

In addition, the vacancy Judge Miller would fill has been vacant since December 28, 1994—more than 26 months. Judge Gordon Thompson took senior status on December 28, 1994.

This vacancy has only made the workload on the southern district more intense.

So I urge my colleagues to address the workload problem by confirming this eminently qualified candidate, Judge Jeffrey Miller.

I thank the Chair, and I yield the floor.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

Mr. LOTT. Mr. President, we will have just some response from the chairman in a moment. But let me proceed to the next unanimous-consent request.

## CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1997

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 60, S. 610.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 610) 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 which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

### SECTION 1. SHORT TITLE.

This Act may be cited as the "Chemical Weapons Convention Implementation Act of 1997".

### SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

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

#### TITLE I—GENERAL PROVISIONS

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

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

##### Subtitle A—Criminal and Civil Penalties

- Sec. 201. Criminal and civil provisions.
- Subtitle B—Revocations of Export Privileges
- Sec. 211. Revocations of export privileges.

#### TITLE III—INSPECTIONS

- Sec. 301. Definitions in the title.
- Sec. 302. Facility agreements.
- Sec. 303. Authority to conduct inspections.
- Sec. 304. Procedures for inspections.
- Sec. 305. Warrants.
- Sec. 306. Prohibited acts relating to inspections.
- Sec. 307. National security exception.
- Sec. 308. Protection of constitutional rights of contractors.

Sec. 309. Annual report on inspections.

Sec. 310. United States assistance in inspections at private facilities.

#### TITLE IV—REPORTS

Sec. 401. Reports required by the United States National Authority.

Sec. 402. Prohibition relating to low concentrations of schedule 2 and 3 chemicals.

Sec. 403. Prohibition relating to unscheduled discrete organic chemicals and co-incident 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.

### SEC. 3. DEFINITIONS.

In this Act:

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

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

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

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

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

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

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

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

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

(7) **PRECURSOR.**—

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

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

the Annex on Chemicals of the Chemical Weapons Convention.

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

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

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

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

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

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

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

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

methylphosphonofluoridate Soman: O-Pinacolyl methylphosphonofluoridate).

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

(Me, Et, n-Pr or i-Pr)-phosphoramidocyanidates

(e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate).

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

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

(Me, Et, n-Pr or i-Pr) phosphonothiolates and

corresponding alkylated or protonated salts (e.g. VX: O-Ethyl S-2-diisopropylaminoethyl

methyl phosphono- thiolate).

(D) Sulfur mustards: 2-Chloroethylchloromethylsulfide

Mustard gas: Bis(2-chloroethyl)sulfide

Bis(2-chloroethylthio)methane

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

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

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

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

Bis(2-chloroethylthiomethyl)ether

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

(E) Lewisites: Lewisite 1: 2-Chlorovinylchloroarsine

Lewisite 2: Bis(2-chlorovinyl)chloroarsine

Lewisite 3: Tris (2-chlorovinyl)arsine.

(F) Nitrogen mustards: HN1: Bis(2-chloroethyl)ethylamine

HN2: Bis(2-chloroethyl)methylamine

HN3: Tris(2-chloroethyl)amine.

(G) Saxitoxin.

(H) Ricin.

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

phosphonyldifluorides (e.g. DF: Methylphosphonyldifluoride.

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

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

(Me, Et, n-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts (e.g. QL: O-Ethyl O-2-diisopropyl- aminoethyl

methylphosphonite.

(K) Chlorosarin: O-Isopropyl methylphosphonochloridate.

(L) Chlorosoman: O-Pinacolyl methylphosphonochloridate.

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

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

phosphorothiolate and corresponding alkylated or protonated salts.

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

(C) BZ: 3-Quinuclidinyl benzilate

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

e.g. Methylphosphonyl dichloride Dimethyl methylphosphonate

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

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

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

(G) arsenic trichloride.

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

(I) Quinuclidine-3-ol.

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

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

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

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

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

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

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

(A) Phosgene: carbonyl dichloride.

(B) Cyanogen chloride.

(C) Hydrogen cyanide.

(D) Chloropicrin: trichloronitromethane.

(E) Phosphorous oxychloride.

(F) Phosphorous trichloride.

(G) Phosphorous pentachloride.

(H) Trimethyl phosphite.

(I) Triethyl phosphite.

(J) Dimethyl phosphite.

(K) Diethyl phosphite.

(L) Sulfur monochloride.

(M) Sulfur dichloride.

(N) Thionyl chloride.

(O) Ethyldiethanolamine.

(P) Methyldiethanolamine.

(Q) Triethanolamine.

(13) TOXIC CHEMICAL.—

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

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

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

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

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

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

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

## TITLE I—GENERAL PROVISIONS

### SEC. 101. DESIGNATION OF UNITED STATES NATIONAL AUTHORITY.

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

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

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

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

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

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

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

### SEC. 102. NO ABRIDGEMENT OF CONSTITUTIONAL RIGHTS.

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

### SEC. 103. CIVIL LIABILITY OF THE UNITED STATES.

(a) CLAIMS FOR TAKING OF PROPERTY.—

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

(A) UNITED STATES COURT OF FEDERAL CLAIMS.—The United States Court of Federal Claims shall, subject to subparagraph (B), have jurisdiction of any civil action or claim against the United States for any taking of property without just compensation that occurs by reason of the action of any officer or employee of the Organization for the Prohibition of Chemical Weapons, including any member of an inspection team of the Technical Secretariat, or by reason of the action of any officer or employee of the United States pursuant to this Act or the Convention. For purposes of this subsection, action taken pursuant to or under the color of this Act or the Convention shall be deemed to be action taken by the United States for a public purpose.

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

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

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

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

(A) the value of proprietary information;

(B) the availability of the proprietary information;

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

(D) the significance of proprietary information; and

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

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

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

(d) AUTHORITY FOR CAUSE OF ACTION.—

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

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

(3) ACTIONS BROUGHT BY INDIVIDUALS AND BUSINESSES.—Notwithstanding any other law,

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

(e) RECOUPMENT.—

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

(2) SANCTIONS ON FOREIGN COMPANIES.—

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

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

(ii) any foreign person or business entity organized and operating under the laws of a foreign nation which knowingly assisted, encouraged or induced, in any way, a foreign person described in clause (i) to publish, divulge, disclose, or make known in any manner or to any extent not authorized by the Convention any United States confidential business information.

(B) SANCTIONS.—

(i) ARMS EXPORT TRANSACTIONS.—The United States Government shall not sell to a person described in subparagraph (A) any item on the United States Munitions List and shall terminate sales of any defense articles, defense services, or design and construction services to a person described in paragraph (2) under the Arms Export Control Act.

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

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

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

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

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

(vii) DENIAL OF LANDING RIGHTS.—Landing rights in the United States shall be denied to any private aircraft or air carrier owned by a

person described in subparagraph (A) except as necessary to provide for emergencies in which the safety of the aircraft or its crew or passengers is threatened.

(3) SANCTIONS ON FOREIGN GOVERNMENTS.—

(A) IMPOSITION OF SANCTIONS.—Whenever the President determines that persuasive information is available indicating that a foreign country has knowingly assisted, encouraged or induced, in any way, a person described in paragraph (2)(A) to publish, divulge, disclose, or make known in any manner or to any extent not authorized by the Convention any United States confidential business information, the President shall, within 30 days after the receipt of such information by the executive branch of Government, notify the Congress in writing of such determination and, subject to the requirements of paragraphs (4) and (5), impose the sanctions provided under subparagraph (B) for a period of not less than five years.

(B) SANCTIONS.—

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

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

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

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

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

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

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

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

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

(4) SUSPENSION OF SANCTIONS UPON RECOUPMENT BY PAYMENT.—Sanctions imposed under paragraph (2) or (3) may be suspended if the sanctioned person, business entity, or country, within the period specified in that paragraph, provides full and complete compensation to the United States Government, in convertible foreign exchange or other mutually acceptable compensation equivalent to the full value thereof, in satisfaction of a tort or taking for which the United States has been held liable pursuant to this Act.

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

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

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

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

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

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

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

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

(1) including—

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

(B) any chemical structure,

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

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

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

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

and that is obtained—

(i) from a United States person; or

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

## 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.

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

#### "CHAPTER 11B—CHEMICAL WEAPONS

"Sec.

"229. Prohibited activities.

"229A. Penalties.

"229B. Criminal forfeitures; destruction of weapons.

"229C. Individual self-defense devices.

"229D. Injunctions.

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

"229F. Definitions.

#### "§229. Prohibited activities

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

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

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

"(b) EXEMPTED AGENCIES AND PERSONS.—

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

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

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

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

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

"(1) takes place in the United States;

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

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

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

#### "§229A. Penalties

"(a) CRIMINAL PENALTIES.—

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

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

"(b) CIVIL PENALTIES.—

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

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

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

any, who is ordered under this subsection to reimburse the United States for the same expenses.

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

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

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

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

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

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

"(b) PROCEDURES.—

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

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

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

"(2) TEMPORARY RESTRAINING ORDERS.—

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

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

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

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

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

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

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

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

"(f) OWNER LIABILITY.—The owner or possessor of any property seized under this section shall be liable to the United States for any expenses incurred incident to the seizure, includ-

ing any expenses relating to the handling, storage, transportation, and destruction or other disposition of the seized property.

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

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

#### "§229D. Injunctions

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

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

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

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

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

#### "§229F. Definitions

"In this chapter:

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

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

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

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

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

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

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

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

"(6) PRECURSOR.—

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

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

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

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

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

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

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

“(8) TOXIC CHEMICAL.—

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

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

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

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

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

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

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

“11B. Chemical Weapons ..... 229”.

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

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

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

## Subtitle B—Revocations of Export Privileges

### SEC. 211. REVOCATIONS OF EXPORT PRIVILEGES.

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

## TITLE III—INSPECTIONS

### SEC. 301. DEFINITIONS IN THE TITLE.

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

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

### SEC. 302. FACILITY AGREEMENTS.

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

(b) TYPES OF FACILITY AGREEMENTS.—

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

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

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

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

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

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

(3) describe the timeframes for inspections; and

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

### SEC. 303. AUTHORITY TO CONDUCT INSPECTIONS.

(a) PROHIBITION.—No inspection of a plant, plant site, or other facility or location in the

United States shall take place under the Convention without the authorization of the United States National Authority in accordance with the requirements of this title.

(b) AUTHORITY.—

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

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

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

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

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

(3) OBJECTIONS TO INDIVIDUALS SERVING AS INSPECTORS.—

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

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

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

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

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

### SEC. 304. PROCEDURES FOR INSPECTIONS.

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

(b) NOTICE.—

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

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

(3) CONTENT OF NOTICE.—

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

(i) the type of inspection;

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

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

(iv) the names and titles of the inspectors.

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

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

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

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

(E) **SCOPE.**—

(1) **IN GENERAL.**—Except as provided in a warrant issued under section 305 or a facility agreement entered into under section 302, an inspection conducted under this title may extend to all things within the premises inspected (including records, files, papers, processes, controls, structures and vehicles) related to whether the requirements of the Convention applicable to such premises have been complied with.

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

(A) financial data;

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

(C) pricing data;

(D) personnel data;

(E) research data;

(F) patent data;

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

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

(f) **SAMPLING AND SAFETY.**—

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

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

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

#### SEC. 305. WARRANTS.

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

(b) **ROUTINE INSPECTIONS.**—

(1) **OBTAINING ADMINISTRATIVE SEARCH WARRANTS.**—For any routine inspection conducted on the territory of the United States pursuant to Article VI of the Convention, where consent has been withheld, the United States Government shall first obtain an administrative search warrant from a judge of the United States. The United States Government shall provide to the judge of the United States all appropriate information supplied by the Technical Secretariat to the United States National Authority regarding the basis for the selection of the plant site, plant, or other facility or location for the type of inspection sought. The United States Government shall also provide any other appropriate information available to it relating to the reasonableness of the selection of the plant, plant site, or other facility or location for the inspection.

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

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

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

(C) the purpose of the inspection is—

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

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

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

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

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

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

(i) in the case of any facility owned or operated by a non-Government entity related to Schedule 1 chemical agents, the intensity, dura-

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

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

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

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

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

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

(4) **CHALLENGE INSPECTIONS.**—

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

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

(i) all appropriate information supplied by the Technical Secretariat to the United States National Authority regarding the basis for the selection of the plant site, plant, or other facility or location for the type of inspection sought;

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

(iii) information concerning—

(I) the duration and scope of the inspection;

(II) areas to be inspected;

(III) records and data to be reviewed; and

(IV) samples to be taken;

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

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

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



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

- (i) the type of inspection authorized;
- (ii) the purpose of the inspection;
- (iii) the type of plant site, plant, or other facility or location to be inspected;
- (iv) the areas of the plant site, plant, or other facility or location to be inspected;
- (v) the items, documents, data, equipment, and computers that may be inspected or seized;
- (vi) samples that may be taken;
- (vii) the earliest commencement and latest concluding dates and times of the inspection; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) **REIMBURSEMENT REQUIREMENT.**—

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

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

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

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

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

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

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

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

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

**TITLE IV—REPORTS**

**SEC. 401. REPORTS REQUIRED BY THE UNITED STATES NATIONAL AUTHORITY.**

(a) **REGULATIONS ON RECORDKEEPING.**—

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

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

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

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

(b) **COORDINATION.**—

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

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

**SEC. 402. PROHIBITION RELATING TO LOW CONCENTRATIONS OF SCHEDULE 2 AND 3 CHEMICALS.**

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

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

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

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

**SEC. 403. PROHIBITION RELATING TO UNSCHEDULED DISCRETE ORGANIC CHEMICALS AND COINCIDENTAL BYPRODUCTS IN WASTE STREAMS.**

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

(1) an unscheduled discrete organic chemical; and

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

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

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

(b) **EXCEPTIONS.**—

(1) **INFORMATION FOR THE TECHNICAL SECRETARIAT.**—Information shall be disclosed or otherwise provided to the Technical Secretariat or other states parties to the Chemical Weapons Convention in accordance with the Convention, in particular, the provisions of the Annex on the Protection of Confidential Information.

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

(3) **INFORMATION FOR ENFORCEMENT ACTIONS.**—Information shall be disclosed to other Federal agencies for enforcement of this Act or any other law, and shall be disclosed or otherwise provided when relevant in any proceeding

under this Act or any other law, except that disclosure or provision in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding.

(c) **INFORMATION DISCLOSED IN THE NATIONAL INTEREST.**—

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

(2) **NOTICE OF DISCLOSURE.**—

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

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

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

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

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

(d) **CRIMINAL PENALTY FOR WRONGFUL DISCLOSURE.**—Any officer or employee of the United States, and any former officer or employee of the United States, who by reason of such employment or official position has obtained possession of, or has access to, information the disclosure or other provision of which is prohibited by subsection (a), and who, knowing that disclosure or provision of such information is prohibited by such subsection, willfully discloses or otherwise provides the information in any manner to any person (including any person located outside the territory of the United States) not authorized to receive it, shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both.

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

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

#### **SEC. 405. RECORDKEEPING VIOLATIONS.**

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

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

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

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

#### **TITLE V—ENFORCEMENT**

##### **SEC. 501. PENALTIES.**

(a) **CIVIL.**—

(1) **PENALTY AMOUNTS.**—

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

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

(2) **HEARING.**—

(A) **IN GENERAL.**—Before imposing an order described in paragraph (1) against a person under this subsection for a violation of section 306 or 405, the Secretary of State shall provide the person or entity with notice and, upon request made within 15 days of the date of the notice, a hearing respecting the violation.

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

(C) **ISSUANCE OF ORDERS.**—If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated section 306 or 405, the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (1).

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

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

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

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

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

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

(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the United States National Authority, the Secretary of State shall file a suit to seek compliance with the order in any appropriate district court of the United States, plus interest at currently prevailing rates calculated from the date of expiration of the 30-day period referred

to in paragraph (5) or the date of such final judgment, as the case may be. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

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

#### **SEC. 502. SPECIFIC ENFORCEMENT.**

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

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

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

(b) **CIVIL ACTIONS.**—

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

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

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

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

#### **SEC. 503. EXPEDITED JUDICIAL REVIEW.**

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

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

#### **TITLE VI—MISCELLANEOUS PROVISIONS**

##### **SEC. 601. REPEAL.**

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

##### **SEC. 602. PROHIBITION.**

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

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

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

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

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



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

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

(3) deleterious alteration of the environment.

#### SEC. 603. BANKRUPTCY ACTIONS.

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

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

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

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

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. LOTT. For the information of all Senators, so they will understand, this is the Chemical Weapons Convention implementing legislation.

I ask unanimous consent that the previous order with respect to the bill be vitiated and, further, the committee substitute amendment be agreed to.

The committee substitute amendment was agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, during the debate on ratification of the Chemical Weapons Convention, I said that I expected that both the President and the Congress must be wholly dedicated to implement this treaty in a way that advances U.S. national security interests and that protects the constitutional rights of American citizens. Today, we will consider a bill to implement the Chemical Weapons Convention. In my view, this bill accomplishes both of those objectives.

The bill before us today is the product of negotiation with the administration and with my colleagues on the other side of the aisle. Although this bill differs, in several respects, from the version of S. 610 that was introduced in the Congress, I believe that we have achieved a bill that comprehensively implements the treaty, while also protecting the constitutional rights of Americans. Let me explain briefly why that is true:

First, our bill provides for civil liability of the United States for the loss of property resulting from inspection procedures under the treaty.

Second, the Chemical Weapons Convention authorizes a team of international officials to inspect the facilities of private American businesses. Our bill protects the constitutional rights of American citizens through the warrant requirement that must be satisfied for all inspections.

Third, the bill protects confidential business information that, according to the treaty, must be reported to the U.S. National Authority. The bill also provides aggressive penalties for the person disclosing the information, as well as for those benefiting from the information.

In sum, the Chemical Weapons Convention Implementation Act of 1997 is a reasonable effort to protect the constitutional rights of our citizens against unlawful inspections under the treaty.

We have worked exceedingly hard with the Administration and with Members on the other side of the aisle to craft this bill. In particular, I want to thank Senators LUGAR, KYL, LEAHY, and BIDEN, as well as their staff, for their tremendous efforts in this regard, done under serious time constraints. I want to thank, in particular, David Stephens, Randy Schueneman, Marshall Billingslea, Ken Meyers, Beryl Howell, Ed Levine, David Schanzer, Stephen Schlesinger, Jennifer Carrico, and Paul Larkin.

Mr. BIDEN. Mr. President, I want to compliment my esteemed chairman, Senator HATCH, for forging a consensus on this complex issue. As my colleagues know, I was engaged in negotiations on the Chemical Weapons convention resolution of ratification for months, and I know first hand how many deeply held views this treaty implicates and how difficult it is to bring the parties together.

But we succeeded on the treaty and now, with the help of many Senators on both sides of the aisle, have succeeded on the implementing legislation.

I supported this compromise measure in committee and will do so again now because it takes the important steps necessary to implement the Chemical Weapons Convention.

As required by the convention, this bill will enact tough criminal sanctions for possessing, stockpiling, transferring, and using chemical weapons. It will also require U.S. companies to report on their production and use of potentially dangerous chemicals and submit to inspections of their facilities.

Taking these steps will demonstrate to the rest of the world that the United States is committed to continuing its leadership role in arms control and other issues of global importance.

I want to make clear, however, that I do not support some of the provisions in this bill and have very serious concerns about their impact on the convention.

In particular, I do not believe we should be granting the President discretionary authority to deny a CWC inspection based on national security grounds, as would be done by section 401. By signing and ratifying this treaty, the United States—with the advice and consent of 74 Members of this body, given less than a month ago—agreed to allow certain inspections, subject to our constitutional requirements. With

few exceptions, denial of a duly authorized inspection would violate the convention.

Even if the President never exercises this authority, the mere inclusion of this provision in the legislation will encourage other countries to deny inspections on national security grounds. If we should enact to so-called national security exception, we can be sure that the Chinese will seize upon the precedent we set and use it to undermine the effectiveness of the entire certification regime.

I have similar concerns regarding section 403, which would exempt from reporting and routine inspection requirements unscheduled discrete organic chemicals that are coincidental byproducts and are not isolated or captured for use or sale. While waste streams are not, in themselves, a threat to the object and purposes of the CWC regime, monitoring of such streams does afford one of the most convenient and nonintrusive means of determining whether a facility is worthy of concern in the first place.

The drafters of this provision are concerned that CWC implementation would otherwise require paper manufacturers to undertake costly monitoring of their waste streams, and that is an understandable concern. There is no need, however, to grant such a broad exemption as is currently contained in this section.

I am also troubled by:

The broad compensation scheme in section 103 that does not even require a plaintiff to prove its case by a preponderance of the evidence to receive taxpayer funded compensation for the loss of trade secrets; and

The limitation in sections 102 and 308 on the Government's power to require contractors to submit to CWC inspections.

I hope to work with other Senators and the administration to ameliorate these concerns prior to enactment of this measure. Treaties are solemn obligations, and the Chemical Weapons Convention, with all its faults, is our best hope for exposing violators and mobilizing the world so as to put a stop to chemical weapons. We must resist the urge, therefore, to enact provisions that could conflict with our treaty obligations and do damage to the effectiveness of the treaty regime.

Mr. LEAHY. Mr. President, the Chemical Weapons Convention was initiated by President Reagan, negotiated by President Bush and ratified on behalf of the United States by President Clinton. The ratification of this convention was a major achievement that consumed a great deal of the time and attention of the Senate.

When the Senate gave its advice and consent to ratification of the Chemical Weapons Convention, the administration told us it was imperative that we act on implementing legislation as quickly as possible. The Judiciary Committee had the task of reporting back to the Senate with implementing

legislation in time for Senate consideration before our Memorial Day recess.

The implementing legislation considered by the Senate today is where the rubber meets the road. It will define precisely how the general obligations of the international treaty will affect American citizens and American chemical companies.

A significant principle of the convention is set forth in Article VII regarding "National Implementation Measures." This principle makes clear that each state party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this convention. My objective when I began work on this legislation was to make sure that it reflected our constitutional principles and sound public policy, while fulfilling our obligations under the convention.

Over the last few weeks, the Judiciary Committee held a hearing, solicited the advice of experts from both the administration and in the private sector, and worked to craft legislation we could report to the Senate in a very short time frame. I commend my colleagues on the Judiciary Committee, and especially Chairman HATCH, Senator BIDEN, and Senator KYL, for their diligence and efforts in fulfilling this Committee's responsibilities. Senator LUGAR deserves enormous credit for his constructive and helpful work in reaching the compromises necessary to get this legislation done.

I also thank Ivo Spalatin, Dave Barton, and Bernie Sewart, from the Arms Control and Disarmament Agency; Bill Danvers and Gordy Bendick, from the National Security Council; Steven Goldman and Ann Connaughton from the Department of Commerce; Eileen Gillio from the Department of Defense; and Craig Iscoe from the Department of Justice. These dedicated employees from Federal agencies and the White House spent hours, even late into the night, to share their expertise with the committee. We appreciate their hard work.

The hearing we held on May 13, 1997, regarding the administration's implementing legislation, S. 610, raised a number of issues that needed to be addressed. For example, one aspect of S.610 that required our attention was its blanket exception from the Freedom of Information Act for all information reported to, or otherwise obtained by any of the agencies involved in implementing the convention.

Even a witness from the Department of Justice admitted that this provision was not intended, for example, to limit public access to records concerning the number of inspections conducted under the convention, even if that information was reported to, or otherwise obtained by the U.S. National Authority from the Technical Secretariat. He agreed that this provision could be clarified.

The committee amendment to S.610 substantially improves this aspect of

the legislation by removing the blanket exception under the Freedom of Information Act contained in the original bill. The substitute retains protection for trade secrets and other proprietary business information provided under the act and the convention, but the operations of the Federal agencies in implementing this act will not be cloaked in secrecy. They will be fully subject to the FOIA—as they should be.

Yet another provision in S.610, as introduced, could have been construed to penalize a person for refusing to consent to an entry or inspection required under the convention. A Justice Department witness testified at the Judiciary Committee hearing that this section is inelegant and fails to account for the process agreed to in the conditions of ratification. The implementing legislation reported by the committee clarifies this provision, and affirms the constitutional right of every American to refuse to give their consent to a search and the requirement that the Government obtain a warrant.

We also heard from several witnesses about including in the implementing legislation a mechanism to compensate those companies that suffer a loss of trade secrets or other confidential or proprietary information due to their compliance with the convention. The implementing legislation we reported out of the Judiciary Committee provides a compensation scheme that I sincerely hope will not become a sure bet than the lottery for a payout to companies subject to the convention. This scheme will, after the plaintiff establishes a prima facie case, shift the burden to the Government to prove that any loss did not arise from the company's compliance with the convention. Proving a negative will be no easy task for the Government, which may legitimately decide simply to settle such claims, despite their lack of merit. We may have to revisit this scheme if it proves to be authorization for a legal holdup of the U.S. Treasury.

Other provisions in this implementing legislation also give me pause. It does not reflect all the changes each of us would like in the exact form we would like them. But it certainly reflects good faith compromises on both sides.

Mrs. FEINSTEIN. Mr. President, I rise today to express my support for the compromise reached on S. 610, the legislation to implement the Chemical Weapons Convention. I believe it is very much in our national interests to pass this implementation legislation just as we ratified the CWC.

Let me first express my respect and appreciation for the distinguished Ranking Member of the Foreign Relations Committee, Senator BIDEN and the distinguished ranking member of the Judiciary Committee, Senator LEAHY. They and their staff have really done the heavy lifting in getting this implementing language to the floor.

I also want to express my respect for the opponents of this treaty, including

the distinguished chairman of the Foreign Relations Committee and the Senator from Arizona, Senator KYL. I have worked well with Senator KYL on many issues, including, at the moment, our strong effort to pass a Crime Victims' Rights Amendment to the Constitution.

I know that in this debate these Senators are motivated by their genuine and deeply felt concern for America's national security. However, I must disagree with the view that we would be better off without this treaty, or by passing implementation language that renders the treaty meaningless.

Mr. President, the threat of chemical weapons falling into the hands of terrorists, or being used as a weapon of war by a rogue state, has increased dramatically in recent years.

One need only reflect on the dangers faced by our military by Iraq's incipient chemical weapons program during the gulf war, or the tragedies our nation has suffered with the bombing of the World Trade Center, the Federal building in Oklahoma City, and the Olympic Park in Atlanta, to fully appreciate the dangers posed by the proliferation of chemical weapons. In each of these cases, the tragedy and loss of life could have been magnified significantly had chemical weapons been used.

Chemical weapons are among the most barbaric of mankind's inventions. They are so awful, that the United States, by act of Congress, has decided to eliminate our own stocks of these weapons by 2004. They are designed to kill and incapacitate by causing such effects as skin blistering, blindness, lung damage, choking, nervous system disruption, paralysis, or oxygen starvation. Because of the ease of their dispersal over a wide area, chemical weapons are especially useful for targeting civilian populations.

The Chemical Weapons Convention is the most far-reaching attempt ever by the international community to control the spread of chemical weapons. It bans for the first time the development, production, and possession of chemical weapons and reinforces the international norm against their use. Since we are destroying our own chemical weapons, it only makes sense that we should want other nations to do so as well.

The convention requires all signatory states to declare and destroy any chemical weapons and the facilities used to produce them. It requires member states to submit annual reports on the production and use of certain sensitive chemicals. This information, combined with our own intelligence resources, will significantly improve our ability to monitor and prevent illegal transfers and uses of such chemicals.

Once the CWC takes effect, it will make it much harder and more costly for proliferators and terrorists to acquire chemical weapons. An intrusive verification system will be set up to detect violations. Sanctions will be imposed against nations that refuse to

participate, making it more difficult for them to acquire precursor chemicals for poison gas and easier to monitor their efforts to do so.

The intelligence-sharing and global verification network that will result from this treaty will increase the chances that terrorist attacks involving chemical weapons can be prevented before they ever occur—a net gain in the security of our troops and our citizens.

We must start with the proposition that no arms control agreement is 100 percent verifiable. But with the CWC, we will know far more about who is trying to develop chemical weapons, where, and how than we would without the treaty. That is why the intelligence community has consistently testified that, while the treaty is not completely verifiable, they regard it as a highly desirable tool that will enhance our knowledge of chemical weapons programs and our ability to stop them.

The CWC's verification regime requires routine inspections of all declared facilities working with significant amounts of chemicals listed by the treaty. In addition, any site, declared or not, may be subject to short-notice challenge inspections if there are suspicions that it is being used to produce or store banned chemicals.

The CWC also establishes significant trade restrictions on precursor chemicals. These restrictions will make it more difficult for nations who are not parties to the treaty to acquire these chemicals, and will provide us with much more information than we currently have about who is seeking to import such chemicals, and in what amounts.

So the concern about verification, while valid, I believe has been more than adequately addressed. We must go into this treaty with our eyes open, aware that it will not detect every violation. But why would we deprive ourselves of the extremely useful tools and information this treaty would provide on the grounds that they are not fool-proof? It would be incredibly shortsighted to do so.

Another concern that has been raised involves the potential theft of commercial or trade secrets. Nothing in the CWC or its implementation language require the United States, or any U.S. company, to provide any confidential business information to any foreign party.

I am concerned about how this issue has been addressed in this implementation legislation. Under this bill, the American taxpayer must pay for the theft of confidential business information by foreign industrial spies.

I think the better course is for the injured business to first take reasonable steps to seek compensation from the spy who stole the information or from the foreign company which used the stolen information to gain a competitive advantage, before going after the U.S. Treasury. I am hopeful that

this issue can be addressed in the conference on this legislation, and I appreciate the commitment of the Senator from Arizona to continue to work with me on this.

Mr. President, I think this debate really comes down to whether or not one supports international arms control agreements. Many of the criticisms of the CWC and implementation legislation were levied against all previous successful arms control treaties, such as the Nuclear Non-Proliferation Treaty, and the START Treaty.

Those who worry that the United States will weaken its vigilance in our efforts to guard against the threat of chemical weapons have actually done us a service. I believe the intensity of this debate has helped to ensure that we will never allow ourselves to believe that the treaty by itself is enough. We will follow the course that President Reagan did—a strong national defense and arms control agreements with verification.

The CWC is not a panacea, and none of its proponents believes it is. It will not by itself banish chemical weapons from the earth, but it would result in the destruction of much of the world's chemical weapons stocks, and provide us with a valuable set of tools that would significantly strengthen our ability to monitor and defend against the threat of chemical weapons.

I am very pleased that both sides of this debate were able to work together and come to what I feel is, overall, a good agreement. I urge my colleagues to vote for the CWC Implementation Legislation.

Thank you, Mr. President. I yield the floor.

Mr. DOMENICI. Mr. President, the Chemical Weapons Convention Implementation Act of 1997, S. 610, adequately serves to implement the obligations of the Nation under the Chemical Weapons Convention that we ratified a few weeks ago. S. 610 reinforces the concerns expressed in the ratification conditions that constitutional protections for U.S. citizens must be maintained during the intrusive inspection regime required by the CWC. S. 610 protects both private companies and Federal installations from frivolous challenge inspections by demanding that probable cause be demonstrated in order to obtain a search warrant.

S. 610 implements procedures for taking samples and maintains the requirement in the Senate's ratification conditions that these samples will stay within the country. To the extent possible, I would encourage the U.S. National Authority to work with the Organization for the Prohibition of Chemical Weapons to move toward inspection techniques that avoid all concerns with loss of proprietary chemical information from the acquisition and analysis of samples. Measurement techniques, using acoustic signatures for example, have been developed at Los Alamos that can identify whether the

contents of a container are a known chemical weapon agent or precursor, without resorting to actual chemical analysis.

During the ratification process for the CWC, I was concerned with protection of business interests of U.S. companies, and was particularly concerned that small businesses might be adversely impacted by challenge inspections directed against their property. S. 610 now allows any company to request federal assistance in preparing for an inspection and provides that a small business shall receive such assistance without cost. That's a good step for further protecting the interests of our small businesses.

With passage of S. 610, the United States will move ahead to implement the Chemical Weapons Convention in concert with the International Organization for the Prohibition of Chemical Weapons. Unfortunately, the international community involved in the CWC now does not include Russia since they failed to ratify the convention. To realize the full global benefits of the CWC, more nations need to accept the convention's conditions—and I hope that Russia will lead the way among the nations that still have not ratified the convention.

Mr. LOTT. Mr. President, I ask unanimous consent the bill be considered read a third time and passed, the title amendment be agreed to, the motion to reconsider be laid upon the table, and that statements relating to the bill appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The bill (S. 610), as amended, was deemed read the third time and passed.

The title was amended so as to read:

A bill to implement the obligations of the United States under the Chemical Weapons Convention.

#### ORDER OF PROCEDURE

Mr. LOTT. Mr. President, with these agreements we did pass the three judges by voice vote, the Chemical Weapons Convention implementation bill by voice vote. Therefore, there will be no further votes today.

We will therefore not have another vote before 5 p.m. on Tuesday, June 2. We will announce the details of the first 2 days we are back later on this afternoon.

I yield the floor, Mr. President.

Mr. LEAHY. Will the Senator from Mississippi yield in regard to the Chemical Weapons Convention?

I do want to compliment the majority leader.

Mr. LOTT. On that basis, I would be happy to yield.

Mr. LEAHY. I want to compliment him, the Democratic leader, the chairman of the committee, Senator BIDEN, Senator KYL, and their staffs, who worked with me and my staff and others throughout this week, sometimes