

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.

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- 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.Premption 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.**

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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~~

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

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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.—

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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).**

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.**

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)—**

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**

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);;**

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**

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) 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 ~~“(v)“(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 704 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**

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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

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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

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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~~
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 :~~

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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

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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) 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)~~ 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)

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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

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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)“(l)~~“(l) 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 “(B) the congressional intelligence committees;

19 ;

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

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

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

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

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

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

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

38 “(i) the Attorney General;

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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~~

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