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H. R. 4849

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

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 1994

Mr. HAMILTON (by request) (for himself, Mr. GILMAN, Mr. LANTOS, Mr. BERMAN, Mr. SWIFT, and Mr. OXLEY) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, the Judiciary, and Energy and Commerce

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Chemical Weapons
5 Convention Implementation Act of 1994”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows—

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

TITLE I—NATIONAL AUTHORITY

Sec. 101. Establishment.

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

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

TITLE III—DECLARATIONS BY CHEMICAL INDUSTRY

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

TITLE IV—INSPECTIONS

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

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

4 The Congress makes the following findings:

5 (1) Chemical weapons pose a significant threat
6 to the national security of the United States and are
7 a scourge to humankind.

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

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

5 (4) The declarations and inspections required
6 by the Chemical Weapons Convention are essential
7 for the effectiveness of the verification regime.

8 **SEC. 4. CONGRESSIONAL DECLARATIONS.**

9 The Congress makes the following declarations:

10 (1) It shall be the policy of the United States
11 to cooperate with other States parties to the Chemi-
12 cal Weapons Convention and afford the appropriate
13 form of legal assistance to facilitate the implementa-
14 tion of the prohibitions contained in title II of this
15 Act.

16 (2) It shall be the policy of the United States,
17 during the implementation of its obligations under
18 the Chemical Weapons Convention, to assign the
19 highest priority to ensuring the safety of people and
20 to protecting the environment, and to cooperate as
21 appropriate with other States parties to the Conven-
22 tion in this regard.

23 (3) It shall be the policy of the United States
24 to minimize, to the greatest extent practicable, the
25 administrative burden and intrusiveness of measures

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

7 **SEC. 5. DEFINITIONS.**

8 (a) IN GENERAL.—Except as otherwise provided in
9 this Act, the definitions of the terms used in this Act shall
10 be those contained in the Chemical Weapons Convention.

11 (b) OTHER DEFINITIONS.—(1) The term “Chemical
12 Weapons Convention” means the Convention on the Prohi-
13 bition of the Development, Production, Stockpiling and
14 Use of Chemical Weapons and on Their Destruction,
15 opened for signature on January 13, 1993.

16 (2) The term “national of the United States” has the
17 same meaning given such term in section 101(a)(22) of
18 the Immigration and Nationality Act (8 U.S.C.
19 1101(a)(22)).

20 (3) The term “United States”, when used in a geo-
21 graphical sense, includes all places under the jurisdiction
22 or control of the United States, including—

23 (A) any of the places within the provisions of
24 section 101(41) of the Federal Aviation Act of 1958,
25 as amended (49 U.S.C. App. Sec. 1301(41)),

1 (B) any public aircraft or civil aircraft of the
2 United States, as such terms are defined in sections
3 101 (36) and (18) of the Federal Aviation Act of
4 1958, as amended (49 U.S.C. App. Secs. 1301(36)
5 and 1301(18)), and

6 (C) any vessel of the United States, as such
7 term is defined in section 3(b) of the Maritime Drug
8 Enforcement Act, as amended (46 U.S.C. App. Sec.
9 1903(b)).

10 (4) The term “person”, except as used in section 201
11 of this Act and as set forth below, means—

12 (A) any individual, corporation, partnership,
13 firm, association, trust, estate, public or private in-
14 stitution, any State or any political subdivision
15 thereof, or any political entity within a State, any
16 foreign government or nation or any agency, instru-
17 mentality or political subdivision of any such govern-
18 ment or nation, or other entity located in the United
19 States; and

20 (B) any legal successor, representative, agent or
21 agency of the foregoing located in the United States.

22 The phrase “located in the United States” in the term
23 “person” shall not apply to the term “person” as used
24 in the phrase “person located outside the territory” in sec-

1 tions 203(b), 203(c), and 302(c) of this Act and “person
2 located in the territory” in section 203(b) of this Act.

3 (5) The term “Technical Secretariat” means the
4 Technical Secretariat of the Organization for the Prohibi-
5 tion of Chemical Weapons established by the Chemical
6 Weapons Convention.

7 **SEC. 6. SEVERABILITY.**

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

13 **TITLE I—NATIONAL AUTHORITY**

14 **SEC. 101. ESTABLISHMENT.**

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

1 **TITLE II—APPLICATION OF CON-**
2 **VENTION PROHIBITIONS TO**
3 **NATURAL AND LEGAL PER-**
4 **SONS**

5 **SEC. 201. CRIMINAL PROVISIONS.**

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

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

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

13 **“CHAPTER 11A—CHEMICAL WEAPONS**

“Sec.

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

“227A. Seizure, forfeiture, and destruction.

“227B. Injunctions.

“227C. Other prohibitions.

“227D. Definitions.

14 **“SEC. 227. PENALTIES AND PROHIBITIONS WITH RESPECT**
15 **TO CHEMICAL WEAPONS.**

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

1 fined under this title or imprisoned for life or any term
2 of years, or both.

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

14 “(c) JURISDICTION.—There is jurisdiction by the
15 United States over the prohibited activity in subsection (a)
16 if—

17 “(1) the prohibited activity takes place in the
18 United States, or

19 “(2) the prohibited activity takes place outside
20 of the United States and is committed by a national
21 of the United States.

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

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

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

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

12 “(2) In exigent circumstances, seizure and destruc-
13 tion of any such chemical weapon described in paragraph
14 (a)(1) may be made by the Attorney General upon prob-
15 able cause without the necessity for a warrant.

16 “(b) PROCEDURE FOR FORFEITURE AND DESTRUC-
17 TION.—Property seized pursuant to subsection (a) shall
18 be forfeited to the United States. Except as inconsistent
19 herewith, the provisions of chapter 46 of this title relating
20 to civil forfeitures shall extend to a seizure or forfeiture
21 under this section. The Attorney General shall provide for
22 the destruction or other appropriate disposition of any
23 chemical weapon seized and forfeited pursuant to this sec-
24 tion.

1 “(c) AFFIRMATIVE DEFENSE.—It is an affirmative
2 defense against a forfeiture under subsection (b) that—

3 “(1) such alleged chemical weapon is for a pur-
4 pose not prohibited under the Chemical Weapons
5 Convention; and

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

9 “(d) OTHER SEIZURE, FORFEITURE, AND DESTRUC-
10 TION.—

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

18 “(2) In exigent circumstances, seizure and de-
19 struction of any such chemical weapon described in
20 paragraph (1) may be made by the Attorney General
21 upon probable cause without the necessity for a war-
22 rant.

23 “(3) Property seized pursuant to this sub-
24 section shall be summarily forfeited to the United
25 States and destroyed.

1 “(e) ASSISTANCE.—The Attorney General may re-
2 quest assistance from any agency or department in the
3 handling, storage, transportation or destruction of prop-
4 erty seized under this section.

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

11 **“SEC. 227B. INJUNCTIONS.**

12 “(a) IN GENERAL.—The United States may obtain
13 in a civil action an injunction against—

14 “(1) the conduct prohibited under section 227
15 of this title;

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

18 “(3) the development, production, other acquisi-
19 tion, stockpiling, retention, direct or indirect trans-
20 fer, use, ownership or possession, or the attempted
21 development, production, other acquisition, stock-
22 piling, retention, direct or indirect transfer, use,
23 ownership or possession, of any alleged chemical
24 weapon defined in section 227D(2)(A) of this title
25 that is of a type or quantity that under the cir-

1 cumstances is inconsistent with the purposes not
2 prohibited under the Chemical Weapons Convention,
3 or the assistance to any person to do so.

4 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative
5 defense against an injunction under subsection (a)(3)
6 that—

7 “(1) the conduct sought to be enjoined is for a
8 purpose not prohibited under the Chemical Weapons
9 Convention; and

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

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

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

19 “(b) EXCLUSION.—Subsection (a) shall not apply to
20 members of the Armed Forces of the United States. Mem-
21 bers of the Armed Forces of the United States who use
22 riot control agents as a method of warfare shall be subject
23 to appropriate military penalties.

1 “(c) JURISDICTION.—There is jurisdiction by the
2 United States over the prohibited activity in subsection (a)
3 if—

4 “(1) the prohibited activity takes place in the
5 United States, or

6 “(2) the prohibited activity takes place outside
7 of the United States and is committed by a national
8 of the United States.

9 **“SEC. 227D. DEFINITIONS.**

10 “As used in this chapter, the term—

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

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

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

23 “(B) a munition or device, specifically de-
24 signed to cause death or other harm through
25 the toxic properties of those toxic chemicals

1 specified in subparagraph (A), which would be
2 released as a result of the employment of such
3 munition or device; or

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

8 “(3) ‘toxic chemical’ means any chemical which
9 through its chemical action on life processes can
10 cause death, temporary incapacitation or permanent
11 harm to humans or animals. This includes all such
12 chemicals, regardless of their origin or of their meth-
13 od of production, and regardless of whether they are
14 produced in facilities, in munitions or elsewhere;

15 “(4) ‘precursor’ means any chemical reactant
16 which takes part at any stage in the production by
17 whatever method of a toxic chemical. This includes
18 any key component of a binary or multicomponent
19 chemical system;

20 “(5) ‘key component of a binary or
21 multicomponent chemical system’ means the precu-
22 sor which plays the most important role in determin-
23 ing the toxic properties of the final product and re-
24 acts rapidly with other chemicals in the binary or
25 multicomponent system;

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

3 “(A) industrial, agricultural, research,
4 medical, pharmaceutical or other peaceful pur-
5 poses;

6 “(B) protective purposes, namely those
7 purposes directly related to protection against
8 toxic chemicals and to protection against chemi-
9 cal weapons;

10 “(C) military purposes not connected with
11 the use of chemical weapons and not dependent
12 on the use of the toxic properties of chemicals
13 as a method of warfare; or

14 “(D) law enforcement purposes, including
15 domestic riot control purposes;

16 “(7) ‘national of the United States’ has the
17 same meaning given such term in section 101(a)(22)
18 of the Immigration and Nationality Act (8 U.S.C.
19 1101(a)(22));

20 “(8) ‘United States,’ when used in a geographi-
21 cal sense, includes all places under the jurisdiction
22 or control of the United States, including—

23 “(A) any of the places within the provi-
24 sions of section 101(41) of the Federal Aviation

1 Act of 1958, as amended (49 U.S.C. App. Sec.
2 1301(41)),

3 “(B) any public aircraft or civil aircraft of
4 the United States, as such terms are defined in
5 sections 101 (36) and (18) of the Federal Avia-
6 tion Act of 1958, as amended (49 U.S.C. App.
7 Secs. 1301(36) and 1301(18)), and

8 “(C) any vessel of the United States, as
9 such term is defined in section 3(b) of the Mar-
10 itime Drug Enforcement Act, as amended (46
11 U.S.C. App. Sec. 1903(b));

12 “(9) ‘person’ means—

13 “(A) any individual, corporation, partner-
14 ship, firm, association, trust, estate, public or
15 private institution, any State or any political
16 subdivision thereof, or any political entity with-
17 in a State, any foreign government or nation or
18 any agency, instrumentality or political subdivi-
19 sion of any such government or nation, or other
20 entity; and

21 “(B) any legal successor, representative,
22 agent or agency of the foregoing; and

23 “(10) ‘riot control agent’ means any chemical
24 not listed in a Schedule in the Annex on Chemicals
25 of the Chemical Weapons Convention, which can

1 produce rapidly in humans sensory irritation or dis-
 2 abling physical effects which disappear within a
 3 short time following termination of exposure.”

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

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

8 (2) inserting after the item for chapter 11 the
 9 following new item:

“11A. CHEMICAL WEAPONS 227.”

10 **SEC. 202. EFFECTIVE DATE.**

11 This title shall take effect on the date the Chemical
 12 Weapons Convention enters into force for the United
 13 States.

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

15 (a) SCHEDULE 1 ACTIVITIES.—It shall be unlawful
 16 for any person or any national of the United States lo-
 17 cated outside the United States to produce, acquire, re-
 18 tain, transfer or use a chemical listed on Schedule 1 of
 19 the Annex on Chemicals of the Chemical Weapons Conven-
 20 tion, unless—

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

23 (2) the types and quantities of chemicals are
 24 strictly limited to those that can be justified for such
 25 purposes; and

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

6 (b) EXTRATERRITORIAL ACTS.—(1) It shall be un-
7 lawful for any person or any national of the United States
8 located outside the United States to produce, acquire, re-
9 tain or use a chemical listed on Schedule 1 of the Annex
10 on Chemicals of the Chemical Weapons Convention out-
11 side the territories of the States Parties to the Convention
12 or to transfer such chemicals to any person located outside
13 the territory of the United States, except as provided for
14 in the Convention for transfer to a person located in the
15 territory of another State Party to the Convention.

16 (2) Beginning three years after the entry into force
17 of the Chemical Weapons Convention, it shall be unlawful
18 for any person or any national of the United States lo-
19 cated outside the United States to transfer a chemical list-
20 ed on Schedule 2 of the Annex on Chemicals of the Con-
21 vention to any person located outside the territory of a
22 State Party to the Convention or to receive such a chemi-
23 cal from any person located outside the territory of a State
24 Party to the Convention.

1 (c) JURISDICTION.—There is jurisdiction by the
2 United States over the prohibited activity in subsections
3 (a) and (b) if—

4 (1) the prohibited activity takes place in the
5 United States, or

6 (2) the prohibited activity takes place outside of
7 the United States and is committed by a national of
8 the United States.

9 **TITLE III—DECLARATIONS BY**
10 **CHEMICAL INDUSTRY**

11 **SEC. 301. REPORTING OF INFORMATION.**

12 (a) REPORTS.—The Department of Commerce shall
13 promulgate regulations under which each person who pro-
14 duces, processes, consumes, exports or imports, or pro-
15 poses to produce, process, consume, export or import, a
16 chemical substance subject to the Chemical Weapons Con-
17 vention shall maintain and permit access to such records
18 and shall submit to the Department of Commerce such
19 reports as the United States National Authority may rea-
20 sonably require pursuant to the Chemical Weapons Con-
21 vention. The Department of Commerce shall promulgate
22 regulations pursuant to this title expeditiously, and may
23 amend or change such regulations as necessary.

24 (b) COORDINATION.—To the extent feasible, the
25 United States National Authority shall not require any re-

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

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

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

20 (1) shall be disclosed or otherwise provided to
21 the Technical Secretariat or other States Parties to
22 the Chemical Weapons Convention in accordance
23 with the Convention, in particular, the provisions of
24 the Annex on the Protection of Confidential Infor-
25 mation;

1 (2) shall be made available to any committee or
2 subcommittee of Congress of appropriate jurisdiction
3 upon the written request of the chairman or ranking
4 minority member of such committee or subcommit-
5 tee, except that no such committee or subcommittee,
6 or member thereof, shall disclose such information
7 or material;

8 (3) shall be disclosed to other agencies or de-
9 partments for law enforcement purposes with regard
10 to this Act or any other Act, and may be disclosed
11 or otherwise provided when relevant in any proceed-
12 ing under this Act or any other Act, except that dis-
13 closure or provision in such a proceeding shall be
14 made in such manner as to preserve confidentiality
15 to the extent practicable without impairing the pro-
16 ceeding; and

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

21 (b) NOTICE OF DISCLOSURE.—If the United States
22 National Authority, pursuant to subsection (a)(4), pro-
23 poses to publish or disclose or otherwise provide informa-
24 tion or materials exempted from disclosure in subsection
25 (a), the United States National Authority shall, where ap-

1 appropriate, notify the person who submitted such informa-
2 tion or materials of the intent to release such information
3 or materials. Where notice has been provided, the United
4 States National Authority may not release such informa-
5 tion or materials until the expiration of thirty days after
6 notice has been provided.

7 (c) CRIMINAL PENALTY FOR WRONGFUL DISCLO-
8 SURE.—Any officer or employee of the United States or
9 former officer or employee of the United States, who by
10 virtue of such employment or official position has obtained
11 possession of, or has access to, information or materials
12 the disclosure or other provision of which is prohibited by
13 subsection (a), and who knowing that disclosure or provi-
14 sion of such information or materials is prohibited by such
15 subsection, willfully discloses or otherwise provides the in-
16 formation or materials in any manner to any person, in-
17 cluding persons located outside the territory of the United
18 States, not entitled to receive it, shall be fined under title
19 18, United States Code, or imprisoned for not more than
20 five years, or both.

21 (d) INTERNATIONAL INSPECTORS.—The provisions of
22 this section on disclosure or provision of information or
23 materials shall also apply to employees of the Technical
24 Secretariat.

1 **SEC. 303. PROHIBITED ACTS.**

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

4 (a) establish or maintain records,

5 (b) submit reports, notices, or other information
6 to the Department of Commerce or the United
7 States National Authority, or

8 (c) permit access to or copying of records, as
9 required by this Act or a regulation thereunder.

10 **TITLE IV—INSPECTIONS**

11 **SEC. 401. INSPECTIONS OF CHEMICAL INDUSTRY.**

12 (a) **AUTHORITY.**—For purposes of administering this
13 Act—

14 (1) any duly designated member of an inspec-
15 tion team of the Technical Secretariat may inspect
16 any plant, plant site, or other facility or location in
17 the United States subject to inspection pursuant to
18 the Chemical Weapons Convention; and

19 (2) any duly designated representative of an
20 agency or department may accompany members of
21 an inspection team of the Technical Secretariat dur-
22 ing the inspection specified in paragraph (1).

23 (b) **NOTICE.**—An inspection pursuant to subsection
24 (a) may be made only upon issuance of a written notice
25 to the owner and to the operator, occupant or agent in
26 charge of the premises to be inspected, except that failure

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

19 (c) CREDENTIALS.—If the owner, operator, occupant
20 or agent in charge of the premises to be inspected is
21 present, a member of the inspection team of the Technical
22 Secretariat, as well as, if present, the representatives of
23 agencies or departments, shall present appropriate creden-
24 tials before the inspection is commenced.

1 (d) TIME FRAME FOR INSPECTIONS.—Consistent
2 with the provisions of the Chemical Weapons Convention,
3 each inspection shall be commenced and completed with
4 reasonable promptness and shall be conducted at reason-
5 able times, within reasonable limits, and in a reasonable
6 manner. The Department of Commerce shall endeavor to
7 ensure that, to the extent possible, each inspection is com-
8 menced, conducted and concluded during ordinary work-
9 ing hours, but no inspection shall be prohibited or other-
10 wise disrupted for commencing, continuing or concluding
11 during other hours. However, nothing in this subsection
12 shall be interpreted as modifying the time frames estab-
13 lished in the Chemical Weapons Convention.

14 (e) SCOPE.—(1) Except as provided in paragraph (2)
15 of this subsection and subsection (f), an inspection con-
16 ducted under this title may extend to all things within the
17 premises inspected (including records, files, papers, proc-
18 esses, controls, structures and entering and exiting vehi-
19 cles) related to whether the requirements of the Chemical
20 Weapons Convention applicable to such premises have
21 been complied with.

22 (2) To the extent possible consistent with the obliga-
23 tions of the United States pursuant to the Chemical
24 Weapons Convention, no inspection under this title shall
25 extend to—

- 1 (A) financial data;
- 2 (B) sales and marketing data (other than ship-
- 3 ment data);
- 4 (C) pricing data;
- 5 (D) personnel data;
- 6 (E) research data;
- 7 (F) patent data; or
- 8 (G) data maintained for compliance with envi-
- 9 ronmental or occupational health and safety regula-
- 10 tions.

11 (f) FACILITY AGREEMENTS.—(1) Inspections of
12 plants, plant sites, or other facilities or locations for which
13 the United States has a facility agreement with the Orga-
14 nization for the Prohibition of Chemical Weapons shall be
15 conducted in accordance with the facility agreement.

16 (2) Facility agreements shall be concluded for plants,
17 plant sites, or other facilities or locations that are subject
18 to inspection pursuant to paragraph 4 of Article VI of the
19 Chemical Weapons Convention unless the owner and the
20 operator, occupant or agent in charge of the facility and
21 the Technical Secretariat agree that such an agreement
22 is not necessary. Facility agreements should be concluded
23 for plants, plant sites, or other facilities or locations that
24 are subject to inspection pursuant to paragraphs 5 or 6
25 of Article VI of the Chemical Weapons Convention if so

1 requested by the owner and the operator, occupant or
2 agent in charge of the facility.

3 (3) The owner and the operator, occupant or agent
4 in charge shall, to the extent practicable consistent with
5 the obligations of the United States under the Chemical
6 Weapons Convention, participate in the negotiation of all
7 facility agreements concluded pursuant to the Convention.

8 (g) SAMPLING AND SAFETY.—(1) The Department of
9 Commerce is authorized to require the provision of sam-
10 ples to a member of the inspection team of the Technical
11 Secretariat in accordance with the provisions of the Chem-
12 ical Weapons Convention. The owner or the operator, oc-
13 cupant or agent in charge of the premises to be inspected
14 shall determine whether the sample shall be taken by rep-
15 resentatives of the premises or the inspection team or
16 other individuals present.

17 (2) In carrying out their activities, members of the
18 inspection team of the Technical Secretariat and rep-
19 resentatives of agencies or departments accompanying the
20 inspection team shall observe safety regulations estab-
21 lished at the premises to be inspected, including those for
22 protection of controlled environments within a facility and
23 for personal safety.

24 (h) COORDINATION.—To the extent possible consist-
25 ent with the obligations of the United States pursuant to

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

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

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

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

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

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

6 **SEC. 404. PENALTIES.**

7 (a) CIVIL.—(1) Any person who violates a provision
8 of section 203, 303, or 403 of this Act shall be liable to
9 the United States for a civil penalty in an amount not
10 to exceed \$50,000 for each such violation. For purposes
11 of this subsection, each day such a violation of section 403
12 continues shall constitute a separate violation of section
13 403.

14 (2)(A) A civil penalty for a violation of section 203,
15 303, or 403 of this Act shall be assessed by the Lead
16 Agency by an order made on the record after opportunity
17 (provided in accordance with this subparagraph) for a
18 hearing in accordance with section 554 of title 5, United
19 States Code. Before issuing such an order, the Lead Agen-
20 cy shall give written notice to the person to be assessed
21 a civil penalty under such order of the Lead Agency's pro-
22 posal to issue such order and provide such person an op-
23 portunity to request, within fifteen days of the date the
24 notice is received by such person, such a hearing on the
25 order.

1 (B) In determining the amount of a civil penalty, the
2 Lead Agency shall take into account the nature, cir-
3 cumstances, extent and gravity of the violation or viola-
4 tions and, with respect to the violator, ability to pay, effect
5 on ability to continue to do business, any history of prior
6 such violations, the degree of culpability, and such other
7 matters as justice may require.

8 (C) The Lead Agency may compromise, modify or
9 remit, with or without conditions, any civil penalty which
10 may be imposed under this subsection. The amount of
11 such penalty, when finally determined, or the amount
12 agreed upon in compromise, may be deducted from any
13 sums owing by the United States to the person charged.

14 (3) Any person who requested in accordance with
15 paragraph (2)(A) a hearing respecting the assessment of
16 a civil penalty and who is aggrieved by an order assessing
17 a civil penalty may file a petition for judicial review of
18 such order with the United States Court of Appeals for
19 the District of Columbia Circuit or for any other circuit
20 in which such person resides or transacts business. Such
21 a petition may be filed only within the thirty-day period
22 beginning on the date the order making such assessment
23 was issued.

24 (4) If any person fails to pay an assessment of a civil
25 penalty—

1 (A) after the order making the assessment has
2 become a final order and if such person does not file
3 a petition for judicial review of the order in accord-
4 ance with paragraph (3); or

5 (B) after a court in an action brought under
6 paragraph (3) has entered a final judgment in favor
7 of the Lead Agency;

8 the Attorney General shall recover the amount assessed
9 (plus interest at currently prevailing rates from the date
10 of the expiration of the thirty-day period referred to in
11 paragraph (3) or the date of such final judgment, as the
12 case may be) in an action brought in any appropriate dis-
13 trict court of the United States. In such an action, the
14 validity, amount and appropriateness of such penalty shall
15 not be subject to review.

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

22 **SEC. 405. SPECIFIC ENFORCEMENT.**

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

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

3 (2) compel the taking of any action required by
4 or under this Act or the Chemical Weapons Conven-
5 tion.

6 (b) CIVIL ACTION.—A civil action described in sub-
7 section (a) may be brought—

8 (1) in the case of a civil action described in sub-
9 section (a)(1), in the United States district court for
10 the judicial district wherein any act, omission, or
11 transaction constituting a violation of section 203,
12 303, or 403 of this Act occurred or wherein the de-
13 fendant is found or transacts business; or

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

18 In any such civil action process may be served on a defend-
19 ant wherever the defendant may reside or may be found,
20 whether the defendant resides or may be found within the
21 United States or elsewhere.

22 **SEC. 406. LEGAL PROCEEDINGS.**

23 (a) WARRANTS.—(1) The Lead Agency shall seek the
24 consent of the owner or the operator, occupant or agent
25 in charge of the premises to be inspected prior to the initi-

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

21 (2) The official authorized to issue search warrants
22 shall promptly issue a warrant authorizing the requested
23 inspection upon an affidavit submitted by the Lead Agen-
24 cy showing that—

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

3 (B) the plant site, plant, or other facility or lo-
4 cation sought to be inspected is subject to the spe-
5 cific type of inspection requested under the Chemical
6 Weapons Convention;

7 (C) the procedures established under the Chem-
8 ical Weapons Convention and this Act for initiating
9 an inspection have been complied with; and

10 (D) the Lead Agency will ensure that the in-
11 spection is conducted in a reasonable manner and
12 will not exceed the scope or duration set forth in or
13 authorized by the Chemical Weapons Convention or
14 this Act.

15 (3) The warrant shall specify the type of inspection
16 authorized; the purpose of the inspection; the type of plant
17 site, plant, or other facility or location to be inspected;
18 to the extent possible, the items, documents and areas that
19 may be inspected; the earliest commencement and latest
20 concluding dates and times of the inspection; and the iden-
21 tities of the representatives of the Technical Secretariat,
22 if known, and, if applicable, the representatives of agencies
23 or departments.

24 (b) SUBPOENAS.—In carrying out this Act, the Lead
25 Agency may by subpoena require the attendance and testi-

1 many of witnesses and the production of reports, papers,
2 documents, answers to questions and other information
3 that the Lead Agency deems necessary. Witnesses shall
4 be paid the same fees and mileage that are paid witnesses
5 in the courts of the United States. In the event of contu-
6 macy, failure or refusal of any person to obey any such
7 subpoena, any district court of the United States in which
8 venue is proper shall have jurisdiction to order any such
9 person to comply with such subpoena. Any failure to obey
10 such an order of the court is punishable by the court as
11 a contempt thereof.

12 (c) INJUNCTIONS AND OTHER ORDERS.—No court
13 shall issue an injunction or other order that would limit
14 the ability of the Technical Secretariat to conduct, or the
15 United States National Authority or the Lead Agency to
16 facilitate, inspections as required or authorized by the
17 Chemical Weapons Convention.

18 **SEC. 407. AUTHORITY.**

19 The Lead Agency may issue such regulations as are
20 necessary to implement this title and the provisions of the
21 Chemical Weapons Convention, and amend or revise them
22 as necessary. The Lead Agency shall have the authority
23 to appoint officials to issue warrants pursuant to section
24 406(a) authorizing inspections pursuant to this title.

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