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109TH CONGRESS
1ST SESSION

S. 1266

[Report No. 109–85]

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

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2005

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—REPEAL AND EXTEN-**
 4 **SION OF SUNSET ON CERTAIN**
 5 **AUTHORITIES**

6 **SEC. 101. EXPANSION OF ENHANCED SURVEILLANCE PRO-**
 7 **CEDURES NOT SUBJECT TO SUNSET UNDER**
 8 **USA PATRIOT ACT.**

9 Section 224(a) of the USA PATRIOT Act of 2001
 10 (Public Law 107–56; 115 Stat. 295; 18 U.S.C. 2510 note)
 11 is amended—

- 12 (1) by striking “203(a), 203(c)” and inserting
 13 “203, 204”;
 14 (2) by inserting “206, 207,” after “205,”;
 15 (3) by inserting “214, 215,” after “213,”;
 16 (4) by inserting “218,” after “216,”; and
 17 (5) by striking “and 222” and inserting “222,
 18 and 225”.

19 **SEC. 102. EXTENSION OF SUNSET OF TREATMENT OF INDIV-**
 20 **IDUAL TERRORISTS AS AGENTS OF FOR-**
 21 **EIGN POWERS.**

22 Subsection (b) of section 6001 of the Intelligence Re-
 23 form and Terrorism Prevention Act of 2004 (Public Law
 24 108–458; 118 Stat. 3742) is amended to read as follows:

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

4 “(2) With respect to any particular foreign intel-
5 ligence investigation that began before the date on which
6 the amendment made by subsection (a) ceases to have ef-
7 fect, section 101(b)(1) of the Foreign Intelligence Surveil-
8 lance Act of 1978, as amended by subsection (a), shall
9 continue in effect.”.

10 **TITLE II—FOREIGN INTEL-**
11 **LIGENCE SURVEILLANCE**
12 **MATTERS**

13 **Subtitle A—Definitional Matters**

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

17 Subsection (n) of section 101 of the Foreign Intel-
18 ligence Surveillance Act of 1978 (50 U.S.C. 1801) is
19 amended to read as follows:

20 “(n) ‘Contents’, when used with respect to a commu-
21 nication, includes any information concerning the sub-
22 stance, purport, or meaning of such communication.”.

1 **SEC. 202. CLARIFICATION OF FOREIGN INTELLIGENCE IN-**
 2 **FORMATION FOR PURPOSES OF FOREIGN IN-**
 3 **TELLIGENCE SURVEILLANCE ACT OF 1978.**

4 Section 101(e)(1) of the Foreign Intelligence Surveil-
 5 lance Act of 1978 (50 U.S.C. 1801(e)(1)) is amended in
 6 the matter preceding subparagraph (A) by inserting “(in-
 7 cluding protection by use of law enforcement methods such
 8 as criminal prosecution)” after “protect”.

9 **Subtitle B—Other Matters**

10 **SEC. 211. ACCESS TO BUSINESS RECORDS FOR INVESTIGA-**
 11 **TIONS UNDER FOREIGN INTELLIGENCE SUR-**
 12 **VEILLANCE ACT OF 1978.**

13 (a) CLARIFICATION OF ACCESS.—(1) Subsection
 14 (a)(1) of section 501 of the Foreign Intelligence Surveil-
 15 lance Act of 1978 (50 U.S.C. 1861) is amended—

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

18 (B) by striking “clandestine intelligence activi-
 19 ties,” and all that follows through the period and in-
 20 serting “clandestine intelligence activities.”.

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

23 (b) LIMITATIONS ON DISCLOSURE.—Such section is
 24 further amended by striking subsection (d) and inserting
 25 the following new subsection (d):

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

5 “(A) those persons to whom such disclosure is
6 necessary to comply with such order;

7 “(B) an attorney to obtain legal advice or as-
8 sistance with respect to the production of things in
9 response to the order; or

10 “(C) other persons as permitted by the Director
11 of the Federal Bureau of Investigation or the des-
12 ignee of the Director.

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

17 “(B) Any person making a further disclosure author-
18 ized by subparagraph (A), (B), or (C) of paragraph (1)
19 shall notify the person to whom the disclosure is made
20 of the prohibitions on disclosure under this subsection.

21 “(3) An order under this section shall notify, in writ-
22 ing, the person to whom the order is directed of the non-
23 disclosure requirements under this subsection.”.

24 (c) MINIMIZATION OF RETENTION AND DISSEMINA-
25 TION OF TANGIBLE THINGS.—Such section is further

1 amended by adding at the end the following new sub-
2 section:

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

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

11 “(g)(1) Following the receipt of an order under this
12 section, but before the production of tangible things under
13 the order, the person charged with production of such tan-
14 gible things may, in the Foreign Intelligence Surveillance
15 Court, petition to modify or set aside the order. Such peti-
16 tion shall be filed in a manner consistent with paragraph
17 (2).

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

22 “(B) All petitions, filings, records, orders, and sub-
23 poenas with respect to any proceedings under this sub-
24 section shall be filed and maintained under seal.

1 “(3)(A) In any proceedings under this subsection, the
2 Foreign Intelligence Surveillance Court shall, upon re-
3 quest of the Federal Government, review any submission,
4 or portion thereof, of the Federal Government containing
5 classified information, or other sensitive information the
6 disclosure of which would harm national security, ex parte
7 and in camera.

8 “(B) If the Court reviews any submission of the Fed-
9 eral Government under subparagraph (A) ex parte and in
10 camera, the Court may disclose the information subject
11 to such review to the person filing the petition concerned,
12 under appropriate security procedures and protective or-
13 ders, only where such disclosure is necessary to make an
14 accurate determination for purposes of paragraph (5).

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

23 “(5) The Foreign Intelligence Surveillance Court may
24 modify or set aside an order under this section if compli-
25 ance with the order would be unreasonable or oppressive.

1 “(6) The Foreign Intelligence Surveillance Court
2 shall adopt and publish procedures governing petitions
3 filed under this subsection.

4 “(7) In this subsection, the term ‘Foreign Intelligence
5 Surveillance Court’ means the court established by section
6 103(a).”.

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

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

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

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

15 “(3) the total number of applications made for
16 orders approving requests for the production of tan-
17 gible things under section 501, and the total number
18 of orders either granted, modified, or denied, when
19 the application or order involved each of the fol-
20 lowing:

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

9 “(D) The production of health information,
10 as defined in section 1171(4) of the Social Se-
11 curity Act (42 U.S.C. 1320d(4)).

16 SEC. 212. NATIONAL SECURITY MAIL COVERS.

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

22 “TITLE VII—NATIONAL SECURITY MAIL
23 COVERS

24 “DEFINITIONS

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1 “(1) The terms ‘foreign intelligence informa-
2 tion’, ‘foreign power’, ‘international terrorism’, and
3 ‘United States person’ have the meaning given such
4 terms in section 101.

5 “(2)(A) The term ‘mail cover’ means the proc-
6 ess by which—

7 “(i) a nonconsensual record is made of any
8 data appearing on the outside cover of any
9 sealed mail or unsealed mail delivered to an ad-
10 dress, forwarding address, or Post Office box;
11 or

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

14 “(B) The term does not include any tran-
15 scription, photograph, photocopy, or any other fac-
16 simile of the image of the contents of any sealed
17 mail.

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

23 “(3) The term ‘record’ means—

24 “(A) in the case of any mail, a tran-
25 scription, photograph, photocopy, or other fac-

1 simile of the image of the outside contents,
2 cover, envelope, or wrapper of such mail; and

3 “(B) in the case of unsealed mail, a tran-
4 scription, photograph, photocopy, or other fac-
5 simile of the image of the contents of such mail.

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

13 “(5) The term ‘unsealed mail’ means mail on
14 which appropriate postage for sealed mail has not
15 been paid and which under postal laws or regula-
16 tions is not included within a class of mail main-
17 tained by the United States Postal Service for the
18 transmission of mail sealed against inspection, in-
19 cluding second class mail, third class mail, and
20 fourth class mail, and international parcel post mail.

21 “NATIONAL SECURITY MAIL COVERS

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

25 “(2) In complying under paragraph (1) with a re-
26 quest for mail covers with respect to a target specified in

1 the request, the United States Postal Service shall provide
2 available records of all mail matter specified in the request
3 that is delivered to the address, forwarding address, or
4 Post Office box of the target as specified in the request.

5 “(3) In complying under paragraph (1) with a re-
6 quest for mail covers with respect to a target specified in
7 the request, the United States Postal Service shall, if re-
8 quested, provide available records of all outgoing mail
9 matter from such target.

10 “(4) Mechanical reproduction shall be used to make
11 records under this subsection, unless circumstances render
12 such reproduction impracticable.

13 “(b) REQUESTS FOR MAIL COVERS.—(1) The Direc-
14 tor of the Federal Bureau of Investigation, or a designee
15 of the Director in a position not lower than Deputy Assist-
16 ant Director at Bureau headquarters or Special Agent in
17 Charge (including an ‘acting’ Special Agent in Charge) in
18 a Bureau field office designated by the Director, may re-
19 quest mail covers under subsection (a) if the Director or
20 such designee certifies in writing to the United States
21 Postal Service that such mail covers are relevant to an
22 authorized investigation to obtain foreign intelligence in-
23 formation not concerning a United States person or to
24 protect against international terrorism or clandestine in-
25 telligence activities.

1 “(2) The Postmaster General shall designate officers
2 and employees of the United States Postal Service who
3 are eligible to receive requests under paragraph (1).

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

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

9 “(B) not be conducted concerning a United
10 States person solely on the basis of activities pro-
11 tected by the first amendment to the Constitution of
12 the United States.

13 “(c) CONTENTS OF REQUEST.—In addition to the
14 certification required under subsection (b) with respect to
15 a request for mail covers described in that subsection, a
16 request for mail covers under subsection (b) shall speci-
17 fy—

18 “(1) the name and address of the Federal Bu-
19 reau of Investigation official making the request;

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

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

24 “(4) the name, if known, of the known attorney
25 of the target;

1 “(5) at least one, and any additional (if
2 known), of the address, forwarding address, or Post
3 Office box of the target;

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

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

8 “(8) the duration of the request; and

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

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

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

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

19 “(B) one year.

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

23 “(B) Except as provided in subparagraph (C), the pe-
24 riod of extension under this paragraph of a request for
25 mail covers shall not be more than 120 days.

1 “(C) The period of extension under this paragraph
2 of a request for mail covers targeted against a foreign
3 power or an agent of a foreign power (as defined in section
4 101(b)(1)(A)) shall be for the lesser of—

5 “(i) the period specified in the request for ex-
6 tension under this paragraph; or

7 “(ii) one year.

8 “(e) MINIMIZATION.—The Attorney General shall
9 adopt minimization procedures governing the retention
10 and dissemination by the Federal Bureau of Investigation
11 of any records received by the Bureau in response to a
12 request under subsection (b).

13 “(f) NONDISCLOSURE REQUIREMENTS.—(1) No offi-
14 cer or employee of the United States Postal Service, or
15 agent thereof, shall disclose to any person that the Federal
16 Bureau of Investigation has sought or received records
17 under a request under subsection (b) other than to—

18 “(A) those persons to whom such disclosure is
19 necessary to comply with the request;

20 “(B) an attorney, who shall be an officer or em-
21 ployee of the United States Postal Service, to obtain
22 legal advice or assistance with respect to the produc-
23 tion of records in response to the request; or

1 “(C) other persons as permitted by the Director
2 of the Federal Bureau of Investigation or a designee
3 of the Director under subsection (b).

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

8 “(B) Any person making a further disclosure author-
9 ized by subparagraph (A), (B), or (C) of paragraph (1)
10 shall notify the person to whom the disclosure is made
11 of the prohibitions on disclosure under this subsection.

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

15 “CONGRESSIONAL OVERSIGHT

16 “SEC. 703. (a) SEMIANNUAL NOTICE ON USE OF
17 MAIL COVERS.—On a semiannual basis, the Attorney
18 General shall fully inform the Select Committee on Intel-
19 ligence of the Senate and the Permanent Select Committee
20 on Intelligence of the House of Representatives concerning
21 all requests for, and use of, national security mail covers
22 pursuant to this title.

23 “(b) SEMIANNUAL REPORT ON MAIL COVERS RE-
24 QUESTED.—On a semiannual basis, the Attorney General
25 shall submit to the committees of Congress referred to in
26 subsection (a) and to the Committees on the Judiciary of

1 the Senate and the House of Representatives a report set-
 2 ting forth, with respect to the preceding six-month period,
 3 the total number of national security mail covers requested
 4 under this title.”.

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

“TITLE VII—NATIONAL SECURITY MAIL COVERS

“Sec. 701. Definitions.

“Sec. 702. National security mail covers.

“Sec. 703. Congressional oversight.”.

9 **SEC. 213. ADMINISTRATIVE SUBPOENAS IN NATIONAL SE-**
 10 **CURITY INVESTIGATIONS.**

11 (a) IN GENERAL.—The Foreign Intelligence Surveil-
 12 lance Act of 1978, as amended by section 212(a) of this
 13 Act, is further amended by adding at the end the following
 14 new title:

15 “TITLE VIII—ADMINISTRATIVE SUBPOENAS IN
 16 NATIONAL SECURITY INVESTIGATIONS

17 “DEFINITIONS

18 “SEC. 801. In this title:

19 “(1) The terms ‘international terrorism’, ‘for-
 20 eign intelligence information’, ‘Attorney General’,
 21 and ‘United States person’ have the meaning given
 22 such terms in section 101.

1 “(2) The term ‘Foreign Intelligence Surveil-
 2 lance Court’ means the court established by section
 3 103(a).

4 “AUTHORIZATION TO ISSUE

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

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

10 “(A) the production of any records or
 11 other materials that are relevant to an author-
 12 ized investigation—

13 “(i) to obtain foreign intelligence in-
 14 formation not concerning a United States
 15 person; or

16 “(ii) to protect against international
 17 terrorism or clandestine intelligence activi-
 18 ties; and

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

23 “(2) DESIGNEES.—A designee of the Attorney
 24 General under this paragraph is any official des-
 25 ignated by the Attorney General from officials as
 26 follows:

1 “(A) Any official of the Department of
2 Justice in a position not lower than Assistant
3 Attorney General which position has responsi-
4 bility for national security investigations.

5 “(B) Any United States Attorney.

6 “(C) Any Assistant United States Attorney
7 with responsibility for national security inves-
8 tigations.

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

11 “(E) Any official of the Federal Bureau of
12 Investigation in a position not lower than Dep-
13 uty Assistant Director, at Bureau headquarters,
14 or a Special Agent in Charge (including an ‘act-
15 ing’ Special Agent in Charge), at a Bureau field
16 office.

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

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

22 “(2) not be conducted concerning a United
23 States person solely upon the basis of activities pro-
24 tected by the first amendment to the Constitution of
25 the United States.

1 “(c) RECORDS NOT SUBJECT TO PRODUCTION.—

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

8 “CONTENTS OF SUBPOENAS

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

16 “PRODUCTION OF RECORDS

17 “SEC. 804. The production of records under a sub-
18 poena issued under section 802 may be required from any
19 place in any State, or in any territory or other place sub-
20 ject to the jurisdiction of the United States.

21 “SERVICE

22 “SEC. 805. (a) IN GENERAL.—A subpoena issued
23 under section 802 may be served by any person designated
24 in the subpoena as the agent of service.

25 “(b) SERVICE OF SUBPOENA.—

13 “(3) PROOF OF SERVICE.—The affidavit of the
14 person serving the subpoena entered by that person
15 on a true copy thereof shall be sufficient proof of
16 service.

18 “SEC. 806. (a) ENFORCEMENT.—

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1 ries on business, or may be found, to compel compli-
2 ance with the subpoena.

3 “(2) VENUE FOR PROCEEDINGS.—If a person
4 or entity files, in a court other than the court in
5 which the Government files for enforcement pro-
6 ceedings under paragraph (1), a petition under sec-
7 tion 808 for judicial review of a subpoena issued
8 under section 802 before the Government files for
9 such enforcement proceedings under paragraph (1),
10 the court in which such enforcement proceedings are
11 initiated under paragraph (1) shall dismiss, without
12 prejudice, such enforcement proceedings or transfer
13 further proceedings under this section to the court
14 in which such judicial review proceedings have been
15 initiated.

16 “(b) ORDER.—A court of the United States referred
17 to in subsection (a) may issue an order requiring the sub-
18 poenaed person to produce records or items in accordance
19 with the subpoena, to appear, or to give testimony relating
20 to compliance with the subpoena. Any failure to obey the
21 order of the court may be punished by the court as con-
22 tempt thereof.

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

1 “NONDISCLOSURE REQUIREMENTS

2 “SEC. 807. (a) IN GENERAL.—If the Attorney Gen-
3 eral, or a designee of the Attorney General under section
4 802, certifies that a danger to the national security of the
5 United States may result, no person shall disclose to any
6 other person that a subpoena was received or records were
7 provided pursuant to this title, other than to—

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

10 “(2) an attorney to obtain legal advice or as-
11 sistance with respect to the production of records in
12 response to the subpoena; or

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

15 “(b) NOTICE OF NONDISCLOSURE REQUIRE-
16 MENTS.—

17 “(1) IN GENERAL.—A subpoena under section
18 802 shall notify, in writing, the person to whom the
19 subpoena is directed of the nondisclosure require-
20 ments under subsection (a).

21 “(2) NOTICE UNDER FURTHER DISCLOSURES.—

22 Any person making a further disclosure authorized
23 by paragraph (1), (2), or (3) of subsection (a) shall
24 notify the person to whom the disclosure is made of
25 the prohibitions on disclosure under this section.

1 “(c) FURTHER APPLICABILITY OF NONDISCLOSURE
2 REQUIREMENTS.—Any person who receives a disclosure
3 under this section shall be subject to the prohibitions on
4 disclosure under subsection (a).

5 “(d) ENFORCEMENT OF NONDISCLOSURE REQUIRE-
6 MENTS.—Whoever knowingly violates subsection (a) or (c)
7 shall be imprisoned for not more than 1 year, fined not
8 more than \$10,000, or both, and if the violation is com-
9 mitted with the intent to obstruct an investigation de-
10 scribed in section 802(a)(1), shall be imprisoned for not
11 more than 5 years, fined not more than \$50,000, or both.

12 “(e) TERMINATION OF NONDISCLOSURE REQUIRE-
13 MENTS.—If the Attorney General, or a designee of the At-
14 torney General under section 802, concludes with respect
15 to any subpoena issued under section 802 and for which
16 a certification has been made under subsection (a) that
17 nondisclosure is no longer justified by a danger to the na-
18 tional security of the United States—

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

22 “(2) an officer, employee, or agency of the
23 United States shall notify the relevant person that
24 such provisions shall no longer apply with respect to
25 such subpoena.

1 “JUDICIAL REVIEW

2 “SEC. 808. (a) JUDICIAL REVIEW.—

3 “(1) IN GENERAL.—At any time before the re-
4 turn date specified in a subpoena issued under sec-
5 tion 802, the person or entity subpoenaed may, in
6 the Foreign Intelligence Surveillance Court or the
7 district court for the district in which that person or
8 entity does business or resides, petition for an order
9 modifying or setting aside the subpoena. Such peti-
10 tion shall be filed in a manner consistent with para-
11 graph (3).

12 “(2) VENUE FOR PROCEEDINGS.—If the Gov-
13 ernment files, in a court other than the court in
14 which judicial review proceedings are initiated under
15 paragraph (1), an enforcement action under section
16 806 before a petition for judicial review proceedings
17 is filed under paragraph (1), the court in which such
18 petition is filed under paragraph (1) shall dismiss,
19 without prejudice, such judicial review proceedings
20 or transfer further proceedings under this section to
21 the court in which such enforcement proceedings
22 have been initiated.

23 “(3) CLOSED PROCEEDINGS.—If a certification
24 has been made under section 807(a) with respect to
25 a subpoena, and the nondisclosure requirements of

1 section 807 continue to apply with respect to such
2 subpoena—

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

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

11 “(b) REVIEW OF GOVERNMENT SUBMISSIONS.—

12 “(1) REQUIREMENTS REGARDING CERTAIN IN-
13 FORMATION.—In all proceedings under this section,
14 the court shall, upon request of the Federal Govern-
15 ment, review any submission of the Federal Govern-
16 ment, or portion thereof, containing classified infor-
17 mation, or other sensitive information the disclosure
18 of which would harm national security, ex parte and
19 in camera.

20 “(2) LIMITED AUTHORITY TO DISCLOSE.—If
21 the court reviews any submission of the Federal
22 Government under paragraph (1) ex parte and in
23 camera, the court may disclose the information sub-
24 ject to such review to the person filing the petition
25 concerned, under appropriate security procedures

1 and protective orders, only where such disclosure is
2 necessary to make an accurate determination for
3 purposes of subsection (d).

4 “(c) MODIFICATION OF NONDISCLOSURE REQUIRE-
5 MENTS.—A court may modify or set aside a nondisclosure
6 requirement imposed under section 807 at the request of
7 a person to whom a subpoena has been directed under sec-
8 tion 802, unless the Attorney General or the Director of
9 the Federal Bureau of Investigation certifies to the court
10 that disclosure may result in a danger to the national se-
11 curity of the United States.

12 “(d) STANDARD OF REVIEW.—A court may modify
13 or set aside a subpoena under this section if compliance
14 with the subpoena would be unreasonable or oppressive.

15 “IMMUNITY FROM CIVIL LIABILITY

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

23 “GUIDELINES AND PROCEDURES

24 “SEC. 810. (a) IN GENERAL.—The Attorney General,
25 in consultation with the Director of the Federal Bureau
26 of Investigation, shall, by regulation, establish such guide-

1 lines as are necessary to ensure the effective implementa-
 2 tion of this title.

3 “(b) MINIMIZATION.—The Attorney General shall
 4 adopt specific minimization procedures governing the re-
 5 tention and dissemination by the Federal Bureau of Inves-
 6 tigation of any records received by the Bureau in response
 7 to a subpoena under this title.

8 “(c) PROCEDURES.—The Foreign Intelligence Sur-
 9 veillance Court shall adopt and publish procedures gov-
 10 erning the enforcement, under section 806, and judicial
 11 review, under section 808, of subpoenas under this title.

12 “CONGRESSIONAL OVERSIGHT

13 “SEC. 811. (a) SEMIANNUAL NOTICE ON USE OF AD-
 14 MINISTRATIVE SUBPOENAS.—On a semiannual basis, the
 15 Attorney General shall fully inform the Select Committee
 16 on Intelligence of the Senate and the Permanent Select
 17 Committee on Intelligence of the House of Representatives
 18 concerning all requests for, and uses of, administrative
 19 subpoenas pursuant to this title.

20 “(b) SEMIANNUAL REPORT ON ADMINISTRATIVE
 21 SUBPOENAS REQUESTED.—On a semiannual basis, the
 22 Attorney General shall submit to the committees of Con-
 23 gress referred to in subsection (a) and to the Committees
 24 on the Judiciary of the Senate and the House of Rep-
 25 resentatives a report setting forth, with respect to the pre-
 26 ceding six-month period—

1 “(1) the total number of administrative sub-
2 poenas issued under this title;

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

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

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

9 “(5) the total number of administrative sub-
10 poenas issued under this title requiring the produc-
11 tion of any records or other materials from or with
12 respect to each of the following:

13 “(A) From a library, as defined in section
14 213(2) of the Library Services and Technology
15 Act (20 U.S.C. 9122(2)).

16 “(B) From a person or entity primarily en-
17 gaged in the sale, rental, or delivery of books,
18 journals, magazines, or other similar forms of
19 communication whether in print or digitally.

20 “(C) With respect to the purchase of a
21 firearm, as defined in section 921(a)(3) of title
22 18, United States Code.

23 “(D) With respect to health information,
24 as defined in section 1171 of the Social Secu-
25 rity Act (42 U.S.C. 1320d(4)).

1 “(E) With respect to taxpayer return in-
 2 formation, return, or return information, as de-
 3 fined in section 6103(b) of the Internal Rev-
 4 enue Code of 1986 (26 U.S.C. 6103(b)).”.

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

“TITLE VIII—ADMINISTRATIVE SUBPOENAS IN NATIONAL
 SECURITY INVESTIGATIONS

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

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

14 (2) Not later than 180 days after the date of the
 15 issuance of the guidelines described in paragraph (1), the
 16 Federal Bureau of Investigation shall use the authority
 17 for administrative subpoenas provided in title VIII of the

1 Foreign Intelligence Surveillance Act of 1978, as so
2 added—

3 (A) to access certain communication service
4 provider records in lieu of the authority in section
5 2709 of title 18, United States Code;

6 (B) to obtain financial institution customer
7 records in lieu of the authority in section 1114 of
8 the Right to Financial Privacy Act (12 U.S.C.
9 3414);

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

14 (D) to obtain certain financial information and
15 consumer reports in lieu of the authority in section
16 625 of the Fair Credit Reporting Act (15 U.S.C.
17 1681u); and

18 (E) to obtain credit agency consumer records
19 for counterterrorism investigations in lieu of the au-
20 thority in section 627 of the Fair Credit Reporting
21 Act (15 U.S.C. 1681v).

22 (d) REPORT.—(1) The Attorney General and Direc-
23 tor of National Intelligence shall, in consultation with the
24 heads of other affected departments and agencies of the
25 United States Government, examine the continuing need

1 for the authority in title V of the Foreign Intelligence Sur-
 2 veillance Act of 1978 (50 U.S.C. 1861 et seq.), and the
 3 authority to utilize so-called “national security letters”
 4 (including requests under the authorities referred to in
 5 subparagraphs (A) through (E) of subsection (c)(2)), in
 6 light of the amendments made by this section.

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

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

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

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

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

23 (2) With respect to any particular foreign intelligence
 24 investigation that began before the date on which the pro-

visions referred to in paragraph (1) cease to have effect,
such provisions shall continue in effect.

**SEC. 214. MODIFICATION OF SEMIANNUAL REPORT RE-
QUIREMENT ON ACTIVITIES UNDER FOREIGN
INTELLIGENCE SURVEILLANCE ACT OF 1978.**

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

“(2) Each report under the first sentence of para-
graph (1) shall include a description of each criminal case
in which information acquired under this Act has been au-
thorized for use at trial during the period covered by such
report.”.

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

Section 402(d)(2) of the Foreign Intelligence Surveil-
lance 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

1 (2) in subparagraph (B)(iii), by striking the pe-
2 riod at the end and inserting “; and”; and

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

5 “(C) shall direct that, upon the request of the
6 applicant, the provider of a wire or electronic com-
7 munication service shall disclose to the Federal offi-
8 cer using the pen register or trap and trace device
9 covered by the order—

10 “(i) in the case of the customer or sub-
11 scriber using the service covered by the order
12 (for the period specified by the order)—

13 “(I) the name of the customer or sub-
14 scriber;

15 “(II) the address of the customer or
16 subscriber;

17 “(III) the telephone or instrument
18 number, or other subscriber number or
19 identifier, of the customer or subscriber,
20 including any temporarily assigned net-
21 work address or associated routing or
22 transmission information;

23 “(IV) the length of the provision of
24 service by such provider to the customer or

1 subscriber and the types of services utilized
2 by the customer or subscriber;

3 “(V) in the case of a provider of local
4 or long distance telephone service, any
5 local or long distance telephone records of
6 the customer or subscriber;

7 “(VI) if applicable, any records re-
8 flecting period of usage (or sessions) by
9 the customer or subscriber; and

10 “(VII) any mechanisms and sources
11 of payment for such service, including the
12 number of any credit card or bank account
13 utilized for payment for such service; and

14 “(ii) if available, with respect to any cus-
15 tomer or subscriber of incoming or outgoing
16 communications to or from the service covered
17 by the order—

18 “(I) the name of such customer or
19 subscriber;

20 “(II) the address of such customer or
21 subscriber;

22 “(III) the telephone or instrument
23 number, or other subscriber number or
24 identifier, of such customer or subscriber,
25 including any temporarily assigned net-

1 work address or associated routing or
 2 transmission information; and
 3 “(IV) the length of the provision of
 4 service by such provider to such customer
 5 or subscriber and the types of services uti-
 6 lized by such customer or subscriber.”.

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

10 (a) TREATMENT AS AGENT OF FOREIGN POWER OF
 11 NON-UNITED STATES PERSONS WHO AID OR ABET CER-
 12 TAIN TERRORISTS AND SABOTEURS.—Section
 13 101(b)(1)(A) of the Foreign Intelligence Surveillance Act
 14 of 1978 (50 U.S.C. 1801(b)(1)(A)) is amended by insert-
 15 ing “, knowingly aids or abets any person in the conduct
 16 of activities described in paragraph (2)(C) for or on behalf
 17 of a foreign power, as defined in subsection (a)(4), or
 18 knowingly conspires with any person engaged in activities
 19 described in paragraph (2)(C) for or on behalf of a foreign
 20 power, as defined in subsection (a)(4)” before the semi-
 21 colon.

22 (b) DURATION OF PEN REGISTERS AND TRAP AND
 23 TRACE DEVICES.—Subsection (e) of section 402 of such
 24 Act (50 U.S.C. 1842) is amended to read as follows:

1 “(e)(1)(A) Except as provided in subparagraphs (B)
2 and (C), an order issued under this section shall authorize
3 the installation and use of a pen register or trap and trace
4 device for a period not to exceed 90 days.

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

11 “(C) In any case in which the applicant for an order
12 under this section certifies that the information likely to
13 be obtained is foreign intelligence information concerning
14 an agent of a foreign power (as defined in section
15 101(b)(1)(A)), the order may be for the period specified
16 in the application or for 120 days, whichever is less.

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

21 “(B) Except as provided in subparagraph (C), an ex-
22 tension under this paragraph of an order under this sec-
23 tion shall be for a period not to exceed 90 days.

24 “(C) In any case in which the applicant for an exten-
25 sion under this paragraph certifies that the information

1 likely to be obtained is foreign intelligence information
 2 concerning a foreign power (as defined in paragraph (1),
 3 (2), or (3) of section 101(a)) or an agent of a foreign
 4 power (as defined in section 101(b)(1)(A)), the extension
 5 may be for a period not to exceed one year.”.

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

11 (a) ORDERS FOR PEN REGISTERS AND TRAP AND
 12 TRACE DEVICES.—Section 402(c) of the Foreign Intel-
 13 ligence Surveillance Act of 1978 (50 U.S.C. 1842(c)) is
 14 amended—

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

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

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

21 “(3) an explanation by the applicant that sup-
 22 ports the assertion of relevance under paragraph
 23 (2).”.

1 (b) ORDERS FOR BUSINESS RECORDS.—Subsection
 2 (b) of section 501 of such Act, as amended by section
 3 211(a)(2) of this Act, is further amended—

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

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

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

10 “(3) shall include an explanation by the appli-
 11 cant that supports the assertion of relevance under
 12 paragraph (2).”.

13 **SEC. 218. FORM OF SEMIANNUAL REPORTS ON ACCESS TO**
 14 **BUSINESS RECORDS UNDER FOREIGN INTEL-**
 15 **LIGENCE SURVEILLANCE ACT OF 1978.**

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

19 (1) in paragraph (3), by redesignating subpara-
 20 graphs (A) through (E) as clauses (i) through (v),
 21 respectively;

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

24 (3) by inserting “(1)” after “(b)”; and

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

3 “(2) Each report under paragraph (1) shall be sub-
4 mitted in unclassified form, but may include a classified
5 annex.”.

6 **SEC. 219. REPORT ON VOLUNTARY DISCLOSURE OF BUSI-**
7 **NESS RECORDS FOR FOREIGN INTELLIGENCE**
8 **PURPOSES.**

9 (a) REPORT REQUIRED.—Not later than six months
10 after the date of the enactment of this Act, the Attorney
11 General shall submit to the Permanent Select Committee
12 on Intelligence of the House of Representatives and the
13 Select Committee on Intelligence of the Senate a report
14 on the access provided to the Federal Bureau of Investiga-
15 tion, on a voluntary basis at the request of the Bureau,
16 to tangible things (including books, records, papers, docu-
17 ments, and other items) for purposes of investigations de-
18 scribed by section 501(a)(1) of the Foreign Intelligence
19 Surveillance Act of 1978 (50 U.S.C. 1861(a)(1)).

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

22 (1) A description of the policies and procedures
23 of the Federal Bureau of Investigation for seeking
24 access to things as described in subsection (a).

1 (2) A description of the circumstance in which
2 such access is regularly sought.

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

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

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

10 (c) FORM.—The report required by subsection (a)
11 shall be submitted in unclassified form, but may include
12 a classified annex.

Calendar No. 132

109TH CONGRESS
1ST Session

S. 1266

[Report No. 109-85]

A BILL

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

JUNE 16, 2005

Read twice and placed on the calendar