Convention, appropriate evidence or reasons
- 14 provided by the requesting State Party to the Convention
- 15 with regard to its concerns about compliance with the
- 16 Chemical Weapons Convention at the facility or location.
- 17 The Lead Agency shall also provide any other appropriate
- 18 information available to it relating to the reasonableness
- 19 of the selection of the plant, plant site, or other facility
- 20 or location for the inspection.
- 21 (2) The official authorized to issue search warrants
- 22 shall promptly issue a warrant authorizing the requested
- 23 inspection upon an affidavit submitted by the Lead Agen-
- 24 cy showing that—

- 1 (A) the Chemical Weapons Convention is in 2 force for the United States;
- 3 (B) the plant site, plant, or other facility or lo-4 cation sought to be inspected is subject to the spe-5 cific type of inspection requested under the Chemical 6 Weapons Convention;
  - (C) the procedures established under the Chemical Weapons Convention and this Act for initiating an inspection have been complied with; and
  - (D) the Lead Agency will ensure that the inspection is conducted in a reasonable manner and will not exceed the scope or duration set forth in or authorized by the Chemical Weapons Convention or this Act.
- 15 (3) The warrant shall specify the type of inspection authorized; the purpose of the inspection; the type of plant 16 site, plant, or other facility or location to be inspected; 17 to the extent possible, the items, documents and areas that 18 may be inspected; the earliest commencement and latest 19 concluding dates and times of the inspection; and the iden-20 tities of the representatives of the Technical Secretariat, 21 if known, and, if applicable, the representatives of agencies 23 or departments.
- 24 (b) Subpoenas.—In carrying out this Act, the Lead 25 Agency may by subpoena require the attendance and testi-

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- 1 mony of witnesses and the production of reports, papers,
- 2 documents, answers to questions and other information
- 3 that the Lead Agency deems necessary. Witnesses shall
- 4 be paid the same fees and mileage that are paid witnesses
- 5 in the courts of the United States. In the event of contu-
- 6 macy, failure or refusal of any person to obey any such
- 7 subpoena, any district court of the United States in which
- 8 venue is proper shall have jurisdiction to order any such
- 9 person to comply with such subpoena. Any failure to obey
- 10 such an order of the court is punishable by the court as
- 11 a contempt thereof.
- 12 (c) Injunctions and Other Orders.—No court
- 13 shall issue an injunction or other order that would limit
- 14 the ability of the Technical Secretariat to conduct, or the
- 15 United States National Authority or the Lead Agency to
- 16 facilitate, inspections as required or authorized by the
- 17 Chemical Weapons Convention.
- 18 SEC. 407. AUTHORITY.
- 19 The Lead Agency may issue such regulations as are
- 20 necessary to implement this title and the provisions of the
- 21 Chemical Weapons Convention, and amend or revise them
- 22 as necessary. The Lead Agency shall have the authority
- 23 to appoint officials to issue warrants pursuant to section
- 24 406(a) authorizing inspections pursuant to this title.

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