

AMENDMENT NO.

Calendar No.

Purpose: To expedite the review of challenges to directives under the Foreign Intelligence Surveillance Act of 1978.

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
ordered to be printed

and

Ordered to lie on the table and to be printed

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

Viz:

- 1 On page 13, strike lines 3 through 13, and insert the
- 2 following:
- 3 “(C) STANDARDS FOR REVIEW.—A judge
- 4 considering a petition to modify or set aside a
- 5 directive may grant such petition only if the
- 6 judge finds that the directive does not meet the
- 7 requirements of this section, or is otherwise un-
- 8 lawful.

1 “(D) PROCEDURES FOR INITIAL RE-
2 VIEW.—A judge shall conduct an initial review
3 not later than 5 days after being assigned a pe-
4 tition described in subparagraph (C). If the
5 judge determines that the petition consists of
6 claims, defenses, or other legal contentions that
7 are not warranted by existing law or by a non-
8 frivolous argument for extending, modifying, or
9 reversing existing law or for establishing new
10 law, the judge shall immediately deny the peti-
11 tion and affirm the directive or any part of the
12 directive that is the subject of the petition and
13 order the recipient to comply with the directive
14 or any part of it. Upon making such a deter-
15 mination or promptly thereafter, the judge shall
16 provide a written statement for the record of
17 the reasons for a determination under this sub-
18 paragraph.

19 “(E) PROCEDURES FOR PLENARY RE-
20 VIEW.—If a judge determines that a petition
21 described in subparagraph (C) requires plenary
22 review, the judge shall affirm, modify, or set
23 aside the directive that is the subject of that pe-
24 tition not later than 30 days after being as-
25 signed the petition, unless the judge, by order

1 for reasons stated, extends that time as nec-
2 essary to comport with the due process clause
3 of the fifth amendment to the Constitution of
4 the United States. Unless the judge sets aside
5 the directive, the judge shall immediately affirm
6 or affirm with modifications the directive, and
7 order the recipient to comply with the directive
8 in its entirety or as modified. The judge shall
9 provide a written statement for the records of
10 the reasons for a determination under this sub-
11 paragraph.

12 On page 13, line 14, strike "(D)" and insert "(F)".

13 On page 13, line 17, strike "(E)" and insert "(G)".

14 On page 14, strike lines 10 through 19, and insert
15 the following:

16 “(C) STANDARDS FOR REVIEW.—A judge
17 considering a petition filed under subparagraph
18 (A) shall issue an order requiring the electronic
19 communication service provider to comply with
20 the directive or any part of it, as issued or as
21 modified, if the judge finds that the directive

1 meets the requirements of this section, and is
2 otherwise lawful.

3 “(D) PROCEDURES FOR REVIEW.—The
4 judge shall render a determination not later
5 than 30 days after being assigned a petition
6 filed under subparagraph (A), unless the judge,
7 by order for reasons stated, extends that time
8 if necessary to comport with the due process
9 clause of the fifth amendment to the Constitu-
10 tion of the United States. The judge shall pro-
11 vide a written statement for the record of the
12 reasons for a determination under this para-
13 graph.

14 On page 14, line 20, strike “(D)” and insert “(E)”.

15 On page 14, line 24, strike “(E)” and insert “(F)”.