

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

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

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

17 “(c) *AFFIRMATIVE DEFENSE.*—*It is an affirmative de-*
18 *fense against a forfeiture under subsection (b) that the prop-*
19 *erty—*

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

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

24 “(d) *DESTRUCTION OR OTHER DISPOSITION.*—*The At-*
25 *torney General shall provide for the destruction or other ap-*

1 *appropriate disposition of any chemical weapon seized and*
2 *forfeited pursuant to this section.*

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

7 “(f) OWNER LIABILITY.—*The owner or possessor of*
8 *any property seized under this section shall be liable to the*
9 *United States for any expenses incurred incident to the sei-*
10 *zure, including any expenses relating to the handling, stor-*
11 *age, transportation, and destruction or other disposition of*
12 *the seized property.*

13 **“§229C. Individual self-defense devices**

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

17 **“§229D. Injunctions**

18 *“The United States may obtain in a civil action an*
19 *injunction against—*

20 *“(1) the conduct prohibited under section 229 or*
21 *229C of this title; or*

22 *“(2) the preparation or solicitation to engage in*
23 *conduct prohibited under section 229 or 229D of this*
24 *title.*

1 **“§229E. Requests for military assistance to enforce**
2 **prohibition in certain emergencies**

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

11 **“§229F. Definitions**

12 *“In this chapter:*

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

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

19 *“(B) A munition or device, specifically de-*
20 *signed to cause death or other harm through*
21 *toxic properties of those toxic chemicals specified*
22 *in subparagraph (A), which would be released as*
23 *a result of the employment of such munition or*
24 *device.*

25 *“(C) Any equipment specifically designed*
26 *for use directly in connection with the employ-*

1 ment of munitions or devices specified in sub-
2 paragraph (B).

3 “(2) *CHEMICAL WEAPONS CONVENTION; CONVEN-*
4 *TION.—The terms ‘Chemical Weapons Convention’*
5 *and ‘Convention’ mean the Convention on the Prohi-*
6 *bition of the Development, Production, Stockpiling*
7 *and Use of Chemical Weapons and on Their Destruc-*
8 *tion, opened for signature on January 13, 1993.*

9 “(3) *KEY COMPONENT OF A BINARY OR MULTI-*
10 *COMPONENT CHEMICAL SYSTEM.—The term ‘key com-*
11 *ponent of a binary or multicomponent chemical sys-*
12 *tem’ means the precursor which plays the most im-*
13 *portant role in determining the toxic properties of the*
14 *final product and reacts rapidly with other chemicals*
15 *in the binary or multicomponent system.*

16 “(4) *NATIONAL OF THE UNITED STATES.—The*
17 *term ‘national of the United States’ has the same*
18 *meaning given such term in section 101(a)(22) of the*
19 *Immigration and Nationality Act (8 U.S.C.*
20 *1101(a)(22)).*

21 “(5) *PERSON.—The term ‘person’, except as oth-*
22 *erwise provided, means any individual, corporation,*
23 *partnership, firm, association, trust, estate, public or*
24 *private institution, any State or any political sub-*
25 *division thereof, or any political entity within a*

1 *State, any foreign government or nation or any agen-*
2 *cy, instrumentality or political subdivision of any*
3 *such government or nation, or other entity located in*
4 *the United States.*

5 *“(6) PRECURSOR.—*

6 *“(A) IN GENERAL.—The term ‘precursor’*
7 *means any chemical reactant which takes part*
8 *at any stage in the production by whatever*
9 *method of a toxic chemical. The term includes*
10 *any key component of a binary or multicompo-*
11 *nent chemical system.*

12 *“(B) LIST OF PRECURSORS.—Precursors*
13 *which have been identified for the application of*
14 *verification measures under Article VI of the*
15 *Convention are listed in schedules contained in*
16 *the Annex on Chemicals of the Chemical Weap-*
17 *ons Convention.*

18 *“(7) PURPOSES NOT PROHIBITED BY THIS CHAP-*
19 *TER.—The term ‘purposes not prohibited by this*
20 *chapter’ means the following:*

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

1 “(B) *PROTECTIVE PURPOSES.*—Any pur-
2 pose directly related to protection against toxic
3 chemicals and to protection against chemical
4 weapons.

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

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

15 “(8) *TOXIC CHEMICAL.*—

16 “(A) *IN GENERAL.*—The term ‘toxic chemi-
17 cal’ means any chemical which through its chemi-
18 cal action on life processes can cause death, tem-
19 porary incapacitation or permanent harm to hu-
20 mans or animals. The term includes all such
21 chemicals, regardless of their origin or of their
22 method of production, and regardless of whether
23 they are produced in facilities, in munitions or
24 elsewhere.

1 “(B) *LIST OF TOXIC CHEMICALS.*—*Toxic*
2 *chemicals which have been identified for the ap-*
3 *plication of verification measures under Article*
4 *VI of the Convention are listed in schedules con-*
5 *tained in the Annex on Chemicals of the Chemi-*
6 *cal Weapons Convention.*

7 “(9) *UNITED STATES.*—*The term ‘United States’*
8 *means the several States of the United States, the Dis-*
9 *trict of Columbia, and the commonwealths, territories,*
10 *and possessions of the United States and includes all*
11 *places under the jurisdiction or control of the United*
12 *States, including—*

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

16 “(B) *any civil aircraft of the United States*
17 *or public aircraft, as such terms are defined in*
18 *paragraphs (17) and (37), respectively, of section*
19 *40102 of title 49, United States Code; and*

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

24 (b) *CONFORMING AMENDMENTS.*—

1 (1) *WEAPONS OF MASS DESTRUCTION.*—Section
2 2332a of title 18, United States Code, is amended—

3 (A) by striking “§2332a. Use of weap-
4 ons of mass destruction” and inserting
5 “§2332a. Use of certain weapons of
6 mass destruction”;

7 (B) in subsection (a), by inserting “(other
8 than a chemical weapon as that term is defined
9 in section 229F)” after “weapon of mass destruc-
10 tion”; and

11 (C) in subsection (b), by inserting “(other
12 than a chemical weapon (as that term is defined
13 in section 229F))” after “weapon of mass de-
14 struction”.

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

 “11B. Chemical Weapons 229”.

19 (c) *REPEALS.*—The following provisions of law are re-
20 pealed:

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

23 (2) In the table of sections for chapter 113B of
24 title 18, United States Code, the item relating to sec-
25 tion 2332c.

1 **Subtitle B—Revocations of Export**
 2 **Privileges**

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

4 *If the President determines, after notice and an oppor-*
 5 *tunity for a hearing in accordance with section 554 of title*
 6 *5, United States Code, that any person within the United*
 7 *States, or any national of the United States located outside*
 8 *the United States, has committed any violation of section*
 9 *229 of title 18, United States Code, the President may issue*
 10 *an order for the suspension or revocation of the authority*
 11 *of the person to export from the United States any goods*
 12 *or technology (as such terms are defined in section 16 of*
 13 *the Export Administration Act of 1979 (50 U.S.C. App.*
 14 *2415)).*

15 **TITLE III—INSPECTIONS**

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

17 (a) *IN GENERAL.*—*In this title, the terms “challenge*
 18 *inspection”, “plant site”, “plant”, “facility agreement”,*
 19 *“inspection team”, and “requesting state party” have the*
 20 *meanings given those terms in Part I of the Annex on Im-*
 21 *plementation and Verification of the Chemical Weapons*
 22 *Convention. The term “routine inspection” means an in-*
 23 *spection, other than an “initial inspection”, undertaken*
 24 *pursuant to Article VI of the Convention.*

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

5 **SEC. 302. FACILITY AGREEMENTS.**

6 **(a) AUTHORIZATION OF INSPECTIONS.—***Inspections by*
7 *the Technical Secretariat of plants, plant sites, or other fa-*
8 *cilities or locations for which the United States has a facil-*
9 *ity agreement with the Organization shall be conducted in*
10 *accordance with the facility agreement. Any such facility*
11 *agreement may not in any way limit the right of the owner*
12 *or operator of the facility to withhold consent to an inspec-*
13 *tion request.*

14 **(b) TYPES OF FACILITY AGREEMENTS.—**

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

23 **(2) SCHEDULE THREE FACILITIES.—***The United*
24 *States National Authority shall ensure that facility*
25 *agreements are concluded for plants, plant sites, or*

1 *other facilities or locations that are subject to inspec-*
2 *tion pursuant to paragraph 5 or 6 of Article VI of*
3 *the Convention if so requested by the owner, operator,*
4 *occupant, or agent in charge of the facility.*

5 (c) *NOTIFICATION REQUIREMENTS.—The United*
6 *States National Authority shall ensure that the owner, oper-*
7 *ator, occupant, or agent in charge of a facility prior to the*
8 *development of the agreement relating to that facility is no-*
9 *tified and, if the person notified so requests, the person may*
10 *participate in the preparations for the negotiation of such*
11 *an agreement. To the maximum extent practicable consist-*
12 *ent with the Convention, the owner and the operator, occu-*
13 *pant or agent in charge of a facility may observe negotia-*
14 *tions of the agreement between the United States and the*
15 *Organization concerning that facility.*

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

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

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

23 (3) *describe the timeframes for inspections; and*

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

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

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

10 (b) *AUTHORITY.*—

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

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

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

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

3 (B) no employee of the Environmental Pro-
4 tection Agency or the Occupational Safety and
5 Health Administration accompanies any inspec-
6 tion team visit conducted pursuant to paragraph
7 (1); and

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

11 (3) *OBJECTIONS TO INDIVIDUALS SERVING AS IN-*
12 *SPECTORS.—*

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

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

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

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

8 (B) NOT SUBJECT TO JUDICIAL REVIEW.—

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

13 **SEC. 304. PROCEDURES FOR INSPECTIONS.**

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

20 (b) NOTICE.—

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

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

13 (3) *CONTENT OF NOTICE.*—

14 (A) *IN GENERAL.*—*The notice under para-*
15 *graph (1) shall include all appropriate informa-*
16 *tion supplied by the Technical Secretariat to the*
17 *United States National Authority concerning—*

18 (i) *the type of inspection;*

19 (ii) *the basis for the selection of the*
20 *plant, plant site, or other facility or loca-*
21 *tion for the type of inspection sought;*

22 (iii) *the time and date that the inspec-*
23 *tion will begin and the period covered by*
24 *the inspection; and*

1 (iv) the names and titles of the
2 inspectors.

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

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

14 (c) CREDENTIALS.—The head of the inspection team
15 of the Technical Secretariat and the accompanying employ-
16 ees of the Federal government shall display appropriate
17 identifying credentials to the owner, operator, occupant, or
18 agent in charge of the premises before the inspection is com-
19 menced.

20 (d) TIMEFRAME FOR INSPECTIONS.—Consistent with
21 the provisions of the Convention, each inspection shall be
22 commenced and completed with reasonable promptness and
23 shall be conducted at reasonable times, within reasonable
24 limits, and in a reasonable manner.

25 (e) SCOPE.—

1 (1) *IN GENERAL.*—*Except as provided in a war-*
2 *rant issued under section 305 or a facility agreement*
3 *entered into under section 302, an inspection con-*
4 *ducted under this title may extend to all things with-*
5 *in the premises inspected (including records, files, pa-*
6 *pers, processes, controls, structures and vehicles) relat-*
7 *ed to whether the requirements of the Convention ap-*
8 *plicable to such premises have been complied with.*

9 (2) *EXCEPTION.*—*Unless required by the Conven-*
10 *tion, no inspection under this title shall extend to—*

11 (A) *financial data;*

12 (B) *sales and marketing data (other than*
13 *shipment data);*

14 (C) *pricing data;*

15 (D) *personnel data;*

16 (E) *research data;*

17 (F) *patent data;*

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

21 (H) *personnel and vehicles entering and*
22 *personnel and personal passenger vehicles exiting*
23 *the facility.*

24 (f) *SAMPLING AND SAFETY.*—

1 *of the premises to be inspected in interacting with the mem-*
2 *bers of the inspection team of the Technical Secretariat.*

3 **SEC. 305. WARRANTS.**

4 (a) *IN GENERAL.*—*The United States Government*
5 *shall seek the consent of the owner or the operator, occupant,*
6 *or agent in charge of the premises to be inspected prior to*
7 *any inspection referred to in section 304(a). If consent is*
8 *obtained, a warrant is not required for the inspection. The*
9 *owner or the operator, occupant, or agent in charge of the*
10 *premises to be inspected may withhold consent for any rea-*
11 *son or no reason. After providing notification pursuant to*
12 *subsection (b), the United States Government may seek a*
13 *search warrant from a United States magistrate judge. Pro-*
14 *ceedings regarding the issuance of a search warrant shall*
15 *be conducted ex parte, unless otherwise requested by the*
16 *United States Government.*

17 (b) *ROUTINE INSPECTIONS.*—

18 (1) *OBTAINING ADMINISTRATIVE SEARCH WAR-*
19 *RANTS.*—*For any routine inspection conducted on the*
20 *territory of the United States pursuant to Article VI*
21 *of the Convention, where consent has been withheld,*
22 *the United States Government shall first obtain an*
23 *administrative search warrant from a judge of the*
24 *United States. The United States Government shall*
25 *provide to the judge of the United States all appro-*

1 *appropriate information supplied by the Technical Sec-*
2 *retariat to the United States National Authority re-*
3 *garding the basis for the selection of the plant site,*
4 *plant, or other facility or location for the type of in-*
5 *spection sought. The United States Government shall*
6 *also provide any other appropriate information avail-*
7 *able to it relating to the reasonableness of the selection*
8 *of the plant, plant site, or other facility or location*
9 *for the inspection.*

10 (2) *CONTENT OF AFFIDAVITS FOR ADMINISTRA-*
11 *TIVE SEARCH WARRANTS.—The judge of the United*
12 *States shall promptly issue a warrant authorizing the*
13 *requested inspection upon an affidavit submitted by*
14 *the United States Government showing that—*

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

17 (B) *the plant site, plant, or other facility or*
18 *location sought to be inspected is required to re-*
19 *port data under title IV of this Act and is sub-*
20 *ject to routine inspection under the Convention;*

21 (C) *the purpose of the inspection is—*

22 (i) *in the case of any facility owned or*
23 *operated by a non-Government entity relat-*
24 *ed to Schedule 1 chemical agents, to verify*
25 *that the facility is not used to produce any*

1 *Schedule 1 chemical agent except for de-*
2 *clared chemicals; quantities of Schedule 1*
3 *chemicals produced, processed, or consumed*
4 *are correctly declared and consistent with*
5 *needs for the declared purpose; and Schedule*
6 *1 chemicals are not diverted or used for*
7 *other purposes;*

8 *(ii) in the case of any facility related*
9 *to Schedule 2 chemical agents, to verify that*
10 *activities are in accordance with obligations*
11 *under the Convention and consistent with*
12 *the information provided in data declara-*
13 *tions; and*

14 *(iii) in the case of any facility related*
15 *to Schedule 3 chemical agents and any*
16 *other chemical production facility, to verify*
17 *that the activities of the facility are consist-*
18 *ent with the information provided in data*
19 *declarations;*

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

22 *(E) in the case of a facility related to*
23 *Schedule 2 or Schedule 3 chemical agents or un-*
24 *scheduled discrete organic chemicals, the plant*
25 *site has not been subject to more than 1 routine*

1 *inspection in the current calendar year, and, in*
2 *the case of facilities related to Schedule 3 chemi-*
3 *cal agents or unscheduled discrete organic chemi-*
4 *cals, the inspection will not cause the number of*
5 *routine inspections in the United States to ex-*
6 *ceed 20 in a calendar year;*

7 *(F) the selection of the site was made in ac-*
8 *cordance with procedures established under the*
9 *Convention and, in particular—*

10 *(i) in the case of any facility owned or*
11 *operated by a non-Government entity relat-*
12 *ed to Schedule 1 chemical agents, the inten-*
13 *sity, duration, timing, and mode of the re-*
14 *quested inspection is based on the risk to the*
15 *object and purpose of the Convention by the*
16 *quantities of chemical produced, the charac-*
17 *teristics of the facility and the nature of ac-*
18 *tivities carried out at the facility, and the*
19 *requested inspection, when considered with*
20 *previous such inspections of the facility un-*
21 *dertaken in the current calendar year, shall*
22 *not exceed the number reasonably required*
23 *based on the risk to the object and purpose*
24 *of the Convention as described above;*

1 (ii) in the case of any facility related
2 to Schedule 2 chemical agents, the Technical
3 Secretariat gave due consideration to the
4 risk to the object and purpose of the Conven-
5 tion posed by the relevant chemical, the
6 characteristics of the plant site and the na-
7 ture of activities carried out there, taking
8 into account the respective facility agree-
9 ment as well as the results of the initial in-
10 spections and subsequent inspections; and

11 (iii) in the case of any facility related
12 to Schedule 3 chemical agents or unsched-
13 uled discrete organic chemicals, the facility
14 was selected randomly by the Technical Sec-
15 retariat using appropriate mechanisms,
16 such as specifically designed computer soft-
17 ware, on the basis of two weighting factors:
18 (I) equitable geographical distribution of in-
19 spections; and (II) the information on the
20 declared sites available to the Technical Sec-
21 retariat, related to the relevant chemical,
22 the characteristics of the plant site, and the
23 nature of activities carried out there;
24 (G) the earliest commencement and latest
25 closing dates and times of the inspection; and

1 (H) the duration of inspection will not ex-
2 ceed time limits specified in the Convention un-
3 less agreed by the owner, operator, or agent in
4 charge of the plant.

5 (3) CONTENT OF WARRANTS.—A warrant issued
6 under paragraph (2) shall specify the same matters
7 required of an affidavit under that paragraph. In ad-
8 dition to the requirements for a warrant issued under
9 this paragraph, each warrant shall contain, if known,
10 the identities of the representatives of the Technical
11 Secretariat conducting the inspection and the observ-
12 ers of the inspection and, if applicable, the identities
13 of the representatives of agencies or departments of
14 the United States accompanying those representatives.

15 (4) CHALLENGE INSPECTIONS.—

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

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

4 (i) *all appropriate information sup-*
5 *plied by the Technical Secretariat to the*
6 *United States National Authority regarding*
7 *the basis for the selection of the plant site,*
8 *plant, or other facility or location for the*
9 *type of inspection sought;*

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

14 (iii) *information concerning—*

15 (I) *the duration and scope of the*
16 *inspection;*

17 (II) *areas to be inspected;*

18 (III) *records and data to be re-*
19 *viewed; and*

20 (IV) *samples to be taken;*

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

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

4 (vi) the identities of the representatives
5 of the Technical Secretariat on the inspec-
6 tion team and the Federal Government em-
7 ployees accompanying the inspection team.

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

10 (i) the type of inspection authorized;

11 (ii) the purpose of the inspection;

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

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

16 (v) the items, documents, data, equip-
17 ment, and computers that may be inspected
18 or seized;

19 (vi) samples that may be taken;

20 (vii) the earliest commencement and
21 latest concluding dates and times of the in-
22 spection; and

23 (viii) the identities of the representa-
24 tives of the Technical Secretariat on the in-
25 spection teams and the Federal Government

1 employees accompanying the inspection
2 team.

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

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

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

8 Consistent with the objective of eliminating chemical
9 weapons, the President may deny a request to inspect any
10 facility in the United States in cases where the President
11 determines that the inspection may pose a threat to the na-
12 tional security interests of the United States.

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

14 **CONTRACTORS.**

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

18 **"SEC. 308. PROTECTION OF CONSTITUTIONAL RIGHTS OF**

19 **CONTRACTORS.**

20 "(a) **PROHIBITION.**—A contractor may not be re-
21 quired, as a condition for entering into a contract with the
22 Federal Government, to waive any right under the Con-
23 stitution for any purpose related to Chemical Weapons Con-
24 vention Implementation Act of 1997 or the Chemical Weap-
25 ons Convention (as defined in section 3 of such Act.)

1 “(b) *CONSTRUCTION.*—Nothing in subsection (a) shall
2 be construed to prohibit an executive agency from including
3 in a contract a clause that requires the contractor to permit
4 inspections for the purpose of ensuring that the contractor
5 is performing the contract in accordance with the provi-
6 sions of the contract.”.

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

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

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

10 (a) *IN GENERAL.*—Not later than one year after the
11 date of enactment of this Act, and annually thereafter, the
12 President shall submit a report in classified and unclassi-
13 fied form to the appropriate congressional committees on
14 inspections made under the Convention during the preced-
15 ing year.

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

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

21 (2) The number of inspections under the Conven-
22 tion conducted on the territory of the United States.

23 (3) The number and identity of inspectors con-
24 ducting any inspection described in paragraph (2)

1 *and the number of inspectors barred from inspection*
2 *by the United States.*

3 (4) *The cost to the United States for each inspec-*
4 *tion described in paragraph (2).*

5 (5) *The total costs borne by United States busi-*
6 *ness firms in the course of inspections described in*
7 *paragraph (2).*

8 (6) *A description of the circumstances surround-*
9 *ing inspections described in paragraph (2), including*
10 *instances of possible industrial espionage and mis-*
11 *conduct of inspectors.*

12 (7) *The identity of parties claiming loss of trade*
13 *secrets, the circumstances surrounding those losses,*
14 *and the efforts taken by the United States Govern-*
15 *ment to redress those losses.*

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

19 (c) *DEFINITION.—The term “appropriate congres-*
20 *sional committees” means the Committee on the Judiciary,*
21 *the Committee on Foreign Relations, and the Select Com-*
22 *mittee on Intelligence of the Senate and the Committee on*
23 *the Judiciary, the Committee on International Relations,*
24 *and the Permanent Select Committee on Intelligence of the*
25 *House of Representatives.*

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

3 (a) **ASSISTANCE IN PREPARATION FOR INSPEC-**
4 **TIONS.**—*At the request of an owner of a facility not owned*
5 *or operated by the United States Government, or contracted*
6 *for use by or for the United States Government, the Sec-*
7 *retary of Defense may assist the facility to prepare the facil-*
8 *ity for possible inspections pursuant to the Convention.*

9 (b) **REIMBURSEMENT REQUIREMENT.**—

10 (1) **IN GENERAL.**—*Except as provided in para-*
11 *graph (2), the owner of a facility provided assistance*
12 *under subsection (a) shall reimburse the Secretary for*
13 *the costs incurred by the Secretary in providing the*
14 *assistance.*

15 (2) **EXCEPTION.**—*In the case of assistance pro-*
16 *vided under subsection (a) to a facility owned by a*
17 *person described in subsection (c), the United States*
18 *National Authority shall reimburse the Secretary for*
19 *the costs incurred by the Secretary in providing the*
20 *assistance.*

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

24 (1) **SMALL BUSINESS CONCERNS.**—*A small busi-*
25 *ness concern as defined in section 3 of the Small*
26 *Business Act.*

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

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

7 (B) *in the calendar year preceding the year*
 8 *in which the assistance is to be provided, pro-*
 9 *duced—*

10 (i) *more than 30 metric tons of Sched-*
 11 *ule 3 or unscheduled discrete organic chemi-*
 12 *cals that contain phosphorous, sulfur, or*
 13 *fluorine; or*

14 (ii) *more than 200 metric tons of un-*
 15 *scheduled discrete organic chemicals.*

16 **TITLE IV—REPORTS**

17 **SEC. 401. REPORTS REQUIRED BY THE UNITED STATES NA-** 18 **TIONAL AUTHORITY.**

19 (a) *REGULATIONS ON RECORDKEEPING.—*

20 (1) *REQUIREMENTS.—The United States Na-*
 21 *tional Authority shall ensure that regulations are pre-*
 22 *scribed that require each person located in the United*
 23 *States who produces, processes, consumes, exports, or*
 24 *imports, or proposes to produce, process, consume, ex-*

1 port, or import, a chemical substance that is subject
2 to the Convention to—

3 (A) maintain and permit access to records
4 related to that production, processing, consump-
5 tion, export, or import of such substance; and

6 (B) submit to the Director of the United
7 States National Authority such reports as the
8 United States National Authority may reason-
9 ably require to provide to the Organization, pur-
10 suant to subparagraph 1(a) of the Annex on
11 Confidentiality of the Convention, the minimum
12 amount of information and data necessary for
13 the timely and efficient conduct by the Organiza-
14 tion of its responsibilities under the Convention.

15 (2) RULEMAKING.—The Director of the United
16 States National Authority shall ensure that regula-
17 tions pursuant to this section are prescribed expedi-
18 tiously.

19 (b) COORDINATION.—

20 (1) AVOIDANCE OF DUPLICATION.—To the extent
21 feasible, the United States Government shall not re-
22 quire the submission of any report that is unneces-
23 sary or duplicative of any report required by or
24 under any other law. The head of each Federal agency
25 shall coordinate the actions of that agency with the

1 heads of the other Federal agencies in order to avoid
2 the imposition of duplicative reporting requirements
3 under this Act or any other law.

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

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

10 (a) *PROHIBITION.*—Notwithstanding any other provi-
11 sion of this Act, no person located in the United States shall
12 be required to report on, or to submit to, any routine in-
13 spection conducted for the purpose of verifying the produc-
14 tion, possession, consumption, exportation, importation, or
15 proposed production, possession, consumption, exportation,
16 or importation of any substance that contains less than—

17 (1) 10 percent concentration of a Schedule 2
18 chemical; or

19 (2) 80 percent concentration of a Schedule 3
20 chemical.

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

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

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

11 (1) *an unscheduled discrete organic chemical;*

12 *and*

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

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

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

1 (b) *EXCEPTIONS.*—

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

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

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

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

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

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

12 (2) *NOTICE OF DISCLOSURE.*—

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

21 (i) *to the person that provided the infor-*
 22 *mation; and*

23 (ii) *in the case of information received from an in-*
 24 *dividual, to the individual, or to the person*
 25 *whom that information was provided to.*

1 *The information may not be disclosed until the expi-*
2 *ration of 30 days after notice under this paragraph*
3 *has been provided.*

4 (B) *PROCEEDINGS ON OBJECTIONS.—In the*
5 *event that the person to which the information per-*
6 *tains objects to the disclosure, the agency shall*
7 *promptly review the grounds for each objection of the*
8 *person and shall afford the objecting person a hearing*
9 *for the purpose of presenting the objections to the dis-*
10 *closure. Not later than 10 days before the scheduled or*
11 *rescheduled date for the disclosure, the United States*
12 *National Authority shall notify such person regarding*
13 *whether such disclosure will occur notwithstanding*
14 *the objections.*

15 (d) *CRIMINAL PENALTY FOR WRONGFUL DISCLO-*
16 *SURE.—Any officer or employee of the United States, and*
17 *any former officer or employee of the United States, who*
18 *by reason of such employment or official position has ob-*
19 *tained possession of, or has access to, information the disclo-*
20 *sure or other provision of which is prohibited by subsection*
21 *(a), and who, knowing that disclosure or provision of such*
22 *information is prohibited by such subsection, willfully dis-*
23 *closes or otherwise provides the information in any manner*
24 *to any person (including any person located outside the ter-*
25 *ritory of the United States) not authorized to receive it,*

1 shall be fined under title 18, United States Code, or impris-
2 oned for not more than five years, or both.

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

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

11 **SEC. 405. RECORDKEEPING VIOLATIONS.**

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

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

17 (2) to submit any report, notice, or other infor-
18 mation to the United States Government in accord-
19 ance with this Act or any regulation prescribed under
20 this Act; or

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

TITLE V—ENFORCEMENT**2 SEC. 501. PENALTIES.****3 (a) CIVIL.—****4 (1) PENALTY AMOUNTS.—**

5 (A) PROHIBITED ACTS RELATING TO IN-
6 SPECTIONS.—*Any person that is determined, in*
7 *accordance with paragraph (2), to have violated*
8 *section 306 of this Act shall be required by order*
9 *to pay a civil penalty in an amount not to ex-*
10 *ceed \$25,000 for each such violation. For pur-*
11 *poses of this paragraph, each day such a viola-*
12 *tion of section 306 continues shall constitute a*
13 *separate violation of that section.*

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

20 (2) HEARING.—

21 (A) IN GENERAL.—*Before imposing an*
22 *order described in paragraph (1) against a per-*
23 *son under this subsection for a violation of sec-*
24 *tion 306 or 405, the Secretary of State shall pro-*
25 *vide the person or entity with notice and, upon*

1 request made within 15 days of the date of the
2 notice, a hearing respecting the violation.

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

11 (C) ISSUANCE OF ORDERS.—If the adminis-
12 trative law judge determines, upon the prepon-
13 derance of the evidence received, that a person or
14 entity named in the complaint has violated sec-
15 tion 306 or 405, the administrative law judge
16 shall state his findings of fact and issue and
17 cause to be served on such person or entity an
18 order described in paragraph (1).

19 (D) FACTORS FOR DETERMINATION OF PEN-
20 ALTY AMOUNTS.—In determining the amount of
21 any civil penalty, the administrative law judge
22 shall take into account the nature, cir-
23 cumstances, extent, and gravity of the violation
24 or violations and, with respect to the violator,
25 the ability to pay, effect on ability to continue

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

5 (3) *ADMINISTRATIVE APPELLATE REVIEW.*—The
6 decision and order of an administrative law judge
7 shall become the final agency decision and order of
8 the head of the United States National Authority un-
9 less, within 30 days, the head of the United States
10 National Authority modifies or vacates the decision
11 and order, with or without conditions, in which case
12 the decision and order of the head of the United
13 States National Authority shall become a final order
14 under this subsection.

15 (4) *OFFSETS.*—The amount of the civil penalty
16 under a final order of the United States National Au-
17 thority may be deducted from any sums owed by the
18 United States to the person.

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

1 **SEC. 602. PROHIBITION.**

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

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

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

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

13 (c) *BIOLOGICAL AGENT DEFINED.*—In this section, the
14 term “biological agent” means any micro-organism (includ-
15 ing bacteria, viruses, fungi, rickettsiae or protozoa), patho-
16 gen, or infectious substance, or any naturally occurring,
17 bio-engineered or synthesized component of any such micro-
18 organism, pathogen, or infectious substance, whatever its
19 origin or method of production, capable of causing—

20 (1) *death, disease, or other biological malfunc-*
21 *tion in a human, an animal, a plant, or another liv-*
22 *ing organism;*

23 (2) *deterioration of food, water, equipment, sup-*
24 *plies, or materials of any kind; or*

25 (3) *deleterious alteration of the environment.*

1 **SEC. 603. BANKRUPTCY ACTIONS.**

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

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

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

7 “(4) under paragraph (1), (2), (3), or (6) of sub-
8 section (a) of this section, of the commencement or
9 continuation of an action or proceeding by a govern-
10 mental unit or any organization exercising authority
11 under the Convention on the Prohibition of the Devel-
12 opment, Production, Stockpiling and Use of Chemical
13 Weapons and on Their Destruction, opened for signa-
14 ture on January 13, 1993, to enforce such govern-
15 mental unit’s or organization’s police and regulatory
16 power, including the enforcement of a judgment other
17 than a money judgment, obtained in an action or
18 proceeding by the governmental unit to enforce such
19 governmental unit’s or organization’s police or regu-
20 latory power;”.

Amend the title to read as follows: “A bill to imple-
ment the obligations of the United States under the
Chemical Weapons Convention.”.