

109TH CONGRESS }
1st Session } HOUSE OF REPRESENTATIVES { REPORT
109-_____

USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT
OF 2005

_____, 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:

~~DECEMBER 8, 2005 10:40AM~~

~~[CONFERENCE REPORT]~~

In lieu of the matter proposed to be inserted by the Senate Amendment to the text of H.R. 3199, insert the following:

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

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

5 (b) **TABLE OF CONTENTS.**—The table of contents for
6 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 eriminal 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.

1 **TITLE I—USA PATRIOT IM-**
2 **PROVEMENT AND REAUTHOR-**
3 **IZATION ACT**

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

- 6 (a) REFERENCES TO USA PATRIOT ACT.—A ref-
7 erence in this Act to the USA PATRIOT Act shall be
8 deemed a reference to the Uniting and Strengthening

1 America by Providing Appropriate Tools Required to
2 Intercept and Obstruct Terrorism Act (USA PATRIOT
3 Act) of 2001.

4 (b) MODIFICATION OF SHORT TITLE OF USA PA-
5 TRIOT ACT.—Section 1(a) of the USA PATRIOT Act
6 is amended to read as follows:

7 “(a) SHORT TITLE.—This Act may be cited as the
8 ‘Uniting and Strengthening America by Providing Appro-
9 priate Tools Required to Intercept and Obstruct Ter-
10 rorism Act of 2001’ or the ‘USA PATRIOT Act’.”.

11 **SEC. 102. USA PATRIOT ACT SUNSET PROVISIONS.**

12 (a) IN GENERAL.—Section 224 of the USA PA-
13 TRIOT Act is repealed.

14 (b) SECTIONS 206 AND 215 SUNSET.—

15 (1) IN GENERAL.—Effective December 31,
16 2009, the Foreign Intelligence Surveillance Act of
17 1978 is amended so that sections 501, 502, and
18 105(c)(2) read as they read on October 25, 2001.

19 (2) EXCEPTION.—With respect to any par-
20 ticular foreign intelligence investigation that began
21 before the date on which the provisions referred to
22 in paragraph (1) cease to have effect, or with re-
23 spect to any particular offense or potential offense
24 that began or occurred before the date on which

1 such provisions cease to have effect, such provisions
2 shall continue in effect.

3 **SEC. 103. EXTENSION OF SUNSET RELATING TO INDI-**
4 **VIDUAL TERRORISTS AS AGENTS OF FOR-**
5 **EIGN POWERS.**

6 Section 6001(b) of the Intelligence Reform and Ter-
7 rorism Prevention Act of 2004 (Public Law 108–458; 118
8 Stat. 3742) is amended to read as follows:

9 “(b) SUNSET.—

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

13 “(2) EXCEPTION.—With respect to any par-
14 ticular foreign intelligence investigation that began
15 before the date on which the provisions referred to
16 in paragraph (1) cease to have effect, or with re-
17 spect to any particular offense or potential offense
18 that began or occurred before the date on which the
19 provisions cease to have effect, such provisions shall
20 continue in effect.”.



1 **SEC. 104. SECTION 2332b AND THE MATERIAL SUPPORT**
2 **SECTIONS OF TITLE 18, UNITED STATES**
3 **CODE.**

4 Section 6603 of the Intelligence Reform and Ter-
5 rorism Prevention Act of 2004 (Public Law 108–458; 118
6 Stat. 3762) is amended by striking subsection (g).

7 **SEC. 105. DURATION OF FISA SURVEILLANCE OF NON-**
8 **UNITED STATES PERSONS UNDER SECTION**
9 **207 OF THE USA PATRIOT ACT.**

10 (a) **ELECTRONIC SURVEILLANCE.**—Section 105(e) of
11 the Foreign Intelligence Surveillance Act of 1978 (50
12 U.S.C. 1805(e)) is amended—

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

16 (2) in subsection (2)(B), by striking “as defined
17 in section 101(b)(1)(A)” and inserting “who is not
18 a United States person”.

19 (b) **PHYSICAL SEARCH.**—Section 304(d) of such Act
20 (50 U.S.C. 1824(d)) is amended—

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

24 (2) in paragraph (2), by striking “as defined in
25 section 101(b)(1)(A)” and inserting “who is not a
26 United States person”.

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

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

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

8 “(2) In the case of an application under subsection
9 (e) where the applicant has certified that the information
10 likely to be obtained is foreign intelligence information not
11 concerning a United States person, an order, or an exten-
12 sion of an order, under this section may be for a period
13 not to exceed one year.”.

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

16 (a) DIRECTOR APPROVAL FOR CERTAIN APPLICA-
17 TIONS.—Subsection (a) of section 501 of the Foreign In-
18 telligence Surveillance Act of 1978 (50 U.S.C. 1861(a))
19 is amended—

20 (1) in paragraph (1), by striking “The Direc-
21 tor” and inserting “Subject to paragraph (3), the
22 Director”; and

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

24 “(3) In the case of an application for an order
25 requiring the production of library circulation



1 records, library patron lists, book sales records, book
2 customer lists, firearms sales records, tax return
3 records, educational records, or medical records con-
4 taining information that would identify a person, the
5 Director of the Federal Bureau of Investigation may
6 delegate the authority to make such application to
7 either the Deputy Director of the Federal Bureau of
8 Investigation or the Executive Assistant Director for
9 National Security (or any successor position). The
10 Deputy Director or the Executive Assistant Director
11 may not further delegate such authority.”.

12 (b) FACTUAL BASIS FOR REQUESTED ORDER.—Sub-
13 section (b)(2) of such section is amended to read as fol-
14 lows:

15 “(2) shall include—

16 “(A) a statement of facts showing that
17 there are reasonable grounds to believe that the
18 tangible things sought are relevant to an au-
19 thorized investigation (other than a threat as-
20 sessment) conducted in accordance with sub-
21 section (a)(2) to obtain foreign intelligence in-
22 formation not concerning a United States per-
23 son or to protect against international terrorism
24 or clandestine intelligence activities, such things
25 being presumptively relevant to an authorized

1 investigation if the applicant shows in the state-
2 ment of the facts that they pertain to—

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

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

8 “(iii) an individual in contact with, or
9 known to, a suspected agent of a foreign
10 power who is the subject of such author-
11 ized investigation; and

12 “(B) an enumeration of the minimization
13 procedures adopted by the Attorney General
14 under subsection (g) that are applicable to the
15 retention and dissemination by the Federal Bu-
16 reau of Investigation of any tangible things to
17 be made available to the Federal Bureau of In-
18 vestigation based on the order requested in such
19 application.”.

20 (c) CLARIFICATION OF JUDICIAL DISCRETION.—Sub-
21 section (c)(1) of such section is amended to read as fol-
22 lows:

23 “(c)(1) Upon an application made pursuant to this
24 section, if the judge finds that the application meets the
25 requirements of subsections (a) and (b), the judge shall

1 enter an ex parte order as requested, or as modified, ap-
2 proving the release of tangible things. Such order shall
3 direct that minimization procedures adopted pursuant to
4 subsection (g) be followed.”

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

7 “(2) An order under this subsection—

8 “(A) shall describe the tangible things that
9 are ordered to be produced with sufficient par-
10 ticularity to permit them to be fairly identified;

11 “(B) shall include the date on which the
12 tangible things must be provided, which shall
13 allow a reasonable period of time within which
14 the tangible things can be assembled and made
15 available;

16 “(C) shall provide clear and conspicuous
17 notice of the principles and procedures de-
18 scribed in subsection (d);

19 “(D) may only require the production of a
20 tangible thing if such thing can be obtained
21 with a subpoena duces tecum issued by a court
22 of the United States in aid of a grand jury in-
23 vestigation or with any other order issued by a
24 court of the United States directing the produc-
25 tion of records or tangible things; and



1 “(E) shall not disclose that such order is
2 issued for purposes of an investigation de-
3 scribed in subsection (a).”.

4 (e) PROHIBITION ON DISCLOSURE.—Subsection (d)
5 of such section is amended to read as follows:

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

10 “(A) those persons to whom disclosure is nec-
11 essary to comply with such order;

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

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

18 “(2)(A) A person to whom disclosure is made pursu-
19 ant to paragraph (1) shall be subject to the nondisclosure
20 requirements applicable to a person to whom an order is
21 directed under this section in the same manner as such
22 person.

23 “(B) Any person who discloses to a person de-
24 scribed in subparagraphs (A), (B), or (C) of para-
25 graph (1) that the Federal Bureau of Investigation

1 has sought or obtained tangible things pursuant to
2 an order under this section shall notify such person
3 of the nondisclosure requirements of this subsection.

4 “(C) At the request of the Director of the Fed-
5 eral Bureau of Investigation or the designee of the
6 Director, any person making or intending to make
7 a disclosure under this section shall identify to the
8 Director or such designee the person to whom such
9 disclosure will be made or to whom such disclosure
10 was made prior to the request, but in no cir-
11 cumstance shall a person be required to inform the
12 Director or such designee that the person intends to
13 consult an attorney to obtain legal advice or legal as-
14 sistance.”.

15 (f) JUDICIAL REVIEW.—

16 (1) PETITION REVIEW POOL.—Section 103 of
17 the Foreign Intelligence Surveillance Act of 1978
18 (50 U.S.C. 1803) is amended by adding at the end
19 the following new subsection:

20 “(e)(1) Three judges designated under subsection (a)
21 who reside within 20 miles of the District of Columbia,
22 or, if all of such judges are unavailable, other judges of
23 the court established under subsection (a) as may be des-
24 ignated by the presiding judge of such court, shall com-

1 prise a petition review pool which shall have jurisdiction
2 to review petitions filed pursuant to section 501(f)(1).

3 “(2) Not later than 60 days after the date of the en-
4 actment of the USA PATRIOT Improvement and Reau-
5 thorization Act of 2005, the court established under sub-
6 section (a) shall adopt and, consistent with the protection
7 of national security, publish procedures for the review of
8 petitions filed pursuant to section 501(f)(1) by the panel
9 established under paragraph (1). Such procedures shall
10 provide that review of a petition shall be conducted in
11 camera and shall also provide for the designation of an
12 acting presiding judge.”.

13 (2) PROCEEDINGS.—Section 501 of the Foreign
14 Intelligence Surveillance Act of 1978 (50 U.S.C.
15 1861) is further amended by adding at the end the
16 following new subsection:

17 “(f)(1) A person receiving an order to produce any
18 tangible thing under this section may challenge the legal-
19 ity of that order by filing a petition with the pool estab-
20 lished by section 103(e)(1). The presiding judge shall im-
21 mediately assign the petition to one of the judges serving
22 in such pool. Not later than 72 hours after the assignment
23 of such petition, the assigned judge shall conduct an initial
24 review of the petition. If the assigned judge determines
25 that the petition is frivolous, the assigned judge shall im-



1 mediate deny the petition and affirm the order. If the
2 assigned judge determines the petition is not frivolous, the
3 assigned judge shall promptly consider the petition in ac-
4 cordance with the procedures established pursuant to sec-
5 tion 103(e)(2). The judge considering the petition may
6 modify or set aside the order only if the judge finds that
7 the order does not meet the requirements of this section
8 or is otherwise unlawful. If the judge does not modify or
9 set aside the order, the judge shall immediately affirm the
10 order and order the recipient to comply therewith. The as-
11 signed judge shall promptly provide a written statement
12 for the record of the reasons for any determination under
13 this paragraph.

14 “(2) A petition for review of a decision to affirm,
15 modify, or set aside an order by the United States or any
16 person receiving such order shall be to the court of review
17 established under section 103(b), which shall have juris-
18 diction to consider such petitions. The court of review shall
19 provide for the record a written statement of the reasons
20 for its decision and, on petition of the United States or
21 any person receiving such order for writ of certiorari, the
22 record shall be transmitted under seal to the Supreme
23 Court, which shall have jurisdiction to review such deci-
24 sion.



1 “(3) Judicial proceedings under this subsection shall
2 be concluded as expeditiously as possible. The record of
3 proceedings, including petitions filed, orders granted, and
4 statements of reasons for decision, shall be maintained
5 under security measures established by the Chief Justice
6 of the United States in consultation with the Attorney
7 General and the Director of National Intelligence.

8 “(4) All petitions under this subsection shall be filed
9 under seal. In any proceedings under this subsection, the
10 court shall, upon request of the government, review ex
11 parte and in camera any government submission, or por-
12 tions thereof, which may include classified information.”.

13 (g) MINIMIZATION PROCEDURES AND USE OF INFOR-
14 MATION.—Section 501 of the Foreign Intelligence Surveil-
15 lance Act of 1978 (50 U.S.C. 1861) is further amended
16 by adding at the end the following new subsections:

17 “(g) MINIMIZATION PROCEDURES.—

18 “(1) IN GENERAL.—Not later than 180 days
19 after the date of the enactment of the USA PA-
20 TRIOT Improvement and Reauthorization Act of
21 2005, the Attorney General shall adopt specific
22 minimization procedures governing the retention and
23 dissemination by the Federal Bureau of Investiga-
24 tion of any tangible things, or information therein,



1 received by the Federal Bureau of Investigation in
2 response to an order under this title.

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

5 “(A) specific procedures that are reason-
6 ably designed in light of the purpose and tech-
7 nique of an order for the production of tangible
8 things, to minimize the retention, and prohibit
9 the dissemination, of nonpublicly available in-
10 formation concerning unconsenting United
11 States persons consistent with the need of the
12 United States to obtain, produce, and dissemi-
13 nate foreign intelligence information;

14 “(B) procedures that require that nonpub-
15 licly available information, which is not foreign
16 intelligence information, as defined in section
17 101(e)(1), shall not be disseminated in a man-
18 ner that identifies any United States person,
19 without such person’s consent, unless such per-
20 son’s identity is necessary to understand foreign
21 intelligence information or assess its impor-
22 tance; and

23 “(C) notwithstanding subparagraphs (A)
24 and (B), procedures that allow for the retention
25 and dissemination of information that is evi-

1 dence of a crime which has been, is being, or
2 is about to be committed and that is to be re-
3 tained or disseminated for law enforcement pur-
4 poses.

5 “(h) USE OF INFORMATION.—Information acquired
6 from tangible things received by the Federal Bureau of
7 Investigation in response to an order under this title con-
8 cerning any United States person may be used and dis-
9 closed by Federal officers and employees without the con-
10 sent of the United States person only in accordance with
11 the minimization procedures adopted pursuant to sub-
12 section (g). No otherwise privileged information acquired
13 from tangible things received by the Federal Bureau of
14 Investigation in accordance with the provisions of this title
15 shall lose its privileged character. No information acquired
16 from tangible things received by the Federal Bureau of
17 Investigation in response to an order under this title may
18 be used or disclosed by Federal officers or employees ex-
19 cept for lawful purposes.”.

20 (h) ENHANCED OVERSIGHT.—Section 502 of the
21 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
22 1862) is amended—

23 (1) in subsection (a)—

24 (A) by striking “semiannual basis” and in-
25 serting “annual basis”; and



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

4 (2) in subsection (b)—

5 (A) by striking “On a semiannual basis”
6 and all that follows through “the preceding 6-
7 month period” and inserting “In April of each
8 year, the Attorney General shall submit to the
9 House and Senate Committees on the Judiciary
10 and the House Permanent Select Committee on
11 Intelligence and the Senate Select Committee
12 on Intelligence a report setting forth with re-
13 spect to the preceding calendar year”;

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

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

18 (D) by adding at the end the following new
19 paragraph:

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

23 “(A) Library circulation records, library
24 patron lists, book sales records, or book cus-
25 tomer lists.



1 “(B) Firearms sales records.

2 “(C) Tax return records.

3 “(D) Educational records.

4 “(E) Medical records containing informa-
5 tion that would identify a person.”; and

6 (3) by adding at the end the following new sub-
7 section:

8 “(c)(1) In April of each year, the Attorney General
9 shall submit to Congress a report setting forth with re-
10 spect to the preceding year—

11 “(A) the total number of applications made for
12 orders approving requests for the production of tan-
13 gible things under section 501; and

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

16 “(2) Each report under this subsection shall be sub-
17 mitted in unclassified form.”.

18 **SECTION 106A. AUDIT ON ACCESS TO CERTAIN BUSINESS**
19 **RECORDS FOR FOREIGN INTELLIGENCE PUR-**
20 **POSES.**

21 (a) **AUDIT.**—The Inspector General of the Depart-
22 ment of Justice shall perform a comprehensive audit of
23 the effectiveness and use, including any improper or illegal
24 use, of the investigative authority provided to the Federal

1 Bureau of Investigation under title V of the Foreign Intel-
2 ligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.).

3 (b) REQUIREMENTS.—The audit required under sub-
4 section (a) shall include—

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

15 (A) whether the Federal Bureau of Inves-
16 tigation requested that the Department of Jus-
17 tice submit an application and the request was
18 not submitted to the court (including an exam-
19 ination of the basis for not submitting the ap-
20 plication);

21 (B) whether the court granted, modified,
22 or denied the application (including an exam-
23 ination of the basis for any modification or de-
24 nial);

1 (2) the justification for the failure of the Attor-
2 ney General to issue implementing procedures gov-
3 erning requests for the production of tangible things
4 under such section in a timely fashion, including
5 whether such delay harmed national security;

6 (3) whether bureaucratic or procedural impedi-
7 ments to the use of such requests for production
8 prevent the Federal Bureau of Investigation from
9 taking full advantage of the authorities provided
10 under section 501 of such Act;

11 (4) any noteworthy facts or circumstances relat-
12 ing to orders under such section, including any im-
13 proper or illegal use of the authority provided under
14 such section; and

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


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

22 (B) the manner in which such information
23 is collected, retained, analyzed, and dissemi-
24 nated by the Federal Bureau of Investigation,
25 including any direct access to such information

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

5 (C) with respect to calendar year 2006, an
6 examination of the minimization procedures
7 adopted by the Attorney General under section
8 501(g) of such Act and whether such minimiza-
9 tion procedures protect the constitutional rights
10 of United States persons;

11 (D) whether, and how often, the Federal
12 Bureau of Investigation utilized information ac-
13 quired pursuant to an order under section 501
14 of such Act to produce an analytical intelligence
15 product for distribution within the Federal Bu-
16 reau of Investigation, to the intelligence com-
17 munity (as such term is defined in section 3(4)
18 of the National Security Act of 1947 (50
19 U.S.C. 401a(4))), or to other Federal, State,
20 local, or tribal government Departments, agen-
21 cies, or instrumentalities; and



22 (E) whether, and how often, the Federal
23 Bureau of Investigation provided such informa-
24 tion to law enforcement authorities for use in
25 criminal proceedings.

1 (c) SUBMISSION DATES.—

2 (1) PRIOR YEARS.—Not later than one year
3 after the date of the enactment of this Act, or upon
4 completion of the audit under this section for cal-
5 endar years 2002, 2003, and 2004, whichever is ear-
6 lier, the Inspector General of the Department of
7 Justice shall submit to the Committee on the Judici-
8 ary and the Permanent Select Committee on Intel-
9 ligence of the House of Representatives and the
10 Committee on the Judiciary and the Select Com-
11 mittee on Intelligence of the Senate a report con-
12 taining the results of the audit conducted under this
13 section for calendar years 2002, 2003, and 2004.

14 (2) CALENDAR YEARS 2005 AND 2006.—Not
15 later than December 31, 2007, or upon completion
16 of the audit under this section for calendar years
17 2005 and 2006, whichever is earlier, the Inspector
18 General of the Department of Justice shall submit
19 to the Committee on the Judiciary and the Perma-
20 nent Select Committee on Intelligence of the House
21 of Representatives and the Committee on the Judici-
22 ary and the Select Committee on Intelligence of the
23 Senate a report containing the results of the audit
24 conducted under this section for calendar years 2005
25 and 2006.



1 (d) PRIOR NOTICE TO ATTORNEY GENERAL AND DI-
2 RECTOR OF NATIONAL INTELLIGENCE; COMMENTS.—

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

8 (2) COMMENTS.—The Attorney General or the
9 Director of National Intelligence may provide com-
10 ments to be included in the reports submitted under
11 subsections (c)(1) and (c)(2) as the Attorney Gen-
12 eral or the Director of National Intelligence may
13 consider necessary.

14 (e) UNCLASSIFIED FORM.—The reports submitted
15 under subsection (c)(1) and (c)(2) and any comments in-
16 cluded under subsection (d)(2) shall be in unclassified
17 form, but may include a classified annex.

18 **SEC. 107. ENHANCED OVERSIGHT OF GOOD-FAITH EMER-**
19 **GENCY DISCLOSURES UNDER SECTION 212 OF**
20 **THE USA PATRIOT ACT.**

21 (a) ENHANCED OVERSIGHT.—Section 2702 of title
22 18, United States Code, is amended by adding at the end
23 the following:

24 “(d) REPORTING OF EMERGENCY DISCLOSURES.—
25 On an annual basis, the Attorney General shall submit to

1 the Committee on the Judiciary of the House of Rep-
2 resentatives and the Committee on the Judiciary of the
3 Senate a report containing—

4 “(1) the number of accounts from which the
5 Department of Justice has received voluntary dislo-
6 cures under subsection (b)(8); and

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

9 “(A) voluntary disclosures under sub-
10 section (b)(8) were made to the Department of
11 Justice; and

12 “(B) the investigation pertaining to those
13 disclosures was closed without the filing of
14 criminal charges.”.

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

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

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

21 (B) by striking paragraph (4) of sub-
22 section (c) and inserting the following:

23 “(4) to a governmental entity, if the provider,
24 in good faith, believes that an emergency involving
25 danger of death or serious physical injury to any

1 person requires disclosure without delay of informa-
2 tion relating to the emergency;”.

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

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

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

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

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

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

16 **SEC. 108. MULTIPPOINT ELECTRONIC SURVEILLANCE**
17 **UNDER SECTION 206 OF THE USA PATRIOT**
18 **ACT.**

19 (a) INCLUSION OF SPECIFIC FACTS IN APPLICA-
20 TION.—

21 (1) APPLICATION.—Section 104(a)(3) of the
22 Foreign Intelligence Surveillance Act of 1978 (50
23 U.S.C. 1804(a)(3)) is amended by inserting “spe-
24 cific” after “description of the”.

1 (2) ORDER.—Subsection (c) of section 105 of
2 the Foreign Intelligence Surveillance Act of 1978
3 (50 U.S.C. 1805(c)) is amended—

4 (A) in paragraph (1)(A) by striking “tar-
5 get of the electronic surveillance” and inserting
6 “specific target of the electronic surveillance
7 identified or described in the application pursu-
8 ant to section 104(a)(3)”; and

9 (B) in paragraph (2)(B), by striking
10 “where the Court finds” and inserting “where
11 the Court finds, based upon specific facts pro-
12 vided in the application,”.

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

15 (1) by striking “An order approving” and all
16 that follows through “specify” and inserting “(1)
17 SPECIFICATIONS.—An order approving an electronic
18 surveillance under this section shall specify”;

19 (2) in paragraph (1)(F), by striking “; and”
20 and inserting a period;

21 (3) in paragraph (2), by striking “direct” and
22 inserting “DIRECTIONS.—An order approving an
23 electronic surveillance under this section shall di-
24 rect”; and

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

3 “(3) SPECIAL DIRECTIONS FOR CERTAIN OR-
4 DERS.—An order approving an electronic surveil-
5 lance under this section in circumstances where the
6 nature and location of each of the facilities or places
7 at which the surveillance will be directed is unknown
8 shall direct the applicant to provide notice to the
9 court within ten days after the date on which sur-
10 veillance begins to be directed at any new facility or
11 place, unless the court finds good cause to justify a
12 longer period of up to 60 days, of—

13 “(A) the nature and location of each new
14 facility or place at which the electronic surveil-
15 lance is directed;

16 “(B) the facts and circumstances relied
17 upon by the applicant to justify the applicant’s
18 belief that each new facility or place at which
19 the electronic surveillance is directed is or was
20 being used, or is about to be used, by the target
21 of the surveillance;

22 “(C) a statement of any proposed mini-
23 mization procedures that differ from those con-
24 tained in the original application or order, that
25 may be necessitated by a change in the facility



1 or place at which the electronic surveillance is
2 directed; and

3 “(D) the total number of electronic surveil-
4 lances that have been or are being conducted
5 under the authority of the order.”.

6 (c) ENHANCED OVERSIGHT.—

7 (1) REPORT TO CONGRESS.—Section 108(a)(1)
8 of the Foreign Intelligence Surveillance Act of 1978
9 (50 U.S.C. 1808(a)(1)) is amended by inserting “,
10 and the Committee on the Judiciary of the Senate,”
11 after “Senate Select Committee on Intelligence”.

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

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

20 “(A) the total number of applications made
21 for orders and extensions of orders approving
22 electronic surveillance under this title where the
23 nature and location of each facility or place at
24 which the electronic surveillance will be directed
25 is unknown;



1 “(B) each criminal case in which informa-
2 tion acquired under this Act has been author-
3 ized for use at trial during the period covered
4 by such report; and

5 “(C) the total number of emergency em-
6 ployments of electronic surveillance under sec-
7 tion 105(f) and the total number of subsequent
8 orders approving or denying such electronic sur-
9 veillance.”.

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

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

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

17 (2) in the second sentence, by striking “and the
18 Committees on the Judiciary of the House of Rep-
19 resentatives and the Senate” and inserting “and the
20 Committee on the Judiciary of the House of Rep-
21 resentatives”;

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

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

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

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

7 (b) EMERGENCY PEN REGISTERS AND TRAP AND
8 TRACE DEVICES.—Section 406(b) of the Foreign Intel-
9 ligence Surveillance Act of 1978 (50 U.S.C. 1846(b)) is
10 amended—

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

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

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

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

23 (c) ADDITIONAL REPORT.—At the beginning and
24 midpoint of each fiscal year, the Secretary of Homeland
25 Security shall submit to the Committees on the Judiciary



1 of the House of Representatives and the Senate, a written
2 report providing a description of internal affairs oper-
3 ations at U.S. Citizenship and Immigration Services, in-
4 cluding the general state of such operations and a detailed
5 description of investigations that are being conducted (or
6 that were conducted during the previous six months) and
7 the resources devoted to such investigations. The first
8 such report shall be submitted not later than April 1,
9 2006.

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

14 “(f)(1) The courts established pursuant to sub-
15 sections (a) and (b) may establish such rules and proce-
16 dures, and take such actions, as are reasonably necessary
17 to administer their responsibilities under this Act.

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

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

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

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

2 “(D) The Committee on the Judiciary of the
3 Senate.

4 “(E) The Select Committee on Intelligence of
5 the Senate.

6 “(F) The Committee on the Judiciary of the
7 House of Representatives.

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

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

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

15 (a) IN GENERAL.—Chapter 97 of title 18, United
16 States Code, is amended by striking sections 1992 through
17 1993 and inserting the following:

18 **“§ 1992. Terrorist attacks and other violence against**
19 **railroad carriers and against mass trans-**
20 **portation systems on land, on water, or**
21 **through the air**

22 **“(a) GENERAL PROHIBITIONS.—Whoever, in a cir-**
23 **cumstance described in subsection (c), knowingly and**
24 **without lawful authority or permission—**



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

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

10 “(3) places or releases a hazardous material or
11 a biological agent or toxin on or near any property
12 described in subparagraph (A) or (B) of paragraph
13 (4), with intent to endanger the safety of any per-
14 son, or with reckless disregard for the safety of
15 human life;

16 “(4) sets fire to, undermines, makes unwork-
17 able, unusable, or hazardous to work on or use, or
18 places any biological agent or toxin, destructive sub-
19 stance, or destructive device in, upon, or near any—

20 “(A) tunnel, bridge, viaduct, trestle, track,
21 electromagnetic guideway, signal, station, depot,
22 warehouse, terminal, or any other way, struc-
23 ture, property, or appurtenance used in the op-
24 eration of, or in support of the operation of, a
25 railroad carrier, and with intent to, or knowing

1 or having reason to know, such activity would
2 likely, derail, disable, or wreck railroad on-track
3 equipment; or

4 “(B) garage, terminal, structure, track,
5 electromagnetic guideway, supply, or facility
6 used in the operation of, or in support of the
7 operation of, a mass transportation vehicle, and
8 with intent to, or knowing or having reason to
9 know, such activity would likely, derail, disable,
10 or wreck a mass transportation vehicle used,
11 operated, or employed by a mass transportation
12 provider;

13 “(5) removes an appurtenance from, damages,
14 or otherwise impairs the operation of a railroad sig-
15 nal system or mass transportation signal or dis-
16 patching system, including a train control system,
17 centralized dispatching system, or highway-railroad
18 grade crossing warning signal;

19 “(6) with intent to endanger the safety of any
20 person, or with a reckless disregard for the safety of
21 human life, interferes with, disables, or incapacitates
22 any dispatcher, driver, captain, locomotive engineer,
23 railroad conductor, or other person while the person
24 is employed in dispatching, operating, controlling, or



1 maintaining railroad on-track equipment or a mass
2 transportation vehicle;

3 “(7) commits an act, including the use of a
4 dangerous weapon, with the intent to cause death or
5 serious bodily injury to any person who is on prop-
6 erty described in subparagraph (A) or (B) of para-
7 graph (4);

8 “(8) surveils, photographs, videotapes, dia-
9 grams, or otherwise collects information with the in-
10 tent to plan or assist in planning any of the acts de-
11 scribed in the paragraphs (1) through (6);

12 “(9) conveys false information, knowing the in-
13 formation to be false, concerning an attempt or al-
14 leged attempt to engage in a violation of this sub-
15 section; or

16 “(10) attempts, threatens, or conspires to en-
17 gage in any violation of any of paragraphs (1)
18 through (9),

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

1 “(b) AGGRAVATED OFFENSE.—Whoever commits an
2 offense under subsection (a) of this section in a cir-
3 cumstance in which—

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

7 “(2) the railroad on-track equipment or mass
8 transportation vehicle was carrying high-level radio-
9 active waste or spent nuclear fuel at the time of the
10 offense, or

11 “(3) the offense was committed with the intent
12 to endanger the safety of any person, or with a reck-
13 less disregard for the safety of any person, and the
14 railroad on-track equipment or mass transportation
15 vehicle was carrying a hazardous material at the
16 time of the offense that—

17 “(A) was required to be placarded under
18 subpart F of part 172 of title 49, Code of Fed-
19 eral Regulations, and

20 “(B) is identified as class number 3, 4, 5,
21 6.1, or 8 and packing group I or packing group
22 II, or class number 1, 2, or 7 under the haz-
23 ardous materials table of section 172.101 of
24 title 49, Code of Federal Regulations,



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

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

8 “(1) Any of the conduct required for the offense
9 is, or, in the case of an attempt, threat, or con-
10 spiracy to engage in conduct, the conduct required
11 for the completed offense would be, engaged in, on,
12 against, or affecting a mass transportation provider,
13 or a railroad carrier engaged in interstate or foreign
14 commerce.

15 “(2) Any person travels or communicates across
16 a State line in order to commit the offense, or trans-
17 ports materials across a State line in aid of the com-
18 mission of the offense.

19 “(d) DEFINITIONS.—In this section—

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

22 “(2) the term ‘dangerous weapon’ means a
23 weapon, device, instrument, material, or substance,
24 animate or inanimate, that is used for, or is readily
25 capable of, causing death or serious bodily injury, in-

1 cluding a pocket knife with a blade of less than 2½
2 inches in length and a box cutter;

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

5 “(4) the term ‘destructive substance’ means an
6 explosive substance, flammable material, infernal
7 machine, or other chemical, mechanical, or radio-
8 active device or material, or matter of a combustible,
9 contaminative, corrosive, or explosive nature, except
10 that the term ‘radioactive device’ does not include
11 any radioactive device or material used solely for
12 medical, industrial, research, or other peaceful pur-
13 poses;

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

16 “(6) the term ‘high-level radioactive waste’ has
17 the meaning given to that term in section 2(12) of
18 the Nuclear Waste Policy Act of 1982 (42 U.S.C.
19 10101(12));

20 “(7) the term ‘mass transportation’ has the
21 meaning given to that term in section 5302(a)(7) of
22 title 49, except that the term includes school bus,
23 charter, and sightseeing transportation and pas-
24 senger vessel as that term is defined in section
25 2101(22) of title 46, United States Code;

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

4 “(9) the term ‘railroad on-track equipment’
5 means a train, locomotive, tender, motor unit,
6 freight or passenger car, or other on-track equip-
7 ment used, operated, or employed by a railroad car-
8 rier;

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

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

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

15 “(13) the term ‘spent nuclear fuel’ has the
16 meaning given to that term in section 2(23) of the
17 Nuclear Waste Policy Act of 1982 (42 U.S.C.
18 10101(23));

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

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

23 “(16) the term ‘vehicle’ means any carriage or
24 other contrivance used, or capable of being used, as

1 a means of transportation on land, on water, or
2 through the air.”.

3 (b) CONFORMING AMENDMENTS.—

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

7 (A) by striking “**RAILROADS**” in the
8 chapter heading and inserting “**RAILROAD
9 CARRIERS AND MASS TRANSPOR-
10 TATION SYSTEMS ON LAND, ON
11 WATER, OR THROUGH THE AIR**”;

12 (B) by striking the items relating to sec-
13 tions 1992 and 1993; and

14 (C) by inserting after the item relating to
15 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.”.

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

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

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

21 (A) in section 2332b(g)(5)(B)(i), by strik-
22 ing “1992 (relating to wrecking trains), 1993



1 (relating to terrorist attacks and other acts of
2 violence against mass transportation systems),”
3 and inserting “1992 (relating to terrorist at-
4 tacks and other acts of violence against railroad
5 carriers and against mass transportation sys-
6 tems on land, on water, or through the air),”;

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

9 (C) in section 2516(1)(e) by striking
10 “1992 (relating to wrecking trains),”.

11 **SEC. 111. FORFEITURE.**

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

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

19 (a) **ADDITIONAL OFFENSES.**—Section
20 2332b(g)(5)(B) of title 18, United States Code, is
21 amended—

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

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

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

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

6 “(iv) section 1010A of the Controlled
7 Substances Import and Export Act (relat-
8 ing to narco-terrorism).”.

9 (b) CLERICAL CORRECTION.—Section
10 2332b(g)(5)(B) of title 18, United States Code, is amend-
11 ed by inserting “)” after “2339C (relating to financing
12 of terrorism”.

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

15 (a) PARAGRAPH (a) AMENDMENT.—Section
16 2516(1)(a) of title 18, United States Code, is amended
17 by inserting “chapter 10 (relating to biological weapons)”
18 after “under the following chapters of this title:”.

19 (b) PARAGRAPH (c) AMENDMENT.—Section
20 2516(1)(c) of title 18, United States Code, is amended—

21 (1) by inserting “section 37 (relating to violence
22 at international airports), section 43 (relating to ani-
23 mal enterprise terrorism),” after “the following sec-
24 tions of this title:”;

1 (2) by inserting “section 832 (relating to nu-
2 clear and weapons of mass destruction threats), sec-
3 tion 842 (relating to explosive materials), section
4 930 (relating to possession of weapons in Federal fa-
5 cilities),” after “section 751 (relating to escape),”;

6 (3) by inserting “section 1114 (relating to offi-
7 cers and employees of the United States), section
8 1116 (relating to protection of foreign officials),”
9 after “section 1014 (relating to loans and credit ap-
10 plications generally; renewals and discounts),”;

11 (4) by inserting “section 1992 (relating to ter-
12 rorist attacks against mass transportation),” after
13 “section 1344 (relating to bank fraud),”;

14 (5) by inserting “section 2340A (relating to tor-
15 ture),” after “section 2321 (relating to trafficking in
16 certain motor vehicles or motor vehicle parts),”;

17 (6) by inserting “section 81 (arson within spe-
18 cial maritime and territorial jurisdiction),” before
19 “section 201 (bribery of public officials and wit-
20 nesses)”;

21 (7) by inserting “section 956 (conspiracy to
22 harm persons or property overseas),” after “section
23 175c (relating to variola virus)”.

24 (c) PARAGRAPH (g) AMENDMENT.—Section
25 2516(1)(g) of title 18, United States Code, is amended

1 by inserting before the semicolon “, or section 5324 of
2 title 31, United States Code (relating to structuring trans-
3 actions to evade reporting requirement prohibited)” .

4 (d) PARAGRAPH (j) AMENDMENT.—Section
5 2516(1)(j) of title 18, United States Code, is amended—

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

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

16 (e) PARAGRAPH (p) AMENDMENT.—Section
17 2516(1)(p) of title 18, United States Code, is amended
18 by inserting “, section 1028A (relating to aggravated iden-
19 tity theft)” after “other documents” .

20 (f) PARAGRAPH (q) AMENDMENT.—Section
21 2516(1)(q) of title 18, United States Code, is amended—

22 (1) by inserting “2339” after “2232h” ;

23 (2) by striking “or” before “2339C” ; and

24 (3) by inserting “, or 2339D” after “2339C” .

1 (g) AMENDMENT OF PREDICATE CRIMES FOR AU-
2 THORIZATION FOR INTERCEPTION OF WIRE, ORAL, AND
3 ELECTRONIC COMMUNICATIONS.—Section 2516(1) of title
4 18, United State Code, is amended—

5 (1) in subparagraph (q), by striking “or” after
6 the semicolon;

7 (2) by redesignating subparagraph (r) as sub-
8 paragraph (s); and

9 (3) by adding after subparagraph (q) the fol-
10 lowing:

11 “(r) any criminal violation of section 1 (relating
12 to illegal restraints of trade or commerce), 2 (relat-
13 ing to illegal monopolizing of trade or commerce), or
14 3 (relating to illegal restraints of trade or commerce
15 in territories or the District of Columbia) of the
16 Sherman Act (15 U.S.C. 1, 2, 3); or”.

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

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

21 (1) by striking subsection (b)(3) and inserting
22 the following:

23 “(3) the warrant provides for the giving of such
24 notice within a reasonable period not to exceed 30
25 days after the date of its execution, or on a later

1 date certain if the facts of the case justify a longer
2 period of delay. ”.

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

4 “(c) EXTENSIONS OF DELAY.—Any period of delay
5 authorized by this section may be extended by the court
6 for good cause shown, subject to the condition that exten-
7 sions should only be granted upon an updated showing of
8 the need for further delay and that each additional delay
9 should be limited to periods of 90 days or less, unless the
10 facts of the case justify a longer period of delay.”.

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

15 (c) ENHANCED OVERSIGHT.—Section 3103a of title
16 18, United States Code, is further amended by adding at
17 the end the following:

18 “(d) REPORTS.—

19 “(1) REPORT BY JUDGE.—Not later than 30
20 days after the expiration of a warrant authorizing
21 delayed notice (including any extension thereof) en-
22 tered under this section, or the denial of such war-
23 rant (or request for extension), the issuing or deny-
24 ing judge shall report to the Administrative Office of
25 the United States Courts—



1 “(A) the fact that a warrant was applied
2 for;

3 “(B) the fact that the warrant or any ex-
4 tension thereof was granted as applied for, was
5 modified, or was denied;

6 “(C) the period of delay in the giving of
7 notice authorized by the warrant, and the num-
8 ber and duration of any extensions; and

9 “(D) the offense specified in the warrant
10 or application.

11 “(2) REPORT BY ADMINISTRATIVE OFFICE OF
12 THE UNITED STATES COURTS.—Beginning with the
13 fiscal year ending September 30, 2007, the Director
14 of the Administrative Office of the United States
15 Courts shall transmit to Congress annually a full
16 and complete report summarizing the data required
17 to be filed with the Administrative Office by para-
18 graph (1), including the number of applications for
19 warrants and extensions of warrants authorizing de-
20 layed notice, and the number of such warrants and
21 extensions granted or denied during the preceding
22 fiscal year.

23 “(3) REGULATIONS.—The Director of the Ad-
24 ministrative Office of the United States Courts, in
25 consultation with the Attorney General, is author-

1 “(b)(1) The recipient of a request for records, a re-
2 port, or other information under section 2709(b) of this
3 title, section 626(a) or (b) or 627(a) of the Fair Credit
4 Reporting Act, section 1114(a)(5)(A) of the Right to Fi-
5 nancial Privacy Act, or section 802(a) of the National Se-
6 curity Act of 1947, may petition any court described in
7 subsection (a) for an order modifying or setting aside a
8 nondisclosure requirement imposed in connection with
9 such a request.

10 “(2) If the petition is filed within one year of the re-
11 quest for records, a report, or other information under sec-
12 tion 2709(b) of this title, section 626(a) or (b) or 627(a)
13 of the Fair Credit Reporting Act, section 1114(a)(5)(A)
14 of the Right to Financial Privacy Act, or section 802(a)
15 of the National Security Act of 1947, the court may mod-
16 ify or set aside such a nondisclosure requirement if it finds
17 that there is no reason to believe that disclosure may en-
18 danger the national security of the United States, inter-
19 fere with a criminal, counterterrorism, or counterintel-
20 ligence investigation, interfere with diplomatic relations,
21 or endanger the life or physical safety of any person. If,
22 at the time of the petition, the Attorney General, Deputy
23 Attorney General, an Assistant Attorney General, or the
24 Director of the Federal Bureau of Investigation, or in the
25 case of a request by a department, agency, or instrumen-

1 tality of the Federal Government other than the Depart-
2 ment of Justice, the head or deputy head of such depart-
3 ment, agency, or instrumentality, certifies that disclosure
4 may endanger the national security of the United States
5 or interfere with diplomatic relations, such certification
6 shall be treated as conclusive unless the court finds that
7 the certification was made in bad faith.

8 “(3) If the petition is filed one year or more after
9 the request for records, a report, or other information
10 under section 2709(b) of this title, section 626(a) or (b)
11 or 627(a) of the Fair Credit Reporting Act, section 1114
12 (a)(5)(A) of the Right to Financial Privacy Act, or section
13 802(a) of the National Security Act of 1947, the Attorney
14 General, Deputy Attorney General, an Assistant Attorney
15 General, or the Director of the Federal Bureau of Inves-
16 tigation, or his designee in a position not lower than Dep-
17 uty Assistant Director at Bureau headquarters or a Spe-
18 cial Agent in Charge in a Bureau field office designated
19 by the Director, or in the case of a request by a depart-
20 ment, agency, or instrumentality of the Federal Govern-
21 ment other than the Federal Bureau of Investigation, the
22 head or deputy head of such department, agency, or in-
23 strumentality, within ninety days of the filing of the peti-
24 tion, shall either terminate the nondisclosure requirement
25 or re-certify that disclosure may result in a danger to the



1 national security of the United States, interference with
2 a criminal, counterterrorism, or counterintelligence inves-
3 tigation, interference with diplomatic relations, or danger
4 to the life or physical safety of any person. In the event
5 of re-certification, the court may modify or set aside such
6 a nondisclosure requirement if it finds that there is no
7 reason to believe that disclosure may endanger the na-
8 tional security of the United States, interfere with a crimi-
9 nal, counterterrorism, or counterintelligence investigation,
10 interfere with diplomatic relations, or endanger the life or
11 physical safety of any person. If the recertification that
12 disclosure may endanger the national security of the
13 United States or interfere with diplomatic relations is
14 made by the Attorney General, Deputy Attorney General,
15 an Assistant Attorney General, or the Director of the Fed-
16 eral Bureau of Investigation, such certification shall be
17 treated as conclusive unless the court finds that the recer-
18 tification was made in bad faith. If the court denies a peti-
19 tion for an order modifying or setting aside a nondiselo-
20 sure requirement under this paragraph, the recipient shall
21 be precluded for a period of one year from filing another
22 petition to modify or set aside such nondisclosure require-
23 ment.

24 “(c) In the case of a failure to comply with a request
25 for records, a report, or other information made to any

1 person or entity under section 2709(b) of this title, section
2 626(a) or (b) or 627(a) of the Fair Credit Reporting Act,
3 section 1114(a)(5)(A) of the Right to Financial Privacy
4 Act, or section 802(a) of the National Security Act of
5 1947, the Attorney General may invoke the aid of any dis-
6 trict court of the United States within the jurisdiction in
7 which the investigation is carried on or the person or enti-
8 ty resides, carries on business, or may be found, to compel
9 compliance with the request. The court may issue an order
10 requiring the person or entity to comply with the request.
11 Any failure to obey the order of the court may be punished
12 by the court as contempt thereof. Any process under this
13 section may be served in any judicial district in which the
14 person or entity may be found.

15 “(d) In all proceedings under this section, subject to
16 any right to an open hearing in a contempt proceeding,
17 the court must close any hearing to the extent necessary
18 to prevent an unauthorized disclosure of a request for
19 records, a report, or other information made to any person
20 or entity under section 2709(b) of this title, section 626(a)
21 or (b) or 627(a) of the Fair Credit Reporting Act, section
22 1114(a)(5)(A) of the Right to Financial Privacy Act, or
23 section 802(a) of the National Security Act of 1947. Peti-
24 tions, filings, records, orders, and subpoenas must also be
25 kept under seal to the extent and as long as necessary



1 person or entity under section 2709(b) of this title, section
2 626(a) or (b) or 627(a) of the Fair Credit Reporting Act,
3 section 1114(a)(5)(A) of the Right to Financial Privacy
4 Act, or section 802(a) of the National Security Act of
5 1947, the Attorney General may invoke the aid of any dis-
6 trict court of the United States within the jurisdiction in
7 which the investigation is carried on or the person or enti-
8 ty resides, carries on business, or may be found, to compel
9 compliance with the request. The court may issue an order
10 requiring the person or entity to comply with the request.
11 Any failure to obey the order of the court may be punished
12 by the court as contempt thereof. Any process under this
13 section may be served in any judicial district in which the
14 person or entity may be found.

15 “(d) In all proceedings under this section, subject to
16 any right to an open hearing in a contempt proceeding,
17 the court must close any hearing to the extent necessary
18 to prevent an unauthorized disclosure of a request for
19 records, a report, or other information made to any person
20 or entity under section 2709(b) of this title, section 626(a)
21 or (b) or 627(a) of the Fair Credit Reporting Act, section
22 1114(a)(5)(A) of the Right to Financial Privacy Act, or
23 section 802(a) of the National Security Act of 1947. Peti-
24 tions, filings, records, orders, and subpoenas must also be
25 kept under seal to the extent and as long as necessary



1 to prevent the unauthorized disclosure of a request for
2 records, a report, or other information made to any person
3 or entity under section 2709(b) of this title, section 626(a)
4 or (b) or 627(a) of the Fair Credit Reporting Act, section
5 1114(a)(5)(A) of the Right to Financial Privacy Act, or
6 section 802(a) of the National Security Act of 1947.

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

11 **SEC. 116. CONFIDENTIALITY OF NATIONAL SECURITY LET-**
12 **TERS.**

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

15 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—

16 “(1) If the Director of the Federal Bureau of
17 Investigation, or his designee in a position not lower
18 than Deputy Assistant Director at Bureau head-
19 quarters or a Special Agent in Charge in a Bureau
20 field office designated by the Director, certifies that
21 otherwise there may result a danger to the national
22 security of the United States, interference with a
23 criminal, counterterrorism, or counterintelligence in-
24 vestigation, interference with diplomatic relations, or
25 danger to the life or physical safety of any person,



1 no wire or electronic communications service pro-
2 vider, or officer, employee, or agent thereof, shall
3 disclose to any person (other than those to whom
4 such disclosure is necessary to comply with the re-
5 quest or an attorney to obtain legal advice or legal
6 assistance with respect to the request) that the Fed-
7 eral Bureau of Investigation has sought or obtained
8 access to information or records under this section.

9 “(2) The request shall notify the person or enti-
10 ty to whom the request is directed of the nondisclo-
11 sure requirement under paragraph (1).

12 “(3) Any recipient disclosing to those persons
13 necessary to comply with the request or to an attor-
14 ney to obtain legal advice or legal assistance with re-
15 spect to the request shall inform such person of any
16 applicable nondisclosure requirement. Any person
17 who receives a disclosure under this subsection shall
18 be subject to the same prohibitions on disclosure
19 under paragraph (1).

20 “(4) At the request of the Director of the Fed-
21 eral Bureau of Investigation or the designee of the
22 Director, any person making or intending to make
23 a disclosure under this section shall identify to the
24 Director or such designee the person to whom such
25 disclosure will be made or to whom such disclosure



1 was made prior to the request, but in no cir-
2 cumstance shall a person be required to inform the
3 Director or such designee that the person intends to
4 consult an attorney to obtain legal advice or legal as-
5 sistance.”.

6 (b) Section 626(d) of the Fair Credit Reporting Act
7 (15 U.S.C. 1681u(d)) is amended to read:

8 “(d) CONFIDENTIALITY.—

9 “(1) If the Director of the Federal Bureau of
10 Investigation, or his designee in a position not lower
11 than Deputy Assistant Director at Bureau head-
12 quarters or a Special Agent in Charge in a Bureau
13 field office designated by the Director, certifies that
14 otherwise there may result a danger to the national
15 security of the United States, interference with a
16 criminal, counterterrorism, or counterintelligence in-
17 vestigation, interference with diplomatic relations, or
18 danger to the life or physical safety of any person,
19 no consumer reporting agency or officer, employee,
20 or agent of a consumer reporting agency shall dis-
21 close to any person (other than those to whom such
22 disclosure is necessary to comply with the request or
23 an attorney to obtain legal advice or legal assistance
24 with respect to the request) that the Federal Bureau
25 of Investigation has sought or obtained the identity



1 of financial institutions or a consumer report re-
2 specting any consumer under subsection (a), (b), or
3 (c), and no consumer reporting agency or officer,
4 employee, or agent of a consumer reporting agency
5 shall include in any consumer report any informa-
6 tion that would indicate that the Federal Bureau of
7 Investigation has sought or obtained such informa-
8 tion on a consumer report.

9 “(2) The request shall notify the person or enti-
10 ty to whom the request is directed of the nondiscl-
11 sure requirement under paragraph (1).

12 “(3) Any recipient disclosing to those persons
13 necessary to comply with the request or to an attor-
14 ney to obtain legal advice or legal assistance with re-
15 spect to the request shall inform such persons of any
16 applicable nondisclosure requirement. Any person
17 who receives a disclosure under this subsection shall
18 be subject to the same prohibitions on disclosure
19 under paragraph (1).

20 “(4) At the request of the Director of the Fed-
21 eral Bureau of Investigation or the designee of the
22 Director, any person making or intending to make
23 a disclosure under this section shall identify to the
24 Director or such designee the person to whom such
25 disclosure will be made or to whom such disclosure



1 was made prior to the request, but in no cir-
2 cumstance shall a person be required to inform the
3 Director or such designee that the person intends to
4 consult an attorney to obtain legal advice or legal as-
5 sistance.”.

6 (c) Section 626(c) of the Fair Credit Reporting Act
7 (15 U.S.C. 1681v(c)) is amended to read:

8 “(c) CONFIDENTIALITY.—

9 “(1) If the head of a government agency au-
10 thorized to conduct investigations of intelligence or
11 counterintelligence activities or analysis related to
12 international terrorism, or his designee, certifies that
13 otherwise there may result a danger to the national
14 security of the United States, interference with a
15 criminal, counterterrorism, or counterintelligence in-
16 vestigation, interference with diplomatic relations, or
17 danger to the life or physical safety of any person,
18 no consumer reporting agency or officer, employee,
19 or agent of such consumer reporting agency, shall
20 disclose to any person (other than those to whom
21 such disclosure is necessary to comply with the re-
22 quest or an attorney to obtain legal advice or legal
23 assistance with respect to the request), or specify in
24 any consumer report, that a government agency has



1 sought or obtained access to information under sub-
2 section (a).

3 “(2) The request shall notify the person or enti-
4 ty to whom the request is directed of the nondisclo-
5 sure requirement under paragraph (1).

6 “(3) Any recipient disclosing to those persons
7 necessary to comply with the request or to any attor-
8 ney to obtain legal advice or legal assistance with re-
9 spect to the request shall inform such persons of any
10 applicable nondisclosure requirement. Any person
11 who receives a disclosure under this subsection shall
12 be subject to the same prohibitions on disclosure
13 under paragraph (1).

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



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

4 “(3)(A) If the Government authority described
5 in paragraph (1) or the Secret Service, as the case
6 may be, certifies that otherwise there may result a
7 danger to the national security of the United States,
8 interference with a criminal, counterterrorism, or
9 counterintelligence investigation, interference with
10 diplomatic relations, or danger to the life or physical
11 safety of any person, no financial institution, or offi-
12 cer, employee, or agent of such institution, shall dis-
13 close to any person (other than those to whom such
14 disclosure is necessary to comply with the request or
15 an attorney to obtain legal advice or legal assistance
16 with respect to the request) that the Government au-
17 thority or the Secret Service has sought or obtained
18 access to a customer’s financial records.

19 “(B) The request shall notify the person or en-
20 tity to whom the request is directed of the nondiscl-
21 sure requirement under subparagraph (A).

22 “(C) Any recipient disclosing to those persons
23 necessary to comply with the request or to an attor-
24 ney to obtain legal advice or legal assistance with re-
25 spect to the request shall inform such persons of any



1 applicable nondisclosure requirement. Any person
2 who receives a disclosure under this subsection shall
3 be subject to the same prohibitions on disclosure
4 under subparagraph (A).

5 “(D) At the request of the authorized Govern-
6 ment agency or the Secret Service, any person mak-
7 ing or intending to make a disclosure under this sec-
8 tion shall identify to the requesting official of the
9 authorized Government agency or the Secret Service
10 the person to whom such disclosure will be made or
11 to whom such disclosure was made prior to the re-
12 quest, but in no circumstance shall a person be re-
13 quired to inform such requesting official that the
14 person intends to consult an attorney to obtain legal
15 advice or legal assistance.”

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

19 “(D) PROHIBITION OF CERTAIN DISCLO-
20 SURE.—

21 “(i) If the Director of the Federal Bu-
22 reau of Investigation, or his designee in a
23 position not lower than Deputy Assistant
24 Director at Bureau headquarters or a Spe-
25 cial Agent in Charge in a Bureau field of-



1 fice designated by the Director, certifies
2 that otherwise there may result a danger
3 to the national security of the United
4 States, interference with a criminal,
5 counterterrorism, or counterintelligence in-
6 vestigation, interference with diplomatic re-
7 lations, or danger to the life or physical
8 safety of any person, no financial institu-
9 tion, or officer, employee, or agent of such
10 institution, shall disclose to any person
11 (other than those to whom such disclosure
12 is necessary to comply with the request or
13 an attorney to obtain legal advice or legal
14 assistance with respect to the request) that
15 the Federal Bureau of Investigation has
16 sought or obtained access to a customer's
17 or entity's financial records under subpara-
18 graph (A).

19 "(ii) The request shall notify the per-
20 son or entity to whom the request is di-
21 rected of the nondisclosure requirement
22 under clause (i).

23 "(iii) Any recipient disclosing to those
24 persons necessary to comply with the re-
25 quest or to an attorney to obtain legal ad-



1 vice or legal assistance with respect to the
2 request shall inform such persons of any
3 applicable nondisclosure requirement. Any
4 person who receives a disclosure under this
5 subsection shall be subject to the same
6 prohibitions on disclosure under clause (i).

7 “(iv) At the request of the Director of
8 the Federal Bureau of Investigation or the
9 designee of the Director, any person mak-
10 ing or intending to make a disclosure
11 under this section shall identify to the Di-
12 rector or such designee the person to
13 whom such disclosure will be made or to
14 whom such disclosure was made prior to
15 the request, but in no circumstance shall a
16 person be required to inform the Director
17 or such designee that the person intends to
18 consult an attorney to obtain legal advice
19 or legal assistance.”

20 (f) Section 802(b) of the National Security Act of
21 1947 (50 U.S.C. 436(b)) is amended to read as follows:

22 “(b) PROHIBITION OF CERTAIN DISCLOSURE.—

23 “(1) If an authorized investigative agency de-
24 scribed in subsection (a) certifies that otherwise
25 there may result a danger to the national security of



1 the United States, interference with a criminal,
2 counterterrorism, or counterintelligence investiga-
3 tion, interference with diplomatic relations, or dan-
4 ger to the life or physical safety of any person, no
5 governmental or private entity, or officer, employee,
6 or agent of such entity, may disclose to any person
7 (other than those to whom such disclosure is nec-
8 essary to comply with the request or an attorney to
9 obtain legal advice or legal assistance with respect to
10 the request) that such entity has received or satis-
11 fied a request made by an authorized investigative
12 agency under this section.

13 “(2) The request shall notify the person or enti-
14 ty to whom the request is directed of the nondisclo-
15 sure requirement under paragraph (1).

16 “(3) Any recipient disclosing to those persons
17 necessary to comply with the request or to an attor-
18 ney to obtain legal advice or legal assistance with re-
19 spect to the request shall inform such persons of any
20 applicable nondisclosure requirement. Any person
21 who receives a disclosure under this subsection shall
22 be subject to the same prohibitions on disclosure
23 under paragraph (1).

24 “(4) At the request of the authorized investiga-
25 tive agency, any person making or intending to

1 make a disclosure under this section shall identify to
2 the requesting official of the authorized investigative
3 agency the person to whom such disclosure will be
4 made or to whom such disclosure was made prior to
5 the request, but in no circumstance shall a person
6 be required to inform such official that the person
7 intends to consult an attorney to obtain legal advice
8 or legal assistance.”.

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

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

13 “(e) Whoever, having been notified of the applicable
14 disclosure prohibitions or confidentiality requirements of
15 section 2709(c)(1) of this title, section 626(d)(1) or
16 627(c)(1) of the Fair Credit Reporting Act (15 U.S.C.
17 1681u(d)(1) or 1681v(c)(1)), section 1114(a)(3)(A) or
18 1114(a)(5)(D)(i) of the Right to Financial Privacy Act
19 (12 U.S.C. 3414(a)(3)(A) or 3414(a)(5)(D)(i)), or section
20 802(b)(1) of the National Security Act of 1947 (50 U.S.C.
21 436(b)(1)), knowingly and with the intent to obstruct an
22 investigation or judicial proceeding violates such prohibi-
23 tions or requirements applicable by law to such person
24 shall be imprisoned for not more than five years, fined
25 under this title, or both.”.



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

2 (a) **EXISTING REPORTS.**—Any report made to a com-
3 mittee of Congress regarding national security letters
4 under section 2709(c)(1) of title 18, United States Code,
5 sections 626(d) or 627(c) of the Fair Credit Reporting Act
6 (15 U.S.C. 1681u(d) or 1681v(c)), section 1114(a)(3) or
7 1114(a)(5)(D) of the Right to Financial Privacy Act (12
8 U.S.C. 3414(a)(3) or 3414(a)(5)(D)), or section 802(b)
9 of the National Security Act of 1947 (50 U.S.C. 436(b))
10 shall also be made to the Committees on the Judiciary
11 of the House of Representatives and the Senate.

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

17 “(f) **REPORTS TO CONGRESS.**—(1) On a semi-annual
18 basis, the Attorney General shall fully inform the Com-
19 mittee on the Judiciary, the Committee on Financial Serv-
20 ices, and the Permanent Select Committee on Intelligence
21 of the House of Representatives and the Committee on
22 the Judiciary, the Committee on Banking, Housing, and
23 Urban Affairs, and the Select Committee on Intelligence
24 of the Senate concerning all requests made pursuant to
25 subsection (a).

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

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

10 (1) IN GENERAL.—In April of each year, the
11 Attorney General shall submit to Congress an aggreg-
12 ate report setting forth with respect to the pre-
13 ceding year the total number of requests made by
14 the Department of Justice for information con-
15 cerning different United States persons under—

16 (A) section 2709 of title 18, United States
17 Code (to access certain communication service
18 provider records), excluding the number of re-
19 quests for subscriber information;

20 (B) section 1114 of the Right to Financial
21 Privacy Act (12 U.S.C. 3414) (to obtain finan-
22 cial institution customer records);

23 (C) section 802 of the National Security
24 Act of 1947 (50 U.S.C. 436) (to obtain finan-



1 cial information, records, and consumer re-
2 ports);

3 (D) section 626 of the Fair Credit Report-
4 ing Act (15 U.S.C. 1681u) (to obtain certain fi-
5 nancial information and consumer reports); and

6 (E) section 627 of the Fair Credit Report-
7 ing Act (15 U.S.C. 1681v) (to obtain credit
8 agency consumer records for counterterrorism
9 investigations).

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

12 (d) NATIONAL SECURITY LETTER DEFINED.—In
13 this section, the term “national security letter” means a
14 request for information under one of the following provi-
15 sions of law:

16 (1) Section 2709(a) of title 18, United States
17 Code (to access certain communication service pro-
18 vider records).

19 (2) Section 1114(a)(5)(A) of the Right to Fi-
20 nancial Privacy Act (12 U.S.C. 3414(a)(5)(A)) (to
21 obtain financial institution customer records).

22 (3) Section 802 of the National Security Act of
23 1947 (50 U.S.C. 436) (to obtain financial informa-
24 tion, records, and consumer reports).



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

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

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

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

12 (b) **REQUIREMENTS.**—The audit required under sub-
13 section (a) shall include—

14 (1) an examination of the use of national secu-
15 rity letters by the Department of Justice during cal-
16 endar years 2003 through 2006;

17 (2) a description of any noteworthy facts or cir-
18 cumstances relating to such use, including any im-
19 proper or illegal use of such authority; and

20 (3) an examination of the effectiveness of na-
21 tional security letters as an investigative tool,
22 including—

23 (A) the importance of the information ac-
24 quired by the Department of Justice to the in-
25 telligence activities of the Department of Jus-



1 tice or to any other department or agency of
2 the Federal Government;

3 (B) the manner in which such information
4 is collected, retained, analyzed, and dissemi-
5 nated by the Department of Justice, including
6 any direct access to such information (such as
7 access to "raw data") provided to any other de-
8 partment, agency, or instrumentality of Fed-
9 eral, State, local, or tribal governments or any
10 private sector entity;

11 (C) whether, and how often, the Depart-
12 ment of Justice utilized such information to
13 produce an analytical intelligence product for
14 distribution within the Department of Justice,
15 to the intelligence community (as such term is
16 defined in section 3(4) of the National Security
17 Act of 1947 (50 U.S.C. 401a(4))), or to other
18 Federal, State, local, or tribal government de-
19 partments, agencies, or instrumentalities;

20 (D) whether, and how often, the Depart-
21 ment of Justice provided such information to
22 law enforcement authorities for use in criminal
23 proceedings;

24 (E) with respect to national security letters
25 issued following the date of the enactment of



1 this Act, an examination of the number of occa-
2 sions in which the Department of Justice, or an
3 officer or employee of the Department of Jus-
4 tice, issued a national security letter without
5 the certification necessary to require the recipi-
6 ent of such letter to comply with the nondisclo-
7 sure and confidentiality requirements poten-
8 tially applicable under law; and

9 (F) the types of electronic communications
10 and transactional information obtained through
11 requests for information under section 2709 of
12 title 18, United States Code, including the
13 types of dialing, routing, addressing, or sig-
14 naling information obtained, and the procedures
15 the Department of Justice uses if content infor-
16 mation is obtained through the use of such au-
17 thority.

18 (c) SUBMISSION DATES.—

19 (1) PRIOR YEARS.—Not later than one year
20 after the date of the enactment of this Act, or upon
21 completion of the audit under this section for cal-
22 endar years 2003 and 2004, whichever is earlier, the
23 Inspector General of the Department of Justice shall
24 submit to the Committee on the Judiciary and the
25 Permanent Select Committee on Intelligence of the



1 House of Representatives and the Committee on the
2 Judiciary and the Select Committee on Intelligence
3 of the Senate a report containing the results of the
4 audit conducted under this subsection for calendar
5 years 2003 and 2004.

6 (2) CALENDAR YEARS 2005 AND 2006.—Not
7 later than December 31, 2007, or upon completion
8 of the audit under this subsection for calendar years
9 2005 and 2006, whichever is earlier, the Inspector
10 General of the Department of Justice shall submit
11 to the Committee on the Judiciary and the Perma-
12 nent Select Committee on Intelligence of the House
13 of Representatives and the Committee on the Judici-
14 ary and the Select Committee on Intelligence of the
15 Senate a report containing the results of the audit
16 conducted under this subsection for calendar years
17 2005 and 2006.

18 (d) PRIOR NOTICE TO ATTORNEY GENERAL AND DI-
19 RECTOR OF NATIONAL INTELLIGENCE; COMMENTS.—

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



1 (2) COMMENTS.—The Attorney General or the
2 Director of National Intelligence may provide com-
3 ments to be included in the reports submitted under
4 subsections (c)(1) or (c)(2) as the Attorney General
5 or the Director of National Intelligence may consider
6 necessary.

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

11 (f) MINIMIZATION PROCEDURES FEASIBILITY.—Not
12 later than February 1, 2007, or upon completion of review
13 of the report submitted under subsection (c)(1), whichever
14 is earlier, the Attorney General and the Director of Na-
15 tional Intelligence shall jointly submit to the Committee
16 on the Judiciary and the Permanent Select Committee on
17 Intelligence of the House of Representatives and the Com-
18 mittee on the Judiciary and the Select Committee on In-
19 telligence of the Senate a report on the feasibility of apply-
20 ing minimization procedures in the context of national se-
21 curity letters to ensure the protection of the constitutional
22 rights of United States persons.

23 (g) NATIONAL SECURITY LETTER DEFINED.—In
24 this section, the term “national security letter” means a



1 request for information under one of the following provi-
2 sions of law:

3 (1) Section 2709(a) of title 18, United States
4 Code (to access certain communication service pro-
5 vider records).

6 (2) Section 1114(a)(5)(A) of the Right to Fi-
7 nancial Privacy Act (12 U.S.C. 3414(a)(5)(A)) (to
8 obtain financial institution customer records).

9 (3) Section 802 of the National Security Act of
10 1947 (50 U.S.C. 436) (to obtain financial informa-
11 tion, records, and consumer reports).

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

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

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

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

23 (1) in clause (i), by striking “act of inter-
24 national or domestic terrorism (as defined in section

1 2331)” and inserting “any Federal crime of ter-
2 rorism (as defined in section 2332b(g)(5))”;

3 (2) in clause (ii), by striking “an act of inter-
4 national or domestic terrorism (as defined in section
5 2331)” with “any Federal crime of terrorism (as de-
6 fined in section 2332b(g)(5))”; and

7 (3) in clause (iii), by striking “act of inter-
8 national or domestic terrorism (as defined in section
9 2331)” and inserting “Federal crime of terrorism
10 (as defined in section 2332b(g)(5))”.

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

14 (a) **THRESHOLD QUANTITY FOR TREATMENT AS**
15 **CONTRABAND CIGARETTES.**—(1) Section 2341(2) of title
16 18, United States Code, is amended by striking “60,000
17 cigarettes” and inserting “10,000 cigarettes”.

18 (2) Section 2342(b) of that title is amended by strik-
19 ing “60,000” and inserting “10,000”.

20 (3) Section 2343 of that title is amended—

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

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



1 (b) CONTRABAND SMOKELESS TOBACCO.—(1) Sec-
2 tion 2341 of that title is amended—

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

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

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

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

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

18 “(A) a person holding a permit issued pur-
19 suant to chapter 52 of the Internal Revenue
20 Code of 1986 as manufacturer of tobacco prod-
21 ucts or as an export warehouse proprietor, a
22 person operating a customs bonded warehouse
23 pursuant to section 311 or 555 of the Tariff
24 Act of 1930 (19 U.S.C. 1311, 1555), or an
25 agent of such person;



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

5 “(C) a person who—

6 “(i) is licensed or otherwise author-
7 ized by the State where such smokeless to-
8 bacco is found to engage in the business of
9 selling or distributing tobacco products;
10 and

11 “(ii) has complied with the account-
12 ing, tax, and payment requirements relat-
13 ing to such license or authorization with
14 respect to such smokeless tobacco; or

15 “(D) an officer, employee, or agent of the
16 United States or a State, or any department,
17 agency, or instrumentality of the United States
18 or a State (including any political subdivision of
19 a State), having possession of such smokeless
20 tobacco in connection with the performance of
21 official duties;”.

22 (2) Section 2342(a) of that title is amended by insert-
23 ing “or contraband smokeless tobacco” after “contraband
24 cigarettes”.



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

5 (4) Section 2344(c) of that title is amended by insert-
6 ing “or contraband smokeless tobacco” after “contraband
7 cigarettes”.

8 (5) Section 2345 of that title is amended by inserting
9 “or smokeless tobacco” after “cigarettes” each place it ap-
10 pears.

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

18 (c) RECORDKEEPING, REPORTING, AND INSPEC-
19 TION.—Section 2343 of that title, as amended by this sec-
20 tion, is further amended—

21 (1) in subsection (a)—

22 (A) in the matter preceding paragraph (1),
23 by striking “only—” and inserting “such infor-
24 mation as the Attorney General considers ap-

1 appropriate for purposes of enforcement of this
2 chapter, including—”; and

3 (B) in the flush matter following para-
4 graph (3), by striking the second sentence;

5 (2) by redesignating subsection (b) as sub-
6 section (c);

7 (3) by inserting after subsection (a) the fol-
8 lowing new subsection (b):

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

17 “(1) The person’s beginning and ending inven-
18 tory of cigarettes and cans or packages of smokeless
19 tobacco (in total) for such month.

20 “(2) The total quantity of cigarettes and cans
21 or packages of smokeless tobacco that the person re-
22 ceived within such month from each other person
23 (itemized by name and address).

24 “(3) The total quantity of cigarettes and cans
25 or packages of smokeless tobacco that the person

1 distributed within such month to each person
2 (itemized by name and address) other than a retail
3 purchaser.”; and

4 (4) by adding at the end the following new sub-
5 sections:

6 “(d) Any report required to be submitted under this
7 chapter to the Attorney General shall also be submitted
8 to the Secretary of the Treasury and to the attorneys gen-
9 eral and the tax administrators of the States from where
10 the shipments, deliveries, or distributions both originated
11 and concluded.

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

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

22 “(2) the cigarettes or smokeless tobacco are de-
23 livered by use of the mails, common carrier, private
24 delivery service, or any other means where the con-
25 sumer is not in the same physical location as the

1 seller when the consumer obtains physical possession
2 of the cigarettes or smokeless tobacco.

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

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

16 “(1) destroyed and not resold; or

17 “(2) used for undercover investigative oper-
18 ations for the detection and prosecution of crimes,
19 and then destroyed and not resold.”.

20 (e) EFFECT ON STATE AND LOCAL LAW.—Section
21 2345 of that title is amended—

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

1 (2) in subsection (b), by striking “of States,
2 through interstate compact or otherwise, to provide
3 for the administration of State” and inserting “of
4 State or local governments, through interstate com-
5 pact or otherwise, to provide for the administration
6 of State or local”.

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

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

11 (2) by adding at the end the following new sub-
12 section:

13 “(b)(1) A State, through its attorney general, a local
14 government, through its chief law enforcement officer (or
15 a designee thereof), or any person who holds a permit
16 under chapter 52 of the Internal Revenue Code of 1986,
17 may bring an action in the United States district courts
18 to prevent and restrain violations of this chapter by any
19 person (or by any person controlling such person), except
20 that any person who holds a permit under chapter 52 of
21 the Internal Revenue Code of 1986 may not bring such
22 an action against a State or local government. No civil
23 action may be commenced under this paragraph against
24 an Indian tribe or an Indian in Indian country (as defined
25 in section 1151).

1 “(2) A State, through its attorney general, or a local
2 government, through its chief law enforcement officer (or
3 a designee thereof), may in a civil action under paragraph
4 (1) also obtain any other appropriate relief for violations
5 of this chapter from any person (or by any person control-
6 ling such person), including civil penalties, money dam-
7 ages, and injunctive or other equitable relief. Nothing in
8 this chapter shall be deemed to abrogate or constitute a
9 waiver of any sovereign immunity of a State or local gov-
10 ernment, or an Indian tribe against any unconsented law-
11 suit under this chapter, or otherwise to restrict, expand,
12 or modify any sovereign immunity of a State or local gov-
13 ernment, or an Indian tribe.

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

17 “(4) Nothing in this chapter shall be construed to
18 expand, restrict, or otherwise modify any right of an au-
19 thorized State official to proceed in State court, or take
20 other enforcement actions, on the basis of an alleged viola-
21 tion of State or other law.

22 “(5) Nothing in this chapter shall be construed to
23 expand, restrict, or otherwise modify any right of an au-
24 thorized local government official to proceed in State

1 court, or take other enforcement actions, on the basis of
2 an alleged violation of local or other law.”.

3 (g) CONFORMING AND CLERICAL AMENDMENTS.—

4 (1) The section heading for section 2343 of that title is
5 amended to read as follows:

6 “§ 2343. Recordkeeping, reporting, and inspection”.

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

9 “§ 2345. Effect on State and local law”.

10 (3) The table of sections at the beginning of chapter
11 114 of that title is amended—

12 (A) by striking the item relating to section
13 2343 and inserting the following new item:

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

14 and

15 (B) by striking the item relating to section
16 2345 and insert the following new item:

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

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

19 **“CHAPTER 114—TRAFFICKING IN CONTRA-**
20 **BAND CIGARETTES AND SMOKELESS**
21 **TOBACCO”.**

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



"114. Trafficking in contraband cigarettes and smokeless tobacco 2341."

1 SEC. 122. PROHIBITION OF NARCO-TERRORISM.

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

5 "FOREIGN TERRORIST ORGANIZATIONS, TERRORIST
6 PERSONS AND GROUPS

7 "Prohibited Acts

8 "SEC. 1010A. (a) Whoever engages in conduct that
9 would be punishable under section 841(a) of this title if
10 committed within the jurisdiction of the United States, or
11 attempts or conspires to do so, knowing or intending to
12 provide, directly or indirectly, anything of pecuniary value
13 to any person or organization that has engaged or engages
14 in terrorist activity (as defined in section 212(a)(3)(B) of
15 the Immigration and Nationality Act) or terrorism (as de-
16 fined in section 140(d)(2) of the Foreign Relations Au-
17 thorization Act, Fiscal Years 1988 and 1989), shall be
18 sentenced to a term of imprisonment of not less than twice
19 the minimum punishment under section 841(b)(1), and
20 not more than life, a fine in accordance with the provisions
21 of title 18, United States Code, or both. Notwithstanding
22 section 3583 of title 18, United States Code, any sentence
23 imposed under this subsection shall include a term of su-



1 pervised release of at least 5 years in addition to such term
2 of imprisonment.

3 “Jurisdiction

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

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

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

12 “(3) an offender provides anything of pecuniary
13 value for a terrorist offense that causes or is de-
14 signed to cause death or serious bodily injury to a
15 national of the United States while that national is
16 outside the United States, or substantial damage to
17 the property of a legal entity organized under the
18 laws of the United States (including any of its
19 States, districts, commonwealths, territories, or pos-
20 sessions) while that property is outside of the United
21 States;

22 “(4) the offense or the prohibited drug activity
23 occurs in whole or in part outside of the United
24 States (including on the high seas), and a perpe-
25 trator of the offense or the prohibited drug activity

1 is a national of the United States or a legal entity
2 organized under the laws of the United States (in-
3 cluding any of its States, districts, commonwealths,
4 territories, or possessions); or

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

9 “Proof Requirements

10 “(c) To violate subsection (a), a person must have
11 knowledge that the person or organization has engaged or
12 engages in terrorist activity (as defined in section
13 212(a)(3)(B) of the Immigration and Nationality Act) or
14 terrorism (as defined in section 140(d)(2) of the Foreign
15 Relations Authorization Act, Fiscal Years 1988 and
16 1989).

17 “Definition

18 “(d) As used in this section, the term ‘anything of
19 pecuniary value’ has the meaning given the term in section
20 1958(b)(1) of title 18, United States Code.”.

21 **SEC. 123. INTERFERING WITH THE OPERATION OF AN AIR-**
22 **CRAFT.**

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

1 (1) in subsection (a), by redesignating para-
2 graphs (5), (6), and (7) as paragraphs (6), (7), and
3 (8) respectively;

4 (2) by inserting after paragraph (4) of sub-
5 section (a), the following:

6 “(5) interferes with or disables, with intent to
7 endanger the safety of any person or with a reckless
8 disregard for the safety of human life, anyone en-
9 gaged in the authorized operation of such aircraft or
10 any air navigation facility aiding in the navigation of
11 any such aircraft;”;

12 (3) in subsection (a)(8), by striking “para-
13 graphs (1) through (6)” and inserting “paragraphs
14 (1) through (7)”; and

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

18 **SEC. 124. SENSE OF CONGRESS RELATING TO LAWFUL PO-**
19 **LITICAL ACTIVITY.**

20 It is the sense of Congress that government should
21 not investigate an American citizen solely on the basis of
22 the citizen's membership in a non-violent political organi-
23 zation or the fact that the citizen was engaging in other
24 lawful political activity.

1 **SEC. 125. REMOVAL OF CIVIL LIABILITY BARRIERS THAT**
2 **DISCOURAGE THE DONATION OF FIRE EQUIP-**
3 **MENT TO VOLUNTEER FIRE COMPANIES.**

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

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

12 (1) the person's act or omission causing the in-
13 jury, damage, loss, or death constitutes gross neg-
14 ligence or intentional misconduct; or

15 (2) the person is the manufacturer of the quali-
16 fied fire control or rescue equipment.

17 (3) the person or agency modified or altered the
18 equipment after it had been recertified by an author-
19 ized technician as meeting the manufacturer's speci-
20 fications.

21 (c) **PREEMPTION.**—This section preempts the laws of
22 any State to the extent that such laws are inconsistent
23 with this section, except that notwithstanding subsection
24 (b) this section shall not preempt any State law that pro-
25 vides additional protection from liability for a person who



1 donates fire control or fire rescue equipment to a volunteer
2 fire company.

3 (d) DEFINITIONS.—In this section:

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

6 (2) FIRE CONTROL OR RESCUE EQUIPMENT.—
7 The term “fire control or fire rescue equipment” in-
8 cludes any fire vehicle, fire fighting tool, communica-
9 tions equipment, protective gear, fire hose, or
10 breathing apparatus.

11 (3) QUALIFIED FIRE CONTROL OR RESCUE
12 EQUIPMENT.—The term “qualified fire control or
13 rescue equipment” means fire control or fire rescue
14 equipment that has been recertified by an authorized
15 technician as meeting the manufacturer’s specifica-
16 tions.

17 (4) STATE.—The term “State” includes the
18 several States, the District of Columbia, the Com-
19 monwealth of Puerto Rico, the Commonwealth of the
20 Northern Mariana Islands, American Samoa, Guam,
21 the Virgin Islands, any other territory or possession
22 of the United States, and any political subdivision of
23 any such State, territory, or possession.

24 (5) VOLUNTEER FIRE COMPANY.—The term
25 “volunteer fire company” means an association of

1 individuals who provide fire protection and other
2 emergency services, where at least 30 percent of the
3 individuals receive little or no compensation com-
4 pared with an entry level full-time paid individual in
5 that association or in the nearest such association
6 with an entry level full-time paid individual.

7 (6) AUTHORIZED TECHNICIAN.—The term “au-
8 thorized technician” means a technician who has
9 been certified by the manufacturer of fire control or
10 fire rescue equipment to inspect such equipment.
11 The technician need not be employed by the State
12 or local agency administering the distribution of the
13 fire control or fire rescue equipment.

14 (e) EFFECTIVE DATE.—This section applies only to
15 liability for injury, damage, loss, or death caused by equip-
16 ment that, for purposes of subsection (a), is donated on
17 or after the date that is 30 days after the date of the
18 enactment of this section.

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

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

1 (1) A thorough description of the pattern-based
2 data-mining technology consistent with the protec-
3 tion of existing patents, proprietary business proc-
4 esses, trade secrets, and intelligence sources and
5 methods.

6 (2) A thorough discussion of the plans for the
7 use of such technology and the target dates for the
8 deployment of the pattern-based data-mining tech-
9 nology.

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

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

18 (5) A list and analysis of the laws and regula-
19 tions applicable to the Department of Justice that
20 govern the application of the pattern-based data-
21 mining technology to the information to be collected,
22 reviewed, gathered, and analyzed with the pattern-
23 based data-mining technology.

24 (6) A thorough discussion of the policies, proce-
25 dures, and guidelines of the Department of Justice



1 that are to be developed and applied in the use of
2 such technology for pattern-based data-mining in
3 order to—

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

6 (B) ensure that only accurate information
7 is collected and used or account for the possi-
8 bility of inaccuracy in that information and
9 guard against harmful consequences of poten-
10 tial inaccuracies.

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

15 (b) DEFINITIONS.—In this section:

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

19 (A) at least one of the databases was ob-
20 tained from or remains under the control of a
21 non-Federal entity, or the information was ac-
22 quired initially by another department or agen-
23 cy of the Federal Government for purposes
24 other than intelligence or law enforcement;



1 (B) the search does not use personal iden-
2 tifiers of a specific individual or does not utilize
3 inputs that appear on their face to identify or
4 be associated with a specified individual to ac-
5 quire information; and

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

10 (2) DATABASE.—The term “database” does not
11 include telephone directories, information publicly
12 available via the Internet or available by any other
13 means to any member of the public, any databases
14 maintained, operated, or controlled by a State, local,
15 or tribal government (such as a State motor vehicle
16 database), or databases of judicial and administra-
17 tive opinions.

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

19 It is the sense of Congress that under section 981
20 of title 18, United States Code, victims of terrorists at-
21 tacks should have access to the assets forfeited.



1 **SEC. 128. USA PATRIOT ACT SECTION 214; AUTHORITY FOR**
2 **DISCLOSURE OF ADDITIONAL INFORMATION**
3 **IN CONNECTION WITH ORDERS FOR PEN**
4 **REGISTER AND TRAP AND TRACE AUTHORITY**
5 **UNDER 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 **TITLE II—TERRORIST DEATH**
8 **PENALTY ENHANCEMENT**

9 **SEC. 201. SHORT TITLE.**

10 This title may be cited as the “Terrorist Death Pen-
11 alty Enhancement Act of 2005”.

12 **Subtitle A—Terrorist Penalties**
13 **Enhancement Act**

14 **SEC. 211. DEATH PENALTY PROCEDURES FOR CERTAIN AIR**
15 **PIRACY CASES OCCURRING BEFORE ENACT-**
16 **MENT OF THE FEDERAL DEATH PENALTY**
17 **ACT OF 1994.**

18 (a) IN GENERAL.—Section 60003 of the Violent
19 Crime Control and Law Enforcement Act of 1994, (Public
20 Law 103–322), is amended, as of the time of its enact-
21 ment, by adding at the end the following:

22 “(c) DEATH PENALTY PROCEDURES FOR CERTAIN
23 PREVIOUS AIRCRAFT PIRACY VIOLATIONS.—An individual
24 convicted of violating section 46502 of title 49, United
25 States Code, or its predecessor, may be sentenced to death



1 in accordance with the procedures established in chapter
2 228 of title 18, United States Code, if for any offense com-
3 mitted before the enactment of the Violent Crime Control
4 and Law Enforcement Act of 1994 (Public Law 103-322),
5 but after the enactment of the Antihijacking Act of 1974
6 (Public Law 93-366), it is determined by the finder of
7 fact, before consideration of the factors set forth in sec-
8 tions 3591(a)(2) and 3592(a) and (c) of title 18, United
9 States Code, that one or more of the factors set forth in
10 former section 46503(c)(2) of title 49, United States
11 Code, or its predecessor, has been proven by the Govern-
12 ment to exist, beyond a reasonable doubt, and that none
13 of the factors set forth in former section 46503(c)(1) of
14 title 49, United States Code, or its predecessor, has been
15 proven by the defendant to exist, by a preponderance of
16 the information. The meaning of the term ‘especially hei-
17 nous, cruel, or depraved’, as used in the factor set forth
18 in former section 46503(c)(2)(B)(iv) of title 49, United
19 States Code, or its predecessor, shall be narrowed by add-
20 ing the limiting language ‘in that it involved torture or
21 serious physical abuse to the victim’, and shall be con-
22 strued as when that term is used in section 3592(c)(6)
23 of title 18, United States Code.”.

24 (b) SEVERABILITY CLAUSE.—If any provision of sec-
25 tion 60003(b)(2) of the Violent Crime and Law Enforce-



1 ment Act of 1994 (Public Law 103-322), or the applica-
2 tion thereof to any person or any circumstance is held in-
3 valid, the remainder of such section and the application
4 of such section to other persons or circumstances shall not
5 be affected thereby.

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

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

10 **Subtitle B—Federal Death Penalty**
11 **Procedures**

12 **SEC. 221. ELIMINATION OF PROCEDURES APPLICABLE**
13 **ONLY TO CERTAIN CONTROLLED SUB-**
14 **STANCES ACT CASES.**

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

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

19 (2) by striking subsection (g) and all that fol-
20 lows through subsection (p);

21 (3) by striking subsection (r); and

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



1 **SEC. 222. COUNSEL FOR FINANCIALLY UNABLE DEFEND-**
2 **ANTS.**

3 (a) IN GENERAL.—Chapter 228 of title 18, United
4 States Code, is amended by adding at the end the fol-
5 lowing new section:

6 **“§ 3599. Counsel for financially unable defendants**

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

13 “(A) before judgment; or

14 “(B) after the entry of a judgment imposing a
15 sentence of death but before the execution of that
16 judgment;

17 shall be entitled to the appointment of one or more attor-
18 neys and the furnishing of such other services in accord-
19 ance with subsections (b) through (f).

20 “(2) In any post conviction proceeding under section
21 2254 or 2255 of title 28, United States Code, seeking to
22 vacate or set aside a death sentence, any defendant who
23 is or becomes financially unable to obtain adequate rep-
24 resentation or investigative, expert, or other reasonably
25 necessary services shall be entitled to the appointment of

1 one or more attorneys and the furnishing of such other
2 services in accordance with subsections (b) through (f).

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

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

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

21 “(e) Unless replaced by similarly qualified counsel
22 upon the attorney’s own motion or upon motion of the de-
23 fendant, each attorney so appointed shall represent the de-
24 fendant throughout every subsequent stage of available ju-
25 dicial proceedings, including pretrial proceedings, trial,



1 sentencing, motions for new trial, appeals, applications for
2 writ of certiorari to the Supreme Court of the United
3 States, and all available post-conviction process, together
4 with applications for stays of execution and other appro-
5 priate motions and procedures, and shall also represent
6 the defendant in such competency proceedings and pro-
7 ceedings for executive or other clemency as may be avail-
8 able to the defendant.

9 “(f) Upon a finding that investigative, expert, or
10 other services are reasonably necessary for the representa-
11 tion of the defendant, whether in connection with issues
12 relating to guilt or the sentence, the court may authorize
13 the defendant’s attorneys to obtain such services on behalf
14 of the defendant and, if so authorized, shall order the pay-
15 ment of fees and expenses therefor under subsection (g).
16 No ex parte proceeding, communication, or request may
17 be considered pursuant to this section unless a proper
18 showing is made concerning the need for confidentiality.
19 Any such proceeding, communication, or request shall be
20 transcribed and made a part of the record available for
21 appellate review.

22 “(g)(1) Compensation shall be paid to attorneys ap-
23 pointed under this subsection at a rate of not more than
24 \$125 per hour for in-court and out-of-court time. The Ju-
25 dicial Conference is authorized to raise the maximum for



1 hourly payment specified in the paragraph up to the ag-
2 gregate of the overall average percentages of the adjust-
3 ments in the rates of pay for the General Schedule made
4 pursuant to section 5305 of title 5 on or after such date.
5 After the rates are raised under the preceding sentence,
6 such hourly range may be raised at intervals of not less
7 than one year, up to the aggregate of the overall average
8 percentages of such adjustments made since the last raise
9 under this paragraph.

10 “(2) Fees and expenses paid for investigative, expert,
11 and other reasonably necessary services authorized under
12 subsection (f) shall not exceed \$7,500 in any case, unless
13 payment in excess of that limit is certified by the court,
14 or by the United States magistrate judge, if the services
15 were rendered in connection with the case disposed of en-
16 tirely before such magistrate judge, as necessary to pro-
17 vide fair compensation for services of an unusual character
18 or duration, and the amount of the excess payment is ap-
19 proved by the chief judge of the circuit. The chief judge
20 of the circuit may delegate such approval authority to an
21 active circuit judge.

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



1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions of the bill is amended by inserting after the item
3 relating to section 3598 the following new item:

“3599. Counsel for financially unable defendants.”.

4 (c) REPEAL.—Subsection (q) of section 408 of the
5 Controlled Substances Act is amended by striking para-
6 graphs (4) through (10).

7 **TITLE III—REDUCING CRIME**
8 **AND TERRORISM AT AMER-**
9 **ICA’S SEAPORTS**

10 **SEC. 301. SHORT TITLE.**

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

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

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

16 (1) in subsection (a)—

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

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

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

23 “(3) any secure or restricted area of any sea-
24 port, designated as secure in an approved security
25 plan, as required under section 70103 of title 46,



1 United States Code, and the rules and regulations
2 promulgated under that section; or”;

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

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

7 (4) by striking the section heading and insert-
8 ing the following:

9 **“§ 1036. Entry by false pretenses to any real property,
10 vessel, or aircraft of the United States or
11 secure area of any airport or seaport”.**

12 (b) TECHNICAL AND CONFORMING AMENDMENT.—
13 The table of sections for chapter 47 of title 18 is amended
14 by striking the matter relating to section 1036 and insert-
15 ing 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.”.

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

19 **“§ 26. Definition of seaport**

20 “As used in this title, the term ‘seaport’ means all
21 piers, wharves, docks, and similar structures, adjacent to
22 any waters subject to the jurisdiction of the United States,
23 to which a vessel may be secured, including areas of land,
24 water, or land and water under and in immediate prox-



1 imity to such structures, buildings on or contiguous to
2 such structures, and the equipment and materials on such
3 structures or in such buildings.”.

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

“26. Definition of seaport.”.

8 **SEC. 303. CRIMINAL SANCTIONS FOR FAILURE TO HEAVE**
9 **TO, OBSTRUCTION OF BOARDING, OR PRO-**
10 **VIDING FALSE INFORMATION.**

11 (a) OFFENSE.—Chapter 109 of title 18, United
12 States Code, is amended by adding at the end the fol-
13 lowing:

14 **“§ 2237. Criminal sanctions for failure to heave to, ob-**
15 **struction of boarding, or providing false**
16 **information**

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

22 “(2) It shall be unlawful for any person on board a
23 vessel of the United States, or a vessel subject to the juris-
24 diction of the United States, to—



1 “(A) forcibly resist, oppose, prevent, impede, in-
2 timidate, or interfere with a boarding or other law
3 enforcement action authorized by any Federal law or
4 to resist a lawful arrest; or

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

9 “(b) Any person who intentionally violates this sec-
10 tion shall be fined under this title or imprisoned for not
11 more than 5 years, or both.

12 “(c) This section does not limit the authority of a
13 customs officer under section 581 of the Tariff Act of
14 1930 (19 U.S.C. 1581), or any other provision of law en-
15 forced or administered by the Secretary of the Treasury
16 or the Secretary of Homeland Security, or the authority
17 of any Federal law enforcement officer under any law of
18 the United States, to order a vessel to stop or heave to.

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

25 “(e) In this section—

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

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

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

11 “(4) the term ‘vessel of the United States’ has
12 the meaning given the term in section 2 of the Mari-
13 time Drug Law Enforcement Act (46 U.S.C. App.
14 1903).”.

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

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

19 **SEC. 304. CRIMINAL SANCTIONS FOR VIOLENCE AGAINST**
20 **MARITIME NAVIGATION, PLACEMENT OF DE-**
21 **STRUCTIVE DEVICES.**

22 (a) PLACEMENT OF DESTRUCTIVE DEVICES.—Chap-
23 ter 111 of title 18, United States Code, as amended by



1 subsection (a), is further amended by adding at the end
2 the following:

3 **“§ 2282A. Devices or dangerous substances in waters**
4 **of the United States likely to destroy or**
5 **damage ships or to interfere with mari-**
6 **time commerce**

7 “(a) A person who knowingly places, or causes to be
8 placed, in navigable waters of the United States, by any
9 means, a device or dangerous substance which is likely to
10 destroy or cause damage to a vessel or its cargo, cause
11 interference with the safe navigation of vessels, or inter-
12 ference with maritime commerce (such as by damaging or
13 destroying marine terminals, facilities, or any other ma-
14 rine structure or entity used in maritime commerce) with
15 the intent of causing such destruction or damage, inter-
16 ference with the safe navigation of vessels, or interference
17 with maritime commerce shall be fined under this title or
18 imprisoned for any term of years, or for life; or both.

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

22 “(c) Nothing in this section shall be construed to
23 apply to otherwise lawfully authorized and conducted ac-
24 tivities of the United States Government.

25 “(d) In this section:



1 tion maintained by the Saint Lawrence Seaway Develop-
2 ment Corporation under the authority of section 4 of the
3 Act of May 13, 1954 (33 U.S.C. 984), by the Coast Guard
4 pursuant to section 81 of title 14, United States Code,
5 or lawfully maintained under authority granted by the
6 Coast Guard pursuant to section 83 of title 14, United
7 States Code, if such act endangers or is likely to endanger
8 the safe navigation of a ship, shall be fined under this
9 title or imprisoned for not more than 20 years, or both.”.

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

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

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

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

21 **“§ 2283. Transportation of explosive, biological, chem-**
22 **ical, or radioactive or nuclear materials**

23 **“(a) IN GENERAL.—Whoever knowingly transports**
24 **aboard any vessel within the United States and on waters**
25 **subject to the jurisdiction of the United States or any ves-**

1 sel outside the United States and on the high seas or hav-
2 ing United States nationality an explosive or incendiary
3 device, biological agent, chemical weapon, or radioactive
4 or nuclear material, knowing that any such item is in-
5 tended to be used to commit an offense listed under sec-
6 tion 2332b(g)(5)(B), shall be fined under this title or im-
7 prisoned for any term of years or for life, or both.

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

11 “(c) DEFINITIONS.—In this section:

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

15 “(2) BY-PRODUCT MATERIAL.—The term ‘by-
16 product material’ has the meaning given that term
17 in section 11(e) of the Atomic Energy Act of 1954
18 (42 U.S.C. 2014(e)).

19 “(3) CHEMICAL WEAPON.—The term ‘chemical
20 weapon’ has the meaning given that term in section
21 229F(1).

22 “(4) EXPLOSIVE OR INCENDIARY DEVICE.—The
23 term ‘explosive or incendiary device’ has the mean-
24 ing given the term in section 232(5) and includes ex-



1 plosive materials, as that term is defined in section
2 841(c) and explosive as defined in section 844(j).

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

6 “(6) RADIOACTIVE MATERIAL.—The term ‘ra-
7 dioactive material’ means—

8 “(A) source material and special nuclear
9 material, but does not include natural or de-
10 pleted uranium;

11 “(B) nuclear by-product material;

12 “(C) material made radioactive by bom-
13 bardment in an accelerator; or

14 “(D) all refined isotopes of radium.

15 “(8) SOURCE MATERIAL.—The term ‘source
16 material’ has the meaning given that term in section
17 11(z) of the Atomic Energy Act of 1954 (42 U.S.C.
18 2014(z)).

19 “(9) SPECIAL NUCLEAR MATERIAL.—The term
20 ‘special nuclear material’ has the meaning given that
21 term in section 11(aa) of the Atomic Energy Act of
22 1954 (42 U.S.C. 2014(aa)).

23 **“§ 2284. Transportation of terrorists**

24 “(a) IN GENERAL.—Whoever knowingly and inten-
25 tionally transports any terrorist aboard any vessel within

1 the United States and on waters subject to the jurisdiction
2 of the United States or any vessel outside the United
3 States and on the high seas or having United States na-
4 tionality, knowing that the transported person is a ter-
5 rorist, shall be fined under this title or imprisoned for any
6 term of years or for life, or both.

7 “(b) DEFINED TERM.—In this section, the term ‘ter-
8 rorist’ means any person who intends to commit, or is
9 avoiding apprehension after having committed, an offense
10 listed under section 2332b(g)(5)(B).”

11 (b) CONFORMING AMENDMENT.—The table of sec-
12 tions for chapter 111 of title 18, United States Code, as
13 amended by section 305, is further amended by adding
14 at the end the following:

“2283. Transportation of explosive, chemical, biological, or radioactive or nu-
clear materials.

“2284. Transportation of terrorists.”

15 **SEC. 306. DESTRUCTION OF, OR INTERFERENCE WITH, VES-**
16 **SELS OR MARITIME FACILITIES.**

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

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

“Sec.

“2290. Jurisdiction and scope.

“2291. Destruction of vessel or maritime facility.

“2292. Imparting or conveying false information.

1 **“§ 2290. Jurisdiction and scope**

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

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

7 “(2) outside United States and—

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

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

15 “(C) the activity involves a vessel of the
16 United States (as that term is defined under
17 section 2 of the Maritime Drug Law Enforce-
18 ment Act (46 U.S.C. App. 1903).

19 “(b) SCOPE.—Nothing in this chapter shall apply to
20 otherwise lawful activities carried out by or at the direc-
21 tion of the United States Government.

22 **“§ 2291. Destruction of vessel or maritime facility**

23 “(a) OFFENSE.—Whoever knowingly—

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



1 “(2) places or causes to be placed a destructive
2 device, as defined in section 921(a)(4), destructive
3 substance, as defined in section 31(a)(3), or an ex-
4 plosive, as defined in section 844(j) in, upon, or
5 near, or otherwise makes or causes to be made un-
6 workable or unusable or hazardous to work or use,
7 any vessel, or any part or other materials used or in-
8 tended to be used in connection with the operation
9 of a vessel;

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

15 “(4) interferes by force or violence with the op-
16 eration of any maritime facility, including any aid to
17 navigation, lock, canal, or vessel traffic service facil-
18 ity or equipment, if such action is likely to endanger
19 the safety of any vessel in navigation;

20 “(5) sets fire to, damages, destroys, or disables
21 or places a destructive device or substance in, upon,
22 or near, any appliance, structure, property, machine,
23 or apparatus, or any facility or other material used,
24 or intended to be used, in connection with the oper-
25 ation, maintenance, loading, unloading, or storage of



1 any vessel or any passenger or cargo carried or in-
2 tended to be carried on any vessel;

3 “(6) performs an act of violence against or in-
4 capacitates any individual on any vessel, if such act
5 of violence or incapacitation is likely to endanger the
6 safety of the vessel or those on board;

7 “(7) performs an act of violence against a per-
8 son that causes or is likely to cause serious bodily
9 injury, as defined in section 1365(h)(3), in, upon, or
10 near, any appliance, structure, property, machine, or
11 apparatus, or any facility or other material used, or
12 intended to be used, in connection with the oper-
13 ation, maintenance, loading, unloading, or storage of
14 any vessel or any passenger or cargo carried or in-
15 tended to be carried on any vessel;

16 “(8) communicates information, knowing the
17 information to be false and under circumstances in
18 which such information may reasonably be believed,
19 thereby endangering the safety of any vessel in navi-
20 gation; or

21 “(9) attempts or conspires to do anything pro-
22 hibited under paragraphs (1) through (8),
23 shall be fined under this title or imprisoned not more than
24 20 years, or both.

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

6 “(c) PENALTY.—Whoever is fined or imprisoned
7 under subsection (a) as a result of an act involving a vessel
8 that, at the time of the violation, carried high-level radio-
9 active waste (as that term is defined in section 2(12) of
10 the Nuclear Waste Policy Act of 1982 (42 U.S.C.
11 10101(12)) or spent nuclear fuel (as that term is defined
12 in section 2(23) of the Nuclear Waste Policy Act of 1982
13 (42 U.S.C. 10101(23)), shall be fined under this title, im-
14 prisoned for a term up to life, or both.

15 “(d) PENALTY WHEN DEATH RESULTS.—Whoever is
16 convicted of any crime prohibited by subsection (a) and
17 intended to cause death by the prohibited conduct, if the
18 conduct resulted in the death of any person, shall be sub-
19 ject also to the death penalty or to a term of imprisonment
20 for a period up to life.

21 “(e) THREATS.—Whoever knowingly and inten-
22 tionally imparts or conveys any threat to do an act which
23 would violate this chapter, with an apparent determination
24 and will to carry the threat into execution, shall be fined
25 under this title or imprisoned not more than 5 years, or



1 both, and is liable for all costs incurred as a result of such
2 threat.

3 **“§ 2292. Imparting or conveying false information**

4 “(a) IN GENERAL.—Whoever imparts or conveys or
5 causes to be imparted or conveyed false information,
6 knowing the information to be false, concerning an at-
7 tempt or alleged attempt being made or to be made, to
8 do any act that would be a crime prohibited by this chap-
9 ter or by chapter 111 of this title, shall be subject to a
10 civil penalty of not more than \$5,000, which shall be re-
11 coverable in a civil action brought in the name of the
12 United States.

13 “(b) MALICIOUS CONDUCT.—Whoever knowingly, in-
14 tentiously, maliciously, or with reckless disregard for the
15 safety of human life, imparts or conveys or causes to be
16 imparted or conveyed false information, knowing the infor-
17 mation to be false, concerning an attempt or alleged at-
18 tempt to do any act which would be a crime prohibited
19 by this chapter or by chapter 111 of this title, shall be
20 fined under this title or imprisoned not more than 5 years.

21 “(c) JURISDICTION.—

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



1 “(2) JURISDICTION.—Jurisdiction over an of-
2 fense under this section shall be determined in ac-
3 cordance with the provisions applicable to the crime
4 prohibited by this chapter, or by chapter 111 of this
5 title, to which the imparted or conveyed false infor-
6 mation relates, as applicable.

7 **“§ 2293. Bar to prosecution**

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

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

14 “(2) such conduct is prohibited as a mis-
15 demeanor, and not as a felony, under the law of the
16 State in which it was committed.

17 “(b) DEFINITIONS.—In this section:

18 “(1) LABOR DISPUTE.—The term ‘labor dis-
19 pute’ has the same meaning given that term in sec-
20 tion 13(c) of the Act to amend the Judicial Code
21 and to define and limit the jurisdiction of courts sit-
22 ting in equity, and for other purposes (29 U.S.C.
23 113(c), commonly known as the Norris-LaGuardia
24 Act).

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

5 (b) CONFORMING AMENDMENT.—The table of chap-
6 ters at the beginning of title 18, United States Code, is
7 amended by inserting after the item for chapter 111 the
8 following:

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

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

11 (a) THEFT OF INTERSTATE OR FOREIGN SHIP-
12 MENTS.—Section 659 of title 18, United States Code, is
13 amended—

14 (1) in the first undesignated paragraph—

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

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

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

23 (2) in the fifth undesignated paragraph, by
24 striking “in each case” and all that follows through



1 “or both” the second place it appears and inserting
2 “be fined under this title or imprisoned not more
3 than 10 years, or both, but if the amount or value
4 of such money, baggage, goods, or chattels is less
5 than \$1,000, shall be fined under this title or im-
6 prisoned for not more than 3 years, or both”; and

7 (3) by inserting after the first sentence in the
8 eighth undesignated paragraph the following: “For
9 purposes of this section, goods and chattel shall be
10 construed to be moving as an interstate or foreign
11 shipment at all points between the point of origin
12 and the final destination (as evidenced by the waybill
13 or other shipping document of the shipment), re-
14 gardless of any temporary stop while awaiting trans-
15 shipment or otherwise.”.

16 (b) STOLEN VESSELS.—

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

23 (2) TRANSPORTATION AND SALE OF STOLEN
24 VESSELS.—

1 (A) TRANSPORTATION.—Section 2312 of
2 title 18, United States Code, is amended by
3 striking “motor vehicle or aircraft” and insert-
4 ing “motor vehicle, vessel, or aircraft”.

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

9 (c) REVIEW OF SENTENCING GUIDELINES.—Pursu-
10 ant to section 994 of title 28, United States Code, the
11 United States Sentencing Commission shall review the
12 Federal Sentencing Guidelines to determine whether sen-
13 tencing enhancement is appropriate for any offense under
14 section 659 or 2311 of title 18, United States Code, as
15 amended by this title.

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

22 (e) REPORTING OF CARGO THEFT.—The Attorney
23 General shall take the steps necessary to ensure that re-
24 ports of cargo theft collected by Federal, State, and local
25 officials are reflected as a separate category in the Uni-



1 form Crime Reporting System, or any successor system,
2 by no later than December 31, 2006.

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

4 Section 2199 of title 18, United States Code, is
5 amended by striking "Shall be fined under this title or
6 imprisoned not more than one year, or both." and insert-
7 ing the following:

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

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

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



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

2 (a) IN GENERAL.—Chapter 11 of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

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

6 “(a) IN GENERAL.—Whoever knowingly—

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

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

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

21 “(2) directly or indirectly, corruptly demands,
22 seeks, receives, accepts, or agrees to receive or ac-
23 cept anything of value personally or for any other
24 person or entity in return for—



1 “(A) being influenced in the performance
2 of any official act affecting any secure or re-
3 stricted area or seaport; and

4 “(B) knowing that such influence will be
5 used to commit, or plan to commit, inter-
6 national or domestic terrorism,

7 shall be fined under this title or imprisoned not more than
8 15 years, or both.

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

15 (b) CONFORMING AMENDMENT.—The table of sec-
16 tions for chapter 11 of title 18, United States Code, is
17 amended by adding at the end the following:

“226. Bribery affecting port security.”.

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

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

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

2 (a) IN GENERAL.—Chapter 27 of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

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

6 “(a) IN GENERAL.—Whoever fraudulently or know-
7 ingly exports or sends from the United States, or attempts
8 to export or send from the United States, any merchan-
9 dise, article, or object contrary to any law or regulation
10 of the United States, or receives, conceals, buys, sells, or
11 in any manner facilitates the transportation, concealment,
12 or sale of such merchandise, article or object, prior to ex-
13 portation, knowing the same to be intended for expor-
14 tation contrary to any law or regulation of the United
15 States, shall be fined under this title, imprisoned not more
16 than 10 years, or both.

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

19 (b) CONFORMING AMENDMENT.—The chapter anal-
20 ysis for chapter 27 of title 18, United States Code, is
21 amended by adding at the end the following:

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

22 (c) SPECIFIED UNLAWFUL ACTIVITY.—Section
23 1956(c)(7)(D) of title 18, United States Code, is amended
24 by inserting “section 554 (relating to smuggling goods



1 from the United States),” before “section 641 (relating
2 to public money, property, or records),”.

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

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

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

19 **TITLE IV—COMBATING**
20 **TERRORISM FINANCING**

21 **SEC. 401. SHORT TITLE.**

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



1 **SEC. 402. INCREASED PENALTIES FOR TERRORISM FINANC-**
2 **ING.**

3 Section 206 of the International Emergency Eco-
4 nomic Powers Act (50 U.S.C. 1705) is amended—

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

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

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

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

15 (b) AMENDMENT TO SECTION 1956(c)(7).—Section
16 1956(c)(7)(D) of title 18, United States Code, is amended
17 by striking “or any felony violation of the Foreign Corrupt
18 Practices Act” and inserting “any felony violation of the
19 Foreign Corrupt Practices Act”.

20 (c) CONFORMING AMENDMENTS TO SECTIONS
21 1956(e) AND 1957(e).—

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

24 “(e) Violations of this section may be investigated by
25 such components of the Department of Justice as the At-
26 torney General may direct, and by such components of the



1 Department of the Treasury as the Secretary of the Treas-
2 ury may direct, as appropriate, and, with respect to of-
3 fenses over which the Department of Homeland Security
4 has jurisdiction, by such components of the Department
5 of Homeland Security as the Secretary of Homeland Secu-
6 rity may direct, and, with respect to offenses over which
7 the United States Postal Service has jurisdiction, by the
8 Postal Service. Such authority of the Secretary of the
9 Treasury, the Secretary of Homeland Security, and the
10 Postal Service shall be exercised in accordance with an
11 agreement which shall be entered into by the Secretary
12 of the Treasury, the Secretary of Homeland Security, the
13 Postal Service, and the Attorney General. Violations of
14 this section involving offenses described in paragraph
15 (e)(7)(E) may be investigated by such components of the
16 Department of Justice as the Attorney General may di-
17 rect, and the National Enforcement Investigations Center
18 of the Environmental Protection Agency.”.

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

21 “(e) Violations of this section may be investigated by
22 such components of the Department of Justice as the At-
23 torney General may direct, and by such components of the
24 Department of the Treasury as the Secretary of the Treas-
25 ury may direct, as appropriate, and, with respect to of-



1 fenses over which the Department of Homeland Security
2 has jurisdiction, by such components of the Department
3 of Homeland Security as the Secretary of Homeland Security
4 may direct, and, with respect to offenses over which
5 the United States Postal Service has jurisdiction, by the
6 Postal Service. Such authority of the Secretary of the
7 Treasury, the Secretary of Homeland Security, and the
8 Postal Service shall be exercised in accordance with an
9 agreement which shall be entered into by the Secretary
10 of the Treasury, the Secretary of Homeland Security, the
11 Postal Service, and the Attorney General.”.

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

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

- 17 (1) by striking “or” at the end of clause (ii);
18 (2) by striking the period at the end of clause
19 (iii) and inserting “; or”; and
20 (3) by inserting the following after clause (iii):
21 “(iv) of any individual, entity, or or-
22 ganization engaged in planning or perpe-
23 trating any act of international terrorism
24 (as defined in section 2331) against any
25 international organization (as defined in

1 section 209 of the State Department Basic
2 Authorities Act of 1956 (22 U.S.C.
3 4309(b)) or against any foreign Govern-
4 ment. Where the property sought for for-
5 feiture is located beyond the territorial
6 boundaries of the United States, an act in
7 furtherance of such planning or perpetra-
8 tion must have occurred within the juris-
9 diction of the United States.”.

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

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

19 **SEC. 406. TECHNICAL AND CONFORMING AMENDMENTS RE-**
20 **LATING TO THE USA PATRIOT ACT.**

21 (a) TECHNICAL CORRECTIONS.—

22 (1) Section 322 of Public Law 107-56 is
23 amended by striking “title 18” and inserting “title
24 28”.



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

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

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

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

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

 “987. Anti-terrorist forfeiture protection.”

15 ; and

16 (B) by inserting at the end the following:

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

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



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

3 “(2) the innocent owner provisions of section
4 983(d) of title 18, United States Code, apply to the
5 case.

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

12 “(c) CLARIFICATIONS.—

13 “(1) PROTECTION OF RIGHTS.—The exclusion
14 of certain provisions of Federal law from the defini-
15 tion of the term ‘civil forfeiture statute’ in section
16 983(i) of title 18, United States Code, shall not be
17 construed to deny an owner of property the right to
18 contest the confiscation of assets of suspected inter-
19 national terrorists under—

20 “(A) subsection (a) of this section;

21 “(B) the Constitution; or

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



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

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

8 (c) CONFORMING AMENDMENTS CONCERNING CON-
9 SPIRACIES.—

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

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

15 (A) by striking “attempts” each time it ap-
16 pears and inserting “attempts or conspires”;
17 and

18 (B) by inserting “, or if the object of the
19 conspiracy had been achieved,” after “the at-
20 tempted offense had been completed”.

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

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

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

2 Section 6604 of the Intelligence Reform and Ter-
3 rorism Prevention Act of 2004 is amended (effective on
4 the date of the enactment of that Act)—

5 (1) by striking “Section 2339c(e)(2)” and in-
6 serting “Section 2339C(c)(2)”; and

7 (2) by striking “Section 2339c(e)” and insert-
8 ing “Section 2339C(e)”.

9 **SEC. 409. DESIGNATION OF ADDITIONAL MONEY LAUN-**
10 **DERING PREDICATE.**

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

13 (1) by inserting “, section 2339C (relating to fi-
14 nancing of terrorism), or section 2339D (relating to
15 receiving military-type training from a foreign ter-
16 rorist organization)” after “section 2339A or 2339B
17 (relating to providing material support to terror-
18 ists)”; and

19 (2) by striking “or” before “section 2339A or
20 2339B”.

21 **SEC. 410. UNIFORM PROCEDURES FOR CRIMINAL FOR-**
22 **FEITURE.**

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

25 “(c) If a person is charged in a criminal case with
26 a violation of an Act of Congress for which the civil or



1 criminal forfeiture of property is authorized, the Govern-
2 ment may include notice of the forfeiture in the indictment
3 or information pursuant to the Federal Rules of Criminal
4 Procedure. If the defendant is convicted of the offense giv-
5 ing rise to the forfeiture, the court shall order the for-
6 feiture of the property as part of the sentence in the crimi-
7 nal case pursuant to to the Federal Rules of Criminal Pro-
8 cedure and section 3554 of title 18, United States Code.
9 The procedures in section 413 of the Controlled Sub-
10 stances Act (21 U.S.C. 853) apply to all stages of a crimi-
11 nal forfeiture proceeding, except that subsection (d) of
12 such section applies only in cases in which the defendant
13 is convicted of a violation of such Act.””.

14 **TITLE V—MISCELLANEOUS** 15 **PROVISIONS**

16 **SEC. 501. RESIDENCE OF UNITED STATES ATTORNEYS AND** 17 **ASSISTANT UNITED STATES ATTORNEYS.**

18 (a) IN GENERAL.—Subsection (a) of section 545 of
19 title 28, United States Code, is amended by adding at the
20 end the following new sentence: “Pursuant to an order
21 from the Attorney General or his designee, a United
22 States attorney or an assistant United States attorney
23 may be assigned dual or additional responsibilities that ex-
24 empt such officer from the residency requirement in this



1 subsection for a specific period as established by the order
2 and subject to renewal.”.

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

5 **SEC. 502. INTERIM APPOINTMENT OF UNITED STATES AT-**
6 **TORNEYS.**

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

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

14 **SEC. 503. SECRETARY OF HOMELAND SECURITY IN PRESI-**
15 **DENTIAL LINE OF SUCCESSION.**

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

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

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

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

2 Section 561 of title 28, United States Code, is
3 amended by adding at the end the following new sub-
4 section:

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

7 “(1) a minimum of 4 years of command-level
8 law enforcement management duties, including per-
9 sonnel, budget, and accountable property issues, in
10 a police department, sheriff’s office or Federal law
11 enforcement agency;

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

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

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

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

21 (a) ASSISTANT ATTORNEY GENERAL FOR NATIONAL
22 SECURITY.—

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

1 **“§ 507A. Assistant Attorney General for National Se-**
2 **curity**

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

7 “(b) The Assistant Attorney General for National Se-
8 curity shall—

9 “(1) serve as the head of the National Security
10 Division of the Department of Justice under section
11 509A of this title;

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

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

17 (2) ADDITIONAL ASSISTANT ATTORNEY GEN-
18 ERAL.—Section 506 of title 28, United States Code,
19 is amended by striking “ten” and inserting “11”.

20 (3) EXECUTIVE SCHEDULE MATTERS.—Section
21 5315 of title 5, United States Code, is amended by
22 striking the matter relating to Assistant Attorneys
23 General and inserting the following:

24 “ Assistant Attorneys General (11).”

25 (4) CONSULTATION OF DIRECTOR OF NATIONAL
26 INTELLIGENCE IN APPOINTMENT.—Section

1 106(c)(2) of the National Security Act of 1947 (50
2 U.S.C. 403-6(c)(2)) is amended by adding at the
3 end the following new subparagraph:

4 “(C) The Assistant Attorney General des-
5 ignated as the Assistant Attorney General for Na-
6 tional Security under section 507A of title 28,
7 United States Code.”.

8 (5) AUTHORITY TO ACT FOR ATTORNEY GEN-
9 ERAL UNDER FOREIGN INTELLIGENCE SURVEIL-
10 LANCE ACT OF 1978.—Section 101(g) of the Foreign
11 Intelligence Surveillance Act of 1978 (50 U.S.C.
12 1801(g)) is amended by striking “or the Deputy At-
13 torney General” and inserting “, the Deputy Attor-
14 ney General, or, upon the designation of the Attor-
15 ney General, the Assistant Attorney General des-
16 ignated as the Assistant Attorney General for Na-
17 tional Security under section 507A of title 28,
18 United States Code”.

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

24 (7) AUTHORITY TO ACT FOR ATTORNEY GEN-
25 ERAL IN MATTERS INVOLVING WITNESS RELOCATION

1 OR PROTECTION.—Section 3521(d)(3) of title 18,
2 United States Code, is amended by striking “to the
3 Assistant Attorney General in charge of the Crimi-
4 nal Division of the Department of Justice” and in-
5 serting “to any Assistant Attorney General in charge
6 of the Criminal Division or National Security Divi-
7 sion of the Department of Justice”.

8 (8) PROSECUTION OF CASES INVOLVING CLASSI-
9 FIED INFORMATION.—Section 9A(a) of the Classi-
10 fied Information Procedures Act (18 U.S.C. App.) is
11 amended by inserting “or the Assistant Attorney
12 General for National Security, as appropriate,” after
13 “Assistant Attorney General for the Criminal Divi-
14 sion”.

15 (9) INTELLIGENCE AND NATIONAL SECURITY
16 ASPECTS OF ESPIONAGE PROSECUTION.—Section
17 341(b) of the Intelligence Authorization Act for Fis-
18 cal Year 2004 (28 U.S.C. 519 note) is amended by
19 striking “acting through the Office of Intelligence
20 Policy and Review of the Department of Justice”
21 and inserting “acting through the Assistant Attor-
22 ney General for National Security”.

23 (10) CERTIFICATIONS FOR CERTAIN UNDER-
24 COVER FOREIGN INTELLIGENCE AND COUNTER-
25 INTELLIGENCE INVESTIGATIVE OPERATIONS.—Sec-



1 tion 102(b)(1) of Public Law 102-395 (28 U.S.C.
2 533 note) is amended by striking “Counsel for Intel-
3 ligence Policy” and inserting “Assistant Attorney
4 General for National Security”.

5 (11) INCLUSION IN FEDERAL LAW ENFORCE-
6 MENT COMMUNITY FOR EMERGENCY FEDERAL LAW
7 ENFORCEMENTS ASSISTANCE PURPOSES.—Section
8 609N(2) of the Justice Assistance Act of 1984 (42
9 U.S.C. 10502(2)) is amended—

10 (A) by redesignating subparagraphs (L)
11 and (M) as subparagraphs (M) and (N), respec-
12 tively; and

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

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

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

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

22 **“§ 509A. National Security Division**

23 “(a) There is a National Security Division of the De-
24 partment of Justice.



1 “(b) The National Security Division shall consist of
2 the elements of the Department of Justice (other than the
3 Federal Bureau of Investigation) engaged primarily in
4 support of the intelligence and intelligence-related activi-
5 ties of the United States Government, including the fol-
6 lowing:

7 “(1) The Assistant Attorney General designated
8 as the Assistant Attorney General for National Se-
9 curity under section 507A of this title.

10 “(2) The Office of Intelligence Policy and Re-
11 view (or any successor organization).

12 “(3) The counterterrorism section (or any suc-
13 cessor organization).

14 “(4) The counterespionage section (or any suc-
15 cessor organization).

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

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

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

1 (1) by inserting after the item relating to sec-
2 tion 507 the following new item:

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

3 and

4 (2) by inserting after the item relating to sec-
5 tion 509 the following new item:

“509A. National Security Division.”.

6 (d) PROCEDURES FOR CONFIRMATION OF THE AS-
7 SISTANT ATTORNEY GENERAL FOR NATIONAL SECU-
8 RITY.—(1) Section 17 of Senate Resolution 400 (94th
9 Congress) is amended—

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

13 (B) in subsection (b), by striking “(b)” and in-
14 serting “(2)”; and

15 (C) by inserting after subsection (a) the fol-
16 lowing new subsection:

17 “(b)(1) With respect to the confirmation of the As-
18 sistant Attorney General for National Security, or any
19 successor position, the nomination of any individual by the
20 President to serve in such position shall be referred to the
21 Committee on the Judiciary and, if and when reported,
22 to the select Committee for not to exceed 20 calendar
23 days, except that in cases when the 20-day period expires
24 while the Senate is in recess, the select Committee shall

1 have 5 additional calendar days after the Senate recon-
2 venes to report the nomination.

3 “(2) If, upon the expiration of the period de-
4 scribed in paragraph (1), the select Committee has
5 not reported the nomination, such nomination shall
6 be automatically discharged from the select Com-
7 mittee and placed on the Executive Calendar.”.

8 (2) Paragraph (1) is enacted—

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

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

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

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

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

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

24 “(2) counsel was appointed pursuant to that
25 mechanism, petitioner validly waived counsel, peti-

1 tioner retained counsel, or petitioner was found not
2 to be indigent.”.

3 (b) SCOPE OF PRIOR REPRESENTATION.—Section
4 2261(d) of title 28, United States Code is amended by
5 striking “or on direct appeal”.

6 (c) CERTIFICATION AND JUDICIAL REVIEW.—

7 (1) IN GENERAL.—Chapter 154 of title 28,
8 United States Code, is amended by striking section
9 2265 and inserting the following:

10 **“§ 2265. Certification and judicial review**

11 “(a) CERTIFICATION.—

12 “(1) IN GENERAL.—If requested by an appro-
13 priate State official, the Attorney General of the
14 United States shall determine—

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

21 “(B) the date on which the mechanism de-
22 scribed in subparagraph (A) was established;
23 and



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

4 “(2) EFFECTIVE DATE.—The date the mecha-
5 nism described in paragraph (1)(A) was established
6 shall be the effective date of the certification under
7 this subsection.

8 “(3) ONLY EXPRESS REQUIREMENTS.—There
9 are no requirements for certification or for applica-
10 tion of this chapter other than those expressly stated
11 in this chapter.

12 “(b) REGULATIONS.—The Attorney General shall
13 promulgate regulations to implement the certification pro-
14 cedure under subsection (a).

15 “(c) REVIEW OF CERTIFICATION.—

16 “(1) IN GENERAL.—The determination by the
17 Attorney General regarding whether to certify a
18 State under this section is subject to review exclu-
19 sively as provided under chapter 158 of this title.

20 “(2) VENUE.—The Court of Appeals for the
21 District of Columbia Circuit shall have exclusive ju-
22 risdiction over matters under paragraph (1), subject
23 to review by the Supreme Court under section 2350
24 of this title.



1 “(3) STANDARD OF REVIEW.—The determina-
2 tion by the Attorney General regarding whether to
3 certify a State under this section shall be subject to
4 de novo review.”.

5 (2) CLERICAL AMENDMENT.—The table of sec-
6 tions for chapter 154 of title 28, United States
7 Code, is amended by striking the item related to sec-
8 tion 2265 and inserting the following:

 “2265. Certification and judicial review.”.

9 (d) APPLICATION TO PENDING CASES.—

10 (1) IN GENERAL.—This section and the amend-
11 ments made by this section shall apply to cases
12 pending on or after the date of enactment of this
13 Act.

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

21 (e) TIME LIMITS.—Section 2266(b)(1)(A) of title 28,
22 United States Code, is amended by striking “180 days
23 after the date on which the application is filed” and insert-
24 ing “450 days after the date on which the application is



1 filed, or 60 days after the date on which the case is sub-
2 mitted for decision, whichever is earlier”.

3 (f) STAY OF STATE COURT PROCEEDINGS.—Section
4 2251 of title 28, United States Code, is amended—

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

7 “(a) IN GENERAL.—

8 “(1) PENDING MATTERS.—A justice”;

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

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

12 (3) in subsection (a), as so designated by para-
13 graph (1), by adding at the end the following:

14 “(2) MATTER NOT PENDING.—For purposes of
15 this section, a habeas corpus proceeding is not pend-
16 ing until the application is filed.

17 “(3) APPLICATION FOR APPOINTMENT OF
18 COUNSEL.—If a State prisoner sentenced to death
19 applies for appointment of counsel pursuant to sec-
20 tion 3599(a)(2) of title 18 in a court that would
21 have jurisdiction to entertain a habeas corpus appli-
22 cation regarding that sentence, that court may stay
23 execution of the sentence of death, but such stay
24 shall terminate not later than 90 days after counsel



1 is appointed or the application for appointment of
2 counsel is withdrawn or denied.”.

3 **TITLE VI—SECRET SERVICE**

4 **SEC. 601. SHORT TITLE.**

5 This title may be cited as the “Secret Service Author-
6 ization and Technical Modification Act of 2005”.

7 **SEC. 602. INTERFERENCE WITH NATIONAL SPECIAL SECUR-**
8 **RITY EVENTS.**

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

11 (1) in subsection (a)—

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

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

19 (B) by redesignating paragraphs (2), (3),
20 and (4) as paragraphs (3), (4), and (5), respec-
21 tively;

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

24 “(2) willfully and knowingly to enter or remain
25 in any posted, cordoned off, or otherwise restricted

1 area of a building or grounds so restricted in con-
2 junction with an event designated as a special event
3 of national significance;”;

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

6 (i) by inserting “willfully, knowingly,
7 and” before “with intent to impede or dis-
8 rupt”;

9 (ii) by striking “designated” and in-
10 sserting “described”; and

11 (iii) by inserting “or (2)” after “para-
12 graph (1)”;

13 (E) in paragraph (4), as redesignated by
14 subparagraph (B)—

15 (i) by striking “designated or enumer-
16 ated” and inserting “described”; and

17 (ii) by inserting “or (2)” after “para-
18 graph (1)”;

19 (F) in paragraph (5), as redesignated by
20 subparagraph (B)—

21 (i) by striking “designated or enumer-
22 ated” and inserting “described”; and

23 (ii) by inserting “or (2)” after “para-
24 graph (1)”;

1 (2) by amending subsection (b) to read as fol-
2 lows:

3 “(b) Violation of this section, and attempts or con-
4 spiracies to commit such violations, shall be punishable
5 by—

6 “(1) a fine under this title or imprisonment for
7 not more than 10 years, or both, if—

8 “(A) the person, during and in relation to
9 the offense, uses or carries a deadly or dan-
10 gerous weapon or firearm; or

11 “(B) the offense results in significant bod-
12 ily injury as defined by section 2118(e)(3); and

13 “(2) a fine under this title or imprisonment for
14 not more than one year, or both, in any other case.”;
15 and

16 (3) by striking subsection (d) and redesignating
17 subsections (e) and (f) as subsections (d) and (e),
18 respectively.

19 (b) CLERICAL AMENDMENT.—(1) The heading of
20 such section is amended to read as follows:

21 “§ 1752. Restricted building or grounds”.

22 (2) The item relating to such section in the table of
23 sections at the beginning of chapter 84 of such title is
24 amended to read as follows:

 “1752. Restricted building or grounds.”.

1 **SEC. 603. FALSE CREDENTIALS TO NATIONAL SPECIAL SE-**
2 **CURITY EVENTS.**

3 Section 1028 of title 18, United States Code, is
4 amended—

5 (1) in subsection (a)(6), by inserting “or a
6 sponsoring entity of an event designated as a special
7 event of national significance” after “States”;

8 (2) in subsection (c)(1), by inserting “or a
9 sponsoring entity of an event designated as a special
10 event of national significance” after “States”;

11 (3) in subsection (d)(3), by inserting “a spon-
12 soring entity of an event designated as a special
13 event of national significance,” after “political sub-
14 division of a State,”; and

15 (4) in each of subsections (d)(4)(B) and
16 (d)(6)(B), by inserting “a sponsoring entity of an
17 event designated by the President as a special event
18 of national significance,” after “political subdivision
19 of a State,”.

20 **SEC. 604. FORENSIC AND INVESTIGATIVE SUPPORT OF**
21 **MISSING AND EXPLOITED CHILDREN CASES.**

22 Section 3056(f) of title 18, United States Code, is
23 amended by striking “officers and agents of the Secret
24 Service are” and inserting “the Secret Service is”.

1 **SEC. 605. THE UNIFORMED DIVISION, UNITED STATES SE-**
2 **CRET SERVICE.**

3 (a) IN GENERAL.—Chapter 203 of title 18, United
4 States Code, is amended by inserting after section 3056
5 the following:

6 **“§ 3056A. Powers, authorities, and duties of United**
7 **States Secret Service Uniformed Division**

8 “(a) There is hereby created and established a per-
9 manent police force, to be known as the ‘United States
10 Secret Service Uniformed Division’. Subject to the super-
11 vision of the Secretary of Homeland Security, the United
12 States Secret Service Uniformed Division shall perform
13 such duties as the Director, United States Secret Service,
14 may prescribe in connection with the protection of the fol-
15 lowing:

16 “(1) The White House in the District of Colum-
17 bia.

18 “(2) Any building in which Presidential offices
19 are located.

20 “(3) The Treasury Building and grounds.

21 “(4) The President, the Vice President (or
22 other officer next in the order of succession to the
23 Office of President), the President-elect, the Vice
24 President-elect, and their immediate families.

25 “(5) Foreign diplomatic missions located in the
26 metropolitan area of the District of Columbia.



1 “(6) The temporary official residence of the
2 Vice President and grounds in the District of Co-
3 lumbia.

4 “(7) Foreign diplomatic missions located in
5 metropolitan areas (other than the District of Co-
6 lumbia) in the United States where there are located
7 twenty or more such missions headed by full-time of-
8 ficers, except that such protection shall be provided
9 only—

10 “(A) on the basis of extraordinary protec-
11 tive need;

12 “(B) upon request of an affected metro-
13 politan area; and

14 “(C) when the extraordinary protective
15 need arises at or in association with a visit to—

16 “(i) a permanent mission to, or an ob-
17 server mission invited to participate in the
18 work of, an international organization of
19 which the United States is a member; or

20 “(ii) an international organization of
21 which the United States is a member;

22 except that such protection may also be pro-
23 vided for motorcades and at other places associ-
24 ated with any such visit and may be extended

1 at places of temporary domicile in connection
2 with any such visit.

3 “(8) Foreign consular and diplomatic missions
4 located in such areas in the United States, its terri-
5 tories and possessions, as the President, on a case-
6 by-case basis, may direct.

7 “(9) Visits of foreign government officials to
8 metropolitan areas (other than the District of Co-
9 lumbia) where there are located twenty or more con-
10 sular or diplomatic missions staffed by accredited
11 personnel, including protection for motorcades and
12 at other places associated with such visits when such
13 officials are in the United States to conduct official
14 business with the United States Government.

15 “(10) Former Presidents and their spouses, as
16 provided in section 3056(a)(3) of title 18.

17 “(11) An event designated under section
18 3056(e) of title 18 as a special event of national sig-
19 nificance.

20 “(12) Major Presidential and Vice Presidential
21 candidates and, within 120 days of the general Pres-
22 idential election, the spouses of such candidates, as
23 provided in section 3056(a)(7) of title 18.

24 “(13) Visiting heads of foreign states or foreign
25 governments.



1 “(b)(1) Under the direction of the Director of the Se-
2 cret Service, members of the United States Secret Service
3 Uniformed Division are authorized to—

4 “(A) carry firearms;

5 “(B) make arrests without warrant for any of-
6 fense against the United States committed in their
7 presence, or for any felony cognizable under the laws
8 of the United States if they have reasonable grounds
9 to believe that the person to be arrested has com-
10 mitted or is committing such felony; and

11 “(C) perform such other functions and duties
12 as are authorized by law.

13 “(2) Members of the United States Secret Service
14 Uniformed Division shall possess privileges and powers
15 similar to those of the members of the Metropolitan Police
16 of the District of Columbia.

17 “(c) Members of the United States Secret Service
18 Uniformed Division shall be furnished with uniforms and
19 other necessary equipment.

20 “(d) In carrying out the functions pursuant to para-
21 graphs (7) and (9) of subsection (a), the Secretary of
22 Homeland Security may utilize, with their consent, on a
23 reimbursable basis, the services, personnel, equipment,
24 and facilities of State and local governments, and is au-
25 thorized to reimburse such State and local governments



1 for the utilization of such services, personnel, equipment,
2 and facilities. The Secretary of Homeland Security may
3 carry out the functions pursuant to paragraphs (7) and
4 (9) of subsection (a) by contract. The authority of this
5 subsection may be transferred by the President to the Sec-
6 retary of State. In carrying out any duty under para-
7 graphs (7) and (9) of subsection (a), the Secretary of
8 State is authorized to utilize any authority available to the
9 Secretary under title II of the State Department Basic
10 Authorities Act of 1956.”.

11 (b) AMENDMENT TO TABLE OF SECTIONS.—The
12 table of sections at the beginning of chapter 203 of title
13 18, United States Code, is amended by inserting after the
14 item relating to section 3056 the following new item:

3056A. Powers, authorities, and duties of United States Secret Service Uni-
formed Division.

15 (c) CONFORMING REPEAL TO EFFECTUATE TRANS-
16 FER.—Chapter 3 of title 3, United States Code, is re-
17 pealed.

18 (d) CONFORMING AMENDMENTS TO LAWS AFFECT-
19 ING DISTRICT OF COLUMBIA.—(1) Section 1537(d) of
20 title 31, United States Code, is amended—

21 (A) by striking “and the Executive Protective
22 Service” and inserting “and the Secret Service Uni-
23 formed Division”; and



1 (B) by striking “their protective duties” and all
2 that follows and inserting “their protective duties
3 under sections 3056 and 3056A of title 18.”

4 (2) Section 204(e) of the State Department Basic
5 Authorities Act (sec. 6—1304(e), D.C. Official Code) is
6 amended by striking “section 202 of title 3, United States
7 Code, or section 3056” and inserting “sections 3056 or
8 3056A”.

9 (3) Section 214(a) of the State Department Basic
10 Authorities Act (sec. 6—1313(a), D.C. Official Code) is
11 amended by striking “sections 202(8) and 208 of title 3”
12 and inserting “section 3056A(a)(7) and (d) of title 18”.

13 (e) ADDITIONAL CONFORMING AMENDMENTS.—

14 (1) Title 12, United States Code, section 3414,
15 “Special procedures”, is amended by striking “3
16 U.S.C. 202” in subsection (a)(1)(B) and inserting
17 “18 U.S.C. 3056A”.

18 (2) The State Department Basic Authorities
19 Act of 1956 is amended—

20 (A) in the first sentence of section 37(c)
21 (22 U.S.C. 2709(c)), by striking “section 202
22 of title 3, United States Code, or section 3056
23 of title 18, United States Code” and inserting
24 “section 3056 or 3056A of title 18, United
25 States Code”;



1 (B) in section 204(e) (22 U.S.C. 4304(e)),
2 by striking “section 202 of title 3, United
3 States Code, or section 3056 of title 18, United
4 States Code” and inserting “section 3056 or
5 3056A of title 18, United States Code”; and

6 (C) in section 214(a) (22 U.S.C. 4314(a)),
7 by striking “sections 202(7) and 208 of title 3,
8 United States Code” and inserting “subsections
9 (a)(7) and (d) of section 3056A of title 18,
10 United States Code”.

11 (3) Section 8D(a)(1)(F) of the Inspector Gen-
12 eral Act of 1978 (5 U.S.C. App.) is amended by
13 striking “section 202 of title 3” and inserting “sec-
14 tion 3056A of title 18”.

15 (4) Section 8I(a)(1)(E) of the Inspector Gen-
16 eral Act of 1978 (5 U.S.C. App.) is amended by
17 striking “section 202 of title 3” and inserting “sec-
18 tion 3056A of title 18”.

19 **SEC. 606. SAVINGS PROVISIONS.**

20 (a) This title does not affect the retirement benefits
21 of current employees or annuitants that existed on the day
22 before the effective date of this Act.

23 (b) This title does not affect any Executive Order
24 transferring to the Secretary of State the authority of sec-



1 tion 208 of title 3 (now section 3056A(d) of title 18) in
2 effect on the day before the effective date of this Act.

3 **SEC. 607. MAINTENANCE AS DISTINCT ENTITY.**

4 Section 3056 of title 18 is amended by adding the
5 following at the end of the section:

6 “(g) The United States Secret Service shall be main-
7 tained as a distinct entity within the Department of
8 Homeland Security and shall not be merged with any
9 other Department function. No personnel and operational
10 elements of the United States Secret Service shall report
11 to an individual other than the Director of the United
12 States Secret Service, who shall report directly to the Sec-
13 retary of Homeland Security without being required to re-
14 port through any other official of the Department.”.

15 **SEC. 608. EXEMPTIONS FROM THE FEDERAL ADVISORY**
16 **COMMITTEE ACT.**

17 (a) **ADVISORY COMMITTEE REGARDING PROTECTION**
18 **OF MAJOR PRESIDENTIAL AND VICE PRESIDENTIAL CAN-**
19 **DIDATES.**—Section 3056(a)(7) of title 18, United States
20 Code, is amended by inserting “The Committee shall not
21 be subject to the Federal Advisory Committee Act (5
22 U.S.C. App. 2).” after “other members of the Com-
23 mittee.”.

24 (b) **ELECTRONIC CRIMES TASK FORCES.**—Section
25 105 of Public Law 107–56 (18 U.S.C. 3056 note) is



1 amended by inserting “The electronic crimes task forces
2 shall not be subject to the Federal Advisory Committee
3 Act (5 U.S.C. App. 2).” after “financial payment sys-
4 tems.”.

5 **TITLE VII—COMBAT METH-**
6 **AMPHETAMINE EPIDEMIC**
7 **ACT OF 2005**

8 **SEC. 701. SHORT TITLE.**

9 This title may be cited as the “Combat Methamphet-
10 amine Epidemic Act of 2005”.

11 **Subtitle A—Domestic Regulation of**
12 **Precursor Chemicals**

13 **SEC. 711. SCHEDULED LISTED CHEMICAL PRODUCTS; RE-**
14 **STRICTIONS ON SALES QUANTITY, BEHIND-**
15 **THE-COUNTER ACCESS, AND OTHER SAFE-**
16 **GUARDS.**

17 (a) SCHEDULED LISTED CHEMICAL PRODUCTS.—

18 (1) IN GENERAL.—Section 102 of the Con-
19 trolled Substances Act (21 U.S.C. 802) is
20 amended—

21 (A) by redesignating paragraph (46) as
22 paragraph (49); and

23 (B) by inserting after paragraph (44) the
24 following paragraphs:



1 “(45)(A) The term ‘scheduled listed chemical prod-
2 uct’ means, subject to subparagraph (B), a product that—

3 “(i) contains ephedrine, pseudoephedrine, or
4 phenylpropanolamine; and

5 “(ii) may be marketed or distributed lawfully in
6 the United States under the Federal, Food, Drug,
7 and Cosmetic Act as a nonprescription drug.

8 Each reference in clause (i) to ephedrine,
9 pseudoephedrine, or phenylpropanolamine includes each of
10 the salts, optical isomers, and salts of optical isomers of
11 such chemical.

12 “(B) Such term does not include a product described
13 in subparagraph (A) if the product contains a chemical
14 specified in such subparagraph that the Attorney General
15 has under section 201(a) added to any of the schedules
16 under section 202(c). In the absence of such scheduling
17 by the Attorney General, a chemical specified in such sub-
18 paragraph may not be considered to be a controlled sub-
19 stance.

20 “(46) The term ‘regulated seller’ means a retail dis-
21 tributor (including a pharmacy or a mobile retail vendor),
22 except that such term does not include an employee or
23 agent of such distributor.

24 “(47) The term ‘mobile retail vendor’ means a person
25 or entity that makes sales at retail from a stand that is



1 intended to be temporary, or is capable of being moved
2 from one location to another, whether the stand is located
3 within or on the premises of a fixed facility (such as a
4 kiosk at a shopping center or an airport) or whether the
5 stand is located on unimproved real estate (such as a lot
6 or field leased for retail purposes).

7 “(48) The term ‘at retail’, with respect to the sale
8 or purchase of a scheduled listed chemical product, means
9 a sale or purchase for personal use, respectively.”.

10 (2) CONFORMING AMENDMENTS.—The Con-
11 trolled Substances Act (21 U.S.C. 801 et seq.) is
12 amended—

13 (A) in section 102, in paragraph (49) (as
14 redesignated by paragraph (1)(A) of this sub-
15 section)—

16 (i) in subparagraph (A), by striking
17 “pseudoephedrine or” and inserting
18 “ephedrine, pseudoephedrine, or”; and

19 (ii) by striking subparagraph (B) and
20 redesignating subparagraph (C) as sub-
21 paragraph (B); and

22 (B) in section 310(b)(3)(D)(ii), by striking
23 “102(46)” and inserting “102(49)”.

1 (b) RESTRICTIONS ON SALES QUANTITY; BEHIND-
2 THE-COUNTER ACCESS; LOGBOOK REQUIREMENT; TRAIN-
3 ING OF SALES PERSONNEL; PRIVACY PROTECTIONS.—

4 (1) IN GENERAL.—Section 310 of the Con-
5 trolled Substances Act (21 U.S.C. 830) is amended
6 by adding at the end the following subsections:

7 “(d) SCHEDULED LISTED CHEMICALS; RESTRIC-
8 TIONS ON SALES QUANTITY; REQUIREMENTS REGARDING
9 NONLIQUID FORMS.—With respect to ephedrine base,
10 pseudoephedrine base, or phenylpropanolamine base in a
11 scheduled listed chemical product—

12 “(1) the quantity of such base sold at retail in
13 such a product by a regulated seller, or a distributor
14 required to submit reports by subsection (b)(3) may
15 not, for any purchaser, exceed a daily amount of 3.6
16 grams, without regard to the number of trans-
17 actions; and

18 “(2) such a seller or distributor may not sell
19 such a product in nonliquid form (including gel
20 caps) at retail unless the product is packaged in blis-
21 ter packs, each blister containing not more than 2
22 dosage units, or where the use of blister packs is
23 technically infeasible, the product is packaged in
24 unit dose packets or pouches.



1 “(e) SCHEDULED LISTED CHEMICALS; BEHIND-THE-
2 COUNTER ACCESS; LOGBOOK REQUIREMENT; TRAINING
3 OF SALES PERSONNEL; PRIVACY PROTECTIONS.—

4 “(1) REQUIREMENTS REGARDING RETAIL
5 TRANSACTIONS.—

6 “(A) IN GENERAL.—Each regulated seller
7 shall ensure that, subject to subparagraph (F),
8 sales by such seller of a scheduled listed chem-
9 ical product at retail are made in accordance
10 with the following:

11 “(i) In offering the product for sale,
12 the seller places the product such that cus-
13 tomers do not have direct access to the
14 product before the sale is made (in this
15 paragraph referred to as ‘behind-the-
16 counter’ placement). For purposes of this
17 paragraph, a behind-the-counter placement
18 of a product includes circumstances in
19 which the product is stored in a locked
20 cabinet that is located in an area of the fa-
21 cility involved to which customers do have
22 direct access.

23 “(ii) The seller delivers the product
24 directly into the custody of the purchaser.

1 “(iii) The seller maintains, in accord-
2 ance with criteria issued by the Attorney
3 General, a written or electronic list of such
4 sales that identifies the products by name,
5 the quantity sold, the names and addresses
6 of purchasers, and the dates and times of
7 the sales (which list is referred to in this
8 subsection as the ‘logbook’), except that
9 such requirement does not apply to any
10 purchase by an individual of a single sales
11 package if that package contains not more
12 than 60 milligrams of pseudoephedrine.

13 “(iv) In the case of a sale to which
14 the requirement of clause (iii) applies, the
15 seller does not sell such a product unless—

16 “(I) the prospective purchaser—
17 “(aa) presents an identifica-
18 tion card that provides a photo-
19 graph and is issued by a State or
20 the Federal Government, or a
21 document that, with respect to
22 identification, is considered ac-
23 ceptable for purposes of sections
24 274a.2(b)(1)(v)(A) and
25 274a.2(b)(1)(v)(B) of title 8,



1 Code of Federal Regulations (as
2 in effect on or after the date of
3 the enactment of the Combat
4 Methamphetamine Epidemic Act
5 of 2005); and

6 “(bb) signs the logbook and
7 enters in the logbook his or her
8 name, address, and the date and
9 time of the sale; and

10 “(II) the seller—

11 “(aa) determines that the
12 name entered in the logbook cor-
13 responds to the name provided on
14 such identification and that the
15 date and time entered are cor-
16 rect; and

17 “(bb) enters in the logbook
18 the name of the product and the
19 quantity sold.

20 “(v) The logbook includes, in accord-
21 ance with criteria of the Attorney General,
22 a notice to purchasers that entering false
23 statements or misrepresentations in the
24 logbook may subject the purchasers to
25 criminal penalties under section 1001 of

1 title 18, United States Code, which notice
2 specifies the maximum fine and term of
3 imprisonment under such section.

4 “(vi) The seller maintains each entry
5 in the logbook for not fewer than two years
6 after the date on which the entry is made.

7 “(vii) In the case of individuals who
8 are responsible for delivering such products
9 into the custody of purchasers or who deal
10 directly with purchasers by obtaining pay-
11 ments for the products, the seller has sub-
12 mitted to the Attorney General a self-cer-
13 tification that all such individuals have, in
14 accordance with criteria under subpara-
15 graph (B)(ii), undergone training provided
16 by the seller to ensure that the individuals
17 understand the requirements that apply
18 under this subsection and subsection (d).

19 “(viii) The seller maintains a copy of
20 such certification and records dem-
21 onstrating that individuals referred to in
22 clause (vii) have undergone the training.

23 “(ix) If the seller is a mobile retail
24 vendor:



1 “(I) The seller complies with
2 clause (i) by placing the product in a
3 locked cabinet.

4 “(II) The seller does not sell
5 more than 7.5 grams of ephedrine
6 base, pseudoephedrine base, or phen-
7 ylpropanolamine base in such prod-
8 ucts per customer during a 30-day pe-
9 riod.

10 “(B) ADDITIONAL PROVISIONS REGARDING
11 CERTIFICATIONS AND TRAINING.—

12 “(i) IN GENERAL.—A regulated seller
13 may not sell any scheduled listed chemical
14 product at retail unless the seller has sub-
15 mitted to the Attorney General the self-
16 certification referred to in subparagraph
17 (A)(vii). The certification is not effective
18 for purposes of the preceding sentence un-
19 less, in addition to provisions regarding the
20 training of individuals referred to in such
21 subparagraph, the certification includes a
22 statement that the seller understands each
23 of the requirements that apply under this
24 paragraph and under subsection (d) and
25 agrees to comply with the requirements.

1 “(ii) ISSUANCE OF CRITERIA; SELF-
2 CERTIFICATION.—The Attorney General
3 shall by regulation establish criteria for
4 certifications under this paragraph. The
5 criteria shall—

6 “(I) provide that the certifi-
7 cations are self-certifications provided
8 through the program under clause
9 (iii);

10 “(II) provide that a separate cer-
11 tification is required for each place of
12 business at which a regulated seller
13 sells scheduled listed chemical prod-
14 ucts at retail; and

15 “(III) include criteria for train-
16 ing under subparagraph (A)(vii).

17 “(iii) PROGRAM FOR REGULATED
18 SELLERS.—The Attorney General shall es-
19 tablish a program regarding such certifi-
20 cations and training in accordance with the
21 following:

22 “(I) The program shall be car-
23 ried out through an Internet site of
24 the Department of Justice and such



1 other means as the Attorney General
2 determines to be appropriate.

3 “(II) The program shall inform
4 regulated sellers that section 1001 of
5 title 18, United States Code, applies
6 to such certifications.

7 “(III) The program shall make
8 available to such sellers an expla-
9 nation of the criteria under clause (ii).

10 “(IV) The program shall be de-
11 signed to permit the submission of the
12 certifications through such Internet
13 site.

14 “(V) The program shall be de-
15 signed to automatically provide the
16 explanation referred to in subclause
17 (III), and an acknowledgement that
18 the Department has received a certifi-
19 cation, without requiring direct inter-
20 actions of regulated sellers with staff
21 of the Department (other than the
22 provision of technical assistance, as
23 appropriate).

24 “(iv) AVAILABILITY OF CERTIFI-
25 CATION TO STATE AND LOCAL OFFI-



1 CIALS.—Promptly after receiving a certifi-
2 cation under subparagraph (A)(vii), the
3 Attorney General shall make available a
4 copy of the certification to the appropriate
5 State and local officials.

6 “(C) PRIVACY PROTECTIONS.—In order to
7 protect the privacy of individuals who purchase
8 scheduled listed chemical products, the Attorney
9 General shall by regulation establish restrictions
10 on disclosure of information in logbooks under
11 subparagraph (A)(iii). Such regulations shall—

12 “(i) provide for the disclosure of the
13 information as appropriate to the Attorney
14 General and to State and local law enforce-
15 ment agencies; and

16 “(ii) prohibit accessing, using, or
17 sharing information in the logbooks for
18 any purpose other than to ensure compli-
19 ance with this title or to facilitate a prod-
20 uct recall to protect public health and safe-
21 ty.

22 “(D) FALSE STATEMENTS OR MISREPRE-
23 SENTATIONS BY PURCHASERS.—For purposes
24 of section 1001 of title 18, United States Code,
25 entering information in the logbook under sub-

1 paragraph (A)(iii) shall be considered a matter
2 within the jurisdiction of the executive, legisla-
3 tive, or judicial branch of the Government of
4 the United States.

5 “(E) GOOD FAITH PROTECTION.—A regu-
6 lated seller who in good faith releases informa-
7 tion in a logbook under subparagraph (A)(iii) to
8 Federal, State, or local law enforcement au-
9 thorities is immune from civil liability for such
10 release unless the release constitutes gross neg-
11 ligence or intentional, wanton, or willful mis-
12 conduct.

13 “(F) INAPPLICABILITY OF REQUIREMENTS
14 TO CERTAIN SALES.—Subparagraph (A) does
15 not apply to the sale at retail of a scheduled
16 listed chemical product if a report on the sales
17 transaction is required to be submitted to the
18 Attorney General under subsection (b)(3).

19 “(G) CERTAIN MEASURES REGARDING
20 THEFT AND DIVERSION.—A regulated seller
21 may take reasonable measures to guard against
22 employing individuals who may present a risk
23 with respect to the theft and diversion of sched-
24 uled listed chemical products, which may in-
25 clude, notwithstanding State law, asking appli-

1 cants for employment whether they have been
2 convicted of any crime involving or related to
3 such products or controlled substances.”.

4 (2) EFFECTIVE DATES.—With respect to sub-
5 sections (d) and (e)(1) of section 310 of the Con-
6 trolled Substances Act, as added by paragraph (1)
7 of this subsection:

8 (A) Such subsection (d) applies on and
9 after the expiration of the 30-day period begin-
10 ning on the date of the enactment of this Act.

11 (B) Such subsection (e)(1) applies on and
12 after September 30, 2006.

13 (c) MAIL-ORDER REPORTING.—

14 (1) IN GENERAL.—Section 310(e) of the Con-
15 trolled Substances Act, as added by subsection
16 (b)(1) of this section, is amended by adding at the
17 end the following:

18 “(2) MAIL-ORDER REPORTING; VERIFICATION
19 OF IDENTITY OF PURCHASER; 30-DAY RESTRICTION
20 ON QUANTITIES FOR INDIVIDUAL PURCHASERS.—
21 Each regulated person who makes a sale at retail of
22 a scheduled listed chemical product and is required
23 under subsection (b)(3) to submit a report of the
24 sales transaction to the Attorney General is subject
25 to the following:

1 “(A) The person shall, prior to shipping
2 the product, confirm the identity of the pur-
3 chaser in accordance with procedures estab-
4 lished by the Attorney General. The Attorney
5 General shall by regulation establish such pro-
6 cedures.

7 “(B) The person may not sell more than
8 7.5 grams of ephedrine base, pseudoephedrine
9 base, or phenylpropanolamine base in such
10 products per customer during a 30-day pe-
11 riod.”.

12 (2) INAPPLICABILITY OF REPORTING EXEMP-
13 TION FOR RETAIL DISTRIBUTORS.—Section
14 310(b)(3)(D)(ii) of the Controlled Substances Act
15 (21 U.S.C. 830(b)(3)(D)(ii)) is amended by insert-
16 ing before the period the following: “, except that
17 this clause does not apply to sales of scheduled listed
18 chemical products at retail”.

19 (3) EFFECTIVE DATE.—The amendments made
20 by paragraphs (1) and (2) apply on and after the ex-
21 piration of the 30-day period beginning on the date
22 of the enactment of this Act.

23 (d) EXEMPTIONS FOR CERTAIN PRODUCTS.—Section
24 310(e) of the Controlled Substances Act, as added and
25 amended by subsections (b) and (c) of this section, respec-



1 tively, is amended by adding at the end the following para-
2 graph:

3 “(3) EXEMPTIONS FOR CERTAIN PRODUCTS.—
4 Upon the application of a manufacturer of a sched-
5 uled listed chemical product, the Attorney General
6 may by regulation provide that the product is ex-
7 empt from the provisions of subsection (d) and para-
8 graphs (1) and (2) of this subsection if the Attorney
9 General determines that the product cannot be used
10 in the illicit manufacture of methamphetamine.”.

11 (e) RESTRICTIONS ON QUANTITY PURCHASED DUR-
12 ING 30-DAY PERIOD.—

13 (1) IN GENERAL.—Section 404(a) of the Con-
14 trolled Substances Act (21 U.S.C. 844(a)) is amend-
15 ed by inserting after the second sentence the fol-
16 lowing: “It shall be unlawful for any person to know-
17 ingly or intentionally purchase at retail during a 30
18 day period more than 9 grams of ephedrine base,
19 pseudoephedrine base, or phenylpropanolamine base
20 in a scheduled listed chemical product, except that,
21 of such 9 grams, not more than 7.5 grams may be
22 imported by means of shipping through any private
23 or commercial carrier or the Postal Service.”.

24 (2) EFFECTIVE DATE.—The amendment made
25 by paragraph (1) applies on and after the expiration

1 of the 30-day period beginning on the date of the
2 enactment of this Act.

3 (f) ENFORCEMENT OF REQUIREMENTS FOR RETAIL
4 SALES.—

5 (1) CIVIL AND CRIMINAL PENALTIES.—

6 (A) IN GENERAL.—Section 402(a) of the
7 Controlled Substances Act (21 U.S.C. 842(a))
8 is amended—

9 (i) in paragraph (10), by striking “or”
10 after the semicolon;

11 (ii) in paragraph (11), by striking the
12 period at the end and inserting a semi-
13 colon; and

14 (iii) by inserting after paragraph (11)
15 the following paragraphs:

16 “(12) who is a regulated seller, or a distributor
17 required to submit reports under subsection (b)(3)
18 of section 310—

19 “(A) to sell at retail a scheduled listed
20 chemical product in violation of paragraph (1)
21 of subsection (d) of such section, knowing at
22 the time of the transaction involved (inde-
23 pendent of consulting the logbook under sub-
24 section (e)(1)(A)(iii) of such section) that the
25 transaction is a violation; or

1 “(B) to knowingly or recklessly sell at re-
2 tail such a product in violation of paragraph (2)
3 of such subsection (d);

4 “(13) who is a regulated seller to knowingly or
5 recklessly sell at retail a scheduled listed chemical
6 product in violation of subsection (e) of such section;
7 or

8 “(14) who is a regulated seller or an employee
9 or agent of such seller to disclose, in violation of reg-
10 ulations under subparagraph (C) of section
11 310(e)(1), information in logbooks under subpara-
12 graph (A)(iii) of such section, or to refuse to provide
13 such a logbook to Federal, State, or local law en-
14 forcement authorities.”.

15 (B) CONFORMING AMENDMENT.—Section
16 401(f)(1) of the Controlled Substances Act (21
17 U.S.C. 841(f)(1)) is amended by inserting after
18 “shall” the following: “, except to the extent
19 that paragraph (12), (13), or (14) of section
20 402(a) applies,”.

21 (2) AUTHORITY TO PROHIBIT SALES BY VIOLA-
22 TORS.—Section 402(c) of the Controlled Substances
23 Act (21 U.S.C. 842(c)) is amended by adding at the
24 end the following paragraph:

1 “(4)(A) If a regulated seller, or a distributor required
2 to submit reports under section 310(b)(3), violates para-
3 graph (12) of subsection (a) of this section, or if a regu-
4 lated seller violates paragraph (13) of such subsection, the
5 Attorney General may by order prohibit such seller or dis-
6 tributor (as the case may be) from selling any scheduled
7 listed chemical product. Any sale of such a product in vio-
8 lation of such an order is subject to the same penalties
9 as apply under paragraph (2).

10 “(B) An order under subparagraph (A) may be im-
11 posed only through the same procedures as apply under
12 section 304(c) for an order to show cause.”.

13 (g) **PRESERVATION OF STATE AUTHORITY TO REGU-**
14 **LATE SCHEDULED LISTED CHEMICALS.**—This section
15 and the amendments made by this section may not be con-
16 strued as having any legal effect on section 708 of the
17 Controlled Substances Act as applied to the regulation of
18 scheduled listed chemicals (as defined in section 102(45)
19 of such Act).

20 **SEC. 712. REGULATED TRANSACTIONS.**

21 (a) **CONFORMING AMENDMENTS REGARDING SCHED-**
22 **ULED LISTED CHEMICALS.**—The Controlled Substances
23 Act (21 U.S.C. 801 et seq.) is amended—

24 (1) in section 102—

25 (A) in paragraph (39)(A)—

1 (i) by amending clause (iv) to read as
2 follows:

3 “(iv) any transaction in a listed chemical
4 that is contained in a drug that may be mar-
5 keted or distributed lawfully in the United
6 States under the Federal Food, Drug, and Cos-
7 metic Act, subject to clause (v), unless—

8 “(I) the Attorney General has deter-
9 mined under section 204 that the drug or
10 group of drugs is being diverted to obtain
11 the listed chemical for use in the illicit pro-
12 duction of a controlled substance; and

13 “(II) the quantity of the listed chem-
14 ical contained in the drug included in the
15 transaction or multiple transactions equals
16 or exceeds the threshold established for
17 that chemical by the Attorney General;”;

18 (ii) by redesignating clause (v) as
19 clause (vi); and

20 (iii) by inserting after clause (iv) the
21 following clause:

22 “(v) any transaction in a scheduled listed
23 chemical product that is a sale at retail by a
24 regulated seller or a distributor required to sub-
25 mit reports under section 310(b)(3); or”; and



1 (B) by striking the paragraph (45) that re-
2 lates to the term “ordinary over-the-counter
3 pseudoephedrine or phenylpropanolamine prod-
4 uct”;

5 (2) in section 204, by striking subsection (e);
6 and

7 (3) in section 303(h), in the second sentence, by
8 striking “section 102(39)(A)(iv)” and inserting
9 “clause (iv) or (v) of section 102(39)(A)”.

10 (b) PUBLIC LAW 104–237.—Section 401 of the Com-
11 prehensive Methamphetamine Control Act of 1996 (21
12 U.S.C. 802 note) (Public Law 104–237) is amended by
13 striking subsections (d), (e), and (f).

14 **SEC. 713. AUTHORITY TO ESTABLISH PRODUCTION**
15 **QUOTAS.**

16 Section 306 of the Controlled Substances Act (21
17 U.S.C. 826) is amended—

18 (1) in subsection (a), by inserting “and for
19 ephedrine, pseudoephedrine, and phenylpropanola-
20 mine” after “for each basic class of controlled sub-
21 stance in schedules I and II”;

22 (2) in subsection (b), by inserting “or for
23 ephedrine, pseudoephedrine, or phenylpropanola-
24 mine” after “for each basic class of controlled sub-
25 stance in schedule I or II”;



1 (3) in subsection (c), in the first sentence, by
2 inserting “and for ephedrine, pseudoephedrine, and
3 phenylpropanolamine” after “for the basic classes of
4 controlled substances in schedules I and II”;

5 (4) in subsection (d), by inserting “or ephed-
6 rine, pseudoephedrine, or phenylpropanolamine”
7 after “that basic class of controlled substance”;

8 (5) in subsection (e), by inserting “or for
9 ephedrine, pseudoephedrine, or phenylpropanola-
10 mine” after “for a basic class of controlled sub-
11 stance in schedule I or II”;

12 (6) in subsection (f)—

13 (A) by inserting “or ephedrine,
14 pseudoephedrine, or phenylpropanolamine”
15 after “controlled substances in schedules I and
16 II”;

17 (B) by inserting “or of ephedrine,
18 pseudoephedrine, or phenylpropanolamine”
19 after “the manufacture of a controlled sub-
20 stance”; and

21 (C) by inserting “or chemicals” after
22 “such incidentally produced substances”; and

23 (7) by adding at the end the following sub-
24 section:

1 “(g) Each reference in this section to ephedrine,
2 pseudoephedrine, or phenylpropanolamine includes each of
3 the salts, optical isomers, and salts of optical isomers of
4 such chemical.”

5 **SEC. 714. PENALTIES; AUTHORITY FOR MANUFACTURING;**
6 **QUOTA.**

7 Section 402(b) of the Controlled Substances Act (21
8 U.S.C. 842(b)) is amended by inserting after “manufac-
9 ture a controlled substance in schedule I or II” the fol-
10 lowing: “, or ephedrine, pseudoephedrine, or phenyl-
11 propanolamine or any of the salts, optical isomers, or salts
12 of optical isomers of such chemical,”

13 **SEC. 715. RESTRICTIONS ON IMPORTATION; AUTHORITY TO**
14 **PERMIT IMPORTS FOR MEDICAL, SCIENTIFIC,**
15 **OR OTHER LEGITIMATE PURPOSES.**

16 Section 1002 of the Controlled Substances Import
17 and Export Act (21 U.S.C. 952) is amended—

18 (1) in subsection (a)—

19 (A) in the matter preceding paragraph (1),
20 by inserting “or ephedrine, pseudoephedrine, or
21 phenylpropanolamine,” after “schedule III, IV,
22 or V of title II,”; and

23 (B) in paragraph (1), by inserting “, and
24 of ephedrine, pseudoephedrine, and phenyl-
25 propanolamine,” after “coca leaves”; and



1 (2) by adding at the end the following sub-
2 sections:

3 “(d)(1) With respect to a registrant under section
4 1008 who is authorized under subsection (a)(1) to import
5 ephedrine, pseudoephedrine, or phenylpropanolamine, at
6 any time during the year the registrant may apply for an
7 increase in the amount of such chemical that the reg-
8 istrant is authorized to import, and the Attorney General
9 may approve the application if the Attorney General deter-
10 mines that the approval is necessary to provide for med-
11 ical, scientific, or other legitimate purposes regarding the
12 chemical.

13 “(2) With respect to the application under paragraph
14 (1):

15 “(A) Not later than 60 days after receiving the
16 application, the Attorney General shall approve or
17 deny the application.

18 “(B) In approving the application, the Attorney
19 General shall specify the period of time for which
20 the approval is in effect, or shall provide that the
21 approval is effective until the registrant involved is
22 notified in writing by the Attorney General that the
23 approval is terminated.

24 “(C) If the Attorney General does not approve
25 or deny the application before the expiration of the

1 60-day period under subparagraph (A), the applica-
2 tion is deemed to be approved, and such approval re-
3 mains in effect until the Attorney General notifies
4 the registrant in writing that the approval is termi-
5 nated.

6 “(e) Each reference in this section to ephedrine,
7 pseudoephedrine, or phenylpropanolamine includes each of
8 the salts, optical isomers, and salts of optical isomers of
9 such chemical.”.

10 **SEC. 716. NOTICE OF IMPORTATION OR EXPORTATION; AP-**
11 **PROVAL OF SALE OR TRANSFER BY IM-**
12 **PORTER OR EXPORTER.**

13 (a) IN GENERAL.—Section 1018 of the Controlled
14 Substances Import and Export Act (21 U.S.C. 971) is
15 amended—

16 (1) in subsection (b)(1), in the first sentence,
17 by striking “or to an importation by a regular im-
18 porter” and inserting “or to a transaction that is an
19 importation by a regular importer”;

20 (2) by redesignating subsections (d) and (e) as
21 subsections (e) and (f), respectively;

22 (3) by inserting after subsection (e) the fol-
23 lowing subsection:

24 “(d)(1)(A) Information provided in a notice under
25 subsection (a) or (b) shall include the name of the person

1 to whom the importer or exporter involved intends to
2 transfer the listed chemical involved, and the quantity of
3 such chemical to be transferred.

4 “(B) In the case of a notice under subsection (b) sub-
5 mitted by a regular importer, if the transferee identified
6 in the notice is not a regular customer, such importer may
7 not transfer the listed chemical until after the expiration
8 of the 15-day period beginning on the date on which the
9 notice is submitted to the Attorney General.

10 “(C) After a notice under subsection (a) or (b) is sub-
11 mitted to the Attorney General, if circumstances change
12 and the importer or exporter will not be transferring the
13 listed chemical to the transferee identified in the notice,
14 or will be transferring a greater quantity of the chemical
15 than specified in the notice, the importer or exporter shall
16 update the notice to identify the most recent prospective
17 transferee or the most recent quantity or both (as the case
18 may be) and may not transfer the listed chemical until
19 after the expiration of the 15-day period beginning on the
20 date on which the update is submitted to the Attorney
21 General, except that such 15-day restriction does not
22 apply if the prospective transferee identified in the update
23 is a regular customer. The preceding sentence applies with
24 respect to changing circumstances regarding a transferee
25 or quantity identified in an update to the same extent and

1 in the same manner as such sentence applies with respect
2 to changing circumstances regarding a transferee or quan-
3 tity identified in the original notice under subsection (a)
4 or (b).

5 “(D) In the case of a transfer of a listed chemical
6 that is subject to a 15-day restriction under subparagraph
7 (B) or (C), the transferee involved shall, upon the expira-
8 tion of the 15-day period, be considered to qualify as a
9 regular customer, unless the Attorney General otherwise
10 notifies the importer or exporter involved in writing.

11 “(2) With respect to a transfer of a listed chemical
12 with which a notice or update referred to in paragraph
13 (1) is concerned:

14 “(A) The Attorney General, in accordance with
15 the same procedures as apply under subsection
16 (c)(2)—

17 “(i) may order the suspension of the trans-
18 fer of the listed chemical by the importer or ex-
19 porter involved, except for a transfer to a reg-
20 ular customer, on the ground that the chemical
21 may be diverted to the clandestine manufacture
22 of a controlled substance (without regard to the
23 form of the chemical that may be diverted, in-
24 cluding the diversion of a finished drug product
25 to be manufactured from bulk chemicals to be



1 transferred), subject to the Attorney General
2 ordering such suspension before the expiration
3 of the 15-day period referred to in paragraph
4 (1) with respect to the importation or expor-
5 tation (in any case in which such a period ap-
6 plies); and

7 “(ii) may, for purposes of clause (i) and
8 paragraph (1), disqualify a regular customer on
9 such ground.

10 “(B) From and after the time when the Attor-
11 ney General provides written notice of the order
12 under subparagraph (A) (including a statement of
13 the legal and factual basis for the order) to the im-
14 porter or exporter, the importer or exporter may not
15 carry out the transfer.

16 “(3) For purposes of this subsection:

17 “(A) The terms ‘importer’ and ‘exporter’ mean
18 a regulated person who imports or exports a listed
19 chemical, respectively.

20 “(B) The term ‘transfer’, with respect to a list-
21 ed chemical, includes the sale of the chemical.

22 “(C) The term ‘transferee’ means a person to
23 whom an importer or exporter transfers a listed
24 chemical.”; and



1 (4) by adding at the end the following sub-
2 section:

3 “(g) Within 30 days after a transaction covered by
4 this section is completed, the importer or exporter shall
5 send the Attorney General a return declaration containing
6 particulars of the transaction, including the date, quan-
7 tity, chemical, container, name of transferees, and such
8 other information as the Attorney General may specify in
9 regulations. For importers, a single return declaration
10 may include the particulars of both the importation and
11 distribution. If the importer has not distributed all chemi-
12 cals imported by the end of the initial 30-day period, the
13 importer shall file supplemental return declarations no
14 later than 30 days from the date of any further distribu-
15 tion, until the distribution or other disposition of all
16 chemicals imported pursuant to the import notification or
17 any update are accounted for.”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) CONTROLLED SUBSTANCES IMPORT AND
20 EXPORT ACT.—The Controlled Substances Import
21 and Export Act (21 U.S.C. 951 et seq.) is
22 amended—

23 (A) in section 1010(d)(5), by striking “sec-
24 tion 1018(e)(2) or (3)” and inserting “para-
25 graph (2) or (3) of section 1018(f)”; and

1 (B) in section 1018(c)(1), in the first sen-
2 tence, by inserting before the period the fol-
3 lowing: “(without regard to the form of the
4 chemical that may be diverted, including the di-
5 version of a finished drug product to be manu-
6 factured from bulk chemicals to be trans-
7 ferred)”.

8 (2) CONTROLLED SUBSTANCES ACT.—Section
9 310(b)(3)(D)(v) of the Controlled Substances Act
10 (21 U.S.C. 830(b)(3)(D)(v)) is amended by striking
11 “section 1018(e)(2)” and inserting “section
12 1018(f)(2)”.

13 **SEC. 717. ENFORCEMENT OF RESTRICTIONS ON IMPORTA-**
14 **TION AND OF REQUIREMENT OF NOTICE OF**
15 **TRANSFER.**

16 Section 1010(d)(6) of the Controlled Substances Im-
17 port and Export Act (21 U.S.C. 960(d)(6)) is amended
18 to read as follows:

19 “(6) imports a listed chemical in violation of
20 section 1002, imports or exports such a chemical in
21 violation of section 1007 or 1018, or transfers such
22 a chemical in violation of section 1018(d); or”.



1 **SEC. 718. COORDINATION WITH UNITED STATES TRADE**
2 **REPRESENTATIVE.**

3 In implementing sections 713 through 717 and sec-
4 tion 721 of this title, the Attorney General shall consult
5 with the United States Trade Representative to ensure im-
6 plementation complies with all applicable international
7 treaties and obligations of the United States.

8 **Subtitle B—International**
9 **Regulation of Precursor Chemicals**

10 **SEC. 721. INFORMATION ON FOREIGN CHAIN OF DISTRIBU-**
11 **TION; IMPORT RESTRICTIONS REGARDING**
12 **FAILURE OF DISTRIBUTORS TO COOPERATE.**

13 Section 1018 of the Controlled Substances Import
14 and Export Act (21 U.S.C. 971), as amended by section
15 716(a)(4) of this title, is further amended by adding at
16 the end the following subsection:

17 “(h)(1) With respect to a regulated person importing
18 ephedrine, pseudoephedrine, or phenylpropanolamine (re-
19 ferred to in this section as an ‘importer’), a notice of im-
20 portation under subsection (a) or (b) shall include all in-
21 formation known to the importer on the chain of distribu-
22 tion of such chemical from the manufacturer to the im-
23 porter.

24 “(2) For the purpose of preventing or responding to
25 the diversion of ephedrine, pseudoephedrine, or phenyl-
26 propanolamine for use in the illicit production of meth-



1 amphetamine, the Attorney General may, in the case of
2 any person who is a manufacturer or distributor of such
3 chemical in the chain of distribution referred to in para-
4 graph (1) (which person is referred to in this subsection
5 as a 'foreign-chain distributor'), request that such dis-
6 tributor provide to the Attorney General information
7 known to the distributor on the distribution of the chem-
8 ical, including sales.

9 “(3) If the Attorney General determines that a for-
10 eign-chain distributor is refusing to cooperate with the At-
11 torney General in obtaining the information referred to in
12 paragraph (2), the Attorney General may, in accordance
13 with procedures that apply under subsection (c), issue an
14 order prohibiting the importation of ephedrine,
15 pseudoephedrine, or phenylpropanolamine in any case in
16 which such distributor is part of the chain of distribution
17 for such chemical. Not later than 60 days prior to issuing
18 the order, the Attorney General shall publish in the Fed-
19 eral Register a notice of intent to issue the order. During
20 such 60-day period, imports of the chemical with respect
21 to such distributor may not be restricted under this para-
22 graph.”.



1 **SEC. 722. REQUIREMENTS RELATING TO THE LARGEST EX-**
2 **PORTING AND IMPORTING COUNTRIES OF**
3 **CERTAIN PRECURSOR CHEMICALS.**

4 (a) **REPORTING REQUIREMENTS.**—Section 489(a) of
5 the Foreign Assistance Act of 1961 (22 U.S.C. 2291h(a))
6 is amended by adding at the end the following new para-
7 graph:

8 “(8)(A) A separate section that contains the
9 following:

10 “(i) An identification of the five countries
11 that exported the largest amount of
12 pseudoephedrine, ephedrine, and phenyl-
13 propanolamine (including the salts, optical iso-
14 mers, or salts of optical isomers of such chemi-
15 cals, and also including any products or sub-
16 stances containing such chemicals) during the
17 preceding calendar year.

18 “(ii) An identification of the five countries
19 that imported the largest amount of the chemi-
20 cals described in clause (i) during the preceding
21 calendar year and have the highest rate of di-
22 version of such chemicals for use in the illicit
23 production of methamphetamine (either in that
24 country or in another country).

25 “(iii) An economic analysis of the total
26 worldwide production of the chemicals described



1 in clause (i) as compared to the legitimate de-
2 mand for such chemicals worldwide.

3 “(B) The identification of countries that im-
4 ported the largest amount of chemicals under sub-
5 paragraph (A)(ii) shall be based on the following:

6 “(i) An economic analysis that estimates
7 the legitimate demand for such chemicals in
8 such countries as compared to the actual or es-
9 timated amount of such chemicals that is im-
10 ported into such countries.

11 “(ii) The best available data and other in-
12 formation regarding the production of meth-
13 amphetamine in such countries and the diver-
14 sion of such chemicals for use in the production
15 of methamphetamine.”.

16 (b) ANNUAL CERTIFICATION PROCEDURES.—Section
17 490(a) of the Foreign Assistance Act of 1961 (22 U.S.C.
18 2291j(a)) is amended—

19 (1) in paragraph (1), by striking “major illicit
20 drug producing country or major drug-transit coun-
21 try” and inserting “major illicit drug producing
22 country, major drug-transit country, or country
23 identified pursuant to clause (i) or (ii) of section
24 489(a)(8)(A) of this Act”; and

1 (2) in paragraph (2), by inserting after “(as de-
2 termined under subsection (h))” the following: “or
3 country identified pursuant to clause (i) or (ii) of
4 section 489(a)(8)(A) of this Act”.

5 (c) CONFORMING AMENDMENT.—Section 706 of the
6 Foreign Relations Authorization Act, Fiscal Year 2003
7 (22 U.S.C. 2291j-1) is amended in paragraph (5) by add-
8 ing at the end the following:

9 “(C) Nothing in this section shall affect the re-
10 quirements of section 490 of the Foreign Assistance
11 Act of 1961 (22 U.S.C. 2291j) with respect to coun-
12 tries identified pursuant to section clause (i) or (ii)
13 of 489(a)(8)(A) of the Foreign Assistance Act of
14 1961.”.

15 (d) PLAN TO ADDRESS DIVERSION OF PRECURSOR
16 CHEMICALS.—In the case of each country identified pur-
17 suant to clause (i) or (ii) of section 489(a)(8)(A) of the
18 Foreign Assistance Act of 1961 (as added by subsection
19 (a)) with respect to which the President has not trans-
20 mitted to Congress a certification under section 490(b) of
21 such Act (22 U.S.C. 2291j(b)), the Secretary of State, in
22 consultation with the Attorney General, shall, not later
23 than 180 days after the date on which the President trans-
24 mits the report required by section 489(a) of such Act (22
25 U.S.C. 2291h(a)), submit to Congress a comprehensive

1 plan to address the diversion of the chemicals described
2 in section 489(a)(8)(A)(i) of such Act to the illicit produc-
3 tion of methamphetamine in such country or in another
4 country, including the establishment, expansion, and en-
5 hancement of regulatory, law enforcement, and other in-
6 vestigative efforts to prevent such diversion.

7 (e) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to the Secretary of State
9 to carry out this section \$1,000,000 for each of the fiscal
10 years 2006 and 2007.

11 **SEC. 723. PREVENTION OF SMUGGLING OF METHAMPHET-**
12 **AMINE INTO THE UNITED STATES FROM MEX-**
13 **ICO.**

14 (a) IN GENERAL.—The Secretary of State, acting
15 through the Assistant Secretary of the Bureau for Inter-
16 national Narcotics and Law Enforcement Affairs, shall
17 take such actions as are necessary to prevent the smug-
18 gling of methamphetamine into the United States from
19 Mexico.

20 (b) SPECIFIC ACTIONS.—In carrying out subsection
21 (a), the Secretary shall—

22 (1) improve bilateral efforts at the United
23 States-Mexico border to prevent the smuggling of
24 methamphetamine into the United States from Mex-
25 ico;



1 (2) seek to work with Mexican law enforcement
2 authorities to improve the ability of such authorities
3 to combat the production and trafficking of meth-
4 amphetamine, including by providing equipment and
5 technical assistance, as appropriate; and

6 (3) encourage the Government of Mexico to
7 take immediate action to reduce the diversion of
8 pseudoephedrine by drug trafficking organizations
9 for the production and trafficking of methamphet-
10 amine.

11 (c) REPORT.—Not later than one year after the date
12 of the enactment of this Act, and annually thereafter, the
13 Secretary shall submit to the appropriate congressional
14 committees a report on the implementation of this section
15 for the prior year.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated to the Secretary to carry
18 out this section \$4,000,000 for each of the fiscal years
19 2006 and 2007.



1 **Subtitle C—Enhanced Criminal**
2 **Penalties for Methamphetamine**
3 **Production and Trafficking**

4 **SEC. 731. SMUGGLING METHAMPHETAMINE OR METH-**
5 **AMPHETAMINE PRECURSOR CHEMICALS**
6 **INTO THE UNITED STATES WHILE USING FA-**
7 **CILITATED ENTRY PROGRAMS.**

8 (a) **ENHANCED PRISON SENTENCE.**—The sentence
9 of imprisonment imposed on a person convicted of an of-
10 fense under the Controlled Substances Act (21 U.S.C. 801
11 et seq.) or the Controlled Substances Import and Export
12 Act (21 U.S.C. 951 et seq.), involving methamphetamine
13 or any listed chemical that is defined in section 102(33)
14 of the Controlled Substances Act (21 U.S.C. 802(33),
15 shall, if the offense is committed under the circumstance
16 described in subsection (b), be increased by a consecutive
17 term of imprisonment of not more than 15 years.

18 (b) **CIRCUMSTANCES.**—For purposes of subsection
19 (a), the circumstance described in this subsection is that
20 the offense described in subsection (a) was committed by
21 a person who—

22 (1) was enrolled in, or who was acting on behalf
23 of any person or entity enrolled in, any dedicated
24 commuter lane, alternative or accelerated inspection
25 system, or other facilitated entry program adminis-



1 tered or approved by the Federal Government for
2 use in entering the United States; and

3 (2) committed the offense while entering the
4 United States, using such lane, system, or program.

5 (c) **PERMANENT INELIGIBILITY.**—Any person whose
6 term of imprisonment is increased under subsection (a)
7 shall be permanently and irrevocably barred from being
8 eligible for or using any lane, system, or program de-
9 scribed in subsection (b)(1).

10 **SEC. 732. MANUFACTURING CONTROLLED SUBSTANCES ON**
11 **FEDERAL PROPERTY.**

12 Subsection (b) of section 401 of the Controlled Sub-
13 stances Act (21 U.S.C. 841(b)) is amended in paragraph
14 (5) by inserting “or manufacturing” after “cultivating”.

15 **SEC. 733. INCREASED PUNISHMENT FOR METHAMPHET-**
16 **AMINE KINGPINS.**

17 Section 408 of the Controlled Substances Act (21
18 U.S.C. 848) is amended by adding at the end the fol-
19 lowing:

20 “(s) **SPECIAL PROVISION FOR METHAMPHET-**
21 **AMINE.**—For the purposes of subsection (b), in the case
22 of continuing criminal enterprise involving methamphet-
23 amine or its salts, isomers, or salts of isomers, paragraph
24 (2)(A) shall be applied by substituting ‘200’ for ‘300’, and



1 paragraph (2)(B) shall be applied by substituting
2 '\$5,000,000' for '\$10 million dollars'.

3 **SEC. 734. NEW CHILD-PROTECTION CRIMINAL ENHANCE-**
4 **MENT.**

5 (a) IN GENERAL.—The Controlled Substances Act is
6 amended by inserting after section 419 (21 U.S.C. 860)
7 the following:

8 “CONSECUTIVE SENTENCE FOR MANUFACTURING OR DIS-
9 TRIBUTING, OR POSSESSING WITH INTENT TO MANU-
10 FACTURE OR DISTRIBUTE, METHAMPHETAMINE ON
11 PREMISES WHERE CHILDREN ARE PRESENT OR RE-
12 SIDE

13 “SEC. 419a. Whoever violates section 401(a)(1) by
14 manufacturing or distributing, or possessing with intent
15 to manufacture or distribute, methamphetamine or its
16 salts, isomers or salts of isomers on premises in which an
17 individual who is under the age of 18 years is present or
18 resides, shall, in addition to any other sentence imposed,
19 be imprisoned for a period of any term of years but not
20 more than 20 years, subject to a fine, or both.”

21 (b) CLERICAL AMENDMENT.—The table of contents
22 of the Comprehensive Drug Abuse Prevention and Control
23 Act of 1970 is amended by inserting after the item relat-
24 ing to section 419 the following new item:

“Sec. 419a. Consecutive sentence for manufacturing or distributing, or pos-
sessing with intent to manufacture or distribute, methamphet-
amine on premises where children are present or reside.”

1 **SEC. 735. AMENDMENTS TO CERTAIN SENTENCING COURT**
2 **REPORTING REQUIREMENTS.**

3 Section 994(w) of title 28, United States Code, is
4 amended—

5 (1) in paragraph (1)—

6 (A) by inserting “, in a format approved
7 and required by the Commission,” after “sub-
8 mits to the Commission”;

9 (B) in subparagraph (B)—

10 (i) by inserting “written” before
11 “statement of reasons”; and

12 (ii) by inserting “and which shall be
13 stated on the written statement of reasons
14 form issued by the Judicial Conference and
15 approved by the United States Sentencing
16 Commission” after “applicable guideline
17 range”; and

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

19 “The information referred to in subparagraphs (A)
20 through (F) shall be submitted by the sentencing court
21 in a format approved and required by the Commission.”;

22 and

23 (2) in paragraph (4), by striking “may assem-
24 ble or maintain in electronic form that include any”
25 and inserting “itself may assemble or maintain in
26 electronic form as a result of the”.



1 **SEC. 736. SEMIANNUAL REPORTS TO CONGRESS.**

2 (a) IN GENERAL.—The Attorney General shall, on a
3 semiannual basis, submit to the congressional committees
4 and organizations specified in subsection (b) reports
5 that—

6 (1) describe the allocation of the resources of
7 the Drug Enforcement Administration and the Fed-
8 eral Bureau of Investigation for the investigation
9 and prosecution of alleged violations of the Con-
10 trolled Substances Act involving methamphetamine;
11 and

12 (2) the measures being taken to give priority in
13 the allocation of such resources to such violations
14 involving—

15 (A) persons alleged to have imported into
16 the United States substantial quantities of
17 methamphetamine or scheduled listed chemicals
18 (as defined pursuant to the amendment made
19 by section 711(a)(1));

20 (B) persons alleged to have manufactured
21 methamphetamine; and

22 (C) circumstances in which the violations
23 have endangered children.

24 (b) CONGRESSIONAL COMMITTEES.—The congres-
25 sional committees and organizations referred to in sub-
26 section (a) are—



1 (1) in the House of Representatives, the Com-
2 mittee on the Judiciary, the Committee on Energy
3 and Commerce, and the Committee on Government
4 Reform; and

5 (2) in the Senate, the Committee on the Judici-
6 ary, the Committee on Commerce, Science, and
7 Transportation, and the Caucus on International
8 Narcotics Control.

9 **Subtitle D—Enhanced Environ-**
10 **mental Regulation of Meth-**
11 **amphetamine Byproducts**

12 **SEC. 741. BIENNIAL REPORT TO CONGRESS ON AGENCY**
13 **DESIGNATIONS OF BY-PRODUCTS OF METH-**
14 **AMPHETAMINE LABORATORIES AS HAZ-**
15 **ARDOUS MATERIALS.**

16 Section 5103 of title 49, Unites States Code, is
17 amended by adding at the end the following:

18 “(d) BIENNIAL REPORT.—The Secretary of Trans-
19 portation shall submit to the Committee on Transpor-
20 tation and Infrastructure of the House of Representatives
21 and the Senate Committee on Commerce, Science, and
22 Transportation a biennial report providing information on
23 whether the Secretary has designated as hazardous mate-
24 rials for purposes of chapter 51 of such title all by-prod-
25 ucts of the methamphetamine-production process that are



1 known by the Secretary to pose an unreasonable risk to
2 health and safety or property when transported in com-
3 merce in a particular amount and form.”.

4 **SEC. 742. METHAMPHETAMINE PRODUCTION REPORT.**

5 Section 3001 of the Solid Waste Disposal Act (42
6 U.S.C. 6921) is amended at the end by adding the fol-
7 lowing:

8 “(j) METHAMPHETAMINE PRODUCTION.—Not later
9 than every 24 months, the Administrator shall submit to
10 the Committee on Energy and Commerce of the House
11 of Representatives and the Committee on Environment
12 and Public Works of the Senate a report setting forth in-
13 formation collected by the Administrator from law enforce-
14 ment agencies, States, and other relevant stakeholders
15 that identifies the byproducts of the methamphetamine
16 production process and whether the Administrator con-
17 siders each of the byproducts to be a hazardous waste pur-
18 suant to this section and relevant regulations.”.

19 **SEC. 743. CLEANUP COSTS.**

20 (a) IN GENERAL.—Section 413(q) of the Controlled
21 Substances Act (21 U.S.C. 853(q)) is amended—

22 (1) in the matter preceding paragraph (1), by
23 inserting “, the possession, or the possession with in-
24 tent to distribute, ” after “manufacture”; and

1 (2) in paragraph (2), by inserting “, or on
2 premises or in property that the defendant owns, re-
3 sides, or does business in” after “by the defendant”.

4 (b) SAVINGS CLAUSE.—Nothing in this section shall
5 be interpreted or construed to amend, alter, or otherwise
6 affect the obligations, liabilities and other responsibilities
7 of any person under any Federal or State environmental
8 laws.

9 **Subtitle E—Additional Programs**
10 **and Activities**

11 **SEC. 751. IMPROVEMENTS TO DEPARTMENT OF JUSTICE**
12 **DRUG COURT GRANT PROGRAM.**

13 Section 2951 of the Omnibus Crime Control and Safe
14 Streets Act of 1968 (42 U.S.C. 3797u) is amended by
15 adding at the end the following new subsection:

16 “(c) MANDATORY DRUG TESTING AND MANDATORY
17 SANCTIONS.—

18 “(1) MANDATORY TESTING.—Grant amounts
19 under this part may be used for a drug court only
20 if the drug court has mandatory periodic testing as
21 described in subsection (a)(3)(A). The Attorney
22 General shall, by prescribing guidelines or regula-
23 tions, specify standards for the timing and manner
24 of complying with such requirements. The
25 standards—



1 “(A) shall ensure that—

2 “ (i) each participant is tested for
3 every controlled substance that the partici-
4 pant has been known to abuse, and for any
5 other controlled substance the Attorney
6 General or the court may require; and

7 “ (ii) the testing is accurate and prac-
8 ticable; and

9 “(B) may require approval of the drug
10 testing regime to ensure that adequate testing
11 occurs.

12 “(2) MANDATORY SANCTIONS.—The Attorney
13 General shall, by prescribing guidelines or regula-
14 tions, specify that grant amounts under this part
15 may be used for a drug court only if the drug court
16 imposes graduated sanctions that increase punitive
17 measures, therapeutic measures, or both whenever a
18 participant fails a drug test. Such sanctions and
19 measures may include, but are not limited to, one or
20 more of the following:

21 “(A) Incarceration.

22 “(B) Detoxification treatment.

23 “(C) Residential treatment.

24 “(D) Increased time in program.

25 “(E) Termination from the program.

- 1 “(F) Increased drug screening require-
2 ments.
3 “(G) Increased court appearances.
4 “(H) Increased counseling.
5 “(I) Increased supervision.
6 “(J) Electronic monitoring.
7 “(K) In-home restriction.
8 “(L) Community service.
9 “(M) Family counseling.
10 “(N) Anger management classes.”.

11 **SEC. 752. DRUG COURTS FUNDING.**

12 Section 1001(25)(A) of title I of the Omnibus Crime
13 Control and Safe Streets Act of 1968 (42 U.S.C.
14 2591(25)(A)) is amended by adding at the end the fol-
15 lowing:

16 “(v) \$70,000,000 for fiscal year
17 2006.”.

18 **SEC. 753. FEASIBILITY STUDY ON FEDERAL DRUG COURTS.**

19 The Attorney General shall, conduct a feasibility
20 study on the desirability of a drug court program for Fed-
21 eral offenders who are addicted to controlled substances.
22 The Attorney General lower-level, non-violate report the
23 results of that study to Congress not later than June 30,
24 2006.

1 **SEC. 754. GRANTS TO HOT SPOT AREAS TO REDUCE AVAIL-**
2 **ABILITY OF METHAMPHETAMINE.**

3 Title I of the Omnibus Crime Control and Safe
4 Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended
5 by adding at the end the following:

6 **“PART II—CONFRONTING USE OF**
7 **METHAMPHETAMINE**

8 **“SEC. 2996. AUTHORITY TO MAKE GRANTS TO ADDRESS**
9 **PUBLIC SAFETY AND METHAMPHETAMINE**
10 **MANUFACTURING, SALE, AND USE IN HOT**
11 **SPOTS.**

12 **“(a) PURPOSE AND PROGRAM AUTHORITY.—**

13 **“(1) PURPOSE.—**It is the purpose of this part
14 to assist States—

15 **“(A)** to carry out programs to address the
16 manufacture, sale, and use of methamphet-
17 amine drugs; and

18 **“(B)** to improve the ability of State and
19 local government institutions of to carry out
20 such programs.

21 **“(2) GRANT AUTHORIZATION.—**The Attorney
22 General, through the Bureau of Justice Assistance
23 in the Office of Justice Programs may make grants
24 to States to address the manufacture, sale, and use
25 of methamphetamine to enhance public safety.



1 “(3) GRANT PROJECTS TO ADDRESS METH-
2 AMPHETAMINE MANUFACTURE SALE AND USE.—
3 Grants made under subsection (a) may be used for
4 programs, projects, and other activities to—

5 “(A) investigate, arrest and prosecute indi-
6 viduals violating laws related to the use, manu-
7 facture, or sale of methamphetamine;

8 “(B) reimburse the Drug Enforcement Ad-
9 ministration for expenses related to the clean
10 up of methamphetamine clandestine labs;

11 “(C) support State and local health depart-
12 ment and environmental agency services de-
13 ployed to address methamphetamine; and

14 “(D) procure equipment, technology, or
15 support systems, or pay for resources, if the ap-
16 plicant for such a grant demonstrates to the
17 satisfaction of the Attorney General that ex-
18 penditures for such purposes would result in
19 the reduction in the use, sale, and manufacture
20 of methamphetamine.

21 **“SEC. 2997. FUNDING.**

22 “‘There are authorized to be appropriated to carry out
23 this part \$99,000,000 for each fiscal year 2006, 2007,
24 2008, 2009, and 2010.’”

1 **SEC. 755. GRANTS FOR PROGRAMS FOR DRUG-ENDAN-**
2 **GERED CHILDREN.**

3 (a) **IN GENERAL.**—The Attorney General shall make
4 grants to States for the purpose of carrying out programs
5 to provide comprehensive services to aid children who are
6 living in a home in which methamphetamine or other con-
7 trolled substances are unlawfully manufactured, distrib-
8 uted, dispensed, or used.

9 (b) **CERTAIN REQUIREMENTS.**—The Attorney Gen-
10 eral shall ensure that the services carried out with grants
11 under subsection (a) include the following:

12 (1) Coordination among law enforcement agen-
13 cies, prosecutors, child protective services, social
14 services, health care services, and any other services
15 determined to be appropriate by the Attorney Gen-
16 eral to provide assistance regarding the problems of
17 children described in subsection (a).

18 (2) Transition of children from toxic or drug-
19 endangering environments to appropriate residential
20 environments.

21 (c) **AUTHORIZATION OF APPROPRIATIONS.**—For the
22 purpose of carrying out this section, there are authorized
23 to be appropriated \$20,000,000 for each of the fiscal years
24 2006 and 2007. Amounts appropriated under the pre-
25 ceding sentence shall remain available until expended.

1 **SEC. 756. AUTHORITY TO AWARD COMPETITIVE GRANTS TO**
2 **ADDRESS METHAMPHETAMINE USE BY PREG-**
3 **NANT AND PARENTING WOMEN OFFENDERS.**

4 (a) **PURPOSE AND PROGRAM AUTHORITY.—**

5 (1) **GRANT AUTHORIZATION.—**The Attorney
6 General may award competitive grants to address
7 the use of methamphetamine among pregnant and
8 parenting women offenders to promote public safety,
9 public health, family permanence and well being.

10 (2) **PURPOSES AND PROGRAM AUTHORITY.—**

11 Grants awarded under this section shall be used to
12 facilitate or enhance and collaboration between the
13 criminal justice, child welfare, and State substance
14 abuse systems in order to carry out programs to ad-
15 dress the use of methamphetamine drugs by preg-
16 nant and parenting women offenders.

17 (b) **DEFINITIONS.—**In this section, the following defi-
18 nitions shall apply:

19 (1) **CHILD WELFARE AGENCY.—**The term
20 “child welfare agency” means the State agency re-
21 sponsible for child and/or family services and wel-
22 fare.

23 (2) **CRIMINAL JUSTICE AGENCY.—**The term
24 “criminal justice agency” means an agency of the
25 State or local government or its contracted agency
26 that is responsible for detection, arrest, enforcement,

1 prosecution, defense, adjudication, incarceration,
2 probation, or parole relating to the violation of the
3 criminal laws of that State or local government.

4 (c) APPLICATIONS.—

5 (1) IN GENERAL.—No grant may be awarded
6 under this section unless an application has been
7 submitted to, and approved by, the Attorney Gen-
8 eral.

9 (2) APPLICATION.—An application for a grant
10 under this section shall be submitted in such form,
11 and contain such information, as the Attorney Gen-
12 eral, may prescribe by regulation or guidelines.

13 (3) ELIGIBLE ENTITIES.—The Attorney Gen-
14 eral shall make grants to States, territories, and In-
15 dian Tribes. Applicants must demonstrate extensive
16 collaboration with the State criminal justice agency
17 and child welfare agency in the planning and imple-
18 mentation of the program.

19 (4) CONTENTS.—In accordance with the regula-
20 tions or guidelines established by the Attorney Gen-
21 eral in consultation with the Secretary of Health and
22 Human Services, each application for a grant under
23 this section shall contain a plan to expand the
24 State's services for pregnant and parenting women
25 offenders who are pregnant women and/or women

1 with dependent children for the use of methamphet-
2 amine or methamphetamine and other drugs and in-
3 clude the following in the plan:

4 (A) A description of how the applicant will
5 work jointly with the State criminal justice and
6 child welfare agencies needs associated with the
7 use of methamphetamine or methamphetamine
8 and other drugs by pregnant and parenting
9 women offenders to promote family stability
10 and permanence.

11 (B) A description of the nature and the ex-
12 tent of the problem of methamphetamine use by
13 pregnant and parenting women offenders.

14 (C) A certification that the State has in-
15 volved counties and other units of local govern-
16 ment, when appropriate, in the development, ex-
17 pansion, modification, operation or improve-
18 ment of proposed programs to address the use,
19 manufacture, or sale of methamphetamine.

20 (D) A certification that funds received
21 under this section will be used to supplement,
22 not supplant, other Federal, State, and local
23 funds.

24 (E) A description of clinically appropriate
25 practices and procedures to—

1 (i) screen and assess pregnant and
2 parenting women offenders for addiction to
3 methamphetamine and other drugs;

4 (ii) when clinically appropriate for
5 both the women and children, provide fam-
6 ily treatment for pregnant and parenting
7 women offenders, with clinically appro-
8 priate services in the same location to pro-
9 mote family permanence and self suffi-
10 ciency; and

11 (iii) provide for a process to enhance
12 or ensure the abilities of the child welfare
13 agency, criminal justice agency and State
14 substance agency to work together to re-
15 unite families when appropriate in the case
16 where family treatment is not provided.

17 (d) PERIOD OF GRANT.—The grant shall be a three-
18 year grant. Successful applicants may reapply for only one
19 additional three-year funding cycle and the Attorney Gen-
20 eral may approve such applications.

21 (e) PERFORMANCE ACCOUNTABILITY; REPORTS AND
22 EVALUATIONS.—

23 (1) REPORTS.—Successful applicants shall sub-
24 mit to the Attorney General a report on the activi-



1 ties carried out under the grant at the end of each
2 fiscal year.

3 (2) EVALUATIONS.—Not later than 12 months
4 at the end of the 3 year funding cycle under this
5 section, the Attorney General shall submit a report
6 to the appropriate committees of jurisdiction that
7 summarizes the results of the evaluations conducted
8 by recipients and recommendations for further legis-
9 lative action.

10 (f) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to carry out this section
12 such sums as may be necessary.



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And the Senate agree to the same.

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**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.

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 amendments of the Senate to the bill (H.R. 3199), the "USA PATRIOT Improvement and Reauthorization Act of 2005," 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 to the text of the bill struck all of the House bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to House bill 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 Pub. 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 "proceeds" 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)(5)(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 instrumentalities 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

Sec. 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.

Sec. 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 enactment 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 servicewoman 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, Congress 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.

Sec. 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.

Sec. 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.

Sec. 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

Sec. 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.

Sec. 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 terrorists. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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 commensurate 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.

Sec. 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 financing 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 nonexistent 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.

Sec. 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."

Sec. 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.

Sec. 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.

Sec. 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 responsibilities. This provision will enable activities such as participation by United States Attorneys in legal activities in Iraq.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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 prisoners 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.

Sec. 601. Short Title.

The short title is "Secret Service Authorization and Technical Modification Act of 2005." Section 601 of the conference report is new.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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

Sec. 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 per-transaction 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.

Sec. 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.

Sec. 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)).

Sec. 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.

Sec. 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.

Sec. 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)).

Sec. 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.

Sec. 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

Sec. 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.

Sec. 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 FY 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.

Sec. 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

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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

Sec. 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.

Sec. 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.

Sec. 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 F.3d 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

Sec. 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.

Sec. 752. Drug Courts Funding.

This provision of the conference report is new and authorizes appropriations for drug courts.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.