

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

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

Viz:

1 On page 6, line 13, strike “and” and all that follows
2 through page 10, line 5, and insert the following:

3 “(4) shall not intentionally acquire any commu-
4 nication as to which the sender and all intended re-
5 cipients are known at the time of the acquisition to
6 be located in the United States; and

7 “(5) shall be conducted in a manner consistent
8 with the fourth amendment to the Constitution of
9 the United States.

1 “(c) CONDUCT OF ACQUISITION.—An acquisition au-
2 thORIZED under subsection (a) may be conducted only in
3 accordance with—

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

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

9 “(d) TARGETING PROCEDURES.—

10 “(1) REQUIREMENT TO ADOPT.—The Attorney
11 General, in consultation with the Director of Na-
12 tional Intelligence, shall adopt targeting procedures
13 that are reasonably designed to ensure that any ac-
14 quisition authorized under subsection (a) is limited
15 to targeting persons reasonably believed to be lo-
16 cated outside the United States and does not result
17 in the intentional acquisition of any communication
18 as to which the sender and all intended recipients
19 are known at the time of the acquisition to be lo-
20 cated in the United States.

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

24 “(e) MINIMIZATION PROCEDURES.—

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

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

10 “(f) CERTIFICATION.—

11 “(1) IN GENERAL.—

12 “(A) REQUIREMENT.—Subject to subpara-
13 graph (B), prior to the initiation of an acquisi-
14 tion authorized under subsection (a), the Attor-
15 ney General and the Director of National Intel-
16 ligence shall provide, under oath, a written cer-
17 tification, as described in this subsection.

18 “(B) EXCEPTION.—If the Attorney Gen-
19 eral and the Director of National Intelligence
20 determine that immediate action by the Govern-
21 ment is required and time does not permit the
22 preparation of a certification under this sub-
23 section prior to the initiation of an acquisition,
24 the Attorney General and the Director of Na-
25 tional Intelligence shall prepare such certifi-

1 cation, including such determination, as soon as
2 possible but in no event more than 168 hours
3 after such determination is made.

4 “(2) REQUIREMENTS.—A certification made
5 under this subsection shall—

6 “(A) attest that—

7 “(i) there are reasonable procedures
8 in place for determining that the acquisi-
9 tion authorized under subsection (a) is tar-
10 geted at persons reasonably believed to be
11 located outside the United States and that
12 such procedures have been approved by, or
13 will be submitted in not more than 5 days
14 for approval by, the Foreign Intelligence
15 Surveillance Court pursuant to subsection
16 (h);

17 “(ii) there are reasonable procedures
18 in place for determining that the acquisi-
19 tion authorized under subsection (a) does
20 not result in the intentional acquisition of
21 any communication as to which the sender
22 and all intended recipients are known at
23 the time of the acquisition to be located in
24 the United States, and that such proce-
25 dures have been approved by, or will be

1 submitted in not more than 5 days for ap-
2 proval by, the Foreign Intelligence Surveil-
3 lance Court pursuant to subsection (h);

4 “(iii) the procedures referred to in
5 clauses (i) and (ii) are consistent with the
6 requirements of the fourth amendment to
7 the Constitution of the United States and
8 do not permit the intentional targeting of
9 any person who is known at the time of ac-
10 quisition to be located in the United States
11 or the intentional acquisition of any com-
12 munication as to which the sender and all
13 intended recipients are known at the time
14 of acquisition to be located in the United
15 States;

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

19 “(v) the minimization procedures to
20 be used with respect to such acquisition—

21 “(I) meet the definition of mini-
22 mization procedures under section
23 101(h) or section 301(4); and

24 “(II) have been approved by, or
25 will be submitted in not more than 5

1 days for approval by, the Foreign In-
2 telligence Surveillance Court pursuant
3 to subsection (h);

4 “(vi) the acquisition involves obtaining
5 the foreign intelligence information from or
6 with the assistance of an electronic com-
7 munication service provider; and

8 “(vii) the acquisition does not con-
9 stitute electronic surveillance, as limited by
10 section 701; and

11 On page 13, strike lines 3 through 13, and insert the
12 following:

13 “(C) STANDARDS FOR REVIEW.—A judge
14 considering a petition to modify or set aside a
15 directive may grant such petition only if the
16 judge finds that the directive does not meet the
17 requirements of this section, or is otherwise un-
18 lawful.

19 “(D) PROCEDURES FOR INITIAL RE-
20 VIEW.—A judge shall conduct an initial review
21 not later than 5 days after being assigned a pe-
22 tition described in subparagraph (C). If the
23 judge determines that the petition consists of
24 claims, defenses, or other legal contentions that

1 are not warranted by existing law or by a non-
2 frivolous argument for extending, modifying, or
3 reversing existing law or for establishing new
4 law, the judge shall immediately deny the peti-
5 tion and affirm the directive or any part of the
6 directive that is the subject of the petition and
7 order the recipient to comply with the directive
8 or any part of it. Upon making such a deter-
9 mination or promptly thereafter, the judge shall
10 provide a written statement for the record of
11 the reasons for a determination under this sub-
12 paragraph.

13 “(E) PROCEDURES FOR PLENARY RE-
14 VIEW.—If a judge determines that a petition
15 described in subparagraph (C) requires plenary
16 review, the judge shall affirm, modify, or set
17 aside the directive that is the subject of that pe-
18 tition not later than 30 days after being as-
19 signed the petition, unless the judge, by order
20 for reasons stated, extends that time as nec-
21 essary to comport with the due process clause
22 of the fifth amendment to the Constitution of
23 the United States. Unless the judge sets aside
24 the directive, the judge shall immediately affirm
25 or affirm with modifications the directive, and

1 order the recipient to comply with the directive
2 in its entirety or as modified. The judge shall
3 provide a written statement for the records of
4 the reasons for a determination under this sub-
5 paragraph.

6 On page 13, line 14, strike “(D)” and insert “(F)”.

7 On page 13, line 17, strike “(E)” and insert “(G)”.

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

10 “(C) STANDARDS FOR REVIEW.—A judge
11 considering a petition filed under subparagraph
12 (A) shall issue an order requiring the electronic
13 communication service provider to comply with
14 the directive or any part of it, as issued or as
15 modified, if the judge finds that the directive
16 meets the requirements of this section, and is
17 otherwise lawful.

18 “(D) PROCEDURES FOR REVIEW.—The
19 judge shall render a determination not later
20 than 30 days after being assigned a petition
21 filed under subparagraph (A), unless the judge,
22 by order for reasons stated, extends that time

1 if necessary to comport with the due process
2 clause of the fifth amendment to the Constitu-
3 tion of the United States. The judge shall pro-
4 vide a written statement for the record of the
5 reasons for a determination under this para-
6 graph.

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

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

9 On page 15, beginning on line 10, strike “not later
10 than 7 days after the issuance of such decision”.

11 On page 17, line 2, strike “States.” and insert
12 “States and does not result in the intentional acquisition
13 of any communication as to which the sender and all in-
14 tended recipients are known at the time of the acquisition
15 to be located in the United States.”.

16 On page 19, strike lines 10 through 12 and insert
17 the following:

18 “(ii) if the Government appeals an
19 order under this section, until the Court of

1 Review enters an order under subpara-
2 graph (C).

3 “(C) IMPLEMENTATION PENDING AP-
4 PEAL.—Not later than 60 days after the filing
5 of an appeal of an order under paragraph
6 (5)(B) directing the correction of a deficiency,
7 the Court of Review shall determine, and enter
8 a corresponding order regarding, whether all or
9 any part of the correction order, as issued or
10 modified, shall be implemented during the pend-
11 ency of the appeal.

12 On page 19, line 13, strike “(C)” and insert “(D)”.

13 On page 70, strike line 1 and insert the following:

14 **SEC. 110. WEAPONS OF MASS DESTRUCTION.**

15 (a) DEFINITIONS.—

16 (1) FOREIGN POWER.—Subsection (a)(4) of sec-
17 tion 101 of the Foreign Intelligence Surveillance Act
18 of 1978 (50 U.S.C. 1801(a)(4)) is amended by in-
19 serting “, the international proliferation of weapons
20 of mass destruction,” after “international ter-
21 rorism”.

22 (2) AGENT OF A FOREIGN POWER.—Subsection
23 (b)(1) of such section 101 is amended—

1 (A) in subparagraph (B), by striking “or”
2 at the end

3 (B) in subparagraph (C), by striking “or”
4 at the end; and

5 (C) by adding at the end the following new
6 subparagraphs:

7 “(D) engages in the international prolifera-
8 tion of weapons of mass destruction, or activi-
9 ties in preparation therefor; or

10 “(E) engages in the international prolifera-
11 tion of weapons of mass destruction, or activi-
12 ties in preparation therefor, for or on behalf of
13 a foreign power; or”.

14 (3) FOREIGN INTELLIGENCE INFORMATION.—
15 Subsection (e)(1)(B) of such section 101 is amended
16 by striking “sabotage or international terrorism”
17 and inserting “sabotage, international terrorism, or
18 the international proliferation of weapons of mass
19 destruction”.

20 (4) WEAPON OF MASS DESTRUCTION.—Such
21 section 101 is amended by inserting after subsection
22 (o) the following:

23 “(p) ‘Weapon of mass destruction’ means—

24 “(1) any destructive device described in section
25 921(a)(4)(A) of title 18, United States Code, that is

1 intended or has the capability to cause death or seri-
2 ous bodily injury to a significant number of people;

3 “(2) any weapon that is designed or intended to
4 cause death or serious bodily injury through the re-
5 lease, dissemination, or impact of toxic or poisonous
6 chemicals or their precursors;

7 “(3) any weapon involving a biological agent,
8 toxin, or vector (as such terms are defined in section
9 178 of title 18, United States Code); or

10 “(4) any weapon that is designed to release ra-
11 diation or radioactivity at a level dangerous to
12 human life.”

13 (b) USE OF INFORMATION.—

14 (1) IN GENERAL.—Section 106(k)(1)(B) of the
15 Foreign Intelligence Surveillance Act of 1978 (50
16 U.S.C. 1806(k)(1)(B)) is amended by striking “sab-
17 otage or international terrorism” and inserting “sab-
18 otage, international terrorism, or the international
19 proliferation of weapons of mass destruction”.

20 (2) PHYSICAL SEARCHES.—Section
21 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B))
22 is amended by striking “sabotage or international
23 terrorism” and inserting “sabotage, international
24 terrorism, or the international proliferation of weap-
25 ons of mass destruction”.

1 (c) TECHNICAL AND CONFORMING AMENDMENT.—
2 Section 301(1) of the Foreign Intelligence Surveillance
3 Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting
4 “‘weapon of mass destruction’,” after “‘person’,”.

5 **SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.**

6 On page 84, line 12, strike “and 109” and insert
7 “109, and 110”.

8 On page 87, line 12, strike “and 109” and insert
9 “109, and 110”.

10 On page 87, line 21, strike “and 109” and insert
11 “109, and 110”.

12 On page 88, line 10, strike “and 109” and insert
13 “109, and 110”.