

S 1469

FISA Reform Act of 2015

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Chamber: Senate

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Sponsor

Name: Sen. Feinstein, Dianne [D-CA]

Party: Democratic • **State:** CA • **Chamber:** Senate

Cosponsors (2 total)

Cosponsor	Party / State	Role	Date Joined
Sen. King, Angus S., Jr. [I-ME]	I · ME		May 23, 2015
Sen. Whitehouse, Sheldon [D-RI]	D · RI		May 23, 2015

Committee Activity

Committee	Chamber	Activity	Date
Judiciary Committee	Senate	Referred To	May 23, 2015

Subjects & Policy Tags

Policy Area:

Armed Forces and National Security

Related Bills

Bill	Relationship	Last Action
114 HR 2048	Related bill	Jun 2, 2015: Became Public Law No: 114-23.
114 S 1123	Related bill	Apr 28, 2015: Read twice and referred to the Committee on the Judiciary. (Sponsor introductory remarks on measure: CR S2772-2773)

FISA Reform Act of 2015

TITLE I--FISA BUSINESS RECORDS REFORMS

Amends the Foreign Intelligence Surveillance Act of 1978 (FISA) to establish a new process to be followed when the Federal Bureau of Investigation (FBI) submits an application to a FISA court for an order requiring the production of business records or other tangible things for an investigation to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities.

Prohibits the FBI from applying for a tangible thing production order, and prohibits a court from authorizing the collection of tangible things, unless a specific selection term is used as the basis for the production. Maintains limitations under current law that prohibit the FBI from applying for tangible thing production orders for threat assessments.

Establishes two separate frameworks for the production of tangible things with different standards that apply based on whether the FBI's application seeks:

- production on an ongoing basis of call detail records created before, on, or after the date of the application relating to an authorized investigation to protect against international terrorism, in which case the specific selection term must specifically identify an individual, account, or personal device; or
- production of call detail records or other tangible things in any other manner, in which case the selection term must specifically identify a person, account, address, personal device, or any other specific identifier that limits, to the greatest extent reasonably practicable, the scope of tangible things sought by the government consistent with the purpose and need to obtain foreign intelligence information but is prohibited from permitting bulk or indiscriminate collection of tangible things, such as by solely identifying an electronic communication or remote computing service provider, unless the provider is itself a subject of an authorized investigation, or by solely identifying a broad domestic geographic region (including the United States, a state, city, county, zip code, or area code) when not used as part of a specific identifier.

Defines "call detail record" as session identifying information (including an originating or terminating telephone number, an International Mobile Subscriber Identity number, or an International Mobile Station Equipment Identity number), a telephone calling card number, or the time or duration of a call. Excludes from such definition: (1) the contents of any communication; (2) the name, address, or financial information of a subscriber or customer; or (3) cell site or global position system location information.

Requires the FBI, in applications for ongoing production of call detail records for investigations to protect against international terrorism, to show: (1) reasonable grounds to believe that the call detail records are relevant to such investigation; and (2) a reasonable, articulable suspicion that the specific selection term is associated with a foreign power or an agent of a foreign power or an individual engaged in international terrorism or activities in preparation for such terrorism.

Allows the FBI to request the FISA court to require recipients of a tangible thing production order to retain call detail records for up to 24 months from the date the record was initially generated if: (1) the FBI certifies that the government has reason to believe the recipient is not retaining call records for such a duration and the absence of records for that period is resulting in, or is reasonably likely to result in, the loss of foreign intelligence information relevant to an authorized investigation; and (2) the call detail records retained solely for purposes of complying with such a requirement

may only be produced pursuant to a tangible thing production order.

Requires a judge approving such an ongoing release of call detail records for an investigation to protect against international terrorism to:

- limit such production to a period not to exceed 180 days but allow such orders to be extended upon application, with judicial approval;
- permit the government to require the production of an initial set of call records using the reasonable, articulable suspicion standard that the term is associated with a foreign power or an agent of a foreign power and then a subsequent set of call records using session-identifying information or a telephone calling card number identified by the specific selection term that was used to produce the initial set of records (thus limiting the government to what is commonly referred to as two "hops" of call records); and
- direct the government to adopt minimization procedures requiring prompt destruction of produced call records that are not foreign intelligence information.

Allows a FISA court to approve other categories of FBI requests for the production of call detail records or tangible things (i.e., FBI call detail record and tangible thing applications that do not seek ongoing production of call detail records created before, on, or after the date of an application relating to an authorized investigation to protect against international terrorism) without subjecting the production to: (1) the reasonable, articulable suspicion standard for an association with a foreign power or an agent of a foreign power; (2) the 180-day or the two-hop limitation; or (3) the special minimization procedures that require prompt destruction of produced records only if the order approves an ongoing production of call detail records for investigations to protect against international terrorism.

Authorizes the Attorney General to require the emergency production of tangible things without first obtaining a court order if the Attorney General: (1) reasonably determines that an emergency situation requires the production of tangible things before an order authorizing production can be obtained with due diligence, (2) reasonably determines that a factual basis exists for the issuance of such a production order, (3) informs a FISA judge of the decision to require such production at the time the emergency decision is made, and (4) makes an application to a FISA judge within seven days after the Attorney General requires such emergency production.

Terminates the authority for such emergency production of tangible things when the information sought is obtained, when the application for the order is denied, or after the expiration of seven days from the time the Attorney General begins requiring such emergency production, whichever is earliest.

Prohibits information obtained or evidence derived from such an emergency production from being received in evidence or disclosed in any proceeding in or before any court, grand jury, agency, legislative committee, or other authority of the United States, any state, or any political subdivision if: (1) the subsequent application for court approval is denied, or (2) the production is terminated and no order is issued approving the production. Bars information concerning any U.S. person acquired from such production from being used or disclosed in any other manner by federal officers or employees without the consent of such person, except with approval of the Attorney General if the information indicates a threat of death or serious bodily harm.

Requires a FISA court, as a condition to approving an application for a tangible thing production order, to find that the minimization procedures submitted with the application meet applicable FISA standards. Authorizes the court to impose additional minimization procedures.

Allows a nondisclosure order imposed in connection with a tangible thing production order to be challenged immediately

by filing a petition for judicial review. Removes a requirement that a judge considering a petition to modify or set aside a nondisclosure order treat as conclusive a certification by the Attorney General, the Deputy Attorney General, an Assistant Attorney General, or the FBI Director that disclosure may endanger national security or interfere with diplomatic relations.

Extends liability protections to persons who retain call detail records under a tangible thing production order or provide information, facilities, or technical assistance for the production of tangible things. Requires the government to compensate a person for reasonable expenses incurred in producing tangible things or providing technical assistance to the government to implement production procedures.

Requires this title to take effect 180 days after its enactment unless the President certifies that a longer transition period of up to one year is necessary to make the new procedures operational. Provides for FISA court orders in effect on May 31, 2015, to continue in effect until the expiration of such orders. Authorizes the FISA court to extend the order of February 26, 2015, in Docket No. BR 15-24, until the effective date of this title.

Prohibits this Act from being construed to authorize the production of the contents of any electronic communication from an electronic communication service provider under such tangible thing requirements.

TITLE II--FISA PEN REGISTER AND TRAP AND TRACE DEVICE REFORM

Requires the government's FISA applications for orders approving pen registers or trap and trace devices to include a specific selection term as the basis for the use of the register or device.

Directs the Attorney General to ensure that appropriate procedures are in place to safeguard nonpublicly available information concerning U.S. persons that is collected, retained, or used through a pen register or trap and trace device installed with FISA court approval.

TITLE III--NATIONAL SECURITY LETTER REFORM

Amends the federal criminal code, the Right to Financial Privacy Act of 1978, and the Fair Credit Reporting Act to require the FBI and other government agencies to use a specific selection term as the basis for national security letters that request information from wire or electronic communication service providers, financial institutions, or consumer reporting agencies. Requires the government to identify: (1) a person, entity, telephone number, or account for requests for telephone toll and transactional records; (2) a customer, entity, or account when requesting financial records for certain intelligence or protective functions; or (3) a consumer or account when requesting consumer reports for counterintelligence or counterterrorism purposes.

TITLE IV--FISA TRANSPARENCY AND REPORTING REQUIREMENTS

Requires the Attorney General to expand an annual report to Congress regarding tangible thing applications to include a summary of compliance reviews and the total number of: (1) applications made for the daily production of call detail records created before, on, or after the date of an application relating to an authorized investigation to protect against international terrorism; and (2) orders approving such requests.

Consolidates various FISA reporting requirements of the Attorney General into a combined semiannual report.

Makes additional information about FISA activities and the decisions of FISA courts available to every Member of Congress.

Requires unclassified reports to be made available to the public.

Permits a person who is subject to a nondisclosure requirement accompanying a FISA order, directive, or national security letter to choose one of four methods to report publicly, on a semiannual or annual basis, the aggregate number of orders, directives, or letters with which the person was required to comply. Specifies the categories of orders, directives, and letters to be itemized or combined, the details authorized to be included with respect to contents or noncontents orders and the number of customer selectors targeted, and the ranges within which the number of orders, directives, or letters received may be reported aggregately in bands under each permitted method.

Expands the categories of FISA court decisions, orders, or opinions that the Attorney General is required to submit to Congress within 45 days after issuance of the decision to include: (1) a denial or modification of an application under FISA; and (2) a change of the application, or a novel application, of any FISA provision.

Revises reporting requirements regarding electronic surveillance, physical searches, and tangible things to include the House Judiciary Committee as a recipient of such reports.

Requires the Attorney General to identify in an existing semiannual report each agency on behalf of which the government has applied for orders authorizing or approving the installation and use of pen registers or trap and trace devices under FISA.

TITLE V--OTHER PROVISIONS

Establishes criminal penalties to be imposed for unauthorized disclosure or removal of classified information by officers, employees, contractors, or consultants of: (1) the United States, or (2) a recipient of a tangible thing production order.

Allows FISA courts to appoint amicus curiae to assist in the consideration of certain matters.

Allows the FISA court of review to certify a question of law to be reviewed by the Supreme Court. Permits the Supreme Court to appoint FISA amicus curiae or other persons to provide briefings or other assistance upon such a certification.

Establishes procedures for a lawfully authorized targeting of a non-U.S. person previously believed to be located outside the United States to continue for a period not to exceed 72 hours from the time that the non-U.S. person is reasonably believed to be located inside the United States. Requires an element of the intelligence community, as a condition to exercising such authority, to: (1) determine that the target of the acquisition has communicated or received, or will communicate or receive, foreign intelligence information relevant to an existing exigent circumstance; (2) notify the Attorney General; and (3) request, as soon as practicable, the employment of emergency electronic surveillance or emergency physical search under appropriate FISA standards.

Directs each head of an element of the intelligence community to review, at least every five years, the Attorney General-approved procedures required by the intelligence collection provisions of Executive Order 12333. Requires the heads of such elements, in coordination with the Attorney General and the Director of National Intelligence, to propose any appropriate modifications to existing procedures and to provide any modified procedures to Congress.

Expands the definition of "agent of a foreign power" to include a non-U.S. person who: (1) acts in the United States for or on behalf of a foreign power engaged in clandestine intelligence activities in the United States contrary to U.S. interests or as an officer, employee, or member of a foreign power, irrespective of whether the person is inside the United States; or (2) knowingly aids, abets, or conspires with any person engaging in an international proliferation of weapons of mass destruction on behalf of a foreign power or conducting activities in preparation for such proliferation.

Amends the USA PATRIOT Improvement and Reauthorization Act of 2005 and the Intelligence Reform and Terrorism Prevention Act of 2004 to extend until December 15, 2019, FISA authorities concerning: (1) the production of business records, including call detail records and other tangible things; (2) roving electronic surveillance orders; and (3) a revised definition of "agent of a foreign power" that includes any non-U.S. persons who engage in international terrorism or preparatory activities (commonly referred to as the "lone wolf" provision). Provides for such authorities, upon the enactment of this Act, to read as they read on May 31, 2015.

Actions Timeline

- **May 23, 2015:** Introduced in Senate
- **May 23, 2015:** Read twice and referred to the Committee on the Judiciary.