

1 (b) TRANSITION PROCEDURES FOR FISA AMEND-  
2 MENTS ACT OF 2008 PROVISIONS.—

3 (1) ORDERS IN EFFECT ON DECEMBER 31,  
4 2011.—Notwithstanding any other provision of this  
5 Act, any amendment made by this Act, or the For-  
6 eign Intelligence Surveillance Act of 1978 (50  
7 U.S.C. 1801 et seq.), any order, authorization, or di-  
8 rective issued or made under title VII of the Foreign  
9 Intelligence Surveillance Act of 1978, as amended by  
10 section 101(a), shall continue in effect until the date  
11 of the expiration of such order, authorization, or di-  
12 rective.

13 (2) APPLICABILITY OF TITLE VII OF FISA TO  
14 CONTINUED ORDERS, AUTHORIZATIONS, DIREC-  
15 TIVES.—Notwithstanding any other provision of this  
16 Act, any amendment made by this Act, or the For-  
17 eign Intelligence Surveillance Act of 1978 (50  
18 U.S.C. 1801 et seq.), with respect to any order, au-  
19 thorization, or directive referred to in paragraph (1),  
20 title VII of such Act, as amended by section 101(a),  
21 shall continue to apply until the later of—

22 (A) the expiration of such order, authoriza-  
23 tion, or directive; or

1 (B) the date on which final judgement is  
2 entered for any petition or other litigation relat-  
3 ing to such order, authorization, or directive.

4 (3) CHALLENGE OF DIRECTIVES; PROTECTION  
5 FROM LIABILITY; USE OF INFORMATION.—Notwith-  
6 standing any other provision of this Act or of the  
7 Foreign Intelligence Surveillance Act of 1978 (50  
8 U.S.C. 1801 et seq.)—

9 (A) section 103(e) of such Act, as amended  
10 by section 113, shall continue to apply with re-  
11 spect to any directive issued pursuant to section  
12 702(h) of such Act, as added by section 101(a);

13 (B) section 702(h)(3) of such Act (as so  
14 added) shall continue to apply with respect to  
15 any directive issued pursuant to section 702(h)  
16 of such Act (as so added);

17 (C) section 703(e) of such Act (as so  
18 added) shall continue to apply with respect to  
19 an order or request for emergency assistance  
20 under that section;

21 (D) section 706 of such Act (as so added)  
22 shall continue to apply to an acquisition con-  
23 ducted under section 702 or 703 of such Act  
24 (as so added); and

1 (E) section 2511(2)(a)(ii)(A) of title 18,  
2 United States Code, as amended by section  
3 101(c)(1), shall continue to apply to an order  
4 issued pursuant to section 704 of the Foreign  
5 Intelligence Surveillance Act of 1978, as added  
6 by section 101(a).

7 (4) REPORTING REQUIREMENTS.—

8 (A) CONTINUED APPLICABILITY.—Not-  
9 withstanding any other provision of this Act or  
10 of the Foreign Intelligence Surveillance Act of  
11 1978 (50 U.S.C. 1801 et seq.), section 601(a)  
12 of such Act (50 U.S.C. 1871(a)), as amended  
13 by section 101(c)(2), and sections 702(l) and  
14 707 of such Act, as added by section 101(a),  
15 shall continue to apply until the date that the  
16 certification described in subparagraph (B) is  
17 submitted.

18 (B) CERTIFICATION.—The certification de-  
19 scribed in this subparagraph is a certification—

- 20 (i) made by the Attorney General;
- 21 (ii) submitted to the Select Committee  
22 on Intelligence of the Senate, the Perma-  
23 nent Select Committee on Intelligence of  
24 the House of Representatives, and the

1 Committees on the Judiciary of the Senate  
2 and the House of Representatives;

3 (iii) that states that there will be no  
4 further acquisitions carried out under title  
5 VII of the Foreign Intelligence Surveil-  
6 lance Act of 1978, as amended by section  
7 101(a), after the date of such certification;  
8 and

9 (iv) that states that the information  
10 required to be included in a review, assess-  
11 ment, or report under section 601 of such  
12 Act, as amended by section 101(c), or sec-  
13 tion 702(l) or 707 of such Act, as added  
14 by section 101(a), relating to any acqui-  
15 sition conducted under title VII of such Act,  
16 as amended by section 101(a), has been in-  
17 cluded in a review, assessment, or report  
18 under such section 601, 702(l), or 707.

19 (5) TRANSITION PROCEDURES CONCERNING  
20 THE TARGETING OF UNITED STATES PERSONS OVER-  
21 SEAS.—Any authorization in effect on the date of  
22 enactment of this Act under section 2.5 of Executive  
23 Order 12333 to intentionally target a United States  
24 person reasonably believed to be located outside the  
25 United States shall continue in effect, and shall con-

1       stitute a sufficient basis for conducting such an ac-  
2       quisition targeting a United States person located  
3       outside the United States until the earlier of—  
4               (A) the date that authorization expires; or  
5               (B) the date that is 90 days after the date  
6       of the enactment of this Act.

1  
2 ~~AMENDMENT: Purpose: To provide a complete substitute.~~

3  
4  
5 ~~Strike out all after the enacting clause and insert: H. R. 3773~~

6  
7 **To amend the Foreign Intelligence Surveillance Act of 1978**  
8 **to establish a procedure for authorizing certain acquisitions**  
9 **of foreign intelligence, and for other purposes.**

10  
11 **Referred to the Committee on \_\_\_\_\_ and ordered to be**  
12 **printed**

13 **Ordered to lie on the table and to be printed**

14 **AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO**  
15 **BE PROPOSED BY MR. ROCKEFELLER**

16 **Viz:**

17 **In lieu of the matter proposed to be inserted by the amendment of the House of**  
18 **Representatives to the amendment of the Senate to the text of the bill, insert the following:**

19 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

20 (a) Short Title.—This Act may be cited as the “Foreign Intelligence Surveillance Act of 1978  
21 Amendments Act of 2008” or the “FISA Amendments Act of 2008”.

22 (b) Table of Contents.—The table of contents for this Act is as follows:

23 Sec.1.Short title; table of contents.

24 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

25 Sec.101.Additional procedures regarding certain persons outside the United States.

26 Sec.102.Statement of exclusive means by which electronic surveillance and interception of  
27 ~~domestic certain~~ communications may be conducted.

28 Sec.103.Submittal to Congress of certain court orders under the Foreign Intelligence  
29 Surveillance Act of 1978.

30 Sec.104.Applications for court orders.

31 Sec.105.Issuance of an order.

32 Sec.106.Use of information.

Deleted: 5/2/2008

- 1 Sec.107.Amendments for physical searches.
- 2 Sec.108.Amendments for emergency pen registers and trap and trace devices.
- 3 Sec.109.Foreign Intelligence Surveillance Court.
- 4 **Sec.110.Review of previous actions.**
- 5 **Sec.111.Weapons** ~~Sec.110.Weapons~~ of mass destruction.

6

7 ~~Sec.111.Technical and conforming amendments.~~

8 **TITLE II—PROTECTIONS FOR ELECTRONIC**  
9 **COMMUNICATION SERVICE PROVIDERS**

10 ~~Sec.201.Definitions.~~

11 ~~Sec.202.Limitations on civil actions for electronic communication service providers.~~

12 ~~Sec.203.Procedures~~ **Sec.201.Procedures** for implementing statutory defenses under the Foreign  
13 Intelligence Surveillance Act of 1978.

14 ~~Sec.204.Preemption of State investigations.~~

15 ~~Sec.205.Technical amendments.~~

16 **TITLE III—OTHER PROVISIONS**

17 ~~Sec.301.Severability.~~

18 ~~Sec.302.Effective date; repeal; transition~~ **Sec.202.Technical amendments.**

19 **TITLE III—COMMISSION ON INTELLIGENCE**  
20 **COLLECTION, PRIVACY PROTECTION, AND**  
21 **CHANGES IN INFORMATION TECHNOLOGY**

22 **Sec.301.Commission on Intelligence Collection, Privacy Protection, and Changes in**  
23 **Information Technology.**

24 **TITLE IV—OTHER PROVISIONS**

25 **Sec.401.Severability.**

26 **Sec.402.Effective date.**

27 **Sec.403.Repeals.**

28 **Sec.404.Transition procedures.**

29 **TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE**

30 **SEC. 101. ADDITIONAL PROCEDURES REGARDING**  
31 **CERTAIN PERSONS OUTSIDE THE UNITED STATES.**

Deleted: 5/2/2008

1 (a) In General.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is  
2 amended—

3 (1) by striking title VII; and

4 (2) by adding after title VI the following new title:

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

7 ~~“SEC. 701. LIMITATION ON DEFINITION OF  
8 ELECTRONIC SURVEILLANCE.~~

9 ~~“Nothing in the definition of electronic surveillance under  
10 section 101(f) shall be construed to encompass surveillance that  
11 is targeted in accordance with this title at a person reasonably  
12 believed to be located outside the United States.~~

13 ~~“SEC. 702. DEFINITIONS.~~

14 “(a) In General.—The terms ‘agent of a foreign power’, ‘Attorney General’, ‘contents’,  
15 ‘electronic surveillance’, ‘foreign intelligence information’, ‘foreign power’, ~~‘minimization  
16 procedures’~~, ‘person’, ‘United States’, and ‘United States person’ shall have the meanings given  
17 such terms in section 101, except as specifically provided in this title.

18 “(b) Additional Definitions.—

19 “(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ‘congressional intelligence  
20 committees’ means—

21 “(A) the Select Committee on Intelligence of the Senate; and

22 “(B) the Permanent Select Committee on Intelligence of the House of  
23 Representatives.

24 “(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms ‘Foreign  
25 Intelligence Surveillance Court’ and ‘Court’ mean the court established by section 103(a).

26 “(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The  
27 terms ‘Foreign Intelligence Surveillance Court of Review’ and ‘Court of Review’ mean the  
28 court established by section 103(b).

29 “(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ‘electronic  
30 communication service provider’ means—

31 “(A) a telecommunications carrier, as that term is defined in section 3 of the  
32 Communications Act of 1934 (47 U.S.C. 153);

33 “(B) a provider of electronic communication service, as that term is defined in  
34 section 2510 of title 18, United States Code;

35 “(C) a provider of a remote computing service, as that term is defined in section

Deleted: 5/2/2008

1 2711 of title 18, United States Code;

2 “(D) any other communication service provider who has access to wire or electronic  
3 communications either as such communications are transmitted or as such  
4 communications are stored; or

5 “(E) an officer, employee, or agent of an entity described in subparagraph (A), (B),  
6 (C), or (D).

7 ~~“(5) ELEMENT OF THE INTELLIGENCE INTELLIGENCE COMMUNITY.—The term ‘element of~~  
8 ~~the intelligence community’ means an element of the intelligence community specified in or~~  
9 ~~designated under ‘intelligence community’ has the meaning given the term in section~~  
10 ~~3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).~~

11 **“SEC. 703 702. PROCEDURES FOR TARGETING CERTAIN**  
12 **PERSONS OUTSIDE THE UNITED STATES OTHER THAN**  
13 **UNITED STATES PERSONS.**

14 “(a) Authorization.—Notwithstanding any other law, ~~provision of law, pursuant to an order~~  
15 ~~issued in accordance with subsection (i)(3) or a determination under subsection~~  
16 ~~(g)(1)(B)(ii), the Attorney General and the Director of National Intelligence may authorize~~  
17 ~~jointly, for periods a period of up to 1 year from the effective date of the authorization, the~~  
18 ~~targeting of persons reasonably believed to be located outside the United States to acquire~~  
19 ~~foreign intelligence information.~~

20 “(b) Limitations.—An acquisition authorized under subsection (a)—

21 “(1) may not intentionally target any person known at the time of acquisition to be  
22 located in the United States;

23 “(2) may not intentionally target a person reasonably believed to be located outside the  
24 United States if the purpose of such acquisition is in order to target a particular, known  
25 person reasonably believed to be in the United States, ~~except in accordance with title I or~~  
26 ~~title III;~~

27 “(3) may not intentionally target a United States person reasonably believed to be located  
28 outside the United States, ~~except in accordance with sections 704, 705, or 706;~~

29 ~~“(4) shall”~~“(4) may not intentionally acquire any communication as to which the sender  
30 and all intended recipients are known at the time of the acquisition to be located in the  
31 United States; and

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

34 “(c) Conduct of Acquisition.—An Acquisition.—

35 “(1) IN GENERAL.—An acquisition authorized under subsection (a) may be conducted  
36 only in accordance with—

37 ~~“(1) a”~~“(A) the certification made by the Attorney General and the Director of  
38 National Intelligence ~~pursuant to~~ submitted in accordance with subsection (f);(g);  
39 and

1           ~~“(2)“(B) the targeting and minimization procedures required pursuant to submitted~~  
2           **in accordance with subsections (d) and (e).**

3           **“(2) CONSTRUCTION.—Nothing in title I of this Act shall be construed to require an**  
4           **application under section 104 for an acquisition that is targeted in accordance with**  
5           **this section at a person reasonably believed to be located outside the United States.**

6           **“(d) Targeting Procedures.—**

7           **“(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director**  
8           **of National Intelligence, shall adopt targeting procedures that are reasonably designed to**  
9           **ensure that any acquisition authorized under subsection (a) is limited to targeting persons**  
10           **reasonably believed to be located outside the United States and does not result in the**  
11           **intentional acquisition of any communication as to which the sender and all intended**  
12           **recipients are known at the time of the acquisition to be located in the United States.**

13           **“(2) JUDICIAL REVIEW.—The procedures referred to in required by paragraph (1) shall be**  
14           **subject to judicial review pursuant to subsection (h)(i).**

15           **“(e) Minimization Procedures.—**

16           **“(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director**  
17           **of National Intelligence, shall adopt minimization procedures that meet the definition of**  
18           **minimization procedures under section 101(h) or section 301(4), as appropriate, for**  
19           **acquisitions authorized under subsection (a).**

20           **“(2) JUDICIAL REVIEW.—The minimization procedures required by this subsection**  
21           **paragraph (1) shall be subject to judicial review pursuant to subsection (h)(i).**

22           ~~“(f)“(f) Guidelines for Compliance With Limitations.—~~

23           **“(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the**  
24           **Director of National Intelligence, shall adopt guidelines to ensure—**

25           **“(A) compliance with the limitations in subsection (b); and**

26           **“(B) that an application is filed under section 104 or section 303, as**  
27           **appropriate, if required by any other section of this Act.**

28           **“(2) TRAINING.—The Director of National Intelligence shall establish a training**  
29           **program for appropriate intelligence community personnel to ensure that the**  
30           **guidelines adopted pursuant to paragraph (1) are properly implemented.**

31           **“(3) SUBMISSION OF GUIDELINES.—The Attorney General shall provide the**  
32           **guidelines adopted pursuant to paragraph (1) to—**

33           **“(A) the congressional intelligence committees;**

34           **“(B) the Committee on the Judiciary of the Senate;**

35           **“(C) the Committee on the Judiciary of the House of Representatives; and**

36           **“(D) the Foreign Intelligence Surveillance Court.**

37           **“(g) Certification.—**

38           **“(1) IN GENERAL.—**

1           “(A) ~~REQUIREMENT.—SUBJECT TO SUBPARAGRAPH (B), PRIOR TO THE INITIATION OF~~  
2 ~~AN ACQUISITION AUTHORIZED~~ **REQUIREMENT.—In order to conduct an acquisition**  
3 **under subsection (a), the Attorney General and the Director of National Intelligence**  
4 **shall provide to the Foreign Intelligence Surveillance Court, under oath, a written**  
5 **certification, as described in and any supporting affidavit, under seal, in**  
6 **accordance with this subsection.**

7           “(B) ~~EXCEPTION.—IF TIMING OF SUBMISSION TO THE COURT.—~~

8           “~~(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General~~  
9 ~~and the Director of National Intelligence determine that immediate action by the~~  
10 ~~Government is required and time does not permit the preparation of a certification~~  
11 ~~under this subsection prior to the initiation of an acquisition, the Attorney General~~  
12 ~~and the Director of National Intelligence shall prepare such provide a copy of a~~  
13 ~~certification made under this subsection to the Foreign Intelligence~~  
14 ~~Surveillance Court prior to the initiation of an acquisition under subsection~~  
15 ~~(a).~~ **(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General**  
**and the Director of National Intelligence determine that immediate action by the**  
**Government is required and time does not permit the preparation of a certification**  
**under this subsection prior to the initiation of an acquisition, the Attorney General**  
**and the Director of National Intelligence shall provide a copy of a**  
**certification made under this subsection to the Foreign Intelligence**  
**Surveillance Court prior to the initiation of an acquisition under subsection**  
**(a).**

16           “~~(ii) EXCEPTION.—If the Attorney General and the Director of National~~  
17 ~~Intelligence determine that there should be immediate implementation of the~~  
18 ~~authorization and time does not permit the issuance of an order pursuant to~~  
19 ~~subsection (i)(3) prior to the implementation of the authorization, the~~  
20 ~~Attorney General and the Director of National Intelligence may authorize the~~  
21 ~~acquisition and shall submit to the Foreign Intelligence Surveillance Court a~~  
22 ~~certification, including such the determination under this subsection, as soon as~~  
23 ~~possible but in no event more than 7 days after such determination is made.~~ **(ii) EXCEPTION.—If the Attorney General and the Director of National**  
**Intelligence determine that there should be immediate implementation of the**  
**authorization and time does not permit the issuance of an order pursuant to**  
**subsection (i)(3) prior to the implementation of the authorization, the**  
**Attorney General and the Director of National Intelligence may authorize the**  
**acquisition and shall submit to the Foreign Intelligence Surveillance Court a**  
**certification, including such the determination under this subsection, as soon as**  
**possible but in no event more than 7 days after such determination is made.**

24           “(2) ~~REQUIREMENTS.—A certification made under this subsection shall—~~

25           “(A) ~~attest that—~~

26           “~~(i) there are reasonable procedures in place that have been approved or~~  
27 ~~submitted for approval to the Foreign Intelligence Surveillance Court, for~~  
28 ~~determining that the acquisition authorized under subsection (a)(a)—~~ **(i) there are reasonable procedures in place that have been approved or**  
**submitted for approval to the Foreign Intelligence Surveillance Court, for**  
**determining that the acquisition authorized under subsection (a)(a)—**

29           “~~(I) is targeted at persons reasonably believed to be located outside the~~  
30 ~~United States and that such procedures have been approved by, or will be~~  
31 ~~submitted in not more than 5 days for approval by, the Foreign Intelligence~~  
32 ~~Surveillance Court pursuant to subsection (h)); and~~ **(I) is targeted at persons reasonably believed to be located outside the**  
**United States and that such procedures have been approved by, or will be**  
**submitted in not more than 5 days for approval by, the Foreign Intelligence**  
**Surveillance Court pursuant to subsection (h)); and**

33           “~~(ii) there are reasonable procedures in place for determining that the~~  
34 ~~acquisition authorized under subsection (a)(II) does not result in the~~  
35 ~~intentional acquisition of any communication as to which the sender and all~~  
36 ~~intended recipients are known at the time of the acquisition to be located in~~  
37 ~~the United States, and that such procedures have been approved by, or will~~  
38 ~~be submitted in not more than 5 days for approval by, the Foreign~~  
39 ~~Intelligence Surveillance Court pursuant to subsection (h));~~ **(ii) there are reasonable procedures in place for determining that the**  
**acquisition authorized under subsection (a)(II) does not result in the**  
**intentional acquisition of any communication as to which the sender and all**  
**intended recipients are known at the time of the acquisition to be located in**  
**the United States, and that such procedures have been approved by, or will**  
**be submitted in not more than 5 days for approval by, the Foreign**  
**Intelligence Surveillance Court pursuant to subsection (h));**

40           “~~(iii) the procedures referred to in clauses (i) and (ii) are consistent with the~~  
41 ~~requirements of the fourth amendment to the Constitution of the United States and~~  
42 ~~do not permit the intentional targeting of any person who is known at the time of~~  
43 ~~acquisition to be located in the United States or the intentional acquisition of any~~ **(iii) the procedures referred to in clauses (i) and (ii) are consistent with the**  
**requirements of the fourth amendment to the Constitution of the United States and**  
**do not permit the intentional targeting of any person who is known at the time of**  
**acquisition to be located in the United States or the intentional acquisition of any**

Deleted: 5/2/2008

1 ~~communication as to which the sender and all intended recipients are known at~~  
2 ~~the time of acquisition to be located in the United States;~~ (ii) guidelines have  
3 been adopted in accordance with subsection (f) to ensure compliance with the  
4 limitations in subsection (b) and to ensure that applications are filed under  
5 section 104 or section 303, if required by this Act;

6  
7 \* 1 ~~(iv)~~ (iv) a significant purpose of the acquisition is to obtain foreign intelligence  
8 information;

9 ~~(v)~~ (iii) the minimization procedures to be used with respect to such  
10 acquisition—

11 (I) meet the definition of minimization procedures under section 101(h)  
12 or section 301(4), as appropriate; and

13 (II) have been approved by, or will be submitted in not more than 5 days  
14 for approval by, the Foreign Intelligence Surveillance Court pursuant to  
15 subsection (h);;

16 (iv) the procedures and guidelines referred to in clauses (i), (ii), and (iii)  
17 are consistent with the requirements of the fourth amendment to the  
18 Constitution of the United States;

19 \*\* 1 ~~(iv)~~ (v) a significant purpose of the acquisition is to obtain foreign  
20 intelligence information;

21 (vi) the acquisition involves obtaining the foreign intelligence information  
22 from or with the assistance of an electronic communication service provider; and

23 ~~(vii) the acquisition does not constitute electronic surveillance, as limited by~~  
24 ~~section 701~~ complies with the limitations in subsection (b); and

25 (B) be supported, as appropriate, by the affidavit of any appropriate official in the  
26 area of national security who is—

27 (i) appointed by the President, by and with the consent of the Senate; or

28 (ii) the head of any an element of the intelligence community; and-

29 ~~(3)~~ (C) include—

30 (i) an effective date for the authorization that is between 30 and 60 days  
31 from the submission of the written certification to the court; or

32 (ii) if the acquisition has begun or the effective date is less than 30 days  
33 from the submission of the written certification to the court—

34 (I) the date the acquisition began or the effective date for the  
35 acquisition;

36 (II) a description of why initiation of the acquisition is required in  
37 less than 30 days from the submission of the written certification to the  
38 court; and

39 (III) if the acquisition is authorized under paragraph (1)(B)(ii), a

Deleted: 5/2/2008

1 description of why there should be immediate implementation of the  
2 authorization and time does not permit the issuance of an order  
3 pursuant to subsection (i)(3) prior to the implementation of the  
4 authorization.

5 **“(3) CHANGE IN EFFECTIVE DATE.—**The Attorney General and the Director of  
6 National Intelligence may advance or delay the effective date described in paragraph  
7 (2)(C) by amending the certification pursuant to subsection (i)(C) to include the  
8 applicable requirements of paragraph (2)(C).

9 **“(4) LIMITATION.—**A certification made under this subsection is not required to identify  
10 the specific facilities, places, premises, or property at which the acquisition authorized  
11 under subsection (a) will be directed or conducted.

12 ~~“(4) Submission to the court.—~~The **“(5) MAINTENANCE OF CERTIFICATION.—**The  
13 Attorney General shall ~~transmit~~ maintain a copy of a certification made under this  
14 subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance  
15 Court as soon as possible, but in no event more than 5 days after such certification is made.  
16 ~~Such certification shall be maintained~~ under security measures adopted by the Chief Justice  
17 of the United States and the Attorney General, in consultation with the Director of National  
18 Intelligence.

19 ~~“(5)“(6) REVIEW.—~~The certification required by this subsection shall be subject to  
20 judicial review pursuant to subsection ~~(h)~~(i).

21 ~~“(g)“(h) Directives and Judicial Review of Directives.—~~

22 **“(1) AUTHORITY.—**With respect to an acquisition authorized under subsection (a), the  
23 Attorney General and the Director of National Intelligence may direct, in writing, an  
24 electronic communication service provider to—

25 **“(A) immediately provide the Government with all information, facilities, or**  
26 **assistance necessary to accomplish the acquisition authorized in accordance with**  
27 **this section in a manner that will protect the secrecy of the acquisition and produce a**  
28 **minimum of interference with the services that such electronic communication service**  
29 **provider is providing to the target of the acquisition; and**

30 **“(B) maintain under security procedures approved by the Attorney General and the**  
31 **Director of National Intelligence any records concerning the acquisition or the aid**  
32 **furnished that such electronic communication service provider wishes to maintain.**

33 **“(2) COMPENSATION.—**The Government shall compensate, at the prevailing rate, an  
34 electronic communication service provider for providing information, facilities, or  
35 assistance pursuant to paragraph (1).

36 ~~“(3) RELEASE FROM LIABILITY.—~~ **NOTWITHSTANDING ANY OTHER LAW, NO LIABILITY.—**  
37 No cause of action shall lie in any court against any electronic communication service  
38 provider for providing any information, facilities, or assistance in accordance with a  
39 directive issued pursuant to paragraph (1).

40 **“(4) CHALLENGING OF DIRECTIVES.—**

41 **“(A) AUTHORITY TO CHALLENGE.—**An electronic communication service provider

1 receiving a directive issued pursuant to paragraph (1) may challenge the directive by  
2 filing a petition with the Foreign Intelligence Surveillance Court, which shall have  
3 jurisdiction to review such a petition.

4 “(B) ASSIGNMENT.—The presiding judge of the Court shall assign the petition filed  
5 under subparagraph (A) to 1 of the judges of the Court serving in the pool established  
6 by section 103(e)(1) not later than 24 hours after the filing of the petition.

7 “(C) STANDARDS FOR REVIEW.—A JUDGE REVIEW.—The Foreign Intelligence  
8 Surveillance Court considering a petition to modify or set aside a directive may grant  
9 such petition only if the judge Court finds that the directive does not meet the  
10 requirements of this section, or is otherwise unlawful.

11 “(D) PROCEDURES FOR INITIAL REVIEW.—A JUDGE REVIEW.—The Foreign  
12 Intelligence Surveillance Court shall conduct an initial review of a petition filed  
13 under subparagraph (A) not later than 5 days after being assigned a such petition  
14 described in subparagraph (C). If the judge Court determines that the petition consists  
15 does not consist of claims, defenses, or other legal contentions that are not warranted  
16 by existing law or by a nonfrivolous argument for extending, modifying, or reversing  
17 existing law or for establishing new law, the judge Court shall immediately deny the  
18 petition and affirm the directive or any part of the directive that is the subject of the  
19 petition and order the recipient to comply with the directive or any part of it. Upon  
20 making such a determination or promptly thereafter, the judge Court shall provide a  
21 written statement for the record of the reasons for a determination under this  
22 subparagraph.

23 “(E) PROCEDURES FOR PLENARY REVIEW.—If a judge the Foreign Intelligence  
24 Surveillance Court determines that a petition described in filed under subparagraph  
25 (C)(A) requires plenary review, the judge Court shall affirm, modify, or set aside the  
26 directive that is the subject of that petition not later than 30 days after being assigned  
27 the petition, unless the judge, by order for reasons stated, extends that time as  
28 necessary to comport with the due process clause of the fifth amendment to the  
29 Constitution of the United States. Unless the judge sets. If the Court does not set  
30 aside the directive, the judge Court shall immediately affirm or affirm with  
31 modifications the directive or order that the directive be modified, and order the  
32 recipient to comply with the directive in its entirety or as modified. The judge Court  
33 shall provide a written statement for the records record of the reasons for a  
34 determination under this subparagraph.

35 “(F) CONTINUED EFFECT.—Any directive not explicitly modified or set aside under  
36 this paragraph shall remain in full effect.

37 “(G) CONTEMPT OF COURT.—Failure to obey an order of the Court issued under this  
38 paragraph may be punished by the Court as contempt of court.

39 “(5) ENFORCEMENT OF DIRECTIVES.—

40 “(A) ORDER TO COMPEL.—IN THE CASE OF A FAILURE COMPEL.—If an electronic  
41 communication service provider fails to comply with a directive issued pursuant to  
42 paragraph (1), the Attorney General may file a petition for an order to compel  
43 compliance the electronic communication service provider to comply with the

1 directive with the Foreign Intelligence Surveillance Court, which shall have  
2 jurisdiction to review such a petition.

3 “(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed  
4 under subparagraph (A) to 1 of the judges serving in the pool established by section  
5 103(e)(1) not later than 24 hours after the filing of the petition.

6 “(C) STANDARDS FOR REVIEW.—A JUDGE PROCEDURES FOR REVIEW.—The  
7 Foreign Intelligence Surveillance Court considering a petition filed under  
8 subparagraph (A) shall issue an order requiring the electronic communication service  
9 provider to comply with the directive or any part of it, as issued or as modified, ~~if the~~  
10 ~~judge not later than 30 days after being assigned the petition if the Court finds that~~  
11 ~~the directive meets the requirements of this section, and is otherwise lawful. The~~ **The**  
12 **Court**

13 ~~“(D) Procedures for review.—The judge shall render a determination not later than~~  
14 ~~30 days after being assigned a petition filed under subparagraph (A), unless the judge,~~  
15 ~~by order for reasons stated, extends that time if necessary to comport with the due~~  
16 ~~process clause of the fifth amendment to the Constitution of the United States. The~~  
17 ~~judge shall provide a written statement for the record of the reasons for a determination~~  
18 ~~under this paragraph.~~

19 ~~“(E)“(D) CONTEMPT OF COURT.—Failure to obey an order of the Court issued under~~  
20 ~~this paragraph may be punished by the Court as contempt of court.~~

21 ~~“(F)“(E) PROCESS.—Any process under this paragraph may be served in any judicial~~  
22 ~~district in which the electronic communication service provider may be found.~~

23 “(6) APPEAL.—

24 “(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic  
25 communication service provider receiving a directive issued pursuant to paragraph (1)  
26 may file a petition with the Foreign Intelligence Surveillance Court of Review for  
27 review of ~~the a~~ decision issued pursuant to paragraph (4) or (5). The Court of Review  
28 shall have jurisdiction to consider such a petition and shall provide a written statement  
29 for the record of the reasons for a decision under this paragraph.

30 “(B) CERTIORARI TO THE SUPREME COURT.—The Government or an electronic  
31 communication service provider receiving a directive issued pursuant to paragraph (1)  
32 may file a petition for a writ of certiorari for review of the decision of the Court of  
33 Review issued under subparagraph (A). The record for such review shall be  
34 transmitted under seal to the Supreme Court of the United States, which shall have  
35 jurisdiction to review such decision.

36 ~~“(h)“(i) Judicial Review of Certifications and Procedures.—~~

37 “(1) IN GENERAL.—

38 “(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign  
39 Intelligence Surveillance Court shall have jurisdiction to review any certification  
40 ~~required by submitted in accordance with~~ subsection (e)(g) and the targeting and  
41 ~~minimization procedures adopted pursuant to submitted in accordance with~~  
42 ~~subsections (d) and (e), and any amendments to :~~

1           ~~“(B) Submission to the court.—The Attorney General shall submit to the Court any~~  
2 such certification or procedure, or amendment thereto, not later than 5 days after  
3 making or amending the certification or adopting or amending the procedures  
4 procedures.

5           ~~“(2) Certifications.—The Court shall review a certification provided under~~  
6 ~~subsection (f)“(B) TIME PERIOD FOR REVIEW.—The Court shall review the~~  
7 certification submitted in accordance with subsection (g) and the targeting and  
8 minimization procedures submitted in accordance with subsections (d) and (e)  
9 and approve or deny an order under this subsection not later than 30 days after  
10 the date on which a certification is submitted.

11           ~~“(C) AMENDMENTS.—The Attorney General and the Director of National~~  
12 Intelligence may amend a certification submitted in accordance with subsection  
13 (g) or the targeting and minimization procedures submitted in accordance with  
14 subsections (d) and (e) as necessary after such certification or procedures have  
15 been submitted for review to the Foreign Intelligence Surveillance Court. If an  
16 amendment is submitted subsequent to the issuance of an order under subsection  
17 (i)(3) that significantly modifies such certification or procedures, the Attorney  
18 General and Director of National Intelligence shall seek approval of such  
19 amendment by the Court.

20           ~~“(2) REVIEW.—Court shall review the following:~~

21           ~~“(A) CERTIFICATION.—A certification submitted in accordance with subsection~~  
22 (g) to determine whether the certification contains all the required elements.

23           ~~“(3)“(B) TARGETING PROCEDURES.—The Court shall review the targeting~~  
24 ~~procedures required by submitted in accordance with subsection (d) to assess~~  
25 whether the procedures are reasonably designed to ensure that the acquisition  
26 authorized under subsection (a) is limited to the targeting of persons reasonably  
27 believed to be located outside the United States and does not result in the intentional  
28 acquisition of any communication as to which the sender and all intended recipients  
29 are known at the time of the acquisition to be located in the United States.

30           ~~“(4)“(C) MINIMIZATION PROCEDURES.—The Court shall review the minimization~~  
31 ~~procedures required by submitted in accordance with subsection (e) to assess~~  
32 whether such procedures meet the definition of minimization procedures under section  
33 101(h) or section 301(4), as appropriate.;

34           ~~“(5)“(3) ORDERS.—~~

35           ~~“(A) APPROVAL.—If the Court finds that a certification required by submitted in~~  
36 ~~accordance with subsection (f)(g) contains all of the required elements and that the~~  
37 targeting and minimization procedures ~~required by submitted in accordance with~~  
38 subsections (d) and (e) are consistent with the requirements of those subsections and  
39 with the fourth amendment to the Constitution of the United States, the Court shall  
40 enter an order approving the ~~continued certification and the use of the procedures for~~  
41 the acquisition ~~authorized under subsection (a).~~

42           ~~“(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required~~  
43 ~~by submitted in accordance with subsection (f)(g) does not contain all of the required~~

Deleted: 5/2/2008

1 elements, or that the procedures ~~required by~~ **submitted in accordance with**  
2 subsections (d) and (e) are not consistent with the requirements of those subsections or  
3 the fourth amendment to the Constitution of the United States, the Court shall issue an  
4 order directing the Government to, at the Government's election and to the extent  
5 required by the Court's order—

6 “(i) correct any deficiency identified by the ~~Court's order~~ **Court** not later than  
7 30 days after the date the Court issues the order; or

8 “(ii) cease, or not begin, the acquisition authorized under subsection (a).

9 “(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this  
10 subsection, the Court shall provide, simultaneously with the orders, for the record a  
11 written statement of its reasons.

12 ~~“(6)“(4)~~ **“(4) APPEAL.—**

13 “(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order  
14 under this section to the Foreign Intelligence Surveillance Court of Review, which  
15 shall have jurisdiction to review such order. For any decision affirming, reversing, or  
16 modifying an order of the Foreign Intelligence Surveillance Court, the Court of  
17 Review shall provide for the record a written statement of its reasons.

18 “(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any  
19 acquisitions **acquisition** affected by an order under paragraph ~~(5)(B)(3)(B)~~ **(B)** may  
20 continue—

21 “(i) during the pendency of any rehearing of the order by the Court en banc;  
22 and

23 “(ii) if the Government appeals an order under this section, ~~until~~ **subject to the**  
24 ~~Court entry of Review enters~~ an order under subparagraph (C).

25 “(C) IMPLEMENTATION PENDING APPEAL.—Not later than 60 days after the filing of  
26 an appeal of an order **issued** under paragraph ~~(5)(B)(3)(B)~~ directing the correction of a  
27 deficiency, the Court of Review shall determine, and enter a corresponding order  
28 regarding, whether all or any part of the correction order, as issued or modified, shall  
29 be implemented during the pendency of the appeal.

30 “(D) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for  
31 a writ of certiorari for review of a decision of the Court of Review issued under  
32 subparagraph (A). The record for such review shall be transmitted under seal to the  
33 Supreme Court of the United States, which shall have jurisdiction to review such  
34 decision.

35 **“(5) SCHEDULE.—**

36 “(A) REPLACEMENT OF AUTHORIZATIONS IN EFFECT.—When replacing an  
37 authorization issued pursuant to section 105B of the Foreign Intelligence  
38 Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007  
39 (Public Law 110-55) with an authorization under this section, the Attorney  
40 General and the Director of National Intelligence shall, to the extent practicable,  
41 submit to the Court the certification prepared in accordance with subsection (g)

1 and the procedures adopted in accordance with subsections (d) and (e) at least 30  
2 days before the expiration of such authorization.

3 **“(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—**When replacing an  
4 authorization issued pursuant to this section, the Attorney General and the  
5 Director of National Intelligence shall, to the extent practicable, submit to the  
6 Court the certification prepared in accordance with section (g) and the  
7 procedures adopted in accordance with subsections (d) and (e) at least 30 days  
8 prior to the expiration of such authorization.

9 **“(C) CONSOLIDATED SUBMISSIONS.—**The Attorney General and Director of  
10 National Intelligence shall, to the extent practicable, annually submit to the Court  
11 a consolidation of—

12 **“(i) certifications prepared in accordance with subsection (g) for**  
13 **reauthorization of authorizations in effect;**

14 **“(ii) the procedures adopted in accordance with subsections (d) and (e);**  
15 **and**

16 **“(iii) the annual review required by subsection (l)(3) for the preceding**  
17 **year.**

18 **“(D) TIMING OF REVIEWS.—**The Attorney General and the Director of National  
19 Intelligence shall schedule the completion of the annual review required by  
20 subsection (l)(3) and a semiannual assessment required by subsection (l)(1) so that  
21 they may be submitted to the Court at the time of the consolidated submission  
22 under subparagraph (C).

23 **“(E) CONSTRUCTION.—**The requirements of subparagraph (C) shall not be  
24 construed to preclude the Attorney General and the Director of National  
25 Intelligence from submitting certifications for additional authorizations at other  
26 times during the year as necessary.

27 **“(6) COMPLIANCE.—**At or before the end of the period of time for which an  
28 authorization under subsection (a) expires, the Foreign Intelligence Surveillance Court  
29 may assess compliance with the minimization procedures required under subsection  
30 (e) by reviewing the circumstances under which information concerning United States  
31 persons was acquired, retained, or disseminated.

32 **“(j) Judicial Proceedings.—**

33 **“(1) EXPEDITED PROCEEDINGS.—**Judicial~~“(i) Expedited Judicial Proceedings.—~~ Judicial  
34 proceedings under this section shall be conducted as expeditiously as possible.

35 **“(2) TIME LIMITS.—**A time limit for a judicial decision in this section shall apply  
36 unless the Court, the Court of Review, or any judge of either the Court or the Court of  
37 Review, by order for reasons stated, extends that time for good cause.

38 **“(k)~~“(j)~~ Maintenance and Security of Records and Proceedings.—**

39 **“(1) STANDARDS.—**A STANDARDS.—The Foreign Intelligence Surveillance Court  
40 shall maintain a record of a proceeding under this section, including petitions filed, orders  
41 granted, and statements of reasons for decision, ~~shall be maintained~~ under security measures

Deleted: 5/2/2008

1 adopted by the Chief Justice of the United States, in consultation with the Attorney General  
2 and the Director of National Intelligence.

3 “(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In  
4 any proceedings under this section, the court shall, upon request of the Government, review  
5 ex parte and in camera any Government submission, or portions of a submission, which  
6 may include classified information.

7 “(3) RETENTION OF RECORDS.—~~A RECORDS.~~—**The Director of National Intelligence**  
8 **and the Attorney General shall retain a directive made or an order granted under this**  
9 **section shall be retained** for a period of not less than 10 years from the date on which such  
10 directive or such order is made.

11 ~~“(k)“(I)~~ Assessments and Reviews.—

12 “(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the  
13 Attorney General and Director of National Intelligence shall assess compliance with the  
14 targeting and minimization procedures ~~required by subsections (e) and submitted in~~  
15 **accordance with subsections (d) and (e) and the guidelines adopted in accordance with**  
16 **subsection (f) and shall submit each such assessment to—**

17 “(A) the Foreign Intelligence Surveillance Court; ~~and~~

18  
19 “(B) the congressional intelligence committees-

20 ;

21 “(C) the Committee on the Judiciary of the Senate; and

22 “(D) the Committee on the Judiciary of the House of Representatives.

23 “(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of  
24 ~~any each~~ element of the intelligence community authorized to acquire foreign intelligence  
25 information under subsection (a) with respect to ~~their the department, agency, or element—~~  
26 ~~or element of such Inspector General—~~

27 “(A) are authorized to review the compliance with the targeting and minimization  
28 procedures ~~required by submitted in accordance with subsections (d) and (e) and the~~  
29 **guidelines submitted in accordance with subsection (f);**

30 “(B) with respect to acquisitions authorized under subsection (a), shall review the  
31 number of disseminated intelligence reports containing a reference to a United States  
32 person identity and the number of United States person identities subsequently  
33 disseminated by the element concerned in response to requests for identities that were  
34 not referred to by name or title in the original reporting;

35 “(C) with respect to acquisitions authorized under subsection (a), shall review the  
36 number of targets that were later determined to be located in the United States and, to  
37 the extent possible, whether their communications were reviewed; and

38 “(D) shall provide each such review to—

39 “(i) the Attorney General;

1           “(ii) the Director of National Intelligence; and

2  
3           “(iii) the congressional intelligence committees; and

4           “(iv) the Committee on the Judiciary of the Senate; and

5           “(v) the Committee on the Judiciary of the House of Representatives.;

6  
7           “(3) ANNUAL REVIEW.—

8           “(A) REQUIREMENT TO CONDUCT.—The head of ~~an~~ each element of the intelligence  
9 community conducting an acquisition authorized under subsection (a) shall ~~direct the~~  
10 ~~element to~~ conduct an annual review to determine whether there is reason to believe  
11 that foreign intelligence information has been or will be obtained from the acquisition.  
12 The annual review shall provide, with respect to such acquisitions authorized under  
13 subsection (a)—

14           “(i) ~~an accounting of~~ the number and nature of disseminated intelligence  
15 reports containing a reference to a United States person identity;

16           “(ii) ~~an accounting of~~ the number and nature of United States person identities  
17 subsequently disseminated by that element in response to requests for identities  
18 that were not referred to by name or title in the original reporting;

19           “(iii) the number of targets that were later determined to be located in the  
20 United States and, to the extent possible, whether their communications were  
21 reviewed; and

22           “(iv) a description of any procedures developed by the head of ~~an~~ such element  
23 of the intelligence community and approved by the Director of National  
24 Intelligence to assess, in a manner consistent with national security, operational  
25 requirements and the privacy interests of United States persons, the extent to  
26 which the acquisitions authorized under subsection (a) acquire the  
27 communications of United States persons, ~~as well as~~ and the results of any such  
28 assessment.

29           “(B) USE OF REVIEW.—The head of each element of the intelligence community that  
30 conducts an annual review under subparagraph (A) shall use each such review to  
31 evaluate the adequacy of the minimization procedures utilized by such element or the  
32 application of the minimization procedures to a particular acquisition authorized under  
33 subsection (a).

34           “(C) PROVISION OF REVIEW.—The head of each element of the intelligence  
35 community that conducts an annual review under subparagraph (A) shall provide such  
36 review to—

37           “(i) the Foreign Intelligence Surveillance Court;

38           “(ii) the Attorney General;

39           “(iii) the Director of National Intelligence; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38

“(iv) the congressional intelligence committees; and  
“SEC. 704“(v) the Committees on the Judiciary of the Senate; and  
“(vi) the Committee on the Judiciary of the House of Representatives.

**“SEC. 703. CERTAIN ACQUISITIONS INSIDE THE  
UNITED STATES OF UNITED STATES PERSONS  
OUTSIDE THE UNITED STATES.**

“(a) Jurisdiction of the Foreign Intelligence Surveillance Court.—

“(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to review an application and to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if such the acquisition constitutes electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) or the acquisition of stored electronic communications or stored electronic data that requires an order under this Act, and such acquisition is conducted within the United States.

“(2) LIMITATION.—~~IN THE EVENT THAT~~ LIMITATION.—If a United States person targeted under this subsection is reasonably believed to be located in the United States during the pendency of an order issued pursuant to subsection (c), ~~such acquisition shall cease until authority, other than the targeting of such United States person under this section, is obtained pursuant to this Act or shall cease unless~~ the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

“(b) Application.—

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

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

“(B) the identity, if known, or a description of the United States person who is the target of the acquisition;

“(C) a statement of the facts and circumstances relied upon to justify the applicant’s belief that the United States person who is the target of the acquisition is—

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

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

“(D) a statement of the proposed minimization procedures that meet the definition of minimization procedures under in section 101(h) or section 301(4), as appropriate;