

thorization Act for Fiscal Year 2015, and not as part of the International Emergency Economic Powers Act which comprises this chapter.

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### SUBCHAPTER I—ELECTRONIC SURVEILLANCE

#### § 1801. Definitions

As used in this subchapter:

(a) “Foreign power” means—

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based political organization, not substantially composed of United States persons;

(6) an entity that is directed and controlled by a foreign government or governments; or

(7) an entity not substantially composed of United States persons that is engaged in the international proliferation of weapons of mass destruction.

(b) “Agent of a foreign power” means—

(1) any person other than a United States person, who—

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4), irrespective of whether the person is inside the United States;

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances indicate that such person may engage in such activities, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities;

(C) Omitted

(D) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor; or

(E) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor, for or on behalf of a foreign power, or knowingly aids or abets any person in the conduct of such proliferation or activities in preparation therefor, or knowingly conspires with any person to engage in such proliferation or activities in preparation therefor; or

(2) any person who—

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power;

(D) knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States, knowingly assumes a false or fraudulent identity for or on behalf of a foreign power; or

(E) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(c) “International terrorism” means activities that—

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) “Sabotage” means activities that involve a violation of chapter 105 of title 18, or that would involve such a violation if committed against the United States.

(e) “Foreign intelligence information” means—

(1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) “Electronic surveillance” means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of title 18;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) “Attorney General” means the Attorney General of the United States (or Acting Attorney General), the Deputy Attorney General, or, upon the designation of the Attorney General, the Assistant Attorney General designated as the Assistant Attorney General for National Security under section 507A of title 28.

(h) “Minimization procedures”, with respect to electronic surveillance, means—

(1) specific procedures, which shall be adopted by the Attorney General, that are

reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e)(1), shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 1802(a) of this title, procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than 72 hours unless a court order under section 1805 of this title is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

(i) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 1101(a)(20) of title 8), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3).

(j) "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(k) "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(l) "Wire communication" means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) "Contents", when used with respect to a communication, includes any information con-

cerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(o) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(p) "Weapon of mass destruction" means—

(1) any explosive, incendiary, or poison gas device that is designed, intended, or has the capability to cause a mass casualty incident;

(2) any weapon that is designed, intended, or has the capability to cause death or serious bodily injury to a significant number of persons through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined in section 178 of title 18) that is designed, intended, or has the capability to cause death, illness, or serious bodily injury to a significant number of persons; or

(4) any weapon that is designed, intended, or has the capability to release radiation or radioactivity causing death, illness, or serious bodily injury to a significant number of persons.

(Pub. L. 95-511, title I, § 101, Oct. 25, 1978, 92 Stat. 1783; Pub. L. 106-120, title VI, § 601, Dec. 3, 1999, 113 Stat. 1619; Pub. L. 107-56, title X, § 1003, Oct. 26, 2001, 115 Stat. 392; Pub. L. 107-108, title III, § 314(a)(1), (c)(2), Dec. 28, 2001, 115 Stat. 1402, 1403; Pub. L. 108-458, title VI, § 6001(a), Dec. 17, 2004, 118 Stat. 3742; Pub. L. 109-177, title V, § 506(a)(5), Mar. 9, 2006, 120 Stat. 248; Pub. L. 110-261, title I, § 110(a), July 10, 2008, 122 Stat. 2465; Pub. L. 111-259, title VIII, § 801(1), Oct. 7, 2010, 124 Stat. 2746; Pub. L. 114-23, title VII, §§ 702, 703, June 2, 2015, 129 Stat. 300.)

## Editorial Notes

### AMENDMENTS

2015—Subsec. (b)(1)(A). Pub. L. 114-23, § 702(1), inserted ", irrespective of whether the person is inside the United States" before semicolon at end.

Subsec. (b)(1)(B). Pub. L. 114-23, § 702(2), struck out "of such person's presence in the United States" after "circumstances" and substituted "may engage in such activities" for "may engage in such activities in the United States".

Subsec. (b)(1)(E). Pub. L. 114-23, § 703, added subpar. (E) and struck out former subpar. (E) which read as follows: "engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor for or on behalf of a foreign power; or".

2010—Subsecs. (a)(7) to (p). Pub. L. 111-259 realigned margins.

2008—Subsec. (a)(7). Pub. L. 110-261, § 110(a)(1), added par. (7).

Subsec. (b)(1)(D), (E). Pub. L. 110-261, § 110(a)(2), added subpars. (D) and (E).

Subsec. (e)(1)(B). Pub. L. 110-261, § 110(a)(3), substituted "sabotage, international terrorism, or the international proliferation of weapons of mass destruction" for "sabotage or international terrorism".

Subsec. (p). Pub. L. 110-261, § 110(a)(4), added subsec. (p).

2006—Subsec. (g). Pub. L. 109-177 substituted ", the Deputy Attorney General, or, upon the designation of the Attorney General, the Assistant Attorney General designated as the Assistant Attorney General for Na-

tional Security under section 507A of title 28” for “or the Deputy Attorney General”.

2004—Subsec. (b)(1)(C). Pub. L. 108-458, § 6001, temporarily added subpar. (C) which read as follows: “engages in international terrorism or activities in preparation thereof;”. See Termination Date of 2004 Amendment note below.

2001—Subsec. (f)(2). Pub. L. 107-56, § 1003, as amended by Pub. L. 107-108, § 314(c)(2), inserted “, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of title 18” before semicolon at end.

Subsec. (h)(4). Pub. L. 107-108, § 314(a)(1), substituted “72 hours” for “twenty-four hours”.

1999—Subsec. (b)(2)(D), (E). Pub. L. 106-120 added subpar. (D) and redesignated former subpar. (D) as (E).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-261, title IV, § 402, July 10, 2008, 122 Stat. 2473, provided that: “Except as provided in section 404 [set out as a note under this section], the amendments made by this Act [see Short Title of 2008 Amendment note below] shall take effect on the date of the enactment of this Act [July 10, 2008].”

##### TERMINATION DATE OF 2004 AMENDMENT

Pub. L. 108-458, title VI, § 6001(b), Dec. 17, 2004, 118 Stat. 3742, as amended by Pub. L. 109-177, title I, § 103, Mar. 9, 2006, 120 Stat. 195; Pub. L. 111-118, div. B, § 1004(b), Dec. 19, 2009, 123 Stat. 3470; Pub. L. 111-141, § 1(b), Feb. 27, 2010, 124 Stat. 37; Pub. L. 112-3, § 2(b), Feb. 25, 2011, 125 Stat. 5; Pub. L. 112-14, § 2(b), May 26, 2011, 125 Stat. 216; Pub. L. 114-23, title VII, § 705(b), June 2, 2015, 129 Stat. 300; Pub. L. 116-69, div. B, title VII, § 1703(b), Nov. 21, 2019, 133 Stat. 1143, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall cease to have effect on March 15, 2020.

“(2) EXCEPTION.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which the provisions cease to have effect, such provisions shall continue in effect.”

[Pub. L. 114-23, § 705(b), which delayed the June 1, 2015, termination of the amendment made by section 6001(a) of Pub. L. 108-458 by substituting “December 15, 2019” for “June 1, 2015” in section 6001(b)(1) of Pub. L. 108-458, set out above, was given effect in this section to reflect the probable intent of Congress, notwithstanding that Pub. L. 114-23 was enacted on June 2, 2015.]

##### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-108, title III, § 314(c), Dec. 28, 2001, 115 Stat. 1402, provided in part that the amendment made by section 314(c)(2) of Pub. L. 107-108 is effective as of Oct. 26, 2001, and as if included in Pub. L. 107-56 as originally enacted.

##### EFFECTIVE DATE; EXCEPTION

Pub. L. 95-511, title VII, § 701, formerly title III, § 301, Oct. 25, 1978, 92 Stat. 1798, as renumbered title IV, § 401, and amended by Pub. L. 103-359, title VIII, § 807(a)(1), (2), Oct. 14, 1994, 108 Stat. 3443; renumbered title VI, § 601, and amended Pub. L. 105-272, title VI, §§ 601(1), 603(a), Oct. 20, 1998, 112 Stat. 2404, 2412; renumbered title VII, § 701, Pub. L. 108-458, title VI, § 6002(a)(1), Dec. 17, 2004, 118 Stat. 3743, which provided that the provisions of this Act [enacting this chapter, amending sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note below] (other than titles III, IV, and V [enacting subchapters II, III, and IV, respectively, of this chapter]) and the amendments made hereby shall become effective upon the date of enactment of this Act [Oct. 25, 1978], except

that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act [enacting this subchapter] within ninety days following the designation of the first judge pursuant to section 103 of this Act [section 1803 of this title], was repealed by Pub. L. 110-261, title I, § 101(a)(1), July 10, 2008, 122 Stat. 2437.

##### SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115-118, § 1(a), Jan. 19, 2018, 132 Stat. 3, provided that: “This Act [amending sections 1803, 1805, 1807, 1822, 1842, 1843, 1846, 1861, 1873, 1874, 1881 to 1881g, 1885, 1885a, 3234, and 3341 of this title, section 1924 of Title 18, Crimes and Criminal Procedure, and sections 2000ee and 2000ee-1 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 1881 and 1881a of this title and section 2303 of Title 5, Government Organization and Employees, and amending provisions set out as notes under this section and section 1881 of this title and section 2511 of Title 18] may be cited as the ‘FISA Amendments Reauthorization Act of 2017’.”

##### SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114-23, § 1(a), June 2, 2015, 129 Stat. 268, provided that: “This Act [see Tables for classification] may be cited as the ‘Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015’ or the ‘USA FREEDOM Act of 2015’.”

##### SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112-238, § 1, Dec. 30, 2012, 126 Stat. 1631, provided that: “This Act [amending sections 1881 to 1881g of this title and provisions set out as notes under this section, section 1881 of this title, and section 2511 of Title 18, Crimes and Criminal Procedure] may be cited as the ‘FISA Amendments Act Reauthorization Act of 2012’.”

##### SHORT TITLE OF 2011 AMENDMENT

Pub. L. 112-14, § 1, May 26, 2011, 125 Stat. 216, provided that: “This Act [amending sections 1805, 1861, and 1862 of this title and provisions set out as notes under this section and section 1805 of this title] may be cited as the ‘PATRIOT Sunsets Extension Act of 2011’.”

Pub. L. 112-3, § 1, Feb. 25, 2011, 125 Stat. 5, provided that: “This Act [amending sections 1805, 1861, and 1862 of this title and provisions set out as notes under this section and section 1805 of this title] may be cited as the ‘FISA Sunsets Extension Act of 2011’.”

##### SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-261, § 1(a), July 10, 2008, 122 Stat. 2436, provided that: “This Act [enacting section 1812 and subchapters VI and VII of this chapter, amending this section, sections 1803 to 1805, 1806, 1808, 1809, 1821 to 1825, 1843, and 1871 of this title, and section 2511 of Title 18, Crimes and Criminal Procedure, repealing sections 1805a to 1805c of this title and subchapter VI of this chapter, enacting provisions set out as notes under this section, section 1881 of this title, and section 2511 of Title 18, amending provisions set out as a note under section 1803 of this title, and repealing provisions set out as a note under this section] may be cited as the ‘Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008’ or the ‘FISA Amendments Act of 2008’.”

##### SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110-55, § 1, Aug. 5, 2007, 121 Stat. 552, provided that: “This Act [enacting sections 1805a to 1805c of this title, amending section 1803 of this title, and enacting provisions set out as a note under section 1803 of this title] may be cited as the ‘Protect America Act of 2007’.”

## SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-567, title VI, § 601, Dec. 27, 2000, 114 Stat. 2850, provided that: “This title [enacting section 9A of the Classified Information Procedures Act, set out in the Appendix to Title 18, Crimes and Criminal Procedure, amending sections 402a, 1804, 1805, 1808, 1823, and 1824 of this title, and enacting provisions set out as notes under this section and section 1806 of this title] may be cited as the ‘Counterintelligence Reform Act of 2000.’”

## SHORT TITLE

Pub. L. 95-511, § 1, Oct. 25, 1978, 92 Stat. 1783, provided in part: “That this Act [enacting this chapter, amending sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note above] may be cited as the ‘Foreign Intelligence Surveillance Act of 1978.’”

## SEVERABILITY

Pub. L. 115-118, title II, § 206, Jan. 19, 2018, 132 Stat. 22, provided that: “If any provision of this Act [see Short Title of 2018 Amendment note set out above], any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act, of any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.”

Pub. L. 110-261, title IV, § 401, July 10, 2008, 122 Stat. 2473, provided that: “If any provision of this Act [see Short Title of 2008 Amendment note above], any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act, of any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.”

Pub. L. 106-567, title VI, § 608, Dec. 27, 2000, 114 Stat. 2856, provided that: “If any provision of this title [see Short Title of 2000 Amendment note above] (including an amendment made by this title), or the application thereof, to any person or circumstance, is held invalid, the remainder of this title (including the amendments made by this title), and the application thereof, to other persons or circumstances shall not be affected thereby.”

## TRANSITION PROCEDURES

Pub. L. 110-261, title IV, § 404, July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, § 2(b), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title I, § 101(b)(3), title II, § 201(b), Jan. 19, 2018, 132 Stat. 8, 19, provided that:

“(a) TRANSITION PROCEDURES FOR PROTECT AMERICA ACT OF 2007 PROVISIONS.—

“(1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—Except as provided in paragraph (7), notwithstanding any other provision of law, any order, authorization, or directive issued or made pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b], as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue in effect until the expiration of such order, authorization, or directive.

“(2) APPLICABILITY OF PROTECT AMERICA ACT OF 2007 TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act [see Short Title of 2008 Amendment note above], any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

“(A) subject to paragraph (3), section 105A of such Act [50 U.S.C. 1805a], as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue to apply to any acquisition conducted pursuant to an order, authorization, or directive referred to in paragraph (1); and

“(B) sections 105B and 105C of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b,

1805c], as added by sections 2 and 3, respectively, of the Protect America Act of 2007, shall continue to apply with respect to an order, authorization, or directive referred to in paragraph (1) until the later of—

“(i) the expiration of such order, authorization, or directive; or

“(ii) the date on which final judgment is entered for any petition or other litigation relating to such order, authorization, or directive.

“(3) USE OF INFORMATION.—Information acquired from an acquisition conducted pursuant to an order, authorization, or directive referred to in paragraph (1) shall be deemed to be information acquired from an electronic surveillance pursuant to title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106 of such Act (50 U.S.C. 1806), except for purposes of subsection (j) of such section.

“(4) PROTECTION FROM LIABILITY.—Subsection (l) of section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b(l)], as added by section 2 of the Protect America Act of 2007, shall continue to apply with respect to any directives issued pursuant to such section 105B.

“(5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 103(e) of the Foreign Intelligence Surveillance Act [of 1978] (50 U.S.C. 1803(e)), as amended by section 5(a) of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556), shall continue to apply with respect to a directive issued pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b], as added by section 2 of the Protect America Act of 2007, until the later of—

“(A) the expiration of all orders, authorizations, or directives referred to in paragraph (1); or

“(B) the date on which final judgment is entered for any petition or other litigation relating to such order, authorization, or directive.

“(6) REPORTING REQUIREMENTS.—

“(A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act, any amendment made by this Act, the Protect America Act of 2007 (Public Law 110-55) [see Short Title of 2007 Amendment note above], or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 4 of the Protect America Act of 2007 [121 Stat. 555] shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

“(B) CERTIFICATION.—The certification described in this subparagraph is a certification—

“(i) made by the Attorney General;

“(ii) submitted as part of a semi-annual report required by section 4 of the Protect America Act of 2007;

“(iii) that states that there will be no further acquisitions carried out under section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b], as added by section 2 of the Protect America Act of 2007, after the date of such certification; and

“(iv) that states that the information required to be included under such section 4 relating to any acquisition conducted under such section 105B has been included in a semi-annual report required by such section 4.

“(7) REPLACEMENT OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—

“(A) IN GENERAL.—If the Attorney General and the Director of National Intelligence seek to replace an authorization issued pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b], as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), with an authorization under section 702 of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C.

1881a] (as added by section 101(a) of this Act), the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Foreign Intelligence Surveillance Court (as such term is defined in section 701(b)(2) of such Act [50 U.S.C. 1881(b)(2)]) (as so added) a certification prepared in accordance with subsection (g) [now subsection (h)] of such section 702 and the procedures adopted in accordance with subsections (d) and (e) of such section 702 at least 30 days before the expiration of such authorization.

“(B) CONTINUATION OF EXISTING ORDERS.—If the Attorney General and the Director of National Intelligence seek to replace an authorization made pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 522), by filing a certification in accordance with subparagraph (A), that authorization, and any directives issued thereunder and any order related thereto, shall remain in effect, notwithstanding the expiration provided for in subsection (a) of such section 105B, until the Foreign Intelligence Surveillance Court (as such term is defined in section 701(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (as so added)) issues an order with respect to that certification under section 702(j)(3) of such Act (as so added) at which time the provisions of that section and of section 702(j)(4) of such Act (as so added) shall apply.

“(8) EFFECTIVE DATE.—Paragraphs (1) through (7) shall take effect as if enacted on August 5, 2007.

“(b) TRANSITION PROCEDURES FOR FISA AMENDMENTS ACT OF 2008 PROVISIONS.—

“(1) ORDERS IN EFFECT ON DECEMBER 31, 2023.—Notwithstanding any other provision of this Act, any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), any order, authorization, or directive issued or made under title VII of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881 et seq.], as amended by section 101(a) and by the FISA Amendments Reauthorization Act of 2017 [Pub. L. 115–118, see Short Title of 2018 Amendment note set out above], shall continue in effect until the date of the expiration of such order, authorization, or directive.

“(2) APPLICABILITY OF TITLE VII OF FISA TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act, any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), with respect to any order, authorization, or directive referred to in paragraph (1), title VII of such Act, as amended by section 101(a) and by the FISA Amendments Reauthorization Act of 2017, shall continue to apply until the later of—

“(A) the expiration of such order, authorization, or directive; or

“(B) the date on which final judgment is entered for any petition or other litigation relating to such order, authorization, or directive.

“(3) CHALLENGE OF DIRECTIVES; PROTECTION FROM LIABILITY; USE OF INFORMATION.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

“(A) section 103(e) of such Act [50 U.S.C. 1803(e)], as amended by section 403(a)(1)(B)(ii), shall continue to apply with respect to any directive issued pursuant to section 702(i) of such Act [50 U.S.C. 1881a(i)], as added by section 101(a);

“(B) section 702(i)(3) of such Act (as so added) shall continue to apply with respect to any directive issued pursuant to section 702(i) of such Act (as so added);

“(C) section 703(e) of such Act [50 U.S.C. 1881b(e)] (as so added) shall continue to apply with respect to an order or request for emergency assistance under that section;

“(D) section 706 of such Act [50 U.S.C. 1881e] (as so added) shall continue to apply to an acquisition

conducted under section 702 or 703 of such Act (as so added); and

“(E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978, [50 U.S.C. 1881c] as added by section 101(a).

“(4) REPORTING REQUIREMENTS.—

“(A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section 101(c)(2), and sections 702(m) and 707 of such Act, [50 U.S.C. 1881a(m), 1881f] as added by section 101(a) and amended by the FISA Amendments Reauthorization Act of 2017, shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

“(B) CERTIFICATION.—The certification described in this subparagraph is a certification—

“(i) made by the Attorney General;

“(ii) submitted to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on the Judiciary of the Senate and the House of Representatives;

“(iii) that states that there will be no further acquisitions carried out under title VII of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881 et seq.], as amended by section 101(a) and by the FISA Amendments Reauthorization Act of 2017, after the date of such certification; and

“(iv) that states that the information required to be included in a review, assessment, or report under section 601 of such Act [50 U.S.C. 1871], as amended by section 101(c), or section 702(m) or 707 of such Act, as added by section 101(a) and amended by the FISA Amendments Reauthorization Act of 2017, relating to any acquisition conducted under title VII of such Act, as amended by section 101(a) and by the FISA Amendments Reauthorization Act of 2017, has been included in a review, assessment, or report under such section 601, 702(l) [now 702(m)], or 707.

“(5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS OVERSEAS.—Any authorization in effect on the date of enactment of this Act [July 10, 2008] under section 2.5 of Executive Order 12333 [50 U.S.C. 3001 note] to intentionally target a United States person reasonably believed to be located outside the United States shall continue in effect, and shall constitute a sufficient basis for conducting such an acquisition targeting a United States person located outside the United States until the earlier of—

“(A) the date that authorization expires; or

“(B) the date that is 90 days after the date of the enactment of this Act [July 10, 2008].”

#### Executive Documents

##### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

#### § 1802. Electronic surveillance authorization without court order; certification by Attorney General; reports to Congressional committees; transmittal under seal; duties and compensation of communication common carrier; applications; jurisdiction of court

(a)(1) Notwithstanding any other law, the President, through the Attorney General, may

authorize electronic surveillance without a court order under this subchapter to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

(A) the electronic surveillance is solely directed at—

(i) the acquisition of the contents of communications transmitted by means of communications used exclusively between or among foreign powers, as defined in section 1801(a)(1), (2), or (3) of this title; or

(ii) the acquisition of technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title;

(B) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party; and

(C) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 1801(h) of this title; and

if the Attorney General reports such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by him. The Attorney General shall assess compliance with such procedures and shall report such assessments to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence under the provisions of section 1808(a) of this title.

(3) The Attorney General shall immediately transmit under seal to the court established under section 1803(a) of this title a copy of his certification. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless—

(A) an application for a court order with respect to the surveillance is made under sections 1801(h)(4) and 1804 of this title; or

(B) the certification is necessary to determine the legality of the surveillance under section 1806(f) of this title.

(4) With respect to electronic surveillance authorized by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the surveillance or the aid furnished which such carrier wishes to retain.

The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this subchapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the court having jurisdiction under section 1803 of this title, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 1805 of this title, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1)(A) of subsection (a) unless such surveillance may involve the acquisition of communications of any United States person.

(Pub. L. 95-511, title I, §102, Oct. 25, 1978, 92 Stat. 1786; Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 111-259, title VIII, §806(a)(2), Oct. 7, 2010, 124 Stat. 2748.)

## Editorial Notes

### AMENDMENTS

2010—Subsec. (a)(3), (4)(B). Pub. L. 111-259 made technical amendment to directory language of Pub. L. 108-458. See 2004 Amendment note below.

2004—Subsec. (a)(3), (4)(B). Pub. L. 108-458, as amended by Pub. L. 111-259, substituted "Director of National Intelligence" for "Director of Central Intelligence".

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 3001 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 3001 of this title.

## Executive Documents

### EX. ORD. NO. 12139. EXERCISE OF CERTAIN AUTHORITY RESPECTING ELECTRONIC SURVEILLANCE

Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, as amended by Ex. Ord. No. 13383, §1, July 15, 2005, 70 F.R. 41933; Ex. Ord. No. 13475, §1, Oct. 7, 2008, 73 F.R. 60095, provided:

By the authority vested in me as President by Sections 102 and 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802 and 1804), in order to provide as set forth in that Act [this chapter] for the authorization of electronic surveillance for foreign intelligence purposes, it is hereby ordered as follows:

1-101. Pursuant to Section 102(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(a)), the Attorney General is authorized to approve electronic surveillance to acquire foreign intelligence in-

formation without a court order, but only if the Attorney General makes the certifications required by that Section.

1-102. Pursuant to Section 102(b) of the Foreign Intelligence Act of 1978 (50 U.S.C. 1802(b)), the Attorney General is authorized to approve applications to the court having jurisdiction under Section 103 of that Act [50 U.S.C. 1803] to obtain orders for electronic surveillance for the purpose of obtaining foreign intelligence information.

1-103. Pursuant to Section 104(a)(6) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(6)), the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by Section 104(a)(6) of the Act in support of applications to conduct electronic surveillance:

- (a) Secretary of State.
- (b) Secretary of Defense.
- (c) Director of National Intelligence.
- (d) Director of the Federal Bureau of Investigation.
- (e) Deputy Secretary of State.
- (f) Deputy Secretary of Defense.
- (g) Director of the Central Intelligence Agency.
- (h) Principal Deputy Director of National Intelligence.
- (i) Deputy Director of the Federal Bureau of Investigation.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President with the advice and consent of the Senate. The requirement of the preceding sentence that the named official must be appointed by the President with the advice and consent of the Senate does not apply to the Deputy Director of the Federal Bureau of Investigation.

[1-104, 1-105. Amended Ex. Ord. No. 12036, formerly set out under section 401 (now 3001) of this title.]

### § 1803. Designation of judges

#### (a) Court to hear applications and grant orders; record of denial; transmittal to court of review

(1) The Chief Justice of the United States shall publicly designate 11 district court judges from at least seven of the United States judicial circuits of whom no fewer than 3 shall reside within 20 miles of the District of Columbia who shall constitute a court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this chapter, except that no judge designated under this subsection (except when sitting en banc under paragraph (2)) shall hear the same application for electronic surveillance under this chapter which has been denied previously by another judge designated under this subsection. If any judge so designated denies an application for an order authorizing electronic surveillance under this chapter, such judge shall provide immediately for the record a written statement of each reason for his decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established in subsection (b).

(2)(A) The court established under this subsection may, on its own initiative, or upon the request of the Government in any proceeding or a party under section 1861(f)<sup>1</sup> of this title or paragraph (4) or (5) of section 1881a(i) of this title, hold a hearing or rehearing, en banc, when

ordered by a majority of the judges that constitute such court upon a determination that—

- (i) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or
- (ii) the proceeding involves a question of exceptional importance.

(B) Any authority granted by this chapter to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such authority, the court en banc shall comply with any requirements of this chapter on the exercise of such authority.

(C) For purposes of this paragraph, the court en banc shall consist of all judges who constitute the court established under this subsection.

#### (b) Court of review; record, transmittal to Supreme Court

The Chief Justice shall publicly designate three judges, one of whom shall be publicly designated as the presiding judge, from the United States district courts or courts of appeals who together shall comprise a court of review which shall have jurisdiction to review the denial of any application made under this chapter. If such court determines that the application was properly denied, the court shall provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

#### (c) Expeditious conduct of proceedings; security measures for maintenance of records

Proceedings under this chapter shall be conducted as expeditiously as possible. The record of proceedings under this chapter, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of National Intelligence.

#### (d) Tenure

Each judge designated under this section shall so serve for a maximum of seven years and shall not be eligible for redesignation, except that the judges first designated under subsection (a) shall be designated for terms of from one to seven years so that one term expires each year, and that judges first designated under subsection (b) shall be designated for terms of three, five, and seven years.

#### (e) Jurisdiction and procedures for review of petitions

(1) Three judges designated under subsection (a) who reside within 20 miles of the District of Columbia, or, if all of such judges are unavailable, other judges of the court established under subsection (a) as may be designated by the presiding judge of such court, shall comprise a petition review pool which shall have jurisdiction to review petitions filed pursuant to section 1861(f)(1)<sup>1</sup> or 1881a(i)(4) of this title.

(2) Not later than 60 days after March 9, 2006, the court established under subsection (a) shall adopt and, consistent with the protection of national security, publish procedures for the re-

<sup>1</sup> See References in Text note below.



view of petitions filed pursuant to section 1861(f)(1)<sup>1</sup> or 1881a(i)(4) of this title by the panel established under paragraph (1). Such procedures shall provide that review of a petition shall be conducted in camera and shall also provide for the designation of an acting presiding judge.

**(f) Stay of order**

(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any subchapter of this chapter, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

(2) The authority described in paragraph (1) shall apply to an order entered under any provision of this chapter.

**(g) Establishment and transmittal of rules and procedures**

(1) The courts established pursuant to subsections (a) and (b) may establish such rules and procedures, and take such actions, as are reasonably necessary to administer their responsibilities under this chapter.

(2) The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded, and shall be transmitted to the following:

(A) All of the judges on the court established pursuant to subsection (a).

(B) All of the judges on the court of review established pursuant to subsection (b).

(C) The Chief Justice of the United States.

(D) The Committee on the Judiciary of the Senate.

(E) The Select Committee on Intelligence of the Senate.

(F) The Committee on the Judiciary of the House of Representatives.

(G) The Permanent Select Committee on Intelligence of the House of Representatives.

(3) The transmissions required by paragraph (2) shall be submitted in unclassified form, but may include a classified annex.

**(h) Compliance with orders, rules, and procedures**

Nothing in this chapter shall be construed to reduce or contravene the inherent authority of a court established under this section to determine or enforce compliance with an order or a rule of such court or with a procedure approved by such court.

**(i) Amicus curiae**

**(1) Designation**

The presiding judges of the courts established under subsections (a) and (b) shall, not later than 180 days after June 2, 2015, jointly designate not fewer than 5 individuals to be el-

igible to serve as amicus curiae, who shall serve pursuant to rules the presiding judges may establish. In designating such individuals, the presiding judges may consider individuals recommended by any source, including members of the Privacy and Civil Liberties Oversight Board, the judges determine appropriate.

**(2) Authorization**

A court established under subsection (a) or (b), consistent with the requirement of subsection (c) and any other statutory requirement that the court act expeditiously or within a stated time—

(A) shall appoint an individual who has been designated under paragraph (1) to serve as amicus curiae to assist such court in the consideration of any application for an order or review that, in the opinion of the court, presents a novel or significant interpretation of the law, unless the court issues a finding that such appointment is not appropriate; and

(B) may appoint an individual or organization to serve as amicus curiae, including to provide technical expertise, in any instance as such court deems appropriate or, upon motion, permit an individual or organization leave to file an amicus curiae brief.

**(3) Qualifications of amicus curiae**

**(A) Expertise**

Individuals designated under paragraph (1) shall be persons who possess expertise in privacy and civil liberties, intelligence collection, communications technology, or any other area that may lend legal or technical expertise to a court established under subsection (a) or (b).

**(B) Security clearance**

Individuals designated pursuant to paragraph (1) shall be persons who are determined to be eligible for access to classified information necessary to participate in matters before the courts. Amicus curiae appointed by the court pursuant to paragraph (2) shall be persons who are determined to be eligible for access to classified information, if such access is necessary to participate in the matters in which they may be appointed.

**(4) Duties**

If a court established under subsection (a) or (b) appoints an amicus curiae under paragraph (2)(A), the amicus curiae shall provide to the court, as appropriate—

(A) legal arguments that advance the protection of individual privacy and civil liberties;

(B) information related to intelligence collection or communications technology; or

(C) legal arguments or information regarding any other area relevant to the issue presented to the court.

**(5) Assistance**

An amicus curiae appointed under paragraph (2)(A) may request that the court designate or appoint additional amici curiae pursuant to paragraph (1) or paragraph (2), to be available to assist the amicus curiae.

**(6) Access to information****(A) In general**

If a court established under subsection (a) or (b) appoints an amicus curiae under paragraph (2), the amicus curiae—

(i) shall have access to any legal precedent, application, certification, petition, motion, or such other materials that the court determines are relevant to the duties of the amicus curiae; and

(ii) may, if the court determines that it is relevant to the duties of the amicus curiae, consult with any other individuals designated pursuant to paragraph (1) regarding information relevant to any assigned proceeding.

**(B) Briefings**

The Attorney General may periodically brief or provide relevant materials to individuals designated pursuant to paragraph (1) regarding constructions and interpretations of this chapter and legal, technological, and other issues related to actions authorized by this chapter.

**(C) Classified information**

An amicus curiae designated or appointed by the court may have access to classified documents, information, and other materials or proceedings only if that individual is eligible for access to classified information and to the extent consistent with the national security of the United States.

**(D) Rule of construction**

Nothing in this section shall be construed to require the Government to provide information to an amicus curiae appointed by the court that is privileged from disclosure.

**(7) Notification**

A presiding judge of a court established under subsection (a) or (b) shall notify the Attorney General of each exercise of the authority to appoint an individual to serve as amicus curiae under paragraph (2).

**(8) Assistance**

A court established under subsection (a) or (b) may request and receive (including on a nonreimbursable basis) the assistance of the executive branch in the implementation of this subsection.

**(9) Administration**

A court established under subsection (a) or (b) may provide for the designation, appointment, removal, training, or other support for an individual designated to serve as amicus curiae under paragraph (1) or appointed to serve as amicus curiae under paragraph (2) in a manner that is not inconsistent with this subsection.

**(10) Receipt of information**

Nothing in this subsection shall limit the ability of a court established under subsection (a) or (b) to request or receive information or materials from, or otherwise communicate with, the Government or amicus curiae appointed under paragraph (2) on an ex parte basis, nor limit any special or heightened obli-

gation in any ex parte communication or proceeding.

**(11) Compensation**

Notwithstanding any other provision of law, a court established under subsection (a) or (b) may compensate an amicus curiae appointed under paragraph (2) for assistance provided under such paragraph as the court considers appropriate and at such rate as the court considers appropriate.

**(j) Review of FISA court decisions**

Following issuance of an order under this chapter, a court established under subsection (a) shall certify for review to the court established under subsection (b) any question of law that may affect resolution of the matter in controversy that the court determines warrants such review because of a need for uniformity or because consideration by the court established under subsection (b) would serve the interests of justice. Upon certification of a question of law under this subsection, the court established under subsection (b) may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

**(k) Review of FISA court of review decisions****(1) Certification**

For purposes of section 1254(2) of title 28, the court of review established under subsection (b) shall be considered to be a court of appeals.

**(2) Amicus curiae briefing**

Upon certification of an application under paragraph (1), the Supreme Court of the United States may appoint an amicus curiae designated under subsection (i)(1), or any other person, to provide briefing or other assistance.

(Pub. L. 95-511, title I, §103, Oct. 25, 1978, 92 Stat. 1788; Pub. L. 107-56, title II, §208, Oct. 26, 2001, 115 Stat. 283; Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, §§106(f)(1), 109(d), Mar. 9, 2006, 120 Stat. 197, 205; Pub. L. 110-55, §5(a), Aug. 5, 2007, 121 Stat. 556; Pub. L. 110-261, title I, §109(a)-(b)(2)(A), (c), (d), title IV, §403(a)(1)(B)(ii), July 10, 2008, 122 Stat. 2464, 2465, 2474; Pub. L. 111-259, title VIII, §§801(2), 806(a)(2), Oct. 7, 2010, 124 Stat. 2746, 2748; Pub. L. 114-23, title IV, §401, June 2, 2015, 129 Stat. 279; Pub. L. 115-118, title I, §§101(b)(2)(A), 106, title II, §205(a)(1), (b)(1), Jan. 19, 2018, 132 Stat. 8, 13, 21, 22.)

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c), (f), (g)(1), (h), (i)(6)(B), and (j), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 1861(f) of this title, referred to in subsecs. (a)(2)(A) and (e), means section 1861(f) of this title prior to the amendment of section 1861 by Pub. L. 109-177, title I, §102(b), Mar. 9, 2006, 120 Stat. 195, set out as an Effective Date of 2006 Amendment note under section 1805 of this title, which amended section 1861 of this title, effective Mar. 15, 2020, so that such section read as it read on Oct. 25, 2001, with certain exceptions.

## AMENDMENTS

2018—Subsec. (a)(2)(A). Pub. L. 115–118, § 101(b)(2)(A), substituted “section 1881a(i)” for “section 1881a(h)”.

Subsec. (b). Pub. L. 115–118, § 205(b)(1)(A), struck out “immediately” before “provide for the record”.

Pub. L. 115–118, § 205(a)(1), which directed substitution of “designated as the” for “designate as the”, could not be executed because the words “designate as the” do not appear.

Subsec. (e)(1), (2). Pub. L. 115–118, § 101(b)(2)(A), which directed substitution of “section 1881a(i)” for “section 1881a(h)”, was executed by substituting “1881a(i)(4)” for “1881a(h)(4)” to reflect the probable intent of Congress.

Subsec. (h). Pub. L. 115–118, § 205(b)(1)(B), substituted “a court established under this section” for “the court established under subsection (a)”.

Subsec. (i)(11). Pub. L. 115–118, § 106, added par. (11).

2015—Subsecs. (i) to (k). Pub. L. 114–23 added subsecs. (i) to (k).

2010—Subsec. (c). Pub. L. 111–259, § 806(a)(2), made technical amendment to directory language of Pub. L. 108–458. See 2004 Amendment note below.

Subsecs. (h), (i). Pub. L. 111–259, § 801(2), redesignated subsec. (i) as (h).

2008—Subsec. (a). Pub. L. 110–261, § 109(a)–(b)(2)(A), designated existing provisions as par. (1), inserted “at least” before “seven of the United States judicial circuits” and “(except when sitting en banc under paragraph (2))” before “shall hear”, and added par. (2).

Subsec. (e)(1), (2). Pub. L. 110–261, § 403(a)(1)(B)(ii), which directed substitution of “1861(f)(1) or 1881a(h)(4)” for “1805b(h) or 1861(f)(1)”, was executed by making the substitution for “1861(f)(1)” to reflect the probable intent of Congress and termination of the temporary amendment by Pub. L. 110–55, § 5(a). See 2007 Amendment note and Effective and Termination Dates of 2007 Amendment note below.

Subsecs. (f), (g). Pub. L. 110–261, § 109(c), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (i). Pub. L. 110–261, § 109(d), added subsec. (i).

2007—Subsec. (e). Pub. L. 110–55, §§ 5(a), 6(c), temporarily substituted “1805b(h) or 1861(f)(1)” for “1861(f)(1)” in pars. (1) and (2). See Effective and Termination Dates of 2007 Amendment note below.

2006—Subsecs. (e), (f). Pub. L. 109–177 added subsecs. (e) and (f).

2004—Subsec. (c). Pub. L. 108–458, as amended by Pub. L. 111–259, § 806(a)(2), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2001—Subsec. (a). Pub. L. 107–56 substituted “11 district court judges” for “seven district court judges” and inserted “of whom no fewer than 3 shall reside within 20 miles of the District of Columbia” after “judicial circuits”.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110–261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

## EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Pub. L. 110–55, § 6, Aug. 5, 2007, 121 Stat. 556, as amended by Pub. L. 110–182, § 1, Jan. 31, 2008, 122 Stat. 605; Pub. L. 110–261, title IV, § 403(a)(3), July 10, 2008, 122 Stat. 2474, provided that:

“(a) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this Act [enacting sections 1805a to 1805c of this title and amending this section] shall take effect immediately after the date of the enactment of this Act [Aug. 5, 2007].

“(b) Repealed. Pub. L. 110–261, title IV, § 403(a)(3), July 10, 2008, 122 Stat. 2474.]

“(c) SUNSET.—Except as provided in subsection (d), sections 2, 3, 4, and 5 of this Act [enacting sections

1805a to 1805c of this title and amending this section], and the amendments made by this Act [enacting sections 1805a to 1805c of this title and amending this section], shall cease to have effect 195 days after the date of the enactment of this Act.

“(d) AUTHORIZATIONS IN EFFECT.—Authorizations for the acquisition of foreign intelligence information pursuant to the amendments made by this Act, and directives issued pursuant to such authorizations, shall remain in effect until their expiration. Such acquisitions shall be governed by the applicable provisions of such amendments and shall not be deemed to constitute electronic surveillance as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)).”

[Repeal by Pub. L. 110–261 of section 6(b) of Pub. L. 110–55, set out above, effective July 10, 2008, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110–261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.]

## EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 3001 of this title.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 3001 of this title.

**§ 1804. Applications for court orders****(a) Submission by Federal officer; approval of Attorney General; contents**

Each application for an order approving electronic surveillance under this subchapter shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 1803 of this title. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this subchapter. It shall include—

(1) the identity of the Federal officer making the application;

(2) the identity, if known, or a description of the specific target of the electronic surveillance;

(3) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(4) a statement of the proposed minimization procedures;

(5) a description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

(6) a certification or certifications by the Assistant to the President for National Security Affairs, an executive branch official or officials designated by the President from

among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that a significant purpose of the surveillance is to obtain foreign intelligence information;

(C) that such information cannot reasonably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and

(E) including a statement of the basis for the certification that—

(i) the information sought is the type of foreign intelligence information designated; and

(ii) such information cannot reasonably be obtained by normal investigative techniques;

(7) a summary statement of the means by which the surveillance will be effected and a statement whether physical entry is required to effect the surveillance;

(8) a statement of the facts concerning all previous applications that have been made to any judge under this subchapter involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application; and

(9) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this subchapter should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter.

**(b) Additional affidavits or certifications**

The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

**(c) Additional information**

The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 1805 of this title.

**(d) Personal review by Attorney General**

(1)(A) Upon written request of the Director of the Federal Bureau of Investigation, the Secretary of Defense, the Secretary of State, the Director of National Intelligence, or the Director of the Central Intelligence Agency, the Attorney General shall personally review under subsection (a) an application under that subsection for a target described in section 1801(b)(2) of this title.

(B) Except when disabled or otherwise unavailable to make a request referred to in subpara-

graph (A), an official referred to in that subparagraph may not delegate the authority to make a request referred to in that subparagraph.

(C) Each official referred to in subparagraph (A) with authority to make a request under that subparagraph shall take appropriate actions in advance to ensure that delegation of such authority is clearly established in the event such official is disabled or otherwise unavailable to make such request.

(2)(A) If as a result of a request under paragraph (1) the Attorney General determines not to approve an application under the second sentence of subsection (a) for purposes of making the application under this section, the Attorney General shall provide written notice of the determination to the official making the request for the review of the application under that paragraph. Except when disabled or otherwise unavailable to make a determination under the preceding sentence, the Attorney General may not delegate the responsibility to make a determination under that sentence. The Attorney General shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event the Attorney General is disabled or otherwise unavailable to make such determination.

(B) Notice with respect to an application under subparagraph (A) shall set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application under the second sentence of subsection (a) for purposes of making the application under this section.

(C) Upon review of any modifications of an application set forth under subparagraph (B), the official notified of the modifications under this paragraph shall modify the application if such official determines that such modification is warranted. Such official shall supervise the making of any modification under this subparagraph. Except when disabled or otherwise unavailable to supervise the making of any modification under the preceding sentence, such official may not delegate the responsibility to supervise the making of any modification under that preceding sentence. Each such official shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to supervise the making of such modification.

(Pub. L. 95-511, title I, §104, Oct. 25, 1978, 92 Stat. 1788; Pub. L. 106-567, title VI, §602(a), Dec. 27, 2000, 114 Stat. 2851; Pub. L. 107-56, title II, §218, Oct. 26, 2001, 115 Stat. 291; Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, §108(a)(1), Mar. 9, 2006, 120 Stat. 203; Pub. L. 110-261, title I, §104, July 10, 2008, 122 Stat. 2460; Pub. L. 111-259, title VIII, §806(a)(2), Oct. 7, 2010, 124 Stat. 2748.)

**Editorial Notes**

AMENDMENTS

2010—Subsec. (e)(1)(A). Pub. L. 111-259 made technical amendment to directory language of Pub. L. 108-458, §1071(e). See 2004 Amendment note below.

2008—Subsec. (a)(2) to (4). Pub. L. 110-261, §104(1)(A), (B), redesignated pars. (3) to (5) as (2) to (4), respec-

tively, and struck out former par. (2) which read as follows: “the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;”.

Subsec. (a)(5). Pub. L. 110-261, §104(1)(B), (C), redesignated par. (6) as (5) and struck out “detailed” before “description”. Former par. (5) redesignated (4).

Subsec. (a)(6). Pub. L. 110-261, §104(1)(B), (D), redesignated par. (7) as (6) and substituted “Affairs,” for “Affairs or” and “Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—” for “Senate—” in introductory provisions. Former par. (6) redesignated (5).

Subsec. (a)(7). Pub. L. 110-261, §104(1)(B), (E), redesignated par. (8) as (7) and substituted “summary statement of” for “statement of”. Former par. (7) redesignated (6).

Subsec. (a)(8) to (11). Pub. L. 110-261, §104(1)(A), (B), redesignated pars. (9) and (10) as (8) and (9), respectively, and struck out par. (11) which read as follows: “whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.” Former par. (8) redesignated (7).

Subsecs. (b) to (e). Pub. L. 110-261, §104(2)–(4), redesignated subsecs. (c) to (e) as (b) to (d), respectively, in subsec. (d)(1)(A) substituted “the Director of National Intelligence, or the Director of the Central Intelligence Agency” for “or the Director of National Intelligence”, and struck out former subsec. (b) which related to exclusion of certain information respecting foreign power targets.

2006—Subsec. (a)(3). Pub. L. 109-177 inserted “specific” before “target”.

2004—Subsec. (e)(1)(A). Pub. L. 108-458, §1071(e), as amended by Pub. L. 111-259, substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2001—Subsec. (a)(7)(B). Pub. L. 107-56 substituted “a significant purpose” for “the purpose”.

2000—Subsec. (e). Pub. L. 106-567 added subsec. (e).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 3001 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 3001 of this title.

### Executive Documents

#### DESIGNATION OF CERTAIN OFFICIALS TO MAKE CERTIFICATIONS

For designation of certain officials to make certifications required by subsec. (a)(7) of this section, see Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, set out under section 1802 of this title.

### § 1805. Issuance of order

#### (a) Necessary findings

Upon an application made pursuant to section 1804 of this title, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

(1) the application has been made by a Federal officer and approved by the Attorney General;

(2) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power: *Provided*, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(3) the proposed minimization procedures meet the definition of minimization procedures under section 1801(h) of this title; and

(4) the application which has been filed contains all statements and certifications required by section 1804 of this title and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 1804(a)(7)(E)<sup>1</sup> of this title and any other information furnished under section 1804(d)<sup>1</sup> of this title.

#### (b) Determination of probable cause

In determining whether or not probable cause exists for purposes of an order under subsection (a)(2), a judge may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target.

#### (c) Specifications and directions of orders

##### (1) SPECIFICATIONS.—

An order approving an electronic surveillance under this section shall specify—

(A) the identity, if known, or a description of the specific target of the electronic surveillance identified or described in the application pursuant to section 1804(a)(3) of this title;

(B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed, if known;

(C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;

(D) the means by which the electronic surveillance will be effected and whether physical entry will be used to effect the surveillance; and

(E) the period of time during which the electronic surveillance is approved.

##### (2) direct—<sup>2</sup>

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original.

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; and

(D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.

(3) **SPECIAL DIRECTIONS FOR CERTAIN ORDERS.—**

An order approving an electronic surveillance under this section in circumstances where the nature and location of each of the facilities or places at which the surveillance will be directed is unknown shall direct the applicant to provide notice to the court within ten days after the date on which surveillance begins to be directed at any new facility or place, unless the court finds good cause to justify a longer period of up to 60 days, of—

(A) the nature and location of each new facility or place at which the electronic surveillance is directed;

(B) the facts and circumstances relied upon by the applicant to justify the applicant's belief that each new facility or place at which the electronic surveillance is directed is or was being used, or is about to be used, by the target of the surveillance;

(C) a statement of any proposed minimization procedures that differ from those contained in the original application or order, that may be necessitated by a change in the facility or place at which the electronic surveillance is directed; and

(D) the total number of electronic surveillances that have been or are being conducted under the authority of the order.

**(d) Duration of order; extensions; review of circumstances under which information was acquired, retained or disseminated**

(1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that (A) an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title, for the period specified in the application or for one year, whichever is less, and (B) an order under this chapter for a surveillance targeted against an agent of a foreign power who is not a United States person may be for the period specified in the application or for 120 days, whichever is less.

(2) Extensions of an order issued under this subchapter may be granted on the same basis as

an original order upon an application for an extension and new findings made in the same manner as required for an original order, except that (A) an extension of an order under this chapter for a surveillance targeted against a foreign power, as defined in paragraph (5), (6), or (7) of section 1801(a) of this title, or against a foreign power as defined in section 1801(a)(4) of this title that is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period, and (B) an extension of an order under this chapter for a surveillance targeted against an agent of a foreign power who is not a United States person may be for a period not to exceed 1 year.

(3) At or before the end of the period of time for which electronic surveillance is approved by an order or an extension, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(4) A denial of the application made under section 1804 of this title may be reviewed as provided in section 1803 of this title.

**(e) Emergency orders**

(1) Notwithstanding any other provision of this subchapter, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General—

(A) reasonably determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

(B) reasonably determines that the factual basis for the issuance of an order under this subchapter to approve such electronic surveillance exists;

(C) informs, either personally or through a designee, a judge having jurisdiction under section 1803 of this title at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

(D) makes an application in accordance with this subchapter to a judge having jurisdiction under section 1803 of this title as soon as practicable, but not later than 7 days after the Attorney General authorizes such surveillance.

(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this subchapter for the issuance of a judicial order be followed.

(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

(4) A denial of the application made under this subsection may be reviewed as provided in section 1803 of this title.

(5) In the event that such application for approval is denied, or in any other case where the

electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(6) The Attorney General shall assess compliance with the requirements of paragraph (5).

**(f) Emergencies involving non-United States persons**

(1) Notwithstanding any other provision of this chapter, the lawfully authorized targeting of a non-United States person previously believed to be located outside the United States for the acquisition of foreign intelligence information may continue for a period not to exceed 72 hours from the time that the non-United States person is reasonably believed to be located inside the United States and the acquisition is subject to this subchapter or to subchapter II of this chapter, provided that the head of an element of the intelligence community—

(A) reasonably determines that a lapse in the targeting of such non-United States person poses a threat of death or serious bodily harm to any person;

(B) promptly notifies the Attorney General of a determination under subparagraph (A); and

(C) requests, as soon as practicable, the employment of emergency electronic surveillance under subsection (e) or the employment of an emergency physical search pursuant to section 1824(e) of this title, as warranted.

(2) The authority under this subsection to continue the acquisition of foreign intelligence information is limited to a period not to exceed 72 hours and shall cease upon the earlier of the following:

(A) The employment of emergency electronic surveillance under subsection (e) or the employment of an emergency physical search pursuant to section 1824(e) of this title.

(B) An issuance of a court order under this subchapter or subchapter II of this chapter.

(C) The Attorney General provides direction that the acquisition be terminated.

(D) The head of the element of the intelligence community conducting the acquisition determines that a request under paragraph (1)(C) is not warranted.

(E) When the threat of death or serious bodily harm to any person is no longer reasonably believed to exist.

(3) Nonpublicly available information concerning unconsenting United States persons acquired under this subsection shall not be dis-

seminated during the 72 hour time period under paragraph (1) unless necessary to investigate, reduce, or eliminate the threat of death or serious bodily harm to any person.

(4) If the Attorney General declines to authorize the employment of emergency electronic surveillance under subsection (e) or the employment of an emergency physical search pursuant to section 1824(e) of this title, or a court order is not obtained under this subchapter or subchapter II of this chapter, information obtained during the 72 hour acquisition time period under paragraph (1) shall not be retained, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(5) Paragraphs (5) and (6) of subsection (e) shall apply to this subsection.

**(g) Testing of electronic equipment; discovering unauthorized electronic surveillance; training of intelligence personnel**

Notwithstanding any other provision of this subchapter, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment;

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test; and

(D) *Provided*, That the test may exceed ninety days only with the prior approval of the Attorney General;

(2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, or section 605 of title 47, or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—

(A) it is not reasonable to—

(i) obtain the consent of the persons incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this subchapter; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no contents of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.

**(h) Retention of certifications, applications and orders**

Certifications made by the Attorney General pursuant to section 1802(a) of this title and applications made and orders granted under this subchapter shall be retained for a period of at least ten years from the date of the certification or application.

**(i) Bar to legal action**

No cause of action shall lie in any court against any provider of a wire or electronic communication service, landlord, custodian, or other person (including any officer, employee, agent, or other specified person thereof) that furnishes any information, facilities, or technical assistance in accordance with a court order or request for emergency assistance under this chapter for electronic surveillance or physical search.

**(j) Pen registers and trap and trace devices**

In any case in which the Government makes an application to a judge under this subchapter to conduct electronic surveillance involving communications and the judge grants such application, upon the request of the applicant, the judge shall also authorize the installation and use of pen registers and trap and trace devices, and direct the disclosure of the information set forth in section 1842(d)(2) of this title.

(Pub. L. 95-511, title I, §105, Oct. 25, 1978, 92 Stat. 1790; Pub. L. 98-549, §6(b)(3), Oct. 30, 1984, 98 Stat. 2804; Pub. L. 106-567, title VI, §602(b), Dec. 27, 2000, 114 Stat. 2851; Pub. L. 107-56, title II, §§206, 207(a)(1), (b)(1), 225, Oct. 26, 2001, 115 Stat. 282, 295; Pub. L. 107-108, title III, §314(a)(2), (c)(1), Dec. 28, 2001, 115 Stat. 1402, 1403; Pub. L. 107-273, div. B, title IV, §4005(c), Nov. 2, 2002, 116 Stat. 1812; Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, §§102(b)(1), 105(a), 108(a)(2), (b), Mar. 9, 2006, 120 Stat. 195, 203; Pub. L. 110-261, title I, §§105(a), 110(c)(1), July 10, 2008, 122 Stat. 2461, 2466; Pub. L. 111-118, div. B, §1004(a), Dec. 19, 2009, 123 Stat. 3470; Pub. L. 111-141, §1(a), Feb. 27, 2010, 124 Stat. 37; Pub. L. 111-259, title VIII, §806(a)(2), Oct. 7, 2010, 124 Stat. 2748; Pub. L. 112-3, §2(a), Feb. 25, 2011, 125 Stat. 5; Pub. L. 112-14, §2(a), May 26, 2011, 125 Stat. 216; Pub. L. 114-23, title VII, §§701(a), 705(a), (c), June 2, 2015, 129 Stat. 298, 300; Pub. L. 115-118, title II, §205(b)(2), Jan. 19, 2018, 132 Stat. 22; Pub. L. 116-69, div. B, title VII, §1703(a), Nov. 21, 2019, 133 Stat. 1143.)

**Editorial Notes**

REFERENCES IN TEXT

Section 1804(a)(7)(E) of this title, referred to in subsec. (a)(4), was redesignated section 1804(a)(6)(E) of this

title by Pub. L. 110-261, title I, §104(1)(B), July 10, 2008, 122 Stat. 2461.

Section 1804(d) of this title, referred to in subsec. (a)(4), was redesignated section 1804(c) of this title by Pub. L. 110-261, title I, §104(3), July 10, 2008, 122 Stat. 2461.

This chapter, referred to in subsecs. (d), (f)(1), and (i), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

CODIFICATION

As originally enacted, Pub. L. 107-56, §225, amended this section by adding subsec. (h) relating to bar of legal action after subsec. (g). The section already contained a subsec. (h). Both Pub. L. 107-108, §314(a)(2)(C), and Pub. L. 107-273, §4005(c), made amendments retroactive to the date of enactment of Pub. L. 107-56 which had the effect of redesignating subsec. (h), relating to bar of legal action, as subsec. (i) and transferring it to appear at the end of this section. See 2001 Amendment notes, Effective Date of 2002 Amendment note, and Effective Date of 2001 Amendment note below.

AMENDMENTS

2019—Pub. L. 116-69 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2018—Subsec. (d)(4). Pub. L. 115-118 added par. (4).

2015—Subsec. (c)(2). Pub. L. 114-23, §705(a), (c), amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below. Pursuant to Pub. L. 109-177, §102(b)(1), as amended by Pub. L. 112-14, subsec. (c)(2) was amended, effective June 1, 2015, to read as it read on Oct. 25, 2001. The amendment by Pub. L. 114-23, which delayed the reversion of subsec. (c)(2) from June 1, 2015, to Dec. 15, 2019, was given effect to reflect the probable intent of Congress, notwithstanding that Pub. L. 114-23 was enacted on June 2, 2015.

Subsecs. (f) to (j). Pub. L. 114-23, §701(a), added subsec. (f) and redesignated former subsecs. (f) to (i) as (g) to (j), respectively.

2011—Subsec. (c)(2). Pub. L. 112-14 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

Pub. L. 112-3 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2010—Subsec. (c)(2). Pub. L. 111-141 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

Subsec. (c)(2)(C). Pub. L. 111-259 made technical amendment to directory language of Pub. L. 108-458, §1071(e). See 2004 Amendment note below.

2009—Subsec. (c)(2). Pub. L. 111-118 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2008—Subsec. (a). Pub. L. 110-261, §105(a)(1), redesignated pars. (2) to (5) as (1) to (4), respectively, and struck out former par. (1) which read as follows: “the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;”.

Subsec. (b). Pub. L. 110-261, §105(a)(2), substituted “(a)(2)” for “(a)(3)”.

Subsec. (c)(1)(D) to (F). Pub. L. 110-261, §105(a)(3), inserted “and” after semicolon at and of subpar. (D), substituted a period for “; and” in subpar. (E), and struck out subpar. (F) which read as follows: “whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization procedures shall apply to information subject to acquisition by each device.”

Subsec. (d). Pub. L. 110-261, §105(a)(4), (5), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to exclusion of certain information respecting foreign power targets from ex parte order.



Subsec. (d)(2). Pub. L. 110-261, §110(c)(1), substituted “paragraph (5), (6), or (7) of section 1801(a)” for “section 1801(a)(5) or (6)”.

Subsec. (e). Pub. L. 110-261, §105(a)(5), (6), redesignated subsec. (f) as (e) and amended it generally. Prior to amendment, subsec. (e) related to authority of the Attorney General to authorize emergency employment of electronic surveillance and required application to a judge within 72 hours after authorization. Former subsec. (e) redesignated (d).

Subsecs. (f) to (i). Pub. L. 110-261, §105(a)(5), (7), added subsec. (i) and redesignated former subsecs. (g) to (i) as (f) to (h), respectively. Former subsec. (f) redesignated (e).

2006—Subsec. (c)(1). Pub. L. 109-177, §108(b)(1), substituted “(1) SPECIFICATIONS.—An order approving an electronic surveillance under this section shall specify—” for “An order approving an electronic surveillance under this section shall—  
“(1) specify—”.

Subsec. (c)(1)(A). Pub. L. 109-177, §108(a)(2)(A), substituted “specific target of the electronic surveillance identified or described in the application pursuant to section 1804(a)(3) of this title” for “target of the electronic surveillance”.

Subsec. (c)(1)(F). Pub. L. 109-177, §108(b)(2), substituted period for “; and” at end.

Subsec. (c)(2). Pub. L. 109-177, §108(b)(3), inserted par. heading and substituted “An order approving an electronic surveillance under this section shall direct” for “direct” in introductory provisions.

Pub. L. 109-177, §102(b)(1), as amended by Pub. L. 111-118, Pub. L. 111-141, Pub. L. 112-3, Pub. L. 112-14, Pub. L. 114-23, §705(a), (c), and Pub. L. 116-69, amended par. (2), effective Mar. 15, 2020, so as to read as it read on Oct. 25, 2001. Prior to amendment, par. (2) established requirements of orders approving electronic surveillance.

Subsec. (c)(2)(B). Pub. L. 109-177, §108(a)(2)(B), substituted “where the Court finds, based upon specific facts provided in the application,” for “where the Court finds”.

Subsec. (c)(3). Pub. L. 109-177, §108(b)(4), added par. (3).

Subsec. (e)(1)(B). Pub. L. 109-177, §105(a)(1), substituted “who is not a United States person” for “, as defined in section 1801(b)(1)(A) of this title”.

Subsec. (e)(2)(B). Pub. L. 109-177, §105(a)(2), substituted “who is not a United States person” for “as defined in section 1801(b)(1)(A) of this title”.

2004—Subsec. (c)(2)(C). Pub. L. 108-458, §1071(e), as amended by Pub. L. 111-259, substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2002—Subsec. (i). Pub. L. 107-273 amended Pub. L. 107-56, §225. See 2001 Amendment notes below.

2001—Subsec. (c)(1)(B). Pub. L. 107-108, §314(a)(2)(A), inserted “, if known” before semicolon at end.

Subsec. (c)(2)(B). Pub. L. 107-56, §206, inserted “, or in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons,” after “specified person”.

Subsec. (e)(1). Pub. L. 107-56, §207(a)(1), inserted “(A)” after “except that” and “, and (B) an order under this chapter for a surveillance targeted against an agent of a foreign power, as defined in section 1801(b)(1)(A) of this title may be for the period specified in the application or for 120 days, whichever is less” before period at end.

Subsec. (e)(2). Pub. L. 107-56, §207(b)(1), as amended by Pub. L. 107-108, §314(c)(1), inserted “(A)” after “except that” and “, and (B) an extension of an order under this chapter for a surveillance targeted against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title may be for a period not to exceed 1 year” before period at end.

Subsec. (f). Pub. L. 107-108, §314(a)(2)(B), substituted “72 hours” for “twenty-four hours” in two places in concluding provisions.

Subsec. (h). Pub. L. 107-108, §314(a)(2)(C), transferred subsec. (h) added by section 225 of Pub. L. 107-56 to appear after the subsec. (h) redesignated by section 602(b)(2) of Pub. L. 106-567, and redesignated the transferred subsec. (h) as subsec. (i). See Codification note above.

Subsec. (i). Pub. L. 107-108, §314(a)(2)(D), inserted “for electronic surveillance or physical search” before period at end.

Pub. L. 107-108, §314(a)(2)(C), transferred subsec. (h) added by section 225 of Pub. L. 107-56 to appear after the subsec. (h) redesignated by section 602(b)(2) of Pub. L. 106-567, and redesignated the transferred subsec. (h) as subsec. (i). See Codification note above.

Pub. L. 107-56, §225, as amended by Pub. L. 107-273, §4005(c), added subsec. (i) relating to bar of legal action.

2000—Subsecs. (b), (c). Pub. L. 106-567, §602(b)(1), (2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 106-567, §602(b)(1), (3), redesignated subsec. (c) as (d) and substituted “subsection (c)(1)” for “subsection (b)(1)”. Former subsec. (d) redesignated (e).

Subsecs. (e) to (h). Pub. L. 106-567, §602(b)(1), redesignated subsecs. (d) to (g) as (e) to (h), respectively.

1984—Subsec. (f)(2)(C). Pub. L. 98-549 substituted “section 705” for “section 605” in the original to accommodate renumbering of sections in subchapter VI (section 601 et seq.) of chapter 5 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, by section 6(a) of Pub. L. 98-549. Because both sections translate as “section 605 of Title 47”, the amendment by Pub. L. 98-549 resulted in no change in text.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

##### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-177, title I, §102(b), Mar. 9, 2006, 120 Stat. 195, as amended by Pub. L. 111-118, div. B, §1004(a), Dec. 19, 2009, 123 Stat. 3470; Pub. L. 111-141, §1(a), Feb. 27, 2010, 124 Stat. 37; Pub. L. 112-3, §2(a), Feb. 25, 2011, 125 Stat. 5; Pub. L. 112-14, §2(a), May 26, 2011, 125 Stat. 216; Pub. L. 114-23, title VII, §705(a), (c), June 2, 2015, 129 Stat. 300; Pub. L. 116-69, div. B, title VII, §1703(a), Nov. 21, 2019, 133 Stat. 1143, provided that:

“(1) IN GENERAL.—Effective March 15, 2020, the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.] is amended so that title V and section 105(c)(2) [50 U.S.C. 1861 to 1863, and 1805(c)(2)] read as they read on October 25, 2001.

“(2) EXCEPTION.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.”

[Pub. L. 109-177, §102(b)(1), set out above, as amended by Pub. L. 112-14, provided that sections 1861 and 1862 of this title and subsec. (c)(2) of this section were amended, effective June 1, 2015, to read as they read on Oct. 25, 2001. Pub. L. 114-23, §705(a), amended section 102(b)(1) by substituting “December 15, 2019” for “June 1, 2015”, thereby delaying the reversion of those provisions until Dec. 15, 2019. Such amendment was given effect in those provisions by not executing the reversions on June 1, 2015, to reflect the probable intent of Congress, notwithstanding that Pub. L. 114-23 was enacted on June 2, 2015. See Amendment of Subsection (c)(2)

note and 2015 Amendment note for subsec. (c)(2) above and Codification and 2015 Amendment notes under sections 1861 and 1862 of this title.]

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 3001 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 3001 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-273, div. B, title IV, § 4005(c), Nov. 2, 2002, 116 Stat. 1812, provided that the amendment made by section 4005(c) is effective Oct. 26, 2001.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-108, title III, § 314(c), Dec. 28, 2001, 115 Stat. 1402, provided in part that the amendment made by section 314(c)(1) of Pub. L. 107-108 is effective as of Oct. 26, 2001, and as if included in Pub. L. 107-56 as originally enacted.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-549 effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of Title 47, Telecommunications.

**§§ 1805a to 1805c. Repealed. Pub. L. 110-261, title IV, § 403(a)(1)(A), July 10, 2008, 122 Stat. 2473**

Section 1805a, Pub. L. 95-511, title I, § 105A, as added Pub. L. 110-55, § 2, Aug. 5, 2007, 121 Stat. 552, related to clarification of electronic surveillance of persons outside the United States.

Section 1805b, Pub. L. 95-511, title I, § 105B, as added Pub. L. 110-55, § 2, Aug. 5, 2007, 121 Stat. 552, related to additional procedure for authorizing certain acquisitions concerning persons located outside the United States.

Section 1805c, Pub. L. 95-511, title I, § 105C, as added Pub. L. 110-55, § 3, Aug. 5, 2007, 121 Stat. 555, related to submission to court review of procedures.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF REPEAL

Repeal effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

**§ 1806. Use of information**

**(a) Compliance with minimization procedures; privileged communications; lawful purposes**

Information acquired from an electronic surveillance conducted pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this subchapter. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this subchapter shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

**(b) Statement for disclosure**

No information acquired pursuant to this subchapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

**(c) Notification by United States**

Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this subchapter, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

**(d) Notification by States or political subdivisions**

Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this subchapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

**(e) Motion to suppress**

Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired;

or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

**(f) In camera and ex parte review by district court**

Whenever a court or other authority is notified pursuant to subsection (c) or (d), or when-

ever a motion is made pursuant to subsection (e), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to electronic surveillance or to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance under this chapter, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the surveillance only where such disclosure is necessary to make an accurate determination of the legality of the surveillance.

**(g) Suppression of evidence; denial of motion**

If the United States district court pursuant to subsection (f) determines that the surveillance was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

**(h) Finality of orders**

Orders granting motions or requests under subsection (g), decisions under this section that electronic surveillance was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

**(i) Destruction of unintentionally acquired information**

In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents indicate a threat of death or serious bodily harm to any person.

**(j) Notification of emergency employment of electronic surveillance; contents; postponement, suspension or elimination**

If an emergency employment of electronic surveillance is authorized under subsection (e) or (f) of section 1805 of this title and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

- (1) the fact of the application;
- (2) the period of the surveillance; and
- (3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

**(k) Coordination with law enforcement on national security matters**

(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this subchapter may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 1804(a)(7)(B)<sup>1</sup> of this title or the entry of an order under section 1805 of this title.

(Pub. L. 95-511, title I, § 106, Oct. 25, 1978, 92 Stat. 1793; Pub. L. 107-56, title V, § 504(a), Oct. 26, 2001, 115 Stat. 364; Pub. L. 107-296, title VIII, § 898, Nov. 25, 2002, 116 Stat. 2258; Pub. L. 110-261, title I, §§ 106, 110(b)(1), July 10, 2008, 122 Stat. 2462, 2466; Pub. L. 114-23, title VII, § 701(b), June 2, 2015, 129 Stat. 299.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

<sup>1</sup> See References in Text note below.

Section 1804(a)(7)(B) of this title, referred to in subsection (k)(2), was redesignated section 1804(a)(6)(B) of this title by Pub. L. 110-261, title I, §104(1)(B), July 10, 2008, 122 Stat. 2461.

#### AMENDMENTS

2015—Subsec. (j). Pub. L. 114-23 substituted “subsection (e) or (f) of section 1805 of this title” for “section 1805(e) of this title”.

2008—Subsec. (i). Pub. L. 110-261, §106, substituted “communication” for “radio communication”.

Subsec. (k)(1)(B). Pub. L. 110-261, §110(b)(1), substituted “sabotage, international terrorism, or the international proliferation of weapons of mass destruction” for “sabotage or international terrorism”.

2002—Subsec. (k)(1). Pub. L. 107-296, in introductory provisions, inserted “or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)” after “law enforcement officers”.

2001—Subsec. (k). Pub. L. 107-56 added subsec. (k).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

##### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

#### REPORT ON MECHANISMS FOR DETERMINATIONS OF DISCLOSURE OF INFORMATION FOR LAW ENFORCEMENT PURPOSES

Pub. L. 106-567, title VI, §604(b), Dec. 27, 2000, 114 Stat. 2853, provided that:

“(1) The Attorney General shall submit to the appropriate committees of Congress a report on the authorities and procedures utilized by the Department of Justice for determining whether or not to disclose information acquired under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for law enforcement purposes.

“(2) In this subsection, the term ‘appropriate committees of Congress’ means the following:

“(A) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

“(B) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.”

#### § 1807. Report of electronic surveillance

##### (a) Annual report

In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Courts and to the congressional intelligence committees and the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding calendar year—

(1) the total number of applications made for orders and extensions of orders approving electronic surveillance under this subchapter;

(2) the total number of such orders and extensions either granted, modified, or denied; and

(3) the total number of subjects targeted by electronic surveillance conducted under an

order or emergency authorization under this subchapter, rounded to the nearest 500, including the number of such individuals who are United States persons, reported to the nearest band of 500, starting with 0-499.

##### (b) Form

Each report under subsection (a) shall be submitted in unclassified form, to the extent consistent with national security. Not later than 7 days after the date on which the Attorney General submits each such report, the Attorney General shall make the report publicly available, or, if the Attorney General determines that the report cannot be made publicly available consistent with national security, the Attorney General may make publicly available an unclassified summary of the report or a redacted version of the report.

(Pub. L. 95-511, title I, §107, Oct. 25, 1978, 92 Stat. 1795; Pub. L. 115-118, title I, §107(a), Jan. 19, 2018, 132 Stat. 14.)

#### Editorial Notes

##### AMENDMENTS

2018—Pub. L. 115-118 amended section generally. Prior to amendment, section related to report to Administrative Office of the United States Court and to Congress.

#### § 1808. Report of Attorney General to Congressional committees; limitation on authority or responsibility of information gathering activities of Congressional committees; report of Congressional committees to Congress

(a)(1) On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate concerning all electronic surveillance under this subchapter. Nothing in this subchapter shall be deemed to limit the authority and responsibility of the appropriate committees of each House of Congress to obtain such information as they may need to carry out their respective functions and duties.

(2) Each report under the first sentence of paragraph (1) shall include a description of—

(A) the total number of applications made for orders and extensions of orders approving electronic surveillance under this subchapter where the nature and location of each facility or place at which the electronic surveillance will be directed is unknown;

(B) each criminal case in which information acquired under this chapter has been authorized for use at trial during the period covered by such report;

(C) the total number of emergency employments of electronic surveillance under section 1805(e) of this title and the total number of subsequent orders approving or denying such electronic surveillance; and

(D) the total number of authorizations under section 1805(f) of this title and the total number of subsequent emergency employments of electronic surveillance under section 1805(e) of this title or emergency physical searches pursuant to section 301(e).<sup>1</sup>

<sup>1</sup> See References in Text note below.

(b) On or before one year after October 25, 1978, and on the same day each year for four years thereafter, the Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence shall report respectively to the House of Representatives and the Senate, concerning the implementation of this chapter. Said reports shall include but not be limited to an analysis and recommendations concerning whether this chapter should be (1) amended, (2) repealed, or (3) permitted to continue in effect without amendment.

(Pub. L. 95-511, title I, § 108, Oct. 25, 1978, 92 Stat. 1795; Pub. L. 106-567, title VI, § 604(a), Dec. 27, 2000, 114 Stat. 2853; Pub. L. 109-177, title I, § 108(c), Mar. 9, 2006, 120 Stat. 204; Pub. L. 110-261, title I, § 105(b), July 10, 2008, 122 Stat. 2462; Pub. L. 114-23, title VI, § 605(a), title VII, § 701(c), June 2, 2015, 129 Stat. 297, 299.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 301, referred to in subsec. (a)(2)(D), means section 301 of Pub. L. 95-511, which is classified to section 1821 of this title, relates to definitions for terms used in subchapter II of this chapter, and does not contain a subsec. (e). Section 304(e) of Pub. L. 95-511, which is classified to section 1824(e) of this title, relates to authorizations and orders for emergency physical searches.

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

#### AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114-23, § 605(a), substituted “the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate” for “the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, and the Committee on the Judiciary of the Senate.”.

Subsec. (a)(2)(D). Pub. L. 114-23, § 701(c), added subpar. (D).

2008—Subsec. (a)(2)(C). Pub. L. 110-261 substituted “1805(e)” for “1805(f)”.

2006—Subsec. (a)(1). Pub. L. 109-177, § 108(c)(1), inserted “, and the Committee on the Judiciary of the Senate,” after “Senate Select Committee on Intelligence”.

Subsec. (a)(2). Pub. L. 109-177, § 108(c)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Each report under the first sentence of paragraph (1) shall include a description of—

“(A) each criminal case in which information acquired under this chapter has been passed for law enforcement purposes during the period covered by such report; and

“(B) each criminal case in which information acquired under this chapter has been authorized for use at trial during such reporting period.”

2000—Subsec. (a). Pub. L. 106-567 designated existing provisions as par. (1) and added par. (2).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801

of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

### § 1809. Criminal sanctions

#### (a) Prohibited activities

A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title;

(2) discloses or uses information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance not authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title.

#### (b) Defense

It is a defense to a prosecution under subsection (a) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

#### (c) Penalties

An offense described in this section is punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

#### (d) Federal jurisdiction

There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

(Pub. L. 95-511, title I, § 109, Oct. 25, 1978, 92 Stat. 1796; Pub. L. 110-261, title I, § 102(b), July 10, 2008, 122 Stat. 2459; Pub. L. 111-259, title VIII, § 801(3), Oct. 7, 2010, 124 Stat. 2746.)

### Editorial Notes

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

#### AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-259, § 801(3)(A), substituted “section 1812 of this title;” for “section 1812 of this title;”.

Subsec. (a)(2). Pub. L. 111-259, § 801(3)(B), substituted “title.” for “title..”

2008—Subsec. (a). Pub. L. 110-261 substituted “authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title.” for “authorized by statute” in pars. (1) and (2).

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

**§ 1810. Civil liability**

An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 1801(a) or (b)(1)(A) of this title, respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 1809 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

(Pub. L. 95-511, title I, § 110, Oct. 25, 1978, 92 Stat. 1796.)

**§ 1811. Authorization during time of war**

Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed fifteen calendar days following a declaration of war by the Congress.

(Pub. L. 95-511, title I, § 111, Oct. 25, 1978, 92 Stat. 1796.)

**§ 1812. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted**

(a) Except as provided in subsection (b), the procedures of chapters 119, 121, and 206 of title 18 and this chapter shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.

(b) Only an express statutory authorization for electronic surveillance or the interception of domestic wire, oral, or electronic communications, other than as an amendment to this chapter or chapters 119, 121, or 206 of title 18 shall constitute an additional exclusive means for the purpose of subsection (a).

(Pub. L. 95-511, title I, § 112, as added Pub. L. 110-261, title I, § 102(a), July 10, 2008, 122 Stat. 2459.)

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

**§ 1813. Procedures for the retention of incidentally acquired communications****(a) Definitions**

In this section:

**(1) Covered communication**

The term “covered communication” means any nonpublic telephone or electronic communication acquired without the consent of a person who is a party to the communication, including communications in electronic storage.

**(2) Head of an element of the intelligence community**

The term “head of an element of the intelligence community” means, as appropriate—

(A) the head of an element of the intelligence community; or

(B) the head of the department or agency containing such element.

**(3) United States person**

The term “United States person” has the meaning given that term in section 1801 of this title.

**(b) Procedures for covered communications****(1) Requirement to adopt**

Not later than 2 years after December 19, 2014, each head of an element of the intelligence community shall adopt procedures approved by the Attorney General for such element that ensure compliance with the requirements of paragraph (3).

**(2) Coordination and approval**

The procedures required by paragraph (1) shall be—

(A) prepared in coordination with the Director of National Intelligence; and

(B) approved by the Attorney General prior to issuance.

**(3) Procedures****(A) Application**

The procedures required by paragraph (1) shall apply to any intelligence collection activity not otherwise authorized by court order (including an order or certification issued by a court established under subsection (a) or (b) of section 1803 of this title), subpoena, or similar legal process that is reasonably anticipated to result in the acquisition of a covered communication to or from a United States person and shall permit the acquisition, retention, and dissemination of covered communications subject to the limitation in subparagraph (B).

**(B) Limitation on retention**

A covered communication shall not be retained in excess of 5 years, unless—

(i) the communication has been affirmatively determined, in whole or in part, to constitute foreign intelligence or counter-intelligence or is necessary to understand or assess foreign intelligence or counter-intelligence;

(ii) the communication is reasonably believed to constitute evidence of a crime and is retained by a law enforcement agency;

(iii) the communication is enciphered or reasonably believed to have a secret meaning;

(iv) all parties to the communication are reasonably believed to be non-United States persons;

(v) retention is necessary to protect against an imminent threat to human life, in which case both the nature of the threat and the information to be retained shall be reported to the congressional intelligence committees not later than 30 days after the date such retention is extended under this clause;

(vi) retention is necessary for technical assurance or compliance purposes, including a court order or discovery obligation, in which case access to information retained for technical assurance or compliance purposes shall be reported to the congressional intelligence committees on an annual basis; or

(vii) retention for a period in excess of 5 years is approved by the head of the element of the intelligence community responsible for such retention, based on a determination that retention is necessary to protect the national security of the United States, in which case the head of such element shall provide to the congressional intelligence committees a written certification describing—

(I) the reasons extended retention is necessary to protect the national security of the United States;

(II) the duration for which the head of the element is authorizing retention;

(III) the particular information to be retained; and

(IV) the measures the element of the intelligence community is taking to protect the privacy interests of United States persons or persons located inside the United States.

(Pub. L. 113-293, title III, §309, Dec. 19, 2014, 128 Stat. 3998.)

#### Editorial Notes

##### CODIFICATION

Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 2015, and not as part of the Foreign Intelligence Surveillance Act of 1978 which comprises this chapter.

#### Statutory Notes and Related Subsidiaries

##### DEFINITIONS

For definitions of “congressional intelligence committees” and “intelligence community” as used in this section, see section 2 of Pub. L. 113-293, set out as a note under section 3003 of this title.

## SUBCHAPTER II—PHYSICAL SEARCHES

### § 1821. Definitions

As used in this subchapter:

(1) The terms “foreign power”, “agent of a foreign power”, “international terrorism”, “sabotage”, “foreign intelligence information”, “Attorney General”, “United States person”, “United States”, “person”, “weapon of mass destruction”, and “State” shall have the same meanings as in section 1801 of this title, except as specifically provided by this subchapter.

(2) “Aggrieved person” means a person whose premises, property, information, or material is the target of physical search or any other person whose premises, property, information, or material was subject to physical search.

(3) “Foreign Intelligence Surveillance Court” means the court established by section 1803(a) of this title.

(4) “Minimization procedures” with respect to physical search, means—

(A) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purposes and technique of the particular physical search, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section 1801(e)(1) of this title, shall not be disseminated in a manner that identifies any United States person, without such person’s consent, unless such person’s identity is necessary to understand such foreign intelligence information or assess its importance;

(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(D) notwithstanding subparagraphs (A), (B), and (C), with respect to any physical search approved pursuant to section 1822(a) of this title, procedures that require that no information, material, or property of a United States person shall be disclosed, disseminated, or used for any purpose or retained for longer than 72 hours unless a court order under section 1824 of this title is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

(5) “Physical search” means any physical intrusion within the United States into premises or property (including examination of the interior of property by technical means) that is intended to result in a seizure, reproduction, inspection, or alteration of information, mate-

rial, or property, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, but does not include (A) “electronic surveillance”, as defined in section 1801(f) of this title, or (B) the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 1801(f) of this title.

(Pub. L. 95-511, title III, §301, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3443; amended Pub. L. 107-108, title III, §314(a)(3), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 110-261, title I, §110(c)(2), July 10, 2008, 122 Stat. 2467; Pub. L. 111-259, title VIII, §801(4), Oct. 7, 2010, 124 Stat. 2746.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 301 of Pub. L. 95-511 was renumbered section 701 and was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110-261.

##### AMENDMENTS

2010—Par. (1). Pub. L. 111-259 substituted “‘United States’, ‘person’, ‘weapon of mass destruction’, and ‘State’” for “‘United States’, ‘person’, ‘weapon of mass destruction’, and ‘State’”.

2008—Par. (1). Pub. L. 110-261 which directed the insertion of “‘weapon of mass destruction,’” after “‘person,’” was executed by making the insertion after “‘person,’” to reflect the probable intent of Congress.

2001—Par. (4)(D). Pub. L. 107-108 substituted “‘72 hours” for “‘24 hours”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

##### EFFECTIVE DATE

Pub. L. 103-359, title VIII, §807(c), Oct. 14, 1994, 108 Stat. 3453, provided that: “The amendments made by subsections (a) and (b) [enacting this subchapter and amending provisions set out as a note under section 1801 of this title] shall take effect 90 days after the date of enactment of this Act [Oct. 14, 1994], except that any physical search approved by the Attorney General of the United States to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of title III of the Foreign Intelligence Surveillance Act of 1978 [this subchapter] (as added by this Act), if that search is conducted within 180 days after the date of enactment of this Act pursuant to regulations issued by the Attorney General, which were in the possession of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the date of enactment of this Act.”

#### § 1822. Authorization of physical searches for foreign intelligence purposes

##### (a) Presidential authorization

(1) Notwithstanding any other provision of law, the President, acting through the Attorney General, may authorize physical searches without a court order under this subchapter to acquire foreign intelligence information for periods of up to one year if—

(A) the Attorney General certifies in writing under oath that—

(i) the physical search is solely directed at premises, information, material, or property used exclusively by, or under the open and exclusive control of, a foreign power or powers (as defined in section 1801(a)(1), (2), or (3) of this title);

(ii) there is no substantial likelihood that the physical search will involve the premises, information, material, or property of a United States person; and

(iii) the proposed minimization procedures with respect to such physical search meet the definition of minimization procedures under subparagraphs (A) through (D) of section 1821(4) of this title; and

(B) the Attorney General reports such minimization procedures and any changes thereto to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate at least 30 days before their effective date, unless the Attorney General determines that immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) A physical search authorized by this subsection may be conducted only in accordance with the certification and minimization procedures adopted by the Attorney General. The Attorney General shall assess compliance with such procedures and shall report such assessments to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate under the provisions of section 1826 of this title.

(3) The Attorney General shall immediately transmit under seal to the Foreign Intelligence Surveillance Court a copy of the certification. Such certification shall be maintained under security measures established by the Chief Justice of the United States with the concurrence of the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless—

(A) an application for a court order with respect to the physical search is made under section 1821(4) of this title and section 1823 of this title; or

(B) the certification is necessary to determine the legality of the physical search under section 1825(g) of this title.

(4)(A) With respect to physical searches authorized by this subsection, the Attorney General may direct a specified landlord, custodian, or other specified person to—

(i) furnish all information, facilities, or assistance necessary to accomplish the physical



search in such a manner as will protect its secrecy and produce a minimum of interference with the services that such landlord, custodian, or other person is providing the target of the physical search; and

(ii) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the search or the aid furnished that such person wishes to retain.

(B) The Government shall compensate, at the prevailing rate, such landlord, custodian, or other person for furnishing such aid.

**(b) Application for order; authorization**

Applications for a court order under this subchapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the Foreign Intelligence Surveillance Court. Notwithstanding any other provision of law, a judge of the court to whom application is made may grant an order in accordance with section 1824 of this title approving a physical search in the United States of the premises, property, information, or material of a foreign power or an agent of a foreign power for the purpose of collecting foreign intelligence information.

**(c) Jurisdiction of Foreign Intelligence Surveillance Court**

The Foreign Intelligence Surveillance Court shall have jurisdiction to hear applications for and grant orders approving a physical search for the purpose of obtaining foreign intelligence information anywhere within the United States under the procedures set forth in this subchapter, except that no judge (except when sitting en banc) shall hear the same application which has been denied previously by another judge designated under section 1803(a) of this title. If any judge so designated denies an application for an order authorizing a physical search under this subchapter, such judge shall provide immediately for the record a written statement of each reason for such decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established under section 1803(b) of this title.

**(d) Court of review; record; transmittal to Supreme Court**

The court of review established under section 1803(b) of this title shall have jurisdiction to review the denial of any application made under this subchapter. If such court determines that the application was properly denied, the court shall provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

**(e) Expeditious conduct of proceedings; security measures for maintenance of records**

Judicial proceedings under this subchapter shall be concluded as expeditiously as possible. The record of proceedings under this subchapter, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice of the United

States in consultation with the Attorney General and the Director of National Intelligence.

(Pub. L. 95-511, title III, §302, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3444; amended Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 110-261, title I, §109(b)(2)(B), July 10, 2008, 122 Stat. 2465; Pub. L. 111-259, title VIII, §806(a)(2), Oct. 7, 2010, 124 Stat. 2748; Pub. L. 115-118, title II, §205(a)(2), (b)(3), Jan. 19, 2018, 132 Stat. 21, 22.)

**Editorial Notes**

AMENDMENTS

2018—Subsec. (a)(1)(A)(iii). Pub. L. 115-118, §205(a)(2), substituted “subparagraphs (A) through (D)” for “paragraphs (1) through (4)”.

Subsec. (d). Pub. L. 115-118, §205(b)(3), struck out “immediately” after “the court shall”.

2010—Subsecs. (a)(3), (4)(A)(ii), (e). Pub. L. 111-259 made technical amendment to directory language of Pub. L. 108-458. See 2004 Amendment note below.

2008—Subsec. (c). Pub. L. 110-261 inserted “(except when sitting en banc)” after “except that no judge”.

2004—Subsecs. (a)(3), (4)(A)(ii), (e). Pub. L. 108-458, as amended by Pub. L. 111-259, substituted “Director of National Intelligence” for “Director of Central Intelligence”.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 3001 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 3001 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 14, 1994, with exception for certain physical searches approved by the Attorney General to gather foreign intelligence information, see section 807(c) of Pub. L. 103-359, set out as a note under section 1821 of this title.

**Executive Documents**

EX. ORD. NO. 12949. FOREIGN INTELLIGENCE PHYSICAL SEARCHES

Ex. Ord. No. 12949, Feb. 9, 1995, 60 F.R. 8169, as amended by Ex. Ord. No. 13383, §2, July 15, 2005, 70 F.R. 41933; Ex. Ord. No. 13475, §2, Oct. 7, 2008, 73 F.R. 60095, provided:

By the authority vested in me as President by the Constitution and the laws of the United States, including sections 302 and 303 of the Foreign Intelligence Surveillance Act of 1978 (“Act”) (50 U.S.C. 1801, *et seq.*), as amended by Public Law 103-359 [50 U.S.C. 1822, 1823], and in order to provide for the authorization of physical searches for foreign intelligence purposes as set forth in the Act, it is hereby ordered as follows:

SECTION 1. Pursuant to section 302(a)(1) of the Act, the Attorney General is authorized to approve physical

searches, without a court order, to acquire foreign intelligence information for periods of up to one year, if the Attorney General makes the certifications required by that section.

SEC. 2. Pursuant to section 302(b) of the Act, the Attorney General is authorized to approve applications to the Foreign Intelligence Surveillance Court under section 303 of the Act to obtain orders for physical searches for the purpose of collecting foreign intelligence information.

SEC. 3. Pursuant to section 303(a)(6) of the Act, the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by section 303(a)(6) of the Act in support of applications to conduct physical searches:

- (a) Secretary of State;
- (b) Secretary of Defense;
- [(c)] Director of National Intelligence;
- (d) Director of the Federal Bureau of Investigation;
- (e) Deputy Secretary of State;
- (f) Deputy Secretary of Defense;
- (g) Director of the Central Intelligence Agency;
- (h) Principal Deputy Director of National Intelligence; and
- (i) Deputy Director of the Federal Bureau of Investigation.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President, by and with the advice and consent of the Senate. The requirement of the preceding sentence that the named official must be appointed by the President with the advice and consent of the Senate does not apply to the Deputy Director of the Federal Bureau of Investigation.

### § 1823. Application for order

#### (a) Submission by Federal officer; approval of Attorney General; contents

Each application for an order approving a physical search under this subchapter shall be made by a Federal officer in writing upon oath or affirmation to a judge of the Foreign Intelligence Surveillance Court. Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements for such application as set forth in this subchapter. Each application shall include—

- (1) the identity of the Federal officer making the application;
- (2) the identity, if known, or a description of the target of the search, and a description of the premises or property to be searched and of the information, material, or property to be seized, reproduced, or altered;
- (3) a statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that—
  - (A) the target of the physical search is a foreign power or an agent of a foreign power;
  - (B) the premises or property to be searched contains foreign intelligence information; and
  - (C) the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power;
- (4) a statement of the proposed minimization procedures;
- (5) a statement of the nature of the foreign intelligence sought and the manner in which the physical search is to be conducted;

(6) a certification or certifications by the Assistant to the President for National Security Affairs, an executive branch official or officials designated by the President from among those executive branch officers employed in the area of national security or defense and appointed by the President, by and with the advice and consent of the Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—

- (A) that the certifying official deems the information sought to be foreign intelligence information;
- (B) that a significant purpose of the search is to obtain foreign intelligence information;
- (C) that such information cannot reasonably be obtained by normal investigative techniques;
- (D) that designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and
- (E) includes a statement explaining the basis for the certifications required by subparagraphs (C) and (D);

(7) where the physical search involves a search of the residence of a United States person, the Attorney General shall state what investigative techniques have previously been utilized to obtain the foreign intelligence information concerned and the degree to which these techniques resulted in acquiring such information; and

(8) a statement of the facts concerning all previous applications that have been made to any judge under this subchapter involving any of the persons, premises, or property specified in the application, and the action taken on each previous application.

#### (b) Additional affidavits or certifications

The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

#### (c) Additional information

The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 1824 of this title.

#### (d) Personal review by Attorney General

(1)(A) Upon written request of the Director of the Federal Bureau of Investigation, the Secretary of Defense, the Secretary of State, the Director of National Intelligence, or the Director of the Central Intelligence Agency, the Attorney General shall personally review under subsection (a) an application under that subsection for a target described in section 1801(b)(2) of this title.

(B) Except when disabled or otherwise unavailable to make a request referred to in subparagraph (A), an official referred to in that subparagraph may not delegate the authority to make a request referred to in that subparagraph.

(C) Each official referred to in subparagraph (A) with authority to make a request under that subparagraph shall take appropriate actions in advance to ensure that delegation of such authority is clearly established in the event such

official is disabled or otherwise unavailable to make such request.

(2)(A) If as a result of a request under paragraph (1) the Attorney General determines not to approve an application under the second sentence of subsection (a) for purposes of making the application under this section, the Attorney General shall provide written notice of the determination to the official making the request for the review of the application under that paragraph. Except when disabled or otherwise unavailable to make a determination under the preceding sentence, the Attorney General may not delegate the responsibility to make a determination under that sentence. The Attorney General shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event the Attorney General is disabled or otherwise unavailable to make such determination.

(B) Notice with respect to an application under subparagraph (A) shall set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application under the second sentence of subsection (a) for purposes of making the application under this section.

(C) Upon review of any modifications of an application set forth under subparagraph (B), the official notified of the modifications under this paragraph shall modify the application if such official determines that such modification is warranted. Such official shall supervise the making of any modification under this subparagraph. Except when disabled or otherwise unavailable to supervise the making of any modification under the preceding sentence, such official may not delegate the responsibility to supervise the making of any modification under that preceding sentence. Each such official shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to supervise the making of such modification.

(Pub. L. 95-511, title III, §303, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3446; amended Pub. L. 106-567, title VI, §603(a), Dec. 27, 2000, 114 Stat. 2852; Pub. L. 107-56, title II, §218, Oct. 26, 2001, 115 Stat. 291; Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 110-261, title I, §107(a), July 10, 2008, 122 Stat. 2462; Pub. L. 111-259, title VIII, §806(a)(2), Oct. 7, 2010, 124 Stat. 2748.)

### Editorial Notes

#### AMENDMENTS

2010—Subsec. (d)(1)(A). Pub. L. 111-259 made technical amendment to directory language of Pub. L. 108-458. See 2004 Amendment note below.

2008—Subsec. (a)(2). Pub. L. 110-261, §107(a)(1)(A)-(C), redesignated par. (3) as (2), struck out “detailed” before “description of the premises”, and struck out former par. (2) which read as follows: “the authority conferred on the Attorney General by the President and the approval of the Attorney General to make the application;”.

Subsec. (a)(3). Pub. L. 110-261, §107(a)(1)(B), (D), redesignated par. (4) as (3) and inserted “or is about to be” before “owned” in subpar. (C). Former par. (3) redesignated (2).

Subsec. (a)(4), (5). Pub. L. 110-261, §107(a)(1)(B), redesignated pars. (5) and (6) as (4) and (5), respectively. Former par. (4) redesignated (3).

Subsec. (a)(6). Pub. L. 110-261, §107(a)(1)(B), (E), redesignated par. (7) as (6) and substituted “Affairs,” for “Affairs or” and “Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—” for “Senate—” in introductory provisions. Former par. (6) redesignated (5).

Subsec. (a)(7) to (9). Pub. L. 110-261, §107(a)(1)(B), redesignated pars. (8) and (9) as (7) and (8), respectively. Former par. (7) redesignated (6).

Subsec. (d)(1)(A). Pub. L. 110-261, §107(a)(2), substituted “the Director of National Intelligence, or the Director of the Central Intelligence Agency” for “or the Director of National Intelligence”.

2004—Subsec. (d)(1)(A). Pub. L. 108-458, as amended by Pub. L. 111-259, substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2001—Subsec. (a)(7)(B). Pub. L. 107-56 substituted “a significant purpose” for “the purpose”.

2000—Subsec. (d). Pub. L. 106-567 added subsec. (d).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 3001 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 3001 of this title.

#### EFFECTIVE DATE

Section effective 90 days after Oct. 14, 1994, with exception for certain physical searches approved by the Attorney General to gather foreign intelligence information, see section 807(c) of Pub. L. 103-359, set out as a note under section 1821 of this title.

#### OFFICIALS DESIGNATED TO MAKE CERTIFICATIONS

For provisions listing officials designated by President to make certifications required by subsec. (a)(7) of this section, see Ex. Ord. No. 12949, §3, Feb. 9, 1995, 60 F.R. 8169, set out as a note under section 1822 of this title.

### § 1824. Issuance of order

#### (a) Necessary findings

Upon an application made pursuant to section 1823 of this title, the judge shall enter an ex parte order as requested or as modified approving the physical search if the judge finds that—

(1) the application has been made by a Federal officer and approved by the Attorney General;

(2) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the physical search is a foreign power or an agent of a foreign power, except that no United States person may be

considered an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from an agent of a foreign power or a foreign power;

(3) the proposed minimization procedures meet the definition of minimization contained in this subchapter; and

(4) the application which has been filed contains all statements and certifications required by section 1823 of this title, and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 1823(a)(6)(E) of this title and any other information furnished under section 1823(c) of this title.

**(b) Determination of probable cause**

In determining whether or not probable cause exists for purposes of an order under subsection (a)(2), a judge may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target.

**(c) Specifications and directions of orders**

An order approving a physical search under this section shall—

(1) specify—

(A) the identity, if known, or a description of the target of the physical search;

(B) the nature and location of each of the premises or property to be searched;

(C) the type of information, material, or property to be seized, altered, or reproduced;

(D) a statement of the manner in which the physical search is to be conducted and, whenever more than one physical search is authorized under the order, the authorized scope of each search and what minimization procedures shall apply to the information acquired by each search; and

(E) the period of time during which physical searches are approved; and

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified landlord, custodian, or other specified person furnish the applicant forthwith all information, facilities, or assistance necessary to accomplish the physical search in such a manner as will protect its secrecy and produce a minimum of interference with the services that such landlord, custodian, or other person is providing the target of the physical search;

(C) that such landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the search or the aid furnished that such person wishes to retain;

(D) that the applicant compensate, at the prevailing rate, such landlord, custodian, or other person for furnishing such aid; and

(E) that the Federal officer conducting the physical search promptly report to the court

the circumstances and results of the physical search.

**(d) Duration of order; extensions; assessment of compliance**

(1) An order issued under this section may approve a physical search for the period necessary to achieve its purpose, or for 90 days, whichever is less, except that (A) an order under this section shall approve a physical search targeted against a foreign power, as defined in paragraph (1), (2), or (3) of section 1801(a) of this title, for the period specified in the application or for one year, whichever is less, and (B) an order under this section for a physical search targeted against an agent of a foreign power who is not a United States person may be for the period specified in the application or for 120 days, whichever is less.

(2) Extensions of an order issued under this subchapter may be granted on the same basis as the original order upon an application for an extension and new findings made in the same manner as required for the original order, except that an extension of an order under this chapter for a physical search targeted against a foreign power, as defined in paragraph (5), (6), or (7) of section 1801(a) of this title, or against a foreign power, as defined in section 1801(a)(4) of this title, that is not a United States person, or against an agent of a foreign power who is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no property of any individual United States person will be acquired during the period.

(3) At or before the end of the period of time for which a physical search is approved by an order or an extension, or at any time after a physical search is carried out, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

**(e) Emergency orders**

(1) Notwithstanding any other provision of this subchapter, the Attorney General may authorize the emergency employment of a physical search if the Attorney General—

(A) reasonably determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information before an order authorizing such physical search can with due diligence be obtained;

(B) reasonably determines that the factual basis for issuance of an order under this subchapter to approve such physical search exists;

(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

(D) makes an application in accordance with this subchapter to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such physical search.

(2) If the Attorney General authorizes the emergency employment of a physical search

under paragraph (1), the Attorney General shall require that the minimization procedures required by this subchapter for the issuance of a judicial order be followed.

(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

(4) A denial of the application made under this subsection may be reviewed as provided in section 1803 of this title.

(5) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(6) The Attorney General shall assess compliance with the requirements of paragraph (5).

**(f) Retention of applications and orders**

Applications made and orders granted under this subchapter shall be retained for a period of at least 10 years from the date of the application.

(Pub. L. 95-511, title III, §304, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3447; amended Pub. L. 106-567, title VI, §603(b), Dec. 27, 2000, 114 Stat. 2853; Pub. L. 107-56, title II, §207(a)(2), (b)(2), Oct. 26, 2001, 115 Stat. 282; Pub. L. 107-108, title III, §314(a)(4), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, §105(b), Mar. 9, 2006, 120 Stat. 195; Pub. L. 110-261, title I, §§107(b), (c)(1), 110(c)(3), July 10, 2008, 122 Stat. 2463, 2464, 2467; Pub. L. 111-259, title VIII, §§801(5), 806(a)(2), Oct. 7, 2010, 124 Stat. 2746, 2748.)

**Editorial Notes**

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (d)(2), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

**AMENDMENTS**

2010—Subsec. (b). Pub. L. 111-259, §801(5), substituted “subsection (a)(2)” for “subsection (a)(3)”.

Subsec. (c)(2)(C). Pub. L. 111-259, §806(a)(2), made technical amendment to directory language of Pub. L. 108-458. See 2004 Amendment note below.

2008—Subsec. (a). Pub. L. 110-261, §107(b)(1), (c)(1), redesignated pars. (2) to (5) as (1) to (4), respectively, in-

serted “or is about to be” before “owned” in par. (2)(B), substituted “1823(a)(6)(E)” for “1823(a)(7)(E)” in par. (4), and struck out former par. (1) which read as follows: “the President has authorized the Attorney General to approve applications for physical searches for foreign intelligence purposes;”.

Subsec. (d)(2). Pub. L. 110-261, §110(c)(3), substituted “paragraph (5), (6), or (7) of section 1801(a)” for “section 1801(a)(5) or (6)”.

Subsec. (e). Pub. L. 110-261, §107(b)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) related to the power of the Attorney General to authorize the emergency employment of a physical search and required an application be made to a judge within 72 hours after the authorization.

2006—Subsec. (d)(1)(B), (2). Pub. L. 109-177 substituted “who is not a United States person” for “as defined in section 1801(b)(1)(A) of this title”.

2004—Subsec. (c)(2)(C). Pub. L. 108-458, as amended by Pub. L. 111-259, §806(a)(2), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2001—Subsec. (d)(1). Pub. L. 107-56, §207(a)(2), substituted “90 days,” for “forty-five days,” and inserted “(A)” after “except that” and “,” and (B) an order under this section for a physical search targeted against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title may be for the period specified in the application or for 120 days, whichever is less” before period at end.

Subsec. (d)(2). Pub. L. 107-56, §207(b)(2), inserted “or against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title,” after “not a United States person,”.

Subsec. (e)(1)(A)(ii), (3)(C). Pub. L. 107-108 substituted “72 hours” for “24 hours”.

2000—Subsecs. (b) to (f). Pub. L. 106-567 added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

**EFFECTIVE DATE OF 2004 AMENDMENT**

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 3001 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 3001 of this title.

**EFFECTIVE DATE**

Section effective 90 days after Oct. 14, 1994, with exception for certain physical searches approved by the Attorney General to gather foreign intelligence information, see section 807(c) of Pub. L. 103-359, set out as a note under section 1821 of this title.

**§ 1825. Use of information**

**(a) Compliance with minimization procedures; lawful purposes**

Information acquired from a physical search conducted pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees

without the consent of the United States person only in accordance with the minimization procedures required by this subchapter. No information acquired from a physical search pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

**(b) Notice of search and identification of property seized, altered, or reproduced**

Where a physical search authorized and conducted pursuant to section 1824 of this title involves the residence of a United States person, and, at any time after the search the Attorney General determines there is no national security interest in continuing to maintain the secrecy of the search, the Attorney General shall provide notice to the United States person whose residence was searched of the fact of the search conducted pursuant to this chapter and shall identify any property of such person seized, altered, or reproduced during such search.

**(c) Statement for disclosure**

No information acquired pursuant to this subchapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

**(d) Notification by United States**

Whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from a physical search pursuant to the authority of this subchapter, the United States shall, prior to the trial, hearing, or the other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information.

**(e) Notification by States or political subdivisions**

Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof against an aggrieved person any information obtained or derived from a physical search pursuant to the authority of this subchapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

**(f) Motion to suppress**

(1) Any person against whom evidence obtained or derived from a physical search to

which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such search on the grounds that—

(A) the information was unlawfully acquired; or

(B) the physical search was not made in conformity with an order of authorization or approval.

(2) Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

**(g) In camera and ex parte review by district court**

Whenever a court or other authority is notified pursuant to subsection (d) or (e), or whenever a motion is made pursuant to subsection (f), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to a physical search authorized by this subchapter or to discover, obtain, or suppress evidence or information obtained or derived from a physical search authorized by this subchapter, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority shall, notwithstanding any other provision of law, if the Attorney General files an affidavit under oath that disclosure or any adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the physical search as may be necessary to determine whether the physical search of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the physical search, or may require the Attorney General to provide to the aggrieved person a summary of such materials, only where such disclosure is necessary to make an accurate determination of the legality of the physical search.

**(h) Suppression of evidence; denial of motion**

If the United States district court pursuant to subsection (g) determines that the physical search was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the physical search of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the physical search was lawfully authorized or conducted, it shall deny the motion of the aggrieved person except to the

extent that due process requires discovery or disclosure.

**(i) Finality of orders**

Orders granting motions or requests under subsection (h), decisions under this section that a physical search was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to the physical search shall be final orders and binding upon all courts of the United States and the several States except a United States Court of Appeals or the Supreme Court.

**(j) Notification of emergency execution of physical search; contents; postponement, suspension, or elimination**

(1) If an emergency execution of a physical search is authorized under section 1824(d)<sup>1</sup> of this title and a subsequent order approving the search is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to the search as the judge may determine in his discretion it is in the interests of justice to serve, notice of—

(A) the fact of the application;

(B) the period of the search; and

(C) the fact that during the period information was or was not obtained.

(2) On an ex parte showing of good cause to the judge, the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed 90 days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

**(k) Coordination with law enforcement on national security matters**

(1) Federal officers who conduct physical searches to acquire foreign intelligence information under this subchapter may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 1823(a)(6) of this title or the entry of an order under section 1824 of this title.

(Pub. L. 95-511, title III, §305, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3449; amended Pub. L. 107-56, title V,

§504(b), Oct. 26, 2001, 115 Stat. 364; Pub. L. 107-296, title VIII, §899, Nov. 25, 2002, 116 Stat. 2258; Pub. L. 110-261, title I, §§107(c)(2), 110(b)(2), July 10, 2008, 122 Stat. 2464, 2466.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 1824(d) of this title, referred to in subsec. (j)(1), was redesignated section 1824(e) of this title by Pub. L. 106-567, title VI, §603(b)(1), Dec. 27, 2000, 114 Stat. 2853.

AMENDMENTS

2008—Subsec. (k)(1)(B). Pub. L. 110-261, §110(b)(2), substituted “sabotage, international terrorism, or the international proliferation of weapons of mass destruction” for “sabotage or international terrorism”.

Subsec. (k)(2). Pub. L. 110-261, §107(c)(2), substituted “1823(a)(6)” for “1823(a)(7)”.

2002—Subsec. (k)(1). Pub. L. 107-296, in introductory provision, inserted “or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)” after “law enforcement officers”.

2001—Subsec. (k). Pub. L. 107-56 added subsec. (k).

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Section effective 90 days after Oct. 14, 1994, with exception for certain physical searches approved by the Attorney General to gather foreign intelligence information, see section 807(c) of Pub. L. 103-359, set out as a note under section 1821 of this title.

**§ 1826. Congressional oversight**

On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate concerning all physical searches conducted pursuant to this subchapter. On a semiannual basis the Attorney General shall also provide to those committees a report setting forth with respect to the preceding six-month period—

(1) the total number of applications made for orders approving physical searches under this subchapter;

(2) the total number of such orders either granted, modified, or denied;

<sup>1</sup> See References in Text note below.

(3) the number of physical searches which involved searches of the residences, offices, or personal property of United States persons, and the number of occasions, if any, where the Attorney General provided notice pursuant to section 1825(b) of this title; and

(4) the total number of emergency physical searches authorized by the Attorney General under section 1824(e) of this title and the total number of subsequent orders approving or denying such physical searches.

(Pub. L. 95-511, title III, §306, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3451; amended Pub. L. 109-177, title I, §109(a), Mar. 9, 2006, 120 Stat. 204; Pub. L. 114-23, title VI, §605(b), June 2, 2015, 129 Stat. 298.)

#### Editorial Notes

##### AMENDMENTS

2015—Pub. L. 114-23, in introductory provisions, substituted “Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate” for “Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate,” and struck out “and the Committee on the Judiciary of the House of Representatives” after “those committees”.

2006—Pub. L. 109-177, §109(a)(1), (2), in introductory provisions, inserted “, and the Committee on the Judiciary of the Senate,” after “Select Committee on Intelligence of the Senate” and substituted “and the Committee on the Judiciary of the House of Representatives” for “and the Committees on the Judiciary of the House of Representatives and the Senate”.

Par. (4). Pub. L. 109-177, §109(a)(3)–(5), added par. (4).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 90 days after Oct. 14, 1994, with exception for certain physical searches approved by the Attorney General to gather foreign intelligence information, see section 807(c) of Pub. L. 103-359, set out as a note under section 1821 of this title.

#### § 1827. Penalties

##### (a) Prohibited activities

A person is guilty of an offense if he intentionally—

(1) under color of law for the purpose of obtaining foreign intelligence information, executes a physical search within the United States except as authorized by statute; or

(2) discloses or uses information obtained under color of law by physical search within the United States, knowing or having reason to know that the information was obtained through physical search not authorized by statute, for the purpose of obtaining intelligence information.

##### (b) Defense

It is a defense to a prosecution under subsection (a) that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the physical search was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

##### (c) Fine or imprisonment

An offense described in this section is punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

##### (d) Federal jurisdiction

There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

(Pub. L. 95-511, title III, §307, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3452.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 90 days after Oct. 14, 1994, with exception for certain physical searches approved by the Attorney General to gather foreign intelligence information, see section 807(c) of Pub. L. 103-359, set out as a note under section 1821 of this title.

#### § 1828. Civil liability

An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 1801(a) or (b)(1)(A), respectively, of this title, whose premises, property, information, or material has been subjected to a physical search within the United States or about whom information obtained by such a physical search has been disclosed or used in violation of section 1827 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(1) actual damages, but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater;

(2) punitive damages; and

(3) reasonable attorney’s fees and other investigative and litigation costs reasonably incurred.

(Pub. L. 95-511, title III, §308, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3452.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 90 days after Oct. 14, 1994, with exception for certain physical searches approved by the Attorney General to gather foreign intelligence information, see section 807(c) of Pub. L. 103-359, set out as a note under section 1821 of this title.

#### § 1829. Authorization during time of war

Notwithstanding any other provision of law, the President, through the Attorney General, may authorize physical searches without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by the Congress.

(Pub. L. 95-511, title III, §309, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3452.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 90 days after Oct. 14, 1994, with exception for certain physical searches approved by the



Attorney General to gather foreign intelligence information, see section 807(c) of Pub. L. 103-359, set out as a note under section 1821 of this title.

**SUBCHAPTER III—PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES**

**§ 1841. Definitions**

As used in this subchapter:

(1) The terms “foreign power”, “agent of a foreign power”, “international terrorism”, “foreign intelligence information”, “Attorney General”, “United States person”, “United States”, “person”, and “State” shall have the same meanings as in section 1801 of this title.

(2) The terms “pen register” and “trap and trace device” have the meanings given such terms in section 3127 of title 18.

(3) The term “aggrieved person” means any person—

(A) whose telephone line was subject to the installation or use of a pen register or trap and trace device authorized by this subchapter; or

(B) whose communication instrument or device was subject to the use of a pen register or trap and trace device authorized by this subchapter to capture incoming electronic or other communications impulses.

(4)(A) The term “specific selection term”—

(i) is a term that specifically identifies a person, account, address, or personal device, or any other specific identifier; and

(ii) is used to limit, to the greatest extent reasonably practicable, the scope of information sought, consistent with the purpose for seeking the use of the pen register or trap and trace device.

(B) A specific selection term under subparagraph (A) does not include an identifier that does not limit, to the greatest extent reasonably practicable, the scope of information sought, consistent with the purpose for seeking the use of the pen register or trap and trace device, such as an identifier that—

(i) identifies an electronic communication service provider (as that term is defined in section 1881 of this title) or a provider of remote computing service (as that term is defined in section 2711 of title 18), when not used as part of a specific identifier as described in subparagraph (A), unless the provider is itself a subject of an authorized investigation for which the specific selection term is used as the basis for the use; or

(ii) identifies a broad geographic region, including the United States, a city, a county, a State, a zip code, or an area code, when not used as part of a specific identifier as described in subparagraph (A).

(C) For purposes of subparagraph (A), the term “address” means a physical address or electronic address, such as an electronic mail address or temporarily assigned network address (including an Internet protocol address).

(D) Nothing in this paragraph shall be construed to preclude the use of multiple terms or identifiers to meet the requirements of subparagraph (A).

(Pub. L. 95-511, title IV, §401, as added Pub. L. 105-272, title VI, §601(2), Oct. 20, 1998, 112 Stat. 2404; amended Pub. L. 114-23, title II, §201(b), June 2, 2015, 129 Stat. 277.)

**Editorial Notes**

**PRIOR PROVISIONS**

A prior section 401 of Pub. L. 95-511 was renumbered section 701 and was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110-261.

**AMENDMENTS**

2015—Par. (4). Pub. L. 114-23 added par. (4).

**§ 1842. Pen registers and trap and trace devices for foreign intelligence and international terrorism investigations**

**(a) Application for authorization or approval**

(1) Notwithstanding any other provision of law, the Attorney General or a designated attorney for the Government may make an application for an order or an extension of an order authorizing or approving the installation and use of a pen register or trap and trace device for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution which is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

(2) The authority under paragraph (1) is in addition to the authority under subchapter I of this chapter to conduct the electronic surveillance referred to in that paragraph.

**(b) Form of application; recipient**

Each application under this section shall be in writing under oath or affirmation to—

(1) a judge of the court established by section 1803(a) of this title; or

(2) a United States Magistrate Judge under chapter 43 of title 28 who is publicly designated by the Chief Justice of the United States to have the power to hear applications for and grant orders approving the installation and use of a pen register or trap and trace device on behalf of a judge of that court.

**(c) Executive approval; contents of application**

Each application under this section shall require the approval of the Attorney General, or a designated attorney for the Government, and shall include—

(1) the identity of the Federal officer seeking to use the pen register or trap and trace device covered by the application;

(2) a certification by the applicant that the information likely to be obtained is foreign intelligence information not concerning a United States person or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely

upon the basis of activities protected by the first amendment to the Constitution; and

(3) a specific selection term to be used as the basis for the use of the pen register or trap and trace device.

**(d) Ex parte judicial order of approval**

(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the installation and use of a pen register or trap and trace device if the judge finds that the application satisfies the requirements of this section.

(2) An order issued under this section—

(A) shall specify—

(i) the identity, if known, of the person who is the subject of the investigation;

(ii) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied; and

(iii) the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied and, in the case of a trap and trace device, the geographic limits of the trap and trace order;

(B) shall direct that—

(i) upon request of the applicant, the provider of a wire or electronic communication service, landlord, custodian, or other person shall furnish any information, facilities, or technical assistance necessary to accomplish the installation and operation of the pen register or trap and trace device in such a manner as will protect its secrecy and produce a minimum amount of interference with the services that such provider, landlord, custodian, or other person is providing the person concerned;

(ii) such provider, landlord, custodian, or other person—

(I) shall not disclose the existence of the investigation or of the pen register or trap and trace device to any person unless or until ordered by the court; and

(II) shall maintain, under security procedures approved by the Attorney General and the Director of National Intelligence pursuant to section 1805(b)(2)(C)<sup>1</sup> of this title, any records concerning the pen register or trap and trace device or the aid furnished; and

(iii) the applicant shall compensate such provider, landlord, custodian, or other person for reasonable expenses incurred by such provider, landlord, custodian, or other person in providing such information, facilities, or technical assistance; and

(C) shall direct that, upon the request of the applicant, the provider of a wire or electronic communication service shall disclose to the Federal officer using the pen register or trap and trace device covered by the order—

(i) in the case of the customer or subscriber using the service covered by the order (for the period specified by the order)—

(I) the name of the customer or subscriber;

(II) the address of the customer or subscriber;

(III) the telephone or instrument number, or other subscriber number or identifier, of the customer or subscriber, including any temporarily assigned network address or associated routing or transmission information;

(IV) the length of the provision of service by such provider to the customer or subscriber and the types of services utilized by the customer or subscriber;

(V) in the case of a provider of local or long distance telephone service, any local or long distance telephone records of the customer or subscriber;

(VI) if applicable, any records reflecting period of usage (or sessions) by the customer or subscriber; and

(VII) any mechanisms and sources of payment for such service, including the number of any credit card or bank account utilized for payment for such service; and

(ii) if available, with respect to any customer or subscriber of incoming or outgoing communications to or from the service covered by the order—

(I) the name of such customer or subscriber;

(II) the address of such customer or subscriber;

(III) the telephone or instrument number, or other subscriber number or identifier, of such customer or subscriber, including any temporarily assigned network address or associated routing or transmission information; and

(IV) the length of the provision of service by such provider to such customer or subscriber and the types of services utilized by such customer or subscriber.

(3) A denial of the application made under this subsection may be reviewed as provided in section 1803 of this title.

**(e) Time limitation**

(1) Except as provided in paragraph (2), an order issued under this section shall authorize the installation and use of a pen register or trap and trace device for a period not to exceed 90 days. Extensions of such an order may be granted, but only upon an application for an order under this section and upon the judicial finding required by subsection (d). The period of extension shall be for a period not to exceed 90 days.

(2) In the case of an application under subsection (c) where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an order, or an extension of an order, under this section may be for a period not to exceed one year.

**(f) Cause of action barred**

No cause of action shall lie in any court against any provider of a wire or electronic communication service, landlord, custodian, or other person (including any officer, employee, agent, or other specified person thereof) that

<sup>1</sup> See References in Text note below.

furnishes any information, facilities, or technical assistance under subsection (d) in accordance with the terms of an order issued under this section.

**(g) Furnishing of results**

Unless otherwise ordered by the judge, the results of a pen register or trap and trace device shall be furnished at reasonable intervals during regular business hours for the duration of the order to the authorized Government official or officials.

**(h) Privacy procedures**

**(1) In general**

The Attorney General shall ensure that appropriate policies and procedures are in place to safeguard nonpublicly available information concerning United States persons that is collected through the use of a pen register or trap and trace device installed under this section. Such policies and procedures shall, to the maximum extent practicable and consistent with the need to protect national security, include privacy protections that apply to the collection, retention, and use of information concerning United States persons.

**(2) Rule of construction**

Nothing in this subsection limits the authority of the court established under section 1803(a) of this title or of the Attorney General to impose additional privacy or minimization procedures with regard to the installation or use of a pen register or trap and trace device.

(Pub. L. 95-511, title IV, §402, as added Pub. L. 105-272, title VI, §601(2), Oct. 20, 1998, 112 Stat. 2405; amended Pub. L. 107-56, title II, §214(a), Oct. 26, 2001, 115 Stat. 286; Pub. L. 107-108, title III, §314(a)(5), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, §§105(c), 128(a), Mar. 9, 2006, 120 Stat. 195, 228; Pub. L. 111-259, title VIII, §806(a)(2), Oct. 7, 2010, 124 Stat. 2748; Pub. L. 114-23, title II, §§201(a), 202(a), June 2, 2015, 129 Stat. 277; Pub. L. 115-118, title II, §205(b)(4), Jan. 19, 2018, 132 Stat. 22.)

**Editorial Notes**

REFERENCES IN TEXT

Executive Order No. 12333, referred to in subsec. (a)(1), is set out as a note under section 3001 of this title.

Section 1805(b)(2)(C) of this title, referred to in subsec. (d)(2)(B)(ii)(II), was redesignated section 1805(c)(2)(C) of this title by Pub. L. 106-567, title VI, §602(b)(1), Dec. 27, 2000, 114 Stat. 2851.

AMENDMENTS

2018—Subsec. (d)(3). Pub. L. 115-118 added par. (3).

2015—Subsec. (c)(3). Pub. L. 114-23, §201(a), added par. (3).

Subsec. (h). Pub. L. 114-23, §202(a), added subsec. (h).  
2010—Subsec. (d)(2)(B)(ii)(II). Pub. L. 111-259 made technical amendment to directory language of Pub. L. 108-458. See 2004 Amendment note below.

2006—Subsec. (d)(2)(A). Pub. L. 109-177, §128(a)(1), inserted “and” at end of cl. (ii) and substituted semicolon for period at end of cl. (iii).

Subsec. (d)(2)(C). Pub. L. 109-177, §128(a)(2), (3), added subpar. (C).

Subsec. (e). Pub. L. 109-177, §105(c), designated existing provisions as par. (1), substituted “Except as pro-

vided in paragraph (2), an order issued” for “An order issued”, and added par. (2).

2004—Subsec. (d)(2)(B)(ii)(II). Pub. L. 108-458, as amended by Pub. L. 111-259, substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2001—Subsec. (a)(1). Pub. L. 107-56, §214(a)(1), substituted “for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution” for “for any investigation to gather foreign intelligence information or information concerning international terrorism”.

Subsec. (c)(1). Pub. L. 107-108, §314(a)(5)(A), inserted “and” after semicolon at end.

Subsec. (c)(2). Pub. L. 107-56, §214(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “a certification by the applicant that the information likely to be obtained is relevant to an ongoing foreign intelligence or international terrorism investigation being conducted by the Federal Bureau of Investigation under guidelines approved by the Attorney General; and”.

Subsec. (c)(3). Pub. L. 107-56, §214(a)(3), struck out par. (3) which read as follows: “information which demonstrates that there is reason to believe that the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device, has been or is about to be used in communication with—

“(A) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States; or

“(B) a foreign power or agent of a foreign power under circumstances giving reason to believe that the communication concerns or concerned international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States.”

Subsec. (d)(2)(A). Pub. L. 107-56, §214(a)(4), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “shall specify—

“(i) the identity, if known, of the person who is the subject of the foreign intelligence or international terrorism investigation;

“(ii) in the case of an application for the installation and use of a pen register or trap and trace device with respect to a telephone line—

“(I) the identity, if known, of the person to whom is leased or in whose name the telephone line is listed; and

“(II) the number and, if known, physical location of the telephone line; and

“(iii) in the case of an application for the use of a pen register or trap and trace device with respect to a communication instrument or device not covered by clause (ii)—

“(I) the identity, if known, of the person who owns or leases the instrument or device or in whose name the instrument or device is listed; and

“(II) the number of the instrument or device; and”.

Subsec. (f). Pub. L. 107-108, §314(a)(5)(B), substituted “terms of an order issued” for “terms of a court”.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 3001 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 3001 of this title.

### § 1843. Authorization during emergencies

#### (a) Requirements for authorization

Notwithstanding any other provision of this subchapter, when the Attorney General makes a determination described in subsection (b), the Attorney General may authorize the installation and use of a pen register or trap and trace device on an emergency basis to gather foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution if—

(1) a judge referred to in section 1842(b) of this title is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to install and use the pen register or trap and trace device, as the case may be, on an emergency basis; and

(2) an application in accordance with section 1842 of this title is made to such judge as soon as practicable, but not more than 7 days, after the Attorney General authorizes the installation and use of the pen register or trap and trace device, as the case may be, under this section.

#### (b) Determination of emergency and factual basis

A determination under this subsection is a reasonable determination by the Attorney General that—

(1) an emergency requires the installation and use of a pen register or trap and trace device to obtain foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution before an order authorizing the installation and use of the pen register or trap and trace device, as the case may be, can with due diligence be obtained under section 1842 of this title; and

(2) the factual basis for issuance of an order under such section 1842 of this title to approve the installation and use of the pen register or trap and trace device, as the case may be, exists.

#### (c) Effect of absence of order

(1) In the absence of an order applied for under subsection (a)(2) approving the installation and use of a pen register or trap and trace device authorized under this section, the installation and use of the pen register or trap and trace device, as the case may be, shall terminate at the earlier of—

(A) when the information sought is obtained;

(B) when the application for the order is denied under section 1842 of this title; or

(C) 7 days after the time of the authorization by the Attorney General.

(2) In the event that an application for an order applied for under subsection (a)(2) is denied, or in any other case where the installation and use of a pen register or trap and trace device under this section is terminated and no order under section 1842 of this title is issued approving the installation and use of the pen register or trap and trace device, as the case may be, no information obtained or evidence derived from the use of the pen register or trap and trace device, as the case may be, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from the use of the pen register or trap and trace device, as the case may be, shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(3) A denial of the application made under subsection (a)(2) may be reviewed as provided in section 1803 of this title.

#### (d) Privacy procedures

Information collected through the use of a pen register or trap and trace device installed under this section shall be subject to the policies and procedures required under section 1842(h) of this title.

(Pub. L. 95-511, title IV, §403, as added Pub. L. 105-272, title VI, §601(2), Oct. 20, 1998, 112 Stat. 2407; amended Pub. L. 107-56, title II, §214(b), Oct. 26, 2001, 115 Stat. 287; Pub. L. 110-261, title I, §108, July 10, 2008, 122 Stat. 2464; Pub. L. 114-23, title II, §202(b), June 2, 2015, 129 Stat. 278; Pub. L. 115-118, title II, §205(b)(5), Jan. 19, 2018, 132 Stat. 22.)

### Editorial Notes

#### AMENDMENTS

2018—Subsec. (c)(3). Pub. L. 115-118 added par. (3).

2015—Subsec. (d). Pub. L. 114-23 added subsec. (d).

2008—Subsecs. (a)(2), (c)(1)(C). Pub. L. 110-261 substituted “7 days” for “48 hours”.

2001—Subsec. (a). Pub. L. 107-56, §214(b)(1), substituted “foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution” for “foreign intelligence information or information concerning international terrorism” in introductory provisions.

Subsec. (b)(1). Pub. L. 107-56, §214(b)(2), substituted “foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Con-

stitution” for “foreign intelligence information or information concerning international terrorism”.

#### **Statutory Notes and Related Subsidiaries**

##### **EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

#### **§ 1844. Authorization during time of war**

Notwithstanding any other provision of law, the President, through the Attorney General, may authorize the use of a pen register or trap and trace device without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by Congress.

(Pub. L. 95-511, title IV, § 404, as added Pub. L. 105-272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2408.)

#### **§ 1845. Use of information**

##### **(a) In general**

(1) Information acquired from the use of a pen register or trap and trace device installed pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the provisions of this section.

(2) No information acquired from a pen register or trap and trace device installed and used pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

##### **(b) Disclosure for law enforcement purposes**

No information acquired pursuant to this subchapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

##### **(c) Notification of intended disclosure by United States**

Whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States against an aggrieved person any information obtained or derived from the use of a pen register or trap and trace device pursuant to this subchapter, the United States shall, before the trial, hearing, or the other proceeding or at a reasonable time before an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information.

##### **(d) Notification of intended disclosure by State or political subdivision**

Whenever any State or political subdivision thereof intends to enter into evidence or other-

wise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the State or political subdivision thereof against an aggrieved person any information obtained or derived from the use of a pen register or trap and trace device pursuant to this subchapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

##### **(e) Motion to suppress**

(1) Any aggrieved person against whom evidence obtained or derived from the use of a pen register or trap and trace device is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, or a State or political subdivision thereof, may move to suppress the evidence obtained or derived from the use of the pen register or trap and trace device, as the case may be, on the grounds that—

(A) the information was unlawfully acquired; or

(B) the use of the pen register or trap and trace device, as the case may be, was not made in conformity with an order of authorization or approval under this subchapter.

(2) A motion under paragraph (1) shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the aggrieved person concerned was not aware of the grounds of the motion.

##### **(f) In camera and ex parte review**

(1) Whenever a court or other authority is notified pursuant to subsection (c) or (d), whenever a motion is made pursuant to subsection (e), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to the use of a pen register or trap and trace device authorized by this subchapter or to discover, obtain, or suppress evidence or information obtained or derived from the use of a pen register or trap and trace device authorized by this subchapter, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority shall, notwithstanding any other provision of law and if the Attorney General files an affidavit under oath that disclosure or any adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the use of the pen register or trap and trace device, as the case may be, as may be necessary to determine whether the use of the pen register or trap and trace device, as the case may be, was lawfully authorized and conducted.

(2) In making a determination under paragraph (1), the court may disclose to the ag-

grieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the use of the pen register or trap and trace device, as the case may be, or may require the Attorney General to provide to the aggrieved person a summary of such materials, only where such disclosure is necessary to make an accurate determination of the legality of the use of the pen register or trap and trace device, as the case may be.

**(g) Effect of determination of lawfulness**

(1) If the United States district court determines pursuant to subsection (f) that the use of a pen register or trap and trace device was not lawfully authorized or conducted, the court may, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the use of the pen register or trap and trace device, as the case may be, or otherwise grant the motion of the aggrieved person.

(2) If the court determines that the use of the pen register or trap and trace device, as the case may be, was lawfully authorized or conducted, it may deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

**(h) Binding final orders**

Orders granting motions or requests under subsection (g), decisions under this section that the use of a pen register or trap and trace device was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to the installation and use of a pen register or trap and trace device shall be final orders and binding upon all courts of the United States and the several States except a United States Court of Appeals or the Supreme Court.

(Pub. L. 95-511, title IV, §405, as added Pub. L. 105-272, title VI, §601(2), Oct. 20, 1998, 112 Stat. 2408.)

**§ 1846. Congressional oversight**

(a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, concerning all uses of pen registers and trap and trace devices pursuant to this subchapter.

(b) On a semiannual basis, the Attorney General shall also provide to the committees referred to in subsection (a) a report setting forth with respect to the preceding 6-month period—

(1) the total number of applications made for orders approving the use of pen registers or trap and trace devices under this subchapter;

(2) the total number of such orders either granted, modified, or denied;

(3) the total number of pen registers and trap and trace devices whose installation and use was authorized by the Attorney General on an emergency basis under section 1843 of this title, and the total number of subsequent

orders approving or denying the installation and use of such pen registers and trap and trace devices;

(4) each department or agency on behalf of which the Attorney General or a designated attorney for the Government has made an application for an order authorizing or approving the installation and use of a pen register or trap and trace device under this subchapter;

(5) for each department or agency described in paragraph (4), each number described in paragraphs (1), (2), and (3); and

(6) a good faith estimate of the total number of subjects who were targeted by the installation and use of a pen register or trap and trace device under an order or emergency authorization issued under this subchapter, rounded to the nearest 500, including—

(A) the number of such subjects who are United States persons, reported to the nearest band of 500, starting with 0-499; and

(B) of the number of United States persons described in subparagraph (A), the number of persons whose information acquired pursuant to such order was reviewed or accessed by a Federal officer, employee, or agent, reported to the nearest band of 500, starting with 0-499.

(c) Each report under subsection (b) shall be submitted in unclassified form, to the extent consistent with national security. Not later than 7 days after the date on which the Attorney General submits such a report, the Attorney General shall make the report publicly available, or, if the Attorney General determines that the report cannot be made publicly available consistent with national security, the Attorney General may make publicly available an unclassified summary of the report or a redacted version of the report.

(Pub. L. 95-511, title IV, §406, as added Pub. L. 105-272, title VI, §601(2), Oct. 20, 1998, 112 Stat. 2410; amended Pub. L. 109-177, title I, §§109(b), 128(b), Mar. 9, 2006, 120 Stat. 204, 229; Pub. L. 114-23, title VI, §605(c), June 2, 2015, 129 Stat. 298; Pub. L. 115-118, title I, §107(b), title II, §205(a)(3), Jan. 19, 2018, 132 Stat. 14, 21.)

**Editorial Notes**

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-118, §205(a)(3), struck out “and to the Committees on the Judiciary of the House of Representatives and the Senate” after “to the committees referred to in subsection (a)” in introductory provisions.

Subsec. (b)(6). Pub. L. 115-118, §107(b)(1), added par. (6).

Subsec. (c). Pub. L. 115-118, §107(b)(2), added subsec. (c).

2015—Subsec. (b)(4), (5). Pub. L. 114-23 added pars. (4) and (5).

2006—Subsec. (a). Pub. L. 109-177, §128(b), inserted “, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,” after “Select Committee on Intelligence of the Senate”.

Subsec. (b)(3). Pub. L. 109-177, §109(b), added par. (3).

SUBCHAPTER IV—ACCESS TO CERTAIN  
BUSINESS RECORDS FOR FOREIGN IN-  
TELLIGENCE PURPOSES

§ 1861. Definitions

As used in this subchapter:

(1) The terms “foreign power”, “agent of a foreign power”, “foreign intelligence information”, “international terrorism”, and “Attorney General” shall have the same meanings as in section 1801 of this title.

(2) The term “common carrier” means any person or entity transporting people or property by land, rail, water, or air for compensation.

(3) The term “physical storage facility” means any business or entity that provides space for the storage of goods or materials, or services related to the storage of goods or materials, to the public or any segment thereof.

(4) The term “public accommodation facility” means any inn, hotel, motel, or other establishment that provides lodging to transient guests.

(5) The term “vehicle rental facility” means any person or entity that provides vehicles for rent, lease, loan, or other similar use to the public or any segment thereof.

(Pub. L. 95-511, title V, §501, as added Pub. L. 107-56, title II, §215, Oct. 26, 2001, 115 Stat. 287; amended Pub. L. 107-108, title III, §314(a)(6), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 109-177, title I, §§102(b)(1), 106(a)-(e), (f)(2), (g), Mar. 9, 2006, 120 Stat. 195-198; Pub. L. 109-178, §§3, 4(a), Mar. 9, 2006, 120 Stat. 278, 280; Pub. L. 111-118, div. B, §1004(a), Dec. 19, 2009, 123 Stat. 3470; Pub. L. 111-141, §1(a), Feb. 27, 2010, 124 Stat. 37; Pub. L. 112-3, §2(a), Feb. 25, 2011, 125 Stat. 5; Pub. L. 112-14, §2(a), May 26, 2011, 125 Stat. 216; Pub. L. 114-23, title I, §§101-107, title VII, §705(a), (c), June 2, 2015, 129 Stat. 269-273, 300; Pub. L. 115-118, title II, §205(b)(6), Jan. 19, 2018, 132 Stat. 22; Pub. L. 116-69, div. B, title VII, §1703(a), Nov. 21, 2019, 133 Stat. 1143.)

Editorial Notes

CODIFICATION

Pursuant to Pub. L. 109-177, §102(b)(1), as amended by Pub. L. 112-14, this section was amended, effective June 1, 2015, to read as it read on Oct. 25, 2001. The amendments made by Pub. L. 114-23, which was enacted June 2, 2015, were directed to this section as it read prior to such reversion and were executed as if the reversion had not taken place, to reflect the probable intent of Congress and the extension of the provisions of this section to Dec. 15, 2019, by Pub. L. 114-23, §705(a), (c). See 2015 Amendment notes below.

PRIOR PROVISIONS

A prior section 1861, Pub. L. 95-511, title V, §501, as added Pub. L. 105-272, title VI, §602, Oct. 20, 1998, 112 Stat. 2410, defined terms used in this subchapter, prior to repeal by Pub. L. 107-56, title II, §215, Oct. 26, 2001, 115 Stat. 287.

AMENDMENTS

2019—Pub. L. 116-69 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2018—Subsec. (c)(4). Pub. L. 115-118 added par. (4).

2015—Pub. L. 114-23, §705(a), (c), amended directory language of Pub. L. 109-177, §102(b)(1). See Codification note above and 2006 Amendment note below.

Subsec. (b)(2)(A). Pub. L. 114-23, §103(a), added subpar. (A). Former subpar. (A) redesignated (B).

Pub. L. 114-23, §101(a)(1)(A), substituted “in the case of an application other than an application described in subparagraph (C) (including an application for the production of call detail records other than in the manner described in subparagraph (C)), a statement” for “a statement” in introductory provisions.

Subsec. (b)(2)(A)(iii). Pub. L. 114-23, §101(a)(1)(B), struck out “and” at end.

Subsec. (b)(2)(B). Pub. L. 114-23, §101(a)(2), redesignated subpar. (A) as (B). Former subpar. (B) redesignated (D).

Subsec. (b)(2)(C). Pub. L. 114-23, §101(a)(3), added subpar. (C).

Subsec. (b)(2)(D). Pub. L. 114-23, §101(a)(2), redesignated subpar. (B) as (D).

Subsec. (c)(1). Pub. L. 114-23, §104(a)(1), inserted “and that the minimization procedures submitted in accordance with subsection (b)(2)(D) meet the definition of minimization procedures under subsection (g)” after “subsections (a) and (b)”.

Subsec. (c)(2)(A). Pub. L. 114-23, §103(b)(1), inserted before semicolon at end “, including each specific selection term to be used as the basis for the production”.

Subsec. (c)(2)(F). Pub. L. 114-23, §101(b), added subpar. (F).

Subsec. (c)(3). Pub. L. 114-23, §103(b)(2), added par. (3).  
Subsec. (d)(1). Pub. L. 114-23, §102(b)(1)(A), substituted “pursuant to an order issued or an emergency production required” for “pursuant to an order” in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 114-23, §102(b)(1)(B), substituted “such order or such emergency production” for “such order”.

Subsec. (d)(1)(B). Pub. L. 114-23, §102(b)(1)(C), substituted “the order or the emergency production” for “the order”.

Subsec. (d)(2)(A). Pub. L. 114-23, §102(b)(2)(A), substituted “an order or emergency production” for “an order”.

Subsec. (d)(2)(B). Pub. L. 114-23, §102(b)(2)(B), substituted “an order or emergency production” for “an order”.

Subsec. (e). Pub. L. 114-23, §105, amended subsec. (e) generally. Prior to amendment, text read as follows: “A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.”

Subsec. (f)(2)(A)(i). Pub. L. 114-23, §104(b)(1), substituted “the production order or any nondisclosure order imposed in connection with the production order” for “that order” and struck out at end “Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section 1803(e)(1) of this title.”

Subsec. (f)(2)(C)(ii), (iii). Pub. L. 114-23, §104(b)(2), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: “If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive, unless the judge finds that the certification was made in bad faith.”

Subsec. (g)(1). Pub. L. 114-23, §104(a)(3), substituted “The” for “Not later than 180 days after March 9, 2006, the” and inserted “, and update as appropriate,” after “adopt”.

Subsec. (g)(3). Pub. L. 114-23, §104(a)(2), added par. (3).

Subsec. (i). Pub. L. 114-23, §102(a), which directed adding subsec. (i) at the end of this section, effective after

the addition of subsecs. (j) and (k), was executed by adding subsec. (i) after subsec. (h) to reflect the probable intent of Congress.

Subsec. (j). Pub. L. 114-23, §106, added subsec. (j).

Subsec. (k). Pub. L. 114-23, §107, added subsec. (k).

2011—Pub. L. 112-14 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

Pub. L. 112-3 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2010—Pub. L. 111-141 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2009—Pub. L. 111-118 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2006—Pub. L. 109-177, §102(b)(1), as amended by Pub. L. 111-118, Pub. L. 111-141, Pub. L. 112-3, Pub. L. 112-14, Pub. L. 114-23, §705(a), (c), and Pub. L. 116-69, amended section effective Mar. 15, 2020, so as to read as it read on Oct. 25, 2001. Prior to amendment, section related to access to certain business records for foreign intelligence and international terrorism investigations.

Subsec. (a)(1). Pub. L. 109-177, §106(a)(1), substituted “Subject to paragraph (3), the Director” for “The Director”.

Subsec. (a)(3). Pub. L. 109-177, §106(a)(2), added par. (3).

Subsec. (b)(2). Pub. L. 109-177, §106(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.”

Subsec. (c). Pub. L. 109-177, §106(c), (d), amended subsec. (c) generally. Prior to amendment, text read as follows:

“(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section.

“(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).”

Subsec. (d). Pub. L. 109-177, §106(e), amended subsec. (d) generally. Prior to amendment, text read as follows: “No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section.”

Subsec. (d)(2)(C). Pub. L. 109-178, §4(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”

Subsec. (f). Pub. L. 109-178, §3, amended subsec. (f) generally. Prior to amendment, subsec. (f) provided for judicial proceedings relating to challenging an order to produce tangible things.

Pub. L. 109-177, §106(f)(2), added subsec. (f).

Subsecs. (g), (h). Pub. L. 109-177, §106(g), added subsecs. (g) and (h).

2001—Subsec. (a)(1). Pub. L. 107-108 inserted “to obtain foreign intelligence information not concerning a United States person or” after “an investigation”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-23, title I, §109(a), June 2, 2015, 129 Stat. 276, provided that: “The amendments made by sections

101 through 103 [amending this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [June 2, 2015].”

##### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 102(b)(1) of Pub. L. 109-177 effective Mar. 15, 2020, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before Mar. 15, 2020, or with respect to any particular offense or potential offense that began or occurred before Mar. 15, 2020, see section 102(b) of Pub. L. 109-177, set out as a note under section 1805 of this title.

##### CONSTRUCTION OF PUB. L. 114-23

Pub. L. 114-23, title I, §109(b), June 2, 2015, 129 Stat. 276, provided that: “Nothing in this Act [see Tables for classification] shall be construed to alter or eliminate the authority of the Government to obtain an order under title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) as in effect prior to the effective date described in subsection (a) [see Effective Date of 2015 Amendment note above] during the period ending on such effective date.”

Pub. L. 114-23, title I, §110, June 2, 2015, 129 Stat. 276, provided that: “Nothing in this Act [see Tables for classification] shall be construed to authorize the production of the contents (as such term is defined in section 2510(8) of title 18, United States Code) of any electronic communication from an electronic communication service provider (as such term is defined in section 701(b)(4) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881(b)(4))) under title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.).”

#### § 1862. Access to certain business records for foreign intelligence and international terrorism investigations

##### (a) Application for authorization

The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order authorizing a common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to release records in its possession for an investigation to gather foreign intelligence information or an investigation concerning international terrorism which investigation is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

##### (b) Recipient and contents of application

Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section 1803(a) of this title; or

(B) a United States Magistrate Judge under chapter 43 of title 28 who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the release of records under this section on behalf of a judge of that court; and

(2) shall specify that—

(A) the records concerned are sought for an investigation described in subsection (a); and

(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.



**(c) Ex parte judicial order of approval**

(1) Upon application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application satisfies the requirements of this section.

(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

**(d) Compliance; nondisclosure**

(1) Any common carrier, public accommodation facility, physical storage facility, or vehicle rental facility shall comply with an order under subsection (c).

(2) No common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, or officer, employee, or agent thereof, shall disclose to any person (other than those officers, agents, or employees of such common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section) that the Federal Bureau of Investigation has sought or obtained records pursuant to an order under this section. (Pub. L. 95-511, title V, § 502, as added Pub. L. 107-56, title II, § 215, Oct. 26, 2001, 115 Stat. 288; amended Pub. L. 107-108, title III, § 314(a)(7), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 109-177, title I, §§ 102(b)(1), 106(h), Mar. 9, 2006, 120 Stat. 195, 199; Pub. L. 111-118, div. B, § 1004(a), Dec. 19, 2009, 123 Stat. 3470; Pub. L. 111-141, § 1(a), Feb. 27, 2010, 124 Stat. 37; Pub. L. 111-259, title VIII, § 801(6), Oct. 7, 2010, 124 Stat. 2746; Pub. L. 112-3, § 2(a), Feb. 25, 2011, 125 Stat. 5; Pub. L. 112-14, § 2(a), May 26, 2011, 125 Stat. 216; Pub. L. 114-23, title VI, §§ 601, 605(d), title VII, § 705(a), (c), June 2, 2015, 129 Stat. 291, 298, 300; Pub. L. 116-69, div. B, title VII, § 1703(a), Nov. 21, 2019, 133 Stat. 1143.)

**Editorial Notes****REFERENCES IN TEXT**

Executive Order No. 12333, referred to in subsec. (a), is set out as a note under section 3001 of this title.

**CODIFICATION**

Pursuant to Pub. L. 109-177, § 102(b)(1), as amended by Pub. L. 112-14, this section was amended, effective June 1, 2015, to read as it read on Oct. 25, 2001. The amendments made by Pub. L. 114-23, which was enacted June 2, 2015, were directed to this section as it read prior to such reversion and were executed as if the reversion had not taken place, to reflect the probable intent of Congress and the extension of the provisions of this section to Dec. 15, 2019, by Pub. L. 114-23, § 705(a), (c). See 2015 Amendment notes below.

**PRIOR PROVISIONS**

A prior section 1862, Pub. L. 95-511, title V, § 502, as added Pub. L. 105-272, title VI, § 602, Oct. 20, 1998, 112 Stat. 2411, which related to access to certain business records for foreign intelligence and international terrorism investigations, was repealed by Pub. L. 107-56, title II, § 215, Oct. 26, 2001, 115 Stat. 287.

**AMENDMENTS**

2019—Pub. L. 116-69 amended directory language of Pub. L. 109-177, § 102(b)(1). See 2006 Amendment note below.

2015—Pub. L. 114-23, § 705(a), (c), amended directory language of Pub. L. 109-177, § 102(b)(1). See Codification note above and 2006 Amendment note below.

Subsec. (a). Pub. L. 114-23, § 605(d), substituted “Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate” for “Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate”.

Subsec. (b). Pub. L. 114-23, § 601(a), added pars. (1) to (5) and redesignated former pars. (1) to (3) as (6) to (8), respectively.

Subsec. (c)(1)(C) to (E). Pub. L. 114-23, § 601(b), added subpars. (C) to (E).

2011—Pub. L. 112-14 amended directory language of Pub. L. 109-177, § 102(b)(1). See 2006 Amendment note below.

Pub. L. 112-3 amended directory language of Pub. L. 109-177, § 102(b)(1). See 2006 Amendment note below.

2010—Pub. L. 111-141 amended directory language of Pub. L. 109-177, § 102(b)(1). See 2006 Amendment note below.

Subsec. (a). Pub. L. 111-259 substituted “an annual” for “a annual”.

2009—Pub. L. 111-118 amended directory language of Pub. L. 109-177, § 102(b)(1). See 2006 Amendment note below.

2006—Pub. L. 109-177, § 102(b)(1), as amended by Pub. L. 111-118, Pub. L. 111-141, Pub. L. 112-3, Pub. L. 112-14, Pub. L. 114-23, § 705(a), (c), and Pub. L. 116-69, amended section effective Mar. 15, 2020, so as to read as it read on Oct. 25, 2001. Prior to amendment, section related to reports to Congressional committees concerning requests for the production of tangible things under section 1861 of this title.

Subsec. (a). Pub. L. 109-177, § 106(h)(1), substituted “annual basis” for “semiannual basis” and inserted “and the Committee on the Judiciary” after “and the Select Committee on Intelligence”.

Subsec. (b). Pub. L. 109-177, § 106(h)(2)(A), in introductory provisions, substituted “In April of each year, the Attorney General shall submit to the House and Senate Committees on the Judiciary and the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence a report setting forth with respect to the preceding calendar year” for “On a semiannual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period”.

Subsec. (b)(3). Pub. L. 109-177, § 106(h)(2)(B)–(D), added par. (3).

Subsec. (c). Pub. L. 109-177, § 106(h)(3), added subsec. (c).

2001—Subsecs. (a), (b)(1). Pub. L. 107-108 substituted “section 1861 of this title” for “section 1842 of this title”.

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 2006 AMENDMENT**

Amendment by section 102(b)(1) of Pub. L. 109-177 effective Mar. 15, 2020, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before Mar. 15, 2020, or with respect to any particular offense or potential offense that began or occurred before Mar. 15, 2020, see section 102(b) of Pub. L. 109-177, set out as a note under section 1805 of this title.

**§ 1863. Congressional oversight**

(a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests for records under this subchapter.

(b) On a semiannual basis, the Attorney General shall provide to the Committees on the Ju-

diciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period—

- (1) the total number of applications made for orders approving requests for records under this subchapter; and
- (2) the total number of such orders either granted, modified, or denied.

(Pub. L. 95-511, title V, §503, as added Pub. L. 105-272, title VI, §602, Oct. 20, 1998, 112 Stat. 2412; Pub. L. 109-177, title I, §102(b)(1), Mar. 9, 2006, 120 Stat. 195; Pub. L. 111-118, div. B, §1004(a), Dec. 19, 2009, 123 Stat. 3470; Pub. L. 111-141, §1(a), Feb. 27, 2010, 124 Stat. 37; Pub. L. 112-3, §2(a), Feb. 25, 2011, 125 Stat. 5; Pub. L. 112-14, §2(a), May 26, 2011, 125 Stat. 216; Pub. L. 114-23, title VII, §705(a), (c), June 2, 2015, 129 Stat. 300; Pub. L. 116-69, div. B, title VII, §1703(a), Nov. 21, 2019, 133 Stat. 1143.)

#### Editorial Notes

##### AMENDMENTS

2019—Pub. L. 116-69 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2015—Pub. L. 114-23, §705(a), (c), amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2011—Pub. L. 112-14 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

Pub. L. 112-3 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2010—Pub. L. 111-141 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2009—Pub. L. 111-118 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2006—Pub. L. 109-177, §102(b)(1), revived this section to read as it read on Oct. 25, 2001.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF REVIVAL

Section, which had been repealed by Pub. L. 107-56, title II, §215, Oct. 26, 2001, 115 Stat. 287, was revived by section 102(b)(1) of Pub. L. 109-177 effective Mar. 15, 2020, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before Mar. 15, 2020, or with respect to any particular offense or potential offense that began or occurred before Mar. 15, 2020, see section 102(b) of Pub. L. 109-177, set out as an Effective Date of 2006 Amendment note under section 1805 of this title.

#### § 1864. Notification of changes to retention of call detail record policies

##### (a) Requirement to retain

###### (1) In general

Not later than 15 days after learning that an electronic communication service provider that generates call detail records in the ordinary course of business has changed the policy of the provider on the retention of such call detail records to result in a retention period of less than 18 months, the Director of National Intelligence shall notify, in writing, the congressional intelligence committees of such change.

###### (2) Report

Not later than 30 days after December 18, 2015, the Director shall submit to the congres-

sional intelligence committees a report identifying each electronic communication service provider that has, as of the date of the report, a policy to retain call detail records for a period of 18 months or less.

##### (b) Definitions

In this section:

###### (1) Call detail record

The term “call detail record” has the meaning given that term in section 1861(k)<sup>1</sup> of this title.

###### (2) Electronic communication service provider

The term “electronic communication service provider” has the meaning given that term in section 1881(b)(4) of this title.

(Pub. L. 114-113, div. M, title III, §307, Dec. 18, 2015, 129 Stat. 2916.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 1861(k) of this title, referred to in subsec. (b)(1), means section 1861(k) of this title prior to the amendment of section 1861 by Pub. L. 109-177, title I, §102(b), Mar. 9, 2006, 120 Stat. 195, set out as an Effective Date of 2006 Amendment note under section 1805 of this title, which amended section 1861 of this title, effective Mar. 15, 2020, so that such section read as it read on Oct. 25, 2001, with certain exceptions.

##### CODIFICATION

Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 2016, and also as part of the Consolidated Appropriations Act, 2016, and not as part of the Foreign Intelligence Surveillance Act of 1978 which comprises this chapter.

#### Statutory Notes and Related Subsidiaries

##### DEFINITIONS

For definition of “congressional intelligence committees” as used in this section, see section 2 of div. M of Pub. L. 114-113, set out as a note under section 3003 of this title.

#### SUBCHAPTER V—OVERSIGHT

#### Editorial Notes

##### CODIFICATION

Pub. L. 114-23, title IV, §402(a)(1), June 2, 2015, 129 Stat. 281, substituted “OVERSIGHT” for “REPORTING REQUIREMENT” in heading.

#### § 1871. Semiannual report of the Attorney General

##### (a) Report

On a semiannual basis, the Attorney General shall submit to the Permanent Select Committee on Intelligence of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Committees on the Judiciary of the House of Representatives and the Senate, in a manner consistent with the protection of the national security, a report setting forth with respect to the preceding 6-month period—

- (1) the aggregate number of persons targeted for orders issued under this chapter, including a breakdown of those targeted for—

<sup>1</sup> See References in Text note below.

- (A) electronic surveillance under section 1805 of this title;
- (B) physical searches under section 1824 of this title;
- (C) pen registers under section 1842 of this title;
- (D) access to records under section 1861<sup>1</sup> of this title;
- (E) acquisitions under section 1881b of this title; and
- (F) acquisitions under section 1881c of this title;

(2) the number of individuals covered by an order issued pursuant to section 1801(b)(1)(C)<sup>1</sup> of this title;

(3) the number of times that the Attorney General has authorized that information obtained under this chapter may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding;

(4) a summary of significant legal interpretations of this chapter involving matters before the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review, including interpretations presented in applications or pleadings filed with the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review by the Department of Justice; and

(5) copies of all decisions, orders, or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review that include significant construction or interpretation of the provisions of this chapter.

#### (b) Frequency

The first report under this section shall be submitted not later than 6 months after December 17, 2004. Subsequent reports under this section shall be submitted semi-annually thereafter.

#### (c) Submissions to Congress

The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

(1) not later than 45 days after the date on which the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review issues a decision, order, or opinion, including any denial or modification of an application under this chapter, that includes significant construction or interpretation of any provision of law or results in a change of application of any provision of this chapter or a novel application of any provision of this chapter, a copy of such decision, order, or opinion and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion; and

(2) a copy of each such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, that was issued during the 5-year period ending on July 10, 2008, and not previously submitted in a report under subsection (a).

#### (d) Protection of national security

The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of materials described in subsection (c) that are provided to the committees of Congress referred to in subsection (a), if such redactions are necessary to protect the national security of the United States and are limited to sensitive sources and methods information or the identities of targets.

#### (e) Definitions

In this section:

##### (1) Foreign Intelligence Surveillance Court

The term “Foreign Intelligence Surveillance Court” means the court established under section 1803(a) of this title.

##### (2) Foreign Intelligence Surveillance Court of Review

The term “Foreign Intelligence Surveillance Court of Review” means the court established under section 1803(b) of this title.

(Pub. L. 95-511, title VI, § 601, as added Pub. L. 108-458, title VI, § 6002(a)(2), Dec. 17, 2004, 118 Stat. 3743; amended Pub. L. 110-261, title I, §§ 101(c)(2), 103, title IV, § 403(b)(2)(B), July 10, 2008, 122 Stat. 2459, 2460, 2474; Pub. L. 114-23, title VI, § 604, June 2, 2015, 129 Stat. 297.)

#### AMENDMENT OF SUBSECTION (a)(1)

*Pub. L. 110-261, title IV, § 403(b)(2), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, § 2(a)(2), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, § 201(a)(2), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, subsection (a)(1) of this section is amended to read as it read on the day before July 10, 2008.*

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(1), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 1861 of this title, referred to in subsec. (a)(1)(D), means section 1861 of this title prior to the amendment of section 1861 by Pub. L. 109-177, title I, § 102(b), Mar. 9, 2006, 120 Stat. 195, set out as an Effective Date of 2006 Amendment note under section 1805 of this title, which amended section 1861 of this title, effective Mar. 15, 2020, so that such section read as it read on Oct. 25, 2001, with certain exceptions.

Section 1801(b)(1)(C) of this title, referred to in subsec. (a)(2), was temporarily added by Pub. L. 108-458, title VI, § 6001(a), Dec. 17, 2004, 118 Stat. 3742, and provided that, as used in subchapter I of this chapter, the term “agent of a foreign power” included any person other than a United States person who “engages in international terrorism or activities in preparation therefore”. Such amendment ceased to have effect on Mar. 15, 2020; see section 6001(b) of Pub. L. 108-458, set out as a Termination Date of 2004 Amendment note under section 1801 of this title.

##### PRIOR PROVISIONS

A prior section 601 of Pub. L. 95-511 was renumbered section 701 and was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110-261.

<sup>1</sup> See References in Text note below.

## AMENDMENTS

2015—Subsec. (c)(1). Pub. L. 114-23 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this chapter, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and”.

2008—Subsec. (a)(1)(E), (F). Pub. L. 110-261, §101(c)(2), added subpars. (E) and (F).

Subsec. (a)(5). Pub. L. 110-261, §103(a), substituted “, orders,” for “(not including orders)”.

Subsecs. (c), (d). Pub. L. 110-261, §103(b), added subsecs. (c) and (d).

Subsec. (e). Pub. L. 110-261, §103(c), added subsec. (e).

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-261, title IV, §403(b)(2), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(2), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(2), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the amendments made by section 403(b)(2) are effective Dec. 31, 2023.

**§ 1872. Declassification of significant decisions, orders, and opinions****(a) Declassification required**

Subject to subsection (b), the Director of National Intelligence, in consultation with the Attorney General, shall conduct a declassification review of each decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review (as defined in section 1871(e) of this title) that includes a significant construction or interpretation of any provision of law, including any novel or significant construction or interpretation of the term “specific selection term”, and, consistent with that review, make publicly available to the greatest extent practicable each such decision, order, or opinion.

**(b) Redacted form**

The Director of National Intelligence, in consultation with the Attorney General, may satisfy the requirement under subsection (a) to make a decision, order, or opinion described in such subsection publicly available to the greatest extent practicable by making such decision, order, or opinion publicly available in redacted form.

**(c) National security waiver**

The Director of National Intelligence, in consultation with the Attorney General, may waive the requirement to declassify and make publicly available a particular decision, order, or opinion under subsection (a), if—

(1) the Director of National Intelligence, in consultation with the Attorney General, determines that a waiver of such requirement is necessary to protect the national security of the United States or properly classified intelligence sources or methods; and

(2) the Director of National Intelligence makes publicly available an unclassified state-

ment prepared by the Attorney General, in consultation with the Director of National Intelligence—

(A) summarizing the significant construction or interpretation of any provision of law, which shall include, to the extent consistent with national security, a description of the context in which the matter arises and any significant construction or interpretation of any statute, constitutional provision, or other legal authority relied on by the decision; and

(B) that specifies that the statement has been prepared by the Attorney General and constitutes no part of the opinion of the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review.

(Pub. L. 95-511, title VI, §602, as added Pub. L. 114-23, title IV, §402(a)(2), June 2, 2015, 129 Stat. 281.)

**§ 1873. Annual reports****(a) Report by Director of the Administrative Office of the United States Courts****(1) Report required**

The Director of the Administrative Office of the United States Courts shall annually submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate, subject to a declassification review by the Attorney General and the Director of National Intelligence, a report that includes—

(A) the number of applications or certifications for orders submitted under each of sections 1805, 1824, 1842, 1861,<sup>1</sup> 1881a, 1881b, and 1881c of this title;

(B) the number of such orders granted under each of those sections;

(C) the number of orders modified under each of those sections;

(D) the number of applications or certifications denied under each of those sections;

(E) the number of appointments of an individual to serve as amicus curiae under section 1803 of this title, including the name of each individual appointed to serve as amicus curiae; and

(F) the number of findings issued under section 1803(i) of this title that such appointment is not appropriate and the text of any such findings.

**(2) Publication**

The Director shall make the report required under paragraph (1) publicly available on an Internet Web site, except that the Director shall not make publicly available on an Internet Web site the findings described in subparagraph (F) of paragraph (1).

**(b) Mandatory reporting by Director of National Intelligence**

Except as provided in subsection (d), the Director of National Intelligence shall annually

<sup>1</sup> See References in Text note below.

make publicly available on an Internet Web site a report that identifies, for the preceding 12-month period—

(1) the total number of orders issued pursuant to subchapters I and II and sections 1881b and 1881c of this title and a good faith estimate of—

(A) the number of targets of such orders;

(B) the number of targets of such orders who are known to not be United States persons; and

(C) the number of targets of such orders who are known to be United States persons;

(2) the total number of orders issued pursuant to section 1881a of this title, including pursuant to subsection (f)(2) of such section, and a good faith estimate of—

(A) the number of targets of such orders;

(B) the number of search terms concerning a known United States person used to retrieve the unminimized contents of electronic communications or wire communications obtained through acquisitions authorized under such section, excluding the number of search terms used to prevent the return of information concerning a United States person;

(C) the number of queries concerning a known United States person of unminimized noncontents information relating to electronic communications or wire communications obtained through acquisitions authorized under such section, excluding the number of queries containing information used to prevent the return of information concerning a United States person;<sup>2</sup>

(D) the number of instances in which the Federal Bureau of Investigation opened, under the Criminal Investigative Division or any successor division, an investigation of a United States person (who is not considered a threat to national security) based wholly or in part on an acquisition authorized under such section;

(3) the total number of orders issued pursuant to subchapter III and a good faith estimate of—

(A) the number of targets of such orders, including—

(i) the number of targets of such orders who are known to not be United States persons; and

(ii) the number of targets of such orders who are known to be United States persons; and

(B) the number of unique identifiers used to communicate information collected pursuant to such orders;

(4) the number of criminal proceedings in which the United States or a State or political subdivision thereof provided notice pursuant to subsection (c) or (d) of section 1806 of this title (including with respect to information acquired from an acquisition conducted under section 1881a of this title) or subsection (d) or (e) of section 1825 of this title of the intent of the government to enter into evidence or oth-

erwise use or disclose any information obtained or derived from electronic surveillance, physical search, or an acquisition conducted pursuant to this chapter;

(5) the total number of orders issued pursuant to applications made under section 1861(b)(2)(B)<sup>1</sup> of this title and a good faith estimate of—

(A) the number of targets of such orders; and

(B) the number of unique identifiers used to communicate information collected pursuant to such orders;

(6) the total number of orders issued pursuant to applications made under section 1861(b)(2)(C)<sup>1</sup> of this title and a good faith estimate of—

(A) the number of targets of such orders;

(B) the number of unique identifiers used to communicate information collected pursuant to such orders; and

(C) the number of search terms that included information concerning a United States person that were used to query any database of call detail records obtained through the use of such orders; and

(7) the total number of national security letters issued and the number of requests for information contained within such national security letters.

#### (c) Timing

The annual reports required by subsections (a) and (b) shall be made publicly available during April of each year and include information relating to the previous calendar year.

#### (d) Exceptions

##### (1) Statement of numerical range

If a good faith estimate required to be reported under subparagraph (B) of any of paragraphs (3), (5), or (6) of subsection (b) is fewer than 500, it shall be expressed as a numerical range of “fewer than 500” and shall not be expressed as an individual number.

##### (2) Nonapplicability to certain information

###### (A) Federal Bureau of Investigation

Paragraphs (2)(B), (2)(C), and (6)(C) of subsection (b) shall not apply to information or records held by, or queries conducted by, the Federal Bureau of Investigation, except with respect to information required under paragraph (2) relating to orders issued under section 1881a(f)(2) of this title.

###### (B) Electronic mail address and telephone numbers

Paragraph (3)(B) of subsection (b) shall not apply to orders resulting in the acquisition of information by the Federal Bureau of Investigation that does not include electronic mail addresses or telephone numbers.

##### (3) Certification

###### (A) In general

If the Director of National Intelligence concludes that a good faith estimate required to be reported under subsection (b)(2)(C) cannot be determined accurately because some but not all of the relevant ele-

<sup>2</sup> So in original. Probably should be followed by “and”.

ments of the intelligence community are able to provide such good faith estimate, the Director shall—

(i) certify that conclusion in writing to the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives;

(ii) report the good faith estimate for those relevant elements able to provide such good faith estimate;

(iii) explain when it is reasonably anticipated that such an estimate will be able to be determined fully and accurately; and

(iv) make such certification publicly available on an Internet Web site.

#### **(B) Form**

A certification described in subparagraph (A) shall be prepared in unclassified form, but may contain a classified annex.

#### **(C) Timing**

If the Director of National Intelligence continues to conclude that the good faith estimates described in this paragraph cannot be determined accurately, the Director shall annually submit a certification in accordance with this paragraph.

#### **(e) Definitions**

In this section:

##### **(1) Contents**

The term “contents” has the meaning given that term under section 2510 of title 18.

##### **(2) Electronic communication**

The term “electronic communication” has the meaning given that term under section 2510 of title 18.

##### **(3) National security letter**

The term “national security letter” means a request for a report, records, or other information under—

(A) section 2709 of title 18;

(B) section 3414(a)(5)(A) of title 12;

(C) subsection (a) or (b) of section 1681u of title 15; or

(D) section 1681v(a) of title 15.

##### **(4) United States person**

The term “United States person” means a citizen of the United States or an alien lawfully admitted for permanent residence (as defined in section 1101(a) of title 8).

##### **(5) Wire communication**

The term “wire communication” has the meaning given that term under section 2510 of title 18.

(Pub. L. 95-511, title VI, § 603, as added Pub. L. 114-23, title VI, § 602(a), June 2, 2015, 129 Stat. 292; amended Pub. L. 115-118, title I, § 102(b), Jan. 19, 2018, 132 Stat. 9.)

#### **Editorial Notes**

##### **REFERENCES IN TEXT**

Section 1861 of this title, referred to in subsecs. (a)(1)(A) and (b)(5), (6), means section 1861 of this title

prior to the amendment of section 1861 by Pub. L. 109-177, title I, § 102(b), Mar. 9, 2006, 120 Stat. 195, set out as an Effective Date of 2006 Amendment note under section 1805 of this title, which amended section 1861 of this title, effective Mar. 15, 2020, so that such section read as it read on Oct. 25, 2001, with certain exceptions.

This chapter, referred to in subsec. (b)(4), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

#### **AMENDMENTS**

2018—Subsec. (b)(1). Pub. L. 115-118, § 102(b)(1)(A), substituted “good faith estimate of—” for “good faith estimate of the number of targets of such orders;” and added subpars. (A) to (C).

Subsec. (b)(2). Pub. L. 115-118, § 102(b)(1)(B), inserted “, including pursuant to subsection (f)(2) of such section,” after “section 1881a of this title” in introductory provisions, added subpars. (A) and (D), and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Subsec. (b)(3)(A). Pub. L. 115-118, § 102(b)(1)(C), substituted “orders, including—” for “orders; and” and added cls. (i) and (ii).

Subsec. (b)(4) to (7). Pub. L. 115-118, § 102(b)(1)(D), (E), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

Subsec. (d)(1). Pub. L. 115-118, § 102(b)(2)(A), substituted “(5), or (6)” for “(4), or (5)”.

Subsec. (d)(2)(A). Pub. L. 115-118, § 102(b)(2)(B), substituted “Paragraphs (2)(B), (2)(C), and (6)(C)” for “Paragraphs (2)(A), (2)(B), and (5)(C)” and inserted before period at end “, except with respect to information required under paragraph (2) relating to orders issued under section 1881a(f)(2) of this title”.

Subsec. (d)(3)(A). Pub. L. 115-118, § 102(b)(2)(C), substituted “subsection (b)(2)(C)” for “subsection (b)(2)(B)” in introductory provisions.

#### **§ 1874. Public reporting by persons subject to orders**

##### **(a) Reporting**

A person subject to a nondisclosure requirement accompanying an order or directive under this chapter or a national security letter may, with respect to such order, directive, or national security letter, publicly report the following information using one of the following structures:

(1) A semiannual report that aggregates the number of orders, directives, or national security letters with which the person was required to comply into separate categories of—

(A) the number of national security letters received, reported in bands of 1000 starting with 0-999;

(B) the number of customer selectors targeted by national security letters, reported in bands of 1000 starting with 0-999;

(C) the number of orders or directives received, combined, under this chapter for contents, reported in bands of 1000 starting with 0-999;

(D) the number of customer selectors targeted under orders or directives received, combined, under this chapter for contents, reported in bands of 1000 starting with 0-999;

(E) the number of orders received under this chapter for noncontents, reported in bands of 1000 starting with 0-999; and

(F) the number of customer selectors targeted under orders under this chapter for noncontents, reported in bands of 1000 starting with 0-999, pursuant to—

- (i) subchapter III;
- (ii) subchapter IV with respect to applications described in section 1861(b)(2)(B)<sup>1</sup> of this title; and
- (iii) subchapter IV with respect to applications described in section 1861(b)(2)(C)<sup>1</sup> of this title.

(2) A semiannual report that aggregates the number of orders, directives, or national security letters with which the person was required to comply into separate categories of—

(A) the number of national security letters received, reported in bands of 500 starting with 0-499;

(B) the number of customer selectors targeted by national security letters, reported in bands of 500 starting with 0-499;

(C) the number of orders or directives received, combined, under this chapter for contents, reported in bands of 500 starting with 0-499;

(D) the number of customer selectors targeted under orders or directives received, combined, under this chapter for contents, reported in bands of 500 starting with 0-499;

(E) the number of orders received under this chapter for noncontents, reported in bands of 500 starting with 0-499; and

(F) the number of customer selectors targeted under orders received under this chapter for noncontents, reported in bands of 500 starting with 0-499.

(3) A semiannual report that aggregates the number of orders, directives, or national security letters with which the person was required to comply into separate categories of—

(A) the total number of all national security process received, including all national security letters, and orders or directives under this chapter, combined, reported in bands of 250 starting with 0-249; and

(B) the total number of customer selectors targeted under all national security process received, including all national security letters, and orders or directives under this chapter, combined, reported in bands of 250 starting with 0-249.

(4) An annual report that aggregates the number of orders, directives, and national security letters the person was required to comply with into separate categories of—

(A) the total number of all national security process received, including all national security letters, and orders or directives under this chapter, combined, reported in bands of 100 starting with 0-99; and

(B) the total number of customer selectors targeted under all national security process received, including all national security letters, and orders or directives under this chapter, combined, reported in bands of 100 starting with 0-99.

#### (b) Period of time covered by reports

(1) A report described in paragraph (1) or (2) of subsection (a) shall include only information—

(A) relating to national security letters for the previous 180 days; and

(B) relating to authorities under this chapter for the 180-day period of time ending on the date that is not less than 180 days prior to the date of the publication of such report, except that with respect to a platform, product, or service for which a person did not previously receive an order or directive (not including an enhancement to or iteration of an existing publicly available platform, product, or service) such report shall not include any information relating to such new order or directive until 540 days after the date on which such new order or directive is received.

(2) A report described in paragraph (3) of subsection (a) shall include only information relating to the previous 180 days.

(3) A report described in paragraph (4) of subsection (a) shall include only information for the 1-year period of time ending on the date that is not less than 1 year prior to the date of the publication of such report.

#### (c) Other forms of agreed to publication

Nothing in this section prohibits the Government and any person from jointly agreeing to the publication of information referred to in this subsection in a time, form, or manner other than as described in this section.

#### (d) Definitions

In this section:

##### (1) Contents

The term “contents” has the meaning given that term under section 2510 of title 18.

##### (2) National security letter

The term “national security letter” has the meaning given that term under section 1873 of this title.

(Pub. L. 95-511, title VI, § 604, as added Pub. L. 114-23, title VI, § 603(a), June 2, 2015, 129 Stat. 295; amended Pub. L. 115-118, title II, § 205(a)(4), Jan. 19, 2018, 132 Stat. 21.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1)(B), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 1861(b)(2)(B), (C) of this title, referred to in subsec. (a)(1)(F)(ii), (iii), means section 1861(b)(2)(B), (C) of this title prior to the amendment of section 1861 by Pub. L. 109-177, title I, § 102(b), Mar. 9, 2006, 120 Stat. 195, set out as an Effective Date of 2006 Amendment note under section 1805 of this title, which amended section 1861 of this title, effective Mar. 15, 2020, so that such section read as it read on Oct. 25, 2001, with certain exceptions.

##### AMENDMENTS

2018—Subsec. (a)(1)(D). Pub. L. 115-118, § 205(a)(4)(A), substituted “contents,” for “contents”.

Subsec. (a)(3). Pub. L. 115-118, § 205(a)(4)(B), substituted “comply into” for “comply in the into” in introductory provisions.

<sup>1</sup> See References in Text note below.

SUBCHAPTER VI—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

§ 1881. Definitions

(a) In general

In this subchapter, the terms “agent of a foreign power”, “Attorney General”, “contents”, “electronic surveillance”, “foreign intelligence information”, “foreign power”, “person”, “United States”, and “United States person” have the meanings given such terms in section 1801 of this title, except as specifically provided in this subchapter.

(b) Additional definitions

In this subchapter:

(1) Congressional intelligence committees

The term “congressional intelligence committees” means—

- (A) the Select Committee on Intelligence of the Senate; and
- (B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) Foreign Intelligence Surveillance Court; Court

The terms “Foreign Intelligence Surveillance Court” and “Court” mean the court established under section 1803(a) of this title.

(3) Foreign Intelligence Surveillance Court of Review; Court of Review

The terms “Foreign Intelligence Surveillance Court of Review” and “Court of Review” mean the court established under section 1803(b) of this title.

(4) Electronic communication service provider

The term “electronic communication service provider” means—

- (A) a telecommunications carrier, as that term is defined in section 153 of title 47;
- (B) a provider of electronic communication service, as that term is defined in section 2510 of title 18;
- (C) a provider of a remote computing service, as that term is defined in section 2711 of title 18;
- (D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or
- (E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

(5) Intelligence community

The term “intelligence community” has the meaning given the term in section 3003(4) of this title.

(Pub. L. 95-511, title VII, §701, as added Pub. L. 110-261, title I, §101(a)(2), July 10, 2008, 122 Stat. 2437; amended Pub. L. 115-118, title II, §205(a)(5), Jan. 19, 2018, 132 Stat. 21.)

REPEAL OF SECTION

*Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631;*

*Pub. L. 115-118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.*

Editorial Notes

PRIOR PROVISIONS

A prior section 701 of Pub. L. 95-511 was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110-261.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-118, §205(a)(5)(A), substituted “In this subchapter, the terms” for “The terms”.

Subsec. (b). Pub. L. 115-118, §205(a)(5)(B)(i), inserted introductory provisions.

Subsec. (b)(5). Pub. L. 115-118, §205(a)(5)(B)(ii), made technical amendment to reference in original act which appears in text as reference to section 3003(4) of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-96, div. A, §1002, Dec. 22, 2017, 131 Stat. 2045, which temporarily extended the effective date of the amendments made by section 403(b) of Pub. L. 110-261 to Jan. 19, 2018, was repealed by its own terms upon the enactment, on Jan. 19, 2018, of section 201(a) of Pub. L. 115-118, which amended the dates specified in section 403(b) of Pub. L. 110-261, and by Pub. L. 115-120, div. B, §2002, Jan. 22, 2018, 132 Stat. 31, which was effective on Jan. 22, 2018.

EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

[Pub. L. 115-118, title II, §201(c), Jan. 19, 2018, 132 Stat. 19, provided that: “The amendments made to the FISA Amendments Act of 2008 (Public Law 110-261) by this section [amending sections 1881 to 1881g of this title and provisions set out as notes under section 1801 of this title and section 2511 of Title 18, Crimes and Criminal Procedure] shall take effect on December 31, 2017.”]

§ 1881a. Procedures for targeting certain persons outside the United States other than United States persons

(a) Authorization

Notwithstanding any other provision of law, upon the issuance of an order in accordance with subsection (j)(3) or a determination under subsection (c)(2), the Attorney General and the Director of National Intelligence may authorize jointly, for a period of up to 1 year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

(b) Limitations

An acquisition authorized under subsection (a)—

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



(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;

(3) may not intentionally target a United States person reasonably believed to be located outside the United States;

(4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States;

(5) may not intentionally acquire communications that contain a reference to, but are not to or from, a target of an acquisition authorized under subsection (a), except as provided under section 103(b) of the FISA Amendments Reauthorization Act of 2017; and

(6) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

**(c) Conduct of acquisition**

**(1) In general**

An acquisition authorized under subsection (a) shall be conducted only in accordance with—

(A) the targeting and minimization procedures adopted in accordance with subsections (d) and (e); and

(B) upon submission of a certification in accordance with subsection (h), such certification.

**(2) Determination**

A determination under this paragraph and for purposes of subsection (a) is a determination by the Attorney General and the Director of National Intelligence that exigent circumstances exist because, without immediate implementation of an authorization under subsection (a), intelligence important to the national security of the United States may be lost or not timely acquired and time does not permit the issuance of an order pursuant to subsection (j)(3) prior to the implementation of such authorization.

**(3) Timing of determination**

The Attorney General and the Director of National Intelligence may make the determination under paragraph (2)—

(A) before the submission of a certification in accordance with subsection (h); or

(B) by amending a certification pursuant to subsection (j)(1)(C) at any time during which judicial review under subsection (j) of such certification is pending.

**(4) Construction**

Nothing in subchapter I shall be construed to require an application for a court order under such subchapter for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States.

**(d) Targeting procedures**

**(1) Requirement to adopt**

The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to—

(A) ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and

(B) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

**(2) Judicial review**

The procedures adopted in accordance with paragraph (1) shall be subject to judicial review pursuant to subsection (j).

**(e) Minimization procedures**

**(1) Requirement to adopt**

The Attorney General, in consultation with the Director of National Intelligence, shall adopt minimization procedures that meet the definition of minimization procedures under section 1801(h) of this title or section 1821(4) of this title, as appropriate, for acquisitions authorized under subsection (a).

**(2) Judicial review**

The minimization procedures adopted in accordance with paragraph (1) shall be subject to judicial review pursuant to subsection (j).

**(3) Publication**

The Director of National Intelligence, in consultation with the Attorney General, shall—

(A) conduct a declassification review of any minimization procedures adopted or amended in accordance with paragraph (1); and

(B) consistent with such review, and not later than 180 days after conducting such review, make such minimization procedures publicly available to the greatest extent practicable, which may be in redacted form.

**(f) Queries**

**(1) Procedures required**

**(A) Requirement to adopt**

The Attorney General, in consultation with the Director of National Intelligence, shall adopt querying procedures consistent with the requirements of the fourth amendment to the Constitution of the United States for information collected pursuant to an authorization under subsection (a).

**(B) Record of United States person query terms**

The Attorney General, in consultation with the Director of National Intelligence, shall ensure that the procedures adopted under subparagraph (A) include a technical procedure whereby a record is kept of each United States person query term used for a query.

**(C) Judicial review**

The procedures adopted in accordance with subparagraph (A) shall be subject to judicial review pursuant to subsection (j).

**(2) Access to results of certain queries conducted by FBI****(A) Court order required for FBI review of certain query results in criminal investigations unrelated to national security**

Except as provided by subparagraph (E), in connection with a predicated criminal investigation opened by the Federal Bureau of Investigation that does not relate to the national security of the United States, the Federal Bureau of Investigation may not access the contents of communications acquired under subsection (a) that were retrieved pursuant to a query made using a United States person query term that was not designed to find and extract foreign intelligence information unless—

- (i) the Federal Bureau of Investigation applies for an order of the Court under subparagraph (C); and
- (ii) the Court enters an order under subparagraph (D) approving such application.

**(B) Jurisdiction**

The Court shall have jurisdiction to review an application and to enter an order approving the access described in subparagraph (A).

**(C) Application**

Each application for an order under this paragraph shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subparagraph (B). Each application shall require the approval of the Attorney General based upon the finding of the Attorney General that the application satisfies the criteria and requirements of such application, as set forth in this paragraph, and shall include—

- (i) the identity of the Federal officer making the application; and
- (ii) an affidavit or other information containing a statement of the facts and circumstances relied upon by the applicant to justify the belief of the applicant that the contents of communications described in subparagraph (A) covered by the application would provide evidence of—
  - (I) criminal activity;
  - (II) contraband, fruits of a crime, or other items illegally possessed by a third party; or
  - (III) property designed for use, intended for use, or used in committing a crime.

**(D) Order**

Upon an application made pursuant to subparagraph (C), the Court shall enter an order approving the accessing of the contents of communications described in subparagraph (A) covered by the application if the Court finds probable cause to believe that such contents would provide any of the evidence described in subparagraph (C)(ii).

**(E) Exception**

The requirement for an order of the Court under subparagraph (A) to access the contents of communications described in such subparagraph shall not apply with respect to a query if the Federal Bureau of Investiga-

tion determines there is a reasonable belief that such contents could assist in mitigating or eliminating a threat to life or serious bodily harm.

**(F) Rule of construction**

Nothing in this paragraph may be construed as—

- (i) limiting the authority of the Federal Bureau of Investigation to conduct lawful queries of information acquired under subsection (a);
- (ii) limiting the authority of the Federal Bureau of Investigation to review, without a court order, the results of any query of information acquired under subsection (a) that was reasonably designed to find and extract foreign intelligence information, regardless of whether such foreign intelligence information could also be considered evidence of a crime; or
- (iii) prohibiting or otherwise limiting the ability of the Federal Bureau of Investigation to access the results of queries conducted when evaluating whether to open an assessment or predicated investigation relating to the national security of the United States.

**(3) Definitions**

In this subsection:

- (A) The term “contents” has the meaning given that term in section 2510(8) of title 18.
- (B) The term “query” means the use of one or more terms to retrieve the unminimized contents or noncontents located in electronic and data storage systems of communications of or concerning United States persons obtained through acquisitions authorized under subsection (a).

**(g) Guidelines for compliance with limitations****(1) Requirement to adopt**

The Attorney General, in consultation with the Director of National Intelligence, shall adopt guidelines to ensure—

- (A) compliance with the limitations in subsection (b); and
- (B) that an application for a court order is filed as required by this chapter.

**(2) Submission of guidelines**

The Attorney General shall provide the guidelines adopted in accordance with paragraph (1) to—

- (A) the congressional intelligence committees;
- (B) the Committees on the Judiciary of the Senate and the House of Representatives; and
- (C) the Foreign Intelligence Surveillance Court.

**(h) Certification****(1) In general****(A) Requirement**

Subject to subparagraph (B), prior to the implementation of an authorization under subsection (a), the Attorney General and the Director of National Intelligence shall provide to the Foreign Intelligence Surveillance Court a written certification and any sup-

porting affidavit, under oath and under seal, in accordance with this subsection.

**(B) Exception**

If the Attorney General and the Director of National Intelligence make a determination under subsection (c)(2) and time does not permit the submission of a certification under this subsection prior to the implementation of an authorization under subsection (a), the Attorney General and the Director of National Intelligence shall submit to the Court a certification for such authorization as soon as practicable but in no event later than 7 days after such determination is made.

**(2) Requirements**

A certification made under this subsection shall—

(A) attest that—

(i) there are targeting procedures in place that have been approved, have been submitted for approval, or will be submitted with the certification for approval by the Foreign Intelligence Surveillance Court that are reasonably designed to—

(I) ensure that an acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and

(II) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States;

(ii) the minimization procedures to be used with respect to such acquisition—

(I) meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate; and

(II) have been approved, have been submitted for approval, or will be submitted with the certification for approval by the Foreign Intelligence Surveillance Court;

(iii) guidelines have been adopted in accordance with subsection (g) to ensure compliance with the limitations in subsection (b) and to ensure that an application for a court order is filed as required by this chapter;

(iv) the procedures and guidelines referred to in clauses (i), (ii), and (iii) are consistent with the requirements of the fourth amendment to the Constitution of the United States;

(v) a significant purpose of the acquisition is to obtain foreign intelligence information;

(vi) the acquisition involves obtaining foreign intelligence information from or with the assistance of an electronic communication service provider; and

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

(B) include the procedures adopted in accordance with subsections (d) and (e);

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

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

(ii) the head of an element of the intelligence community;

(D) include—

(i) an effective date for the authorization that is at least 30 days after the submission of the written certification to the court; or

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

(E) if the Attorney General and the Director of National Intelligence make a determination under subsection (c)(2), include a statement that such determination has been made.

**(3) Change in effective date**

The Attorney General and the Director of National Intelligence may advance or delay the effective date referred to in paragraph (2)(D) by submitting an amended certification in accordance with subsection (j)(1)(C) to the Foreign Intelligence Surveillance Court for review pursuant to subsection (i).<sup>1</sup>

**(4) Limitation**

A certification made under this subsection is not required to identify the specific facilities, places, premises, or property at which an acquisition authorized under subsection (a) will be directed or conducted.

**(5) Maintenance of certification**

The Attorney General or a designee of the Attorney General shall maintain a copy of a certification made under this subsection.

**(6) Review**

A certification submitted in accordance with this subsection shall be subject to judicial review pursuant to subsection (j).

**(i) Directives and judicial review of directives**

**(1) Authority**

With respect to an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

(A) immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target of the acquisition; and

(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain.

<sup>1</sup> See References in Text note below.

**(2) Compensation**

The Government shall compensate, at the prevailing rate, an electronic communication service provider for providing information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

**(3) Release from liability**

No cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

**(4) Challenging of directives****(A) Authority to challenge**

An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition to modify or set aside such directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such petition.

**(B) Assignment**

The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established under section 1803(e)(1) of this title not later than 24 hours after the filing of such petition.

**(C) Standards for review**

A judge considering a petition filed under subparagraph (A) may grant such petition only if the judge finds that the directive does not meet the requirements of this section, or is otherwise unlawful.

**(D) Procedures for initial review**

A judge shall conduct an initial review of a petition filed under subparagraph (A) not later than 5 days after being assigned such petition. If the judge determines that such petition does not consist of claims, defenses, or other legal contentions that are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, the judge shall immediately deny such petition and affirm the directive or any part of the directive that is the subject of such petition and order the recipient to comply with the directive or any part of it. Upon making a determination under this subparagraph or promptly thereafter, the judge shall provide a written statement for the record of the reasons for such determination.

**(E) Procedures for plenary review**

If a judge determines that a petition filed under subparagraph (A) requires plenary review, the judge shall affirm, modify, or set aside the directive that is the subject of such petition not later than 30 days after being assigned such petition. If the judge does not set aside the directive, the judge shall immediately affirm or affirm with modifications the directive, and order the recipient to comply with the directive in its entirety or as modified. The judge shall pro-

vide a written statement for the record of the reasons for a determination under this subparagraph.

**(F) Continued effect**

Any directive not explicitly modified or set aside under this paragraph shall remain in full effect.

**(G) Contempt of Court**

Failure to obey an order issued under this paragraph may be punished by the Court as contempt of court.

**(5) Enforcement of directives****(A) Order to compel**

If an electronic communication service provider fails to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel the electronic communication service provider to comply with the directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such petition.

**(B) Assignment**

The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established under section 1803(e)(1) of this title not later than 24 hours after the filing of such petition.

**(C) Procedures for review**

A judge considering a petition filed under subparagraph (A) shall, not later than 30 days after being assigned such petition, issue an order requiring the electronic communication service provider to comply with the directive or any part of it, as issued or as modified, if the judge finds that the directive meets the requirements of this section and is otherwise lawful. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

**(D) Contempt of Court**

Failure to obey an order issued under this paragraph may be punished by the Court as contempt of court.

**(E) Process**

Any process under this paragraph may be served in any judicial district in which the electronic communication service provider may be found.

**(6) Appeal****(A) Appeal to the Court of Review**

The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of a decision issued pursuant to paragraph (4) or (5). The Court of Review shall have jurisdiction to consider such petition and shall provide a written statement for the record of the reasons for a decision under this subparagraph.

**(B) Certiorari to the Supreme Court**

The Government or an electronic communication service provider receiving a direc-

tive issued pursuant to paragraph (1) may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

**(j) Judicial review of certifications and procedures**

**(1) In general**

**(A) Review by the Foreign Intelligence Surveillance Court**

The Foreign Intelligence Surveillance Court shall have jurisdiction to review a certification submitted in accordance with subsection (g)<sup>1</sup> and the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1), and amendments to such certification or such procedures.

**(B) Time period for review**

The Court shall review a certification submitted in accordance with subsection (g)<sup>1</sup> and the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1) and shall complete such review and issue an order under paragraph (3) not later than 30 days after the date on which such certification and such procedures are submitted.

**(C) Amendments**

The Attorney General and the Director of National Intelligence may amend a certification submitted in accordance with subsection (g)<sup>1</sup> or the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1) as necessary at any time, including if the Court is conducting or has completed review of such certification or such procedures, and shall submit the amended certification or amended procedures to the Court not later than 7 days after amending such certification or such procedures. The Court shall review any amendment under this subparagraph under the procedures set forth in this subsection. The Attorney General and the Director of National Intelligence may authorize the use of an amended certification or amended procedures pending the Court's review of such amended certification or amended procedures.

**(2) Review**

The Court shall review the following:

**(A) Certification**

A certification submitted in accordance with subsection (h) to determine whether the certification contains all the required elements.

**(B) Targeting procedures**

The targeting procedures adopted in accordance with subsection (d) to assess whether the procedures are reasonably designed to—

- (i) ensure that an acquisition authorized under subsection (a) is limited to targeting

persons reasonably believed to be located outside the United States; and

- (ii) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

**(C) Minimization procedures**

The minimization procedures adopted in accordance with subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 1801(h) of this title or section 1821(4) of this title, as appropriate.

**(D) Querying procedures**

The querying procedures adopted in accordance with subsection (f)(1) to assess whether such procedures comply with the requirements of such subsection.

**(3) Orders**

**(A) Approval**

If the Court finds that a certification submitted in accordance with subsection (h) contains all the required elements and that the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the certification and the use, or continued use in the case of an acquisition authorized pursuant to a determination under subsection (c)(2), of the procedures for the acquisition.

**(B) Correction of deficiencies**

If the Court finds that a certification submitted in accordance with subsection (h) does not contain all the required elements, or that the procedures adopted in accordance with subsections (d), (e), and (f)(1) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

- (i) correct any deficiency identified by the Court's order not later than 30 days after the date on which the Court issues the order; or
- (ii) cease, or not begin, the implementation of the authorization for which such certification was submitted.

**(C) Requirement for written statement**

In support of an order under this subsection, the Court shall provide, simultaneously with the order, for the record a written statement of the reasons for the order.

**(D) Limitation on use of information**

**(i) In general**

Except as provided in clause (ii), if the Court orders a correction of a deficiency in a certification or procedures under subparagraph (B), no information obtained or

evidence derived pursuant to the part of the certification or procedures that has been identified by the Court as deficient concerning any United States person shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired pursuant to such part of such certification or procedures shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of the United States person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

**(ii) Exception**

If the Government corrects any deficiency identified by the order of the Court under subparagraph (B), the Court may permit the use or disclosure of information obtained before the date of the correction under such minimization procedures as the Court may approve for purposes of this clause.

**(4) Appeal**

**(A) Appeal to the Court of Review**

The Government may file a petition with the Foreign Intelligence Surveillance Court of Review for review of an order under this subsection. The Court of Review shall have jurisdiction to consider such petition. For any decision under this subparagraph affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of the reasons for the decision.

**(B) Continuation of acquisition pending rehearing or appeal**

Any acquisition affected by an order under paragraph (3)(B) may continue—

(i) during the pendency of any rehearing of the order by the Court en banc; and

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

**(C) Implementation pending appeal**

Not later than 60 days after the filing of a petition for review of an order under paragraph (3)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order regarding, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the review.

**(D) Certiorari to the Supreme Court**

The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subpara-

graph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

**(5) Schedule**

**(A) Reauthorization of authorizations in effect**

If the Attorney General and the Director of National Intelligence seek to reauthorize or replace an authorization issued under subsection (a), the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Court the certification prepared in accordance with subsection (h) and the procedures adopted in accordance with subsections (d), (e), and (f)(1) at least 30 days prior to the expiration of such authorization.

**(B) Reauthorization of orders, authorizations, and directives**

If the Attorney General and the Director of National Intelligence seek to reauthorize or replace an authorization issued under subsection (a) by filing a certification pursuant to subparagraph (A), that authorization, and any directives issued thereunder and any order related thereto, shall remain in effect, notwithstanding the expiration provided for in subsection (a), until the Court issues an order with respect to such certification under paragraph (3) at which time the provisions of that paragraph and paragraph (4) shall apply with respect to such certification.

**(k) Judicial proceedings**

**(1) Expedited judicial proceedings**

Judicial proceedings under this section shall be conducted as expeditiously as possible.

**(2) Time limits**

A time limit for a judicial decision in this section shall apply unless the Court, the Court of Review, or any judge of either the Court or the Court of Review, by order for reasons stated, extends that time as necessary for good cause in a manner consistent with national security.

**(l) Maintenance and security of records and proceedings**

**(1) Standards**

The Foreign Intelligence Surveillance Court shall maintain a record of a proceeding under this section, including petitions, appeals, orders, and statements of reasons for a decision, under security measures adopted by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

**(2) Filing and review**

All petitions under this section shall be filed under seal. In any proceedings under this section, the Court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

**(3) Retention of records**

The Attorney General and the Director of National Intelligence shall retain a directive

or an order issued under this section for a period of not less than 10 years from the date on which such directive or such order is issued.

**(m) Assessments<sup>2</sup> reviews, and reporting**

**(1) Semiannual assessment**

Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1) and the guidelines adopted in accordance with subsection (g) and shall submit each assessment to—

(A) the Foreign Intelligence Surveillance Court; and

(B) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(i) the congressional intelligence committees; and

(ii) the Committees on the Judiciary of the House of Representatives and the Senate.

**(2) Agency assessment**

The Inspector General of the Department of Justice and the Inspector General of each element of the intelligence community authorized to acquire foreign intelligence information under subsection (a), with respect to the department or element of such Inspector General—

(A) are authorized to review compliance with the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1) and the guidelines adopted in accordance with subsection (g);

(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States-person identity and the number of United States-person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed; and

(D) shall provide each such review to—

(i) the Attorney General;

(ii) the Director of National Intelligence; and

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

(I) the congressional intelligence committees; and

(II) the Committees on the Judiciary of the House of Representatives and the Senate.

**(3) Annual review**

**(A) Requirement to conduct**

The head of each element of the intelligence community conducting an acquisition authorized under subsection (a) shall conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to acquisitions authorized under subsection (a)—

(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States-person identity;

(ii) an accounting of the number of United States-person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed; and

(iv) a description of any procedures developed by the head of such element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, and the results of any such assessment.

**(B) Use of review**

The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element and, as appropriate, the application of the minimization procedures to a particular acquisition authorized under subsection (a).

**(C) Provision of review**

The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to—

(i) the Foreign Intelligence Surveillance Court;

(ii) the Attorney General;

(iii) the Director of National Intelligence; and

(iv) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(I) the congressional intelligence committees; and

(II) the Committees on the Judiciary of the House of Representatives and the Senate.

<sup>2</sup> So in original. Probably should be followed by a comma.

**(4) Reporting of material breach****(A) In general**

The head of each element of the intelligence community involved in the acquisition of abouts communications shall fully and currently inform the Committees on the Judiciary of the House of Representatives and the Senate and the congressional intelligence committees of a material breach.

**(B) Definitions**

In this paragraph:

(i) The term “abouts communication” means a communication that contains a reference to, but is not to or from, a target of an acquisition authorized under subsection (a).

(ii) The term “material breach” means significant noncompliance with applicable law or an order of the Foreign Intelligence Surveillance Court concerning any acquisition of abouts communications.

(Pub. L. 95–511, title VII, §702, as added Pub. L. 110–261, title I, §101(a)(2), July 10, 2008, 122 Stat. 2438; amended Pub. L. 114–23, title III, §301, June 2, 2015, 129 Stat. 278; Pub. L. 115–118, title I, §§101(a)(1), (b)(1), 103(a), (b)(5), 104, title II, §205(a)(6), Jan. 19, 2018, 132 Stat. 4, 6, 10, 12, 13, 21.)

**REPEAL OF SECTION**

*Pub. L. 110–261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112–238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115–118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.*

**Editorial Notes****REFERENCES IN TEXT**

Section 103(b) of the FISA Amendments Reauthorization Act of 2017, referred to in subsec. (b)(5), is section 103(b) of Pub. L. 115–118, which is set out as a note below.

This chapter, referred to in subsecs. (f)(1)(B) and (g)(2)(A)(iii), was in the original “this Act”, meaning Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Subsection (i), referred to in subsec. (h)(3), was redesignated subsection (j) of this section by Pub. L. 115–118, title I, §101(a)(1)(A), Jan. 19, 2018, 132 Stat. 4.

Subsection (g), referred to in subsec. (j)(1), was redesignated subsection (h) of this section by Pub. L. 115–118, title I, §101(a)(1)(A), Jan. 19, 2018, 132 Stat. 4.

Senate Resolution 400 of the 94th Congress, referred to in subsec. (l), was agreed to May 19, 1976, and was subsequently amended by both Senate resolution and public law. The Resolution, which established the Senate Select Committee on Intelligence, is not classified to the Code.

**AMENDMENTS**

2018—Subsec. (a). Pub. L. 115–118, §101(b)(1)(A), substituted “with subsection (j)(3)” for “with subsection (i)(3)”.

Subsec. (b)(5), (6). Pub. L. 115–118, §103(a), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(1)(B). Pub. L. 115–118, §101(b)(1)(B)(i), substituted “with subsection (h)” for “with subsection (g)”.

Subsec. (c)(2). Pub. L. 115–118, §101(b)(1)(B)(ii), substituted “to subsection (j)(3)” for “to subsection (i)(3)”.

Subsec. (c)(3)(A). Pub. L. 115–118, §101(b)(1)(B)(iii)(I), substituted “with subsection (h)” for “with subsection (g)”.

Subsec. (c)(3)(B). Pub. L. 115–118, §101(b)(1)(B)(iii)(II), substituted “to subsection (j)(1)(C)” for “to subsection (i)(1)(C)” and “under subsection (j)” for “under subsection (i)”.

Subsec. (d)(2). Pub. L. 115–118, §101(b)(1)(C), substituted “to subsection (j)” for “to subsection (i)”.

Subsec. (e)(2). Pub. L. 115–118, §101(b)(1)(D), substituted “to subsection (j)” for “to subsection (i)”.

Subsec. (e)(3). Pub. L. 115–118, §104, added par. (3).

Subsecs. (f) to (h). Pub. L. 115–118, §101(a)(1), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (h)(2)(A)(i). Pub. L. 115–118, §205(a)(6), inserted “targeting” before “procedures in place” in introductory provisions.

Subsec. (h)(2)(A)(iii). Pub. L. 115–118, §101(b)(1)(E)(i), substituted “with subsection (g)” for “with subsection (f)”.

Subsec. (h)(3). Pub. L. 115–118, §101(b)(1)(E)(ii), substituted “with subsection (j)(1)(C)” for “with subsection (i)(1)(C)”.

Subsec. (h)(6). Pub. L. 115–118, §101(b)(1)(E)(iii), substituted “to subsection (j)” for “to subsection (i)”.

Subsecs. (i), (j). Pub. L. 115–118, §101(a)(1)(A), redesignated subsecs. (h) and (i) as (i) and (j), respectively. Former subsec. (j) redesignated (k).

Subsec. (j)(1). Pub. L. 115–118, §101(b)(1)(F)(i), substituted “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)” for “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” in subpars. (A) to (C).

Subsec. (j)(2)(A). Pub. L. 115–118, §101(b)(1)(F)(ii)(I), substituted “with subsection (h)” for “with subsection (g)”.

Subsec. (j)(2)(D). Pub. L. 115–118, §101(b)(1)(F)(ii)(II), added subpar. (D).

Subsec. (j)(3)(A). Pub. L. 115–118, §101(b)(1)(F)(iii)(I), substituted “with subsection (h)” for “with subsection (g)” and “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)” for “targeting and minimization procedures adopted in accordance with subsections (d) and (e)”.

Subsec. (j)(3)(B). Pub. L. 115–118, §101(b)(1)(F)(iii)(II), substituted “with subsection (h)” for “with subsection (g)” and “with subsections (d), (e), and (f)(1)” for “with subsections (d) and (e)” in introductory provisions.

Subsec. (j)(5)(A). Pub. L. 115–118, §101(b)(1)(F)(iv), substituted “with subsection (h)” for “with subsection (g)” and “with subsections (d), (e), and (f)(1)” for “with subsections (d) and (e)”.

Subsecs. (k), (l). Pub. L. 115–118, §101(a)(1)(A), redesignated subsecs. (j) and (k) as (k) and (l), respectively. Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 115–118, §§101(a)(1)(A), 103(b)(5)(A), redesignated subsec. (l) as (m) and substituted “reviews, and reporting” for “and reviews” in heading.

Subsec. (m)(1). Pub. L. 115–118, §101(b)(1)(G)(i), substituted “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)” for “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and “with subsection (g)” for “with subsection (f)” in introductory provisions.

Subsec. (m)(2)(A). Pub. L. 115–118, §101(b)(1)(G)(ii), substituted “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)” for “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and “with subsection (g)” for “with subsection (f)”.

Subsec. (m)(4). Pub. L. 115–118, §103(b)(5)(B), added par. (4).



2015—Subsec. (i)(3)(D). Pub. L. 114-23 added subpar. (D).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-118, title I, §101(a)(2), Jan. 19, 2018, 132 Stat. 6, provided that: “Subsection (f) of section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a), as added by paragraph (1), shall apply with respect to certifications submitted under subsection (h) of such section to the Foreign Intelligence Surveillance Court after January 1, 2018.”

##### EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

##### CONGRESSIONAL REVIEW AND OVERSIGHT OF ABOUTS COLLECTION

Pub. L. 115-118, title I, §103(b), Jan. 19, 2018, 132 Stat. 10, provided that:

“(1) DEFINITIONS.—In this subsection:

“(A) The term ‘abouts communication’ means a communication that contains a reference to, but is not to or from, a target of an acquisition authorized under section 702(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(a)).

“(B) The term ‘material breach’ means significant noncompliance with applicable law or an order of the Foreign Intelligence Surveillance Court concerning any acquisition of abouts communications.

“(2) SUBMISSION TO CONGRESS.—

“(A) REQUIREMENT.—Notwithstanding any other provision of law, and except as provided in paragraph (4), if the Attorney General and the Director of National Intelligence intend to implement the authorization of the intentional acquisition of abouts communications, before the first such implementation after the date of enactment of this Act [Jan. 19, 2018], the Attorney General and the Director of National Intelligence shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a written notice of the intent to implement the authorization of such an acquisition, and any supporting materials in accordance with this subsection.

“(B) CONGRESSIONAL REVIEW PERIOD.—During the 30-day period beginning on the date written notice is submitted under subparagraph (A), the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives shall, as appropriate, hold hearings and briefings and otherwise obtain information in order to fully review the written notice.

“(C) LIMITATION ON ACTION DURING CONGRESSIONAL REVIEW PERIOD.—Notwithstanding any other provision of law, and subject to paragraph (4), unless the Attorney General and the Director of National Intelligence make a determination pursuant to section 702(c)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(c)(2)), the Attorney General and the Director of National Intelligence may not implement the authorization of the intentional acquisition of abouts communications before the end of the period described in subparagraph (B).

“(3) WRITTEN NOTICE.—Written notice under paragraph (2)(A) shall include the following:

“(A) A copy of any certification submitted to the Foreign Intelligence Surveillance Court pursuant to

section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a), or amendment thereto, authorizing the intentional acquisition of abouts communications, including all affidavits, procedures, exhibits, and attachments submitted therewith.

“(B) The decision, order, or opinion of the Foreign Intelligence Surveillance Court approving such certification, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion.

“(C) A summary of the protections in place to detect any material breach.

“(D) Data or other results of modeling, simulation, or auditing of sample data demonstrating that any acquisition method involving the intentional acquisition of abouts communications shall be conducted in accordance with title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.), if such data or other results exist at the time the written notice is submitted and were provided to the Foreign Intelligence Surveillance Court.

“(E) Except as provided under paragraph (4), a statement that no acquisition authorized under subsection (a) of such section 702 shall include the intentional acquisition of an abouts communication until after the end of the 30-day period described in paragraph (2)(B).

“(4) EXCEPTION FOR EMERGENCY ACQUISITION.—

“(A) NOTICE OF DETERMINATION.—If the Attorney General and the Director of National Intelligence make a determination pursuant to section 702(c)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(c)(2)) with respect to the intentional acquisition of abouts communications, the Attorney General and the Director of National Intelligence shall notify the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives as soon as practicable, but not later than 7 days after the determination is made.

“(B) IMPLEMENTATION OR CONTINUATION.—

“(i) IN GENERAL.—If the Foreign Intelligence Surveillance Court approves a certification that authorizes the intentional acquisition of abouts communications before the end of the 30-day period described in paragraph (2)(B), the Attorney General and the Director of National Intelligence may authorize the immediate implementation or continuation of that certification if the Attorney General and the Director of National Intelligence jointly determine that exigent circumstances exist such that without such immediate implementation or continuation intelligence important to the national security of the United States may be lost or not timely acquired.

“(ii) NOTICE.—The Attorney General and the Director of National Intelligence shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives notification of a determination pursuant to clause (i) as soon as practicable, but not later than 3 days after the determination is made.

“(5) REPORTING OF MATERIAL BREACH.—[Amended this section.]

“(6) APPOINTMENT OF AMICI CURIAE BY FOREIGN INTELLIGENCE SURVEILLANCE COURT.—For purposes of section 103(i)(2)(A) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(i)(2)(A)), the Foreign Intelligence Surveillance Court shall treat the first certification under section 702(h) of such Act (50 U.S.C. 1881a(h)) or amendment thereto that authorizes the acquisition of abouts communications as presenting a novel or significant interpretation of the law, unless the court determines otherwise.”

**§ 1881b. Certain acquisitions inside the United States targeting United States persons outside the United States**

**(a) Jurisdiction of the Foreign Intelligence Surveillance Court**

**(1) In general**

The Foreign Intelligence Surveillance Court shall have jurisdiction to review an application and to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if the acquisition constitutes electronic surveillance or the acquisition of stored electronic communications or stored electronic data that requires an order under this chapter, and such acquisition is conducted within the United States.

**(2) Limitation**

If a United States person targeted under this subsection is reasonably believed to be located in the United States during the effective period of an order issued pursuant to subsection (c), an acquisition targeting such United States person under this section shall cease unless the targeted United States person is again reasonably believed to be located outside the United States while an order issued pursuant to subsection (c) is in effect. Nothing in this section shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other subchapter of this chapter.

**(b) Application**

**(1) In general**

Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application, as set forth in this section, and shall include—

(A) the identity of the Federal officer making the application;

(B) the identity, if known, or a description of the United States person who is the target of the acquisition;

(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

(i) a person reasonably believed to be located outside the United States; and

(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(D) a statement of proposed minimization procedures that meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate;

(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

(F) a certification made by the Attorney General or an official specified in section 1804(a)(6) of this title that—

(i) the certifying official deems the information sought to be foreign intelligence information;

(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

(iii) such information cannot reasonably be obtained by normal investigative techniques;

(iv) designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and

(v) includes a statement of the basis for the certification that—

(I) the information sought is the type of foreign intelligence information designated; and

(II) such information cannot reasonably be obtained by normal investigative techniques;

(G) a summary statement of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition;

(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

(I) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

(J) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

**(2) Other requirements of the Attorney General**

The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

**(3) Other requirements of the judge**

The judge may require the applicant to furnish such other information as may be necessary to make the findings required by subsection (c)(1).

**(c) Order**

**(1) Findings**

Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified by the Court approving the acquisition if the Court finds that—

(A) the application has been made by a Federal officer and approved by the Attorney General;

(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

(i) a person reasonably believed to be located outside the United States; and

(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(C) the proposed minimization procedures meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate; and

(D) the application that has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

**(2) Probable cause**

In determining whether or not probable cause exists for purposes of paragraph (1)(B), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target and facts and circumstances relating to current or future activities of the target. No United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

**(3) Review**

**(A) Limitation on review**

Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1).

**(B) Review of probable cause**

If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause under paragraph (1)(B), the judge shall enter an order so stating and provide a written statement for the record of the reasons for the determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).

**(C) Review of minimization procedures**

If the judge determines that the proposed minimization procedures referred to in paragraph (1)(C) do not meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate, the judge shall enter an order so stating and provide a written statement for the record of the reasons for the determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).

**(D) Review of certification**

If the judge determines that an application pursuant to subsection (b) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the judge shall enter an order so stating and provide a written statement for the record of the reasons for the determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).

**(4) Specifications**

An order approving an acquisition under this subsection shall specify—

(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

(C) the nature of the information sought to be acquired and the type of communications or activities to be subjected to acquisition;

(D) a summary of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition; and

(E) the period of time during which the acquisition is approved.

**(5) Directives**

An order approving an acquisition under this subsection shall direct—

(A) that the minimization procedures referred to in paragraph (1)(C), as approved or modified by the Court, be followed;

(B) if applicable, an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under such order in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target of the acquisition;

(C) if applicable, an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

(D) if applicable, that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

**(6) Duration**

An order approved under this subsection shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

**(7) Compliance**

At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

**(d) Emergency authorization****(1) Authority for emergency authorization**

Notwithstanding any other provision of this chapter, if the Attorney General reasonably determines that—

(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained, and

(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize such acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this section is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

**(2) Minimization procedures**

If the Attorney General authorizes an acquisition under paragraph (1), the Attorney General shall require that the minimization procedures referred to in subsection (c)(1)(C) for the issuance of a judicial order be followed.

**(3) Termination of emergency authorization**

In the absence of a judicial order approving an acquisition under paragraph (1), such acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

**(4) Use of information**

If an application for approval submitted pursuant to paragraph (1) is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

**(e) Release from liability**

No cause of action shall lie in any court against any electronic communication service provider for providing any information, facili-

ties, or assistance in accordance with an order or request for emergency assistance issued pursuant to subsection (c) or (d), respectively.

**(f) Appeal****(1) Appeal to the Foreign Intelligence Surveillance Court of Review**

The Government may file a petition with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

**(2) Certiorari to the Supreme Court**

The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

**(g) Construction**

Except as provided in this section, nothing in this chapter shall be construed to require an application for a court order for an acquisition that is targeted in accordance with this section at a United States person reasonably believed to be located outside the United States.

(Pub. L. 95-511, title VII, § 703, as added Pub. L. 110-261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2448.)

## REPEAL OF SECTION

*Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, § 2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, § 201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.*

## Editorial Notes

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (d)(1), and (g), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

## Statutory Notes and Related Subsidiaries

## EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, § 2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, § 201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

**§ 1881c. Other acquisitions targeting United States persons outside the United States****(a) Jurisdiction and scope****(1) Jurisdiction**

The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subsection (c).

**(2) Scope**

No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order with respect to such targeted United States person or the Attorney General has authorized an emergency acquisition pursuant to subsection (c) or (d), respectively, or any other provision of this chapter.

**(3) Limitations****(A) Moving or misidentified targets**

If a United States person targeted under this subsection is reasonably believed to be located in the United States during the effective period of an order issued pursuant to subsection (c), an acquisition targeting such United States person under this section shall cease unless the targeted United States person is again reasonably believed to be located outside the United States during the effective period of such order.

**(B) Applicability**

If an acquisition for foreign intelligence purposes is to be conducted inside the United States and could be authorized under section 1881b of this title, the acquisition may only be conducted if authorized under section 1881b of this title or in accordance with another provision of this chapter other than this section.

**(C) Construction**

Nothing in this paragraph shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other subchapter of this chapter.

**(b) Application**

Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

(1) the identity of the Federal officer making the application;

(2) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

(3) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

(A) a person reasonably believed to be located outside the United States; and

(B) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(4) a statement of proposed minimization procedures that meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate;

(5) a certification made by the Attorney General, an official specified in section 1804(a)(6) of this title, or the head of an element of the intelligence community that—

(A) the certifying official deems the information sought to be foreign intelligence information; and

(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

(6) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

(7) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

**(c) Order****(1) Findings**

Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified by the Court if the Court finds that—

(A) the application has been made by a Federal officer and approved by the Attorney General;

(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

(i) a person reasonably believed to be located outside the United States; and

(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(C) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate; and

(D) the application that has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(5) is not clearly erroneous on the basis of the information furnished under subsection (b).

**(2) Probable cause**

In determining whether or not probable cause exists for purposes of paragraph (1)(B), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target and facts and circumstances relating to current or future activities of the target. No United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

**(3) Review****(A) Limitations on review**

Review by a judge having jurisdiction under subsection (a)(1) shall be limited to

that required to make the findings described in paragraph (1). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

**(B) Review of probable cause**

If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

**(C) Review of minimization procedures**

If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

**(D) Scope of review of certification**

If the judge determines that an application under subsection (b) does not contain all the required elements, or that the certification provided under subsection (b)(5) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

**(4) Duration**

An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

**(5) Compliance**

At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

**(d) Emergency authorization**

**(1) Authority for emergency authorization**

Notwithstanding any other provision of this section, if the Attorney General reasonably determines that—

(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection can, with due diligence, be obtained, and

(B) the factual basis for the issuance of an order under this section exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this section is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

**(2) Minimization procedures**

If the Attorney General authorizes an emergency acquisition under paragraph (1), the Attorney General shall require that the minimization procedures referred to in subsection (c)(1)(C) be followed.

**(3) Termination of emergency authorization**

In the absence of an order under subsection (c), an emergency acquisition under paragraph (1) shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

**(4) Use of information**

If an application submitted to the Court pursuant to paragraph (1) is denied, or in any other case where the acquisition is terminated and no order with respect to the target of the acquisition is issued under subsection (c), no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

**(e) Appeal**

**(1) Appeal to the Court of Review**

The Government may file a petition with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

**(2) Certiorari to the Supreme Court**

The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under paragraph (1). The record for such review shall be trans-

mitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(Pub. L. 95-511, title VII, §704, as added Pub. L. 110-261, title I, §101(a)(2), July 10, 2008, 122 Stat. 2453.)

#### REPEAL OF SECTION

*Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.*

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), (3)(B), (C), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

#### § 1881d. Joint applications and concurrent authorizations

##### (a) Joint applications and orders

If an acquisition targeting a United States person under section 1881b or 1881c of this title is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 1881b(a)(1) or 1881c(a)(1) of this title may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of sections 1881b(b) and 1881c(b) of this title, orders under sections 1881b(c) and 1881c(c) of this title, as appropriate.

##### (b) Concurrent authorization

If an order authorizing electronic surveillance or physical search has been obtained under section 1805 or 1824 of this title, the Attorney General may authorize, for the effective period of that order, without an order under section 1881b or 1881c of this title, the targeting of that United States person for the purpose of acquiring foreign intelligence information while such person is reasonably believed to be located outside the United States.

##### (c) Emergency authorization

###### (1) Concurrent authorization

If the Attorney General authorized the emergency employment of electronic surveillance or a physical search pursuant to section 1805 or 1824 of this title, the Attorney General

may authorize, for the effective period of the emergency authorization and subsequent order pursuant to section 1805 or 1824 of this title, without a separate order under section 1881b or 1881c of this title, the targeting of a United States person subject to such emergency employment for the purpose of acquiring foreign intelligence information while such United States person is reasonably believed to be located outside the United States.

##### (2) Use of information

If an application submitted to the Court pursuant to section 1804 or 1823 of this title is denied, or in any other case in which the acquisition pursuant to paragraph (1) is terminated and no order with respect to the target of the acquisition is issued under section 1805 or 1824 of this title, all information obtained or evidence derived from such acquisition shall be handled in accordance with section 1881c(d)(4) of this title.

(Pub. L. 95-511, title VII, §705, as added Pub. L. 110-261, title I, §101(a)(2), July 10, 2008, 122 Stat. 2457; amended Pub. L. 115-118, title I, §105, Jan. 19, 2018, 132 Stat. 13.)

#### REPEAL OF SECTION

*Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.*

#### Editorial Notes

##### AMENDMENTS

2018—Subsec. (c). Pub. L. 115-118 added subsec. (c).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

#### § 1881e. Use of information acquired under this subchapter

##### (a) Information acquired under section 1881a

###### (1) In general

Information acquired from an acquisition conducted under section 1881a of this title shall be deemed to be information acquired from an electronic surveillance pursuant to subchapter I for purposes of section 1806 of this title, except for the purposes of subsection (j) of such section.

###### (2) United States persons

###### (A) In general

Any information concerning a United States person acquired under section 1881a of this title shall not be used in evidence

against that United States person pursuant to paragraph (1) in any criminal proceeding unless—

(i) the Federal Bureau of Investigation obtained an order of the Foreign Intelligence Surveillance Court to access such information pursuant to section 1881a(f)(2) of this title; or

(ii) the Attorney General determines that—

(I) the criminal proceeding affects, involves, or is related to the national security of the United States; or

(II) the criminal proceeding involves—

(aa) death;

(bb) kidnapping;

(cc) serious bodily injury, as defined in section 1365 of title 18;

(dd) conduct that constitutes a criminal offense that is a specified offense against a minor, as defined in section 20911 of title 34;

(ee) incapacitation or destruction of critical infrastructure, as defined in section 5195c(e) of title 42;

(ff) cybersecurity, including conduct described in section 5195c(e) of title 42 or section 1029, 1030, or 2511 of title 18;

(gg) transnational crime, including transnational narcotics trafficking and transnational organized crime; or

(hh) human trafficking.

#### (B) No judicial review

A determination by the Attorney General under subparagraph (A)(ii) is not subject to judicial review.

#### (b) Information acquired under section 1881b

Information acquired from an acquisition conducted under section 1881b of this title shall be deemed to be information acquired from an electronic surveillance pursuant to subchapter I for purposes of section 1806 of this title.

(Pub. L. 95-511, title VII, §706, as added Pub. L. 110-261, title I, §101(a)(2), July 10, 2008, 122 Stat. 2457; amended Pub. L. 115-118, title I, §102(a), Jan. 19, 2018, 132 Stat. 8.)

#### REPEAL OF SECTION

*Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.*

#### Editorial Notes

##### AMENDMENTS

2018—Subsec. (a). Pub. L. 115-118 designated existing provisions as par. (1), inserted par. heading, and added par. (2).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(1),

Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

#### § 1881f. Congressional oversight

##### (a) Semiannual report

Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees and the Committees on the Judiciary of the Senate and the House of Representatives, consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution, concerning the implementation of this subchapter.

##### (b) Content

Each report under subsection (a) shall include—

(1) with respect to section 1881a of this title—

(A) any certifications submitted in accordance with section 1881a(h) of this title during the reporting period;

(B) with respect to each determination under section 1881a(c)(2) of this title, the reasons for exercising the authority under such section;

(C) any directives issued under section 1881a(i) of this title during the reporting period;

(D) a description of the judicial review during the reporting period of such certifications and targeting and minimization procedures adopted in accordance with subsections (d) and (e) of section 1881a of this title and utilized with respect to an acquisition under such section, including a copy of an order or pleading in connection with such review that contains a significant legal interpretation of the provisions of section 1881a of this title;

(E) any actions taken to challenge or enforce a directive under paragraph (4) or (5) of section 1881a(i) of this title;

(F) any compliance reviews conducted by the Attorney General or the Director of National Intelligence of acquisitions authorized under section 1881a(a) of this title;

(G) a description of any incidents of non-compliance—

(i) with a directive issued by the Attorney General and the Director of National Intelligence under section 1881a(i) of this title, including incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under section 1881a(i) of this title; and

(ii) by an element of the intelligence community with procedures and guidelines adopted in accordance with subsections (d), (e), (f)(1), and (g) of section 1881a of this title; and

(H) any procedures implementing section 1881a of this title;

(2) with respect to section 1881b of this title—



- (A) the total number of applications made for orders under section 1881b(b) of this title;
- (B) the total number of such orders—
- (i) granted;
  - (ii) modified; and
  - (iii) denied; and

(C) the total number of emergency acquisitions authorized by the Attorney General under section 1881b(d) of this title and the total number of subsequent orders approving or denying such acquisitions; and

(3) with respect to section 1881c of this title—

(A) the total number of applications made for orders under section 1881c(b) of this title;

- (B) the total number of such orders—
- (i) granted;
  - (ii) modified; and
  - (iii) denied; and

(C) the total number of emergency acquisitions authorized by the Attorney General under section 1881c(d) of this title and the total number of subsequent orders approving or denying such applications.

(Pub. L. 95-511, title VII, §707, as added Pub. L. 110-261, title I, §101(a)(2), July 10, 2008, 122 Stat. 2457; amended Pub. L. 115-118, title I, §101(b)(2), Jan. 19, 2018, 132 Stat. 8.)

#### REPEAL OF SECTION

*Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.*

#### Editorial Notes

##### REFERENCES IN TEXT

Senate Resolution 400 of the 94th Congress, referred to in subsec. (a), was agreed to May 19, 1976, and was subsequently amended by both Senate resolution and public law. The Resolution, which established the Senate Select Committee on Intelligence, is not classified to the Code.

##### AMENDMENTS

2018—Subsec. (b)(1)(A). Pub. L. 115-118, §101(b)(2)(B), substituted “section 1881a(h) of this title” for “section 1881a(g) of this title”.

Subsec. (b)(1)(C), (E). Pub. L. 115-118, §102(b)(2)(A), substituted “section 1881a(i) of this title” for “section 1881a(h) of this title”.

Subsec. (b)(1)(G)(i). Pub. L. 115-118, §102(b)(2)(A), substituted “section 1881a(i) of this title” for “section 1881a(h) of this title” in two places.

Subsec. (b)(1)(G)(ii). Pub. L. 115-118, §101(b)(2)(C), substituted “subsections (d), (e), (f)(1), and (g)” for “subsections (d), (e), and (f)”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title,

the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

#### § 1881g. Savings provision

Nothing in this subchapter shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other subchapter of this chapter.

(Pub. L. 95-511, title VII, §708, as added Pub. L. 110-261, title I, §101(a)(2), July 10, 2008, 122 Stat. 2458.)

#### REPEAL OF SECTION

*Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.*

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

#### SUBCHAPTER VII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

#### § 1885. Definitions

In this subchapter:

##### (1) Assistance

The term “assistance” means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

##### (2) Civil action

The term “civil action” includes a covered civil action.

##### (3) Congressional intelligence committees

The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

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

##### (4) Contents

The term “contents” has the meaning given that term in section 1801(n) of this title.

##### (5) Covered civil action

The term “covered civil action” means a civil action filed in a Federal or State court that—

(A) alleges that an electronic communication service provider furnished assistance to an element of the intelligence community; and

(B) seeks monetary or other relief from the electronic communication service provider related to the provision of such assistance.

**(6) Electronic communication service provider**

The term “electronic communication service provider” means—

(A) a telecommunications carrier, as that term is defined in section 153 of title 47;

(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18;

(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18;

(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

(F) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

**(7) Intelligence community**

The term “intelligence community” has the meaning given the term in section 3003(4) of this title.

**(8) Person**

The term “person” means—

(A) an electronic communication service provider; or

(B) a landlord, custodian, or other person who may be authorized or required to furnish assistance pursuant to—

(i) an order of the court established under section 1803(a) of this title directing such assistance;

(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18; or

(iii) a directive under section 1802(a)(4), 1805b(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), or 1881a(i) of this title.

**(9) State**

The term “State” means any State, political subdivision of a State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States, and includes any officer, public utility commission, or other body authorized to regulate an electronic communication service provider.

(Pub. L. 95-511, title VIII, § 801, as added Pub. L. 110-261, title II, § 201, July 10, 2008, 122 Stat. 2467; amended Pub. L. 115-118, title I, § 101(b)(2)(A), title II, § 205(a)(7), Jan. 19, 2018, 132 Stat. 8, 21.)

**Editorial Notes**

REFERENCES IN TEXT

Section 1805b of this title, referred to in par. (8)(B)(iii), was repealed by Pub. L. 110-261, title IV, § 403(a)(1)(A), July 10, 2008, 122 Stat. 2473.

AMENDMENTS

2018—Par. (7). Pub. L. 115-118, § 205(a)(7), made technical amendment to reference in original act which appears in text as reference to section 3003(4) of this title.

Par. (8)(B)(iii). Pub. L. 115-118, § 101(b)(2)(A), which directed substitution of “section 1881a(i) of this title” for “section 1881a(h) of this title”, was executed by substituting “1881a(i) of this title” for “1881a(h) of this title” to reflect the probable intent of Congress.

**§ 1885a. Procedures for implementing statutory defenses**

**(a) Requirement for certification**

Notwithstanding any other provision of law, a civil action may not lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the district court of the United States in which such action is pending that—

(1) any assistance by that person was provided pursuant to an order of the court established under section 1803(a) of this title directing such assistance;

(2) any assistance by that person was provided pursuant to a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18;

(3) any assistance by that person was provided pursuant to a directive under section 1802(a)(4), 1805b(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), or 1881a(i) of this title directing such assistance;

(4) in the case of a covered civil action, the assistance alleged to have been provided by the electronic communication service provider was—

(A) in connection with an intelligence activity involving communications that was—

(i) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

(ii) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

(B) the subject of a written request or directive, or a series of written requests or directives, from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

(i) authorized by the President; and

(ii) determined to be lawful; or

(5) the person did not provide the alleged assistance.

**(b) Judicial review**

**(1) Review of certifications**

A certification under subsection (a) shall be given effect unless the court finds that such certification is not supported by substantial evidence provided to the court pursuant to this section.

**(2) Supplemental materials**

In its review of a certification under subsection (a), the court may examine the court order, certification, written request, or directive described in subsection (a) and any relevant court order, certification, written re-

quest, or directive submitted pursuant to subsection (d).

**(c) Limitations on disclosure**

If the Attorney General files a declaration under section 1746 of title 28 that disclosure of a certification made pursuant to subsection (a) or the supplemental materials provided pursuant to subsection (b) or (d) would harm the national security of the United States, the court shall—

(1) review such certification and the supplemental materials in camera and ex parte; and

(2) limit any public disclosure concerning such certification and the supplemental materials, including any public order following such in camera and ex parte review, to a statement as to whether the case is dismissed and a description of the legal standards that govern the order, without disclosing the paragraph of subsection (a) that is the basis for the certification.

**(d) Role of the parties**

Any plaintiff or defendant in a civil action may submit any relevant court order, certification, written request, or directive to the district court referred to in subsection (a) for review and shall be permitted to participate in the briefing or argument of any legal issue in a judicial proceeding conducted pursuant to this section, but only to the extent that such participation does not require the disclosure of classified information to such party. To the extent that classified information is relevant to the proceeding or would be revealed in the determination of an issue, the court shall review such information in camera and ex parte, and shall issue any part of the court's written order that would reveal classified information in camera and ex parte and maintain such part under seal.

**(e) Nondelegation**

The authority and duties of the Attorney General under this section shall be performed by the Attorney General (or Acting Attorney General) or the Deputy Attorney General.

**(f) Appeal**

The courts of appeals shall have jurisdiction of appeals from interlocutory orders of the district courts of the United States granting or denying a motion to dismiss or for summary judgment under this section.

**(g) Removal**

A civil action against a person for providing assistance to an element of the intelligence community that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28.

**(h) Relationship to other laws**

Nothing in this section shall be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

**(i) Applicability**

This section shall apply to a civil action pending on or filed after July 10, 2008.

(Pub. L. 95-511, title VIII, §802, as added Pub. L. 110-261, title II, §201, July 10, 2008, 122 Stat. 2468;

amended Pub. L. 115-118, title I, §101(b)(2)(A), Jan. 19, 2018, 132 Stat. 8.)

**Editorial Notes**

REFERENCES IN TEXT

Section 1805b of this title, referred to in subsec. (a)(3), was repealed by Pub. L. 110-261, title IV, §403(a)(1)(A), July 10, 2008, 122 Stat. 2473.

AMENDMENTS

2018—Subsec. (a)(3). Pub. L. 115-118, which directed substitution of “section 1881a(i) of this title” for “section 1881a(h) of this title”, was executed by substituting “1881a(i) of this title” for “1881a(h) of this title” to reflect the probable intent of Congress.

**§ 1885b. Preemption**

**(a) In general**

No State shall have authority to—

(1) conduct an investigation into an electronic communication service provider's alleged assistance to an element of the intelligence community;

(2) require through regulation or any other means the disclosure of information about an electronic communication service provider's alleged assistance to an element of the intelligence community;

(3) impose any administrative sanction on an electronic communication service provider for assistance to an element of the intelligence community; or

(4) commence or maintain a civil action or other proceeding to enforce a requirement that an electronic communication service provider disclose information concerning alleged assistance to an element of the intelligence community.

**(b) Suits by the United States**

The United States may bring suit to enforce the provisions of this section.

**(c) Jurisdiction**

The district courts of the United States shall have jurisdiction over any civil action brought by the United States to enforce the provisions of this section.

**(d) Application**

This section shall apply to any investigation, action, or proceeding that is pending on or commenced after July 10, 2008.

(Pub. L. 95-511, title VIII, §803, as added Pub. L. 110-261, title II, §201, July 10, 2008, 122 Stat. 2470.)

**§ 1885c. Reporting**

**(a) Semiannual report**

Not less frequently than once every 6 months, the Attorney General shall, in a manner consistent with national security, the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution, fully inform the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives concerning the implementation of this subchapter.

**(b) Content**

Each report made under subsection (a) shall include—

- (1) any certifications made under section 1885a of this title;
- (2) a description of the judicial review of the certifications made under section 1885a of this title; and
- (3) any actions taken to enforce the provisions of section 1885b of this title.

(Pub. L. 95-511, title VIII, §804, as added Pub. L. 110-261, title II, §201, July 10, 2008, 122 Stat. 2470.)

#### CHAPTER 37—NATIONAL SECURITY SCHOLARSHIPS, FELLOWSHIPS, AND GRANTS

Sec.	
1901.	Short title, findings, and purposes.
1902.	Scholarship, fellowship, and grant program.
1903.	National Security Education Board.
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1909.	Fiscal year 1992 funding.
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1913.	National Language Service Corps.
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#### § 1901. Short title, findings, and purposes

##### (a) Short title

This chapter may be cited as the “David L. Boren National Security Education Act of 1991”.

##### (b) Findings

The Congress makes the following findings:

- (1) The security of the United States is and will continue to depend on the ability of the United States to exercise international leadership.
- (2) The ability of the United States to exercise international leadership is, and will increasingly continue to be, based on the political and economic strength of the United States, as well as on United States military strength around the world.
- (3) Recent changes in the world pose threats of a new kind to international stability as Cold War tensions continue to decline while economic competition, regional conflicts, terrorist activities, and weapon proliferations have dramatically increased.
- (4) The future national security and economic well-being of the United States will depend substantially on the ability of its citizens to communicate and compete by knowing the languages and cultures of other countries.
- (5) The Federal Government has an interest in ensuring that the employees of its departments and agencies with national security responsibilities are prepared to meet the challenges of this changing international environment.
- (6) The Federal Government also has an interest in taking actions to alleviate the problem of American undergraduate and graduate students being inadequately prepared to meet the challenges posed by increasing global interaction among nations.

- (7) American colleges and universities must place a new emphasis on improving the teaching of foreign languages, area studies, counterproliferation studies, and other international fields to help meet those challenges.

##### (c) Purposes

The purposes of this chapter are as follows:

- (1) To provide the necessary resources, accountability, and flexibility to meet the national security education needs of the United States, especially as such needs change over time.
- (2) To increase the quantity, diversity, and quality of the teaching and learning of subjects in the fields of foreign languages, area studies, counterproliferation studies, and other international fields that are critical to the Nation’s interest.
- (3) To produce an increased pool of applicants for work in the departments and agencies of the United States Government with national security responsibilities.
- (4) To expand, in conjunction with other Federal programs, the international experience, knowledge base, and perspectives on which the United States citizenry, Government employees, and leaders rely.
- (5) To permit the Federal Government to advocate the cause of international education.

(Pub. L. 102-183, title VIII, §801, Dec. 4, 1991, 105 Stat. 1271; Pub. L. 102-496, title IV, §404(a), Oct. 24, 1992, 106 Stat. 3185; Pub. L. 105-272, title III, §305(a)(1), Oct. 20, 1998, 112 Stat. 2400.)

#### Editorial Notes

##### AMENDMENTS

- 1998—Subsecs. (b)(7), (c)(2). Pub. L. 105-272 inserted “counterproliferation studies,” after “area studies.”
- 1992—Subsec. (a). Pub. L. 102-496 amended subsec. (a) generally, inserting “David L. Boren”.

#### § 1902. Scholarship, fellowship, and grant program

##### (a) Program required

###### (1) In general

The Secretary of Defense shall carry out a program for—

- (A) awarding scholarships to undergraduate students who—
  - (i) are United States citizens in order to enable such students to study, for at least one academic semester or equivalent term, in foreign countries that are critical countries (as determined under section 1903(d)(4)(A) of this title) in those languages and study areas where deficiencies exist (as identified in the assessments undertaken pursuant to section 1906(d) of this title); and
  - (ii) pursuant to subsection (b)(2)(A), enter into an agreement to work in a national security position or work in the field of higher education in the area of study for which the scholarship was awarded;
- (B) awarding fellowships to graduate students who—
  - (i) are United States citizens to enable such students to pursue education as part