

OLC PART 4

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From: Rice, K (Intelligence) [redacted]@SSCI.senate.gov] bb
Sent: Thursday, January 31, 2008 7:17 PM
To: Ben Powell; Hopkins, Heather A.; Demers, John
Cc: Livingston, J (Intelligence); Eisenberg, John; [redacted] bb
Subject: FISA amendments
Attachments: HEN08141_xml.pdf; HEN08142_xml.pdf; HEN08143_xml.pdf; HEN08144_xml.pdf;
HEN08147_xml-complete substitute.pdf; HEN08148_xml-managers'amendment.pdf;
HEN08149_xml.pdf; HEN08146_xml.pdf

Attached are the final versions of the six proposed amendments—Feingold FISC orders is 81//. If these are acceptable to DoJ, the DNI, and the White House, please send us an email to that effect. Otherwise, let us know of any problems.

(I am also attaching the latest complete substitute and managers' amendment—neither of these includes the revised Feingold FISC orders amendment.) Exclusive means is still unresolved.

Thanks. Kathleen

AMENDMENT NO.

Calendar No.

Purpose: To clarify that the authority under title VII of the Foreign Intelligence Surveillance Act of 1978 does not extend to purely domestic communications.

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

1 “(5) shall be conducted in a manner consistent
2 with the fourth amendment to the Constitution of
3 the United States.

4 “(c) CONDUCT OF ACQUISITION.—An acquisition au-
5 thorized under subsection (a) may be conducted only in
6 accordance with—

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

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

12 “(d) TARGETING PROCEDURES.—

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

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

4 “(e) MINIMIZATION PROCEDURES.—

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

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

14 “(f) CERTIFICATION.—

15 “(1) IN GENERAL.—

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

22 “(B) EXCEPTION.—If the Attorney Gen-
23 eral and the Director of National Intelligence
24 determine that immediate action by the Govern-
25 ment is required and time does not permit the

1 preparation of a certification under this sub-
2 section prior to the initiation of an acquisition,
3 the Attorney General and the Director of Na-
4 tional Intelligence shall prepare such certifi-
5 cation, including such determination, as soon as
6 possible but in no event more than 168 hours
7 after such determination is made.

8 “(2) REQUIREMENTS.—A certification made
9 under this subsection shall—

10 “(A) attest that—

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

21 “(ii) there are reasonable procedures
22 in place for determining that the acquisi-
23 tion authorized under subsection (a) does
24 not result in the intentional acquisition of
25 any communication as to which the sender

1 and all intended recipients are known at
2 the time of the acquisition to be located in
3 the United States, and that such proce-
4 dures have been approved by, or will be
5 submitted in not more than 5 days for ap-
6 proval by, the Foreign Intelligence Surveil-
7 lance Court pursuant to subsection (h);

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

20 “(iv) a significant purpose of the ac-
21 quisition is to obtain foreign intelligence
22 information;

23 “(v) the minimization procedures to
24 be used with respect to such acquisition—

1 “(I) meet the definition of mini-
2 mization procedures under section
3 101(h) or section 301(4); and

4 “(II) have been approved by, or
5 will be submitted in not more than 5
6 days for approval by, the Foreign In-
7 telligence Surveillance Court pursuant
8 to subsection (h);

9 “(vi) the acquisition involves obtaining
10 the foreign intelligence information from or
11 with the assistance of an electronic com-
12 munication service provider; and

13 “(vii) the acquisition does not con-
14 stitute electronic surveillance, as limited by
15 section 701; and

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

AMENDMENT NO. _____ Calendar No. _____

Purpose: To strike the time limitation for certain appeals.

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.

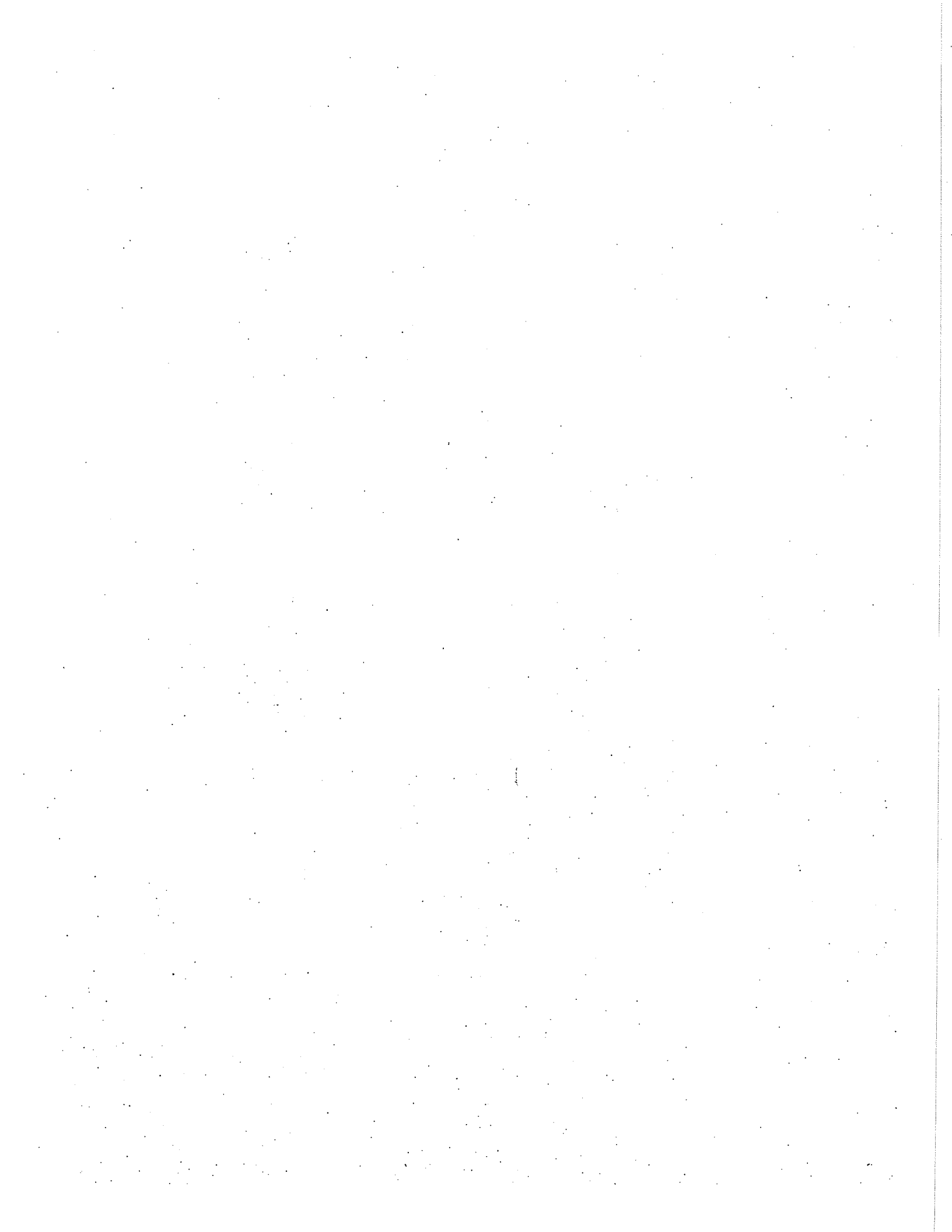
Referred to the Committee on _____ and
ordered to be printed

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 15, beginning on line 10, strike "not later
- 2 than 7 days after the issuance of such decision".



AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for implementation of an order pending appeal.

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 19, strike lines 10 through 12 and insert
2 the following:

3 “(ii) if the Government appeals an
4 order under this section, until the Court of
5 Review enters an order under subpara-
6 graph (C).

7 “(C) IMPLEMENTATION PENDING AP-
8 PEAL.—Not later than 60 days after the filing
9 of an appeal of an order under paragraph

1 (5)(B) directing the correction of a deficiency,
2 the Court of Review shall determine, and enter
3 a corresponding order regarding, whether all or
4 any part of the correction order, as issued or
5 modified, shall be implemented during the pend-
6 ency of the appeal.

7 On page 19, line 13, strike "(C)" and insert "(D)".

AMENDMENT NO. _____ Calendar No. _____

Purpose: To include prohibitions on the international proliferation of weapons of mass destruction in 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 _____ 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 70, strike line 1 and insert the following:
- 2 **SEC. 110. WEAPONS OF MASS DESTRUCTION.**
- 3 (a) DEFINITIONS.—
- 4 (1) FOREIGN POWER.—Subsection (a)(4) of sec-
- 5 tion 101 of the Foreign Intelligence Surveillance Act
- 6 of 1978 (50 U.S.C. 1801(a)(4)) is amended by in-
- 7 serting “, the international proliferation of weapons

1 of mass destruction,” after “international ter-
2 rorism”.

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

5 (A) in subparagraph (B), by striking “or”
6 at the end

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

9 (C) by adding at the end the following new
10 subparagraphs:

11 “(D) engages in the international prolifera-
12 tion of weapons of mass destruction, or activi-
13 ties in preparation therefor; or

14 “(E) engages in the international prolifera-
15 tion of weapons of mass destruction, or activi-
16 ties in preparation therefor, for or on behalf of
17 a foreign power; or”.

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

1 (4) WEAPON OF MASS DESTRUCTION.—Such
2 section 101 is amended by inserting after subsection
3 (o) the following:

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

5 “(1) any destructive device described in section
6 921(a)(4)(A) of title 18, United States Code, that is
7 intended or has the capability to cause death or seri-
8 ous bodily injury to a significant number of people;

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

13 “(3) any weapon involving a biological agent,
14 toxin, or vector (as such terms are defined in section
15 178 of title 18, United States Code); or

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

19 (b) USE OF INFORMATION.—

20 (1) IN GENERAL.—Section 106(k)(1)(B) of the
21 Foreign Intelligence Surveillance Act of 1978 (50
22 U.S.C. 1806(k)(1)(B)) is amended by striking “sab-
23 otage or international terrorism” and inserting “sab-
24 otage, international terrorism, or the international
25 proliferation of weapons of mass destruction”.

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

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

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

12 On page 84, line 12, strike “and 109” and insert
13 “109, and 110”.

14 On page 87, line 12, strike “and 109” and insert
15 “109, and 110”.

16 On page 87, line 21, strike “and 109” and insert
17 “109, and 110”.

18 On page 88, line 10, strike “and 109” and insert
19 “109, and 110”.

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d 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 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Foreign Intelligence Surveillance Act of 1978 Amend-
6 ments Act of 2008” or the “FISA Amendments Act of
7 2008”.

8 (b) **TABLE OF CONTENTS.**—The table of contents for
9 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

- Sec. 101. Additional procedures regarding certain persons outside the United States.
- Sec. 102. Statement of exclusive means by which electronic surveillance and interception of domestic communications may be conducted.
- Sec. 103. Submittal to Congress of certain court orders under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 104. Applications for court orders.
- Sec. 105. Issuance of an order.
- Sec. 106. Use of information.
- Sec. 107. Amendments for physical searches.
- Sec. 108. Amendments for emergency pen registers and trap and trace devices.
- Sec. 109. Foreign Intelligence Surveillance Court.
- Sec. 110. Weapons of mass destruction.
- Sec. 111. Technical and conforming amendments.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

- Sec. 201. Definitions.
- Sec. 202. Limitations on civil actions for electronic communication service providers.
- Sec. 203. Procedures for implementing statutory defenses under the Foreign Intelligence Surveillance Act of 1978.
- Sec. 204. Preemption of State investigations.
- Sec. 205. Technical amendments.

TITLE III—OTHER PROVISIONS

- Sec. 301. Severability.
- Sec. 302. Effective date; repeal; transition procedures.

1 **TITLE I—FOREIGN**
2 **INTELLIGENCE SURVEILLANCE**
3 **SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN**
4 **PERSONS OUTSIDE THE UNITED STATES.**
5 (a) **IN GENERAL.**—The Foreign Intelligence Surveil-
6 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—
7 (1) by striking title VII; and
8 (2) by adding after title VI the following new
9 title:

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

5 **“SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC**
6 **SURVEILLANCE.**

7 “Nothing in the definition of electronic surveillance
8 under section 101(f) shall be construed to encompass sur-
9 veillance that is targeted in accordance with this title at
10 a person reasonably believed to be located outside the
11 United States.

12 **“SEC. 702. DEFINITIONS.**

13 “(a) **IN GENERAL.**—The terms ‘agent of a foreign
14 power’, ‘Attorney General’, ‘contents’, ‘electronic surveil-
15 lance’, ‘foreign intelligence information’, ‘foreign power’,
16 ‘minimization procedures’, ‘person’, ‘United States’, and
17 ‘United States person’ shall have the meanings given such
18 terms in section 101, except as specifically provided in this
19 title.

20 **“(b) ADDITIONAL DEFINITIONS.—**

21 **“(1) CONGRESSIONAL INTELLIGENCE COMMIT-**
22 **TEES.**—The term ‘congressional intelligence commit-
23 tees’ means—

24 **“(A) the Select Committee on Intelligence**
25 **of the Senate; and**

1 “(B) the Permanent Select Committee on
2 Intelligence of the House of Representatives.

3 “(2) FOREIGN INTELLIGENCE SURVEILLANCE
4 COURT; COURT.—The terms ‘Foreign Intelligence
5 Surveillance Court’ and ‘Court’ mean the court es-
6 tablished by section 103(a).

7 “(3) FOREIGN INTELLIGENCE SURVEILLANCE
8 COURT OF REVIEW; COURT OF REVIEW.—The terms
9 ‘Foreign Intelligence Surveillance Court of Review’
10 and ‘Court of Review’ mean the court established by
11 section 103(b).

12 “(4) ELECTRONIC COMMUNICATION SERVICE
13 PROVIDER.—The term ‘electronic communication
14 service provider’ means—

15 “(A) a telecommunications carrier, as that
16 term is defined in section 3 of the Communica-
17 tions Act of 1934 (47 U.S.C. 153);

18 “(B) a provider of electronic communica-
19 tion service, as that term is defined in section
20 2510 of title 18, United States Code;

21 “(C) a provider of a remote computing
22 service, as that term is defined in section 2711
23 of title 18, United States Code;

24 “(D) any other communication service pro-
25 vider who has access to wire or electronic com-

1 communications either as such communications are
2 transmitted or as such communications are
3 stored; or

4 “(E) an officer, employee, or agent of an
5 entity described in subparagraph (A), (B), (C),
6 or (D).

7 “(5) ELEMENT OF THE INTELLIGENCE COMMU-
8 NITY.—The term ‘element of the intelligence com-
9 munity’ means an element of the intelligence com-
10 munity specified in or designated under section 3(4)
11 of the National Security Act of 1947 (50 U.S.C.
12 401a(4)).

13 **“SEC. 703. PROCEDURES FOR TARGETING CERTAIN PER-**
14 **SONS OUTSIDE THE UNITED STATES OTHER**
15 **THAN UNITED STATES PERSONS.**

16 “(a) AUTHORIZATION.—Notwithstanding any other
17 law, the Attorney General and the Director of National
18 Intelligence may authorize jointly, for periods of up to 1
19 year, the targeting of persons reasonably believed to be
20 located outside the United States to acquire foreign intel-
21 ligence information.

22 “(b) LIMITATIONS.—An acquisition authorized under
23 subsection (a)—

1 “(1) may not intentionally target any person
2 known at the time of acquisition to be located in the
3 United States;

4 “(2) may not intentionally target a person rea-
5 sonably believed to be located outside the United
6 States if the purpose of such acquisition is to target
7 a particular, known person reasonably believed to be
8 in the United States, except in accordance with title
9 I or title III;

10 “(3) may not intentionally target a United
11 States person reasonably believed to be located out-
12 side the United States, except in accordance with
13 sections 704, 705, or 706;

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

18 “(5) shall be conducted in a manner consistent
19 with the fourth amendment to the Constitution of
20 the United States.

21 “(c) CONDUCT OF ACQUISITION.—An acquisition au-
22 thorized under subsection (a) may be conducted only in
23 accordance with—

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

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

6 “(d) TARGETING PROCEDURES.—

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

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

21 “(e) MINIMIZATION PROCEDURES.—

22 “(1) REQUIREMENT TO ADOPT.—The Attorney
23 General, in consultation with the Director of Na-
24 tional Intelligence, shall adopt, consistent with the
25 requirements of section 101(h) or section 301(4),

1 minimization procedures for acquisitions authorized
2 under subsection (a).

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

6 “(f) CERTIFICATION.—

7 “(1) IN GENERAL.—

8 “(A) REQUIREMENT.—Subject to subpara-
9 graph (B), prior to the initiation of an acqui-
10 sition authorized under subsection (a), the Attor-
11 ney General and the Director of National Intel-
12 ligence shall provide, under oath, a written cer-
13 tification, as described in this subsection.

14 “(B) EXCEPTION.—If the Attorney Gen-
15 eral and the Director of National Intelligence
16 determine that immediate action by the Govern-
17 ment is required and time does not permit the
18 preparation of a certification under this sub-
19 section prior to the initiation of an acquisition,
20 the Attorney General and the Director of Na-
21 tional Intelligence shall prepare such certifi-
22 cation, including such determination, as soon as
23 possible but in no event more than 168 hours
24 after such determination is made.

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

3 “(A) attest that—

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

14 “(ii) there are reasonable procedures
15 in place for determining that the acquisi-
16 tion authorized under subsection (a) does
17 not result in the intentional acquisition of
18 any communication as to which the sender
19 and all intended recipients are known at
20 the time of the acquisition to be located in
21 the United States, and that such proce-
22 dures have been approved by, or will be
23 submitted in not more than 5 days for ap-
24 proval by, the Foreign Intelligence Surveil-
25 lance Court pursuant to subsection (h);

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

13 “(iv) a significant purpose of the ac-
14 quisition is to obtain foreign intelligence
15 information;

16 “(v) the minimization procedures to
17 be used with respect to such acquisition—

18 “(I) meet the definition of mini-
19 mization procedures under section
20 101(h) or section 301(4); and

21 “(II) have been approved by, or
22 will be submitted in not more than 5
23 days for approval by, the Foreign In-
24 telligence Surveillance Court pursuant
25 to subsection (h);

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

5 “(vii) the acquisition does not con-
6 stitute electronic surveillance, as limited by
7 section 701; and

8 “(B) be supported, as appropriate, by the
9 affidavit of any appropriate official in the area
10 of national security who is—

11 “(i) appointed by the President, by
12 and with the consent of the Senate; or

13 “(ii) the head of any element of the
14 intelligence community.

15 “(3) LIMITATION.—A certification made under
16 this subsection is not required to identify the specific
17 facilities, places, premises, or property at which the
18 acquisition authorized under subsection (a) will be
19 directed or conducted.

20 “(4) SUBMISSION TO THE COURT.—The Attor-
21 ney General shall transmit a copy of a certification
22 made under this subsection, and any supporting affi-
23 davit, under seal to the Foreign Intelligence Surveil-
24 lance Court as soon as possible, but in no event
25 more than 5 days after such certification is made.

1 Such certification shall be maintained under security
2 measures adopted by the Chief Justice of the United
3 States and the Attorney General, in consultation
4 with the Director of National Intelligence.

5 “(5) REVIEW.—The certification required by
6 this subsection shall be subject to judicial review
7 pursuant to subsection (h).

8 “(g) DIRECTIVES AND JUDICIAL REVIEW OF DIREC-
9 TIVES.—

10 “(1) AUTHORITY.—With respect to an acquisi-
11 tion authorized under subsection (a), the Attorney
12 General and the Director of National Intelligence
13 may direct, in writing, an electronic communication
14 service provider to—

15 “(A) immediately provide the Government
16 with all information, facilities, or assistance
17 necessary to accomplish the acquisition in a
18 manner that will protect the secrecy of the ac-
19 quisition and produce a minimum of inter-
20 ference with the services that such electronic
21 communication service provider is providing to
22 the target; and

23 “(B) maintain under security procedures
24 approved by the Attorney General and the Di-
25 rector of National Intelligence any records con-

1 cerning the acquisition or the aid furnished that
2 such electronic communication service provider
3 wishes to maintain.

4 “(2) COMPENSATION.—The Government shall
5 compensate, at the prevailing rate, an electronic
6 communication service provider for providing infor-
7 mation, facilities, or assistance pursuant to para-
8 graph (1).

9 “(3) RELEASE FROM LIABILITY.—Notwith-
10 standing any other law, no cause of action shall lie
11 in any court against any electronic communication
12 service provider for providing any information, facili-
13 ties, or assistance in accordance with a directive
14 issued pursuant to paragraph (1).

15 “(4) CHALLENGING OF DIRECTIVES.—

16 “(A) AUTHORITY TO CHALLENGE.—An
17 electronic communication service provider re-
18 ceiving a directive issued pursuant to paragraph
19 (1) may challenge the directive by filing a peti-
20 tion with the Foreign Intelligence Surveillance
21 Court, which shall have jurisdiction to review
22 such a petition.

23 “(B) ASSIGNMENT.—The presiding judge
24 of the Court shall assign the petition filed
25 under subparagraph (A) to 1 of the judges serv-