

Public Law 115–118
115th Congress

An Act

To amend the Foreign Intelligence Surveillance Act of 1978 to improve foreign intelligence collection and the safeguards, accountability, and oversight of acquisitions of foreign intelligence, to extend title VII of such Act, and for other purposes.

Jan. 19, 2018
[S. 139]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “FISA Amendments Reauthorization Act of 2017”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
Sec. 2. Amendments to the Foreign Intelligence Surveillance Act of 1978.

TITLE I—ENHANCEMENTS TO FOREIGN INTELLIGENCE COLLECTION AND SAFEGUARDS, ACCOUNTABILITY, AND OVERSIGHT

- Sec. 101. Querying procedures required.
Sec. 102. Use and disclosure provisions.
Sec. 103. Congressional review and oversight of abouts collection.
Sec. 104. Publication of minimization procedures under section 702.
Sec. 105. Section 705 emergency provision.
Sec. 106. Compensation of amici curiae and technical experts.
Sec. 107. Additional reporting requirements.
Sec. 108. Improvements to Privacy and Civil Liberties Oversight Board.
Sec. 109. Privacy and civil liberties officers.
Sec. 110. Whistleblower protections for contractors of the intelligence community.
Sec. 111. Briefing on notification requirements.
Sec. 112. Inspector General report on queries conducted by Federal Bureau of Investigation.

TITLE II—EXTENSION OF AUTHORITIES, INCREASED PENALTIES, REPORTS, AND OTHER MATTERS

- Sec. 201. Extension of title VII of FISA; effective dates.
Sec. 202. Increased penalty for unauthorized removal and retention of classified documents or material.
Sec. 203. Report on challenges to the effectiveness of foreign intelligence surveillance.
Sec. 204. Comptroller General study on the classification system and protection of classified information.
Sec. 205. Technical amendments and amendments to improve procedures of the Foreign Intelligence Surveillance Court of Review.
Sec. 206. Severability.

SEC. 2. AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the

FISA
Amendments
Reauthorization
Act of 2017.
50 USC 1801
note.

Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

TITLE I—ENHANCEMENTS TO FOREIGN INTELLIGENCE COLLECTION AND SAFEGUARDS, ACCOUNTABILITY, AND OVERSIGHT

SEC. 101. QUERYING PROCEDURES REQUIRED.

(a) QUERYING PROCEDURES.—

(1) IN GENERAL.—Section 702 (50 U.S.C. 1881a) is amended—

(A) by redesignating subsections (f) through (l) as subsections (g) through (m), respectively; and

(B) by inserting after subsection (e) the following new subsection:

“(f) QUERIES.—

“(1) PROCEDURES REQUIRED.—

“(A) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt querying procedures consistent with the requirements of the fourth amendment to the Constitution of the United States for information collected pursuant to an authorization under subsection (a).

“(B) RECORD OF UNITED STATES PERSON QUERY TERMS.—The Attorney General, in consultation with the Director of National Intelligence, shall ensure that the procedures adopted under subparagraph (A) include a technical procedure whereby a record is kept of each United States person query term used for a query.

“(C) JUDICIAL REVIEW.—The procedures adopted in accordance with subparagraph (A) shall be subject to judicial review pursuant to subsection (j).

“(2) ACCESS TO RESULTS OF CERTAIN QUERIES CONDUCTED BY FBI.—

“(A) COURT ORDER REQUIRED FOR FBI REVIEW OF CERTAIN QUERY RESULTS IN CRIMINAL INVESTIGATIONS UNRELATED TO NATIONAL SECURITY.—Except as provided by subparagraph (E), in connection with a predicated criminal investigation opened by the Federal Bureau of Investigation that does not relate to the national security of the United States, the Federal Bureau of Investigation may not access the contents of communications acquired under subsection (a) that were retrieved pursuant to a query made using a United States person query term that was not designed to find and extract foreign intelligence information unless—

“(i) the Federal Bureau of Investigation applies for an order of the Court under subparagraph (C); and

“(ii) the Court enters an order under subparagraph (D) approving such application.

“(B) JURISDICTION.—The Court shall have jurisdiction to review an application and to enter an order approving the access described in subparagraph (A).

Consultations.

“(C) APPLICATION.—Each application for an order under this paragraph shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subparagraph (B). Each application shall require the approval of the Attorney General based upon the finding of the Attorney General that the application satisfies the criteria and requirements of such application, as set forth in this paragraph, and shall include—

“(i) the identity of the Federal officer making the application; and

“(ii) an affidavit or other information containing a statement of the facts and circumstances relied upon by the applicant to justify the belief of the applicant that the contents of communications described in subparagraph (A) covered by the application would provide evidence of—

“(I) criminal activity;

“(II) contraband, fruits of a crime, or other items illegally possessed by a third party; or

“(III) property designed for use, intended for use, or used in committing a crime.

“(D) ORDER.—Upon an application made pursuant to subparagraph (C), the Court shall enter an order approving the accessing of the contents of communications described in subparagraph (A) covered by the application if the Court finds probable cause to believe that such contents would provide any of the evidence described in subparagraph (C)(ii).

Courts.

“(E) EXCEPTION.—The requirement for an order of the Court under subparagraph (A) to access the contents of communications described in such subparagraph shall not apply with respect to a query if the Federal Bureau of Investigation determines there is a reasonable belief that such contents could assist in mitigating or eliminating a threat to life or serious bodily harm.

“(F) RULE OF CONSTRUCTION.—Nothing in this paragraph may be construed as—

“(i) limiting the authority of the Federal Bureau of Investigation to conduct lawful queries of information acquired under subsection (a);

“(ii) limiting the authority of the Federal Bureau of Investigation to review, without a court order, the results of any query of information acquired under subsection (a) that was reasonably designed to find and extract foreign intelligence information, regardless of whether such foreign intelligence information could also be considered evidence of a crime; or

“(iii) prohibiting or otherwise limiting the ability of the Federal Bureau of Investigation to access the results of queries conducted when evaluating whether to open an assessment or predicated investigation relating to the national security of the United States.

“(3) DEFINITIONS.—In this subsection:

“(A) The term ‘contents’ has the meaning given that term in section 2510(8) of title 18, United States Code.

“(B) The term ‘query’ means the use of one or more terms to retrieve the unminimized contents or noncontents

located in electronic and data storage systems of communications of or concerning United States persons obtained through acquisitions authorized under subsection (a).”.

Certifications.

(2) APPLICATION.—Subsection (f) of section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a), as added by paragraph (1), shall apply with respect to certifications submitted under subsection (h) of such section to the Foreign Intelligence Surveillance Court after January 1, 2018.

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO SECTION 702 OF FISA.—Such section 702 is further amended—

(A) in subsection (a), by striking “with subsection (i)(3)” and inserting “with subsection (j)(3)”;

(B) in subsection (c)—

(i) in paragraph (1)(B), by striking “with subsection (g)” and inserting “with subsection (h)”;

(ii) in paragraph (2), by striking “to subsection (i)(3)” and inserting “to subsection (j)(3)”; and

(iii) in paragraph (3)—

(I) in subparagraph (A), by striking “with subsection (g)” and inserting “with subsection (h)”; and

(II) in subparagraph (B)—

(aa) by striking “to subsection (i)(1)(C)” and inserting “to subsection (j)(1)(C)”; and

(bb) by striking “under subsection (i)” and inserting “under subsection (j)”;

(C) in subsection (d)(2), by striking “to subsection (i)” and inserting “to subsection (j)”;

(D) in subsection (e)(2), by striking “to subsection (i)” and inserting “to subsection (j)”;

(E) in subsection (h), as redesignated by subsection (a)(1)—

(i) in paragraph (2)(A)(iii), by striking “with subsection (f)” and inserting “with subsection (g)”;

(ii) in paragraph (3), by striking “with subsection (i)(1)(C)” and inserting “with subsection (j)(1)(C)”; and

(iii) in paragraph (6), by striking “to subsection (i)” and inserting “to subsection (j)”;

(F) in subsection (j), as redesignated by subsection (a)(1)—

(i) in paragraph (1)—

(I) in subparagraph (A), by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”;

(II) in subparagraph (B), by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”; and

(III) in subparagraph (C), by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and

inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”;

(ii) in paragraph (2)—

(I) in subparagraph (A), by striking “with subsection (g)” and inserting “with subsection (h)”;

and

(II) by adding at the end the following:

“(D) QUERYING PROCEDURES.—The querying procedures adopted in accordance with subsection (f)(1) to assess whether such procedures comply with the requirements of such subsection.”;

(iii) in paragraph (3)—

(I) in subparagraph (A)—

(aa) by striking “with subsection (g)” and inserting “with subsection (h)”;

(bb) by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”;

(II) in subparagraph (B), in the matter before clause (i)—

(aa) by striking “with subsection (g)” and inserting “with subsection (h)”;

(bb) by striking “with subsections (d) and (e)” and inserting “with subsections (d), (e), and (f)(1)”;

(iv) in paragraph (5)(A)—

(I) by striking “with subsection (g)” and inserting “with subsection (h)”;

(II) by striking “with subsections (d) and (e)” and inserting “with subsections (d), (e), and (f)(1)”;

(G) in subsection (m), as redesignated by subsection (a)(1)—

(i) in paragraph (1), in the matter before subparagraph (A)—

(I) by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”;

(II) by striking “with subsection (f)” and inserting “with subsection (g)”;

(ii) in paragraph (2)(A)—

(I) by striking “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and inserting “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)”;

(II) by striking “with subsection (f)” and inserting “with subsection (g)”.

(2) AMENDMENTS TO FISA.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is further amended—

(A) by striking “section 702(h)” each place it appears and inserting “section 702(i)”;

(B) by striking “section 702(g)” each place it appears and inserting “section 702(h)”;

(C) in section 707(b)(1)(G)(ii), by striking “subsections (d), (e), and (f)” and inserting “subsections (d), (e), (f)(1), and (g)”.

(3) AMENDMENTS TO FISA AMENDMENTS ACT OF 2008.—Section 404 of the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (Public Law 110–261; 50 U.S.C. 1801 note) is amended—

(A) in subsection (a)(7)(B)—

(i) by striking “under section 702(i)(3)” and inserting “under section 702(j)(3)”; and

(ii) by striking “of section 702(i)(4)” and inserting “of section 702(j)(4)”;

(B) in subsection (b)—

(i) in paragraph (3)—

(I) in subparagraph (A), by striking “to section 702(h)” and inserting “to section 702(i)”; and

(II) in subparagraph (B)—

(aa) by striking “section 702(h)(3) of” and inserting “section 702(i)(3) of”; and

(bb) by striking “to section 702(h)” and inserting “to section 702(i)”; and

(ii) in paragraph (4)—

(I) in subparagraph (A), by striking “and sections 702(l)” and inserting “and sections 702(m)”; and

(II) in subparagraph (B)(iv), by striking “or section 702(l)” and inserting “or section 702(m)”.

SEC. 102. USE AND DISCLOSURE PROVISIONS.

(a) END USE RESTRICTION.—Section 706(a) (50 U.S.C. 1881e(a)) is amended—

(1) by striking “Information acquired” and inserting the following:

“(1) IN GENERAL.—Information acquired”; and

(2) by adding at the end the following:

“(2) UNITED STATES PERSONS.—

“(A) IN GENERAL.—Any information concerning a United States person acquired under section 702 shall not be used in evidence against that United States person pursuant to paragraph (1) in any criminal proceeding unless—

“(i) the Federal Bureau of Investigation obtained an order of the Foreign Intelligence Surveillance Court to access such information pursuant to section 702(f)(2); or

“(ii) the Attorney General determines that—

“(I) the criminal proceeding affects, involves, or is related to the national security of the United States; or

“(II) the criminal proceeding involves—

“(aa) death;

“(bb) kidnapping;

Determination.

“(cc) serious bodily injury, as defined in section 1365 of title 18, United States Code;

“(dd) conduct that constitutes a criminal offense that is a specified offense against a minor, as defined in section 111 of the Adam Walsh Child Protection and Safety Act of 2006 (34 U.S.C. 20911);

“(ee) incapacitation or destruction of critical infrastructure, as defined in section 1016(e) of the USA PATRIOT Act (42 U.S.C. 5195c(e));

“(ff) cybersecurity, including conduct described in section 1016(e) of the USA PATRIOT Act (42 U.S.C. 5195c(e)) or section 1029, 1030, or 2511 of title 18, United States Code;

“(gg) transnational crime, including transnational narcotics trafficking and transnational organized crime; or

“(hh) human trafficking.

“(B) NO JUDICIAL REVIEW.—A determination by the Attorney General under subparagraph (A)(ii) is not subject to judicial review.”

(b) INTELLIGENCE COMMUNITY DISCLOSURE PROVISION.—Section 603 (50 U.S.C. 1873) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking “good faith estimate of the number of targets of such orders;” and inserting the following: “good faith estimate of—

“(A) the number of targets of such orders;

“(B) the number of targets of such orders who are known to not be United States persons; and

“(C) the number of targets of such orders who are known to be United States persons;”;

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by inserting “, including pursuant to subsection (f)(2) of such section,” after “section 702”;

(ii) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively;

(iii) by inserting before subparagraph (B), as so redesignated, the following:

“(A) the number of targets of such orders;”;

(iv) in subparagraph (B), as so redesignated, by striking “and” at the end; and

(v) by adding at the end the following:

“(D) the number of instances in which the Federal Bureau of Investigation opened, under the Criminal Investigative Division or any successor division, an investigation of a United States person (who is not considered a threat to national security) based wholly or in part on an acquisition authorized under such section;”;

(C) in paragraph (3)(A), by striking “orders; and” and inserting the following: “orders, including—

“(i) the number of targets of such orders who are known to not be United States persons; and

- “(ii) the number of targets of such orders who are known to be United States persons; and”;
- (D) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively; and
- (E) by inserting after paragraph (3) the following:
- “(4) the number of criminal proceedings in which the United States or a State or political subdivision thereof provided notice pursuant to subsection (c) or (d) of section 106 (including with respect to information acquired from an acquisition conducted under section 702) or subsection (d) or (e) of section 305 of the intent of the government to enter into evidence or otherwise use or disclose any information obtained or derived from electronic surveillance, physical search, or an acquisition conducted pursuant to this Act;”;
- (2) in subsection (d)—
- (A) in paragraph (1), by striking “(4), or (5)” and inserting “(5), or (6)”;
- (B) in paragraph (2)(A)—
- (i) by striking “Paragraphs (2)(A), (2)(B), and (5)(C)” and inserting “Paragraphs (2)(B), (2)(C), and (6)(C)”;
- (ii) by inserting before the period at the end the following: “, except with respect to information required under paragraph (2) relating to orders issued under section 702(f)(2)”;
- (C) in paragraph (3)(A), in the matter preceding clause (i), by striking “subsection (b)(2)(B)” and inserting “subsection (b)(2)(C)”.

SEC. 103. CONGRESSIONAL REVIEW AND OVERSIGHT OF ABOUTS COLLECTION.

(a) **IN GENERAL.**—Section 702(b) (50 U.S.C. 1881a(b)) is amended—

- (1) in paragraph (4), by striking “and” at the end;
- (2) by redesignating paragraph (5) as paragraph (6); and
- (3) by inserting after paragraph (4) the following:

“(5) may not intentionally acquire communications that contain a reference to, but are not to or from, a target of an acquisition authorized under subsection (a), except as provided under section 103(b) of the FISA Amendments Reauthorization Act of 2017; and”.

(b) **CONGRESSIONAL REVIEW AND OVERSIGHT OF ABOUTS COLLECTION.**—

(1) **DEFINITIONS.**—In this subsection:

(A) The term “abouts communication” means a communication that contains a reference to, but is not to or from, a target of an acquisition authorized under section 702(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(a)).

(B) The term “material breach” means significant non-compliance with applicable law or an order of the Foreign Intelligence Surveillance Court concerning any acquisition of abouts communications.

(2) **SUBMISSION TO CONGRESS.**—

(A) **REQUIREMENT.**—Notwithstanding any other provision of law, and except as provided in paragraph (4), if

50 USC 1881a
note.

Notice.

the Attorney General and the Director of National Intelligence intend to implement the authorization of the intentional acquisition of abouts communications, before the first such implementation after the date of enactment of this Act, the Attorney General and the Director of National Intelligence shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a written notice of the intent to implement the authorization of such an acquisition, and any supporting materials in accordance with this subsection.

(B) CONGRESSIONAL REVIEW PERIOD.—During the 30-day period beginning on the date written notice is submitted under subparagraph (A), the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives shall, as appropriate, hold hearings and briefings and otherwise obtain information in order to fully review the written notice.

Effective date.
Hearings.
Briefings.

(C) LIMITATION ON ACTION DURING CONGRESSIONAL REVIEW PERIOD.—Notwithstanding any other provision of law, and subject to paragraph (4), unless the Attorney General and the Director of National Intelligence make a determination pursuant to section 702(c)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(c)(2)), the Attorney General and the Director of National Intelligence may not implement the authorization of the intentional acquisition of abouts communications before the end of the period described in subparagraph (B).

Determination.

(3) WRITTEN NOTICE.—Written notice under paragraph (2)(A) shall include the following:

Records.

(A) A copy of any certification submitted to the Foreign Intelligence Surveillance Court pursuant to section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a), or amendment thereto, authorizing the intentional acquisition of abouts communications, including all affidavits, procedures, exhibits, and attachments submitted therewith.

Certification.

(B) The decision, order, or opinion of the Foreign Intelligence Surveillance Court approving such certification, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion.

(C) A summary of the protections in place to detect any material breach.

(D) Data or other results of modeling, simulation, or auditing of sample data demonstrating that any acquisition method involving the intentional acquisition of abouts communications shall be conducted in accordance with title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.), if such data or other results exist at the time the written notice is submitted and were provided to the Foreign Intelligence Surveillance Court.

(E) Except as provided under paragraph (4), a statement that no acquisition authorized under subsection (a)

of such section 702 shall include the intentional acquisition of an abouts communication until after the end of the 30-day period described in paragraph (2)(B).

(4) EXCEPTION FOR EMERGENCY ACQUISITION.—

Deadline.

(A) NOTICE OF DETERMINATION.—If the Attorney General and the Director of National Intelligence make a determination pursuant to section 702(c)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(c)(2)) with respect to the intentional acquisition of abouts communications, the Attorney General and the Director of National Intelligence shall notify the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives as soon as practicable, but not later than 7 days after the determination is made.

(B) IMPLEMENTATION OR CONTINUATION.—

Certification.
Determination.

(i) IN GENERAL.—If the Foreign Intelligence Surveillance Court approves a certification that authorizes the intentional acquisition of abouts communications before the end of the 30-day period described in paragraph (2)(B), the Attorney General and the Director of National Intelligence may authorize the immediate implementation or continuation of that certification if the Attorney General and the Director of National Intelligence jointly determine that exigent circumstances exist such that without such immediate implementation or continuation intelligence important to the national security of the United States may be lost or not timely acquired.

Determination.
Deadline.

(ii) NOTICE.—The Attorney General and the Director of National Intelligence shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives notification of a determination pursuant to clause (i) as soon as practicable, but not later than 3 days after the determination is made.

(5) REPORTING OF MATERIAL BREACH.—Subsection (m) of section 702 (50 U.S.C. 1881a), as redesignated by section 101, is amended—

(A) in the heading by striking “AND REVIEWS” and inserting “REVIEWS, AND REPORTING”; and

(B) by adding at the end the following new paragraph:

“(4) REPORTING OF MATERIAL BREACH.—

“(A) IN GENERAL.—The head of each element of the intelligence community involved in the acquisition of abouts communications shall fully and currently inform the Committees on the Judiciary of the House of Representatives and the Senate and the congressional intelligence committees of a material breach.

“(B) DEFINITIONS.—In this paragraph:

“(i) The term ‘abouts communication’ means a communication that contains a reference to, but is not to or from, a target of an acquisition authorized under subsection (a).

“(ii) The term ‘material breach’ means significant noncompliance with applicable law or an order of the Foreign Intelligence Surveillance Court concerning any acquisition of abouts communications.”.

(6) APPOINTMENT OF AMICI CURIAE BY FOREIGN INTELLIGENCE SURVEILLANCE COURT.—For purposes of section 103(i)(2)(A) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(i)(2)(A)), the Foreign Intelligence Surveillance Court shall treat the first certification under section 702(h) of such Act (50 U.S.C. 1881a(h)) or amendment thereto that authorizes the acquisition of abouts communications as presenting a novel or significant interpretation of the law, unless the court determines otherwise.

SEC. 104. PUBLICATION OF MINIMIZATION PROCEDURES UNDER SECTION 702.

Section 702(e) (50 U.S.C. 1881a(e)) is amended by adding at the end the following new paragraph:

“(3) PUBLICATION.—The Director of National Intelligence, in consultation with the Attorney General, shall—

Consultation.

“(A) conduct a declassification review of any minimization procedures adopted or amended in accordance with paragraph (1); and

“(B) consistent with such review, and not later than 180 days after conducting such review, make such minimization procedures publicly available to the greatest extent practicable, which may be in redacted form.”.

SEC. 105. SECTION 705 EMERGENCY PROVISION.

Section 705 (50 U.S.C. 1881d) is amended by adding at the end the following:

“(c) EMERGENCY AUTHORIZATION.—

“(1) CONCURRENT AUTHORIZATION.—If the Attorney General authorized the emergency employment of electronic surveillance or a physical search pursuant to section 105 or 304, the Attorney General may authorize, for the effective period of the emergency authorization and subsequent order pursuant to section 105 or 304, without a separate order under section 703 or 704, the targeting of a United States person subject to such emergency employment for the purpose of acquiring foreign intelligence information while such United States person is reasonably believed to be located outside the United States.

“(2) USE OF INFORMATION.—If an application submitted to the Court pursuant to section 104 or 303 is denied, or in any other case in which the acquisition pursuant to paragraph (1) is terminated and no order with respect to the target of the acquisition is issued under section 105 or 304, all information obtained or evidence derived from such acquisition shall be handled in accordance with section 704(d)(4).”.

SEC. 106. COMPENSATION OF AMICI CURIAE AND TECHNICAL EXPERTS.

Subsection (i) of section 103 (50 U.S.C. 1803) is amended by adding at the end the following:

“(11) COMPENSATION.—Notwithstanding any other provision of law, a court established under subsection (a) or (b) may compensate an amicus curiae appointed under paragraph

(2) for assistance provided under such paragraph as the court considers appropriate and at such rate as the court considers appropriate.”.

SEC. 107. ADDITIONAL REPORTING REQUIREMENTS.

(a) ELECTRONIC SURVEILLANCE.—Section 107 (50 U.S.C. 1807) is amended to read as follows:

“SEC. 107. REPORT OF ELECTRONIC SURVEILLANCE.

“(a) ANNUAL REPORT.—In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to the congressional intelligence committees and the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding calendar year—

“(1) the total number of applications made for orders and extensions of orders approving electronic surveillance under this title;

“(2) the total number of such orders and extensions either granted, modified, or denied; and

“(3) the total number of subjects targeted by electronic surveillance conducted under an order or emergency authorization under this title, rounded to the nearest 500, including the number of such individuals who are United States persons, reported to the nearest band of 500, starting with 0–499.

“(b) FORM.—Each report under subsection (a) shall be submitted in unclassified form, to the extent consistent with national security. Not later than 7 days after the date on which the Attorney General submits each such report, the Attorney General shall make the report publicly available, or, if the Attorney General determines that the report cannot be made publicly available consistent with national security, the Attorney General may make publicly available an unclassified summary of the report or a redacted version of the report.”.

(b) PEN REGISTERS AND TRAP AND TRACE DEVICES.—Section 406 (50 U.S.C. 1846) is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking “; and” and inserting a semicolon;

(B) in paragraph (5), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(6) a good faith estimate of the total number of subjects who were targeted by the installation and use of a pen register or trap and trace device under an order or emergency authorization issued under this title, rounded to the nearest 500, including—

“(A) the number of such subjects who are United States persons, reported to the nearest band of 500, starting with 0–499; and

“(B) of the number of United States persons described in subparagraph (A), the number of persons whose information acquired pursuant to such order was reviewed or accessed by a Federal officer, employee, or agent, reported to the nearest band of 500, starting with 0–499.”; and

(2) by adding at the end the following new subsection:

“(c) Each report under subsection (b) shall be submitted in unclassified form, to the extent consistent with national security.

Not later than 7 days after the date on which the Attorney General submits such a report, the Attorney General shall make the report publicly available, or, if the Attorney General determines that the report cannot be made publicly available consistent with national security, the Attorney General may make publicly available an unclassified summary of the report or a redacted version of the report.”.

Deadline.
Determination.

SEC. 108. IMPROVEMENTS TO PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.

(a) APPOINTMENT OF STAFF.—Subsection (j) of section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee(j)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

“(2) APPOINTMENT IN ABSENCE OF CHAIRMAN.—If the position of chairman of the Board is vacant, during the period of the vacancy, the Board, at the direction of the unanimous vote of the serving members of the Board, may exercise the authority of the chairman under paragraph (1).”.

(b) MEETINGS.—Subsection (f) of such section (42 U.S.C. 2000ee(f)) is amended—

(1) by striking “The Board shall” and inserting “The Board”;

(2) in paragraph (1) by striking “make its” and inserting “shall make its”; and

(3) in paragraph (2)—

(A) by striking “hold public” and inserting “shall hold public”; and

(B) by inserting before the period at the end the following: “, but may, notwithstanding section 552b of title 5, United States Code, meet or otherwise communicate in any number to confer or deliberate in a manner that is closed to the public”.

SEC. 109. PRIVACY AND CIVIL LIBERTIES OFFICERS.

Section 1062(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee–1(a)) is amended by inserting “, the Director of the National Security Agency, the Director of the Federal Bureau of Investigation” after “the Director of the Central Intelligence Agency”.

SEC. 110. WHISTLEBLOWER PROTECTIONS FOR CONTRACTORS OF THE INTELLIGENCE COMMUNITY.

(a) PROHIBITED PERSONNEL PRACTICES IN THE INTELLIGENCE COMMUNITY.—Section 1104 of the National Security Act of 1947 (50 U.S.C. 3234) is amended—

(1) in subsection (a)—

(A) in paragraph (3), by inserting “or a contractor employee” after “character”; and

(B) by adding at the end the following new paragraph:

“(4) CONTRACTOR EMPLOYEE.—The term ‘contractor employee’ means an employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of a covered intelligence community element.”;

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

Definition.

(3) by inserting after subsection (b) the following new subsection (c):

“(c) CONTRACTOR EMPLOYEES.—(1) Any employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of a covered intelligence community element who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any contractor employee as a reprisal for a lawful disclosure of information by the contractor employee to the Director of National Intelligence (or an employee designated by the Director of National Intelligence for such purpose), the Inspector General of the Intelligence Community, the head of the contracting agency (or an employee designated by the head of that agency for such purpose), the appropriate inspector general of the contracting agency, a congressional intelligence committee, or a member of a congressional intelligence committee, which the contractor employee reasonably believes evidences—

“(A) a violation of any Federal law, rule, or regulation (including with respect to evidence of another employee or contractor employee accessing or sharing classified information without authorization); or

“(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

“(2) A personnel action under paragraph (1) is prohibited even if the action is undertaken at the request of an agency official, unless the request takes the form of a nondiscretionary directive and is within the authority of the agency official making the request.”;

(4) in subsection (b), by striking the heading and inserting “AGENCY EMPLOYEES.—”; and

(5) in subsection (e), as redesignated by paragraph (2), by inserting “contractor employee,” after “any employee,”.

5 USC 2303 note.

(b) FEDERAL BUREAU OF INVESTIGATION.—

(1) IN GENERAL.—Any employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to a contractor employee as a reprisal for a disclosure of information—

(A) made—

(i) to a supervisor in the direct chain of command of the contractor employee;

(ii) to the Inspector General;

(iii) to the Office of Professional Responsibility of the Department of Justice;

(iv) to the Office of Professional Responsibility of the Federal Bureau of Investigation;

(v) to the Inspection Division of the Federal Bureau of Investigation;

(vi) to the Office of Special Counsel; or

(vii) to an employee designated by any officer, employee, office, or division described in clauses (i) through (vi) for the purpose of receiving such disclosures; and

(B) which the contractor employee reasonably believes evidences—

(i) any violation of any law, rule, or regulation (including with respect to evidence of another employee or contractor employee accessing or sharing classified information without authorization); or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(2) ACTIONS BY REQUEST.—A personnel action under paragraph (1) is prohibited even if the action is undertaken at the request of an official of the Federal Bureau of Investigation, unless the request takes the form of a nondiscretionary directive and is within the authority of the official making the request.

(3) REGULATIONS.—The Attorney General shall prescribe regulations to ensure that a personnel action described in paragraph (1) shall not be taken against a contractor employee of the Federal Bureau of Investigation as a reprisal for any disclosure of information described in subparagraph (A) of such paragraph.

(4) ENFORCEMENT.—The President shall provide for the enforcement of this subsection. President.

(5) DEFINITIONS.—In this subsection:

(A) The term “contractor employee” means an employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of the Federal Bureau of Investigation.

(B) The term “personnel action” means any action described in clauses (i) through (x) of section 2302(a)(2)(A) of title 5, United States Code, with respect to a contractor employee.

(c) RETALIATORY REVOCATION OF SECURITY CLEARANCES AND ACCESS DETERMINATIONS.—Section 3001(j) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(j)) is amended by adding at the end the following new paragraph:

“(8) INCLUSION OF CONTRACTOR EMPLOYEES.—In this subsection, the term ‘employee’ includes an employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of an agency. With respect to such employees, the term ‘employing agency’ shall be deemed to be the contracting agency.”.

SEC. 111. BRIEFING ON NOTIFICATION REQUIREMENTS.

Not later than 180 days after the date of the enactment of this Act, the Attorney General, in consultation with the Director of National Intelligence, shall provide to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a briefing with respect to how the Department of Justice interprets the requirements under sections 106(c), 305(d), and 405(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(c), 1825(d), and 1845(c)) to notify an aggrieved person under such sections of the use of information obtained or derived from electronic surveillance, physical search, or the use of a pen register or trap and trace device. The briefing shall focus on how the Department interprets the phrase “obtained or derived from” in such sections.

Deadline.
Consultation.

SEC. 112. INSPECTOR GENERAL REPORT ON QUERIES CONDUCTED BY FEDERAL BUREAU OF INVESTIGATION.

(a) **REPORT.**—Not later than 1 year after the date on which the Foreign Intelligence Surveillance Court first approves the querying procedures adopted pursuant to section 702(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(f)), as added by section 101, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a report containing a review by the Inspector General of the interpretation of, and compliance with, such procedures by the Federal Bureau of Investigation.

(b) **MATTERS INCLUDED.**—The report under subsection (a) shall include, at a minimum, an assessment of the following:

(1) The interpretations by the Federal Bureau of Investigation and the National Security Division of the Department of Justice, respectively, relating to the querying procedures adopted under subsection (f) of section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(f)), as added by section 101.

(2) The handling by the Federal Bureau of Investigation of individuals whose citizenship status is unknown at the time of a query conducted under such section 702.

(3) The practice of the Federal Bureau of Investigation with respect to retaining records of queries conducted under such section 702 for auditing purposes.

(4) The training or other processes of the Federal Bureau of Investigation to ensure compliance with such querying procedures.

(5) The implementation of such querying procedures with respect to queries conducted when evaluating whether to open an assessment or predicated investigation relating to the national security of the United States.

(6) The scope of access by the criminal division of the Federal Bureau of Investigation to information obtained pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), including with respect to information acquired under subsection (a) of such section 702 based on queries conducted by the criminal division.

(7) The frequency and nature of the reviews conducted by the National Security Division of the Department of Justice and the Office of the Director of National Intelligence relating to the compliance by the Federal Bureau of Investigation with such querying procedures.

(8) Any impediments, including operational, technical, or policy impediments, for the Federal Bureau of Investigation to count—

(A) the total number of queries where the Federal Bureau of Investigation subsequently accessed information acquired under subsection (a) of such section 702;

(B) the total number of such queries that used known United States person identifiers; and

(C) the total number of queries for which the Federal Bureau of Investigation received an order of the Foreign

Intelligence Surveillance Court pursuant to subsection (f)(2) of such section 702.

(c) FORM.—The report under subsection (a) shall be submitted in unclassified form to the extent consistent with national security, but may include a classified annex.

TITLE II—EXTENSION OF AUTHORITIES, INCREASED PENALTIES, REPORTS, AND OTHER MATTERS

SEC. 201. EXTENSION OF TITLE VII OF FISA; EFFECTIVE DATES.

(a) EXTENSION.—Section 403(b) of the FISA Amendments Act of 2008 (Public Law 110–261; 122 Stat. 2474) is amended—

(1) in paragraph (1)—

(A) by striking “December 31, 2017” and inserting “December 31, 2023”; and

50 USC 1881
and note,
1881a–1881g.

(B) by inserting “and by the FISA Amendments Reauthorization Act of 2017” after “section 101(a)”; and

50 USC 2511
note.

(2) in paragraph (2) in the matter preceding subparagraph (A), by striking “December 31, 2017” and inserting “December 31, 2023”.

(b) CONFORMING AMENDMENTS.—Section 404(b) of the FISA Amendments Act of 2008 (Public Law 110–261; 122 Stat. 2476), as amended by section 101, is further amended—

50 USC 1801
note.

(1) in paragraph (1)—

(A) in the heading, by striking “DECEMBER 31, 2017” and inserting “DECEMBER 31, 2023”; and

(B) by inserting “and by the FISA Amendments Reauthorization Act of 2017” after “section 101(a)”; and

(2) in paragraph (2), by inserting “and by the FISA Amendments Reauthorization Act of 2017” after “section 101(a)”; and

(3) in paragraph (4)—

(A) by inserting “and amended by the FISA Amendments Reauthorization Act of 2017” after “as added by section 101(a)” both places it appears; and

(B) by inserting “and by the FISA Amendments Reauthorization Act of 2017” after “as amended by section 101(a)” both places it appears.

(c) EFFECTIVE DATE OF AMENDMENTS TO FAA.—The amendments made to the FISA Amendments Act of 2008 (Public Law 110–261) by this section shall take effect on December 31, 2017.

50 USC 1881
note.

SEC. 202. INCREASED PENALTY FOR UNAUTHORIZED REMOVAL AND RETENTION OF CLASSIFIED DOCUMENTS OR MATERIAL.

Section 1924(a) of title 18, United States Code, is amended by striking “one year” and inserting “five years”.

SEC. 203. REPORT ON CHALLENGES TO THE EFFECTIVENESS OF FOR- EIGN INTELLIGENCE SURVEILLANCE.

(a) REPORT.—Not later than 270 days after the date of the enactment of this Act, the Attorney General, in coordination with the Director of National Intelligence, shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate

Coordination.

Recommendations.

a report on current and future challenges to the effectiveness of the foreign intelligence surveillance activities of the United States authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(b) **MATTERS INCLUDED.**—The report under subsection (a) shall include, at a minimum, the following:

(1) A discussion of any trends that currently challenge the effectiveness of the foreign intelligence surveillance activities of the United States, or could foreseeably challenge such activities during the decade following the date of the report, including with respect to—

(A) the extraordinary and surging volume of data occurring worldwide;

(B) the use of encryption;

(C) changes to worldwide telecommunications patterns or infrastructure;

(D) technical obstacles in determining the location of data or persons;

(E) the increasing complexity of the legal regime, including regarding requests for data in the custody of foreign governments;

(F) the current and future ability of the United States to obtain, on a compulsory or voluntary basis, assistance from telecommunications providers or other entities; and

(G) any other matters the Attorney General and the Director of National Intelligence determine appropriate.

(2) Recommendations for changes, including, as appropriate, fundamental changes, to the foreign intelligence surveillance activities of the United States to address the challenges identified under paragraph (1) and to ensure the long-term effectiveness of such activities.

(3) Recommendations for any changes to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) that the Attorney General and the Director of National Intelligence determine necessary to address the challenges identified under paragraph (1).

(c) **FORM.**—The report under subsection (a) may be submitted in classified or unclassified form.

SEC. 204. COMPTROLLER GENERAL STUDY ON THE CLASSIFICATION SYSTEM AND PROTECTION OF CLASSIFIED INFORMATION.

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study of the classification system of the United States and the methods by which the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 3003(4))) protects classified information.

(b) **MATTERS INCLUDED.**—The study under subsection (a) shall address the following:

(1) Whether sensitive information is properly classified.

(2) The effect of modern technology on the storage and protection of classified information, including with respect to—

(A) using cloud storage for classified information; and

(B) any technological means to prevent or detect unauthorized access to such information.

(3) Any ways to improve the classification system of the United States, including with respect to changing the levels

of classification used in such system and to reduce overclassification.

(4) How to improve the authorized sharing of classified information, including with respect to sensitive compartmented information.

(5) The value of polygraph tests in determining who is authorized to access classified information and in investigating unauthorized disclosures of classified information.

(6) Whether each element of the intelligence community—

(A) applies uniform standards in determining who is authorized to access classified information; and

(B) provides proper training with respect to the handling of classified information and the avoidance of overclassification.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the study under subsection (a).

(d) FORM.—The report under subsection (c) shall be submitted in unclassified form, but may include a classified annex.

SEC. 205. TECHNICAL AMENDMENTS AND AMENDMENTS TO IMPROVE PROCEDURES OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.

(a) TECHNICAL AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended as follows:

(1) In section 103(b) (50 U.S.C. 1803(b)), by striking “designate as the” and inserting “designated as the”.

(2) In section 302(a)(1)(A)(iii) (50 U.S.C. 1822(a)(1)(A)(iii)), by striking “paragraphs (1) through (4)” and inserting “subparagraphs (A) through (D)”.

(3) In section 406(b) (50 U.S.C. 1846(b)), by striking “and to the Committees on the Judiciary of the House of Representatives and the Senate”.

(4) In section 604(a) (50 U.S.C. 1874(a))—

(A) in paragraph (1)(D), by striking “contents” and inserting “contents,”; and

(B) in paragraph (3), by striking “comply in the into” and inserting “comply into”.

(5) In section 701 (50 U.S.C. 1881)—

(A) in subsection (a), by striking “The terms” and inserting “In this title, the terms”; and

(B) in subsection (b)—

(i) by inserting “In this title:” after the subsection heading; and

(ii) in paragraph (5), by striking “(50 U.S.C. 401a(4))” and inserting “(50 U.S.C. 3003(4))”.

(6) In section 702(h)(2)(A)(i) (50 U.S.C. 1881a(h)(2)(A)(i)), as redesignated by section 101, by inserting “targeting” before “procedures in place”.

(7) In section 801(7) (50 U.S.C. 1885(7)), by striking “(50 U.S.C. 401a(4))” and inserting “(50 U.S.C. 3003(4))”.

(b) **COURT-RELATED AMENDMENTS.**—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is further amended as follows:

(1) In section 103 (50 U.S.C. 1803)—

(A) in subsection (b), by striking “immediately”; and

(B) in subsection (h), by striking “the court established under subsection (a)” and inserting “a court established under this section”.

(2) In section 105(d) (50 U.S.C. 1805(d)), by adding at the end the following new paragraph:

“(4) A denial of the application made under section 104 may be reviewed as provided in section 103.”.

(3) In section 302(d) (50 U.S.C. 1822(d)), by striking “immediately”.

(4) In section 402(d) (50 U.S.C. 1842(d)), by adding at the end the following new paragraph:

“(3) A denial of the application made under this subsection may be reviewed as provided in section 103.”.

(5) In section 403(c) (50 U.S.C. 1843(c)), by adding at the end the following new paragraph:

“(3) A denial of the application made under subsection (a)(2) may be reviewed as provided in section 103.”.

(6) In section 501(c) (50 U.S.C. 1861(c)), by adding at the end the following new paragraph:

“(4) A denial of the application made under this subsection may be reviewed as provided in section 103.”.

50 USC 1801
note.

SEC. 206. SEVERABILITY.

If any provision of this Act, any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act, of any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.

Approved January 19, 2018.

LEGISLATIVE HISTORY—S. 139:

CONGRESSIONAL RECORD:

Vol. 163 (2017): May 16, considered and passed Senate.

Vol. 164 (2018): Jan. 11, considered and passed House, amended. Considered in Senate.

Jan. 16–18, Senate considered and concurred in House amendment.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2018):

Jan. 19, Presidential statement.

