

113TH CONGRESS
2D SESSION

H. R. 4291

To amend the Foreign Intelligence Surveillance Act of 1978 to prohibit the bulk collection of call detail records, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2014

Mr. ROGERS of Michigan (for himself, Mr. MILLER of Florida, Mr. CONAWAY, Mr. KING of New York, Mr. LOBIONDO, Mr. NUNES, Mr. WESTMORELAND, Mrs. BACHMANN, Mr. POMPEO, Mr. RUPPERSBERGER, Mr. THOMPSON of California, Mr. LANGEVIN, and Ms. SEWELL of Alabama) introduced the following bill; which was referred to the Select Committee on Intelligence (Permanent Select), and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to prohibit the bulk collection of call detail records, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “FISA Transparency
5 and Modernization Act”.

1 **SEC. 2. PROHIBITION ON BULK COLLECTION OF CALL DE-**
2 **TAIL RECORDS.**

3 Section 501(a) of the Foreign Intelligence Surveil-
4 lance Act of 1978 (50 U.S.C. 1861) is amended—

5 (1) in paragraph (1), by striking “other items”
6 and inserting “other items, but not including call de-
7 tail records”; and

8 (2) by adding at the end the following new
9 paragraph:

10 “(4) In this subsection, the term ‘call detail records’
11 means communications routing information, including an
12 original or terminating telephone number, an Inter-
13 national Mobile Subscriber Identity, an International Mo-
14 bile Station Equipment Identity, a trunk identifier, a tele-
15 phone calling card number, the time or duration of a call,
16 or original or terminating text-message numerical infor-
17 mation.”.

18 **SEC. 3. PROHIBITION ON BULK COLLECTION OF ELEC-**
19 **TRONIC COMMUNICATIONS RECORDS.**

20 (a) IN GENERAL.—Notwithstanding any other provi-
21 sion of law, the Federal Government may not acquire
22 under the Foreign Intelligence Surveillance Act of 1978
23 (50 U.S.C. 1801 et seq.) records of any electronic commu-
24 nication without the use of specific identifiers or selection
25 terms.

1 (b) DEFINITION OF ELECTRONIC COMMUNICA-
2 TIONS.—In this section, the term “electronic communica-
3 tion” has the meaning given such term under section 2510
4 of title 18, United States Code.

5 **SEC. 4. PROHIBITION ON BULK COLLECTION OF CERTAIN**
6 **BUSINESS RECORDS.**

7 Notwithstanding any other provision of law, the Fed-
8 eral Government may not acquire under the Foreign Intel-
9 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
10 library circulation records, library patron lists, book sales
11 records, book customer lists, firearm sales records, tax re-
12 turn records, educational records, or medical records con-
13 taining information that would identify a person without
14 the use of specific identifiers or selection terms.

15 **SEC. 5. APPOINTMENT OF AMICUS CURIAE.**

16 Section 103 of the Foreign Intelligence Surveillance
17 Act of 1978 (50 U.S.C. 1803) is amended by adding at
18 the end the following:

19 “(i) AMICUS CURIAE.—

20 “(1) AUTHORIZATION.—Notwithstanding any
21 other provision of law, a court established under
22 subsection (a) or (b) may, consistent with the re-
23 quirement of subsection (c) and any other statutory
24 requirement that the court act expeditiously or with-
25 in a stated time, to appoint amicus curiae to assist

1 the court in the consideration of a covered applica-
2 tion.

3 “(2) DESIGNATION.—The courts established by
4 subsection (a) and (b) shall each designate 1 or
5 more individuals who have been determined by ap-
6 propriate executive branch officials to be eligible for
7 access to classified information who may be ap-
8 pointed to serve as amicus curiae. In appointing an
9 amicus curiae pursuant to paragraph (1), the court
10 may choose from among those so designated.

11 “(3) EXPERTISE.—An individual appointed as
12 an amicus curiae under paragraph (1) may be a spe-
13 cial counsel or an expert on privacy and civil lib-
14 erties, intelligence collection, telecommunications, or
15 any other area that may lend legal or technical ex-
16 pertise to the court.

17 “(4) DUTIES.—An amicus curiae appointed
18 under paragraph (1) to assist with the consideration
19 of a covered application shall carry out the duties
20 assigned by the appointing court. That court may
21 authorize, to the extent consistent with the case or
22 controversy requirements of article III of the Con-
23 stitution of the United States and the national secu-
24 rity of the United States, the amicus curiae to re-
25 view any application, certification, petition, motion,

1 or other submission that the court determines is rel-
2 evant to the duties assigned by the court.

3 “(5) NOTIFICATION.—A court established under
4 subsection (a) or (b) shall notify the Attorney Gen-
5 eral of each exercise of the authority to appoint an
6 amicus curiae under paragraph (1).

7 “(6) ASSISTANCE.—A court established under
8 subsection (a) or (b) may request and receive (in-
9 cluding on a non-reimbursable basis) the assistance
10 of the executive branch in the implementation of this
11 subsection.

12 “(7) ADMINISTRATION.—A court established
13 under subsection (a) or (b) may provide for the des-
14 ignation, appointment, removal, training, support, or
15 other administration of an amicus curiae appointed
16 under paragraph (1) in a manner that is not incon-
17 sistent with this subsection.

18 “(8) CONGRESSIONAL OVERSIGHT.—The Attor-
19 ney General shall submit to the appropriate commit-
20 tees of Congress an annual report on the number of
21 notices described in paragraph (5) received by Attor-
22 ney General for the preceding 12-month period.
23 Each such report shall include the name of each in-
24 dividual appointed as an amicus curiae during such
25 period.

1 “(9) DEFINITIONS.—In this subsection:

2 “(A) APPROPRIATE COMMITTEES OF CON-
3 GRESS.—The term ‘appropriate committees of
4 Congress’ means—

5 “(i) the Committee on the Judiciary
6 and the Select Committee on Intelligence
7 of the Senate; and

8 “(ii) the Committee on the Judiciary
9 and the Permanent Select Committee on
10 Intelligence of the House of Representa-
11 tives.

12 “(B) COVERED APPLICATION.—The term
13 ‘covered application’ means an application for
14 an order or review made to a court established
15 under subsection (a) or (b)—

16 “(i) that, in the opinion of such a
17 court, presents a novel or significant inter-
18 pretation of the law; and

19 “(ii) that is—

20 “(I) an application for an order
21 under this title, title III, IV, or V of
22 this Act, or section 703 or 704 of this
23 Act;

1 “(II) a review of a certification
2 or procedures under section 503 or
3 702 of this Act; or

4 “(III) a notice of non-compliance
5 with any such order, certification, or
6 procedures.”.

7 **SEC. 6. REPORTING REQUIREMENTS FOR DECISIONS OF**
8 **THE FOREIGN INTELLIGENCE SURVEIL-**
9 **LANCE COURT.**

10 Section 601(c)(1) of the Foreign Intelligence Surveil-
11 lance Act of 1978 (50 U.S.C. 1871(c)) is amended to read
12 as follows:

13 “(1) not later than 45 days after the date on
14 which the Foreign Intelligence Surveillance Court or
15 the Foreign Intelligence Surveillance Court of Re-
16 view issues a decision, order, or opinion that in-
17 cludes a significant construction or interpretation of
18 any provision of this Act or a denial of a request for
19 an order or a modification of a request for an order,
20 or results in a change of application of any provision
21 of this Act or a new application of any provision of
22 this Act—

23 “(A) a copy of such decision, order, or
24 opinion and any pleadings, applications, or

1 memoranda of law associated with such deci-
2 sion, order, or opinion; and

3 “(B) with respect to such decision, order,
4 or opinion, a brief statement of the relevant
5 background factual information, questions of
6 law, legal analysis, and decision rendered; and”.

7 **SEC. 7. DECLASSIFICATION OF DECISIONS, ORDERS, AND**
8 **OPINIONS.**

9 (a) DECLASSIFICATION.—Title VI of the Foreign In-
10 telligence Surveillance Act of 1978 (50 U.S.C. 1871 et
11 seq.) is amended—

12 (1) in the heading, by striking “**REPORT-**
13 **ING REQUIREMENT**” and inserting “**OVER-**
14 **SIGHT**”; and

15 (2) by adding at the end the following new sec-
16 tion:

17 **“SEC. 602. DECLASSIFICATION OF SIGNIFICANT DECISIONS,**
18 **ORDERS, AND OPINIONS.**

19 “(a) DECLASSIFICATION REQUIRED.—Subject to
20 subsection (b), the Director of National Intelligence shall
21 conduct a declassification review of each decision, order,
22 or opinion issued by the Foreign Intelligence Surveillance
23 Court or the Foreign Intelligence Surveillance Court of
24 Review that includes significant construction or interpre-
25 tation of any provision of this Act and, consistent with

1 that review, make publicly available to the greatest extent
2 practicable each such decision, order, or opinion.

3 “(b) REDACTED FORM.—The Director of National
4 Intelligence may satisfy the requirement under subsection
5 (a) to make a decision, order, or opinions described in such
6 subsection publicly available to the greatest extent prac-
7 ticable by making such decision, order, or opinion publicly
8 available in redacted form.

9 “(c) NATIONAL SECURITY WAIVER.—The Director of
10 National Intelligence may waive the requirement to declas-
11 sify and make publicly available a particular decision,
12 order, or opinion under subsection (a) if the Director—

13 “(1) determines that a waiver of such require-
14 ment is necessary to protect the national security of
15 the United States or properly classified intelligence
16 sources or methods; and

17 “(2) makes publicly available an unclassified
18 summary of such decision, order, or opinion.”.

19 (b) TABLE OF CONTENTS AMENDMENTS.—The table
20 of contents in the first section of such Act is amended—

21 (1) by striking the item relating to title VI and
22 inserting the following new item:

“TITLE VI—OVERSIGHT”;

23 and

1 (2) by inserting after the item relating to sec-
2 tion 601 the following new item:

“Sec. 602. Declassification of significant decisions, orders, and opinions.”.

3 **SEC. 8. PUBLIC REPORTING ON INCIDENTAL COLLECTION**
4 **OF UNITED STATES PERSON INFORMATION.**

5 Section 601 of the Foreign Intelligence Surveillance
6 Act of 1978 (50 U.S.C. 1871) is amended—

7 (1) by redesignating subsection (e) as sub-
8 section (f); and

9 (2) by inserting after subsection (d) the fol-
10 lowing new subsection:

11 “(e) PUBLIC REPORTING ON INCIDENTAL COLLEC-
12 TION OF UNITED STATES PERSON INFORMATION.—The
13 Attorney General shall annually make publicly available
14 a report describing the number of identified instances in
15 which the contents of a communication of a United States
16 person was acquired under this Act when the acquisition
17 authorized by this Act that resulted in the collection of
18 such contents could not reasonably have been anticipated
19 to capture such contents.”.

20 **SEC. 9. ANNUAL REPORTS ON VIOLATIONS OF LAW OR EX-**
21 **ECUTIVE ORDER.**

22 (a) IN GENERAL.—Title V of the National Security
23 Act of 1947 (50 U.S.C. 3091 et seq.) is amended by add-
24 ing at the end the following:

1 **“SEC. 509. ANNUAL REPORT ON VIOLATIONS OF LAW OR EX-**
2 **ECUTIVE ORDER.**

3 “(a) ANNUAL REPORTS REQUIRED.—Not later than
4 April 1 of each year, the Director of National Intelligence
5 shall submit to the congressional intelligence committees
6 a report on violations of law or executive order by per-
7 sonnel of an element of the intelligence community that
8 were identified during the previous calendar year.

9 “(b) ELEMENTS.—Each report required subsection
10 (a) shall include a description of any violation of law or
11 executive order (including Executive Order No. 12333 (50
12 U.S.C. 3001 note)) by personnel of an element of the intel-
13 ligence community in the course of such employment that,
14 during the previous calendar year, was determined by the
15 director, head, general counsel, or inspector general of any
16 element of the intelligence community to have occurred.”.

17 (b) CLERICAL AMENDMENT.—The table of sections
18 in the first section of the National Security Act of 1947
19 is amended by adding after the section relating to section
20 508 the following:

“Sec. 509. Annual report on violations of law or Executive order.”.

1 **SEC. 10. PERIODIC REVIEW OF INTELLIGENCE COMMUNITY**
 2 **PROCEDURES FOR THE ACQUISITION, RETEN-**
 3 **TION, AND DISSEMINATION OF INTEL-**
 4 **LIGENCE.**

5 (a) IN GENERAL.—Title V of the National Security
 6 Act of 1947 (50 U.S.C. 3091 et seq.), as amended by sec-
 7 tion 9, is further amended by adding at the end the fol-
 8 lowing:

9 **“SEC. 510. PERIODIC REVIEW OF INTELLIGENCE COMMU-**
 10 **NITY PROCEDURES FOR THE ACQUISITION,**
 11 **RETENTION, AND DISSEMINATION OF INTEL-**
 12 **LIGENCE.**

13 **“(a) HEAD OF AN ELEMENT OF THE INTELLIGENCE**
 14 **COMMUNITY DEFINED.**—In this section, the term ‘head
 15 of an element of the intelligence community’ means, as
 16 appropriate—

17 **“(1) the head of an element of the intelligence**
 18 **community; or**

19 **“(2) the head of the department or agency con-**
 20 **taining such element.**

21 **“(b) REVIEW OF PROCEDURES APPROVED BY THE**
 22 **ATTORNEY GENERAL.**—

23 **“(1) REQUIREMENT FOR IMMEDIATE RE-**
 24 **VIEW.**—Each head of an element of the intelligence
 25 community that has not obtained the approval of the
 26 Attorney General for the procedures, in their en-

1 tirety, required by section 2.3 of Executive Order
2 12333 (50 U.S.C. 3001 note) within 5 years prior
3 to the date of the enactment of the FISA Trans-
4 parency and Modernization Act, shall initiate, not
5 later than 180 days after such date of enactment, a
6 review of the procedures for such element, in accord-
7 ance with paragraph (3).

8 “(2) REQUIREMENT FOR REVIEW.—Not less
9 frequently than once every 5 years, each head of an
10 element of the intelligence community shall conduct
11 a review of the procedures approved by the Attorney
12 General for such element that are required by sec-
13 tion 2.3 of Executive Order 12333 (50 U.S.C. 3001
14 note), or any successor order, in accordance with
15 paragraph (3).

16 “(3) REQUIREMENTS FOR REVIEWS.—In coordi-
17 nation with the Director of National Intelligence and
18 the Attorney General, the head of an element of the
19 intelligence community required to perform a review
20 under paragraph (1) or (2) shall—

21 “(A) review existing procedures for such
22 element that are required by section 2.3 of Ex-
23 ecutive Order 12333 (50 U.S.C. 3001 note), or
24 any successor order, to assess whether—

1 “(i) advances in communications or
2 other technologies since the time the proce-
3 dures were most recently approved by the
4 Attorney General have affected the privacy
5 protections that the procedures afford to
6 United States persons, to include the pro-
7 tections afforded to United States persons
8 whose nonpublic communications are inci-
9 dentally acquired by an element of the in-
10 telligence community; or

11 “(ii) aspects of the existing proce-
12 dures impair the acquisition, retention, or
13 dissemination of timely, accurate, and in-
14 sightful information about the activities,
15 capabilities, plans, and intentions of for-
16 eign powers, organization, and persons,
17 and their agents; and

18 “(B) propose any modifications to existing
19 procedures for such element in order to—

20 “(i) clarify the guidance such proce-
21 dures afford to officials responsible for the
22 acquisition, retention, and dissemination of
23 intelligence;

1 “(ii) eliminate unnecessary impedi-
2 ments to the acquisition, retention, and
3 dissemination of intelligence; or

4 “(iii) ensure appropriate protections
5 for the privacy of United States persons
6 and persons located inside the United
7 States.

8 “(4) NOTICE.—The Director of National Intel-
9 ligence and the Attorney General shall notify the
10 congressional intelligence committees following the
11 completion of each review required under this sec-
12 tion.

13 “(5) REQUIREMENT TO PROVIDE PROCE-
14 DURES.—Upon the implementation of any modifica-
15 tions to procedures required by section 2.3 of Execu-
16 tive Order 12333 (50 U.S.C. 3001 note), or any suc-
17 cessor order, the head of the element of the intel-
18 ligence community to which the modified procedures
19 apply shall promptly provide a copy of the modified
20 procedures to the congressional intelligence commit-
21 tees.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 in the first section of the National Security Act of 1947,
24 as amended by section 9, is further amended by adding
25 after the section relating to section 509 the following:

“Sec. 510. Periodic review of intelligence community procedures for the acquisition, retention, and dissemination of intelligence.”.

1 **SEC. 11. PROCEDURES FOR TARGETED ACQUISITIONS OF**
2 **TERRORIST AND FOREIGN AGENT NON-CON-**
3 **TENT COMMUNICATIONS RECORDS.**

4 (a) IN GENERAL.—Title V of the Foreign Intelligence
5 Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is
6 amended by adding at the end the following new section:

7 **“SEC. 503. PROCEDURES FOR TARGETED ACQUISITIONS OF**
8 **TERRORIST AND FOREIGN AGENT NON-CON-**
9 **TENT COMMUNICATIONS RECORDS.**

10 “(a) AUTHORIZATION.—Notwithstanding any other
11 provision of law, upon the issuance of an order in accord-
12 ance with subsection (i)(3) or a determination under sub-
13 section (c)(2), the Attorney General and the Director of
14 National Intelligence may authorize jointly, for a period
15 of up to 1 year from the effective date of the authoriza-
16 tion, the acquisition from an electronic communication
17 service provider of records created as a result of commu-
18 nications of an individual or facility who, based on reason-
19 able and articulable suspicion, is—

20 “(1) a foreign power or the agent of a foreign
21 power;

22 “(2) associated with a foreign power or the
23 agent of a foreign power; or

1 “(3) in contact with, or known to, a suspected
2 agent of a foreign power.

3 “(b) LIMITATIONS.—An acquisition authorized under
4 subsection (a) shall be reasonably designed—

5 “(1) not to acquire—

6 “(A) the contents associated with any com-
7 munication;

8 “(B) records of wire or electronic commu-
9 nications without the use of specific identifiers
10 or selection terms;

11 “(C) information for an investigation of a
12 United States person conducted solely upon the
13 basis of activities protected by the first amend-
14 ment to the Constitution; or

15 “(D) the name, address, social security
16 number, employer or taxpayer identification
17 number, date of birth, or credit card number of
18 any United States person; and

19 “(2) to comply with the fourth amendment to
20 the Constitution of the United States.

21 “(c) CONDUCT OF ACQUISITION.—

22 “(1) IN GENERAL.—An acquisition authorized
23 under subsection (a) shall be conducted only—

24 “(A) in accordance with the selection and
25 civil liberties and privacy protection procedures

1 adopted in accordance with subsections (d) and
2 (e); and

3 “(B) upon submission of a certification in
4 accordance with subsection (g).

5 “(2) DETERMINATION.—A determination under
6 this paragraph and for purposes of subsection (a) is
7 a determination by the Attorney General and the Di-
8 rector of National Intelligence that exigent cir-
9 cumstances exist because, without immediate imple-
10 mentation of an authorization under subsection (a),
11 intelligence important to the national security of the
12 United States may be lost or not timely acquired
13 and time does not permit the issuance of an order
14 pursuant to subsection (i)(3) prior to the implemen-
15 tation of such authorization.

16 “(3) TIMING OF DETERMINATION.—The Attor-
17 ney General and the Director of National Intel-
18 ligence may make the determination under para-
19 graph (2)—

20 “(A) before the submission of a certifi-
21 cation in accordance with subsection (g); or

22 “(B) by amending a certification pursuant
23 to subsection (i)(1)(C) at any time during
24 which judicial review under subsection (i) of
25 such certification is pending.

1 “(d) SELECTION PROCEDURES.—

2 “(1) REQUIREMENT TO ADOPT.—The Attorney
3 General, in consultation with the Director of Na-
4 tional Intelligence, shall adopt selection procedures
5 that are reasonably designed to ensure that any ac-
6 quisition authorized under subsection (a) complies
7 with the requirements and limitations relating to
8 such acquisitions under subsections (a) and (b);

9 “(2) JUDICIAL REVIEW.—The procedures
10 adopted in accordance with paragraph (1) shall be
11 subject to judicial review pursuant to subsection (i).

12 “(e) CIVIL LIBERTIES AND PRIVACY PROTECTION
13 PROCEDURES.—

14 “(1) REQUIREMENT TO ADOPT.—The Attorney
15 General, in consultation with the Director of Na-
16 tional Intelligence, shall adopt civil liberties and pri-
17 vacy protection procedures that are reasonably de-
18 signed to—

19 “(A) minimize the impact of any acquisi-
20 tion authorized by (a) on the privacy and civil
21 liberties of United States persons; and

22 “(B) reasonably limit the receipt, reten-
23 tion, use, and disclosure of communications
24 records associated with a specific person when
25 such records are not necessary to understand

1 foreign intelligence information or assess the
2 importance of such information.

3 “(2) JUDICIAL REVIEW.—The civil liberties and
4 privacy protection procedures adopted in accordance
5 with paragraph (1) shall be subject to judicial review
6 pursuant to subsection (i).

7 “(f) GUIDELINES FOR COMPLIANCE WITH LIMITA-
8 TIONS.—

9 “(1) REQUIREMENT TO ADOPT.—The Attorney
10 General, in consultation with the Director of Na-
11 tional Intelligence, shall adopt guidelines to ensure—

12 “(A) compliance with the requirements and
13 limitations under subsections (a) and (b); and

14 “(B) that an application for a court order
15 is filed as required by this title.

16 “(2) SUBMISSION OF GUIDELINES.—The Attor-
17 ney General shall provide the guidelines adopted in
18 accordance with paragraph (1)—

19 “(A) the congressional intelligence commit-
20 tees;

21 “(B) the Committees on the Judiciary of
22 the Senate and the House of Representatives;
23 and

24 “(C) the Foreign Intelligence Surveillance
25 Court.

1 “(g) CERTIFICATION.—

2 “(1) IN GENERAL.—

3 “(A) REQUIREMENT TO SUBMIT CERTIFI-
4 CATION.—Subject to subparagraph (B), prior to
5 the implementation of an authorization under
6 subsection (a), the Attorney General and the
7 Director of National Intelligence shall provide
8 to the Foreign Intelligence Surveillance Court a
9 written certification and any supporting affi-
10 davit, under oath and under seal, in accordance
11 with this subsection.

12 “(B) EXCEPTION.—If the Attorney Gen-
13 eral and the Director of National Intelligence
14 make a determination under subsection (c)(2)
15 and time does not permit the submission of a
16 certification under this subsection prior to the
17 implementation of an authorization under sub-
18 section (a), the Attorney General and the Direc-
19 tor of National Intelligence shall submit to the
20 Court a certification for such authorization as
21 soon as practicable but in no event later than
22 7 days after such determination is made.

23 “(2) CERTIFICATION REQUIREMENTS.—A cer-
24 tification made under this subsection shall—

25 “(A) attest that—

1 “(i) procedures have been approved,
2 have been submitted for approval, or will
3 be submitted with the certification for ap-
4 proval by the Foreign Intelligence Surveil-
5 lance Court that are reasonably designed
6 to ensure compliance with the require-
7 ments and limitations under subsections
8 (a) and (b);

9 “(ii) the civil liberties and privacy pro-
10 tection procedures to be used with respect
11 to such acquisition—

12 “(I) meet the requirements of
13 civil liberties and privacy protection
14 procedures adopted under subsection
15 (e); and

16 “(II) have been approved, have
17 been submitted for approval, or will be
18 submitted with the certification for
19 approval by the Foreign Intelligence
20 Surveillance Court;

21 “(iii) guidelines have been adopted in
22 accordance with subsection (f) to ensure
23 compliance with the limitations in sub-
24 section (b) and to ensure that an applica-

1 tion for a court order is filed as required
2 by this chapter;

3 “(iv) the procedures and guidelines re-
4 ferred to in clauses (i), (ii), and (iii) are
5 consistent with the requirements of the
6 fourth amendment to the Constitution of
7 the United States;

8 “(v) a significant purpose of the ac-
9 quisition is to obtain foreign intelligence
10 information;

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

15 “(vii) the acquisition complies with
16 the limitations in subsection (b);

17 “(B) include the procedures adopted in ac-
18 cordance with subsections (d) and (e);

19 “(C) be supported, as appropriate, by the
20 affidavit of any appropriate official in the area
21 of national security who is—

22 “(i) appointed by the President, by
23 and with the advice and consent of the
24 Senate; or

1 “(ii) the head of an element of the in-
2 telligence community;

3 “(D) include—

4 “(i) an effective date for the author-
5 ization that is at least 30 days after the
6 submission of the written certification to
7 the court; or

8 “(ii) if the acquisition has begun or
9 the effective date is less than 30 days after
10 the submission of the written certification
11 to the court, the date the acquisition began
12 or the effective date for the acquisition;
13 and

14 “(E) if the Attorney General and the Di-
15 rector of National Intelligence make a deter-
16 mination under subsection (c)(2), include a
17 statement that such determination has been
18 made.

19 “(3) CHANGE IN EFFECTIVE DATE.—The At-
20 torney General and the Director of National Intel-
21 ligence may advance or delay the effective date re-
22 ferred to in paragraph (2)(D) by submitting an
23 amended certification in accordance with subsection
24 (i)(1)(C) to the Foreign Intelligence Surveillance
25 Court for review pursuant to subsection (i).

1 “(4) MAINTENANCE OF CERTIFICATION.—The
2 Attorney General or a designee of the Attorney Gen-
3 eral shall maintain a copy of a certification made
4 under this subsection.

5 “(5) JUDICIAL REVIEW.—A certification sub-
6 mitted in accordance with this subsection shall be
7 subject to judicial review pursuant to subsection (i).

8 “(h) DIRECTIVES.—

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

14 “(A) immediately provide the Government
15 with records, whether existing or created in the
16 future, in the format specified by the Govern-
17 ment and in a manner that will protect the se-
18 crecy of the acquisition; and

19 “(B) maintain under security procedures
20 approved by the Attorney General and the Di-
21 rector of National Intelligence any records con-
22 cerning the aid furnished that such electronic
23 communication service provider retains.

24 “(2) COMPENSATION AND ASSISTANCE.—The
25 Government shall compensate, at the prevailing rate,

1 an electronic communications service provider for
2 providing records in accordance with directives
3 issued pursuant to paragraph (1). The Government
4 may provide any information, facilities, or assistance
5 necessary to aid an electronic communications serv-
6 ice provider in complying with a directive issued pur-
7 suant to paragraph (1).

8 “(3) RECORD REQUIREMENT.—For any direc-
9 tive issued under paragraph (1), the Attorney Gen-
10 eral shall retain a record of the information indi-
11 cating that, at the time the directive was issued, the
12 directive complied with the selection procedures es-
13 tablished by subsection (d).

14 “(4) JUDICIAL REVIEW.—

15 “(A) REQUIREMENT TO PROVIDE DIREC-
16 TIVES AND SUPPORTING RECORDS.—The Attor-
17 ney General shall promptly provide to the court
18 established by section 103(a) a copy of each di-
19 rective issued under paragraph (1) and a copy
20 of each record prepared under paragraph (3).

21 “(B) REMEDY FOR IMPROPER DIREC-
22 TIVES.—The court shall promptly consider each
23 directive and record provided under subpara-
24 graph (A), and if the court finds that a record
25 prepared under paragraph (3) does not meet

1 the requirements of the selection procedures es-
2 tablished by subsection (d), the court may order
3 that the production of records under the appli-
4 cable directive be terminated or modified, that
5 the information produced in response to the di-
6 rective be destroyed, or another appropriate
7 remedy.

8 “(5) CHALLENGING OF DIRECTIVES.—

9 “(A) AUTHORITY TO CHALLENGE.—An
10 electronic communications service provider re-
11 ceiving a directive issued pursuant to paragraph
12 (1) may file a petition to modify or set aside
13 such directive with the Foreign Intelligence
14 Surveillance Court, which shall have jurisdiction
15 to review such petition.

16 “(B) ASSIGNMENT.—The presiding judge
17 of the Court shall assign a petition filed under
18 subparagraph (A) to 1 of the judges serving in
19 the pool established under section 103(e)(1) not
20 later than 24 hours after the filing of such peti-
21 tion.

22 “(C) STANDARDS FOR REVIEW.—A judge
23 considering a petition filed under subparagraph
24 (A) may grant such petition only if the judge
25 finds that the directive does not meet the re-

1 requirements of this section or is otherwise un-
2 lawful.

3 “(D) PROCEDURES FOR INITIAL RE-
4 VIEW.—A judge shall conduct an initial review
5 of a petition filed under subparagraph (A) not
6 later than 5 days after being assigned such pe-
7 tition. If the judge determines that such peti-
8 tion consists of claims, defenses, or other legal
9 contentions that are not warranted by existing
10 law or consists of a frivolous argument for ex-
11 tending, modifying, or reversing existing law or
12 for establishing new law, the judge shall imme-
13 diately deny such petition and affirm the direc-
14 tive or any part of the directive that is the sub-
15 ject of such petition and order the recipient to
16 comply with the directive or any part of it.
17 Upon making a determination under this sub-
18 paragraph or promptly thereafter, the judge
19 shall provide a written statement for the record
20 of the reasons for such determination.

21 “(E) PROCEDURES FOR PLENARY RE-
22 VIEW.—If a judge determines that a petition
23 filed under subparagraph (A) requires plenary
24 review, the judge shall affirm, modify, or set
25 aside the directive that is the subject of such

1 petition not later than 30 days after being as-
2 signed such petition. If the judge does not set
3 aside the directive, the judge shall immediately
4 affirm or affirm with modifications the direc-
5 tive, and order the recipient to comply with the
6 directive in its entirety or as modified. The
7 judge shall provide a written statement for the
8 record of the reasons for a determination under
9 this subparagraph.

10 “(F) CONTINUED EFFECT.—Any directive
11 not explicitly modified or set aside under this
12 paragraph shall remain in full effect.

13 “(G) CONTEMPT OF COURT.—Failure to
14 obey an order issued under this paragraph may
15 be punished by the Court as contempt of court.

16 “(6) ENFORCEMENT OF DIRECTIVES.—

17 “(A) ORDER TO COMPEL.—If an electronic
18 communications service provider fails to comply
19 with a directive issued pursuant to paragraph
20 (1), the Attorney General may file a petition for
21 an order to compel the service to comply with
22 the directive with the Foreign Intelligence Sur-
23 veillance Court, which shall have jurisdiction to
24 review such petition.

1 “(B) ASSIGNMENT.—The presiding judge
2 of the Court shall assign a petition filed under
3 subparagraph (A) to 1 of the judges serving in
4 the pool established under section 103(e)(1) not
5 later than 24 hours after the filing of such peti-
6 tion.

7 “(C) PROCEDURES FOR REVIEW.—A judge
8 considering a petition filed under subparagraph
9 (A) shall, not later than 30 days after being as-
10 signed such petition, issue an order requiring
11 the electronic communications service provider
12 to comply with the directive or any part of it,
13 as issued or as modified, if the judge finds that
14 the directive meets the requirements of this sec-
15 tion and is otherwise lawful. The judge shall
16 provide a written statement for the record of
17 the reasons for a determination under this
18 paragraph.

19 “(D) CONTEMPT OF COURT.—Failure to
20 obey an order issued under this paragraph may
21 be punished by the Court as contempt of court.

22 “(E) PROCESS.—Any process under this
23 paragraph may be served in any judicial district
24 in which the electronic communications service
25 provider may be found.

1 “(7) APPEAL.—

2 “(A) APPEAL TO THE COURT OF RE-
3 VIEW.—The Government or an electronic com-
4 munications service provider receiving a direc-
5 tive issued pursuant to paragraph (1) may file
6 a petition with the Foreign Intelligence Surveil-
7 lance Court of Review for review of a decision
8 issued pursuant to paragraph (4) or (5). The
9 Court of Review shall have jurisdiction to con-
10 sider such petition and shall provide a written
11 statement for the record of the reasons for a
12 decision under this subparagraph.

13 “(B) CERTIORARI TO THE SUPREME
14 COURT.—The Government or an electronic com-
15 munications service provider receiving a direc-
16 tive issued pursuant to paragraph (1) may file
17 a petition for a writ of certiorari for review of
18 a decision of the Court of Review issued under
19 subparagraph (A). The record for such review
20 shall be transmitted under seal to the Supreme
21 Court of the United States, which shall have ju-
22 risdiction to review such decision.

23 “(8) RULE OF CONSTRUCTION.—Nothing in
24 this subsection shall be construed to prevent a direc-
25 tive issued under paragraph (1) from requiring an

1 electronic communications service provider to
2 produce additional records, whether existing or cre-
3 ated in the future, based on records produced by a
4 previous directive issued under paragraph (1).

5 “(i) JUDICIAL REVIEW OF CERTIFICATIONS AND
6 PROCEDURES.—

7 “(1) IN GENERAL.—

8 “(A) REVIEW BY THE FOREIGN INTEL-
9 LIGENCE SURVEILLANCE COURT.—The Foreign
10 Intelligence Surveillance Court shall have juris-
11 diction to review a certification submitted in ac-
12 cordance with subsection (g) and the selection
13 and civil liberties and privacy protection proce-
14 dures adopted in accordance with subsections
15 (d) and (e), and amendments to such certifi-
16 cation or such procedures.

17 “(B) TIME PERIOD FOR REVIEW.—The
18 Court shall review a certification submitted in
19 accordance with subsection (g) and the selection
20 and civil liberties and privacy protection proce-
21 dures adopted in accordance with subsections
22 (d) and (e) and shall complete such review and
23 issue an order under paragraph (3) not later
24 than 30 days after the date on which such cer-
25 tification and such procedures are submitted.

1 “(C) AMENDMENTS.—The Attorney Gen-
2 eral and the Director of National Intelligence
3 may amend a certification submitted in accord-
4 ance with subsection (g) or the selection and
5 civil liberties and privacy protection procedures
6 adopted in accordance with subsections (d) and
7 (e) as necessary at any time, including if the
8 Court is conducting or has completed review of
9 such certification or such procedures, and shall
10 submit the amended certification or amended
11 procedures to the Court not later than 7 days
12 after amending such certification or such proce-
13 dures. The Court shall review any amendment
14 under this subparagraph under the procedures
15 set forth in this subsection. The Attorney Gen-
16 eral and the Director of National Intelligence
17 may authorize the use of an amended certifi-
18 cation or amended procedures pending the
19 Court’s review of such amended certification or
20 amended procedures.

21 “(2) REVIEW.—The Court shall review the fol-
22 lowing:

23 “(A) CERTIFICATION.—A certification sub-
24 mitted in accordance with subsection (g) to de-

1 termine whether the certification contains all
2 the required elements.

3 “(B) SELECTION PROCEDURES.—The se-
4 lection procedures adopted in accordance with
5 subsection (d) to assess whether the procedures
6 are reasonably designed to meet the require-
7 ments of subsection (d).

8 “(C) CIVIL LIBERTIES AND PRIVACY PRO-
9 TECTION PROCEDURES.—The civil liberties and
10 privacy protection procedures adopted in ac-
11 cordance with subsection (e) to assess whether
12 such procedures meet the requirements of sub-
13 section (e).

14 “(3) ORDERS.—

15 “(A) APPROVAL.—If the Court finds that
16 a certification submitted in accordance with
17 subsection (g) contains all the required ele-
18 ments and that the selection and civil liberties
19 and privacy protection procedures adopted in
20 accordance with subsections (d) and (e) are
21 consistent with the requirements of those sub-
22 sections and with the fourth amendment to the
23 Constitution of the United States, the Court
24 shall enter an order approving the certification
25 and the use, or continued use in the case of an

1 acquisition authorized pursuant to a determina-
2 tion under subsection (e)(2), of the procedures
3 for the acquisition.

4 “(B) CORRECTION OF DEFICIENCIES.—If
5 the Court finds that a certification submitted in
6 accordance with subsection (g) does not contain
7 all the required elements, or that the proce-
8 dures adopted in accordance with subsections
9 (d) and (e) are not consistent with the require-
10 ments of those subsections or the fourth
11 amendment to the Constitution of the United
12 States, the Court shall issue an order directing
13 the Government to, at the Government’s elec-
14 tion and to the extent required by the Court’s
15 order—

16 “(i) correct any deficiency identified
17 by the Court’s order not later than 30 days
18 after the date on which the Court issues
19 the order; or

20 “(ii) cease, or not begin, the imple-
21 mentation of the authorization for which
22 such certification was submitted.

23 “(C) REQUIREMENT FOR WRITTEN STATE-
24 MENT.—In support of an order under this sub-
25 section, the Court shall provide, simultaneously

1 with the order, for the record a written state-
2 ment of the reasons for the order.

3 “(4) APPEAL.—

4 “(A) APPEAL TO THE COURT OF RE-
5 VIEW.—The Government may file a petition
6 with the Foreign Intelligence Surveillance Court
7 of Review for review of an order under this sub-
8 section. The Court of Review shall have juris-
9 diction to consider such petition. For any deci-
10 sion under this subparagraph affirming, revers-
11 ing, or modifying an order of the Foreign Intel-
12 ligence Surveillance Court, the Court of Review
13 shall provide for the record a written statement
14 of the reasons for the decision.

15 “(B) CONTINUATION OF ACQUISITION
16 PENDING REHEARING OR APPEAL.—Any acqui-
17 sition affected by an order under paragraph
18 (3)(B) may continue—

19 “(i) during the pendency of any re-
20 hearing of the order by the Court en banc;
21 and

22 “(ii) if the Government files a petition
23 for review of an order under this section,
24 until the Court of Review enters an order
25 under subparagraph (C).

1 “(C) IMPLEMENTATION PENDING AP-
2 PEAL.—Not later than 60 days after the filing
3 of a petition for review of an order under para-
4 graph (3)(B) directing the correction of a defi-
5 ciency, the Court of Review shall determine,
6 and enter a corresponding order regarding,
7 whether all or any part of the correction order,
8 as issued or modified, shall be implemented
9 during the pendency of the review.

10 “(D) CERTIORARI TO THE SUPREME
11 COURT.—The Government may file a petition
12 for a writ of certiorari for review of a decision
13 of the Court of Review issued under subpara-
14 graph (A). The record for such review shall be
15 transmitted under seal to the Supreme Court of
16 the United States, which shall have jurisdiction
17 to review such decision.

18 “(5) SCHEDULE.—

19 “(A) REAUTHORIZATION OF AUTHORIZA-
20 TIONS IN EFFECT.—If the Attorney General
21 and the Director of National Intelligence seek
22 to reauthorize or replace an authorization
23 issued under subsection (a), the Attorney Gen-
24 eral and the Director of National Intelligence
25 shall, to the extent practicable, submit to the

1 Court the certification prepared in accordance
2 with subsection (g) and the procedures adopted
3 in accordance with subsections (d) and (e) at
4 least 30 days prior to the expiration of such au-
5 thorization.

6 “(B) REAUTHORIZATION OF ORDERS, AU-
7 THORIZATIONS, AND DIRECTIVES.—If the At-
8 torney General and the Director of National In-
9 telligence seek to reauthorize or replace an au-
10 thorization issued under subsection (a) by filing
11 a certification pursuant to subparagraph (A),
12 that authorization, and any directives issued
13 thereunder and any order related thereto, shall
14 remain in effect, notwithstanding the expiration
15 provided for in subsection (a), until the Court
16 issues an order with respect to such certifi-
17 cation under paragraph (3) at which time the
18 provisions of that paragraph and paragraph (4)
19 shall apply with respect to such certification.

20 “(j) JUDICIAL PROCEEDINGS.—

21 “(1) EXPEDITED JUDICIAL PROCEEDINGS.—Ju-
22 dicial proceedings under this section shall be con-
23 ducted as expeditiously as possible.

24 “(2) TIME LIMITS.—A time limit for a judicial
25 decision in this section shall apply unless the Court,

1 the Court of Review, or any judge of either the
2 Court or the Court of Review, by order for reasons
3 stated, extends that time as necessary for good
4 cause in a manner consistent with national security.

5 “(k) MAINTENANCE AND SECURITY OF RECORDS
6 AND PROCEEDINGS.—

7 “(1) STANDARDS.—The Foreign Intelligence
8 Surveillance Court shall maintain a record of a pro-
9 ceeding under this section, including petitions, ap-
10 peals, orders, and statements of reasons for a deci-
11 sion, under security measures adopted by the Chief
12 Justice of the United States, in consultation with
13 the Attorney General and the Director of National
14 Intelligence.

15 “(2) FILING AND REVIEW.—All petitions under
16 this section shall be filed under seal. In any pro-
17 ceedings under this section, the Court shall, upon re-
18 quest of the Government, review ex parte and in
19 camera any Government submission, or portions of
20 a submission, which may include classified informa-
21 tion.

22 “(3) RETENTION OF RECORDS.—The Attorney
23 General and the Director of National Intelligence
24 shall retain a directive or an order issued under this
25 section for a period of not less than 10 years from

1 the date on which such directive or such order is
2 issued.

3 “(l) ASSESSMENTS AND REVIEWS.—

4 “(1) SEMIANNUAL ASSESSMENT.—Not less fre-
5 quently than once every 6 months, the Attorney
6 General and Director of National Intelligence shall
7 assess compliance with the selection and civil lib-
8 erties and privacy protection procedures adopted in
9 accordance with subsections (d) and (e) and the
10 guidelines adopted in accordance with subsection (f).
11 The assessment shall also include the aggregate
12 number of directives issued under subsection (h)
13 during the relevant time period. The Attorney Gen-
14 eral and Director of National Intelligence shall sub-
15 mit each assessment to—

16 “(A) the Foreign Intelligence Surveillance
17 Court; and

18 “(B) consistent with the Rules of the
19 House of Representatives, the Standing Rules
20 of the Senate, and Senate Resolution 400 of the
21 94th Congress or any successor Senate resolu-
22 tion—

23 “(i) the congressional intelligence
24 committees; and

1 “(ii) the Committees on the Judiciary
2 of the House of Representatives and the
3 Senate.

4 “(2) AGENCY ASSESSMENT.—The Inspector
5 General of the Department of Justice and the In-
6 spector General of each element of the intelligence
7 community authorized to acquire communications
8 records under subsection (a), with respect to the de-
9 partment or element of such Inspector General—

10 “(A) are authorized to review compliance
11 with the selection and civil liberties and privacy
12 protection procedures adopted in accordance
13 with subsections (d) and (e) and the guidelines
14 adopted in accordance with subsection (f);

15 “(B) shall provide each such review to—

16 “(i) the Attorney General;

17 “(ii) the Director of National Intel-
18 ligence; and

19 “(iii) consistent with the Rules of the
20 House of Representatives, the Standing
21 Rules of the Senate, and Senate Resolution
22 400 of the 94th Congress or any successor
23 Senate resolution—

24 “(I) the congressional intelligence
25 committees; and

1 **SEC. 12. CONTINUOUS EVALUATION AND SHARING OF DE-**
2 **ROGATORY INFORMATION REGARDING PER-**
3 **SONNEL WITH ACCESS TO CLASSIFIED IN-**
4 **FORMATION.**

5 Section 102A(j) of the National Security Act of 1947
6 (50 U.S.C. 3024(j)) is amended—

7 (1) in the heading, by striking “SENSITIVE
8 COMPARTMENTED INFORMATION” and inserting
9 “CLASSIFIED INFORMATION”;

10 (2) in paragraph (3), by striking “; and” and
11 inserting a semicolon;

12 (3) in paragraph (4), by striking the period and
13 inserting a semicolon; and

14 (4) by adding at the end the following new
15 paragraphs:

16 “(5) ensure that the background of each em-
17 ployee or officer of an element of the intelligence
18 community, each contractor to an element of the in-
19 telligence community, and each individual employee
20 of such a contractor who has been determined to be
21 eligible for access to classified information is mon-
22 itored on a continual basis under standards devel-
23 oped by the Director, including with respect to the
24 frequency of evaluation, during the period of eligi-
25 bility of such employee or officer of an element of
26 the intelligence community, such contractor, or such

1 individual employee to such a contractor to deter-
2 mine whether such employee or officer of an element
3 of the intelligence community, such contractor, and
4 such individual employee of such a contractor con-
5 tinues to meet the requirements for eligibility for ac-
6 cess to classified information; and

7 “(6) develop procedures to require information
8 sharing between elements of the intelligence commu-
9 nity concerning potentially derogatory security infor-
10 mation regarding an employee or officer of an ele-
11 ment of the intelligence community, a contractor to
12 an element of the intelligence community, or an indi-
13 vidual employee of such a contractor that may im-
14 pact the eligibility of such employee or officer of an
15 element of the intelligence community, such con-
16 tractor, or such individual employee of such a con-
17 tractor for a security clearance.”.

18 **SEC. 13. REQUIREMENTS FOR INTELLIGENCE COMMUNITY**

19 **CONTRACTORS.**

20 (a) REQUIREMENTS.—Section 102A of the National
21 Security Act of 1947 (50 U.S.C. 3024) is amended by
22 adding at the end the following new subsection:

23 “(x) REQUIREMENTS FOR INTELLIGENCE COMMU-
24 NITY CONTRACTORS.—The Director of National Intel-
25 ligence, in consultation with the head of each department

1 of the Federal Government that contains an element of
2 the intelligence community and the Director of the Central
3 Intelligence Agency, shall—

4 “(1) ensure that—

5 “(A) any contractor to an element of the
6 intelligence community with access to a classi-
7 fied network or classified information develops
8 and operates a security plan that is consistent
9 with standards established by the Director of
10 National Intelligence for intelligence community
11 networks; and

12 “(B) each contract awarded by an element
13 of the intelligence community includes provi-
14 sions requiring the contractor comply with such
15 plan and such standards;

16 “(2) conduct periodic assessments of each secu-
17 rity plan required under paragraph (1)(A) to ensure
18 such security plan complies with the requirements of
19 such paragraph; and

20 “(3) ensure that the insider threat detection ca-
21 pabilities and insider threat policies of the intel-
22 ligence community apply to facilities of contractors
23 with access to a classified network.”.

24 (b) APPLICABILITY.—The amendment made by sub-
25 section (a) shall apply with respect to contracts entered

1 into or renewed after the date of the enactment of this
2 Act.

○