

AMENDMENT NO.

Calendar No.

Purpose: To clarify that the authority under title VII of the Foreign Intelligence Surveillance Act of 1978 does not extend to purely domestic communications.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 2248

To amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. ROCKEFELLER
(for himself and Mr. BOND)

Viz:

- 1 On page 6, line 13, strike “and” and all that follows
- 2 through page 10, line 5, and insert the following:
- 3 “(4) shall not intentionally acquire any commu-
- 4 nication as to which the sender and all intended re-
- 5 cipients are known at the time of the acquisition to
- 6 be located in the United States; and

1 “(5) shall be conducted in a manner consistent
2 with the fourth amendment to the Constitution of
3 the United States.

4 “(e) CONDUCT OF ACQUISITION.—An acquisition au-
5 thorized under subsection (a) may be conducted only in
6 accordance with—

7 “(1) a certification made by the Attorney Gen-
8 eral and the Director of National Intelligence pursu-
9 ant to subsection (f); and

10 “(2) the targeting and minimization procedures
11 required pursuant to subsections (d) and (e).

12 “(d) TARGETING PROCEDURES.—

13 “(1) REQUIREMENT TO ADOPT.—The Attorney
14 General, in consultation with the Director of Na-
15 tional Intelligence, shall adopt targeting procedures
16 that are reasonably designed to ensure that any ac-
17 quisition authorized under subsection (a) is limited
18 to targeting persons reasonably believed to be lo-
19 cated outside the United States and does not result
20 in the intentional acquisition of any communication
21 as to which the sender and all intended recipients
22 are known at the time of the acquisition to be lo-
23 cated in the United States.

1 “(2) JUDICIAL REVIEW.—The procedures re-
2 ferred to in paragraph (1) shall be subject to judicial
3 review pursuant to subsection (h).

4 “(e) MINIMIZATION PROCEDURES.—

5 “(1) REQUIREMENT TO ADOPT.—The Attorney
6 General, in consultation with the Director of Na-
7 tional Intelligence, shall adopt, consistent with the
8 requirements of section 101(h) or section 301(4),
9 minimization procedures for acquisitions authorized
10 under subsection (a).

11 “(2) JUDICIAL REVIEW.—The minimization
12 procedures required by this subsection shall be sub-
13 ject to judicial review pursuant to subsection (h).

14 “(f) CERTIFICATION.—

15 “(1) IN GENERAL.—

16 “(A) REQUIREMENT.—Subject to subpara-
17 graph (B), prior to the initiation of an acquisi-
18 tion authorized under subsection (a), the Attor-
19 ney General and the Director of National Intel-
20 ligence shall provide, under oath, a written cer-
21 tification, as described in this subsection.

22 “(B) EXCEPTION.—If the Attorney Gen-
23 eral and the Director of National Intelligence
24 determine that immediate action by the Govern-
25 ment is required and time does not permit the

1 preparation of a certification under this sub-
2 section prior to the initiation of an acquisition,
3 the Attorney General and the Director of Na-
4 tional Intelligence shall prepare such certifi-
5 cation, including such determination, as soon as
6 possible but in no event more than 168 hours
7 after such determination is made.

8 “(2) REQUIREMENTS.—A certification made
9 under this subsection shall—

10 “(A) attest that—

11 “(i) there are reasonable procedures
12 in place for determining that the acquisi-
13 tion authorized under subsection (a) is tar-
14 geted at persons reasonably believed to be
15 located outside the United States and that
16 such procedures have been approved by, or
17 will be submitted in not more than 5 days
18 for approval by, the Foreign Intelligence
19 Surveillance Court pursuant to subsection
20 (h);

21 “(ii) there are reasonable procedures
22 in place for determining that the acquisi-
23 tion authorized under subsection (a) does
24 not result in the intentional acquisition of
25 any communication as to which the sender

1 and all intended recipients are known at
2 the time of the acquisition to be located in
3 the United States, and that such proce-
4 dures have been approved by, or will be
5 submitted in not more than 5 days for ap-
6 proval by, the Foreign Intelligence Surveil-
7 lance Court pursuant to subsection (h);

8 “(iii) the procedures referred to in
9 clauses (i) and (ii) are consistent with the
10 requirements of the fourth amendment to
11 the Constitution of the United States and
12 do not permit the intentional targeting of
13 any person who is known at the time of ac-
14 quisition to be located in the United States
15 or the intentional acquisition of any com-
16 munication as to which the sender and all
17 intended recipients are known at the time
18 of acquisition to be located in the United
19 States;

20 “(iv) a significant purpose of the ac-
21 quisition is to obtain foreign intelligence
22 information;

23 “(v) the minimization procedures to
24 be used with respect to such acquisition—

1 “(I) meet the definition of mini-
2 mization procedures under section
3 101(h) or section 301(4); and

4 “(II) have been approved by, or
5 will be submitted in not more than 5
6 days for approval by, the Foreign In-
7 telligence Surveillance Court pursuant
8 to subsection (h);

9 “(vi) the acquisition involves obtaining
10 the foreign intelligence information from or
11 with the assistance of an electronic com-
12 munication service provider; and

13 “(vii) the acquisition does not con-
14 stitute electronic surveillance, as limited by
15 section 701; and

16 On page 17, line 2, strike “States.” and insert
17 “States and does not result in the intentional acquisition
18 of any communication as to which the sender and all in-
19 tended recipients are known at the time of the acquisition
20 to be located in the United States.”.