

AMENDMENT NO.

Calendar No.

Purpose: To modify the procedures for acquisitions targeting United States persons located outside the United States.

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

~~S. 2248~~  
S.A. 3911 (Rockefeller-Bond managers' amendment)

To: **AMENDMENT No. 3933** 1978,  
By Wyden t Act,

To: Amdt. No. 3911

Re \_\_\_\_\_ and  
15  
Page(s)

GPO: 2008 30-772 (Rev. 6)

AMENDMENT intended to be proposed by Mr. Wyden

Viz:

1 Beginning on page 24 , strike line 20 and all that  
2 following through page 48 , line 3 , and insert the fol-  
3 lowing:

4 ~~“(c) UNITED STATES PERSONS LOCATED OUTSIDE~~  
5 ~~THE UNITED STATES.~~

6 ~~Sec. 704~~(1) ACQUISITION INSIDE THE UNITED STATES  
7 OF UNITED STATES PERSONS OUTSIDE THE UNITED  
8 STATES.—An acquisition authorized under sub-

1 get, for the purpose of acquiring foreign  
2 intelligence information, a United States  
3 person reasonably believed to be located  
4 outside the United States under cir-  
5 cumstances in which the targeted United  
6 States person has a reasonable expectation  
7 of privacy and a warrant would be required  
8 if the acquisition were conducted inside the  
9 United States for law enforcement pur-  
10 poses, unless a judge of the Foreign Intel-  
11 ligence Surveillance Court has entered an  
12 order or the Attorney General has author-  
13 ized an emergency acquisition pursuant to  
14 subparagraphs (C) or (D) or any other  
15 provision of this Act.

16 “(iii) LIMITATIONS.—

17 “(I) MOVING OR MISIDENTIFIED  
18 TARGETS.—In the event that the tar-  
19 geted United States person is reason-  
20 ably believed to be in the United  
21 States during the pendency of an  
22 order issued pursuant to subpara-  
23 graph (C), such acquisition shall cease  
24 until authority is obtained pursuant to  
25 this Act or the targeted United States

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

5                   “(I) a United States person rea-  
6                   sonably believed to be located outside  
7                   the United States; and

8                   “(II) a foreign power, an agent  
9                   of a foreign power, or an officer or  
10                  employee of a foreign power who is  
11                  reasonably believed to have access to  
12                  foreign intelligence information;

13                  “(iii) a certification or certifications  
14                  by the Assistant to the President for Na-  
15                  tional Security Affairs or an executive  
16                  branch official or officials designated by  
17                  the President from among those executive  
18                  officers employed in the area of national  
19                  security or defense and appointed by the  
20                  President with the advice and consent of  
21                  the Senate—

22                  “(I) that the certifying official  
23                  deems the information sought to be  
24                  foreign intelligence information; and

1 maintained, provided that such period of  
2 time shall not exceed 90 days per applica-  
3 tion.

4 “(C) ORDER.—

5 “(i) FINDINGS.—If, upon an applica-  
6 tion made pursuant to subparagraph (B),  
7 a judge having jurisdiction under subpara-  
8 graph (A)(i) finds that—

9 “(I) on the basis of the facts sub-  
10 mitted by the applicant there is prob-  
11 able cause to believe that the specified  
12 target of the acquisition is—

13 “(aa) a person reasonably  
14 believed to be located outside the  
15 United States; and

16 (bb) a foreign power, an  
17 agent of a foreign power, or an  
18 officer or employee of a foreign  
19 power who is reasonably believed  
20 to have access to foreign intel-  
21 ligence information;

22 “(II) the proposed minimization  
23 procedures, with respect to their dis-  
24 semination provisions, meet the defini-

1                   “(I) LIMITATIONS ON REVIEW.—

2                   Review by a judge having jurisdiction  
3                   under subparagraph (A)(i) shall be  
4                   limited to that required to make the  
5                   findings described in clause (i). The  
6                   judge shall not have jurisdiction to re-  
7                   view the means by which an acquisi-  
8                   tion under this section may be con-  
9                   ducted.

10                   “(II) REVIEW OF PROBABLE  
11                   CAUSE.—If the judge determines that  
12                   the facts submitted under subpara-  
13                   graph (B) are insufficient to establish  
14                   probable cause to issue an order  
15                   under this subsection, the judge shall  
16                   enter an order so stating and provide  
17                   a written statement for the record of  
18                   the reasons for such determination.  
19                   The Government may appeal an order  
20                   under this clause pursuant to sub-  
21                   paragraph (E).

22                   “(III) REVIEW OF MINIMIZATION  
23                   PROCEDURES.—If the judge deter-  
24                   mines that the minimization proce-  
25                   dures applicable to dissemination of

1           sons was disseminated, provided that the  
2           judge may not inquire into the cir-  
3           cumstances relating to the conduct of the  
4           acquisition.

5           “(D) EMERGENCY AUTHORIZATION.—

6                   “(i) AUTHORITY FOR EMERGENCY AU-  
7           THORIZATION.—Notwithstanding any other  
8           provision in this subsection, if the Attorney  
9           General reasonably determines that—

10                   “(I) an emergency situation ex-  
11           ists with respect to the acquisition of  
12           foreign intelligence information for  
13           which an order may be obtained under  
14           subparagraph (C) before an order  
15           under that subsection may, with due  
16           diligence, be obtained; and

17                   “(II) the factual basis for  
18           issuance of an order under this sec-  
19           tion exists,

20           the Attorney General may authorize the  
21           emergency acquisition if a judge having ju-  
22           risdiction under subparagraph (A)(i) is in-  
23           formed by the Attorney General or a des-  
24           ignee of the Attorney General at the time  
25           of such authorization that the decision has

1 minated and no order is issued approving  
2 the acquisition, no information obtained or  
3 evidence derived from such acquisition, ex-  
4 cept under circumstances in which the tar-  
5 get of the acquisition is determined not to  
6 be a United States person during the  
7 pendency of the 168-hour emergency ac-  
8 quisition period, shall be received in evi-  
9 dence or otherwise disclosed in any trial,  
10 hearing, or other proceeding in or before  
11 any court, grand jury, department, office,  
12 agency, regulatory body, legislative com-  
13 mittee, or other authority of the United  
14 States, a State, or political subdivision  
15 thereof, and no information concerning any  
16 United States person acquired from such  
17 acquisition shall subsequently be used or  
18 disclosed in any other manner by Federal  
19 officers or employees without the consent  
20 of such person, except with the approval of  
21 the Attorney General if the information in-  
22 dicates a threat of death or serious bodily  
23 harm to any person.

24 “(E) APPEAL.—

1           103(a) may issue simultaneously, upon the re-  
2           quest of the Government in a joint application  
3           complying with the requirements of subpara-  
4           graph (B) and section 104 or 303, orders au-  
5           thorizing the proposed acquisition under sub-  
6           paragraph (B) and section 105 or 304, as ap-  
7           plicable.

8           “(G) CONCURRENT AUTHORIZATION.—If  
9           an order authorizing electronic surveillance or  
10          physical search has been obtained under section  
11          105 or 304 and that order is in effect, the At-  
12          torney General may authorize, during the pend-  
13          ency of such order and without an order under  
14          this paragraph, an acquisition under this para-  
15          graph of foreign intelligence information tar-  
16          geting that United States person while such  
17          person is reasonably believed to be located out-  
18          side the United States. Prior to issuing such an  
19          authorization, the Attorney General shall sub-  
20          mit dissemination provisions of minimization  
21          procedures for such an acquisition to a judge  
22          having jurisdiction under subparagraph (A) for  
23          approval.