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

AMENDMENT NO. 1142

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

AMENDMENT NO. 1161

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

AMENDMENT NO. 1162

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

AMENDMENT NO. 1181

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

AMENDMENT NO. 1184

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

AMENDMENT NO. 1189

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

AMENDMENT NO. 1190

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

AMENDMENT NO. 1191

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

AMENDMENT NO. 1192

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

AMENDMENT NO. 1194

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

AMENDMENT NO. 1206

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

AMENDMENT NO. 1207

At the request of Mr. SALAZAR, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of amendment No. 1207 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1209

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

AMENDMENT NO. 1210

At the request of Mr. SALAZAR, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of amendment No. 1210 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

AMENDMENT NO. 1217

At the request of Ms. STABENOW, the names of the Senator from Michigan (Mr. LEVIN), the Senator from New Jersey (Mr. CORZINE), the Senator from Hawaii (Mr. AKAKA), the Senator from Connecticut (Mr. DODD) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of amendment No. 1217 proposed to H.R. 2360, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. SNOWE:

S. 1388. A bill to amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

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

The Regulatory Flexibility Act, RFA, was enacted in 1980 and requires Federal Government agencies to propose rules that keep the regulatory burden at a minimum on small businesses. The RFA requires agencies to analyze the economic impact of proposed regulations when there is likely to be a significant economic impact on a substantial number of small entities.

In 1996, I was pleased to support, along with all of my colleagues, the Small Business Regulatory Enforcement Fairness Act, SBREFA, which amended the RFA. The intent of SBREFA was to further curtail the impact of burdensome or duplicative regulations on small businesses, by clarifying key RFA requirements. In September we will celebrate the 25th Anniversary of the RFA—a law that is largely working as Congress intended.

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

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

For example, rules can regulate a handful of large manufacturers in the

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

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

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

This situation demands reform.

Second, my legislation requires Federal agencies to consider comments provided by the Small Business Administration's Office of Advocacy. The SBA's Office of Advocacy does not receive the public attention it deserves. It should. In case after case it has been the last, best hope for small businesses faced with burdensome, duplicative and nonsensical Federal regulations.

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

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

Finally, the RFRA would clarify the circumstances for a periodic review of Federal rules. If there is a significant impact on a substantial number of small entities, a review would be required. It would also clarify the requirement that agencies review all 10-year-old rules to avoid confusion over which rules to review. In addition, agencies would be required to review rules every 10 years and not just the first 10 years. That's because rules can have unintended and negative consequences in our changing global, information-age economy.

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

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

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

S. 1388

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

SEC. 2. FINDINGS.

Congress finds the following:

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

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

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

(4) Since 1980, Federal agencies have been required to recognize and take account of the differences in the scale and resources of regulated entities, but have failed to do so.

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

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

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

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

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

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

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

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

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

''(9) ECONOMIC IMPACT.—The term 'economic impact' means, with respect to a proposed or final rule—

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

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

SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED ANALYSES.

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

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

''(b) Each initial regulatory flexibility analysis required under this section shall contain a detailed statement—

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

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

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

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

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

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

(2) by adding at the end the following:

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

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

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

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

(1) IN GENERAL.—Section 604(a) of title 5, United States Code, is amended—

(A) in paragraph (1), by striking ''succinct'';

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

(C) in paragraph (3), by—

(i) striking ''an explanation'' and inserting ''a detailed explanation''; and

(ii) inserting ''detailed'' before ''description'';

(D) in paragraph (4), by inserting ''detailed'' before ''description''; and

(E) in paragraph (5), by inserting ''detailed'' before ''description''.

(2) INCLUSION OF RESPONSE TO COMMENTS ON CERTIFICATION OF PROPOSED RULE.—Section 604(a)(2) of title 5, United States Code, is amended by inserting ''(or certification of the proposed rule under section 605(b))'' after ''initial regulatory flexibility analysis''.

(3) INCLUSION OF RESPONSE TO COMMENTS FILED BY CHIEF COUNSEL FOR ADVOCACY.—Section 604(a) of title 5, United States Code, is amended by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively, and inserting after paragraph (2) the following:

''(3) the agency's response to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any changes made to the proposed rule in the final rule as a result of such comments;''.

(4) PUBLICATION OF ANALYSIS ON WEB SITE, ETC.—Section 604(b) of title 5, United States Code, is amended to read as follows:

''(b) The agency shall make copies of the final regulatory flexibility analysis available to the public, including placement of the entire analysis on the agency's Web site, and shall publish in the Federal Register the final regulatory flexibility analysis, or a summary thereof that includes the telephone number, mailing address, and link to the Web site where the complete analysis may be obtained.''.

(c) CROSS-REFERENCES TO OTHER ANALYSES.—Section 605(a) of title 5, United States Code, is amended to read as follows:

''(a) A Federal agency shall be treated as satisfying any requirement regarding the content of an agenda or regulatory flexibility analysis under section 602, 603, or 604, if such agency provides in such agenda or analysis a cross-reference to the specific portion of another agenda or analysis that is required by any other law and which satisfies such requirement.''.

(d) CERTIFICATIONS.—The second sentence of section 605(b) of title 5, United States Code, is amended—

(1) by inserting ''detailed'' before ''statement''; and

(2) by inserting ''and legal'' after ''factual''.

(e) QUANTIFICATION REQUIREMENTS.—Section 607 of title 5, United States Code, is amended to read as follows:

''§ 607. Quantification requirements

''In complying with sections 603 and 604, an agency shall provide—

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

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

SEC. 5. PERIODIC REVIEW OF RULES.

Section 610 of title 5, United States Code, is amended to read as follows:

''§ 610. Periodic review of rules

''(a) Not later than 180 days after the enactment of the Regulatory Flexibility Reform Act of 2005, each agency shall publish in the Federal Register and place on its Web site a plan for the periodic review of rules issued by the agency that the head of the agency determines has a significant economic impact on a substantial number of small entities. Such determination shall be made without regard to whether the agency performed an analysis under section 604. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant adverse economic impacts on a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register and subsequently placing the amended plan on the agency's Web site.

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

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

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

''(1) the continued need for the rule;

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

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

''(4) the complexity of the rule;

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

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

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

''(8) the current impact of the rule, including—

''(A) the number of small entities to which the rule will apply; and

''(B) the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including—

''(i) an estimate of the classes of small entities that will be subject to the requirement; and

''(ii) the type of professional skills necessary for preparation of the report or record.

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

SEC. 6. CLERICAL AMENDMENTS.

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

(1) in paragraph (1)—

(A) by striking the semicolon at the end and inserting a period; and

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

''(1) AGENCY.—The term'';

(2) in paragraph (2)—

(A) by striking the semicolon at the end and inserting a period; and

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

''(2) RULE.—The term'';

(3) in paragraph (3)—

(A) by striking the semicolon at the end and inserting a period; and

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

''(3) SMALL BUSINESS.—The term'';

(4) in paragraph (4)—

(A) by striking the semicolon at the end and inserting a period; and

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

''(4) SMALL ORGANIZATIONS.—The term'';

(5) in paragraph (5)—

(A) by striking the semicolon at the end and inserting a period; and

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

''(5) SMALL GOVERNMENTAL JURISDICTION.—The term'';

(6) in paragraph (6)—

(A) by striking ''; and'' and inserting a period; and

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

''(6) SMALL ENTITY.—The term'';

(7) in paragraph (7), by striking ''(7) the term'' and inserting the following:

''(7) COLLECTION OF INFORMATION.—The term''; and

(8) in the matter preceding paragraph (1), by striking ''chapter—'' and inserting ''chapter, the following definitions apply:''.

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

''§ 605. Incorporations by reference and certifications''.

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

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

''605. Incorporations by reference and certifications.''; and

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

''607. Quantification requirements.''.

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

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

Mr. SPECTER. Mr. President, I seek recognition to introduce, along with my colleagues Senator FEINSTEIN and Senator KYL, the USA PATRIOT Improvement and Reauthorization Act of

2005, a bipartisan bill to reauthorize provisions of the landmark anti- terrorism legislation we adopted in the wake of September 11, 2001. We continue to give tools to law enforcement to protect our security; and, at the same time, we make important improvements to the law to ensure greater protection of civil liberties and to require greater accountability through enhanced reporting and oversight.

In recent months, the political rhetoric about the PATRIOT Act has reached a fever pitch. Not surprisingly, however, the reality fails to match the rhetoric. As the Washington Post has editorialized, ''[a]lthough the PATRIOT Act has become a catch phrase for civil liberties anxieties, it in fact has little connection to the most serious infringements on civil liberties in the war on terrorism.'' At the same time, it would be unwise to credit the act with all of our hard-won successes in the effort to combat terror. As evidenced by the grisly attacks in London last week, no law or surveillance regime can prevent every terrorist attack.

Nevertheless, as last week's attacks remind us, the danger of international terrorism remains real, and has not abated in the years since 9/11. So, we must remain vigilant, and we must be cautious not to recreate the legal circumstances that arguably contributed to significant intelligence failures before 9/11. Reauthorizing the PATRIOT Act, while incorporating improvements designed to safeguard our liberties and enhance oversight, is the right thing to do. To quote the Post again, ''there is little evidence of abuse—and considerable evidence that the law has facilitated needed cooperation. Based on what's known, it merits reauthorization with minor modifications.''

The bill we introduce today is the result of careful consideration. We have listened both to the concerns of critics and the arguments of the administration. We have probed and prodded both for information. And, we have consulted with both sides of the political aisle to fashion language designed to maintain the Government's ability to effectively investigate—and hopefully preempt—terrorist attacks, while making changes to reassure the American people that the law will be used responsibly, consistent with the rights enshrined in our Constitution.

Mr. President, I would like to focus on the changes we have made to those PATRIOT Act provisions that have generated the most controversy.

The PATRIOT Act modified electronic surveillance authority under the Foreign Intelligence Surveillance Act of 1978, or FISA, to permit multipoint wiretaps of suspected terrorists or spies; but only upon a judicial finding of probable cause to believe the target is an agent of a foreign power and a further finding that the target's actions could thwart efforts to identify a single phone company or similar communications provider upon whom to serve the order. The principle behind this authority, which parallels similar authority in the criminal law, is that surveillance of a suspected terrorist or spy should be permitted to continue, uninterrupted, when the target changes phones. By definition, a multipoint wiretap order does not identify the specific phone to be tapped, because the order allows the Government to track the person not a single device. This was a change made necessary by the advent of cell phones, which are easily purchased and then discarded. After passage of the PATRIOT Act, however, this authority was further modified, so that a FISA surveillance order only had to specify the identity of the target ''if known.'' If the identity was unknown, the order had to include a ''description of the target,'' but there was no further requirement about how detailed the description of such ''John Doe'' targets had to be—raising concerns that the Government could conduct roving surveillance of a broadly described target. Our bill corrects this shortcoming and makes other improvements to the roving authority under FISA.

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

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

I would next like to turn to the bill's modification of section 215 of the PATRIOT Act, perhaps the most controversial provision of the act, and one that is frequently misidentified as the ''library'' provision.

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

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

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

the Congress to monitor the Justice Department's activities.

In addition to the foregoing, the bill also requires an annual report on the number of times FISA orders for records and tangible things have been issued, modified, or denied. At our April 5 hearing, the Attorney General declassified the fact that, as of March 30, 2005, the FISA court had ''granted the department's request for a 215 order 35 times.'' He further noted that section 215 had not been used to obtain library or bookstore records, medical records or gun sale records. According to the Attorney General, section 215 had been used only to obtain driver's license records, public accommodation records, apartment leasing records, credit card records and subscriber information, such as names and addresses for telephone numbers captured through court-authorized pen register devices. It is our hope that regular public reporting, together with enhanced congressional reporting, will bolster public confidence in the law without compromising sensitive investigations. Finally, as with the multipoint surveillance authority, we have extended the sunset date for section 215 of the PATRIOT Act until December 31, 2009, so Congress must revisit the continuing need for this tool.

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

Prior to the PATRIOT Act, three Federal circuits had approved the practice of delayed notice search warrants. Supreme Court precedent also supported the legality of judicially authorized covert entries. Indeed, in Dalia v. United States, a 1979 case involving the analogous situation of a covert entry to install a listening device, the Supreme Court described as ''frivolous'' the argument that ''covert entries are unconstitutional for their lack of notice.'' Nevertheless, in the 1995 case of Wilson v. Arkansas, which focused on whether officers must ''knock and announce'' their presence before serving a warrant, the Court held that, ''in some circumstances an officer's unannounced entry into a home might be unreasonable under the Fourth Amendment.'' But, the Court did not address sneak and peek warrants directly, and it left ''to the lower courts the task of determining the circumstances under which an unannounced entry is reasonable under the Fourth Amendment.''

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

Over the last 3 months, at the Judiciary Committee's request, the Department of Justice has furnished new information about its use of delayed notice search warrants. This data shows that delayed notice warrants account for less than 0.2 percent of the warrants handled by Federal district courts. Moreover, delayed notice warrants based solely on seriously jeopardizing an investigation account for less than 1 in every 1,500 warrants—mitigating concerns that the ''catch-all'' provision is being overused. DOJ has also now supplied summaries of 15 cases—out of a total of 22 where the delay was based solely on the ''catch-all.'' In these cases, the delay was based on the substantial risk of comprising a title III wiretap or frustrating efforts to identify the full scope of a complex criminal enterprise. Accordingly, the draft bill does not eliminate seriously jeopardizing an investigation as a basis for delay. Instead, the bill enhances reporting requirements—including the addition of new public reporting requirements—to ensure that DOJ continues to use this authority responsibly. The bill also requires the court to set a ''date certain'' for notice to be provided, eliminating concerns about indefinite delays. The bill permits extensions of the delay period, but requires that extensions be granted only ''upon an updated showing of the need for further delay.'' Finally, the bill limits extensions to 90 days each, which parallels the notice requirements for criminal wiretaps and ''bugs'' which are arguably more invasive that a one-time search, because they may require covert entries and they continue to collect personal data for extended periods of time.

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

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

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

Section 207, Duration of FISA surveillance of non-U.S. persons: The bill extends surveillance periods for non-U.S. persons under FISA, 120 days for original orders, and up to 1 year for extensions. Also, it extends the duration of FISA pen registers for non-U.S. persons, up to 1 year.

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

Section 505, national security letters: The bill incorporates legislation introduced by Senator CORNYN to address a 2004 Federal district court decision holding a national security letter, or NSL, served on an Internet service provider unconstitutional. This legislation permits disclosure to legal counsel; allows court challenges; and permits judicial enforcement of NSLs.

Sunsets: As I have noted, the bill retains sunsets for PATRIOT sections 206, multi-point wiretaps, and 215, FISA orders for business records and tangible things. The bill also extends the sunset date for the ''Lone Wolf'' provision added to FISA by last year's Intelligence Reform and Terrorism Prevention Act until December 31, 2009.

Taken together, these changes provide important checks on the governmental authorities contained in the PATRIOT Act. At the same time, these amendments honor President Bush's call for Congress to reauthorize the act without weakening the tools used to combat terrorism. I am pleased to be joined by Senators FEINSTEIN and KYL in introducing this measure, and I look forward to securing the support of other Judiciary Committee members as we move to consider this bill.

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

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

[From the Washington Post, June 13, 2005]

PATRIOT SECOND ACT

Congress passed the USA Patriot Act in haste after the Sept. 11, 2001, attacks. Critics predicted that the act would deal a blow to liberty, while proponents insisted it was essential to the fight against al Qaeda. A wise compromise gave the administration new powers but had them expire at the end of 2005, giving Congress a chance to take a second look. Consequently, various congressional committees are considering whether

the Patriot Act should be reauthorized, rolled back or expanded—and whether this time it should be made permanent, as the administration wishes, or renewed only temporarily.

Although the Patriot Act has become a catch phrase for civil liberties anxieties, it in fact has little connection to the most serious infringements on civil liberties in the war on terrorism. It has nothing to do with the detention of Americans as enemy combatants, the abuse of prisoners captured abroad or the roundup of foreigners for minor immigration violations. The law's key sections were designed to expand investigative powers in national security cases and permit more information-sharing between intelligence and law enforcement agencies. These have sparked controversy more because of abuses they might permit than because of anything that is known to have happened. Indeed, there is little evidence of abuse—and considerable evidence that the law has facilitated needed cooperation. Based on what's known, it merits reauthorization with minor modifications.

But first more ought to be known. Far from regularly releasing information about its use of the law, the administration has generally hidden even basic information—only to release it when politically convenient. Neither in the Patriot Act nor in the surveillance statute it amended did Congress require the sort of routine public reporting that would offer Americans a useful ongoing sense of the law in operation. And while the administration has, in recent months, released a good deal of information to support its request for reauthorization, the public still lacks a full picture. Before reauthorizing the Patriot Act, Congress needs to demand and release sufficient information. And in revising the law, Congress should make it more transparent, so the public is not at the mercy of the administration's sense of openness.

Nor should reauthorization be permanent. Knowing it had to return to Congress for reauthorization was one of the few incentives for the administration to release information; it's useful to maintain that incentive. And it's not overly burdensome to ask the executive branch to periodically justify its need for such powerful investigative tools.

Finally, the Senate intelligence committee has included as part of its reauthorization package a broad authority for the FBI to collect information from businesses in intelligence matters using an administrative subpoena the FBI can issue on its own. This should not become law. Administrative subpoenas make sense in regulatory matters have made their way into certain criminal and security investigations. But the Justice Department already can get the records it needs using the traditional, wide-ranging investigative powers of the grand jury or another provision of the Patriot Act. Administrative subpoenas are more secretive than grand jury subpoenas, and they involve less scrutiny from prosecutors; they strip away a layer of oversight. The administration may well make a persuasive case for Patriot Act renewal, with increased oversight. But this particular power should not be granted.

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, Apr. 4, 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We have indicated in some of our responses to questions for the record, including those recently submitted on April 1, 2005, that we would supplement our responses to some questions. This letter is intended to supplement previous information we have provided regarding the usage of section 213 of the USA PATRIOT Act (''the Act''), relating to delayed-notice search warrants. We believe the information contained herein completely answers all the Committee's questions submitted to date regarding section 213 and we look forward to working with you on this and other issues related to the reauthorization of the USA PATRIOT Act.

As you know, the Department of Justice believes very strongly that section 213 is an invaluable tool in the war on terror and our efforts to combat serious criminal conduct. In passing the USA PATRIOT Act, Congress recognized that delayed-notice search warrants are a vital aspect of the Department's strategy of prevention; detecting and incapacitating terrorists, drug dealers and other criminals before they can harm our nation. Codified at 18 U.S.C. §3103a, section 213 of the Act created an explicit statutory authority for investigators and prosecutors to ask a court for permission to delay temporarily notice that a search warrant was executed. While not scheduled to sunset on December 31, 2005, section 213 has been the subject of criticism and various legislative proposals. For the following reasons, the Department does not believe any modifications to section 213 are required.

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

In addition, investigators and prosecutors seeking a judge's approval to delay notification must show that, if notification were made contemporaneous to the search, there is reasonable cause to believe one of the following might occur: (1) notification would endanger the life or physical safety of an individual; (2) notification would cause flight from prosecution; (3) notification would result in destruction of, or tampering with, evidence; (4) notification would result in intimidation of potential witnesses; or (5) notification would cause serious jeopardy to an investigation or unduly delay a trial.

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

Delayed-notice search warrants provide a crucial option to law enforcement. If immediate notification were required regardless of the circumstances, law enforcement officials would be too often forced into making a ''Hobson's choice'': delaying the urgent need to conduct a search and/or seizure or conducting the search and prematurely notifying the target of the existence of law enforcement interest in his or her illegal conduct and undermine the equally pressing need to keep the ongoing investigation confidential.

A prime example in which a delayed-notice search warrant was executed is Operation Candy Box. This operation was a complex multi-year, multi-country, multi-agency investigative effort by the Organized Crime Drug Enforcement Task Force, involving the illegal trafficking and distribution of both MDMA (also known as Ecstasy) and BC bud (a potent and expensive strain of marijuana). The delayed-notice search warrant used in the investigation was obtained on the grounds that notice would cause serious jeopardy to the investigation (see 18 V.S.C. §2705(a)(2) (E)).

In 2004, investigators learned that an automobile loaded with a large quantity of Ecstasy would be crossing the U.S.-Canadian border en route to Florida. On March 5, 2004, after the suspect vehicle crossed into the United States near Buffalo, Drug Enforcement Administration (DEA) Special Agents followed the vehicle until the driver stopped at a restaurant. One agent then used a duplicate key to enter the vehicle and drive away while other agents spread broken glass in the parking space to create the impression that the vehicle had been stolen. The ruse worked, and the drug traffickers were not tipped off that the DEA had seized their drugs. A subsequent search of the vehicle revealed a hidden compartment containing 30,000 MDMA tablets and ten pounds of BC bud Operation Candy Box was able to continue because agents were able to delay notification of the search for more than three weeks.

On March 31, 2004, in a two-nation crackdown the Department notified the owner of the car of the seizure and likewise arrested more than 130 individuals. Ultimately, Operation Candy Box resulted in approximately 212 arrests and the seizure of $8,995,811 in U.S. currency, 1,546 pounds of MDMA powder, 409,300 MDMA tablets, 1,976 pounds of marijuana, 6.5 pounds of methamphetamine, jewelry valued at $174,000,38 vehicles, and 62 weapons. By any measure, Operation Candy Box seriously disrupted the Ecstasy market in the United States and made MDMA pills less potent, more expensive and harder to find. There has been a sustained nationwide eight percent per pill price increase since the culmination of Operation Candy Box; a permanent decrease of average purity per pill to the lowest levels since 1996; and currency seizures have denied traffickers access to critical resources—preventing the distribution of between 17 and 34 million additional Ecstasy pills to our Nation's children.

Had Operation Candy Box agents, however, been required to provide immediate notification of the search of the car and seizure of the drugs, they would have prematurely revealed the existence of and thus seriously jeopardized the ultimate success of this massive long-term investigation. The dilemma faced by investigators in the absence of delayed notification is even more acute in terrorism investigations where the slightest indication of governmental interest can lead a loosely connected cell to dissolve. Fortunately though, because delayed-notice search warrants are available, investigators do not have to choose between pursuing terrorists or criminals and protecting the public—we can do both.

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

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

The Committee has requested detailed information regarding how often section 213 has been used. Let us assure you that the use of a delayed-notice search warrant is the exception, not the rule. Law enforcement agents and investigators provide immediate notice of a search warrant's execution in the vast majority of cases. According to Administrative Office of the U.S. Courts (AOUSC), during a 12–month period ending September 30, 2003, U.S. District Courts handled 32,539 search warrants. By contrast, in one 14-month period—between April 2003 and July 2004—the Department used the section 213 authority only 61 times according to a Department survey. Even when compared to the AOUSC data for a shorter period of time, the 61 uses of section 213 still only accounts for less than 0.2% of the total search warrants handled by the courts. Indeed, since the USA PATRIOT Act was enacted on October 26, 2001, through January 31, 2005—a period of more than 3 years—the Department has utilized a delayed-notice search warrant only 155 times.

We have been working with United States Attorneys across the country to refine our data and develop a more complete picture of the usage of the section 213 authority. We have manually surveyed each of the 94 United States Attorneys' Offices for this information which, we understand, is not in a database. We are pleased to report our additional findings below.

In September 2003, the Department made public the fact that we had exercised the authority contained in section 213 to delay notification 47 times between October 2001, and April 1, 2003. Our most recent survey, which covers the time frame between April 1, 2003, and January 31, 2005, indicates we have delayed notification of searches in an additional 108 instances. Since April 1, 2003, no request for a delayed-notice search warrant has been denied. It is possible to misconstrue this information as evidence that courts are merely functioning as a ''rubber stamp'' for the Department's requests. In reality, however, it is an indication that the Department takes the authority codified by the USA PATRIOT Act very seriously. We judiciously seek court approval only in those rare circumstances—those that fit the narrowly tailored statute—when it is absolutely necessary and justified. As explained above, the Department estimates that it seeks to delay notice of fewer than 1 in 500 search warrants issued nationwide. To further buttress this point, the 108 instances of section 213 usage between April 1, 2003, and January 31, 2005, occurred in 40 different offices. And of those 40 offices, 17 used section 213 only once. Looking at it from another perspective over a longer time frame, 48 U.S. Attorneys' Offices—or slightly more than half—have never sought court permission to execute a delayed-notice search warrant in their districts since passage of the USA PATRIOT Act.

To provide further detail for your consideration, of the 108 times authority to delay notice was sought between April 1, 2003, and January 31, 2005, in 92 instances ''seriously jeopardizing an investigation'' (18 U.S.C. §2705(a)(2)(E) was relied upon as a justification for the application. And in at least 28 instances, jeopardizing the investigation was the sole ground for seeking court approval to delay notification, including Operation Candy Box described above. It is important to note that under S. 1709, the ''SAFE Act,'' which was introduced in the 108th Congress, this ground for delaying notice would be eliminated. Other grounds for seeking delayed-notice search warrants were relied on as follows: 18 U.S.C. §2705(a)(2)(A) (danger to life or physical safety of an individual) was cited 23 times; 18 U.S.C. §2705(a)(2)(B) (flight from prosecution) was cited 45 times; 18 U.S.C. §2705(a)(2)(C) (destruction or tampering with evidence) was cited 61 times; and 18 U.S.C. §2705(a)(2)(D) (intimidation of potential witnesses) was cited 20 times. As is probably clear, in numerous applications, U.S. Attorneys' Offices cited more than one circumstance as justification for seeking court approval. The bulk of uses have occurred in drug cases; but section 213 has also been used in many cases including terrorism, identity fraud, alien smuggling, explosives and firearms violations, and the sale of protected wildlife.

Members of the Senate Judiciary Committee have also been concerned about delayed notification of seizures and have requested more detailed explanation of the number of times seizures have been made pursuant to delayed-notice warrants. The Department is pleased to provide the following information.

Seizures can be made only after receiving approval of a Federal judge that the government has probable cause to believe the property or material to be seized constitutes evidence of a criminal offense and that there is reasonable necessity for the seizure. (See 18 U.S.C. §3103a(b)(2)). According to the same survey of all U.S. Attorneys' Offices, the Department has asked a court to find reasonable necessity for a seizure in connection with delayed-notice searches 45 times between April 1, 2003, and January 31, 2005. In each instance in which we have sought authorization from a court during this same time frame, the court has granted the request. Therefore, from the time of the passage of the USA PATRIOT Act through January 31, 2005, the Department exercised this authority 59 times. We previously, in May 2003, advised Congress that we had made 15 requests for seizures, one of which was denied. In total, since the passage of the USA PATRIOT Act, the Department has therefore requested court approval to make a seizure and delay notification 60 times. Most commonly, these requests related to the seizure of illegal drugs. Such seizures were deemed necessary to prevent these drugs from being distributed because they are inherently dangerous to members of the community. Other seizures have been authorized pursuant to delayed-notice search warrants so that explosive material and the operability of gun components could be tested, other relevant evidence could be copied so that it would not be lost if destroyed, and a GPS tracking device could be placed on a vehicle. In short, the Department has sought seizure authority only when reasonably necessary.

The length of the delay in providing notice of the execution of a warrant has also received significant attention from Members of Congress. The range of delay must be decided on a case-by-case basis and is always dictated by the approving judge or magistrate. According to the survey of the 94 U.S. Attorneys' Offices, between April 1, 2003 and January 31, 2005, the shortest period of time for which the government has requested delayed-notice of a search warrant was 7 days. The longest such specific period was 180 days; the longest unspecified period was until ''further order of the court'' or until the end of the investigation. An unspecified period of time for delay was granted for six warrants (four of these were related to the same case). While no court has ever rejected the government's request for a delay, in a few cases courts have granted a shorter time frame than the period originally requested. For example, in one case, the U.S. Attorney for the District of Arizona sought a delay of 30 days, and the court authorized a shorter delay of 25 days.

Of the 40 U.S. Attorneys' Offices that exercised the authority to seek delayed-notice search warrants between April 1, 2003, and January 31, 2005, just over half (22) of the offices sought extensions of delays. Those 22 offices together made approximately 98 appearances to seek additional extensions. In certain cases, it was necessary for the Offices to return to court on multiple occasions with respect to the same warrant. One case bears note. The U.S. Attorney in the Southern District of Illinois sought and received approval to delay notification based on the fifth category of adverse result—that immediate notification would seriously jeopardize the investigation. The length of the delay granted by the court was 7 days. However, the notification could not be made within 7 days and the office was required to seek 31 extensions. So, each week for almost eight straight months, the case agent was made to swear out an affidavit, and the Assistant United States Attorney (AUSA) then had to reappear before the judge or magistrate to renew the delay of notice.

In the vast majority of instances reported by the U.S. Attorneys' Offices, original delays were sought for between 30 to 90 days. It is not surprising that our U.S. Attorneys' Offices are requesting up to 90-day delays. Ninety days is the statutory allowance under Title III for notification of interception of wire or electronic communications (see 18 U.S.C. 2518(8)(d). In only one instance did a U.S. Attorney's Office seek a delay of a specified period of time longer than 90 days (180 days), and the court granted this request. In another instance, an office sought a 90-day delay period, and the court granted 180 days. In seven instances, the Department sought delays that would last until the end of the investigation. In only once instance was such a request modified. In that matter, the court originally granted a 30-day delay. However, when notification could not be made within 30 days, the U.S. Attorney's Office returned to the judge for an extension, and the judge granted an extension through the end of the investigation, for a total of 406 days. This is, according to our survey, the longest total delay a court authorized. However, most extensions were sought and granted for the same period as the original delay requested.

In one case, a court denied a U.S. Attorney's Office's request for an extension of the delay in providing notice. This matter involved three delayed-notice search warrants—all-stemming from the same investigation. The original period of delay sought and granted was for 30 days on all three warrants. The Office then sought 30-day extensions on all three warrants out of concern that the multiple targets of the investigation might flee to a foreign country if notifie.d The court denied our request. The judge in the matter reasoned that the need to delay notification warranted only a 30-day stay of service, particularly in light of the

fact that one of the targets of the investigation was, by this time, in Federal custody in California on an unrelated matter. At some point after notification was made, however, the other targets fled to Mexico.

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

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

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

Sincerely,

WILLIAM E. MOSCHELLA,
Assistant Attorney General.

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, May 3, 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: During the closed session of the Senate Judiciary Committee on April 12, 2005, you requested additional information regarding Section 213 of the USA PATRIOT Act. Specifically, you inquired about examples of where the ''seriously jeopardizing an investigation'' prong was the sole ''adverse result'' used to request delayed notice. In addition to Operation Candy Box, which was detailed in our April 4, 2005, letter to the Committee, we have described seven additional cases below. It is important to note that the twenty-eight instances cited in our April 4 letter do not equate to twenty-eight investigations or cases. For example, some of the cases that used delayed-notice search warrants utilizing the ''seriously jeopardize'' prong involved multiple search warrants.

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

Example #1: Western District of Pennsylvania:

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

An Organized Crime Drug Enforcement Task Force (''OCDETF''), which included agents from the Drug Enforcement Administration (DEA), the Internal Revenue Service, and the Pittsburgh Police Department, as well as from other state and local law enforcement agencies, was engaged in a multi-year investigation that culminated in the indictment of the largest trafficking organization ever prosecuted in the Western District of Pennsylvania. The organization was headed by Oliver Beasley and Donald ''The Chief'' Lyles. A total of fifty-one defendants were indicted on drug, money laundering and firearms charges. Beasley and Lyles were charged with operating a Continuing Criminal Enterprise as the leaders of the organization. Both pleaded guilty and received very lengthy sentences of imprisonment.

The Beasley/Lyle organization was responsible for bringing thousands of kilograms of cocaine and heroin into Western Pennsylvania. Cooperation was obtained from selected defendants and their cooperation was used to obtain indictments against individuals in New York who supplied the heroin and cocaine. Thousands of dollars in real estate, automobiles, jewelry and cash have been forfeited.

The case had a discernible and positive impact upon the North Side of Pittsburgh, where the organization was based. The DEA reported that the availability of heroin and cocaine in this region decreased as the result of the successful elimination of this major drug trafficking organization. In addition, heroin overdose deaths in Allegheny County declined from 138 in 2001 to 46 in 2003.

While the drug investigation was ongoing, it became clear that several leaders of the drug conspiracy had ties to an ongoing credit card fraud operation. An investigation into the credit card fraud was undertaken, and a search was made of a Fed Ex package that contained fraudulent credit cards. Had the search into the credit card fraud investigation revealed the ongoing drug investigation prematurely, the drug investigation could have been seriously jeopardized. The credit card investigation ultimately resulted in several cases including US v. Larry Goolsby, Sandra Young (Cr. No. 02–74); US v. Lasaun Beeman, Derinda Daniels, Anna Holland, Darryl Livsey and Kevin Livsey (Cr. No. 03–43); US v. Gayle Charles (Cr. No. 03–77); US v. Scott Zimmerman, Lloyd Foster (Cr. No. 03–44). All of the defendants charged with credit card fraud were convicted except one, Lloyd Foster, who was acquitted at trial. These cases have now concluded.

Example #2: Western District of Texas:

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

During the wiretaps, three delayed-notice search warrants were executed at the organization's stash houses. The search warrants were based primarily on evidence developed as a result of the wiretaps. Pursuant to section 213 of the USA PATRIOT Act, the court allowed the investigating agency to delay the notifications of these search warrants. Without the ability to delay notification, the Department would have faced two choices: (1) seize the drugs and be required to notify the criminals of the existence of the wiretaps and thereby end our ability to build a significant case on the leadership or (2) not seize the drugs and allow the organization to continue to sell them in the community as we continued with the investigation. Because of the availability of delayed-notice search warrants, the Department was not forced to make this choice. Agents seized the drugs, continued our investigation, and listened to incriminating conversations as the dealers tried to figure out what had happened to their drugs.

On March 16, 2005, a grand jury returned an indictment charging twenty-one individuals with conspiracy to manufacture, distribute, and possess with intent to distribute more than 50 grams of cocaine base. Nineteen of the defendants, including all of the leadership, are in custody. All of the search warrants have been unsealed, and it is anticipated that the trial will be set sometime within the next few months.

Example #3: District of Connecticut:

The Justice Department used section 213 of the USA PATRIOT Act in three instances to avoid jeopardizing the integrity of a pending federal investigation into a Connecticut drug trafficking organization's distribution of cocaine base and cocaine. The provision was used to place a global positioning device on three vehicles.

These applications were submitted in the case of United States v. Julius Moorning, et al. That case was indicted at the end of April 2004, and 48 of 49 individuals charged have been arrested. As of this date, 38 of the defendants have entered guilty pleas, and several more are being scheduled. The trial of the remaining defendants is scheduled to begin on July 15. All defendants with standing to challenge any of the orders obtained have entered guilty pleas.

The Justice Department believed that if the targets of the investigation were notified of our use of the GPS devices and our monitoring of them, the purpose of the use of this investigative tool would be defeated, and the investigation would be totally compromised. As it was, the principals in the targeted drug-trafficking organization were highly surveillance-conscious, and reacted noticeably to perceived surveillance efforts by law enforcement. Had they received palpable confirmation of the existence of an ongoing federal criminal investigation, the Justice Department believed they would have ceased their activities, or altered their methods to an extent that would have required us to begin the investigation anew.

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

Example #4: Western District of Washington:

During an investigation of a drug trafficking organization, which was distributing cocaine and an unusually pure methamphetamine known as ''ice,'' a 30-day delayed-notice search warrant was sought in April 2004. As a result of information obtained through a wiretap as well as a drug-sniffing dog, investigators believed that the leader of the drug distribution organization was storing drugs and currency in a storage locker in Everett, Washington. The warrant was executed, and while no drugs or cash was found, an assault rifle and ammunition were discovered. Delayed notice of the search warrant's execution was necessary in order to protect the integrity of other investigative techniques being used in the case, such as a wiretap. The investigation ultimately led to the indictment of twenty-seven individuals in

the methamphetamine conspiracy. Twenty-three individuals, including the leader, have pled guilty, three are fugitives, and one is awaiting trial.

Example #5: Southern District of Illinois:

The Justice Department used section 213 of the USA PATRIOT Act in an investigation into a marijuana distribution conspiracy in the Southern District of Illinois. In particular, in November 2003, a vehicle was seized pursuant to authority granted under the provision.

During this investigation, a Title III wiretap was obtained for the telephone of one of the leaders of the organization. As a result of intercepted telephone calls and surveillance conducted by DEA, it was learned that a load of marijuana was being brought into Illinois from Texas. Agents were able to identify the vehicle used to transport the marijuana. DEA then located the vehicle at a motel in the Southern District of Illinois and developed sufficient probable cause to apply for a warrant to search the vehicle. It was believed, however, that immediate notification of the search warrant would disclose the existence of the investigation, resulting in, among other things, phones being ''dumped'' and targets ceasing their activities, thereby jeopardizing potential success of the wiretaps and compromising the overall investigation (as well as related investigations in other districts). At the same time it was important, for the safety of the community, to keep the marijuana from being distributed.

The court approved the Department's application for a warrant to seize the vehicle and to delay notification of the execution of the search warrant for a period of seven days, unless extended by the Court. With this authority, the agents seized the vehicle in question (making it appear that the vehicle had been stolen) and then searched it following the seizure. Approximately 96 kilograms of marijuana were recovered in the search. Thirty one seven-day extensions to delay notice were subsequently sought and granted due to the ongoing investigation.

As a result of this investigation, ten defendants were ultimately charged in the Southern District of Illinois. Seven of these defendants have pled guilty, and the remaining three defendants are scheduled for jury trial beginning on June 7, 2005.

Example #6: Eastern District of Wisconsin:

In a Wisconsin drug trafficking case, a delayed-notice search warrant was issued under section 213 because immediate notification would have seriously jeopardized the investigation. In this case, the Department was in the final stages of a two-year investigation, pre-takedown of several individuals involved in the trafficking of cocaine. The Department initially received a delayed-notice search warrant for seven days, and thereafter received three separate seven-day extensions. For each request, the Department showed a particularized need that providing notice that federal investigators had entered the home being searched would compromise the informant and the investigation.

On February 14, 2004, the United States Attorney's Office for the Eastern District of Wisconsin requested a search warrant to look for evidence of assets, especially bank accounts, at a suspect's residence as well as to attach an electronic tracking device on a vehicle investigators expected to find in the garage. The purpose of the device would be to track the suspect and observe his meetings in the final weeks before the takedown. The warrant also requested delayed notice, based on the particularized showing that providing notice that federal investigators had entered the home would compromise an informant and the investigation. The court issued the search warrant and granted the delayed notification for a period of seven days. On February 15, 2004, authorized officers of the United States executed the search warrant on the subject premises. However, agents were unable to locate the vehicle to install the electronic tracking device.

Before the expiration of the initial delayed-notice period, the Department sought an extension of the delay based on the showing that notice would compromise the informant and the investigation. The court granted a seven-day extension, but investigators were still unable to locate the suspect's vehicle during this time. During this period, however, five suspects were charged with conspiring to possess more than five kilograms of cocaine, and arrest warrants were issued for each of the individuals.

After the issuance of the arrest warrants, the Department sought its third delay of notice to allow agents to endeavor to install the electronic tracking device and to attempt to locate the five suspects. Once again, the request was based on the showing that notice would compromise the informant and the investigation. The court granted another seven-day extension, and agents were able to find a location where one suspect appeared to be staying. After locating the suspect, and before the expiration of the delayed-notice period, the government requested a separate warrant for this location and for other locations used by the conspirators. The Department also requested its fourth and final delay in the notice period to allow agents to execute the search warrants sought, and to arrest the suspects. The court granted all requests and the suspects were subsequently arrested. As required by law, notice of the searches was given upon arrest.

Example #7: Eastern District of Washington:

In a drug trafficking and money laundering case in the State of Washington, a delayed-notice search warrant was issued under section 213 because immediate notification would have seriously jeopardized the investigation. In this case, a district judge had authorized the interception of wire and electronic communications occurring over four cellular telephones that were being used in furtherance of drug trafficking and/or money laundering activities. On December 18, 2004, more than one month after the Drug Enforcement Administration (DEA) began surveillance, DEA agents administratively seized a black Ford Focus owned by one of the suspects based on the determination that the vehicle likely contained controlled substances.

On December 21, 2004, the DEA requested a warrant to search the seized vehicle for drugs, and the court issued the warrant based on the DEA's articulation of probable cause. On the same day, the search warrant was executed on the suspect's vehicle, which was still in the DEA's possession pursuant to the administrative seizure. During the search, agents located approximately two kilograms of suspected cocaine and three pounds of suspected methamphetamine. At the time, the service copy of the search warrant was ''served'' on the vehicle.

Due to the nature of the investigation, which included the orders authorizing the interception of wire and electronic communications to and from a number of cellular telephones, the DEA believed that both the continued administrative seizure of the vehicle and notice of the execution of the search warrant would greatly compromise the investigation. Therefore, the DEA requested an order allowing them to remove the served copy of the warrant from the vehicle, and delay notice to the owner for sixty days in order to avoid jeopardizing the ongoing criminal investigation. The court granted the order, concluding that immediate notification would compromise a major drug trafficking and money laundering investigation.

Approximately twenty-five individuals have been indicted as a result of this investigation (eight of whom are still fugitives), and trial is scheduled for this October.

In closing, the Department of Justice believes it is critical that law enforcement continue to have this vital tool for those limited circumstances, such as those discussed above, where a court finds good cause to permit the temporary delay of notification of a search.

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

Sincerely,

WILLIAM E. MOSCHELLA,
Assistant Attorney General.

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, June 28, 2005.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter responds to your request for more information regarding the use of section 213 of the USA PATRIOT Act (''the Act''), which relates to delayed-notice search warrants. The Department of Justice has provided the Senate Judiciary Committee two letters detailing the specific usage of delayed-notice search warrants. Those letters were sent to the Committee on April 4, 2005, and May 3, 2005, respectively. This letter is intended to supplement the previous information we have already provided the Committee.

As you know, the Department believes very strongly that section 213 is an invaluable tool in the war on terror and our efforts to combat serious criminal conduct. In passing the USA PATRIOT Act, Congress recognized that delayed-notice search warrants are a vital aspect of the Department's strategy of prevention: detecting and incapacitating terrorists, drug dealers and other criminals before they can harm our nation. Codified at 18 U.S.C. §3103a, section 213 of the Act created an explicit statutory authority for investigators and prosecutors to ask a court for permission to delay notice temporarily that a search warrant was executed.

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

In addition, investigators and prosecutors seeking a judge's approval to delay notification must show that, if notification were made contemporaneous to the search, there is reasonable cause to believe one of the following adverse results might occur: (1) notification would endanger the life or physical safety of an individual; (2) notification would cause flight from prosecution; (3) notification would result in destruction of, or tampering with, evidence; (4) notification would result in intimidation of potential witnesses;

or (5) notification would cause serious jeopardy to an investigation or unduly delay a trial.

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

Delayed-notice search warrants provide a crucial option to law enforcement. If immediate notification were required regardless of the circumstances, law enforcement officials would be too often forced into making a ''Hobson's choice'': delaying the urgent need to conduct a search and/or seizure or conducting the search and prematurely notifying the target of the existence of law enforcement interest in his or her illegal conduct and undermine the equally pressing need to keep the ongoing investigation confidential.

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

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

The Department has provided the Committee with detailed information regarding how often section 213 has been used. Let us assure you again that the use of a delayed-notice search warrant is the exception, not the rule. Law enforcement agents and investigators provide immediate notice of a search warrant's execution in the vast majority of cases. According to Administrative Office of the U.S. Courts (AOUSC), during the 36-month period ending September 30, 2004, U.S. District Courts handled 95,925 search warrants. By contrast, in the 39-month period between the passage of the USA PATRIOT Act and January 31, 2005, the Department used the section 213 authority only 153 times according to a Department survey. Even when compared to the AOUSC data for a shorter period of time, the 153 uses of section 213 still only account for less than 0.2% of the total search warrants handled by the courts.

Specifically, you have inquired about examples of where the ''seriously jeopardizing an investigation'' prong was the sole ''adverse result'' used to request delayed notice. From April 1, 2003, to January 31, 2005, the ''seriously jeopardizing an investigation'' prong has been the sole ground for requesting delayed notice in thirty-two instances. Contrary to concerns expressed by some, this prong is not a ''catch-all'' that is used in run-of-the-mill cases. The Department estimates that fewer than one in 500 of the search warrants that have been obtained since the passage of the PATRIOT Act have been delayed-notice search warrants. In other words, in over 499 of 500 cases, immediate notice was provided. Moreover, fewer than one in three delayed-notice search warrants obtained by the Department in the last two years solely relied on the fact that immediate notification would seriously jeopardize an investigation. Thus, fewer than one in 1,500 search warrants relied solely on this prong, a fact hardly consistent with the concern that the Department will obtain a delayed-notice search warrant in the typical case.

Of those thirty-two instances, delayed-notice search warrants were used in a total of twenty-two investigations. The thirty-two instances do not equate to thirty-two investigations or cases because some of the cases that used delayed-notice search warrants utilizing the ''seriously jeopardize'' prong involved multiple search warrants. The Department of Justice has provided the Committee detailed descriptions of eight of the twenty-two investigations where the ''seriously jeopardizing an investigation'' prong was the sole ''adverse result'' used to request delayed notice. The descriptions already provided include Operation Candy Box, which was detailed in our April 4, 2005, letter to the Committee, and seven additional cases described in a May 3, 2005 letter to the Committee. This letter is intended to supplement the previous information we have provided by detailing the seven remaining investigations that have been unsealed, and identifying the seven remaining investigations that are currently sealed. Two of the seven investigations that remain under seal are terrorism-related.

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

Example #9: Southern District of Illinois:

The United States Attorney's Office for the Southern District of Illinois used a delayed-notice search warrant pursuant to Title 18 U.S.C. §3103a in the investigation of an OCDETF (Organized Crime Drug Enforcement Task Force) case. Although the Southern District of Illinois handled the investigation, the search warrant application was filed by the United States Attorney's Office in the Eastern District of Missouri because the apartment to be searched was located there. The search warrant was sought because a Title III wiretap revealed that the house to be searched was being used as a safehouse for those trafficking in drugs, and it was believed that the notification of the search warrant would seriously jeopardize the ongoing investigation into the drug organization and its numerous members and frustrate the identification of additional sources of supply. The search warrant was issued by a Magistrate Judge in the Eastern District of Missouri on April 6, 2004, for a period of 7 days. No extensions were requested or authorized. The case was indicted on November 18, 2004. One defendant has pled guilty and thirteen defendants are awaiting trial.

Example #10: Northern District of Georgia:

The United States Attorney's Office for the Northern District of Georgia used section 213 in a drug investigation to delay notice of three search warrants in three locations. A Title III wiretap had revealed that a drug dealer had three stash locations, and the United States Attorney's Office wanted to search those locations without tipping off the drug dealers. A federal judge approved three delayed-notice search warrants that yielded several kilos of cocaine, pounds of ICE, a very pure form of methamphetamine, and firearms. The agents were also able to photograph documentary evidence such as ledgers. The use of the delayed-notice search warrant was successful in cementing the case against the defendant, who was indicted in April 2005.

Example #11: Northern District of Georgia:

The United States Attorney's Office for the Northern District of Georgia also used section 213 in another drug investigation. The DEA had obtained court approval to install and monitor wiretaps of several cellular phones used by high-level members of a Mexican cocaine and methamphetamine distribution cell operating in Atlanta. While monitoring the phones, the targets' conversations showed that they were delivering 100 kilograms of cocaine to a purchaser. Surveillance identified one of the stash houses from which the targets obtained 14 kilograms of the cocaine, and the conversations indicated that more of the cocaine was located in the stash house. At that time, however, the investigation and interceptions on the cell phones had not identified the highest-level members of the cell, so the agents were not in a position to make arrests and take down the organization. The agents therefore needed to seize the cocaine while trying to minimize the chances that the seizure would cause the targets to cease usage of their cellular phones. Investigators decided it was appropriate to seek a delayed-notice warrant that would allow them access to the stash house. A federal judge approved the warrant that resulted in the seizure of 36 kilograms of cocaine, some methamphetamines, and two weapons including a sawed-off shotgun, without having to leave a copy of the warrant and provide confirmation to the targets that they were being watched by law enforcement. Since the subsequent arrests of sixteen individuals for various drug-trafficking charges in this investigation, two have pled guilty, three have been sentenced, five are set for sentencing and six are currently awaiting trial.

Example #12: Western District of New York:

Operation Trifecta was a Title III wiretap investigation being conducted in the United States Attorney's Office for the Southern District of New York, the Western District of New York (WDNY OCDETF Operation Next of Kin) as well as in U.S. Attorney's Offices in California, Ohio, and Arizona and by law enforcement authorities in Mexico. As part of this multi-district and international investigation, Title III wiretap orders were obtained in each of the jurisdictions involved in the investigation. In May 2003, information was received as a result of a Title III interception order that the targets of the investigation were arranging the transportation of a vehicle (''load vehicle'') that was believed to conceal a substantial quantity of cocaine by transporting it on a car carrier. Once it was determined that the car carrier would transport the load vehicle through the Western District of New York, an application was made to search the load vehicle. The magistrate judge that issued the warrant also authorized delay in giving notice of the execution of the search warrant pursuant to section 213 of the USA PATRIOT Act.

Once the car carrier transporting the load vehicle arrived in the Western District of New York, a local Sheriff's Department deputy executed a traffic stop. It was discovered that the VIN plate on the dashboard of the load vehicle appeared to have been tampered with or replaced. As a result of the suspect VIN plate, the load vehicle was removed

from the car carrier, impounded and the car carrier was allowed to proceed on its way. Thereafter, a delayed-notice search warrant was executed on the load vehicle, resulting in 37 kilograms of cocaine being seized from it. After the seizure of the load vehicle, conversations regarding efforts to re-obtain the load vehicle were intercepted between the subjects of the investigation. These efforts continued until July 30, 2003, which was the takedown date for all aspects of the investigation. Extensions of the order delaying notice were obtained until the takedown date. Until they were arrested, the subjects of the investigation were completely unaware as to the actual reason why the load vehicle was seized, and that the cocaine secreted in the load vehicle had been located.

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

Example #13: Western District of New York:

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

Example #14: Western District of New York:

A delayed-notice search warrant was obtained for the District of Maryland to open and photograph the contents of a safe deposit box that the target, a Canadian citizen, was allegedly using to store his proceeds of drug trafficking. Following the sale of heroin by the target to undercover law enforcement in Maryland, the target was followed back to the U.S./Canada border and observed going to a bank in Niagara Falls, New York before entering Canada. A search warrant was obtained for the safe deposit box, and the money (identified through prerecorded serial numbers) from the purchase of the drugs was found in the box. The contents were photographed but not seized. The notification was delayed until arrests could be made in the case—a period of six months. This target is currently a fugitive while other subjects of the investigation were arrested in August 2003.

Example #15: Western District of Michigan:

The defendant in United States v. Eason was charged on numerous drug-trafficking counts in indictments returned in 1995 and 1996, and was a fugitive until his arrest in July 2004. While the defendant was incarcerated and his case was pending, information was discovered that the defendant was corresponding with associates and family members through the mail at the Kalamazoo County Jail in an attempt to intimidate witnesses, obstruct justice or even contract for the murder of a federal prosecutor. It was determined that the only way to effectively obtain information about these threats was to use a delayed-notice search warrant, which allowed agents to copy the defendant's ingoing and outgoing mail and envelopes, reseal the mail, and then forward the mail to the intended recipient. The judge determined that notifying the defendant of these actions would have seriously jeopardized the investigation. Additional information concerning the underlying threat investigation cannot be disclosed at this time. The defendant was convicted on January 18, 2005 on numerous drug-trafficking counts and faces a statutory range of 20 years to life. His advisory United States Sentencing Guideline range is life imprisonment.

Example #16: District of Maryland—Sealed.

Example #17: Northern District of Georgia—Sealed.

Example #18: Southern District of Iowa—Sealed. Two delayed-notice search warrants were issued in this investigation.

Example #19: Southern District of Ohio—Sealed.

Example #20: Southern District of Ohio—Sealed.

Example #21: Southern District of Texas—Sealed.

Example #22: Western District of New York—Sealed.

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

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

Sincerely,

WILLIAM E. MOSCHELLA,
Assistant Attorney General.

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

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

S. 1389

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''USA PATRIOT Improvement and Reauthorization Act of 2005''.

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

SEC. 2. PATRIOT SECTION 203; NOTICE TO COURT OF DISCLOSURE OF FOREIGN INTELLIGENCE INFORMATION.

Section 2517 of title 18, United States Code, is amended by adding at the end the following:

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

SEC. 3. PATRIOT SECTION 206; ADDITIONAL REQUIREMENTS FOR MULTIPOINT ELECTRONIC SURVEILLANCE UNDER FISA.

(a) PARTICULARITY REQUIREMENT.—Section 105(c)(1)(A) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(1)(A)) is amended by inserting before the semicolon at the end the following: '', and if the nature and location of each of the facilities or places at which the surveillance will be directed is not known, and if the identity of the target is not known, the order shall include sufficient information to describe a specific target with particularity''.

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

(1) by striking ''An order approving an electronic surveillance under this section shall—'';

(2) in paragraph (1), by inserting before ''specify'' the following: ''SPECIFICATIONS.—An order approving an electronic surveillance under this section shall'';

(3) in paragraph (1)(F), by striking ''; and'' and inserting a period;

(4) in paragraph (2), by inserting before ''direct'' the following: ''DIRECTIONS.—An order approving an electronic surveillance under this section shall''; and

(5) by adding at the end the following:

''(3) SPECIAL DIRECTIONS FOR CERTAIN ORDERS.—An order approving an electronic surveillance under this section in circumstances where the nature and location of each of the facilities or places at which the surveillance will be directed is unknown shall direct the applicant to provide notice to the court

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

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

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

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

(c) ENHANCED OVERSIGHT.—

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

(2) MODIFICATION OF SEMIANNUAL REPORT REQUIREMENT ON ACTIVITIES UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—Paragraph (2) of section 108(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1808(a)) is amended to read as follows:

''(2) Each report under the first sentence of paragraph (1) shall include a description of—

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

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

SEC. 4. PATRIOT SECTION 207; DURATION OF FISA SURVEILLANCE OF NON-UNITED STATES PERSONS.

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

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

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

(b) PHYSICAL SEARCH ORDERS.—Section 304(d) of the Foreign Intelligence Surveillance Act (50 U.S.C. 1824(d)) is amended—

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

(2) in paragraph (2), striking ''as defined in section 101(b)(1)(A)'' and inserting ''who is not a United States person''.

(c) PEN REGISTERS.—Section 402(e) of the Foreign Intelligence Surveillance Act (50 U.S.C. 1842(e)) is amended by—

(1) inserting after ''90 days'' the first place it appears the following: '', except that in cases where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an order issued under this section may be for a period not to exceed 1 year''; and

(2) by inserting after ''90 days'' the second place it appears the following: '', except that in cases where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an extension of an order issued under this section may be for a period not to exceed 1 year''.

SEC. 5. PATRIOT SECTION 212; ENHANCED OVERSIGHT OF GOOD-FAITH EMERGENCY DISCLOSURES.

(a) ENHANCED OVERSIGHT.—Section 2702 of title 18, United States Code, is amended by adding at the end the following:

''(d) REPORTING OF EMERGENCY DISCLOSURES.—On an annual basis, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report containing—

''(1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8); and

''(2) a summary of the basis for disclosure in those instances where—

''(A) voluntary disclosures under subsection (b)(8) were made to the Department of Justice; and

''(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges.''.

(b) TECHNICAL AMENDMENTS TO CONFORM COMMUNICATIONS AND CUSTOMER RECORDS EXCEPTIONS.—

(1) VOLUNTARY DISCLOSURES.—Section 2702 of title 18, United States Code, is amended—

(A) in subsection (b)(8)—

(i) by striking ''Federal, State, or local''; and

(ii) by inserting ''immediate'' before ''danger''; and

(B) by striking subsection (c)(4) and inserting the following:

''(4) to a governmental entity, if the provider, in good faith, believes that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure without delay of the information.''.

(2) DEFINITIONS.—Section 2711 of title 18, United States Code, is amended—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) the term 'governmental entity' means a department or agency of the United States or any State or political subdivision thereof.''.

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

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

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

''(B) result in flight from prosecution;

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

''(D) result in intimidation of potential witnesses; or

''(E) otherwise seriously jeopardize an investigation;''.

(b) LIMITATION ON REASONABLE PERIOD FOR DELAY.—Section 3103a(b)(3) of title 18, United States Code, is amended by—

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

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

(c) ENHANCED OVERSIGHT.—Section 3103a of title 18, United States Code, is amended by adding at the end the following:

''(c) REPORTS.—

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

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

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

''(C) the period of delay in the giving of notice authorized by the warrant, and the number and duration of any extensions; and

''(D) the offense specified in the warrant or application.

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

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

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

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

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

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

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

(2) ORDER.—Section 402(d)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(d)(1)) is amended by striking ''if the judge finds that'' and all that follows and inserting ''if the judge finds that the application includes sufficient facts to justify the belief that the information likely to be obtained is foreign intelligence information not concerning a United States person or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities and otherwise satisfies the requirements of this section.''.

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

(1) in subparagraph (A)—

(A) in clause (ii), by adding ''and'' at the end; and

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

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

(3) by adding at the end the following:

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

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

''(I) the name of the customer or subscriber;

''(II) the address of the customer or subscriber;

''(III) the telephone or instrument number, or other subscriber number or identifier, of the customer or subscriber, including any temporarily assigned network address or associated routing or transmission information;

''(IV) the length of the provision of service by such provider to the customer or subscriber and the types of services utilized by the customer or subscriber;

''(V) in the case of a provider of local or long distance telephone service, any local or long distance telephone records of the customer or subscriber;

''(VI) if applicable, any records reflecting period of usage (or sessions) by the customer or subscriber; and

''(VII) any mechanisms and sources of payment for such service, including the number of any credit card or bank account utilized for payment for such service; and

''(ii) if available, with respect to any customer or subscriber of incoming or outgoing communications to or from the service covered by the order—

''(I) the name of such customer or subscriber;

''(II) the address of such customer or subscriber;

''(III) the telephone or instrument number, or other subscriber number or identifier, of such customer or subscriber, including any temporarily assigned network address or associated routing or transmission information; and

''(IV) the length of the provision of service by such provider to such customer or subscriber and the types of services utilized by such customer or subscriber.''.

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

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

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

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

(a) FACTUAL BASIS FOR REQUESTED ORDER.—

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

(2) ORDER.—Section 501(c)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(c)(1)) is amended by striking ''if the judge finds that'' and all that follows and inserting ''if the judge finds that the statement of facts contained in the application establishes reasonable grounds to believe that the records or other things sought are relevant to an authorized investigation conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, and the application meets the other requirements of this section.''.

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

(1) in paragraph (2), by inserting after ''An order under this subsection'' the following: ''(A) shall describe the tangible things concerned with sufficient particularity to permit them to be fairly identified;

''(B) shall prescribe a return date which will provide a reasonable period of time within which the tangible things can be assembled and made available;

''(C) shall provide clear and conspicuous notice of the principles and procedures set forth in subsections (d) and (f); and

''(D)''.

(c) DIRECTOR APPROVAL FOR CERTAIN APPLICATIONS.—Section 501(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(a)) is amended—

(1) in paragraph (1), by striking ''The Director'' and inserting ''Except as provided in paragraph (3), the Director''; and

(2) by adding at the end the following:

''(3) No application shall be made under this section for an order requiring the production of library circulation records, library patron lists, book sales records, book customer lists, firearms sales records, or medical records containing personally identifiable information without the prior written approval of the Director of the Federal Bureau of Investigation. The Director may delegate authority to approve such an application to the Deputy Director of the Federal Bureau of Investigation, but such authority may not be further delegated.''.

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

''(d)(1) No person shall disclose to any other person that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section other than to—

''(A) those persons to whom such disclosure is necessary to comply with such order;

''(B) an attorney to obtain legal advice or assistance with respect to the production of things in response to the order; or

''(C) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

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

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

''(3) An order under this section shall notify, in writing, the person to whom the order is directed of the nondisclosure requirements under this subsection.''.

(e) JUDICIAL REVIEW.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended by adding at the end the following:

''(f)(1)(A) Any person receiving an order to produce any tangible thing under this section may challenge the legality of that order by filing a petition in the court established under section 103(a).

''(B) That petition may be considered by any judge of the court.

''(C) The judge considering the petition may modify or set aside the order if the judge finds that the order does not meet the requirements of this section or is otherwise unlawful.

''(D) Any petition for review of a decision to affirm, modify, or set aside an order under this paragraph by the United States or any person receiving such order shall be sent to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions.

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

''(2)(A) Judicial proceedings under this subsection shall be concluded as expeditiously as possible.

''(B) The record of proceedings, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of National Intelligence.

''(3) All petitions under this subsection shall be filed under seal, and the court, upon the request of the Government, shall review any Government submission, which may include classified information, as well as the application of the Government and related materials, ex parte and in camera.''.

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

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

(2) in subsection (b)—

(A) by striking ''On a semiannual basis'' through ''the preceding 6-month period'' and inserting ''In April of each year, the Attorney General shall transmit to the Congress a report setting forth with respect to the preceding calendar year'';

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

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

(D) by adding at the end the following:

''(3) the total number of applications made for orders approving requests for the production of tangible things under section 501, and the total number of orders either granted, modified, or denied, when the application or order involved any of the following:

''(A) The production of tangible things from a library, as defined in section 213(2) of the Library Services and Technology Act (20 U.S.C. 9122(2)).

''(B) The production of tangible things from a person or entity primarily engaged in the sale, rental, or delivery of books, journals, magazines, or other similar forms of communication whether in print or digitally.

''(C) The production of records related to the purchase of a firearm, as defined in section 921(a)(3) of title 18, United States Code.

''(D) The production of health information, as defined in section 1171(4) of the Social Security Act (42 U.S.C. 1320d(4)).

''(E) The production of taxpayer return information, return, or return information, as defined in section 6103(b) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(b)).

''(c) Each report under subsection (b) shall be submitted in unclassified form, but may include a classified annex.

''(d) In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to Congress a report setting forth with respect to the preceding calendar year—

''(1) the total number of applications made for orders approving requests for the production of tangible things under section 501; and

''(2) the total number of such orders either granted, modified, or denied.''.

SEC. 9. PATRIOT SECTION 505; PROCEDURAL PROTECTIONS FOR NATIONAL SECURITY LETTERS.

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

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

''(1) IN GENERAL.—A wire or electronic communication service provider''; and

(2) by adding at the end the following:

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

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

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

''(1) IN GENERAL.—No wire or electronic communication service provider''; and

(2) by adding at the end the following:

''(2) JUDICIAL REVIEW.—A wire or electronic communication service provider who receives a request under subsection (b) may, at any time, seek a court order from an appropriate United States district court challenging the nondisclosure requirement under paragraph (1). Any such motion shall state the grounds for challenging the nondisclosure requirement with particularity.

''(3) STANDARD OF REVIEW.—The court may modify or set aside such a nondisclosure requirement if 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, or endanger the life or physical safety of any person. In reviewing a nondisclosure requirement, the certification by the Government that the 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.''.

(c) ENFORCEMENT OF NATIONAL SECURITY LETTERS.—Section 2709(a) of title 18, United States Code, as amended by subsection (b), is amended by adding at the end the following:

''(3) ENFORCEMENT OF REQUESTS.—The Attorney General may seek enforcement of a request under subsection (b) in an appropriate United States district court if a recipient refuses to comply with the request.''.

(d) DISCLOSURE OF INFORMATION.—

(1) SECURE PROCEEDINGS.—Section 2709 of title 18, United States Code, as amended by subsections (b) and (c), is amended—

(A) in subsection (a), by adding at the end the following:

''(4) SECURE PROCEEDINGS.—The disclosure of information in any proceedings under this subsection may be limited consistent with the requirements of the Classified Information Procedures Act (18 U.S.C. App).''; and

(B) in subsection (c), by adding at the end the following:

''(4) SECURE PROCEEDINGS.—The disclosure of information in any proceedings under this subsection may be limited consistent with the requirements of the Classified Information Procedures Act (18 U.S.C. App).''.

(2) DISCLOSURE TO NECESSARY PERSONS.—Section 2709(c)(1) of title 18, United States Code, as amended by subsection (b), is amended—

(A) by inserting after ''any person'' the following: '', except for disclosure to an attorney to obtain legal advice regarding the request or to persons to whom disclosure is necessary in order to comply with the request,''; and

(B) by adding at the end the following: ''Any attorney or person whose assistance is necessary to comply with the request who is notified of the request also shall not disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.''.

SEC. 10. SUNSET PROVISIONS.

(a) MODIFICATION OF PATRIOT ACT SUNSET PROVISION.—Section 224(a) of the USA PATRIOT Act (18 U.S.C. 2510 note) is amended to read as follows:

''(a) IN GENERAL.—Except as provided in subsection (b), sections 206 and 215, and the amendments made by those sections, shall cease to have effect on December 31, 2009, and any provision of law amended or modified by such sections shall take effect on January 1, 2010, as in effect on the day before the effective date of this Act.''.

(b) EXTENSION OF SUNSET ON ''LONE WOLF'' PROVISION.—Subsection (b) of section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 1801 note) is amended to read as follows:

''(b) SUNSET.—

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

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

(c) REPEAL OF SUNSET PROVISION RELATING TO SECTION 2332B AND THE MATERIAL SUPPORT SECTIONS OF TITLE 18, UNITED STATES CODE.—Section 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 10809458; 118 Stat. 3762) is amended by striking subsection (g).

(d) TECHNICAL AMENDMENT.—Section 1(a) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 is amended to read as follows:

''(a) SHORT TITLE.—This Act may be cited as the 'Uniting and Strengthening America by Providing Appropriate tools Required to Intercept and Obstruct Terrorism Act of 2001' or the 'USA PATRIOT Act'.''.

SEC. 11. ENHANCEMENT OF SUNSHINE PROVISIONS.

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

''(e)(1) The courts established pursuant to subsections (a) and (b) may establish such rules and procedures, and take such actions, as are reasonably necessary to administer their responsibilities under this Act.

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

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

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

''(C) The Chief Justice of the United States.

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

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

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

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

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

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

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

(A) in paragraph (a), by striking ''and'' at the end;

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

(C) by adding at the end the following:

''(c) the total number of emergency employments of electronic surveillance under section 105(f) and the total number of subsequent orders approving or denying such electronic surveillance.''.

(2) EMERGENCY PHYSICAL SEARCHES.—Section 306 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1826) is amended—

(A) in the first sentence, by inserting '', and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,'' after ''the Senate'';

(B) in the second sentence, by striking ''and the Committees on the Judiciary of the House of Representatives and the Senate'';

(C) in paragraph (2), by striking ''and'' at the end;

(D) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(E) by adding at the end the following:

''(4) the total number of emergency physical searches authorized by the Attorney General under section 304(e) (50 U.S.C. 1824(e)), and the total number of subsequent orders approving or denying such physical searches.''.

(3) EMERGENCY PEN REGISTERS AND TRAP AND TRACE DEVICES.—Section 406(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1846(b)), as amended by section 7, is amended—

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

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

(C) by adding at the end the following:

''(3) the total number of pen registers and trap and trace devices whose installation and use was authorized by the Attorney General on an emergency basis under section 403, and the total number of subsequent orders approving or denying the installation and use of such pen registers and trap and trace devices.''.

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

S. 1390. A bill to reauthorize the Coral Reef Conservation Act of 2000, and for other purposes; to the Committee on Commerce, Science, and Transportation.

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

Coral reefs, often called the ''rainforests of the sea,'' are among the oldest and most diverse ecosystems on

the planet. Covering less than one percent of the Earth's surface, these fragile resources provide services worth billions of dollars each year to the United States economy and economies worldwide. Coral reef resources provide economic and environmental benefits in the form of food, jobs, natural products, pharmaceuticals, and shoreline protection. In Hawaii, reef-related activities generate $360 million each year for the State's economy, and the overall worth of our reefs has been estimated at close to $10 billion.

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

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

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

The Coral Reef Amendments Act of 2005 responds to these recommendations by increasing annual authorizations under the Coral Reef Conservation Act, starting at $30 million in fiscal year 2006, and increasing to $35 million in fiscal year 2009 to 2012. This roughly doubles the authorization levels in the existing act. It also gives priority attention to local action strategies and territorial needs, as well as on prevention of physical damage from vessel impacts. A new $8 million Community-Based Planning Grants program is included to encourage and enhance on-the-ground efforts to develop and implement coral management and protection plans, working through appropriate Federal and State management agencies. I am particularly pleased that this grant program will encourage adoption of traditional and island-based management approaches, many of which have a long history in the Pacific region.

The bill also fills a gap in authority needed for NOAA to respond to vessel groundings on coral reefs, damage that compounds over time if left unaddressed. Grounded vessels have remained on reefs, and have been a particular problem, when there is no viable owner or when the grounding occurs under circumstances that do not allow for response under authorities such as the National Marine Sanctuaries Act or the Oil Pollution Act. The July 2, 2005, grounding of the survey vessel CASITAS in the remote Northwestern Hawaiian Islands, and the damage caused in American Samoa several years ago when a typhoon drove 9 abandoned fishing vessels onto reefs in Pago Pago harbor, highlight the vulnerability of coral reefs to groundings, and limitations of existing law and funding.

The bill responds to these needs by giving NOAA statutory authority to respond on an emergency basis to prevent or mitigate coral reef destruction from vessel or other physical impacts, including damage caused by natural disasters. The bill also authorizes NOAA to use Coral Reef Conservation Funds for these purposes, and encourages leveraging resources and assistance from other Federal agencies, as well as private sources. To assist in preventing future groundings, the bill authorizes NOAA to establish a vessel grounding inventory, identify reefs outside National Marine Sanctuaries that are at risk, and recommend measures that may be used to prevent future groundings, such as navigational aids or beacons to warn mariners.

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

I hope that my colleagues will join me in supporting this bill. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1390

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

SECTION 1. SHORT TITLE.

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

SEC. 2. EXPANSION OF CORAL REEF CONSERVATION PROGRAM.

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

(2) by striking ''GEOGRAPHIC AND BIOLOGICAL'' in the heading and inserting ''PROJECT'';

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

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

''(3) Remaining funds shall be awarded for—

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

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

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

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

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

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

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

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

SEC. 3. EMERGENCY RESPONSE.

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

''SEC. 206. EMERGENCY RESPONSE ACTIONS.

''(a) IN GENERAL.—The Administrator may undertake or authorize action necessary to prevent or minimize the destruction or loss of, or injury to, coral reefs or coral reef ecosystems from vessel impacts or other physical damage to coral reefs, including damage from unforeseen or disaster-related circumstances.

''(b) ACTIONS AUTHORIZED.—Action authorized by subsection (a) includes vessel removal and emergency restabilization of the vessel and any impacted coral reef.

''(c) PARTNERING WITH OTHER FEDERAL AGENCIES.—When possible, action by the Administrator under this section should—

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

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

SEC. 4. NATIONAL PROGRAM.

Section 207(b) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6406) is amended—

(1) by striking ''and'' after the semicolon in paragraph (3);

(2) by striking ''partners.'' in paragraph (4) and inserting ''partners; and''; and

(3) by adding at the end the following:

''(5) activities designed to minimize the likelihood of vessel impacts or other physical damage to coral reefs, including those activities described identified in section 210(b).''.

SEC. 5. REPORT TO CONGRESS.

(a) IN GENERAL.—Section 208 of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6407) is amended to read as follows:

''SEC. 208. REPORT TO CONGRESS.

''Not later than March 1, 2007, and every 3 years thereafter, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing all activities undertaken to implement the strategy, including—

''(1) a description of the funds obligated by each participating Federal agency to advance coral reef conservation during each of the 3 fiscal years next preceding the fiscal year in which the report is submitted;

''(2) a description of Federal interagency and cooperative efforts with States and United States territories to prevent or address overharvesting, coastal runoff, or other anthropogenic impacts on coral reefs, including projects undertaken with the Department of Interior, Department of Agriculture, the Environmental Protection Agency, and the United States Army Corps of Engineers;

''(3) a summary of the information contained in the vessel grounding inventory established under section 210, including additional authorization or funding, needed for response and removal of such vessels;''

''(4) a description of Federal disaster response actions taken pursuant to the National Response Plan to address damage to coral reefs and coral reef ecosystems; and

''(5) an assessment of the condition of United States coral reefs, accomplishments under this Act, and the effectiveness of management actions to address threats to coral reefs.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) is amended by striking the item relating to section 208 and inserting the following:

''208. Report to Congress.''.

SEC. 6. FUND; GRANTS; GROUNDING INVENTORY; COORDINATION.

(a) IN GENERAL.—The Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) is amended—

(1) by striking ''organization solely'' and all that follows in section 205(a) (16 U.S.C. 6404(a)) and inserting ''organization—

''(1) to support partnerships between the public and private sectors that further the purposes of this Act and are consistent with the national coral reef strategy under section 203: and

''(2) to address emergency response actions under section 206.'';

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

(3) by striking ''the grant program'' in section 205(c) (16 U.S.C. 6404(c)) and inserting ''any grant program or emergency response action'';

(4) by redesignating sections 209 and 210 as sections 212 and 213, respectively; and

(5) by inserting after section 208 the following:

''SEC. 209. COMMUNITY-BASED PLANNING GRANTS.

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

''(1) support attainment of 1 or more of the criteria described in section 204(g);

''(2) be developed at the community level;

''(3) utilize watershed-based approaches;

''(4) provide for coordination with Federal and State experts and managers; and

''(5) build upon local approaches or models, including traditional or island-based resource management concepts.

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

''SEC. 210. VESSEL GROUNDING INVENTORY.

''(a) IN GENERAL.—The Administrator may maintain an inventory of all vessel grounding incidents involving coral reef resources, including a description of—

''(1) the impacts to such resources;

''(2) vessel and ownership information, if available;

''(3) the estimated cost of removal, mitigation, or restoration;

''(4) the response action taken by the owner, the Administrator, the Commandant of the Coast Guard, or other Federal or State agency representatives;

''(5) the status of the response action, including the dates of vessel removal and mitigation or restoration and any actions taken to prevent future grounding incidents; and

''(6) recommendations for additional navigational aids or other mechanisms for preventing future grounding incidents.

''(b) IDENTIFICATION OF AT-RISK REEFS.—The Administrator may—

''(1) use information from any inventory maintained under subsection (a) or any other available information source to identify coral reef areas outside designated National Marine Sanctuaries that have a high incidence of vessel impacts, including groundings and anchor damage; and

''(2) identify appropriate measures, including action by other agencies, to reduce the likelihood of such impacts.

''SEC. 211. REGIONAL COORDINATION.

''The Administrator shall work in coordination and collaboration with other Federal agencies, States, and United States territorial governments to implement the strategies developed under section 203, including regional and local strategies, to address multiple threats to coral reefs and coral reef ecosystems such as coastal runoff, vessel impacts, and overharvesting.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) is amended—

(1) by redesignating the items relating to sections 208 through 211 as relating to sections 211 through 214; and

(b) by inserting the following after the item relating to section 207:

''209. Community-based planning grants.
''210. Vessel grounding inventory.
''211. Regional coordination.''.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

Section 212 of the Coral Reef Conservation Act of 2000 (formerly 16 U.S.C. 6408), as redesignated by section 6, is amended—

(1) by striking ''$16,000,000 for each of fiscal years 2001, 2002, 2003, and 2004,'' in subsection (a) and inserting ''$30,000,000 for fiscal year 2006, $32,000,000 for fiscal year 2007, $34,000,000 for fiscal year 2008, and $35,000,000 for each of fiscal years 2009 through 2012, of which no less than 30 percent per year (for each of fiscal years 2006 through 2012) shall be used for the grant program under section 204 and up to 10 percent per year shall be used for the Fund established under section 205,'';

(2) by striking ''$1,000,000'' in subsection (b) and inserting ''$2,000,000''; and

(3) by striking subsection (c) and inserting the following:

''(c) COMMUNITY-BASED PLANNING GRANTS.—There is authorized to be appropriated to the Administrator to carry out section 209 the sum of $8,000,000 for fiscal years 2007 through 2012, such sum to remain available until expended.''; and

(4) by striking subsection (d).

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

S. 1391. A bill to amend the Toxic Substances Control Act to reduce the exposure of children, workers, and consumers to toxic chemical substances; to the Committee on Environment and Public Works.

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

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

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

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

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

Mothers have every right to expect their babies to be safe from exposure to toxic chemicals—before and after birth. We have laws to make sure that pesticides and medicines are safe—and even toys. But we fail to require similar assessments for the chemicals used in baby bottles, water bottles, food packages and thousands of other products. This is inexcusable.

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

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

According to the GAO, only five chemicals that existed 29 years ago when Congress passed TSCA have ever been restricted by EPA. In 29 years, the agency has formally requested health and environmental effects information on just 200 chemicals—out of about 80,000.

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

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

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

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

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

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

Synthetic chemicals play an integral role in the US economy and in enhancing our quality of life. Yet—like most Americans—I assumed basic safeguards were in place to ensure that chemicals widely used in household products were first determined to be safe. Sadly, this assumption is false.

A new report, issued today by the Government Accountability Office, shows that most chemicals used in consumer products today have never undergone any Federal safety review. Further, the report demonstrates that EPA lacks the necessary legal tools to protect our children from harmful chemicals. The report, which I requested along with Senators LAUTENBERG and LEAHY, is titled ''Chemical Regulation: Options Exist to Improve EPA's Ability to Assess Health Risks and Manage its Chemical Review Program.''

To all people who care about our children's health, GAO's conclusions should be a call to action. Three findings merit particular attention.

First, GAO found that ''EPA does not routinely assess the human health and environmental risks of existing chemicals and faces challenges obtaining the information necessary to do so.'' For example, the Agency has required testing for fewer than 200 of the 62,000 chemicals used in commerce since EPA began reviewing chemicals in 1979.

Additionally, GAO found that ''EPA's reviews of new chemicals provide limited assurance that health and environmental risks are identified before the chemicals enter commerce.'' According to the report, chemical companies generally do not test new chemicals for toxicity or gauge human exposure levels before they are submitted for EPA review, forcing the Agency to rely on predictive modeling that ''does not ensure that the chemicals' risks are fully assessed before they enter commerce.''

Finally, even when EPA has toxicity and exposure information on chemicals showing significant health risks, GAO found that the Agency has difficulty overcoming the legal hurdles needed to take action. As a result, in almost three decades, EPA has issued regulations to ban or limit the production or restrict the use of only five chemicals.

Our toxic ignorance would be less alarming if it wasn't coupled with overwhelming evidence of widespread human exposure. Study after study—including those by the Centers for Disease Control—have found a cocktail of synthetic chemicals in the blood and tissue of most people tested. For example, bio-monitoring studies have found Bisphenyl A, a chemical used in plastic baby pacifiers, water bottles, and food and beverage containers, in 95 percent of people tested. Similarly, chemicals such as P-FOA, which is used in non-stick Teflon pans, and polybrominated diphenyl ethers, used as flame retardants, are regularly found in breast milk and fetal liver tissue.

To be clear, the health effects of these chemicals are unknown. Unknown because no one is required to look. We do know, however, that most of us are carrying in our bodies dozens—if not hundreds—of synthetic chemicals to which our grandparents were never exposed. We also know that the incidence of certain cancers and neurological and developmental disorders linked to chemical exposure are on the rise.

The Kid Safe Chemical Act would fundamentally overhaul the nation's chemical management framework. First, it would protect kids by requiring chemical manufacturers to perform basic testing of their products. Second, it would reduce our toxic ignorance by providing much needed hazard and exposure information to EPA and the public. Third, using a science based, worst-first priority system, EPA would be required to determine the safety of 300 chemicals within the next five years. By 2020, all chemicals distributed in commerce would need to meet the safety standard.

To avoid imposing an undue burden on industry, the Kid Safe Chemicals Act relies on essentially the same safety standard as the Food Quality Protection Act, which passed the Gingrich-Lott Congress unanimously and which chemical manufacturers themselves have complied with for the past decade. In short, chemical manufacturers would need to establish to EPA that there was ''a reasonable certainty of no harm'' before distributing their chemicals in commerce. A ten-fold safety factor would be built in to account for the unique sensitivity of children.

Finally, the Kid Safe Chemicals Act encourages innovation of less toxic chemicals by removing existing disincentives and initiating a safer alternatives and green chemistry program.

As a result, the bill has been endorsed by a wide array of public health groups, such as the Breast Cancer Fund, the Center for Children's Environmental Health, and the American Public Health Association.

I believe that the Kid Safe Chemicals Act represents a rational, common sense approach to reducing children's exposure to toxic chemicals.

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

S. 1392. A bill to reauthorize the Federal Trade Commission; to the Committee on Commerce, Science, and Transportation.

Mr. SMITH. Mr. President, I rise today with Senator DORGAN to introduce the FTC Reauthorization Act of 2005.

As the chairman of the Subcommittee on Trade, Tourism, and

Economic Development, I am pleased to have Senator DORGAN, the ranking member of the subcommittee join me to introduce this important bill. Our subcommittee has jurisdiction over the Federal Trade Commission and its missions and this legislation would reauthorize the FTC from fiscal year 2006 through 2010.

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

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

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

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

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

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

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

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

S. 1392

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''FTC Reauthorization Act of 2005.''

SEC. 2. REAUTHORIZATION.

The text of section 25 of the Federal Trade Commission Act (15 U.S.C. 57c) is amended to read as follows:

''There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed $213,000,000 for fiscal year 2006, $241,000,000 for fiscal year 2007, $253,000,000 for fiscal year 2008, $264,000,000 for fiscal year 2009, and $276,000,000 for fiscal year 2010.''.

By Mr. VITTER:

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

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

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

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

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

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

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

SUBMITTED RESOLUTIONS

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

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

S. RES. 197

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

Whereas the Manhattan Project, the project for the development of that device, involved the labors of 130,000 men and women over 28 months at a cost of more than $2,200,000,000, and was one of the largest single scientific and engineering endeavors in history;

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

Whereas the scientific accomplishments demonstrated by the Manhattan Project provided a new era of technological development resulting in clean energy sources, new medical technologies, supercomputers, and a host of new materials and processes;

Whereas the Manhattan Project was a model for collaboration between the Government, the private sector, and United States institutions of higher education, as well as scientists and engineers of all nationalities, who worked to preserve freedom;

Whereas the success of the Manhattan Project played a central role in the development of the modern research enterprise in the United States, including the establishment of the National Science Foundation and the National Institutes of Health; and

Whereas, with the passage of time, it becomes more important to preserve the historic facilities used during the Manhattan Project, and to honor those remaining men and women who took part in it:

Now, therefore, be it

Resolved, That the Senate—

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

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

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

AMENDMENTS SUBMITTED AND PROPOSED

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

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

SA 1220. Mr. GREGG proposed an amendment to amendment SA 1205 proposed by Mr. SHELBY (for himself, Mr. SARBANES, Mr. REED, Mrs. DOLE, Mr. DODD, Mr. SCHUMER,