

AMENDMENT NO.

Calendar No.

Purpose: To provide a complete substitute.

**IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.****S. 2248**

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

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. ROCKEFELLER (for himself and Mr. BOND)

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

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

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Foreign Intelligence Surveillance Act of 1978 Amend-  
6 ments Act of 2007” or the “FISA Amendments Act of  
7 2007”.

8 (b) **TABLE OF CONTENTS.**—The table of contents for  
9 this Act is as follows:

Sec. 1. Short title; table of contents.

#### TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

- Sec. 101. Additional procedures regarding certain persons outside the United States.
- Sec. 102. Statement of exclusive means by which electronic surveillance and interception of domestic communications may be conducted.
- Sec. 103. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 104. Applications for court orders.
- Sec. 105. Issuance of an order.
- Sec. 106. Use of information.
- Sec. 107. Amendments for physical searches.
- Sec. 108. Amendments for emergency pen registers and trap and trace devices.
- Sec. 109. Foreign Intelligence Surveillance Court.
- Sec. 110. Technical and conforming amendments.

#### TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

- Sec. 201. Definitions.
- Sec. 202. Limitations on civil actions for electronic communication service providers.
- Sec. 203. Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 204. Preemption of State investigations.
- Sec. 205. Technical amendments.

#### TITLE III—OTHER PROVISIONS

- Sec. 301. Severability.
- Sec. 302. Effective date; repeal; transition procedures.

- 1                   **TITLE I—FOREIGN**  
2                   **INTELLIGENCE SURVEILLANCE**  
3                   **SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN**  
4                   **PERSONS OUTSIDE THE UNITED STATES.**  
5                   (a) IN GENERAL.—The Foreign Intelligence Surveil-  
6                   lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—  
7                   (1) by striking title VII; and  
8                   (2) by adding after title VI the following new  
9                   title:

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

5 **“SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC**  
6 **SURVEILLANCE.**

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

12 **“SEC. 702. DEFINITIONS.**

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

20 “(b) ADDITIONAL DEFINITIONS.—

21 “(1) CONGRESSIONAL INTELLIGENCE COMMIT-  
22 TEES.—The term ‘congressional intelligence commit-  
23 tees’ means—

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

1           “(B) the Permanent Select Committee on  
2           Intelligence of the House of Representatives.

3           “(2) FOREIGN INTELLIGENCE SURVEILLANCE  
4           COURT; COURT.—The terms ‘Foreign Intelligence  
5           Surveillance Court’ and ‘Court’ mean the court es-  
6           tablished by section 103(a).

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

12          “(4) ELECTRONIC COMMUNICATION SERVICE  
13          PROVIDER.—The term ‘electronic communication  
14          service provider’ means—

15                 “(A) a telecommunications carrier, as that  
16                 term is defined in section 3 of the Communica-  
17                 tions Act of 1934 (47 U.S.C. 153);

18                 “(B) a provider of electronic communica-  
19                 tion service, as that term is defined in section  
20                 2510 of title 18, United States Code;

21                 “(C) a provider of a remote computing  
22                 service, as that term is defined in section 2711  
23                 of title 18, United States Code;

24                 “(D) any other communication service pro-  
25                 vider who has access to wire or electronic com-

1           munications either as such communications are  
2           transmitted or as such communications are  
3           stored; or

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

7           “(5) ELEMENT OF THE INTELLIGENCE COMMU-  
8           NITY.—The term ‘element of the intelligence com-  
9           munity’ means an element of the intelligence com-  
10          munity specified in or designated under section 3(4)  
11          of the National Security Act of 1947 (50 U.S.C.  
12          401a(4)).

13   **“SEC. 703. PROCEDURES FOR TARGETING CERTAIN PER-**  
14                   **SONS OUTSIDE THE UNITED STATES OTHER**  
15                   **THAN UNITED STATES PERSONS.**

16          “(a) AUTHORIZATION.—Notwithstanding any other  
17          law, the Attorney General and the Director of National  
18          Intelligence may authorize jointly, for periods of up to 1  
19          year, the targeting of persons reasonably believed to be  
20          located outside the United States to acquire foreign intel-  
21          ligence information.

22          “(b) LIMITATIONS.—An acquisition authorized under  
23          subsection (a)—

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

4           “(2) may not intentionally target a person rea-  
5 sonably believed to be located outside the United  
6 States if the purpose of such acquisition is to target  
7 for surveillance a particular, known person reason-  
8 ably believed to be in the United States, except in  
9 accordance with title I;

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

14           “(4) shall be conducted in a manner consistent  
15 with the fourth amendment to the Constitution of  
16 the United States.

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

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

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

25           “(d) TARGETING PROCEDURES.—

1           “(1) REQUIREMENT TO ADOPT.—The Attorney  
2           General, in consultation with the Director of Na-  
3           tional Intelligence, shall adopt targeting procedures  
4           that are reasonably designed to ensure that any ac-  
5           quisition authorized under subsection (a) is limited  
6           to targeting persons reasonably believed to be lo-  
7           cated outside the United States.

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

11          “(e) MINIMIZATION PROCEDURES.—

12           “(1) REQUIREMENT TO ADOPT.—The Attorney  
13           General, in consultation with the Director of Na-  
14           tional Intelligence, shall adopt, consistent with the  
15           requirements of section 101(h) or section 301(4),  
16           minimization procedures for acquisitions authorized  
17           under subsection (a).

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

21          “(f) CERTIFICATION.—

22           “(1) IN GENERAL.—

23           “(A) REQUIREMENT.—Subject to subpara-  
24           graph (B), prior to the initiation of an acquisi-  
25           tion authorized under subsection (a), the Attor-

1           ney General and the Director of National Intel-  
2           ligence shall provide, under oath, a written cer-  
3           tification, as described in this subsection.

4                   “(B) EXCEPTION.—If the Attorney Gen-  
5           eral and the Director of National Intelligence  
6           determine that immediate action by the Govern-  
7           ment is required and time does not permit the  
8           preparation of a certification under this sub-  
9           section prior to the initiation of an acquisition,  
10          the Attorney General and the Director of Na-  
11          tional Intelligence shall prepare such certifi-  
12          cation, including such determination, as soon as  
13          possible but in no event more than 168 hours  
14          after such determination is made.

15                   “(2) REQUIREMENTS.—A certification made  
16          under this subsection shall—

17                           “(A) attest that—

18                                   “(i) there are reasonable procedures  
19                           in place for determining that the acquisi-  
20                           tion authorized under subsection (a) is tar-  
21                           geted at persons reasonably believed to be  
22                           located outside the United States and that  
23                           such procedures have been approved by, or  
24                           will promptly be submitted for approval by,



1 the Foreign Intelligence Surveillance Court  
2 pursuant to subsection (h);

3 “(ii) the procedures referred to in  
4 clause (i) are consistent with the require-  
5 ments of the fourth amendment to the  
6 Constitution of the United States and do  
7 not permit the intentional targeting of any  
8 person who is known at the time of acqui-  
9 sition to be located in the United States;

10 “(iii) a significant purpose of the ac-  
11 quisition is to obtain foreign intelligence  
12 information;

13 “(iv) the minimization procedures to  
14 be used with respect to such acquisition—

15 “(I) meet the definition of mini-  
16 mization procedures under section  
17 101(h) or section 301(4); and

18 “(II) have been approved by, or  
19 will promptly be submitted for ap-  
20 proval by, the Foreign Intelligence  
21 Surveillance Court pursuant to sub-  
22 section (h);

23 “(v) the acquisition involves obtaining  
24 the foreign intelligence information from or

1 with the assistance of an electronic com-  
2 munication service provider; and

3 “(vi) the acquisition does not con-  
4 stitute electronic surveillance, as limited by  
5 section 701; and

6 “(B) be supported, as appropriate, by the  
7 affidavit of any appropriate official in the area  
8 of national security who is—

9 “(i) appointed by the President, by  
10 and with the consent of the Senate; or

11 “(ii) the head of any element of the  
12 intelligence community.

13 “(3) LIMITATION.—A certification made under  
14 this subsection is not required to identify the specific  
15 facilities, places, premises, or property at which the  
16 acquisition authorized under subsection (a) will be  
17 directed or conducted.

18 “(4) SUBMISSION TO THE COURT.—The Attor-  
19 ney General shall transmit a copy of a certification  
20 made under this subsection, and any supporting affi-  
21 davit, under seal to the Foreign Intelligence Surveil-  
22 lance Court as soon as possible, but in no event  
23 more than 5 days after such certification is made.  
24 Such certification shall be maintained under security  
25 measures adopted by the Chief Justice of the United

1 States and the Attorney General, in consultation  
2 with the Director of National Intelligence.

3 “(5) REVIEW.—The certification required by  
4 this subsection shall be subject to judicial review  
5 pursuant to subsection (h).

6 “(g) DIRECTIVES.—

7 “(1) AUTHORITY.—With respect to an acquisi-  
8 tion authorized under subsection (a), the Attorney  
9 General and the Director of National Intelligence  
10 may direct, in writing, an electronic communication  
11 service provider to—

12 “(A) immediately provide the Government  
13 with all information, facilities, or assistance  
14 necessary to accomplish the acquisition in a  
15 manner that will protect the secrecy of the ac-  
16 quisition and produce a minimum of inter-  
17 ference with the services that such electronic  
18 communication service provider is providing to  
19 the target; and

20 “(B) maintain under security procedures  
21 approved by the Attorney General and the Di-  
22 rector of National Intelligence any records con-  
23 cerning the acquisition or the aid furnished that  
24 such electronic communication service provider  
25 wishes to maintain.

1           “(2) COMPENSATION.—The Government shall  
2       compensate, at the prevailing rate, an electronic  
3       communication service provider for providing infor-  
4       mation, facilities, or assistance pursuant to para-  
5       graph (1).

6           “(3) RELEASE FROM LIABILITY.—Notwith-  
7       standing any other law, no cause of action shall lie  
8       in any court against any electronic communication  
9       service provider for providing any information, facili-  
10      ties, or assistance in accordance with a directive  
11      issued pursuant to paragraph (1).

12          “(4) CHALLENGING OF DIRECTIVES.—

13               “(A) AUTHORITY TO CHALLENGE.—An  
14      electronic communication service provider re-  
15      ceiving a directive issued pursuant to paragraph  
16      (1) may challenge the directive by filing a peti-  
17      tion with the Foreign Intelligence Surveillance  
18      Court.

19               “(B) ASSIGNMENT.—The presiding judge  
20      of the Court shall assign the petition filed  
21      under subparagraph (A) to 1 of the judges serv-  
22      ing in the pool established by section 103(e)(1)  
23      not later than 24 hours after the filing of the  
24      petition.

1           “(C) STANDARDS FOR REVIEW.—A judge  
2           considering a petition to modify or set aside a  
3           directive may grant such petition only if the  
4           judge finds that the directive does not meet the  
5           requirements of this section or is otherwise un-  
6           lawful. If the judge does not modify or set aside  
7           the directive, the judge shall immediately affirm  
8           such directive, and order the recipient to com-  
9           ply with the directive. The judge shall provide  
10          a written statement for the record of the rea-  
11          sons for a determination under this paragraph.

12          “(D) CONTINUED EFFECT.—Any directive  
13          not explicitly modified or set aside under this  
14          paragraph shall remain in full effect.

15          “(5) ENFORCEMENT OF DIRECTIVES.—

16          “(A) ORDER TO COMPEL.—In the case of  
17          a failure to comply with a directive issued pur-  
18          suant to paragraph (1), the Attorney General  
19          may file a petition for an order to compel com-  
20          pliance with the directive with the Foreign In-  
21          telligence Surveillance Court.

22          “(B) ASSIGNMENT.—The presiding judge  
23          of the Court shall assign a petition filed under  
24          subparagraph (A) to 1 of the judges serving in  
25          the pool established by section 103(e)(1) not

1 later than 24 hours after the filing of the peti-  
2 tion.

3 “(C) STANDARDS FOR REVIEW.—A judge  
4 considering a petition shall issue an order re-  
5 quiring the electronic communication service  
6 provider to comply with the directive if the  
7 judge finds that the directive was issued in ac-  
8 cordance with paragraph (1), meets the require-  
9 ments of this section, and is otherwise lawful.  
10 The judge shall provide a written statement for  
11 the record of the reasons for a determination  
12 under this paragraph.

13 “(D) CONTEMPT OF COURT.—Failure to  
14 obey an order of the Court issued under this  
15 paragraph may be punished by the Court as  
16 contempt of court.

17 “(E) PROCESS.—Any process under this  
18 paragraph may be served in any judicial district  
19 in which the electronic communication service  
20 provider may be found.

21 “(6) APPEAL.—

22 “(A) APPEAL TO THE COURT OF RE-  
23 VIEW.—The Government or an electronic com-  
24 munication service provider receiving a directive  
25 issued pursuant to paragraph (1) may file a pe-

1           tition with the Foreign Intelligence Surveillance  
2           Court of Review for review of the decision  
3           issued pursuant to paragraph (4) or (5) not  
4           later than 7 days after the issuance of such de-  
5           cision. The Court of Review shall have jurisdic-  
6           tion to consider such a petition and shall pro-  
7           vide a written statement for the record of the  
8           reasons for a decision under this paragraph.

9           “(B) CERTIORARI TO THE SUPREME  
10          COURT.—The Government or an electronic com-  
11          munication service provider receiving a directive  
12          issued pursuant to paragraph (1) may file a pe-  
13          tition for a writ of certiorari for review of the  
14          decision of the Court of Review issued under  
15          subparagraph (A). The record for such review  
16          shall be transmitted under seal to the Supreme  
17          Court of the United States, which shall have ju-  
18          risdiction to review such decision.

19          “(h) JUDICIAL REVIEW.—

20                 “(1) IN GENERAL.—

21                         “(A) REVIEW BY THE FOREIGN INTEL-  
22                         LIGENCE SURVEILLANCE COURT.—The Foreign  
23                         Intelligence Surveillance Court shall have juris-  
24                         diction to review any certification required by  
25                         subsection (c) and the targeting and minimiza-

1           tion procedures adopted pursuant to subsections  
2           (d) and (e).

3                   “(B) SUBMISSION TO THE COURT.—The  
4           Attorney General shall submit to the Court any  
5           such certification or procedure, or amendment  
6           thereto, not later than 5 days after making or  
7           amending the certification or adopting or  
8           amending the procedures.

9                   “(2) CERTIFICATIONS.—The Court shall review  
10          a certification provided under subsection (f) to deter-  
11          mine whether the certification contains all the re-  
12          quired elements.

13                   “(3) TARGETING PROCEDURES.—The Court  
14          shall review the targeting procedures required by  
15          subsection (d) to assess whether the procedures are  
16          reasonably designed to ensure that the acquisition  
17          authorized under subsection (a) is limited to the tar-  
18          geting of persons reasonably believed to be located  
19          outside the United States.

20                   “(4) MINIMIZATION PROCEDURES.—The Court  
21          shall review the minimization procedures required by  
22          subsection (e) to assess whether such procedures  
23          meet the definition of minimization procedures  
24          under section 101(h) or section 301(4).

25                   “(5) ORDERS.—



1           “(A) APPROVAL.—If the Court finds that  
2 a certification required by subsection (f) con-  
3 tains all of the required elements and that the  
4 targeting and minimization procedures required  
5 by subsections (d) and (e) are consistent with  
6 the requirements of those subsections and with  
7 the fourth amendment to the Constitution of  
8 the United States, the Court shall enter an  
9 order approving the continued use of the proce-  
10 dures for the acquisition authorized under sub-  
11 section (a).

12           “(B) CORRECTION OF DEFICIENCIES.—If  
13 the Court finds that a certification required by  
14 subsection (f) does not contain all of the re-  
15 quired elements, or that the procedures re-  
16 quired by subsections (d) and (e) are not con-  
17 sistent with the requirements of those sub-  
18 sections or the fourth amendment to the Con-  
19 stitution of the United States, the Court shall  
20 issue an order directing the Government to, at  
21 the Government’s election and to the extent re-  
22 quired by the Court’s order—

23                   “(i) correct any deficiency identified  
24 by the Court’s order not later than 30 days

1 after the date the Court issues the order;  
2 or

3 “(ii) cease the acquisition authorized  
4 under subsection (a).

5 “(C) REQUIREMENT FOR WRITTEN STATE-  
6 MENT.—In support of its orders under this sub-  
7 section, the Court shall provide, simultaneously  
8 with the orders, for the record a written state-  
9 ment of its reasons.

10 “(6) APPEAL.—

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

20 “(B) CONTINUATION OF ACQUISITION  
21 PENDING REHEARING OR APPEAL.—Any acqui-  
22 sitions affected by an order under paragraph  
23 (5)(B) may continue—

24 “(i) during the pending of any rehear-  
25 ing of the order by the Court en banc; and

1                   “(ii) during the pendency of any ap-  
2                   peal of the order to the Foreign Intel-  
3                   ligence Surveillance Court of Review.

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

12               “(i) JUDICIAL PROCEEDINGS.—Judicial proceedings  
13               under this section shall be conducted as expeditiously as  
14               possible.

15               “(j) MAINTENANCE OF RECORDS.—

16               “(1) STANDARDS.—A record of a proceeding  
17               under this section, including petitions filed, orders  
18               granted, and statements of reasons for decision,  
19               shall be maintained under security measures adopted  
20               by the Chief Justice of the United States, in con-  
21               sultation with the Attorney General and the Director  
22               of National Intelligence.

23               “(2) FILING AND REVIEW.—All petitions under  
24               this section shall be filed under seal. In any pro-  
25               ceedings under this section, the court shall, upon re-

1       quest of the Government, review ex parte and in  
2       camera any Government submission, or portions of  
3       a submission, which may include classified informa-  
4       tion.

5           “(3) RETENTION OF RECORDS.—A directive  
6       made or an order granted under this section shall be  
7       retained for a period of not less than 10 years from  
8       the date on which such directive or such order is  
9       made.

10       “(k) ASSESSMENTS AND REVIEWS.—

11           “(1) SEMIANNUAL ASSESSMENT.—Not less fre-  
12       quently than once every 6 months, the Attorney  
13       General and Director of National Intelligence shall  
14       assess compliance with the targeting and minimiza-  
15       tion procedures required by subsections (e) and (f)  
16       and shall submit each such assessment to—

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

19           “(B) the congressional intelligence commit-  
20       tees.

21           “(2) AGENCY ASSESSMENT.—The Inspectors  
22       General of the Department of Justice and of any  
23       element of the intelligence community authorized to  
24       acquire foreign intelligence information under sub-

1 section (a) with respect to their department, agency,  
2 or element—

3 “(A) are authorized to review the compli-  
4 ance with the targeting and minimization proce-  
5 dures required by subsections (d) and (e);

6 “(B) with respect to acquisitions author-  
7 ized under subsection (a), shall review the num-  
8 ber of disseminated intelligence reports con-  
9 taining a reference to a United States person  
10 identity and the number of United States per-  
11 son identities subsequently disseminated by the  
12 element concerned in response to requests for  
13 identities that were not referred to by name or  
14 title in the original reporting;

15 “(C) with respect to acquisitions author-  
16 ized under subsection (a), shall review the num-  
17 ber of targets that were later determined to be  
18 located in the United States and, to the extent  
19 possible, whether their communications were re-  
20 viewed; and

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

22 “(i) the Attorney General;

23 “(ii) the Director of National Intel-  
24 ligence; and

1                   “(iii) the congressional intelligence  
2                   committees.

3                   “(3) ANNUAL REVIEW.—

4                   “(A) REQUIREMENT TO CONDUCT.—The  
5                   head of an element of the intelligence commu-  
6                   nity conducting an acquisition authorized under  
7                   subsection (a) shall direct the element to con-  
8                   duct an annual review to determine whether  
9                   there is reason to believe that foreign intel-  
10                  ligence information has been or will be obtained  
11                  from the acquisition. The annual review shall  
12                  provide, with respect to such acquisitions au-  
13                  thorized under subsection (a)—

14                  “(i) an accounting of the number of  
15                  disseminated intelligence reports con-  
16                  taining a reference to a United States per-  
17                  son identity;

18                  “(ii) an accounting of the number of  
19                  United States person identities subse-  
20                  quently disseminated by that element in re-  
21                  sponse to requests for identities that were  
22                  not referred to by name or title in the  
23                  original reporting;

24                  “(iii) the number of targets that were  
25                  later determined to be located in the

1 United States and the number of and, to  
2 the extent possible, whether their commu-  
3 nications were reviewed; and

4 “(iv) a description of any procedures  
5 developed by the Director of National In-  
6 telligence to assess, in a manner consistent  
7 with national security, operational require-  
8 ments and the privacy interests of United  
9 States persons, the extent to which the ac-  
10 quisitions authorized under subsection (a)  
11 acquire the communications of United  
12 States persons, as well as the results of  
13 any assessment.

14 “(B) USE OF REVIEW.—The head of each  
15 element of the intelligence community that con-  
16 ducts an annual review under subparagraph (A)  
17 shall use each such review to evaluate the ade-  
18 quacy of the minimization procedures utilized  
19 by such element or the application of the mini-  
20 mization procedures to a particular acquisition  
21 authorized under subsection (a).

22 “(C) PROVISION OF REVIEW TO FOREIGN  
23 INTELLIGENCE SURVEILLANCE COURT.—The  
24 head of each element of the intelligence commu-  
25 nity that conducts an annual review under sub-

1 paragraph (A) shall provide such review to the  
2 Foreign Intelligence Surveillance Court.

3 **“SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED**  
4 **STATES OF UNITED STATES PERSONS OUT-**  
5 **SIDE THE UNITED STATES.**

6 **“(a) JURISDICTION OF THE FOREIGN INTELLIGENCE**  
7 **SURVEILLANCE COURT.—**

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

19 **“(2) LIMITATION.—**In the event that a United  
20 States person targeted under this subsection is rea-  
21 sonably believed to be located in the United States  
22 during the pendency of an order issued pursuant to  
23 subsection (c), such acquisition shall cease until au-  
24 thority, other than under this section, is obtained  
25 pursuant to this Act or the targeted United States



1 person is again reasonably believed to be located out-  
2 side the United States during the pendency of an  
3 order issued pursuant to subsection (c).

4 “(b) APPLICATION.—

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

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

16 “(B) the identity, if known, or a descrip-  
17 tion of the United States person target of the  
18 acquisition;

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

22 “(i) a United States person reason-  
23 ably believed to be located outside the  
24 United States; and

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

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

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

10                   “(F) a certification made by the Attorney  
11                   General or an official specified in section  
12                   104(a)(6) that—

13                   “(i) the certifying official deems the  
14                   information sought to be foreign intel-  
15                   ligence information;

16                   “(ii) a significant purpose of the ac-  
17                   quisition is to obtain foreign intelligence  
18                   information;

19                   “(iii) such information cannot reason-  
20                   ably be obtained by normal investigative  
21                   techniques;

22                   “(iv) designates the type of foreign in-  
23                   telligence information being sought accord-  
24                   ing to the categories described in section  
25                   101(e); and