

AMENDMENT NO.

Calendar No.

Purpose: To improve the bill.

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

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

Viz:

1        On page 2, line 5, strike “Targeting the communica-  
2 tions of”, and insert “Additional Procedures regarding”

3        On page 3, strike lines 1 through 5 and insert the  
4 following:

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

5 On page 4, beginning on line 20, strike “communica-  
6 tions” and insert “communication”.

7 On page 5, strike lines 15 through 17 and insert the  
8 following:

9 **“SEC. 703. PROCEDURES FOR TARGETING CERTAIN PER-**  
10 **SONS OUTSIDE THE UNITED STATES OTHER**  
11 **THAN UNITED STATES PERSONS.”.**

12 On page 6, line 5, insert “located” after “be”.

13 On page 6, line 9, strike “and”.

14 On page 6, between lines 9 and 10, insert the fol-  
15 lowing:

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

- 1 On page 6, line 10, strike "(3)" and insert "(4)".
- 2 Beginning on page 6, strike line 13 and all that fol-  
3 lows through page 8, line 24.
- 4 On page 9, line 1, strike "(d)" and insert "(e)".
- 5 On page 9, line 6, strike "(g)" and insert "(f)".
- 6 On page 9, line 8, strike "(e) and (f)" and insert "(d)  
7 and (e)".
- 8 On page 9, line 9, strike "(e)" and insert "(d)".
- 9 On page 9, line 19, strike "(i)" and insert "(h)".
- 10 On page 9, line 20, strike "(f)" and insert "(e)".
- 11 On page 9, line 24, insert "or section 301(4)" after  
12 "101(h)".
- 13 On page 10, line 5, strike "(i)" and insert "(h)".
- 14 On page 10, line 6, strike "(g)" and insert "(f)".

- 1 On page 11, line 12, strike "(i)" and insert "(h)".
- 2 On page 12, line 3, insert "or section 301(4)" after  
3 "101(h)".
- 4 On page 12, line 8, strike "(i)" and insert "(h)".
- 5 On page 13, line 15, strike "(i)" and insert "(h)".
- 6 On page 13, line 16, strike "(h)" and insert "(g)".
- 7 On page 18, line 5, strike "(i)" and insert "(h)".
- 8 On page 18, line 11, strike "(d) or" and insert "(c)  
9 and the".
- 10 On page 18, beginning on line 12, strike "(e) and  
11 (f)" and insert "(d) and (e)".
- 12 On page 18, line 21, strike "(g)" and insert "(f)".
- 13 On page 19, line 1, strike "(e)" and insert "(d)".
- 14 On page 19, line 8, strike "(f)" and insert "(e)".

- 1        On page 19, line 10, insert “or section 301(4)” after  
2 “101(h)”.
- 3        On page 19, line 13, strike “(g)” and insert “(f)”.
- 4        On page 19, line 16, strike “(e) and (f)” and insert  
5 “(d) and (e)”.
- 6        On page 19, line 25, strike “(g)” and insert “(f)”.
- 7        On page 20, line 2, strike “(e) and (f)” and insert  
8 “(d) and (e)”.
- 9        On page 21, line 22, strike “(j)” and insert “(i)”.
- 10       On page 21, line 25, strike “(k)” and insert “(j)”.
- 11       On page 22, line 20, strike “(l) OVERSIGHT.—” and  
12 insert “(k) ASSESSMENTS AND REVIEWS.—”
- 13       On page 23, line 11, strike “(a)—” and insert “(a)  
14 with respect to their department, agency, or element—”.

1       On page 23, line 13, strike “of their agency or ele-  
2 ment”.

3       On page 23, line 15, strike “(e) and (f)” and insert  
4 “(d) and (e)”.

5       On page 24, beginning on line 4, strike “and the  
6 number of persons located in the United States whose  
7 communications were reviewed” and insert “and, to the  
8 extent possible, whether their communications were re-  
9 viewed”.

10       On page 25, beginning on line 11, strike “and the  
11 number of persons located in the United States whose  
12 communications were reviewed” and insert “and, to the  
13 extent possible, whether their communications were re-  
14 viewed; and

15                   “(iv) a description of any procedures  
16                   developed by the head of an element of the  
17                   Intelligence Community and approved by  
18                   the Director of National Intelligence to as-  
19                   sess, in a manner consistent with national  
20                   security, operational requirements and the  
21                   privacy interests of the United States per-  
22                   sons, the extent to which the acquisitions

1 authorized under subsection (a) acquire  
2 the communications of United States per-  
3 sons, as well as the results of any such as-  
4 sessment.

5 Beginning on page 26, strike line 3 and all that fol-  
6 lows through page 28, line 17, and insert the following:

7 **“SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED**  
8 **STATES OF UNITED STATES PERSONS OUT-**  
9 **SIDE THE UNITED STATES.**

10 **“(a) JURISDICTION OF THE FOREIGN INTELLIGENCE**  
11 **SURVEILLANCE COURT.—**

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

23 **“(2) LIMITATION.—**In the event that a United  
24 States person targeted under this subsection is rea-

1 sonably believed to be located in the United States  
2 during the pendency of an order issued pursuant to  
3 subsection (c), such acquisition shall cease until au-  
4 thority, other than under this section, is obtained  
5 pursuant to this Act or the targeted United States  
6 person is again reasonably believed to be located out-  
7 side the United States during the pendency of an  
8 order issued pursuant to subsection (c).

9 “(b) APPLICATION.—

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

19 “(A) the identity of the Federal officer  
20 making the application;

21 “(B) the identity, if known, or a descrip-  
22 tion of the United States person target of the  
23 acquisition;



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

4                   “(i) a United States person reason-  
5                   ably believed to be located outside the  
6                   United States; and

7                   “(ii) a foreign power, an agent of a  
8                   foreign power, or an officer or employee of  
9                   a foreign power;

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

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

16           “(F) a certification made by the Attorney  
17           General or an official specified in section  
18           104(a)(6) that—

19                   “(i) the certifying official deems the  
20                   information sought to be foreign intel-  
21                   ligence information;

22                   “(ii) a significant purpose of the ac-  
23                   quisition is to obtain foreign intelligence  
24                   information;

1                   “(iii) such information cannot reason-  
2 ably be obtained by normal investigative  
3 techniques;

4                   “(iv) designates the type of foreign in-  
5 telligence information being sought accord-  
6 ing to the categories described in section  
7 101(e); and

8                   “(v) includes a statement of the basis  
9 for the certification that—

10                   “(I) the information sought is  
11 the type of foreign intelligence infor-  
12 mation designated; and

13                   “(II) such information cannot  
14 reasonably be obtained by normal in-  
15 vestigative techniques.

16                   “(G) a summary statement of the means  
17 by which the acquisition will be conducted and  
18 whether physical entry is required to effect the  
19 acquisition;

20                   “(H) the identity of any electronic commu-  
21 nication service provider necessary to effect the  
22 acquisition, provided, however, that the applica-  
23 tion is not required to identify the specific fa-  
24 cilities, places, premises, or property at which

1           the acquisition authorized under this section  
2           will be directed or conducted;

3           “(I) a statement of the facts concerning  
4           any previous applications that have been made  
5           to any judge of the Foreign Intelligence Surveil-  
6           lance Court involving the United States person  
7           specified in the application and the action taken  
8           on each previous application; and

9           “(J) a statement of the period of time for  
10          which the acquisition is required to be main-  
11          tained, provided that such period of time shall  
12          not exceed 90 days per application.

13          “(2) OTHER REQUIREMENTS OF THE ATTOR-  
14          NEY GENERAL.—The Attorney General may require  
15          any other affidavit or certification from any other  
16          officer in connection with the application.

17          “(3) OTHER REQUIREMENTS OF THE JUDGE.—  
18          The judge may require the applicant to furnish such  
19          other information as may be necessary to make the  
20          findings required by subsection (c)(1).

21          “(c) ORDER.—

22          “(1) FINDINGS.—Upon an application made  
23          pursuant to subsection (b), the Foreign Intelligence  
24          Surveillance Court shall enter an ex parte order as

1 requested or as modified approving the acquisition if  
2 the Court finds that—

3 “(A) the application has been made by a  
4 Federal officer and approved by the Attorney  
5 General;

6 “(B) on the basis of the facts submitted by  
7 the applicant, there is probable cause to believe  
8 that the specified target of the acquisition is—

9 “(i) a person reasonably believed to be  
10 located outside the United States; and

11 “(ii) a foreign power, an agent of a  
12 foreign power, or an officer or employee of  
13 a foreign power;

14 “(C) the proposed minimization procedures  
15 meet the definition of minimization procedures  
16 under section 101(h) or section 301(4); and

17 “(D) the application which has been filed  
18 contains all statements and certifications re-  
19 quired by subsection (b) and the certification or  
20 certifications are not clearly erroneous on the  
21 basis of the statement made under subsection  
22 (b) (1)(F) and any other information furnished  
23 under subsection (b)(3).

24 “(2) PROBABLE CAUSE.—In determining  
25 whether or not probable cause exists for purposes of

1 an order under paragraph (1), a judge having juris-  
2 diction under subsection (a)(1) may consider past  
3 activities of the target, as well as facts and cir-  
4 cumstances relating to current or future activities of  
5 the target. However, no United States person may  
6 be considered a foreign power, agent of a foreign  
7 power, or officer or employee of a foreign power  
8 solely upon the basis of activities protected by the  
9 first amendment to the Constitution of the United  
10 States.

11 “(3) REVIEW.—

12 “(A) LIMITATION ON REVIEW.—Review by  
13 a judge having jurisdiction under subsection  
14 (a)(1) shall be limited to that required to make  
15 the findings described in paragraph (1).

16 “(B) REVIEW OF PROBABLE CAUSE.—If  
17 the judge determines that the facts submitted  
18 under subsection (b) are insufficient to estab-  
19 lish probable cause to issue an order under  
20 paragraph (1), the judge shall enter an order so  
21 stating and provide a written statement for the  
22 record of the reasons for such determination.  
23 The Government may appeal an order under  
24 this clause pursuant to subsection (f).

1           “(C) REVIEW OF MINIMIZATION PROCE-  
2           DURES.—If the judge determines that the pro-  
3           posed minimization procedures required under  
4           paragraph (1)(C) do not meet the definition of  
5           minimization procedures under section 101(h)  
6           or section 301(4), the judge shall enter an  
7           order so stating and provide a written state-  
8           ment for the record of the reasons for such de-  
9           termination. The Government may appeal an  
10          order under this clause pursuant to subsection  
11          (f).

12           “(D) REVIEW OF CERTIFICATION.—If the  
13          judge determines that an application required  
14          by subsection (2) does not contain all of the re-  
15          quired elements, or that the certification or cer-  
16          tifications are clearly erroneous on the basis of  
17          the statement made under subsection  
18          (b)(1)(F)(v) and any other information fur-  
19          nished under subsection (b)(3), the judge shall  
20          enter an order so stating and provide a written  
21          statement for the record of the reasons for such  
22          determination. The Government may appeal an  
23          order under this clause pursuant to subsection  
24          (f).

1           “(4) SPECIFICATIONS.—An order approving an  
2 acquisition under this subsection shall specify—

3           “(A) the identity, if known, or a descrip-  
4 tion of the United States person target of the  
5 acquisition identified or described in the appli-  
6 cation pursuant to subsection (b)(1)(B);

7           “(B) if provided in the application pursu-  
8 ant to subsection (b)(1)(H), the nature and lo-  
9 cation of each of the facilities or places at  
10 which the acquisition will be directed;

11           “(C) the nature of the information sought  
12 to be acquired and the type of communications  
13 or activities to be subjected to acquisition;

14           “(D) the means by which the acquisition  
15 will be conducted and whether physical entry is  
16 required to effect the acquisition; and

17           “(E) the period of time during which the  
18 acquisition is approved.

19           “(5) DIRECTIONS.—An order approving acquisi-  
20 tions under this subsection shall direct—

21           “(A) that the minimization procedures be  
22 followed;

23           “(B) an electronic communication service  
24 provider to provide to the Government forthwith  
25 all information, facilities, or assistance nec-

1           essary to accomplish the acquisition authorized  
2           under this subsection in a manner that will pro-  
3           tect the secrecy of the acquisition and produce  
4           a minimum of interference with the services  
5           that such electronic communication service pro-  
6           vider is providing to the target;

7           “(C) an electronic communication service  
8           provider to maintain under security procedures  
9           approved by the Attorney General any records  
10          concerning the acquisition or the aid furnished  
11          that such electronic communication service pro-  
12          vider wishes to maintain; and

13          “(D) that the Government compensate, at  
14          the prevailing rate, such electronic communica-  
15          tion service provider for providing such infor-  
16          mation, facilities, or assistance.

17          “(6) DURATION.—An order approved under this  
18          paragraph shall be effective for a period not to ex-  
19          ceed 90 days and such order may be renewed for ad-  
20          ditional 90-day periods upon submission of renewal  
21          applications meeting the requirements of subsection  
22          (b).

23          “(7) COMPLIANCE.—At or prior to the end of  
24          the period of time for which an acquisition is ap-  
25          proved by an order or extension under this section,



1 the judge may assess compliance with the minimiza-  
2 tion procedures by reviewing the circumstances  
3 under which information concerning United States  
4 persons was acquired, retained, or disseminated.

5 “(d) EMERGENCY AUTHORIZATION.—

6 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-  
7 TION.—Notwithstanding any other provision of this  
8 Act, if the Attorney General reasonably determines  
9 that—

10 “(A) an emergency situation exists with re-  
11 spect to the acquisition of foreign intelligence  
12 information for which an order may be obtained  
13 under subsection (c) before an order author-  
14 izing such acquisition can with due diligence be  
15 obtained; and

16 “(B) the factual basis for issuance of an  
17 order under this subsection to approve such ac-  
18 quisition exists,

19 the Attorney General may authorize the emergency  
20 acquisition if a judge having jurisdiction under sub-  
21 section (a)(1) is informed by the Attorney General,  
22 or a designee of the Attorney General, at the time  
23 of such authorization that the decision has been  
24 made to conduct such acquisition and if an applica-  
25 tion in accordance with this subsection is made to a

1 judge of the Foreign Intelligence Surveillance Court  
2 as soon as practicable, but not more than 168 hours  
3 after the Attorney General authorizes such acquisi-  
4 tion.

5 “(2) MINIMIZATION PROCEDURES.—If the At-  
6 torney General authorizes such emergency acquisi-  
7 tion, the Attorney General shall require that the  
8 minimization procedures required by this subsection  
9 for the issuance of a judicial order be followed.

10 “(3) TERMINATION OF EMERGENCY AUTHOR-  
11 IZATION.—In the absence of a judicial order approv-  
12 ing such acquisition, the acquisition shall terminate  
13 when the information sought is obtained, when the  
14 application for the order is denied, or after the expi-  
15 ration of 168 hours from the time of authorization  
16 by the Attorney General, whichever is earliest.

17 “(4) USE OF INFORMATION.—In the event that  
18 such application for approval is denied, or in any  
19 other case where the acquisition is terminated and  
20 no order is issued approving the acquisition, no in-  
21 formation obtained or evidence derived from such ac-  
22 quisition, except under circumstances in which the  
23 target of the acquisition is determined not to be a  
24 United States person during the pendency of the  
25 168-hour emergency acquisition period, shall be re-

1       ceived in evidence or otherwise disclosed in any trial,  
2       hearing, or other proceeding in or before any court,  
3       grand jury, department, office, agency, regulatory  
4       body, legislative committee, or other authority of the  
5       United States, a State, or political subdivision there-  
6       of, and no information concerning any United States  
7       person acquired from such acquisition shall subse-  
8       quently be used or disclosed in any other manner by  
9       Federal officers or employees without the consent of  
10      such person, except with the approval of the Attor-  
11      ney General if the information indicates a threat of  
12      death or serious bodily harm to any person.

13      “(e) RELEASE FROM LIABILITY.—Notwithstanding  
14      any other law, no cause of action shall lie in any court  
15      against any electronic communication service provider for  
16      providing any information, facilities, or assistance in ac-  
17      cordance with an order or request for emergency assist-  
18      ance issued pursuant to subsections (c) or (d).

19      “(f) APPEAL.—

20              “(1) APPEAL TO THE FOREIGN INTELLIGENCE  
21      SURVEILLANCE COURT OF REVIEW.—The Govern-  
22      ment may file an appeal with the Foreign Intel-  
23      ligence Surveillance Court of Review for review of an  
24      order issued pursuant to subsection (c). The Court  
25      of Review shall have jurisdiction to consider such ap-

1 peal and shall provide a written statement for the  
2 record of the reasons for a decision under this para-  
3 graph.

4 “(2) CERTIORARI TO THE SUPREME COURT.—  
5 The Government may file a petition for a writ of  
6 certiorari for review of the decision of the Court of  
7 Review issued under paragraph (1). The record for  
8 such review shall be transmitted under seal to the  
9 Supreme Court of the United States, which shall  
10 have jurisdiction to review such decision.

11 **“SEC. 705. OTHER ACQUISITIONS TARGETING UNITED**  
12 **STATES PERSONS OUTSIDE THE UNITED**  
13 **STATES.**

14 “(a) JURISDICTION AND SCOPE.—

15 “(1) JURISDICTION.—The Foreign Intelligence  
16 Surveillance Court shall have jurisdiction to enter an  
17 order pursuant to subsection (c).

18 “(2) SCOPE.—No element of the intelligence  
19 community may intentionally target, for the purpose  
20 of acquiring foreign intelligence information, a  
21 United States person reasonably believed to be lo-  
22 cated outside the United States under circumstances  
23 in which the targeted United States person has a  
24 reasonable expectation of privacy and a warrant  
25 would be required if the acquisition were conducted

1       inside the United States for law enforcement pur-  
2       poses, unless a judge of the Foreign Intelligence  
3       Surveillance Court has entered an order or the At-  
4       torney General has authorized an emergency acqui-  
5       sition pursuant to subsections (c) or (d) or any other  
6       provision of this Act.

7               “(3) LIMITATIONS.—

8               “(A) MOVING OR MISIDENTIFIED TAR-  
9       GETS.—In the event that the targeted United  
10       States person is reasonably believed to be in the  
11       United States during the pendency of an order  
12       issued pursuant to subsection (c), such acqui-  
13       sition shall cease until authority is obtained pur-  
14       suant to this Act or the targeted United States  
15       person is again reasonably believed to be lo-  
16       cated outside the United States during the  
17       pendency of an order issued pursuant to sub-  
18       section (c).

19              “(B) APPLICABILITY.—If the acquisition  
20       could be authorized under section 704, the pro-  
21       cedures of section 704 shall apply, unless an  
22       order or emergency acquisition authority has  
23       been obtained under a provision of this Act  
24       other than under this section.

1       “(b) APPLICATION.—Each application for an order  
2 under this section shall be made by a Federal officer in  
3 writing upon oath or affirmation to a judge having juris-  
4 diction under subsection (a)(1). Each application shall re-  
5 quire the approval of the Attorney General based upon the  
6 Attorney General’s finding that it satisfies the criteria and  
7 requirements of such application as set forth in this sec-  
8 tion and shall include—

9               “(1) the identity, if known, or a description of  
10 the specific United States person target of the acqui-  
11 sition;

12               “(2) a statement of the facts and circumstances  
13 relied upon to justify the applicant’s belief that the  
14 target of the acquisition is—

15                       “(A) a United States person reasonably be-  
16 lieved to be located outside the United States;  
17 and

18                       “(B) a foreign power, an agent of a foreign  
19 power, or an officer or employee of a foreign  
20 power;

21               “(3) a statement of the proposed minimization  
22 procedures consistent with the requirements of sec-  
23 tion 101(h) or section 301(4);

24               “(4) a statement of the facts concerning any  
25 previous applications that have been made to any

1 judge of the Foreign Intelligence Surveillance Court  
2 involving the United States person specified in the  
3 application and the action taken on each previous  
4 application; and

5 “(5) a statement of the period of time for which  
6 the acquisition is required to be maintained, pro-  
7 vided that such period of time shall not exceed 90  
8 days per application.

9 “(c) ORDER.—

10 “(1) FINDINGS.—If, upon an application made  
11 pursuant to subsection (b), a judge having jurisdic-  
12 tion under subsection (a) finds that—

13 “(A) on the basis of the facts submitted by  
14 the applicant there is probable cause to believe  
15 that the specified target of the acquisition is—

16 “(i) a person reasonably believed to be  
17 located outside the United States; and

18 “(ii) a foreign power, an agent of a  
19 foreign power, or an officer or employee of  
20 a foreign power; and

21 “(B) the proposed minimization proce-  
22 dures, with respect to their dissemination provi-  
23 sions, meet the definition of minimization pro-  
24 cedures under section 101(h) or section 301(4),  
25 the Court shall issue an ex parte order so stating.

1           “(2) PROBABLE CAUSE.—In determining  
2 whether or not probable cause exists for purposes of  
3 an order under paragraph (1)(A), a judge having ju-  
4 risdiction under subsection (a)(1) may consider past  
5 activities of the target, as well as facts and cir-  
6 cumstances relating to current or future activities of  
7 the target. However, no United States person may  
8 be considered a foreign power, agent of a foreign  
9 power, or officer or employee of a foreign power  
10 solely upon the basis of activities protected by the  
11 first amendment to the Constitution of the United  
12 States.

13           “(3) REVIEW.—

14           “(A) LIMITATIONS ON REVIEW.—Review  
15 by a judge having jurisdiction under subsection  
16 (a)(1) shall be limited to that required to make  
17 the findings described in paragraph (1). The  
18 judge shall not have jurisdiction to review the  
19 means by which an acquisition under this sec-  
20 tion may be conducted.

21           “(B) REVIEW OF PROBABLE CAUSE.—If  
22 the judge determines that the facts submitted  
23 under subsection (b) are insufficient to estab-  
24 lish probable cause to issue an order under this  
25 subsection, the judge shall enter an order so



1           stating and provide a written statement for the  
2           record of the reasons for such determination.  
3           The Government may appeal an order under  
4           this clause pursuant to subsection (e).

5           “(C) REVIEW OF MINIMIZATION PROCE-  
6           DURES.—If the judge determines that the mini-  
7           mization procedures applicable to dissemination  
8           of information obtained through an acquisition  
9           under this subsection do not meet the definition  
10          of minimization procedures under section  
11          101(h) or section 301(4), the judge shall enter  
12          an order so stating and provide a written state-  
13          ment for the record of the reasons for such de-  
14          termination. The Government may appeal an  
15          order under this clause pursuant to subsection  
16          (e).

17          “(4) DURATION.—An order under this para-  
18          graph shall be effective for a period not to exceed 90  
19          days and such order may be renewed for additional  
20          90-day periods upon submission of renewal applica-  
21          tions meeting the requirements of subsection (b).

22          “(5) COMPLIANCE.—At or prior to the end of  
23          the period of time for which an order or extension  
24          is granted under this section, the judge may assess  
25          compliance with the minimization procedures by re-

1 viewing the circumstances under which information  
2 concerning United States persons was disseminated,  
3 provided that the judge may not inquire into the cir-  
4 cumstances relating to the conduct of the acquisi-  
5 tion.

6 “(d) EMERGENCY AUTHORIZATION.—

7 “(1) AUTHORITY FOR EMERGENCY AUTHORIZA-  
8 TION.—Notwithstanding any other provision in this  
9 subsection, if the Attorney General reasonably deter-  
10 mines that—

11 “(A) an emergency situation exists with re-  
12 spect to the acquisition of foreign intelligence  
13 information for which an order may be obtained  
14 under subsection (c) before an order under that  
15 subsection may, with due diligence, be obtained;  
16 and

17 “(B) the factual basis for issuance of an  
18 order under this section exists,  
19 the Attorney General may authorize the emergency  
20 acquisition if a judge having jurisdiction under sub-  
21 section (a)(1) is informed by the Attorney General  
22 or a designee of the Attorney General at the time of  
23 such authorization that the decision has been made  
24 to conduct such acquisition and if an application in  
25 accordance with this subsection is made to a judge

1 of the Foreign Intelligence Surveillance Court as  
2 soon as practicable, but not more than 168 hours  
3 after the Attorney General authorizes such acqui-  
4 sition.

5 “(2) MINIMIZATION PROCEDURES.—If the At-  
6 torney General authorizes such emergency acqui-  
7 sition, the Attorney General shall require that the  
8 minimization procedures required by this subsection  
9 be followed.

10 “(3) TERMINATION OF EMERGENCY AUTHOR-  
11 IZATION.—In the absence of an order under sub-  
12 section (c), the acquisition shall terminate when the  
13 information sought is obtained, if the application for  
14 the order is denied, or after the expiration of 168  
15 hours from the time of authorization by the Attor-  
16 ney General; whichever is earliest.

17 “(4) USE OF INFORMATION.—In the event that  
18 such application is denied, or in any other case  
19 where the acquisition is terminated and no order is  
20 issued approving the acquisition, no information ob-  
21 tained or evidence derived from such acquisition, ex-  
22 cept under circumstances in which the target of the  
23 acquisition is determined not to be a United States  
24 person during the pendency of the 168-hour emer-  
25 gency acquisition period, shall be received in evi-