

**Chart comparing current law, S. 1692 (PATRIOT Act Sunset Extension Act) as reported by Senate Judiciary Committee, and H.R. 3845 (USA Patriot Amendments Act of 2009) as reported by the House Judiciary Committee.**

Issue Area	Current Law	S. 1692 – as reported by Senate Judiciary Comm.	H.R. 3845 – as reported by House Judiciary Comm.
Standard for NSL Issuance	Mere relevance. Gov't must certify that information sought is relevant to authorized investigation to protect against int'l terrorism or clandestine intel activity. Investigation cannot be based solely on First Amendment activity of US Person.	Sec. 7: Same as current law but also requires written statement of specific facts showing reasonable grounds to believe that the info sought is relevant to an investigation. This statement is retained by the agency and does not appear in the NSL itself. (FBI procedures already require the creation of similar statements.)	Sec. 204: Requires statement of specific and articulable facts showing reasonable grounds to believe the info sought i) pertains to a foreign power or AFP, ii) is relevant to the activities of a suspected AFP who is under investigation, iii) pertains to an individual in contact with or personally known to AFP. (This standard is similar to Senate Judiciary standard for library patron lists sought with Section 215 orders.) The statement must be created at the time the letter is issued, is retained by the agency, and does not appear in the NSL itself.
Minimization of Info Obtained with NSL	None required by law.	Sec. 12: AG must establish minimization procedures similar to those in FISA for FISA surveillance. The required minimization procedures govern acquisition, retention and dissemination of non-public info collected with NSLs about unconsenting U.S. Persons and must be submitted to House and Senate Judiciary and Intel Committees. Ct. approval not required.	Sec. 208: Same as Senate Judiciary bill.
Judicial Review of NSL Production Demand	18 USC 3511: Upon petition filed by NSL recipient, U.S. District court may set aside NSL request for records if compliance would be unreasonable, oppressive, or otherwise unlawful.	Same as current law.	Same as current law.

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NSL Gag Provision	Can't disclose to anyone that agency has sought or obtained access to info with an NSL. Gov't must certify that disclosure may result in danger to NS, interference with investigation, or danger to safety of any person. Gag does not apply to disclosures to persons who must carry out the order, and attorney. Gag stays in place forever unless it is successfully challenged in a court of law.	Sec. 5: Same as current law, except permits FBI to add to the list of people to whom disclosure is permitted, & gag order must give notice of right to judicial review.	Sec. 205: Same as current law except, as with the Senate bill, the order must give notice of right to judicial review. Also prohibits use of info obtained with an NSL to be used for law enforcement purpose unless accompanied by statement that such information may only be used in a criminal proceeding with advance authorization of AG or AG's designees of rank no lower than DOJ Section Chief.
Judicial Review NSL Gag	18 USC 3511: Court sets aside gag only if there is "no reason to believe" that disclosure may endanger NS, interfere with investigation, endanger safety of any person, or interfere with diplomatic relations. Gov't certification that disclosure will cause such harm is conclusive unless made in bad faith.	Sec. 5 & 6: Codifies 2nd Cir. decision. Recipient notifies gov't of desire for judicial review. Then gov't has 30 days to apply to court for nondisclosure order. Gov't application for non-disclosure order must include specific & articulable facts that disclosure would endanger NS or safety of a person, or would interfere with an investigation or diplomatic relations. Court "shall" issue gag if there is "reason to believe" disclosure will result in at least one of those harms. Gov't certification of harm not conclusive but court must give it "substantial weight."	Sec. 205 Sec. 207: Same as Senate Judiciary bill except: 1) there is no requirement that court must give "substantial weight," to gov't certification that disclosure will cause a harm, 2) the court "may" issue gag order if there is reason to believe disclosure would result in one of the harms, and 3) a court receiving the gov't application may issue nondisclosure order for no longer than 180 days, renewable in 180-day increments.
NSL Public Reporting & Audits	FBI director must fully inform House & Senate Intel Committees concerning all electronic/wire,	Sec. 8: Gov't must report on total number of requests concerning US persons, non-US persons, persons	Sec. 105: Requires the same audits and reporting as does the Senate Judiciary bill, but for two additional years.

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	financial, consumer reporting NSL requests. Raw numbers are reported; other information is classified. No Inspector General audits required by Patriot Reauthorization Act in 2006 are outstanding.	subject to NS investigations. Sec. 10: Requires additional Inspector General audits covering the years 2007 -2011.	
NSL Sunset	None	Sec. 2: Imposes sunsets on NSL authority for the first time. On 12/31/13 NSL authorities revert to their pre-PATRIOT state.	Sec. 202: Same as Senate Judiciary bill.
PATRIOT Act Section 215 Business Records - Standard	50 USC 1861: Gov't may make application for order to produce tangible things relevant to an investigation. Application includes statement of facts showing that there are reasonable grounds to believe the tangible things sought are relevant. Things sought are presumptively relevant if they pertain to i) foreign power or AFP, ii) person in contact or known to AFP, iii) activities of AFP who is under investigation. Application must also enumerate minimization procedures. Judge approves if he finds the application meets the statutory requirements.	Sec. 3: Government application must include statement of facts and circumstances relied upon by applicant to justify the belief of the applicant that there are reasonable grounds to believe that the tangible things sought are relevant to investigation. Eliminates presumption of relevance. Application must also include proposed minimization procedures. Higher standard for library circulation records and patron lists: gov't application must include statement of facts showing reasonable grounds to believe that the records sought are relevant to a foreign intel investigation and pertain to i) foreign power or AFP, ii) person in contact or known to AFP, iii) activities of an AFP who is under investigation.	Sec. 103: Issuance standard the same as Senate bill, and as with the Senate Judiciary bill, the presumption of relevance is removed. Same standard as that of Senate Judiciary bill for library records, except House language applies standard more broadly: to bookseller information or library records containing personally identifiable information.

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Section 215 - Judicial Review of Order of Production	50 USC 1861: Recipient may challenge by filing a petition w/ FISA court judge. FISA court may modify or set aside order for production if order doesn't meet requirements of Sec. 215, e.g.: omits statement of facts showing relevance, lacks particularity, omits gag info, exceeds subpoena standards, or sets unreasonable deadline.	Sec. 6: Judge may review compliance with minimization procedures. Otherwise same as current law.	Sec. 103: Same as Senate Judiciary bill, but gov't must notify recipient of right to judicial review and of the review procedures.
Section 215 - Gag Order	50 USC 1861: No person may disclose that the FBI sought or obtained tangible things under this section. No showing of harm is required. Gag does not apply to persons who must carry out NSL order, attorney, other persons permitted by FBI director. Gag is perpetual unless overturned.	Same as current law.	Same as current law.

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Section 215 - Judicial Review of Gag Order	50 USC 1861: Recipient may challenge in court after gag has been in place for at least one year. Court may modify or set aside gag only if there is "no reason to believe" disclosure may endanger NS, interfere with investigation or diplomatic relations, or endanger safety of any person. Gov't certification that disclosure may endanger NS or diplomatic relations is conclusive unless made in bad faith.	Sec. 6: Removes language making gov't certification of harm conclusive and removes requirement that gag must be in place for a year before it can be challenged. Recipient must still prove "no reason to believe" disclosure would cause one of the specific harms.	Sec. 103: Same as Senate bill except gov't must also provide recipient with notice of right to judicial review and procedures to follow to file for review.
Section 215 – Inspector General Audits	DOJ IG conducted two audits of FBI use of Section 215, required under Sec. 106A of PATRIOT Improvement and Reauthorization Act of 2005.	Sec. 10: Requires additional DOJ IG audits of FBI use of Sec. 215 covering 2007-2011.	Sec. 105: Same as Senate Judiciary bill, but with two more years of audits (through 2013).
Section 215 – Sunset	Sec. 215 reverts to pre-PATRIOT state on 12/31/09.	Sec. 2: Sec. 215 reverts to pre-PATRIOT state on 12/31/13.	Sec. 102: Same as Senate Judiciary bill.
FISA Reporting	50 USC 1871: AG must semiannually report to House & Senate Committees aggregate <i>number of persons targeted</i> for FISA electronic surveillance, physical searches, pen/trap orders, lone wolf surveillance and 215 orders. Statute permits these reports to be made secretly.	Sec. 9: AG must make this information public. Annual number of <i>applications</i> for FISA electronic and physical surveillance, aggregated, currently is reported publicly under 50 USC 1807 and total number of Sec. 215 <i>applications</i> currently is reported publicly under 50 USC 1862.	Sec. 109: Same as Senate Judiciary bill, except additional reporting does not cover the expiring lone wolf provision. Also, the President must submit to House and Senate Judiciary and Intel Committees a report describing whether FISA operations could be modified to enhance civil liberties.

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Pen Registers, Trap & Traces - Foreign Intel	50 USC 1842: Gov't application must include certification that info likely to be obtained is foreign intel unrelated to US Person or is relevant to an ongoing investigation to protect against int'l terrorism or clandestine intel activities. No minimization procedures statutorily required. Investigation of U.S. person cannot be based solely on First Amendment activity. Judge shall issue if application satisfies requirements of the section.	Sec. 4: Same as current law except certification is replaced by a statement of facts and circumstances that justify applicant's belief that info likely to be obtained is foreign intel or is relevant to an investigation. Court-approved minimization may be required in "exceptional circumstances" regarding nonpublic information "known to concern" unconsenting U.S. Persons. Judge may assess compliance with minimization procedures. Sec. 10: DOJ IG must perform comprehensive audit of effectiveness and use of pen/traps for all calendar years through 2011.	Sec. 108: Same as Senate Judiciary bill, except application must also include statement of proposed minimization procedures. Judge shall issue if application and minimization procedures satisfy requirements of the section. As with Senate Judiciary bill, judge shall direct that minimization procedures be followed if judge finds exceptional circumstances, and judge may assess compliance with minimization procedures. Sec. 105: Same audit requirement as Senate bill, but through 2012.
Pen/Trap – Criminal	18 USC 3121 et seq: Court issues pen/trap order enabling FBI to obtain email to/from, phone nos. dialed, IP addresses, and other dialing, routing, and signaling info. in real time if gov't certifies that info likely to be obtained is relevant to ongoing criminal investigation.	Same as current law.	Same as current law, except Sec. 105 adds audit requirement: DOJ IG must perform comprehensive audit of effectiveness and use of pen/traps under 18 USC 3122.
Challenges to Nationwide Orders for Surveillance	18 USC 2703: Court orders for customer communications records can be served nationwide, but communications providers can challenge only in the district where the order is issued.	Same as current law.	Sec. 110: Challenge can be brought in either the district in which the order was issued or the district in which it was served.

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Sneak and Peek search warrants in criminal cases	18 USC 3103a: Court can delay notice of a search if finds reasonable cause to believe immediate notice may have adverse result (endangers life/safety of individual, would result in flight, evidence tampering, witness intimidation, seriously jeopardizing investigation.) Delay longer than 30 days requires justification and is renewable in 90-day increments.	Section 11: Initial period of delay shortened from 30 days to 7 days. Otherwise same as current law.	Sec. 106: Like Senate bill, initial period of delay shortened from 30 days to 7 days. Delay is renewable, but extensions are limited to only 21-day increments. The catch-all grounds for sneak and peek searches – “seriously jeopardizing an investigation or unduly delaying a trial” – is eliminated for extension requests but still applicable for initial delay. Extension request must be made to court by U.S. Attorney for the district seeking the delay. Otherwise same as current law.
Roving Intelligence Wiretaps	50 USC 1805(c): Permits surveillance orders that specify neither target of surveillance nor telephone, computer or other facility at which surveillance is to be directed. Reverts to pre-PATRIOT state on 12/31/09.	Sec 2: Same as current law except extends sunset to 12/31/13. On that date, law reverts to its pre-PATRIOT state.	Sec. 101: Court approves roving wiretap application only if it can determine that an unnamed target is a specific individual. Sec. 102: Same sunset as Senate Judiciary bill.
Lone Wolf Surveillance (authority never used)	50 USC 1801(b)(1)(C): Permits intelligence surveillance of non-U.S. persons who are not AFPs if there is probable cause of acts in preparation of terrorism. Sunsets 12/31/09.	Sec 2: Same as current law except extends sunset to 12/31/13. On that date, law reverts to its pre-PATRIOT state.	Sec. 104: Would allow the lone wolf provision to expire on 12/31/09.