To permanently authorize certain provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, to reauthorize a provision of the Intelligence Reform and Terrorism Prevention Act of 2004, to clarify certain definitions in the Foreign Intelligence Surveillance Act of 1978, to provide additional investigative tools necessary to protect the national security, and for other purposes.

IN THE SENATE OF THE UNITED STATES
JUNE 16, 2005

Mr. ROBERTS, from the Select Committee on Intelligence, reported the following original bill; which was read twice and placed on the calendar.

A BILL

To permanently authorize certain provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, to reauthorize a provision of the Intelligence Reform and Terrorism Prevention Act of 2004, to clarify certain definitions in the Foreign Intelligence Surveillance Act of 1978, to provide additional investigative tools necessary to protect the national security, and for other purposes.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,
TITLE I—REPEAL AND EXTEN-
SION OF SUNSET ON CERTAIN
AUTHORITIES
SEC. 101. EXPANSION OF ENHANCED SURVEILLANCE PRO-
CEDURES NOT SUBJECT TO SUNSET UNDER
USA PATRIOT ACT.
Section 224(a) of the USA PATRIOT Act of 2001
is amended—
(1) by striking “203(a), 203(c)” and inserting
“203, 204”;
(2) by inserting “206, 207,” after “205,”;
(3) by inserting “214, 215,” after “213,”;
(4) by inserting “218,” after “216,”; and
(5) by striking “and 222” and inserting “222,
and 225”.
SEC. 102. EXTENSION OF SUNSET OF TREATMENT OF INDIVI-
DUAL TERRORISTS AS AGENTS OF FOR-
EIGN POWERS.
Subsection (b) of section 6001 of the Intelligence Re-
form and Terrorism Prevention Act of 2004 (Public Law
108–458; 118 Stat. 3742) is amended to read as follows:
“(b) SUNSET.—(1) Except as provided in paragraph
(2), the amendment made by subsection (a) shall cease
to have effect on December 31, 2009.
“(2) With respect to any particular foreign intel-
ligence investigation that began before the date on which
the amendment made by subsection (a) ceases to have ef-
fect, section 101(b)(1) of the Foreign Intelligence Surveil-
rance Act of 1978, as amended by subsection (a), shall
continue in effect.”.

TITLE II—FOREIGN INTELLIGENCE SURVEILLANCE
MATTERS
Subtitle A—Definitional Matters

SEC. 201. CLARIFICATION OF CONTENTS OF COMMUNICA-
TIONS FOR PURPOSES OF FOREIGN INTEL-
LIGENCE SURVEILLANCE ACT OF 1978.

Subsection (n) of section 101 of the Foreign Intelli-
gence Surveillance Act of 1978 (50 U.S.C. 1801) is
amended to read as follows:
“(n) ‘Contents’, when used with respect to a com-
unication, includes any information concerning the sub-
stance, purport, or meaning of such communication.”.

Section 101(e)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(e)(1)) is amended in the matter preceding subparagraph (A) by inserting “(including protection by use of law enforcement methods such as criminal prosecution)” after “protect”.

Subtitle B—Other Matters

SEC. 211. ACCESS TO BUSINESS RECORDS FOR INVESTIGATIONS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) CLARIFICATION OF ACCESS.—(1) Subsection (a)(1) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended—

(A) by striking “items) for” and inserting “items) relevant to”; and

(B) by striking “clandestine intelligence activities,” and all that follows through the period and inserting “clandestine intelligence activities.”.

(2) Subsection (b)(2) of such section is amended by striking “sought for” and inserting “relevant to”.

(b) LIMITATIONS ON DISCLOSURE.—Such section is further amended by striking subsection (d) and inserting the following new subsection (d):
“(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 non-disclosure requirements under this subsection.”.

(c) MINIMIZATION OF RETENTION AND DISSEMINATION OF TANGIBLE THINGS.—Such section is further
amended by adding at the end the following new sub-
section:

“(f) The Attorney General shall adopt minimization
procedures governing the retention and dissemination by
the Federal Bureau of Investigation of any tangible things
received by the Bureau in response to an order under this
section.”

(d) JUDICIAL REVIEW.—Such section is further
amended by adding at the end the following new sub-
section:

“(g)(1) Following the receipt of an order under this
section, but before the production of tangible things under
the order, the person charged with production of such tan-
gible things may, in the Foreign Intelligence Surveillance
Court, petition to modify or set aside the order. Such peti-
tion shall be filed in a manner consistent with paragraph
(2).

“(2)(A) All proceedings under this subsection shall
be closed consistent with the requirements of subsection
(d) and subject to any right to an open hearing in a crimi-
nal proceeding.

“(B) All petitions, filings, records, orders, and sub-
poenas with respect to any proceedings under this sub-
section shall be filed and maintained under seal.
“(3)(A) In any proceedings under this subsection, the Foreign Intelligence Surveillance Court shall, upon request of the Federal Government, review any submission, or portion thereof, of the Federal Government containing classified information, or other sensitive information the disclosure of which would harm national security, ex parte and in camera.

“(B) If the Court reviews any submission of the Federal Government under subparagraph (A) ex parte and in camera, the Court may disclose the information subject to such review to the person filing the petition concerned, under appropriate security procedures and protective orders, only where such disclosure is necessary to make an accurate determination for purposes of paragraph (5).

“(4) The Foreign Intelligence Surveillance Court may modify or set aside a nondisclosure requirement imposed under subsection (d) at the request of the person charged with production of tangible things pursuant to an order under this section, unless the Director of the Federal Bureau of Investigation certifies to the Court that disclosure may result in a danger to the national security of the United States.

“(5) The Foreign Intelligence Surveillance Court may modify or set aside an order under this section if compliance with the order would be unreasonable or oppressive.
“(6) The Foreign Intelligence Surveillance Court shall adopt and publish procedures governing petitions filed under this subsection.

“(7) In this subsection, the term ‘Foreign Intelligence Surveillance Court’ means the court established by section 103(a).”.

(e) CONGRESSIONAL OVERSIGHT.—Section 502(b) of such Act (50 U.S.C. 1862(b)) is amended—

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

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

(3) by adding at the end the following new paragraph:

“(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 each 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)).”.

SEC. 212. NATIONAL SECURITY MAIL COVERS.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by striking title VII; and

(2) by adding at the end the following new title VII:

“TITLE VII—NATIONAL SECURITY MAIL COVERS

“DEFINITIONS

“Sec. 701. In this title:
“(1) The terms ‘foreign intelligence information’, ‘foreign power’, ‘international terrorism’, and ‘United States person’ have the meaning given such terms in section 101.

“(2)(A) The term ‘mail cover’ means the process by which—

“(i) a nonconsensual record is made of any data appearing on the outside cover of any sealed mail or unsealed mail delivered to an address, forwarding address, or Post Office box; or

“(ii) a record is made of the contents of any unsealed mail as authorized by law.

“(B) The term does not include any transcription, photograph, photocopy, or any other facsimile of the image of the contents of any sealed mail.

“(C) The term also does not include the making of a record of the data appearing on the outside cover of any sealed mail or unsealed mail, or the contents of any unsealed mail, mailed between the target and the target’s known attorney.

“(3) The term ‘record’ means—

“(A) in the case of any mail, a transcription, photograph, photocopy, or other fac-
simile of the image of the outside contents, cover, envelope, or wrapper of such mail; and

“(B) in the case of unsealed mail, a transcription, photograph, photocopy, or other facsimile of the image of the contents of such mail.

“(4) The term ‘sealed mail’ means mail on which appropriate postage is paid, and which under postal laws and regulations is included within a class of mail maintained by the United States Postal Service for the transmission of mail sealed against inspection, including first class mail, express mail, international letter mail, and mailgram messages.

“(5) The term ‘unsealed mail’ means mail on which appropriate postage for sealed mail has not been paid and which under postal laws or regulations is not included within a class of mail maintained by the United States Postal Service for the transmission of mail sealed against inspection, including second class mail, third class mail, and fourth class mail, and international parcel post mail.

“NATIONAL SECURITY MAIL COVERS

“SEC. 702. (a) DUTY TO PROVIDE.—(1) The United States Postal Service shall comply with each request for mail covers made under subsection (b).

“(2) In complying under paragraph (1) with a request for mail covers with respect to a target specified in
the request, the United States Postal Service shall provide
available records of all mail matter specified in the request
that is delivered to the address, forwarding address, or
Post Office box of the target as specified in the request.
“(3) In complying under paragraph (1) with a re-
quest for mail covers with respect to a target specified in
the request, the United States Postal Service shall, if re-
quested, provide available records of all outgoing mail
matter from such target.
“(4) Mechanical reproduction shall be used to make
records under this subsection, unless circumstances render
such reproduction impracticable.
“(b) REQUESTS FOR MAIL COVERS.—(1) The Direc-
tor of the Federal Bureau of Investigation, or a designee
of the Director in a position not lower than Deputy Assis-
tant Director at Bureau headquarters or Special Agent in
Charge (including an ‘acting’ Special Agent in Charge) in
a Bureau field office designated by the Director, may re-
quest mail covers under subsection (a) if the Director or
such designee certifies in writing to the United States
Postal Service that such mail covers are relevant to an
authorized investigation to obtain foreign intelligence in-
formation not concerning a United States person or to
protect against international terrorism or clandestine in-
telligence activities.
“(2) The Postmaster General shall designate officers and employees of the United States Postal Service who are eligible to receive requests under paragraph (1).

“(3) An investigation conducted under this section shall—

“(A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

“(B) not be conducted concerning a United States person solely on the basis of activities protected by the first amendment to the Constitution of the United States.

“(c) CONTENTS OF REQUEST.—In addition to the certification required under subsection (b) with respect to a request for mail covers described in that subsection, a request for mail covers under subsection (b) shall specify—

“(1) the name and address of the Federal Bureau of Investigation official making the request;

“(2) the authority of such official to make the request;

“(3) the name, if known, of the target of the request;

“(4) the name, if known, of the known attorney of the target;
“(5) at least one, and any additional (if
known), of the address, forwarding address, or Post
Office box of the target;

“(6) the classes of mail to be covered by the re-
quest;

“(7) whether incoming mail, outgoing mail, or
both are to be covered by the request;

“(8) the duration of the request; and

“(9) the name and phone number of a local of-
ficial of the Bureau who will facilitate the collection
of the records produced in response to the request.

“(d) DURATION.—(1) Except as provided in para-
graph (2), no request for mail covers under subsection (b)
shall remain in force longer than 120 consecutive days.

“(2) In the case of a request for mail covers under
subsection (b) targeted against a foreign power, the re-
quest shall remain in force for the lesser of—

“(A) the period specified in the request; or

“(B) one year.

“(3)(A) A request under subsection (b) may be ex-
tended, but only upon submittal of a new request under
this section.

“(B) Except as provided in subparagraph (C), the pe-
riod of extension under this paragraph of a request for
mail covers shall not be more than 120 days.
“(C) The period of extension under this paragraph
of a request for mail covers targeted against a foreign
power or an agent of a foreign power (as defined in section
101(b)(1)(A)) shall be for the lesser of—
“(i) the period specified in the request for ex-
tension under this paragraph; or
“(ii) one year.
“(e) MINIMIZATION.—The Attorney General shall
adopt minimization procedures governing the retention
and dissemination by the Federal Bureau of Investigation
of any records received by the Bureau in response to a
request under subsection (b).
“(f) NONDISCLOSURE REQUIREMENTS.—(1) No offi-
cer or employee of the United States Postal Service, or
agent thereof, shall disclose to any person that the Federal
Bureau of Investigation has sought or received records
under a request under subsection (b) other than to—
“(A) those persons to whom such disclosure is
necessary to comply with the request;
“(B) an attorney, who shall be an officer or em-
ployee of the United States Postal Service, to obtain
legal advice or assistance with respect to the produc-
tion of records in response to the request; or
“(C) other persons as permitted by the Director of the Federal Bureau of Investigation or a designee of the Director under subsection (b).

“(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) A request under subsection (b) shall notify, in writing, the person to whom the request is directed of the nondisclosure requirements under this subsection.

“CONGRESSIONAL OVERSIGHT

“SEC. 703. (a) SEMIANNUAL NOTICE ON USE OF MAIL COVERS.—On a semianual basis, the Attorney General shall fully inform the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives concerning all requests for, and use of, national security mail covers pursuant to this title.

“(b) SEMIANNUAL REPORT ON MAIL COVERS REQUESTED.—On a semianual basis, the Attorney General shall submit to the committees of Congress referred to in subsection (a) and to the Committees on the Judiciary of
the Senate and the House of Representatives a report setting forth, with respect to the preceding six-month period, the total number of national security mail covers requested under this title.’’.

(b) CLERICAL AMENDMENT.—The table of contents for that Act is amended by striking the items relating to title VII and section 701 and inserting the following new items:

“TITLE VII—NATIONAL SECURITY MAIL COVERS

Sec. 701. Definitions.
Sec. 702. National security mail covers.
Sec. 703. Congressional oversight.”.

SEC. 213. ADMINISTRATIVE SUBPOENAS IN NATIONAL SECURITY INVESTIGATIONS.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978, as amended by section 212(a) of this Act, is further amended by adding at the end the following new title:

“TITLE VIII—ADMINISTRATIVE SUBPOENAS IN NATIONAL SECURITY INVESTIGATIONS

DEFINITIONS

Sec. 801. In this title:

“(1) The terms ‘international terrorism’, ‘foreign intelligence information’, ‘Attorney General’, and ‘United States person’ have the meaning given such terms in section 101.
“(2) The term ‘Foreign Intelligence Surveillance Court’ means the court established by section 103(a).

“AUTHORIZATION TO ISSUE

“SEC. 802. (a) AUTHORIZATION TO ISSUE.—

“(1) IN GENERAL.—The Attorney General, or a designee of the Attorney General under paragraph (2), may issue in writing and caused to be served a subpoena requiring—

“(A) the production of any records or other materials that are relevant to an authorized investigation—

“(i) to obtain foreign intelligence information not concerning a United States person; or

“(ii) to protect against international terrorism or clandestine intelligence activities; and

“(B) a certification by the custodian of such records or other materials concerning the production and authentication of such records or other materials.

“(2) DESIGNEES.—A designee of the Attorney General under this paragraph is any official designated by the Attorney General from officials as follows:
“(A) Any official of the Department of Justice in a position not lower than Assistant Attorney General which position has responsibility for national security investigations.

“(B) Any United States Attorney.

“(C) Any Assistant United States Attorney with responsibility for national security investigations.

“(D) The Director of the Federal Bureau of Investigation.

“(E) Any official of the Federal Bureau of Investigation in a position not lower than Deputy Assistant Director, at Bureau headquarters, or a Special Agent in Charge (including an ‘acting’ Special Agent in Charge), at a Bureau field office.

“(b) GOVERNING AUTHORITIES.—An investigation conducted under this section shall—

“(1) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

“(2) not be conducted concerning a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.
“(c) RECORDS NOT SUBJECT TO PRODUCTION.—

Any documentary evidence that would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation of espionage or international terrorism shall be privileged from disclosure if demanded by a subpoena issued under this section.

“CONTENTS OF SUBPOENAS

“Sec. 803. A subpoena issued under section 802 shall describe the records or items required to be produced and prescribe a return date within a reasonable period of time within which such records or items can be assembled and made available and at a location not more than 500 miles distant from the place where the subpoena was served.

“PRODUCTION OF RECORDS

“Sec. 804. The production of records under a subpoena issued under section 802 may be required from any place in any State, or in any territory or other place subject to the jurisdiction of the United States.

“SERVICE

“Sec. 805. (a) In General.—A subpoena issued under section 802 may be served by any person designated in the subpoena as the agent of service.

“(b) SERVICE OF SUBPOENA.—
“(1) **Natural person.**—Service of a subpoena upon a natural person may be made by personal delivery of the subpoena to that person, or by certified mail with return receipt requested.

“(2) **Business entities and associations.**—Service of a subpoena may be made upon a domestic or foreign corporation, or upon a partnership or other unincorporated association that is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

“(3) **Proof of service.**—The affidavit of the person serving the subpoena entered by that person on a true copy thereof shall be sufficient proof of service.

**Enforcement**

“Sec. 806. (a) **Enforcement.**—

“(1) **In general.**—In the case of a failure or refusal to obey a subpoena issued under section 802 to any person or entity, the Attorney General may invoke the aid of the Foreign Intelligence Surveillance Court or any court of the United States within the jurisdiction of which the investigation concerned is carried on, or the subpoenaed person resides, car-
ries on business, or may be found, to compel compliance with the subpoena.

“(2) VENUE FOR PROCEEDINGS.—If a person or entity files, in a court other than the court in which the Government files for enforcement proceedings under paragraph (1), a petition under section 808 for judicial review of a subpoena issued under section 802 before the Government files for such enforcement proceedings under paragraph (1), the court in which such enforcement proceedings are initiated under paragraph (1) shall dismiss, without prejudice, such enforcement proceedings or transfer further proceedings under this section to the court in which such judicial review proceedings have been initiated.

“(b) ORDER.—A court of the United States referred to in subsection (a) may issue an order requiring the subpoenaed person to produce records or items in accordance with the subpoena, to appear, or to give testimony relating to compliance with the subpoena. Any failure to obey the order of the court may be punished by the court as contempt thereof.

“(c) SERVICE OF PROCESS.—Any process under this subsection may be served in any judicial district in which the person may be found.
“Nondisclosure Requirements

Sec. 807. (a) In General.—If the Attorney General, or a designee of the Attorney General under section 802, certifies that a danger to the national security of the United States may result, no person shall disclose to any other person that a subpoena was received or records were provided pursuant to this title, other than to—

“(1) those persons to whom such disclosure is necessary to comply with the subpoena;

“(2) an attorney to obtain legal advice or assistance with respect to the production of records in response to the subpoena; or

“(3) other persons as permitted by the Attorney General or the designee of the Attorney General.

“(b) Notice of Nondisclosure Requirements.—

“(1) In General.—A subpoena under section 802 shall notify, in writing, the person to whom the subpoena is directed of the nondisclosure requirements under subsection (a).

“(2) Notice Under Further Disclosures.—Any person making a further disclosure authorized by paragraph (1), (2), or (3) of subsection (a) shall notify the person to whom the disclosure is made of the prohibitions on disclosure under this section.
“(c) Further Applicability of Nondisclosure Requirements.—Any person who receives a disclosure under this section shall be subject to the prohibitions on disclosure under subsection (a).

“(d) Enforcement of Nondisclosure Requirements.—Whoever knowingly violates subsection (a) or (c) shall be imprisoned for not more than 1 year, fined not more than $10,000, or both, and if the violation is committed with the intent to obstruct an investigation described in section 802(a)(1), shall be imprisoned for not more than 5 years, fined not more than $50,000, or both.

“(e) Termination of Nondisclosure Requirements.—If the Attorney General, or a designee of the Attorney General under section 802, concludes with respect to any subpoena issued under section 802 and for which a certification has been made under subsection (a) that nondisclosure is no longer justified by a danger to the national security of the United States—

“(1) the provisions of subsections (a) through (d) of this section shall no longer apply with respect to such subpoena; and

“(2) an officer, employee, or agency of the United States shall notify the relevant person that such provisions shall no longer apply with respect to such subpoena.
"Sec. 808. (a) Judicial Review.—

“(1) In general.—At any time before the return date specified in a subpoena issued under section 802, the person or entity subpoenaed may, in the Foreign Intelligence Surveillance Court or the district court for the district in which that person or entity does business or resides, petition for an order modifying or setting aside the subpoena. Such petition shall be filed in a manner consistent with paragraph (3).

“(2) Venue for proceedings.—If the Government files, in a court other than the court in which judicial review proceedings are initiated under paragraph (1), an enforcement action under section 806 before a petition for judicial review proceedings is filed under paragraph (1), the court in which such petition is filed under paragraph (1) shall dismiss, without prejudice, such judicial review proceedings or transfer further proceedings under this section to the court in which such enforcement proceedings have been initiated.

“(3) Closed proceedings.—If a certification has been made under section 807(a) with respect to a subpoena, and the nondisclosure requirements of
section 807 continue to apply with respect to such subpoena—

“(A) all proceedings under this section shall be closed to the extent necessary to ensure nondisclosure of the issuance of the subpoena, subject to any right to an open hearing in a criminal proceeding; and

“(B) all petitions, filings, records, orders, and subpoenas with respect to such proceedings shall be filed and maintained under seal.

“(b) Review of Government Submissions.—

“(1) Requirements regarding certain information.—In all proceedings under this section, the court shall, upon request of the Federal Government, review any submission of the Federal Government, or portion thereof, containing classified information, or other sensitive information the disclosure of which would harm national security, ex parte and in camera.

“(2) Limited authority to disclose.—If the court reviews any submission of the Federal Government under paragraph (1) ex parte and in camera, the court may disclose the information subject to such review to the person filing the petition concerned, under appropriate security procedures.
and protective orders, only where such disclosure is
necessary to make an accurate determination for
purposes of subsection (d).

“(c) Modification of nondisclosure requirements.—A court may modify or set aside a nondisclosure
requirement imposed under section 807 at the request of
a person to whom a subpoena has been directed under sec-
tion 802, unless the Attorney General or the Director of
the Federal Bureau of Investigation certifies to the court
that disclosure may result in a danger to the national se-
curity of the United States.

“(d) Standard of review.—A court may modify
or set aside a subpoena under this section if compliance
with the subpoena would be unreasonable or oppressive.

“Immunity from civil liability

“Sec. 809. Any person, including any officer, agent, or
employee of a non-natural person, who in good faith pro-
duces the records or items requested in a subpoena issued
under section 802 shall not be liable in any court of the
United States or any State to any customer or other per-
son for such production, or for nondisclosure of that pro-
duction to the customer or other person.

“Guidelines and procedures

“Sec. 810. (a) In general.—The Attorney General,
in consultation with the Director of the Federal Bureau
of Investigation, shall, by regulation, establish such guide-
lines as are necessary to ensure the effective implementation of this title.

“(b) MINIMIZATION.—The Attorney General shall adopt specific minimization procedures governing the retention and dissemination by the Federal Bureau of Investigation of any records received by the Bureau in response to a subpoena under this title.

“(c) PROCEDURES.—The Foreign Intelligence Surveillance Court shall adopt and publish procedures governing the enforcement, under section 806, and judicial review, under section 808, of subpoenas under this title.

“CONGRESSIONAL OVERSIGHT

“Sec. 811. (a) SEMIANNUAL NOTICE ON USE OF ADMINISTRATIVE SUBPOENAS.—On a semiannual basis, the Attorney General shall fully inform the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives concerning all requests for, and uses of, administrative subpoenas pursuant to this title.

“(b) SEMIANNUAL REPORT ON ADMINISTRATIVE SUBPOENAS REQUESTED.—On a semiannual basis, the Attorney General shall submit to the committees of Congress referred to in subsection (a) and to the Committees on the Judiciary of the Senate and the House of Representatives a report setting forth, with respect to the preceding six-month period—
“(1) the total number of administrative subpoenas issued under this title;

“(2) the total number of certifications under section 807(a);

“(3) the total number of petitions filed under section 808;

“(4) the total number of petitions modified or set aside pursuant to section 808(a); and

“(5) the total number of administrative subpoenas issued under this title requiring the production of any records or other materials from or with respect to each of the following:

“(A) From a library, as defined in section 213(2) of the Library Services and Technology Act (20 U.S.C. 9122(2)).

“(B) 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) With respect to the purchase of a firearm, as defined in section 921(a)(3) of title 18, United States Code.

“(D) With respect to health information, as defined in section 1171 of the Social Security Act (42 U.S.C. 1320d(4)).
“(E) With respect to 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)).”.

(b) CLERICAL AMENDMENT.—The table of contents for that Act, as amended by section 212(b) of this Act, is further amended adding at the end the following new items:

“TITLE VIII—ADMINISTRATIVE SUBPOENAS IN NATIONAL SECURITY INVESTIGATIONS

 Sec. 801. Definitions.
 Sec. 802. Authorization to issue.
 Sec. 803. Contents of subpoena.
 Sec. 804. Production of records.
 Sec. 805. Service.
 Sec. 806. Enforcement.
 Sec. 807. Nondisclosure requirements.
 Sec. 808. Judicial review.
 Sec. 809. Immunity from civil liability.
 Sec. 810. Guidelines and procedures.
 Sec. 811. Congressional oversight.”.

(c) IMPLEMENTATION.—(1) The Attorney General shall issue the guidelines required by section 810(a) of the Foreign Intelligence Surveillance Act of 1978, as added by subsection (a), not later than 180 days after the date of the enactment of this Act.

(2) Not later than 180 days after the date of the issuance of the guidelines described in paragraph (1), the Federal Bureau of Investigation shall use the authority for administrative subpoenas provided in title VIII of the
Foreign Intelligence Surveillance Act of 1978, as so
added—

(A) to access certain communication service
provider records in lieu of the authority in section
2709 of title 18, United States Code;

(B) to obtain financial institution customer
records in lieu of the authority in section 1114 of
the Right to Financial Privacy Act (12 U.S.C.
3414);

(C) to obtain financial information, records,
and consumer reports in lieu of the authority in sec-
tion 802 of the National Security Act of 1947 (50
U.S.C. 436);

(D) to obtain certain financial information and
consumer reports in lieu of the authority in section
625 of the Fair Credit Reporting Act (15 U.S.C.
1681u); and

(E) to obtain credit agency consumer records
for counterterrorism investigations in lieu of the au-
 thority in section 627 of the Fair Credit Reporting

(d) REPORT.—(1) The Attorney General and Direc-
tor of National Intelligence shall, in consultation with the
heads of other affected departments and agencies of the
United States Government, examine the continuing need
for the authority in title V of the Foreign Intelligence Sur-
veillance Act of 1978 (50 U.S.C. 1861 et seq.), and the
authority to utilize so-called “national security letters”
(including requests under the authorities referred to in
subparagraphs (A) through (E) of subsection (c)(2)), in
light of the amendments made by this section.

(2) Not later than one year after the date of the en-
actment of this Act, the Attorney General and the Direc-
tor shall jointly submit to the appropriate committees of
Congress a report on the examination conducted under
paragraph (1). The report shall be submitted in unclassi-
fied form, but may include a classified annex.

(3) In this subsection, the term “appropriate commit-
tees of Congress” means—

(A) the Select Committee on Intelligence and
the Committee on the Judiciary of the Senate; and

(B) the Permanent Select Committee on Intel-
ligence and the Committee on the Judiciary of the
House of Representatives.

(e) SUNSET.—(1) Except as provided in paragraph
(2), this section, and the amendments made by this sec-
tion, shall cease to have effect on December 31, 2009.

(2) With respect to any particular foreign intelligence
investigation that began before the date on which the pro-
visions referred to in paragraph (1) cease to have effect, such provisions shall continue in effect.

SEC. 214. 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 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. 215. AUTHORITY FOR DISCLOSURE OF ADDITIONAL INFORMATION IN CONNECTION WITH ORDERS FOR PEN REGISTERS OR TRAP AND TRACE DEVICES UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

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 (i), 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 peri-


d at the end and inserting “; and”; and

(3) by adding at the end the following new sub-

paragraph:

“(C) shall direct that, upon the request of the

applicant, the provider of a wire or electronic com-

munication service shall disclose to the Federal offi-

cer using the pen register or trap and trace device

covered by the order—

“(i) in the case of the customer or sub-

scriber using the service covered by the order

(for the period specified by the order)—

“(I) the name of the customer or sub-

scriber;

“(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 net-

work 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 net-
work 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 uti-
lized by such customer or subscriber.”.

SEC. 216. SURVEILLANCE OF CERTAIN NON-UNITED STATES
PERSONS UNDER FOREIGN INTELLIGENCE
SURVEILLANCE ACT OF 1978.

(a) TREATMENT AS AGENT OF FOREIGN POWER OF
NON-UNITED STATES PERSONS WHO AID OR ABET CERT-
AIN TERRORISTS AND SABOTEURS.—Section
101(b)(1)(A) of the Foreign Intelligence Surveillance Act
of 1978 (50 U.S.C. 1801(b)(1)(A)) is amended by insert-
ing “, knowingly aids or abets any person in the conduct
of activities described in paragraph (2)(C) for or on behalf
of a foreign power, as defined in subsection (a)(4), or
knowingly conspires with any person engaged in activities
described in paragraph (2)(C) for or on behalf of a foreign
power, as defined in subsection (a)(4)” before the semi-
colon.

(b) DURATION OF PEN REGISTERS AND TRAP AND
TRACE DEVICES.—Subsection (e) of section 402 of such
Act (50 U.S.C. 1842) is amended to read as follows:
“(e)(1)(A) Except as provided in subparagraphs (B) and (C), an order issued under this section shall authorize the installation and use of a pen register or trap and trace device for a period not to exceed 90 days.

“(B) In any case in which the applicant for an order under this section certifies that the information likely to be obtained is foreign intelligence information concerning a foreign power (as defined in paragraph (1), (2), or (3) of section 101(a)), the order may be for the period specified in the application or for one year, whichever is less.

“(C) In any case in which the applicant for an order under this section certifies that the information likely to be obtained is foreign intelligence information concerning an agent of a foreign power (as defined in section 101(b)(1)(A)), the order may be for the period specified in the application or for 120 days, whichever is less.

“(2)(A) Extensions of an order under this section may be granted, but only upon application for an order under this section and upon the judicial finding required by subsection (d).

“(B) Except as provided in subparagraph (C), an extension under this paragraph of an order under this section shall be for a period not to exceed 90 days.

“(C) In any case in which the applicant for an extension under this paragraph certifies that the information
likely to be obtained is foreign intelligence information concerning a foreign power (as defined in paragraph (1), (2), or (3) of section 101(a)) or an agent of a foreign power (as defined in section 101(b)(1)(A)), the extension may be for a period not to exceed one year.”.

SEC. 217. ADDITIONAL INFORMATION IN APPLICATIONS FOR ORDERS FOR PEN REGISTERS AND TRAP AND TRACE DEVICES AND BUSINESS RECORDS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) Orders for Pen Registers and Trap and Trace Devices.—Section 402(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(c)) is amended—

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

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

(3) by adding at the end the following new paragraph:

“(3) an explanation by the applicant that supports the assertion of relevance under paragraph (2).”.
(b) Orders for Business Records.—Subsection 211(a)(2) of this Act, is further amended—

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

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

(3) by adding at the end the following new paragraph:

“(3) shall include an explanation by the applicant that supports the assertion of relevance under paragraph (2).”.

SEC. 218. FORM OF SEMIANNUAL REPORTS ON ACCESS TO BUSINESS RECORDS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

Section 502(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1862(b)), as amended by section 211(e) of this Act, is further amended—

(1) in paragraph (3), by redesignating subparagraphs (A) through (E) as clauses (i) through (v), respectively;

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(3) by inserting “(1)” after “(b)”; and
(4) by adding at the end the following new paragraph:

“(2) Each report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.”.

SEC. 219. REPORT ON VOLUNTARY DISCLOSURE OF BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES.

(a) REPORT REQUIRED.—Not later than six months after the date of the enactment of this Act, the Attorney General shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report on the access provided to the Federal Bureau of Investigation, on a voluntary basis at the request of the Bureau, to tangible things (including books, records, papers, documents, and other items) for purposes of investigations described by section 501(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(a)(1)).

(b) ELEMENTS.—The report required by subsection (a) shall include the following:

(1) A description of the policies and procedures of the Federal Bureau of Investigation for seeking access to things as described in subsection (a).
(2) A description of the circumstance in which such access is regularly sought.

(3) A description of the general frequency with which such access is sought.

(4) A description of the general frequency with which a request for such access is denied.

(5) An assessment of the success of the Bureau in obtaining through such access information of value to investigations described in subsection (a).

(c) Form.—The report required by subsection (a) shall be submitted in unclassified form, but may include a classified annex.
A BILL

[Report No. 109-85]

S. 1266

109TH CONGRESS

S. 1266

Read twice and placed on the calendar

JUNE 16, 2005

To permanently authorize certain provisions of the USA PATRIOT Act of 1996.