

AMENDMENT NO. _____ Calendar No. _____

Purpose: To propose a complete substitute.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1389

To reauthorize and improve the USA PATRIOT Act.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT in the nature of a substitute intended to be
proposed by Mr. SPECTER (for himself, Mrs. FEINSTEIN,
and Mr. KYL)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “USA PATRIOT Improvement and Reauthorization Act
6 of 2005”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Patriot section 206; additional requirements for multipoint electronic
surveillance under FISA.

Sec. 3. Patriot section 207; duration of FISA surveillance of non-United States
persons.

- Sec. 4. Patriot section 212; enhanced oversight of good-faith emergency disclosures.
- Sec. 5. Patriot section 213; limitations on delayed notice search warrants.
- Sec. 6. Patriot section 214; authority for disclosure of additional information in connection with orders for pen register and trap and trace authority under FISA.
- Sec. 7. Patriot section 215; procedural protections for court orders to produce records and other items in intelligence investigations.
- Sec. 8. Patriot section 505; procedural protections for national security letters.
- Sec. 9. Sunset provisions.
- Sec. 10. Enhancement of sunshine provisions.

1 **SEC. 2. PATRIOT SECTION 206; ADDITIONAL REQUIRE-**
2 **MENTS FOR MULTIPOINT ELECTRONIC SUR-**
3 **VEILLANCE UNDER FISA.**

4 (a) PARTICULARITY REQUIREMENT.—Section
5 105(c)(1)(A) of the Foreign Intelligence Surveillance Act
6 of 1978 (50 U.S.C. 1805(c)(1)(A)) is amended by insert-
7 ing before the semicolon at the end the following: “, and
8 if the nature and location of each of the facilities or places
9 at which the surveillance will be directed is not known,
10 and if the identity of the target is not known, the order
11 shall include sufficient information to describe a specific
12 target with particularity”.

13 (b) ADDITIONAL DIRECTIONS.—Section 105(c) of the
14 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
15 1805(c)) is amended—

16 (1) by striking “An order approving an elec-
17 tronic surveillance under this section shall—”;

18 (2) in paragraph (1), by inserting before “speci-
19 fy” the following: “SPECIFICATIONS.—An order ap-

1 proving an electronic surveillance under this section
2 shall”;

3 (3) in paragraph (1)(F), by striking “; and”
4 and inserting a period;

5 (4) in paragraph (2), by inserting before “di-
6 rect” the following: “DIRECTIONS.—An order ap-
7 proving an electronic surveillance under this section
8 shall”; and

9 (5) by adding at the end the following:

10 “(3) SPECIAL DIRECTIONS FOR CERTAIN OR-
11 DERS.—An order approving an electronic surveil-
12 lance under this section in circumstances where the
13 nature and location of each of the facilities or places
14 at which the surveillance will be directed is unknown
15 shall direct the applicant to provide notice to the
16 court within 10 days after the date on which surveil-
17 lance begins to be directed at any new facility or
18 place of—

19 “(A) the nature and location of each facil-
20 ity or place at which the electronic surveillance
21 is directed;

22 “(B) the facts and circumstances relied
23 upon by the applicant to justify the applicant’s
24 belief that each facility or place at which the
25 electronic surveillance is directed is being used,

1 or is about to be used, by the target of the sur-
2 veillance; and

3 “(C) a statement of any proposed mini-
4 mization procedures that differ from those con-
5 tained in the original application or order, that
6 may be necessitated by a change in the facility
7 or place at which the electronic surveillance is
8 directed.”.

9 (c) ENHANCED OVERSIGHT.—

10 (1) REPORT TO CONGRESS.—Section 108(a)(1)
11 of the Foreign Intelligence Surveillance Act of 1978
12 (50 U.S.C. 1808(a)(1)) is amended by inserting “,
13 and the Committee on the Judiciary of the House of
14 Representatives and the Committee on the Judiciary
15 of the Senate,” after “Senate Select Committee on
16 Intelligence”.

17 (2) MODIFICATION OF SEMIANNUAL REPORT
18 REQUIREMENT ON ACTIVITIES UNDER FOREIGN IN-
19 TELLIGENCE SURVEILLANCE ACT OF 1978.—Para-
20 graph (2) of section 108(a) of the Foreign Intel-
21 ligence Surveillance Act of 1978 (50 U.S.C.
22 1808(a)) is amended to read as follows:

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

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

7 “(B) Each criminal case in which informa-
8 tion acquired under this Act has been author-
9 ized for use at trial during the period covered
10 by such report.”.

11 **SEC. 3. PATRIOT SECTION 207; DURATION OF FISA SUR-**
12 **VEILLANCE OF NON-UNITED STATES PER-**
13 **SONS.**

14 (a) **ELECTRONIC SURVEILLANCE ORDERS.**—Section
15 105(e) of the Foreign Intelligence Surveillance Act (50
16 U.S.C. 1805(e)) is amended—

17 (1) in paragraph (1)(B), by striking “, as de-
18 fined in section 101(b)(1)(A)” and inserting “who is
19 not a United States person”; and

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

23 (b) **PHYSICAL SEARCH ORDERS.**—Section 304(d) of
24 the Foreign Intelligence Surveillance Act (50 U.S.C.
25 1824(d)) is amended—

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

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

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

10 (1) inserting after “90 days” the first place it
11 appears the following: “, except that in cases where
12 the applicant has certified that the information like-
13 ly to be obtained is foreign intelligence information
14 not concerning a United States person, an order
15 issued under this section may be for a period not to
16 exceed 1 year”; and

17 (2) inserting after “90 days” the second place
18 it appears the following: “, except that in cases
19 where the applicant has certified that the informa-
20 tion likely to be obtained is foreign intelligence infor-
21 mation not concerning a United States person, an
22 extension of an order issued under this section may
23 be for a period not to exceed 1 year”.

1 **SEC. 4. PATRIOT SECTION 212; ENHANCED OVERSIGHT OF**
2 **GOOD-FAITH EMERGENCY DISCLOSURES.**

3 (a) ENHANCED OVERSIGHT.—Section 2702 of title
4 18, United States Code, is amended by adding at the end
5 the following:

6 “(d) REPORTING OF EMERGENCY DISCLOSURES.—
7 On an annual basis, the Attorney General shall submit to
8 the Committee on the Judiciary of the House of Rep-
9 resentatives and the Committee on the Judiciary of the
10 Senate a report containing—

11 “(1) the number of accounts from which the
12 Department of Justice has received voluntary disclo-
13 sures under subsection (b)(8); and

14 “(2) a summary of the basis for disclosure in
15 those instances where—

16 “(A) voluntary disclosures under sub-
17 section (b)(8) were made to the Department of
18 Justice; and

19 “(B) the investigation pertaining to those
20 disclosures was closed without the filing of
21 criminal charges.”.

22 (b) TECHNICAL AMENDMENTS TO CONFORM COMMU-
23 NICATIONS AND CUSTOMER RECORDS EXCEPTIONS.—

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

1 (A) in subsection (b)(8), by striking “Fed-
2 eral, State, or local”; and

3 (B) by striking subsection (c)(4) and in-
4 serting the following:

5 “(4) to a governmental entity, if the provider,
6 in good faith, believes that an emergency involving
7 danger of death or serious physical injury to any
8 person requires disclosure without delay of the infor-
9 mation.”.

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

12 (A) in paragraph (2), by striking “and” at
13 the end;

14 (B) in paragraph (3), by striking the pe-
15 riod at the end and inserting “; and”; and

16 (C) by adding at the end the following:

17 “(4) the term ‘governmental entity’ means a de-
18 partment or agency of the United States or any
19 State or political subdivision thereof.”.

20 **SEC. 5. PATRIOT SECTION 213; LIMITATIONS ON DELAYED**
21 **NOTICE SEARCH WARRANTS.**

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

1 “(A) endanger the life or physical safety of
2 an individual;

3 “(B) result in flight from prosecution;

4 “(C) result in the destruction of or tam-
5 pering with evidence;

6 “(D) result in intimidation of potential
7 witnesses; or

8 “(E) otherwise seriously jeopardize an in-
9 vestigation;”.

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

13 (1) by striking subsection (b)(3) and inserting
14 the following:

15 “(3) the warrant provides for the giving of such
16 notice not later than 7 days after the date of its exe-
17 cution, or on a later date certain if the facts of the
18 case justify a longer period of delay.”; and

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

20 “(c) EXTENSIONS OF DELAY.—Any period of delay
21 authorized by this section may be extended by the court
22 for good cause shown, subject to the condition that exten-
23 sions should only be granted upon an updated showing of
24 the need for further delay and that each additional delay

1 should be limited to periods of 90 days or less, unless the
2 facts of the case justify a longer period of delay.”.

3 (c) ENHANCED OVERSIGHT.—Section 3103a of title
4 18, United States Code, is amended by adding at the end
5 the following:

6 “(c) REPORTS.—

7 “(1) REPORT BY JUDGE.—Not later than 30
8 days after the expiration of a warrant authorizing
9 delayed notice (including any extension thereof) en-
10 tered under this section, or the denial of such war-
11 rant (or request for extension), the issuing or deny-
12 ing judge shall report to the Administrative Office of
13 the United States Courts—

14 “(A) the fact that a warrant was applied
15 for;

16 “(B) the fact that the warrant or any ex-
17 tension thereof was granted as applied for, was
18 modified, or was denied;

19 “(C) the period of delay in the giving of
20 notice authorized by the warrant, and the num-
21 ber and duration of any extensions; and

22 “(D) the offense specified in the warrant
23 or application.

24 “(2) REPORT BY ADMINISTRATIVE OFFICE OF
25 THE UNITED STATES COURTS.—In April of each

1 year, the Director of the Administrative Office of the
2 United States Courts shall transmit to Congress a
3 full and complete report—

4 “(A) concerning the number of applica-
5 tions for warrants and extensions of warrants
6 authorizing delayed notice pursuant to this sec-
7 tion, and the number of warrants and exten-
8 sions granted or denied pursuant to this section
9 during the preceding calendar year; and

10 “(B) that includes a summary and analysis
11 of the data required to be filed with the Admin-
12 istrative Office by paragraph (1).

13 “(3) REGULATIONS.—The Director of the Ad-
14 ministrative Office of the United States Courts, in
15 consultation with the Attorney General, is author-
16 ized to issue binding regulations dealing with the
17 content and form of the reports required to be filed
18 under paragraph (1).”.

1 **SEC. 6. PATRIOT SECTION 214; AUTHORITY FOR DISCLO-**
2 **SURE OF ADDITIONAL INFORMATION IN CON-**
3 **NECTION WITH ORDERS FOR PEN REGISTER**
4 **AND TRAP AND TRACE AUTHORITY UNDER**
5 **FISA.**

6 (a) RECORDS.—Section 402(d)(2) of the Foreign In-
7 telligence Surveillance Act of 1978 (50 U.S.C. 1842(d)(2))
8 is amended—

9 (1) in subparagraph (A)—

10 (A) in clause (ii), by adding ‘and’ at the
11 end; and

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

14 (2) in subparagraph (B)(iii), by striking the pe-
15 riod at the end and inserting ‘; and’; and

16 (3) by adding at the end the following:

17 “(C) shall direct that, upon the request of
18 the applicant, the provider of a wire or elec-
19 tronic communication service shall disclose to
20 the Federal officer using the pen register or
21 trap and trace device covered by the order—

22 “(i) in the case of the customer or
23 subscriber using the service covered by the
24 order (for the period specified by the
25 order)—

1 “(I) the name of the customer or
2 subscriber;

3 “(II) the address of the customer
4 or subscriber;

5 “(III) the telephone or instru-
6 ment number, or other subscriber
7 number or identifier, of the customer
8 or subscriber, including any tempo-
9 rarily assigned network address or as-
10 sociated routing or transmission infor-
11 mation;

12 “(IV) the length of the provision
13 of service by such provider to the cus-
14 tomer or subscriber and the types of
15 services utilized by the customer or
16 subscriber;

17 “(V) in the case of a provider of
18 local or long distance telephone serv-
19 ice, any local or long distance tele-
20 phone records of the customer or sub-
21 scriber;

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

1 “(VII) any mechanisms and
2 sources of payment for such service,
3 including the number of any credit
4 card or bank account utilized for pay-
5 ment for such service; and

6 “(ii) if available, with respect to any
7 customer or subscriber of incoming or out-
8 going communications to or from the serv-
9 ice covered by the order—

10 “(I) the name of such customer
11 or subscriber;

12 “(II) the address of such cus-
13 tomer or subscriber;

14 “(III) the telephone or instru-
15 ment number, or other subscriber
16 number or identifier, of such customer
17 or subscriber, including any tempo-
18 rarily assigned network address or as-
19 sociated routing or transmission infor-
20 mation; and

21 “(IV) the length of the provision
22 of service by such provider to such
23 customer or subscriber and the types
24 of services utilized by such customer
25 or subscriber.”.

1 (b) ENHANCED OVERSIGHT.—Section 406(a) of the
2 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
3 1846(a)) is amended by inserting “, and the Committee
4 on the Judiciary of the House of Representatives and the
5 Committee on the Judiciary of the Senate,” after “of the
6 Senate”.

7 **SEC. 7. PATRIOT SECTION 215; PROCEDURAL PROTECTIONS**
8 **FOR COURT ORDERS TO PRODUCE RECORDS**
9 **AND OTHER ITEMS IN INTELLIGENCE INVES-**
10 **TIGATIONS.**

11 (a) FACTUAL BASIS FOR REQUESTED ORDER.—

12 (1) APPLICATION.—Section 501(b)(2) of the
13 Foreign Intelligence Surveillance Act of 1978 (50
14 U.S.C. 1861(b)(2)) is amended to read as follows:

15 “(2) shall include a statement of facts showing
16 that there are reasonable grounds to believe that the
17 records or other things sought—

18 “(A) are relevant to an authorized inves-
19 tigation conducted in accordance with sub-
20 section (a)(2) to obtain foreign intelligence in-
21 formation not concerning a United States per-
22 son or to protect against international terrorism
23 or clandestine intelligence activities; and

24 “(B)(i) pertain to a foreign power or an
25 agent of a foreign power;

1 “(ii) are relevant to the activities of a sus-
2 pected agent of a foreign power who is the sub-
3 ject of such authorized investigation; or

4 “(iii) pertain to an individual in contact
5 with, or known to, a suspected agent of a for-
6 eign power.”.

7 (2) ORDER.—Section 501(c)(1) of the Foreign
8 Intelligence Surveillance Act of 1978 (50 U.S.C.
9 1861(c)(1)) is amended to read as follows:

10 “(c)(1) Upon an application made pursuant to this
11 section, the judge shall enter an ex parte order as re-
12 quested, or as modified, approving the release of records
13 or tangible things if the judge finds that—

14 “(A) the statement of facts contained in the ap-
15 plication establishes reasonable grounds to believe
16 that the records or other things sought are relevant
17 to an authorized investigation conducted in accord-
18 ance with subsection (a)(2) to obtain foreign intel-
19 ligence information not concerning a United States
20 person or to protect against international terrorism
21 or clandestine intelligence activities;

22 “(B) the statement of facts contained in the ap-
23 plication establishes reasonable grounds to believe
24 that the records or other things sought—

1 “(i) pertain to a foreign power or an agent
2 of a foreign power;

3 “(ii) are relevant to the activities of a sus-
4 pected agent of a foreign power who is the sub-
5 ject of such authorized investigation; or

6 “(iii) pertain to an individual in contact
7 with, or known to, a suspected agent of a for-
8 eign power; and

9 “(C) the application meets the other require-
10 ments of this section.”.

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

14 (1) in paragraph (2), by inserting after “An
15 order under this subsection” the following:

16 “(A) shall describe the tangible things con-
17 cerned with sufficient particularity to permit
18 them to be fairly identified;

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

23 “(C) shall provide clear and conspicuous
24 notice of the principles and procedures set forth
25 in subsection (d);

1 “(D) shall not require the production of
2 anything that would be protected from produc-
3 tion under the standards applicable to a sub-
4 poena duces tecum issued by a court of the
5 United States in aid of a grand jury investiga-
6 tion; and

7 “(E)”.

8 (c) DIRECTOR APPROVAL FOR CERTAIN APPLICA-
9 TIONS.—Section 501(a) of the Foreign Intelligence Sur-
10 veillance Act of 1978 (50 U.S.C. 1861(a)) is amended—

11 (1) in paragraph (1), by striking “The Direc-
12 tor” and inserting “Except as provided in paragraph
13 (3), the Director”; and

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

15 “(3) No application shall be made under this
16 section for an order requiring the production of li-
17 brary circulation records, library patron lists, book
18 sales records, book customer lists, firearms sales
19 records, or medical records containing personally
20 identifiable information without the prior written ap-
21 proval of the Director of the Federal Bureau of In-
22 vestigation. The Director may delegate authority to
23 approve such an application to the Deputy Director
24 of the Federal Bureau of Investigation, but such au-
25 thority may not be further delegated.”.

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

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

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

10 (B) an attorney to obtain legal advice or as-
11 sistance with respect to the production of things in
12 response to the order; or

13 (C) other persons as permitted by the Director
14 of the Federal Bureau of Investigation or the des-
15 ignee of the Director.

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

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

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

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

7 “(f)(1)(A) Any person receiving an order to produce
8 any tangible thing under this section may challenge the
9 legality of that order, including any prohibition on disclo-
10 sure, by filing a petition in the court established under
11 section 103(a).

12 “(B) That petition may be considered by any judge
13 of the court.

14 “(C) The judge considering the petition may modify
15 or set aside the order if the judge finds that the order
16 does not meet the requirements of this section or is other-
17 wise unlawful.

18 “(D) Any petition for review of a decision to affirm,
19 modify, or set aside an order or prohibition on disclosure
20 under this paragraph by the United States or any person
21 receiving such order shall be sent to the court of review
22 established under section 103(b), which shall have juris-
23 diction to consider such petitions.

24 “(E) The court of review shall immediately provide
25 for the record a written statement of the reasons for its

1 decision and, on petition of the United States or any per-
2 son receiving such order for a writ of certiorari, the record
3 shall be transmitted under seal to the Supreme Court,
4 which shall have jurisdiction to review such decision.

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

7 “(B) The record of proceedings, including applica-
8 tions made and orders granted, shall be maintained under
9 security measures established by the Chief Justice of the
10 United States in consultation with the Attorney General
11 and the Director of National Intelligence.

12 “(3) All petitions under this subsection shall be filed
13 under seal, and the court, upon the request of the Govern-
14 ment, shall review any Government submission, which may
15 include classified information, as well as the application
16 of the Government and related materials, ex parte and in
17 camera.

18 “(4) Not later than 60 days after the date of enact-
19 ment of the USA PATRIOT Improvement and Reauthor-
20 ization Act of 2005, the court established under section
21 103(a) shall develop and issue procedures for the review
22 of petitions filed under paragraph (1).”.

23 (f) ENHANCED OVERSIGHT.—Section 502 of the For-
24 eign Intelligence Surveillance Act of 1978 (50 U.S.C.
25 1862) is amended

1 (1) in subsection (a), by inserting “, and the
2 Committee on the Judiciary of the House of Rep-
3 resentatives and the Committee on the Judiciary of
4 the Senate,” after “of the Senate”; and

5 (2) in subsection (b)—

6 (A) by striking “On a semiannual basis”
7 through “the preceding 6-month period” and
8 inserting “In April of each year, the Attorney
9 General shall transmit to the Congress a report
10 setting forth with respect to the preceding cal-
11 endar year”;

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

14 (C) in paragraph (2), by striking the pe-
15 riod at the end and inserting “; and”; and

16 (D) by adding at the end the following:

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

23 “(A) The production of tangible things
24 from a library, as defined in section 213(2) of

1 the Library Services and Technology Act (20
2 U.S.C. 9122(2)).

3 “(B) The production of tangible things
4 from a person or entity primarily engaged in
5 the sale, rental, or delivery of books, journals,
6 magazines, or other similar forms of commu-
7 nication whether in print or digitally.

8 “(C) The production of records related to
9 the purchase of a firearm, as defined in section
10 921(a)(3) of title 18, United States Code.

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

14 “(E) The production of taxpayer return in-
15 formation, return, or return information, as de-
16 fined in section 6103(b) of the Internal Rev-
17 enue Code of 1986 (26 U.S.C. 6103(b)).

18 “(c) Each report under subsection (b) shall be sub-
19 mitted in unclassified form, but may include a classified
20 annex.

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

1 “(1) the total number of applications made for
2 orders approving requests for the production of tan-
3 gible things under section 501; and

4 “(2) the total number of such orders either
5 granted, modified, or denied.”.

6 **SEC. 8. PATRIOT SECTION 505; PROCEDURAL PROTECTIONS**
7 **FOR NATIONAL SECURITY LETTERS.**

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

10 (1) by striking “A wire or electronic commu-
11 nication service provider” and inserting the fol-
12 lowing:

13 “(1) IN GENERAL.—A wire or electronic com-
14 munication service provider”; and

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

16 “(2) JUDICIAL REVIEW.—A wire or electronic
17 communication service provider who receives a re-
18 quest under subsection (b) may, at any time, seek a
19 court order from an appropriate United States dis-
20 trict court to modify or set aside the request. Any
21 such motion shall state the grounds for challenging
22 the request with particularity. The court may modify
23 or set aside the request if compliance would be un-
24 reasonable or oppressive or would violate any con-

1 stitutional or other legal right or privilege of the pe-
2 titioner.”.

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

5 (1) by striking “No wire or electronic commu-
6 nication service provider” and inserting the fol-
7 lowing:

8 “(1) IN GENERAL.—No wire or electronic com-
9 munication service provider”; and

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

11 “(3) JUDICIAL REVIEW.—A wire or electronic
12 communication service provider who receives a re-
13 quest under subsection (b) may, at any time, seek a
14 court order from an appropriate United States dis-
15 trict court challenging the nondisclosure requirement
16 under paragraph (1). Any such motion shall state
17 the grounds for challenging the nondisclosure re-
18 quirement with particularity.

19 “(4) STANDARD OF REVIEW.—The court may
20 modify or set aside such a nondisclosure requirement
21 if there is no reason to believe that disclosure may
22 endanger the national security of the United States,
23 interfere with a criminal, counterterrorism, or coun-
24 terintelligence investigation, interfere with diplo-
25 matic relations, or endanger the life or physical safe-

1 ty of any person. In reviewing a nondisclosure re-
2 quirement, the certification by the Government that
3 the disclosure may endanger the national security of
4 the United States or interfere with diplomatic rela-
5 tions shall be treated as conclusive unless the court
6 finds that the certification was made in bad faith.”.

7 (c) ENFORCEMENT OF NATIONAL SECURITY LET-
8 TERS.—Section 2709(a) of title 18, United States Code,
9 as amended by subsection (b), is amended by adding at
10 the end the following:

11 “(3) ENFORCEMENT OF REQUESTS.—The At-
12 torney General may seek enforcement of a request
13 under subsection (b) in an appropriate United
14 States district court if a recipient refuses to comply
15 with the request.”.

16 (d) DISCLOSURE OF INFORMATION.—

17 (1) SECURE PROCEEDINGS.—Section 2709 of
18 title 18, United States Code, as amended by sub-
19 sections (b) and (c), is amended—

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

22 “(4) SECURE PROCEEDINGS.—The disclosure of
23 information in any proceedings under this subsection
24 may be limited consistent with the requirements of

1 the Classified Information Procedures Act (18
2 U.S.C. App)”; and

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

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

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

13 (A) by inserting after “any person” the
14 following: “ ’, except for disclosure to an attor-
15 ney to obtain legal advice regarding the request
16 or to persons to whom disclosure is necessary in
17 order to comply with the request,”; and

18 (B) by adding at the end the following:
19 “Any attorney or person whose assistance is
20 necessary to comply with the request who is no-
21 tified of the request also shall not disclose to
22 any person that the Federal Bureau of Inves-
23 tigation has sought or obtained access to infor-
24 mation or records under this section.”.

1 **SEC. 9. SUNSET PROVISIONS.**

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

5 “(a) IN GENERAL.—Except as provided in subsection
6 (b), sections 206 and 215, and the amendments made by
7 those sections, shall cease to have effect on December 31,
8 2009, and any provision of law amended or modified by
9 such sections shall take effect on January 1, 2010, as in
10 effect on the day before the effective date of this Act.”.

11 (b) EXTENSION OF SUNSET ON “LONE WOLF” PRO-
12 VISION.—Subsection (b) of section 6001 of the Intelligence
13 Reform and Terrorism Prevention Act of 2004 (50 U.S.C.
14 1801 note) is amended to read as follows:

15 “(b) SUNSET.—

16 “(1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendment made by subsection (a)
18 shall cease to have effect on December 31, 2009.

19 “(2) SPECIAL RULE.—With respect to any par-
20 ticular foreign intelligence investigation that began
21 before the date on which the amendment made by
22 subsection (a) ceases to have effect, section
23 101(b)(1) of the Foreign Intelligence Surveillance
24 Act of 1978, as amended by subsection (a), shall
25 continue in effect.”.

1 (c) REPEAL OF SUNSET PROVISION RELATING TO
2 SECTION 2332B AND THE MATERIAL SUPPORT SECTIONS
3 OF TITLE 18, UNITED STATES CODE.—Section 6603 of
4 the Intelligence Reform and Terrorism Prevention Act of
5 2004 (Public Law 108–458; 118 Stat. 3762) is amended
6 by striking subsection (g).

7 (d) TECHNICAL AMENDMENT.—Section 1(a) of the
8 Uniting and Strengthening America by Providing Appro-
9 priate Tools Required to Intercept and Obstruct Ter-
10 rorism (USA PATRIOT ACT) Act of 2001 is amended
11 to read as follows:

12 “(a) SHORT TITLE.—This Act may be cited as the
13 ‘Uniting and Strengthening America by Providing Appro-
14 priate tools Required to Intercept and Obstruct Terrorism
15 Act of 2001’ or the ‘USA PATRIOT Act’.”.

16 **SEC. 10. ENHANCEMENT OF SUNSHINE PROVISIONS.**

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

21 “(e)(1) The courts established pursuant to sub-
22 sections (a) and (b) may establish such rules and proce-
23 dures, and take such actions, as are reasonably necessary
24 to administer their responsibilities under this Act.

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

5 “(A) All of the judges on the court established
6 pursuant to subsection (a).

7 “(B) All of the judges on the court of review es-
8 tablished pursuant to subsection (b).

9 “(C) The Chief Justice of the United States.

10 “(D) The Committee on the Judiciary of the
11 Senate.

12 “(E) The Select Committee on Intelligence of
13 the Senate.

14 “(F) The Committee on the Judiciary of the
15 House of Representatives.

16 “(G) The Permanent Select Committee on In-
17 telligence of the House of Representatives.

18 “(3) The transmissions required by paragraph (2)
19 shall be submitted in unclassified form, but may include
20 a classified annex.”.

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

23 (1) EMERGENCY ELECTRONIC SURVEIL-
24 LANCE.—Section 107 of the Foreign Intelligence

1 Surveillance Act of 1978 (50 U.S.C. 1807), is
2 amended—

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

5 (B) in paragraph (b), by striking the pe-
6 riod at the end and inserting ‘; and’; and

7 (C) by adding at the end the following:

8 “(c) the total number of emergency employments of
9 electronic surveillance under section 105(f) and the total
10 number of subsequent orders approving or denying such
11 electronic surveillance.”.

12 (2) EMERGENCY PHYSICAL SEARCHES.—Section
13 306 of the Foreign Intelligence Surveillance Act of
14 1978 (50 U.S.C. 1826) is amended—

15 (A) in the first sentence, by inserting ,“
16 and the Committee on the Judiciary of the
17 House of Representatives and the Committee
18 on the Judiciary of the Senate,” after “the Sen-
19 ate”;

20 (B) in the second sentence, by striking
21 “and the Committees on the Judiciary of the
22 House of Representatives and the Senate”;

23 (C) in paragraph (2), by striking “and” at
24 the end;

1 (D) in paragraph (3), by striking the pe-
2 riod at the end and inserting “; and”; and

3 (E) by adding at the end the following:

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

9 (3) EMERGENCY PEN REGISTERS AND TRAP
10 AND TRACE DEVICES.—Section 406(b) of the For-
11 eign Intelligence Surveillance Act of 1978 (50
12 U.S.C. 1846(b)) is amended—

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

15 (B) in paragraph (2), by striking the pe-
16 riod at the end and inserting “; and”; and

17 (C) by adding at the end the following:

18 “(3) the total number of pen registers and trap
19 and trace devices whose installation and use was au-
20 thorized by the Attorney General on an emergency
21 basis under section 403, and the total number of
22 subsequent orders approving or denying the installa-
23 tion and use of such pen registers and trap and
24 trace devices.”.