

105TH CONGRESS
1ST SESSION

H. R. 1590

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

MAY 14, 1997

Mr. HAMILTON (for himself and Mr. CONYERS) (both by request) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Chemical Weapons
3 Convention Implementation Act of 1997”.

4 SEC. 2. TABLE OF CONTENTS.

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

- See. 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—REPORTING

- Sec. 301. Reporting of information.
- Sec. 302. Confidentiality of information.
- Sec. 303. Prohibited acts.

TITLE IV—INSPECTIONS

- Sec. 401. Inspections pursuant to Article VI of the Chemical Weapons Convention.
- Sec. 402. Other inspections pursuant to the Chemical Weapons Convention and lead agency.
- Sec. 403. Prohibited acts.
- Sec. 404. Penalties.
- Sec. 405. Specific enforcement.
- Sec. 406. Legal proceedings.
- Sec. 407. Authority.
- Sec. 408. Saving provision.

6 SEC. 3. CONGRESSIONAL FINDINGS.

7 The Congress makes the following findings:

8 (1) Chemical weapons pose a significant threat
9 to the national security of the United States and are
10 a scourge to humankind.

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

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

9 (4) The declarations and inspections required
10 by the Chemical Weapons Convention are essential
11 for the effectiveness of the verification regime.

12 **SEC. 4. CONGRESSIONAL DECLARATIONS.**

13 The Congress makes the following declarations:

14 (1) It shall be the policy of the United States
15 to cooperate with other States Parties to the Chemi-
16 cal Weapons Convention and to afford the appro-
17 priate form of legal assistance to facilitate the imple-
18 mentation of the prohibitions contained in title II of
19 this Act.

20 (2) It shall be the policy of the United States,
21 during the implementation of its obligations under
22 the Chemical Weapons Convention, to assign the
23 highest priority to ensuring the safety of people and
24 to protecting the environment, and to cooperate as

1 appropriate with other States Parties to the Conven-
2 tion in this regard.

3 (3) It shall be the policy of the United States
4 to minimize, to the greatest extent practicable, the
5 administrative burden and intrusiveness of measures
6 to implement the Chemical Weapons Convention
7 placed on commercial and other private entities, and
8 to take into account the possible competitive impact
9 of regulatory measures on industry, consistent with
10 the obligations of the United States under the Con-
11 vention.

12 **SEC. 5. DEFINITIONS.**

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

16 (Nothing in paragraphs 2 or 3 of Article II of the Chemi-
17 cal Weapons Convention shall be construed to limit ver-
18 ification activities pursuant to Parts X or XI of the Annex
19 on Implementation and Verification of the Convention.)

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

1 (2) The term “national of the United States” has the
2 same meaning given such term in section 101(a)(22) of
3 the Immigration and Nationality Act (8 U.S.C.
4 1101(a)(22)).

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

8 (A) any of the places within the provisions of
9 section 101(41) of the Federal Aviation Act of 1958,
10 as amended (49 U.S.C. Sec. 40102(41)),

11 (B) any public aircraft or civil aircraft of the
12 United States, as such terms are defined in sections
13 101 (36) and (18) of the Federal Aviation Act of
14 1958, as amended (49 U.S.C. App. 40102(37) and
15 40102(17)), and

16 (C) any vessel of the United States, as such
17 term is defined in section 3(b) of the Maritime Drug
18 Enforcement Act, as amended (46 U.S.C. App. Sec.
19 1903(b)).

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

22 (A) any individual, corporation, partnership,
23 firm, association, trust, estate, public or private in-
24 stitution, any State or any political subdivision
25 thereof, or any political entity within a State, any

1 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; and

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

7 The phrase “located in the United States” in the term
8 “person” shall not apply to the term “person” as used
9 in the phrase “person located outside the territory” in sections 203(b) and 302(d) of this Act and “person located
10 in the territory” in section 203(b) of this Act.

12 (5) The term “Technical Secretariat” means the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons established by the Chemical Weapons Convention.

16 SEC. 6. SEVERABILITY.

17 If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

22 TITLE I—NATIONAL AUTHORITY

23 SEC. 101. ESTABLISHMENT.

24 Pursuant to paragraph 4 of Article VII of the Chemical Weapons Convention, the President or the designee of

1 the President shall establish the “United States National
2 Authority” to, inter alia, serve as the national focal point
3 for effective liaison with the Organization for the Prohibi-
4 tion of Chemical Weapons and other States Parties to the
5 Convention.

6 **TITLE II—APPLICATION OF CON-**
7 **VENTION PROHIBITIONS TO**
8 **NATURAL AND LEGAL PER-**
9 **SONS**

10 **SEC. 201. CRIMINAL PROVISIONS.**

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

13 (1) redesignating chapter 11A relating to child
14 support as chapter 11B; and

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

18 **“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.

19 **“SEC. 227. PENALTIES AND PROHIBITIONS WITH RESPECT**
20 **TO CHEMICAL WEAPONS.**

21 “(a) IN GENERAL.—Except as provided in subsection
22 (b), whoever knowingly develops, produces, otherwise ac-

1 quires, stockpiles, retains, directly or indirectly transfers,
2 uses, owns or possesses any chemical weapon, or know-
3 ingly assists, encourages or induces, in any way, any per-
4 son to do so, or attempts or conspires to do so, shall be
5 fined under this title or imprisoned for life or any term
6 of years, or both.

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

18 “(c) JURISDICTION.—There is jurisdiction by the
19 United States over the prohibited activity in subsection (a)
20 if—

21 “(1) the prohibited activity takes place in the
22 United States, or

23 “(2) the prohibited activity takes place outside
24 of the United States and is committed by a national
25 of the United States.

1 “(d) ADDITIONAL PENALTY.—The court shall order
2 that any person convicted of any offense under this section
3 pay to the United States any expenses incurred incident
4 to the seizure, storage, handling, transportation and de-
5 struction or other disposition of property seized for the
6 violation of this section.

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

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

16 “(2) In exigent circumstances, seizure and destruc-
17 tion of any such chemical weapon described in paragraph
18 (1) may be made by the Attorney General upon probable
19 cause without the necessity for a warrant.

20 “(b) PROCEDURE FOR FORFEITURE AND DESTRUC-
21 TION.—Except as provided in paragraph (2) of subsection
22 (a), property seized pursuant to subsection (a) shall be
23 forfeited to the United States after notice to potential
24 claimants and an opportunity for a hearing. At such a
25 hearing, the government shall bear the burden of persuad-

1 sion by a preponderance of the evidence. Except as incon-
2 sistent herewith, the provisions of chapter 46 of this title
3 relating to civil forfeitures shall extend to a seizure or for-
4 feiture under this section. The Attorney General shall pro-
5 vide for the destruction or other appropriate disposition
6 of any chemical weapon seized and forfeited pursuant to
7 this section.

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

10 “(1) such alleged chemical weapon is for a pur-
11 pose not prohibited under the Chemical Weapons
12 Convention; and

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

16 “(d) OTHER SEIZURE, FORFEITURE, AND DESTRUC-
17 TION.—

18 “(1) Except as provided in paragraph (2), the
19 Attorney General may request the issuance, in the
20 same manner as provided for a search warrant, of
21 a warrant authorizing the seizure of any chemical
22 weapon defined in section 227D(2) (B) or (C) of
23 this title that exists by reason of conduct prohibited
24 under section 227 of this title.

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

6 “(3) Property seized pursuant to this sub-
7 section shall be summarily forfeited to the United
8 States and destroyed.

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

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

19 **“SEC. 227B. INJUNCTIONS.**

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

22 “(1) the conduct prohibited under section 227
23 of this title;

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

1 “(3) the development, production, other acquisition,
2 stockpiling, retention, direct or indirect transfer, use,
3 ownership or possession, or the attempted
4 development, production, other acquisition, stock-
5 piling, retention, direct or indirect transfer, use,
6 ownership or possession, of any alleged chemical
7 weapon defined in section 227D(2)(A) of this title
8 that is of a type or quantity that under the cir-
9 cumstances is inconsistent with the purposes not
10 prohibited under the Chemical Weapons Convention,
11 or the assistance to any person to do so.

12 “(b) AFFIRMATIVE DEFENSE.—It is an affirmative
13 defense against an injunction under subsection (a)(3)
14 that—

15 “(1) the conduct sought to be enjoined is for a
16 purpose not prohibited under the Chemical Weapons
17 Convention; and

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

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

22 “(a) IN GENERAL.—Except as provided in subsection
23 (b), whoever knowingly uses riot control agents as a meth-
24 od of warfare, or knowingly assists any person to do so,

1 shall be fined under this title or imprisoned for a term
2 of not more than ten years, or both.

3 “(b) EXCLUSION.—Subsection (a) shall not apply to
4 members of the Armed Forces of the United States. Mem-
5 bers of the Armed Forces of the United States who use
6 riot control agents as a method of warfare shall be subject
7 to appropriate military penalties.

8 “(c) JURISDICTION.—There is jurisdiction by the
9 United States over the prohibited activity in subsection (a)
10 if—

11 “(1) the prohibited activity takes place in the
12 United States, or

13 “(2) the prohibited activity takes place outside
14 of the United States and is committed by a national
15 of the United States.

16 **“SEC. 227D. DEFINITIONS.**

17 “As used in this chapter, the term—

18 “(1) ‘Chemical Weapons Convention’ means the
19 Convention on the Prohibition of the Development,
20 Production, Stockpiling and Use of Chemical Weap-
21 ons and on Their Destruction, opened for signature
22 on January 13, 1993;

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

1 “(A) a toxic chemical and its precursors,
2 except where intended for a purpose not prohib-
3 ited under the Chemical Weapons Convention,
4 as long as the type and quantity is consistent
5 with such a purpose;

6 “(B) a munition or device, specifically de-
7 signed to cause death or other harm through
8 the toxic properties of those toxic chemicals
9 specified in subparagraph (A), which would be
10 released as a result of the employment of such
11 munition or device; or

12 “(C) any equipment specifically designed
13 for use directly in connection with the employ-
14 ment of munitions or devices specified in sub-
15 paragraph (B);

16 “(3) ‘toxic chemical’ means any chemical which
17 through its chemical action on life processes can
18 cause death, temporary incapacitation or permanent
19 harm to humans or animals. This includes all such
20 chemicals, regardless of their origin or of their meth-
21 od of production, and regardless of whether they are
22 produced in facilities, in munitions or elsewhere;
23 (For the purpose of implementing the Chemical
24 Weapons Convention, toxic chemicals which have
25 been identified for the application of verification

1 measures are listed in Schedules contained in the
2 Annex on Chemicals of the Chemical Weapons Con-
3 vention.);

4 “(4) ‘precursor’ means any chemical reactant
5 which takes part at any stage in the production by
6 whatever method of a toxic chemical. This includes
7 any key component of a binary or multicomponent
8 chemical system; (For the purpose of implementing
9 the Chemical Weapons Convention, precursors which
10 have been identified for the application of verifica-
11 tion measures are listed in Schedules contained in
12 the Annex on Chemicals of the Chemical Weapons
13 Convention.);

14 “(5) ‘key component of a binary or multicompo-
15 nent chemical system’ means the precursor which
16 plays the most important role in determining the
17 toxic properties of the final product and reacts rap-
18 idly with other chemicals in the binary or multi-
19 component system;

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

22 “(A) industrial, agricultural, research,
23 medical, pharmaceutical or other peaceful pur-
24 poses;

1 “(B) protective purposes, namely those
2 purposes directly related to protection against
3 toxic chemicals and to protection against chemi-
4 cal weapons;

5 “(C) military purposes not connected with
6 the use of chemical weapons and not dependent
7 on the use of the toxic properties of chemicals
8 as a method of warfare; or

9 “(D) law enforcement purposes, including
10 domestic riot control purposes;

11 “(7) ‘national of the United States’ has the
12 same meaning given such term in section 101(a)(22)
13 of the Immigration and Nationality Act (8 U.S.C.
14 1101(a)(22));

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

18 “(A) any of the places within the provi-
19 sions of section 101(41) of the Federal Aviation
20 Act of 1958, as amended (49 U.S.C. Sec.
21 40102(41)),

22 “(B) any public aircraft or civil aircraft of
23 the United States, as such terms are defined in
24 sections 101 (36) and (18) of the Federal Avia-

1 tion Act of 1958, as amended (49 U.S.C. Secs.
2 40102(37) and 40102(17)), and

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

7 “(9) ‘person’ means—

8 “(A) any individual, corporation, partner-
9 ship, firm, association, trust, estate, public or
10 private institution, any State or any political
11 subdivision thereof, or any political entity within-
12 in a State, any foreign government or nation or
13 any agency, instrumentality or political subdivi-
14 sion of any such government or nation, or other
15 entity; and

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

18 “(10) ‘riot control agent’ means any chemical
19 not listed in a Schedule in the Annex on Chemicals
20 of the Chemical Weapons Convention, which can
21 produce rapidly in humans sensory irritation or dis-
22 abling physical effects which disappear within a
23 short time following termination of exposure.”

24 “Nothing in paragraphs (3) or (4) of this section
25 shall be construed to limit verification activities pursuant

1 to Part X or Part XI of the Annex on Implementation
2 and Verification of the Chemical Weapons Convention.”

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

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

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

“11A. CHEMICAL WEAPONS 227.”

9 **SEC. 202. EFFECTIVE DATE.**

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

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

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

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

22 (2) the types and quantities of chemicals are
23 strictly limited to those that can be justified for such
24 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
20 listed on Schedule 2 of the Annex on Chemicals of the
21 Convention to any person located outside the territory of
22 a State Party to the Convention or to receive such a chem-
23 ical from any person located outside the territory of a
24 State 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—REPORTING**

10 **SEC. 301. REPORTING OF INFORMATION.**

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

1 (b) COORDINATION.—To the extent feasible, the
2 United States National Authority shall not require any re-
3 porting that is unnecessary, or duplicative of reporting re-
4 quired under any other Act. Agencies and departments
5 shall coordinate their actions with other agencies and de-
6 partments to avoid duplication of reporting by the affected
7 persons under this Act or any other Act.

8 **SEC. 302. CONFIDENTIALITY OF INFORMATION.**

9 (a) FREEDOM OF INFORMATION ACT EXEMPTION
10 FOR CERTAIN CHEMICAL WEAPONS CONVENTION INFOR-
11 MATION.—Any information reported to, or otherwise ob-
12 tained by, the United States National Authority or the De-
13 partment of Commerce, or any other agency or depart-
14 ment under this Act or the Chemical Weapons Convention
15 shall not be required to be publicly disclosed pursuant to
16 section 552 of title 5, United States Code.

17 (b) PROHIBITED DISCLOSURE AND EXEMPTIONS.—
18 Information exempt from disclosure under subsection (a)
19 shall not be published or disclosed, except that such infor-
20 mation—

21 (1) shall be disclosed or otherwise provided to
22 the Technical Secretariat or other States Parties to
23 the Chemical Weapons Convention in accordance
24 with the Convention, in particular, the provisions of

1 the Annex on the Protection of Confidential Infor-
2 mation;

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

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

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

23 (c) NOTICE OF DISCLOSURE.—If the United States
24 National Authority, pursuant to subsection (b)(4), pro-
25 poses to publish or disclose or otherwise provide informa-

1 tion exempted from disclosure in subsection (a), the
2 United States National Authority shall, where appro-
3 priate, notify the person who submitted such information
4 of the intent to release such information. Where notice has
5 been provided, the United States National Authority may
6 not release such information until the expiration of thirty
7 days after notice has been provided.

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

21 (e) INTERNATIONAL INSPECTORS.—The provisions of
22 this section on disclosure or provision of information shall
23 also apply to employees of the Technical 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 PURSUANT TO ARTICLE VI OF THE**

12 **CHEMICAL WEAPONS CONVENTION.**

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

14 Act—

15 (1) any duly designated member of an inspec-

16 tion team of the Technical Secretariat may inspect

17 any plant, plant site, or other facility or location in

18 the United States subject to inspection pursuant to

19 the Chemical Weapons Convention; and

20 (2) the National Authority shall designate rep-

21 resentatives who may accompany members of an in-

22 spection team of the Technical Secretariat during

23 the inspection specified in paragraph (1). The num-

24 ber of duly designated representatives shall be kept

25 to the minimum necessary.

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

23 (c) CREDENTIALS.—If the owner, operator, occupant
24 or agent in charge of the premises to be inspected is
25 present, a member of the inspection team of the Technical

1 Secretariat, as well as, if present, the representatives of
2 agencies or departments, shall present appropriate creden-
3 tials before the inspection is commenced.

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

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

24 (2) To the extent possible consistent with the obliga-
25 tions of the United States pursuant to the Chemical

1 Weapons Convention, no inspection under this title shall
2 extend to—
3 (A) financial data;
4 (B) sales and marketing data (other than ship-
5 ment data);
6 (C) pricing data;
7 (D) personnel data;
8 (E) research data;
9 (F) patent data;
10 (G) data maintained for compliance with envi-
11 ronmental or occupational health and safety regula-
12 tions; or
13 (H) personnel and vehicles entering and person-
14 nel and personal passenger vehicles exiting the facil-
15 ity.

16 (f) FACILITY AGREEMENTS.—(1) Inspections of
17 plants, plant sites, or other facilities or locations for which
18 the United States has a facility agreement with the Orga-
19 nization for the Prohibition of Chemical Weapons shall be
20 conducted in accordance with the facility agreement.

21 (2) Facility agreements shall be concluded for plants,
22 plant sites, or other facilities or locations that are subject
23 to inspection pursuant to paragraph 4 of Article VI of the
24 Chemical Weapons Convention unless the owner and the
25 operator, occupant or agent in charge of the facility and

1 the Technical Secretariat agree that such an agreement
2 is not necessary. Facility agreements should be concluded
3 for plants, plant sites, or other facilities or locations that
4 are subject to inspection pursuant to paragraphs 5 or 6
5 of Article VI of the Chemical Weapons Convention if so
6 requested by the owner and the operator, occupant or
7 agent in charge of the facility.

8 (3) The owner and the operator, occupant or agent
9 in charge of a facility shall be notified prior to the develop-
10 ment of the agreement relating to that facility and, if they
11 so request, may participate in the preparations for the ne-
12 gotiation of such an agreement. To the extent practicable
13 consistent with the Chemical Weapons Convention, the
14 owner and the operator, occupant or agent in charge of
15 a facility may observe negotiations of the agreement be-
16 tween the United States and the Organization for the Pro-
17 hibition of Chemical Weapons concerning the facility.

18 (g) SAMPLING AND SAFETY.—(1) The Department of
19 Commerce is authorized to require the provision of sam-
20 ples to a member of the inspection team of the Technical
21 Secretariat in accordance with the provisions of the Chem-
22 ical Weapons Convention. The owner or the operator, oc-
23 cupant or agent in charge of the premises to be inspected
24 shall determine whether the sample shall be taken by rep-

1 representatives of the premises or the inspection team or
2 other individuals present.

3 (2) In carrying out their activities, members of the
4 inspection team of the Technical Secretariat and rep-
5 resentatives of agencies or departments accompanying the
6 inspection team shall observe safety regulations estab-
7 lished at the premises to be inspected, including those for
8 protection of controlled environments within a facility and
9 for personal safety.

10 (h) COORDINATION.—To the extent possible consist-
11 ent with the obligations of the United States pursuant to
12 the Chemical Weapons Convention, the representatives of
13 the United States National Authority, the Department of
14 Commerce and any other agency or department, if
15 present, shall assist the owner and the operator, occupant
16 or agent in charge of the premises to be inspected in inter-
17 acting with the members of the inspection team of the
18 Technical Secretariat.

19 **SEC. 402. OTHER INSPECTIONS PURSUANT TO THE CHEMI-**
20 **CAL WEAPONS CONVENTION AND LEAD**
21 **AGENCY.**

22 (a) OTHER INSPECTIONS.—The provisions of this
23 title shall apply, as appropriate, to all other inspections
24 authorized by the Chemical Weapons Convention. For all
25 inspections other than those conducted pursuant to para-

1 graphs 4, 5, or 6 of Article VI of the Convention, the term
2 “Department of Commerce” shall be replaced by the term
3 “Lead Agency” in section 401.

4 (b) LEAD AGENCY.—For the purposes of this title,
5 the term “Lead Agency” means the agency or department
6 designated by the President to exercise the functions and
7 powers set forth in the specific provision, based, *inter alia*,
8 on the particular responsibilities of the agency or depart-
9 ment within the United States Government and the rela-
10 tionship of the agency or department to the premises to
11 be inspected.

12 **SEC. 403. PROHIBITED ACTS.**

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

17 **SEC. 404. PENALTIES.**

18 (a) CIVIL.—

19 (1) (A) Any person who violates a provision of
20 section 203, of this Act shall be liable to the United
21 States for a civil penalty in an amount not to exceed
22 \$50,000 for each such violation.

23 (B) Any person who violates a provision of sec-
24 tion 303 of this Act shall be liable to the United

1 States for a civil penalty in an amount not to exceed
2 \$5,000 for each such violation.

3 (C) Any person who violates a provision of sec-
4 tion 403 of this Act shall be liable to the United
5 States for a civil penalty in an amount not to exceed
6 \$25,000 for each such violation. For purposes of
7 this subsection, each day such a violation of section
8 403 continues shall constitute a separate violation of
9 section 403.

10 (2)(A) A civil penalty for a violation of section 203,
11 303, or 403 of this Act shall be assessed by the Lead
12 Agency by an order made on the record after opportunity
13 (provided in accordance with this subparagraph) for a
14 hearing in accordance with section 554 of title 5, United
15 States Code. Before issuing such an order, the Lead Agen-
16 cy shall give written notice to the person to be assessed
17 a civil penalty under such order of the Lead Agency's pro-
18 posal to issue such order and provide such person an op-
19 portunity to request, within fifteen days of the date the
20 notice is received by such person, such a hearing on the
21 order.

22 (B) In determining the amount of a civil penalty, the
23 Lead Agency shall take into account the nature, cir-
24 cumstances, extent and gravity of the violation or viola-
25 tions and, with respect to the violator, ability to pay, effect

1 on ability to continue to do business, any history of prior
2 such violations, the degree of culpability, the existence of
3 an internal compliance program, and such other matters
4 as justice may require.

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

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

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

23 (A) after the order making the assessment has
24 become a final order and if such person does not file

1 a petition for judicial review of the order in accord-
2 ance with paragraph (3); or

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

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

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

20 **SEC. 405. SPECIFIC ENFORCEMENT.**

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

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

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

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

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

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

16 In any such civil action process may be served on a defen-
17 dant wherever the defendant may reside or may be found,
18 whether the defendant resides or may be found within the
19 United States or elsewhere.

20 **SEC. 406. LEGAL PROCEEDINGS.**

21 (a) WARRANTS.—(1) The Lead Agency shall seek the
22 consent of the owner or the operator, occupant or agent
23 in charge of the premises to be inspected prior to the initi-
24 ation of any inspection. Before or after seeking such con-
25 sent, the Lead Agency may seek a search warrant from

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

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

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

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

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

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

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

22 (b) SUBPOENAS.—In carrying out this Act, the Lead
23 Agency may by subpoena require the attendance and testi-
24 mony of witnesses and the production of reports, papers,
25 documents, answers to questions and other information

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

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

16 **SEC. 407. AUTHORITY.**

17 (a) REGULATIONS.—The Lead Agency may issue
18 such regulations as are necessary to implement and en-
19 force this title and the provisions of the Chemical Weapons
20 Convention, and amend or revise them as necessary.

21 (b) ENFORCEMENT.—The Lead Agency may des-
22 ignate officers or employees of the agency or department
23 to conduct investigations pursuant to this Act. In conduct-
24 ing such investigations, those officers or employees may,
25 to the extent necessary or appropriate for the enforcement

1 of this Act, or for the imposition of any penalty or liability
2 arising under this Act, exercise such authorities as are
3 conferred upon them by other laws of the United States.

4 **SEC. 408. SAVING PROVISION.**

5 The purpose of this Act is to enable the United States
6 to comply with its obligations under the Chemical Weap-
7 ons Convention. Accordingly, in addition to the authorities
8 set forth in this Act, the President is authorized to issue
9 such executive orders, directives or regulations as are nec-
10 essary to fulfill the obligations of the United States under
11 the Chemical Weapons Convention, provided such execu-
12 tive orders, directives or regulations do not exceed the re-
13 quirements specified in the Chemical Weapons Conven-
14 tion.

