S. 613. A bill to provide that Kennedy may not tax compensation paid to a resident of Tennessee for certain services performed at Fort Campbell, Kentucky; to the Committee on Finance.

By Mr. BREAUX (for himself and Mr. D'AMATO):

S. 614. A bill to amend the Internal Revenue Code of 1986 to provide flexibility in the use of unused volume cap for tax-exempt bonds, to provide a $20,000,000 limit on small issue bonds, and for other purposes; to the Committee on Finance.

By Mr. CHAFEE (for himself, Mrs. FEINSTEIN, Mr. D'AMATO, Mr. LIEBERMAN, Mr. DEWINE, Mr. MOYNIHAN, and Ms. MIKULSKI):

S. 615. A bill to amend the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to provide for continued eligibility for supplemental security income and food stamps with regard to certain classifications of aliens; to the Committee on Finance.

By Mr. ALLARD:

S. 616. A bill to amend titles 23 and 49, United States Code, to improve the designation of metropolitan planning organizations, and for other purposes; to the Committee on Environment and Public Works.

By Mr. JOHNSON (for himself, Mr. CRAIG, Mr. DASCHLE, Mr. BURNS, and Mr. BAUCUS):

S. 617. A bill to amend the Federal Meat Inspection Act to require that imported meat, and meat food products containing imported meat, bear a label identifying the country of origin; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SARBANES:

S. 618. A bill to amend the Federal Water Pollution Control Act to assist in the restoration of the Chesapeake Bay, and for other purposes; to the Committee on Environment and Public Works.

S. 619. A bill to establish a Chesapeake Bay Gateways and Watertrails Network, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GREGG (for himself, Mr. ROTH, Mrs. HUTCHISON, Mr. JEFFORDS, Mr. MURKOWSKI, Mr. FAIRCLOTH, Mr. SANTORUM, Mr. BOND, Ms. COLLINS, Mr. DEWINE, Mr. ROBERTS, Mr. CRAIG, Mr. NICKLES, Mr. MCCONNELL, Mr. KYL, Ms. SNOWE, Mr. MACK, Mr. HAGEL, and Mr. GRASSLEY):

S. 620. A bill to amend the Internal Revenue Code of 1986 to provide greater equity in savings opportunities for families with children, and for other purposes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HELMS:

S. Res. 75. An executive resolution to advise and consent to the ratification of the Chemical Weapons Convention, subject to certain conditions; to the Committee on Foreign Relations.

By Mr. CHAFEE (for himself and Mr. REED):

S. Con. Res. 22. A concurrent resolution to provide that the statue of Roger Williams be returned to the United States Capitol Rotunda at the conclusion of the temporary display of the Portrait Monument of Elizabeth Cady Stanton, Susan B. Anthony and Lucretia Mott; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. SNOWE:

S. 601. A bill to amend title 18, United States Code, to prohibit taking a child hostage in order to evade arrest; to the Committee on the Judiciary.

S. 602. A bill to provide a mandatory minimum sentence for State crimes involving the use of a firearm, impose work requirements for prisoners, and prohibit the provision of luxury items to prisoners; to the Committee on the Judiciary.

CRIME LEGISLATION

Ms. SNOWE. Mr. President, I rise today to introduce two bills intended to protect innocent Americans from the violent will of criminals and fugitives. One need take only a quick review of recent statistics to realize the chilling scope of our nation's crime problems. For instance, the Bureau of Justice Statistics reports that 11 million Americans were the victims of violent crime in 1994 alone. The Bureau of Justice Statistics also reports that approximately 3.5 million Americans were accosted at gunpoint during that same year. These statistics should galvanize us all into taking concrete steps to protect innocent Americans against senseless victimization and turn the tide against criminals once and for all. My bills will help to do just that.

The first bill I introduce today, the Crime Control Act of 1997, will ensure that an individual convicted of committing a violent crime or engaging in drug trafficking activities while in possession of a gun, will go to jail for 10 years, and not a day less. If an offender fires a gun while committing those crimes, that offender will go to jail for 20 years. And should that criminal make the mistake of using a machinegun or a gun with a silencer to commit those crimes, that criminal will be incarcerated for 30 years. Once imprisoned, the Crime Control Act provides hardened criminals with no option for parole or reduced sentences that would allow them another chance to harm innocent citizens.

Simply put, the passage of my Crime Control Act ensures that if you do the crime, you will most certainly do the time. And under my bill, that time won't be easy. A key initiative of the Crime Control Act is the creation of work programs for all able bodied prisoners by the Attorney General. In addition, my bill prohibits the government from providing any entertainment devices, like televisions, radios, or stereos, for use in individual prisoner cells. Federal prisons are not the place for entertainment. They are not intended to be fun. They are the places where individuals repay their debt to society and in the case of violent criminals, it is a very large debt indeed. My Crime Control Act makes sure that violent criminals pay that debt, and I hope my colleagues will join me in supporting this important and effective crime control measure.

The second bill I introduce today applies directly to actions taken by fugitives who resist arrest. Over the past few years, America has witnessed an unfortunate trend involving standoffs between the U.S. Government and parties who reject its authority to enforce the laws of this land—specifically, the incidents in Waco, TX; Ruby Ridge, ID; and Garfield County, MT. Thankfully, the episode involving the Freemen did not escalate to violence or bloodshed. Regrettably, this does not hold true for Waco or Ruby Ridge, where there was a tragic loss of life to civilians and Government agents alike.

Each of these situations jeopardized children's lives—innocent children who had no choice in the role they played in these standoffs. In Waco, 25 young children under the age of 15 died in the blaze that spread throughout the compound. These deaths occurred despite the repeated efforts by Federal agents to encourage Branch Davidians leaders to allow children to leave the compound.

At Ruby Ridge, a 14-year-old died after being caught in gunfire. And during the Freeman standoff, Americans across the Nation held their breath—praying that violence would not erupt. Once again, the lives of children were placed in jeopardy. But thankfully, this time, the children—and adults—emerged unharmed.

As we have seen, tragedy can occur in these very tense situations. Above all else, we need to ensure that children are kept out of these situations in the future. People who arm themselves after failing to comply with warrants or because they seek to avoid arrest must realize that, whether or not it is intended, children are implicated in these standoffs. We cannot allow this to continue any longer. We cannot allow another child's life to be endangered in this manner.

This bill seeks to protect children from harm in these standoff situations. My bill would make it a crime to detain a child when two conditions are met: if a person is trying to evade arrest or avoid complying with a warrant, and that person uses force, or threatens to use force, against a Federal agent. Any person convicted of violating this act would be imprisoned for 10–25 years. If a child is injured, the penalty would be increased to 20–35 years. If a child is killed, the penalty would be life imprisonment.

No law can ever assure that children will be kept free from harm. But this legislation will help assure that children do not become inadvertent, innocent pawns when violent situations arise. It will provide a deterrent to involving a child in any standoff—and severe penalties for those who ignore the law.

Both of the bills I introduce today are aimed at protecting the innocents in our society, and I urge my colleagues to support them. America needs to be a place where innocent citizens do not have to fear for their life

because gun-toting criminals and drug pushers linger on the streets. It needs to be a place where children are not the captives of adults intent upon resisting arrest. Freedom from violence and captivity are basic tenets of our society, which most Americans enjoy and respect. Those among us who don't share our respect for the laws of our society must realize that their actions are criminal, and that in America, criminal actions have repercussions. The passage of these bills will make sure that they do.

By Mr. SPECTER (for himself, Mr. FEINGOLD, and Mr. KOHL):

S. 603. A bill to require the Secretary of Agriculture to collect and disseminate statistically reliable information from milk manufacturing plants on prices received for bulk cheese and to provide the Secretary with the authority to require reporting by such manufacturing plants throughout the United States on prices received for cheese, butter, and nonfat dry milk; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SPECTER:

S. 604. A bill to amend the Agricultural Market Transition Act to require the Secretary of Agriculture to use the price of feed grains and other cash expenses as factors that are used to determine the basic formula price for milk and any other milk price regulated by the Secretary; to the Committee on Agriculture, Nutrition, and Forestry.

AGRICULTURAL LEGISLATION

Mr. SPECTER. Mr. President, I have sought recognition to introduce two pieces of legislation which will respond to a very serious problem on the falling prices of milk which have occurred in Pennsylvania, especially in northeastern Pennsylvania, and across the country.

In introducing this legislation, I am pleased to have a chance to address this issue in the presence of the distinguished Senator from Kansas, who was the chairman of the House Agriculture Committee, and is making quite an addition to the U.S. Senate. It is not inappropriate to note that Senator ROBERTS is from Kansas, as I am a native of Kansas. I was born in Wichita, grew up in Russell, and worked on a farm as a teenager and have some appreciation of the problems of the farmers.

During my tenure in the U.S. Senate, I have been on the Agriculture Subcommittee of the Appropriations Committee. There are more people living in rural Pennsylvania than live in the rural part of any State in the Union. Mr. President, my colleague from Kansas, we have 2½ million people living in rural Pennsylvania. When I last looked, which is a while ago, there were not 2½ million people living in all of Kansas, let alone 2 million people—slightly reduced—when I moved into Pennsylvania. So I approach this issue with some due regard for the expert presiding over the U.S. Senate. Having discussed this issue with him before, I am not sure he agrees with me on all aspects.

I am of the firm opinion that something needs to be done to help the milk farmers. I say that because the price of milk has fallen precipitously from almost $16 per hundredweight down to $11 per hundredweight. It has gone back up a little, but not a great deal.

In responding to that problem, I asked the distinguished Secretary of Agriculture, Dan Glickman, also a Kansan, to accompany me to northeastern Pennsylvania, which he did, on February 10. We met a crowd of approximately 500 to 750 angry farmers who complained about the precipitous drop in the price of milk.

During the course of my analysis of this pricing problem, I found that the price of milk depended upon a number of factors, one of which was the price of cheese. For every 10 cents the price of cheese was raised, the price of milk would be raised by $1 per hundredweight. Then I found that the price of cheese was determined by the National Cheese Exchange in Green Bay, WI. At least according to a survey made by the University of Wisconsin, there was an issue as to whether the price of cheese established by the Green Bay exchange was accurate or not. The authors of the report used a term as tough as manipulation. Whether that is so or not, there was a real question as to whether that price was accurate.

Since this controversy has arisen—perhaps it brought the matter to a head, perhaps not; perhaps it would have happened anyway—it has been announced that the Green Bay exchange will close and will be replaced by a new commodity market on May 1. In any event, in my discussions with Secretary Glickman, I found he had the power to raise the price of milk unilaterally by establishing a different price of cheese.

This subject was aired during the course of his testimony when he came before the appropriations subcommittee. It is a very good time to find a more-agreeable-than-usual Cabinet officer when a Cabinet officer comes in for the appropriations process for his Department's budget.

During the course of that hearing, we could not explore fully the issue of the price of milk and the price of cheese, so our distinguished chairman, Senator COCHRAN, agreed to have a special hearing, which we had a couple of weeks later. At that time, Secretary Glickman said that they had ascertained the identity of 118 people or entities who had cheese transactions that could establish a different price of cheese. He told me they had written to the 118 and were having problems getting responses. I suggested it might be faster to telephone those people.

Secretary Glickman provided my staff and me with the list of people, and we telephoned them and found, after reaching approximately half of them, that the price of cheese was, in fact, 16 cents higher by those individuals than otherwise.

I have been pressing Secretary Glickman since. If he has C-SPAN2, or if he knows someone who has C-SPAN2 or if he talks to someone who has C-SPAN2, my staff has been exhorting his staff daily to act on it, and I am going to send him a fax letter before the day is up to try to get a determination on this issue, because I am on my way to northeastern Pennsylvania again next Monday on a routine trip to the Wilkes-Barre/Scranton area. The Presiding Officer knows what that is like. There will be people who want answers to questions, and I shall answer with due diligence, which I think I have. I hope the Secretary of Agriculture will note this different price of cheese and act accordingly to raise the price of milk.

The legislation which I am introducing today goes to two points. One is to amend the Agriculture Market Transition Act to require the Secretary to use the price of feed grains and other cash expenses in the dairy industry as factors that are used to determine the basic formula for the price of milk and other milk prices regulated by the Secretary.

Simply stated, the Government should use what it costs for production to establish the price of milk, so that if the farmers are caught with rising prices of feed and other rising costs of production, they can have those rising costs reflected in the cost of milk.

The second piece of legislation would require the Secretary of Agriculture to collect and disseminate statistically reliable information from milk manufacturing plants on prices received for bulk cheese and provide the Secretary with the authority to require reporting by such manufacturing plants throughout the United States on the prices for cheese, butter, and nonfat dry milk.

Frankly, I am reluctant to impose this obligation anywhere, but I think it is a fair request to make since the Secretary told the Subcommittee on Agriculture of the Appropriations Committee that the Secretary could not get this information on a voluntary basis. People would not comply. My staff found that corroborated when we telephoned the individuals who had these transactions. Burdensome as it is, I think it is fair to give the Secretary the authority to require this reporting.

Mr. President, I am authorized to say that the distinguished Senator from Wisconsin, Senator FEINGOLD, wishes to cosponsor the piece of legislation requiring the information to be collected.

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

Mr. SPECTER. Mr. President, I ask unanimous consent that the full text of the bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 603

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1.

(1) Not later than 30 days after the enactment of this Act, the Secretary shall collect and disseminate, on a weekly basis, statistically reliable information, obtained from cheese manufacturing areas in the United States on prices received and terms of trade involving bulk cheese, including information on the national average price for bulk cheese sold through spot and forward contract transactions. To the extent practicable, the Secretary shall report the prices and terms of trade for spot and forward contract transaction separately,

(2) The Secretary may require dairy product manufacturing plants in the United States to report to the Secretary on a weekly basis the price they receive for cheese, butter and nonfat dry milk sold through spot sales arrangements, forward contracts or other sales arrangements.

(3) All information provided to, or acquired by, the Secretary under subsections (1) and (2) shall be kept confidential by each officer and employee of the Department of Agriculture except that general weekly statements may be issued that are based on the information and that do not identify the information provided by any person.

S. 604

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BASIC FORMULA PRICE.

Section 143(a) of the Agricultural Market Transition Act (7 U.S.C. 7253(a)) is amended by adding at the end the following:

''(5) BASIC FORMULA PRICE.—In carrying out this subsection and section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, the Secretary shall use as factors that are used to determine the basic formula price for milk and any other milk price regulated by the Secretary—

''(A) the price of feed gains, including the cost of concentrates, byproducts, liquid whey, hay, silage, pasture, and other forage; and

''(B) other cash expenses, including the cost of hauling, artificial insemination, veterinary services and medicine, bedding and litter, marketing, custom services and supplies, fuel, lubrication, electricity, machinery and building repairs, labor, association fees, and assessments.''.

Mr. FEINGOLD. Mr. President, I am pleased today to introduce with the Senator from Pennsylvania, Senator SPECTER, a bill which attempts to address problems in the dairy industry stemming from the lack of adequate price discovery in manufactured dairy product markets.

There has been a great deal of controversy surrounding the National Cheese Exchange [NCE], currently located in Green Bay, WI. The NCE is a small cash market that trades less than 1 percent of all bulk cheese sold nationally, has few traders, short trading periods, and infrequent trading sessions. Those characteristics make this exchange vulnerable to price manipulation. Trading on this exchange would not be a concern if it did not have such tremendous influence over cheese prices nationally. However, because the Cheese Exchange is the only source of cheese price information in the country, it acts as a benchmark or reference price for most off-exchange cheese sales. There simply is no other reliable source of information, no other source of price discovery, available for buyers and sellers in this industry to use as an indicator of market conditions. Because the price for cheese directly and indirectly affects the price of milk, dairy farmers are justifiably concerned about the lack of adequate cheese price information and the influence of the NCE on prices they receive for milk.

Concern about the Cheese Exchange among dairy farmers, while on-going for many years, heightened late last year when cheese prices at the exchange fell dramatically in just a few weeks, causing record declines in milk prices paid to farmers. While milk prices have recovered slightly, they are expected to fall again next month as a result of further price declines at the National Cheese Exchange.

While the National Cheese Exchange is closing its doors at the end of this month, a new but nearly identical cash market for cheese is opening at the Chicago Mercantile Exchange. It is expected that this new market, which appears to share a number of the flaws of the Cheese Exchange, will serve as the reference price for cheese throughout the country. It is unclear whether this market will be capable of providing adequate price discovery for the dairy industry.

That is why the Senator from Pennsylvania, Senator SPECTER, and I are introducing this bill today. This legislation requires the Secretary to collect and disseminate statistically reliable cheese price information collected from cheese manufacturing plants throughout the country—a provision also included in my bill, S. 258, which I introduced in February. A price series of this type will not only provide more price information, it will provide more reliable information based on transactions throughout the country rather than on one thinly traded cash market.

Secretary of Agriculture Dan Glickman has already begun this process. Last August, I asked the Secretary to use his existing administrative authority to initiate a weekly price survey of cheese plants to improve cheese price discovery and lessen the influence of the small but powerful National Cheese Exchange on milk prices. Secretary Glickman graciously agreed to conduct such a survey, which formally began this January on a monthly basis, and became a weekly survey last month. I have been very pleased with the Secretary's response to the concerns about cheese pricing and effect of the National Cheese Exchange on farm-level milk prices and I appreciate his efforts on this matter.

Since that survey is relatively new, it is still unclear whether it will produce prices which reflect market conditions. That depends upon the voluntary participation of those manufacturers reporting prices as well as on the integrity of the data reported.

On March 13, both Secretary Glickman and I testified before the Senate Agriculture Appropriations Committee about the problem of the Cheese Exchange and the lack of reliable price information in the dairy industry and the potential for this new price series to address that problem. At that time, the Secretary indicated that if participation by cheese manufacturers in his new survey was inadequate, the Department may need to consider requiring participation in that survey. However, under current law, the Secretary has only very limited authority to require cheese price reporting by manufacturing plants.

The bill we are introducing today requires the Secretary to continue his cheese price collection and reporting activities and provides him with broader authority to require participation by cheese manufacturers in that survey. I want to make clear that this bill does not mandate that the Secretary require participation in the cheese price survey, but merely provides him with the authority to do so if it is necessary to ensure the new cheese price survey is statistically reliable. Under the current survey procedures, many cheese manufacturers are already participating voluntarily, so this new Secretarial authority may not be necessary.

Mr. President, it is essential that dairy farmers have some assurances that cheese prices, which have such a dramatic impact on the price of milk, are reflective of market conditions and not vulnerable to manipulation. By improving price discovery, the new USDA cheese price survey implemented by Secretary Glickman may help accomplish that goal. If mandatory price reporting is necessary to produce accurate survey data, our bill provides the Secretary with the authority to require participation. However, I am hopeful that participation in the survey will continue to be high so that mandatory reporting never becomes necessary.

I thank the Senator from Pennsylvania for working with me to devise legislation that might effectively improve price discovery in the dairy industry and I welcome his interest in this important issue. I urge my colleagues to support this legislation.

By Mr. CONRAD (for himself and Mr. DORGAN):

S. 605. A bill to require the Secretary of Agriculture to provide emergency assistance to producers for cattle losses that are due to damaging weather or related condition occurring during the 1996–97 winter season, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

AGRICULTURAL EMERGENCY ASSISTANCE LEGISLATION

Mr. CONRAD. Mr. President, my State has been hit by one of the most remarkable series of events ever in the history of our State.

First we had the greatest snowfall in our State's history, over 100 inches of snow. Then the last of eight major blizzards hit. The eighth and final blizzard

was the most powerful winter storm in 50 years. It included almost 2 feet of snow as well as major ice storms, then followed by 70 mile-an-hour winds that were devastating—80,000 people lost their electricity, many of them for a week. The economic devastation is truly remarkable.

Now in the last 12 hours even more disaster is occurring. I am going to read just briefly from the major newspaper in my State, which is in the largest city of our State, Fargo, ND.

The article begins this way:

At 12:15 a.m. today, the flood of 1997 officially became the worst in Fargo-Moorhead's history.

The National Weather Service said a reading taken at that time put the Red River's level at 39.12 feet. That exceeds . . . the river level measured in the flood of 1897—until this morning, the worst ever.

That also means the Red [River] has hit the 500-year flood level.

Speaking on [a local] radio [station] at 1:15 a.m., city Operations Manager Dennis Walaker struck an ominous note.

Walaker said, ''We are at river stages that exceed the 1897 level. No one has ever seen this much water in the Fargo area, ever. All we can do is react.''

I just talked to the mayor, and I just talked to Mr. Walaker. He tells me they have 15 square miles of water headed for Fargo, ND. This on top of the river which is 20 feet above flood stage. There is just a mass scramble to try to deal with this extraordinary flood threat.

The crest is not expected to be much higher than [about 39.5 feet] but officials will reevaluate the situation this morning. . . .

Iced-over farm fields liquefied. Shelterbelt snowdrifts shrank. Drainage ditches whooshed into coulees and merged with rivers.

In rural Cass County . . . winter turned into water.

By noon, sheets of melted snow rolled toward the Red River. Water that couldn't fit into engorged rivers, particularly the Wild Rice River, took off over land. The overland flows crossed I–29—

The major north-south Federal highway—

near the Horace exit and threatened homes in southwest Fargo.

At midmorning, [the mayor] warned residents of approaching overland flooding. He suggested people leave work and check their property if they live in—

Certain residential areas.

By midafternoon, some students were leaving [schools] because of the flood threat.

The situation was even more urgent next to the Red River. Fargo-Moorhead homeowners who hadn't lost the battle Tuesday asked for more sandbags and sandbaggers. North Dakota State University canceled classes so students could help in the fight.

I will not go further, Mr. President, other than to say this is absolutely an extraordinary time. One of the areas in which we have been hit the hardest is cattle death losses. The number of cattle losses are at least 112,000 head at this point. North Dakota Farm Service Agency reports that nearly 80,000 of them are from the weekend storm of April 4 through 6 alone, a storm that is being called Blizzard Hannah. I fear, Mr. President, that many more calves may die.

This is such an extraordinary set of events. These pictures depict some of the situations and scenes that we are seeing across the State of North Dakota. Here, one cow is nuzzling a calf with a dead cow alongside. What happened in this storm, which was so powerful, is that not only did cattle freeze to death, but many suffocated because the winds were so intense that compacted snow was blown up into their nostrils and they suffocated.

Mr. President, this next picture shows what we are seeing all too often. Here a farmer is coming down the road to inspect the herd. Here is a cow dead in a ditch. All across North Dakota, carcasses are littered after this devastation.

Here is an all-too-often sight. This is a cow frozen in a snow bank. It is not just a snow bank, it is actually ice and snow together. People report that these snow banks are like concrete. There was first this heavy snowfall, then the ice, then these incredible winds. These cattle did not have a chance.

For that reason, today I am introducing legislation that will provide for an indemnification payment. I hope that this legislation will be enacted. I hope that my colleagues will understand the massive economic loss in my State.

Under this legislation, producers who have experienced a 5-percent loss of their cattle herd or calf crop would receive indemnity payments of $200 per head, up to 200 of lost livestock. In some cases, losses will be covered by private insurance. In these instances, producers will be able to receive indemnity payments under my program, but the total payments of private insurance and Government indemnity cannot exceed the expected value of a cow.

I have been working with my colleagues from the Dakotas, Senator DORGAN from North Dakota, and Senator DASCHLE and Senator JOHNSON from South Dakota to implement assistance to livestock producers in North Dakota and South Dakota. We will continue working to provide meaningful, comprehensive relief.

Cattle producers in my State have asked for something simple and something that will help them overcome these overwhelming difficulties. My legislation accomplishes those goals, and I call on my colleagues to offer this assistance to livestock producers.

I understand I have a colleague standing by who would like to have time as well, so I do not want to extend this, other than to send the legislation to the desk and ask it be appropriately referred. I introduce it on behalf of myself and my colleague from North Dakota, Senator DORGAN. I urge my colleagues' close attention to it.

Again, Mr. President, we are faced with what I call a slow-motion disaster, because it is a circumstance in which you do not have the flood come and leave. In this circumstance, the flood has come, and it is staying. In addition to that, we have all of these other severe weather factors to cope with.

I, again, hope that we will move expeditiously with the supplemental disaster legislation so that we can fund the programs necessary to help in the recovery that is so urgently needed, not only in my State but in the States of Minnesota and South Dakota as well.

By Mr. FEINGOLD:

S. 608. A bill to authorize the enforcement by State and local governments of certain Federal Communications Commission regulations regarding use of citizens band radio equipment; to the Committee on Commerce, Science, and Transportation.

CB RADIO FREQUENCY INTERFERENCE LEGISLATION

Mr. FEINGOLD. Mr. President, I rise to introduce legislation designed to provide a practical solution to the all too common problem of interference with residential home electronic equipment caused by unlawful use of citizens band [CB] radios. This problem can be extremely distressing for residents who cannot have a telephone conversation, watch television, or listen to the radio without being interrupted by a neighbor's illegal use of a CB radio. Unfortunately, under the current law, those residents have little recourse. The bill I am introducing today will provide those residents with a practical solution to this problem.

Up until recently, the FCC has enforced its rules outlining what equipment may or may not be used for CB radio transmissions, how long transmissions may be broadcast, what channels may be used, as well as many other technical requirements. FCC also investigated complaints that a CB radio enthusiast's transmissions interfered with a neighbor's use of home electronic and telephone equipment. FCC receives thousands of such complaints annually.

Mr. President, for the past 3 years I have worked with constituents who have been bothered by persistent interference of nearby CB radio transmissions in some cases caused by unlawful use of radio equipment. In each case, the constituents have sought my help in securing an FCC investigation of the complaint. In each case, Mr. President, the FCC indicated that due to a lack of resources, the Commission no longer investigates radio frequency interference complaints. Instead of investigation and enforcement, the FCC is able to provide only self-help information which the consumer may use to limit the interference on their own.

In many cases, residents implement the self-help measures recommended by FCC such as installing filtering devices to prevent the unwanted interference, working with their telephone company, or attempting to work with the neighbor they believe is causing

the interference. In many cases these self-help measures are effective.

However, in some cases filters and other technical solutions fail to solve the problem because the interference is caused by unlawful use of CB radio equipment such as unauthorized linear amplifiers.

Municipal residents, after being denied investigative or enforcement assistance from the FCC, frequently contact their city or town government and ask them to police the interference. However, the Communications Act of 1934 provides exclusive authority to the Federal Government for the regulation of radio, preempting municipal ordinances or State laws to regulate radio frequency interference caused by unlawful use of CB radio equipment. This has created an interesting dilemma for municipal governments. They can neither pass their own ordinances to control CB radio interference, nor can they rely on the agency with exclusive jurisdiction over interference to enforce the very Federal law which preempts them.

Let me give an example of the kind of frustrations people have experienced in attempting to deal with these problems. Shannon Ladwig, a resident of Beloit, WI has been fighting to end CB interference with her home electronic equipment that has been plaguing her family for over a year. Shannon worked within the existing system, asking for an FCC investigation, installing filtering equipment on her telephone, attempting to work with the neighbor causing the interference, and so on. Nothing has been effective. Shannon's answering machine picks up calls for which there is no audible ring, and at times records ghost messages. Often, she cannot get a dial tone when she or her family members wish to place an outgoing call. During telephone conversations, the content of the nearby CB transmission can frequently be heard and on occasion, her phone conversations are inexplicably cut off. Her TV transmits audio from the CB transmission rather than the television program her family is watching. Shannon never knows if the TV program she taped with her VCR will actually record the intended program or whether it will contain profanity from a nearby CB radio conversation.

Shannon did everything she could to solve the problem and a year later she still feels like a prisoner in her home, unable to escape the broadcasting whims of a CB operator using illegal equipment with impunity. Shannon even went to her city council to demand action. The Beloit City Council responded by passing an ordinance allowing local law enforcement to enforce FCC regulations—an ordinance the council knows is preempted by Federal law. Earlier this year, the Beloit City Council passed a resolution supporting the legislation I am introducing today, which will allow at least part of that ordinance to stand.

The problems experienced by Beloit residents are by no means isolated incidents. I have received very similar complaints from at least 10 other Wisconsin communities in the last several years in which whole neighborhoods are experiencing persistent radio frequency interference. Since I have begun working on this legislation, my staff has also been contacted by a number of other congressional offices who are also looking for a solution to the problem of radio frequency interference in their States or districts caused by unlawful CB use. The city of Grand Rapids, MI, in particular, has contacted me about this legislation because they face a persistent interference problem very similar to that in Beloit. In all, FCC receives more than 30,000 radio frequency interference complaints annually—most of which are caused by CB radios. Unfortunately, FCC no longer has the staff, resources, or the field capability to investigate these complaints and localities are blocked from exercising any jurisdiction to provide relief to their residents.

The legislation I am introducing today attempts to resolve this dilemma by allowing States and localities to enforce existing FCC regulations regarding authorized CB equipment and frequencies while maintaining exclusive Federal jurisdiction over the regulation of radio services. It is a commonsense solution to a very frustrating and real problem which cannot be addressed under existing law. Residents should not be held hostage to a Federal law which purports to protect them but which cannot be enforced.

This legislation is by no means a panacea for the problem of radio frequency interference. My bill is intended only to help localities solve the most egregious and persistent problems of interference—those caused by unauthorized use of CB radio equipment and frequencies. In cases where interference is caused by the legal and licensed operation of any radio service, residents will need to resolve the interference using FCC self-help measures that I mentioned earlier.

In many cases, interference can result from inadequate home electronic equipment immunity from radio frequency interference. Those problems can only be resolved by installing filtering equipment and by improving the manufacturing standards of home telecommunications equipment. The electronic equipment manufacturing industry, represented by the Telecommunications Industry Association and the Electronics Industry Association, working with the Federal Communications Commission, has adopted voluntary standards to improve the immunity of telephones from interference. Those standards were adopted by the American National Standards Institute last year. Manufacturers of electronic equipment should be encouraged to adopt these new ANSI standards. Consumers have a right to expect that the telephones they purchase will operate as expected without excessive levels of interference from legal radio transmissions. Of course, Mr. President, these standards assume legal operation of radio equipment and cannot protect residents from interference from illegal operation of CB equipment.

This bill also does not address interference caused by other radio services, such as commercial stations or amateur stations. Mr. President, last year, I introduced S. 2025, a bill with intent similar to that of the bill I am introducing today. The American Radio Relay League [ARRL], an organization representing amateur radio operators, frequently referred to as ''ham'' operators, raised a number of concerns about that legislation. ARRL was concerned that while the bill was intended to cover only illegal use of CB equipment, FCC-licensed amateur radio operators might inadvertently be targeted and prosecuted by local law enforcement. ARRL also expressed concern that local law enforcement might not have the technical abilities to distinguish between ham stations and CB stations and might not be able to determine what CB equipment was FCC-authorized and what equipment is illegal.

Over the past several months, I have worked with the ARRL representatives and amateur operators from Wisconsin to address these concerns. As a result of those discussions, the bill I am introducing today incorporates a number of provisions suggested by the league. First, my legislation makes clear that the limited enforcement authority provided to localities in no way diminishes or affects FCC's exclusive jurisdiction over the regulation of radio. Second, the bill clarifies that possession of an FCC license to operate a radio service for the operation at issue, such as an amateur station, is a complete protection against any local law enforcement action authorized by this bill. Amateur radio enthusiasts are not only individually licensed by FCC, unlike CB operators, but they also self-regulate. The ARRL is very involved in resolving interference concerns both among their own members and between ham operators and residents experiencing problems.

Third, my legislation also provides for an FCC appeal process by any radio operator who is adversely affected by a local law enforcement action under this bill. FCC will make determinations as to whether the locality acted properly within the limited jurisdiction this legislation provides. FCC will have the power to reverse the action of the locality if local law enforcement acted improperly. And fourth, my legislation requires FCC to provide States and localities with technical guidance on how to determine whether a CB operator is acting within the law.

Again, Mr. President, my legislation is narrowly targeted to resolve persistent interference with home electronic equipment caused by illegal CB operation. Under my bill, localities cannot establish their own regulations on CB

use. They may only enforce existing FCC regulations on authorized CB equipment and frequencies. This bill will not resolve all interference problems and it is not intended to do so. Some interference problems need to continue to be addressed by the FCC, the telecommunications manufacturing industry, and radio service operators. This bill merely provides localities with the tools they need to protect their residents while preserving FCC's exclusive regulatory jurisdiction over the regulation of radio services.

I urge my colleagues to support this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 608

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ENFORCEMENT OF REGULATIONS REGARDING CITIZENS BAND RADIO EQUIPMENT.

Section 302 of the Communications Act of 1934 (47 U.S.C. 302) is amended by adding at the end the following:

''(f)(1) Except as provided in paragraph (2), a State or local government may enforce the following regulations of the Commission under this section:

''(A) A regulation that prohibits a use of citizens band radio equipment not authorized by the Commission.

''(B) A regulation that prohibits the unauthorized operation of citizens band radio equipment on a frequency between 24 MHz and 35 MHz.

''(2) Possession of a station license issued by the Commission pursuant to section 301 in any radio service for the operation at issue shall preclude action by a State or local government under this subsection.

''(3) The Commission shall provide technical guidance to State and local governments regarding the detection and determination of violations of the regulations specified in paragraph (1).

''(4)(A) In addition to any other remedy authorized by law, a person affected by the decision of a State or local government enforcing a regulation under paragraph (1) may submit to the Commission an appeal of the decision on the grounds that the State or local government, as the case may be, acted outside the authority provided in this subsection.

''(B) A person shall submit an appeal on a decision of a State or local government to the Commission under this paragraph, if at all, not later than 30 days after the date on which the decision by the State or local government becomes final.

''(C) The Commission shall make a determination on an appeal submitted under subparagraph (B) not later than 180 days after its submittal.

''(D) If the Commission determines under subparagraph (C) that a State or local government has acted outside its authority in enforcing a regulation, the Commission shall reverse the decision enforcing the regulation.

''(5) The enforcement of a regulation by a State or local government under paragraph (1) in a particular case shall not preclude the Commission from enforcing the regulation in that case concurrently.

''(6) Nothing in this subsection shall be construed to diminish or otherwise affect the jurisdiction of the Commission under this section over devices capable of interfering with radio communications.''.

By Mr. KENNEDY (for himself, Ms. MIKULSKI, Mr. DASCHLE, Mr. DODD, Mr. HARKIN, Mr. WELLSTONE, Mrs. MURRAY, Mrs. BOXER, Ms. MOSELEY-BRAUN, Mrs. FEINSTEIN, Mr. FORD, and Mr. INOUYE):

S. 609. A bill to amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for reconstructive breast surgery if they provide coverage for mastectomies; to the Committee on Labor and Human Resources.

RECONSTRUCTIVE BREAST SURGERY BENEFITS ACT OF 1997

Mr. KENNEDY. Mr. President, today I am introducing the Reconstructive Breast Surgery Benefits Act of 1997. An identical bill is being introduced by Representative ANNA ESHOO in the House of Representatives. Our purpose in introducing this legislation is to improve the lives of thousands of women who suffer from breast cancer.

Breast cancer is the most common form of cancer in American women, affecting one woman out of every nine. Nearly three million American women are living with the disease, and 46,000 die from it each year. Over 180,000 more women will be diagnosed with breast cancer this year, and nearly half of the women will suffer the loss of one or both breasts in order to survive.

Reconstructive surgery or use of a prothesis can help women cope with the consequences of this deadly illness. Every woman deserves the opportunity to have these important options available if breast cancer strikes. It is also a distressing fact that some women avoid early detection procedures, for fear that it may result in the loss of a breast if cancer is detected. For these women, breast reconstruction surgery should be available as a part of treatment, since its availability can alleviate fears about the disease and encourage life-saving early detection and treatment.

Many insurers classify this important medical procedure as cosmetic, however, and deny coverage for it. In addition, as many as 25 percent of women who undergo breast cancer treatments are affected by lymphedema, a complication resulting from mastectomy. Many insurers also refuse to cover treatment and management of this condition. This legislation will end these types of discrimination.

Currently, 12 States have laws that require coverage for breast reconstruction following mastectomy. Nine States require coverage for prosthesis. This legislation will extend these protections to all women.

This bill will amend the Public Health Service Act and the Employee Retirement Income Security Act in order to accomplish the following important actions:

It requires insurers and companies that provide coverage for mastectomy to provide coverage for reconstructive breast surgery, prosthesis and other treatments which may be necessary as a result of surgical complications, including lymphedema;

It prohibits monetary payments or rebates that encourage a woman to accept less than the minimum medical protection available; and

Finally, it prohibits insurers using penalties or incentives to encourage providers to furnish levels of care inconsistent with this legislation.

This bill has been endorsed by major national organizations involved in the diagnosis and treatment of breast cancer, including the American Cancer Society, the National Breast Cancer Coalition, the National Women's Health Network, and the national medical and nursing groups concerned with this disease.

Our goal is to end the cruel and arbitrary practice that unfairly discriminates against breast cancer patients and their needs. I look forward to early action by Congress, and I hope that it will receive the overwhelming bipartisan support it deserves.

By Mr. LUGAR (for himself and Mr. BIDEN):

S. 610. 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; to the Committee on the Judiciary.

THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1997

Mr. LUGAR. Mr. President, I introduce, by request, on behalf of Senator BIDEN and myself, the Chemical Weapons Convention Implementation Act.

The Chemical Weapons Convention was signed by the United States on January 13, 1993, and was submitted by President Clinton to the United States Senate on November 23, 1993, for its advice and consent to ratification.

The Chemical Weapons Convention contains a number of provisions that require implementing legislation to give them effect within the United States. These include: international inspections of U.S. facilities; declarations by U.S. chemical and related industry; and establishment of a ''National Authority'' to serve as the liaison between the United States and the international organization established by the Chemical Weapons Convention and States Parties to the Convention.

Mr. President, I ask unanimous consent that this Implementation Act that we are introducing at the request of the administration be printed in the RECORD together with the transmitted letter to the President of the Senate from ACDA Director John D. Holum.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 610

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

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

SEC. 3. CONGRESSIONAL FINDINGS.

The Congress makes the following findings:

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

(2) The Chemical Weapons Convention is the best means of ensuring the nonproliferation of chemical weapons and their eventual destruction and forswearing by all nations.

(3) The verification procedures contained in the Chemical Weapons Convention and the faithful adherence of nations to them, including the United States, are crucial to the success of the Convention.

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

SEC. 4. CONGRESSIONAL DECLARATIONS.

The Congress makes the following declarations:

(1) It shall be the policy of the United States to cooperate with other States Parties to the Chemical Weapons Convention and to afford the appropriate form of legal assistance to facilitate the implementation of the prohibitions contained in title II of this Act.

(2) It shall be the policy of the United States, during the implementation of its obligations under the Chemical Weapons Convention, to assign the highest priority to ensuring the safety of people and to protecting the environment, and to cooperate as appropriate with other States Parties to the Convention in this regard.

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

SEC. 5. DEFINITIONS.

(a) IN GENERAL.—Except as otherwise provided in this Act, the definitions of the terms used in this Act shall be those contained in the Chemical Weapons Convention. Nothing in paragraphs 2 or 3 of Article II of the Chemical Weapons Convention shall be construed to limit verification activities pursuant to Parts X or XI of the Annex on Implementation and Verification of the Convention.

(b) OTHER DEFINITIONS.—

(1) The term ''Chemical Weapons Convention'' means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993.

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

(3) The term ''United States,'' when used in a geographical sense, includes all places under the jurisdiction or control of the United States, including (A) any of the places within the provisions of section 101(41) of the Federal Aviation Act of 1958, as amended (49 U.S.C. Sec. 40102(41)), (B) any public aircraft or civil aircraft of the United States, as such terms are defined in sections 101(36) and (18) of the Federal Aviation Act of 1958, as amended (49 U.S.C. Secs. 40102(37) and 40102(17)), and (C) any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (46 U.S.C. App. Sec. 1903(b)).

(4) The term ''person,'' except as used in section 201 of this Act and as set forth below, means (A) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision or any such government or nation, or other entity located in the United States; and (B) any legal successor, representative, agent or agency of the foregoing located in the United States. The phrase ''located in the United States'' in the term ''person'' shall not apply to the term ''person'' as used in the phrases ''person located outside the territory'' in sections 203(b) and 302(d) of this Act and ''person located in the territory'' in section 203(b) of this Act.

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

SEC. 6. SEVERABILITY.

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.

TITLE I—NATIONAL AUTHORITY

SEC. 101. ESTABLISHMENT.

Pursuant to paragraph 4 of Article VII of the Chemical Weapons Convention, the President or the designee of the President shall establish the ''United States National Authority'' to, inter alia, serve as the national focal point for effective liaison with the Organization for the Prohibition of Chemical Weapons and other States Parties to the Convention.

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

SEC. 201. CRIMINAL PROVISIONS.

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

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

(2) inserting after chapter 11 relating to bribery, graft and conflicts of interest the following new chapter:

''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.

''SEC. 227. PENALTIES AND PROHIBITIONS WITH RESPECT TO CHEMICAL WEAPONS.

''(a) IN GENERAL.—Except as provided in subsection (b), whoever knowingly develops, produces, otherwise acquires, stockpiles, retains, directly or indirectly transfers, uses, owns or possesses any chemical weapon, or knowingly assists, encourages or induces, in any way, any person to do so, or attempts or conspires to do so, shall be fined under this title or imprisoned for life or any term of years, or both.

''(b) EXCLUSION.—Subsection (a) shall not apply to the retention, ownership or possession of a chemical weapon, that is permitted by the Chemical Weapons Convention pending the weapon's destruction, by any agency or department of the United States. This exclusion shall apply to any person, including members of the Armed Forces of the United States, who is authorized by any agency or department of the United States to retain, own or possess a chemical weapon, unless that person knows or should have known that such retention, ownership or possession is not permitted by the Chemical Weapons Convention.

''(c) JURISDICTION.—There is jurisdiction by the United States over the prohibited activity in subsection (a) if (1) the prohibited activity takes place in the United States or (2) the prohibited activity takes place outside of the United States and is committed by a national of the United States.

''(d) ADDITIONAL PENALTY.—The court shall order that any person convicted of any offense under this section pay to the United States any expenses incurred incident to the seizure, storage, handling, transportation and destruction or other disposition of property seized for the violation of this section.

''SEC. 227A. SEIZURE, FORFEITURE, AND DESTRUCTION.

''(a) SEIZURE.—

''(1) Except as provided in paragraph (2), the Attorney General may request the issuance, in the same manner as provided for a search warrant, of a warrant authorizing the seizure of any chemical weapon defined in section 227D(2)(A) of this title that is of a type or quantity that under the circumstances is inconsistent with the purposes not prohibited under the Chemical Weapons Convention.

''(2) In the exigent circumstances, seizure and destruction of any such chemical weapon described in paragraph (1) may be made by the Attorney General upon probable cause without the necessity for a warrant.

''(b) PROCEDURE FOR FORFEITURE AND DESTRUCTION.—Except as provided in paragraph (2) of subsection (a), property seized pursuant to subsection (a) shall be forfeited to the United States after notice to potential claimants and an opportunity for a hearing.

At such a hearing, the Government shall bear the burden of persuasion by a preponderance of the evidence. Except as inconsistent herewith, the provisions of chapter 46 of this title related to civil forfeitures shall extend to a seizure or forfeiture under this section. The Attorney General shall provide for the destruction or other appropriate disposition of any chemical weapon seized and forfeited pursuant to this section.

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

''(1) such alleged chemical weapon is for a purpose not prohibited under the Chemical Weapons Convention; and

''(2) such alleged chemical weapon is of a type and quantity that under the circumstances is consistent with that purpose.

''(d) OTHER SEIZURE, FORFEITURE, AND DESTRUCTION.—

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

''(2) In exigent circumstances, seizure and destruction of any such chemical weapon described in paragraph (1) may be made by the Attorney General upon probable cause without the necessity for a warrant.

''(3) Property seized pursuant to this subsection shall be summarily forfeited to the United States and destroyed.

''(e) ASSISTANCE.—The Attorney General may request assistance from any agency or department in the handling, storage, transportation or destruction of property seized under this section.

''(f) OWNER LIABILITY.—The owner or possessor of any property seized under this section shall be liable to the United States for any expenses incurred incident to the seizure, including any expenses relating to the handling, storage, transportation and destruction or other disposition of the seized property.

''SEC. 227B. INJUNCTIONS.

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

''(1) the conduct prohibited under section 227 of this title;

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

''(3) the development, production, other acquisition, stockpiling, retention, direct or indirect transfer, use, ownership or possession, or the attempted development, production, other acquisition, stockpiling, retention, direct or indirect transfer, use, ownership or possession, of any alleged chemical weapon defined in section 227D(2)(A) of this title that is of a type or quantity that under the circumstances is inconsistent with the purposes not prohibited under the Chemical Weapons Convention, or the assistance to any person to do so.

''(b) AFFIRMATIVE DEFENSE.—It is an affirmative defense against an injunction under subsection (a)(3) that—

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

''(2) such alleged chemical weapon is of a type and quantity that under the circumstances is consistent with that purpose.

''SEC. 227C. OTHER PROHIBITIONS.

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

''(b) EXCLUSION.—Subsection (a) shall not apply to members of the Armed Forces of the United States. Members of the Armed Forces of the United States who use riot control agents as a method of warfare shall be subject to appropriate military penalties.

''(c) JURISDICTION.—There is jurisdiction by the United States over the prohibited activity in subsection (a) if (1) the prohibited activity takes place in the United States or (2) the prohibited activity takes place outside of the United States and is committed by a national of the United States.

''SEC. 227D. DEFINITIONS.

''As used in this chapter, the term—

''(1) 'Chemical Weapons Convention' means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993;

''(2) 'chemical weapon' means the following, together or separately:

''(A) a toxic chemical and its precursors, except where intended for a purpose not prohibited under the Chemical Weapons Convention, as long as the type and quantity is consistent with such a purpose;

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

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

''(3) 'toxic chemical' means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere. (For the purpose of implementing the Chemical Weapons Convention, toxic chemicals which have been identified for the application of verification measures are listed in Schedules contained in the Annex on Chemicals of the Chemical Weapons Convention.);

''(4) 'precursor' means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system. (For the purpose of implementing the Chemical Weapons Convention, precursors which have been identified for the application of verification measures are listed in Schedules contained in the Annex on Chemicals of the Chemical Weapons convention.);

''(5) 'key component of a binary or multicomponent chemical system' means the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system;

''(6) 'purpose not prohibited under the Chemical Weapons Convention' means—

''(A) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

''(B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;

''(C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warefare; or

''(D) law enforcement purposes, including domestic riot control purposes;

''(7) 'national of the United States' has the same meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

''(8) 'United States,' when used in a geographical sense, includes all places under the jurisdiction or control of the United States, including (A) any of the places within the provisions of section 101(41) of the Federal Aviation Act of 1958, as amended (49 U.S.C. Sec. 40102(41)), (B) any public aircraft or civil aircraft of the United States, as such terms are defined in sections 101(36) and (18) of the Federal Aviation Act of 1958, as amended (49 U.S.C. Secs. 40102(37) and 40102(17)), and (C) any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (46 U.S.C. App. Sec. 1903(b));

''(9) 'person' means (A) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity; and (B) any legal successor, representative, agent, or agency of the foregoing; and

''(10) 'riot control agent' means any chemical not listed in a Schedule in the Annex on Chemicals of the Chemical Weapons Convention, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.

Nothing in paragraphs (3) or (4) of this section shall be construed to limit verification activities pursuant to part X or part XI of the Annex on Implementation and Verification of the Chemical Weapons Convention.''

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

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

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

''11A. CHEMICAL WEAPONS ..... 227.''

SEC. 202. EFFECTIVE DATE.

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

SEC. 203. RESTRICTIONS ON SCHEDULED CHEMICALS.

(a) SCHEDULE 1 ACTIVITIES.—It shall be unlawful for any person, or any national of the United States located outside the United States, to produce, acquire, retain, transfer or use a chemical listed on Schedule 1 of the Annex on Chemicals of the Chemical Weapons Convention, unless—

(1) the chemicals are applied to research, medical, pharmaceutical or protective purposes;

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

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

(b) EXTRATERRITORIAL ACTS.—

(1) It shall be unlawful for any person, or any national of the United States located outside the United States, to produce, acquire, retain or use a chemical listed on Schedule 1 of the Annex on Chemicals of the Chemical Weapons Convention outside the territories of the States Parties to the Convention or to transfer such chemicals to any person located outside the territory of the United States, except as provided for in the Convention for transfer to a person located

in the territory of another State Party to the Convention.

(2) Beginning three years after the entry into force of the Chemical Weapons Convention, it shall be unlawful for any person, or any national of the United States located outside the United States, to transfer a chemical listed on Schedule 2 of the Annex on Chemicals of the Convention to any person located outside the territory of a State Party to the Convention or to receive such a chemical from any person located outside the territory of a State Party to the Convention.

(c) JURISDICTION.—There is jurisdiction by the United States over the prohibited activity in subsections (a) and (b) if (1) the prohibited activity takes place in the United States or (2) the prohibited activity takes place outside of the United States and is committed by a national of the United States.

TITLE III—REPORTING

SEC. 301. REPORTING OF INFORMATION.

(a) REPORTS.—The Department of Commerce shall promulgate regulations under which each person who produces, processes, consumes, exports or imports, or proposes to produce, process, consume, export or import, a chemical substance subject to the Chemical Weapons Convention shall maintain and permit access to such records and shall submit to the Department of Commerce such reports as the United States National Authority may reasonably require pursuant to the Chemical Weapons Convention. The Department of Commerce shall promulgate regulations pursuant to this title expeditiously, taking into account the written decisions issued by the Organization for the Prohibition of Chemical Weapons, and may amend or change such regulations as necessary.

(b) COORDINATION.—To the extent feasible, the United States National Authority shall not require any reporting that is unnecessary, or duplicative of reporting required under any other Act. Agencies and departments shall coordinate their actions with other agencies and departments to avoid duplication of reporting by the affected persons under this Act or any other Act.

SEC. 302. CONFIDENTIALITY OF INFORMATION.

(a) FREEDOM OF INFORMATION ACT EXEMPTION FOR CERTAIN CHEMICAL WEAPONS CONVENTION INFORMATION.—Any information reported to, or otherwise obtained by, the United States National Authority, the Department of Commerce, or any other agency or department under this Act or under the Chemical Weapons Convention shall not be required to be publicly disclosed pursuant to section 552 of title 5, United States Code.

(b) PROHIBITED DISCLOSURE AND EXCEPTIONS.—Information exempt from disclosure under subsection (a) shall not be published or disclosed, except that such information—

(1) shall be disclosed or otherwise provided to the Technical Secretariat or other States Parties to the Chemical Weapons Convention in accordance with the Convention, in particular, the provisions of the Annex on the Protection of Confidential Information;

(2) shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon the written request of the chairman or ranking minority member of such committee or subcommittee, except that no such committee or subcommittee, or member thereof, shall disclose such information or material;

(3) shall be disclosed to other agencies or departments for law enforcement purposes with regard to this Act or any other Act, and may be disclosed or otherwise provided when relevant in any proceeding under this Act or any other Act, except that disclosure or provision in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding; and

(4) may be disclosed, including in the form of categories of information, if the United States National Authority determines that such disclosure is in the national interest.

(c) NOTICE OF DISCLOSURE.—If the United States National Authority, pursuant to subsection (b)(4), proposes to publish or disclose or otherwise provide information exempted from disclosure in subsection (a), the United States National Authority shall, where appropriate, notify the person who submitted such information of the intent to release such information. Where notice has been provided, the United States National Authority may not release such information until the expiration of 30 days after notice has been provided.

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

(e) INTERNATIONAL INSPECTORS.—The provisions of this section on disclosure or provision of information shall also apply to employees of the Technical Secretariat.

SEC. 303. PROHIBITED ACTS.

It shall be unlawful for any person to fail or refuse to (a) establish or maintain records, (b) submit reports, notices, or other information to the Department of Commerce or the United States National Authority, or (c) permit access to or copying of records, as required by this Act or a regulation thereunder.

TITLE IV—INSPECTIONS

SEC. 401. INSPECTIONS PURSUANT TO ARTICLE VI OF THE CHEMICAL WEAPONS CONVENTION.

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

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

(2) the National Authority shall designate representatives who may accompany members of an inspection team of the Technical Secretariat during the inspection specified in paragraph (1). The number of duly designated representatives shall be kept to the minimum necessary.

(b) NOTICE.—An inspection pursuant to subjection (a) may be made only upon issuance of a written notice to the owner and to the operator, occupant or agent in charge of the premises to be inspected, except that failure to receive a notice shall not be a bar to the conduct of an inspection. The notice shall be submitted to the owner and to the operator, occupant or agent in charge as soon as possible after the United States National Authority receives it from the Technical Secretariat. The notice shall include all appropriate information supplied by the Technical Secretariat to the United States National Authority regarding the basis for the selection of the plant site, plant, or other facility or location for the type of inspection sought, including, for challenge inspections pursuant to Article IX of the Chemical Weapons Convention, appropriate evidence or reasons provided by the requesting State Party to the Convention with regard to its concerns about compliance with the Chemical Weapons Convention at the facility or location. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection.

(c) CREDENTIALS.—If the owner, operator, occupant or agent in charge of the premises to be inspected is presented, a member of the inspection team of the Technical Secretariat, as well as, if present, the representatives of agencies or departments, shall present appropriate credentials before the inspection is commenced.

(d) TIME FRAME FOR INSPECTIONS.—Consistent with the provisions of the Chemical Weapons Convention, each inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner. The Department of Commerce shall endeavor to ensure that, to the extent possible, each inspection is commenced, conducted and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted for commencing, continuing or concluding during other hours. However, nothing in this subsection shall be interpreted as modifying the time frames established in the Chemical Weapons Convention.

(e) SCOPE.—

(1) Except as provided in paragraph (2) of this subsection and subsection (f), an inspection conducted under this title may extend to all things within the premises inspected (including records, files, papers, processes, controls, structures and vehicles) related to whether the requirements of the Chemical Weapons Convention applicable to such premises have been complied with.

(2) To the extent possible consistent with the obligations of the United States pursuant to the Chemical Weapons Convention, no inspection under this title shall extend to—

(A) financial data;

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

(C) pricing data;

(D) personnel data;

(E) research data;

(F) patent data;

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

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

(f) FACILITY AGREEMENTS.—

(1) Inspection of plants, plant sites, or other facilities or locations for which the United States has a facility agreement with the Organization for the Prohibition of Chemical Weapons shall be conducted in accordance with the facility agreement.

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

(3) The owner and the operator, occupant or agent in charge of a facility shall be notified prior to the development of the agreement relating to that facility and, if they so

request, may participate in the preparations for the negotiation of such an agreement. To the extent practicable consistent with the Chemical Weapons Convention, the owner and the operator, occupant or agent in charge of a facility may observe negotiations of the agreement between the United States and the Organization for the Prohibition of Chemical Weapons concerning that facility.

(g) SAMPLING AND SAFETY.—

(1) The Department of Commerce is authorized to require the provision of samples to a member of the inspection team of the Technical Secretariat in accordance with the provisions of the Chemical Weapons Convention. The owner or the operator, occupant or agent in charge of the premises to be inspected shall determine whether the sample shall be taken by representatives of the premises or the inspection team or other individuals present.

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

(h) COORDINATION.—To the extent possible consistent with the obligations of the United States pursuant to the Chemical Weapons Convention, the representatives of the United States National Authority, the Department of Commerce and any other agency or department, if present, shall assist the owner and the operator, occupant or agent in charge of the premises to be inspected in interacting with the members of the inspection team of the Technical Secretariat.

SEC. 402. OTHER INSPECTIONS PURSUANT TO THE CHEMICAL WEAPONS CONVENTION AND LEAD AGENCY.

(a) OTHER INSPECTIONS.—The provisions of this title shall apply, as appropriate, to all other inspections authorized by the Chemical Weapons Convention. For all inspections other than those conducted pursuant to paragraphs 4, 5 or 6 of Article VI of the Convention, the term ''Department of Commerce'' shall be replaced by the term ''Lead Agency'' in section 401.

(b) LEAD AGENCY.—For the purposes of this title, the term ''Lead Agency'' means the agency or department designated by the President or the designee of the President to exercise the functions and powers set forth in the specific provision, based, inter alia, on the particular responsibilities of the agency or department within the United States Government and the relationship of the agency or department to the premises to be inspected.

SEC. 403. PROHIBITED ACTS.

It shall be unlawful for any person to fail or refuse to permit entry or inspection, or to disrupt, delay or otherwise impede an inspection as required by this Act or the Chemical Weapons Convention.

SEC. 404. PENALTIES.

(a) CIVIL.—

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

(B) Any person who violates a provision of section 303 of this Act shall be liable to the United States for a civil penalty in an amount not to exceed $5,000 for each such violation.

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

(2)(A) A civil penalty for a violation of section 203, 303 or 403 of this Act shall be assessed by the Lead Agency by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Lead Agency shall give written notice to the person to be assessed a civil penalty under such order of the Lead Agency's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(B) In determining the amount of a civil penalty, the Lead Agency shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

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

(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may be filed only within the 30-day period beginning on the date the order making such assessment was issued.

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

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

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

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount and appropriateness of such penalty shall not be subject to review.

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

SEC. 405. SPECIFIC ENFORCEMENT.

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

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

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

(b) CIVIL ACTIONS.—A civil action described in subsection (a) may be brought—

(1) in the case of a civil action described in subsection (a)(1), in the United States district court for the judicial district wherein any act, omission, or transaction constituting a violation of section 203, 303 or 403 of this Act occurred or wherein the defendant is found or transacts business; or

(2) in the case of a civil action described in subsection (a)(2), in the United States district court for the judicial district wherein the defendant is found or transacts business. In any such civil action process may be served on a defendant wherever the defendant may reside or may be found, whether the defendant resides or may be found within the United States or elsewhere.

SEC. 406. LEGAL PROCEEDINGS.

(a) WARRANTS.—

(1) The Lead Agency shall seek the consent of the owner or the operator, occupant or agent in charge of the premises to be inspected prior to the initiation of any inspection. Before or after seeking such consent, the Lead Agency may seek a search warrant from any official authorized to issue search warrants. Proceedings regarding the issuance of a search warrant shall be conducted ex parte, unless otherwise requested by the Lead Agency. The Lead Agency shall provide to the official authorized to issue search warrants all appropriate information supplied by the Technical Secretariat to the United States National Authority regarding the basis for the selection of the plant site, plant, or other facility or location for the type of inspection sought, including, for challenge inspections pursuant to Article IX of the Chemical Weapons Convention, appropriate evidence or reasons provided by the requesting State Party to the Convention with regard to its concerns about compliance with the Chemical Weapons Convention at the facility or location. The Lead Agency shall also provide any other appropriate information available to it relating to the reasonableness of the selection of the plant, plant site, or other facility or location for the inspection.

(2) The official authorized to issue search warrants shall promptly issue a warrant authorizing the requested inspection upon an affidavit submitted by the Lead Agency showing that—

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

(B) the plant site, plant, or other facility or location sought to be inspected is subject to the specific type of inspection requested under the Chemical Weapons Convention;

(C) the procedures established under the Chemical Weapons Convention and this Act for initiating an inspection have been complied with; and

(D) the Lead Agency will ensure that the inspection is conducted in a reasonable manner and will not exceed the scope or duration set forth in or authorized by the Chemical Weapons Convention or this Act.

(3) The warrant shall specify the type of inspection authorized; the purpose of the inspection; the type of plant site, plant, or other facility or location to be inspected; to the extent possible, the items, documents and areas that may be inspected; the earliest commencement and latest concluding dates and times of the inspection; and the identities of the representatives of the Technical Secretariat, if known, and, if applicable, the representatives of agencies or departments.

(b) SUBPOENAS.—In carrying out this Act, the Lead Agency may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions and other information that the Lead Agency deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the

courts of the United States. In the event of contumacy, failure or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

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

SEC. 407. AUTHORITY.

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

(b) ENFORCEMENT.—The Lead Agency may designate officers or employees of the agency or department to conduct investigations pursuant to this Act. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate for the enforcement of this Act, or for the imposition of any penalty or liability arising under this Act, exercise such authorities as are conferred upon them by other laws of the United States.

SEC. 408. SAVING PROVISION.

The purpose of this Act is to enable the United States to comply with its obligations under the Chemical Weapons Convention. Accordingly, in addition to the authorities set forth in this Act, the President is authorized to issue such executive orders, directives or regulations as are necessary to fulfill the obligations of the United States under the Chemical Weapons Convention, provided such executive orders, directives or regulations do not exceed the requirements specified in the Chemical Weapons Convention.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY,
Washington, DC, March 27, 1997.

Hon. RICHARD G. LUGAR,
Committee on Foreign Relations,
U.S. Senate.

DEAR SENATOR LUGAR: On behalf of the Administration, I hereby submit for consideration the ''Chemical Weapons Convention Implementation Act of 1997.'' This proposed legislation is identical to the legislation submitted by the Administration in 1995. The Chemical Weapons Convention (CWC) was signed by the United States in Paris on January 13, 1993, and was submitted by President Clinton to the United States Senate on November 23, 1993, for its advice and consent to ratification. The CWC prohibits, inter alia, the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons.

The President has urged the Senate to provide its advice and consent to ratification as early as possible this year so that the United States will be an original State Party and can continue to lead the fight against these terrible weapons. The CWC will enter into force, with or without the United States, on April 29, 1997. if the United States has not ratified by that time, we will not have a seat on the governing council which will oversee implementation of the Convention and U.S. nationals will not be able to serve as inspectors and in other key positions. Here at home, the U.S. chemical industry could lose hundreds of millions of dollars and many well-paying jobs because of CWC-mandated trade restrictions against non-Parties. As Secretaries Albright and Cohen have recently underscored, ratifying the CWC before it enters into force is in the best interests of the United States.

The CWC contains a number of provisions that require implementing legislation to give them effect within the United States. These include: carrying out verification activities, including inspections of U.S. facilities; collecting and protecting the confidentiality of data declarations by U.S. chemical and related companies; and establishing a ''National Authority'' to serve as the liaison between the United States and the international organization established by the CWC.

In addition, the CWC requires the United States to prohibit all individuals and legal entities, such as corporations, within the United States, as well as all individuals outside the United States, possessing U.S. citizenship, from engaging in activities that are prohibited under the Convention. As part of this obligation, the CWC requires the United States to enact ''penal'' legislation implementing this prohibition (i.e., legislation that penalizes conduct, either by criminal, administrative, military or other sanctions).

Expeditious enactment of implementing legislation is very important to the ability of the United States to fulfill its obligations under the Convention. Enactment will enable the United States to collect the required information from industry, to provide maximum protection for confidential information, and to allow the inspections called for in the Convention. It will also enable the United States to outlaw all activities related to chemical weapons, except CWC permitted activities such as chemical defense programs. This will help fight chemical terrorism by penalizing not just the use, but also the development, production and transfer of chemical weapons. Thus, the enactment of legislation by the United States and other CWC States Parties will make it much easier for law enforcement officials to investigate and punish chemical terrorists early, before chemical weapons are used.

As the President indicated in his transmittal letter of the Convention: ''The CWC is in the best interests of the United States. Its provisions will significantly strengthen United States, allied and international security, and enhance global and regional stability.'' Therefore, I urge the Congress to enact the necessary implementing legislation as soon as possible.

The Office of Management and Budget advises that there is no objection to the submission of this proposal and its enactment is in accord with the President's program.

Sincerely,

JOHN D. HOLUM,
Director.

By Mr. ROTH (for himself and Mr. MOYNIHAN):

S. 612. A bill to amend section 355 of the Internal Revenue Code of 1986 to prevent the avoidance of corporate tax on prearranged sales of corporate stock, and for other purposes; to the Committee on Finance.

CORPORATE ACQUISITION TRANSACTIONS LEGISLATION

Mr. ROTH. Mr. President, I ask unanimous consent that the following joint statement by the ranking member of the Finance Committee, Senator MOYNIHAN, and myself, be inserted in the RECORD at this point, along with the text of a bill we are introducing today.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 612

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. APPLICATION OF SECTION 355 TO DISTRIBUTIONS FOLLOWED BY ACQUISITIONS AND TO INTRAGROUP TRANSACTIONS.

(a) DISTRIBUTIONS FOLLOWED BY ACQUISITIONS.—Section 355 of the Internal Revenue Code of 1986 (relating to distribution of stock and securities of a controlled corporation) is amended by adding at the end the following new subsection:

''(e) RECOGNITION OF GAIN WHERE CERTAIN DISTRIBUTIONS OF STOCK OR SECURITIES ARE FOLLOWED BY ACQUISITION.—

''(1) GENERAL RULE.—If there is a distribution to which this subsection applies, the following rules shall apply:

''(A) ACQUISITION OF CONTROLLED CORPORATION.—If there is an acquisition described in paragraph (2)(A)(ii) with respect to any controlled corporation (or any successor thereof), any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

''(B) ACQUISITION OF DISTRIBUTING CORPORATION.—If there is an acquisition described in paragraph (2)(A)(ii) with respect to the distributing corporation (or any successor thereof), the controlled corporation shall recognize gain in an amount equal to the amount of net gain which would be recognized if all the assets of the distributing corporation (immediately after the distribution) were sold (at such time) for fair market value. Any gain recognized under the preceding sentence shall be treated as long-term capital gain and shall be taken into account for the taxable year which includes the day after the date of such distribution.

''(2) DISTRIBUTIONS TO WHICH SUBSECTION APPLIES.—

''(A) IN GENERAL.—This subsection shall apply to any distribution—

''(i) to which this section (or so much of section 356 as relates to this section) applies, and

''(ii) which is part of a plan (or series of related transactions) pursuant to which a person acquires stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation (or any successor of either).

''(B) PLAN PRESUMED TO EXIST IN CERTAIN CASES.—If a person acquires stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation (or any successor of either) during the 4-year period beginning on the date which is 2 years before the date of the distribution, such acquisition shall be treated as pursuant to a plan described in subparagraph (A)(ii) unless it is established that the distribution and the acquisition are not pursuant to a plan or series of related transactions.

''(C) CERTAIN ACQUISITIONS NOT TAKEN INTO ACCOUNT.—If—

''(i) a person acquires stock in any controlled corporation by reason of holding stock in the distributing corporation, and

''(ii) such person did not acquire the stock in the distributing corporation pursuant to a plan described in subparagraph (A)(ii),

the acquisition described in clause (i) shall not be taken into account for purposes of subparagraph (A)(ii) or (B).

''(D) COORDINATION WITH SUBSECTION (d).—This subsection shall not apply to any distribution to which subsection (d) applies.

''(3) DEFINITION AND SPECIAL RULES.—For purposes of this subsection—

''(A) 50-PERCENT OR GREATER INTEREST.—The term '50-percent or greater interest' has

the meaning given such term by subsection (d)(4).

''(B) DISTRIBUTIONS IN TITLE 11 OR SIMILAR CASE.—Paragraph (1) shall not apply to any distribution made in a title 11 or similar case (as defined in section 368(a)(3)).

''(C) AGGREGATION AND ATTRIBUTION RULES.—

''(i) AGGREGATION.—The rules of paragraph (7) of subsection (d) shall apply.

''(ii) ATTRIBUTION.—Section 318(a)(2) shall apply in determining whether a person holds stock or securities in any corporation. Except as provided in regulations, section 318(a)(2)(C) shall be applied without regard to the phrase '50 percent or more in value' for purposes of the preceding sentence.

''(D) STATUTE OF LIMITATIONS.—If there is an acquisition to which paragraph (1) (A) or (B) applies—

''(i) the statutory period for the assessment of any deficiency attributable to any part of the gain recognized under this subsection by reason of such acquisition shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) that such acquisition occurred, and

''(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

''(A) providing for the application of this subsection where there is more than 1 controlled corporation,

''(B) treating 2 or more distributions as 1 distribution where necessary to prevent the avoidance of such purposes, and

''(C) providing for the application of rules similar to the rules of subsection (d)(6) where appropriate for purposes of paragraph (2)(B).''

(b) SECTION 355 NOT TO APPLY TO CERTAIN INTRAGROUP TRANSACTIONS.—Section 355 of the Internal Revenue Code of 1986, as amended by subsection (a), is amended by adding at the end the following new subsection:

''(f) SECTION NOT TO APPLY TO CERTAIN INTRAGROUP TRANSACTIONS.—Except as provided in regulations, this section shall not apply to the distribution of stock from 1 member of an affiliated group filing a consolidated return to another member of such group, and the Secretary shall provide proper adjustments for the treatment of such distribution, including (if necessary) adjustments to—

''(1) the adjusted basis of any stock which—

''(A) is in a corporation which is a member of such group, and

''(B) is held by another member of such group, and

''(2) the earnings and profits of any member of such group.''

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to distributions after April 16, 1997.

(2) TRANSITION RULE FOR DISTRIBUTIONS FOLLOWED BY ACQUISITIONS.—The amendments made by subsection (a) shall not apply to any distribution after April 16, 1997, if such distribution is—

(A) made pursuant to a written agreement which was (subject to customary conditions) binding on such date and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the distribution.

This paragraph shall not apply to any written agreement, ruling request, or public announcement or filing unless it identifies the acquirer of the distributing corporation or any controlled corporation, whichever is applicable.

JOINT INTRODUCTORY STATEMENT OF SENATORS ROTH AND MOYNIHAN

BACKGROUND

Several recent news reports describe corporate acquisition transactions in which one corporation distributes the stock of one—or more—of its subsidiaries to its shareholders—in a so-called spin-off—and, pursuant to a pre-arranged plan, either the distributed subsidiary or the old parent corporation is acquired by another, unrelated corporation. Often, the corporation that is to be acquired borrows or assumes a large amount of debt incurred prior to the spin-off, while the proceeds of such indebtedness are retained by the other corporation.

For Federal income tax purposes, the initial distribution generally is tax free pursuant to section 355 of the Internal Revenue Code and the subsequent acquisition is tax free pursuant to one of the various reorganization provisions described in section 368. Such positions are consistent with the holding in the case of Commissioner v. Mary Archer W. Morris Trust, 367 F.2d 794 (4th Cir. 1966) and published IRS rulings.

Congress did not intend that section 355 apply to insulate these transactions from tax. Section 355 was intended to permit tax free restructurings of several businesses among existing shareholders, with limitations to prevent the bail-out of corporate earnings and profits to the shareholders as capital gains. The recent transactions that raise concerns have very little to do with individual shareholder tax planning. Rather, they are pre-arranged structures designed to avoid corporate-level gain recognition. In essence, these transactions resemble sales.

Today's introduced legislation is intended to treat transactions occurring after April 16, 1997, the general effective date of the bill, as sales at the corporate level.

A technical explanation of the legislation is provided below. This legislation affects complex transactions and additional or alternative legislative changes also may be appropriate. For example, it may be appropriate to amend or repeal present-law section 355(d), and to treat certain asset acquisitions as stock acquisitions. Written comments on the issues raised by this bill are welcome.

DESCRIPTION OF PROPOSAL

Acquisitions of distributing or controlled corporations pursuant to plan

The proposal would adopt additional restrictions under section 355. Under the proposal, if pursuant to a plan or arrangement in existence on the date of distribution, either the controlled or distributing corporation is acquired, gain would be recognized by the other corporation as of the date of the distribution.

Whether a corporation is acquired would be determined under rules similar to those of present-law section 355(d), except that acquisitions would not be restricted to purchase transactions. Thus, an acquisition would occur if a person—or persons acting in concert—acquired more than 50 percent of the vote or value of the stock of the controlled or distributing corporation pursuant to a plan or arrangement. For example, assume a corporation (''P'') distributes the stock of its wholly-owned subsidiary (''S'') to its shareholders. If, pursuant to a plan or arrangement, either P or S is acquired, the proposal would apply to require gain recognition by the corporation not acquired. It is anticipated that certain asset acquisitions would be treated as stock acquisitions.

Acquisitions occurring within the 4-year period beginning 2 years before the date of distribution would be presumed to have occurred pursuant to a plan or arrangement. Taxpayers could avoid gain recognition by showing that an acquisition occurring during this 4-year period was unrelated to the distribution.

In the case of an acquisition of the controlled corporation, the amount of gain recognized by the distributing corporation would be the amount of gain that the distributing corporation would have recognized had the stock of the controlled corporation been sold for fair market value on the date of distribution. In the case of an acquisition of the distributing corporation, the amount of gain recognized by the controlled corporation would be the amount of net gain that the distributing corporation would have recognized had it sold its assets for fair market value immediately after the distribution. This gain would be treated as long-term capital gain. No adjustment to the basis of the stock or assets of either corporation would be allowed by reason of the recognition of the gain.

The proposal would not apply to a distribution pursuant to a title 11 or similar case.

The Treasury Department would be authorized to prescribe regulations as necessary to carry out the purposes of the proposal, including regulations to provide for the application of the proposal in the case of multiple distributions.

Treatment of distributions within affiliated groups

Except as provided in Treasury regulations, section 355 would not apply to a distribution of stock of one member of an affiliated group of corporations filing a consolidated return to another member. In the case of a distribution of stock within an affiliated group, the Secretary of the Treasury would be instructed to provide appropriate rules for the treatment of the distribution,

including rules governing adjustments to the adjusted basis of the stock and the earnings and profits of the members of the group.

EFFECTIVE DATE

The proposal would be effective for distributions after April 16, 1997, unless the distribution is: First, made pursuant to a written agreement with an acquirer which was (subject to customary conditions) binding on or before such date and at all times thereafter; second, described in a ruling request that identifies the acquirer and is submitted to the IRS on or before such date; third, described in a Securities and Exchange Commission (''SEC'') filing made on or before such date, to the extent such filing was required to be made on account of the distribution and identifies the acquirer; or fourth, described in a public announcement that identifies the acquirer on or before such date. The exceptions for written agreements, IRS ruling requests, SEC filings, and public announcements would not apply to distributions of stock within a consolidated group of corporations.

By Mr. THOMPSON (for himself and Mr. FRIST):

S. 613. A bill to provide that Kentucky may not tax compensation paid to a resident of Tennessee for certain services performed at Fort Campbell, KY; to the Committee on Finance.

FORT CAMPBELL TAX FAIRNESS ACT OF 1997

Mr. THOMPSON. Mr. President, today I am introducing legislation to provide much-needed tax relief to the residents of my State who are employed as civilians on Fort Campbell, KY. These Clarksville area Tennesseans are hard working citizens who, I believe, are being taxed unfairly by the Commonwealth of Kentucky.

Fort Campbell is the home of the Army's famous 101st Airborne Division. This installation straddles the border between Tennessee and Kentucky. In fact, 80 percent of it lies within the State of Tennessee. But because the post office is located on the Kentucky side of the base, it is best known to most people as Fort Campbell, KY.

Civilian residents of both Tennessee and Kentucky are employed by the Federal Government to perform important nonmilitary functions at Fort Campbell. Approximately 2,000 of the Tennesseans who work on post are employed on the Kentucky side in the schools, at the post office, at the post exchange, and on the primary airfield. Unfortunately, these Tennesseans are forced to pay income tax to the Commonwealth of Kentucky of up to 6 percent of their wages, in addition to the sales and excise taxes they pay to their home State of Tennessee.

Because the State of Tennessee does not have an income tax, Kentuckians employed on the Tennessee side of Fort Campbell do not pay income tax to the State of Tennessee. Nor are Kentuckians required to pay Tennessee sales tax on Fort Campbell. All of the facilities on the Tennessee side of Fort Campbell to which Kentuckians have access, the KFC and the Taco Bell, for example, are exempt from State sales tax. It is only when a Kentucky resident leaves post that he or she becomes subject to Tennessee sales tax on purchases made in the State.

Mr. President, I believe it is unfair of Kentucky to impose income tax on Tennesseans, because Tennesseans who work on the Kentucky side of Fort Campbell do not consume any services provided by the Commonwealth. Fort Campbell is a Federal installation. All emergency fire, police, and medical services on post are provided by the Federal Government, not the Commonwealth of Kentucky. All roads on Fort Campbell, both on the Kentucky and the Tennessee side, are maintained by the Federal Government. Water and sewer services are paid for by the Federal Government. If a Tennessean who worked on the Kentucky side of Fort Campbell were laid off, he or she would not be eligible to obtain unemployment benefits from Kentucky, despite the fact that he or she had been paying income tax to the Commonwealth of Kentucky. Finally, Tennesseans have no voice in the Kentucky legislature to affect change to this law. Tennesseans are being unfairly taxed without the benefit of representation—a principle anathema to this country. As I see it, the Commonwealth of Kentucky is receiving free money from residents of Tennessee who work on a Federal installation that happens to border their State.

And although Kentucky likes to argue that the residents of Clarksville are not forced to work on the Kentucky side of Fort Campbell, employees are often moved on the base where a change of buildings means a change of State. A Tennessean forced to move into a Fort Campbell job across the border takes an automatic pay cut of up to 6 percent—just for moving across the street. This situation has been the cause of significant morale problems at Fort Campbell. According to Kentucky, however, those employees can escape paying the income tax by quitting their jobs. I find this alternative an unacceptable one. It is for this reason that I am introducing legislation to prohibit Kentucky from imposing its income tax on these Tennesseans employed either by the Federal Government or by a contractor with the Federal Government at Fort Campbell. I am pleased to be joined by my colleague, Senator FRIST. Congressman ED BRYANT has introduced the similar legislation in the other body.

Let me provide some history on this issue. According to legislation enacted by Congress in 1940, the Commonwealth of Kentucky is permitted to impose its income tax on Federal employees working in the State. This legislation, the Buck Act, repealed a prior law prohibiting States from imposing income tax on individuals who live or work on Federal property. However, Congress has also granted exemptions from State income tax to classes of Federal employees based on their obvious special circumstances: military personnel and Members of Congress and their employees. In addition, Congress enacted legislation in 1990 to exempt Amtrak employees from State taxation in the States in which they do not reside but through which they travel while working. Congress intended these exemptions to provide relief from inequitable situations. The Tennesseans employed at Fort Campbell also merit an exemption.

Mr. President, I firmly believe that a State has the right to raise revenue in whatever manner its residents believe is most appropriate. In the case of Tennessee, residents have chosen sales and excise taxes to fund their cost of government—only one of six States in the United States without an income tax. But it should be noted that Kentucky has entered into reciprocal tax agreements with surrounding income tax States to ensure that Kentuckians are treated fairly. Unfortunately, Kentucky has refused to negotiate any type of reciprocal tax agreement with Tennessee, because it knows it has Tennesseans over a barrel. Prohibiting the Commonwealth of Kentucky from taxing Tennesseans working on the Kentucky side of Fort Campbell is the best way to resolve this inequitable situation.

During this week in April Americans are reminded of their obligations to government. I believe that Americans are willing to pay their fair share of taxes, but citizens should not be expected to pay tax to a government from which they receive nothing and in which they have no voice.

THE FORT CAMPBELL TAX FAIRNESS ACT OF 1997

Mr. FRIST. Mr. President, I rise today to join my friend, colleague, and senior Senator from Tennessee, FRED THOMPSON, to introduce the Fort Campbell Tax Fairness Act of 1997.

We are introducing this legislation today to rectify a tax injustice imposed on Tennessee residents at Fort Campbell in northwest Tennessee. Fort Campbell, a 105,000-acre military installation that serves as America's premier power projection platform, straddles the border of Tennessee and Kentucky. Under current law, about 2,000 Tennesseans who work on the Kentucky side of Fort Campbell are forced to pay income tax to Kentucky—even though they receive no benefits or services from the Kentucky State government.

They cannot send their children to Kentucky public schools. In an emergency, these residents cannot use Kentucky fire, ambulance, and police services. Tennesseans who want to attend a Kentucky public university must pay out-of-State tuition. Tennesseans who want to hunt and fish in Kentucky