

CRITERIA.—With respect to subsection (b)(2), the guidelines adopted pursuant to paragraph (1) shall contain specific criteria for determining whether a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States. Such criteria shall include consideration of whether—

“(A) the department or agency of the Federal Government conducting the acquisition has made an inquiry to another department or agency of the Federal Government to gather information on the specific United States person;

“(B) the department or agency of the Federal Government conducting the acquisition has provided information that identifies the specific United States person to another department or agency of the Federal Government;

“(C) the department or agency of the Federal Government conducting the acquisition determines that the specific United States person has been the subject of ongoing interest or repeated investigation by a department or agency of the Federal Government; and

“(D) the specific United States person is a natural person.

“(3)

“(e) Special Rule for Certain Cases.—For any covered civil action alleging that a person provided assistance to an element of the intelligence community pursuant to a request or directive during the period from September 11, 2001 through January 17, 2007, the Attorney General shall provide to the court any request or directive related to the allegations under the procedures set forth in subsection (b).

“(f)

covered civil actions.”.

## TITLE III—COMMISSION ON WARRANTLESS ELECTRONIC SURVEILLANCE ACTIVITIES

### SEC. 301. COMMISSION ON WARRANTLESS ELECTRONIC SURVEILLANCE ACTIVITIES.

(a) Establishment of Commission.—There is established in the legislative branch a commission to be known as the “Commission on Warrantless Electronic Surveillance Activities” (in this section referred to as the “Commission”).

(b) Duties of Commission.—

(1) IN GENERAL.—The Commission shall—

(A) ascertain, evaluate, and report upon the facts and circumstances relating

to electronic surveillance activities conducted without a warrant between September 11, 2001 and January 17, 2007;

(B) evaluate the lawfulness of such activities;

(C) examine all programs and activities relating to intelligence collection inside the United States or regarding United States persons that were in effect or operation on September 11, 2001, and all such programs and activities undertaken since that date, including the legal framework or justification for those activities; and

(D) report to the President and Congress the findings and conclusions of the Commission and any recommendations the Commission considers appropriate.

(2) PROTECTION OF NATIONAL SECURITY.—The Commission shall carry out the duties of the Commission under this section in a manner consistent with the need to protect national security.

(c) Composition of Commission.—

(1) MEMBERS.—The Commission shall be composed of 9 members, of whom—

(A) 5 members shall be appointed jointly by the majority leader of the Senate and the Speaker of the House of Representatives; and

(B) 4 members shall be appointed jointly by the minority leader of the Senate and the minority leader of the House of Representatives.

(2) QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens with significant depth of experience in national security, Constitutional law, and civil liberties.

(3) CHAIR; VICE CHAIR.—

(A) CHAIR.—The Chair of the Commission shall be jointly appointed by the majority leader of the Senate and the Speaker of the House of Representatives from among the members appointed under paragraph (1)(A).

(B) VICE CHAIR.—The Vice Chair of the Commission shall be jointly appointed by the minority leader of the Senate and the minority leader of the House of Representatives from among the members appointed under paragraph (1)(B).

(4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed not later than 90 days after the date of the enactment of this Act.

(5) INITIAL MEETING.—The Commission shall hold its first meeting and begin operations not later than 45 days after the date on which a majority of its members have been appointed.

(6) SUBSEQUENT MEETINGS.—After its initial meeting, the Commission shall meet upon the call of the Chair.

(7) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(8) VACANCIES.—Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(d) Powers of Commission.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Chair, any subcommittee or member thereof may, for the purpose of carrying out this section, hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths as the Commission, such designated subcommittee, or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—

(i) IN GENERAL.—The Commission may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter that the Commission is empowered to investigate under this section. The attendance of witnesses and the production of evidence may be required from any place within the United States at any designated place of hearing within the United States.

(ii) SIGNATURE.—Subpoenas issued under this paragraph may be issued under the signature of the Chair of the Commission, the chair of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission and may be served by any person designated by such Chair, subcommittee chair, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—If a person refuses to obey a subpoena issued under subparagraph (A), the Commission may apply to a United States district court for an order requiring that person to appear before the Commission to give testimony, produce evidence, or both, relating to the matter under investigation. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

(ii) JURISDICTION.—In the case of contumacy or failure to obey a subpoena issued under subparagraph (A), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(iii) ADDITIONAL ENFORCEMENT.—In the case of the failure of a witness to comply with any subpoena or to testify when summoned under authority of this paragraph, the Commission, by majority vote, may certify a statement of fact attesting to such failure to the appropriate United States attorney, who shall bring the matter before the grand jury for its action, under the same

authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(3) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriations Acts, enter into contracts to enable the Commission to discharge its duties under this section.

(4) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government documents, information, suggestions, estimates, and statistics for the purposes of this section. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall furnish such documents, information, suggestions, estimates, and statistics directly to the Commission upon request made by the Chair, the chair of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(B) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff in a manner consistent with all applicable statutes, regulations, and Executive orders.

(5) ASSISTANCE FROM FEDERAL AGENCIES.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(B) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in subparagraph (A), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(6) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(7) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(e) Staff of Commission.—

(1) IN GENERAL.—

(A) APPOINTMENT AND COMPENSATION.—The Chair, in consultation with

Vice Chair and in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of an executive director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this paragraph may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

**(B) PERSONNEL AS FEDERAL EMPLOYEES.—**

(i) **IN GENERAL.**—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

(ii) **MEMBERS OF COMMISSION.**—Clause (i) shall not be construed to apply to members of the Commission.

(2) **DETAILEES.**—A Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) **CONSULTANT SERVICES.**—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

**(f) Security Clearances for Commission Members and Staff.—**

(1) **EXPEDITIOUS PROVISION OF CLEARANCES.**—The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this section without the appropriate security clearances.

(2) **ACCESS TO CLASSIFIED INFORMATION.**—All members of the Commission and commission staff, as authorized by the Chair or the designee of the Chair, who have obtained appropriate security clearances, shall have access to classified information related to the surveillance activities within the scope of the examination of the Commission and any other related classified information that the members of the Commission determine relevant to carrying out the duties of the Commission under this section.

(3) **FACILITIES AND RESOURCES.**—The Director of National Intelligence shall provide the Commission with appropriate space and technical facilities approved by the Commission.

(g) Compensation and Travel Expenses.—

(1) COMPENSATION.—Each member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission:

(2) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(h) Nonapplicability of Federal Advisory Committee Act.—

(1) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(2) PUBLIC MEETINGS.—The Commission shall hold public hearings and meetings to the extent appropriate.

(3) PUBLIC HEARINGS.—Any public hearings of the Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

(i) Reports and Recommendations of Commission.—

(1) INTERIM REPORTS.—The Commission may submit to the President and Congress interim reports containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(2) FINAL REPORT.—Not later than one year after the date of its first meeting, the Commission, in consultation with appropriate representatives of the intelligence community, shall submit to the President and Congress a final report containing such information, analysis, findings, conclusions, and recommendations as have been agreed to by a majority of Commission members.

(3) FORM.—The reports submitted under paragraphs (1) and (2) shall be submitted in unclassified form, but may include a classified annex.

(4) RECOMMENDATIONS FOR DECLASSIFICATION.—The Commission may make recommendations to the appropriate department or agency of the Federal Government regarding the declassification of documents or portions of documents.

(j) Termination.—

(1) IN GENERAL.—The Commission, and all the authorities of this section, shall terminate 60 days after the date on which the final report is submitted under subsection (i)(2).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its report and disseminating the final report.

(k) Definitions.—In this section:

(1) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) UNITED STATES PERSON.—The term “United States person” has the meaning given the term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(i)).

(l) Funding.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the activities of the Commission under this section.

(2) DURATION OF AVAILABILITY.—Amounts made available to the Commission under paragraph (1) shall remain available until the termination of the Commission.