AMENDMENT TO RULES COMMITTEE PRINT OF  
H.R. 3523  
OFFERED BY MS. LORETTA SANCHEZ OF  
CALIFORNIA  

At the end of the bill, add the following new section:  

SEC. 3. RULE WITH RESPECT TO BORDER SECURITY  
SEARCHES OF ELECTRONIC DEVICES.  

(a) IN GENERAL.—Not later than 180 days after the  
date of the enactment of this Act, the head of the depart- 
ment or agency of the Federal Government, shall issue a  
rule with respect to the scope of and procedural and rec- 
ordkeeping requirements associated with border security  
searches of electronic devices.  

(b) CONTENT.—The rule issued pursuant to sub- 
section (a) shall include the following:  

(1) A requirement that information collected  
during a border security search of an electronic de- 
vice that is determined to be commercial informa- 
tion, including trade secrets, information subject to  
attorney-client privilege, information subject to doc- 
tor-patient privilege, or information subject to an- 
other privilege or protection shall be handled con- 
sistent with the laws, rules, and regulations gov-
erning such information and shall not be shared with a Federal, State, local, tribal, or foreign agency unless it is determined that such agency has the mechanisms in place to comply with such laws, rules, and regulations.

(2) A requirement that authorized agents, to the greatest extent practicable, conduct all border security searches of electronic devices in the presence of a supervisor and, where appropriate, in the presence of the individuals whose electronic devices are subject to such searches.

(3) A determination of the number of days that an electronic device subjected to a border security search or the information collected from such device may be retained, unless probable cause exists, that prohibits retention exceeding the period necessary to translate, decrypt, or reasonably search such device or information and that requires such information to be destroyed if in the custody of an authorized agent after such number of days.

(4) A requirement that if information collected from an electronic device subjected to a border security search is copied, shared, retained, or entered into an electronic database, the individual from whose electronic device such information is collected
shall receive written notification of such copying, sharing, retention, or entry unless such notification would hinder an investigation involving national security or would meet another criteria established by the head of the department or agency of the Federal Government in the rule.

(5) A requirement that an individual subjected to a border security search of an electronic device shall receive a receipt for such device if such device is removed from the possession of such individual.

(6) A requirement that an individual subjected to a border security search of an electronic device shall receive notice of how to report abuses or concerns and how to seek redress from the head of the department or agency of the Federal Government.

(7) A requirement that information on the rights of individuals with respect to border security searches and head of the department or agency of the Federal Government redress procedures shall be posted at all ports of entry in locations that are likely to be viewed by individuals subject to border security searches.

(8) A privacy impact assessment of the rule, that includes recommendations with respect to the copying, sharing, retention, and entry into an elec-
tronic database of personally identifiable information collected from electronic devices subjected to a border security search.

(9) A civil liberties impact assessment of the rule.

(c) TRAINING AND AUDITING WITH RESPECT TO THE RULE.—

(1) TRAINING.—The head of the department or agency of the Federal Government shall provide each authorized agent with appropriate training to conduct border security searches of electronic devices in accordance with the rule issued pursuant to subsection (a). The training shall include instruction on constitutional, privacy, civil rights, and civil liberties issues related to such searches.

(2) AUDITING.—The head of the department or agency of the Federal Government, acting through the respective Inspector General, shall develop and annually administer an auditing mechanism to review whether authorized agents are conducting border security searches of electronic devices in accordance with the rule issued pursuant to subsection (a).

(d) REPORT.—Not later than 180 days after the effective date of the rule issued pursuant to subsection (a), and quarterly thereafter, the head of the department or
agency of the Federal Government shall submit to the relevant committees in both the House of Representatives and Senate a report that shall include the following:

(1) A description of the activities of authorized agents with respect to border security searches of electronic devices.

(2) A description of the manner in which the head of the department or agency of the Federal Government has complied with this Act.

(3) The number, by port of entry, of border security searches of electronic devices conducted during the reporting period.

(4) The number, by port of entry, of instances during the reporting period that information from an electronic device subjected to a border security search was retained, copied, shared, or entered in an electronic database, including the number of electronic devices retained as the result of a border security search.

(5) The race, ethnicity, national origin, and citizenship of each individual whose electronic device was subjected to a border security search during the reporting period, to determine the existence or absence of racial profiling.
(6) The number of instances during the reporting period that information collected from an electronic device subjected to a border security search was referred to a law enforcement or intelligence agency for further action, including whether such information resulted in a prosecution or conviction.

(e) DEFINITIONS.—In this section:

(1) AUTHORIZED AGENT.—The term “authorized agent” means an agent, officer, or official of head of the department or agency of the Federal Government who is authorized to conduct a border security search.

(2) BORDER SECURITY SEARCH.—The term “border security search” means a search by an authorized agent of persons, baggage, or cargo entering, departing, or passing through the United States through any port of entry.

(3) ELECTRONIC DEVICE.—The term “electronic device” means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, such as a computer, a cellular telephone, or any other device used for electronic communication or for storing electronic, digital or analog data, and which includes any data storage facil-
ity or communications facility directly related to or
operating in conjunction with such device.