

The USA FREEDOM Reauthorization Act of 2020
Section-by-Section

Title I—FISA Business Records

- Sec. 101 Repeals the authority to collect call detail records on an ongoing basis and up to two “hops” from the target.
- Sec. 102 Prohibits the use of Section 215 to collect any records or information in circumstances where a person has a reasonable expectation of privacy and where a warrant would be required to collect the same records or information for law enforcement purposes. Expressly prohibits the use of Section 215 to collect cell site location information or GPS information.
- Sec. 103 Requires the government to give notice to an individual who is the target of an investigation and whose information is collected pursuant to Section 215 when the government intends to use that information in a trial or other proceeding against the individual. Permits the person to whom notice is provided to challenge the admission of that evidence. Contains an exception to these provisions if the government demonstrates that providing notice would harm national security.
- Sec. 104 Prohibits the government from retaining materials collected pursuant to Section 215 for more than five years, subject to certain enumerated exceptions.
- Sec. 105 Makes the changes in Title I effective on the date of enactment of this Act and for all Section 215 applications issued on or after that date.

Title II—Accuracy and Integrity of FISA Process

- Sec. 201 Requires that, for all applications submitted to the FISC, the applicant must certify that, to the best of his or her knowledge, the Department of Justice has been apprised of all information that might reasonably call the accuracy of the application into question or may otherwise raise doubts with respect to the applicable findings required under the law.
- Sec. 202 Requires applications made pursuant to Title I and Title III of FISA to describe other investigative techniques carried out before making the application.
- Sec. 203 In circumstances where the target of an application for electronic surveillance or a physical search is a Federal official or a candidate in a Federal election, requires

the application to state that the Attorney General has approved in writing of the investigation.

Sec. 204 Requires that Federal officers, employees, or contractors who engage in deliberate misconduct before the FISC or FISC-R be subject to appropriate adverse actions.

Sec. 205 Provides a criminal penalty of up to eight years imprisonment for anyone who knowingly makes a materially false statement before the FISC or FISC-R. Increases maximum penalty from five to eight years for unauthorized use of electronic surveillance authorities. Provides a penalty of up to eight years imprisonment for any Federal officer, employee, or contractor who intentionally discloses a FISA application or classified information contained in a FISA application to a person not authorized to receive classified information.

Sec. 206 Clarifies that contempt before the FISC and FISC-R is punishable by up to six months imprisonment under existing criminal contempt statute.

Sec. 207 Makes the changes in Title II effective on the date of enactment of this Act and for all Section 215 applications issued on or after that date.

Title III—Foreign Intelligence Surveillance Court

Sec. 301 Requires the Director of National Intelligence (DNI) to conduct a declassification review of significant FISC and FISC-R opinions within 180 days. Expands the category of the types of opinions requiring declassification review to include those involving a novel or significant construction of Section 102 of this Act (restriction against certain uses of Section 215), or those that result from a proceeding in which an amicus has been appointed.

Clarifies that the requirement to conduct declassification reviews applies to opinions issued before enactment of the USA FREEDOM Act, and provides the DNI one year to conduct a declassification review of those materials.

Sec. 302 Expands requirement of FISC and FISC-R to appoint an amicus to include cases presenting exceptional concerns about the protection of the rights of a United States person under the First Amendment, unless the court issues a finding that such appointment is not appropriate.

Permits an amicus appointed by the FISC to petition the court to certify a question of law for review by the FISC-R. Permits an amicus before the FISC-R to request that the FISC-R certify a question of law for review before the Supreme Court. Strengthens amicus's ability to access relevant information. Permits amici to seek

access to additional information and to consult amongst themselves. Provides that amici serve five-year terms, and permits reappointment by the court for good cause.

- Sec. 303 Authorizes the FISC and FISC-R to employ legal advisors to assist the courts in their duties, including by providing advice on issues presented by applications, identifying relevant concerns, and proposing appropriate requirements or conditions for approval of applications. Provides that legal advisors report solely to the presiding judges of the FISC and FISC-R.
- Sec. 304 Requires that proceedings before the FISC and FISC-R be transcribed and that such transcripts be stored in a file associated with the relevant application or order. Requires the Department of Justice and the FISC to maintain records of all substantive written communications between the Department and the court.
- Sec. 305 Adds to annual reporting requirements by the Administrative Office of the United States Courts to include the number of instances in which the Attorney General required emergency production of tangible things pursuant to Section 215, where the subsequent application was denied; the number of certifications of questions of law made by the FISC-R; and the number of requests to certify questions of law made by amici.

Title IV—Transparency, Sunsets, and Other Matters

- Sec. 401 Clarifies that, in a manner consistent with the protection of national security, nothing in this Act or any other provision of law may be construed to prevent the Intelligence Committees of the House and Senate from receiving FISA applications, orders, and related materials upon request, and in a timely manner.
- Sec. 402 Requires the head of each agency that submits applications to the FISC to appoint a Compliance Officer responsible for overseeing that agency's compliance with FISA, including compliance with the targeting, minimization, querying, and accuracy procedures established by the law. Requires the Compliance Officer to conduct routine audits, and requires the Inspector General of each agency to submit annual reviews to the FISC and to Congress regarding the implementation of these provisions.
- Sec. 403 Requires the Attorney General to produce within 180 days (1) a report explaining how the government determines whether information is "obtained or derived" from FISA activities for purposes of FISA's notice requirements; and (2) a report explaining how the government interprets the prohibition against conducting an

investigation of a United States person “solely upon the basis of activities protected by the First Amendment to the Constitution.”

- Sec. 404 Strengthens reporting requirements regarding instances in which intelligence officials query Section 702 holdings for information concerning U.S. persons, and removes the FBI’s exemption from this reporting requirement.
- Sec. 405 Requires the Privacy and Civil Liberties Oversight Board (PCLOB) to issue a report regarding the manner in which the government’s use of FISA authorities may be premised on or may impact First Amendment activities or targets’ statuses as members of protected classes.
- Sec. 406 Permits members of the PCLOB to be reappointed to consecutive terms and to continue serving after their terms have expired, should they so choose.
- Sec. 407 Reauthorizes Section 215 (as amended), “roving wiretap,” and “lone wolf” authorities. Provides that these authorities will next sunset on December 1, 2023.
- Sec. 408 Contains various technical amendments.