amendment No. 1140 intended to be proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1142

At the request of Ms. Collins, the name of the Senator from South Dakota (Mr. Thune) was added as a cosponsor of amendment No. 1142 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1151

At the request of Mr. Durbin, his name was added as a cosponsor of amendment No. 1161 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1162

At the request of Mr. Kerry, the name of the Senator from Maryland (Mr. Sarbanes) was added as a cosponsor of amendment No. 1162 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1181

At the request of Mr. Biden, the name of the Senator from Illinois (Mr. Obama) was added as a cosponsor of amendment No. 1181 intended to be proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1184

At the request of Mr. Schumer, the name of the Senator from New Jersey (Mr. Corzine) was added as a cosponsor of amendment No. 1184 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1189

At the request of Mr. Schumer, the name of the Senator from New Jersey (Mr. Corzine) was added as a cosponsor of amendment No. 1189 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1190

At the request of Mr. Schumer, the name of the Senator from New Jersey (Mr. Corzine) was added as a cosponsor of amendment No. 1190 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1191

At the request of Mr. Schumer, the name of the Senator from New Jersey (Mr. Corzine) was added as a cosponsor of amendment No. 1191 intended to be proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1192

At the request of Mr. Schumer, the name of the Senator from New Jersey (Mr. Corzine) was added as a cosponsor of amendment No. 1192 intended to be proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1193

At the request of Mr. Schumer, the name of the Senator from New Jersey (Mr. Corzine) was added as a cosponsor of amendment No. 1193 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1194

At the request of Mr. Nelson of Florida, the name of the Senator from New Jersey (Mr. Corzine) was added as a cosponsor of amendment No. 1194 intended to be proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1206

At the request of Mr. Sasse, the names of the Senator from Maryland (Ms. Mikulski) and the Senator from New Jersey (Mr. Corzine) were added as cosponsors of amendment No. 1206 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1209

At the request of Mr. Salazar, the names of the Senator from New Jersey (Mr. Corzine) and the Senator from Connecticut (Mr. Lieberman) were added as cosponsors of amendment No. 1209 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1210

At the request of Mr. Salazar, the names of the Senator from New Jersey (Mr. Corzine) and the Senator from Arizona (Mr. Dorgan) were added as cosponsors of amendment No. 1210 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1212

At the request of Ms. Stabenow, the names of the Senator from Michigan (Mr. Levin), the Senator from New Jersey (Mr. Corzine), the Senator from Hawaii (Mr. Akaka), the Senator from Connecticut (Mr. Dodd) and the Senator from New Jersey (Mr. Lautenberg) were added as cosponsors of amendment No. 1212 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1217

At the request of Ms. Stabenow, the names of the Senator from Michigan (Mr. Levin), the Senator from New Jersey (Mr. Corzine), the Senator from Hawaii (Mr. Akaka), the Senator from Connecticut (Mr. Dodd) and the Senator from New Jersey (Mr. Lautenberg) were added as cosponsors of amendment No. 1217 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1218

At the request of Mr. Stabenow, the name of the Senator from New Jersey (Mr. Corzine) was added as a cosponsor of amendment No. 1218 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. Snowe:

S. 1398. A bill to amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules of Federal agencies, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Ms. Snowe, Mr. President, as Chair of the Senate Committee on Small Business and Entrepreneurship, I have fought to ensure that small businesses across the country are treated fairly by Federal Government regulations. Unfortunately, in far too many cases, Federal agencies promulgate regulations without adequately addressing the economic impacts on small businesses.

The Regulatory Flexibility Act, RFA, was enacted in 1980 and requires Federal Government agencies to propose rules that keep the regulatory burden at a minimum on small businesses. The intent of the RFA was to allow agencies to analyze the economic impact of proposed regulations when there is likely to be a significant economic impact on a substantial number of small entities. In 1996, I was pleased to support, along with all of my colleagues, the Small Business Regulatory Enforcement Fairness Act, SBREFA, which amended the RFA. The intent of SBREFA was to further curtail the impact of burdensome or duplicative regulations on small businesses, by clarifying key RFA requirements. In September we will celebrate the 25th Anniversary of the RFA—a law that is largely working as Congress intended.

Unfortunately, there remain a number of loopholes in the RFA that undermine its effectiveness in reducing these regulatory burdens. To close these loopholes, today I introduce the Regulatory Flexibility Reform Act of 2005, RFR. This bill would ensure that Federal agencies conduct a complete analysis of the impacts of Federal regulations, thereby providing small businesses, which represent more than 99 percent of all firms in America and provide up to 75 percent of new jobs each year, with much needed regulatory relief.

Under my legislation agencies must consider the indirect effects of an “economic impact.” Rules with indirect effects are currently exempt from RFA coverage according to well-established case law. This has serious consequences for small businesses. It means a Federal agency can avoid the various analyses required under the RFA by either requiring the States to regulate small entities or regulating an industry so rigorously that it has a negative trickles down impact on other industries.

For example, rules can regulate a handful of large manufacturers in the
same industry. Yet, a foreseen, indirect effect of these rules—not presently considered under RFA analyses—is that small distributors would no longer have the right to sell the product produced by the larger manufacturers. In one case 100,000 small distributors were prevented from distributing their products.

This indirect economic effect had a significant impact on a substantial number of small businesses because their ability to compete in the marketplace would be lost—and will continue to be harmed.

In addition, this large loophole amounts to an “unfunded mandate” because many States do not have a requirement to conduct an RFA-type analysis of regulations. And even when there is such a statute on the books, those States frequently do not have the resources to conduct the analysis themselves. Worse still, for States with no requirement to conduct RFA-type analysis, the impact of the Federal regulation upon small businesses is never properly assessed either at the Federal or State level.

This situation demands reform.

Second, my legislation requires Federal agencies to consider comments provided by the Small Business Administration’s Office of Advocacy. The SBA’s Office of Advocacy does not receive the public attention it deserves. It should. In case after case it has been shown that all impacts, including indirect effects, of proposed and final rules are not always caused by these small businesses and other small entities.

The Office of Advocacy serves two critical roles: No. 1, it represents small business’ interests before the Federal government in regulatory matters, and No. 2, it conducts valuable research to further our understanding of the importance of small businesses and their job creating potential in our economy.

My legislation would also amend the RFA to provide a provision for agencies to specifically respond to comments filed by the Chief Counsel for Advocacy. Codifying this necessary change would ensure that agencies give the proper deference to the Office of Advocacy, and hence, to the comments and concerns of small businesses. This is a straightforward and simple reform that could have major benefits.

Finally, the RFR Act would clarify the circumstances for a periodic review of Federal rules. This is a critical step in ensuring that small businesses faced with burdensome, duplicative and nonsensical Federal regulations.

This legislation is absolutely necessary. I urge my colleagues to support my bill so we can ensure that our Nation’s small businesses and their employees are provided with much needed regulatory relief.

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. 3388

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE. This Act may be cited as the “Regulatory Flexibility Reform Act of 2005”.

(b) TABLE OF CONTENTS. The table of contents of this Act is as follows:

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</tr>
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SEC. 2. FINDINGS.

Congress finds the following:

(1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy.

(2) Regulations designed for application to large-scale entities have been applied uniformly to small businesses and other small entities, even though the problems sought to be solved by such regulations are not always caused by these small businesses and other small entities.

(3) Uniform Federal regulatory and reporting requirements in many instances have imposed on small businesses and other small entities, unnecessarily disproportionate burdensome demands, including legal, accounting, and consulting costs.

(4) Since 1996, Federal agencies have been required to recognize and take account of the differences in the scale and resources of regulated entities, but have failed to do so.

(5) Alternative regulatory approaches that do not conflict with the stated objectives of the statutes the regulations seek to implement may be available and may minimize the significant economic impact of regulations on small businesses and other small entities.

(6) Federal agencies have failed to analyze and uncover less-costly alternative regulatory approaches, despite the fact that the chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), requires them to do so.

(7) Federal agencies continue to interpret chapter 6 of title 5, United States Code, in a manner that permits them to avoid their analytical responsibilities.

(8) The extent of the compliance of Federal agencies with the analytical requirements to assess regulatory impacts on small businesses and other small entities and obtain input from the Chief Counsel for Advocacy has not sufficiently modified the Federal agency regulatory culture.

(9) Significant changes are needed in the methods by which Federal agencies develop and analyze regulations, receive input from affected entities, and develop regulatory alternatives that will lessen the burden or maximize the benefits to small businesses and other small entities.

(10) It is the intention of Congress to amend chapter 6 of title 5, United States Code, to ensure that Federal agencies consider foreseeable indirect effects, of proposed and final rules are considered by agencies during the rulemaking process and that the agencies assess a full range of alternatives that will limit adverse economic consequences or enhance economic benefits.

(11) Federal agencies should be capable of assessing the impact of proposed and final rules without delaying the regulatory process or impinging on the ability of Federal agencies to fulfill their statutory mandates.

(3) CLARIFICATION AND EXPANSION OF RULES COVERED BY THE REGULATORY FLEXIBILITY ACT.

SEC. 3. CLARIFICATION AND EXPANSION OF RULES COVERED BY THE REGULATORY FLEXIBILITY ACT.

Section 601 of title 5, United States Code, is amended by adding at the end the following:

(1) any direct economic effect on small entities of such rule; and

(2) any indirect economic effect on small entities which is reasonably foreseeable and results from such rule (without regard to whether small entities will be directly regulated by the rule).

SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS. Section 603 of title 5, United States Code, is amended—

(1) by striking subsection (b) and inserting the following:

(“b) Each initial regulatory flexibility analysis required under this section shall contain a detailed statement explaining:

(1) the reasons why action by the agency is being considered;

(2) describing the objectives of, and legal basis for, the proposed rule;

(3) estimating the number and type of small entities to which the proposed rule will apply;

(4) describing the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report and record;

(5) describing all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule, or the reasons why such a description could not be provided; and

(6) estimating the additional cumulative economic impact of the proposed rule on small entities beyond that already imposed on the class of small entities by the agency or why such an estimate is not available.”);

(2) by adding at the end the following:

“(4) An agency shall notify the Chief Counsel for Advocacy of the Small Business Administration of any draft rules that may have a significant economic impact on a substantial number of small entities either—

“(i) if the agency submits a draft rule to the Office of Information and Regulatory Affairs at the Office of Management and Budget under Executive Order 12866, if that order requires such submission; or

“(ii) if no submission to the Office of Information and Regulatory Affairs is so required, at a reasonable time prior to publication of the rule by the agency.”

(b) FINIAL REGULATORY FLEXIBILITY ANALYSIS. Section 601 of title 5, United States Code, is amended—

(1) In general. Section 601(a)(1) of title 5, United States Code, is amended—

(A) in paragraph (1), by striking “succinct”;

(B) in paragraph (2), by striking “summary” each place it appears and inserting “statement”;

(C) in paragraph (3), by—

(i) striking “an explanation” and inserting “a detailed explanation”; and

(ii) inserting “detailed” before “description”;

SEC. 5. PERIODIC REVIEW OF RULES.

SEC. 6. CLARIFICATION AND EXPANSION OF RULES COVERED BY THE REGULATORY FLEXIBILITY ACT.
section 601 of title 5, United States Code, is amended by inserting “or certification of the paragraph 602(5) of section 607 and inserting the following:

‘‘§ 607. Quantification requirements. ‘‘In complying with sections 603 and 604, an agency shall provide—

(1) a quantifiable or numerical description of the effects of the proposed or final rule and alternatives to the proposed or final rule; and

(2) a more general descriptive statement and a detailed statement explaining why quantification is not practicable or reliable.’’."

SEC. 5. PERIODIC REVIEW OF RULES. Section 610 of title 5, United States Code, is amended to read as follows:

‘‘§ 610. Periodic review of rules

(a) Not later than 180 days after the enactment of the Regulatory Flexibility Reform Act of 2005, each agency shall publish in the Federal Register and place on its Web site a plan for the periodic review of rules issued by the agency that the head of the agency determines has a significant economic impact on a substantial number of small entities. Such determination shall be made and reported to the agency performed an analysis under section 604. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant adverse economic impacts on a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register and, if such agency determines that it has a significant economic impact on a substantial number of small entities (without regard to whether it had prepared a final regulatory flexibility analysis for the rule), and request comments from the Chief Counsel for Advocacy, and the Regulatory Enforcement Ombudsman concerning the enforcement of the rule.

(b) The plan shall provide for the review of all such agency’s rules existing on the date of the enactment of the Regulatory Flexibility Reform Act of 2005 within 10 years after the date of publication of the plan in the Federal Register and every 10 years thereafter and for review of rules adopted after the date of enactment of the Regulatory Flexibility Reform Act of 2005 within 10 years after the publication of the final rule in the Federal Register and every 10 years thereafter. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the head of the agency shall so certify in a statement published in the Federal Register and may extend the review for not longer than 2 years after publication of notice of extension in the Federal Register. Such certification and notice shall be sent to the Chief Counsel for Advocacy and Congress.

(c) The agency shall annually submit a report regarding the results of its periodic rule reviews under the plan, in the case of agencies other than independent regulatory agencies (as defined in section 3502(5) of title 44, United States Code), to the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget. Such report shall include the identification of any rule with respect to which the agency determined infeasibility under paragraph (5) or (6) of subsection (d) and a detailed explanation of the reasons for such determination.

(d) In reviewing rules under such plan, the agency shall consider—

(1) the continued need for the rule;

(2) the nature of complaints received by the agency from small entities concerning the rule;

(3) comments by the Regulatory Enforcement Ombudsman and the Chief Counsel for Advocacy;

(4) the complexity of the rule;

(5) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, unless the head of the agency determines it to be infeasible, State and local rules;

(6) the contribution of the rule to the cumulative economic impact of all Federal rules on the class of small entities affected by the rule, unless the head of the agency determines that calculations cannot be made and reports that determination in the annual report required under subsection (c); and

(7) the length of time since the rule has been evaluated and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule; and

(e) The agency shall publish in the Federal Register and on its Web site a list of rules to be reviewed pursuant to such plan. Such publication shall include a brief description of the rule, the reason why the agency determined that it has a significant adverse economic impact on a substantial number of small entities (without regard to whether it had prepared a final regulatory flexibility analysis for the rule), and request comments from the Chief Counsel for Advocacy, and the Regulatory Enforcement Ombudsman concerning the enforcement of the rule.

SEC. 6. CERLYNAMENTS. (a) IN GENERAL.—Section 601 of title 5, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking the semicolon at the end

and inserting a period; and

(B) by striking ‘‘(1) the term’’ and inserting the following:

‘‘(1) AGENCY. — The term’’;

and

(2) in paragraph (2)—

(A) by striking the semicolon at the end

and inserting a period; and

(B) by striking ‘‘(2) the term’’ and inserting the following:

‘‘(2) RULE. — The term’’;

and

(3) in paragraph (3)—

(A) by striking the semicolon at the end

and inserting a period; and

(B) by striking ‘‘(3) the term’’ and inserting the following:

‘‘(3) SMALL BUSINESS. — The term’’;

and

(4) in paragraph (4)—

(A) by striking the semicolon at the end

and inserting a period; and

(B) by striking ‘‘(4) the term’’ and inserting the following:

‘‘(4) SMALL ORGANIZATIONS. — The term’’;

and

(5) in paragraph (5)—

(A) by striking the semicolon at the end

and inserting a period; and

(B) by striking ‘‘(5) the term’’ and inserting the following:

‘‘(5) SMALL GOVERNMENTAL JURISDICTION. — The term’’;

and

(6) in paragraph (6)—

(A) by striking ‘‘;’’ and inserting a period;

and

(B) by striking ‘‘(6) the term’’ and inserting the following:

‘‘(6) SMALL ENTITIY. — The term’’;

and

(7) in the matter preceding paragraph (1), by striking ‘‘chapter—’’ and inserting ‘‘chapter, the following definitions apply:’’;

and

(b) HEADINGS.—The heading of section 605 of title 5, United States Code, is amended to read as follows:

‘‘§ 605. Incorporations by reference and certifications.

(c) TABLE OF SECTIONS.—The table of sections for chapter 6 of title 5, United States Code, is amended—

(1) by striking the item relating to section 605 and inserting the following:

‘‘605. Incorporations by reference and certificat—’’

and

(2) by striking the item relating to section 607 and inserting the following:

‘‘607. Quantification requirements.’’.

By Mr. SPECTER (for himself, Mrs. FEINSTEIN, and Mr. KYL):

S. 1389. A bill to reauthorize and improve the USA PATRIOT Act; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I seek recognition to introduce, along with my colleagues Senator FEINSTEIN and Senator KYL, the USA PATRIOT Improvement and Reauthorization Act of
serve the order. The principle behind this authority, which parallels similar surveillance in the criminal law, is that surveillance of a suspected terrorist or spy should be permitted to continue, uninterrupted, when the target changes phones. By definition, a multipoint wiretap order does not identify the specific phone to be tapped, because the order allows the Government to track the person not a single device. This was a change made necessary by the advent of cell phones, which are easily switched and discarded.

After passage of the PATRIOT Act, however, this authority was further modified, so that a FISA surveillance order only had to specify the identity of the target “if known.” If the identity was unknown, the order had to include a “description of the target,” but there was no further requirement about how detailed the description of such “John Doe” targets had to be—raising concerns that the Government could improperly target a broadly described target. Our bill corrects this shortcoming and makes other improvements to the roving authority under FISA.

First, the bill responds to concerns that revealed John Doe wiretaps could be used against someone described generically as a “Middle Eastern male” or “Hispanic female” by requiring such orders to include sufficient information to describe a specific target. The bill makes it clear that, although such orders may “rove” from one phone to another when the target changes devices, the Government cannot “rove” from one investigative target to another, seeking to identify the right person. Through this change, we avoid rewarding terrorists or spies who successfully conceal their identities, but we also protect innocent Americans from unwarranted surveillance.

The bill minimizes the chance that “roving” wiretaps could be used indiscriminately against multiple devices by requiring the Government to notify the court every time it begins surveillance of a new device. This notice must be made within 10 days of the initiation of surveillance, and must include a description of the new device, as well as the “facts and circumstances” indicating that each new phone or similar device is “being used, or is about to be used,” by the target. The bill also amends the techniques being used to minimize the interception and retention of unrelated communications. Finally, the bill adds new reporting requirements and extends the sunset date until December 31, 2009, allowing us to revisit the need for this surveillance tool.

I would next like to turn to the bill’s modification of section 215 of the PATRIOT Act, perhaps the most controversial provision of the act, and one that has never been concisely identified as the “library” provision.

Prior to the PATRIOT Act, FISA authorized the FBI to obtain orders for the production of certain types of business records, including those of hotels, car rental agencies and storage facilities, in limited circumstances. Under the pre-PATRIOT standard, however, the FBI could not even seek the records of someone in the presence of a suspected spy or terrorist, unless it had specific reasons to suspect the associate was himself a spy or terrorist. Strangely, this standard was significantly higher than the requirements of the Judiciary Committee’s requests in criminal cases. Accordingly, section 215 of the PATRIOT Act amended FISA to permit orders for any records or tangible things sought in connection with an authorized investigation to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities.

As enacted, however, section 215 did not require the FBI to establish the factual basis for the requested order. According to critics, section 215 rendered the FISA court little more than a rubber stamp for the Government’s requests. Moreover, section 215 included no explicit right for recipients to confer with legal counsel, despite oft-repeated comparisons to grand jury subpoenas, orders under section 215 included no explicit right to judicial review akin to a motion to quash a subpoena. Indeed, in testimony before the Judiciary Committee this year, Attorney General Gonzales conceded these shortcomings in the law, and expressed a new willingness to consider modifications of section 215.

Our bill addresses these issues, and adds still more protections to ensure the provision is used responsibly. First, the bill eliminates the mere certification of relevance required by current law and enhances the factual showing that must be made by the Government to obtain records. The bill requires the court to agree with the adequacy of the Government’s factual showing, and adds several procedural protections including heightened approval requirements and increased reporting for orders seeking sensitive materials, like library or medical records. Specifically, the bill requires the Government to submit a “statement of facts” showing “reasonable grounds to believe that the records or other things sought are relevant” to an authorized investigation. The bill also incorporates concerns about the FISA judge acting as a “rubber stamp” by requiring the court to find that the facts establish “reasonable grounds to believe” the items sought are relevant. The bill also adds an explicit right to consult counsel; provides for judicial review; requires approval of the FBI Director or Deputy Director for orders concerning library records and other sensitive materials; and adds annual reports to Congress regarding the use of the provision to obtain library records, firearms sales records, health information or tax information. This reporting feature is important because it enables
the Congress to monitor the Justice Department’s activities.

In addition to the foregoing, the bill also requires an annual report on the number of times FISA orders for records and tangible things have been issued during the preceding year. On April 5 hearing, the Attorney General deprecated the fact that, as of March 30, 2005, the FISA court had “granted the department’s request for a 215 order 35 times.” He further noted that section 215 had not been used to obtain library or bookstore records, medical records or gun sale records. According to the Attorney General, section 215 had been used only to obtain driver’s license records, public accommodation records, apartment leasing records, credit card records and subscriber information, such as names and addresses for telephone numbers captured through court-authorized pen register devices. It is our hope that regular public reporting, together with enhanced congressional oversight, will bolster public confidence in the law without compromising sensitive investigations.

Finally, as with the multipoint surveillance authority, we have extended the sunset date for section 215 of the PATRIOT Act, because December 31, 2005, on the Congress must revisit the continuing need for this tool.

Another PATRIOT Act provision that has inspired significant criticism is section 213 of the act, which authorized delayed notification, or so-called sneaky & peek search warrants. Unlike the other sections I have discussed, section 213 is not scheduled to sunset later this year. Nevertheless, in recognition of the concerns raised about this provision, we have made several changes to this authority as well.

Prior to the PATRIOT Act, three federal circuits had approved the practice of delayed notice search warrants. Supreme Court precedent also supported such authority as well.

In Casa v. United States, a 1979 case involving the analogous situation of a covert entry to install a listening device, the Supreme Court described as “frivolous” the argument that “covert entries are unconstitutional for their lack of notice.” Nevertheless, in the 1995 case of Wilson v. Arkansas, which focused on whether officers must “knock and announce” their presence before entering a home, the Court held that, “in some circumstances an officer’s unannounced entry into a home might be unreasonable under the Fourth Amendment.” But the Court did not address sneaky and peek warrants directly, and it left “to the lower courts the task of determining the circumstances under which an unannounced entry is reasonable under the Fourth Amendment.”

The PATRIOT Act sought to create a unified standard for delayed notice searches. Under the PATRIOT Act, notice of a search may be delayed if a court finds reasonable cause to believe immediate notice may have an adverse result, including: (A) endangering the life or physical safety of an individual; (B) flight from prosecution; (C) destruction of, or tampering with, evidence; (D) intimidation of potential witnesses; or (E) otherwise seriously depleting or delaying a trial. Notice must be provided within a “reasonable period” of time, which may be extended for good cause. As noted by critics, however, the period of delay could be indefinite. Moreover, when and if delayed warrants are approved by the Department of Justice, courts have authorized unspecified periods of delay—such as delays until the conclusion of an investigation.

Over the last 3 months, at the Judiciary Committee’s request, the Department of Justice has furnished new information about its use of delayed notice search warrants. This data shows that delayed notice warrants account for less than 0.2 percent of the warrants handled by Federal district courts. Moreover, delayed notice warrants based solely on seriously jeopardizing an investigation account for less than 1 percent. The data also indicates concerns that the “catch-all” provision is being overused. DOJ has also now supplied summaries of 15 cases—out of a total of 22 where the delay was based solely on the “catch-all.” In these cases, the delay was based on the substantial risk of comprising a title III wiretap or frustrating efforts to identify the full scope of a complex criminal enterprise. Accordingly, the draft bill does not eliminate seriously jeopardizing an investigation as a basis for delay. Instead, the bill enhances reporting requirements—including the addition of new public reporting requirements—to ensure that DOJ continues to use this authority responsibly. The bill also requires the court to set a “date certain” for notice to be provided, eliminating concerns about indefinite delays. The bill permits extensions of the delay period, but requires the court to consider only the need for further delay. Finally, the bill limits extensions to 90 days each, which parallels the notice requirements for criminal wiretaps and “bugs” which are arguably more invasive than a one-time search, because they may require covert entries and they continue to collect personal data for extended periods of time.

As these changes illustrate, while we have emphasized enhanced oversight through reporting. This bill adds reporting requirement to several PATRIOT provisions, including the aforementioned public reporting on delayed warrants and FISA business records orders. The bill also adds public reporting on FISA pen registers and the emergency authorization of FISA electronic surveillance. Moreover, throughout FISA, the draft bill adds the Judiciary Committees to reporting provisions currently limited to the Senate and House Intelligence Committees.

In addition, we have made adjustments to other provisions of the PATRIOT Act. These include:

Section 203, sharing criminal information with intelligence agencies: The bill requires notice to the authorizing court when foreign intelligence information gathered via a court-authorized criminal wiretap is disclosed to intelligence agencies.

Section 207, Duration of FISA surveillance of non-U.S. persons: The bill extends the duration of FISA pen registers for non-U.S. persons, up to 1 year.

Section 212, emergency disclosure of electronic communications: The bill adds new reporting requirements to ensure the government is using this authority appropriately. The bill also makes technical corrections to harmonize the language permitting the emergency disclosure of contents and records.

Section 505, national security letters: The bill incorporates language introduced by Senator CORNYN to address a Federal district court decision holding a national security letter, or NSL, served on an Internet service provider unconstitutional. This legislation permits disclosure to legal counsel; allows court challenges; and permits judicial enforcement of NSLs.

Sunsets: As I have noted, the bill retains sunsets for PATRIOT Act sections 306, multi-point wiretaps, and 215, FISA orders for business records and tangible things. The bill also extends the sunset date for the “Lone Wolf” provision added to FISA by last year’s Intelligence and Terrorism Prevention Act until December 31, 2009. Taken together, these changes provide important checks on the government’s authorities contained in the PATRIOT Act. At the same time, these amendments honor President Bush’s commitment to Congress to make these tools more specific and targeted without weakening the tools used to combat terrorism. I am pleased to be joined by Senators FEINSTEIN and KYL in introducing this measure, and I look forward to securing the support of other Judiciary Committee members as we move to consider this bill.

Mr. President, I would ask that the Washington Post editorial mentioned in my remarks, as well as three letters from the Department of Justice on the use of delayed notice warrants, be printed in the RECORD.

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

[From the Washington Post, June 13, 2005]

Patrot Act Sunsets Act

Congress passed the USA Patriot Act in haste after the Sept. 11, 2001, attacks. Critics predicted that the act would deal a blow to liberty, while property owners was essential to the fight against al Qaeda. A wise compromise gave the administration new powers but had them expire at the end of 2005. Now Congress is giving it a second look. Consequently, various congressional committees are considering whether
the Patriot Act should be reauthorized, rolled back or expanded—and whether this time it should be made permanent, as the administration wishes, or renewed only temporarily.

Although the Patriot Act has become a catch phrase for civil liberties anxieties, it in fact has little connection to the serious infringements on civil liberties in the war on terrorism. It has nothing to do with the detention of Americans as enemy combatants, or the roundup of foreigners abroad or the roundup of foreigners for minor immigration violations. The law’s key sections were designed to expand investigative power, make sure security matters using an administrative subpoena are more secretive than other provision of the Patriot Act. Administrative subpoenas are more secretive than the judicial process. But the Justice Department believes section 213 is an invaluable tool in the war on terror and our efforts to combat serious criminal conduct. In passing the USA PATRIOT Act, Congress specifically recognized that search warrants are a vital aspect of the Department’s strategy of prevention; detecting and incapacitating terrorists, drug dealers and other criminals before they can harm our nation.

Codified at 18 U.S.C. §310a, section 213 of the Act created an explicit statutory authority for investigators and prosecutors to ask a court for permission to delay temporarily notice that a search warrant was executed. While not scheduled to sunset on December 31, 2005, section 213 has been the subject of criticism and various legislative proposals. For the following reasons, the Department does not believe any modifications to section 213 are required.

To begin with, delayed-notice search warrants have been used by law enforcement officials for decades and were not created by the USA PATRIOT Act. Rather, the Act simply codified a common-law practice recognized by courts across the country. Section 213 simply created a uniform nationwide standard for the issuance of those warrants, thus ensuring that delayed-notice search warrants are evaluated under the same criteria across the nation. Like any other search warrant, a delayed-notice search warrant is issued by a federal judge only upon a showing that there is probable cause to believe property to be searched for or seized constitutes evidence of a criminal offense. A delayed-notice warrant differs from an ordinary search warrant only in that the judge specifically authorizes the law enforcement officers executing the warrant to wait for a limited period of time before notifying the subject of the search that a search was executed.

In addition, investigators and prosecutors seeking a judge’s approval to delay notification must show that, if notification were made contemporaneous to the search, there is reasonable cause to believe one of the following might occur: (1) notification would endanger the life or physical safety of an individual; (2) notification would cause flight from prosecution; (3) notification would result in destruction of, or tampering with, evidence; (4) notification would result in intimidation of potential witnesses; or (5) notification would cause serious jeopardy to an investigation or unduly delay a trial. To be clear, the five tailored circumstances that the Department may request judicial approval to delay notification, as laid out in section 213, are the Department’s evaluation before approving any delay.

Delayed-notice search warrants provide a crucial tool to law enforcement. If immediate notification were required regardless of the circumstances, law enforcement officials would be too often forced into making a ‘Robinson v. California’ choice—urgent need to conduct a search and/or seizure or conducting the search and prematurely notifying the rights of the accused. A subsequent search of the vehicle revealed the existence of and thus seriously jeopardized the ultimate success of this massive long-term investigation. The dilemma faced by investigators in the absence of delayed notification is even more acute in terror investigations where the slightest indication of governmental interest can lead a loosely connected cell to dissolve. Fortunately though, because delayed-notice search warrants are available, investigators are able to make critical long-term disclosures to protect our borders from terrorists or criminals and protecting the public—we can do both.

It is important to stress that in all circumstances the subject of a criminal search warrant is informed of the search. It is simply false to suggest, as some have, that delayed-notice search warrants prevent the government from searching an individual’s houses, papers, and effects without notifying them of the search. In every case where the government decides to conduct searches, as the Supreme Court has repeatedly stated, including those issued pursuant to section 213, the subject of the search is told of the search. With respect to delayed-notice warrants, such delay may be delayed for a reasonable period of time—a time period defined by a Federal judge.
Delayed-notice search warrants are constitutional and do not violate the Fourth Amendment. The U.S. Supreme Court expressly held in Dalia v. United States that the provision is not unconstitutional. The Department is not required to provide immediate notice, in most cases, to give law enforcement time to give immediate notice of the execution of a search warrant. Since Dalia, three Federal courts of appeals have considered the constitutionality of a delayed-notice search warrant and all three have upheld their constitutionality. To our knowledge, no court has ever held otherwise.

The Department of Justice, through the U.S. Attorneys' Offices for this information, which we understand, is not in a database format, is pleased to provide our additional findings below.

In September 2003, the Department made public that it had exercised the authority contained in section 213 to delay notification 47 times between October 2001, and April 1, 2003. Our most recent survey, which covered instances between April 1, 2003, and January 31, 2005, indicates we have delayed notification of searches in an additional 108 instances. Since April 1, 2003, no request for a delayed-notice search warrant has been denied. It is possible to misconstrue this information as evidence that courts are merely functioning as a rubber stamp for the Department. In reality, it is an indication that the Department exercises its authority prudently—indeed, it is an indication that the Department takes the authority codified by the USA PATRIOT Act very seriously. We judiciously seek court approval only in those rare circumstances—those that fit the narrowly tailored statute—when it is absolutely necessary and justifiable. As explained above, the Department has exercised the authority to seek delayed-notice of fewer than 1 in 500 search warrants issued nationwide. To further buttress this point, the 108 instances of section 213 usage between April 1, 2003, and January 31, 2005, occurred in 40 different offices. And of those 40 offices, 17 used section 213 only once. Looking at it from another perspective over a longer period, since 1990 U.S. Attorneys' Offices—or slightly more than half—have never sought court permission to execute a delayed-notice search warrant in their districts since passage of the USA PATRIOT Act.

To provide further detail for your consideration, of the 108 times authority to delay notification was exercised between April 1, 2003, and January 31, 2005, in 92 instances “seriously jeopardizing an investigation” (18 U.S.C. §270(a)(2)(B) (flight from prosecution) was cited 23 times; 18 U.S.C. §270(a)(2)(D) (intimidation of potential witnesses) was cited 20 times. As is probably clear, in numerous applications, U.S. attorneys based their decision to delay notice on a finding of imminent and serious jeopardy, in the form of terrorism, identity theft, immigration fraud, alien smuggling, explosives and weapons violations, and the sale of protected wildlife. Members of the Senate Judiciary Committee have also been concerned about delayed-notice of seizures and have requested more detailed explanation of the authority codified by the USA PATRIOT Act. The U.S. Supreme Court has never raised the constitutionality of delayed-notice warrants in the entire period of more than 3 years—indeed, it is an indication that the Department has used this authority prudently.

The length of the delay in providing notice is the exception, not the rule. Law enforcement agents and prosecutors consider the authority contained in section 213 to delay notice of a search warrant’s execution in the vast majority of cases. According to Administration data on U.S. Courts handled by the courts. Indeed, since the USA PATRIOT Act was enacted on October 26, 2001, through January 31, 2005. In total, since the passage of the USA PATRIOT Act through January 31, 2005, the Department has sought seizure authority 59 times. We previously, in May 2003, advised Congress that we had made 15 requests for an extension of the investigation, of the 108 times authority to delay notification was exercised, 59 times. We previously, in May 2003, advised Congress that we had made 15 requests for seizure authority, and delay notification 60 times. Most commonly, these requests related to the seizure of firearms, which the Department has deemed necessary to prevent these drugs from being distributed and to which the Department has deemed necessary to prevent these drugs from being distributed because they are inherently dangerous to members of the community. Other seizures have been authorized pursuant to delayed-notice search warrants so that explosive material and the operability of gun components could be tested, other relevant evidence could be considered, that it would not be lost if destroyed, and a GPS tracking device could be placed on a vehicle. In short, the Department has sought seizure authority only when it was absolutely necessary.

The length of the delay in providing notice of the execution of a warrant has also received significant attention from Members of the Senate. The Senate has, in some cases, decided to make a case-by-case basis and is always dictated by the approving judge or magistrate. According to the survey of the 94 U.S. Attorneys’ Offices, between April 1, 2003, and January 31, 2005, the shortest period of time for which the government has requested delayed notification was 30 days. The longest such specific period was 180 days; the longest unspecified period was 30 days. In nine cases, the Department requested an unspecified period of time for delay was for security reasons and for security reasons. In a few cases courts have granted a shorter time frame than the period originally requested. In one case, the U.S. Attorney for the District of Arizona sought a delay of 30 days, and the court authorized a shorter delay of 25 days.

U.S. Attorneys’ Offices that exercised the authority to seek delayed-notice search warrants between April 1, 2003, and January 31, 2005, just over half (22) of the offices sought extensions of delays. Those 22 offices together made approximately 98 appearances to seek additional extensions. In certain cases, it was necessary for the U.S. Attorney to return to court to seek reapproval to delay notification based on the fifth category of adverse result—that immediate notification would seriously jeopardize the investigation. The delay granted by the court was 7 days. However, the notification could not be made within 7 days and the office was required to seek an extension. So, each week for almost eight straight months, the case agent was made to swear out an affidavit, and the Assistant United States Attorney (USA) then had to appear before the judge or magistrate to renew the delay of notice.

In the vast majority of instances reported by the U.S. Attorneys’ Offices, original delays were sought for between 30 to 90 days. It is not surprising that our U.S. Attorneys’ Offices are requesting up to 90-day delays. Ninety days is the statutory allowance under Title III for notification of interception of wire or electronic communications (see 18 U.S.C. §2518(8)(d)). In only one instance did a U.S. Attorney’s Office seek a delay of a 120-day period. In that instance, the 120-day delay was granted.

In one case, a court denied a U.S. Attorney’s Office a request for an extension of the day in providing notice. This matter involved three delayed-notice search warrants (21) to continue the same investigation. The original period of delay sought and granted was for 30 days on all three warrants. The office then sought an extension. In this case, the court denied the request, and the government was required to delay notification warranted only a 30-day stay of service, particularly in light of the
The fact that one of the targets of the investigation was, by this time, in Federal custody in California on an unrelated matter. At some point after notification was made, however, the other targets fled to Mexico.

In sum, both before enactment of section 213 and after, immediate notice that a search warrant had been executed has been standard procedure. Notice search warrants have been used for decades by law enforcement and, as demonstrated by the numbers provided above, delayed-notice warrants are used infrequently and sporadically—only in appropriate situations where immediate notice likely would harm individuals or compromise investigations, and even then only with a judge’s approval. Investigators and prosecutors on the front lines of fighting crime and terrorism should not be forced to choose between preventing immediate harm—such as a terrorist attack or an influx of illegal drugs—and completing a sensitive investigation that might shut down an entire terrorism cell or drug trafficking operation altogether. Thanks to the long-standing availability of delayed-notice warrants in these circumstances, they do not have to make that choice. Section 213 will not result in better protection of the public from terrorists and criminals while preserving Americans constitutional rights.

To further be aware, the Department published a detailed report last year that includes numerous additional examples of how delaying notification of search warrants in certain circumstances resulted in beneficial results. We have enclosed a copy for your convenience.

If we can be of further assistance regarding this or any other matter, please do not hesitate to contact this office.

Sincerely,

William E. Moschella
Assistant Attorney General

DEPARTMENT OF JUSTICE
OFFICE OF LEGISLATIVE AFFAIRS

Hon. Arlen Specter,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington.

Dear Mr. Chairman: During the closed session of the Senate Judiciary Committee on April 12, 2005, you requested additional information, pursuant to section 213 of the USA PATRIOT Act. Specifically, you inquired about examples of where the “seriously jeopardizing an investigation” prong was the sole “adverse result” to a delayed-notice search warrant.

In addition to Operation Candy Box, which was detailed in our April 4, 2005, letter to the Committee, we have described seven additional cases below. It is important to note that the twenty-eight instances cited in our April 4 letter do not equate to twenty-eight investigations or cases. For example, some of the cases that used delayed-notice search warrants utilizing the “seriously jeopardizing an investigation” prong involved multiple search warrants.

As we are sure you will agree, the following examples of the use of delayed-notice search warrants illustrate not only the appropriateness of the Department’s use of this important investigative tool, but its criticality to law enforcement investigations.

Example #1: Western District of Pennsylvania

The Justice Department obtained a delayed-notice search warrant for a Federal Express package that contained counterfeit credit cards. At the time of the search, it was very important not to disclose the existence of a federal investigation, as this would have revealed and endangered a related Title III wiretap that was ongoing for major drug trafficking activities. Originally, the Department was granted a ten-day delay by the court; but the Department sought and was granted eight extensions before notice could be made.

An Organized Crime Drug Enforcement Task Force (“OCDETF”), which included agents from the Drug Enforcement Administration (DEA), the Internal Revenue Service, and the Pittsburgh Police Department, as well as other local law enforcement agencies, was engaged in a multi-year investigation that culminated in the indictment of the largest trafficking organization ever prosecuted in the Western District of Pennsylvania. The organization was headed by Oliver Beasley and Donald “The Chief” Lyle. At the time the warrants were executed, the defendants were indicted on drug, money laundering and fire-arms charges. Beasley and Lyle were charged with operating a Continuing Criminal Enterprise (CCE). The CCE provided an organization that permitted the defendants to continue to sell them in the community as we

Example #2: Western District of Texas

The Justice Department executed three delayed notice search warrants as part of an OCDETF investigation of a major drug trafficking ring that operated in the Western and Northern Districts of Texas. The investigation lasted a little under one year and employed a wide variety of electronic surveillance techniques such as tracking devices and wiretaps of cell phones used by the leadership. The original delay approved by the court in this case was for 60 days. The Department sought two extensions, one for 60 days and one for 90 days both of which were approved.

During the first two delayed-notice search warrants were executed at the organization’s stash houses. The search warrants were based primarily on evidence developed as a result of a search warrant executed under section 213 of the USA PATRIOT Act, the court allowed the investigating agency to delay the notifications of these search warrants. After the execution of the first search warrant, the Department believed they would have ceased their activities, or altered their methods to avoid detection. The Department continued its use of the GPS devices and our monitoring of them, the purpose of the use of this investigative tool would be defeated, and the investigation would be totally compromised. As it was, the principals in the targeted drug distribution organization were highly surveillance-conscientious, and reacted noticeably to perceived surveillance efforts by law enforcement. Had they received palpable evidence of the existence of our investigation, the Justice Department believed they would have ceased their activities, or altered their methods to avoid detection. As it was, the Department was required to begin the investigation anew.

In each instance, the period of delay requested and granted was 90-120 days, and no renewals of the delay orders were sought. And, as required by law, the interested parties were made aware of the intrusions resulting from the execution of the warrants within the 90-day period authorized by the court.

Example #3: Western District of Washington

During an investigation of a drug trafficking organization, which was distributing cocaine and an unusually pure methamphetamine known as “ice,” a 30-day delayed-notice search warrant was sought in April 2004. A result of information obtained through a wiretap as well as a drug-sniffing dog, investigators believed that the leader of the drug distribution organization was storing drugs and currency in a storage locker in Everett, Washington. The warrant was executed, and while no drugs or cash was found, the drug organization was disrupted. Delayed notice of the search warrant’s execution was necessary in order to protect the integrity of other investigative techniques, including the wiretap. The investigation ultimately led to the indictment of twenty-seven individuals in
The methamphetamine conspiracy. Twenty-three individuals, including the leader, have pled guilty, three are fugitives, and one is awaiting trial.

Example #6: Southern District of Illinois:
The Justice Department used section 213 of the USA PATRIOT Act in an investigation into a drug trafficking conspiracy in the Southern District of Illinois. In particular, in November 2003, a vehicle was seized pursuant to authority granted under the paragraph.

During this investigation, a Title III wiretap was obtained for the telephone of one of the leaders of the organization. As a result of intercepted calls and surveillance conducted by DEA, it was learned that a load of marijuana was being brought into Illinois from Texas. Agents were able to identify the vehicle and request the registration and notice to allow agents to endeavor to install the electronic tracking device and to attempt to locate the suspect’s vehicle during this time. During this period, however, five suspects were charged with conspiring to possess more than five kilograms of marijuana in the Southern District of Illinois and developed sufficient probable cause to apply for a warrant to search the vehicle. It was believed, however, that immediate notification of the search warrant would disclose the existence of the investigation, resulting in, among other things, phones being turned off and targets ceasing their activities, thereby jeopardizing potential success of the wiretaps and compromising the overall investigation (in other districts). At the same time it was important, for the safety of the community, to keep the marijuana from being distributed.

The Department of Justice filed an application for a warrant to seize the vehicle and to delay notification of the execution of the search warrant for a period of seven days, unless extended by the Court. With this authority, the agents seized the vehicle in question (making it appear that the vehicle had been stolen) and then searched it following the guidelines set forth for the use of a delayed-notice period, the government re-

ample notice to the owner for sixty days in order allowing them to remove the served warrant. After the issuance of the arrest warrants, the Department of Justice granted all requests and the suspects were continued to have this vital tool for those investigation would result in destruction of, or tampering with, evidence; (4) notification would result in intimidation of potential witnesses;
or (5) notification would cause serious jeopardy to an investigation or unduly delay a trial.

To be clear, it is only in those five tailored circumstances that the Department may request judicial approval to delay notification, and a federal judge must agree with the Department’s evaluation before approving any delay.

Delayed-notification search warrants provide a crucial option to law enforcement. If immediate notification required regarding all of the circumstances, law enforcement officials would be too often forced into making a “Hobson’s choice”: delaying the urgent need to conduct a search and prematurely notifying the target of the existence of law enforcement interest in his or her illegal conduct or (5) notification would cause serious jeopardy. In those instances, the Department need to keep the ongoing investigation confidential.

It is important to stress that in all circumstances the subject of a criminal search warrant is informed of the search. It is simply false to suggest, as some have, that delayed-notification search warrants allow the government to search an individual’s houses, papers, and effects” without notifying them of the search. In every case where the government is served a criminal search warrant, including those issued pursuant to section 213, the subject of the search is told of the search. With respect to delayed-notification search warrants, notice is simply delayed for a reasonable period of time—a time period defined by a federal judge.

Delayed-notification search warrants are constitutional and do not violate the Fourth Amendment. The U.S. Supreme Court expressly held in Dalia v. United States that the Fourth Amendment does not require law enforcement to give immediate notice of the execution of a search warrant. Since Dalia, three federal courts of appeals have considered the constitutionality of delayed-notification search warrants, and all three have upheld their constitutionality. To our knowledge, no court has ever held otherwise. In short, before the enactment of the USA PATRIOT Act, it was clear that delayed notification was appropriate in certain circumstances; that remains true today. The USA PATRIOT Act simply resolved the mix of inequities and inequities varying from circuit to circuit. Therefore, section 213 had the beneficial impact of mandating uniform and equitable application of this constitutional prong across the nation.

The Department has provided the Committee with detailed information regarding how often section 213 has been used. Let us be assured you again that the use of a delayed-notification search warrant is the exception, not the rule. Law enforcement agents and investigators provide immediate notice of a search warrant’s execution in the vast majority of cases. According to Administrative Office of the U.S. Courts (AOUSC), during the third quarter of 2004, U.S. District Courts handled 95,925 search warrants. By contrast, in the 39-month period between the passage of the USA PATRIOT Act and January 31, 2005, the Department used the section 213 authority only 153 times according to a Department survey. Even when compared to the AOUSC data for a shorter period of time, the percentage of section 213 still only account for less than 0.2% of the total search warrants handled by the courts.

Specifically, you have inquired about examples of where the “seriously jeopardizing an investigation” prong was the sole “adverse result” used to request delayed notice. From January 1, 2003 to January 31, 2005, the “seriously jeopardizing an investigation” prong has been the sole ground for requesting delayed notice in thirty-two instances. Contrary to concerns expressed by some, this prong is not a “catch-all” that is used in run-of-the-mill cases. The Department esti- mated that a pure prong of the delayed-notification search warrants that have been obtained since the passage of the PATRIOT Act have been delayed-notification search warrants. In those instances, an immediate notice was provided. Moreover, fewer than one in three delayed-notification search warrants obtained by the Department in the last two years relied on the fact that immediate notification would seriously jeopardize an investigation. Thus, fewer than one in three warrants used the “seriously jeopardizing an investigation” prong, a fact hardly consistent with the concern that the Department will obtain a delayed-notification search warrant in the typical case.

Of those thirty-two instances, delayed-notification search warrants were used in a total of twenty-two investigations. The thirty-two instances do not equate to thirty-two investigations or cases because some of the cases that used delayed-notification search warrants utilizing the “seriously jeopardizing” prong involved multiple search warrants. The Department of Justice has provided the Committee detailed descriptions of eight of the twenty-two investigations where the “seriously jeopardizing” prong was the sole “adverse result” used to request delayed notice. The descriptions already provided include Operation Candy Box, which was discussed in the Committee, and seven additional cases described in a May 3, 2005 letter to the Committee. This letter is intended to supplement the previous examples that have provided by detailing the seven remaining investigations that have been unsealed, and identifying the seven remaining investigations that are currently awaiting sealing. The seven investigations that remain under seal are terrorism-related.

As we are sure you will agree, the following examples of the use of delayed-notification search warrants illustrate not only the appropriateness of the Department’s use of this vital tool, but also its importance to law enforcement investigations.

Example #9: Southern District of Illinois:

The United States Attorney’s Office for the Southern District of Illinois, in a case that involved a delayed-notification search warrant pursuant to Title 18 U.S.C. §3183a in the investigation of an OCDETF (Organized Crime Drug Enforcement Task Force) case. The United States Attorney’s Office in the Southern District of Illinois handled the investigation, and the search warrant application was filed by the United States Attorney’s Office in the Eastern District of Missouri because the house to be searched was located there. The search warrant was sought because a Title III wiretap revealed that the house to be searched was being used as a safehouse for those trafficking in drugs, and it was believed that the notification of the search warrant would seriously jeopardize the integrity of the drug organization and the lead agents. The investigation and its numerous members and frustrate the identification of additional sources of supply. The search warrant was issued by the United States Magistrate’s Office in the Eastern District of Missouri on April 6, 2004, for a period of 7 days. No extensions were requested or authorized. The case was explained on November 18, 2004. One defendant pled guilty and thirteen defendants are awaiting trial.

Example #10: Northern District of Georgia:

The United States Attorney’s Office for the Northern District of Georgia used section 213 in a drug investigation to delay notice of three search warrants in three locations. A cocaine dealer had three stash locations, and the United States Attorney’s Office wanted to search those locations without tipping off the drug dealers. A federal judge approved three delayed-notification search warrants that yielded several kilos of cocaine, pounds of heroin, a kilogram of marijuana, semi-automatic rifles, and firearms. The agents were also able to photograph documentary evidence such as ledgers. The use of the delayed-notification search warrant in this case was successful in obtaining the case against the defendant, who was indicted in April 2005.

Example #11: Northern District of Georgia:

The United States Attorney’s Office for the Northern District of Georgia also used section 213 in another drug investigation. The Department obtained search warrants to install and monitor wiretaps of several cellular phones used by high-level members of a Mexican cocaine and methamphetamine distribution cell operating in Georgia. While monitoring the phones, the targets’ conversations showed that they were delivering large quantities of cocaine to a particular user. Surveillance identified one of the stash houses from which the targets obtained 14 kilograms of cocaine, and the conversations indicated that more of the cocaine was located in the stash houses. However, the investigation and interceptions on the cell phones had not identified the high-level targets. Agents believed the targets were not in a position to make arrests and take down the organization. The agents therefore needed to seize the cocaine while it was in transit to an address; an arrest on seizure of their cellular phones. Investigators decided it was appropriate to seize a delayed-warrant warrant that would allow them access to the stash house. A federal judge approved the warrant that resulted in the seizure of 36 kilograms of cocaine, some methamphetamine, and two handcuffed sawed-off shotguns, without having to leave a copy of the warrant and provide confirmation to the targets that they were being watched by law enforcement. Since the subsequent arrests of sixteen individuals for various drug-trafficking charges in this investigation, two have pled guilty, three have been sentenced, five are set for sentencing and six are currently awaiting trial.

Example #12: Western District of New York:

Operation Trifecta was a Title III wiretap investigation being conducted in the United States Attorney’s Office for the Southern District of New York. It is a drug-related case that was conducted with delayed-notification warrant. The United States Attorney’s Office for the Western District of New York (WDNY OCDETF Operations Office of the Next of Kin) as well as in U.S. Attorney’s Offices in California, Ohio, and Arizona and by law enforcement agencies in Mexico. As part of this multi-district and international investigation, Title III wiretap orders were obtained in each of the jurisdictions involved in the investigation. In May 2005, information was released as a result of a Title III interception order that the targets of the investigation were arranging the transpor- tation of a vehicle (“the load vehicle”) that was believed to conceal a substantial quantity of cocaine by transporting it on a car carrier. Once it was determined that the car carrier would transport the load vehicle, “the load vehicle appeared to have been tampered with or replaced. As a result of the suspect VIN plate, the load vehicle was removed.
from the car carrier, impounded and the car carrier was allowed to proceed on its way. Thereafter, a delayed-notice search warrant was executed on the load vehicle, resulting in 37 kilograms of cocaine being seized in the load vehicle. The investigation continued until July 30, 2003, which was the takedown date for all aspects of the investigation. Extensions of the order delaying notice were obtained until the takedown date. Until they were arrested, the subjects of the investigation were completely unaware as to the actual reason why the load vehicle was stopped and why the contents of it were seized.

Obviously, had the subjects of the investigation received notice that a search warrant had been obtained for the load vehicle, this investigation would have been seriously compromised. Delayed notice allowed the investigation agencies to make a significant seizure of cocaine while at the same time allowing the investigation, which had national and international ramifications, to continue to its successful conclusion. Twenty defendants were charged in the Western District of New York, and all have pled guilty.

Example #13: Western District of New York

As a result of investigations in the Western District of New York, the Eastern District of California, and Canada, including wiretaps at various locations, information was obtained that several defendants were involved in smuggling large quantities of ephedrine, a listed chemical, from Canada into the United States. There were four delayed-notice search warrants issued in the case, which were all justified by the "seriously jeopardizing an investigation" prong only. Three of these search warrants were to be "stash houses" for ephedrine and money; and two for packages sent through the U.S. and Canadian mail which were believed to also contain contraband. All delayed-notice search warrants were issued for 10 days on the grounds that providing notice would adversely affect the investigation. In this multi-district case in the Eastern District of California, the prosecution in this case is currently pending.

Example #14: Western District of New York

A delayed-notice search warrant was obtained for the District of Maryland to open and photograph the contents of a safe deposit box that the target, a Canadian citizen, was allegedly using to store his proceeds of drug trafficking. Following the sale of heroin by the target to undercover law enforcement agents, an attorney for the target was convicted on January 18, 2005 on numerous drug-trafficking counts and faces a statutory range of 20 years to life. His advisory United States Sentencing Guidelines range is life imprisonment.

Example #16: District of Maryland—Sealed.
Example #17: Northern District of Georgia—Sealed.
Example #18: Southern District of Iowa—Sealed.
Example #19: Southern District of Ohio—Sealed.
Example #20: Southern District of Ohio—Sealed.
Example #21: Southern District of Texas—Sealed.
Example #22: Western District of New York—Sealed.

In sum, delayed-notice search warrants have been used for decades by law enforcement and, as demonstrated by the numbers and examples provided above, delayed-notice warrants are used infrequently and scrupulously—only in appropriate situations where immediate notice likely would harm individual investigators, and even then only with a judge’s express approval. The investigators and prosecutors on the front lines of fighting crime and terrorism should not be forced to choose between preventing immediate harm—such as a terrorist attack or an influx of illegal drugs—and completing a sensitive investigation that might shut down an entire terror cell or drug trafficking operation. Thanks to the long-standing availability of delayed-notice warrants in these circumstances, they do not have to choose. See section 213 enables us to better protect the public from terrorists and criminals while preserving Americans constitutional rights. The Department of Justice believes it is critical that law enforcement continue to have this vital tool for those limited circumstances, such as those discussed above, where a court finds good cause to delay the temporary delay of notification of a search.

We hope the information provided above is helpful. Should you require any further information, please do not hesitate to contact this office.

Sincerely,

WILLIAM E. MOSCHIELA,
Assistant Attorney General.

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. 1389
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) This Act may be cited as the "USA PATRIOT Improvement and Authorization Act of 2005".

(b) TABLE OF CONTENTS—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Patent section 203; notice to court of disclosure of foreign intelligence information.
Sec. 3. Patent section 206; additional requirements for multipoint electronic surveillance under FISA.
Sec. 4. Patent section 207; duration of FISA surveillance of non-Unites States persons.
Sec. 5. Patent section 209; enhanced oversight of good-faith emergency disclosures.
Sec. 6. Patent section 213; limitations on the burden of proof.
Sec. 7. Patent section 214; factual basis for pen register and trap and trace authorizations under FISA.
Sec. 8. Patent section 215; procedural protections for court orders to produce records and other items in intelligence investigations.
Sec. 9. Patent section 505; procedural protections for national security letters.
Sec. 10. Sunset provisions.
Sec. 11. Enhancement of sunshine provisions.

SEC. 2. PATENT SECTION 203; NOTICE TO COURT OF DISCLOSURE OF FOREIGN INTEL-

LEGANCE INFORMATION.

Section 217 of title 18, United States Code, is amended by adding at the end the following:

"(9) Within a reasonable time after disclosure is made, pursuant to paragraph (6), (7), or (8), of the contents of any wire, oral, or electronic communication, an attorney for the Government must file, under seal, a notice with the judge that issued the order authorizing or approving the interception of such wire, oral, or electronic communication, stating that such contents or evidence was disclosed and the departments, agencies, or entities to which the disclosure was made."

SEC. 3. PATENT SECTION 206; ADDITIONAL REQUIRE-

MENTS FOR MULTIPONT ELECTRONIC 

SURVEILLANCE UNDER FISA.

(a) PARTICULARITY REQUIREMENT.—Section 105(c)(1)(A) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(1)(A)) is amended by inserting before the semicolon the following:

"(9) In paragraph (2), by inserting before "specify", the following: "SPECIFICATIONS.—An order approving an electronic surveillance under this section shall include sufficient information to describe a specific target with particularity".

(b) ADDITIONAL DIRECTIONS.—Section 105(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)) is amended—

(1) by striking "An order approving an electronic surveillance under this section shall include sufficient information to describe a specific target with particularity".

(2) in paragraph (1), by inserting before "specify" the following: "SPECIFICATIONS.—An order approving an electronic surveillance under this section shall include sufficient information to describe a specific target with particularity".

(3) in paragraph (1)(F), by striking "and" and inserting a period.

(4) in paragraph (2), by inserting before "specify", and inserting a period.

(5) by adding at the end the following:

"A SPECIAL PROCEDURE FOR CERTAIN OR-

NEAS.—An order approving an electronic surveillance under this section in circumstances where the nature and location of each of the facilities or places at which the surveillance will be directed is not known shall direct the applicant to provide notice to the court

The table of con-
within 10 days after the date on which surveillance begins to be directed at any new facility or place of—

(A) the nature and location of each facility or place at which the electronic surveillance is directed;

(B) the facts and circumstances relied upon by the applicant to justify the applicant’s request for the facility or place at which the electronic surveillance is directed is being used, or is about to be used, by the target of the surveillance; and

(C) any proposed minimization procedures that differ from those contained in the original application or order, that may be necessitated by a change in the place at which the electronic surveillance is directed.”.

(c) ENHANCED OVERSIGHT.—

(1) REPORT TO CONGRESS.—Section 108(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1808(a)(1)) is amended by inserting “,” and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, after “Senate Select Committee on Intelligence”.

(2) MODIFICATION OF SEMIANNUAL REPORT REQUIREMENTS ABOUT FACILITIES UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—

Paragraph (2) of section 108(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1808(a)) is amended to read as follows:—

“(2) in the first sentence of paragraph (1) shall include a description of—

(A) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title where the nature and location of each facility or place at which the electronic surveillance will be directed is not known; and

(B) the case in which information acquired under this Act has been authorized for use at trial during the period covered by such report.”.

SEC. 4. PATRIOT SECTION 202; DURATION OF FISA SURVEILLANCE OF NON-UNITED STATES PERSONS.

(a) ELECTRONIC SURVEILLANCE ORDERS.—Section 105(e) of the Foreign Intelligence Surveillance Act (50 U.S.C. 1805(e)) is amended—

(1) in paragraph (1)(B), by striking “,” as defined in section 101(b)(1)(A)” and inserting “who is not a United States person”;

(2) in paragraph (2), by striking “as defined in section 101(b)(1)(A)” and inserting “who is not a United States person”;

(b) PHYSICAL SEARCH ORDERS.—Section 305(d) of the Foreign Intelligence Surveillance Act (50 U.S.C. 1824(d)) is amended—

(1) in paragraph (1)(B), striking “as defined in section 101(b)(1)(A)” and inserting “who is not a United States person”;

SEC. 6. PATRIOT SECTION 213; LIMITATIONS ON DELAYED NOTICE SEARCH WARRANTS.

(a) GROUNDS FOR DELAY.—Section 3103a(b)(1) of title 18, United States Code, is amended by striking “may have an adverse result (as defined in section 2705)” and inserting “may”.

(b) LIMITATION ON REASONABLE PERIOD FOR DELAY.—Section 3103a(b)(1) of title 18, United States Code, is amended by—

(1) inserting “on a date certain that is before within a reasonable period of its execution”;

(2) after “good cause shown” inserting “subject to the condition that extensions should only be granted upon an updated showing of the need for further delay and that each additional delay shall be limited to periods of 90 days or less, unless the facts of the case justify a longer period of delay”;

(c) ENHANCED OVERSIGHT.—Section 3103a(b)(1) of title 18, United States Code, is amended by—

(1) REPORT TO JUDGE.—Not later than 30 days after the expiration of a warrant authorizing delayed notice (including any extension thereof) entered under this section, or the denial of such warrant (or request for extension), the issuing or denying judge shall transmit to the Administrative Office of the United States Courts—

“(A) the fact that a warrant was applied for; and

(B) the fact that the warrant or any extension thereof was granted as applied for, was modified, or was denied;”.

(2) DELAY REPORT TO ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—In April of each year, the Director of the Administrative Office of the United States Courts shall transmit to Congress a full and complete report—

“(A) concerning the number of applications for warrants and extensions of warrants authorizing delayed notice pursuant to this section, and the number of warrants and extensions granted or denied pursuant to this section during the preceding calendar year; and

(B) that includes a summary and analysis of the data required to be filed with the Administrative Office by paragraph (1).”.

SEC. 7. PATRIOT SECTION 214; FACTUAL BASIS FOR PEN REGISTER AND TRAP AND TRACK DEVICES UNDER FISA.

(a) FACTUAL BASIS FOR PEN REGISTERS AND TRAP AND TRACK DEVICES UNDER FISA.—

(1) APPLICATION.—Section 402(c)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(c)(2)) is amended by striking “a certification by the applicant that” and inserting “a statement of the facts relied upon by the applicant to justify the applicant’s belief that”.

(2) ORDER.—Section 402(d)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(d)(1)) is amended by—

(A) endanger the life or physical safety of an individual;

(B) result in flight from prosecution;

(C) result in the destruction of or tampering with evidence;

(D) result in intimidation of potential witnesses; or

(E) otherwise seriously jeopardize an investigation;—

(b) LIMITATION ON REASONABLE PERIOD FOR DELAY.—Section 3103a(b)(1) of title 18, United States Code, is amended by—

(1) inserting “on a date certain that is before within a reasonable period of its execution”;

(2) after “good cause shown” inserting “subject to the condition that extensions should only be granted upon an updated showing of the need for further delay and that each additional delay shall be limited to periods of 90 days or less, unless the facts of the case justify a longer period of delay”;

(3) REPORT TO JUDGE.—Not later than 30 days after the expiration of a warrant authorizing delayed notice (including any extension thereof) entered under this section, or the denial of such warrant (or request for extension), the issuing or denying judge shall transmit to the Administrative Office of the United States Courts—

“(A) the fact that a warrant was applied for; and

(B) the fact that the warrant or any extension thereof was granted as applied for, was modified, or was denied;”.

(3) REGULATIONS.—The Director of the Administrative Office of the United States Courts, in consultation with the Attorney General, is authorized to issue binding regulations dealing with the content and form of the reports required to be filed under paragraph (1).”.

(b) RECORDS.—Section 402(d)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(d)(2)) is amended—

(1) in subparagraph (A)—

(A) in clause (ii), by adding “and’ as at the end;

(B) in clause (iii), by striking the period at the end and inserting a semicolon; and

(2) in subparagraph (B)(iii), by striking the period at the end and inserting “; and’ and

(3) by adding at the end the following:

“(C) shall direct that, upon the request of the applicant, the provider of a wire or electronic communication service shall disclose to the Federal officer using the pen register or trap and trace device covered by the order—

(i) in the case of the customer or subscriber using the service covered by the order (for the period specified by the order)—

(A) the name of the customer or subscriber; and

(II) the address of the customer or subscriber;
“(III) the telephone or instrument number, or other subscriber number or identifier, of the customer or subscriber, including any temporarily assigned network address or associated routing or transmission information; “(IV) the length of the provision of service by such provider to the customer or subscriber; “(V) in the case of a provider of local or long distance telephone service, any local or long distance cellular phone records of the customer or subscriber; “(VI) if applicable, any records reflecting period of usage (or sessions) by the customer or subscriber; and “(VII) any mechanisms and sources of payment for such service, including the number of any credit card or bank account utilized for payment for such service; and “(ii) if available, with respect to any customer or subscriber of incoming or outgoing communications or from the service covered by the order— “(I) the name of such customer or subscriber; “(II) the address of such customer or subscriber; “(III) the telephone or instrument number, or other subscriber number or identifier, of such customer or subscriber, including any temporarily assigned network address or associated routing or transmission information; “(IV) the length of the provision of service by such provider to such customer or subscriber and the types of services utilized by such customer or subscriber.”

(c) ENHANCED OVERSIGHT.—Section 406 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1846) is amended—

(1) by inserting “, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,” after “of the Senate;” and

(2) in subsection (b), by striking “On a semiannual basis” through “the preceding 6-month period” and inserting “In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to Congress a report setting forth with respect to the preceding calendar year”.

SEC. 8. PATRIOT SECTION 215; PROCEDURAL PROVISIONS FOR ORDERS TO PRODUCE RECORDS AND OTHER ITEMS IN INTELLIGENCE INVESTIGATIONS.

(a) Factual Basis for Requested Order.—

(1) APPLICATION.—Section 501(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(b)(2)) is amended by striking “shall specify that the records concerned are sought for” and inserting “shall include a statement of facts showing that there are reasonable grounds to believe that the records or other things sought are relevant to”.

(2) ORDER.—Section 501(c)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(c)(1)) is amended by striking “if the judge finds that” and all that follows and inserting “if the judge finds that the statement of facts contained in the application establishes reasonable grounds to believe that the records or other things sought are relevant to

(b) Additional Protections.—Section 501(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(c)) is amended—

(1) in paragraph (2), by inserting after “An order under this subsection” the following:

“(A) shall describe the tangible things concerned with sufficient particularity to permit them to be fairly identified; “(B) shall include the date which will provide a reasonable period of time within which the tangible things can be assembled and made available; “(C) shall specify that the records concerned are relevant to an authorized investigation conducted in accordance with subsection (a)(2) of this section for an order requiring the production of library circulation records, book, library catalog cards, firearms sales records, book, library patron lists, firearms sales records, or medical records containing personally identifiable information without the prior written approval of the Attorney General shall provide the Director of the Federal Bureau of Investigation. The Director may delegate authority to approve such an application to the Director of the Federal Bureau of Investigation or such authority may not be further delegated.”;

(d) PROHIBITION ON DISCLOSURE.—Section 501(d) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(d)) is amended to read as follows:

“(d)(1) No person shall disclose to any other person that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section other than to— “(A) those persons to whom such disclosure is necessary to comply with such order; “(B) an attorney to obtain legal advice or assistance with respect to the production of things in response to the order; or “(C) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

(2) Any person having received a disclosure under paragraph (1), or (B), or (C) of paragraph (1) shall be subject to the prohibitions on disclosure under that paragraph.

(3) Any person further disclosing authorized by subparagraph (A), (B), or (C) of paragraph (1) shall notify the person to whom the disclosure is made of the prohibitions on disclosure under this subsection.

(3) An order under this section shall notify, in writing, the person to whom the order is directed of the nondisclosure requirement specified in section 103(b), which shall have jurisdiction to consider such petitions.

“(E) The court of review shall immediately provide for the record a written statement of the reasons for its decision and, on petition of the United States or any person receiving such order for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction over such decision.

“(f) ENHANCED OVERSIGHT.—Section 502 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1862) is amended—

(1) in subsection (a), by inserting “, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,” after “of the Senate;” and

(2) in subsection (b)— “(A) On a semiannual basis through the preceding 6-month period and inserting “In April of each year, the Attorney General shall transmit to the Congress a report setting forth with respect to the preceding calendar year”.

(B) in paragraph (1), by striking “and” at the end;

(C) in paragraph (2), by striking the period at the end and inserting “;” and “; and “

(D) by adding at the end following:

“(3) the total number of applications made for orders approving requests for the production of tangible things under section 501, and the total number of orders either granted, modified, or denied, when the application or order involved any of the following: “(A) The production of tangible things from a library, as defined in section 213(2) of the Library Services and Technology Act (20 U.S.C. 2242(2)). “(B) The production of tangible things from a person or entity primarily engaged in the sale, rental, or delivery of books, journals, magazines, or other similar forms of communication whether in print or digitally. “(C) The production of records related to the purchase of a firearm, as defined in section 1171(4) of the Social Security Act (42 U.S.C. 1320c(4)). “(D) The production of health information, as defined in section 117(4) of the Social Security Act (42 U.S.C. 1320c(4)). “(E) The production of taxpayer return information, return, or return information, as defined in section 6103(b) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(b)). “(c) Each report under subsection (b) shall be submitted in unclassified form, but may include a classified annex.

“(D) In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to Congress a report setting forth with respect to the preceding calendar year— “(1) the total number of applications made for orders approving requests for the production of tangible things under section 501; and “(2) the total number of such orders either granted, modified, or denied.”.
SEC. 9. PATRIOT SECTION 505: PROCEDURAL PROTECTIONS FOR NATIONAL SECURITY LETTERS.

(a) In General.—Section 2709(a) of title 18, United States Code, is amended—

(1) by striking “A wire or electronic communication service provider” and inserting the following:

“(1) In general.—A wire or electronic communication service provider who receives a request under subsection (b) may, at any time, seek a court order from an appropriate United States district court to modify or set aside the request. Any such motion shall state the grounds for challenging the request with particularity. The court may modify or set aside such a request if compliance would be unreasonable or oppressive.”;

(b) NONDISCLOSURE.—Section 2709(c) of title 18, United States Code, is amended—

(1) by striking “No wire or electronic communication service provider” and inserting the following:

“(1) In general.—No wire or electronic communication service provider shall be treated as conclusive unless the disclosure may endanger the national security of the United States or interfere with diplomatic relations, or endanger the life or physical safety of any person. In reviewing a disclosure requirement, the certification or nondisclosure requirement, the certification shall cease to have effect on December 31, 2009, and any provision of law amended or modified by such sections shall take effect on January 1, 2010, as in effect on the day before the effective date of this Act.”;

(c) EXTENSION OF SUNSET ON NONDISCLOSURE REQUIREMENT.—Section 2710 of the USA PATRIOT Act (18 U.S.C. 2510 note) is amended to read as follows:

“(a) In general.—Except as provided in subsection (b), the amendment made by section 2710 of the USA PATRIOT Act (18 U.S.C. 2510 note) is amended to read as follows:

“(b) SUNSET.—

“(1) In general.—Except as provided in paragraph (2), the amendment made by subsection (a) shall cease to have effect on December 31, 2009.

“(2) Special Rule.—With respect to any particular foreign intelligence investigation that began before the date on which the amendment made by subsection (a) ceases to have effect, section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978, as amended by subsection (a), shall continue in effect.”;

(d) REPEAL OF SUNSET PROVISION RELATING TO SECTION 2525 AND THE MATERIAL SUPPORT SECTION OF TITLE 50.—Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 1801 note) is amended by striking subsection (c).

SEC. 10. SUNSET PROVISIONS.

(a) MODIFICATION OF PATRIOT ACT SUNSET PROVISIONS.—Section 103 of the USA PATRIOT Act (18 U.S.C. 2510 note) is amended to read as follows:

“(a) MODIFICATION OF PATRIOT ACT SUNSET PROVISION.—Section 103 of the USA PATRIOT Act (18 U.S.C. 2510 note) is amended to read as follows:

“(1) In General.—Except as provided in paragraph (2), the amendment made by subsection (a) shall cease to have effect on December 31, 2009.

“(2) SPECIAL RULE.—With respect to any particular foreign intelligence investigation that began before the date on which the amendment made by subsection (a) ceases to have effect, section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978, as amended by subsection (a), shall continue in effect.”;

(b) EXTENSION OF SUNSET ON “LONELY WOLF” PROVISION.—Subsection (b) of section 6601 of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 1801 note) is amended to read as follows:

“(1) In general.—Except as provided in paragraph (2), the amendment made by subsection (a) shall cease to have effect on December 31, 2009.

“(2) SPECIAL RULE.—With respect to any particular foreign intelligence investigation that began before the date on which the amendment made by subsection (a) ceases to have effect, section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978, as amended by subsection (a), shall continue in effect.”

(c) THE TECHNICAL AMENDMENT.—Section 1(a) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as amended, is amended—

(1) by striking “The courts established pursuant to subsection (a) shall cease to have effect” and inserting “The courts established pursuant to subsection (a) shall cease to have effect on December 31, 2009”;

(2) by striking “The committee on the judiciary of the house of representatives and the committee on the judiciary of the Senate, after the hearing” and inserting “and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, after the hearing”;

(3) by striking “The committee on the judiciary of the house of representatives and the committee on the judiciary of the Senate, after the hearing” and inserting “the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate”;

(4) by striking “at the end and inserting “; and”;

(5) by striking “and” and inserting “; and”;

SEC. 11. ENHANCEMENT OF SUNSHINE PROVISIONS.

(a) RULES AND PROCEDURES FOR FISA COURTS.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by adding after the end the following:

“(g) Court Proceedings Established Pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)— Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by striking subsection (b) and inserting the following:

“(b) COURT PROCEEDINGS ESTABLISHED PURSUANT TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 (50 U.S.C. 1801 ET SEQ.).—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by striking subsection (b) and inserting the following:

“(1) S ELECTIVE INTELLIGENCE COLLECTION.—Providing or denying the installation and use of trap and trace devices whose installation and use was authorized by the Attorney General of the United States is among the critical tools of modern intelligence collection.

(2) The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded, and shall be transmitted to the following:

(A) All of the judges on the court established pursuant to subsection (a).

(B) All of the judges on the court of review established pursuant to subsection (b).

(C) The Chief Justice of the United States.

(D) The Committee on the Judiciary of the Senate.

(E) The Select Committee on Intelligence of the Senate.

(F) The Committee on the Judiciary of the House of Representatives.

(G) The Permanent Select Committee on Intelligence of the House of Representatives.

(3) The transmission required by paragraph (2) shall be submitted in unclassified form, but may include a classified annex.

(b) ENHANCED CONGRESSIONAL OVERSIGHT OF FISA EMERGENCY AUTHORITIES.—

(1) EMERGENCY ELECTRONIC SURVEILLANCE.—Section 107 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1807) is amended—

(A) in the first sentence, by inserting “; and” at the end;

(B) in paragraph (b), by striking the period at the end and inserting “; and”;

(C) by adding at the end the following:

“(4) The total number of emergency physical searches authorized by the Attorney General under section 107(e) (50 U.S.C. 1807) and the total number of subsequent orders approving or denying such physical searches.”;

(2) EMERGENCY PHYSICAL SEARCHES.—Section 106 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended—

(A) in the first sentence, by inserting “; and” at the end;

(B) in paragraph (2), by striking “and” at the end;

(C) by adding at the end the following:

“(4) The total number of emergency physical searches authorized by the Attorney General under section 106(e) (50 U.S.C. 1806) and the total number of subsequent orders approving or denying such physical searches.”;

(3) EMERGENCY PEN REGISTERS AND TRAP AND TRACE DEVICES.—Section 406(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1816(b)), as amended by section 7, is amended—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the period at the end and inserting “; and”;

(C) by adding at the end the following:

“(5) The total number of pen registers and trap and trace devices whose installation and use was authorized by the Attorney General under section 406(d) (50 U.S.C. 1816(d)) and the total number of subsequent orders approving or denying the installation and use of such pen registers and trap and trace devices.”.

By Mr. INOUYE (for himself and Mr. SUNUNU):


Mr. INOUYE. Mr. President, I rise today to introduce the Coral Reef Conservation Amendments Act of 2005, legislation to reauthorize and update the Coral Reef Conservation Act of 2000. I am pleased to be joined in this endeavor by Senator JOHN SUNUNU, the new Chairman of the Commerce Committee’s National Ocean Policy Study, who is also greatly concerned about the fate of coral reefs and the future well-being of our coastal regions and resources.

Coral reefs, often called the "rainforests of the sea," are among the oldest and most diverse ecosystems on
the planet. Covering less than one percent of the Earth’s surface, these fragile resources provide services worth billions of dollars each year to the United States economy and economies worldwide. Coral reef resources provide economic and environmental benefits in the form of food, jobs, natural products, pharmaceuticals, and shoreline protection. In Hawaii, reef-related activities generate $360 million each year for the state’s economy, and the overall worth of these reefs has been estimated at close to $10 billion.

However, these reefs are also under pressure from some 1.2 million residents and the seven million tourists visiting each year. Threats range from land-based sources of pollution, overfishing, recreational overuse, alien species introduction, marine debris, coral bleaching and the increased acidity of our oceans. Despite these impacts, there are still remote coral reefs that are largely intact, such as those in the Northwestern Hawaiian Islands. Continued conservation and study of these isolated reefs is necessary for understanding healthy coral reef ecosystems and restoring impacted ecosystems.

The reefs of the Northwestern Hawaiian Islands are an important nesting and breeding site for many endangered and threatened species. A Federal designation process is underway to manage these areas as a National Marine Sanctuary under a science-based management scheme that will accommodate multiple uses while achieving the necessary conservation goals. Increased funding and expanded Federal, State and local partnerships in this area have resulted in monitoring, mapping, and research programs that have improved our understanding of the spatial and temporal dynamics of Hawaiian reefs which can be used to guide conservation and management decisions.

Through this authorization, we can build upon lessons learned in Hawaii and other areas and apply them throughout the United States. A mere five years ago, Congress took its first step toward addressing coral reef declines by authorizing legislation that provided targeted funding to advance our understanding and capacity to address threats to coral reefs. Since then, strong support for these programs around the country, as well as focused funding, has underscored the need to improve management and conservation of coral reefs from a variety of threats. Our hearing on coral threats last month provided additional recommendations for changes to move from monitoring to action to improve coral conservation.

The Coral Reef Conservation Amendments of 2005 responds to these recommendations by increasing annual authorizations under the Coral Reef Conservation Act, starting at $30 million in fiscal year 2006, and increasing to $35 million in fiscal year 2009 to 2012. This roughly doubles the authorization levels in the existing act. It also gives priority attention to local action strategies and territorial needs, as well as on prevention of physical damage from spills, discharges and groundings.

The bill also adds focused support for coral reef protection and management decisions. In particular, when there is no viable owner or when the grounding occurs under circumstances that do not allow for response under authorities such as the National Marine Sanctuaries Act or the Oil Pollution Act, the bill authorizes NOAA to establish a vessel grounding inventory, identify reefs outside National Marine Sanctuaries that are at risk, and recommend measures that may be used to prevent future touchdowns, such as navigational aids or beacons to warn mariners.

Finally, the bill specifically directs NOAA to coordinate on the federal, state, and local levels to implement the U.S. National Coral Action Strategy.

I hope that my colleagues will join me in supporting this bill. 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:

SEC. 1. SHORT TITLE.

This Act may be cited as the “Coral Reef Conservation Amendments Act of 2005.”

SEC. 2. EXPANSION OF CORAL REEF CONSERVATION PROGRAM.

(a) PROJECT DIVERSITY.—Section 204(d) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6403(d)) is amended—

(1) by striking “GEOGRAPHIC AND BIOLOGICAL” in the heading and inserting “PROJECT”;

(2) by striking “40 percent” in paragraph (2) and inserting “30 percent”;

(3) by striking paragraph (3) and inserting the following:

“(3) Remaining funds shall be awarded for—

“(A) projects (with priority given to community-based local action strategies) that address emerging priorities or threats, including international and territorial priorities, or threats identified by the Administrator in consultation with the Coral Reef Task Force; and

“(B) other appropriate projects, as determined by the Administrator, including monitoring and assessment, research, pollution reduction, education, and technical support activities.”

(b) APPROVAL CRITERIA.—Section 204(g) of that Act (16 U.S.C. 6403(g)) is amended—

(1) by striking “or” after the semicolon in paragraph (9);

(2) by redesignating paragraph (10) as paragraph (12); and

(3) by inserting after paragraph (9) the following:

“(10) activities designed to minimize the likelihood of vessel impacts on coral reefs, particularly those activities described in section 210(b), including the promotion of ecologically sound navigation and anchorages near coral reefs;

“(11) promoting and assisting entities to work with local communities, and all appropriate governmental and nongovernmental organizations, to support community-based planning and management initiatives for the protection of coral reef systems; or”

SEC. 3. EMERGENCY RESPONSE.

Section 206 of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6404) is amended to read as follows:

“SEC. 206. EMERGENCY RESPONSE ACTIONS.

“(a) IN GENERAL.—The Administrator may undertake or authorize action necessary to prevent or mitigate any physical damage to coral reefs, including damage caused by natural disasters. The bill also authorizes NOAA to use Coral Reef Conservation Program funds to encourage leveraging resources and assistance from other Federal agencies, as well as private sources. To assist in preventing future touchdowns, the bill authorizes NOAA to establish a vessel grounding inventory, identify reefs outside National Marine Sanctuaries that are at risk, and recommend measures that may be used to prevent future touchdowns, such as navigational aids or beacons to warn mariners.

“(c) PARTNERING WITH OTHER FEDERAL AGENCIES.—When possible, action by the Administrator under this subsection includes—

“(1) be conducted in partnership with other Federal agencies, including the United States Coast Guard, the Federal Emergency Management Agency, and the United States Army Corps of Engineers, and the Department of the Interior; and

“(2) leverage resources of such other agencies, including funding or assistance authorized under other Federal laws, such as the Oil Pollution Act of 1990, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Federal Water Pollution Control Act.”

SEC. 4. NATIONAL PROGRAM.

Section 207(b) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6405(b)) is amended—

(1) by striking “and” after the semicolon in paragraph (3);
SEC. 209. COMMUNITY-BASED PLANNING GRANTS.

(a) In General.—The Administrator may make grants to entities that have received grants under section 204(c) to provide additional funds to such entities to work with local communities and through appropriate Federal and State agencies to prepare and implement plans for the increased protection of coral reef areas identified by the community and the best scientific information available as high priorities for focused attention. The plans shall—

(1) support attainment of 1 or more of the criteria described in section 204(g);
(2) be developed community level;
(3) utilize watershed-based approaches;
(4) provide for coordination with Federal and State experts and managers; and
(5) build upon such approaches or models, including traditional or island-based resource management concepts.

(b) Terms and Conditions.—The provisions of subsections (b), (d), (f), and (h) of section 204 apply to grants under subsection (a), except that, for the purpose of applying section 204(b)(1) to grants under this section, 25 percent shall be substituted for 50 percent.

SEC. 210. VESSEL GROUNDING INVENTORY.

(a) In General.—The Administrator may maintain an inventory of all vessel grounding incidents and activities designed to minimize the threat to coral reefs and coral reef ecosystems; and
(b) by inserting the following after the sentence:

The Administrator may

SEC. 212. REGIONAL COORDINATION.

(a) In General.—The Administrator shall work in coordination and consultation with other Federal agencies, States, and United States territories to implement the strategies developed under section 203, including regional and local strategies, to address multiple threats to coral reefs and coral reef ecosystems such as coastal runoff, vessel impacts, and oil and gas activities.


(1) by striking “partners,” in paragraph (4) and inserting “partners;” and
(2) by adding at the end the following:

“activities designed to minimize the likelihood or other physical damage to coral reefs, including those activities described in section 210(b)

(b) by adding at the end of section 205(b)(16 U.S.C. 6404(b)) “The organization is encouraged to solicit funding and in-kind services from the private sector, including non-governmental organizations, for emergency response actions under section 206 and for activities to prevent damage to coral reefs, including activities described in section 210(b)(2).”

(2) by striking “the grant program” in section 204(c)(4)(B) and inserting “any grant program or emergency response action”;
(3) by redesignating sections 209 and 210 as sections 209 and 210, respectively;
(4) by striking section 208; and
(5) by inserting after section 208 the following:

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

SEC. 212. REGIONAL COORDINATION.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

By Mr. LAUTENBERG (for himself, Mr. JEFFORDS, Mrs. BOXER, Mr. KERRY, Mr. CORZINE, Mrs. CLINTON, and Mr. KENNEDY)

S. 1891. A bill to amend the Toxic Substances Control Act to provide for the exposure of children, workers, and consumers to toxic chemical substances; and to the Committee on Environment and Public Works.

Mr. LAUTENBERG. Mr. President, I rise today to introduce the Child, Worker and Consumer Safe Chemicals Act of 2005. Senators JEFFORDS, BOXER, KERRY, CORZINE, CLINTON and KENNEDY are cosponsors of this legislation.

Every day, Americans use household products that contain hundreds of chemicals. Most people assume that those chemicals have been proven safe for their families and children. Unfortunately, that assumption is wrong. Many chemicals that have been in use for decades have never been tested for their health effects.

Over 40 years ago Rachel Carson, in her book Silent Spring, warned about the dangers of using chemicals that had not been fully tested. Today, nearly all of those same chemicals are still being used—yet to this day most of them have never been tested for their health effects.

Many of these chemicals perform amazing services and make our lives easier. But in recent years study after study has raised concerns about some of the chemicals that are used in thousands of products.

For instance, take the common baby bottle. Many baby bottles contain the chemical “Bisphenol A” which at very low doses has been shown to affect reproduction, the immune system, brain chemistry, behavior and more. How great is the risk of using Bisphenol A in baby bottles, water bottles and other everyday products? The answer is “we don’t know.”

Thus, what is needed is to have every right to expect their babies to be safe from exposure to toxic chemicals—before and after birth. We have laws to make sure that pesticides and medicines are safe—and even toys. But we fail to require similar safeguards in the products that come into contact with the skin of our children. Today, we strike a balance by striking “partners,” in paragraph (4) and inserting “partners;” and; and

product being exported.

The other sectors that further the purposes of this Act and are consistent with the national coral reef strategy under section 203; and

to address emergency response actions under section 206.”

“(d) Community-Based Planning Grants.—(1) by redesigning the items relating to sections 208 through 211 as relating to sections 211 through 214; and

(b) by striking the following after the item relating to section 208:

“209. Community-based planning grants.

210. Vessel grounding inventory.

211. Regional coordination.”
But the current law, known as “Toxic Substances Control Act” (TSCA) actually sets up roadblocks to EPA getting the vital information it needs to determine whether these chemicals are safe. So last year, I asked the Government Accountability Office (GAO) to assess TSCA to determine how effective it has been in doing the job of protecting public health and the environment.

In the GAO report released today, Chemical Regulator: Options Exit to Improve EPA’s Ability to Assess Health Risks and Manage its Chemical Review Program, we learn that TSCA is such an ineffective and burdensome law that it often fails to protect our children, workers and the general population from exposure to carcinogens such as asbestos—for which there is no safe level of exposure.

According to the GAO, only five chemicals used in about 200 chemicals have been restricted by EPA. In 29 years, the agency has formally requested health and environmental effects information on just 200 chemicals—out of about 80,000.

The GAO reports, “EPA does not routinely assess existing chemicals and has limited information on their health and environmental risks.” It adds, “EPA lacks sufficient data to ensure that potential health and environmental risks of new chemicals are identified.”

Children are the most sensitive population to chemical pollutants and we must protect that sacred bond between a mother and her child. Again, it is inexcusable; that our laws require extensive data to approve pesticides and pharmaceuticals as safe—but fail to require similar analysis for the chemicals used in baby bottles, water bottles, food packages and thousands of other products.

That is why today I am introducing The Kid Safe Chemicals Act. My bill will establish a safety standard that each chemical will meet. It shifts the burden of proving that chemicals are safe from EPA to the chemical manufacturers. Under my bill, the manufacturers must provide the EPA with whatever data it needs to determine if a chemical use meets the safety standard. And the bill strengthens EPA’s authority to restrict the use of chemicals which fail to meet that standard.

I have ten grandchildren . . . and I believe we have a sacred duty to protect the health of infants and children. I agree with Daniel Maguire, a professor of religious ethics at Marquette University who stated, “As a principle of ethics, whatever is good for kids is good; whatever is bad for kids is ungodly.”

My bill has been endorsed by the American Public Health Association and many of the nation’s leading pediatricians. The American people have a right to assume that the products they use are safe. This bill will help guarantee that right.

Mr. JEFFORDS. Mr. President, I rise today to introduce the Kid Safe Chemicals Act with Senators LAUTENBERG, BOXER, KERRY, CORZINE, CLINTON and KENNEDY. The purpose of the bill is simple—improve children’s health by reducing exposure to harmful toxic chemicals in everyday consumer products.

Synthetic chemicals play an integral role in the US economy and in enhancing our quality of life. Yet—like most Americans—I assumed basic safeguards were in place to protect children.

The report shows that potential health and environmental risks of new chemicals are fully assessed before they enter commerce. A ten-fold safety factor would be built in to account for the unique sensitivity of children.

As a principle of ethics, whatever is good for kids is good; whatever is bad for kids is ungodly. I believe that the Kid Safe Chemicals Act represents a commonsense approach to reducing children’s exposure to toxic chemicals.

By Mr. SMITH (for himself and Mr. Dorgan): S. 1392. A bill to reauthorize the Federal Trade Commission; to the Committee on Commerce, Science, and Transportation.

Mr. SMITH. Mr. President, I rise today with Senator Dorgan to introduce the PTC Reauthorization Act of 2005. As the chairman of the Subcommittee on Trade, Tourism, and...
Economic Development, I am pleased to have Senator Dorgan, the ranking member of the subcommittee join me to introduce this important bill. Our subcommittee has jurisdiction over the Federal Trade Commission and its missions and this legislation would reauthorize the FTC from fiscal year 2006 through 2010.

The FTC reauthorization bill is important for the FTC to carry out its critical mission of preventing unfair competition and protecting consumers from the deceptive acts or practices in the marketplace.

The responsibility to protect consumers is quite broad and includes a wide array of deception and unfair business practices, including price fixing, telemarketing fraud, Internet scams, and consumer identity theft.

As a product of its responsibilities, the FTC plays a vital role in maintaining integrity in the marketplace and strengthening our economy.

This legislation authorizes appropriations to fund the FTC’s operations including monies for efforts to secure data privacy and to combat spyware and identity theft. These are areas that have posed an increased threat to consumers recently, affecting millions of consumers with a pricetag to society in the billions of dollars.

The services and protections the FTC performs for consumers are invaluable and we need to pass an authorization bill, which it has operated without since 1998.

I urge my colleagues to support this legislation and its expeditious passage through the Congress.

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. 1392

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 “FTC Reauthorization Act of 2005.”

SEC. 2. REAUTHORIZATION.

The text of section 25 of the Federal Trade Commission Act (15 U.S.C. 57c) is amended to read as follows: “There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed $213,000,000 for fiscal year 2006, $241,000,000 for fiscal year 2007, $253,000,000 for fiscal year 2008, $264,000,000 for fiscal year 2009, and $277,000,000 for fiscal year 2010.”

By Mr. VITTER:

S. 1393. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide for reimbursement of certain for-profit hospitals; to the Committee on Homeland Security and Governmental Affairs.

Mr. VITTER. Mr. President, I rise to introduce the Hospital Emergency Reimbursement Act of 2005. This bill will help ensure the safety of many patients, elderly residents, and those who require critical care during the event of a hurricane or other disaster.

Each year, natural disasters place millions of Americans in harm’s way. Hurricanes, floods, and other hazards pose a particular danger to people with special health needs who depend on technology to keep them alive. For them, electricity is a necessity that makes lengthy evacuations a life-threatening race against the clock. These patients must be sheltered in temporary medical facilities with reliable power generators that will perform during a severe storm and during the immediate recovery period after the storm.

Providing for their safety is precisely why I am introducing the Hospital Emergency Reimbursement Act. This bill will enable the Federal Emergency Management Agency, under certain circumstances, to reimburse private for-profit hospitals that shelter special needs patients during federally declared disasters.

Currently, FEMA only has the authority to reimburse a hospital for sheltering if it is a public or nonprofit institution. However, the number of special needs patients swelling in many communities. The guidelines for providing assistance must acknowledge this reality. Last year in Louisiana, two people with critical needs died in transit from New Orleans to a temporary public facility in Baton Rouge in the evacuation for Hurricane Ivan. With every storm or evacuation order, tens of thousands of families with relatives in critical condition scramble to make arrangements to protect their loved ones.

By allowing reimbursement to additional private facilities, the Hospital Emergency Reimbursement Act of 2005 would promote the safety of Americans around the Nation by allowing greater flexibility during an emergency. The amount of reimbursement provided by FEMA under this bill would be limited to the same amount available to public and nonprofit facilities. Furthermore, funds would be available to for-profit hospitals when public facilities within a 30-mile radius have met or exceeded their capacity. Under this measure, public and non-profits still are used first for emergency needs, with private for-profit hospitals available as backup to ensure that everyone in a medically critical condition is covered.

I urge my colleagues to support the Hospital Emergency Assistance Act of 2005.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 197—TO COMMEMORATE THE 60TH ANNIVERSARY OF THE TRINITY TEST, THE CULMINATION OF THE MANHATTAN PROJECT, AND TO HONOR THE PEOPLE WHO MADE IT POSSIBLE

Mr. DOMENICI (for himself and Mr. CRAPO) submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. Res. 197

Whereas the Trinity Test of July 16, 1945, in Alamogordo, New Mexico, the detonation of the first atomic device, demonstrated scientific and engineering capabilities and the ability to understand the atom and for the first time the practical application of nuclear fission, changing mankind’s understanding of the universe;

Whereas the Manhattan Project, the project for the development of that device, involved the labors of women over 28 months at a cost of more than $2,200,000,000, and was one of the largest single scientific and engineering endeavors in history;

Whereas the fruits of the Manhattan Project brought an early end to World War II and saved the lives of countless military and civilian personnel on all sides in that conflict;

Whereas the scientific accomplishments demonstrated by the Manhattan Project produced a new era of technological development resulting in clean energy sources, new medical technologies, supercomputers, and a host of new materials and processes; whereas the Manhattan Project was a model for collaboration between the Government, the private sector, and United States institutions of higher education, as well as scientists and engineers of all nationalities, who worked to preserve freedom;

Whereas the success of the Manhattan Project played a central role in the development of the modern research enterprise in the United States, including the establishment of the National Science Foundation and the National Institutes of Health; and was, with the passage of time, it becomes more important to preserve the historic facilities used during the Manhattan Project, and to honor those remaining men and women who took part in it:

Now, therefore, be it

Resolved. That the Senate—

(1) commemorates the significance of the 60th anniversary of the Trinity Test of July 16, 1945, in Alamogordo, New Mexico, the detonation of the first atomic device, as marking one of the seminal events in human history and one that epitomizes the American spirit;

(2) acknowledges the brilliance and dedication of the men and women of all nationalities who strove so valiantly to make it happen; and

(3) recognizes the critical role of science and technology in keeping our Nation free and prosperous.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1218. Mr. REID (for Mr. BYRD) for himself, Mr. INOUYE, Mr. SARBANES, Mr. REED, Mrs. CLINTON, Mr. SCHUMER, Mr. KENNEDY, Ms. MUKULSKIE, Mr. LIEBERMAN, Mr. LUTHERAN, Mr. DAYTON, Mr. CORZINE, Mrs. BOXER, Mr. KERRY, Mr. BIDEN, and Mr. ROCKEFELLER)) proposed an amendment to the bill H.R. 2360, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

SA 1219. Mr. ENSIGN (for himself, Mr. MURkowski, Mr. SPECTER, and Mr. ROCKEFELLER) proposed an amendment to amendment SA 1124 proposed by Mr. ENSIGN to the bill H.R. 2360, supra.

SA 1220. Mr. GREGG proposed an amendment to amendment SA 1219 proposed by Mr. ENSIGN to the bill H.R. 2360, supra.

SA 1221. Mr. SHELBY (for himself, Mr. SARBANES, Mr. REED, Mrs. DOLE, Mr. DODD, Mr. SCHUMER,