
**NATIONAL SECURITY AGENCY/CENTRAL SECURITY
SERVICE**



**(U) Final Report of the Audit on the FISA Amendments
Act §702 Detasking Requirements**

AU-10-0023

24 November 2010

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OFFICE OF THE INSPECTOR GENERAL
NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE

24 November 2010

IG-11226-10

TO: DISTRIBUTION

SUBJECT: (U) Audit of the FISA Amendments Act (FAA) §702 Detasking Requirements (AU-10-0023) — ACTION MEMORANDUM

1. (U) This report summarizes the results of our audit of the FISA Amendments Act (FAA) §702 Detasking Requirements (AU-10-0023) and incorporates management's response to the draft report.
2. (U//~~FOUO~~) As required by NSA/CSS Policy 1-60, *NSA/CSS Office of the Inspector General*, actions on OIG audit recommendations are subject to monitoring and follow-up until completion. Therefore, we ask that you provide a written status report concerning each planned corrective action categorized as "OPEN." If you propose that a recommendation be considered closed, please provide sufficient information to show that actions have been taken to correct the deficiency. If a planned action will not be completed by the original target completion date, please state the reason for the delay and provide a revised target completion date. Status reports should be sent to [redacted] Assistant Inspector General for Follow-up, at OPS 2B, Suite 6247, within 15 calendar days after each target completion date.
3. (U//~~FOUO~~) We appreciate the courtesy and cooperation extended to the auditors throughout the review. For additional information, please contact [redacted] on 963-0957 or via e-mail at [redacted]

(b) (3) - P.L. 86-36

George Ellard
George Ellard
Inspector General

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(U) EXECUTIVE SUMMARY

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(b) (3) -P.L. 86-36
(b) (3) -50 USC 3024 (i)

(U) OVERVIEW

~~(S//SI//REL TO USA, FVEY)~~ Section 702 of the Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008 (FAA), has strengthened Signals Intelligence (SIGINT) collection, particularly against terrorist targets. From September 2008 to March 2010, the number of SIGINT reports that incorporated FAA §702 sourced collection [redacted]

~~(TS//SI//NF)~~ Under the law, collection under FAA §702 must cease in certain circumstances, potentially resulting in a gap in coverage. To regain coverage, NSA must transition to another authority for continued collection, such as a FBI FISA Order. The Agency does not have a consistent process to ensure a seamless transition from FAA §702 authority to FBI FISA Orders.

(U) HIGHLIGHTS

(U) Gaps in [redacted] coverage exist

~~(TS//SI//REL TO USA, FVEY)~~ Analysis of detasking for FAA §702 compliance

[redacted]

b)(3)-P.L. 86-36

(U) Significance of [redacted]

~~(TS//SI//NF)~~

(b) (1)
(b) (3) -P.L. 86-36
(b) (3) -50 USC 3024 (i)

[redacted]

~~(S//SI//REL TO USA, FVEY)~~ Need for standardized process [redacted]

~~(TS//SI//NF)~~ The Agency lacks a standardized process [redacted]

[redacted]

(U//~~FOUO~~) Management Response

(U//~~FOUO~~) The recommendation is being addressed by management.

(b) (1)
(b) (3) -P.L. 86-36
(b) (3) -50 USC 3024 (i)

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I. (U) INTRODUCTION

(U) Background

(b) (1) ~~(TS//SI//NF)~~ Section 702 of the Foreign Intelligence Surveillance Act
 (b) (3) -P.L. 86-36 (FISA) Amendments Act of 2008 (FAA), enhances surveillance against
 (b) (3) -50 USC 3024(i) foreign nationals outside the United States. [redacted]

[redacted] §702 effectively broadened access to critical targets of interest, particularly terrorists. From September 2008, when FAA was implemented, to March 2010, the number of Signals Intelligence (SIGINT) reports that incorporated §702 sourced collection [redacted]

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 (b) (3) -P.L. 86-36

[redacted]

~~(TS//SI//NF)~~ Collection under FAA §702 must cease under certain circumstances. Detasking is required when a target is determined to be entering or to have entered the United States [redacted]

[redacted]
 Collection also must cease when a target is found to be a U.S. person (USP) [redacted]

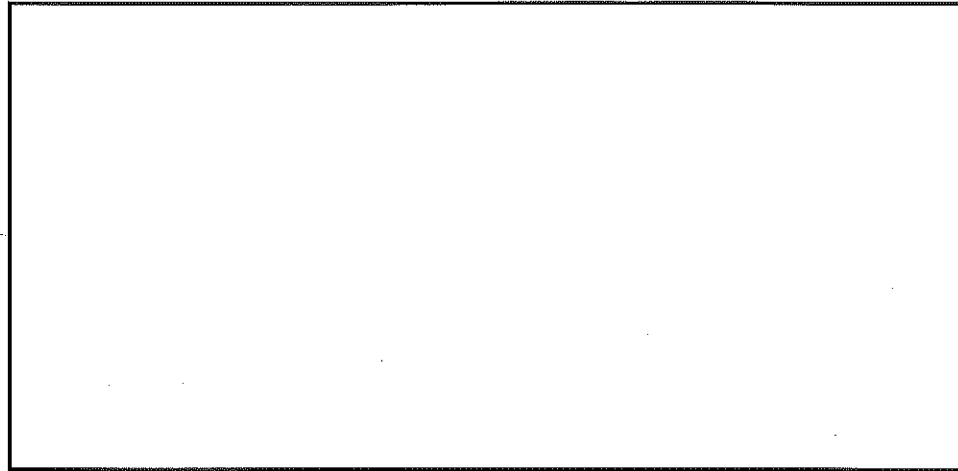
(b) (1)
 (b) (3) -P.L. 86-36
 (b) (3) -50 USC 3024(i)

[redacted] To regain coverage of such a target, collection must transition to another authority, for example, a Federal Bureau of Investigation (FBI) FISA Order. The transition from FAA §702 to another authority may not be seamless, thereby creating a gap in coverage and potentially causing a risk to U.S. security. This audit assessed the circumstances and extent of the FAA §702 coverage gap by examining tasking and detasking records, FBI FISA data, traffic collected and purged, and SIGINT reporting.

(U) FAA §702
~~(TS//SI//NF)~~ FAA §702 allows NSA to use the assistance of U.S. telecommunications and Internet service providers to target non-USPs outside the United States. After the Attorney General and the Director of National Intelligence file a joint certification that certain statutory requirements have been met and the certification is approved by the FISA Court (FISC), NSA may conduct foreign intelligence surveillance of the content of communications. The certification includes an affirmation that the surveillance targets only non-USPs reasonably believed to be outside the United States. The certification is submitted to the FISC and typically is approved for one year. Acquisition under a certification must adhere to targeting and minimization procedures approved by the Court. As of August

2010, NSA was authorized to conduct FAA §702 collection under [redacted] certifications.

(b) (1)
 (b) (3) - P.L. 86-36
 (b) (3) - 50 USC 3024(i)



(U//~~FOUO~~) Other, FISA authorities provide alternative means to obtain collection against foreign intelligence targets when NSA must stop collection (detask) pursuant to FAA §702.

- (U) **FAA §704**

(U//~~FOUO~~) *Other Acquisitions Targeting USPs Outside the United States.* A FISC Order is required, but surveillance techniques are not reviewed by the court.

- (U) **FAA §705b**

(U//~~FOUO~~) *Joint Applications and Concurrent Applications.* When a FISA Order that authorizes surveillance of a target inside the United States is in place, the Attorney General can authorize targeting while the USP is reasonably believed to be outside the United States.

- (U) **FBI FISA Order**

~~(S//SI//REL TO FVEY)~~ The FBI is authorized under a FISC Order to perform searches and electronic surveillance against agents of a foreign power. Under FISC docket number [redacted] (known as the Raw Take Sharing Order) dated July 2002, NSA is able to receive most FBI FISA collection.

(b) (1)
 (b) (3) - P.L. 86-36
 (b) (3) - 50 USC 3024(i)

- (U) **Increased use of FAA §702 Authority**

~~(S//SI//REL TO USA, FVEY)~~ According to analysts in the Signals Intelligence Directorate (SID), collection under FAA §702 authority is productive and grew in the 19 months between September 2008 and March 2010. Increased tasking under FAA §702 authority has resulted in increased SIGINT reporting. The Agency has also experienced an increase in compliance-related detaskings of selectors.

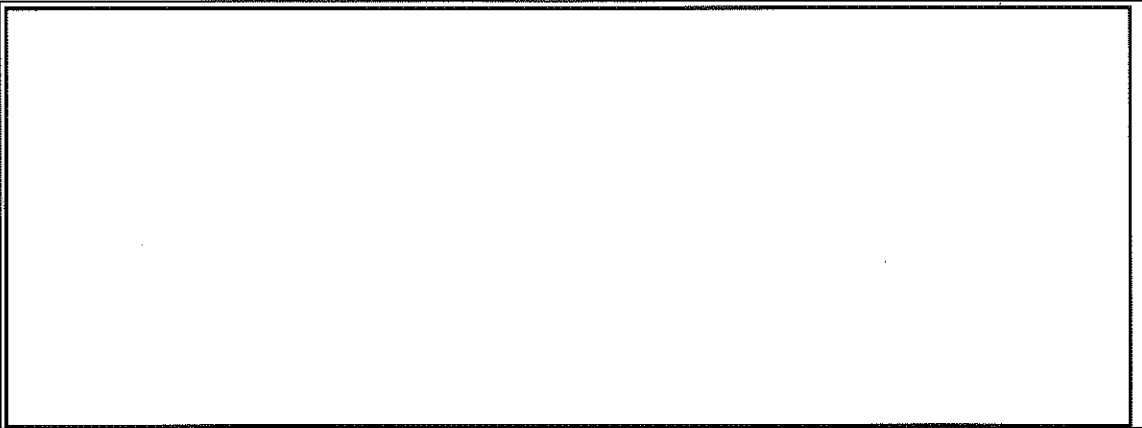
- (U) Tasking
~~(S//SI//REL TO USA, FVEY)~~ Tasking by selector [redacted]
[redacted] increased [redacted]

(b) (1)
(b) (3) - P.L. 86-36
(b) (3) - 50 USC 3024(i)

- (U) Detasking
~~(S//SI//REL TO USA, FVEY)~~ Compliance-related detasking significantly increased [redacted]
[redacted]

- (U) SIGINT reporting
~~(S//SI//REL TO USA, FVEY)~~ Reporting based on collection under FAA §702 authority increased [redacted]
[redacted]

~~(S//SI//REL TO USA, FVEY)~~



~~(S//SI//REL TO USA, FVEY)~~

(U) NSA oversight of FAA §702 collection

~~(S//SI//REL TO USA, FVEY)~~ In addition to the analysts' obligation to review the status of their selectors, the SID Oversight and Compliance Office (SV) is responsible for monitoring compliance with FAA §702 and tracking detasking. SV monitors selectors through special tools to ensure compliance [redacted] (b) (3) - P.L. 86-36

[redacted] When a compliance problem exists, SV contacts the Targeting Office of Primary Interest (TOPI) and requests that its personnel research the selector before detasking. SV is also responsible for maintaining a Protect America Act (PAA)/FAA Incident database to record and track incidents and provide that information for external oversight by the Department of Justice (DoJ) and the Office of the Director of National Intelligence.

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II. (U) FINDING AND RECOMMENDATION

(U) FINDING: Gaps in [redacted] Coverage Exist

(b) (3) - P.L. 86-36

~~(TS//SI//NF)~~ Although FAA §702 has provided important SIGINT collection, the Agency has experienced [redacted] coverage gaps when transitioning from FAA §702 to another authority. [redacted]

[redacted] The Agency does not have a consistent process to ensure a seamless transition from FAA §702 authority to FBI FISA Orders.

(b) (1)

(b) (3) - P.L. 86-36

(b) (3) - 50 USC 3024(i)

(U) FAA §702 Implementation

(U) FAA §702 procedures

~~(TS//SI//NF)~~ FAA §702 requires that NSA adopt procedures to ensure that its collection targets are non-USPs reasonably believed to be outside the United States and to ensure that the Agency does not intentionally acquire communications known to be purely domestic. NSA must also establish minimization procedures that reasonably balance its foreign intelligence needs against the privacy interests of USPs with respect to the collection, retention, and dissemination of information.

(U) FAA §702 detaskings for compliance

(U//~~FOUO~~) In certain circumstances, NSA must detask selectors to maintain compliance with FAA §702 and approved targeting and minimization procedures. There are three broad reasons for detasking.

- (U) Roamers

~~(S//SI//REL TO USA, FVEY)~~ The foreign target is initially believed to be overseas, but it is subsequently determined that the target has entered the United States [redacted]

(b) (1)

(b) (3) - P.L. 86-36

- (U//~~FOUO~~) USP status determined after tasking

~~(S//SI//REL TO USA, FVEY)~~ The target is overseas and believed to be foreign, but NSA subsequently determines that the target is a USP overseas.

(b) (1)

(b) (3) - P.L. 86-36

(b) (3) - 50 USC 3024(i)

~~(S//SI//REL TO USA, FVEY)~~ [redacted]

• (U)

~~(S//SI//REL TO USA, FVEY)~~ The target is foreign and overseas.

(b) (1)

(b) (3) - P.L. 86-36

NSA must detask the account from FAA §702 collection.

~~(TS//SI//NF)~~ Once NSA determines that a target is a USP, is roaming in the United States, or

NSA must detask associated selectors from collection under FAA §702 authority and purge related SIGINT holdings from all databases. To avoid a break in coverage, other authorities must be sought if the target remains of interest and is an agent of a foreign power (e.g., §704, §705b, and/or FBI FISA).

(C) Compliance detaskings few in context, but potential risk is great

~~(S//SI//REL TO USA, FVEY)~~ The number of selectors that are

detasked for compliance reasons from collection under FAA §702 authority is small compared with all SIGINT selector tasking as of March 2010

however, loss of FAA §702 collection on potentially high-interest selectors, particularly those related to poses a risk when transition to alternative coverage is not seamless.

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(b) (3) - P.L. 86-36

(U//FOUO) FAA 702 detasked Selectors compared to all FAA tasking and total SIGINT Selectors

(b) (1)

(b) (3)

P.L. 86-36

(U) Defining the FAA §702 gap in coverage

~~(TS//SI//NF)~~ The gap in coverage is the collection lost in the time between destasking selectors from FAA §702 collection authority and initiation of collection under another authority (e.g., §704, §705b, or FBI FISA). For non-FAA §702 coverage, a higher legal standard, individualized probable cause, is required to secure a FISA order. In some cases, the Government may not be able to assemble facts sufficient to satisfy the probable cause standard.

[Redacted]

(U) Audit Focus on

(U) Audit universe of FAA §702 detaskings

~~(TS//SI//NF)~~ To determine the extent of the coverage gaps, we identified every Digital Network Intelligence (DNI) and Dialed Number Recognition (DNR) selector that was detasked to comply with FAA §702 after enactment of the FAA in July 2008. By examining tasking records and SV's PAA/FAA Incidents database, we identified relevant detasked DNI and DNR selectors. These selectors were drawn from FAA §702 certifications

(b) (3) -P.L. 86-36

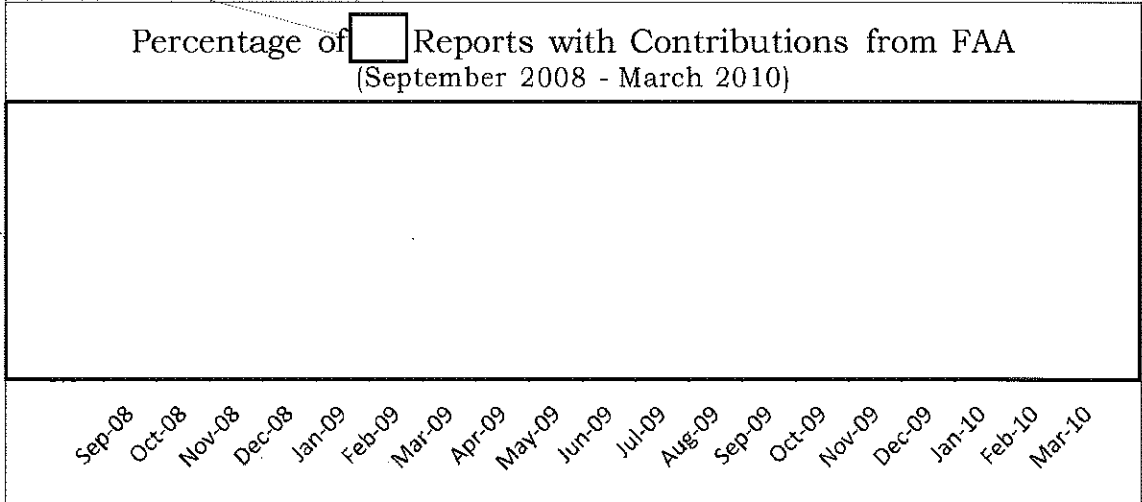
b) (1)
b) (3) -P.L. 86-36
b) (3) -50 USC 3024(i)

(U//FOUO) Contribution of collection under FAA §702 authority to reporting

~~(S//SI//REL TO USA, FVEY)~~ From September 2008 to March 2010, FAA §702 collection contributed to an increasing percentage of reporting. Overall, the increase was from percent to percent.

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(b) (3) -P.L. 86-36

~~(S//SI//REL TO USA, FVEY)~~



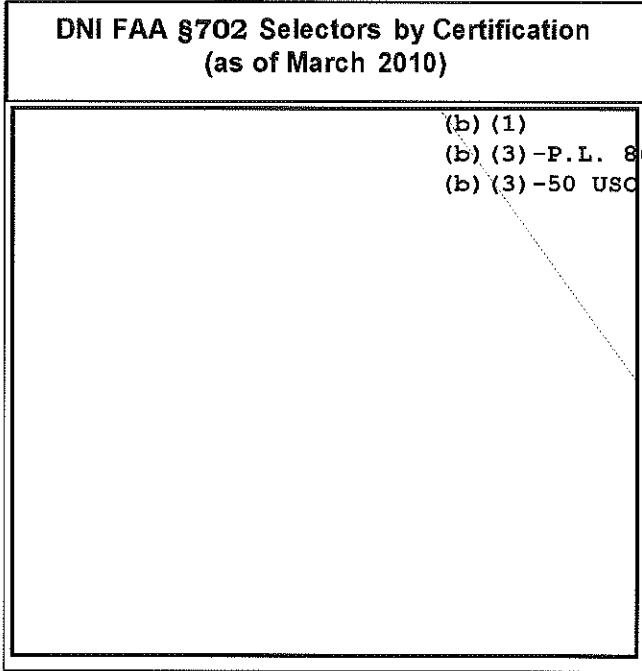
~~(S//SI//REL TO USA, FVEY)~~

(b)(3)-P.L. 86-36

~~(U//FOUO)~~ **Audit sample focuses on [] DNI selectors**

~~(S//SI//REL TO USA, FVEY)~~ From the universe of [] detasked DNI and DNR selectors, we identified [] DNI selectors for detailed selector-by-selector gap analysis (see Appendix B for scope and methodology). DNI selectors represented the large majority of FAA §702 detaskings in the sample (93 percent). In addition, [] selectors accounted for [] percent of tasked FAA §702 DNI selectors as indicated in the adjacent diagram. The large quantity of taskings and detaskings coupled with the significant role of FAA §702 on [] reporting, as well as the high risk that a gap in [] coverage poses, prompted our focus on [] DNI detaskings.

(b) (1)
(b) (3) - P.L. 86-36



(U) Effective Collection Priority

~~(S//SI//REL TO USA, FVEY)~~ To understand better the priority of tasking and forwarding of collection for these [] selectors, we obtained the Effective Collection Priority (ECP) of the [] selectors under review. ECP is derived from two values: national SIGINT priority and collection precedence []

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(b) (3) - P.L. 86-36

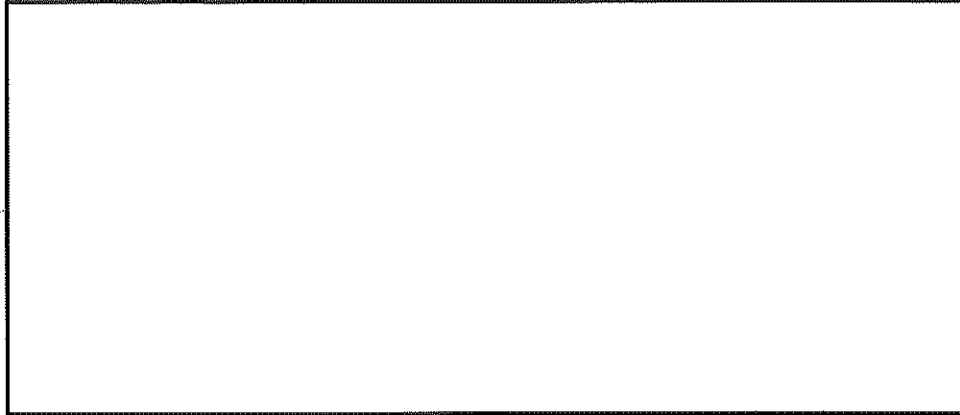
[] ECP values range from one through nine, with one being the highest priority. For the [] selectors that we identified, the average ECP was 2.52, indicating that these selectors are of high priority.

(U) Effect of Gaps on SIGINT Collection and Reporting

~~(TS//SI//NF)~~ To determine the effects of FAA §702 detasking on [] SIGINT collection and reporting, we analyzed the [] selectors during a 13-month period (February 2009 to March 2010). []

(b) (1)
(b) (3) - P.L. 86-36

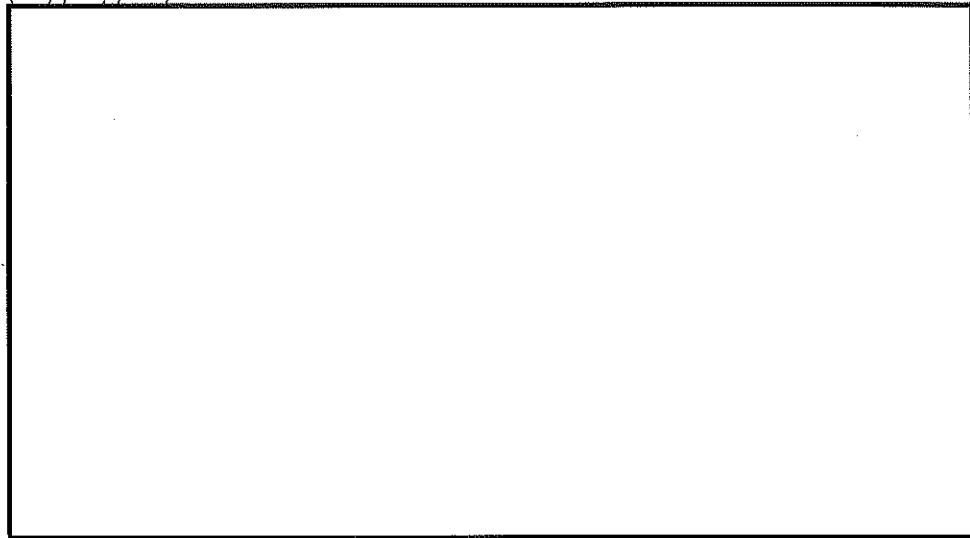




(b) (1)
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(U) Collection Coverage Gap Analysis

~~(TS//SI//NF)~~



~~(TS//SI//NF)~~

~~(S//SI//REL TO USA, FVEY)~~ 

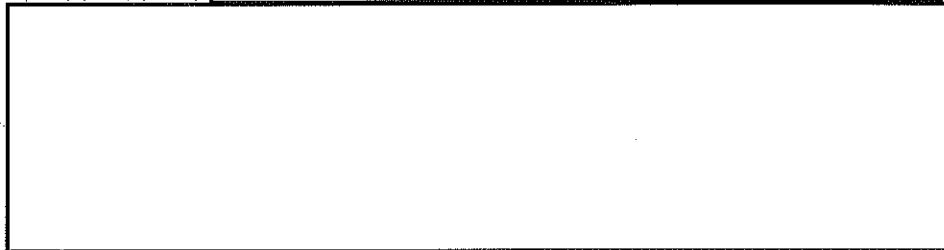
~~(S//SI//REL TO USA, FVEY)~~ 



(b) (1)
(b) (3) - P.L. 86-36

(U//FOUO) Time delay poses risk on productive selectors

~~(TS//SI//NF)~~ 



(b) (1)
(b) (3) - P.L. 86-36

[Redacted]

(U) Minimal delay on some high-interest selectors

~~(TS//SI//NF)~~

[Redacted]

[Redacted]

(b) (1)
(b) (3) - P.L. 86-36
(b) (3) - 50 USC 3024 (i)

(U) Projected lost FAA §702 collection

~~(S//SI//REL TO USA, FVEY)~~

[Redacted]

[Redacted]

[Redacted] could result in risk to the nation from these high-interest [Redacted] targets.

(U) Majority of [Redacted] selectors dropped from collection

(b) (1)
(b) (3) - P.L. 86-36

~~(TS//SI//NF)~~

[Redacted]

[Redacted]

(b) (1)
(b) (3) - P.L. 86-36
(b) (3) - 50 USC 3024 (i)

(U) Selectors not Retasked

~~(TS//SI//NF)~~

Reason Selector Was not Retasked	No. of Detaskings	Percentage of Total
[Redacted]		
Total		100.00%

~~(TS//SI//NF)~~

(b) (1)
(b) (3) -P.L. 86-36

(U) Lack of Systematic Process [Redacted]

(U) [Redacted] (b)(3)-P.L. 86-36
~~(TS//SI//NF)~~ [Redacted] Production Center has faced challenges in achieving seamless coverage of targets while maintaining compliance with FAA §702 requirements, [Redacted]

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(b)(3)-P.L. 86-36

[Redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

(U//FOUO) [Redacted] (b)(3)-P.L. 86-36
~~(TS//SI//NF)~~ [Redacted]

[Redacted]

(U) Need for consistent process

~~(TS//SI//NF)~~ [Redacted]
 [Redacted]

² (U//FOUO)

[Redacted]

(b)(3)-P.L. 86-36

[Redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

(U) [Redacted] Tasking Time Gap

(b)(3)-P.L. 86-36

~~(TS//SI//NF)~~

Gap	No. of Selectors	Percentage
[Redacted]	[Redacted]	[Redacted]
Total	[Redacted]	100%

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(b)(3)-P.L. 86-36

~~(TS//SI//NF)~~

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(b)(3)-P.L. 86-36

(U//FOUO) [Redacted]

~~(TS//SI//NF)~~

[Redacted]

1. ~~(TS//SI//NF)~~ After the Agency detasks an FAA §702 selector,

(b)(3)-P.L. 86-36
(b)(3)-18 USC 798
(b)(3)-50 USC 3024(i)

[Redacted]

2. ~~(TS//SI//NF)~~ TOPIs can directly notify [Redacted]

[Redacted]

3. ~~(TS//SI//NF)~~ After normal duty hours, NSA's

(b)(1)
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[Redacted]

4. ~~(TS//SI//NF)~~ Agency analysts can send [Redacted]

[Redacted]

~~(TS//SI//NF)~~

[Redacted]

~~(TS//SI//NF)~~ In addition, in September 2009, at the request of the NSA Director, an Emergency Authorization Concept of Operations was developed [Redacted] and the Office of General Counsel (OGC) to outline a detailed process for maintaining coverage [Redacted]

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(b)(3)-P.L. 86-36

³ ~~(S//SI//REL TO USA, FVEY)~~

[Redacted]

[Redacted]

(b)(1)
(b)(3)-P.L.

(U//FOUO) Lack of understanding of the handoff process

~~(TS//SI//NF)~~ [Redacted]

[Redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

(U//FOUO)

Case studies

~~(TS//SI//NF)~~ [Redacted]

[Redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

1. ~~(TS//SI//REL TO USA, FVEY)~~ Informal, but nearly seamless:

[Redacted]

~~(TS//SI//REL TO USA, FVEY)~~ [Redacted]

[Redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-18 USC 79
(b)(3)-50 USC 30

~~(TS//SI//NF)~~ [Redacted]

[Redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

~~(TS//SI//NF)~~ Selectors Associated with [Redacted]

(b)(1)
(b)(3)-P.L. :

[Redacted]

~~(TS//SI//NF)~~

Selectors [Redacted]

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(b)(3)-P.L. 86-36

[Redacted]

~~(TS//SI//NF)~~

~~(TS//SI//NF)~~ NSA, the Central Intelligence Agency, and the FBI

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[Redacted]

2. ~~(TS//SI//REL TO USA, FVEY)~~ Learning experience: [Redacted]

~~(TS//SI//NF)~~ [Redacted]

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(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

[Redacted]

~~(TS//SI//NF)~~ Selectors Associated with [Redacted]

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(b)(3)-P.L. 86-36

~~(TS//SI//NF)~~
[Redacted]

~~(TS//SI//REL TO USA, FVEY)~~ These selectors had been placed under FAA §702 coverage [Redacted]

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(b)(3)-P.L. 86-36

[Redacted] because they were used by several persons associated with

[Redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

~~(TS//SI//NF)~~ [Redacted] analysts initially did not know who to contact about obtaining alternative coverage and were not clear about what could be obtained from FAA §705b tasking and how this tasking [Redacted] Ultimately, the analysts

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~~(TS//SI//REL TO USA, FVEY)~~ [Redacted]

(b)(3)-P.L. 86-36

[Redacted]

were provided guidance internally. [redacted]

[redacted]

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(b)(3)-50 USC 3024(i)

~~(TS//SI//NF)~~ [redacted]
[redacted]

occur because not all analysts in the office are familiar with these new procedures.

3. ~~(TS//SI//REL TO USA, FVEY)~~ Limited feedback and a long delay: [redacted]

~~(TS//SI//NF)~~ [redacted]
[redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

(b)(1)
(b)(3)-P.L. 86-36

~~(TS//SI//NF)~~ Selector Associated with [redacted]
[redacted]

~~(TS//SI//NF)~~ [redacted]

~~(TS//SI//NF)~~

~~(TS//SI//NF)~~ Shortly after tasking on the selector had been initiated, [redacted]

[redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

~~(S//SI//REL TO USA, FVEY)~~ SV uses [redacted] to monitor tasked selectors to ensure foreignness and compliance with the law.

[Redacted]

~~(TS//SI//NF)~~ [Redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

[Redacted]

(b)(3)-P.L. 86-36

(U) [Redacted] suggest improvements
~~(TS//SI//NF)~~ [Redacted]

agreed that a standardized process would improve the timeliness
[Redacted] They also concluded that the
process should be strengthened and suggested other
improvements to the current system. [Redacted]

[Redacted]

Recommendation

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

~~(TS//SI//NF)~~ Establish a standardized process for
[Redacted] when it is determined that
coverage should continue after selectors are detasked
from FAA §702 collection.
(ACTION: SID with OGC)

(U) Management Response

CONCUR. (U//FOUO) [Redacted] and OGC concur with OIG's [Redacted] (b)(3)-P.L. 86-36
recommendation. Corrective action is under way and will be
completed as soon as possible, [Redacted]

Successful completion within this timeframe is contingent upon direct involvement from SV and S1 as they are owners of mission components that are directly tied to the transition process (see Appendix C for full text of management comments).

(U) OIG Comment

(U) Planned actions meet the intent of the recommendation.

(U) Loss of Collection

[Redacted]

(b)(3)-P.L. 86-36

~~(S//SI//REL TO USA, FVEY)~~ We also grouped the [Redacted] selectors reviewed by the reason for detasking.

~~(TS//SI//NF)~~ **Circumstances of Detasking**

[Redacted]

~~(TS//SI//NF)~~

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

~~(TS//SI//NF)~~ [Redacted]

(U) Significance of

[Redacted]

(b)(3)-P.L. 86-36

~~(TS//SI//NF)~~ [Redacted]

[Redacted]

(U//FOUO) Strict guidance on detasking [Redacted]

(b)(3)-P.L. 86-36

~~(S//SI//REL TO USA, FVEY)~~ Strict guidance from DoJ and OGC

[Redacted]

~~(TS//SI//NF)~~ [Redacted]

[Redacted]

[Redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

(U) Action taken

~~(TS//SI//NF)~~ [Redacted] the DIRNSA, along with the Attorney General and the acting Director of National Intelligence, filed with the FISC FAA §702 certification renewal documents related to targeting and minimization procedures for the [Redacted]

(b)(3)-P.L. 86-36

[Redacted]

~~(TS//SI//NF)~~ [Redacted] NSA learned that the FISC was concerned with the proposed changes to the minimization procedures. DoJ and NSA are exploring alternatives to address the matter while continuing to operate under the existing procedures.

(U) ACRONYMS AND ORGANIZATIONS

- [redacted] (U) [redacted]
- CIA (U) Central Intelligence Agency
- [redacted] (U//~~FOUO~~) [redacted]
- [redacted] (U) [redacted]
- DIRNSA (U) Director, NSA
- DNI (U//~~FOUO~~) Digital Network Intelligence
- DNR (U) Dialed Number Recognition
- DoJ (U) Department of Justice
- ECP (U) Effective Collection Priority
- FAA (U) Foreign Intelligence Surveillance Act of 1978 (FISA) Amendments Act of 2008
- FBI (U) Federal Bureau of Investigation
- FISA (U) Foreign Intelligence Surveillance Act of 1978
- FISC (U) Foreign Intelligence Surveillance Court
- [redacted] (U) [redacted]
- OGC (U) Office of General Counsel
- PAA (U) Protect America Act
- SID (U) Signals Intelligence Directorate
- SIGINT (U) Signals Intelligence
- SV (U//~~FOUO~~) Signals Intelligence Directorate, Oversight and Compliance
- SV4 (U//~~FOUO~~) Signals Intelligence Directorate, Oversight and Compliance, FISA Authorities
- TOPI (U//~~FOUO~~) Targeting Office of Primary Interest
- USP (U) United States Person

(b)(3)-P.L. 86-36

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(U) APPENDIX A

(U) About the Audit

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(U) ABOUT THE AUDIT**(U) Objectives**

(U) The audit objective was to document the circumstances and the extent of dropped Signals Intelligence (SIGINT) collection as a result of Foreign Intelligence Surveillance Act of 1978 (FISA) Amendments Act of 2008 (FAA) §702 restrictions.

(U) Scope and Methodology

(U) Conducted from February to August 2010, the audit examined the gaps in coverage when a selector is required to be detasked for compliance with FAA §702 and the measured effect of the lost coverage.

(U//~~FOUO~~) We reviewed current policies and laws pertaining to FAA §702. We obtained access to the Protect America Act (PAA)/FAA Incident database and reviewed reported incidents from 10 July 2008 (when the FAA became law) through 4 March 2010 and documented actual instances when SIGINT collection was stopped to comply with §702. See Appendix C – Data Analysis for our data sources.

~~(C)~~ We interviewed representatives from the following organizations: Signals Intelligence Directorate (SID) Oversight and Compliance (SV); [redacted] Office of General Counsel (OGC); [redacted] and [redacted]. In addition, we met with [redacted] and documented the collection transfer from NSA to FBI.

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

(U) SID Oversight and Compliance

(U//~~FOUO~~) To gain an understanding of the Agency's process for documenting and reporting incidents and violations, we met with the SV staff. We obtained for our analysis information from SV's PAA/FAA Incidents database on selectors that were detasked because of FAA §702 restrictions.

(U) Office of General Counsel

(U//~~FOUO~~) We met with the OGC FAA liaison to gain the overall legal perspective of the implementation of FAA §702. We also met with the Acting General Counsel to discuss the nature of collection restrictions that are inherent in NSA's legal authorities. In addition, we discussed whether the current law is sufficient for NSA to achieve its mission goals.

(U) [redacted]
(U//FOUO) We met with technical leadership in the [redacted] to gain an understanding of the legal, policy, and compliance constraints in the [redacted] analytic environment, specifically related to FAA §702. Case studies regarding [redacted] selectors that were detasked because of FAA §702 restrictions were conducted. [redacted] when a selector was detasked was discussed with [redacted] analysts. We obtained the analysts' opinions about the effect of collection on their work, including specific benefits and obstacles of the FAA §702 authority.

(b)(3)-P.L. 86-36

(U) FAA implementation leads

(U//FOUO) We met with the Analysis & Production FAA leads who are charged with overseeing working groups, which are addressing problems with carrying out work under the FAA. They outline efforts on analytic training and coordinate with the Department of Justice, OGC, and SV.

~~(S//SI//REL TO USA, FVEY)~~ [redacted]

~~(TS//SI//NF)~~ [redacted]

[redacted]

(U) Tasking tool and data repository personnel

(U//FOUO) We met with personnel in [redacted] to discuss the [redacted] and [redacted] tasking databases. We obtained extractions from these databases to assist in our review. In addition, we met with the S2 metrics team, [redacted] personnel, and a representative from SIGINT Strategy and Governance to gather additional data concerning tasking gaps, collection prioritization, and qualitative measures related to the FAA §702 selectors of interest.

(b)(3)-P.L. 86-36

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

(U) Training

(U//FOUO) We took the Legal Compliance and Minimization Procedures (USSID 18) training to obtain access to certain databases. In addition, we attended [redacted] training.

(U) Government auditing standards

(U) We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions according our audit objectives. We believe

that the evidence obtained provides a reasonable basis for our findings and conclusions according to our audit objectives.

(U) Prior Coverage

(U) The Office of the Inspector General has not performed any previous audits or inspections on FAA §702.

(U) Use of Computer-Processed Data

(U) To perform this audit, we used data that originated from the [redacted] the SV4 PAA/FAA Incidents, [redacted] and [redacted] (b)(3)-P.L. 86-36 databases. We used the data to conduct a gap analysis on selectors that were detasked for FAA §702 compliance reasons. We did not determine the validity of these databases; however, we validated the data across multiple sources to ensure an accurate depiction of the data as used for our analysis.

(U) Management Control Program

(U//~~FOUO~~) As part of the audit, we assessed the organization's control environment pertaining to the audit objectives, as set forth in NSA/CSS Policy 7-3, *Internal Control Program*, 14 April 2006. We found that SV4's 2010 statement of assurance reported that a lack of upgrades of Information Technology systems and software application and lack of training and staffing could impede the SV4 mission.

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(U) APPENDIX B

(U) Data Analysis

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(U) DATA ANALYSIS

(U) Identification of Detasked Selectors

(b)(3)-P.L. 86-36 (U//~~FOUO~~) We used the SV PPAA/FAA incidents database and the [redacted] as sources of selectors that were detasked to maintain compliance with FAA §702.

(U//FOUO)

SV4 PAA/FAA Incidents database

(U//~~FOUO~~) We examined the SV4 PAA/FAA Incidents database, which contains a record of reportable incidents under the PAA/FAA. A reportable incident under PAA/FAA is one of the following:

(U//~~FOUO~~) The conduct of any SIGINT activity (collection, processing, retention or dissemination) using PAA collectors in a way that contravenes the terms of the PAA or the terms of the specific certification under which you are operating.⁶ This includes any activity that runs counter to the Director's affidavit or the associated exhibits that describe the process for determining foreignness, the minimization procedures, or the targets authorized for collection under the certification.

(U//~~FOUO~~) The conduct of any SIGINT activity using PAA collectors without having a certification in place to cover the target being collected.

(b)(1)
(b)(3)-P.L. 86-36

~~(S//SI//REL TO USA, FVEY)~~ We reviewed the records in the SV PAA/FAA Incidents database from 10 July 2008 (the inception of FAA) to 4 March 2010 and determined that there were a total of [redacted] incidents.

(U//~~FOUO~~) The records in the database are categorized by incident type. This allowed us to determine those that met the criteria for our review of detaskings related to compliance. The relevant incident types for further review are:

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

- ~~(S//SI//REL TO USA, FVEY)~~ Roamers into the US
- ~~(S//SI//REL TO USA, FVEY)~~ [redacted]
- ~~(S//SI//REL TO USA, FVEY)~~ [redacted]
- ~~(S//SI//REL TO USA, FVEY)~~ [redacted]
- ~~(S//SI//REL TO USA, FVEY)~~ Targets identified as a USP after tasking under §702

(U//~~FOUO~~) Incident types such as "analyst error" and "tasking error" did not relate to detasking to maintain compliance with §702; therefore, we eliminated these types of records from our review.

⁶ (U) PAA was the predecessor to FAA.

(U//FOUO) [redacted] is the targeting tool used to submit and manage Digital Network Intelligence (DNI) targeting requests. To ensure that we obtained records of all detaskings related to §702 compliance, we requested from [redacted] tasking records a record of detaskings for any of the three following reasons⁷:

(b)(3)-P.L. 86-36

1. User is a USP
2. User is entering the United States
3. User is in the United States

~~(S//SI//REL TO USA, FVEY)~~ The main purpose for requesting detasking records from [redacted] was to search for selectors that were detasked citing a reason "user is entering the United States" and that were not captured as incidents in the SV PAA/FAA Incidents database because they were detasked before the user actually roamed into the United States.

(b)(3)-P.L. 86-36

(U) Audit universe

(U//FOUO) We compared the results of the query with the selectors identified in the review of the PAA/FAA Incidents database and identified additional selectors that were detasked for compliance purposes.

~~(S//SI//REL TO USA, FVEY)~~ From our review of the SV PAA/FAA Incidents and [redacted] detasking records, we identified a total universe of [redacted] unique selectors that were detasked for compliance reasons. The detaskings covered the [redacted] FAA §702 certifications:

(b)(1)
(b)(3)-P.L. 86-36

(b)(3)-P.L. 86-36

[redacted] We were able to identify both detasked DNI and Dialed Number Recognition (DNR) selectors from the SV PAA/FAA Incidents database and detasked DNI selectors from [redacted] detasking records. The breakout of the selectors are detailed in the following table:

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

⁷ (U//FOUO) [redacted] did not formally include a "detask reason" field until an upgrade was performed in February 2009; therefore, our search within [redacted] detasking records was performed for the date range February 2009 to March 2010.

(b)(3)-P.L. 86-36

~~(S//SI//REL TO USA, FVEY)~~

(U//FOU) Detasked Selectors by Source and Type

~~(S//SI//REL TO USA, FVEY)~~

Source	Type	§702 Selector Type	Description	Time Frame	No. of Detasked Selectors
SV4 PAA/FAA Incidents database			Compliance-related detaskings since July 2008	July 2008 to March 2010	
SV4 PAA/FAA Incidents database			Compliance-related detaskings since July 2008	July 2008 to March 2010	
SV4 PAA/FAA Incidents database			Compliance-related detaskings since July 2008	July 2008 to March 2010	
SV4 PAA/FAA Incidents database			Compliance-related detaskings since July 2008	July 2008 to March 2010	
<input type="checkbox"/> detasking record			Compliance-related detaskings since February 2009	February 2009 to March 2010	
<input type="checkbox"/> detasking record			Compliance-related detaskings since February 2009	February 2009 to March 2010	
Total					

~~(S//SI//REL TO USA, FVEY)~~

(b)(3)-P.L. 86-36

(b)(1)
(b)(3)-P.L. 86-36

(U) Audit Sample for Gap Analysis

~~(S//SI//REL TO USA, FVEY)~~ The focus of our gap analysis was on FAA selectors that were detasked for collection for compliance reasons under the certification from February 2009 to March 2010. We concentrated on the selectors from the certification because of the significance of the FAA §702 collection, including the number of FAA §702 taskings, and the key role it plays in SIGINT production. We also based our decisions regarding the time frame for review and the focus on selectors on of the availability of records necessary to conduct the analysis, and the majority of the §702 detaskings were . There were detasked selectors. We were unable to conduct an analysis of selectors because of a lack of traffic or tasking information or both.

(b)(1)
(b)(3)-P.L. 86-36

~~(S//SI//REL TO USA, FVEY)~~ Our analysis covered both time gaps (gaps in coverage in days) and collection coverage gaps (projected missed collection as a result of the loss of coverage) for the selectors.

(b)(1)
(b)(3)-P.L. 86-36

~~(S//SI//REL TO USA, FVEY)~~

Database	Type	§702 Selector Type	Selectors Reviewed (February 2009 to March 2010)
SV4 PAA/FAA Incidents database			
<input type="checkbox"/> detasking records			
Total			

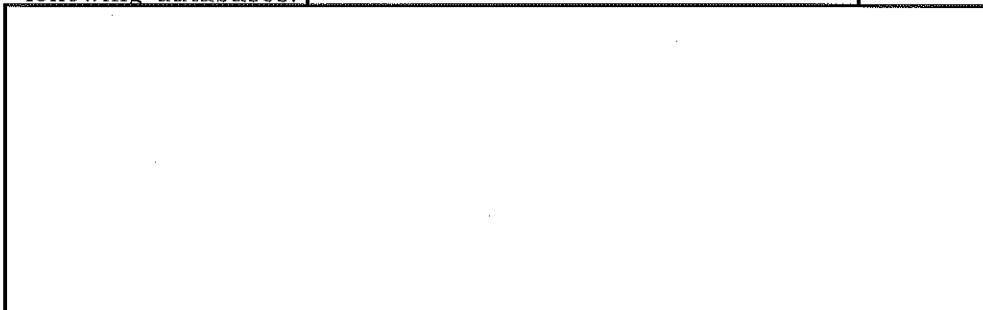
(b)(3)-P.L. 86-36

~~(S//SI//REL TO USA, FVEY)~~

(U//~~FOUO~~) **Records reviewed**

(U//~~FOUO~~) To measure the extent of the gaps associated with detasked §702 selectors, we evaluated multiple sources of information. This information was requested from SV, [redacted] and the S2 [redacted]. We also reviewed the following databases: [redacted]

(b)(3)-P.L. 86-36



• (U//~~FOUO~~) **§702 tasking history**

(U//~~FOUO~~) [redacted] records were used to determine the dates of coverage for the selectors. The data included the dates the selectors were tasked and detasked in [redacted] for Executive Order 12333 and §702 coverage.

• (U//~~FOUO~~) [redacted]

(U//~~FOUO~~) Data were requested from the [redacted] on the tasking and detasking of the selectors. This allowed us to draw a comparison between information in the SV4 PAA/FAA Incidents database and the tasking records from [redacted]. We also used the [redacted] data to determine the Effective Collection Priority of each of the selectors.

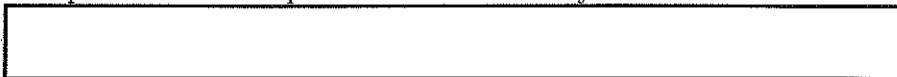
(b)(3)-P.L. 86-36

• (U//~~FOUO~~) [redacted]

~~(S//SI//REL TO USA, FVEY)~~ [redacted] data were requested for determination of the number of pieces of traffic, or "traffic hits," collected per day related to §702 [redacted]. This traffic allowed us to determine how active the selectors were in regard to traffic collected [redacted].

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

From this information, we were able to project the potential collection that was lost during gaps in coverage related to §702 compliance. It also provided us the ability to determine how



• (U//~~FOUO~~) **Purged records**

(U//~~FOUO~~) Purge requests from SV4 to database managers were evaluated for records related to the group of [redacted] selectors in the [redacted] database. The purged records in effect represent a gap in collection coverage.

(b)(3)-P.L. 86-36

- (U//FOUO) [redacted] reporting
 (U//FOUO) We requested from the S2 [redacted] counts of serialized SIGINT reporting that cited §702 data as the source (partial or sole-source). The records were extracted from the [redacted] database and provided us the ability to determine the effect of §702 collection on serialized SIGINT reporting.

(b)(3)-P.L. 86-36

- (U//FOUO) [redacted]
~~(S//SI//REL TO USA, FVEY)~~ [redacted]
 [redacted]

- (U//FOUO) §704/§705b tasking
~~(S//SI//REL TO USA, FVEY)~~ Reports were generated from [redacted] and records requested from SV regarding §704/705b authorizations to determine if any of the [redacted] detasked §702 selectors were subsequently approved under those authorizations.

(b)(3)-P.L. 86-36

(b)(1)
(b)(3)-P.L. 86-36

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(U) APPENDIX C

(U) Full Text of Management Comments

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(U) SID and OGC Management Responses

~~TOP SECRET//COMINT//NOFORN~~

SECURITY CLASSIFICATION

NSA STAFF PROCESSING FORM

TO OIG	EXREG CONTROL NUMBER 2010-8956	KCC CONTROL NUMBER
THRU	ACTION <input type="checkbox"/> APPROVAL <input type="checkbox"/> SIGNATURE <input checked="" type="checkbox"/> INFORMATION	EXREG SUSPENSE 15 Nov 2010
SUBJECT (U// FOUO) SID Response to Draft Audit Report on the FISA Amendments Act 702 Detasking Requirements		KCC SUSPENSE
DISTRIBUTION		ELEMENT SUSPENSE

SUMMARY

PURPOSE: (U//~~FOUO~~) To provide the SID response to the draft report on FISA Amendments Act (FAA) 702 Detasking Requirements (AU-10-0023).

BACKGROUND: (U//~~FOUO~~) The Audit was initiated at the request of DIRNSA. The Audit objective was to document the circumstances and the extent of dropped SIGINT collection as a result of FAA 702 restrictions. The draft Audit report was provided to [redacted] and Office of General Counsel (OGC) to review for factual accuracy and respond to the assigned recommendation listed below.

~~(S//SI//NF)~~ **Recommendation:** Establish a process [redacted] coverage for accounts de-tasked from FAA 702 collection. **Lead Actionee:** SID with OGC.

DISCUSSION: (U//~~FOUO~~) The attached document (TAB A) is the consolidated SID/S2 and OGC response to the subject report. The [redacted] deferred to [redacted] for their response to this tasker.

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

(b)(3)-P.L. 86-36

This SPF may be downgraded and marked SECRET//COMINT//NOFORN upon removal of encl(s).

COORDINATION/APPROVAL					
OFFICE	NAME AND DATE	SECURE PHONE	OFFICE	NAME AND DATE	SECURE PHONE
SID DIR	[redacted] 9/17/10				
S02	[redacted] 11/12/10				
S2	[redacted] 11/12/10	963-3335			
OGC	[redacted] email/11/10/10	963-3121			
	[redacted] email/11/10/10	963-4093			
ORIGINATOR	[redacted]	ORG.	PHONE (Secure)	DATE PREPARED	
		S023	966-5590	11/15/2010	

FORM A6798T REV FEB 2005 (Supersedes A6790 NOV 96 which is obsolete)
 NSN: 7540-FM-001-5465
 Derived From: NSA/CSSM 1-52
 Dated: 20070108
 Declassify On: 2020100

SECURITY CLASSIFICATION
~~TOP SECRET//COMINT//NOFORN~~

I. (U) SUMMARY

(U//FOUO) As requested, this correspondence provides the Office of [redacted] and Office of General Counsel's (OGC) statements of concurrence (or non-concurrence) with the recommendation contained in the Office of Inspector General's (OIG's) draft audit report on the transition gap NSA encounters when targets of Foreign Intelligence Surveillance Act (FISA) Amendments Act (FAA) §702 collection must be de-tasked from this collection authority. This memorandum also provides OIG with the results of [redacted] and OGC's review of the draft report for factual accuracy. (b)(3)-P.L. 86-36

II. (U) CONCURRENCE WITH RECOMMENDATION

(S//SI//NF) Recommendation: Establish a process for NSA [redacted] [redacted] coverage for accounts de-tasked from FAA 702 collection. (b)(1) (b)(3)-P.L. 86-36 (b)(3)-50 USC 3024(i)

(U) Lead Actionee: SID with OGC.

(U) Concur/Non-Concur & Estimated Completion Date: [redacted] and OGC concur with [redacted] and OGC concur with OIG's recommendation. Corrective action is underway and will be completed as soon as possible, [redacted]. Successful completion within this timeframe is contingent upon direct involvement from SV and S1 as they are owners of mission components that are directly tied to the transition process. (b)(3)-P.L. 86-36

(TS//SI//NF) Comment: Although there is a current process for the Signals Intelligence Directorate (SID) [redacted] coverage of targets of interest, OGC does not dispute OIG's substantive finding that the current process does not appear to be universally understood by SID's [redacted] personnel. In response to this finding and recommendation, OGC and individuals from SID, to include [redacted] personnel, are working on improving the current process [redacted] [redacted] coverage of [redacted] targets that must be dropped from FAA 702 collection. OGC and SID [redacted] personnel have already initiated discussions to establish a clearer process for NSA [redacted] coverage for selectors de-tasked from FAA 702 collection. OGC and [redacted] personnel have begun drafting a comprehensive standard operating procedure (SOP) for analysts to follow when [redacted] as appropriate. The SOP will also include a quick reference guide and checklist for analysts. OGC will engage with the Department of Justice (DoJ) [redacted] as [redacted] (b)(3)-P.L. 86-36 (b)(3)-P.L. 86-36

necessary to ensure that the new process addresses OIG's finding and recommendation.

~~b)(1)~~
~~b)(3)-P.L. 86-36 (TS//SI//NF)~~ In the short term, [] has initiated a series of training sessions for ~~(b)(3)-P.L. 86-36~~
~~b)(3)-50 USC 3024(i)~~ members of the division and branch leadership teams to raise awareness of the process [] The purpose of the training is to establish branch and division level Points of Contact (POCs) who will be able to assist analysts through the [] process. Additional Video Teleconferencing Center (VTC) sessions will be scheduled to include the extended enterprise.

~~(b)(3)-P.L. 86-36 (TS//SI//NF)~~ Finally, an e-mail alias has been created that includes technical and policy experts in [] The purpose of this group is to assist the division and branch POCs as they work with the analysts on the [] process. Members of the group will also ensure that timely resolution is reached for selectors de-tasked from FAA 702.

III. (U) [] REVIEW FOR FACTUAL ACCURACY

~~(b)(3)-P.L. 86-36~~

~~(U//FOUO)~~ **OIG Comment:** The OIG does not agree with the [] that all suggested changes were due to inaccuracies or misleading statements. In most cases, these suggested changes were based on [] interpretations of the report and new information. We made the appropriate changes to update and clarify areas of the report.

~~(S//SI//NF)~~ The following lists areas of the report where [] identified factual inaccuracies or misleading statements that should be corrected in the final version of OIG's report on the [] gap NSA encounters when targets of FAA 702 collection must be de-tasked from this collection authority. These factual inaccuracies do not affect [] concurrence with the report's recommendation that SID and OGC establish a new process [] [] targets that must be dropped from FAA 702 collection. The following constitutes [] specific suggested corrections:

(U) Correction 1

~~(b)(3)-P.L. 86-36~~

~~(b)(1)~~
~~(b)(3)-P.L. 86-36~~
~~(b)(3)-50 USC 3024(i)~~

~~(S//SI//NF)~~ **Highlights Section (page i):** On page 'i' in the "Highlights" section, the report contains a sentence that says []

[]

~~(S//SI//NF)~~ **Comment:** This statement implies that NSA would have been able to obtain probable cause on all of those selectors and would have been able to transition to another authority. Believe we should clarify that we cannot transition all selectors in all circumstances.

(U) Correction 2

(b)(3)-P.L. 86-36

~~(S//SI//NF)~~ **Gaps in [redacted] Coverage Exist (page 5):** Under the FINDING (top of the page), it states "...the Agency has experienced [redacted] coverage gaps when transitioning from FAA702 to another authority."

~~(S//SI//NF)~~ **Comment:** This statement implies that NSA should be able to transition to another authority in all instances. This is not the case. Believe we should clarify that we cannot transition all selectors in all circumstances. While the need for a "higher legal standard" is mentioned on the bottom of page 6, believe we need to be up front with the fact that some selectors will not transition.

(U) Correction 3

~~(S//SI//NF)~~ **Effective Collection Priority (ECP) (page 8):** This section states that the average ECP was 2.52 indicating that "the average ECP was 2.52, indicating that these selectors are of high priority."

~~(S//SI//NF)~~ **Comment:** Believe we need to add context to this statement. We would imagine that most if not all [redacted] has an (b)(3)-P.L. 86-36 ECP that falls into the 1-3 range. Probably all [redacted] selectors are of high priority based on the ECP.

(U) Correction 4

~~(TS//SI//NF)~~ **Selectors not retasked (page 11):** The table at the top of the page indicates that [redacted]

(b)(1)
(b)(3)-P.L. 86-36

~~(TS//SI//NF)~~ **Comment:** We think it is important to add a footnote that indicates that the analysts were told that they did NOT have to perform thorough research to try to recall why the selector was not retasked. Below is an excerpt from an email exchange between OIG and [redacted] indicating that the analyst did not have to perform research if they did not remember why the selector was not retasked.

~~(TS//SI//NF)~~ We agree with your assertion that the analysts simply note that they do not recall what happened to the selectors if they cannot remember. Our intention was not to require people to spend hours trying to recall information to answer our survey, which is why there is a "don't recall" option in the first question.

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

(U) Correction 5

~~(TS//SI//NF)~~ [Redacted]
[Redacted]

~~(TS//SI//NF)~~ Comment: [Redacted]
[Redacted]

(U) Correction 6

~~(TS//SI//NF)~~ Need for consistent process (page 11): The document states that,

[Redacted] (b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

~~(TS//SI//NF)~~ Comment: We think it is important to note that some selectors will take longer to transition compared to others based on the circumstances. The probable cause standard is higher than the standard associated FAA 702 tasking. This statement implies that we should always be able to transition quickly. It may take time and a lot of back and forth between [Redacted] before we reach the probable cause standard. We realize this is addressed in the Case Studies on page 13 but we think it should be stated up front.

(U) Correction 7

~~(S//SI//REL)~~ Footnote 3 (page 14): States that [Redacted] (b)(3)-P.L. 86-36

~~(TS//SI//NF)~~ Comment: [Redacted] (b)(1)
(b)(3)-P.L. 86-36

[Redacted]

(b)(3)-P.L. 86-36

(U) Correction 8

~~(TS//SI//NF)~~ First Paragraph (page 15): "The analysts also may not have been

[Redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

~~(TS//SI//NF)~~ Comment:

[Redacted]

[Redacted]

(U) Correction 9

~~(TS//SI//NF)~~ Action Taken (page 18): This section discusses the new procedures which are supposed to provide relief on some [Redacted] scenarios.

(b)(1)
(b)(3)-P.L. 86-36

~~(TS//SI//NF)~~ Comment: Unfortunately, [Redacted] provisions were removed from the new procedures so we will not see any [Redacted] relief based on the new procedures. OGC would have details on exactly what occurred and where we stand.

(b)(1)
(b)(3)-P.L. 86-36

III. (U) OGC - REVIEW FOR FACTUAL ACCURACY

(U//FOUO) **OIG Comment:** The OIG does not agree with the OGC that all suggested changes were due to inaccuracies or misleading statements. In most cases, these suggested changes were based on OGC's interpretations of the report and new information. We made the appropriate changes to update and clarify areas of the report.

~~(S//SI//NF)~~ The following lists areas of the report where OGC identified factual inaccuracies that should be corrected in the final version of OIG's report on the transition gap NSA encounters when targets of FAA 702 collection must be de-tasked from this collection authority. These factual inaccuracies do not affect OGC's concurrence with the report's recommendation that SID and OGC establish a new process [Redacted] targets that must be dropped from FAA 702 collection. The following constitutes OGC's specific suggested corrections:

(U) Correction 1

(b)(1)
(b)(3)-P.L. 86-36

~~(S//SI//NF)~~ **Highlights Section (page i):** On page 'i' in the "Highlights" section, the report contains a sentence that says the issue of a [redacted] [redacted] is currently under review by DoJ. This statement is factually incorrect. In July 2010, DoJ attempted to persuade the Foreign Intelligence Surveillance Court (FISC) to allow tasking to continue under one version of the [redacted] but the FISC refused to accept the proposed change to NSA's FAA targeting and minimization procedures that the Government proposed to address this problem. OGC's understanding is that the FISC concluded such a change would conflict with statutory restrictions contained in the FAA legislation itself. Therefore, DoJ is no longer reviewing this issue in the manner mentioned in the draft report. Instead, DoJ is reviewing two different draft legislative proposals that attempt to close the transition gap. One proposal was drafted by NSA and the other proposal was prepared by DoJ's National Security Division. [redacted]

(U) Correction 2

(b)(1)
(b)(3)-P.L. 86-36

~~(S//SI//NF)~~ **Introduction:** On page 2, the "Introduction" section of the draft report contains the following sentence:

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i) ~~(S//SI//NF)~~ "Under FISC docket number [redacted] (known as the Raw Take Sharing Order) dated July 2002, NSA is able to receive FBI FISA collection."

(U) As drafted, this sentence is factually inaccurate. The sentence should be revised to read:

~~(S//SI//NF)~~ "Under FISC docket number [redacted] (known as the Raw Take Sharing Order) dated July 2002, NSA is able to receive most FBI FISA collection directed against the FBI's counterterrorism targets."

(U) Correction 3

(b)(3)-P.L. 86-36

~~(S//SI//NF)~~ Finding that Gaps in Target Coverage Exist: Page 6 of this section of the draft report contains the following sentence:

~~(S//SI//NF)~~ "To avoid a break in coverage, other authorities must be sought if the target remains of interest and is an agent of a foreign power (§704, §705b, and/or FBI FISA)."

~~(S//SI//NF)~~ This sentence is inaccurate as drafted since it implies that the listed authorities are the only possible authorities available to resume coverage. The sentence should be revised to read:

~~(S//SI//NF)~~ "To avoid a break in coverage, other authorities must be sought if the target remains of interest and is an agent of a foreign power (e.g., §704, §705b, FBI FISA, etc.)."

(U) Correction 4

(b)(3)-P.L. 86-36

~~(S//SI//NF)~~ Finding that Gaps in Target Coverage Exist: Page 6 of this section of the draft report contains the following statement:

~~(S//SI//NF)~~ "For non-FAA §702 coverage, a higher legal standard, individualized probable cause, is required to secure a FISA order.

~~(S//SI//NF)~~ Although the statement is accurate as drafted, for completeness OIG may wish to note that, in some cases, the Government may simply not be able to assemble facts sufficient to satisfy the probable cause standard.

(b)(1)
(b)(3)-P.L. 86-36

(U) Correction 5

~~(TS//SI//NF)~~ Discussion of lack of process On pages 15 to 16 of this section of the draft report, there is a discussion of the delay experienced in regaining coverage of selectors associated with

Since the report says

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024(i)

NSA had to de-task the account once the Agency learned that [redacted]

(b)(1)
(b)(3)-P.L. 86-36
(b)(3)-50 USC 3024

[redacted]

(U) Correction 6

~~(S//SI//NF)~~ Discussion of "Strict guidance on detasking [redacted]": On pages 17 to 18, the draft report states that DoJ and OGC have provided "strict guidance" to de-task [redacted]. Although accurate, as drafted the report implies that DoJ and OGC have discretion to alter the guidance. Therefore, the draft report's discussion of the legal advice provided by DoJ and OGC on the detasking of [redacted] is extremely misleading. Although this section of the draft report notes that the FISC has expressed "concern" about the modifications the Government proposed [redacted] to NSA's FAA 702 targeting and minimization procedures, the report fails to note that the Court's concern was with the [redacted] issue. OGC's understanding is that the Court concluded that even the modest changes proposed [redacted] to address one aspect of the [redacted] [redacted] were incompatible with the current statutory framework. Moreover, for completeness, the report should also note that, even if the statutory language is changed, there may be Fourth Amendment problems with maintaining electronic surveillance of a U.S. person or a person located inside the United States on anything less than a formal probable cause determination.

(b)(1)
(b)(3)-P.L. 86-36

~~TOP SECRET//COMINT//NOFORN~~

~~TOP SECRET//COMINT//NOFORN~~