

AMENDMENT NO.

Calendar No.

Purpose: To improve the bill.

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

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

Viz:

1 On page 2, line 5, strike “Targeting the communica-
2 tions of”, and insert “Additional Procedures regarding”

3 On page 3, strike lines 1 through 5 and insert the
4 following:

1 **“TITLE VII—ADDITIONAL PROCE-**
2 **DURES REGARDING CERTAIN**
3 **PERSONS OUTSIDE THE**
4 **UNITED STATES”.**

5 On page 4, beginning on line 20, strike “communica-
6 tions” and insert “communication”.

7 On page 5, strike lines 15 through 17 and insert the
8 following:

9 **“SEC. 703. PROCEDURES FOR TARGETING CERTAIN PER-**
10 **SONS OUTSIDE THE UNITED STATES OTHER**
11 **THAN UNITED STATES PERSONS.”.**

12 On page 6, line 5, insert “located” after “be”.

13 On page 6, line 9, strike “and”.

14 On page 6, between lines 9 and 10, insert the fol-
15 lowing:

16 “(3) may not intentionally target a United
17 States person reasonably believed to be located out-
18 side the United States, except in accordance with
19 sections 704 or 705; and

- 1 On page 6, line 10, strike "(3)" and insert "(4)".
- 2 Beginning on page 6, strike line 13 and all that fol-
3 lows through page 8, line 24.
- 4 On page 9, line 1, strike "(d)" and insert "(e)".
- 5 On page 9, line 6, strike "(g)" and insert "(f)".
- 6 On page 9, line 8, strike "(e) and (f)" and insert "(d)
7 and (e)".
- 8 On page 9, line 9, strike "(e)" and insert "(d)".
- 9 On page 9, line 19, strike "(i)" and insert "(h)".
- 10 On page 9, line 20, strike "(f)" and insert "(e)".
- 11 On page 9, line 24, insert "or section 301(4)" after
12 "101(h)".
- 13 On page 10, line 5, strike "(i)" and insert "(h)".
- 14 On page 10, line 6, strike "(g)" and insert "(f)".

- 1 On page 11, line 12, strike "(i)" and insert "(h)".
- 2 On page 12, line 3, insert "or section 301(4)" after
3 "101(h)".
- 4 On page 12, line 8, strike "(i)" and insert "(h)".
- 5 On page 13, line 15, strike "(i)" and insert "(h)".
- 6 On page 13, line 16, strike "(h)" and insert "(g)".
- 7 On page 18, line 5, strike "(i)" and insert "(h)".
- 8 On page 18, line 11, strike "(d) or" and insert "(c)
9 and the".
- 10 On page 18, beginning on line 12, strike "(e) and
11 (f)" and insert "(d) and (e)".
- 12 On page 18, line 21, strike "(g)" and insert "(f)".
- 13 On page 19, line 1, strike "(e)" and insert "(d)".
- 14 On page 19, line 8, strike "(f)" and insert "(e)".

- 1 On page 19, line 10, insert “or section 301(4)” after
2 “101(h)”.
- 3 On page 19, line 13, strike “(g)” and insert “(f)”.
- 4 On page 19, line 16, strike “(e) and (f)” and insert
5 “(d) and (e)”.
- 6 On page 19, line 25, strike “(g)” and insert “(f)”.
- 7 On page 20, line 2, strike “(e) and (f)” and insert
8 “(d) and (e)”.
- 9 On page 21, line 22, strike “(j)” and insert “(i)”.
- 10 On page 21, line 25, strike “(k)” and insert “(j)”.
- 11 On page 22, line 20, strike “(l) OVERSIGHT.—” and
12 insert “(k) ASSESSMENTS AND REVIEWS.—”
- 13 On page 23, line 11, strike “(a)—” and insert “(a)
14 with respect to their department, agency, or element—”.

1 On page 23, line 13, strike “of their agency or ele-
2 ment”.

3 On page 23, line 15, strike “(e) and (f)” and insert
4 “(d) and (e)”.

5 On page 24, beginning on line 4, strike “and the
6 number of persons located in the United States whose
7 communications were reviewed” and insert “and, to the
8 extent possible, whether their communications were re-
9 viewed”.

10 On page 25, beginning on line 11, strike “and the
11 number of persons located in the United States whose
12 communications were reviewed” and insert “and, to the
13 extent possible, whether their communications were re-
14 viewed; and

15 “(iv) a description of any procedures
16 developed by the head of an element of the
17 Intelligence Community and approved by
18 the Director of National Intelligence to as-
19 sess, in a manner consistent with national
20 security, operational requirements and the
21 privacy interests of the United States per-
22 sons, the extent to which the acquisitions

1 authorized under subsection (a) acquire
2 the communications of United States per-
3 sons, as well as the results of any such as-
4 sessment.

5 Beginning on page 26, strike line 3 and all that fol-
6 lows through page 28, line 17, and insert the following:

7 **“SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED**
8 **STATES OF UNITED STATES PERSONS OUT-**
9 **SIDE THE UNITED STATES.**

10 **“(a) JURISDICTION OF THE FOREIGN INTELLIGENCE**
11 **SURVEILLANCE COURT.—**

12 **“(1) IN GENERAL.—**The Foreign Intelligence
13 Surveillance Court shall have jurisdiction to enter an
14 order approving the targeting of a United States
15 person reasonably believed to be located outside the
16 United States to acquire foreign intelligence infor-
17 mation, if such acquisition constitutes electronic sur-
18 veillance (as defined in section 101(f), regardless of
19 the limitation of section 701) or the acquisition of
20 stored electronic communications or stored electronic
21 data that requires an order under this Act, and such
22 acquisition is conducted within the United States.

23 **“(2) LIMITATION.—**In the event that a United
24 States person targeted under this subsection is rea-

1 sonably believed to be located in the United States
2 during the pendency of an order issued pursuant to
3 subsection (c), such acquisition shall cease until au-
4 thority, other than under this section, is obtained
5 pursuant to this Act or the targeted United States
6 person is again reasonably believed to be located out-
7 side the United States during the pendency of an
8 order issued pursuant to subsection (c).

9 “(b) APPLICATION.—

10 “(1) IN GENERAL.—Each application for an
11 order under this section shall be made by a Federal
12 officer in writing upon oath or affirmation to a
13 judge having jurisdiction under subsection (a)(1).
14 Each application shall require the approval of the
15 Attorney General based upon the Attorney General’s
16 finding that it satisfies the criteria and requirements
17 of such application, as set forth in this section, and
18 shall include—

19 “(A) the identity of the Federal officer
20 making the application;

21 “(B) the identity, if known, or a descrip-
22 tion of the United States person target of the
23 acquisition;

1 “(C) a statement of the facts and cir-
2 cumstances relied upon to justify the appli-
3 cant’s belief that the target of acquisition is—

4 “(i) a United States person reason-
5 ably believed to be located outside the
6 United States; and

7 “(ii) a foreign power, an agent of a
8 foreign power, or an officer or employee of
9 a foreign power;

10 “(D) a statement of the proposed mini-
11 mization procedures consistent with the require-
12 ments of section 101(h) or section 301(4);

13 “(E) a description of the nature of the in-
14 formation sought and the type of communica-
15 tions or activities to be subjected to acquisition;

16 “(F) a certification made by the Attorney
17 General or an official specified in section
18 104(a)(6) that—

19 “(i) the certifying official deems the
20 information sought to be foreign intel-
21 ligence information;

22 “(ii) a significant purpose of the ac-
23 quisition is to obtain foreign intelligence
24 information;

1 “(iii) such information cannot reason-
2 ably be obtained by normal investigative
3 techniques;

4 “(iv) designates the type of foreign in-
5 telligence information being sought accord-
6 ing to the categories described in section
7 101(e); and

8 “(v) includes a statement of the basis
9 for the certification that—

10 “(I) the information sought is
11 the type of foreign intelligence infor-
12 mation designated; and

13 “(II) such information cannot
14 reasonably be obtained by normal in-
15 vestigative techniques.

16 “(G) a summary statement of the means
17 by which the acquisition will be conducted and
18 whether physical entry is required to effect the
19 acquisition;

20 “(H) the identity of any electronic commu-
21 nication service provider necessary to effect the
22 acquisition, provided, however, that the applica-
23 tion is not required to identify the specific fa-
24 cilities, places, premises, or property at which

1 the acquisition authorized under this section
2 will be directed or conducted;

3 “(I) a statement of the facts concerning
4 any previous applications that have been made
5 to any judge of the Foreign Intelligence Surveil-
6 lance Court involving the United States person
7 specified in the application and the action taken
8 on each previous application; and

9 “(J) a statement of the period of time for
10 which the acquisition is required to be main-
11 tained, provided that such period of time shall
12 not exceed 90 days per application.

13 “(2) OTHER REQUIREMENTS OF THE ATTOR-
14 NEY GENERAL.—The Attorney General may require
15 any other affidavit or certification from any other
16 officer in connection with the application.

17 “(3) OTHER REQUIREMENTS OF THE JUDGE.—
18 The judge may require the applicant to furnish such
19 other information as may be necessary to make the
20 findings required by subsection (c)(1).

21 “(c) ORDER.—

22 “(1) FINDINGS.—Upon an application made
23 pursuant to subsection (b), the Foreign Intelligence
24 Surveillance Court shall enter an ex parte order as

1 requested or as modified approving the acquisition if
2 the Court finds that—

3 “(A) the application has been made by a
4 Federal officer and approved by the Attorney
5 General;

6 “(B) on the basis of the facts submitted by
7 the applicant, there is probable cause to believe
8 that the specified target of the acquisition is—

9 “(i) a person reasonably believed to be
10 located outside the United States; and

11 “(ii) a foreign power, an agent of a
12 foreign power, or an officer or employee of
13 a foreign power;

14 “(C) the proposed minimization procedures
15 meet the definition of minimization procedures
16 under section 101(h) or section 301(4); and

17 “(D) the application which has been filed
18 contains all statements and certifications re-
19 quired by subsection (b) and the certification or
20 certifications are not clearly erroneous on the
21 basis of the statement made under subsection
22 (b) (1)(F) and any other information furnished
23 under subsection (b)(3).

24 “(2) PROBABLE CAUSE.—In determining
25 whether or not probable cause exists for purposes of

1 an order under paragraph (1), a judge having juris-
2 diction under subsection (a)(1) may consider past
3 activities of the target, as well as facts and cir-
4 cumstances relating to current or future activities of
5 the target. However, no United States person may
6 be considered a foreign power, agent of a foreign
7 power, or officer or employee of a foreign power
8 solely upon the basis of activities protected by the
9 first amendment to the Constitution of the United
10 States.

11 “(3) REVIEW.—

12 “(A) LIMITATION ON REVIEW.—Review by
13 a judge having jurisdiction under subsection
14 (a)(1) shall be limited to that required to make
15 the findings described in paragraph (1).

16 “(B) REVIEW OF PROBABLE CAUSE.—If
17 the judge determines that the facts submitted
18 under subsection (b) are insufficient to estab-
19 lish probable cause to issue an order under
20 paragraph (1), the judge shall enter an order so
21 stating and provide a written statement for the
22 record of the reasons for such determination.
23 The Government may appeal an order under
24 this clause pursuant to subsection (f).

1 “(C) REVIEW OF MINIMIZATION PROCE-
2 DURES.—If the judge determines that the pro-
3 posed minimization procedures required under
4 paragraph (1)(C) do not meet the definition of
5 minimization procedures under section 101(h)
6 or section 301(4), the judge shall enter an
7 order so stating and provide a written state-
8 ment for the record of the reasons for such de-
9 termination. The Government may appeal an
10 order under this clause pursuant to subsection
11 (f).

12 “(D) REVIEW OF CERTIFICATION.—If the
13 judge determines that an application required
14 by subsection (2) does not contain all of the re-
15 quired elements, or that the certification or cer-
16 tifications are clearly erroneous on the basis of
17 the statement made under subsection
18 (b)(1)(F)(v) and any other information fur-
19 nished under subsection (b)(3), the judge shall
20 enter an order so stating and provide a written
21 statement for the record of the reasons for such
22 determination. The Government may appeal an
23 order under this clause pursuant to subsection
24 (f).

1 “(4) SPECIFICATIONS.—An order approving an
2 acquisition under this subsection shall specify—

3 “(A) the identity, if known, or a descrip-
4 tion of the United States person target of the
5 acquisition identified or described in the appli-
6 cation pursuant to subsection (b)(1)(B);

7 “(B) if provided in the application pursu-
8 ant to subsection (b)(1)(H), the nature and lo-
9 cation of each of the facilities or places at
10 which the acquisition will be directed;

11 “(C) the nature of the information sought
12 to be acquired and the type of communications
13 or activities to be subjected to acquisition;

14 “(D) the means by which the acquisition
15 will be conducted and whether physical entry is
16 required to effect the acquisition; and

17 “(E) the period of time during which the
18 acquisition is approved.

19 “(5) DIRECTIONS.—An order approving acquisi-
20 tions under this subsection shall direct—

21 “(A) that the minimization procedures be
22 followed;

23 “(B) an electronic communication service
24 provider to provide to the Government forthwith
25 all information, facilities, or assistance nec-

1 essary to accomplish the acquisition authorized
2 under this subsection in a manner that will pro-
3 tect the secrecy of the acquisition and produce
4 a minimum of interference with the services
5 that such electronic communication service pro-
6 vider is providing to the target;

7 “(C) an electronic communication service
8 provider to maintain under security procedures
9 approved by the Attorney General any records
10 concerning the acquisition or the aid furnished
11 that such electronic communication service pro-
12 vider wishes to maintain; and

13 “(D) that the Government compensate, at
14 the prevailing rate, such electronic communica-
15 tion service provider for providing such infor-
16 mation, facilities, or assistance.

17 “(6) DURATION.—An order approved under this
18 paragraph shall be effective for a period not to ex-
19 ceed 90 days and such order may be renewed for ad-
20 ditional 90-day periods upon submission of renewal
21 applications meeting the requirements of subsection
22 (b).

23 “(7) COMPLIANCE.—At or prior to the end of
24 the period of time for which an acquisition is ap-
25 proved by an order or extension under this section,

1 the judge may assess compliance with the minimiza-
2 tion procedures by reviewing the circumstances
3 under which information concerning United States
4 persons was acquired, retained, or disseminated.

5 “(d) EMERGENCY AUTHORIZATION.—

6 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
7 TION.—Notwithstanding any other provision of this
8 Act, if the Attorney General reasonably determines
9 that—

10 “(A) an emergency situation exists with re-
11 spect to the acquisition of foreign intelligence
12 information for which an order may be obtained
13 under subsection (c) before an order author-
14 izing such acquisition can with due diligence be
15 obtained; and

16 “(B) the factual basis for issuance of an
17 order under this subsection to approve such ac-
18 quisition exists,

19 the Attorney General may authorize the emergency
20 acquisition if a judge having jurisdiction under sub-
21 section (a)(1) is informed by the Attorney General,
22 or a designee of the Attorney General, at the time
23 of such authorization that the decision has been
24 made to conduct such acquisition and if an applica-
25 tion in accordance with this subsection is made to a

1 judge of the Foreign Intelligence Surveillance Court
2 as soon as practicable, but not more than 168 hours
3 after the Attorney General authorizes such acquisi-
4 tion.

5 “(2) MINIMIZATION PROCEDURES.—If the At-
6 torney General authorizes such emergency acquisi-
7 tion, the Attorney General shall require that the
8 minimization procedures required by this subsection
9 for the issuance of a judicial order be followed.

10 “(3) TERMINATION OF EMERGENCY AUTHOR-
11 IZATION.—In the absence of a judicial order approv-
12 ing such acquisition, the acquisition shall terminate
13 when the information sought is obtained, when the
14 application for the order is denied, or after the expi-
15 ration of 168 hours from the time of authorization
16 by the Attorney General, whichever is earliest.

17 “(4) USE OF INFORMATION.—In the event that
18 such application for approval is denied, or in any
19 other case where the acquisition is terminated and
20 no order is issued approving the acquisition, no in-
21 formation obtained or evidence derived from such ac-
22 quisition, except under circumstances in which the
23 target of the acquisition is determined not to be a
24 United States person during the pendency of the
25 168-hour emergency acquisition period, shall be re-

1 ceived in evidence or otherwise disclosed in any trial,
2 hearing, or other proceeding in or before any court,
3 grand jury, department, office, agency, regulatory
4 body, legislative committee, or other authority of the
5 United States, a State, or political subdivision there-
6 of, and no information concerning any United States
7 person acquired from such acquisition shall subse-
8 quently be used or disclosed in any other manner by
9 Federal officers or employees without the consent of
10 such person, except with the approval of the Attor-
11 ney General if the information indicates a threat of
12 death or serious bodily harm to any person.

13 “(e) RELEASE FROM LIABILITY.—Notwithstanding
14 any other law, no cause of action shall lie in any court
15 against any electronic communication service provider for
16 providing any information, facilities, or assistance in ac-
17 cordance with an order or request for emergency assist-
18 ance issued pursuant to subsections (c) or (d).

19 “(f) APPEAL.—

20 “(1) APPEAL TO THE FOREIGN INTELLIGENCE
21 SURVEILLANCE COURT OF REVIEW.—The Govern-
22 ment may file an appeal with the Foreign Intel-
23 ligence Surveillance Court of Review for review of an
24 order issued pursuant to subsection (c). The Court
25 of Review shall have jurisdiction to consider such ap-

1 peal and shall provide a written statement for the
2 record of the reasons for a decision under this para-
3 graph.

4 “(2) CERTIORARI TO THE SUPREME COURT.—
5 The Government may file a petition for a writ of
6 certiorari for review of the decision of the Court of
7 Review issued under paragraph (1). The record for
8 such review shall be transmitted under seal to the
9 Supreme Court of the United States, which shall
10 have jurisdiction to review such decision.

11 **“SEC. 705. OTHER ACQUISITIONS TARGETING UNITED**
12 **STATES PERSONS OUTSIDE THE UNITED**
13 **STATES.**

14 “(a) JURISDICTION AND SCOPE.—

15 “(1) JURISDICTION.—The Foreign Intelligence
16 Surveillance Court shall have jurisdiction to enter an
17 order pursuant to subsection (c).

18 “(2) SCOPE.—No element of the intelligence
19 community may intentionally target, for the purpose
20 of acquiring foreign intelligence information, a
21 United States person reasonably believed to be lo-
22 cated outside the United States under circumstances
23 in which the targeted United States person has a
24 reasonable expectation of privacy and a warrant
25 would be required if the acquisition were conducted

1 inside the United States for law enforcement pur-
2 poses, unless a judge of the Foreign Intelligence
3 Surveillance Court has entered an order or the At-
4 torney General has authorized an emergency acquisi-
5 tion pursuant to subsections (c) or (d) or any other
6 provision of this Act.

7 “(3) LIMITATIONS.—

8 “(A) MOVING OR MISIDENTIFIED TAR-
9 GETS.—In the event that the targeted United
10 States person is reasonably believed to be in the
11 United States during the pendency of an order
12 issued pursuant to subsection (c), such acquisi-
13 tion shall cease until authority is obtained pur-
14 suant to this Act or the targeted United States
15 person is again reasonably believed to be lo-
16 cated outside the United States during the
17 pendency of an order issued pursuant to sub-
18 section (c).

19 “(B) APPLICABILITY.—If the acquisition
20 could be authorized under section 704, the pro-
21 cedures of section 704 shall apply, unless an
22 order or emergency acquisition authority has
23 been obtained under a provision of this Act
24 other than under this section.

1 “(b) APPLICATION.—Each application for an order
2 under this section shall be made by a Federal officer in
3 writing upon oath or affirmation to a judge having juris-
4 diction under subsection (a)(1). Each application shall re-
5 quire the approval of the Attorney General based upon the
6 Attorney General’s finding that it satisfies the criteria and
7 requirements of such application as set forth in this sec-
8 tion and shall include—

9 “(1) the identity, if known, or a description of
10 the specific United States person target of the acqui-
11 sition;

12 “(2) a statement of the facts and circumstances
13 relied upon to justify the applicant’s belief that the
14 target of the acquisition is—

15 “(A) a United States person reasonably be-
16 lieved to be located outside the United States;
17 and

18 “(B) a foreign power, an agent of a foreign
19 power, or an officer or employee of a foreign
20 power;

21 “(3) a statement of the proposed minimization
22 procedures consistent with the requirements of sec-
23 tion 101(h) or section 301(4);

24 “(4) a statement of the facts concerning any
25 previous applications that have been made to any

1 judge of the Foreign Intelligence Surveillance Court
2 involving the United States person specified in the
3 application and the action taken on each previous
4 application; and

5 “(5) a statement of the period of time for which
6 the acquisition is required to be maintained, pro-
7 vided that such period of time shall not exceed 90
8 days per application.

9 “(c) ORDER.—

10 “(1) FINDINGS.—If, upon an application made
11 pursuant to subsection (b), a judge having jurisdic-
12 tion under subsection (a) finds that—

13 “(A) on the basis of the facts submitted by
14 the applicant there is probable cause to believe
15 that the specified target of the acquisition is—

16 “(i) a person reasonably believed to be
17 located outside the United States; and

18 “(ii) a foreign power, an agent of a
19 foreign power, or an officer or employee of
20 a foreign power; and

21 “(B) the proposed minimization proce-
22 dures, with respect to their dissemination provi-
23 sions, meet the definition of minimization pro-
24 cedures under section 101(h) or section 301(4),
25 the Court shall issue an ex parte order so stating.

1 “(2) PROBABLE CAUSE.—In determining
2 whether or not probable cause exists for purposes of
3 an order under paragraph (1)(A), a judge having ju-
4 risdiction under subsection (a)(1) may consider past
5 activities of the target, as well as facts and cir-
6 cumstances relating to current or future activities of
7 the target. However, no United States person may
8 be considered a foreign power, agent of a foreign
9 power, or officer or employee of a foreign power
10 solely upon the basis of activities protected by the
11 first amendment to the Constitution of the United
12 States.

13 “(3) REVIEW.—

14 “(A) LIMITATIONS ON REVIEW.—Review
15 by a judge having jurisdiction under subsection
16 (a)(1) shall be limited to that required to make
17 the findings described in paragraph (1). The
18 judge shall not have jurisdiction to review the
19 means by which an acquisition under this sec-
20 tion may be conducted.

21 “(B) REVIEW OF PROBABLE CAUSE.—If
22 the judge determines that the facts submitted
23 under subsection (b) are insufficient to estab-
24 lish probable cause to issue an order under this
25 subsection, the judge shall enter an order so

1 stating and provide a written statement for the
2 record of the reasons for such determination.
3 The Government may appeal an order under
4 this clause pursuant to subsection (e).

5 “(C) REVIEW OF MINIMIZATION PROCE-
6 DURES.—If the judge determines that the mini-
7 mization procedures applicable to dissemination
8 of information obtained through an acquisition
9 under this subsection do not meet the definition
10 of minimization procedures under section
11 101(h) or section 301(4), the judge shall enter
12 an order so stating and provide a written state-
13 ment for the record of the reasons for such de-
14 termination. The Government may appeal an
15 order under this clause pursuant to subsection
16 (e).

17 “(4) DURATION.—An order under this para-
18 graph shall be effective for a period not to exceed 90
19 days and such order may be renewed for additional
20 90-day periods upon submission of renewal applica-
21 tions meeting the requirements of subsection (b).

22 “(5) COMPLIANCE.—At or prior to the end of
23 the period of time for which an order or extension
24 is granted under this section, the judge may assess
25 compliance with the minimization procedures by re-

1 viewing the circumstances under which information
2 concerning United States persons was disseminated,
3 provided that the judge may not inquire into the cir-
4 cumstances relating to the conduct of the acquisi-
5 tion.

6 “(d) EMERGENCY AUTHORIZATION.—

7 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-
8 TION.—Notwithstanding any other provision in this
9 subsection, if the Attorney General reasonably deter-
10 mines that—

11 “(A) an emergency situation exists with re-
12 spect to the acquisition of foreign intelligence
13 information for which an order may be obtained
14 under subsection (c) before an order under that
15 subsection may, with due diligence, be obtained;
16 and

17 “(B) the factual basis for issuance of an
18 order under this section exists,
19 the Attorney General may authorize the emergency
20 acquisition if a judge having jurisdiction under sub-
21 section (a)(1) is informed by the Attorney General
22 or a designee of the Attorney General at the time of
23 such authorization that the decision has been made
24 to conduct such acquisition and if an application in
25 accordance with this subsection is made to a judge

1 of the Foreign Intelligence Surveillance Court as
2 soon as practicable, but not more than 168 hours
3 after the Attorney General authorizes such acqui-
4 sition.

5 “(2) MINIMIZATION PROCEDURES.—If the At-
6 torney General authorizes such emergency acqui-
7 sition, the Attorney General shall require that the
8 minimization procedures required by this subsection
9 be followed.

10 “(3) TERMINATION OF EMERGENCY AUTHOR-
11 IZATION.—In the absence of an order under sub-
12 section (c), the acquisition shall terminate when the
13 information sought is obtained, if the application for
14 the order is denied, or after the expiration of 168
15 hours from the time of authorization by the Attor-
16 ney General; whichever is earliest.

17 “(4) USE OF INFORMATION.—In the event that
18 such application is denied, or in any other case
19 where the acquisition is terminated and no order is
20 issued approving the acquisition, no information ob-
21 tained or evidence derived from such acquisition, ex-
22 cept under circumstances in which the target of the
23 acquisition is determined not to be a United States
24 person during the pendency of the 168-hour emer-
25 gency acquisition period, shall be received in evi-

1 dence or otherwise disclosed in any trial, hearing, or
2 other proceeding in or before any court, grand jury,
3 department, office, agency, regulatory body, legisla-
4 tive committee, or other authority of the United
5 States, a State, or political subdivision thereof, and
6 no information concerning any United States person
7 acquired from such acquisition shall subsequently be
8 used or disclosed in any other manner by Federal of-
9 ficers or employees without the consent of such per-
10 son, except with the approval of the Attorney Gen-
11 eral if the information indicates a threat of death or
12 serious bodily harm to any person.

13 “(e) APPEAL.—

14 “(1) APPEAL TO THE COURT OF REVIEW.—The
15 Government may file an appeal with the Foreign In-
16 telligence Surveillance Court of Review for review of
17 an order issued pursuant to subsection (c). The
18 Court of Review shall have jurisdiction to consider
19 such appeal and shall provide a written statement
20 for the record of the reasons for a decision under
21 this paragraph.

22 “(2) CERTIORARI TO THE SUPREME COURT.—
23 The Government may file a petition for a writ of
24 certiorari for review of the decision of the Court of
25 Review issued under paragraph (1). The record for

1 such review shall be transmitted under seal to the
2 Supreme Court of the United States, which shall
3 have jurisdiction to review such decision.

4 “(f) JOINT APPLICATIONS AND ORDERS.—If an ac-
5 quisition targeting a United States person under section
6 704 or this section is proposed to be conducted both inside
7 and outside the United States, a judge having jurisdiction
8 under subsection (a)(1) or section 704(a)(1) may issue si-
9 multaneously, upon the request of the Government in a
10 joint application complying with the requirements of sub-
11 section (b) or section 704(b), orders under subsection (b)
12 or section 704(b), as applicable.

13 “(g) CONCURRENT AUTHORIZATION.—If an order
14 authorizing electronic surveillance or physical search has
15 been obtained under section 105 or 304 and that order
16 is still in effect, the Attorney General may authorize, with-
17 out an order under this section or section 704, an acquisi-
18 tion of foreign intelligence information targeting that
19 United States person while such person is reasonably be-
20 lieved to be located outside the United States.

21 **“SEC. 706. USE OF INFORMATION ACQUIRED UNDER THIS**

22 **TITLE.**

23 “(a) INFORMATION ACQUIRED UNDER SECTION
24 703.—Information acquired from an acquisition con-
25 ducted under section 703 shall be deemed to be informa-

1 tion acquired from an electronic surveillance pursuant to
2 title I for purposes of section 106, except for the purposes
3 of subsection (j) of such section.

4 “(b) INFORMATION ACQUIRED UNDER SECTION
5 704.—Information acquired from an acquisition con-
6 ducted under section 704 shall be deemed to be informa-
7 tion acquired from an electronic surveillance pursuant to
8 title I for purposes of section 106.

9 **“SEC. 707. CONGRESSIONAL OVERSIGHT.**

10 “(a) SEMIANNUAL REPORT.—Not less frequently
11 than once every 6 months, the Attorney General shall fully
12 inform, in a manner consistent with national security, the
13 congressional intelligence committees, the Committee on
14 the Judiciary of the Senate, and the Committee on the
15 Judiciary of the House of Representatives, concerning the
16 implementation of this title.

17 “(b) CONTENT.—Each report made under subpara-
18 graph (a) shall include—

19 “(1) with respect to section 703—

20 “(A) any certifications made under sub-
21 section 703(f) during the reporting period;

22 “(B) any directives issued under sub-
23 section 703(g) during the reporting period;

24 “(C) a description of the judicial review
25 during the reporting period of any such certifi-

1 cations and targeting and minimization proce-
2 dures utilized with respect to such acquisition,
3 including a copy of any order or pleading in
4 connection with such review that contains a sig-
5 nificant legal interpretation of the provisions of
6 this section;

7 “(D) any actions taken to challenge or en-
8 force a directive under paragraphs (4) or (5) of
9 section 703(g);

10 “(E) any compliance reviews conducted by
11 the Department of Justice or the Office of the
12 Director of National Intelligence of acquisitions
13 authorized under subsection 703(a);

14 “(F) a description of any incidents of non-
15 compliance with a directive issued by the Attor-
16 ney General and the Director of National Intel-
17 ligence under subsection 703(g), including—

18 “(i) incidents of noncompliance by an
19 element of the intelligence community with
20 procedures adopted pursuant to sub-
21 sections (d) and (e) of section 703; and

22 “(ii) incidents of noncompliance by a
23 specified person to whom the Attorney
24 General and Director of National Intel-

1 ligence issued a directive under subsection
2 703(g);

3 “(G) any procedures implementing this
4 section; and

5 “(H) any annual review conducted pursu-
6 ant to section 703(k)(3);

7 “(2) with respect to section 704—

8 “(A) the total number of applications made
9 for orders under section 704(b);

10 “(B) the total number of such orders ei-
11 ther granted, modified, or denied; and

12 “(C) the total number of emergency acqui-
13 sitions authorized by the Attorney General
14 under section 704(d) and the total number of
15 subsequent orders approving or denying such
16 acquisitions; and

17 “(3) with respect to section 705—

18 “(A) the total number of applications made
19 for orders under 705(b);

20 “(B) the total number of such orders ei-
21 ther granted, modified, or denied; and

22 “(C) the total number of emergency acqui-
23 sitions authorized by the Attorney General
24 under subsection 705(d) and the total number

1 of subsequent orders approving or denying such
2 applications.”.

3 (b) TABLE OF CONTENTS.—The table of contents in
4 the first section of the Foreign Intelligence Surveillance
5 Act of 1978 (50 U.S.C. 1801 et. seq.) is amended—

6 (1) by striking the item relating to title VII;

7 (2) by striking the item relating to section 701;

8 and

9 (3) by adding at the end the following:

“TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN
PERSONS OUTSIDE THE UNITED STATES

“Sec. 701. Limitation on definition of electronic surveillance.

“Sec. 702. Definitions.

“Sec. 703. Procedures for targeting certain persons outside the United States
other than United States persons.

“Sec. 704. Certain acquisitions inside the United States of United States per-
sons outside the United States.

“Sec. 705. Other acquisitions targeting United States persons outside the
United States.

“Sec. 706. Use of information acquired under title VII.

“Sec. 707. Congressional oversight.”.

10 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

11 (1) TITLE 18, UNITED STATES CODE.—

12 (A) SECTION 2232.—Section 2232(e) of
13 title 18, United States Code, is amended by in-
14 serting “(as defined in section 101(f) of the
15 Foreign Intelligence Surveillance Act of 1978,
16 regardless of the limitation of section 701 of
17 that Act)” after “electronic surveillance”.

18 (B) SECTION 2511.—Section
19 2511(2)(a)(ii)(A) of title 18, United States

1 Code, is amended by inserting “or a court order
2 pursuant to section 705 of the Foreign Intel-
3 ligence Surveillance Act of 1978” after “assist-
4 ance”.

5 (2) FOREIGN INTELLIGENCE SURVEILLANCE
6 ACT OF 1978.—

7 (A) SECTION 109.—Section 109 of the For-
8 eign Intelligence Surveillance Act of 1978 (50
9 U.S.C. 1809) is amended by adding at the end
10 the following:

11 “(e) DEFINITION.—For the purpose of this section,
12 the term ‘electronic surveillance’ means electronic surveil-
13 lance as defined in section 101(f) of this Act regardless
14 of the limitation of section 701 of this Act.”.

15 (B) SECTION 601.—Section 601(a)(1) of
16 the Foreign Intelligence Surveillance Act of
17 1978 is amended by striking subparagraphs (C)
18 and (D) and inserting the following:

19 “(C) pen registers under section 402;

20 “(D) access to records under section 501;

21 “(E) acquisitions under section 704; and

22 “(F) acquisitions under section 705;”.

23 (d) TERMINATION OF AUTHORITY.—

1 On page 29, line 7, insert “Section 704(e) of the For-
2 eign Intelligence Surveillance Act of 1978 (as amended by
3 subsection (a)) shall remain in effect with respect to an
4 order or request for emergency assistance under that sec-
5 tion.” after “fect.”

6 On page 29, line 22, strike “Chapters 119 and 121”
7 and insert “The procedures of chapters 119, 121, and
8 206”.

9 On page 30, before line 7, insert the following:

10 (c) CONFORMING AMENDMENTS.—Section 2511(2)
11 of title 18, United States Code, is amended in paragraph
12 (f), by striking “, as defined in section 101 of such Act,”
13 and inserting “(as defined in section 101(f) of such Act
14 regardless of the limitation of section 701 of such Act)”.

15 On page 33, beginning on line 16, strike “General—
16 ” and insert “General reasonably—”.

17 On page 37, line 22, strike “General—” and insert
18 “General reasonably—”

19 On page 49, beginning on line 15, strike “commu-
20 nications” and insert “communication”.

1 On page 59, line 12, strike “704” and insert “706”.

2 On page 61, after line 14, insert:

3 (8) TRANSITION PROCEDURES CONCERNING
4 THE TARGETING OF UNITED STATES PERSONS OVER-
5 SEAS.—Any authorization in effect on the date of
6 enactment of this Act under section 2.5 of Executive
7 Order 12333 to intentionally target a United States
8 person reasonably believed to be located outside the
9 United States shall remain in effect, and shall con-
10 stitute a sufficient basis for conducting such an ac-
11 quisition targeting a United States person located
12 outside the United States until the earlier of—

13 (A) the date that authorization expires; or

14 (B) the date that is 90 days after the date
15 of the enactment of this Act.