

105TH CONGRESS
1ST SESSION

S. 610

AN ACT

To implement the obligations of the United States under
the Chemical Weapons Convention.

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 1997”.

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. Definitions.

TITLE I—GENERAL PROVISIONS

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

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

Subtitle A—Criminal and Civil Penalties

- Sec. 201. Criminal and civil provisions.

Subtitle B—Revocations of Export Privileges

- Sec. 211. Revocations of export privileges.

TITLE III—INSPECTIONS

- Sec. 301. Definitions in the title.
- Sec. 302. Facility agreements.
- Sec. 303. Authority to conduct inspections.
- Sec. 304. Procedures for inspections.
- Sec. 305. Warrants.
- Sec. 306. Prohibited acts relating to inspections.
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- Sec. 308. Protection of constitutional rights of contractors.
- Sec. 309. Annual report on inspections.
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TITLE IV—REPORTS

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

TITLE V—ENFORCEMENT

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

TITLE VI—MISCELLANEOUS PROVISIONS

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

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

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

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

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

15 (C) Any equipment specifically designed
16 for use directly in connection with the employ-
17 ment of munitions or devices specified in sub-
18 paragraph (B).

19 (2) **CHEMICAL WEAPONS CONVENTION; CON-**
20 **VENTION.**—The terms “Chemical Weapons Conven-
21 tion” and “Convention” mean the Convention on the
22 Prohibition of the Development, Production, Stock-
23 piling and Use of Chemical Weapons and on Their
24 Destruction, opened for signature on January 13,
25 1993.

1 (3) KEY COMPONENT OF A BINARY OR MULTI-
2 COMPONENT CHEMICAL SYSTEM.—The term “key
3 component of a binary or multicomponent chemical
4 system” means the precursor which plays the most
5 important role in determining the toxic properties of
6 the final product and reacts rapidly with other
7 chemicals in the binary or multicomponent system.

8 (4) NATIONAL OF THE UNITED STATES.—The
9 term “national of the United States” has the same
10 meaning given such term in section 101(a)(22) of
11 the Immigration and Nationality Act (8 U.S.C.
12 1101(a)(22)).

13 (5) ORGANIZATION.—The term “Organization”
14 means the Organization for the Prohibition of
15 Chemical Weapons.

16 (6) PERSON.—The term “person”, except as
17 otherwise provided, means any individual, corpora-
18 tion, partnership, firm, association, trust, estate,
19 public or private institution, any State or any politi-
20 cal subdivision thereof, or any political entity within
21 a State, any foreign government or nation or any
22 agency, instrumentality or political subdivision of
23 any such government or nation, or other entity lo-
24 cated in the United States.

25 (7) PRECURSOR.—

1 (A) IN GENERAL.—The term “precursor”
2 means any chemical reactant which takes part
3 at any stage in the production by whatever
4 method of a toxic chemical. The term includes
5 any key component of a binary or multicompo-
6 nent chemical system.

7 (B) LIST OF PRECURSORS.—Precursors
8 which have been identified for the application of
9 verification measures under Article VI of the
10 Convention are listed in schedules contained in
11 the Annex on Chemicals of the Chemical Weap-
12 ons Convention.

13 (8) PURPOSES NOT PROHIBITED BY THIS
14 ACT.—The term “purposes not prohibited by this
15 Act” means the following:

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

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

24 (C) UNRELATED MILITARY PURPOSES.—
25 Any military purpose of the United States that

1 is not connected with the use of a chemical
 2 weapon and that is not dependent on the use of
 3 the toxic or poisonous properties of the chemi-
 4 cal weapon to cause death or other harm.

5 (D) LAW ENFORCEMENT PURPOSES.—Any
 6 law enforcement purpose, including any domes-
 7 tic riot control purpose and including imposition
 8 of capital punishment.

9 (9) TECHNICAL SECRETARIAT.—The term
 10 “Technical Secretariat” means the Technical Sec-
 11 retariat of the Organization for the Prohibition of
 12 Chemical Weapons established by the Chemical
 13 Weapons Convention.

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

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

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

1 (Me, Et, n-Pr or i-Pr)-
 2 phosphoramidocyanidates
 3 (e.g. Tabun: O-Ethyl N,N-dimethyl
 4 phosphoramidocyanidate).
 5 (C) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) S-
 6 2-dialkyl
 7 (Me, Et, n-Pr or i-Pr)-aminoethyl
 8 alkyl
 9 (Me, Et, n-Pr or i-Pr)
 10 phosphonothiolates and corresponding
 11 alkylated or protonated salts
 12 (e.g. VX: O-Ethyl S-2-
 13 diisopropylaminoethyl methyl
 14 phosphonothiolate).
 15 (D) Sulfur mustards:
 16 2-Chloroethylchloromethylsulfide
 17 Mustard gas: (Bis(2-
 18 chloroethyl)sulfide
 19 Bis(2-chloroethylthio)methane
 20 Sesquimustard: 1,2-Bis(2-
 21 chloroethylthio)ethane
 22 1,3-Bis(2-chloroethylthio)-n-propane
 23 1,4-Bis(2-chloroethylthio)-n-butane
 24 1,5-Bis(2-chloroethylthio)-n-pentane
 25 Bis(2-chloroethylthiomethyl)ether

- 1 O-Mustard: Bis(2-
 2 chloroethylthioethyl)ether.
 3 (E) Lewisites:
 4 Lewisite 1: 2-
 5 Chlorovinylchloroarsine
 6 Lewisite 2: Bis(2-
 7 chlorovinyl)chloroarsine
 8 Lewisite 3: Tris (2-chlorovinyl)arsine.
 9 (F) Nitrogen mustards:
 10 HN1: Bis(2-chloroethyl)ethylamine
 11 HN2: Bis(2-chloroethyl)methylamine
 12 HN3: Tris(2-chloroethyl)amine.
 13 (G) Saxitoxin.
 14 (H) Ricin.
 15 (I) Alkyl (Me, Et, n-Pr or i-Pr)
 16 phosphoryldifluorides
 17 e.g. DF: Methylphosphonyldifluoride.
 18 (J) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl)O-
 19 2-dialkyl
 20 (Me, Et, n-Pr or i-Pr)-aminoethyl
 21 alkyl
 22 (Me, Et, n-Pr or i-Pr) phosphonites
 23 and corresponding alkylated or protonated
 24 salts

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

3 (K) Chlorosarin: O-Isopropyl
4 methylphosphonochloridate.

5 (L) Chlorosoman: O-Pinacolyl
6 methylphosphonochloridate.

7 (11) SCHEDULE 2 CHEMICAL AGENT.—The
8 term ‘Schedule 2 chemical agent’ means the follow-
9 ing, together or separately:

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

12 phosphorothiolate and corresponding
13 alkylated or protonated salts.

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

16 (C) BZ: 3-Quinuclidinyl benzilate

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

22 e.g. Methylphosphonyl dichloride Di-
23 methyl methylphosphonate

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

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

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

6 (G) arsenic trichloride.

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

8 (I) Quinuclidine-3-ol.

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

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

15 Exemptions: N,N-
16 Dimethylaminoethanol and corresponding
17 protonated salts N,N-Diethylaminoethanol
18 and corresponding protonated salts.

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

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

24 (N) Pinacolyl alcohol: 3,3-Dimethylbutane-
25 2-ol.

1 (12) SCHEDULE 3 CHEMICAL AGENT.—The
2 term ‘Schedule 3 chemical agent’ means any the fol-
3 lowing, together or separately:

4 (A) Phosgene: carbonyl dichloride.

5 (B) Cyanogen chloride.

6 (C) Hydrogen cyanide.

7 (D) Chloropicrin: trichloronitromethane.

8 (E) Phosphorous oxychloride.

9 (F) Phosphorous trichloride.

10 (G) Phosphorous pentachloride.

11 (H) Trimethyl phosphite.

12 (I) Triethyl phosphite.

13 (J) Dimethyl phosphite.

14 (K) Diethyl phosphite.

15 (L) Sulfur monochloride.

16 (M) Sulfur dichloride.

17 (N) Thionyl chloride.

18 (O) Ethyldiethanolamine.

19 (P) Methyldiethanolamine.

20 (Q) Triethanolamine.

21 (13) TOXIC CHEMICAL.—

22 (A) IN GENERAL.—The term “toxic chemi-
23 cal” means any chemical which through its
24 chemical action on life processes can cause
25 death, temporary incapacitation or permanent

1 harm to humans or animals. The term includes
2 all such chemicals, regardless of their origin or
3 of their method of production, and regardless of
4 whether they are produced in facilities, in muni-
5 tions or elsewhere.

6 (B) LIST OF TOXIC CHEMICALS.—Toxic
7 chemicals which have been identified for the ap-
8 plication of verification measures under Article
9 VI of the Convention are listed in schedules
10 contained in the Annex on Chemicals of the
11 Chemical Weapons Convention.

12 (14) UNITED STATES.—The term “United
13 States” means the several States of the United
14 States, the District of Columbia, and the common-
15 wealths, territories, and possessions of the United
16 States and includes all places under the jurisdiction
17 or control of the United States, including—

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

21 (B) any civil aircraft of the United States
22 or public aircraft, as such terms are defined in
23 paragraphs (17) and (37), respectively, of sec-
24 tion 40102 of title 49, United States Code; and

1 (C) any vessel of the United States, as
2 such term is defined in section 3(b) of the Mar-
3 itime Drug Enforcement Act, as amended (46
4 U.S.C., App. sec. 1903(b)).

5 (15) UNSCHEDULED DISCRETE ORGANIC CHEM-
6 ICAL.—The term “unscheduled discrete organic
7 chemical” means any chemical not listed on any
8 schedule contained in the Annex on Chemicals of the
9 Convention that belongs to the class of chemical
10 compounds consisting of all compounds of carbon,
11 except for its oxides, sulfides, and metal carbonates.

12 **TITLE I—GENERAL PROVISIONS**

13 **SEC. 101. DESIGNATION OF UNITED STATES NATIONAL AU-** 14 **THORITY.**

15 (a) DESIGNATION.—Pursuant to paragraph 4 of Arti-
16 cle VII of the Chemical Weapons Convention, the Presi-
17 dent shall designate the Department of State to be the
18 United States National Authority.

19 (b) PURPOSES.—The United States National Author-
20 ity shall—

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

1 (2) implement the provisions of this Act in co-
2 ordination with an interagency group designated by
3 the President consisting of the Secretary of Com-
4 merce, Secretary of Defense, Secretary of Energy,
5 the Attorney General, and the heads of agencies con-
6 sidered necessary or advisable by the President.

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

9 (d) POWERS.—The Director may utilize the adminis-
10 trative authorities otherwise available to the Secretary of
11 State in carrying out the responsibilities of the Director
12 set forth in this Act.

13 (e) IMPLEMENTATION.—The President is authorized
14 to implement and carry out the provisions of this Act and
15 the Convention and shall designate through Executive
16 order which agencies of the United States shall issue,
17 amend, or revise the regulations in order to implement this
18 Act and the provisions of the Convention. The Director
19 of the United States National Authority shall report to
20 the Congress on the regulations that have been issued, im-
21 plemented, or revised pursuant to this section.

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

23 No person may be required, as a condition for enter-
24 ing into a contract with the United States or as a condi-
25 tion for receiving any benefit from the United States, to

1 waive any right under the Constitution for any purpose
2 related to this Act or the Convention.

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

4 (a) CLAIMS FOR TAKING OF PROPERTY.—

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

7 (A) UNITED STATES COURT OF FEDERAL
8 CLAIMS.—The United States Court of Federal
9 Claims shall, subject to subparagraph (B), have
10 jurisdiction of any civil action or claim against
11 the United States for any taking of property
12 without just compensation that occurs by rea-
13 son of the action of any officer or employee of
14 the Organization for the Prohibition of Chemi-
15 cal Weapons, including any member of an in-
16 spection team of the Technical Secretariat, or
17 by reason of the action of any officer or em-
18 ployee of the United States pursuant to this
19 Act or the Convention. For purposes of this
20 subsection, action taken pursuant to or under
21 the color of this Act or the Convention shall be
22 deemed to be action taken by the United States
23 for a public purpose.

24 (B) DISTRICT COURTS.—The district
25 courts of the United States shall have original

1 jurisdiction, concurrent with the United States
2 Court of Federal Claims, of any civil action or
3 claim described in subparagraph (A) that does
4 not exceed \$10,000.

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

15 (3) INITIAL STEPS BY UNITED STATES GOVERN-
16 MENT TO SEEK REMEDIES.—During the period be-
17 tween a notification pursuant to paragraph (2) and
18 the filing of a claim covered by the notification in
19 the United States Court of Federal Claims, the
20 United States National Authority shall pursue all
21 diplomatic and other remedies that the United
22 States National Authority considers necessary and
23 appropriate to seek redress for the claim including,
24 but not limited to, the remedies provided for in the
25 Convention and under this Act.

1 (4) BURDEN OF PROOF.—In any civil action
2 under paragraph (1), the plaintiff shall have the
3 burden to establish a prima facie case that, due to
4 acts or omissions of any official of the Organization
5 or any member of an inspection team of the Tech-
6 nical Secretariat taken under the color of the Con-
7 vention, proprietary information of the plaintiff has
8 been divulged or taken without authorization. If the
9 United States Court of Federal Claims finds that
10 the plaintiff has demonstrated such a prima facie
11 case, the burden shall shift to the United States to
12 disprove the plaintiff's claim. In deciding whether
13 the plaintiff has carried its burden, the United
14 States Court of Federal Claims shall consider,
15 among other things—

16 (A) the value of proprietary information;

17 (B) the availability of the proprietary in-
18 formation;

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

22 (D) the significance of proprietary infor-
23 mation; and

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

1 (b) TORT LIABILITY.—The district courts of the
2 United States shall have exclusive jurisdiction of civil ac-
3 tions for money damages for any tort under the Constitu-
4 tion or any Federal or State law arising from the acts
5 or omissions of any officer or employee of the United
6 States or the Organization, including any member of an
7 inspection team of the Technical Secretariat, taken pursu-
8 ant to or under color of the Convention or this Act.

9 (c) WAIVER OF SOVEREIGN IMMUNITY OF THE UNIT-
10 ED STATES.—In any action under subsection (a) or (b),
11 the United States may not raise sovereign immunity as
12 a defense.

13 (d) AUTHORITY FOR CAUSE OF ACTION.—

14 (1) UNITED STATES ACTIONS IN UNITED
15 STATES DISTRICT COURT.—Notwithstanding any
16 other law, the Attorney General of the United States
17 is authorized to bring an action in the United States
18 District Court for the District of Columbia against
19 any foreign nation for money damages resulting
20 from that nation's refusal to provide indemnification
21 to the United States for any liability imposed on the
22 United States by virtue of the actions of an inspec-
23 tor of the Technical Secretariat who is a national of
24 that foreign nation acting at the direction or the be-
25 hest of that foreign nation.

1 (2) UNITED STATES ACTIONS IN COURTS OUT-
2 SIDE THE UNITED STATES.—The Attorney General
3 is authorized to seek any and all available redress in
4 any international tribunal for indemnification to the
5 United States for any liability imposed on the Unit-
6 ed States by virtue of the actions of an inspector of
7 the Technical Secretariat, and to seek such redress
8 in the courts of the foreign nation from which the
9 inspector is a national.

10 (3) ACTIONS BROUGHT BY INDIVIDUALS AND
11 BUSINESSES.—Notwithstanding any other law, any
12 national of the United States, or any business entity
13 organized and operating under the laws of the Unit-
14 ed States, may bring a civil action in a United
15 States District Court for money damages against
16 any foreign national or any business entity organized
17 and operating under the laws of a foreign nation for
18 an unauthorized or unlawful acquisition, receipt,
19 transmission, or use of property by or on behalf of
20 such foreign national or business entity as a result
21 of any tort under the Constitution or any Federal or
22 State law arising from acts or omissions by any offi-
23 cer or employee of the United States or any member
24 of an inspection team of the Technical Secretariat

1 taken pursuant to or under the color of the Conven-
2 tion or this Act.

3 (e) RECOUPMENT.—

4 (1) POLICY.—It is the policy of the United
5 States to recoup all funds withdrawn from the
6 Treasury of the United States in payment for any
7 tort under Federal or State law or taking under the
8 Constitution arising from the acts or omissions of
9 any foreign person, officer, or employee of the Orga-
10 nization, including any member of an inspection
11 team of the Technical Secretariat, taken under color
12 of the Chemical Weapons Convention or this Act.

13 (2) SANCTIONS ON FOREIGN COMPANIES.—

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

18 (i) any foreign person, officer, or em-
19 ployee of the Organization, including any
20 member of an inspection team of the Tech-
21 nical Secretariat, for whose actions or
22 omissions the United States has been held
23 liable for a tort or taking pursuant to this
24 Act; and

1 (ii) any foreign person or business en-
2 tity organized and operating under the
3 laws of a foreign nation which knowingly
4 assisted, encouraged or induced, in any
5 way, a foreign person described in clause
6 (i) to publish, divulge, disclose, or make
7 known in any manner or to any extent not
8 authorized by the Convention any United
9 States confidential business information.

10 (B) SANCTIONS.—

11 (i) ARMS EXPORT TRANSACTIONS.—
12 The United States Government shall not
13 sell to a person described in subparagraph
14 (A) any item on the United States Muni-
15 tions List and shall terminate sales of any
16 defense articles, defense services, or design
17 and construction services to a person de-
18 scribed in subparagraph (A) under the
19 Arms Export Control Act.

20 (ii) SANCTIONS UNDER EXPORT AD-
21 MINISTRATION ACT OF 1979.—The authori-
22 ties under section 6 of the Export Admin-
23 istration Act of 1979 shall be used to pro-
24 hibit the export of any goods or technology
25 on the control list established pursuant to

1 section 5(c)(1) of that Act to a person de-
2 scribed in subparagraph (A).

3 (iii) INTERNATIONAL FINANCIAL AS-
4 SISTANCE.—The United States shall op-
5 pose any loan or financial or technical as-
6 sistance by international financial institu-
7 tions in accordance with section 701 of the
8 International Financial Institutions Act to
9 a person described in subparagraph (A).

10 (iv) EXPORT-IMPORT BANK TRANS-
11 ACTIONS.—The United States shall not
12 give approval to guarantee, insure, or ex-
13 tend credit, or to participate in the exten-
14 sion of credit to a person described in sub-
15 subparagraph (A) through the Export-Import
16 Bank of the United States.

17 (v) PRIVATE BANK TRANSACTIONS.—
18 Regulations shall be issued to prohibit any
19 United States bank from making any loan
20 or providing any credit to a person de-
21 scribed in subparagraph (A).

22 (vi) BLOCKING OF ASSETS.—The
23 President shall take all steps necessary to
24 block any transactions in any property
25 subject to the jurisdiction of the United

1 States in which a person described in sub-
2 paragraph (A) has any interest whatsoever,
3 for the purpose of recouping funds in ac-
4 cordance with the policy in paragraph (1).

5 (vii) DENIAL OF LANDING RIGHTS.—

6 Landing rights in the United States shall
7 be denied to any private aircraft or air car-
8 rier owned by a person described in sub-
9 paragraph (A) except as necessary to pro-
10 vide for emergencies in which the safety of
11 the aircraft or its crew or passengers is
12 threatened.

13 (3) SANCTIONS ON FOREIGN GOVERNMENTS.—

14 (A) IMPOSITION OF SANCTIONS.—When-
15 ever the President determines that persuasive
16 information is available indicating that a for-
17 eign country has knowingly assisted, encour-
18 aged or induced, in any way, a person described
19 in paragraph (2)(A) to publish, divulge, dis-
20 close, or make known in any manner or to any
21 extent not authorized by the Convention any
22 United States confidential business information,
23 the President shall, within 30 days after the re-
24 ceipt of such information by the executive
25 branch of Government, notify the Congress in

1 writing of such determination and, subject to
2 the requirements of paragraphs (4) and (5), im-
3 pose the sanctions provided under subpara-
4 graph (B) for a period of not less than five
5 years.

6 (B) SANCTIONS.—

7 (i) ARMS EXPORT TRANSACTIONS.—

8 The United States Government shall not
9 sell a country described in subparagraph
10 (A) any item on the United States Muni-
11 tions List, shall terminate sales of any de-
12 fense articles, defense services, or design
13 and construction services to that country
14 under the Arms Export Control Act, and
15 shall terminate all foreign military financ-
16 ing for that country under the Arms Ex-
17 port Control Act.

18 (ii) DENIAL OF CERTAIN LICENSES.—

19 Licenses shall not be issued for the export
20 to the sanctioned country of any item on
21 the United States Munitions List or com-
22 mercial satellites.

23 (iii) DENIAL OF ASSISTANCE.—No ap-

24 propriated funds may be used for the pur-
25 pose of providing economic assistance, pro-

1 viding military assistance or grant military
2 education and training, or extending mili-
3 tary credits or making guarantees to a
4 country described in subparagraph (A).

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

13 (v) INTERNATIONAL FINANCIAL AS-
14 SISTANCE.—The United States shall op-
15 pose any loan or financial or technical as-
16 sistance by international financial institu-
17 tions in accordance with section 701 of the
18 International Financial Institutions Act to
19 a country described in subparagraph (A).

20 (vi) TERMINATION OF ASSISTANCE
21 UNDER FOREIGN ASSISTANCE ACT OF
22 1961.—The United States shall terminate
23 all assistance to a country described in
24 subparagraph (A) under the Foreign As-

1 sistance Act of 1961, except for urgent hu-
2 manitarian assistance.

3 (vii) PRIVATE BANK TRANSACTIONS.—

4 The United States shall not give approval
5 to guarantee, insure, or extend credit, or
6 participate in the extension of credit
7 through the Export-Import Bank of the
8 United States to a country described in
9 subparagraph (A).

10 (viii) PRIVATE BANK TRANS-

11 ACTIONS.—Regulations shall be issued to
12 prohibit any United States bank from
13 making any loan or providing any credit to
14 a country described in subparagraph (A).

15 (ix) DENIAL OF LANDING RIGHTS.—

16 Landing rights in the United States shall
17 be denied to any air carrier owned by a
18 country described in subparagraph (A), ex-
19 cept as necessary to provide for emer-
20 gencies in which the safety of the aircraft
21 or its crew or passengers is threatened.

22 (4) SUSPENSION OF SANCTIONS UPON

23 RECOUPMENT BY PAYMENT.—Sanctions imposed
24 under paragraph (2) or (3) may be suspended if the
25 sanctioned person, business entity, or country, with-

1 in the period specified in that paragraph, provides
2 full and complete compensation to the United States
3 Government, in convertible foreign exchange or other
4 mutually acceptable compensation equivalent to the
5 full value thereof, in satisfaction of a tort or taking
6 for which the United States has been held liable pur-
7 suant to this Act.

8 (5) WAIVER OF SANCTIONS ON FOREIGN COUN-
9 TRIES.—The President may waive some or all of the
10 sanctions provided under paragraph (3) in a particu-
11 lar case if he determines and certifies in writing to
12 the Speaker of the House of Representatives and the
13 Committee on Foreign Relations of the Senate that
14 such waiver is necessary to protect the national se-
15 curity interests of the United States. The certifi-
16 cation shall set forth the reasons supporting the de-
17 termination and shall take effect on the date on
18 which the certification is received by the Congress.

19 (6) NOTIFICATION TO CONGRESS.—Not later
20 than five days after sanctions become effective
21 against a foreign person pursuant to this Act, the
22 President shall transmit written notification of the
23 imposition of sanctions against that foreign person
24 to the chairmen and ranking members of the Com-
25 mittee on International Relations of the House of

1 Representatives and the Committee on Foreign Re-
2 lations of the Senate.

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

8 (1) is, or previously served as, an officer or em-
9 ployee of the Organization and who has willfully
10 published, divulged, disclosed, or made known in any
11 manner or to any extent not authorized by the Con-
12 vention any United States confidential business in-
13 formation coming to him in the course of his em-
14 ployment or official duties, or by reason of any ex-
15 amination or investigation of any return, report, or
16 record made to or filed with the Organization, or
17 any officer or employee thereof, such practice or dis-
18 closure having resulted in financial loses or damages
19 to a United States person and for which actions or
20 omissions the United States has been found liable of
21 a tort or taking pursuant to this Act;

22 (2) traffics in United States confidential busi-
23 ness information, a proven claim to which is owned
24 by a United States national;

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

7 (4) is a spouse, minor child, or agent of a per-
8 son excludable under paragraph (1), (2), or (3).

9 (g) UNITED STATES CONFIDENTIAL BUSINESS IN-
10 FORMATION DEFINED.—In this section, the term “United
11 States confidential business information” means any trade
12 secrets or commercial or financial information that is priv-
13 ileged and confidential—

14 (1) including—

15 (A) data described in section 304(e)(2) of
16 this Act,

17 (B) any chemical structure,

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

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

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

1 (2) as described in section 552(b)(4) of title 5,
 2 United States Code,
 3 and that is obtained—

4 (i) from a United States person; or

5 (ii) through the United States Government or
 6 the conduct of an inspection on United States terri-
 7 tory under the Convention.

8 **TITLE II—PENALTIES FOR UN-**
 9 **LAWFUL ACTIVITIES SUBJECT**
 10 **TO THE JURISDICTION OF**
 11 **THE UNITED STATES**

12 **Subtitle A—Criminal and Civil**
 13 **Penalties**

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

15 (a) IN GENERAL.—Part I of title 18, United States
 16 Code, is amended by inserting after chapter 11A the fol-
 17 lowing new chapter:

18 **“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 emer-
 gencies.

“229F. Definitions.

1 **“§ 229. Prohibited activities**

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

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

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

12 “(b) EXEMPTED AGENCIES AND PERSONS.—

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

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

21 “(A) any person, including a member of
22 the Armed Forces of the United States, who is
23 authorized by law or by an appropriate officer
24 of the United States to retain, own, possess,
25 transfer, or receive the chemical weapon; or

1 “(B) in an emergency situation, any other-
2 wise nonculpable person if the person is at-
3 tempting to destroy or seize the weapon.

4 “(c) JURISDICTION.—Conduct prohibited by sub-
5 section (a) is within the jurisdiction of the United States
6 if the prohibited conduct—

7 “(1) takes place in the United States;

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

10 “(3) is committed against a national of the
11 United States while the national is outside the Unit-
12 ed States; or

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

18 **“§ 229A. Penalties**

19 “(a) CRIMINAL PENALTIES.—

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

23 “(2) DEATH PENALTY.—Any person who vio-
24 lates section 229 of this title and by whose action

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

3 “(b) CIVIL PENALTIES.—

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

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

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

1 and severally liable for such expenses with each other per-
2 son, if any, who is ordered under this subsection to reim-
3 burse the United States for the same expenses.

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

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

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

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

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

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

25 “(b) PROCEDURES.—

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

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

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

14 “(2) TEMPORARY RESTRAINING ORDERS.—

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

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

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

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

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

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

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

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

5 “(e) ASSISTANCE.—The Attorney General may re-
6 quest the head of any agency of the United States to assist
7 in the handling, storage, transportation, or destruction of
8 property seized under this section.

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

15 **“§ 229C. Individual self-defense devices**

16 “Nothing in this chapter shall be construed to pro-
17 hibit any individual self-defense device, including those
18 using a pepper spray or chemical mace.

19 **“§ 229D. Injunctions**

20 “The United States may obtain in a civil action an
21 injunction against—

22 “(1) the conduct prohibited under section 229
23 or 229C of this title; or

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

4 **“§ 229E. Requests for military assistance to enforce**
5 **prohibition in certain emergencies**

6 “The Attorney General may request the Secretary of
7 Defense to provide assistance under section 382 of title
8 10 in support of Department of Justice activities relating
9 to the enforcement of section 229 of this title in an emer-
10 gency situation involving a chemical weapon. The author-
11 ity to make such a request may be exercised by another
12 official of the Department of Justice in accordance with
13 section 382(f)(2) of title 10.

14 **“§ 229F. Definitions**

15 “In this chapter:

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

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

22 “(B) A munition or device, specifically de-
23 signed to cause death or other harm through
24 toxic properties of those toxic chemicals speci-
25 fied in subparagraph (A), which would be re-

1 leased as a result of the employment of such
2 munition or device.

3 “(C) Any equipment specifically designed
4 for use directly in connection with the employ-
5 ment of munitions or devices specified in sub-
6 paragraph (B).

7 “(2) CHEMICAL WEAPONS CONVENTION; CON-
8 VENTION.—The terms ‘Chemical Weapons Conven-
9 tion’ and ‘Convention’ mean the Convention on the
10 Prohibition of the Development, Production, Stock-
11 piling and Use of Chemical Weapons and on Their
12 Destruction, opened for signature on January 13,
13 1993.

14 “(3) KEY COMPONENT OF A BINARY OR MULTI-
15 COMPONENT CHEMICAL SYSTEM.—The term ‘key
16 component of a binary or multicomponent chemical
17 system’ means the precursor which plays the most
18 important role in determining the toxic properties of
19 the final product and reacts rapidly with other
20 chemicals in the binary or multicomponent system.

21 “(4) NATIONAL OF THE UNITED STATES.—The
22 term ‘national of the United States’ has the same
23 meaning given such term in section 101(a)(22) of
24 the Immigration and Nationality Act (8 U.S.C.
25 1101(a)(22)).

1 “(5) PERSON.—The term ‘person’, except as
2 otherwise provided, means any individual, corpora-
3 tion, partnership, firm, association, trust, estate,
4 public or private institution, any State or any politi-
5 cal subdivision thereof, or any political entity within
6 a State, any foreign government or nation or any
7 agency, instrumentality or political subdivision of
8 any such government or nation, or other entity lo-
9 cated in the United States.

10 “(6) PRECURSOR.—

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

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

23 “(7) PURPOSES NOT PROHIBITED BY THIS
24 CHAPTER.—The term ‘purposes not prohibited by
25 this chapter’ means the following:

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

5 “(B) PROTECTIVE PURPOSES.—Any pur-
6 pose directly related to protection against toxic
7 chemicals and to protection against chemical
8 weapons.

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

15 “(D) LAW ENFORCEMENT PURPOSES.—
16 Any law enforcement purpose, including any do-
17 mestic riot control purpose and including im-
18 position of capital punishment.

19 “(8) TOXIC CHEMICAL.—

20 “(A) IN GENERAL.—The term ‘toxic chem-
21 ical’ means any chemical which through its
22 chemical action on life processes can cause
23 death, temporary incapacitation or permanent
24 harm to humans or animals. The term includes
25 all such chemicals, regardless of their origin or

1 of their method of production, and regardless of
2 whether they are produced in facilities, in muni-
3 tions or elsewhere.

4 “(B) LIST OF TOXIC CHEMICALS.—Toxic
5 chemicals which have been identified for the ap-
6 plication of verification measures under Article
7 VI of the Convention are listed in schedules
8 contained in the Annex on Chemicals of the
9 Chemical Weapons Convention.

10 “(9) UNITED STATES.—The term ‘United
11 States’ means the several States of the United
12 States, the District of Columbia, and the common-
13 wealths, territories, and possessions of the United
14 States and includes all places under the jurisdiction
15 or control of the United States, including—

16 “(A) any of the places within the provi-
17 sions of paragraph (41) of section 40102 of
18 title 49, United States Code;

19 “(B) any civil aircraft of the United States
20 or public aircraft, as such terms are defined in
21 paragraphs (17) and (37), respectively, of sec-
22 tion 40102 of title 49, United States Code; and

23 “(C) any vessel of the United States, as
24 such term is defined in section 3(b) of the Mar-

1 itime Drug Enforcement Act, as amended (46
2 U.S.C., App. sec. 1903(b)).”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) WEAPONS OF MASS DESTRUCTION.—Section
5 2332a of title 18, United States Code, is amended—

6 (A) by striking “**§ 2332a. Use of weap-**
7 **ons of mass destruction**” and inserting
8 “**§ 2332a. Use of certain weapons of**
9 **mass destruction**”;

10 (B) in subsection (a), by inserting “(other
11 than a chemical weapon as that term is defined
12 in section 229F)” after “weapon of mass de-
13 struction”; and

14 (C) in subsection (b), by inserting “(other
15 than a chemical weapon (as that term is de-
16 fined in section 229F))” after “weapon of mass
17 destruction”.

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

 “**11B. Chemical Weapons** **229**”.

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

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

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

4 **Subtitle B—Revocations of Export** 5 **Privileges**

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

7 If the President determines, after notice and an op-
 8 portunity for a hearing in accordance with section 554 of
 9 title 5, United States Code, that any person within the
 10 United States, or any national of the United States lo-
 11 cated outside the United States, has committed any viola-
 12 tion of section 229 of title 18, United States Code, the
 13 President may issue an order for the suspension or revoca-
 14 tion of the authority of the person to export from the Unit-
 15 ed States any goods or technology (as such terms are de-
 16 fined in section 16 of the Export Administration Act of
 17 1979 (50 U.S.C. App. 2415)).

18 **TITLE III—INSPECTIONS**

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

20 (a) IN GENERAL.—In this title, the terms “challenge
 21 inspection”, “plant site”, “plant”, “facility agreement”,
 22 “inspection team”, and “requesting state party” have the
 23 meanings given those terms in Part I of the Annex on
 24 Implementation and Verification of the Chemical Weapons
 25 Convention. The term “routine inspection” means an in-

1 spection, other than an “initial inspection”, undertaken
2 pursuant to Article VI of the Convention.

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

7 **SEC. 302. FACILITY AGREEMENTS.**

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

16 (b) TYPES OF FACILITY AGREEMENTS.—

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

1 (2) SCHEDULE THREE FACILITIES.—The Unit-
2 ed States National Authority shall ensure that facil-
3 ity agreements are concluded for plants, plant sites,
4 or other facilities or locations that are subject to in-
5 spection pursuant to paragraph 5 or 6 of Article VI
6 of the Convention if so requested by the owner, oper-
7 ator, occupant, or agent in charge of the facility.

8 (c) NOTIFICATION REQUIREMENTS.—The United
9 States National Authority shall ensure that the owner, op-
10 erator, occupant, or agent in charge of a facility prior to
11 the development of the agreement relating to that facility
12 is notified and, if the person notified so requests, the per-
13 son may participate in the preparations for the negotiation
14 of such an agreement. To the maximum extent practicable
15 consistent with the Convention, the owner and the opera-
16 tor, occupant or agent in charge of a facility may observe
17 negotiations of the agreement between the United States
18 and the Organization concerning that facility.

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

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

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

1 (3) describe the timeframes for inspections; and

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

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

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

11 (b) AUTHORITY.—

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

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

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

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

3 (B) no employee of the Environmental
4 Protection Agency or the Occupational Safety
5 and Health Administration accompanies any in-
6 spection team visit conducted pursuant to para-
7 graph (1); and

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

11 (3) OBJECTIONS TO INDIVIDUALS SERVING AS
12 INSPECTORS.—

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

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

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

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

9 (B) NOT SUBJECT TO JUDICIAL REVIEW.—

10 Any objection by the President to an individual
11 serving as an inspector, whether made pursuant
12 to this section or otherwise, shall not be
13 reviewable in any court.

14 **SEC. 304. PROCEDURES FOR INSPECTIONS.**

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

21 (b) NOTICE.—

22 (1) IN GENERAL.—An inspection referred to in
23 subsection (a) may be made only upon issuance of
24 an actual written notice by the United States Na-
25 tional Authority to the owner and to the operator,

1 occupant, or agent in charge of the premises to be
2 inspected.

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

15 (3) CONTENT OF NOTICE.—

16 (A) IN GENERAL.—The notice under para-
17 graph (1) shall include all appropriate informa-
18 tion supplied by the Technical Secretariat to
19 the United States National Authority concern-
20 ing—

21 (i) the type of inspection;

22 (ii) the basis for the selection of the
23 plant, plant site, or other facility or loca-
24 tion for the type of inspection sought;

1 (iii) the time and date that the inspec-
2 tion will begin and the period covered by
3 the inspection; and

4 (iv) the names and titles of the
5 inspectors.

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

13 (4) SEPARATE NOTICES REQUIRED.—A sepa-
14 rate notice shall be provided for each inspection, ex-
15 cept that a notice shall not be required for each
16 entry made during the period covered by the
17 inspection.

18 (c) CREDENTIALS.—The head of the inspection team
19 of the Technical Secretariat and the accompanying em-
20 ployees of the Federal government shall display appro-
21 priate identifying credentials to the owner, occupa-
22 pant, or agent in charge of the premises before the inspec-
23 tion is commenced.

24 (d) TIMEFRAME FOR INSPECTIONS.—Consistent with
25 the provisions of the Convention, each inspection shall be

1 commenced and completed with reasonable promptness
2 and shall be conducted at reasonable times, within reason-
3 able limits, and in a reasonable manner.

4 (e) SCOPE.—

5 (1) IN GENERAL.—Except as provided in a war-
6 rant issued under section 305 or a facility agree-
7 ment entered into under section 302, an inspection
8 conducted under this title may extend to all things
9 within the premises inspected (including records,
10 files, papers, processes, controls, structures and ve-
11 hicles) related to whether the requirements of the
12 Convention applicable to such premises have been
13 complied with.

14 (2) EXCEPTION.—Unless required by the Con-
15 vention, no inspection under this title shall extend
16 to—

17 (A) financial data;

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

20 (C) pricing data;

21 (D) personnel data;

22 (E) research data;

23 (F) patent data;

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

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

7 (f) SAMPLING AND SAFETY.—

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

21 (2) COMPLIANCE WITH REGULATIONS.—In car-
22 rying out their activities, members of the inspection
23 team of the Technical Secretariat and representa-
24 tives of agencies or departments accompanying the
25 inspection team shall observe safety regulations es-

1 tablished at the premises to be inspected, including
2 those for protection of controlled environments with-
3 in a facility and for personal safety.

4 (g) COORDINATION.—The appropriate representa-
5 tives of the United States, as designated, if present, shall
6 assist the owner and the operator, occupant or agent in
7 charge of the premises to be inspected in interacting with
8 the members of the inspection team of the Technical Sec-
9 retariat.

10 **SEC. 305. WARRANTS.**

11 (a) IN GENERAL.—The United States Government
12 shall seek the consent of the owner or the operator, occu-
13 pant, or agent in charge of the premises to be inspected
14 prior to any inspection referred to in section 304(a). If
15 consent is obtained, a warrant is not required for the in-
16 spection. The owner or the operator, occupant, or agent
17 in charge of the premises to be inspected may withhold
18 consent for any reason or no reason. After providing noti-
19 fication pursuant to subsection (b), the United States Gov-
20 ernment may seek a search warrant from a United States
21 magistrate judge. Proceedings regarding the issuance of
22 a search warrant shall be conducted ex parte, unless other-
23 wise requested by the United States Government.

24 (b) ROUTINE INSPECTIONS.—

1 (1) OBTAINING ADMINISTRATIVE SEARCH WAR-
2 RANTS.—For any routine inspection conducted on
3 the territory of the United States pursuant to Arti-
4 cle VI of the Convention, where consent has been
5 withheld, the United States Government shall first
6 obtain an administrative search warrant from a
7 judge of the United States. The United States Gov-
8 ernment shall provide to the judge of the United
9 States all appropriate information supplied by the
10 Technical Secretariat to the United States National
11 Authority regarding the basis for the selection of the
12 plant site, plant, or other facility or location for the
13 type of inspection sought. The United States Gov-
14 ernment shall also provide any other appropriate in-
15 formation available to it relating to the reasonable-
16 ness of the selection of the plant, plant site, or other
17 facility or location for the inspection.

18 (2) CONTENT OF AFFIDAVITS FOR ADMINISTRA-
19 TIVE SEARCH WARRANTS.—The judge of the United
20 States shall promptly issue a warrant authorizing
21 the requested inspection upon an affidavit submitted
22 by the United States Government showing that—

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

1 (B) the plant site, plant, or other facility
2 or location sought to be inspected is required to
3 report data under title IV of this Act and is
4 subject to routine inspection under the Conven-
5 tion;

6 (C) the purpose of the inspection is—

7 (i) in the case of any facility owned or
8 operated by a non-Government entity relat-
9 ed to Schedule 1 chemical agents, to verify
10 that the facility is not used to produce any
11 Schedule 1 chemical agent except for de-
12 clared chemicals; quantities of Schedule 1
13 chemicals produced, processed, or
14 consumed are correctly declared and con-
15 sistent with needs for the declared pur-
16 pose; and Schedule 1 chemicals are not di-
17 verted or used for other purposes;

18 (ii) in the case of any facility related
19 to Schedule 2 chemical agents, to verify
20 that activities are in accordance with obli-
21 gations under the Convention and consist-
22 ent with the information provided in data
23 declarations; and

24 (iii) in the case of any facility related
25 to Schedule 3 chemical agents and any

1 other chemical production facility, to verify
2 that the activities of the facility are con-
3 sistent with the information provided in
4 data declarations;

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

7 (E) in the case of a facility related to
8 Schedule 2 or Schedule 3 chemical agents or
9 unscheduled discrete organic chemicals, the
10 plant site has not been subject to more than 1
11 routine inspection in the current calendar year,
12 and, in the case of facilities related to Schedule
13 3 chemical agents or unscheduled discrete or-
14 ganic chemicals, the inspection will not cause
15 the number of routine inspections in the United
16 States to exceed 20 in a calendar year;

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

20 (i) in the case of any facility owned or
21 operated by a non-Government entity relat-
22 ed to Schedule 1 chemical agents, the in-
23 tensity, duration, timing, and mode of the
24 requested inspection is based on the risk to
25 the object and purpose of the Convention

1 by the quantities of chemical produced, the
2 characteristics of the facility and the na-
3 ture of activities carried out at the facility,
4 and the requested inspection, when consid-
5 ered with previous such inspections of the
6 facility undertaken in the current calendar
7 year, shall not exceed the number reason-
8 ably required based on the risk to the ob-
9 ject and purpose of the Convention as de-
10 scribed above;

11 (ii) in the case of any facility related
12 to Schedule 2 chemical agents, the Tech-
13 nical Secretariat gave due consideration to
14 the risk to the object and purpose of the
15 Convention posed by the relevant chemical,
16 the characteristics of the plant site and the
17 nature of activities carried out there, tak-
18 ing into account the respective facility
19 agreement as well as the results of the ini-
20 tial inspections and subsequent inspections;
21 and

22 (iii) in the case of any facility related
23 to Schedule 3 chemical agents or unsched-
24 uled discrete organic chemicals, the facility
25 was selected randomly by the Technical

1 Secretariat using appropriate mechanisms,
2 such as specifically designed computer soft-
3 ware, on the basis of two weighting fac-
4 tors: (I) equitable geographical distribution
5 of inspections; and (II) the information on
6 the declared sites available to the Tech-
7 nical Secretariat, related to the relevant
8 chemical, the characteristics of the plant
9 site, and the nature of activities carried
10 out there;

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

13 (H) the duration of inspection will not ex-
14 ceed time limits specified in the Convention un-
15 less agreed by the owner, operator, or agent in
16 charge of the plant.

17 (3) CONTENT OF WARRANTS.—A warrant is-
18 sued under paragraph (2) shall specify the same
19 matters required of an affidavit under that para-
20 graph. In addition to the requirements for a warrant
21 issued under this paragraph, each warrant shall con-
22 tain, if known, the identities of the representatives
23 of the Technical Secretariat conducting the inspec-
24 tion and the observers of the inspection and, if appli-
25 cable, the identities of the representatives of agen-

1 cies or departments of the United States accompany-
2 ing those representatives.

3 (4) CHALLENGE INSPECTIONS.—

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

15 (B) INFORMATION PROVIDED.—The Unit-
16 ed States Government shall provide to the judge
17 of the United States—

18 (i) all appropriate information sup-
19 plied by the Technical Secretariat to the
20 United States National Authority regard-
21 ing the basis for the selection of the plant
22 site, plant, or other facility or location for
23 the type of inspection sought;

24 (ii) any other appropriate information
25 relating to the reasonableness of the selec-

1 tion of the plant, plant site, or other facil-
2 ity or location for the inspection;

3 (iii) information concerning—

4 (I) the duration and scope of the
5 inspection;

6 (II) areas to be inspected;

7 (III) records and data to be re-
8 viewed; and

9 (IV) samples to be taken;

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

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

16 (vi) the identities of the representa-
17 tives of the Technical Secretariat on the
18 inspection team and the Federal Govern-
19 ment employees accompanying the inspec-
20 tion team.

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

23 (i) the type of inspection authorized;

24 (ii) the purpose of the inspection;

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

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

5 (v) the items, documents, data, equip-
6 ment, and computers that may be in-
7 spected or seized;

8 (vi) samples that may be taken;

9 (vii) the earliest commencement and
10 latest concluding dates and times of the in-
11 spection; and

12 (viii) the identities of the representa-
13 tives of the Technical Secretariat on the
14 inspection teams and the Federal Govern-
15 ment employees accompanying the inspec-
16 tion team.

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

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

22 **SEC. 307. NATIONAL SECURITY EXCEPTION.**

23 Consistent with the objective of eliminating chemical
24 weapons, the President may deny a request to inspect any
25 facility in the United States in cases where the President

1 determines that the inspection may pose a threat to the
2 national security interests of the United States.

3 **SEC. 308. PROTECTION OF CONSTITUTIONAL RIGHTS OF**
4 **CONTRACTORS.**

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

8 **“SEC. 39. PROTECTION OF CONSTITUTIONAL RIGHTS OF**
9 **CONTRACTORS.**

10 “(a) PROHIBITION.—A contractor may not be re-
11 quired, as a condition for entering into a contract with
12 the Federal Government, to waive any right under the
13 Constitution for any purpose related to Chemical Weapons
14 Convention Implementation Act of 1997 or the Chemical
15 Weapons Convention (as defined in section 3 of such Act.)

16 “(b) CONSTRUCTION.—Nothing in subsection (a)
17 shall be construed to prohibit an executive agency from
18 including in a contract a clause that requires the contrac-
19 tor to permit inspections for the purpose of ensuring that
20 the contractor is performing the contract in accordance
21 with the provisions of the contract.”.

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

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

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

2 (a) IN GENERAL.—Not later than one year after the
3 date of enactment of this Act, and annually thereafter,
4 the President shall submit a report in classified and un-
5 classified form to the appropriate congressional commit-
6 tees on inspections made under the Convention during the
7 preceding year.

8 (b) CONTENT OF REPORTS.—Each report shall con-
9 tain the following information for the reporting period:

10 (1) The name of each company or entity subject
11 to the jurisdiction of the United States reporting
12 data pursuant to title IV of this Act.

13 (2) The number of inspections under the Con-
14 vention conducted on the territory of the United
15 States.

16 (3) The number and identity of inspectors con-
17 ducting any inspection described in paragraph (2)
18 and the number of inspectors barred from inspection
19 by the United States.

20 (4) The cost to the United States for each in-
21 spection described in paragraph (2).

22 (5) The total costs borne by United States busi-
23 ness firms in the course of inspections described in
24 paragraph (2).

25 (6) A description of the circumstances sur-
26 rounding inspections described in paragraph (2), in-

1 including instances of possible industrial espionage
2 and misconduct of inspectors.

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

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

10 (c) DEFINITION.—The term “appropriate congress-
11 sional committees” means the Committee on the Judici-
12 ary, the Committee on Foreign Relations, and the Select
13 Committee on Intelligence of the Senate and the Commit-
14 tee on the Judiciary, the Committee on International Rela-
15 tions, and the Permanent Select Committee on Intel-
16 ligence of the House of Representatives.

17 **SEC. 310. UNITED STATES ASSISTANCE IN INSPECTIONS AT**
18 **PRIVATE FACILITIES.**

19 (a) ASSISTANCE IN PREPARATION FOR INSPEC-
20 TIONS.—At the request of an owner of a facility not owned
21 or operated by the United States Government, or con-
22 tracted for use by or for the United States Government,
23 the Secretary of Defense may assist the facility to prepare
24 the facility for possible inspections pursuant to the Con-
25 vention.

1 (b) REIMBURSEMENT REQUIREMENT.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the owner of a facility provided assistance
4 under subsection (a) shall reimburse the Secretary
5 for the costs incurred by the Secretary in providing
6 the assistance.

7 (2) EXCEPTION.—In the case of assistance pro-
8 vided under subsection (a) to a facility owned by a
9 person described in subsection (c), the United States
10 National Authority shall reimburse the Secretary for
11 the costs incurred by the Secretary in providing the
12 assistance.

13 (c) OWNERS COVERED BY UNITED STATES NA-
14 TIONAL AUTHORITY REIMBURSEMENTS.—Subsection
15 (b)(2) applies in the case of assistance provided to the fol-
16 lowing:

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

20 (2) DOMESTIC PRODUCERS OF SCHEDULE 3 OR
21 UNSCHEDULED DISCRETE ORGANIC CHEMICALS.—

22 Any person located in the United States that—

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

1 (B) in the calendar year preceding the year
2 in which the assistance is to be provided, pro-
3 duced—

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

8 (ii) more than 200 metric tons of un-
9 scheduled discrete organic chemicals.

10 **TITLE IV—REPORTS**

11 **SEC. 401. REPORTS REQUIRED BY THE UNITED STATES NA-** 12 **TIONAL AUTHORITY.**

13 (a) REGULATIONS ON RECORDKEEPING.—

14 (1) REQUIREMENTS.—The United States Na-
15 tional Authority shall ensure that regulations are
16 prescribed that require each person located in the
17 United States who produces, processes, consumes,
18 exports, or imports, or proposes to produce, process,
19 consume, export, or import, a chemical substance
20 that is subject to the Convention to—

21 (A) maintain and permit access to records
22 related to that production, processing, con-
23 sumption, export, or import of such substance;
24 and

1 (B) submit to the Director of the United
2 States National Authority such reports as the
3 United States National Authority may reason-
4 ably require to provide to the Organization,
5 pursuant to subparagraph 1(a) of the Annex on
6 Confidentiality of the Convention, the minimum
7 amount of information and data necessary for
8 the timely and efficient conduct by the Organi-
9 zation of its responsibilities under the Conven-
10 tion.

11 (2) RULEMAKING.—The Director of the United
12 States National Authority shall ensure that regula-
13 tions pursuant to this section are prescribed expedi-
14 tiously.

15 (b) COORDINATION.—

16 (1) AVOIDANCE OF DUPLICATION.—To the ex-
17 tent feasible, the United States Government shall
18 not require the submission of any report that is un-
19 necessary or duplicative of any report required by or
20 under any other law. The head of each Federal
21 agency shall coordinate the actions of that agency
22 with the heads of the other Federal agencies in
23 order to avoid the imposition of duplicative reporting
24 requirements under this Act or any other law.

1 (2) DEFINITION.—As used in paragraph (1),
2 the term “Federal agency” has the meaning given
3 the term “agency” in section 551(1) of title 5, Unit-
4 ed States Code.

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

7 (a) PROHIBITION.—Notwithstanding any other provi-
8 sion of this Act, no person located in the United States
9 shall be required to report on, or to submit to, any routine
10 inspection conducted for the purpose of verifying the pro-
11 duction, possession, consumption, exportation, importa-
12 tion, or proposed production, possession, consumption, ex-
13 portation, or importation of any substance that contains
14 less than—

15 (1) 10 percent concentration of a Schedule 2
16 chemical; or

17 (2) 80 percent concentration of a Schedule 3
18 chemical.

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

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

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

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

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

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

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

1 (b) EXCEPTIONS.—

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

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

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

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

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

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

12 (2) NOTICE OF DISCLOSURE.—

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

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

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

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

7 (B) PROCEEDINGS ON OBJECTIONS.—In
8 the event that the person to which the informa-
9 tion pertains objects to the disclosure, the agen-
10 cy shall promptly review the grounds for each
11 objection of the person and shall afford the ob-
12 jecting person a hearing for the purpose of pre-
13 senting the objections to the disclosure. Not
14 later than 10 days before the scheduled or re-
15 scheduled date for the disclosure, the United
16 States National Authority shall notify such per-
17 son regarding whether such disclosure will
18 occur notwithstanding the objections.

19 (d) CRIMINAL PENALTY FOR WRONGFUL DISCLO-
20 SURE.—Any officer or employee of the United States, and
21 any former officer or employee of the United States, who
22 by reason of such employment or official position has ob-
23 tained possession of, or has access to, information the dis-
24 closure or other provision of which is prohibited by sub-
25 section (a), and who, knowing that disclosure or provision

1 of such information is prohibited by such subsection, will-
2 fully discloses or otherwise provides the information in any
3 manner to any person (including any person located out-
4 side the territory of the United States) not authorized to
5 receive it, shall be fined under title 18, United States
6 Code, or imprisoned for not more than five years, or both.

7 (e) CRIMINAL FORFEITURE.—The property of any
8 person who violates subsection (d) shall be subject to for-
9 feiture to the United States in the same manner and to
10 the same extent as is provided in section 229C of title
11 18, United States Code, as added by this Act.

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

15 **SEC. 405. RECORDKEEPING VIOLATIONS.**

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

18 (1) to establish or maintain any record required
19 by this Act or any regulation prescribed under this
20 Act;

21 (2) to submit any report, notice, or other infor-
22 mation to the United States Government in accord-
23 ance with this Act or any regulation prescribed
24 under this Act; or

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

4 **TITLE V—ENFORCEMENT**

5 **SEC. 501. PENALTIES.**

6 (a) CIVIL.—

7 (1) PENALTY AMOUNTS.—

8 (A) PROHIBITED ACTS RELATING TO IN-
9 SPECTIONS.—Any person that is determined, in
10 accordance with paragraph (2), to have violated
11 section 306 of this Act shall be required by
12 order to pay a civil penalty in an amount not
13 to exceed \$25,000 for each such violation. For
14 purposes of this paragraph, each day such a
15 violation of section 306 continues shall con-
16 stitute a separate violation of that section.

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

23 (2) HEARING.—

24 (A) IN GENERAL.—Before imposing an
25 order described in paragraph (1) against a per-

1 son under this subsection for a violation of sec-
2 tion 306 or 405, the Secretary of State shall
3 provide the person or entity with notice and,
4 upon request made within 15 days of the date
5 of the notice, a hearing respecting the violation.

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

14 (C) ISSUANCE OF ORDERS.—If the admin-
15 istrative law judge determines, upon the pre-
16 ponderance of the evidence received, that a per-
17 son or entity named in the complaint has vio-
18 lated section 306 or 405, the administrative law
19 judge shall state his findings of fact and issue
20 and cause to be served on such person or entity
21 an order described in paragraph (1).

22 (D) FACTORS FOR DETERMINATION OF
23 PENALTY AMOUNTS.—In determining the
24 amount of any civil penalty, the administrative
25 law judge shall take into account the nature,

1 circumstances, extent, and gravity of the viola-
2 tion or violations and, with respect to the viola-
3 tor, the ability to pay, effect on ability to con-
4 tinue to do business, any history of prior such
5 violations, the degree of culpability, the exist-
6 ence of an internal compliance program, and
7 such other matters as justice may require.

8 (3) ADMINISTRATIVE APPELLATE REVIEW.—

9 The decision and order of an administrative law
10 judge shall become the final agency decision and
11 order of the head of the United States National Au-
12 thority unless, within 30 days, the head of the Unit-
13 ed States National Authority modifies or vacates the
14 decision and order, with or without conditions, in
15 which case the decision and order of the head of the
16 United States National Authority shall become a
17 final order under this subsection.

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

22 (5) JUDICIAL REVIEW.—A person adversely af-
23 fected by a final order respecting an assessment
24 may, within 30 days after the date the final order
25 is issued, file a petition in the Court of Appeals for

1 the District of Columbia Circuit or for any other cir-
2 cuit in which the person resides or transacts busi-
3 ness.

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

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

11 (B) after a court in an action brought
12 under paragraph (5) has entered a final judg-
13 ment in favor of the United States National
14 Authority,

15 the Secretary of State shall file a suit to seek com-
16 pliance with the order in any appropriate district
17 court of the United States, plus interest at currently
18 prevailing rates calculated from the date of expira-
19 tion of the 30-day period referred to in paragraph
20 (5) or the date of such final judgment, as the case
21 may be. In any such suit, the validity and appro-
22 priateness of the final order shall not be subject to
23 review.

24 (b) CRIMINAL.—Any person who knowingly violates
25 any provision of section 306 or 405 of this Act, shall, in

1 addition to or in lieu of any civil penalty which may be
2 imposed under subsection (a) for such violation, be fined
3 under title 18, United States Code, imprisoned for not
4 more than one year, or both.

5 **SEC. 502. SPECIFIC ENFORCEMENT.**

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

8 (1) restrain any violation of section 306 or 405
9 of this Act; and

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

12 (b) CIVIL ACTIONS.—

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

15 (A) in the case of a civil action described
16 in subsection (a)(1), in the United States dis-
17 trict court for the judicial district in which any
18 act, omission, or transaction constituting a vio-
19 lation of section 306 or 405 occurred or in
20 which the defendant is found or transacts busi-
21 ness; or

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

1 (2) SERVICE OF PROCESS.—In any such civil
2 action process may be served on a defendant wher-
3 ever the defendant may reside or may be found,
4 whether the defendant resides or may be found with-
5 in the United States or elsewhere.

6 **SEC. 503. EXPEDITED JUDICIAL REVIEW.**

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

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

1 **TITLE VI—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 601. REPEAL.**

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

8 **SEC. 602. PROHIBITION.**

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

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

15 (2) use human subjects for the testing of chem-
16 ical or biological agents.

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

20 (c) **BIOLOGICAL AGENT DEFINED.**—In this section,
21 the term “biological agent” means any micro-organism
22 (including bacteria, viruses, fungi, rickettsiae or protozoa),
23 pathogen, or infectious substance, or any naturally occur-
24 ring, bio-engineered or synthesized component of any such
25 micro-organism, pathogen, or infectious substance, what-

1 ever its origin or method of production, capable of caus-
2 ing—

3 (1) death, disease, or other biological malfunc-
4 tion in a human, an animal, a plant, or another liv-
5 ing organism;

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

8 (3) deleterious alteration of the environment.

9 **SEC. 603. BANKRUPTCY ACTIONS.**

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

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

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

15 “(4) under paragraph (1), (2), (3), or (6) of
16 subsection (a) of this section, of the commencement
17 or continuation of an action or proceeding by a gov-
18 ernmental unit or any organization exercising au-
19 thority under the Convention on the Prohibition of
20 the Development, Production, Stockpiling and Use
21 of Chemical Weapons and on Their Destruction,
22 opened for signature on January 13, 1993, to en-
23 force such governmental unit’s or organization’s po-
24 lice and regulatory power, including the enforcement
25 of a judgment other than a money judgment, ob-

1 tained in an action or proceeding by the govern-
2 mental unit to enforce such governmental unit's or
3 organization's police or regulatory power;”.

Passed the Senate May 23, 1997.

Attest:

Secretary.

105TH CONGRESS
1ST SESSION

S. 610

AN ACT

To implement the obligations of the United States
under the Chemical Weapons Convention.

S 610 ES—2
S 610 ES—3
S 610 ES—4
S 610 ES—5
S 610 ES—6
S 610 ES—7
S 610 ES—8
S 610 ES—9
S 610 ES—10