I look forward to a full and thorough debate on this bill in September. I urge all of my colleagues to support the petition to invoke cloture—after five years, the people of Hawaii deserve to have this issue considered by the Senate. If you oppose the bill, then—again, let us give the opportunity to debate the merits of this bill. Unfortunately, there are some in this body who do not even want to allow us to debate this issue. I ask them to carefully consider their position over the August recess. While I respect their ability to use Senate procedure to prevent us from considering this measure, I do not agree with their tactics. I believe the people of Hawaii deserve more than that—we deserve a full debate and up or down vote on this bill.

Once again, I thank the Majority and Democratic leaders for working with us to bring this issue before the Senate for its consideration.

Mr. FRIST. Mr. President, through the Chair, I thank the distinguished Senator from Hawaii. I ask unanimous consent that notwithstanding rule XXII, this cloture vote occur at 5:30 on Tuesday, September 6, with the mandatory live quorum waived.

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

Mr. FRIST. Mr. President, I withdraw my motion.

DEATH TAX REPEAL PERMANENCY ACT OF 2005—MOTION TO PROCEED

Mr. FRIST. Mr. President, I now move to proceed to Calendar No. 84. H.R. 8, the death tax repeal, and I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 84, H.R. 8: To make a repeal of the estate tax permanent.


Mr. FRIST. Mr. President, I ask unanimous consent that the mandatory live quorum be waived and that this vote occur immediately after the previously filed cloture motion, if not waived.

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

Mr. FRIST. Mr. President, this procedure has now set a cloture vote on the motion to proceed to the Native Hawaiians legislation. That vote will occur at 5:30 on Tuesday when we return. If cloture is invoked, we will stay on that motion until it is disposed of. If cloture is not invoked, we will proceed to a vote on the cloture motion to proceed to the death tax.

USA PATRIOT AND TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3199, the House-passed PATRIOT Act reauthorization bill. I further ask unanimous consent that all after the enacting clause be stricken, the text of the committee-reported substitute to Calendar No. 171, S. 1389 be inserted, the bill, as amended, be read a third time and passed, and the Senate insist on its amendment and request a conference with the House with a ratio of six to four.

The PRESIDING OFFICER. Is there objection?

Mr. WYDEN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I intend to be very brief. Tonight the Senate is passing the USA PATRIOT Act by unanimous consent. It is certainly not often that such a procedure would be used for a statute of such extraordinary importance. I believe that it is possible to fight terrorism and protect civil liberties. Tonight I remain concerned that there will be an effort in the conference between the House and the Senate to authorize what are known as administrative subpoenas for the FBI under the law. These administrative subpoenas are warrants that FBI field offices can write themselves without having to make an application to a judge.

Under an administrative subpoena, an FBI field office could get records secretly without anything from just about anybody. Here is an example of how intrusive these administrative subpoenas could be. There are 56 field offices, one in almost every major city. The head of a field office could issue an administrative subpoena to a hospital director and ask for all of the hospital’s medical records simply by claiming they were relevant to an investigation, the hospital director was busy or didn’t have the resources to make a challenge. No judge would ever see the subpoena. The patients would not know their records had been seized. They would be totally in the dark. Your mother’s, your husband’s, your own medical records could move into the FBI database.

Despite the very aggressive efforts in the Senate to include this power to conduct these what I believe are fish expeditions, it is not in the version of the PATRIOT Act that is being considered. I am very involved in these issues for years as well. I also want to commend Chairwoman SPECTER who has talked with me on a number of occasions. We can strike a balance. We can ensure that we pull out all the stops to fight the terrorists without throwing our civil liberties into the ash can. If these administrative subpoenas show up in that conference report, that will skew the balance that is so important to make sure we can win the war on terrorism but also to protect the rights that we have brave men and women fighting for.

I yield the floor.

Mr. REID. Mr. President, last week, after negotiations that went late into the night and early morning, the Judiciary Committee unanimously approved S. 1389, a bipartisan, compromise bill to build on the PATRIOT Act.

This bill, entitled the USA PATRIOT Improvement and Reauthorization Act of 2005, is not perfect. Like all compromises, it includes provisions that are not supported by everyone in this body. However, Democratic and Republican members of the Judiciary Committee came together in a spirit of cooperation and compromise to agree on this bill, and I strongly support it.

I am very pleased that we have also been able to bring Republicans and Democrats together in the full Senate to pass this bill by unanimous consent. Given the divisions we have seen over this legislation in the years since it was passed, I believe it is very important for our Nation and for the American people that we have been able to compromise and to come together in a spirit of bipartisanship to pass this legislation unanimously.

This bill preserves the vital tools the Government needs to protect our national security. At the same time, it puts in place some important checks on the expanded authorities granted the government by the original PATRIOT Act.

Although Members of both parties may feel there are additional improvements that can be made to this bill, Senate Democrats have agreed to join our colleagues on the other side of the aisle to take up and pass this compromise legislation approved unanimously by the Judiciary Committee with no amendments in order.

The President and other officials in his administration have repeatedly called on Congress to act now to reauthorize the PATRIOT Act as quickly as possible. Senate Democrats agree with the President that we should reauthorize the PATRIOT Act and do so quickly. We
are pleased to be able to pass this bill today. I only hope the spirit of bipartisan cooperation and advocacy we have witnessed to this point continues throughout the rest of the legislative process. The next step is a conference with the House. The Senate is passing a very good bill, and I urge Senate conferees—Democratic and Republican—to do everything they can to defend its provisions in the conference report. If they do, I am confident that the Senate, with the House, the Senate is passing a very good bill, and I urge Senate conferees—Democratic and Republican—to do everything they can to defend its provisions in the conference report. If they do, I am confident that the Senate, with the House, the Senate is passing a very good bill, and I urge Senate conferees—Democratic and Republican—to do everything they can to defend its provisions in the conference report. 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did something that the administration has been urging us to do all year—we reported a bill that reauthorizes every expiring provision of the USA PATRIOT Act. This achievement was particularly notable for its bipartisanship. Following months of intense negotiations on opposite sides of the aisle, we produced a consensus bill that won the support of every member of the committee. I commend Chairman SPECTER and all members of the committee for their work on this legislation. I believe it is possible something that many of us would have thought impossible just a few weeks ago: a PATRIOT Act improvement and reauthorization package approved by every Member of the U.S. Senate.

The bill we pass today—S. 1389, as reported—has three key elements.

First, the bill protects the privacy interests of Americans. It requires the Government to convince a judge that a person is suspected of terrorism before obtaining their library records, medical records or other sensitive personal information. It also requires the Government to notify the target of a “sneak and peek” search warrant. It also sets a 4-year “sunset” on three domestic surveillance powers, including roving wiretaps, business record orders, and “sneak and peek” search warrants. It also sets a 4-year “sunset” on three domestic surveillance powers with great potential to affect civil liberties.

Like the PATRIOT Act itself, S. 1389 is not perfect. Nor is any Member, would have written if compromise were unnecessary. I would have liked the bill to include additional checks and balances on certain Government surveillance powers granted or expanded by the PATRIOT Act. I would have liked the bill to include more sunshine provisions, as well as additional sunsets. I regret that the bill repeals a sunset provision that Congress enacted last year and that is due to expire until the end of 2006.

While not perfect, S. 1389 is a good bill, which moves the law in what I believe is the right direction. The bill is also substantially better, from a civil liberties perspective, than either the House bill, H.R. 3199, or the bill reported by the Senate Select Committee on Intelligence, S. 1266. And as the product of true bipartisanship—an 18-to-0 vote is something you do not see every day in the Senate Judiciary Committee, which is one of the most practical committees on which the American people can and should have confidence. I hope that the bipartisan effort that got us to this point will carry over to the conference and speed this bill to final passage.

Second, the bill enhances judicial oversight and protects free speech rights. It gives the recipient of an order for sensitive personal information the right to challenge the order in court on the same grounds as they could challenge a grand jury subpoena. It also provides a right to challenge the gag order that currently prevents people who receive a request for records from speaking out even if they feel the Government is violating their rights.

Third, the bill increases transparency and ensures accountability. One of my principal objectives in this reauthorization process has been to introduce more sunshine into the PATRIOT Act. The reported bill requires increased reporting by the Department of Justice on its use of several PATRIOT Act powers, including roving wiretaps, business record orders, and “sneak and peak” search warrants. It also sets a 4-year “sunset” on three domestic surveillance powers with great potential to affect civil liberties.

The USA PATRIOT Act is one of the most consequential laws that has ever been passed by Congress. It made wide ranging, and necessary changes to our intelligence and law-enforcement communities, giving them the tools they need to defeat this Nation’s most dangerous enemies.

When we passed the PATRIOT Act shortly after September 11, 2001, we recognized that this was very significant legislation, providing new authorities to the Government. That’s why the committee provided vigorous and in-depth oversight of the implementation of the Act. In fact, sixteen of the most controversial provisions came with “sunset clauses,” which would cause them to expire in December of this year.

Since 2001, I have worked, along with my colleagues on both the Judiciary and Intelligence Committees to carry out that oversight. The result has been literally hundreds of hours of hearings, markups, and floor debate. We asked tough questions, and got answers. We did extensive research, and consulted with a wide array of experts.

As part of my effort to oversee the implementation of the USA PATRIOT Act, I asked the ACLU, in a letter dated March 25, 2005, to provide an update of their October 2003 statement that they did not know of any abuses of the USA PATRIOT Act.

On April 4, 2005, the ACLU published a reply to my letter, in which they listed what they described as ‘abuses and misuses’ of the Act. I carefully reviewed each of the examples provided in the letter. I also reviewed information provided to me by the Department of Justice about each of the examples. And while I understand the concerns raised by the ACLU, it does not appear that these charges rose to the level of ‘abuse’ of the PATRIOT Act.

This conclusion has been borne out by the thorough reviews, hearings and briefings. Simply put, there have been no sustainable allegations of serious abuse of the Act.

That said, I believe that we can, and should, make some changes to the PATRIOT Act to ensure it is less likely to be abused in the future.

Furthermore, I am confident that the expiring USA PATRIOT Act provisions should be reauthorized. The sixteen sunsets and provisions are generally needed and should be reauthorized with some of the modifications reflected in the bill we take up today.

The bottom line is that the Judiciary Committee was able to do its work, and reach appropriate compromises. This allowed the committee to favorably report this bill by a vote of 18-0. This type of consensus and bipartisanship is welcome and bodes well for our continued work on these critical issues.

This Nation faces difficult times. We know that there are those already in the country, and others trying to enter our country who would do us grievous injury and harm unless we can stop them—and to stop them, we must find

The USA PATRIOT Act Improvement and Reauthorization Act, that the Judiciary Committee unanimously reported last week. I am pleased that the Senate is about to pass it without modification.

The compromise that the Judiciary Committee worked out addresses a number of the concerns that I have been talking about since October 2001 when I first introduced the PATRIOT Act on the floor. We have come a long way since that night, and I am grateful for the efforts of my colleagues to try to deal with the civil liberties concerns that have been raised by both the Senate and around the country. This is not a perfect bill, but it is a good bill.

This bill does not address all of the problems with the PATRIOT Act. But the compromise does deal with the core concerns that I and others have had about the standard for section 215 orders, sneak and peek search warrants, and meaningful judicial review of section 215 orders and National Security Letters, including judicial review of the gag rule. It does not go as far on any of these issues as the SAFE Act, but it does make meaningful changes to current law.

I want to be clear that this will not be the end of my efforts to further fix problems with the PATRIOT Act. But it does make meaningful changes to current law.

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This Nation faces difficult times. We know that there are those already in the country, and others trying to enter our country who would do us grievous injury and harm unless we can stop them—and to stop them, we must find
them first—before they act, not after they act. Therefore, this bill is necessary and prudent.

This legislation would permanently reauthorize 14 of the 16 provisions scheduled to sunset in December 2005 and extend two other provisions, multipoint wiretaps and the TROIT Act, which provide business records, until December 2009.

I believe it was important to extend, rather than eliminate, the sunsets on these two most controversial provisions—they warrant continued scrutiny.

But this legislation does not merely extend the sunsets. It makes improvements to key portions of the Act. The bill approved by Committee, and which take up today, went even further in strengthening the USA PATRIOT Act and protecting the civil liberties of Americans. It included the following modifications:

Clarifying the rules governing multipoint wiretaps as well as regulating the acquisition of business records in the course of foreign intelligence investigations by requiring that a judge determine that the request is relevant to a national security intelligence investigation, and increases the amount of information that must be provided to Congress to ensure adequate and effective oversight.

Changing Section 215 of the USA PATRIOT Act FISA Tangible Item Orders or the so-called “library provision,” tightening the requirement to make it clear that investigators must not only show relevance but also that the request pertains to a known or suspected agent of a foreign power or their associates.

Changing Section 213 of the USA PATRIOT Act, Delayed Notification of Search Warrants or “Sneak and Peak,” to include a “7-day default” for delayed notice search warrants. Extension of this period permitted to dates certain, limited to 90 days or less unless the facts of the case justify a longer period of delay, but only upon showing of facts supporting that request.

Changing Section 212 of the USA PATRIOT Act, so that electronic service provider, Verizon, Comcast, etc., are authorized to voluntarily, i.e., without a warrant, disclose customer records and the content of communications in an emergency situation—where delay could be harmful, but without a need to show immediacy.

Changing Section 214 of the USA PATRIOT Act, FISA Pen Registers/Trap and Trace Devices, in a way that makes them consistent with those used in criminal cases.

Changing Section 505 of the USA PATRIOT Act, National Security Letter Protection, clarifying that any person contesting an order to produce a tangible thing, can not only challenge the order, but also any gag-order accompanying it.

Taken as a whole, these changes help ensure that these key provisions are used responsibly, in a focused and effective manner and against our Nation’s enemies, not against ordinary Americans. They provide critical additional civil liberties protections, without sacrificing the safety of Americans. I strongly believe that Congress’s responsibility does not end when it passes legislation to carry out vigorous oversight. We have an obligation to adjust and fine-tune laws to fit changing circumstances. We have an obligation to see that the law accomplishes its aims and remains balanced and reasonable.

I believe the bill before us represents the result of fulfilling those obligations, strikes a careful balance and should be approved.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, reserving the right to object to the unanimous consent request pending, I will make a brief statement regarding the PATRIOT Act, which is now being considered.

I rise in support of the compromise legislation. It is an amazing legislative achievement. This revision of the PATRIOT Act was enacted by the Senate Judiciary Committee, on which I am honored to serve, the House, by a vote of 18 to 0—a bipartisan vote—which indicated that both sides of the table came together in an effort to make meaningful revisions to the PATRIOT Act which will protect our freedom but not compromise our security.

We all remember the PATRIOT Act was passed shortly after 9/11, when we were the most engaged in the emotions of the moment. We worried that we might have another attack, and we needed to give our Government powers to protect us. But we worried as well that we might go too far in our emotion in the moment, so we included sunset provisions in the PATRIOT Act which forced us to revisit it. Those sunsets turned out to be exceedingly wise. They brought us back in the last few weeks to take another close look at that PATRIOT Act.

In the meantime, many people stepped forward with criticism of the original PATRIOT Act. One of those was my colleague, Senator LARRY CRAIG of Idaho. He and I probably have the most different voting records of any Senators you might find in the Democratic side—yet we sat down and looked at the PATRIOT Act and found we had many concerns. We put together a bipartisan revision of the act, called the SAFE Act, which suggested some changes in the bill. We attracted support from across the political spectrum—from the American Conservative Union and the American Civil Liberties Union, from a wide range of different groups, right and left and center, who raised serious and important questions about a number of the PATRIOT Act should be changed.

We brought that conversation to the Judiciary Committee while they were deliberating on this version of the PATRIOT Act. I am happy to report that many of the principles that Senator CRAIG and I were urging were included in this final revision of the act which now comes before us on the floor of the Senate.

There were some who worried that we might not reach that point because an early version of the SAFE Act had been threatened with a veto by the Bush White House. Nevertheless, we found that when we could come to an understanding and could produce a work product that we believe will be acceptable not only to the Senate but we hope to the House and to the President.

Like the SAFE Act, the Senate bill retains all of the new powers created by the PATRIOT Act. That is an important thing to say and underline. Like the SAFE Act, it enhances judicial oversight and requires the Government to report to the Congress and the American people on the use of the PATRIOT Act.

Like the SAFE Act, it protects the privacy and free speech rights of innocent Americans. Here is one example: The bill would require the Government to notify a judge that a person is connected to terrorism or espionage before obtaining their library records, medical records, financial data, or other sensitive personal information. That is the right thing to do. The bill isn’t perfect, but it moves us in the right direction.

Let me say a word as I close. One of the most unlikely groups became so important in this debate—the American Library Association. I cannot recall a time in recent memory when this organization showed such leadership. Time and again, they came forward to tell us that they wanted to protect the privacy of their patrons at libraries across America who might come in and take out a magazine or book. They certainly didn’t want to do that with the knowledge that the Government could sweep up all of the library records and sift through them to see if anybody had checked out a suspicious book. They sent us petitions gathered from libraries across the nation, and I think they really did good work on behalf of our Constitution and our rights and liberties guaranteed under the Bill of Rights.

Let me dedicate any success we have with this revision of the PATRIOT Act to the American Library Association and all those who stood with them in asking that we make meaningful changes to the act without eliminating the important provisions that continue to make America safe.

This bill today is not perfect. That’s the nature of a compromise. But it does significantly improve the Patriot Act, and it extends the sunset for several controversial provisions so Congress will have another opportunity to review them in four years.

In contrast, the House of Representatives last week passed a flawed bill
that would extend the Patriot Act’s expiring provisions, but not fix its fundamental problems. Many Republicans and Democrats voted against the bill because it doesn’t protect our constitutional rights.

The Senate bill should serve as a model for how Republicans and Democrats can come together to protect our fundamental constitutional rights and give the government the powers it needs. This legislation shows that we can fight terrorism without changing the nature of our free and open society. It shows that we can be safe and free.

I urge my colleagues to support this legislation and to maintain this approach and balance in the Conference Committee.

I withdraw any reservation and accept the unanimous consent pending before the Senate.

The PRESIDING OFFICER. Without objection, the request is agreed to.

The bill (H.R. 3199), as amended, was read the third time and passed, as follows:

H.R. 3199

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 “USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005”.

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

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 SEC. 107. ACCESS TO CERTAIN BUSINESS RECORDS. (a) ESTABLISHMENT OF RELEVANCE STANDARD.—Subsection (b)(2) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended by striking "with respect to an order under this section." and inserting "with respect to an order under this section or subsection (c)". (b) PHYSICAL SEARCH.—Section 305(d) of such Act (50 U.S.C. 1824(d)) is amended— (1) by striking "as defined in section 102(b)(1)(A)" and inserting "as defined in section 101(b)(1)(A)", and (2) in paragraph (2), by striking "with respect to an order under subsection (a) who reside within 20 miles of the District of Columbia, or if all of such judges are unavailable, other judges of the court established under paragraph (1) who shall be designated by the Presiding Judge of such court (who is designated by the Chief Justice of the United States from among the judges of the court), shall comprise a petition review panel which shall have jurisdiction to review petitions filed pursuant to section 501(f)(1)." (2) The date of the enactment of the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005, the court established under subsection (a) shall have jurisdiction to review petitions for the review of petitions filed pursuant to section 501(f)(1) by the panel established under paragraph (1). Such procedures shall provide that review of a petition shall be conducted ex parte and in camera and shall also provide for the designation of an Acting Presiding Judge.". (c) PEN REGISTERS, TRAP AND TRACE DEVICES.—Section 422(e) of such Act (50 U.S.C. 1827(e)) is amended— (1) by striking "(e) An" and inserting "(e)(1) Except as provided in paragraph (2), an", and (2) by adding at the end the following new paragraph: "(2) In the case of an application under subsection (c) where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an order of the court under this section may be for a period not to exceed one year.". SEC. 108. REPORT ON EMERGENCY DISCLOSURES UNDER SECTION 212 OF THE USA PATRIOT ACT. (a) INCLUSION OF SPECIFIC FACTS IN APPLICATION.—Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by striking "as defined in section 102(b)(8);" and "(2) a summary of the basis for disclosure in those instances where— (B) an attorney to obtain legal advice; and 
(3) by adding at the end the following new subparagraph: "(E) that, in the case of electronic surveillance directed at a facility or place that is not known at the time the order is issued, the applicant shall notify a judge having jurisdiction under section 106 at the earliest reasonable time as determined by the court, and in no case later than 15 days, after electronic surveillance begins to be directed at a new facility or place, and such notice shall include a statement of the legal and circumstantial reasons relied upon by the applicant to justify the belief that the facility or place at which the electronic surveillance is or was directed is being used, or is about to be used, by the target of electronic surveillance and shall specify the total number of electronic surveillance or electronic surveillance that has been or is being conducted under the authority of the order.". (b) NOTIFICATION OF SURVEILLANCE OF NEW FACILITY OR PLACE.—Section 105(c)(2) of such Act is amended— (1) in subparagraph (C), by striking "and" at the end; (2) in subparagraph (D), by striking the period at the end and inserting a comma; and (3) by adding at the end the following new subparagraph: "(E) that, in the case of electronic surveillance directed at a facility or place that is not known at the time the order is issued, the applicant shall notify a judge having jurisdiction under section 106 at the earliest reasonable time as determined by the court, and in no case later than 15 days, after electronic surveillance begins to be directed at a new facility or place, and such notice shall include a statement of the legal and circumstantial reasons relied upon by the applicant to justify the belief that the facility or place at which the electronic surveillance is or was directed is being used, or is about to be used, by the target of electronic surveillance and shall specify the total number of electronic surveillances that has been or is being conducted under the authority of the order.". SEC. 110. PROHIBITION ON PLANNING TERRORIST ATTACKS ON MASS TRANSPORTATION. Section 1993(a) of title 18, United States Code, is amended— (1) in paragraph (1)(A), by striking "or" at the end of paragraph (7); and (2) by redesigning paragraph (8) as paragraph (9); and
SEC. 111. FORFEITURE.

Section 981(a)(1)(B)(i) of title 18, United States Code, is amended—

(1) by inserting ``(a) Amendment.—Section 981(a)(1)(B)(i) of title 18, United States Code, is amended—'' before ``(b) Amendments'' in section 981(a)(1)(B)(i); and

(2) by inserting ``(c) Amendments'' in section 981(a)(1)(B)(i).'' after every reference to section 981(a)(1)(B)(i).

SEC. 112. ADDING OFFENSES TO THE DEFINITION OF FEDERAL CRIME OF TERRORISM.

Section 2332b(c)(5)(B)(i) of title 18, United States Code, is amended—

(1) by inserting ``(a) Paragraph (c) Amendment.—Section 2332b(c)(5)(B)(i) of title 18, United States Code, is amended—'' before ``(b) Amendments'' in section 2332b(c)(5)(B)(i); and

(2) by inserting ``(c) Amendments'' in section 2332b(c)(5)(B)(i).'' after every reference to section 2332b(c)(5)(B)(i).
(9) the term ‘railroad on-track equipment’ means a train, locomotive, tender, motor unit, freight or passenger car, or other on-track equipment used, operated, or employed by a railroad that passes, or is about to pass, a trespasser or other person, or where a trespasser or other person is present, for protection or defense; petition for an order modifying or setting aside the request. The court may modify or set aside the nondisclosure requirement if it finds that the certification was made in bad faith. If the court finds that the certification was made in bad faith, the court may modify or set aside the nondisclosure requirement imposed in connection with such a request.

(1) If the petition is filed within one year of the request for records, a report, or other information under section 2706(b) of this title, section 626(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the court may modify or set aside such a nondisclosure requirement if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, endanger the physical safety of any person. The certification made at the time of the request that disclosure may endanger the national security of the United States or interfere with diplomatic relations shall be treated as conclusive unless the court finds that the certification was made in bad faith.

(2) If the petition is filed one year or more after the request for records, a report, or other information under section 2706(b) of this title, section 626(a) or (b) or 626(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the issuing officer, within ninety days of the filing of the petition, shall either terminate the nondisclosure requirement or re-certify that disclosure may result in danger to the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, or endanger the life or physical safety of any person. In the event or re-certification is made in bad faith, the court may modify or set aside such a nondisclosure requirement if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, or endanger the life or physical safety of any person. The re-certification that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, must be in a written form, to be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a request for records, a report, or other information made to any person or entity under section 2706(b) of this title, section 626(a) or (b) or 626(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947.

(c) In all proceedings under this section, the court shall, upon request of the Government’s representative, review the decision of the Government, which may include classified information, ex parte and in camera.

SEC. 117. CONFIDENTIALITY OF NATIONAL SECURITY LETTERS.

(a) Section 2709(c) of title 18, United States Code, is amended to read—

"(c) In all proceedings under this section, the court shall, upon request of the Government’s representative, review the decision of the Government, which may include classified information, ex parte and in camera."
may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no financial institution, or officer, employee, or agent of such institution, shall disclose to any person (other than to those to whom such disclosure is necessary in order to comply with the request or an attorney to obtain legal advice with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to a customer’s or entity’s financial records during that period, indicating the address and the number of delayed notices authorized during that period, the number of search warrants granted during the reporting period, and the number of delayed notices authorized during that period, indicating the adverse results that occurred that day.’’.

SEC. 121. LIMITATION ON AUTHORITY TO DELAY NOTICE.

(a) In General.—Section 3103(a)(1) of title 18, United States Code, is amended by inserting ‘‘section 2351’’ each place it appears and inserting ‘‘2332b(g)(5)(B)’’.

(b) Reporting Requirement.—Section 3103a of title 18, United States Code, is amended by adding at the end the following: ‘‘(c) Reports.—On an annual basis, the Administrator of the United States Courts shall report to the Committees on the Judiciary of the House of Representatives and the Senate the number of search warrants granted during the reporting period, and the number of delayed notices authorized during that period, indicating the adverse result that occurred that day.’’.

SEC. 122. INTERCEPTION OF COMMUNICATIONS.

Section 2516(1) of title 18, United States Code, is amended—

(1) in paragraph (c)—

(A) by inserting before ‘‘section 201 (bribery of public officials and witnesses)’’ the following: ‘‘section 81 (arson within special maritime and territorial jurisdiction),’’;

(B) by inserting before ‘‘subsection (d), (e), (f), (g), (h), or (i) of section 444 (unlawful use of explosives)’’ the following: ‘‘subsection (n) or subsection (o) of section 444 (relating to plastic explosives),’’;

(C) by inserting before ‘‘section 1992 (relating to wrecking trains)’’ the following: ‘‘section 956 (conspiracy to harm persons or property overseas),’’;

(2) in paragraph (d)—

(A) by striking ‘‘or’’ before ‘‘section 46502 (relating to aircraft piracy)’’ and inserting a comma after ‘‘section 46502(a) (relating to the destruction of a natural gas pipeline)’’;

(B) by inserting ‘‘, the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), or section 46505(b) (relating to the use or possession of weapons on aircraft)’’ before ‘‘of title 49’’.}

SEC. 123. PENAL PROVISIONS REGARDING TRAFFICKING IN CONTRABAND CIGARETTES OR SMOKELESS TOBACCO.

(a) Threshold Quantity for Treatment As Contraband Cigarettes.—(1) Section 2341(2) of title 18, United States Code, is amended by striking ‘‘60,000 cigarettes’’ and inserting ‘‘10,000 cigarettes’’.

(2) Section 2342(b) of that title is amended by inserting ‘‘60,000’’ and inserting ‘‘10,000’’.

(3) Section 2345 of that title is amended—

(A) in subsection (a), by striking ‘‘60,000’’ and inserting ‘‘10,000’’;

(B) in subsection (b), by striking ‘‘60,000’’ and inserting ‘‘10,000’’.

(b) CONTRABAND SMOKELESS TOBACCO.—(1) Section 2341 of that title is amended—

(A) in paragraph (4), by striking ‘‘and’’ at the end;

(B) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

‘‘(6) the term ‘smokeless tobacco’ means any finely cut, ground, powdered, or leaf to leaf tobacco, not unduly delayed a danger to the life or oral or nasal cavity or otherwise consumed without being combusted;
"(7) the term ‘contraband smokeless tobacco’ means a quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, that are in the possession of any person other than—

(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 (26 U.S.C. 5771, 5772), or an agent of such person;

(B) a common carrier transporting such smokeless tobacco under a proper bill of lading or other document which states the quantity, source, and designation of such smokeless tobacco;

(C) a person who—

(1) is licensed or otherwise authorized by the State where such smokeless tobacco is found to engage in the business of selling or distributing tobacco products; and

(2) is authorized by the accounting, tax, and payment requirements relating to such license or authorization with respect to such smokeless tobacco; or

(D) a employee, or agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision thereof), having possession of such smokeless tobacco in connection with the performance of official duties;—

(2) strike the second sentence;—

(3) by inserting after subsection (a) the following new subsection:

(4) in this section, the term ‘delivery sale’ means any sale of cigarettes or smokeless tobacco in interstate commerce to a consumer if—

1. the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or by any other means where the consumer is not in the same physical location as the seller when the purchase or offer of sale is made; or

2. the cigarettes or smokeless tobacco are delivered by use of the mails, common carrier, private delivery service, or any other means where the consumer is not in the same physical location as the seller when the consumer obtains physical possession of the cigarettes or smokeless tobacco.

(2) is in this section, the term ‘interstate commerce’ means commerce between points in the same State but through any other State, or 

(3) in subsection (a), by striking ‘a State’ and inserting ‘a State or local government to enact and enforce’ and inserting ‘a State’ and inserting ‘a State or local government to enact and enforce’;—

(c) Reporting, RECORDKEEPING, REPORTING, AND INSPECTION.—Section 2343 of that title is amended by striking the second sentence;—

(d) DISPOSAL OR USE OF FORFEITED CIGARETTES AND SMOKELESS TOBACCO.—Section 2345 of that title is amended by striking ‘the term ‘interstate commerce’ means commerce between points in the same State but through any other State, or’ and inserting ‘the term ‘interstate commerce’ means commerce between points in the same State but through any other State, or’;—

(e) EFFECT ON STATE AND LOCAL LAW.—Section 2344(c) of that title, as amended by this section, is amended by striking ‘the term ‘interstate commerce’ means commerce between points in the same State but through any other State, or’ and inserting ‘the term ‘interstate commerce’ means commerce between points in the same State but through any other State, or’;—

(f) In this section, the term ‘interstate commerce’ means commerce between points in the same State but through any other State, or

(g) CONFORMING AND CLERICAL AMENDMENTS.—(1) The section heading for section 2346 of that title is amended to read as follows—

‘2343. Recordkeeping, reporting, and inspection’.—

(2) The section heading for section 2345 of that title is amended to read as follows—

‘2345. Effect on State and local law’.—

(3) The table of sections at the beginning of chapter 114 of that title is amended—

(A) by striking the item relating to section 2343 and inserting the following new item:

‘2343. Recordkeeping, reporting, and inspection.’;—

and

(B) by striking the item relating to section 2345 and inserting the following new item:

‘2345. Effect on State and local law.’;—

(4) (A) The heading for chapter 114 of that title is amended to read as follows—

‘CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO’.—

(B) The table of chapters at the beginning of part A of that title is amended by striking the item relating to section 114 and inserting the following new item:

‘114. Trafficking in contraband cigarettes and smokeless tobacco . . . . . . 2341’.—

SEC. 2314. PROHIBITION OF NARCOTIC DRUGS. Part A of the Controlled Substance Import and Export Act (21 U.S.C. 951 et seq.) is amended by inserting after section 1010 the following:

‘WAR ON TERRORISTS WHO AID AND SUPPORT TERRORISTS OR FOREIGN TERRORIST ORGANIZATIONS

‘SEC. 1010A. (a) (Prohibited acts.—Whoever, in a circumstance described in sub- section (c), manufactures, distributes, im- ports, exports, or possesses with intent to distribute or manufacture a controlled sub- stance, flunitrazepam, or listed chemical, or who attempts or conspires to do so, knowing or intending that such activity, directly or indirectly, aids or provides support, resources, or anything of pecuniary value to—

1. a terrorist organization; or

2. any person or group involved in the planning, preparation for, or carrying out of,
a terrorist offense, shall be punished as provided under subsection (b)."

"(b) PENALTIES.—Whoever violates subsection (a) shall be fined under this title, imprisoned for a term of not less than 20 years and not more than life and shall be sentenced to a term of supervised release of not less than 5 years.

"(c) JURISDICTION.—There is jurisdiction over an offense under this section if—

"(1) the prohibited drug activity or the terrorist offense is in violation of the criminal laws of a State of the United States;

"(2) the offense or the prohibited drug activity occurs in or affects interstate or foreign commerce;

"(3) the terrorist offense occurs in or affects interstate or foreign commerce or would have occurred in or affected interstate or foreign commerce had it been committed;

"(4) an offender provides anything of pecuniary value to a terrorist organization;

"(5) an offender provides anything of pecuniary value for a terrorist offense that is designed to influence the policy or affect the conduct of the United States government;

"(6) an offender provides anything of pecuniary value for a terrorist offense that occurs in part within the United States and is designed to influence the policy or affect the conduct of the United States government;

"(7) an offender provides anything of pecuniary value for a terrorist offense that occurs in whole or in part outside of the United States, or substantial damage to the property of a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions) while that property is outside of the United States;

"(8) the offense occurs in whole or in part within the United States, and an offender provides anything of pecuniary value for a terrorist offense that is designed to influence the policy or affect the conduct of a foreign government;

"(9) the offense or the prohibited drug activity occurs in whole or in part outside of the United States (including on the high seas), and a perpetrator of the offense or the prohibited drug activity is a national of the United States while that national is outside the United States, or substantial damage to the property of a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions) while that property is outside of the United States;

"(10) the offense occurs in whole or in part within the United States, and an offender is brought into or found in the United States after the offense occurred.

"(d) d REQUIREMENTS.—The prosecution shall not be required to prove that any defendant knew that an organization was designated as a ‘foreign terrorist organization’ under the Immigration and Nationality Act.

"(e) DEFINITIONS.—In this section, the following definitions shall apply:

"(1) ANYTHING OF PEUCIUNARY VALUE.—The term ‘anything of pecuniary value’ has the meaning given in the term in section 1958(b)(1) of title 18, United States Code.

"(2) TERRORIST OFFENSE.—The term ‘terrorist offense’ means—

"(A) an act which constitutes an offense within the scope of a treaty, as defined under section 1016, United States Code, which has been implemented by the United States;

"(B) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act; or

"(C) if it is located on, or within 5 miles of, an international border or waterway;

"(ii) is located within 5 miles of a facility designated as high-risk critical infrastructure by the Secretary;

"(iii) is located within or contiguous to one of the 150 largest metropolitan statistical areas in the United States;

"(iv) has more than 1,000 square miles of Indian country, as that term is defined in section 1511 of title 18, United States Code.

"(f) ELEVATIONS IN THE THREAT ALERT LEVEL.—The term ‘elevations in the threat alert level’ means any designation (including those that are less than national in scope) that raises the homeland security threat level to either the highest or second highest threat level under the Homeland Security Advisory System referred to in section 201(a).

"(g) EMERGENCY PREPAREDNESS.—The term ‘emergency preparedness’ shall have the same meaning that term has under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155a).

"(h) ESSENTIAL CAPABILITIES.—The term ‘essential capabilities’ means the levels, availability, and capability of emergency personnel, planning, training, and equipment across a variety of disciplines needed to effectively and efficiently prevent, prepare for, respond to, and recover from acts of terrorism consistent with established practices.

"(i) FIRST RESPONDER.—The term ‘first responder’ shall have the same meaning as the term ‘emergency response provider’.

"(j) INDIAN TRIBE.—The term ‘Indian tribe’ means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (49 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(k) REGION.—The term ‘region’ means—

"(i) a geographic area, or parts of 2 or more contiguous States, counties, municipalities, or other local governments that have a combined population of 1,500,000 or more, an area of not less than 20,000 square miles, and that, for purposes of an application for a covered grant, is represented by 1 or more governments of any level to either the highest or second highest threat level under the Homeland Security Advisory System referred to in section 201(a); or

"(ii) any other combination of contiguous local government units (including such a combination established by law or agreement of 2 or more governments or governmental agencies in a mutual aid agreement); or

"(ii) any other combination of contiguous local government units (including such a combination established by law or agreement of 2 or more governments or governmental agencies in a mutual aid agreement) that is formally certified by the Secretary as a region for purposes of this Act with the consent of—

"(i) the State or States in which they are located, including a multi-State entity established by a compact between two or more States and the Secretary;

"(ii) the incorporated municipalities, counties, and parishes that they encompass.

"(l) TASK FORCE.—The term ‘Task Force’ means the Task Force on Terrorism Preparedness for First Responders established under section 1805.
"(1) TERRORISM PREPAREDNESS.—The term ‘terrorism preparedness’ means any activity designed to improve the ability to prevent, prepare for, respond to, mitigate against, or recover from threatened or actual terrorist attacks.

"SEC. 1802. FASTER AND SMARTER FUNDING FOR FIRST RESPONDERS.—

"(a) Coverage.—This title applies to grants provided by the Department to States, regions, or directly eligible tribes for the primary purpose of improving the ability of first responders to prevent, prepare for, respond to, mitigate against, or recover from threatened or actual terrorist attacks, especially those involving weapons of mass destruction, under the following:

"(1) STATE HOMELAND SECURITY GRANT PROGRAM.—The State Homeland Security Grant Program of the Department, or any successor to such grant program.

"(2) URBAN AREA SECURITY INITIATIVE.—The Urban Area Security Initiative of the Department, or any successor to such grant program.

"(3) LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM.—The Law Enforcement Terrorism Prevention Program of the Department, or any successor to such grant program.

"(b) EXCLUDED PROGRAMS.—This title does not apply to or otherwise affect the following Federal grant programs or any grant under such a program:

"(1) NONDEPARTMENT PROGRAMS.—Any Federal grant program that is not administered by the Department.


"(4) ADMINISTRATION .—The title does not apply to the Incident Management System.

"(b) EXCLUDED PROGRAMS.—This title does not apply to or otherwise affect the following Federal grant programs or any grant under such a program:

"(1) NONDEPARTMENT PROGRAMS.—Any Federal grant program that is not administered by the Department.


"(4) ADMINISTRATION .—The title does not apply to the Incident Management System.
"(E) DIRECT PAYMENTS TO REGIONS.—If any State fails to pass through a regional award to a region as required by subparagraph (C) within 45 days after receiving such award and does not request or receive an extension of such period under section 1806(h)(2), the region may petition the Secretary to receive directly the portion of the regional award that is intended to be passed through to such region under subparagraph (C).

"(F) REGIONAL LIAISONS.—A regional liaison designated under paragraph (4)(E)(ii) shall—

(i) coordinate with Federal, State, local, regional, and private officials within the region concerning terrorism preparedness;

(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials within the region to assist in the development of the regional application and to improve the region’s access to covered grants; and

(iii) administer, in consultation with State, local, regional, and private officials within the region, covered grants awarded to the region.

"(G) TRIBAL APPLICATIONS.—

(A) ELIGIBILITY OF THE STATE OR STATES.—To ensure the consistency required under subsection (d), an applicant that is a directly eligible tribe must submit its application to each of the States within the boundaries of which any part of such tribe is located for direct submission to the Department along with the application to the State or States.

(B) OPPORTUNITY FOR STATE COMMENT.—Before awarding any covered grant to a directly eligible tribe, the Secretary shall provide an opportunity to each State within the boundaries of which any part of such tribe is located to comment to the Secretary on the consistency of the tribe’s application with the homeland security plan or plans and by such comments shall be submitted to the Secretary concurrently with the submission of the State and tribal applications.

(C) FINAL AUTHORITY.—The Secretary shall have final authority to determine the consistency of any application of a directly eligible tribe with the applicable State homeland security plan or plans, and to approve any application of such tribe. The Secretary shall notify each State within the boundaries of which any part of such tribe is located of the approval of an application by such tribe.

(D) TRIBAL LIAISON.—A tribal liaison designated under paragraph (4)(F)(ii) shall—

(i) coordinate with Federal, State, local, regional, and private officials concerning terrorism preparedness;

(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials to assist in the development of the application of such tribe and to improve the tribe’s access to covered grants; and

(iii) administer, in consultation with State, local, regional, and private officials, covered grants awarded to such tribe.

(E) LIMITATION ON THE NUMBER OF DIRECT GRANTS.—The Secretary may make covered grants directly to not more than 20 directly eligible tribes per fiscal year.

(F) TRIBES NOT RECEIVING DIRECT GRANTS.—An Indian tribe that does not receive a grant directly under this section is eligible to receive funds under paragraph (1) of this subsection in an amount not to exceed the amount of any grant under such subsection in which any part of any such tribe is located, consistent with the homeland security plan of the State as described in subparagraph (C).

(G) APPLICATIONS.—If a State fails to comply with section 1806(c)(1), the tribe may request payment under section 1806(b)(3) in the same manner as a local government.

(H) EQUIPMENT STANDARDS.—If an applicant for a covered grant proposes to upgrade or purchase, with assistance provided under the grant, new equipment or systems that do not meet or exceed any applicable national voluntary consensus standards established by the Federal Government, the Secretary shall include in the application an explanation of why such equipment or systems will serve the needs of the applicant better than equipment or systems that meet or exceed such standards.

SEC. 1804. RISK-BASED EVALUATION AND PRIORITIZATION.

"(a) FIRST RESPONDER GRANTS BOARD.—

(1) ESTABLISHMENT OF BOARD.—The Secretary shall establish a First Responder Grants Board consisting of—

(A) the President of the United States;

(B) the Secretary of Homeland Security;

(C) the Administrator of the Federal Emergency Management Agency;

(D) the Administrator of the United States Fire Administration; and

(E) the Administrator of the Animal and Plant Health Inspection Service.

(2) CHAIRMAN.—

(A) IN GENERAL.—The Secretary shall be the Chairman of the Board.

(B) EXERCISE OF AUTHORITIES BY DEPUTY SECRETARY.—The Deputy Secretary of Homeland Security may exercise the authorities of the Chairman, if the Secretary so directs.

(3) LINE OF RESOURCES BY DEPUTY SECRETARY.—The Under Secretaries referred to in subsection (a)(1) shall seek to ensure that the relevant expertise and input of the staff of their directorates are available to and considered by the Board.

(c) PRIORITIZATION OF GRANT APPLICATIONS.—

"(1) FACTORS TO BE CONSIDERED.—The Board shall evaluate and annually prioritize all pending applications for covered grants based upon the degree to which they would, by achieving, maintaining, or enhancing the essential capabilities of the applicants on a nationwide basis, lessen the threat to, vulnerability of, or resiliency of the interests of the United States, with particular attention to—

(A) Agriculture and food;

(B) Banking and finance;

(C) Chemical; and

(D) The defense industrial base.

(2) EMERGENCY SERVICES.—

(A) General.

(B) Public health and health care.

(C) Information technology.

(D) Telecommunications.

(E) Transportation systems.

(F) Water.

(G) Dams.

(H) Commercial facilities.

(I) National monuments and icons.

(2) CRITICAL INFRASTRUCTURE SECTORS.—

The Board specifically shall consider threats of terrorism against the following critical infrastructure sectors in areas of the United States, urban and rural:

(A) Agriculture and food;

(B) Banking and finance;

(C) Chemical;

(D) The defense industrial base;

(E) Emergency services;

(F) Energy;

(G) Government facilities;

(H) Postal and shipping;

(I) Public health and health care;

(J) Information technology;

(K) Telecommunications;

(L) Transportation systems;

(M) Water;

(N) Dams;

(O) Commercial facilities;

(P) National monuments and icons.

The order in which the critical infrastructure sectors are listed in this paragraph shall not be construed as an order of priority for consideration of the importance of such sectors.

(3) TYPES OF THREAT.—The Board specifically and shall consider the following types of threat to the critical infrastructure sectors described in paragraph (2), and to populations in all areas of the United States, urban and rural:

(A) Biological threats.

(B) Nuclear threats.

(C) Radiological threats.

(D) Incendiary threats.

(E) Chemical threats.

(F) Explosives.

(G) Suicide bombers.

(H) Cyber threats.

(I) Any other threats based on proximity to specific past acts of terrorism or the known activity of any terrorist group.

The order in which the types of threat are listed in this paragraph shall not be construed as an order of priority for consideration of the importance of such threats.

(4) CONSIDERATION OF ADDITIONAL FACTORS.—The Board shall take into account any other specific threat to a population (including a transient commuting or tourist population) or critical infrastructure sector that the Board deems necessary. In evaluating the threat to a population or critical infrastructure sector, the Board shall give greater weight to a threat based upon its specificity and credibility, including any pattern of repetition.

(5) MINIMUM AMOUNTS.—After evaluating and prioritizing grant applications under paragraph (1), the Board shall ensure that, for each fiscal year:

(A) each of the States, other than the Virgin Islands, American Samoa, Guam, and the Northern Marianas Islands, that has an approved State homeland security plan, receives no less than 0.25 percent of the funds available for covered grants for that fiscal year for purposes of implementing its homeland security plan in accordance with the prioritization of needs under section 1803(c)(1)(A); and

(B) each of the States, other than the Virgin Islands, American Samoa, Guam, and the Northern Marianas Islands, that has an approved State homeland security plan, and that meets one or both of the following high-risk qualifying criteria under paragraph (6) receives no less than 0.45 percent of the funds available for covered grants for that fiscal year for purposes of implementing its homeland security plan in accordance with the prioritization of needs under section 1803(c)(1)(C) and (D); and

(C) the Virgin Islands, American Samoa, Guam, and the Northern Marianas Islands each receives no less than 0.08 percent of the funds available for covered grants for that fiscal year for purposes of implementing its approved State homeland security plan in accordance with the prioritization of needs under section 1803(c)(1)(D); and

(D) directly eligible tribes collectively receive no less than 0.08 percent of the funds available for covered grants for that fiscal year for purposes of implementing its approved State homeland security plan in accordance with the prioritization of needs identified in the applications of such tribes, consistent with the homeland security plan of each State within the boundaries of which any part of any such tribe is located, except that this clause shall not apply with respect to funds available for a fiscal year if the Secretary receives less than 5 applications for such fiscal year from such tribes under section 1803(e)(6)(A) or does not approve at least one such application.

(6) ADDITIONAL HIGH-RISK QUALIFYING CRITERIA.—The purposes for which funds may be awarded for grants for homeland security plans under section 1803(c)(1)(D), and additional high-risk qualifying criteria consist of—
“(a) having a significant international land border; or

“(b) adjoining a body of water within North America through which an international crossing line extends.

“(d) EFFECT OF REGIONAL AWARDS ON STATE MINIMUM.—Any regional award, or portion thereof, made by a State under section 1803(e)(5) of this title shall not be considered in calculating the minimum State award under subsection (c)(5) of this section.

“SEC. 1805. USE OF FUNDS AND ACCOUNTABILITY REQUIREMENTS.

“(a) IN GENERAL.—A covered grant may be used for—

“(1) purchasing or upgrading equipment, including computer software, to enhance terrorism preparedness;

“(2) exercises to strengthen terrorism preparedness;

“(3) training for prevention (including detection) of preparedness for, response to, or recovery from attacks involving weapons of mass destruction, including training in the use of equipment and computer software;

“(4) developing or updating State homeland security plans, risk assessments, mutual aid agreements, and emergency management plans to enhance terrorism preparedness;

“(5) establishing or enhancing mechanisms for sharing terrorism threat information;

“(6) systems architecture and engineering, program management and oversight, formulation and strategic planning, life-cycle systems design, product and technology evaluation, and prototype development for terrorism preparedness purposes;

“(7) additional personnel costs resulting from—

“(A) elevations in the threat alert level of the Homeland Security Advisory System by the Secretary, or a similar elevation in threat alert level issued by a State, region, or local government with the approval of the Secretary;

“(B) travel to and participation in exercises and training in the use of equipment and on prevention activities; and

“(C) the temporary replacement of personnel during any period of travel to and participation in exercises and training in the use of equipment and on prevention activities;

“(8) the costs of equipment (including software) required to receive, transmit, handle, and store classified information;

“(9) protecting critical infrastructure against potential attack by the addition of barriers, fences, gates, and other such devices, except that the cost of such measures may not exceed the greater of—

“(A) $1,000,000 per project; or

“(B) such greater amount as may be approved by the Secretary which may not exceed 10 percent of the total amount of the covered grant;

“(10) the costs of commercially available interoperable communications equipment (which, where applicable, is based on national, voluntary consensus standards) that the Secretary, in consultation with the Chairman of the Federal Communications Commission, deems best suited to facilitate interoperability, coordination, and integration between and among emergency communications systems, and that complies with prevailing grant guidance of the Department for interoperable communications;

“(11) educational curricula development for public safety training; and

“(12) training and exercises to assist public safety training; and

“(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE.—Notwithstanding section 871(a), the Federal Advisory Committee Act (5 U.S.C. App.), including subsections (a), (b), and (d) of section 10 of such Act, and section 552(b)(c) of title 5, United States Code, shall apply to the Task Force.

“SEC. 1806. USE OF FUNDS AND ACCOUNTABILITY REQUIREMENTS.

“(a) IN GENERAL.—A covered grant may be used for—

“(1) purchasing or upgrading equipment, including computer software, to enhance terrorism preparedness;

“(2) exercises to strengthen terrorism preparedness;

“(3) training for prevention (including detection) of preparedness for, response to, or recovery from attacks involving weapons of mass destruction, including training in the use of equipment and computer software;

“(4) developing or updating State homeland security plans, risk assessments, mutual aid agreements, and emergency management plans to enhance terrorism preparedness;

“(5) establishing or enhancing mechanisms for sharing terrorism threat information;

“(6) systems architecture and engineering, program management and oversight, formulation and strategic planning, life-cycle systems design, product and technology evaluation, and prototype development for terrorism preparedness purposes;

“(7) additional personnel costs resulting from—

“(A) elevations in the threat alert level of the Homeland Security Advisory System by the Secretary, or a similar elevation in threat alert level issued by a State, region, or local government with the approval of the Secretary;

“(B) travel to and participation in exercises and training in the use of equipment and on prevention activities; and

“(C) the temporary replacement of personnel during any period of travel to and participation in exercises and training in the use of equipment and on prevention activities;

“(8) the costs of equipment (including software) required to receive, transmit, handle, and store classified information;

“(9) protecting critical infrastructure against potential attack by the addition of barriers, fences, gates, and other such devices, except that the cost of such measures may not exceed the greater of—

“(A) $1,000,000 per project; or

“(B) such greater amount as may be approved by the Secretary which may not exceed 10 percent of the total amount of the covered grant;

“(10) the costs of commercially available interoperable communications equipment (which, where applicable, is based on national, voluntary consensus standards) that the Secretary, in consultation with the Chairman of the Federal Communications Commission, deems best suited to facilitate interoperability, coordination, and integration between and among emergency communications systems, and that complies with prevailing grant guidance of the Department for interoperable communications;

“(11) educational curricula development for public safety training; and

“(12) training and exercises to assist public safety training; and

“(13) paying of administrative expenses directly related to administration of the grant, except that such expenses may not exceed 3 percent of the amount of the grant;

“(14) paying for the conduct of any activity permitted under the Law Enforcement Terrorism Prevention Program, or any such successor to such program; and

“(15) other appropriate activities as determined by the Secretary.

“(b) PROHIBITED USES.—Funds provided as a covered grant may not be used—

“(1) to supplant State or local funds;

“(2) to construct buildings or other physical facilities;

“(3) to acquire land; or

“(4) for any State or local government cost sharing contribution.

“(c) MULTIPLE-PURPOSE FUNDS.—Nothing in this section shall be construed to preclude State and local governments from using covered grant funds in a manner that also enhances first responder preparedness for emergencies and disasters unrelated to acts of terrorism, if such use assists such government in achieving essential capabilities for terrorism preparedness established by the Secretary.

“(d) REIMBURSEMENT OF COSTS.—(1) In addition to the activities described in subsection (a), a covered grant may be used to provide a reasonable stipend to paid-on-call or volunteer first responders whose capabilities are otherwise compensated for travel to or participation in training covered by this section. Any such
reimbursement shall not be considered compensation for purposes of rendering such a first responder an employee under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(2) An applicant for a covered grant may petition the Secretary for the reimbursement of any activity relating to prevention (including detection) of, preparedness for, response to, or recovery from acts of terrorism that is a Federal duty and usually performed by a Federal agency and that is being performed by a State or local government (or both) under agreement with a Federal agency.

(e) ASSISTANCE REQUIREMENT.—The Secretary may not require that equipment paid for, wholly or in part, with funds provided as a covered grant be made available for responding to emergencies in surrounding States, regions, and localities, unless the Secretary undertakes to pay the costs directly attributable to transporting and operating such equipment during such response.

(f) FLEXIBILITY IN UNSPENT HOMELAND SECURITY GRANT FUNDS.—Upon request by the recipient of a covered grant, the Secretary may authorize the grantee to transfer all or part of funds provided as the covered grant from uses specified in the grant agreement to other uses authorized under this section, if the Secretary determines that such transfer is in the interests of homeland security.

(g) TRANSFER OF FUNDS TO LOCAL SHARING.—(1) PASS-THROUGH.—The Secretary shall require a recipient of a covered grant that is a State to obligate or otherwise make available to local governments, first responders, and other local groups, to the extent required under the homeland security plan or plans specified in the application for the grant, not less than 80 percent of the grant funds, resources purchased with the grant, and other local governments, first responders, and other local groups, to the extent required under paragraph (1), to the extent that the Secretary determines that such transfer is in the interests of homeland security.

(h) INCENTIVES TO EFFICIENT ADMINISTRATION OF HOMELAND SECURITY GRANTS.—(1) P ENALTIES FOR DELAY IN PASSING THROUGH.—If a recipient of a covered grant that is a State fails to pass through to local governments, first responders, and other local groups funds or resources required to be passed through under subsection (g)(1), reducing grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (g)(1), except that the total amount of such reduction may not exceed 20 percent of the total amount of funds that are subject to the penalty.

(2) EXTENSION OF PERIOD.—The Governor of a State may request in writing that the Secretary extend the 45-day period under section 1803(e)(5)(E) or paragraph (1) for an additional 15-day period. The Secretary may approve such a request, and may extend such period for additional 15-day periods, if the Secretary determines that the resulting delay in providing grant funding to the local government entities that will receive funding under the grant will not have a significant detrimental impact on such entities’ terrorism preparedness efforts.

(i) NOTICE TO CONGRESS.—The Secretary shall submit an annual report to Congress by January 31 of each year covering the preceding fiscal year.

4. AMENDMENTS.—Any Act amending this section shall be enacted before the end of the 45-day period beginning on the date the report is submitted by another local government under this paragraph or the date the report is submitted by another local government.
were directed to each State, region, and directly eligible tribe in the preceding fiscal year;

(2) containing information on the use of such grants; and

(3) describing—

(A) the Nation’s progress in achieving, maintaining, and enhancing the essential capabilities established by the Secretary as a result of the expenditure of covered grant funds during the preceding fiscal year; and

(B) an estimate of the amount of expenditures for each category of equipment and other protective clothing.

SEC. 129. OVERSIGHT.

The Secretary of Homeland Security shall establish within the Office for Domestic Preparedness an office of the Comptroller to coordinate grants distribution process and the financial management of the Office for Domestic Preparedness.

SEC. 130. GAO REPORT ON AN INVENTORY AND STATUS OF FIRST RESPONDER SECURITY.

SEC. 130. GAO REPORT ON AN INVENTORY AND STATUS OF FIRST RESPONDER SECURITY.

(a) IN GENERAL.—The Comptroller General of the United States shall submit to the Congress in accordance with this section—

(1) on the overall inventory and status of first responder training programs of the Department of Homeland Security and other departments and agencies of the Federal Government; and

(2) the extent to which such programs are coordinated.

(b) CONTENTS OF REPORTS.—The reports under this section shall include—

(1) an assessment of the effectiveness of the structure and organization of such training programs;

(2) recommendations to—

(A) improve the coordination, structure, and organization of such training programs; and

(B) increase the availability of training to first responders who are not able to attend centralized training programs;

(3) the structure and organizational effectiveness of such programs for first responders in rural communities;

(4) identification of any duplication or redundancy among such programs;

(5) a description of the use of State and local training institutions, universities, centers, and the Domestic Preparedness Consortium in designing and providing training;

(6) a cost-benefit analysis of the costs and time required for first responders to participate in training courses at Federal institutions;

(7) an assessment of the approval process for certifying non-Department of Homeland Security training courses that are useful for anti-terrorism purposes as eligible for grants awarded by the Department;

(8) a description of the use of Department of Homeland Security grant funds by States and local governments to acquire training; and

(c) TIMELINE.—The reports required under subsection (a) shall be submitted during the 2nd calendar year after the date of the enactment of this Act.

SEC. 131. REMOVAL OF CIVIL LIABILITY BARRIERS TO THE DONATION OF FIRE EQUIPMENT TO VOLUNTEER FIRE COMPANIES.

(a) LIABILITY PROTECTION.—A person who donates fire control or fire rescue equipment to a volunteer fire company shall not be liable for civil damages under any State or Federal law for personal injury, property damage or loss, or death caused by the equipment after the donation.

(b) EXCEPTIONS.—Subsection (a) does not apply if—

(1) the person’s act or omission causing the injury, damage, loss, or death constitutes
cussion of the possible effectiveness of the data-mining technology to be informed of the use of their personal information and what procedures are in place to allow for individuals to opt out of the technology. If no such procedures are in place, a thorough explanation as to why not.

(H) Any necessary classified information in an annex to the report shall be made available to the Committee on the Judiciary of both the Senate and the House of Representatives.

(3) TIME FOR REPORT.—The report required under paragraph (2) shall be—

(A) submitted not later than 180 days after the date of enactment of this Act; and

(B) updated once a year to include any new data-mining technologies.

(d) DEFINITIONS.—In this section:

(1) PERSON.—The term ‘person’ includes any governmental or other entity.

(2) FIRE CONTROL OR RESCUE EQUIPMENT.—The term ‘fire control or rescue equipment’ means fire vehicle, fire fighting tool, communications equipment, protective gear, fire hose, or breathing apparatus.

(3) STATE.—The term ‘State’ includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, any other territory or possession of the United States, and any political subdivision of any such State, territory, or possession.

(4) VOLUNTEER FIRE COMPANY.—The term ‘volunteer fire company’ means an association of individuals who provide fire protection and other emergency services, where at least 30 percent of the individuals receive little or no compensation and who are entered in the entry level full-time paid individual in that association or in the nearest such association with an entry level full-time paid individual.

(5) EFFECTIVE DATE.—This section applies only to liability for injury, death, or death caused by equipment that, for purposes of subsection (a), is donated on or after the date that is 30 days after the date of the enactment of this section.

SEC. 132. REPORT BY ATTORNEY GENERAL.

(a) REPORTS ON DATA-MINING ACTIVITIES.—

(1) REQUIREMENT FOR REPORT.—The Attorney General shall collect the information described in paragraph (2) from the head of each department or agency of the Federal Government that is engaged in any activity to use or develop data-mining technology and shall report to Congress on all such activities.

(2) CONTENT OF REPORT.—A report submitted under paragraph (1) shall include, for each activity to use or develop data-mining technology that is required to be covered by the report, the following information:

(A) A thorough description of the data-mining technology and the data that will be used.

(B) A thorough discussion of the plans for the use of such technology and the target dates for the deployment of the data-mining technology.

(C) An assessment of the likely efficacy of the data-mining technology in providing accurate and valuable information consistent with the stated plans for the use of the technology.

(D) An assessment of the likely impact of the implementation of the data-mining technology on privacy and civil liberties.

(E) A list and analysis of the laws and regulations that govern the collection of data gathered, and aligned with the data-mining technology and a description of any modifications of such laws that will be required to use the information in the manner proposed under such program.

(F) A thorough discussion of the policies, procedures, and guidelines that are to be developed and applied in the use of such technology and, in order to—

(i) protect the privacy and due process rights of individuals; and

(ii) ensure that only accurate information is collected and used.

(G) A thorough discussion of the procedures allowing individuals whose personal information is accessed by the data-mining technology to be informed of the use of their personal information and what procedures are in place to allow for individuals to opt out of the technology. If no such procedures are in place, a thorough explanation as to why not.

(H) Any necessary classified information in an annex to the report shall be made available to the Committee on the Judiciary of both the Senate and the House of Representatives.

(3) TIME FOR REPORT.—The report required under paragraph (2) shall be—

(A) submitted not later than 180 days after the date of enactment of this Act; and

(B) updated once a year to include any new data-mining technologies.

(d) DEFINITIONS.—In this section:

(1) DATA-MINING.—The term ‘data-mining’ means a query or search or other analysis of one or more electronic databases, where—

(A) at least 1 of the databases was obtained from or remains under the control of a non-Federal entity, or the information was acquired initial by another department of agency of the Federal Government for purposes other than intelligence or law enforcement.

(B) the search does not use a specific individual’s personal identifiers to acquire information concerning that individual; and

(C) a department or agency of the Federal Government is conducting the query or search or other analysis to find a pattern indicating terrorist or other criminal activity.

(2) DATABASE.—The term ‘database’ does not include telephone directories, information publicly available via the Internet or available by any other means to any member of the public without payment of a fee, or databases of judicial and administrative opinions.

SEC. 133. SENSE OF CONGRESS.

It is the sense of Congress that under section 961 of title 18, United States Code, victims of terrorist attacks should have access to the assets forfeited.

TITLE II—TERRORIST DEATH PENALTY ENHANCEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the ‘‘Terrorist Death Penalty Enhancement Act of 2005’’.

Subtitle A—Terrorist Penalties Enhancement Act

SEC. 211. TERRORIST OFFENSES RESULTING IN DEATH.

(a) NEW OFFENSE.—Chapter 113B of title 18, United States Code, is amended by adding at the end the following:

'‘2339E. Terrorist offenses resulting in death.’’.

SEC. 212. DENIAL OF FEDERAL BENEFITS TO TERRORISTS.

(a) In General.—Chapter 113B of title 18, United States Code, as amended by section 211 of this subtitle, is further amended by adding at the end the following:

'‘2339F. Denial of Federal benefits to terrorists.’’.


Section 60003 of the Violent Crime Control and Law Enforcement Act of 1994, (Public Law 103–322), is amended, as of the time of its enactment by adding at the end the following:

(b) DEATH PENALTY PROCEDURES FOR CERTAIN TERRORIST OFFENSES WHICH CREATE GRAVE RISK OF DEATH.

(1) A person who is convicted of violating section 46502 of title 49, United States Code, or its predecessor, shall be narrowed by adding the limitation that the sentence of death must be imposed for any or all Federal benefits for any term of years or for life.

(2) Section 3591(a)(1) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), is amended, as of the time of its enactment, by adding at the end the following:

'‘2339E. Denial of Federal benefits to terrorists.’’.
(b) MODIFICATION OF AGGRAVATING FACTORS FOR TERRORISM OFFENSES.—Section 3592(b) of title 18, United States Code, is amended—

(1) in the heading, by inserting “terrorist offenses resulting in death”; and

(2) by inserting immediately after paragraph (3) the following:

“(d) ADDITIONAL GROUND FOR IMPANELING NEW JURY.—Section 3593(b)(2) of title 18, United States Code, is amended—

(1) by striking “or” at the end of subparagraph (C); and

(2) by inserting after subparagraph (D) the following:

“(E) an entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport.”

(b) ENFORCEMENT BY FALSE PRETENSES TO ANY SEAPORT.—(a) In General.—Section 1036 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking “or” at the end;

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

“(3) any secure or restricted area of any seaport, designated as secure in an approved security plan, as required under section 70031 of title 46, United States Code, and the rules and regulations promulgated under that section; or

(4) in subsection (b)(1), by striking “5 years” and inserting “10 years”;

(5) in subsection (c)(1), by inserting “, captain of the seaport,” after “airport authority”; and

(6) by striking the section heading and inserting the following:

“§ 1036. Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport.”

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 47 of title 18, United States Code, is amended by striking “unless” and all that follows through the end of the subsection and inserting “unless the court finds good cause, or the parties stipulate, with the approval of the court, a lesser number.”.

(c) IMPEL错了 of NEW Jury WHEN UNANIMOUS RECOMMENDATION CANNOT Be REACHED.—Section 3593 of title 18, United States Code, is amended by inserting after the first sentence the following: “If the jury is unable to reach an unanimous recommendation under section 3593(e), the court, upon motion by the Government, may impanel a jury under section 3593(b)(2)(E) for a new sentencing hearing.”

Title III—Reducing Crime and Terrorism at America’s Seaports


(a) Elimination of Procedures Applicable Only to Certain Controlled Substances Act Cases.—Section 406 of the Controlled Substances Act (21 U.S.C. 848) is amended—

(1) in subsection (c)(2), by striking “(1)(b); and

(2) by striking subparagraphs (A) through (G) and inserting—

“(A) a Federal law enforcement officer to heave to, obstruction of boarding; or

(B) Whoever violates this section shall be fined under this title or imprisoned for not more than 5 years, or both.”

(b) Technical and Conformng Amendments.—The table of sections for chapter 109, title 18, United States Code, is amended by inserting after the term “seaport” the following:

“§ 26. Definition of seaport.”

Subsection B—Penetration of Terrorist Access to Destructive Weapons Act

Subsection C—Federal Death Penalty Procedures

Subtitle C—Federal Death Penalty Provisions

(b) Modification of Aggravating Factors for Offenses Resulting in Death.—Section 3592(c)(1) of title 18, United States Code, is amended—

(1) in paragraph (7), by inserting “or causing the expectation of payment,” after “punished by death or”;

(2) in paragraph (8), by inserting “‘promising of payment,’ or” after “punished by death or”;

(3) by striking immediately after paragraph (16) the following:

“(17) OBSTRUCTION OF JUSTICE.—The defendant engaged in any conduct resulting in the death of an officer in order to obstruct investigation or prosecution of any offense.”

(4) Additional Ground for Impealing New Jury.—Section 3593(b)(2) of title 18, United States Code, is amended—

(1) by striking “or” at the end of subparagraph (C); and

(2) by inserting after subparagraph (D) the following:

“(E) a new penalty hearing is necessary due to the inability of the jury to reach a unanimous verdict as required by section 3593(e); or”.

(c) Juris of Less Than 12 Members.—Subsection (b) of section 3593 of title 18, United States Code, is amended by striking “unless” and all that follows through the end of the subsection and inserting “unless the court finds good cause, or the parties stipulate, with the approval of the court, a lesser number.”.

(d) Technical and Conformng Amendments.—The table of sections for chapter 47 of title 26, United States Code, is amended by inserting after the term matter relating to section 25 the following:

“26. Definition of seaport.”

Title III—Reducing Crime and Terrorism at America’s Seaports

Section 201. Short Title

This title may be cited as the “Reducing Crime and Terrorism at America’s Seaports Act of 2005”.

Section 202. Entry by False Pretenses to Any Seaport

(a) In General.—Section 1036 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking “or” at the end;

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

“(3) any secure or restricted area of any seaport, designated as secure in an approved security plan, as required under section 70031 of title 46, United States Code, and the rules and regulations promulgated under that section; or

(4) in subsection (b)(1), by striking “5 years” and inserting “10 years”;

(5) in subsection (c)(1), by inserting “, captain of the seaport,” after “airport authority”; and

(6) by striking the section heading and inserting the following:

“§ 1036. Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport.”

(b) Technical and Conformng Amendments.—The table of sections for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

“§ 26. Definition of seaport.—As used in this title, the term ‘seaport’ means all piers, wharves, docks, and similar structures, adjacent to any waters subject to the jurisdiction of the United States, to which a vessel may be secured, including areas of land, water, or land and water and in immediate proximity to such structures, buildings on or contiguous to such structures, and the equipment and materials on such structures or in such buildings.”

(c) Definition of Seaport.—Chapter 1 of title 18, United States Code, is amended by inserting after the item for section 2236 the following:

“2237. Criminal sanctions for failure to heave to, obstruction of boarding, or providing false information.”
S9576

CONGRESSIONAL RECORD — SENATE

July 29, 2005

SEC. 304. USE OF A DANGEROUS WEAPON OR EXPLOSIVE ON A PASSENGER VESSEL.

Section 1993 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting "passenger vessel," after "transportation vehicle";

(B) in paragraphs (2) and (3), by inserting "or owner of the passenger vessel," after "transportation provider" each place that term appears;

(C) in paragraph (4), by inserting "or owner of the passenger vessel," after "transportation provider" each place that term appears;

(D) in paragraph (5)—

(i) by inserting "passenger vessel," after "transportation vehicle";

(ii) by inserting "or owner of the passenger vessel," after "transportation provider" each place that term appears;

(E) in paragraph (6), by inserting "or owner of the passenger vessel," after "transportation provider" each place that term appears;

(F) in subsection (b), by inserting "passenger vessel," after "transportation vehicle";

(G) in subsection (c)—

(i) by redesignating paragraph (6) through (8) as paragraphs (7) through (9); and

(ii) by inserting after paragraph (5) the following:

"(6) The term 'passenger vessel' has the meaning given that term in section 2101(22) of this title.";

(2) CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 18, United States Code, as amended by subsection (b), is further amended by adding after the item related to section 2282 the following:

"2282A. Devices or dangerous substances in waters of the United States likely to destroy or damage ships or to interfere with maritime commerce.''.

(b) VIOLENCE AGAINST MARITIME NAVIGATION.—

(1) IN GENERAL.—Chapter 111 of title 18, United States Code as amended by subsections (a) and (b) is further amended by adding at the end the following:

"§ 2282B. Violence against aids to maritime navigation.

Whoever intentionally destroys, seriously damages, alters, moves, or tampers with any aid to maritime navigation maintained by the Saint Lawrence Seaway Development Corporation under the authority of section 4 of the Saint Lawrence Seaway Development Act of 1954 (42 U.S.C. 1903), or by the Coast Guard pursuant to section 81 of title 14, United States Code, or lawfully maintained under authority granted by the Coast Guard pursuant to section 83 of title 14, United States Code, if such act endangers or is likely to endanger the safe navigation of a ship, shall be fined under this title or imprisoned for not more than 20 years.''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 18, United States Code, as amended by subsections (a) and (b) is further amended by adding after the item related to section 2282A the following:

"2282B. Violence against aids to maritime navigation.''.

SEC. 305. CRIMINAL SANCTIONS FOR VIOLENCE AGAINST MARITIME NAVIGATION, PLACEMENT OF DESTRUCTIVE DEVICES.

(a) PLACEMENT OF DESTRUCTIVE DEVICES.—Title 18, United States Code, as amended by subsection (a), is further amended by adding at the end the following:

"§ 2284. Transportation of terrorists.

(a) IN GENERAL.—Whoever knowingly transports aboard any vessel within the United States or on waters subject to the jurisdiction of the United States or on the high seas or having United States nationality an individual outside the United States and on the high seas or having United States nationality or any vessel outside the United States and on the high seas or having United States nationality, or any vessel outside the United States and on waters subject to the jurisdiction of the United States, tends to commit, or is avoiding apprehension after having committed, an offense listed under section 2315(b)(1)(B).''

(b) CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 18, United States Code, as amended by section 305, is further amended by adding at the end the following:

"2283. Transportation of explosive, chemical, biological, or radioactive or nuclear materials.

2284. Transportation of terrorists.''.

SEC. 306. TRANSPORTATION OF DANGEROUS MATERIALS AND TERRORISTS.

(a) TRANSPORTATION OF DANGEROUS MATERIALS AND TERRORISTS.—Chapter 111 of title 18, United States Code, as amended by section 305, is further amended by adding at the end the following:

"§ 2283. Transportation of explosive, chemical, biological, or radioactive or nuclear materials.

(1) IN GENERAL.—Whoever knowingly transports aboard any vessel within the United States and on waters subject to the jurisdiction of the United States or on the high seas or having United States nationality an explosive or incendiary device, biological weapon, chemical weapon, or radioactive or nuclear material, knowing or having reason to believe that any such item is intended to be used to commit an offense listed under section 2315(b)(1)(B), shall be fined under this title or imprisoned for any term of years or for life, or both.

(b) DEATH PENALTY.—If the death of any individual results from an offense under subsection (a) the offender may be punished by death.

(c) DEFINITIONS.—In this section:

(1) EXPLOSIVE.—The term 'explosive' means any object which has the capacity to cause damage to a vessel or its cargo, or cause interference with the safe navigation of a vessel.

(2) INCENDIARY.—The term 'incendiary' means any object that, because of its physical, mechanical, structural, or chemical properties, has the capacity to cause damage to a vessel or its cargo, or cause interference with the safe navigation of a vessel.

(3) BIOLOGICAL WEAPON.—The term 'biological weapon' has the meaning given that term in section 11(a)(1) of the Biological Weapons Convention (42 U.S.C. 2182).''

(b) VIOLENCE AGAINST MARITIME NAVIGATION.—

(1) IN GENERAL.—Chapter 111 of title 18, United States Code, as amended by subsection (b), is further amended by adding after the item related to section 2282 the following:

"2282A. Devices or dangerous substances in waters of the United States likely to destroy or damage ships or to interfere with maritime commerce.''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 18, United States Code, as amended by subsection (b), is further amended by adding after the item related to section 2282A the following:

"2282B. Violence against aids to maritime navigation.''.

SEC. 307. DESTRUCTION OF, OR INTERFERENCE WITH, VESSELS OR MARITIME FACILITIES.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after section 2290 the following:

"CHAPTER 111A—DESTRUCTION OF, OR INTERFERENCE WITH, VESSELS OR MARITIME FACILITIES

Sec. 2290a. Jurisdiction and scope.

2290b. Impartial or conveying false information.

2290c. Jurisdiction and scope.

(a) JURISDICTION.—There is jurisdiction, in the exercise of extraterritorial jurisdiction, over an offense under this chapter if the prohibited activity takes place—

(1) within the United States and within waters subject to the jurisdiction of the United States; or

(2) outside United States and—

(A) an offender or a victim is a national of the United States; or

(B) the activity involves a vessel of the United States (as that term is defined under section 2 of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903).

(b) SCOPE.—Nothing in this chapter shall apply to otherwise lawful activities carried out by or at the direction of the United States Government.

2290d. Jurisdiction and scope.
§ 2291. Destruction of vessel or maritime facility

(a) OFFENSE.—Whoever intentionally—

(1) sets fire to, damages, destroys, disables, or wrecks any vessel;

(2) places any device to be placed a destructive device, as defined in section 922(a)(4), destructive substance, as defined in section 921(a)(5), or an explosive, as defined in section 184(j) of title 18, United States Code, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any vessel, or any part or other materials used or intended to be used in connection with the operation of a vessel;

(3) sets fire to, damages, destroys, or disables or places a destructive device or substance near, any facility or other material used, or intended to be used in connection with the operation, maintenance, loading, unloading, or storage of any vessel or any passenger or cargo carried or intended to be carried on any vessel;

(4) interferes by force or violence with the operation of any maritime facility, including any aid to navigation, lock, canal, or vessel traffic service facility or equipment, if such action is likely to endanger the safety of any vessel in navigation;

(5) sets fire to, damages, destroys, or disables or places a destructive device or substance near, any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading, or storage of any vessel or any passenger or cargo carried or intended to be carried on any vessel;

(6) performs an act of violence against or incapacitates any individual on any vessel, if such act of violence or incapacitation is likely to endanger the safety of the vessel or those on board;

(7) performs an act of violence against a person that causes or is likely to cause serious bodily injury, as defined in section 1346(b)(3), in, upon, or near, any appliance, structure, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading, or storage of any vessel or any passenger or cargo carried or intended to be carried on any vessel;

(8) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safety of any vessel in navigation;

(9) attempts or conspires to do anything prohibited under paragraphs (1) through (8), shall be fined under this title or imprisoned not more than 30 years, or both.

(b) LIMITATION.—Subsection (a) shall not apply to any person that is engaging in otherwise lawful activity, such as normal repair or salvage activities, and the transportation of hazardous materials regulated and allowed to be transported under chapter 51 of title 49.

(c) PENALTY.—Whoever is fined or imprisoned not more than 5 years, or both, but if the amount or value of such money, baggage, goods, or chattels is less than the amount or value of such money, baggage, goods, or chattels the offender shall be fined under this title or imprisoned not more than 5 years, or both;

(d) A NNUAL REPORT OF LAW ENFORCEMENT ACTIVITIES.—The Attorney General shall annually submit to Congress a report which shall include an evaluation of law enforcement activities relating to the investigation and prosecution of offenses under section 659 of this title, United States Code, as amended by this title.

(e) REPORTING OF CARGO THEFT.—The Attorney General shall take the steps necessary to ensure that reports of cargo theft collected by Federal, State, and local officials are reflected as a separate category in the annual Crime Against Cargo report by any successor system, by no later than December 31, 2006.

SEC. 308. THEFT OF INTERSTATE OR FOREIGN SHIPMENTS OR VESSELS.

(a) THEFT OF INTERSTATE OR FOREIGN SHIPMENTS.—Section 659 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(2) by inserting “aircraft, motor vehicle, vessel, or aircraft”;

(b) THEFT OF INTERSTATE OR FOREIGN VESSELS.—Section 2311 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(2) by inserting “aircraft, motor vehicle, vessel, or aircraft”;

(c) FALSITY OR LACK OF MANIFEST.—Section 1594 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(2) by inserting “aircraft, motor vehicle, vessel, or aircraft”;

(d) A NNUAL REPORT OF LAW ENFORCEMENT ACTIVITIES.—The Attorney General shall annually submit to Congress a report which shall include an evaluation of law enforcement activities relating to the investigation and prosecution of offenses under section 659 of this title, United States Code, as amended by this title.

SEC. 309. INCREASED PENALTIES FOR NON-COMPLIANCE WITH MANIFEST REQUIREMENTS.

SEC. 310. STOWAWAYS ON VESSELS OR AIRCRAFT.

SEC. 311. BRIBERY AFFECTING PORT SECURITY.
§526. Bribery affecting port security

(a) In General.—Whoever knowingly—

(1) directly or indirectly, corruptly gives, offers, or promises anything of value to any public official, or attempt to commit or to permit any other person to commit or to aid in committing, or to collude in, or to allow, any fraud, or to make opportunity for the commission of any fraud affecting any public money, property, or records, or

(2) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for—

(A) being influenced in the performance of any official act affecting any secure or restricted area or seaport; or

(B) inducing any official or person to do or omit to do any act in violation of the lawful duty of such official or person that affects any secure or restricted area or seaport,

shall be fined under this title or imprisoned for not more than 20 years, or both.

(b) Definition.—In this section, the term ‘secure or restricted area’ means an area of a vessel or facility designated as secure in an approved security plan, as required under section 7018 of title 46, United States Code, and the rules and regulations promulgated under that section.

(c) Conforming Amendment.—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end the following:

226. Bribery affecting port security.

SEC. 312. PENALTIES FOR SMUGGLING GOODS FROM THE UNITED STATES.

The third undesignated paragraph of section 545 of title 18, United States Code, is amended by striking ‘‘5 years’’ and inserting ‘‘20 years’’.

SEC. 313. SMUGGLING GOODS FROM THE UNITED STATES.

(a) In General.—Chapter 27 of title 18, United States Code, is amended by adding at the end the following:

§554. Smuggling goods from the United States.

(a) In General.—Whoever fraudulently or knowingly buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise, article, or object contrary to any law or regulation of the United States, or attempts to export or send from the United States, any merchandise, article, or object, prior to exportation, knowing the same to be intended for exportation contrary to any law or regulation of the United States, shall be fined under this title, imprisoned not more than 10 years, and, if such merchandise, article, or object is knowingly concealed, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise, article, or object, prior to exportation, shall be fined under this title, imprisoned not more than 20 years.

(b) Definition.—In this section, the term ‘‘United States’’ has the meaning given that term in section 554.

(c) Conforming Amendment.—The chapter analysis for chapter 27 of title 18, United States Code, is amended by adding at the end the following:

554. Smuggling goods from the United States.

(d) Merchandise exported or sent from the United States or attempted to be exported or sent from the United States contrary to law, or the proceeds or value thereof, and property not otherwise subject to any such forfeiture is located beyond the territorial jurisdiction of the United States, is forfeited to the United States.

Title IV—COMBATING TERRORISM FINANCING

SEC. 401. SHORT TITLE.

This title may be cited as the ‘‘Combating Terrorism Financing Act of 2005’’.

SEC. 402. INCREASED PENALTIES FOR TERRORISM FINANCING.


(1) in subsection (a), by deleting ‘‘$10,000’’ and inserting ‘‘$50,000’’;

(2) in subsection (b), by deleting ‘‘ten years’’ and inserting ‘‘twenty years’’.

SEC. 403. TERRORISM-RELATED SPECIFIED ACTIVITIES FOR MONEY LAUNDERING.

(a) AMENDMENT.—Section 1956(e) of title 18, United States Code, is amended—

(1) in the first and second sentences of paragraph (1), by striking ‘‘section 2331’’; and

(2) by striking the period at the end of the last sentence of paragraph (2), and inserting ‘‘or section 2339C (relating to illegal money transmitting)’’.

(b) Conforming Amendments.—The amendments made by section 403(a)(1) and (a)(2) shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

(c) Extension.—The Attorney General shall enter an agreement with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General.

SEC. 404. AMENDMENTS RELATING TO THE USA PATRIOT ACT.

Section 1956 of title 18, United States Code, is amended—

(1) by striking ‘‘or’’ at the end of clause (ii); and

(2) by striking the end of clause (ii) and inserting ‘‘; or’’.

SEC. 405. MONEY LAUNDERING THROUGH HAWALAS.

Section 1956 of title 18, United States Code, is amended by adding at the end the following:

(1) For the purposes of subsections (a)(1) and (a)(2), a transaction, transportation, transmission, or transfer of funds shall be considered to be one involving the proceeds of unspecified unlawful activity, if the transaction, transportation, transmission, or transfer is part of a set of parallel or depend-ent transactions, any one of which involves the proceeds of specified unlawful activity.

(2) As used in this section, a ‘dependent transaction’ is one that completes or complements another transaction or one that would not have occurred but for another transaction.

SEC. 406. TECHNICAL AND CONFORMING AMENDMENTS RELATING TO THE USA PATRIOT ACT.

(a) Technical Corrections.—

(1) Section 322 of Public Law 107–76 is amended by striking ‘‘title 18’’ and inserting ‘‘title 28’’.

(2) Section 5323(a)(1) of title 31, United States Code, is amended by striking ‘‘article of luggage’’ and inserting ‘‘article of luggage or mail’’.

(3) Section 1956(b)(3) and (4) of title 18, United States Code, are amended by striking ‘‘described in paragraph (2)’’ each time it appears.

(4) Section 981(k) of title 18, United States Code, is amended by striking ‘‘foreign bank’’ and inserting ‘‘foreign bank or financial institution’’.

(b) Citation of Section 316 or the USA PATRIOT ACT.—

(1) Chapter 46 of title 18, United States Code, is amended—

(1) by inserting at the end the following:

§1987. Anti-terrorism forfeiture protection

‘‘(a) Right to Contest.—An owner of property that is confiscated under this chapter or
any other provision of law relating to the confiscation of assets of suspected international terrorists, may contest that confiscation by filing a claim in the manner set forth in the Federal Rules of Civil Procedure (Supplemental Rules for Certain Admiralty and Maritime Claims), and asserting as an affirmative defense that—

"(1) the property is not subject to confiscation under such provision of law; or

"(2) the innocent owner provisions of section 983(i) apply to the case.

"(b) EVIDENCE.—In considering a claim filed under this section, a court may admit evidence that is otherwise inadmissible under the Federal Rules of Evidence, if the court determines that the evidence is reliable, and that compliance with the Federal Rules of Evidence may jeopardize the national security interests of the United States.

"(c) CLARIFICATIONS.—The exclusion of certain provisions of Federal law from the definition of the term 'civil forfeiture statute' in section 963(i) shall not be construed to deny a owner of property the right to contest the confiscation of assets of suspected international terrorists under—

"(A) subsection (a) of this section;

"(B) section 2329c; or

"(C) subchapter II of chapter 5 of title 5, United States Code (commonly known as the 'Administrative Procedure Act').

"(2) Nothing in this section shall limit or otherwise affect any other remedies that may be available to an owner of property under section 963 or any other provisions of this part; and

(B) in the chapter analysis, by inserting at the end the following:

"967. Anti-terrorist forfeiture protection.''.

Subsections (a), (b), and (c) of section 316 of Public Law 93-58 are repealed.

Conforming amendments concerning conspiracies.—

Section 53(a) of title 18, United States Code is amended by inserting "or conspiracies" before "to do any of the aforesaid acts".

Section 1896(a) of title 18, United States Code, is amended—

(A) by striking "attempts" each time it appears and inserting "attempts or conspiracies"; and

(B) by inserting "or, if the object of the conspiracy had been achieved," after "the attempted offense had been completed".

SEC. 407. TECHNICAL CORRECTIONS TO FINANCIAL CRIMES ACT OF 1982.

Section 23232(b)(6)(B) of title 18, United States Code, is amended by inserting "(" after "2339C (relating to financing of terrorism)".

SEC. 408. CROSS REFERENCE CORRECTION.

Section 318(b)(4)(A) of title 31, United States Code, is amended by striking "National Intelligence Reform and Terrorism Prevention Act of 2004", and inserting "Intelligence Reform and Terrorism Prevention Act of 2004".

SEC. 409. AMENDMENT TO AMENDATORY LANGUAGE.

Section 6004 of the Intelligence Reform and Terrorism Prevention Act of 2004 is amended (effective on the date of the enactment of that Act)—

(1) by striking "Section 2339(c)(2)" and inserting "Section 2339(c)(2)"; and

(2) by striking "Section 2339(c)(3)" and inserting "Section 2339(c)(3)".

SEC. 410. DESIGNATION OF ADDITIONAL MONEY LAUUNDERING PRECINCT.

Section 356(c)(7)(A) of title 18, United States Code, is amended—

(A) by striking "or", and section 2339D (relating to receiving military-type training from a foreign sponsor or organization) after "section 2339A or 2339B (relating to providing material support to terrorists)"; and

(2) by striking "or" before "section 2339A or 2339B."

The PRESIDING OFFICER appointed Mr. SPECTER, Mr. HATCH, Mr. Kyl, Mr. DeWine, Mr. Sessions, Mr. Roberts, Mr. Levy, Mr. Kennedy, Mr. Rockefeller, and Mr. Levin conferences on the part of the Senate.

Mr. FRIST. Mr. President, I thank our colleagues on this very important piece of legislation—both those who have reservations and those who support this very important act. I talked to the Attorney General a short while ago, and he expressed his appreciation to this body.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Calendar: Calendar Nos. 212, 220, 227, 229, 230, 231, 232, 233, 234, 235, 236, 237, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 253, 254, 255 through 268, 267 through 293, 295, 296, 297 through 302, 303, 304, 305, 306, 307, 308, 309, 310.

I further ask that the Chair now put the question on Calendar No. 212, the nomination of Granta Nakayama, to be an Assistant Administrator of the Environmental Protection Agency, for a term of six years.

The question is, shall the Senate advise and consent to the nomination of Granta Y. Nakayama, to be an Assistant Administrator of the Environmental Protection Agency, for a term of six years.

The nomination was confirmed.

The nomination was confirmed.

The PRESIDING OFFICER. The question is, shall the Senate advise and consent to the nomination of Jendayi Elizabeth Frazer, of Virginia, to be an Assistant Secretary of State for Counterterrorism, with the rank and status of Ambassador at Large.

DEPARTMENT OF VETERANS AFFAIRS

James Philip Terry, of Virginia, to be Chairman of the Board of Veterans' Appeals for a term of six years.

DEPARTMENT OF THE TREASURY

John D. Dugan, of Maryland, to be Comptroller of the Currency for a term of five years.

John M. Reich, of Virginia, to be Director of the Office of Thrift Supervision for a term of five years.

SECURITIES AND EXCHANGE COMMISSION

Christopher Cox, of California, to be a Member of the Securities and Exchange Commission for the term expiring June 5, 2009.

Roel C. Campos, of Texas, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 2010. (Reappointment)

Annette L. Nazareth, of the District of Columbia, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 2013. (Reappointment)

Martin J. Gruenberg, of Maryland, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation for the term expiring December 27, 2006.

Martin J. Gruenberg, of Maryland, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation for the term expiring December 27, 2012. (Reappointment)

DEPARTMENT OF JUSTICE

Michael J. Garcia, of New York, to be United States Attorney for the Southern District of New York for the term of four years.