



COMPARISON OF "PATRIOT" PROVISIONS

	USA PATRIOT Act	USA PATRIOT Improvement and Reauthorization Act (incl. Sen. Sununu's Bill, S.2271)	Sen. Specter's New PATRIOT Bill (S. 2369)
Status/Sunsets	Became law 10/26/2001. 16 provisions designed to sunset on 12/31/2005 (postponed to 03/10/2006).	Became law 03/09/2006. 4-year sunsets kept for PATRIOT § 206 (FISA "roving" wiretaps) and § 215 (FISA business records).	Introduced 03/06/2006. Adds 4-year sunset for NSLs. Causes uncertainty; use of NSLs already subject to OIG auditing (thru 2006)
Outside the Scope			
FISA Business Records Orders (Section 215) - Legal Standard	Requires certification "that the records concerned are <u>sought for</u> an authorized investigation" (implicit relevance standard).	Requires "statement of facts" showing "reasonable grounds to believe" records are " <u>relevant</u> " to authorized investigation. Creates a <u>legal presumption</u> of relevance for records that satisfy 3-part test (see next column).	Under <u>3-part test</u> , the records must: (1) pertain to a foreign power or an agent of a foreign power (AFP); (2) be relevant to the activities of a suspected AFP who is the subject of an authorized investigation, or (3) pertain to an individual in contact with a suspected AFP. Eliminates flexibility of FISC to issue "relevant" orders that do not satisfy 1 of the 3 parts.
Judicial Review of Section 215 Orders	No explicit right to judicial review of production order or non-disclosure requirement.	Explicit right to challenge both production request and "gag." But, includes "conclusive presumption" (like NSLs) and requires a 1-year waiting period for challenges to the "gag" order.	Eliminates the "conclusive presumption" and the 1-year waiting period. Vests Judiciary with authority to overrule Executive's decision re national security. 1-year minimum reasonable given length of national security investigations.