

H.R. 3361, the USA FREEDOM Act
Section-by-Section

Title I – FISA Business Record Reforms

Sec. 101 – Additional requirements for call detail records.

Creates a new process for the collection of call detail records pursuant to the Administration’s proposal. For counterterrorism purposes only, when the government has reasonable articulable suspicion that a specific selection term is associated with a foreign power or an agent of a foreign power, it may apply to the FISA court for an order requiring the ongoing production of call detail records related to that specific selection term and two “hops.” The government may renew these orders every 180 days.

The term “call detail records” is defined to mean a telephone number, an IMSI or IMSEI number, a telephone calling card number, or the time or duration of a call. The term does not include the contents of any communication; nor does it include names, addresses, or financial information; nor does it include cell site location information.

Except for records that are determined to be foreign intelligence information, the government must promptly destroy all information obtained under this program.

Sec. 102 – Emergency authority.

Creates a new emergency authority for the use of Section 215. The Attorney General may authorize the emergency production of tangible things, provided that such an application is presented to the court within seven days. If the court denies an emergency application, the government may not use any of the information obtained under the emergency authority except in instances of a threat of death or serious bodily harm.

Sec. 103 – Prohibition on bulk collection of tangible things.

Provides that Section 215 may only be used where a specific selection term is provided as the basis for the production of tangible things. No order issued under Section 215 may authorize the bulk collection of tangible things.

Sec. 104 – Judicial review of minimization procedures for the production of tangible things.

Provides that the court may evaluate the adequacy of minimization procedures under Section 215.

Sec. 105 – Liability protection.

Provides liability protections to third parties who provide information, facilities, or technical assistance to the government in compliance with an order issued under Section 215.

Sec. 106 – Compensation for assistance.

Permits the government to compensate third parties for producing tangible things or providing information, facilities, or technical assistance in accordance with an order issued under Section 215 or to comply with this Act.

Sec. 107 – Definitions

Provides definitions for the terms “call detail records” and “specific selection term.”

Sec. 108 – Inspector general reports on business records orders.

Requires the Inspector General of the Department of Justice to conduct a comprehensive review of the use of Section 215 with respect to calendar years 2012 to 2014. Also requires the Inspector General of the Intelligence Community to assess the value and use of intelligence obtained under Section 215 over the same period.

Sec. 109 – Effective date.

Provides that the new telephone metadata program, the new Section 215 emergency authority, and the prohibition on bulk collection of tangible things under Section 215 take effect 180 days after enactment.

Sec. 110 – Rule of Construction

Provides a rule of construction that nothing in this Act shall be construed to authorize the production of the contents of electronic communications by electronic communication service providers under Title V of FISA.

Title II – FISA Pen Register and Trap and Trace Device Reform

Sec. 201 – Prohibition on bulk collection.

Provides that the pen register and trap and trace device authority may not be used without a specific selection term as the basis for selecting the telephone line or other facility to which the pen register or trap and trace devices is to be attached or applied.

Sec. 202 – Privacy procedures.

Directs the Attorney General to adopt procedures to safeguard nonpublicly available information concerning U.S. persons consistent with the need to protect national security.

Title III – FISA Acquisitions Targeting Persons Outside the United States Reforms

Sec. 301 – Minimization procedures.

Codifies the requirement that the government must minimize the acquisition, and prohibit the retention and dissemination of, wholly domestic communications captured under Section 702 and prohibit the use of certain discrete U.S. person communications.

Sec. 302 – Limits on use of unlawfully obtained information.

Provides that the government may not use information acquired outside the scope of court-approved targeting and minimization procedures.

Title IV – Foreign Intelligence Surveillance Court Reforms

Sec. 401 – Appointment of amicus curiae.

Provides that both the FISA court and the FISA Court of Review shall, if deemed appropriate, appoint an individual to serve as amicus curiae in a case involving a novel or significant interpretation of law. Permits the court to appoint amicus curiae in any case.

The presiding judges of the courts will designate five individuals who are eligible to serve as amicus curiae. These individuals shall possess expertise in privacy and civil liberties, intelligence collection, telecommunications, or any other area that may lend legal or technical expertise to the courts, and shall possess appropriate security clearances.

Sec. 402 – Declassification of decisions, orders, and opinions.

Requires the Director of National Intelligence, in consultation with the Attorney General, to conduct a declassification review of each decision, order, or opinion of the FISA court that includes a significant construction or interpretation of law. In the interest of national security, the DNI may waive the declassification requirement, in which case the Attorney General shall provide a summary of the decision.

Title V – National Security Letter Reform

Sec. 501 – Prohibition on bulk collection.

Prohibits the use of various national security letter authorities without the use of a specific selection term as the basis for the national security letter request.

Title VI – FISA Transparency and Reporting Requirements

Sec. 601 – Additional reporting on orders requiring production of business records.

In addition to existing annual reporting requirements, requires the government to report on the number of requests made for call detail records under the new call detail record authority.

Sec. 602 – Business records compliance reports to Congress.

Requires the government to provide to Congress a summary of compliance reports related to the use of Section 215.

Sec. 603 – Annual report by the Government on orders Entered.

Requires the Director of the Administrative Office of the United States Court to make an annual report on the number of orders issued under sections 105, 304, 402, 501, 702, 703, and 704 of FISA, as well as the number of appointments of individuals to serve as amicus curiae to the FISA court.

Requires the DNI to annually publicly report the number of orders issued and estimated number of targets under FISA and National Security Letter authorities.

Sec. 604 – Public reporting by persons subject to FISA orders

Permits a person subjected to a FISA order or National Security Letter to publicly semi-annually report aggregate information relating to such orders.

Sec. 605 – Reporting requirements for decisions of the Foreign Intelligence Surveillance Court.

Requires the Attorney General to provide to the relevant committees, within 45 days of each decision, order, or opinion, including a modification or denial of an application, that includes a significant construction or interpretation, a copy of each such decision and a brief statement of the relevant background.

Sec. 606 – Submission of reports under FISA.

Includes the House Judiciary Committee in several existing reporting requirements.

Title VII – Sunsets

Sec. 701 – USA PATRIOT Improvement and Reauthorization Act of 2005.

Aligns the sunset of the three sun-setting provisions of the USA PATRIOT Act with the sunset of the FISA Amendment Act on December 31, 2017.