

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 3989
OFFERED BY MR. POE OF TEXAS**

Page 3, strike lines 15 and all that follows through page 10, line 9, and insert the following:

1 “(2) CLARIFICATION ON PROHIBITION ON
2 QUERYING OF COLLECTIONS OF COMMUNICATIONS
3 OF UNITED STATES PERSONS.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (C) or (D), no officer or em-
6 ployee of the United States may conduct a
7 query of information acquired under subsection
8 (a) in an effort to find communications of or
9 about a particular person reasonably believed to
10 be a United States person without—

11 “(i) an application by the Attorney
12 General to a judge of the Foreign Intel-
13 ligence Surveillance Court that describes
14 the determination of the Attorney General
15 that—

16 “(I) there is probable cause to
17 believe that—

1 “(aa) such communications
2 provide evidence of a crime speci-
3 fied in section 2516 of title 18,
4 United States Code; or

5 “(bb) such person is a for-
6 eign power or an agent of a for-
7 eign power;

8 “(II) such communications are
9 relevant to an authorized investigation
10 or assessment, provided that such in-
11 vestigation or assessment is not con-
12 ducted solely on the basis of activities
13 protected by the first amendment to
14 the Constitution of the United States;
15 and

16 “(III) any use of such commu-
17 nications pursuant to section 706 will
18 be carried out in accordance with such
19 section; and

20 “(ii) an order of the judge under sub-
21 paragraph (B) approving such application.

22 “(B) ORDER.—

23 “(i) APPROVAL.—Upon an application
24 made under subparagraph (A), the Foreign
25 Intelligence Surveillance Court shall enter

1 an order as requested or as modified by
2 the Court approving the query of contents
3 of communications covered by the applica-
4 tion if the Court determines that, based on
5 an independent review—

6 “(I) the application contains all
7 information required by clause (i) of
8 such subparagraph;

9 “(II) on the basis of the facts in
10 the application, there is probable
11 cause to believe that—

12 “(aa) such communications
13 provide evidence of a crime speci-
14 fied in section 2516 of title 18,
15 United States Code; or

16 “(bb) such person is a for-
17 eign power or an agent of a for-
18 eign power;

19 “(III) the minimization proce-
20 dures adopted pursuant to subsection
21 (e) will ensure compliance with sub-
22 paragraph (A)(i)(III).

23 “(ii) REVIEW.—A denial of an appli-
24 cation made under subparagraph (A) may
25 be reviewed as provided in section 103.

1 “(C) REQUIREMENTS TO QUERY NONCON-
2 TENTS INFORMATION.—Notwithstanding sub-
3 paragraph (A), and except as provided by sub-
4 paragraph (D), the information of communica-
5 tions acquired under subsection (a) relating to
6 the dialing, routing, addressing, signaling, or
7 other similar noncontents information may be
8 queried in an effort to find information about
9 the communications of a person reasonably be-
10 lieved to be a United States person only—

11 “(i)(I) upon an application by the At-
12 torney General using the same process re-
13 quired under section 402 or section 3122
14 of title 18, United States Code; or

15 “(II) during a time of war as specified
16 in section 404;

17 “(ii) if an order based on probable
18 cause would not be required by law to ob-
19 tain such information if requested as part
20 of an investigation of a Federal crime; and

21 “(iii) if any use of such communica-
22 tions pursuant to section 706 will be car-
23 ried out in accordance with such section.

24 “(D) EXCEPTIONS.—The requirement for
25 an order of a judge pursuant to subparagraph

1 (A) and the requirements under subparagraph
2 (C), respectively, shall not apply to querying
3 communications acquired under subsection (a)
4 if one or more of the following conditions are
5 met:

6 “(i) The Attorney General makes a
7 determination that the person identified by
8 the queried term is the subject of an order
9 based upon a finding of probable cause, or
10 emergency authorization, that authorizes
11 electronic surveillance or physical search
12 under this Act or title 18, United States
13 Code (other than such emergency author-
14 izations under title IV of this Act or sec-
15 tion 3125 of title 18, United States Code).

16 “(ii) The Attorney General—

17 “(I) reasonably determines that
18 an emergency situation requires the
19 accessing or dissemination of the com-
20 munications before an order pursuant
21 to subparagraph (A) authorizing such
22 query, or before the requirements
23 under subparagraph (C), as the case
24 may be, can with due diligence be ob-
25 tained;

1 “(II) reasonably believes that the
2 factual basis for the issuance of such
3 an order or such approval exists; and
4 “(III) with respect to the query
5 of the contents of communications
6 under subparagraph (A)—
7 “(aa) informs the Court at
8 the time the Attorney General re-
9 quires the emergency query that
10 the decision has been made to
11 employ the authority under this
12 clause;
13 “(bb) makes an application
14 for an order under such subpara-
15 graph as soon as practicable, but
16 not more than 7 days after the
17 Attorney General requires such
18 emergency production; and
19 “(cc) may not use such com-
20 munications pursuant to section
21 706 if the Court finds that the
22 determination by the Attorney
23 General with respect to the emer-
24 gency situation was not appro-
25 priate.

1 “(iii) In the case of consent provided
2 pursuant to paragraph (5).”.

Page 12, beginning line 22, strike subsections (b) and (c) and redesignate the subsequent subsection accordingly.

Page 25, line 6, strike “accessed or disseminated” and insert “queried”.

