

USA PATRIOT IMPROVEMENT AND REAUTHORIZATION  
ACT OF 2005

DECEMBER 8, 2005.—Ordered to be printed

Mr. SENSENBRENNER, from the committee of conference,  
submitted the following

CONFERENCE REPORT

[To accompany H.R. 3199]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3199), to extend and modify authorities needed to combat terrorism, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

**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 for this Act is as follows:*

*Sec. 1. Short title; table of contents.*

**TITLE I—USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT**

*Sec. 101. References to, and modification of short title for, USA PATRIOT Act.*

*Sec. 102. USA PATRIOT Act sunset provisions.*

*Sec. 103. Extension of sunset relating to individual terrorists as agents of foreign powers.*

*Sec. 104. Section 2332b and the material support sections of title 18, United States Code.*

*Sec. 105. Duration of FISA surveillance of non-United States persons under section 207 of the USA PATRIOT Act.*

*Sec. 106. Access to certain business records under section 215 of the USA PATRIOT Act.*

*Sec. 106A. Audit on access to certain business records for foreign intelligence purposes.*

- Sec. 107. *Enhanced oversight of good-faith emergency disclosures under section 212 of the USA PATRIOT Act.*
- Sec. 108. *Multipoint electronic surveillance under section 206 of the USA PATRIOT Act.*
- Sec. 109. *Enhanced congressional oversight.*
- Sec. 110. *Attacks against railroad carriers and mass transportation systems.*
- Sec. 111. *Forfeiture.*
- Sec. 112. *Section 2332b(g)(5)(B) amendments relating to the definition of Federal crime of terrorism.*
- Sec. 113. *Amendments to section 2516(1) of title 18, United States Code.*
- Sec. 114. *Delayed notice search warrants.*
- Sec. 115. *Judicial review of national security letters.*
- Sec. 116. *Confidentiality of national security letters.*
- Sec. 117. *Violations of nondisclosure provisions of national security letters.*
- Sec. 118. *Reports on national security letters.*
- Sec. 119. *Audit of use of national security letters.*
- Sec. 120. *Definition for forfeiture provisions under section 806 of the USA PATRIOT Act.*
- Sec. 121. *Penal provisions regarding trafficking in contraband cigarettes or smokeless tobacco.*
- Sec. 122. *Prohibition of narco-terrorism.*
- Sec. 123. *Interfering with the operation of an aircraft.*
- Sec. 124. *Sense of Congress relating to lawful political activity.*
- Sec. 125. *Removal of civil liability barriers that discourage the donation of fire equipment to volunteer fire companies.*
- Sec. 126. *Report on data-mining activities.*
- Sec. 127. *Sense of Congress.*
- Sec. 128. *USA PATRIOT Act section 214; authority for disclosure of additional information in connection with orders for pen register and trap and trace authority under FISA.*

#### TITLE II—TERRORIST DEATH PENALTY ENHANCEMENT

- Sec. 201. *Short title.*
- Subtitle A—Terrorist penalties enhancement Act*
- Sec. 211. *Death penalty procedures for certain air piracy cases occurring before enactment of the Federal Death Penalty Act of 1994.*
- Sec. 212. *Postrelease supervision of terrorists.*
- Subtitle B—Federal Death Penalty Procedures*
- Sec. 221. *Elimination of procedures applicable only to certain Controlled Substances Act cases.*
- Sec. 222. *Counsel for financially unable defendants.*

#### TITLE III—REDUCING CRIME AND TERRORISM AT AMERICA'S SEAPORTS

- Sec. 301. *Short title.*
- Sec. 302. *Entry by false pretenses to any seaport.*
- Sec. 303. *Criminal sanctions for failure to heave to, obstruction of boarding, or providing false information.*
- Sec. 304. *Criminal sanctions for violence against maritime navigation, placement of destructive devices.*
- Sec. 305. *Transportation of dangerous materials and terrorists.*
- Sec. 306. *Destruction of, or interference with, vessels or maritime facilities.*
- Sec. 307. *Theft of interstate or foreign shipments or vessels.*
- Sec. 308. *Stowaways on vessels or aircraft.*
- Sec. 309. *Bribery affecting port security.*
- Sec. 310. *Penalties for smuggling goods into the United States.*
- Sec. 311. *Smuggling goods from the United States.*

#### TITLE IV—COMBATING TERRORISM FINANCING

- Sec. 401. *Short title.*
- Sec. 402. *Increased penalties for terrorism financing.*
- Sec. 403. *Terrorism-related specified activities for money laundering.*
- Sec. 404. *Assets of persons committing terrorist acts against foreign countries or international organizations.*
- Sec. 405. *Money laundering through hawalas.*
- Sec. 406. *Technical and conforming amendments relating to the USA PATRIOT Act.*
- Sec. 407. *Cross reference correction.*

- Sec. 408. *Amendment to amendatory language.*  
 Sec. 409. *Designation of additional money laundering predicate.*  
 Sec. 410. *Uniform procedures for criminal forfeiture.*

**TITLE V—MISCELLANEOUS PROVISIONS**

- Sec. 501. *Residence of United States attorneys and assistant United States attorneys.*  
 Sec. 502. *Interim appointment of United States Attorneys.*  
 Sec. 503. *Secretary of Homeland Security in Presidential line of succession.*  
 Sec. 504. *Bureau of Alcohol, Tobacco and Firearms to the Department of Justice.*  
 Sec. 505. *Qualifications of United States Marshals.*  
 Sec. 506. *Department of Justice intelligence matters.*  
 Sec. 507. *Review by Attorney General.*

**TITLE VI—SECRET SERVICE**

- Sec. 601. *Short title.*  
 Sec. 602. *Interference with national special security events.*  
 Sec. 603. *False credentials to national special security events.*  
 Sec. 604. *Forensic and investigative support of missing and exploited children cases.*  
 Sec. 605. *The Uniformed Division, United States Secret Service.*  
 Sec. 606. *Savings provisions.*  
 Sec. 607. *Maintenance as distinct entity.*  
 Sec. 608. *Exemptions from the Federal Advisory Committee Act.*

**TITLE VII—COMBAT METHAMPHETAMINE EPIDEMIC ACT OF 2005**

- Sec. 701. *Short title.*

*Subtitle A—Domestic regulation of precursor chemicals*

- Sec. 711. *Scheduled listed chemical products; restrictions on sales quantity, behind-the-counter access, and other safeguards.*  
 Sec. 712. *Regulated transactions.*  
 Sec. 713. *Authority to establish production quotas.*  
 Sec. 714. *Penalties; authority for manufacturing; quota.*  
 Sec. 715. *Restrictions on importation; authority to permit imports for medical, scientific, or other legitimate purposes.*  
 Sec. 716. *Notice of importation or exportation; approval of sale or transfer by importer or exporter.*  
 Sec. 717. *Enforcement of restrictions on importation and of requirement of notice of transfer.*  
 Sec. 718. *Coordination with United States Trade Representative.*

*Subtitle B—International regulation of precursor chemicals*

- Sec. 721. *Information on foreign chain of distribution; import restrictions regarding failure of distributors to cooperate.*  
 Sec. 722. *Requirements relating to the largest exporting and importing countries of certain precursor chemicals.*  
 Sec. 723. *Prevention of smuggling of methamphetamine into the United States from Mexico.*

*Subtitle C—Enhanced criminal penalties for methamphetamine production and trafficking*

- Sec. 731. *Smuggling methamphetamine or methamphetamine precursor chemicals into the United States while using facilitated entry programs.*  
 Sec. 732. *Manufacturing controlled substances on Federal property.*  
 Sec. 733. *Increased punishment for methamphetamine kingpins.*  
 Sec. 734. *New child-protection criminal enhancement.*  
 Sec. 735. *Amendments to certain sentencing court reporting requirements.*  
 Sec. 736. *Semiannual reports to Congress.*

*Subtitle D—Enhanced environmental regulation of methamphetamine byproducts*

- Sec. 741. *Biennial report to Congress on agency designations of by-products of methamphetamine laboratories as hazardous materials.*  
 Sec. 742. *Methamphetamine production report.*  
 Sec. 743. *Cleanup costs.*

*Subtitle E—Additional programs and activities*

- Sec. 751. *Improvements to Department of Justice drug court grant program.*

- Sec. 752. Drug courts funding.  
 Sec. 753. Feasibility study on Federal drug courts.  
 Sec. 754. Grants to hot spot areas to reduce availability of methamphetamine.  
 Sec. 755. Grants for programs for drug-endangered children.  
 Sec. 756. Authority to award competitive grants to address methamphetamine use by pregnant and parenting women offenders.

## **TITLE I—USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT**

### **SEC. 101. REFERENCES TO, AND MODIFICATION OF SHORT TITLE FOR, USA PATRIOT ACT.**

(a) *REFERENCES TO USA PATRIOT ACT.*—A reference in this Act to the USA PATRIOT Act shall be deemed a reference to the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001*.

(b) *MODIFICATION OF SHORT TITLE OF USA PATRIOT ACT.*—Section 1(a) of the USA PATRIOT Act 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. 102. USA PATRIOT ACT SUNSET PROVISIONS.**

(a) *IN GENERAL.*—Section 224 of the USA PATRIOT Act is repealed.

(b) *SECTIONS 206 AND 215 SUNSET.*—

(1) *IN GENERAL.*—Effective December 31, 2009, the *Foreign Intelligence Surveillance Act of 1978* is amended so that sections 501, 502, and 105(c)(2) read as they read on October 25, 2001.

(2) *EXCEPTION.*—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.

### **SEC. 103. EXTENSION OF SUNSET RELATING TO INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.**

Section 6001(b) of the *Intelligence Reform and Terrorism Prevention Act of 2004* (Public Law 108–458; 118 Stat. 3742) 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) *EXCEPTION.*—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which the provisions cease to have effect, such provisions shall continue in effect.”

**SEC. 104. 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 108-458; 118 Stat. 3762) is amended by striking subsection (g).*

**SEC. 105. DURATION OF FISA SURVEILLANCE OF NON-UNITED STATES PERSONS UNDER SECTION 207 OF THE USA PATRIOT ACT.**

*(a) ELECTRONIC SURVEILLANCE.—Section 105(e) of the Foreign Intelligence Surveillance Act of 1978 (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 subsection (2)(B), by striking “as defined in section 101(b)(1)(A)” and inserting “who is not a United States person”.*

*(b) PHYSICAL SEARCH.—Section 304(d) of such Act (50 U.S.C. 1824(d)) 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), by striking “as defined in section 101(b)(1)(A)” and inserting “who is not a United States person”.*

*(c) PEN REGISTERS, TRAP AND TRACE DEVICES.—Section 402(e) of such Act (50 U.S.C. 1842(e)) is amended—*

*(1) by striking “(e) An” and inserting “(e)(1) Except as provided in paragraph (2), an”; and*

*(2) by adding at the end the following new paragraph:*

*“(2) In the case of an application under subsection (c) where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an order, or an extension of an order, under this section may be for a period not to exceed one year.”.*

**SEC. 106. ACCESS TO CERTAIN BUSINESS RECORDS UNDER SECTION 215 OF THE USA PATRIOT ACT.**

*(a) DIRECTOR APPROVAL FOR CERTAIN APPLICATIONS.—Subsection (a) of section 501 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 “Subject to paragraph (3), the Director”; and*

*(2) by adding at the end the following:*

*“(3) In the case of an application for an order requiring the production of library circulation records, library patron lists, book sales records, book customer lists, firearms sales records, tax return records, educational records, or medical records containing information that would identify a person, the Director of the Federal Bureau of Investigation may delegate the authority to make such application to either the Deputy Director of the Federal Bureau of Investigation or the Executive Assistant Director for National Security (or any successor position). The Deputy Director or the Executive Assistant Director may not further delegate such authority.”.*

*(b) FACTUAL BASIS FOR REQUESTED ORDER.—Subsection (b)(2) of such section is amended to read as follows:*

*“(2) shall include—*

“(A) a statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation (other than a threat assessment) 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, such things being presumptively relevant to an authorized investigation if the applicant shows in the statement of the facts that they pertain to—

“(i) a foreign power or an agent of a foreign power;

“(ii) the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

“(iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation; and

“(B) an enumeration of the minimization procedures adopted by the Attorney General under subsection (g) that are applicable to the retention and dissemination by the Federal Bureau of Investigation of any tangible things to be made available to the Federal Bureau of Investigation based on the order requested in such application.”

(c) CLARIFICATION OF JUDICIAL DISCRETION.—Subsection (c)(1) of such section is amended to read as follows:

“(c)(1) Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an *ex parte* order as requested, or as modified, approving the release of tangible things. Such order shall direct that minimization procedures adopted pursuant to subsection (g) be followed.”

(d) ADDITIONAL PROTECTIONS.—Subsection (c)(2) of such section is amended to read as follows:

“(2) An order under this subsection—

“(A) shall describe the tangible things that are ordered to be produced with sufficient particularity to permit them to be fairly identified;

“(B) shall include the date on which the tangible things must be provided, which shall allow 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 described in subsection (d);

“(D) may only require the production of a tangible thing if such thing can be obtained with a subpoena *duces tecum* issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things; and

“(E) shall not disclose that such order is issued for purposes of an investigation described in subsection (a).”

(e) PROHIBITION ON DISCLOSURE.—Subsection (d) of such section 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 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) A person to whom disclosure is made pursuant to paragraph (1) shall be subject to the nondisclosure requirements applicable to a person to whom an order is directed under this section in the same manner as such person.

“(B) Any person who discloses to a person described in subparagraphs (A), (B), or (C) of paragraph (1) that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section shall notify such person of the nondisclosure requirements of this subsection.

“(C) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”

(f) JUDICIAL REVIEW.—

(1) PETITION REVIEW POOL.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

“(e)(1) Three judges designated under subsection (a) who reside within 20 miles of the District of Columbia, or, if all of such judges are unavailable, other judges of the court established under subsection (a) as may be designated by the presiding judge of such court, shall comprise a petition review pool which shall have jurisdiction to review petitions filed pursuant to section 501(f)(1).

“(2) Not later than 60 days after the date of the enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005, the court established under subsection (a) shall adopt and, consistent with the protection of national security, publish procedures for the review of petitions filed pursuant to section 501(f)(1) by the panel established under paragraph (1). Such procedures shall provide that review of a petition shall be conducted in camera and shall also provide for the designation of an acting presiding judge.”

(2) PROCEEDINGS.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is further amended by adding at the end the following new subsection:

“(f)(1) A person receiving an order to produce any tangible thing under this section may challenge the legality of that order by filing a petition with the pool established by section 103(e)(1). The presiding judge shall immediately assign the petition to one of the judges serving in such pool. Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the

*petition is frivolous, the assigned judge shall immediately deny the petition and affirm the order. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established pursuant to section 103(e)(2). The judge considering the petition may modify or set aside the order only if the judge finds that the order does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the order, the judge shall immediately affirm the order and order the recipient to comply therewith. The assigned judge shall promptly provide a written statement for the record of the reasons for any determination under this paragraph.*

*“(2) A petition for review of a decision to affirm, modify, or set aside an order by the United States or any person receiving such order shall be to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions. The court of review shall 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 writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.*

*“(3) Judicial proceedings under this subsection shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, 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.*

*“(4) All petitions under this subsection shall be filed under seal. In any proceedings under this subsection, the court shall, upon request of the government, review ex parte and in camera any government submission, or portions thereof, which may include classified information.”*

*(g) MINIMIZATION PROCEDURES AND USE OF INFORMATION.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is further amended by adding at the end the following new subsections:*

*“(g) MINIMIZATION PROCEDURES.—*

*“(1) IN GENERAL.—Not later than 180 days after the date of the enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005, the Attorney General shall adopt specific minimization procedures governing the retention and dissemination by the Federal Bureau of Investigation of any tangible things, or information therein, received by the Federal Bureau of Investigation in response to an order under this title.*

*“(2) DEFINED.—In this section, the term ‘minimization procedures’ means—*

*“(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the production of tangible things, to minimize the retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;*

*“(B) procedures that require that nonpublicly available information, which is not foreign intelligence information,*

as defined in section 101(e)(1), shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance; and

“(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes.

“(h) *USE OF INFORMATION.*—Information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this title concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures adopted pursuant to subsection (g). No otherwise privileged information acquired from tangible things received by the Federal Bureau of Investigation in accordance with the provisions of this title shall lose its privileged character. No information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this title may be used or disclosed by Federal officers or employees except for lawful purposes.”.

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

(1) in subsection (a)—

(A) by striking “semiannual basis” and inserting “annual basis”; and

(B) by inserting “and the Committee on the Judiciary” after “and the Select Committee on Intelligence”;

(2) in subsection (b)—

(A) by striking “On a semiannual basis” and all that follows through “the preceding 6-month period” and inserting “In April of each year, the Attorney General shall submit to the House and Senate Committees on the Judiciary and the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence 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 new paragraph:

“(3) the number of such orders either granted, modified, or denied for the production of each of the following:

“(A) Library circulation records, library patron lists, book sales records, or book customer lists.

“(B) Firearms sales records.

“(C) Tax return records.

“(D) Educational records.

“(E) Medical records containing information that would identify a person.”; and

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

“(c)(1) In April of each year, the Attorney General shall submit to Congress a report setting forth with respect to the preceding year—

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

*“(B) the total number of such orders either granted, modified, or denied.*

*“(2) Each report under this subsection shall be submitted in unclassified form.”.*

**SECTION 106A. AUDIT ON ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES.**

*(a) AUDIT.—The Inspector General of the Department of Justice shall perform a comprehensive audit of the effectiveness and use, including any improper or illegal use, of the investigative authority provided to the Federal Bureau of Investigation under title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.).*

*(b) REQUIREMENTS.—The audit required under subsection (a) shall include—*

*(1) an examination of each instance in which the Attorney General, any other officer, employee, or agent of the Department of Justice, the Director of the Federal Bureau of Investigation, or a designee of the Director, submitted an application to the Foreign Intelligence Surveillance Court (as such term is defined in section 301(3) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(3))) for an order under section 501 of such Act during the calendar years of 2002 through 2006, including—*

*(A) whether the Federal Bureau of Investigation requested that the Department of Justice submit an application and the request was not submitted to the court (including an examination of the basis for not submitting the application);*

*(B) whether the court granted, modified, or denied the application (including an examination of the basis for any modification or denial);*

*(2) the justification for the failure of the Attorney General to issue implementing procedures governing requests for the production of tangible things under such section in a timely fashion, including whether such delay harmed national security;*

*(3) whether bureaucratic or procedural impediments to the use of such requests for production prevent the Federal Bureau of Investigation from taking full advantage of the authorities provided under section 501 of such Act;*

*(4) any noteworthy facts or circumstances relating to orders under such section, including any improper or illegal use of the authority provided under such section; and*

*(5) an examination of the effectiveness of such section as an investigative tool, including—*

*(A) the categories of records obtained and the importance of the information acquired to the intelligence activities of the Federal Bureau of Investigation or any other Department or agency of the Federal Government;*

*(B) the manner in which such information is collected, retained, analyzed, and disseminated by the Federal Bureau of Investigation, including any direct access to such*

information (such as access to “raw data”) provided to any other Department, agency, or instrumentality of Federal, State, local, or tribal governments or any private sector entity;

(C) with respect to calendar year 2006, an examination of the minimization procedures adopted by the Attorney General under section 501(g) of such Act and whether such minimization procedures protect the constitutional rights of United States persons;

(D) whether, and how often, the Federal Bureau of Investigation utilized information acquired pursuant to an order under section 501 of such Act to produce an analytical intelligence product for distribution within the Federal Bureau of Investigation, to the intelligence community (as such term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))), or to other Federal, State, local, or tribal government Departments, agencies, or instrumentalities; and

(E) whether, and how often, the Federal Bureau of Investigation provided such information to law enforcement authorities for use in criminal proceedings.

(c) **SUBMISSION DATES.**—

(1) **PRIOR YEARS.**—Not later than one year after the date of the enactment of this Act, or upon completion of the audit under this section for calendar years 2002, 2003, and 2004, whichever is earlier, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for calendar years 2002, 2003, and 2004.

(2) **CALENDAR YEARS 2005 AND 2006.**—Not later than December 31, 2007, or upon completion of the audit under this section for calendar years 2005 and 2006, whichever is earlier, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for calendar years 2005 and 2006.

(d) **PRIOR NOTICE TO ATTORNEY GENERAL AND DIRECTOR OF NATIONAL INTELLIGENCE; COMMENTS.**—

(1) **NOTICE.**—Not less than 30 days before the submission of a report under subsections (c)(1) or (c)(2), the Inspector General of the Department of Justice shall provide such report to the Attorney General and the Director of National Intelligence.

(2) **COMMENTS.**—The Attorney General or the Director of National Intelligence may provide comments to be included in the reports submitted under subsections (c)(1) and (c)(2) as the Attorney General or the Director of National Intelligence may consider necessary.

(e) **UNCLASSIFIED FORM.**—The reports submitted under subsection (c)(1) and (c)(2) and any comments included under sub-

section (d)(2) shall be in unclassified form, but may include a classified annex.

**SEC. 107. ENHANCED OVERSIGHT OF GOOD-FAITH EMERGENCY DISCLOSURES UNDER SECTION 212 OF THE USA PATRIOT ACT.**

(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), by striking “Federal, State, or local”; and

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

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

(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.”.

(c) *ADDITIONAL EXCEPTION.*—Section 2702(a) of title 18, United States Code, is amended by inserting “or (c)” after “Except as provided in subsection (b)”.

**SEC. 108. MULTIPOINT ELECTRONIC SURVEILLANCE UNDER SECTION 206 OF THE USA PATRIOT ACT.**

(a) *INCLUSION OF SPECIFIC FACTS IN APPLICATION.*—

(1) *APPLICATION.*—Section 104(a)(3) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(3)) is amended by inserting “specific” after “description of the”.

(2) *ORDER.*—Subsection (c) of section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)) is amended—

(A) in paragraph (1)(A) by striking “target of the electronic surveillance” and inserting “specific target of the

electronic surveillance identified or described in the application pursuant to section 104(a)(3)"; and

(B) in paragraph (2)(B), by striking "where the Court finds" and inserting "where the Court finds, based upon specific facts provided in the application,".

(b) **ADDITIONAL DIRECTIONS.**—Such subsection is further amended—

(1) by striking "An order approving" and all that follows through "specify" and inserting "(1) SPECIFICATIONS.—An order approving an electronic surveillance under this section shall specify";

(2) in paragraph (1)(F), by striking "; and" and inserting a period;

(3) in paragraph (2), by striking "direct" and inserting "DIRECTIONS.—An order approving an electronic surveillance under this section shall direct"; and

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

"(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 ten days after the date on which surveillance begins to be directed at any new facility or place, unless the court finds good cause to justify a longer period of up to 60 days, of—

"(A) the nature and location of each new 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 new facility or place at which the electronic surveillance is directed is or was being used, or is about to be used, by the target of the surveillance;

"(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; and

"(D) the total number of electronic surveillances that have been or are being conducted under the authority of the order."

(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 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 facil-

ity or place at which the electronic surveillance will be directed is unknown;

“(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; and

“(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.”.

**SEC. 109. ENHANCED CONGRESSIONAL OVERSIGHT.**

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

(1) in the first sentence, by inserting , “ and the Committee on the Judiciary of the Senate,” after “the Senate”;

(2) in the second sentence, by striking “and the Committees on the Judiciary of the House of Representatives and the Senate” and inserting “and the Committee on the Judiciary of the House of Representatives”;

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

(4) in paragraph (3), by striking the period at the end and inserting “; and”; and

(5) by adding at the end the following:

“(4) the total number of emergency physical searches authorized by the Attorney General under section 304(e) and the total number of subsequent orders approving or denying such physical searches.”.

(b) **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)) 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:

“(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.”.

(c) **ADDITIONAL REPORT.**—At the beginning and midpoint of each fiscal year, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate, a written report providing a description of internal affairs operations at U.S. Citizenship and Immigration Services, including the general state of such operations and a detailed description of investigations that are being conducted (or that were conducted during the previous six months) and the resources devoted to such investigations. The first such report shall be submitted not later than April 1, 2006.

(d) **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:

“(f)(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.”.

**SEC. 110. ATTACKS AGAINST RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS.**

(a) *IN GENERAL.*—Chapter 97 of title 18, United States Code, is amended by striking sections 1992 through 1993 and inserting the following:

**“§ 1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air**

“(a) *GENERAL PROHIBITIONS.*—Whoever, in a circumstance described in subsection (c), knowingly and without lawful authority or permission—

“(1) wrecks, derails, sets fire to, or disables railroad on-track equipment or a mass transportation vehicle;

“(2) places any biological agent or toxin, destructive substance, or destructive device in, upon, or near railroad on-track equipment or a mass transportation vehicle with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life;

“(3) places or releases a hazardous material or a biological agent or toxin on or near any property described in subparagraph (A) or (B) of paragraph (4), with intent to endanger the safety of any person, or with reckless disregard for the safety of human life;

“(4) sets fire to, undermines, makes unworkable, unusable, or hazardous to work on or use, or places any biological agent or toxin, destructive substance, or destructive device in, upon, or near any—

“(A) tunnel, bridge, viaduct, trestle, track, electromagnetic guideway, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of, or in support of the operation of, a railroad carrier, and with intent to, or knowing or having reason to know, such activity would likely, derail, disable, or wreck railroad on-track equipment; or

“(B) garage, terminal, structure, track, electromagnetic guideway, supply, or facility used in the operation of, or in

*support of the operation of, a mass transportation vehicle, and with intent to, or knowing or having reason to know, such activity would likely, derail, disable, or wreck a mass transportation vehicle used, operated, or employed by a mass transportation provider;*

*“(5) removes an appurtenance from, damages, or otherwise impairs the operation of a railroad signal system or mass transportation signal or dispatching system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal;*

*“(6) with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, controlling, or maintaining railroad on-track equipment or a mass transportation vehicle;*

*“(7) commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to any person who is on property described in subparagraph (A) or (B) of paragraph (4);*

*“(8) surveils, photographs, videotapes, diagrams, or otherwise collects information with the intent to plan or assist in planning any of the acts described in the paragraphs (1) through (6);*

*“(9) conveys false information, knowing the information to be false, concerning an attempt or alleged attempt to engage in a violation of this subsection; or*

*“(10) attempts, threatens, or conspires to engage in any violation of any of paragraphs (1) through (9),*

*shall be fined under this title or imprisoned not more than 20 years, or both, and if the offense results in the death of any person, shall be imprisoned for any term of years or for life, or subject to death, except in the case of a violation of paragraphs (8), (9), or (10).*

*“(b) AGGRAVATED OFFENSE.—Whoever commits an offense under subsection (a) of this section in a circumstance in which—*

*“(1) the railroad on-track equipment or mass transportation vehicle was carrying a passenger or employee at the time of the offense,*

*“(2) the railroad on-track equipment or mass transportation vehicle was carrying high-level radioactive waste or spent nuclear fuel at the time of the offense, or*

*“(3) the offense was committed with the intent to endanger the safety of any person, or with a reckless disregard for the safety of any person, and the railroad on-track equipment or mass transportation vehicle was carrying a hazardous material at the time of the offense that—*

*“(A) was required to be placarded under subpart F of part 172 of title 49, Code of Federal Regulations, and*

*“(B) is identified as class number 3, 4, 5, 6.1, or 8 and packing group I or packing group II, or class number 1, 2, or 7 under the hazardous materials table of section 172.101 of title 49, Code of Federal Regulations,*

shall be fined under this title or imprisoned for any term of years or life, or both, and if the offense resulted in the death of any person, the person may be sentenced to death.

“(c) *CIRCUMSTANCES REQUIRED FOR OFFENSE.*—A circumstance referred to in subsection (a) is any of the following:

“(1) Any of the conduct required for the offense is, or, in the case of an attempt, threat, or conspiracy to engage in conduct, the conduct required for the completed offense would be, engaged in, on, against, or affecting a mass transportation provider, or a railroad carrier engaged in interstate or foreign commerce.

“(2) Any person travels or communicates across a State line in order to commit the offense, or transports materials across a State line in aid of the commission of the offense.

“(d) *DEFINITIONS.*—In this section—

“(1) the term ‘biological agent’ has the meaning given to that term in section 178(1);

“(2) the term ‘dangerous weapon’ means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, including a pocket knife with a blade of less than 2½ inches in length and a box cutter;

“(3) the term ‘destructive device’ has the meaning given to that term in section 921(a)(4);

“(4) the term ‘destructive substance’ means an explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or material, or matter of a combustible, contaminative, corrosive, or explosive nature, except that the term ‘radioactive device’ does not include any radioactive device or material used solely for medical, industrial, research, or other peaceful purposes;

“(5) the term ‘hazardous material’ has the meaning given to that term in chapter 51 of title 49;

“(6) the term ‘high-level radioactive waste’ has the meaning given to that term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

“(7) the term ‘mass transportation’ has the meaning given to that term in section 5302(a)(7) of title 49, except that the term includes school bus, charter, and sightseeing transportation and passenger vessel as that term is defined in section 2101(22) of title 46, United States Code;

“(8) the term ‘on-track equipment’ means a carriage or other contrivance that runs on rails or electromagnetic guideways;

“(9) the term ‘railroad on-track equipment’ means a train, locomotive, tender, motor unit, freight or passenger car, or other on-track equipment used, operated, or employed by a railroad carrier;

“(10) the term ‘railroad’ has the meaning given to that term in chapter 201 of title 49;

“(11) the term ‘railroad carrier’ has the meaning given to that term in chapter 201 of title 49;

“(12) the term ‘serious bodily injury’ has the meaning given to that term in section 1365;

“(13) the term ‘spent nuclear fuel’ has the meaning given to that term in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23));

“(14) the term ‘State’ has the meaning given to that term in section 2266;

“(15) the term ‘toxin’ has the meaning given to that term in section 178(2); and

“(16) the term ‘vehicle’ means any carriage or other contrivance used, or capable of being used, as a means of transportation on land, on water, or through the air.”.

(b) **CONFORMING AMENDMENTS.**—

(1) The table of sections at the beginning of chapter 97 of title 18, United States Code, is amended—

(A) by striking “**RAILROADS**” in the chapter heading and inserting “**RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS ON LAND, ON WATER, OR THROUGH THE AIR**”;

(B) by striking the items relating to sections 1992 and 1993; and

(C) by inserting after the item relating to section 1991 the following:

“1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air.”.

(2) The table of chapters at the beginning of part I of title 18, United States Code, is amended by striking the item relating to chapter 97 and inserting the following:

“**97. Railroad carriers and mass transportation systems on land, on water, or through the air** ..... 1991”.

(3) Title 18, United States Code, is amended—

(A) in section 2332b(g)(5)(B)(i), by striking “1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems),” and inserting “1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),”;

(B) in section 2339A, by striking “1993,”; and

(C) in section 2516(1)(c) by striking “1992 (relating to wrecking trains),”.

**SEC. 111. FORFEITURE.**

Section 981(a)(1)(B)(i) of title 18, United States Code, is amended by inserting “trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or” after “involves”.

**SEC. 112. SECTION 2332b(g)(5)(B) AMENDMENTS RELATING TO THE DEFINITION OF FEDERAL CRIME OF TERRORISM.**

(a) **ADDITIONAL OFFENSES.**—Section 2332b(g)(5)(B) of title 18, United States Code, is amended—

(1) in clause (i), by inserting “, 2339D (relating to military-type training from a foreign terrorist organization)” before “, or 2340A”;

(2) in clause (ii), by striking “or” after the semicolon;

(3) in clause (iii), by striking the period and inserting “; or”;

and

(4) by inserting after clause (iii) the following:

“(iv) section 1010A of the Controlled Substances Import and Export Act (relating to narco-terrorism).”.

(b) CLERICAL CORRECTION.—Section 2332b(g)(5)(B) of title 18, United States Code, is amended by inserting “)” after “2339C (relating to financing of terrorism”.

**SEC. 113. AMENDMENTS TO SECTION 2516(1) OF TITLE 18, UNITED STATES CODE.**

(a) PARAGRAPH (a) AMENDMENT.—Section 2516(1)(a) of title 18, United States Code, is amended by inserting “chapter 10 (relating to biological weapons)” after “under the following chapters of this title:”.

(b) PARAGRAPH (c) AMENDMENT.—Section 2516(1)(c) of title 18, United States Code, is amended—

(1) by inserting “section 37 (relating to violence at international airports), section 43 (relating to animal enterprise terrorism),” after “the following sections of this title:”;

(2) by inserting “section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities),” after “section 751 (relating to escape),”;

(3) by inserting “section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials),” after “section 1014 (relating to loans and credit applications generally; renewals and discounts),”;

(4) by inserting “section 1992 (relating to terrorist attacks against mass transportation),” after “section 1344 (relating to bank fraud),”;

(5) by inserting “section 2340A (relating to torture),” after “section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts),”;

(6) by inserting “section 81 (arson within special maritime and territorial jurisdiction),” before “section 201 (bribery of public officials and witnesses);” and

(7) by inserting “section 956 (conspiracy to harm persons or property overseas),” after “section 175c (relating to variola virus)”.

(c) PARAGRAPH (g) AMENDMENT.—Section 2516(1)(g) of title 18, United States Code, is amended by inserting before the semicolon “, or section 5324 of title 31, United States Code (relating to structuring transactions to evade reporting requirement prohibited)”.

(d) PARAGRAPH (j) AMENDMENT.—Section 2516(1)(j) of title 18, United States Code, is amended—

(1) by striking “or” before “section 46502 (relating to aircraft piracy)” and inserting a comma after “section 60123(b) (relating to the destruction of a natural gas pipeline”; and

(2) by inserting “, the second sentence of section 46504 (relating to assault on a flight crew with dangerous weapon), or section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life, by means of weapons on aircraft)” before of “title 49”.

(e) PARAGRAPH (p) AMENDMENT.—Section 2516(1)(p) of title 18, United States Code, is amended by inserting “, section 1028A (relating to aggravated identity theft)” after “other documents”.

(f) PARAGRAPH (q) AMENDMENT.—Section 2516(1)(q) of title 18, United States Code, is amended—

- (1) by inserting “2339” after “2232h”;
- (2) by striking “or” before “2339C”; and
- (3) by inserting “, or 2339D” after “2339C”.

(g) **AMENDMENT OF PREDICATE CRIMES FOR AUTHORIZATION FOR INTERCEPTION OF WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS.**—Section 2516(1) of title 18, United State Code, is amended—

- (1) in subparagraph (q), by striking “or” after the semicolon;
- (2) by redesignating subparagraph (r) as subparagraph (s); and
- (3) by adding after subparagraph (q) the following:
  - “(r) any criminal violation of section 1 (relating to illegal restraints of trade or commerce), 2 (relating to illegal monopolizing of trade or commerce), or 3 (relating to illegal restraints of trade or commerce in territories or the District of Columbia) of the Sherman Act (15 U.S.C. 1, 2, 3); or”.

**SEC. 114. DELAYED NOTICE SEARCH WARRANTS.**

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

- (1) by striking subsection (b)(3) and inserting the following:
  - “(3) the warrant provides for the giving of such notice within a reasonable period not to exceed 30 days after the date of its execution, or on a later date certain if the facts of the case justify a longer period of delay.”

(2) by adding at the end the following:
 

- “(c) **EXTENSIONS OF DELAY.**—Any period of delay authorized by this section may be extended by the court for good cause shown, 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.”.

(b) **LIMITATION ON AUTHORITY TO DELAY NOTICE.**—Section 3103a(b)(1) of title 18, United States Code, is amended by inserting “, except if the adverse results consist only of unduly delaying a trial” after “2705”.

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

- “(d) **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.**—Beginning with the fiscal year ending September 30, 2007, the Director of the Administrative Office of the

*United States Courts shall transmit to Congress annually a full and complete report summarizing the data required to be filed with the Administrative Office by paragraph (1), including the number of applications for warrants and extensions of warrants authorizing delayed notice, and the number of such warrants and extensions granted or denied during the preceding fiscal year.*

*“(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. 115. JUDICIAL REVIEW OF NATIONAL SECURITY LETTERS.**

*Chapter 223 of title 18, United States Code, is amended—*

*(1) by inserting at the end of the table of sections the following new item:*

*“3511. Judicial review of requests for information.”;*

*and*

*(3) by inserting after section 3510 the following:*

**“§ 3511. Judicial review of requests for information**

*“(a) The recipient of a request for records, a report, or other information under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947 may, in the United States district court for the district in which that person or entity does business or resides, petition for an order modifying or setting aside the request. The court may modify or set aside the request if compliance would be unreasonable, oppressive, or otherwise unlawful.*

*“(b)(1) The recipient of a request for records, a report, or other information under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, may petition any court described in subsection (a) for an order modifying or setting aside a nondisclosure requirement imposed in connection with such a request.*

*“(2) If the petition is filed within one year of the request for records, a report, or other information under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the court may modify or set aside such a nondisclosure requirement if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person. If, at the time of the petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation, or in the case of a request by a department, agency, or instrumentality of the Federal Government other than the Department of Justice, the head or deputy head of such department, agency, or instrumentality, certifies that disclosure may endanger the national security of the United States or*

*interfere with diplomatic relations, such certification shall be treated as conclusive unless the court finds that the certification was made in bad faith.*

*“(3) If the petition is filed one year or more after the request for records, a report, or other information under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114 (a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, or in the case of a request by a department, agency, or instrumentality of the Federal Government other than the Federal Bureau of Investigation, the head or deputy head of such department, agency, or instrumentality, within ninety days of the filing of the petition, shall either terminate the nondisclosure requirement or re-certify that disclosure may result in a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person. In the event of re-certification, the court may modify or set aside such a nondisclosure requirement if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person. If the recertification that disclosure may endanger the national security of the United States or interfere with diplomatic relations is made by the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation, such certification shall be treated as conclusive unless the court finds that the recertification was made in bad faith. If the court denies a petition for an order modifying or setting aside a nondisclosure requirement under this paragraph, the recipient shall be precluded for a period of one year from filing another petition to modify or set aside such nondisclosure requirement.*

*“(c) In the case of a failure to comply with a request for records, a report, or other information made to any person or entity under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the Attorney General may invoke the aid of any district court of the United States within the jurisdiction in which the investigation is carried on or the person or entity resides, carries on business, or may be found, to compel compliance with the request. The court may issue an order requiring the person or entity to comply with the request. Any failure to obey the order of the court may be punished by the court as contempt thereof. Any process under this section may be served in any judicial district in which the person or entity may be found.*

*“(d) In all proceedings under this section, subject to any right to an open hearing in a contempt proceeding, the court must close any hearing to the extent necessary to prevent an unauthorized disclosure of a request for records, a report, or other information made*

to any person or entity under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947. Petitions, filings, records, orders, and subpoenas must also be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a request for records, a report, or other information made to any person or entity under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947.

“(e) In all proceedings under this section, the court shall, upon request of the government, review *ex parte* and *in camera* any government submission or portions thereof, which may include classified information.”

**SEC. 116. CONFIDENTIALITY OF NATIONAL SECURITY LETTERS.**

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

“(c) **PROHIBITION OF CERTAIN DISCLOSURE.**—

“(1) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no wire or electronic communications service provider, or officer, employee, or agent thereof, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

“(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

“(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such person of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

“(4) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”

(b) Section 626(d) of the Fair Credit Reporting Act (15 U.S.C. 1681u(d)) is amended to read:

“(d) **CONFIDENTIALITY.**—

*“(1) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c), and no consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information on a consumer report.*

*“(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).*

*“(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).*

*“(4) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”*

*(c) Section 626(c) of the Fair Credit Reporting Act (15 U.S.C. 1681v(c)) is amended to read:*

*“(c) CONFIDENTIALITY.—*

*“(1) If the head of a government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism, or his designee, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no consumer reporting agency or officer, employee, or agent of such consumer reporting agency, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the re-*

quest), or specify in any consumer report, that a government agency has sought or obtained access to information under subsection (a).

“(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

“(3) Any recipient disclosing to those persons necessary to comply with the request or to any attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

“(4) At the request of the authorized Government agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized Government agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform such requesting official that the person intends to consult an attorney to obtain legal advice or legal assistance.”

(d) Section 1114(a)(3) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(3)) is amended to read as follows:

“(3)(A) If the Government authority described in paragraph (1) or the Secret Service, as the case may be, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no financial institution, or officer, employee, or agent of such institution, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Government authority or the Secret Service has sought or obtained access to a customer’s financial records.

“(B) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under subparagraph (A).

“(C) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under subparagraph (A).

“(D) At the request of the authorized Government agency or the Secret Service, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized Government agency or the Secret Service the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform such requesting

official that the person intends to consult an attorney to obtain legal advice or legal assistance.”.

(e) Section 1114(a)(5)(D) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)(D)) is amended to read:

“(D) PROHIBITION OF CERTAIN DISCLOSURE.—

“(i) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no financial institution, or officer, employee, or agent of such institution, shall disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice or legal assistance with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to a customer’s or entity’s financial records under subparagraph (A).

“(ii) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under clause (i).

“(iii) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under clause (i).

“(iv) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”.

(f) Section 802(b) of the National Security Act of 1947 (50 U.S.C. 436(b)) is amended to read as follows:

“(b) PROHIBITION OF CERTAIN DISCLOSURE.—

“(1) If an authorized investigative agency described in subsection (a) certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no governmental or private entity, or officer, employee, or agent of such entity, may disclose to any person (other than those to whom such disclosure is necessary to comply with the request or an attorney to obtain legal advice

or legal assistance with respect to the request) that such entity has received or satisfied a request made by an authorized investigative agency under this section.

“(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

“(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice or legal assistance with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).

“(4) At the request of the authorized investigative agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized investigative agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform such official that the person intends to consult an attorney to obtain legal advice or legal assistance.”.

**SEC. 117. VIOLATIONS OF NONDISCLOSURE PROVISIONS OF NATIONAL SECURITY LETTERS.**

Section 1510 of title 18, United States Code, is amended by adding at the end the following:

“(e) Whoever, having been notified of the applicable disclosure prohibitions or confidentiality requirements of section 2709(c)(1) of this title, section 626(d)(1) or 627(c)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681u(d)(1) or 1681v(c)(1)), section 1114(a)(3)(A) or 1114(a)(5)(D)(i) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(3)(A) or 3414(a)(5)(D)(i)), or section 802(b)(1) of the National Security Act of 1947 (50 U.S.C. 436(b)(1)), knowingly and with the intent to obstruct an investigation or judicial proceeding violates such prohibitions or requirements applicable by law to such person shall be imprisoned for not more than five years, fined under this title, or both.”.

**SEC. 118. REPORTS ON NATIONAL SECURITY LETTERS.**

(a) **EXISTING REPORTS.**—Any report made to a committee of Congress regarding national security letters under section 2709(c)(1) of title 18, United States Code, sections 626(d) or 627(c) of the Fair Credit Reporting Act (15 U.S.C. 1681u(d) or 1681v(c)), section 1114(a)(3) or 1114(a)(5)(D) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(3) or 3414(a)(5)(D)), or section 802(b) of the National Security Act of 1947 (50 U.S.C. 436(b)) shall also be made to the Committees on the Judiciary of the House of Representatives and the Senate.

(b) **ENHANCED OVERSIGHT OF FAIR CREDIT REPORTING ACT COUNTERTERRORISM NATIONAL SECURITY LETTER.**—Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681(v)) is amended by inserting at the end the following new subsection:

“(f) **REPORTS TO CONGRESS.**—(1) On a semi-annual basis, the Attorney General shall fully inform the Committee on the Judiciary, the Committee on Financial Services, and the Permanent Select Committee on Intelligence of the House of Representatives and the

Committee on the Judiciary, the Committee on Banking, Housing, and Urban Affairs, and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to subsection (a).

“(2) In the case of the semiannual reports required to be submitted under paragraph (1) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 507 of the National Security Act of 1947 (50 U.S.C. 415b).”.

(c) **REPORT ON REQUESTS FOR NATIONAL SECURITY LETTERS.**—

(1) **IN GENERAL.**—In April of each year, the Attorney General shall submit to Congress an aggregate report setting forth with respect to the preceding year the total number of requests made by the Department of Justice for information concerning different United States persons under—

(A) section 2709 of title 18, United States Code (to access certain communication service provider records), excluding the number of requests for subscriber information;

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

(C) section 802 of the National Security Act of 1947 (50 U.S.C. 436) (to obtain financial information, records, and consumer reports);

(D) section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) (to obtain certain financial information and consumer reports); and

(E) section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) (to obtain credit agency consumer records for counterterrorism investigations).

(2) **UNCLASSIFIED FORM.**—The report under this section shall be submitted in unclassified form.

(d) **NATIONAL SECURITY LETTER DEFINED.**—In this section, the term “national security letter” means a request for information under one of the following provisions of law:

(1) Section 2709(a) of title 18, United States Code (to access certain communication service provider records).

(2) Section 1114(a)(5)(A) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)(A)) (to obtain financial institution customer records).

(3) Section 802 of the National Security Act of 1947 (50 U.S.C. 436) (to obtain financial information, records, and consumer reports).

(4) Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) (to obtain certain financial information and consumer reports).

(5) Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) (to obtain credit agency consumer records for counterterrorism investigations).

**SEC. 119. AUDIT OF USE OF NATIONAL SECURITY LETTERS.**

(a) **AUDIT.**—The Inspector General of the Department of Justice shall perform an audit of the effectiveness and use, including any improper or illegal use, of national security letters issued by the Department of Justice.

(b) *REQUIREMENTS.*—*The audit required under subsection (a) shall include—*

(1) *an examination of the use of national security letters by the Department of Justice during calendar years 2003 through 2006;*

(2) *a description of any noteworthy facts or circumstances relating to such use, including any improper or illegal use of such authority; and*

(3) *an examination of the effectiveness of national security letters as an investigative tool, including—*

(A) *the importance of the information acquired by the Department of Justice to the intelligence activities of the Department of Justice or to any other department or agency of the Federal Government;*

(B) *the manner in which such information is collected, retained, analyzed, and disseminated by the Department of Justice, including any direct access to such information (such as access to “raw data”) provided to any other department, agency, or instrumentality of Federal, State, local, or tribal governments or any private sector entity;*

(C) *whether, and how often, the Department of Justice utilized such information to produce an analytical intelligence product for distribution within the Department of Justice, to the intelligence community (as such term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))), or to other Federal, State, local, or tribal government departments, agencies, or instrumentalities;*

(D) *whether, and how often, the Department of Justice provided such information to law enforcement authorities for use in criminal proceedings;*

(E) *with respect to national security letters issued following the date of the enactment of this Act, an examination of the number of occasions in which the Department of Justice, or an officer or employee of the Department of Justice, issued a national security letter without the certification necessary to require the recipient of such letter to comply with the nondisclosure and confidentiality requirements potentially applicable under law; and*

(F) *the types of electronic communications and transactional information obtained through requests for information under section 2709 of title 18, United States Code, including the types of dialing, routing, addressing, or signaling information obtained, and the procedures the Department of Justice uses if content information is obtained through the use of such authority.*

(c) *SUBMISSION DATES.*—

(1) *PRIOR YEARS.*—*Not later than one year after the date of the enactment of this Act, or upon completion of the audit under this section for calendar years 2003 and 2004, whichever is earlier, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of*

*the audit conducted under this subsection for calendar years 2003 and 2004.*

(2) *CALENDAR YEARS 2005 AND 2006.—Not later than December 31, 2007, or upon completion of the audit under this subsection for calendar years 2005 and 2006, whichever is earlier, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this subsection for calendar years 2005 and 2006.*

(d) *PRIOR NOTICE TO ATTORNEY GENERAL AND DIRECTOR OF NATIONAL INTELLIGENCE; COMMENTS.—*

(1) *NOTICE.—Not less than 30 days before the submission of a report under subsections (c)(1) or (c)(2), the Inspector General of the Department of Justice shall provide such report to the Attorney General and the Director of National Intelligence.*

(2) *COMMENTS.—The Attorney General or the Director of National Intelligence may provide comments to be included in the reports submitted under subsections (c)(1) or (c)(2) as the Attorney General or the Director of National Intelligence may consider necessary.*

(e) *UNCLASSIFIED FORM.—The reports submitted under subsections (c)(1) or (c)(2) and any comments included under subsection (d)(2) shall be in unclassified form, but may include a classified annex.*

(f) *MINIMIZATION PROCEDURES FEASIBILITY.—Not later than February 1, 2007, or upon completion of review of the report submitted under subsection (c)(1), whichever is earlier, the Attorney General and the Director of National Intelligence shall jointly submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report on the feasibility of applying minimization procedures in the context of national security letters to ensure the protection of the constitutional rights of United States persons.*

(g) *NATIONAL SECURITY LETTER DEFINED.—In this section, the term “national security letter” means a request for information under one of the following provisions of law:*

(1) *Section 2709(a) of title 18, United States Code (to access certain communication service provider records).*

(2) *Section 1114(a)(5)(A) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)(A)) (to obtain financial institution customer records).*

(3) *Section 802 of the National Security Act of 1947 (50 U.S.C. 436) (to obtain financial information, records, and consumer reports).*

(4) *Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) (to obtain certain financial information and consumer reports).*

(5) *Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) (to obtain credit agency consumer records for counterterrorism investigations).*

**SEC. 120. DEFINITION FOR FORFEITURE PROVISIONS UNDER SECTION 806 OF THE USA PATRIOT ACT.**

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

(1) in clause (i), by striking “act of international or domestic terrorism (as defined in section 2331)” and inserting “any Federal crime of terrorism (as defined in section 2332b(g)(5))”;

(2) in clause (ii), by striking “an act of international or domestic terrorism (as defined in section 2331)” with “any Federal crime of terrorism (as defined in section 2332b(g)(5))”; and

(3) in clause (iii), by striking “act of international or domestic terrorism (as defined in section 2331)” and inserting “Federal crime of terrorism (as defined in section 2332b(g)(5))”.

**SEC. 121. PENAL PROVISIONS REGARDING TRAFFICKING IN CONTRABAND CIGARETTES OR SMOKELESS TOBACCO.**

(a) **THRESHOLD QUANTITY FOR TREATMENT AS CONTRABAND CIGARETTES.**—(1) Section 2341(2) of title 18, United States Code, is amended by striking “60,000 cigarettes” and inserting “10,000 cigarettes”.

(2) Section 2342(b) of that title is amended by striking “60,000” and inserting “10,000”.

(3) Section 2343 of that title is amended—

(A) in subsection (a), by striking “60,000” and inserting “10,000”; and

(B) in subsection (b), by striking “60,000” and inserting “10,000”.

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

(A) in paragraph (4), by striking “and” at the end;

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

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

“(6) the term ‘smokeless tobacco’ means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted;

“(7) the term ‘contraband smokeless tobacco’ means a quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, that are in the possession of any person other than—

“(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1986 as manufacturer of tobacco products or as an export warehouse proprietor, a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311, 1555), or an agent of such person;

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

“(C) a person who—

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

“(ii) has complied with the accounting, tax, and payment requirements relating to such license or authorization with respect to such smokeless tobacco; or  
 “(D) an officer, employee, or agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State), having possession of such smokeless tobacco in connection with the performance of official duties;”.

(2) Section 2342(a) of that title is amended by inserting “or contraband smokeless tobacco” after “contraband cigarettes”.

(3) Section 2343(a) of that title is amended by inserting “, or any quantity of smokeless tobacco in excess of 500 single-unit consumer-sized cans or packages,” before “in a single transaction”.

(4) Section 2344(c) of that title is amended by inserting “or contraband smokeless tobacco” after “contraband cigarettes”.

(5) Section 2345 of that title is amended by inserting “or smokeless tobacco” after “cigarettes” each place it appears.

(6) Section 2341 of that title is further amended in paragraph (2), as amended by subsection (a)(1) of this section, in the matter preceding subparagraph (A), by striking “State cigarette taxes in the State where such cigarettes are found, if the State” and inserting “State or local cigarette taxes in the State or locality where such cigarettes are found, if the State or local government”.

(c) RECORDKEEPING, REPORTING, AND INSPECTION.—Section 2343 of that title, as amended by this section, is further amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “only—” and inserting “such information as the Attorney General considers appropriate for purposes of enforcement of this chapter, including—”; and

(B) in the flush matter following paragraph (3), by striking the second sentence;

(2) by redesignating subsection (b) as subsection (c);

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

“(b) Any person, except for a tribal government, who engages in a delivery sale, and who ships, sells, or distributes any quantity in excess of 10,000 cigarettes, or any quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent, within a single month, shall submit to the Attorney General, pursuant to rules or regulations prescribed by the Attorney General, a report that sets forth the following:

“(1) The person’s beginning and ending inventory of cigarettes and cans or packages of smokeless tobacco (in total) for such month.

“(2) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person received within such month from each other person (itemized by name and address).

“(3) The total quantity of cigarettes and cans or packages of smokeless tobacco that the person distributed within such month to each person (itemized by name and address) other than a retail purchaser.”; and

(4) by adding at the end the following new subsections:

“(d) Any report required to be submitted under this chapter to the Attorney General shall also be submitted to the Secretary of the Treasury and to the attorneys general and the tax administrators of the States from where the shipments, deliveries, or distributions both originated and concluded.

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

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

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

“(f) In this section, the term ‘interstate commerce’ means commerce between a State and any place outside the State, or commerce between points in the same State but through any place outside the State.”

(d) DISPOSAL OR USE OF FORFEITED CIGARETTES AND SMOKELESS TOBACCO.—Section 2344(c) of that title, as amended by this section, is further amended by striking “seizure and forfeiture,” and all that follows and inserting “seizure and forfeiture. The provisions of chapter 46 of title 18 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. Any cigarettes or smokeless tobacco so seized and forfeited shall be either—

“(1) destroyed and not resold; or

“(2) used for undercover investigative operations for the detection and prosecution of crimes, and then destroyed and not resold.”

(e) EFFECT ON STATE AND LOCAL LAW.—Section 2345 of that title is amended—

(1) in subsection (a), by striking “a State to enact and enforce” and inserting “a State or local government to enact and enforce its own”; and

(2) in subsection (b), by striking “of States, through interstate compact or otherwise, to provide for the administration of State” and inserting “of State or local governments, through interstate compact or otherwise, to provide for the administration of State or local”.

(f) ENFORCEMENT.—Section 2346 of that title is amended—

(1) by inserting “(a)” before “The Attorney General”; and

(2) by adding at the end the following new subsection:

“(b)(1) A State, through its attorney general, a local government, through its chief law enforcement officer (or a designee thereof), or any person who holds a permit under chapter 52 of the Internal Revenue Code of 1986, may bring an action in the United States district courts to prevent and restrain violations of this chapter by any person (or by any person controlling such person), except that any person who holds a permit under chapter 52 of the Internal Revenue Code of 1986 may not bring such an action against a State or local government. No civil action may be commenced under this

paragraph against an Indian tribe or an Indian in Indian country (as defined in section 1151).

“(2) A State, through its attorney general, or a local government, through its chief law enforcement officer (or a designee thereof), may in a civil action under paragraph (1) also obtain any other appropriate relief for violations of this chapter from any person (or by any person controlling such person), including civil penalties, money damages, and injunctive or other equitable relief. Nothing in this chapter shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government, or an Indian tribe against any unconsented lawsuit under this chapter, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government, or an Indian tribe.

“(3) The remedies under paragraphs (1) and (2) are in addition to any other remedies under Federal, State, local, or other law.

“(4) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

“(5) Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.”.

(g) CONFORMING AND CLERICAL AMENDMENTS.—(1) The section heading for section 2343 of that title is amended to read as follows:

**“§ 2343. Recordkeeping, reporting, and inspection”.**

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

**“§ 2345. Effect on State and local law”.**

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

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

“2343. Recordkeeping, reporting, and inspection.”;

and

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

“2345. Effect on State and local law.”.

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

**“CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES AND SMOKELESS TOBACCO”.**

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

“114. Trafficking in contraband cigarettes and smokeless tobacco .....2341.”.

**SEC. 122. PROHIBITION OF NARCO-TERRORISM.**

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

“FOREIGN TERRORIST ORGANIZATIONS, TERRORIST PERSONS AND  
GROUPS

“Prohibited Acts

“SEC. 1010A. (a) *Whoever engages in conduct that would be punishable under section 841(a) of this title if committed within the jurisdiction of the United States, or attempts or conspires to do so, knowing or intending to provide, directly or indirectly, anything of pecuniary value to any person or organization that has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989), shall be sentenced to a term of imprisonment of not less than twice the minimum punishment under section 841(b)(1), and not more than life, a fine in accordance with the provisions of title 18, United States Code, or both. Notwithstanding section 3583 of title 18, United States Code, any sentence imposed under this subsection shall include a term of supervised release of at least 5 years in addition to such term of imprisonment.*

“Jurisdiction

“(b) *There is jurisdiction over an offense under this section if—*

    “(1) *the prohibited drug activity or the terrorist offense is in violation of the criminal laws of the United States;*

    “(2) *the offense, the prohibited drug activity, or the terrorist offense occurs in or affects interstate or foreign commerce;*

    “(3) *an offender provides anything of pecuniary value for a terrorist offense that causes or is designed to cause death or serious bodily injury to a national of the United States while that national is outside the United States, or substantial damage to the property of a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions) while that property is outside of the United States;*

    “(4) *the offense or the prohibited drug activity occurs in whole or in part outside of the United States (including on the high seas), and a perpetrator of the offense or the prohibited drug activity is a national of the United States or a legal entity organized under the laws of the United States (including any of its States, districts, commonwealths, territories, or possessions); or*

    “(5) *after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States.*

“Proof Requirements

“(c) *To violate subsection (a), a person must have knowledge that the person or organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).*

*“Definition*

*“(d) As used in this section, the term ‘anything of pecuniary value’ has the meaning given the term in section 1958(b)(1) of title 18, United States Code.”.*

**SEC. 123. INTERFERING WITH THE OPERATION OF AN AIRCRAFT.**

*Section 32 of title 18, United States Code, is amended—*

*(1) in subsection (a), by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8) respectively;*

*(2) by inserting after paragraph (4) of subsection (a), the following:*

*“(5) interferes with or disables, with intent to endanger the safety of any person or with a reckless disregard for the safety of human life, anyone engaged in the authorized operation of such aircraft or any air navigation facility aiding in the navigation of any such aircraft;”;*

*(3) in subsection (a)(8), by striking “paragraphs (1) through (6)” and inserting “paragraphs (1) through (7)”;* and

*(4) in subsection (c), by striking “paragraphs (1) through (5)” and inserting “paragraphs (1) through (6)”.*

**SEC. 124. SENSE OF CONGRESS RELATING TO LAWFUL POLITICAL ACTIVITY.**

*It is the sense of Congress that government should not investigate an American citizen solely on the basis of the citizen’s membership in a non-violent political organization or the fact that the citizen was engaging in other lawful political activity.*

**SEC. 125. REMOVAL OF CIVIL LIABILITY BARRIERS THAT DISCOURAGE THE DONATION OF FIRE EQUIPMENT TO VOLUNTEER FIRE COMPANIES.**

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

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

*(1) the person’s act or omission causing the injury, damage, loss, or death constitutes gross negligence or intentional misconduct; or*

*(2) the person is the manufacturer of the qualified fire control or rescue equipment.*

*(3) the person or agency modified or altered the equipment after it had been recertified by an authorized technician as meeting the manufacturer’s specifications.*

*(c) PREEMPTION.—This section preempts the laws of any State to the extent that such laws are inconsistent with this section, except that notwithstanding subsection (b) this section shall not preempt any State law that provides additional protection from liability for a person who donates fire control or fire rescue equipment to a volunteer fire company.*

*(d) DEFINITIONS.—In this section:*

*(1) PERSON.—The term “person” includes any governmental or other entity.*

*(2) FIRE CONTROL OR RESCUE EQUIPMENT.—The term “fire control or fire rescue equipment” includes any fire vehicle, fire*

fighting tool, communications equipment, protective gear, fire hose, or breathing apparatus.

(3) **QUALIFIED FIRE CONTROL OR RESCUE EQUIPMENT.**—The term “qualified fire control or rescue equipment” means fire control or fire rescue equipment that has been recertified by an authorized technician as meeting the manufacturer’s specifications.

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

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

(6) **AUTHORIZED TECHNICIAN.**—The term “authorized technician” means a technician who has been certified by the manufacturer of fire control or fire rescue equipment to inspect such equipment. The technician need not be employed by the State or local agency administering the distribution of the fire control or fire rescue equipment.

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

**SEC. 126. REPORT ON DATA-MINING ACTIVITIES.**

(a) **REPORT.**—Not later than one year after the date of the enactment of this Act, the Attorney General shall submit to Congress a report on any initiative of the Department of Justice that uses or is intended to develop pattern-based data-mining technology, including, for each such initiative, the following information:

(1) A thorough description of the pattern-based data-mining technology consistent with the protection of existing patents, proprietary business processes, trade secrets, and intelligence sources and methods.

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

(3) An assessment of the likely efficacy of the pattern-based data-mining technology quality assurance controls to be used in providing accurate and valuable information consistent with the stated plans for the use of the technology.

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

(5) A list and analysis of the laws and regulations applicable to the Department of Justice that govern the application of the pattern-based data-mining technology to the information to be collected, reviewed, gathered, and analyzed with the pattern-based data-mining technology.

(6) *A thorough discussion of the policies, procedures, and guidelines of the Department of Justice that are to be developed and applied in the use of such technology for pattern-based data-mining in order to—*

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

(B) *ensure that only accurate information is collected and used or account for the possibility of inaccuracy in that information and guard against harmful consequences of potential inaccuracies.*

(7) *Any necessary classified information in an annex that shall be available consistent with national security to the Committee on the Judiciary of both the Senate and the House of Representatives.*

(b) **DEFINITIONS.**—*In this section:*

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

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

(B) *the search does not use personal identifiers of a specific individual or does not utilize inputs that appear on their face to identify or be associated with a specified individual to acquire information; and*

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

(2) **DATABASE.**—*The term “database” does not include telephone directories, information publicly available via the Internet or available by any other means to any member of the public, any databases maintained, operated, or controlled by a State, local, or tribal government (such as a State motor vehicle database), or databases of judicial and administrative opinions.*

**SEC. 127. SENSE OF CONGRESS.**

*It is the sense of Congress that under section 981 of title 18, United States Code, victims of terrorists attacks should have access to the assets forfeited.*

**SEC. 128. USA PATRIOT ACT SECTION 214; AUTHORITY FOR DISCLOSURE OF ADDITIONAL INFORMATION IN CONNECTION WITH ORDERS FOR PEN REGISTER AND TRAP AND TRACE AUTHORITY UNDER FISA.**

(a) **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.”

(b) *ENHANCED OVERSIGHT.*—Section 406(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1846(a)) 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 “of the Senate”.

## **TITLE II—TERRORIST DEATH PENALTY ENHANCEMENT**

### **SEC. 201. SHORT TITLE.**

This title may be cited as the “Terrorist Death Penalty Enhancement Act of 2005”.

## **Subtitle A—Terrorist Penalties Enhancement Act**

### **SEC. 211. DEATH PENALTY PROCEDURES FOR CERTAIN AIR PIRACY CASES OCCURRING BEFORE ENACTMENT OF THE FED- ERAL DEATH PENALTY ACT OF 1994.**

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

“(c) *DEATH PENALTY PROCEDURES FOR CERTAIN PREVIOUS AIRCRAFT PIRACY VIOLATIONS.*—An individual convicted of violating section 46502 of title 49, United States Code, or its predecessor, may be sentenced to death in accordance with the procedures established in chapter 228 of title 18, United States Code, if for any offense committed before the enactment of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), but after the enactment of the Antihijacking Act of 1974 (Public Law 93–366), it is determined by the finder of fact, before consideration of the factors set forth in sections 3591(a)(2) and 3592(a) and (c) of title 18, United States Code, that one or more of the factors set forth in former section 46503(c)(2) of title 49, United States Code, or its predecessor, has been proven by the Government to exist, beyond a reasonable doubt, and that none of the factors set forth in former section 46503(c)(1) of title 49, United States Code, or its predecessor, has been proven by the defendant to exist, by a preponderance of the information. The meaning of the term ‘especially heinous, cruel, or depraved’, as used in the factor set forth in former section 46503(c)(2)(B)(iv) of title 49, United States Code, or its predecessor, shall be narrowed by adding the limiting language ‘in that it involved torture or serious physical abuse to the victim’, and shall be construed as when that term is used in section 3592(c)(6) of title 18, United States Code.”.

(b) *SEVERABILITY CLAUSE.*—If any provision of section 60003(b)(2) of the Violent Crime and Law Enforcement Act of 1994 (Public Law 103–322), or the application thereof to any person or any circumstance is held invalid, the remainder of such section and the application of such section to other persons or circumstances shall not be affected thereby.

### **SEC. 212. POSTRELEASE SUPERVISION OF TERRORISTS.**

Section 3583(j) of title 18, United States Code, is amended in subsection (j), by striking “, the commission” and all that follows through “person,”.

## **Subtitle B—Federal Death Penalty Procedures**

### **SEC. 221. ELIMINATION OF PROCEDURES APPLICABLE ONLY TO CER- TAIN CONTROLLED SUBSTANCES ACT CASES.**

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended—

(1) in subsection (e)(2), by striking “(1)(b)” and inserting (1)(B);

(2) by striking subsection (g) and all that follows through subsection (p);

(3) by striking subsection (r); and

(4) in subsection (q), by striking paragraphs (1) through (3).

**SEC. 222. COUNSEL FOR FINANCIALLY UNABLE DEFENDANTS.**

(a) *IN GENERAL.*—Chapter 228 of title 18, United States Code, is amended by adding at the end the following new section:

**“§ 3599. Counsel for financially unable defendants**

“(a)(1) Notwithstanding any other provision of law to the contrary, in every criminal action in which a defendant is charged with a crime which may be punishable by death, a defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services at any time either—

“(A) before judgment; or

“(B) after the entry of a judgment imposing a sentence of death but before the execution of that judgment; shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with subsections (b) through (f).

“(2) In any post conviction proceeding under section 2254 or 2255 of title 28, United States Code, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with subsections (b) through (f).

“(b) If the appointment is made before judgment, at least one attorney so appointed must have been admitted to practice in the court in which the prosecution is to be tried for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court.

“(c) If the appointment is made after judgment, at least one attorney so appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in that court in felony cases.

“(d) With respect to subsections (b) and (c), the court, for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

“(e) Unless replaced by similarly qualified counsel upon the attorney’s own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

“(f) Upon a finding that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the defendant’s attorneys to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses therefor under subsection (g). No *ex parte* proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.

“(g)(1) Compensation shall be paid to attorneys appointed under this subsection at a rate of not more than \$125 per hour for in-court and out-of-court time. The Judicial Conference is authorized to raise the maximum for hourly payment specified in the paragraph up to the aggregate of the overall average percentages of the adjustments in the rates of pay for the General Schedule made pursuant to section 5305 of title 5 on or after such date. After the rates are raised under the preceding sentence, such hourly range may be raised at intervals of not less than one year, up to the aggregate of the overall average percentages of such adjustments made since the last raise under this paragraph.

“(2) Fees and expenses paid for investigative, expert, and other reasonably necessary services authorized under subsection (f) shall not exceed \$7,500 in any case, unless payment in excess of that limit is certified by the court, or by the United States magistrate judge, if the services were rendered in connection with the case disposed of entirely before such magistrate judge, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active circuit judge.

“(3) The amounts paid under this paragraph for services in any case shall be disclosed to the public, after the disposition of the petition.”.

(b) **CONFORMING AMENDMENT.**—The table of sections of the bill is amended by inserting after the item relating to section 3598 the following new item:

“3599. Counsel for financially unable defendants.”.

(c) **REPEAL.**—Subsection (q) of section 408 of the Controlled Substances Act is amended by striking paragraphs (4) through (10).

## **TITLE III—REDUCING CRIME AND TERRORISM AT AMERICA’S SEAPORTS**

### **SEC. 301. SHORT TITLE.**

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

### **SEC. 302. ENTRY BY FALSE PRETENSES TO ANY SEAPORT.**

(a) **IN GENERAL.**—Section 1036 of title 18, United States Code, is amended—

(1) in subsection (a)—

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

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

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

“(3) any secure or restricted area of any seaport, designated as secure in an approved security plan, as required under section 70103 of title 46, United States Code, and the rules and regulations promulgated under that section; or”;

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

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

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

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

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 47 of title 18 is amended by striking the matter relating to section 1036 and inserting the following:

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

(c) **DEFINITION OF SEAPORT.**—Chapter 1 of title 18, United States Code, is amended by adding at the end the following:

**“§ 26. Definition of seaport**

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

(d) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for chapter 1 of title 18 is amended by inserting after the matter relating to section 25 the following:

“26. Definition of seaport.”

**SEC. 303. CRIMINAL SANCTIONS FOR FAILURE TO HEAVE TO, OBSTRUCTION OF BOARDING, OR PROVIDING FALSE INFORMATION.**

(a) **OFFENSE.**—Chapter 109 of title 18, United States Code, is amended by adding at the end the following:

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

“(a)(1) It shall be unlawful for the master, operator, or person in charge of a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to knowingly fail to obey an order by an authorized Federal law enforcement officer to heave to that vessel.

“(2) It shall be unlawful for any person on board a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to—

“(A) forcibly resist, oppose, prevent, impede, intimidate, or interfere with a boarding or other law enforcement action authorized by any Federal law or to resist a lawful arrest; or

“(B) provide materially false information to a Federal law enforcement officer during a boarding of a vessel regarding the vessel’s destination, origin, ownership, registration, nationality, cargo, or crew.

“(b) Any person who intentionally violates this section shall be fined under this title or imprisoned for not more than 5 years, or both.

“(c) This section does not limit the authority of a customs officer under section 581 of the Tariff Act of 1930 (19 U.S.C. 1581), or any other provision of law enforced or administered by the Secretary of the Treasury or the Secretary of Homeland Security, or the authority of any Federal law enforcement officer under any law of the United States, to order a vessel to stop or heave to.

“(d) A foreign nation may consent or waive objection to the enforcement of United States law by the United States under this section by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the designee of the Secretary of State.

“(e) In this section—

“(1) the term ‘Federal law enforcement officer’ has the meaning given the term in section 115(c);

“(2) the term ‘heave to’ means to cause a vessel to slow, come to a stop, or adjust its course or speed to account for the weather conditions and sea state to facilitate a law enforcement boarding;

“(3) the term ‘vessel subject to the jurisdiction of the United States’ has the meaning given the term in section 2 of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903); and

“(4) the term ‘vessel of the United States’ has the meaning given the term in section 2 of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903).”.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 109, title 18, United States Code, is amended by inserting after the item for section 2236 the following:

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

**SEC. 304. CRIMINAL SANCTIONS FOR VIOLENCE AGAINST MARITIME NAVIGATION, PLACEMENT OF DESTRUCTIVE DEVICES.**

(a) PLACEMENT OF DESTRUCTIVE DEVICES.—Chapter 111 of title 18, United States Code, as amended by subsection (a), is further amended by adding at the end the following:

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

“(a) A person who knowingly places, or causes to be placed, in navigable waters of the United States, by any means, a device or dangerous substance which is likely to destroy or cause damage to a vessel or its cargo, cause interference with the safe navigation of vessels, or interference with maritime commerce (such as by damaging or destroying marine terminals, facilities, or any other marine structure or entity used in maritime commerce) with the intent of

causing such destruction or damage, interference with the safe navigation of vessels, or interference with maritime commerce shall be fined under this title or imprisoned for any term of years, or for life; or both.

“(b) A person who causes the death of any person by engaging in conduct prohibited under subsection (a) may be punished by death.

“(c) Nothing in this section shall be construed to apply to otherwise lawfully authorized and conducted activities of the United States Government.

“(d) In this section:

“(1) The term ‘dangerous substance’ means any solid, liquid, or gaseous material that has the capacity to cause damage to a vessel or its cargo, or cause interference with the safe navigation of a vessel.

“(2) The term ‘device’ means any object that, because of its physical, mechanical, structural, or chemical properties, has the capacity to cause damage to a vessel or its cargo, or cause interference with the safe navigation of a vessel.”

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

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

(b) VIOLENCE AGAINST MARITIME NAVIGATION.—

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

**“§ 2282B. Violence against aids to maritime navigation**

“Whoever intentionally destroys, seriously damages, alters, moves, or tampers with any aid to maritime navigation maintained by the Saint Lawrence Seaway Development Corporation under the authority of section 4 of the Act of May 13, 1954 (33 U.S.C. 984), by the Coast Guard pursuant to section 81 of title 14, United States Code, or lawfully maintained under authority granted by the Coast Guard pursuant to section 83 of title 14, United States Code, if such act endangers or is likely to endanger the safe navigation of a ship, shall be fined under this title or imprisoned for not more than 20 years, or both.”

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

“2282B. Violence against aids to maritime navigation.”

**SEC. 305. TRANSPORTATION OF DANGEROUS MATERIALS AND TERRORISTS.**

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

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

“(a) *IN GENERAL.*—Whoever knowingly transports aboard any vessel within the United States and on waters subject to the jurisdiction of the United States or any vessel outside the United States and on the high seas or having United States nationality an explosive or incendiary device, biological agent, chemical weapon, or radioactive or nuclear material, knowing that any such item is intended to be used to commit an offense listed under section 2332b(g)(5)(B), shall be fined under this title or imprisoned for any term of years or for life, or both.

“(b) *CAUSING DEATH.*—Any person who causes the death of a person by engaging in conduct prohibited by subsection (a) may be punished by death.

“(c) *DEFINITIONS.*—In this section:

“(1) *BIOLOGICAL AGENT.*—The term ‘biological agent’ means any biological agent, toxin, or vector (as those terms are defined in section 178).

“(2) *BY-PRODUCT MATERIAL.*—The term ‘by-product material’ has the meaning given that term in section 11(e) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)).

“(3) *CHEMICAL WEAPON.*—The term ‘chemical weapon’ has the meaning given that term in section 229F(1).

“(4) *EXPLOSIVE OR INCENDIARY DEVICE.*—The term ‘explosive or incendiary device’ has the meaning given the term in section 232(5) and includes explosive materials, as that term is defined in section 841(c) and explosive as defined in section 844(j).

“(5) *NUCLEAR MATERIAL.*—The term ‘nuclear material’ has the meaning given that term in section 831(f)(1).

“(6) *RADIOACTIVE MATERIAL.*—The term ‘radioactive material’ means—

“(A) source material and special nuclear material, but does not include natural or depleted uranium;

“(B) nuclear by-product material;

“(C) material made radioactive by bombardment in an accelerator; or

“(D) all refined isotopes of radium.

“(8) *SOURCE MATERIAL.*—The term ‘source material’ has the meaning given that term in section 11(z) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(z)).

“(9) *SPECIAL NUCLEAR MATERIAL.*—The term ‘special nuclear material’ has the meaning given that term in section 11(aa) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).

**“§ 2284. Transportation of terrorists**

“(a) *IN GENERAL.*—Whoever knowingly and intentionally transports any terrorist aboard any vessel within the United States and on waters subject to the jurisdiction of the United States or any vessel outside the United States and on the high seas or having United States nationality, knowing that the transported person is a terrorist, shall be fined under this title or imprisoned for any term of years or for life, or both.

“(b) *DEFINED TERM.*—In this section, the term ‘terrorist’ means any person who intends to commit, or is avoiding apprehension

after having committed, an offense listed under section 2332b(g)(5)(B).”.

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

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

“2284. Transportation of terrorists.”.

**SEC. 306. DESTRUCTION OF, OR INTERFERENCE WITH, VESSELS OR MARITIME FACILITIES.**

(a) **IN GENERAL.**—Title 18, United States Code, is amended by inserting after chapter 111 the following:

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

“Sec.

“2290. Jurisdiction and scope.

“2291. Destruction of vessel or maritime facility.

“2292. Imparting or conveying false information.

**“§ 2290. Jurisdiction and scope**

“(a) **JURISDICTION.**—There is jurisdiction, including extraterritorial jurisdiction, over an offense under this chapter if the prohibited activity takes place—

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

“(2) outside United States and—

“(A) an offender or a victim is a national of the United States (as that term is defined under section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

“(B) the activity involves a vessel in which a national of the United States was on board; or

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

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

**“§ 2291. Destruction of vessel or maritime facility**

“(a) **OFFENSE.**—Whoever knowingly—

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

“(2) places or causes to be placed a destructive device, as defined in section 921(a)(4), destructive substance, as defined in section 31(a)(3), or an explosive, as defined in section 844(j) in, upon, or near, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any vessel, or any part or other materials used or intended to be used in connection with the operation of a vessel;

“(3) sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or near, any maritime facility, including any aid to navigation, lock, canal, or vessel traffic service facility or equipment;

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

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

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

*“(7) performs an act of violence against a person that causes or is likely to cause serious bodily injury, as defined in section 1365(h)(3), in, upon, or near, any appliance, structure, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading, or storage of any vessel or any passenger or cargo carried or intended to be carried on any vessel;*

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

*“(9) attempts or conspires to do anything prohibited under paragraphs (1) through (8), shall be fined under this title or imprisoned not more than 20 years, or both.*

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

*“(c) PENALTY.—Whoever is fined or imprisoned under subsection (a) as a result of an act involving a vessel that, at the time of the violation, carried high-level radioactive waste (as that term is defined in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)) or spent nuclear fuel (as that term is defined in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23))), shall be fined under this title, imprisoned for a term up to life, or both.*

*“(d) PENALTY WHEN DEATH RESULTS.—Whoever is convicted of any crime prohibited by subsection (a) and intended to cause death by the prohibited conduct, if the conduct resulted in the death of any person, shall be subject also to the death penalty or to a term of imprisonment for a period up to life.*

*“(e) THREATS.—Whoever knowingly and intentionally imparts or conveys any threat to do an act which would violate this chapter, with an apparent determination and will to carry the threat into execution, shall be fined under this title or imprisoned not more than 5 years, or both, and is liable for all costs incurred as a result of such threat.*

**“§ 2292. Imparting or conveying false information**

“(a) *IN GENERAL.*—Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act that would be a crime prohibited by this chapter or by chapter 111 of this title, shall be subject to a civil penalty of not more than \$5,000, which shall be recoverable in a civil action brought in the name of the United States.

“(b) *MALICIOUS CONDUCT.*—Whoever knowingly, intentionally, maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt to do any act which would be a crime prohibited by this chapter or by chapter 111 of this title, shall be fined under this title or imprisoned not more than 5 years.

“(c) *JURISDICTION.*—

“(1) *IN GENERAL.*—Except as provided under paragraph (2), section 2290(a) shall not apply to any offense under this section.

“(2) *JURISDICTION.*—Jurisdiction over an offense under this section shall be determined in accordance with the provisions applicable to the crime prohibited by this chapter, or by chapter 111 of this title, to which the imparted or conveyed false information relates, as applicable.

**“§ 2293. Bar to prosecution**

“(a) *IN GENERAL.*—It is a bar to prosecution under this chapter if—

“(1) the conduct in question occurred within the United States in relation to a labor dispute, and such conduct is prohibited as a felony under the law of the State in which it was committed; or

“(2) such conduct is prohibited as a misdemeanor, and not as a felony, under the law of the State in which it was committed.

“(b) *DEFINITIONS.*—In this section:

“(1) *LABOR DISPUTE.*—The term ‘labor dispute’ has the same meaning given that term in section 13(c) of the Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes (29 U.S.C. 113(c), commonly known as the Norris-LaGuardia Act).

“(2) *STATE.*—The term ‘State’ means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.”

(b) *CONFORMING AMENDMENT.*—The table of chapters at the beginning of title 18, United States Code, is amended by inserting after the item for chapter 111 the following:

“111A. **Destruction of, or interference with, vessels or maritime facilities** ..... 2290”.

**SEC. 307. THEFT OF INTERSTATE OR FOREIGN SHIPMENTS OR VESSELS.**

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

(1) in the first undesignated paragraph—

(A) by inserting “trailer,” after “motortruck,”;

(B) by inserting “air cargo container,” after “aircraft,”; and

(C) by inserting “, or from any intermodal container, trailer, container freight station, warehouse, or freight consolidation facility,” after “air navigation facility”;

(2) in the fifth undesignated paragraph, by striking “in each case” and all that follows through “or both” the second place it appears and inserting “be fined under this title or imprisoned not more than 10 years, or both, but if the amount or value of such money, baggage, goods, or chattels is less than \$1,000, shall be fined under this title or imprisoned for not more than 3 years, or both”; and

(3) by inserting after the first sentence in the eighth undesignated paragraph the following: “For purposes of this section, goods and chattel shall be construed to be moving as an interstate or foreign shipment at all points between the point of origin and the final destination (as evidenced by the waybill or other shipping document of the shipment), regardless of any temporary stop while awaiting transshipment or otherwise.”.

(b) **STOLEN VESSELS.**—

(1) **IN GENERAL.**—Section 2311 of title 18, United States Code, is amended by adding at the end the following, as a new undesignated paragraph: “Vessel’ means any watercraft or other contrivance used or designed for transportation or navigation on, under, or immediately above, water.”.

(2) **TRANSPORTATION AND SALE OF STOLEN VESSELS.**—

(A) **TRANSPORTATION.**—Section 2312 of title 18, United States Code, is amended by striking “motor vehicle or aircraft” and inserting “motor vehicle, vessel, or aircraft”.

(B) **SALE.**—Section 2313(a) of title 18, United States Code, is amended by striking “motor vehicle or aircraft” and inserting “motor vehicle, vessel, or aircraft”.

(c) **REVIEW OF SENTENCING GUIDELINES.**—Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall review the Federal Sentencing Guidelines to determine whether sentencing enhancement is appropriate for any offense under section 659 or 2311 of title 18, United States Code, as amended by this title.

(d) **ANNUAL REPORT OF LAW ENFORCEMENT ACTIVITIES.**—The Attorney General shall annually submit to Congress a report, which shall include an evaluation of law enforcement activities relating to the investigation and prosecution of offenses under section 659 of title 18, United States Code, as amended by this title.

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

**SEC. 308. STOWAWAYS ON VESSELS OR AIRCRAFT.**

Section 2199 of title 18, United States Code, is amended by striking “Shall be fined under this title or imprisoned not more than one year, or both.” and inserting the following:

“(1) shall be fined under this title, imprisoned not more than 5 years, or both;

“(2) if the person commits an act proscribed by this section, with the intent to commit serious bodily injury, and serious bodily injury occurs (as defined under section 1365, including any conduct that, if the conduct occurred in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242) to any person other than a participant as a result of a violation of this section, shall be fined under this title or imprisoned not more than 20 years, or both; and

“(3) if an individual commits an act proscribed by this section, with the intent to cause death, and if the death of any person other than a participant occurs as a result of a violation of this section, shall be fined under this title, imprisoned for any number of years or for life, or both.”.

**SEC. 309. BRIBERY AFFECTING PORT SECURITY.**

(a) *IN GENERAL.*—Chapter 11 of title 18, United States Code, is amended by adding at the end the following:

**“§ 226. Bribery affecting port security**

“(a) *IN GENERAL.*—Whoever knowingly—

“(1) directly or indirectly, corruptly gives, offers, or promises anything of value to any public or private person, with intent to commit international terrorism or domestic terrorism (as those terms are defined under section 2331), to—

“(A) influence any action or any person to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud affecting any secure or restricted area or seaport; or

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

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

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

“(B) knowing that such influence will be used to commit, or plan to commit, international or domestic terrorism, shall be fined under this title or imprisoned not more than 15 years, or both.

“(b) *DEFINITION.*—In this section, the term ‘secure or restricted area’ means an area of a vessel or facility designated as secure in an approved security plan, as required under section 70103 of title 46, United States Code, and the rules and regulations promulgated under that section.”.

(b) *CONFORMING AMENDMENT.*—The table of sections for chapter 11 of title 18, United States Code, is amended by adding at the end the following:

“226. Bribery affecting port security.”.

**SEC. 310. PENALTIES FOR SMUGGLING GOODS INTO THE UNITED STATES.**

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

**SEC. 311. SMUGGLING GOODS FROM THE UNITED STATES.**

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

**“§ 554. Smuggling goods from the United States**

*“(a) IN GENERAL.—Whoever fraudulently or knowingly exports or sends from the United States, or attempts to export or send from the United States, any merchandise, article, or object contrary to any law or regulation of the United States, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise, article or object, prior to exportation, knowing the same to be intended for exportation contrary to any law or regulation of the United States, shall be fined under this title, imprisoned not more than 10 years, or both.*

*“(b) DEFINITION.—In this section, the term ‘United States’ has the meaning given that term in section 545.”.*

*(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 27 of title 18, United States Code, is amended by adding at the end the following:*

*“554. Smuggling goods from the United States.”.*

*(c) SPECIFIED UNLAWFUL ACTIVITY.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting “section 554 (relating to smuggling goods from the United States),” before “section 641 (relating to public money, property, or records),”.*

*(d) TARIFF ACT OF 1990.—Section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a) is amended by adding at the end the following:*

*“(d) Merchandise exported or sent from the United States or attempted to be exported or sent from the United States contrary to law, or the proceeds or value thereof, and property used to facilitate the exporting or sending of such merchandise, the attempted exporting or sending of such merchandise, or the receipt, purchase, transportation, concealment, or sale of such merchandise prior to exportation shall be seized and forfeited to the United States.”.*

*(e) REMOVING GOODS FROM CUSTOMS CUSTODY.—Section 549 of title 18, United States Code, is amended in the 5th paragraph by striking “two years” and inserting “10 years”.*

## **TITLE IV—COMBATING TERRORISM FINANCING**

**SEC. 401. SHORT TITLE.**

*This title may be cited as the “Combating Terrorism Financing Act of 2005”.*

**SEC. 402. INCREASED PENALTIES FOR TERRORISM FINANCING.**

*Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) is amended—*

*(1) in subsection (a), by deleting “\$10,000” and inserting “\$50,000”.*

(2) in subsection (b), by deleting “ten years” and inserting “twenty years”.

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

(a) **AMENDMENTS TO RICO.**—Section 1961(1) of title 18, United States Code, is amended in subparagraph (B), by inserting “section 1960 (relating to illegal money transmitters),” before “sections 2251”.

(b) **AMENDMENT TO SECTION 1956(c)(7).**—Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking “or any felony violation of the Foreign Corrupt Practices Act” and inserting “any felony violation of the Foreign Corrupt Practices Act”.

(c) **CONFORMING AMENDMENTS TO SECTIONS 1956(e) AND 1957(e).**—

(1) Section 1956(e) of title 18, United States Code, is amended to read as follows:

“(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.”.

(2) Section 1957(e) of title 18, United States Code, is amended to read as follows:

“(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General.”.

**SEC. 404. ASSETS OF PERSONS COMMITTING TERRORIST ACTS AGAINST FOREIGN COUNTRIES OR INTERNATIONAL ORGANIZATIONS.**

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

- (1) by striking “or” at the end of clause (ii);
- (2) by striking the period at the end of clause (iii) and inserting “; or”; and
- (3) by inserting the following after clause (iii):
  - “(iv) of any individual, entity, or organization engaged in planning or perpetrating any act of international terrorism (as defined in section 2331) against any international organization (as defined in section 209 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4309(b)) or against any foreign Government. Where the property sought for forfeiture is located beyond the territorial boundaries of the United States, an act in furtherance of such planning or perpetration must have occurred within the jurisdiction of the United States.”.

**SEC. 405. MONEY LAUNDERING THROUGH HAWALAS.**

Section 1956(a)(1) of title 18, United States Code, is amended by adding at the end the following: “For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.”.

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

(a) TECHNICAL CORRECTIONS.—

(1) Section 322 of Public Law 107–56 is amended by striking “title 18” and inserting “title 28”.

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

(3) Section 981(k) of title 18, United States Code, is amended by striking “foreign bank” each time it appears and inserting “foreign financial institution (as defined in section 984(c)(2)(A) of this title)”.

(b) CODIFICATION OF SECTION 316 OF THE USA PATRIOT ACT.—

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

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

“987. Anti-terrorist forfeiture protection.”

; and

(B) by inserting at the end the following:

**“§987. Anti-terrorist forfeiture protection**

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

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

“(2) the innocent owner provisions of section 983(d) of title 18, United States Code, apply to the case.

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

“(c) CLARIFICATIONS.—

“(1) PROTECTION OF RIGHTS.—The exclusion of certain provisions of Federal law from the definition of the term ‘civil forfeiture statute’ in section 983(i) of title 18, United States Code, shall not be construed to deny an owner of property the right to contest the confiscation of assets of suspected international terrorists under—

“(A) subsection (a) of this section;

“(B) the Constitution; or

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

“(2) SAVINGS CLAUSE.—Nothing in this section shall limit or otherwise affect any other remedies that may be available to an owner of property under section 983 of title 18, United States Code, or any other provision of law.”

(2) Subsections (a), (b), and (c) of section 316 of Public Law 107–56 are repealed.

(c) CONFORMING AMENDMENTS CONCERNING CONSPIRACIES.—

(1) Section 33(a) of title 18, United States Code is amended by inserting “or conspires” before “to do any of the aforesaid acts”.

(2) Section 1366(a) of title 18, United States Code, is amended—

(A) by striking “attempts” each time it appears and inserting “attempts or conspires”; and

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

**SEC. 407. CROSS REFERENCE CORRECTION.**

Section 5318(n)(4)(A) of title 31, United States Code, is amended by striking “National Intelligence Reform Act of 2004” and inserting “Intelligence Reform and Terrorism Prevention Act of 2004”.

**SEC. 408. AMENDMENT TO AMENDATORY LANGUAGE.**

Section 6604 of the Intelligence Reform and Terrorism Prevention Act of 2004 is amended (effective on the date of the enactment of that Act)—

(1) by striking “Section 2339c(c)(2)” and inserting “Section 2339C(c)(2)”; and

(2) by striking “Section 2339c(e)” and inserting “Section 2339C(e)”.

**SEC. 409. DESIGNATION OF ADDITIONAL MONEY LAUNDERING PREDICATE.**

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting “, section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization)” after “section 2339A or 2339B (relating to providing material support to terrorists)”; and

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

**SEC. 410. UNIFORM PROCEDURES FOR CRIMINAL FORFEITURE.**

Section 2461(c) of title 28, United States Code, is amended to read as follows:

“(c) If a person is charged in a criminal case with a violation of an Act of Congress for which the civil or criminal forfeiture of property is authorized, the Government may include notice of the forfeiture in the indictment or information pursuant to the Federal Rules of Criminal Procedure. If the defendant is convicted of the offense giving rise to the forfeiture, the court shall order the forfeiture of the property as part of the sentence in the criminal case pursuant to the Federal Rules of Criminal Procedure and section 3554 of title 18, United States Code. The procedures in section 413 of the Controlled Substances Act (21 U.S.C. 853) apply to all stages of a criminal forfeiture proceeding, except that subsection (d) of such section applies only in cases in which the defendant is convicted of a violation of such Act.”.

## **TITLE V—MISCELLANEOUS PROVISIONS**

**SEC. 501. RESIDENCE OF UNITED STATES ATTORNEYS AND ASSISTANT UNITED STATES ATTORNEYS.**

(a) *IN GENERAL.*—Subsection (a) of section 545 of title 28, United States Code, is amended by adding at the end the following new sentence: “Pursuant to an order from the Attorney General or his designee, a United States attorney or an assistant United States attorney may be assigned dual or additional responsibilities that exempt such officer from the residency requirement in this subsection for a specific period as established by the order and subject to renewal.”.

(b) *EFFECTIVE DATE.*—The amendment made by subsection (a) shall take effect as of February 1, 2005.

**SEC. 502. INTERIM APPOINTMENT OF UNITED STATES ATTORNEYS.**

Section 546 of title 28, United States Code, is amended by striking subsections (c) and (d) and inserting the following new subsection:

“(c) A person appointed as United States attorney under this section may serve until the qualification of a United States Attorney for such district appointed by the President under section 541 of this title.”.

**SEC. 503. SECRETARY OF HOMELAND SECURITY IN PRESIDENTIAL LINE OF SUCCESSION.**

Section 19(d)(1) of title 3, United States Code, is amended by inserting “, Secretary of Homeland Security” after “Secretary of Veterans Affairs”.

**SEC. 504. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS TO THE DEPARTMENT OF JUSTICE.**

*The second sentence of section 1111(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 531(a)(2)) is amended by striking “Attorney General” the first place it appears and inserting “President, by and with the advice and consent of the Senate”.*

**SEC. 505. QUALIFICATIONS OF UNITED STATES MARSHALS.**

*Section 561 of title 28, United States Code, is amended by adding at the end the following new subsection:*

*“(i) Each marshal appointed under this section should have—*

*“(1) a minimum of 4 years of command-level law enforcement management duties, including personnel, budget, and accountable property issues, in a police department, sheriff’s office or Federal law enforcement agency;*

*“(2) experience in coordinating with other law enforcement agencies, particularly at the State and local level;*

*“(3) college-level academic experience; and*

*“(4) experience in or with county, State, and Federal court systems or experience with protection of court personnel, jurors, and witnesses.”.*

**SECTION 506. DEPARTMENT OF JUSTICE INTELLIGENCE MATTERS.**

*(a) ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY.—*

*(1) IN GENERAL.—Chapter 31 of title 28, United States Code, is amended by inserting after section 507 the following new section:*

**“§ 507A. Assistant Attorney General for National Security**

*“(a) Of the Assistant Attorneys General appointed under section 506, one shall serve, upon the designation of the President, as the Assistant Attorney General for National Security.*

*“(b) The Assistant Attorney General for National Security shall—*

*“(1) serve as the head of the National Security Division of the Department of Justice under section 509A of this title;*

*“(2) serve as primary liaison to the Director of National Intelligence for the Department of Justice; and*

*“(3) perform such other duties as the Attorney General may prescribe.”.*

*(2) ADDITIONAL ASSISTANT ATTORNEY GENERAL.—Section 506 of title 28, United States Code, is amended by striking “ten” and inserting “11”.*

*(3) EXECUTIVE SCHEDULE MATTERS.—Section 5315 of title 5, United States Code, is amended by striking the matter relating to Assistant Attorneys General and inserting the following: “Assistant Attorneys General (11).”.*

*(4) CONSULTATION OF DIRECTOR OF NATIONAL INTELLIGENCE IN APPOINTMENT.—Section 106(c)(2) of the National Security Act of 1947 (50 U.S.C. 403–6(c)(2)) is amended by adding at the end the following new subparagraph:*

*“(C) The Assistant Attorney General designated as the Assistant Attorney General for National Security under section 507A of title 28, United States Code.”.*

*(5) AUTHORITY TO ACT FOR ATTORNEY GENERAL UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—Section 101(g) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.*

1801(g) is amended by striking “or the Deputy Attorney General” and inserting “, the Deputy Attorney General, or, upon the designation of the Attorney General, the Assistant Attorney General designated as the Assistant Attorney General for National Security under section 507A of title 28, United States Code”.

(6) AUTHORIZATION FOR INTERCEPTION OF COMMUNICATIONS.—Section 2516(1) of title 18, United States Code, is amended by inserting “or National Security Division” after “the Criminal Division”.

(7) AUTHORITY TO ACT FOR ATTORNEY GENERAL IN MATTERS INVOLVING WITNESS RELOCATION OR PROTECTION.—Section 3521(d)(3) of title 18, United States Code, is amended by striking “to the Assistant Attorney General in charge of the Criminal Division of the Department of Justice” and inserting “to any Assistant Attorney General in charge of the Criminal Division or National Security Division of the Department of Justice”.

(8) PROSECUTION OF CASES INVOLVING CLASSIFIED INFORMATION.—Section 9A(a) of the Classified Information Procedures Act (18 U.S.C. App.) is amended by inserting “or the Assistant Attorney General for National Security, as appropriate,” after “Assistant Attorney General for the Criminal Division”.

(9) INTELLIGENCE AND NATIONAL SECURITY ASPECTS OF ESPIONAGE PROSECUTION.—Section 341(b) of the Intelligence Authorization Act for Fiscal Year 2004 (28 U.S.C. 519 note) is amended by striking “acting through the Office of Intelligence Policy and Review of the Department of Justice” and inserting “acting through the Assistant Attorney General for National Security”.

(10) CERTIFICATIONS FOR CERTAIN UNDERCOVER FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE INVESTIGATIVE OPERATIONS.—Section 102(b)(1) of Public Law 102-395 (28 U.S.C. 533 note) is amended by striking “Counsel for Intelligence Policy” and inserting “Assistant Attorney General for National Security”.

(11) INCLUSION IN FEDERAL LAW ENFORCEMENT COMMUNITY FOR EMERGENCY FEDERAL LAW ENFORCEMENTS ASSISTANCE PURPOSES.—Section 609N(2) of the Justice Assistance Act of 1984 (42 U.S.C. 10502(2)) is amended—

(A) by redesignating subparagraphs (L) and (M) as subparagraphs (M) and (N), respectively; and

(B) by inserting after subparagraph (K) the following new subparagraph (L):

“(L) the National Security Division of the Department of Justice,”.

(b) NATIONAL SECURITY DIVISION OF DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—Chapter 31 of title 28, United States Code, is further amended by inserting after section 509 the following new section:

**“§ 509A. National Security Division**

“(a) There is a National Security Division of the Department of Justice.

“(b) The National Security Division shall consist of the elements of the Department of Justice (other than the Federal Bureau of In-

vestigation) engaged primarily in support of the intelligence and intelligence-related activities of the United States Government, including the following:

“(1) The Assistant Attorney General designated as the Assistant Attorney General for National Security under section 507A of this title.

“(2) The Office of Intelligence Policy and Review (or any successor organization).

“(3) The counterterrorism section (or any successor organization).

“(4) The counterespionage section (or any successor organization).

“(5) Any other element, component, or office designated by the Attorney General.”.

(2) **PROHIBITION ON POLITICAL ACTIVITY.**—Section 7323(b)(3) of title 5, United States Code, is amended by inserting “or National Security Division” after “Criminal Division”.

(c) **CLERICAL AMENDMENTS.**—The table of sections at the beginning of chapter 31 of title 28, United States Code, is amended—

(1) by inserting after the item relating to section 507 the following new item:

“507A. Assistant Attorney General for National Security.”;

and

(2) by inserting after the item relating to section 509 the following new item:

“509A. National Security Division.”.

(d) **PROCEDURES FOR CONFIRMATION OF THE ASSISTANT ATTORNEY GENERAL FOR NATIONAL SECURITY.**—(1) Section 17 of Senate Resolution 400 (94th Congress) is amended—

(A) in subsection (a), by striking “(a) The” and inserting “(a)(1) Except as otherwise provided in subsection (b), the”;

(B) in subsection (b), by striking “(b)” and inserting “(2)”; and

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

“(b)(1) With respect to the confirmation of the Assistant Attorney General for National Security, or any successor position, the nomination of any individual by the President to serve in such position shall be referred to the Committee on the Judiciary and, if and when reported, to the select Committee for not to exceed 20 calendar days, except that in cases when the 20-day period expires while the Senate is in recess, the select Committee shall have 5 additional calendar days after the Senate reconvenes to report the nomination.

“(2) If, upon the expiration of the period described in paragraph (1), the select Committee has not reported the nomination, such nomination shall be automatically discharged from the select Committee and placed on the Executive Calendar.”.

(2) Paragraph (1) is enacted—

(A) as an exercise of the rulemaking power of the Senate; and

(B) with full recognition of the constitutional right of the Senate to change the rules of the Senate at any time and to the same extent as in the case of any other rule of the Senate.

**SEC. 507. REVIEW BY ATTORNEY GENERAL.**

(a) **APPLICABILITY.**—Section 2261 of title 28, United States Code, is amended by striking subsection (b) and inserting the following:

“(b) **COUNSEL.**—This chapter is applicable if—

“(1) the Attorney General of the United States certifies that a State has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265; and

“(2) counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent.”.

(b) **SCOPE OF PRIOR REPRESENTATION.**—Section 2261(d) of title 28, United States Code is amended by striking “or on direct appeal”.

(c) **CERTIFICATION AND JUDICIAL REVIEW.**—

(1) **IN GENERAL.**—Chapter 154 of title 28, United States Code, is amended by striking section 2265 and inserting the following:

**“§ 2265. Certification and judicial review**

“(a) **CERTIFICATION.**—

“(1) **IN GENERAL.**—If requested by an appropriate State official, the Attorney General of the United States shall determine—

“(A) whether the State has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent prisoners who have been sentenced to death;

“(B) the date on which the mechanism described in subparagraph (A) was established; and

“(C) whether the State provides standards of competency for the appointment of counsel in proceedings described in subparagraph (A).

“(2) **EFFECTIVE DATE.**—The date the mechanism described in paragraph (1)(A) was established shall be the effective date of the certification under this subsection.

“(3) **ONLY EXPRESS REQUIREMENTS.**—There are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.

“(b) **REGULATIONS.**—The Attorney General shall promulgate regulations to implement the certification procedure under subsection (a).

“(c) **REVIEW OF CERTIFICATION.**—

“(1) **IN GENERAL.**—The determination by the Attorney General regarding whether to certify a State under this section is subject to review exclusively as provided under chapter 158 of this title.

“(2) **VENUE.**—The Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over matters under paragraph (1), subject to review by the Supreme Court under section 2350 of this title.

“(3) **STANDARD OF REVIEW.**—The determination by the Attorney General regarding whether to certify a State under this section shall be subject to *de novo* review.”.

(2) *CLERICAL AMENDMENT.*—The table of sections for chapter 154 of title 28, United States Code, is amended by striking the item related to section 2265 and inserting the following:

“2265. Certification and judicial review.”.

(d) *APPLICATION TO PENDING CASES.*—

(1) *IN GENERAL.*—This section and the amendments made by this section shall apply to cases pending on or after the date of enactment of this Act.

(2) *TIME LIMITS.*—In a case pending on the date of enactment of this Act, if the amendments made by this section establish a time limit for taking certain action, the period of which began on the date of an event that occurred prior to the date of enactment of this Act, the period of such time limit shall instead begin on the date of enactment of this Act.

(e) *TIME LIMITS.*—Section 2266(b)(1)(A) of title 28, United States Code, is amended by striking “180 days after the date on which the application is filed” and inserting “450 days after the date on which the application is filed, or 60 days after the date on which the case is submitted for decision, whichever is earlier”.

(f) *STAY OF STATE COURT PROCEEDINGS.*—Section 2251 of title 28, United States Code, is amended—

(1) in the first undesignated paragraph, by striking “A justice” and inserting the following:

“(a) *IN GENERAL.*—

“(1) *PENDING MATTERS.*—A justice”;

(2) in the second undesignated paragraph, by striking “After the” and inserting the following:

“(b) *NO FURTHER PROCEEDINGS.*—After the”; and

(3) in subsection (a), as so designated by paragraph (1), by adding at the end the following:

“(2) *MATTER NOT PENDING.*—For purposes of this section, a habeas corpus proceeding is not pending until the application is filed.

“(3) *APPLICATION FOR APPOINTMENT OF COUNSEL.*—If a State prisoner sentenced to death applies for appointment of counsel pursuant to section 3599(a)(2) of title 18 in a court that would have jurisdiction to entertain a habeas corpus application regarding that sentence, that court may stay execution of the sentence of death, but such stay shall terminate not later than 90 days after counsel is appointed or the application for appointment of counsel is withdrawn or denied.”.

## **TITLE VI—SECRET SERVICE**

### **SEC. 601. SHORT TITLE.**

This title may be cited as the “Secret Service Authorization and Technical Modification Act of 2005”.

### **SEC. 602. INTERFERENCE WITH NATIONAL SPECIAL SECURITY EVENTS.**

(a) *IN GENERAL.*—Section 1752 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

“(1) willfully and knowingly to enter or remain in any posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting;”;

(B) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(C) by inserting after paragraph (1) the following new paragraph:

“(2) willfully and knowingly to enter or remain in any posted, cordoned off, or otherwise restricted area of a building or grounds so restricted in conjunction with an event designated as a special event of national significance;”;

(D) in paragraph (3), as redesignated by subparagraph (B)—

(i) by inserting “willfully, knowingly, and” before “with intent to impede or disrupt”;

(ii) by striking “designated” and inserting “described”; and

(iii) by inserting “or (2)” after “paragraph (1)”;

(E) in paragraph (4), as redesignated by subparagraph (B)—

(i) by striking “designated or enumerated” and inserting “described”; and

(ii) by inserting “or (2)” after “paragraph (1)”;

(F) in paragraph (5), as redesignated by subparagraph (B)—

(i) by striking “designated or enumerated” and inserting “described”; and

(ii) by inserting “or (2)” after “paragraph (1)”;

(2) by amending subsection (b) to read as follows:

“(b) Violation of this section, and attempts or conspiracies to commit such violations, shall be punishable by—

“(1) a fine under this title or imprisonment for not more than 10 years, or both, if—

“(A) the person, during and in relation to the offense, uses or carries a deadly or dangerous weapon or firearm; or

“(B) the offense results in significant bodily injury as defined by section 2118(e)(3); and

“(2) a fine under this title or imprisonment for not more than one year, or both, in any other case.”; and

(3) by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(b) CLERICAL AMENDMENT.—(1) The heading of such section is amended to read as follows:

**“§ 1752. Restricted building or grounds”.**

(2) The item relating to such section in the table of sections at the beginning of chapter 84 of such title is amended to read as follows:

“1752. Restricted building or grounds.”.

**SEC. 603. FALSE CREDENTIALS TO NATIONAL SPECIAL SECURITY EVENTS.**

Section 1028 of title 18, United States Code, is amended—

(1) in subsection (a)(6), by inserting “or a sponsoring entity of an event designated as a special event of national significance” after “States”;

(2) in subsection (c)(1), by inserting “or a sponsoring entity of an event designated as a special event of national significance” after “States”;

(3) in subsection (d)(3), by inserting “a sponsoring entity of an event designated as a special event of national significance,” after “political subdivision of a State,”; and

(4) in each of subsections (d)(4)(B) and (d)(6)(B), by inserting “a sponsoring entity of an event designated by the President as a special event of national significance,” after “political subdivision of a State,”.

**SEC. 604. FORENSIC AND INVESTIGATIVE SUPPORT OF MISSING AND EXPLOITED CHILDREN CASES.**

Section 3056(f) of title 18, United States Code, is amended by striking “officers and agents of the Secret Service are” and inserting “the Secret Service is”.

**SEC. 605. THE UNIFORMED DIVISION, UNITED STATES SECRET SERVICE.**

(a) *IN GENERAL.*—Chapter 203 of title 18, United States Code, is amended by inserting after section 3056 the following:

**“§ 3056A. Powers, authorities, and duties of United States Secret Service Uniformed Division**

“(a) There is hereby created and established a permanent police force, to be known as the ‘United States Secret Service Uniformed Division’. Subject to the supervision of the Secretary of Homeland Security, the United States Secret Service Uniformed Division shall perform such duties as the Director, United States Secret Service, may prescribe in connection with the protection of the following:

“(1) The White House in the District of Columbia.

“(2) Any building in which Presidential offices are located.

“(3) The Treasury Building and grounds.

“(4) The President, the Vice President (or other officer next in the order of succession to the Office of President), the President-elect, the Vice President-elect, and their immediate families.

“(5) Foreign diplomatic missions located in the metropolitan area of the District of Columbia.

“(6) The temporary official residence of the Vice President and grounds in the District of Columbia.

“(7) Foreign diplomatic missions located in metropolitan areas (other than the District of Columbia) in the United States where there are located twenty or more such missions headed by full-time officers, except that such protection shall be provided only—

“(A) on the basis of extraordinary protective need;

“(B) upon request of an affected metropolitan area; and

“(C) when the extraordinary protective need arises at or in association with a visit to—

“(i) a permanent mission to, or an observer mission invited to participate in the work of, an international organization of which the United States is a member; or

*“(ii) an international organization of which the United States is a member;*

*except that such protection may also be provided for motorcades and at other places associated with any such visit and may be extended at places of temporary domicile in connection with any such visit.*

*“(8) Foreign consular and diplomatic missions located in such areas in the United States, its territories and possessions, as the President, on a case-by-case basis, may direct.*

*“(9) Visits of foreign government officials to metropolitan areas (other than the District of Columbia) where there are located twenty or more consular or diplomatic missions staffed by accredited personnel, including protection for motorcades and at other places associated with such visits when such officials are in the United States to conduct official business with the United States Government.*

*“(10) Former Presidents and their spouses, as provided in section 3056(a)(3) of title 18.*

*“(11) An event designated under section 3056(e) of title 18 as a special event of national significance.*

*“(12) Major Presidential and Vice Presidential candidates and, within 120 days of the general Presidential election, the spouses of such candidates, as provided in section 3056(a)(7) of title 18.*

*“(13) Visiting heads of foreign states or foreign governments.*

*“(b)(1) Under the direction of the Director of the Secret Service, members of the United States Secret Service Uniformed Division are authorized to—*

*“(A) carry firearms;*

*“(B) make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and*

*“(C) perform such other functions and duties as are authorized by law.*

*“(2) Members of the United States Secret Service Uniformed Division shall possess privileges and powers similar to those of the members of the Metropolitan Police of the District of Columbia.*

*“(c) Members of the United States Secret Service Uniformed Division shall be furnished with uniforms and other necessary equipment.*

*“(d) In carrying out the functions pursuant to paragraphs (7) and (9) of subsection (a), the Secretary of Homeland Security may utilize, with their consent, on a reimbursable basis, the services, personnel, equipment, and facilities of State and local governments, and is authorized to reimburse such State and local governments for the utilization of such services, personnel, equipment, and facilities. The Secretary of Homeland Security may carry out the functions pursuant to paragraphs (7) and (9) of subsection (a) by contract. The authority of this subsection may be transferred by the President to the Secretary of State. In carrying out any duty under paragraphs (7) and (9) of subsection (a), the Secretary of State is*

authorized to utilize any authority available to the Secretary under title II of the State Department Basic Authorities Act of 1956.”

(b) AMENDMENT TO TABLE OF SECTIONS.—The table of sections at the beginning of chapter 203 of title 18, United States Code, is amended by inserting after the item relating to section 3056 the following new item:

3056A. Powers, authorities, and duties of United States Secret Service Uniformed Division.

(c) CONFORMING REPEAL TO EFFECTUATE TRANSFER.—Chapter 3 of title 3, United States Code, is repealed.

(d) CONFORMING AMENDMENTS TO LAWS AFFECTING DISTRICT OF COLUMBIA.—(1) Section 1537(d) of title 31, United States Code, is amended—

(A) by striking “and the Executive Protective Service” and inserting “and the Secret Service Uniformed Division”; and

(B) by striking “their protective duties” and all that follows and inserting “their protective duties under sections 3056 and 3056A of title 18.”

(2) Section 204(e) of the State Department Basic Authorities Act (sec. 6—1304(e), D.C. Official Code) is amended by striking “section 202 of title 3, United States Code, or section 3056” and inserting “sections 3056 or 3056A”.

(3) Section 214(a) of the State Department Basic Authorities Act (sec. 6—1313(a), D.C. Official Code) is amended by striking “sections 202(8) and 208 of title 3” and inserting “section 3056A(a)(7) and (d) of title 18”.

(e) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Title 12, United States Code, section 3414, “Special procedures”, is amended by striking “3 U.S.C. 202” in subsection (a)(1)(B) and inserting “18 U.S.C. 3056A”.

(2) The State Department Basic Authorities Act of 1956 is amended—

(A) in the first sentence of section 37(c) (22 U.S.C. 2709(c)), by striking “section 202 of title 3, United States Code, or section 3056 of title 18, United States Code” and inserting “section 3056 or 3056A of title 18, United States Code”;

(B) in section 204(e) (22 U.S.C. 4304(e)), by striking “section 202 of title 3, United States Code, or section 3056 of title 18, United States Code” and inserting “section 3056 or 3056A of title 18, United States Code”; and

(C) in section 214(a) (22 U.S.C. 4314(a)), by striking “sections 202(7) and 208 of title 3, United States Code” and inserting “subsections (a)(7) and (d) of section 3056A of title 18, United States Code”.

(3) Section 8D(a)(1)(F) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking “section 202 of title 3” and inserting “section 3056A of title 18”.

(4) Section 8I(a)(1)(E) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking “section 202 of title 3” and inserting “section 3056A of title 18”.

**SEC. 606. SAVINGS PROVISIONS.**

(a) *This title does not affect the retirement benefits of current employees or annuitants that existed on the day before the effective date of this Act.*

(b) *This title does not affect any Executive Order transferring to the Secretary of State the authority of section 208 of title 3 (now section 3056A(d) of title 18) in effect on the day before the effective date of this Act.*

**SEC. 607. MAINTENANCE AS DISTINCT ENTITY.**

*Section 3056 of title 18 is amended by adding the following at the end of the section:*

*“(g) The United States Secret Service shall be maintained as a distinct entity within the Department of Homeland Security and shall not be merged with any other Department function. No personnel and operational elements of the United States Secret Service shall report to an individual other than the Director of the United States Secret Service, who shall report directly to the Secretary of Homeland Security without being required to report through any other official of the Department.”.*

**SEC. 608. EXEMPTIONS FROM THE FEDERAL ADVISORY COMMITTEE ACT.**

(a) **ADVISORY COMMITTEE REGARDING PROTECTION OF MAJOR PRESIDENTIAL AND VICE PRESIDENTIAL CANDIDATES.**—Section 3056(a)(7) of title 18, United States Code, is amended by inserting “The Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).” after “other members of the Committee.”.

(b) **ELECTRONIC CRIMES TASK FORCES.**—Section 105 of Public Law 107–56 (18 U.S.C. 3056 note) is amended by inserting “The electronic crimes task forces shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).” after “financial payment systems.”.

## **TITLE VII—COMBAT METHAMPHETAMINE EPIDEMIC ACT OF 2005**

**SEC. 701. SHORT TITLE.**

*This title may be cited as the “Combat Methamphetamine Epidemic Act of 2005”.*

### **Subtitle A—Domestic Regulation of Precursor Chemicals**

**SEC. 711. SCHEDULED LISTED CHEMICAL PRODUCTS; RESTRICTIONS ON SALES QUANTITY, BEHIND-THE-COUNTER ACCESS, AND OTHER SAFEGUARDS.**

(a) **SCHEDULED LISTED CHEMICAL PRODUCTS.**—

(1) **IN GENERAL.**—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(A) by redesignating paragraph (46) as paragraph (49); and

(B) by inserting after paragraph (44) the following paragraphs:

“(45)(A) The term ‘scheduled listed chemical product’ means, subject to subparagraph (B), a product that—

“(i) contains ephedrine, pseudoephedrine, or phenylpropranolamine; and

“(ii) may be marketed or distributed lawfully in the United States under the Federal, Food, Drug, and Cosmetic Act as a nonprescription drug.

Each reference in clause (i) to ephedrine, pseudoephedrine, or phenylpropranolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.

“(B) Such term does not include a product described in subparagraph (A) if the product contains a chemical specified in such subparagraph that the Attorney General has under section 201(a) added to any of the schedules under section 202(c). In the absence of such scheduling by the Attorney General, a chemical specified in such subparagraph may not be considered to be a controlled substance.

“(46) The term ‘regulated seller’ means a retail distributor (including a pharmacy or a mobile retail vendor), except that such term does not include an employee or agent of such distributor.

“(47) The term ‘mobile retail vendor’ means a person or entity that makes sales at retail from a stand that is intended to be temporary, or is capable of being moved from one location to another, whether the stand is located within or on the premises of a fixed facility (such as a kiosk at a shopping center or an airport) or whether the stand is located on unimproved real estate (such as a lot or field leased for retail purposes).

“(48) The term ‘at retail’, with respect to the sale or purchase of a scheduled listed chemical product, means a sale or purchase for personal use, respectively.”.

(2) CONFORMING AMENDMENTS.—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(A) in section 102, in paragraph (49) (as redesignated by paragraph (1)(A) of this subsection)—

(i) in subparagraph (A), by striking “pseudoephedrine or” and inserting “ephedrine, pseudoephedrine, or”; and

(ii) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B); and

(B) in section 310(b)(3)(D)(ii), by striking “102(46)” and inserting “102(49)”.

(b) RESTRICTIONS ON SALES QUANTITY; BEHIND-THE-COUNTER ACCESS; LOGBOOK REQUIREMENT; TRAINING OF SALES PERSONNEL; PRIVACY PROTECTIONS.—

(1) IN GENERAL.—Section 310 of the Controlled Substances Act (21 U.S.C. 830) is amended by adding at the end the following subsections:

“(d) SCHEDULED LISTED CHEMICALS; RESTRICTIONS ON SALES QUANTITY; REQUIREMENTS REGARDING NONLIQUID FORMS.—With respect to ephedrine base, pseudoephedrine base, or phenylpropranolamine base in a scheduled listed chemical product—

“(1) the quantity of such base sold at retail in such a product by a regulated seller, or a distributor required to submit reports by subsection (b)(3) may not, for any purchaser, exceed a

daily amount of 3.6 grams, without regard to the number of transactions; and

“(2) such a seller or distributor may not sell such a product in nonliquid form (including gel caps) at retail unless the product is packaged in blister packs, each blister containing not more than 2 dosage units, or where the use of blister packs is technically infeasible, the product is packaged in unit dose packets or pouches.

“(e) SCHEDULED LISTED CHEMICALS; BEHIND-THE-COUNTER ACCESS; LOGBOOK REQUIREMENT; TRAINING OF SALES PERSONNEL; PRIVACY PROTECTIONS.—

“(1) REQUIREMENTS REGARDING RETAIL TRANSACTIONS.—

“(A) IN GENERAL.—Each regulated seller shall ensure that, subject to subparagraph (F), sales by such seller of a scheduled listed chemical product at retail are made in accordance with the following:

“(i) In offering the product for sale, the seller places the product such that customers do not have direct access to the product before the sale is made (in this paragraph referred to as ‘behind-the-counter’ placement). For purposes of this paragraph, a behind-the-counter placement of a product includes circumstances in which the product is stored in a locked cabinet that is located in an area of the facility involved to which customers do have direct access.

“(ii) The seller delivers the product directly into the custody of the purchaser.

“(iii) The seller maintains, in accordance with criteria issued by the Attorney General, a written or electronic list of such sales that identifies the products by name, the quantity sold, the names and addresses of purchasers, and the dates and times of the sales (which list is referred to in this subsection as the ‘logbook’), except that such requirement does not apply to any purchase by an individual of a single sales package if that package contains not more than 60 milligrams of pseudoephedrine.

“(iv) In the case of a sale to which the requirement of clause (iii) applies, the seller does not sell such a product unless—

“(I) the prospective purchaser—

“(aa) presents an identification card that provides a photograph and is issued by a State or the Federal Government, or a document that, with respect to identification, is considered acceptable for purposes of sections 274a.2(b)(1)(v)(A) and 274a.2(b)(1)(v)(B) of title 8, Code of Federal Regulations (as in effect on or after the date of the enactment of the Combat Methamphetamine Epidemic Act of 2005); and

“(bb) signs the logbook and enters in the logbook his or her name, address, and the date and time of the sale; and

“(II) the seller—

“(aa) determines that the name entered in the logbook corresponds to the name provided on such identification and that the date and time entered are correct; and

“(bb) enters in the logbook the name of the product and the quantity sold.

“(v) The logbook includes, in accordance with criteria of the Attorney General, a notice to purchasers that entering false statements or misrepresentations in the logbook may subject the purchasers to criminal penalties under section 1001 of title 18, United States Code, which notice specifies the maximum fine and term of imprisonment under such section.

“(vi) The seller maintains each entry in the logbook for not fewer than two years after the date on which the entry is made.

“(vii) In the case of individuals who are responsible for delivering such products into the custody of purchasers or who deal directly with purchasers by obtaining payments for the products, the seller has submitted to the Attorney General a self-certification that all such individuals have, in accordance with criteria under subparagraph (B)(ii), undergone training provided by the seller to ensure that the individuals understand the requirements that apply under this subsection and subsection (d).

“(viii) The seller maintains a copy of such certification and records demonstrating that individuals referred to in clause (vii) have undergone the training.

“(ix) If the seller is a mobile retail vendor:

“(I) The seller complies with clause (i) by placing the product in a locked cabinet.

“(II) The seller does not sell more than 7.5 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in such products per customer during a 30-day period.

“(B) ADDITIONAL PROVISIONS REGARDING CERTIFICATIONS AND TRAINING.—

“(i) IN GENERAL.—A regulated seller may not sell any scheduled listed chemical product at retail unless the seller has submitted to the Attorney General the self-certification referred to in subparagraph (A)(vii). The certification is not effective for purposes of the preceding sentence unless, in addition to provisions regarding the training of individuals referred to in such subparagraph, the certification includes a statement that the seller understands each of the requirements that apply under this paragraph and under subsection (d) and agrees to comply with the requirements.

“(ii) ISSUANCE OF CRITERIA; SELF-CERTIFICATION.—The Attorney General shall by regulation establish criteria for certifications under this paragraph. The criteria shall—

“(I) provide that the certifications are self-certifications provided through the program under clause (iii);

“(II) provide that a separate certification is required for each place of business at which a regulated seller sells scheduled listed chemical products at retail; and

“(III) include criteria for training under subparagraph (A)(vii).

“(iii) PROGRAM FOR REGULATED SELLERS.—The Attorney General shall establish a program regarding such certifications and training in accordance with the following:

“(I) The program shall be carried out through an Internet site of the Department of Justice and such other means as the Attorney General determines to be appropriate.

“(II) The program shall inform regulated sellers that section 1001 of title 18, United States Code, applies to such certifications.

“(III) The program shall make available to such sellers an explanation of the criteria under clause (ii).

“(IV) The program shall be designed to permit the submission of the certifications through such Internet site.

“(V) The program shall be designed to automatically provide the explanation referred to in subclause (III), and an acknowledgement that the Department has received a certification, without requiring direct interactions of regulated sellers with staff of the Department (other than the provision of technical assistance, as appropriate).

“(iv) AVAILABILITY OF CERTIFICATION TO STATE AND LOCAL OFFICIALS.—Promptly after receiving a certification under subparagraph (A)(vii), the Attorney General shall make available a copy of the certification to the appropriate State and local officials.

“(C) PRIVACY PROTECTIONS.—In order to protect the privacy of individuals who purchase scheduled listed chemical products, the Attorney General shall by regulation establish restrictions on disclosure of information in logbooks under subparagraph (A)(iii). Such regulations shall—

“(i) provide for the disclosure of the information as appropriate to the Attorney General and to State and local law enforcement agencies; and

“(ii) prohibit accessing, using, or sharing information in the logbooks for any purpose other than to ensure compliance with this title or to facilitate a product recall to protect public health and safety.

“(D) FALSE STATEMENTS OR MISREPRESENTATIONS BY PURCHASERS.—For purposes of section 1001 of title 18, United States Code, entering information in the logbook under subparagraph (A)(iii) shall be considered a matter

*within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States.*

*“(E) GOOD FAITH PROTECTION.—A regulated seller who in good faith releases information in a logbook under subparagraph (A)(iii) to Federal, State, or local law enforcement authorities is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.*

*“(F) INAPPLICABILITY OF REQUIREMENTS TO CERTAIN SALES.—Subparagraph (A) does not apply to the sale at retail of a scheduled listed chemical product if a report on the sales transaction is required to be submitted to the Attorney General under subsection (b)(3).*

*“(G) CERTAIN MEASURES REGARDING THEFT AND DIVERSION.—A regulated seller may take reasonable measures to guard against employing individuals who may present a risk with respect to the theft and diversion of scheduled listed chemical products, which may include, notwithstanding State law, asking applicants for employment whether they have been convicted of any crime involving or related to such products or controlled substances.”.*

*(2) EFFECTIVE DATES.—With respect to subsections (d) and (e)(1) of section 310 of the Controlled Substances Act, as added by paragraph (1) of this subsection:*

*(A) Such subsection (d) applies on and after the expiration of the 30-day period beginning on the date of the enactment of this Act.*

*(B) Such subsection (e)(1) applies on and after September 30, 2006.*

*(c) MAIL-ORDER REPORTING.—*

*(1) IN GENERAL.—Section 310(e) of the Controlled Substances Act, as added by subsection (b)(1) of this section, is amended by adding at the end the following:*

*“(2) MAIL-ORDER REPORTING; VERIFICATION OF IDENTITY OF PURCHASER; 30-DAY RESTRICTION ON QUANTITIES FOR INDIVIDUAL PURCHASERS.—Each regulated person who makes a sale at retail of a scheduled listed chemical product and is required under subsection (b)(3) to submit a report of the sales transaction to the Attorney General is subject to the following:*

*“(A) The person shall, prior to shipping the product, confirm the identity of the purchaser in accordance with procedures established by the Attorney General. The Attorney General shall by regulation establish such procedures.*

*“(B) The person may not sell more than 7.5 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in such products per customer during a 30-day period.”.*

*(2) INAPPLICABILITY OF REPORTING EXEMPTION FOR RETAIL DISTRIBUTORS.—Section 310(b)(3)(D)(ii) of the Controlled Substances Act (21 U.S.C. 830(b)(3)(D)(ii)) is amended by inserting before the period the following: “, except that this clause does not apply to sales of scheduled listed chemical products at retail”.*

(3) *EFFECTIVE DATE.*—The amendments made by paragraphs (1) and (2) apply on and after the expiration of the 30-day period beginning on the date of the enactment of this Act.

(d) *EXEMPTIONS FOR CERTAIN PRODUCTS.*—Section 310(e) of the Controlled Substances Act, as added and amended by subsections (b) and (c) of this section, respectively, is amended by adding at the end the following paragraph:

“(3) *EXEMPTIONS FOR CERTAIN PRODUCTS.*—Upon the application of a manufacturer of a scheduled listed chemical product, the Attorney General may by regulation provide that the product is exempt from the provisions of subsection (d) and paragraphs (1) and (2) of this subsection if the Attorney General determines that the product cannot be used in the illicit manufacture of methamphetamine.”.

(e) *RESTRICTIONS ON QUANTITY PURCHASED DURING 30-DAY PERIOD.*—

(1) *IN GENERAL.*—Section 404(a) of the Controlled Substances Act (21 U.S.C. 844(a)) is amended by inserting after the second sentence the following: “It shall be unlawful for any person to knowingly or intentionally purchase at retail during a 30 day period more than 9 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in a scheduled listed chemical product, except that, of such 9 grams, not more than 7.5 grams may be imported by means of shipping through any private or commercial carrier or the Postal Service.”.

(2) *EFFECTIVE DATE.*—The amendment made by paragraph (1) applies on and after the expiration of the 30-day period beginning on the date of the enactment of this Act.

(f) *ENFORCEMENT OF REQUIREMENTS FOR RETAIL SALES.*—

(1) *CIVIL AND CRIMINAL PENALTIES.*—

(A) *IN GENERAL.*—Section 402(a) of the Controlled Substances Act (21 U.S.C. 842(a)) is amended—

(i) in paragraph (10), by striking “or” after the semicolon;

(ii) in paragraph (11), by striking the period at the end and inserting a semicolon; and

(iii) by inserting after paragraph (11) the following paragraphs:

“(12) who is a regulated seller, or a distributor required to submit reports under subsection (b)(3) of section 310—

“(A) to sell at retail a scheduled listed chemical product in violation of paragraph (1) of subsection (d) of such section, knowing at the time of the transaction involved (independent of consulting the logbook under subsection (e)(1)(A)(iii) of such section) that the transaction is a violation; or

“(B) to knowingly or recklessly sell at retail such a product in violation of paragraph (2) of such subsection (d);

“(13) who is a regulated seller to knowingly or recklessly sell at retail a scheduled listed chemical product in violation of subsection (e) of such section; or

“(14) who is a regulated seller or an employee or agent of such seller to disclose, in violation of regulations under subparagraph (C) of section 310(e)(1), information in logbooks

under subparagraph (A)(iii) of such section, or to refuse to provide such a logbook to Federal, State, or local law enforcement authorities.”

(B) **CONFORMING AMENDMENT.**—Section 401(f)(1) of the Controlled Substances Act (21 U.S.C. 841(f)(1)) is amended by inserting after “shall” the following: “, except to the extent that paragraph (12), (13), or (14) of section 402(a) applies,”.

(2) **AUTHORITY TO PROHIBIT SALES BY VIOLATORS.**—Section 402(c) of the Controlled Substances Act (21 U.S.C. 842(c)) is amended by adding at the end the following paragraph:

“(4)(A) If a regulated seller, or a distributor required to submit reports under section 310(b)(3), violates paragraph (12) of subsection (a) of this section, or if a regulated seller violates paragraph (13) of such subsection, the Attorney General may by order prohibit such seller or distributor (as the case may be) from selling any scheduled listed chemical product. Any sale of such a product in violation of such an order is subject to the same penalties as apply under paragraph (2).

“(B) An order under subparagraph (A) may be imposed only through the same procedures as apply under section 304(c) for an order to show cause.”

(g) **PRESERVATION OF STATE AUTHORITY TO REGULATE SCHEDULED LISTED CHEMICALS.**—This section and the amendments made by this section may not be construed as having any legal effect on section 708 of the Controlled Substances Act as applied to the regulation of scheduled listed chemicals (as defined in section 102(45) of such Act).

#### **SEC. 712. REGULATED TRANSACTIONS.**

(a) **CONFORMING AMENDMENTS REGARDING SCHEDULED LISTED CHEMICALS.**—The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended—

(1) in section 102—

(A) in paragraph (39)(A)—

(i) by amending clause (iv) to read as follows:

“(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act, subject to clause (v), unless—

“(I) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

“(II) the quantity of the listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General;”;

(ii) by redesignating clause (v) as clause (vi); and

(iii) by inserting after clause (iv) the following clause:

“(v) any transaction in a scheduled listed chemical product that is a sale at retail by a regulated seller or a distributor required to submit reports under section 310(b)(3); or”; and

(B) by striking the paragraph (45) that relates to the term “ordinary over-the-counter pseudoephedrine or phenylpropanolamine product”;

(2) in section 204, by striking subsection (e); and

(3) in section 303(h), in the second sentence, by striking “section 102(39)(A)(iv)” and inserting “clause (iv) or (v) of section 102(39)(A)”.

(b) PUBLIC LAW 104–237.—Section 401 of the Comprehensive Methamphetamine Control Act of 1996 (21 U.S.C. 802 note) (Public Law 104–237) is amended by striking subsections (d), (e), and (f).

**SEC. 713. AUTHORITY TO ESTABLISH PRODUCTION QUOTAS.**

Section 306 of the Controlled Substances Act (21 U.S.C. 826) is amended—

(1) in subsection (a), by inserting “and for ephedrine, pseudoephedrine, and phenylpropanolamine” after “for each basic class of controlled substance in schedules I and II”;

(2) in subsection (b), by inserting “or for ephedrine, pseudoephedrine, or phenylpropanolamine” after “for each basic class of controlled substance in schedule I or II”;

(3) in subsection (c), in the first sentence, by inserting “and for ephedrine, pseudoephedrine, and phenylpropanolamine” after “for the basic classes of controlled substances in schedules I and II”;

(4) in subsection (d), by inserting “or ephedrine, pseudoephedrine, or phenylpropanolamine” after “that basic class of controlled substance”;

(5) in subsection (e), by inserting “or for ephedrine, pseudoephedrine, or phenylpropanolamine” after “for a basic class of controlled substance in schedule I or II”;

(6) in subsection (f)—

(A) by inserting “or ephedrine, pseudoephedrine, or phenylpropanolamine” after “controlled substances in schedules I and II”;

(B) by inserting “or of ephedrine, pseudoephedrine, or phenylpropanolamine” after “the manufacture of a controlled substance”; and

(C) by inserting “or chemicals” after “such incidentally produced substances”; and

(7) by adding at the end the following subsection:

“(g) Each reference in this section to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.”

**SEC. 714. PENALTIES; AUTHORITY FOR MANUFACTURING; QUOTA.**

Section 402(b) of the Controlled Substances Act (21 U.S.C. 842(b)) is amended by inserting after “manufacture a controlled substance in schedule I or II” the following: “, or ephedrine, pseudoephedrine, or phenylpropanolamine or any of the salts, optical isomers, or salts of optical isomers of such chemical,”

**SEC. 715. RESTRICTIONS ON IMPORTATION; AUTHORITY TO PERMIT IMPORTS FOR MEDICAL, SCIENTIFIC, OR OTHER LEGITIMATE PURPOSES.**

Section 1002 of the Controlled Substances Import and Export Act (21 U.S.C. 952) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting “or ephedrine, pseudoephedrine, or phenylpropanolamine,” after “schedule III, IV, or V of title II,”; and

(B) in paragraph (1), by inserting “, and of ephedrine, pseudoephedrine, and phenylpropanolamine, ” after “coca leaves”; and

(2) by adding at the end the following subsections:

“(d)(1) With respect to a registrant under section 1008 who is authorized under subsection (a)(1) to import ephedrine, pseudoephedrine, or phenylpropanolamine, at any time during the year the registrant may apply for an increase in the amount of such chemical that the registrant is authorized to import, and the Attorney General may approve the application if the Attorney General determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical.

“(2) With respect to the application under paragraph (1):

“(A) Not later than 60 days after receiving the application, the Attorney General shall approve or deny the application.

“(B) In approving the application, the Attorney General shall specify the period of time for which the approval is in effect, or shall provide that the approval is effective until the registrant involved is notified in writing by the Attorney General that the approval is terminated.

“(C) If the Attorney General does not approve or deny the application before the expiration of the 60-day period under subparagraph (A), the application is deemed to be approved, and such approval remains in effect until the Attorney General notifies the registrant in writing that the approval is terminated.

“(e) Each reference in this section to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.”.

**SEC. 716. NOTICE OF IMPORTATION OR EXPORTATION; APPROVAL OF SALE OR TRANSFER BY IMPORTER OR EXPORTER.**

(a) IN GENERAL.—Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971) is amended—

(1) in subsection (b)(1), in the first sentence, by striking “or to an importation by a regular importer” and inserting “or to a transaction that is an importation by a regular importer”;

(2) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(3) by inserting after subsection (c) the following subsection:

“(d)(1)(A) Information provided in a notice under subsection (a) or (b) shall include the name of the person to whom the importer or exporter involved intends to transfer the listed chemical involved, and the quantity of such chemical to be transferred.

“(B) In the case of a notice under subsection (b) submitted by a regular importer, if the transferee identified in the notice is not a regular customer, such importer may not transfer the listed chemical until after the expiration of the 15-day period beginning on the date on which the notice is submitted to the Attorney General.

“(C) After a notice under subsection (a) or (b) is submitted to the Attorney General, if circumstances change and the importer or

exporter will not be transferring the listed chemical to the transferee identified in the notice, or will be transferring a greater quantity of the chemical than specified in the notice, the importer or exporter shall update the notice to identify the most recent prospective transferee or the most recent quantity or both (as the case may be) and may not transfer the listed chemical until after the expiration of the 15-day period beginning on the date on which the update is submitted to the Attorney General, except that such 15-day restriction does not apply if the prospective transferee identified in the update is a regular customer. The preceding sentence applies with respect to changing circumstances regarding a transferee or quantity identified in an update to the same extent and in the same manner as such sentence applies with respect to changing circumstances regarding a transferee or quantity identified in the original notice under subsection (a) or (b).

“(D) In the case of a transfer of a listed chemical that is subject to a 15-day restriction under subparagraph (B) or (C), the transferee involved shall, upon the expiration of the 15-day period, be considered to qualify as a regular customer, unless the Attorney General otherwise notifies the importer or exporter involved in writing.

“(2) With respect to a transfer of a listed chemical with which a notice or update referred to in paragraph (1) is concerned:

“(A) The Attorney General, in accordance with the same procedures as apply under subsection (c)(2)—

“(i) may order the suspension of the transfer of the listed chemical by the importer or exporter involved, except for a transfer to a regular customer, on the ground that the chemical may be diverted to the clandestine manufacture of a controlled substance (without regard to the form of the chemical that may be diverted, including the diversion of a finished drug product to be manufactured from bulk chemicals to be transferred), subject to the Attorney General ordering such suspension before the expiration of the 15-day period referred to in paragraph (1) with respect to the importation or exportation (in any case in which such a period applies); and

“(ii) may, for purposes of clause (i) and paragraph (1), disqualify a regular customer on such ground.

“(B) From and after the time when the Attorney General provides written notice of the order under subparagraph (A) (including a statement of the legal and factual basis for the order) to the importer or exporter, the importer or exporter may not carry out the transfer.

“(3) For purposes of this subsection:

“(A) The terms ‘importer’ and ‘exporter’ mean a regulated person who imports or exports a listed chemical, respectively.

“(B) The term ‘transfer’, with respect to a listed chemical, includes the sale of the chemical.

“(C) The term ‘transferee’ means a person to whom an importer or exporter transfers a listed chemical.”; and

(4) by adding at the end the following subsection:

“(g) Within 30 days after a transaction covered by this section is completed, the importer or exporter shall send the Attorney General a return declaration containing particulars of the transaction, including the date, quantity, chemical, container, name of trans-

feeres, and such other information as the Attorney General may specify in regulations. For importers, a single return declaration may include the particulars of both the importation and distribution. If the importer has not distributed all chemicals imported by the end of the initial 30-day period, the importer shall file supplemental return declarations no later than 30 days from the date of any further distribution, until the distribution or other disposition of all chemicals imported pursuant to the import notification or any update are accounted for.”

(b) CONFORMING AMENDMENTS.—

(1) CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.—The Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.) is amended—

(A) in section 1010(d)(5), by striking “section 1018(e)(2) or (3)” and inserting “paragraph (2) or (3) of section 1018(f)”; and

(B) in section 1018(c)(1), in the first sentence, by inserting before the period the following: “(without regard to the form of the chemical that may be diverted, including the diversion of a finished drug product to be manufactured from bulk chemicals to be transferred)”.

(2) CONTROLLED SUBSTANCES ACT.—Section 310(b)(3)(D)(v) of the Controlled Substances Act (21 U.S.C. 830(b)(3)(D)(v)) is amended by striking “section 1018(e)(2)” and inserting “section 1018(f)(2)”.

**SEC. 717. ENFORCEMENT OF RESTRICTIONS ON IMPORTATION AND OF REQUIREMENT OF NOTICE OF TRANSFER.**

Section 1010(d)(6) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)(6)) is amended to read as follows:

“(6) imports a listed chemical in violation of section 1002, imports or exports such a chemical in violation of section 1007 or 1018, or transfers such a chemical in violation of section 1018(d); or”.

**SEC. 718. COORDINATION WITH UNITED STATES TRADE REPRESENTATIVE.**

In implementing sections 713 through 717 and section 721 of this title, the Attorney General shall consult with the United States Trade Representative to ensure implementation complies with all applicable international treaties and obligations of the United States.

## **Subtitle B—International Regulation of Precursor Chemicals**

**SEC. 721. INFORMATION ON FOREIGN CHAIN OF DISTRIBUTION; IMPORT RESTRICTIONS REGARDING FAILURE OF DISTRIBUTORS TO COOPERATE.**

Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971), as amended by section 716(a)(4) of this title, is further amended by adding at the end the following subsection:

“(h)(1) With respect to a regulated person importing, ephedrine, pseudoephedrine, or phenylpropanolamine (referred to in this section as an ‘importer’), a notice of importation under subsection (a) or (b) shall include all information known to the importer on the

chain of distribution of such chemical from the manufacturer to the importer.

“(2) For the purpose of preventing or responding to the diversion of ephedrine, pseudoephedrine, or phenylpropanolamine for use in the illicit production of methamphetamine, the Attorney General may, in the case of any person who is a manufacturer or distributor of such chemical in the chain of distribution referred to in paragraph (1) (which person is referred to in this subsection as a ‘foreign-chain distributor’), request that such distributor provide to the Attorney General information known to the distributor on the distribution of the chemical, including sales.

“(3) If the Attorney General determines that a foreign-chain distributor is refusing to cooperate with the Attorney General in obtaining the information referred to in paragraph (2), the Attorney General may, in accordance with procedures that apply under subsection (c), issue an order prohibiting the importation of ephedrine, pseudoephedrine, or phenylpropanolamine in any case in which such distributor is part of the chain of distribution for such chemical. Not later than 60 days prior to issuing the order, the Attorney General shall publish in the Federal Register a notice of intent to issue the order. During such 60-day period, imports of the chemical with respect to such distributor may not be restricted under this paragraph.”.

**SEC. 722. REQUIREMENTS RELATING TO THE LARGEST EXPORTING AND IMPORTING COUNTRIES OF CERTAIN PRECURSOR CHEMICALS.**

(a) **REPORTING REQUIREMENTS.**—Section 489(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291h(a)) is amended by adding at the end the following new paragraph:

“(8)(A) A separate section that contains the following:

“(i) An identification of the five countries that exported the largest amount of pseudoephedrine, ephedrine, and phenylpropanolamine (including the salts, optical isomers, or salts of optical isomers of such chemicals, and also including any products or substances containing such chemicals) during the preceding calendar year.

“(ii) An identification of the five countries that imported the largest amount of the chemicals described in clause (i) during the preceding calendar year and have the highest rate of diversion of such chemicals for use in the illicit production of methamphetamine (either in that country or in another country).

“(iii) An economic analysis of the total worldwide production of the chemicals described in clause (i) as compared to the legitimate demand for such chemicals worldwide.

“(B) The identification of countries that imported the largest amount of chemicals under subparagraph (A)(ii) shall be based on the following:

“(i) An economic analysis that estimates the legitimate demand for such chemicals in such countries as compared to the actual or estimated amount of such chemicals that is imported into such countries.

“(ii) The best available data and other information regarding the production of methamphetamine in such coun-

*tries and the diversion of such chemicals for use in the production of methamphetamine.”*

(b) **ANNUAL CERTIFICATION PROCEDURES.**—Section 490(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j(a)) is amended—

(1) in paragraph (1), by striking “major illicit drug producing country or major drug-transit country” and inserting “major illicit drug producing country, major drug-transit country, or country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of this Act”; and

(2) in paragraph (2), by inserting after “(as determined under subsection (h))” the following: “or country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of this Act”.

(c) **CONFORMING AMENDMENT.**—Section 706 of the Foreign Relations Authorization Act, Fiscal Year 2003 (22 U.S.C. 2291j–1) is amended in paragraph (5) by adding at the end the following:

“(C) Nothing in this section shall affect the requirements of section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) with respect to countries identified pursuant to section clause (i) or (ii) of 489(a)(8)(A) of the Foreign Assistance Act of 1961.”

(d) **PLAN TO ADDRESS DIVERSION OF PRECURSOR CHEMICALS.**—In the case of each country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of the Foreign Assistance Act of 1961 (as added by subsection (a)) with respect to which the President has not transmitted to Congress a certification under section 490(b) of such Act (22 U.S.C. 2291j(b)), the Secretary of State, in consultation with the Attorney General, shall, not later than 180 days after the date on which the President transmits the report required by section 489(a) of such Act (22 U.S.C. 2291h(a)), submit to Congress a comprehensive plan to address the diversion of the chemicals described in section 489(a)(8)(A)(i) of such Act to the illicit production of methamphetamine in such country or in another country, including the establishment, expansion, and enhancement of regulatory, law enforcement, and other investigative efforts to prevent such diversion.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary of State to carry out this section \$1,000,000 for each of the fiscal years 2006 and 2007.

**SEC. 723. PREVENTION OF SMUGGLING OF METHAMPHETAMINE INTO THE UNITED STATES FROM MEXICO.**

(a) **IN GENERAL.**—The Secretary of State, acting through the Assistant Secretary of the Bureau for International Narcotics and Law Enforcement Affairs, shall take such actions as are necessary to prevent the smuggling of methamphetamine into the United States from Mexico.

(b) **SPECIFIC ACTIONS.**—In carrying out subsection (a), the Secretary shall—

(1) improve bilateral efforts at the United States-Mexico border to prevent the smuggling of methamphetamine into the United States from Mexico;

(2) seek to work with Mexican law enforcement authorities to improve the ability of such authorities to combat the production and trafficking of methamphetamine, including by providing equipment and technical assistance, as appropriate; and

(3) encourage the Government of Mexico to take immediate action to reduce the diversion of pseudoephedrine by drug traf-

ficking organizations for the production and trafficking of methamphetamine.

(c) *REPORT.*—Not later than one year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to the appropriate congressional committees a report on the implementation of this section for the prior year.

(d) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Secretary to carry out this section \$4,000,000 for each of the fiscal years 2006 and 2007.

### **Subtitle C—Enhanced Criminal Penalties for Methamphetamine Production and Trafficking**

#### **SEC. 731. SMUGGLING METHAMPHETAMINE OR METHAMPHETAMINE PRECURSOR CHEMICALS INTO THE UNITED STATES WHILE USING FACILITATED ENTRY PROGRAMS.**

(a) *ENHANCED PRISON SENTENCE.*—The sentence of imprisonment imposed on a person convicted of an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), involving methamphetamine or any listed chemical that is defined in section 102(33) of the Controlled Substances Act (21 U.S.C. 802(33)), shall, if the offense is committed under the circumstance described in subsection (b), be increased by a consecutive term of imprisonment of not more than 15 years.

(b) *CIRCUMSTANCES.*—For purposes of subsection (a), the circumstance described in this subsection is that the offense described in subsection (a) was committed by a person who—

(1) was enrolled in, or who was acting on behalf of any person or entity enrolled in, any dedicated commuter lane, alternative or accelerated inspection system, or other facilitated entry program administered or approved by the Federal Government for use in entering the United States; and

(2) committed the offense while entering the United States, using such lane, system, or program.

(c) *PERMANENT INELIGIBILITY.*—Any person whose term of imprisonment is increased under subsection (a) shall be permanently and irrevocably barred from being eligible for or using any lane, system, or program described in subsection (b)(1).

#### **SEC. 732. MANUFACTURING CONTROLLED SUBSTANCES ON FEDERAL PROPERTY.**

Subsection (b) of section 401 of the Controlled Substances Act (21 U.S.C. 841(b)) is amended in paragraph (5) by inserting “or manufacturing” after “cultivating”.

#### **SEC. 733. INCREASED PUNISHMENT FOR METHAMPHETAMINE KINGPINS.**

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended by adding at the end the following:

“(s) *SPECIAL PROVISION FOR METHAMPHETAMINE.*—For the purposes of subsection (b), in the case of continuing criminal enterprise involving methamphetamine or its salts, isomers, or salts of isomers, paragraph (2)(A) shall be applied by substituting ‘200’ for

'300', and paragraph (2)(B) shall be applied by substituting '\$5,000,000' for '\$10 million dollars'.

**SEC. 734. NEW CHILD-PROTECTION CRIMINAL ENHANCEMENT.**

(a) *IN GENERAL.*—The Controlled Substances Act is amended by inserting after section 419 (21 U.S.C. 860) the following:

*“CONSECUTIVE SENTENCE FOR MANUFACTURING OR DISTRIBUTING, OR POSSESSING WITH INTENT TO MANUFACTURE OR DISTRIBUTE, METHAMPHETAMINE ON PREMISES WHERE CHILDREN ARE PRESENT OR RESIDE*

*“SEC. 419a. Whoever violates section 401(a)(1) by manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine or its salts, isomers or salts of isomers on premises in which an individual who is under the age of 18 years is present or resides, shall, in addition to any other sentence imposed, be imprisoned for a period of any term of years but not more than 20 years, subject to a fine, or both.”*

(b) *CLERICAL AMENDMENT.*—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 419 the following new item:

*“Sec. 419a. Consecutive sentence for manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine on premises where children are present or reside.”*

**SEC. 735. AMENDMENTS TO CERTAIN SENTENCING COURT REPORTING REQUIREMENTS.**

Section 994(w) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting “, in a format approved and required by the Commission,” after “submits to the Commission”;

(B) in subparagraph (B)—

(i) by inserting “written” before “statement of reasons”; and

(ii) by inserting “and which shall be stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission” after “applicable guideline range”; and

(C) by adding at the end the following:

*“The information referred to in subparagraphs (A) through (F) shall be submitted by the sentencing court in a format approved and required by the Commission.”; and*

(2) in paragraph (4), by striking “may assemble or maintain in electronic form that include any” and inserting “itself may assemble or maintain in electronic form as a result of the”.

**SEC. 736. SEMIANNUAL REPORTS TO CONGRESS.**

(a) *IN GENERAL.*—The Attorney General shall, on a semiannual basis, submit to the congressional committees and organizations specified in subsection (b) reports that—

(1) describe the allocation of the resources of the Drug Enforcement Administration and the Federal Bureau of Investigation for the investigation and prosecution of alleged violations of the Controlled Substances Act involving methamphetamine; and

(2) the measures being taken to give priority in the allocation of such resources to such violations involving—

(A) persons alleged to have imported into the United States substantial quantities of methamphetamine or scheduled listed chemicals (as defined pursuant to the amendment made by section 711(a)(1));

(B) persons alleged to have manufactured methamphetamine; and

(C) circumstances in which the violations have endangered children.

(b) CONGRESSIONAL COMMITTEES.—The congressional committees and organizations referred to in subsection (a) are—

(1) in the House of Representatives, the Committee on the Judiciary, the Committee on Energy and Commerce, and the Committee on Government Reform; and

(2) in the Senate, the Committee on the Judiciary, the Committee on Commerce, Science, and Transportation, and the Caucus on International Narcotics Control.

## **Subtitle D—Enhanced Environmental Regulation of Methamphetamine Byproducts**

### **SEC. 741. BIENNIAL REPORT TO CONGRESS ON AGENCY DESIGNATIONS OF BY-PRODUCTS OF METHAMPHETAMINE LABORATORIES AS HAZARDOUS MATERIALS.**

Section 5103 of title 49, United States Code, is amended by adding at the end the following:

“(d) BIENNIAL REPORT.—The Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Senate Committee on Commerce, Science, and Transportation a biennial report providing information on whether the Secretary has designated as hazardous materials for purposes of chapter 51 of such title all by-products of the methamphetamine-production process that are known by the Secretary to pose an unreasonable risk to health and safety or property when transported in commerce in a particular amount and form.”.

### **SEC. 742. METHAMPHETAMINE PRODUCTION REPORT.**

Section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921) is amended at the end by adding the following:

“(j) METHAMPHETAMINE PRODUCTION.—Not later than every 24 months, the Administrator shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report setting forth information collected by the Administrator from law enforcement agencies, States, and other relevant stakeholders that identifies the byproducts of the methamphetamine production process and whether the Administrator considers each of the byproducts to be a hazardous waste pursuant to this section and relevant regulations.”.

### **SEC. 743. CLEANUP COSTS.**

(a) IN GENERAL.—Section 413(q) of the Controlled Substances Act (21 U.S.C. 853(q)) is amended—

(1) in the matter preceding paragraph (1), by inserting “, the possession, or the possession with intent to distribute,” after “manufacture”; and

(2) in paragraph (2), by inserting “, or on premises or in property that the defendant owns, resides, or does business in” after “by the defendant”.

(b) SAVINGS CLAUSE.—Nothing in this section shall be interpreted or construed to amend, alter, or otherwise affect the obligations, liabilities and other responsibilities of any person under any Federal or State environmental laws.

## **Subtitle E—Additional Programs and Activities**

### **SEC. 751. IMPROVEMENTS TO DEPARTMENT OF JUSTICE DRUG COURT GRANT PROGRAM.**

Section 2951 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797u) is amended by adding at the end the following new subsection:

“(c) MANDATORY DRUG TESTING AND MANDATORY SANCTIONS.—

“(1) MANDATORY TESTING.—Grant amounts under this part may be used for a drug court only if the drug court has mandatory periodic testing as described in subsection (a)(3)(A). The Attorney General shall, by prescribing guidelines or regulations, specify standards for the timing and manner of complying with such requirements. The standards—

“(A) shall ensure that—

“(i) each participant is tested for every controlled substance that the participant has been known to abuse, and for any other controlled substance the Attorney General or the court may require; and

“(ii) the testing is accurate and practicable; and

“(B) may require approval of the drug testing regime to ensure that adequate testing occurs.

“(2) MANDATORY SANCTIONS.—The Attorney General shall, by prescribing guidelines or regulations, specify that grant amounts under this part may be used for a drug court only if the drug court imposes graduated sanctions that increase punitive measures, therapeutic measures, or both whenever a participant fails a drug test. Such sanctions and measures may include, but are not limited to, one or more of the following:

“(A) Incarceration.

“(B) Detoxification treatment.

“(C) Residential treatment.

“(D) Increased time in program.

“(E) Termination from the program.

“(F) Increased drug screening requirements.

“(G) Increased court appearances.

“(H) Increased counseling.

“(I) Increased supervision.

“(J) Electronic monitoring.

“(K) In-home restriction.

“(L) Community service.

“(M) Family counseling.

“(N) Anger management classes.”.

**SEC. 752. DRUG COURTS FUNDING.**

Section 1001(25)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 2591(25)(A)) is amended by adding at the end the following:

“(v) \$70,000,000 for fiscal year 2006.”.

**SEC. 753. FEASIBILITY STUDY ON FEDERAL DRUG COURTS.**

The Attorney General shall conduct a feasibility study on the desirability of a drug court program for Federal offenders who are addicted to controlled substances. The Attorney General lower-level, non-violate report the results of that study to Congress not later than June 30, 2006.

**SEC. 754. GRANTS TO HOT SPOT AREAS TO REDUCE AVAILABILITY OF METHAMPHETAMINE.**

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

**“PART II—CONFRONTING USE OF METHAMPHETAMINE**

**“SEC. 2996. AUTHORITY TO MAKE GRANTS TO ADDRESS PUBLIC SAFETY AND METHAMPHETAMINE MANUFACTURING, SALE, AND USE IN HOT SPOTS.**

“(a) PURPOSE AND PROGRAM AUTHORITY.—

“(1) PURPOSE.—It is the purpose of this part to assist States—

“(A) to carry out programs to address the manufacture, sale, and use of methamphetamine drugs; and

“(B) to improve the ability of State and local government institutions of to carry out such programs.

“(2) GRANT AUTHORIZATION.—The Attorney General, through the Bureau of Justice Assistance in the Office of Justice Programs may make grants to States to address the manufacture, sale, and use of methamphetamine to enhance public safety.

“(3) GRANT PROJECTS TO ADDRESS METHAMPHETAMINE MANUFACTURE SALE AND USE.—Grants made under subsection (a) may be used for programs, projects, and other activities to—

“(A) investigate, arrest and prosecute individuals violating laws related to the use, manufacture, or sale of methamphetamine;

“(B) reimburse the Drug Enforcement Administration for expenses related to the cleanup of methamphetamine clandestine labs;

“(C) support State and local health department and environmental agency services deployed to address methamphetamine; and

“(D) procure equipment, technology, or support systems, or pay for resources, if the applicant for such a grant demonstrates to the satisfaction of the Attorney General that expenditures for such purposes would result in the reduction in the use, sale, and manufacture of methamphetamine.

**“SEC. 2997. FUNDING.**

*“There are authorized to be appropriated to carry out this part \$99,000,000 for each fiscal year 2006, 2007, 2008, 2009, and 2010.”.*

**SEC. 755. GRANTS FOR PROGRAMS FOR DRUG-ENDANGERED CHILDREN.**

*(a) IN GENERAL.—The Attorney General shall make grants to States for the purpose of carrying out programs to provide comprehensive services to aid children who are living in a home in which methamphetamine or other controlled substances are unlawfully manufactured, distributed, dispensed, or used.*

*(b) CERTAIN REQUIREMENTS.—The Attorney General shall ensure that the services carried out with grants under subsection (a) include the following:*

*(1) Coordination among law enforcement agencies, prosecutors, child protective services, social services, health care services, and any other services determined to be appropriate by the Attorney General to provide assistance regarding the problems of children described in subsection (a).*

*(2) Transition of children from toxic or drug-endangering environments to appropriate residential environments.*

*(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated \$20,000,000 for each of the fiscal years 2006 and 2007. Amounts appropriated under the preceding sentence shall remain available until expended.*

**SEC. 756. AUTHORITY TO AWARD COMPETITIVE GRANTS TO ADDRESS METHAMPHETAMINE USE BY PREGNANT AND PARENTING WOMEN OFFENDERS.**

*(a) PURPOSE AND PROGRAM AUTHORITY.—*

*(1) GRANT AUTHORIZATION.—The Attorney General may award competitive grants to address the use of methamphetamine among pregnant and parenting women offenders to promote public safety, public health, family permanence and well being.*

*(2) PURPOSES AND PROGRAM AUTHORITY.—Grants awarded under this section shall be used to facilitate or enhance collaboration between the criminal justice, child welfare, and State substance abuse systems in order to carry out programs to address the use of methamphetamine drugs by pregnant and parenting women offenders.*

*(b) DEFINITIONS.—In this section, the following definitions shall apply:*

*(1) CHILD WELFARE AGENCY.—The term “child welfare agency” means the State agency responsible for child and/or family services and welfare.*

*(2) CRIMINAL JUSTICE AGENCY.—The term “criminal justice agency” means an agency of the State or local government or its contracted agency that is responsible for detection, arrest, enforcement, prosecution, defense, adjudication, incarceration, probation, or parole relating to the violation of the criminal laws of that State or local government.*

*(c) APPLICATIONS.—*

*(1) IN GENERAL.—No grant may be awarded under this section unless an application has been submitted to, and approved by, the Attorney General.*

(2) *APPLICATION.*—An application for a grant under this section shall be submitted in such form, and contain such information, as the Attorney General, may prescribe by regulation or guidelines.

(3) *ELIGIBLE ENTITIES.*—The Attorney General shall make grants to States, territories, and Indian Tribes. Applicants must demonstrate extensive collaboration with the State criminal justice agency and child welfare agency in the planning and implementation of the program.

(4) *CONTENTS.*—In accordance with the regulations or guidelines established by the Attorney General in consultation with the Secretary of Health and Human Services, each application for a grant under this section shall contain a plan to expand the State's services for pregnant and parenting women offenders who are pregnant women and/or women with dependent children for the use of methamphetamine or methamphetamine and other drugs and include the following in the plan:

(A) A description of how the applicant will work jointly with the State criminal justice and child welfare agencies needs associated with the use of methamphetamine or methamphetamine and other drugs by pregnant and parenting women offenders to promote family stability and permanence.

(B) A description of the nature and the extent of the problem of methamphetamine use by pregnant and parenting women offenders.

(C) A certification that the State has involved counties and other units of local government, when appropriate, in the development, expansion, modification, operation or improvement of proposed programs to address the use, manufacture, or sale of methamphetamine.

(D) A certification that funds received under this section will be used to supplement, not supplant, other Federal, State, and local funds.

(E) A description of clinically appropriate practices and procedures to—

(i) screen and assess pregnant and parenting women offenders for addiction to methamphetamine and other drugs;

(ii) when clinically appropriate for both the women and children, provide family treatment for pregnant and parenting women offenders, with clinically appropriate services in the same location to promote family permanence and self sufficiency; and

(iii) provide for a process to enhance or ensure the abilities of the child welfare agency, criminal justice agency and State substance agency to work together to re-unite families when appropriate in the case where family treatment is not provided.

(d) *PERIOD OF GRANT.*—The grant shall be a three-year grant. Successful applicants may reapply for only one additional three-year funding cycle and the Attorney General may approve such applications.

(e) *PERFORMANCE ACCOUNTABILITY; REPORTS AND EVALUATIONS.*—

(1) *REPORTS.*—Successful applicants shall submit to the Attorney General a report on the activities carried out under the grant at the end of each fiscal year.

(2) *EVALUATIONS.*—Not later than 12 months at the end of the 3-year funding cycle under this section, the Attorney General shall submit a report to the appropriate committees of jurisdiction that summarizes the results of the evaluations conducted by recipients and recommendations for further legislative action.

(f) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to carry out this section such sums as may be necessary.

And the Senate agree to the same.

From the Committee on the Judiciary, for consideration of the House bill (except section 132) and the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER, Jr.,  
HOWARD COBLE,  
LAMAR SMITH,  
ELTON GALLEGLY,  
STEVE CHABOT,  
WILLIAM L. JENKINS,  
DANIEL LUNGREN,

From the Permanent Select Committee on Intelligence, for consideration secs. 102, 103, 106, 107, 109, and 132 of the House bill, and secs. 2, 3, 6, 7, 9, and 10 of the Senate amendment, and modifications committed to conference:

PETE HOEKSTRA,  
HEATHER WILSON,

From the Committee on Energy and Commerce, for consideration secs. 124 and 231 of the House bill, and modifications committed to conference:

CHARLIE NORWOOD,  
JOHN SHADEGG,

From the Committee on Financial Services, for consideration sec. 117 of the House bill, and modifications committed to conference:

MICHAEL G. OXLEY,  
SPENCER BACHUS,

From the Committee on Homeland Security, for consideration secs. 127–129 of the House bill, and modifications committed to conference:

PETER T. KING,  
CURT WELDON,

*Managers on the Part of the House.*

ARLEN SPECTER,  
ORRIN HATCH,  
JON KYL,  
MIKE DEWINE,  
JEFF SESSIONS,  
PAT ROBERTS,

*Managers on the Part of the Senate.*



## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3199), to extend and modify authorities needed to combat terrorism, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

### *Section 1. Short title. Table of contents*

The House receded to the Senate on the short title of the Act. The short title is the “USA PATRIOT Improvement and Reauthorization Act of 2005.”

## **TITLE I—USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT**

### *Section 101. References to, and modification of short title for, USA PATRIOT Act*

Section 101 of the conference report is identical to section 101 of the House bill and similar to section 9(d) of the Senate amendment. Section 101 states that references contained within the conference report to the USA PATRIOT Act shall be deemed a reference to Public Law No. 107–56, the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001.”

### *Section 102. USA PATRIOT Act sunset provisions*

Section 102 of the conference report adopts a 4-year sunset on sections 206 and 215 of the USA PATRIOT Act, and makes permanent the other provisions, all of which were set to expire on December 31, 2005. Sections 206 and 215 relate to Foreign Intelligence Court orders for multipoint, or “roving,” wiretaps and for business records requested under the Foreign Intelligence Surveillance Act (FISA).

*Section 103. Extension of sunset relating to individual terrorists as agents of foreign powers*

Section 103 of the conference report extends the sunset of section 6001(b) of the Intelligence Reform and Terrorism Prevention Act (IRTPA) by 4 years so the provision is set to expire on December 31, 2009. Section 6001(b) applied the USA PATRIOT Act sunset to the new definition of “Agent of a Foreign Power” under section 6001 of IRTPA. Section 6001 states that an “Agent of a foreign power” for any person other than a United States person, includes a person who “engages in international terrorism or activities in preparation thereof.” This definition reaches “lone wolf” terrorists engaged in international terrorism.

*Section 104. Section 2332b and the material support sections of Title 18, United States Code*

Section 104 of the conference report is identical to section 104 of the House bill and substantively similar to section 9(c) of the Senate amendment. This section makes section 6603 of the IRTPA permanent by repealing the sunset contained in section 6603(g) of the IRTPA. This sunset would have allowed a criminal offense, and not a law enforcement tool, to expire. Furthermore, this sunset effectively made the underlying provision unconstitutional. Section 6603 of the IRTPA amended the law to address court concerns on the constitutionality of the prohibition of providing material support to terrorists.

*Section 105. Duration of FISA surveillance of non-United States persons under section 207 of the USA PATRIOT Act*

Section 105 of the conference report is substantively similar to section 106 of the House bill and section 3 of the Senate amendment. This section further extends the maximum duration of orders for electronic surveillance and physical searches targeted against all agents of foreign powers who are not U.S. persons. Initial orders authorizing searches and electronic surveillance will be for periods of up to 120 days and renewal orders will extend for periods of up to one year. Section 105 also extends the maximum duration for both the initial and renewal orders for pen register/trap and trace surveillance to a period of one year in cases where the government certified that the information likely to be obtained is foreign intelligence information not concerning a U.S. person.

*Section 106. Access to certain business records under section 215 of the USA PATRIOT Act*

Section 106 of the conference report is a compromise between section 107 of the House bill and section 7 of the Senate amendment. This section of the conference report amends section 215 of the USA PATRIOT Act to clarify that the tangible things sought by a section 215 FISA order (“215 order”) must be “relevant” to an authorized preliminary or full investigation to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities. The provision also requires a statement of facts to be included in the application that shows there are reasonable grounds to believe the tangible things sought are relevant, and, if such facts

show reasonable grounds to believe that certain specified connections to a foreign power or an agent of a foreign power are present, the tangible things sought are presumptively relevant. Congress does not intend to prevent the FBI from obtaining tangible items that it currently can obtain under section 215.

The provision also clarifies that a recipient of a FISA section 215 production order may challenge that order, and may disclose receipt to a lawyer, other persons necessary to comply with the order, and additional persons approved by the FBI. This provision allows the FBI to request the recipient to identify the individuals to whom disclosure has been or will be made. The provision also makes clear that a judge should approve an application only “if the judge finds that the [applicable] requirements [of the section] have been met.” The provision also expressly provides for a judicial review process that authorizes a specified pool of FISA court judges to review a 215 order that has been challenged. The provision requires high-level approval, and specific congressional reporting, of requests for certain sensitive categories of records, such as library, bookstore, tax return, firearms sales, educational, and medical records. The provision requires promulgation and application of minimization procedures governing the retention and dissemination by the FBI of any tangible thing obtained under this section and requires restrictions on the use of information obtained with an order under this section.

In addition, section 106 directs the Attorney General to draft minimization procedures that apply to information obtained under a FISA “business records” order. In the application for the order, the applicant must enumerate the minimization procedures applicable to the retention and dissemination of the tangible things sought by the FBI in the application. Such enumerated procedures should meet the requirements set forth in the definition of minimization procedures found in new subsection (g) of section 501. If the court finds that the enumerated procedures fail to meet the requirements of subsection (g), the Conferees expect that the court will direct that other procedures adopted by the Attorney General be applied to the information sought, consistent with the authority of the court specified in section 501(c)(1), as amended.

Under subsection (g)(1), as amended, the Attorney General is required to adopt minimization procedures within 180 days of the enactment of this Act. Until the Attorney General complies, the Conferees expect that the requirements of subsections (b)(2)(B), (c)(1), and (h) that relate to the adoption of minimization procedures will be viewed as ineffective and, thus, not prevent the use of section 501 to acquire tangible things.

*Sec. 106A. Audit on access to certain business records for foreign intelligence purposes*

Section 106A of the conference report is a new provision. This section requires that the Department of Justice Inspector General conduct an audit on the effectiveness and use of section 215 and submit an unclassified report of the audit to the House and Senate Committees on the Judiciary and Intelligence.

*Section 107. Enhanced oversight of good-faith emergency disclosures under section 212 of the USA PATRIOT Act*

Section 107 of the conference report is virtually identical to section 4 of the Senate amendment, but includes some technical corrections to title 18 of the United States Code. Section 108 of the House bill is substantively similar. Section 107 of the conference report amends 18 U.S.C. §2702, as amended by section 212 of the USA PATRIOT Act. Section 212 allows Internet service providers to disclose voluntarily the contents of electronic communications, as well as subscriber information, in emergencies involving immediate danger of death or serious physical injury. To address concerns that this authority, in certain circumstances, is not subject to adequate congressional, judicial, or public oversight (particularly in situations where the authority is used but criminal charges do not result) the conference report requires the Attorney General to report annually to the Judiciary Committees of the House and Senate and to set forth the number of accounts subject to section 212 disclosures. The report also must summarize the basis for disclosure in certain circumstances. The Conferees believe this will strengthen oversight on the use of this authority without undermining important law enforcement prerogatives and without alerting perpetrators, while simultaneously preserving the vitality of this life-saving authority.

*Section 108. Multipoint electronic surveillance under section 206 of the USA PATRIOT Act*

Section 108 of the conference report is a compromise between section 109 of the House bill and section 2 of the Senate amendment. Section 206 of the USA PATRIOT Act enabled the use of multipoint, or “roving,” wiretaps in FISA investigations. The conference report clarifies that the FISA court must find that the possibility of the target thwarting surveillance is based on specific facts in the application. This is reflected in language contained in section 109(a) of the House bill and for which the Senate amendment did not have a comparable provision. In language derived from section 2(a) of the Senate amendment and for which the House bill had no comparable provision, the conference report also requires that the order describe the specific target in detail when authorizing a roving wiretap for a target whose identity is not known. The conference report requires that in the event the government begins directing surveillance at a new facility or place where the nature and location of each of the facilities or places was unknown at the time the surveillance order was issued, the government must notify the issuing FISA court on an ongoing basis for all multipoint surveillance authority, which addresses concerns of some that the open-ended authorization to surveil new locations could be abused. The conference report provisions provide further protections by including an extra layer of judicial review and to ensure that intelligence investigators will not abuse the multipoint authority. This approach is superior in the FISA context (where surveillance is often long-running and subject to extensive and sophisticated counter-surveillance measures) to a proximity test or ascertainment requirement, both of which could potentially endanger an investigation or field agents conducting the investigation.

*Section 109. Enhanced congressional oversight*

Section 109 of the conference report is similar to section 10 of the Senate amendment, but with an additional new provision. Section 109 of the conference report is identical to section 10 of the Senate amendment and requires: (1) the FISA court to publish its rules; and (2) reporting to the House and Senate Judiciary Committees of the use of the emergency employments of electronic surveillance, physical searches, and pen register and trap and trace devices. Section 109(c) of the conference report also requires that the Secretary of the Department of Homeland Security submit a written report providing a description of internal affairs operations at U.S. Citizenship & Immigration Services to the Judiciary Committees of the House and the Senate.

*Section 110. Attacks against railroad carriers and mass transportation systems*

The conference report is substantively similar to sections 110, 115, and 304 of the House bill. There are no equivalent provisions in the Senate amendment, but section 110 of the conference report is substantively similar to S. 629, the “Railroad Carriers and Mass Transportation Act of 2005,” which was reported favorably by the Senate Judiciary Committee. Section 110 of the conference report amends 18 U.S.C. § 1993, which was created by the USA PATRIOT Act to protect against terrorist attacks and other acts of violence against mass transportation systems. However, current law does not cover the planning for such attacks. The conference report closes this loophole to make it a crime to “surveil, photograph, videotape, diagram, or to otherwise collect information with the intent to plan or assist in planning any of the acts described” in paragraphs (1)–(5) of section 1993(a). It also harmonizes section 1993 with 18 U.S.C. § 1992 (which criminalizes the “wrecking of trains”), in order to eliminate the inconsistency between the intent standard in the mass transportation statute and the intent standard in the wrecking trains statute. It also strengthens the protection of mass transportation and railroad systems by: expanding the types of railroad property and equipment that are explicitly protected by Federal law; updating the definition of “dangerous weapons” to cover box cutters and other previously unrecognized weapons; and expanding the types of prohibited attacks to include causing the release of a hazardous material, a biological agent, or toxin near the property of a railroad carrier or mass transportation system. The conference report restricts the death penalty against inchoate offenses, but retains the death penalty for aggravated offenses. The section also expands coverage of the criminal offense to include passenger vessels (as defined in 46 U.S.C. § 2101(22)).

*Section 111. Forfeiture*

Section 111 of the conference report is identical to section 111 of the House bill. There is no comparable section in the Senate amendment. The USA PATRIOT Act amended 18 U.S.C. § 981 to expressly provide that any property used to commit or facilitate the commission of, derived from, or otherwise involved in a Federal crime of terrorism (as defined in 18 U.S.C. § 2331) is subject to civil forfeiture provisions. Prior to the USA PATRIOT Act, only the “pro-

ceeds” of a crime of terrorism were subject to civil forfeiture provisions. This section extends forfeiture to include property used in or derived from “trafficking in nuclear, chemical, biological, or radiological weapons technology or material.”

*Section 112. Section 2332b(g)(5)(B) amendments relating to the definition of Federal crime of terrorism*

Section 112 of the conference report is substantively similar to section 112 of the House bill but includes an additional offense. There is no comparable provision in the Senate amendment. This section amends the current definition of “Federal crime of terrorism,” to include new predicate offenses. It also includes a clerical correction to 18 U.S.C. § 2332b(g)(S)(B).

*Section 113. Amendments to section 2516(1) of Title 18, United States Code*

Section 113 of the conference report is substantively similar to sections 113 and 122 of the House bill, but includes additions. 18 U.S.C. §§ 2510–2522 require the government, unless otherwise permitted, to obtain an order of a court before conducting electronic surveillance. The government is permitted to seek such orders only in connection with the investigation of the criminal offenses enumerated in 18 U.S.C. § 2516. The USA PATRIOT Act added new wiretap offenses related to terrorism. Section 113 adds new “wiretap predicates” under 18 U.S.C. § 2516, which relate to crimes of terrorism. Those predicates include 18 U.S.C. §§ 37 (violence at international airports); 43 (animal enterprise terrorism); 81 (arson within special maritime and territorial jurisdiction); 175b (biological agents); 832 (nuclear and weapons of mass destruction threats); 842 (explosive materials); 930 (possession of weapons in Federal facilities); 956 (conspiracy to harm persons or property overseas); 1028A (aggravated identity theft); 1114 (killing Federal employees); 1116 (killing certain foreign officials); 1993 (attacks of mass transit); 2340A (torture); 2339 (harboring terrorists); 2339D (terrorist military training); and 5324 (structuring transactions to evade reporting requirements). In addition to these sections, new predicates are added under 49 U.S.C. §§ 46504 (assault on a flight crew member with a dangerous weapon); and 46505(b)(3) or (c) (certain weapons offenses aboard an aircraft).

*Section 114. Delayed notice search warrants*

Section 114 of the conference report is a compromise between sections 114 and 121 of the House bill and section 5 of the Senate amendment. Contrary to reports; the USA PATRIOT Act did not create delayed notice search warrants, but rather codified existing case law governing delayed notices for search warrants. Delayed notice simply means that a court has expressly authorized investigators to delay temporarily notifying a subject that a search warrant has been executed (*i.e.*, a court-ordered search has occurred). The search warrant itself is the same regardless of when the subject receives notice. Thus, before a search warrant is issued, whether notice is or is not delayed, a Federal judge must find that there is probable cause to believe that a crime has been or is about to be committed and that evidence of that crime or the fruits or in-

strumentalities of that crime will be found at the location to be searched. As the Department of Justice explained in an August 29, 2005 letter (p. A-5), “Delayed notice search warrants have been available for decades and were in use long before the USA PATRIOT Act was enacted. Section 213 of the USA PATRIOT Act merely created a nationally uniform process and standard for obtaining them.”

Section 213 codified the established standard of reasonableness for delayed notice search warrants, which previously had been the cause for some to express concern about this indefinite term. Both the House bill in section 114, and the Senate amendment in section 5, placed a maximum specified limit on the length of time in which a judge could authorize law enforcement to delay notice to the subject that a search has been conducted. The House provision provided that the court maintains the discretion to delay notice for up to 180 days with extensions of up to 90 days. The Senate amendment limited the delay to “not later than 7 days after the date of its execution, or on a later date certain if the facts of the case justify a longer period of delay, with extensions of up to 90 days unless the facts justify longer.” The conference report reflects a compromise between the House and Senate provisions to define a reasonable delay as up to 30 days for an initial request, or on a later date certain if the facts justify, and extensions of up to 90 days unless the facts justify longer.

#### *Section 115. Judicial review of national security letters*

Section 115 of the conference report is substantively similar to section 116 of the House bill and section 8 of the Senate amendment. This section makes explicit that the recipient of a national security letter (NSL) may consult with an attorney and challenge the NSL in court. This section of the conference report amends NSL authority under 18 U.S.C. § 2709, 15 U.S.C. § 1681u, 15 U.S.C. § 1861v, 12 U.S.C. § 3414, and 50 U.S.C. § 436, in a similar manner to the House bill. The Senate amendment only modified 18 U.S.C. § 2709. The conference report: provides that the recipient of an NSL may petition for an order modifying or setting aside the request in the U.S. district court for the district in which that person or entity does business or resides; allows the government to move for judicial enforcement of the NSL in the event of non-compliance by recipients; and allows the court to impose sanctions for contempt of court if a recipient fails to comply with a court order to enforce an NSL.

#### *Section 116. Confidentiality of national security letters*

Section 116 of the conference report is substantively similar to section 117 of the House bill and section 8 of the Senate amendment. This section provides that upon certification by an individual authorized to issue an NSL, should the disclosure endanger any individual or national security, or interfere with diplomatic relations or a criminal or intelligence investigation, then the disclosure of the NSL is prohibited. This section allows for the disclosure to those necessary to comply with an NSL or obtain legal advice or assistance with respect to an NSL. If the recipient makes this further disclosure as authorized by law, the recipient must then notify

the person or persons of all applicable nondisclosure requirements. At the request of the Director of National Intelligence, the conference report includes language that allows the Director of the Federal Bureau of Investigation, or the designee of the Director, to request from any person making or intending to make a disclosure to comply with or to receive legal advice or legal assistance, to identify to whom such disclosure will be made. The language does not allow the FBI Director or designee of the Director to request the recipient of an NSL disclose the name of an attorney to whom such disclosure will be made. The provision, however, does allow the FBI Director or designee of the Director to make such a request for the name of an attorney to whom disclosure has already been made. The conference report clarifies that a recipient of an NSL may challenge any nondisclosure requirement in court. If a petition is filed within 1 year of issuance of an NSL, the court may modify or set aside such a nondisclosure requirement if it finds that there is no reason to believe that disclosure may harm national security; interfere with criminal, counterintelligence, or counterterrorism investigations; interfere with diplomatic relations; or endanger the life or physical safety of a person. If, upon filing the petition, a high-ranking official re-certifies that disclosure may endanger national security or interfere with diplomatic relations, the court must treat the re-certification as conclusive unless there is a showing of bad faith. If a petition is filed after a year, a specific official, within 90 days of the filing of the petition, shall either terminate the nondisclosure requirement or re-certify that nondisclosure may result in danger to the national security of the U.S.; interfere with a criminal, counterterrorism, or counterintelligence investigation; interfere with diplomatic relations; or endanger the life or physical safety of any person. In the event of re-certification, the court again may modify or set aside such a nondisclosure requirement only upon a finding of bad faith. The petitioner is barred from seeking review of the nondisclosure requirement for one year if the petition was denied, but can continue to petition every year. This provision recognizes that the Executive branch is both constitutionally and practically better suited to make national security and diplomatic relations judgments than the judiciary.

*Section 117. Violations of nondisclosure provisions of national security letters*

This section of the conference report is similar to section 118 of the House bill. There is no comparable provision in the Senate amendment. This section provides for a felony charge against an individual who was notified of an applicable nondisclosure requirement and nonetheless knowingly and with intent to obstruct an investigation or judicial proceeding, violates that nondisclosure order. The criminal penalties under 18 U.S.C. § 1510 include up to five years imprisonment, a fine, or both. Current law contains no penalties for such violations.

*Section 118. Reports on national security letters*

Section 118 of the conference report is similar to section 119 of the House bill, with some additional reporting requirements that are similar to provisions contained in the Senate amendment. This

section requires reporting to the House and Senate Judiciary Committees on all NSLs, similar to reporting that the Intelligence Committees receive. This section also requires that the Attorney General submit to Congress the annual aggregate number of requests made concerning different U.S. persons. Such reporting will permit the public to see some of the same data Congress sees in conducting its oversight responsibilities of the DOJ. Due to the manner in which this data is currently collected, Congress understands that current reporting may somewhat overstate the number of different U.S. persons about whom requests for information are made, because NSLs seeking information on a particular person may be served at different times and from different FBI field offices. In order to report a number to Congress that is as meaningful as possible, Congress anticipates that the DOJ will undertake reasonable efforts to modify its data collection. Congress, however, does not anticipate that the DOJ will undertake costly or bureaucratically difficult steps to prepare this report.

*Section 119. Enhanced oversight of national security letters*

Section 119 is a new section that requires the Inspector General of DOJ to conduct an audit of the effectiveness and the use of the NSL authority. The report will detail the specific functions and particular characteristics of the NSLs issued and comment on the necessity of this law enforcement tool. This report will be submitted to the House and Senate Committees on the Judiciary and Intelligence one year after the enactment of the conference report.

*Section 120. Definition for forfeiture provisions under section 806 of the USA PATRIOT Act*

Section 120 of the conference report is substantively similar to section 120 of the House bill. There is no comparable provision in the Senate amendment. This provision replaces the reference to the broad definition under 18 U.S.C. §2331 with the definition of a Federal crime of terrorism for asset forfeiture under 18 U.S.C. §981(a)(1)(G).

*Section 121. Penal provisions regarding trafficking in contraband cigarettes or smokeless tobacco*

Section 121 of the conference report is substantively similar to section 123 of the House bill. There is no comparable provision in the Senate amendment. This section of the conference report amends the Contraband Cigarette Trafficking Act (“CCTA,” 18 U.S.C. §§2341 et seq.), which makes it unlawful for any person knowingly to ship, possess, sell, distribute or purchase contraband cigarettes. This section amends the CCTA by: (1) extending its provisions to cover contraband smokeless tobacco; (2) reducing the number of cigarettes that trigger application of the CCTA from 60,000 to 10,000; (3) imposing reporting requirements on persons, except for tribal governments, who engage in delivery sales of more than 10,000 cigarettes or 500 single-unit cans or packages of smokeless tobacco in a single month; (4) requiring the destruction of cigarettes and smokeless tobacco seized and forfeited under the CCTA; and (5) authorizing State and local governments, and certain persons who hold Federal tobacco permits, to bring causes of

action against violators of the CCTA. It also amends section 2344(c), the contraband cigarette forfeiture provisions, by adding “contraband smokeless tobacco” to items subject to forfeiture and by removing the reference to the Internal Revenue Code, which became outdated after the enactment of the Civil Asset Forfeiture Reform Act of 2000.

*Section 122. Prohibition of narco-terrorism*

Section 122 of the conference report is substantively similar to section 124 of the House bill. There is no comparable provision in the Senate amendment. This section adds new section 1010A to Part A of the Controlled Substance Import and Export Act, (21 U.S.C. §§ 951 et seq.), making it a Federal crime to engage in drug trafficking to benefit terrorists. The conference report changes the mandatory minimum penalty from the 20 years provided in the House bill to simply twice the minimum under 21 U.S.C. § 841(b). Finally, the conference report modifies the proof requirements of the House-passed bill to clarify that a person must have knowledge that the person or organization has engaged or engages in terrorist activity or terrorism.

*Section 123. Interfering with the operation of an aircraft*

Section 123 of the conference report is substantively similar to section 125 of the House bill. There is no comparable provision in the Senate amendment. This section amends 18 U.S.C. § 32, which prohibits the destruction of aircraft or aircraft facilities, to address the increasing number of reports to the Federal Aviation Administration of the intentional aiming of lasers into airplane cockpits. The amendment makes it illegal to interfere with or disable a pilot or air navigation facility operator with the intent to endanger the safety of any person or with reckless disregard for the safety of human life.

*Section 124. Sense of Congress relating to lawful political activity*

Section 124 of the conference report is substantively similar to section 126 of the House bill. There is no comparable provision in the Senate amendment. This sense of the Congress articulates that no American citizen should be the target of a criminal investigation solely as a result of that person’s lawful political activity or membership in a non-violent political organization. During the many congressional hearings held on the PATRIOT Act, both in open and classified settings, there has been absolutely no evidence adduced that the Department of Justice or the FBI has used the powers conferred by law to investigate anyone based on his or her participation in the political process.

*Section 125. Removal of civil liability barriers that discourage the donation of fire equipment to volunteer fire companies*

Section 125 of the conference report is substantively similar to section 131 of the House bill. There is no comparable provision in the Senate amendment. This section establishes immunity from civil liability (other than for gross negligence or intentional misconduct) for anyone other than a fire equipment manufacturer who donates fire equipment to volunteer fire companies.

*Section 126. Report on data-mining activities*

Section 126 of the conference report is similar to section 132 of the House bill. There is no comparable provision in the Senate amendment. This section instructs the Attorney General to report to Congress on Department of Justice use or development of pattern-based data-mining technology.

*Section 127. Sense of Congress*

Section 127 of the conference report is substantively similar to section 133 of the House bill. There is no comparable provision in the Senate amendment. This section is a sense of the Congress that the victims of terrorist attacks should have access to the assets of terrorists.

*Section 128. PATRIOT section 214; authority for disclosure of additional information in connection with orders for pen register and trap and trace authority under FISA*

Section 128 of the conference report is substantively identical to section 6 of the Senate amendment. There is no comparable provision in the House bill. This section requires: (1) an ex-parte order for a pen register or trap and trace device for foreign intelligence purposes to direct the provider, upon the applicant's request, to disclose specified information to the Federal officer using the device; and (2) the Attorney General to fully inform the House and Senate Judiciary Committees regarding the use of such devices.

**TITLE II—TERRORIST DEATH PENALTY ENHANCEMENT**

*Section 201. Short title*

The short title is the "Terrorist Death Penalty Enhancement Act of 2005." Section 201 of the conference report is identical to section 201 of the House bill. There is no comparable provision in the Senate amendment.

**SUBTITLE A—TERRORIST PENALTIES ENHANCEMENT ACT**

*Section 211. Death penalty procedures for certain air piracy cases occurring before enactment of the Federal Death Penalty Act of 1994*

This section is the same as section 213 of the House bill, except for the addition of a severability clause. There is no comparable provision in the Senate amendment. Section 211 of the conference report provides procedures for death penalty prosecutions for air piracy crimes occurring before the 1994 Federal Death Penalty Act, provided that the government establishes the existence of one or more factors under former 49 U.S.C. §46503(c)(2), or its predecessor, and that the defendant has not established by a preponderance of the evidence the existence of any of the factors set forth in former 49 U.S.C. §46503(c)(1), or its predecessor. This section makes the 1994 procedures applicable to post-1974, and pre-1994 air piracy murder cases.

Section 211 of the conference report would permit the imposition of the death penalty upon an individual convicted of air piracy offenses resulting in death where those offenses occurred after en-

actment of the Antihijacking Act of 1974 but before the enactment of the Federal Death Penalty Act of 1994. This provision would cover a small, but important category of defendants, including those responsible for the December 1984 hijacking of Kuwait Airways flight 221 and the murder of two American United States Agency for International Development employees, William Stanford and Charles Hegna; the June 1985 hijacking of TWA flight 847 and the murder of Navy diver Robert Stethem; the November 1985 hijacking of Egyptair flight 648 and the murder of American service-woman Scarlett Rogenkamp as well as 56 other passengers; and the September 1986 hijacking of Pan Am flight 73 and the murder of American citizens Rajesh Kumar and Surendra Patel, as well as at least 19 other passengers and crew.

Section 211 is important to reaffirm the intent of Congress to have available the ultimate penalty to use against aircraft hijackers whose criminal actions result in death. In 1974, Congress enacted the Antihijacking Act, making the crime of air piracy the one and only crime under Federal law for which Congress passed comprehensive procedures, in response to *Furman v. Georgia*, 408 U.S. 238 (1972), to ensure that the death penalty could be constitutionally enforced. Over the years after the passage of the Antihijacking Act of 1974, the crime of air piracy was repeatedly cited by Members of Congress and the Executive Branch as an example of a crime for which Congress had enacted the necessary constitutional provisions to enforce the death penalty. In 1994, in an effort to make the death penalty widely available for numerous Federal offenses, and to enact uniform procedures to apply to all Federal capital offenses, Congress passed the Federal Death Penalty Act of 1994 ("FDPA"), explicitly including air piracy procedures among the list of crimes to which it applied, at the same time repealing the former death penalty procedures of the Antihijacking Act of 1974.

The problem with this legal development is that there is a perceived gap in legislative intent to maintain the option of a death penalty for those who committed air piracy resulting in death before enactment of the FDPA. On September 29, 2001, the United States obtained custody of Zaid Hassan Abd Latif Safarini, the operational leader of the deadly attempted hijacking of Pan Am flight 73, a crime which occurred on September 5, 1986, in Karachi, Pakistan, and which resulted in the death of at least 20 people, including two United States citizens, and the injury of more than 100 others. Safarini personally executed the first United States citizen and after a 16-hour stand-off, he and his fellow hijackers opened fire on approximately 380 passengers and crew on board Pan Am 73, attempting to kill all of them with grenades and assault rifles. Safarini and his co-defendants had been indicted by a grand jury in the District of Columbia in 1991, and after his capture in 2001, the prosecutors filed papers stating the government's intention to seek the death penalty against Safarini. The district court, however, ruled that the government could not seek the death penalty in this case or, by implication, in any other air piracy case from the pre-FDPA period, essentially because Congress had not made clear which procedures should apply to such a prosecution. In its ruling, the court noted that, at the time it passed the FDPA in 1994, Con-

gress did not state any intention as to whether the new capital sentencing procedures should be applied to air piracy offenses occurring before enactment of the FDPA. A further complication exists, in that there are two provisions of the Antihijacking Act of 1974 that, if taken away from pre-FDPA air piracy defendants, could pose ex post facto concerns in light of *Ring v. Arizona*, 536 U.S. 584 (2002). Safarini has since pled guilty to the charged offenses and was sentenced, pursuant to a plea agreement, to three life terms plus twenty-five years imprisonment.

Section 211 addresses the issues identified by the district court in the Safarini case by explicitly stating that Congress intends for the provisions of the FDPA to apply to this category of defendants, while also explicitly preserving for such defendants the two provisions of the Antihijacking Act to which they are arguably constitutionally entitled, concerning the statutory aggravating and mitigating circumstances set forth in the Antihijacking Act.

This provision is particularly important for several other reasons. In the absence of a death penalty that could be implemented for pre-FDPA hijacking offenses resulting in death that also occurred before the effective date of the Sentencing Guidelines on November 1, 1987, the maximum penalty available would be life imprisonment. Under the pre-Sentencing Guidelines structure, even prisoners sentenced to life imprisonment were eligible for a parole hearing after serving only ten years. While there is a split in the Circuit Courts of Appeals as to whether a sentencing judge can impose a sentence that could avert the 10-year parole hearing requirement, the current position of the Bureau of Prisons is that a prisoner is eligible for a parole hearing after serving ten years of a life sentence. Even if parole is denied on that first occasion, such prisoners are entitled to have regularly scheduled parole hearings every two years thereafter. Moreover, in addition to parole eligibility after ten years, the old sentencing and parole laws incorporated a presumption that even persons sentenced to life imprisonment would be released after no more than 30 years.

In the context of the individuals responsible for the hijacking incidents described above, most of the perpetrators were no older than in their twenties when they committed their crimes. The imposition of a pre-Guidelines sentence of life imprisonment for these defendants means that many, if not all of them, could be expected to be released from prison well within their lifetime. Given the gravity of these offenses, coupled with the longstanding Congressional intent to have a death penalty available for the offense of air piracy resulting in death, such a result would be at odds with the clear directive of Congress.

Section 211 includes a severability clause that would establish that if any provision of the Act or the application thereof to any person or circumstance is held invalid by a court of law, the remainder of Section 211 and the application of such provision to other persons or circumstances shall not be affected by that declaration of invalidity. The inclusion of this severability clause means that the unaffected portions of the law would remain operable.

*Section 212. Postrelease supervision of terrorists*

This section is substantively similar to section 215 of the House bill. There is no comparable provision in the Senate amendment. Section 212 of the conference report expands the scope of the individuals covered by the post-release supervision provisions for terrorists.

## SUBTITLE B—FEDERAL DEATH PENALTY PROCEDURES

*Section 221. Elimination of procedures applicable only to certain Controlled Substances Act cases*

This section retains a portion of section 231 of the House bill. There is no comparable provision in the Senate amendment. The conference report eliminates duplicative death procedures under title 21 of the United States Code, and consolidates procedures governing all Federal death penalty prosecutions in existing title 18 of the United States Code, thereby eliminating confusing requirements that trial courts provide two separate sets of jury instructions in certain Federal death penalty prosecutions.

*Section 222. Counsel for financially unable defendants*

Section 222 of the conference report is a new provision. This section transfers existing statutes from the death penalty procedures contained in title 21 of the United States Code to the death penalty procedures in title 18 of the United States Code. This section requires that any death-penalty eligible defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services will be entitled to the appointment of one or more attorneys and the furnishing of such other services.

**TITLE III—REDUCING CRIME AND TERRORISM AT AMERICA'S SEAPORTS***Section 301. Short title*

This section designates the short title as the “Reducing Crime and Terrorism at America’s Seaports Act of 2005.” Section 301 of the conference report is identical to section 301 of the House bill. There is no comparable provision in the Senate amendment, but this section is similar to S. 378, the “Reducing Crime and Terrorism at America’s Seaports Act of 2005,” which was reported favorably by the Senate Committee on the Judiciary on April 21, 2005.

*Section 302. Entry by false pretenses to any seaport*

Section 302 of the conference report is substantively similar to section 302 of the House bill and the parallel section in S. 378. There is no comparable provision in the Senate amendment. According to the Report of the Interagency Commission on Crime and Security at U.S. Seaports (hereinafter “Interagency Commission Report”), “[c]ontrol of access to the seaport or sensitive areas within the seaport is often lacking.” Such unauthorized access is especially problematic, because inappropriate controls may result in the theft of cargo and, more dangerously, undetected admission of ter-

rorists. In addition to establishing appropriate physical, procedural, and personnel security for seaports, it is important that U.S. criminal law adequately reflect the seriousness of the offense. This section clarifies that 18 U.S.C. § 1036 (fraudulent access to transport facilities) includes seaports and waterfronts within its scope, and increases the penalties for violating these provisions from a maximum of 5 years to 10 years.

*Section 303. Criminal sanctions for failure to heave to, obstruction of boarding, or providing false information*

Section 303 of the conference report is substantively similar to section 303 of the House bill and the parallel section in S. 378. A core function of the United States Coast Guard is law enforcement at sea, especially in the aftermath of the tragic events of September 11, 2001. While the Coast Guard has authority to use whatever force is reasonably necessary to require a vessel to stop or be boarded, “refusal to stop,” by itself, is not currently a crime. This section amends title 18 of the United States Code to make it a crime: (1) for a vessel operator knowingly to fail to slow or stop a ship once ordered to do so by a Federal law enforcement officer; (2) for any person on board a vessel to impede boarding or other law enforcement action authorized by Federal law; or (3) for any person on board a vessel to provide false information to a Federal law enforcement officer. Any violation of this section will be punishable by a fine and/or imprisonment for a maximum term of 5 years.

*Section 304. Criminal sanctions for violence against maritime navigation, placement of destructive devices*

Section 304 of the conference report is substantively similar to section 305 of the House bill, and excludes the malicious dumping provisions contained in S. 378. The Coast Guard maintains over 50,000 navigational aids on more than 25,000 miles of waterways. These aids, which are relied upon by all commercial, military, and recreational mariners, are essential for safe navigation and, therefore, are inviting targets for terrorists. To deter any such intentional interference, this section amends 18 U.S.C. § 2280(a) (violence against maritime navigation) to make it a crime to intentionally damage or tamper with any maritime navigational aid maintained by the Coast Guard or under its authority, if such act endangers the safe navigation of a ship. In addition, this section amends title 18 of the United States Code to make it a crime to knowingly place in waters any device that is likely to damage a vessel or its cargo, interfere with a vessel’s safe navigation, or interfere with maritime commerce. Any violation of this provision will be punishable by a fine and/or a maximum term of imprisonment for life, and if death results, an offense could be punishable by a sentence of death.

*Section 305. Transportation of dangerous materials and terrorists*

Section 305 of the conference report is substantively similar to section 306 of the House bill and the parallel provision in S. 378, but adopts the intent requirements as specified in S. 378. The section makes it a crime to knowingly and intentionally transport aboard any vessel an explosive, biological agent, chemical weapon,

or radioactive or nuclear materials, knowing that the item is intended to be used to commit a terrorist act. Any violation of this provision will be punishable by a fine and a maximum prison term of life and, if death results, the offense could be punished by a sentence of death.

*Section 306. Destruction of, or interference with, vessels or maritime facilities*

Section 306 of the conference report is substantively similar to section 307 of the House bill and the parallel provision in S. 378. This section makes it a crime to: (1) damage or destroy a vessel or its parts, a maritime facility, or any apparatus used to store, load or unload cargo and passengers; (2) perform an act of violence against or incapacitate any individual on a vessel, or at or near a facility; or (3) knowingly communicate false information that endangers the safety of a vessel. Any violation of this section (including attempts and conspiracies) will be punished by a fine and/or imprisonment for a maximum of 20 years; if death results, the offense could be punished by a sentence of death. If an individual threatens to carry out the above-described offense, and has the apparent will and determination to carry out the threat, that threat is punishable by a fine and/or imprisonment for a maximum of 5 years. The offender also will be liable for all costs incurred as a result of the threat. This section also subjects any individual who knowingly conveys false information about the offenses described above (or other named offenses) to a civil penalty up to \$5,000. In addition, knowingly conveying false information concerning an attempted violation of this section or of chapter 11 of title 18 will be punishable by a maximum of 5 years imprisonment. This section harmonizes the somewhat outdated maritime provisions with the existing criminal sanctions for destruction or interference with an aircraft or aircraft facilities in 18 U.S.C. §§ 32, 34, and 35.

*Section 307. Theft of interstate or foreign shipments or vessels*

This section is similar to section 308 of the House bill and the parallel provision in S. 378, except the conference report does not maintain the increased criminal penalties that were included in the House bill. The Interagency Commission Report found that certain existing statutes, regulations, and sentencing guidelines do not provide sufficient sanctions to deter criminal or civil violations related to a range of offenses, including theft of interstate or foreign shipments. In an effort to close statutory gaps and increase the criminal penalty, this section expands the scope of section 18 U.S.C. § 659 (theft of interstate or foreign shipments) to include theft of goods from additional transportation facilities or instruments, including trailers, cargo containers, and warehouses. In addition, the section increases the penalties for theft of goods from a maximum of 10 years to a maximum of 15 years imprisonment, and for amounts less than \$1000, the punishment will be increased from a maximum of 1 year to a maximum of 3 years imprisonment. The section clarifies that, under 18 U.S.C. § 659, the determination of whether goods are “moving as an interstate or foreign shipment” is made by considering the entire cargo route, regardless of any temporary stop between the point of origin and final destination.

Finally, the section requires an annual report of law enforcement activities relating to cargo theft and requires collection and reporting by the FBI of cargo theft crimes.

*Section 308. Stowaways on vessels or aircraft*

Section 308 of the conference report is similar to section 310 of the House bill. It is similar to the parallel provision in S. 378, though the conference report includes a death penalty that was not part of the Senate amendment. The section increases the maximum penalty for a violation of 18 U.S.C. § 2199 (stowaways on vessels or aircraft) from 1 year to 5 years imprisonment. If the act is committed with the intent to commit serious bodily injury and serious bodily injury occurs, it will be punishable by a fine and a maximum of 20 years imprisonment. If death results, it will be punishable by death or life imprisonment.

*Section 309. Bribery affecting port security*

This section is substantively similar to section 311 of the House bill and the parallel provision of S. 378. Section 309 of the conference report makes it a crime to knowingly, and with the intent to commit international or domestic terrorism, bribe a public official to affect port security; or to receive a bribe in return for being influenced in public duties affecting port security, knowing that such influence will be used to commit, or plan to commit, an act of terrorism. A violation of this section is punishable by a maximum term of 15 years imprisonment.

*Section 310. Penalties for smuggling goods into the United States*

Section 310 of the conference report is substantively identical to section 312 of the House bill. There is no comparable provision in the Senate amendment. This section increases the penalty for violations of 18 U.S.C. § 545 (smuggling) from imprisonment for not more than 5 years to imprisonment for not more than 20 years.

*Section 311. Smuggling goods from the United States*

Section 311 of the conference report is substantively identical to section 313 of the House bill. There is no comparable provision in the Senate amendment. This section creates a new criminal offense for illegally smuggling goods from the United States and establishes a maximum penalty of 10 years imprisonment.

#### **TITLE IV—COMBATING TERRORISM FINANCING**

*Section 401. Short title*

The short title is “Combating Terrorism Financing Act of 2005.” Section 401 of the conference report is identical to section 401 of the House bill. There is no comparable provision in the Senate amendment.

*Section 402. Increased penalties for terrorism financing*

Section 402 of the conference report is substantively similar to section 402 of the House bill. There is no comparable provision in the Senate amendment. Currently, penalties for violating the International Emergency Economic Powers Act (IEEPA) are not com-

mensurate with terrorist financing violations. This section amends section 206 of IEEPA (50 U.S.C. § 1705) to increase the civil penalty from \$10,000 to \$50,000 per violation and to increase the criminal penalty from 10 years imprisonment to 20 years imprisonment with the maximum criminal fine remaining the same.

*Section 403. Terrorism-related specified activities for money laundering*

Section 403 of the conference report is substantively similar to section 403 of the House bill. There is no comparable provision in the Senate amendment. Under current law, a number of activities that terrorist financiers undertake are not predicates for purposes of the Federal money laundering statute, 18 U.S.C. § 1956. Key among those activities is operating an illegal money transmitting business, including “hawala” networks, which terrorists and their sympathizers often use to transfer funds to terrorist organizations abroad. This section adds three terrorism-related provisions to the list of specified unlawful activities that serve as predicates for the money laundering statute. Subsection(a) adds as a RICO predicate the offense in 18 U.S.C. § 1960 (relating to illegal money transmitting businesses), which has the effect of making this offense a money laundering predicate through the cross-reference in 18 U.S.C. § 1956(c)(7)(A). Subsection(b) directly adds as money laundering predicates the new terrorist-financing offense in 18 U.S.C. § 2339C.

*Sec. 404. Assets of persons committing terrorist acts against foreign countries or international organizations*

Section 404 of the conference report is substantively similar to section 404 of the House bill. There is no comparable provision in the Senate amendment. The USA PATRIOT Act enacted a new forfeiture provision codified at 18 U.S.C. § 981(a)(1)(G) pertaining to the assets of any person planning or perpetrating an act of terrorism against the United States. Section 404 of the conference report adds a parallel provision pertaining to the assets of any person planning or perpetrating an act of terrorism against a foreign state or international organization. Where the property sought for forfeiture is located outside the United States, an act in furtherance of planning or perpetrating the terrorist act must have occurred within the jurisdiction of the United States.

*Sec. 405. Money laundering through hawalas*

Section 405 of the conference report is substantively similar to section 405 of the House bill. There is no comparable provision in the Senate amendment. This section outlaws any “dependent transactions” relating to a money laundering transaction. Terrorist financing and money laundering can be mutually exclusive, but many times they go hand-in-hand. As reported in the National Money Laundering Strategy (NMLS), “both depend on the lack of transparency and vigilance in the financial system. Money laundering requires the existence of an underlying crime, while terrorist financing does not. Methods for raising funds to support terrorist activities may be legal or illegal. Also, the objective of money laundering investigations is prosecution and forfeiture. Terrorist fi-

nancing investigations share these objectives; however, the ultimate goal is to identify, disrupt, and cut off the flow of funds to terrorists, whether or not the investigation results in prosecutions.”

Many steps have been taken by Congress, law enforcement, and the private sector to address the issue of terrorist financing. The USA PATRIOT Act codified money laundering statutes and provided authority improving the flow of financial information regarding terrorist financing. The Bank Secrecy Act has been amended to require financial institutions to report suspicious activities. Enforcement and enhanced regulations make it more difficult for terrorist organizations to compromise U.S. financial institutions. However, these terrorists continue to seek the path of least resistance, utilizing alternative financing systems and foreign banking systems that lack sufficient standards and regulations.

Alternative remittance systems are utilized by terrorists to move and launder large amounts of money around the globe quickly and secretly. These remittance systems, also referred to as “hawala” networks, are used throughout the world, including the Middle East, Europe, North America and South Asia. These systems are desirable to criminals and non-criminals alike because of the anonymity, low cost, efficiency, and access to underdeveloped regions. The United States has taken steps to combat the “hawala” networks by requiring all money transmitters, informal or formal, to register as money services businesses.

Under current Federal law, a financial transaction constitutes a money laundering offense only if the funds involved in the transaction represent the proceeds of some criminal offense. See 18 U.S.C. § 1956(a)(1) (“represents the proceeds of some form of unlawful activity”); and 18 U.S.C. § 1957(f)(2) (“property constituting, or derived from, proceeds obtained from a criminal offense”). There is some uncertainty, however, as to whether the “proceeds element” is satisfied with regard to each transaction in a money laundering scheme that involves two or more transactions conducted in parallel, only one of which directly makes use of the proceeds from unlawful activity. For example, consider the following transaction: A sends drug proceeds to B, who deposits the money in Bank Account 1. Simultaneously or subsequently, B takes an equal amount of money from Bank Account 2 and sends it to A, or to a person designated by A. The first transaction from A to B clearly satisfies the proceeds element of the money laundering statute, but there is some question as to whether the second transaction—the one that involves only funds withdrawn from Bank Account 2 does so as well. The question has become increasingly important because such parallel transactions are the technique used to launder money through the Black Market Peso Exchange and “hawala” network. Section 405 of the conference report is intended to remove all uncertainty on this point by providing that all constituent parts of a set of parallel or dependent transactions involve criminal proceeds if one such transaction does so. The conference report modifies the hawala provision to require that it be part of plan or arrangement.

*Sec 406. Technical and conforming amendments relating to the USA PATRIOT Act*

Section 406 of the conference report is substantively similar to section 406 of the House bill. There is no comparable provision in the Senate amendment. This section makes a number of corrections relating to provisions of the USA PATRIOT Act, mostly affecting money laundering or asset forfeiture. While essentially technical in nature, these corrections are critical because typographical and other errors in the USA PATRIOT Act provisions are preventing prosecutors from fully utilizing that Act's tools. For example, certain new forfeiture authorities enacted by that Act refer to a non-existent statute, 31 U.S.C. §5333, where 31 U.S.C. §5331 is intended.

Subsection (a) makes technical corrections to a number of provisions in the USA PATRIOT Act. Subsection (b) codifies section 316(a)–(c) of that Act as 18 U.S.C. §987. Subsection (c) adds explicit language covering conspiracies to carry out two offenses likely to be committed by terrorists (18 U.S.C. §§33(a) and 1366), thereby conforming these provisions to various crimes modified by section 811 of the USA PATRIOT Act, which added conspiracy language to other terrorism offense.

*Section 407. Cross reference correction*

Section 407 of the conference report is substantively identical to section 408 of the House bill. There is no comparable provision in the Senate amendment. This section corrects a cross-reference, replacing the “National Intelligence Reform Act of 2004” with the correct title, the “Intelligence Reform and Terrorism Prevention Act of 2004.”

*Section 408. Amendment to amendatory language*

Section 408 of the conference report is substantively identical to section 409 of the House bill. There is no comparable provision in the Senate amendment. This section amends an incorrect citation.

*Section 409. Designation of additional money laundering predicate*

Section 409 of the conference report is substantively identical to section 410 of the House bill. There is no comparable provision in the Senate amendment. This section adds 18 U.S.C. §2339D (relating to receiving military-type training from a foreign terrorist organization) as a money laundering predicate.

## **TITLE V—MISCELLANEOUS**

*Section 501. Residence of United States Attorneys and Assistant United States Attorneys*

Section 501 is a new section and addresses an unintentional effect of the residency requirement for United States Attorneys and Assistant United States Attorneys. Section 501 of the conference report provides that the Attorney General can order that residency requirements be waived when a United States Attorney or Assistant United States Attorney is assigned dual or additional respon-

sibilities. This provision will enable activities such as participation by United States Attorneys in legal activities in Iraq.

*Section 502. Interim appointment of United States Attorneys*

Section 502 is a new section and addresses an inconsistency in the appointment process of United States Attorneys.

*Section 503. Secretary of Homeland Security in Presidential line of succession*

Section 503 of the conference report is a new section and fills a gap in the Presidential line of succession by including the Secretary of Homeland Security.

*Section 504. Bureau of Alcohol, Tobacco, and Firearms to the Department of Justice*

Section 504 of the conference report is a new section. This provision modifies the appointment procedure for the Director of the Bureau of Alcohol, Tobacco, and Firearms by providing that the President, with the advice and consent of the Senate, shall appoint the Director.

*Section 505. Qualifications of United States Marshals*

Section 505 of the conference report is a new section. This section clarifies the qualifications individuals should have before joining the United States Marshals.

*Section 506. Department of Justice intelligence matters*

Section 506 is a new section that establishes a National Security Division (NSD) within the DOJ, headed by an Assistant Attorney General for National Security (AAGNS). This section is consistent with a recommendation by the WMD Commission that the “Department of Justice’s primary national security elements—the Office of Intelligence Policy and Review, and the Counterterrorism and Counterespionage sections—should be placed under a new Assistant Attorney General for National Security.” A version of this section was included in S. 1803, the “Intelligence Reauthorization bill for fiscal year 2006,” which was reported favorably by the Senate Select Committee on Intelligence on September 29, 2005.

*Section 507. Review by Attorney General*

Section 507 is a new section. It modifies the process by which States can opt in to the expedited habeas procedures for capital cases under chapter 154 of title 28 of the United States Code by shifting responsibility to the Attorney General for certifying when a State has qualified. This section also allows for *de novo* review in the U.S. Court of Appeals for the District of Columbia Circuit of the Attorney General’s certification. It relaxes the time constraints imposed on judges for deciding habeas cases under chapter 154. This section also clarifies when a habeas proceeding is ‘pending’ for purposes of 28 U.S.C. 2251, which controls the circumstances under which a federal court hearing a habeas petition may stay a State court action. Overruling *McFarland v. Scott*, 512 U.S. 849 (1994), this section provides that a habeas proceeding is not ‘pending’ until the habeas application itself is filed. For pris-

oners who have applied for counsel pursuant to 18 U.S.C. 3599(a)(2), there is a limited exception allowing the court to stay execution of a death sentence until after the attorney has been appointed or the application withdrawn or denied.

## **TITLE VI—SECRET SERVICE**

### *Section 601. Short title*

The short title is “Secret Service Authorization and Technical Modification Act of 2005.” Section 601 of the conference report is new.

### *Section 602. Interference with national special security events*

Section 602 of the conference report is a new section. 18 U.S.C. §1752 authorizes the Secret Service to charge individuals who breach established security perimeters or engage in other disruptive or potentially dangerous conduct at National Special Security Events (NSSEs) if a Secret Service protectee is attending the designated event. Section 602 of the conference report expands 18 U.S.C. §1752 to criminalize such security breaches at NSSEs that occur when the Secret Service protectee is not in attendance. Additionally, it doubles the statutory penalties (from 6 months to 1 year) for violations of §1752, to make the penalty consistent with the prescribed penalty under 18 U.S.C. §3056(d) (interference with Secret Service law enforcement personnel generally). The conference report makes punishable by up to 10 years the thwarting of security procedures by individuals in possession of dangerous or deadly weapons.

### *Section 603. False credentials to national special security events*

Section 603 of the conference report is a new section. This section amends 18 U.S.C. §1028 to make it a Federal crime to knowingly produce, possess, or transfer a false identification document that could be used to gain unlawful and unauthorized access to any restricted area of a building or grounds in conjunction with a NSSE. Such actions were a problem during the 2002 Winter Olympics, and the conference report will allow for Federal prosecution against such criminal violations at future NSSEs.

### *Section 604. Forensic and investigative support of missing and exploited children cases*

Section 604 of the conference report is a new section. On April 30, 2003, President Bush signed into law the Child Abduction Prevention Act (Pub. Law No. 108–21), which authorizes the Secret Service to provide, upon request, forensic and investigative assistance to the National Center for Missing and Exploited Children or local law enforcement agencies. The current statute states that “officers and agents” of the Secret Service may provide this assistance. Section 604 of the conference report clarifies that forensic and other civilian personnel, such as fingerprint specialists, polygraph examiners, and handwriting analysts, are authorized to provide such assistance.

*Section 605. The uniformed division, United States Secret Service*

Section 605 of the conference report is a new section. This section places all authorities of the Uniformed Division, which are currently authorized under title 3, in a newly created 18 U.S.C. § 3056A, following the core authorizing statute of the Secret Service (18 U.S.C. § 3056), thereby organizing the Uniformed Division under title 18 of the United States Code with other Federal law enforcement agencies.

*Section 606. Savings provisions*

Section 606 of the conference report is a new section. This section makes clear that the transfer of the Uniformed Division from title 3 of the United States Code to title 18 of the United States Code shall have no impact on the retirement benefits of current employees or annuitants and others necessary to reimburse State and local government organizations for support provided in connection with a visit of a foreign government official.

*Section 607. Maintenance as distinct entity*

Section 607 of the conference report is a new section. This section provides a clear operational and organizational framework for the Secret Service that maintains the Secret Service as a distinct component of the Department of Homeland Security while providing the Service with necessary operational latitude. It allows for the Director of the Secret Service to report directly to the Secretary of the Department of Homeland Security. Finally, the conference report provides that the assets, agents, officers, and other personnel of the Secret Service shall remain at all times under the command and control of the Director.

*Section 608. Exemptions from the Federal Advisory Committee Act*

Section 608 of the conference report is a new section. This section exempts the functions of the Secret Service's Electronic Crime Task Forces and the candidate protection committee from the Federal Advisory Committee Act (5 U.S.C. App. 2), which imposes a series of requirements on committees established or utilized by Federal agencies to provide advice or recommendations to any agency or Federal officer. Committees that wholly consist of full-time officers or employees of the Federal Government are not covered by the Act. If the advisory committee is subject to the Act, it must, among other requirements, open its meetings to the public, publish notice of meetings in the Federal Register, and make its minutes available to the public. There are current exemptions from these requirements, such as committees established by the CIA and the Federal Reserve. This amendment eliminates any doubt and confirms that the Act does not apply to the Electronic Crime Task Forces or the candidate protection committee.

**TITLE VII—COMBAT METHAMPHETAMINE EPIDEMIC  
ACT OF 2005**

*Section 701. Short title*

The short title is the "Combat Methamphetamine Epidemic Act of 2005." Section 701 of the conference report is a new section.

## SUBTITLE A—DOMESTIC REGULATION OF PRECURSOR CHEMICALS

*Section 711. Scheduled listed chemical products; restrictions on sale quantity, behind-the counter access, and other safeguards*

This section of the conference report is new. Section 711 reclassifies pseudoephedrine, phenylpropanolamine, and ephedrine as Schedule Listed Chemicals; reduces the Federal pertransaction sales limit for SLCs from 9 grams to 3.6 grams (the amount recently proposed by the Administration); requires behind-the-counter storage or locked cabinet storage of SLCs; requires that regulated sellers (retail distributors and pharmacies) maintain a written log of purchases; restricts monthly sales to no more than 9.0 grams per purchaser; imposes similar requirements on Internet sellers and mobile retail vendors; and requires each regulated seller to submit a certification that it is in compliance with these requirements, that its employees have been trained as to these requirements, and that records relating to such training are maintained at the retailers location. Such certifications are to be made available by the Attorney General to State and local law enforcement.

*Section 712. Regulated transactions*

This section of the conference report is new and repeals the Federal “blister pack” exemption, and clarifies the law to include derivatives of each of these chemicals. It makes conforming amendments to the current law, to accommodate the new sales restrictions, and makes another technical correction to make it clear that these sales limitations apply to drug combinations containing derivatives of pseudoephedrine, ephedrine, or phenylpropanolamine.

*Section 713. Authority to establish production quotas*

This section of the conference report is new and extends the Attorney General’s existing authority to set production quotas for certain controlled substances (see 21 U.S.C. §826) to pseudoephedrine, ephedrine, and phenylpropanolamine. Currently, domestic production of these chemicals is not very high, as most of our country’s supply is imported. With the adoption of the import quotas in section 715 of this Act (see below), however, the Attorney General would require corresponding authority within the U.S. if domestic production were to increase. Current law (as amended) would allow manufacturers to apply for increases in their production quotas (see 21 U.S.C. § 826(e)).

*Section 714. Penalties; authority for manufacturing; quota*

This section of the conference report is new and expands the existing penalty for illegal production beyond established quotas (see 21 U.S.C. §842(b)) to take into account the Attorney General’s new authority to set quotas for methamphetamine precursors.

*Section 715. Restrictions on importation; authority to permit imports for medical, scientific, or other legitimate purposes*

Section 715 of the conference report is a new provision and extends the Attorney General’s existing authority to set import quotas for controlled substances (see 21 U.S.C. §952) to

pseudoephedrine, ephedrine, and phenylpropanolamine. This section allows registered importers to apply for temporary or permanent increases in a quota to meet legitimate needs. The Attorney General is required to act on all such applications within 60 days.

*Section 716. Notice of importation or exportation; approval of sale or transfer by importer or exporter*

Section 716 of the conference report is new and closes a loophole in the current regulatory system for imports and exports of precursor chemicals for methamphetamine and other synthetic drugs. Under current law, a company that wants to import or export pseudoephedrine or another precursor chemical must either: (1) Notify the Department of Justice 15 days in advance of the import or export; or (2) be a company that has previously imported or exported a precursor and is proposing to sell the chemicals to a customer with whom the company has previously dealt. (See 21 U.S.C. §971(a), (b).)

A problem can arise, however, when the sale that the importer or exporter originally planned falls through. When this happens, the importer or exporter must quickly find a new buyer for the chemicals on what is called the “spot market”—a wholesale market. Sellers are often under pressure to find a buyer in a short amount of time, meaning that they may be tempted to entertain bids from companies without a strong record of preventing diversion. More importantly, the Department of Justice has no opportunity to review such transactions in advance and suspend them if there is a danger of diversion to illegal drug production.

This section extends the current reporting requirements—as well as the current exemption for regular importers and customers—to post-import or export transactions. If an importer or exporter were required to file an initial advance notice with the Department of Justice 15 days before the shipment of chemicals, and the originally planned sale fell through, the importer or exporter would be required to file a second advance notice with DOJ identifying the new proposed purchaser. DOJ would then have 15 days to review the new transaction and decide whether it presents enough of a risk of diversion to warrant suspension. As is the case under existing law, a suspension can be appealed through an administrative process. (See 21 U.S.C. §971(c)(2))

If, however, the new proposed purchaser qualifies as a “regular” customer under existing law, the importer or exporter would not be required to file a second advance notice. (Note that under current law, DOJ does receive a record of these transactions after the fact, see 21 U.S.C. §971(b)(1)).

*Section 717. Enforcement of restrictions on importation and of requirement of notice of transfer*

This section of the conference report is new and makes a conforming amendment to current law to extend existing penalties for illegal imports or exports to the new regulatory requirements added by sections 715 and 716 of the conference report.

*Section 718. Coordination with United States Trade Representative*

This section of the conference report is new and requires coordination by the Attorney General with the United States Trade Representative.

SUBTITLE B—INTERNATIONAL REGULATION OF PRECURSOR CHEMICALS

*Section 721. Information of foreign chain of distribution; import restrictions regarding failure of distributors to cooperate*

This section of the conference report is new and further amends the reporting requirements for importers of meth precursor chemicals, by requiring them to file with Federal regulators the detailed information about the chain of distribution of imported chemicals (from the manufacturer to the shores of the U.S.). This provision will assist U.S. law enforcement agencies to better track where meth precursors come from, and how they get to the U.S. At present, very little information exists about the international “chain of distribution” for these chemicals, hindering effective controls.

*Section 722. Requirements relating to the largest exporting and importing countries of certain precursor chemicals*

This section of the conference report is new, and was originally introduced by Rep. Mark Kennedy in the House and was adopted by the House as part of the State Department reauthorization legislation for FE 2006–07 (H.R. 2601). It mandates a separate section of the current State Department report on major drug producing and transit countries (see 22 U.S.C. 2291h), identifying the five largest exporters of major methamphetamine precursor chemicals, and the five largest importers that also have the highest rate of methamphetamine production or diversion of these chemicals to the production of methamphetamine. If any of those countries was not fully cooperating with U.S. law enforcement in implementing their responsibilities under international drug control treaties, there would be consequences for their eligibility for U.S. aid, similar to those faced by the major drug trafficking nations under current law.

The conference report adds a provision clarifying the original intent of this amendment, to apply the “fully cooperates” standard (and not the lesser standard under another, separate provision of law). The provision also includes an authorization of one million dollars for implementation. The House recently passed an amendment to the State Department’s appropriations bill for FY ’06, adding \$5 million for the State Department to implement anti-methamphetamine measures; this \$1 million could be derived from that amount.

*Section 723. Prevention of smuggling of methamphetamine into the United States from Mexico*

This section of the conference report is new and requires the State Department’s Bureau for International Narcotics and Law Enforcement Affairs (INL) to provide assistance to Mexico to prevent the production of methamphetamine in that country, and to encourage Mexico to stop the illegal diversion of methamphetamine

precursor chemicals. The conference report authorizes the use of \$4 million of the \$5 million recently approved by the House for these purposes. (The remaining funds would be available to help the State Department implement Sec. 722, as described above.)

SUBTITLE C—ENHANCED CRIMINAL PENALTIES FOR  
METHAMPHETAMINE PRODUCTION AND TRACKING

*Section 731. Smuggling methamphetamine or methamphetamine precursor chemicals into the United States while using facilitated entry programs*

This section of the conference report is new. Even as more methamphetamine is being smuggled across the border, increased legitimate international traffic has forced the bureau of Customs and Border Protection (CBP) to rely on facilitated entry programs—so-called “fastpass” systems like SENTRI (for passenger traffic on the Southwest border), FAST (for commercial truck traffic), and NEXUS (for passenger traffic on the Northern border). These systems allow pre-screened individuals to use dedicated lanes at border crossings, subject only to occasional searches to test compliance with customs and immigration laws. This section of the conference report creates an added deterrent for anyone who misuses a facilitated entry program to smuggle methamphetamine or its precursor chemicals. An additional penalty of up to 15 years imprisonment is added to the punishment for the base offense. If convicted, an individual would also be permanently barred from using a fastpass system.

*Section 732. Manufacturing controlled substances on Federal property*

This section of the conference report is new. This section clarifies that current penalties for cultivating illegal drugs on Federal property also apply to manufacturing synthetic drugs (such as methamphetamine). Methamphetamine “cooks” frequently move their operations to parks, national forests, and other public lands, causing serious environmental damage. This criminal penalty can help deter such destructive conduct.

*Section 733. Increased punishment for methamphetamine kingpins*

This provision of the conference report is new, and allows for easier application of the enhanced penalties of the “continuing criminal enterprise” section of the Controlled Substances Act (21 U.S.C. § 848). That section (commonly referred to as the “kingpin” statute) imposes life imprisonment on a leader of a drug trafficking organization convicted of trafficking in very large quantities of a drug, and receiving very large profits from that activity. This new provision reduces the threshold amount of methamphetamine (from 300 to 200 times the threshold for base violations) and profits from methamphetamine (from \$10 million to \$5 million), while still applying the life imprisonment penalty only to true “kingpins”—the ringleaders of methamphetamine trafficking organizations.

*Section 734. New child-protection criminal enhancement*

This provision of the conference report, which is new, punishes an offender who manufactures methamphetamine at a location where a child resides or is present, and imposes a consecutive sentence of up to an additional 20 years imprisonment.

*Section 735. Amendments to certain sentencing court reporting requirements*

This provision of the conference report is new and authorizes the United States Sentencing Commission to establish a form to be used by United States District Judges when imposing criminal sentences in order to facilitate data gathering and reporting by the Sentencing Commission.

*Section 736. Semiannual reports to Congress*

This provision, which is new to the conference report, requires the Attorney General to report to Congress on investigations and prosecutions relating to methamphetamine production.

SUBTITLE D—ENHANCED ENVIRONMENTAL REGULATION OF  
METHAMPHETAMINE BYPRODUCTS

*Section 741. Biennial report to Congress on agency designations of by-products on methamphetamine laboratories as hazardous materials*

This provision of the conference report is new, and requires the Department of Transportation to report to Congress every two years whether then-existing statutes and regulations cover methamphetamine by-products as hazardous materials.

*Section 742. Methamphetamine production report*

This provision of the conference report is new, and requires the Environmental Protection Agency (EPA) to report to Congress every two years on whether then-existing statutes and regulations cover methamphetamine by-products as hazardous materials.

*Section 743. Cleanup costs*

This provision of the conference report is new, and clarifies existing law imposing the obligation of restitution for environmental cleanup costs on persons involved in meth production and trafficking. The recent decision of the Eighth Circuit Court of Appeals in *United States v. Lachowski* (405 F3d 696, 8th Cir. 2005) has undermined the ability of the Federal government to seek cleanup costs from methamphetamine traffickers who are convicted only of methamphetamine possession—even when the methamphetamine lab in question was on the defendant's own property. This provision would ensure that any person convicted of a methamphetamine-related offense can be held liable for clean-up costs for methamphetamine production that took place on the defendant's own property, or in his or her place of business or residence.

## SUBTITLE E—ADDITIONAL PROGRAMS AND ACTIVITIES

*Section 751. Improvements to Department of Justice Drug Courts program*

This section of the conference report is new, and revises the Drug Court program statute to clarify the requirement for periodic testing, graduated sanctions when an offender tests positive, and a list of potential sanctions when a positive test occurs.

*Section 752. Drug Courts funding*

This provision of the conference report is new and authorizes appropriations for drug courts.

*Section 753. Feasibility study on Federal Drug Courts*

This provision of the conference report, which is new, directs the Attorney General to conduct a study on the feasibility of Federal drug courts.

*Section 754. Grants to hot spot areas to reduce availability of methamphetamine*

This section, which is new to the conference report, authorizes \$99 million for fiscal years 2006 to 2010 for grants to State and local law enforcement agencies to assist in the investigation of methamphetamine traffickers and to reimburse the DEA for assistance in cleaning up methamphetamine laboratories.

*Section 755. Grants for programs for drug-endangered children*

This section of the conference report, which is new, authorizes grants to States to assist in treatment of children who have been endangered by living at a residence where methamphetamine has been manufactured or distributed.

*Section 756. Authority to award competitive grants to address methamphetamine use by pregnant and parenting women offenders*

Section 756 is a new provision and authorizes the Attorney General to award grants to address the use of methamphetamine among pregnant and parenting women offenders to promote public safety, public health, family permanence and well being.

From the Committee on the Judiciary, for consideration of the House bill (except section 132) and the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER, Jr.,  
HOWARD COBLE,  
LAMAR SMITH,  
ELTON GALLEGLY,  
STEVE CHABOT,  
WILLIAM L. JENKINS,  
DANIEL LUNGREN,

From the Permanent Select Committee on Intelligence, for consideration of secs. 102, 103, 106, 107, 109, and 132 of the House bill, and secs. 2, 3, 6, 7, 9, and 10 of the Senate amendment, and modifications committed to conference:

PETE HOEKSTRA,  
HEATHER WILSON,

From the Committee on Energy and Commerce, for consideration of secs. 124 and 231 of the House bill, and modifications committed to conference:

CHARLIE NORWOOD,  
JOHN SHADEGG,

From the Committee on Financial Services, for consideration of sec. 117 of the House bill, and modifications committed to conference:

MICHAEL G. OXLEY,  
SPENCER BACHUS,

From the Committee on Homeland Security, for consideration of secs. 127–129 of the House bill, and modifications committed to conference:

PETER T. KING,  
CURT WELDON,

*Managers on the Part of the House.*

ARLEN SPECTER,  
ORRIN HATCH,  
JON KYL,  
MIKE DEWINE,  
JEFF SESSIONS,  
PAT ROBERTS,

*Managers on the Part of the Senate.*

