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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) of this section;

(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 of such person’s presence in the United States indicate that such person may engage in such activities in the United States, 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) engages in international terrorism or activities in preparation therefor;

(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

(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) of this section, 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) of this section.

(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 concerning 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 de-

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.)

AMENDMENT OF SECTION

For termination of amendment by Pub. L. 108-458, see Termination Date of 2004 Amendment note below.

AMENDMENTS

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 National 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). 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).

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, 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 February 28, 2010.

“(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.”

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 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

Section 1 of Pub. L. 95-511 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. 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, 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) 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(i)(3) of such Act (as so added) at which time the provisions of that section and of section 702(i)(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, 2012.—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), 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), 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(h) of such Act [50 U.S.C. 1881a(h)], as added by section 101(a);

“(B) section 702(h)(3) of such Act (as so added) shall continue to apply with respect to any directive issued pursuant to section 702(h) 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(l) and 707 of such Act, [50 U.S.C. 1881a(l), 1881f] as added by section 101(a), 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), 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(l) or 707 of such Act, as added by section 101(a), relating to any acquisition conducted under title VII of such Act, as amended by section 101(a), has been included in a review, assessment, or report under such section 601, 702(l), 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. 401 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].”

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) of this section 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.)

AMENDMENTS

2004—Subsec. (a)(3), (4)(B). Pub. L. 108-458 substituted “Director of National Intelligence” for “Director of Central Intelligence”.

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 401 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 401 of this title.

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 information 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. Section 2-202 of Executive Order No. 12036 [set out under section 401 of this title] is amended by inserting the following at the end of that section: “Any electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act as well as this Order.”

1-105. Section 2-203 of Executive Order No. 12036 [set out under section 401 of this title] is amended by inserting the following at the end of that section: “Any monitoring which constitutes electronic surveillance as defined in the Foreign Intelligence Surveillance Act of 1978 shall be conducted in accordance with that Act as well as this Order.”

§ 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 of 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) of this section.

(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) of this title or paragraph (4) or (5) of section 1881a(h) 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 immediately 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) of this section 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) of this section 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) or 1881a(h)(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 review of petitions filed pursuant to section 1861(f)(1) or 1881a(h)(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.

(i)¹ Compliance with orders, rules, and procedures

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

(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.)

REFERENCES IN TEXT

This chapter, referred to in subssecs. (a), (b), (c), (f), (g)(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.

AMENDMENTS

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 subssecs. (e) and (f).

2004—Subsec. (c). Pub. L. 108-458 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”.

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 401 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 401 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 So in original. No subsec. (h) has been enacted.

(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) of this section 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) of this section 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) of this section 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 modi-

fication 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.)

AMENDMENTS

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

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 Memo-

randum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 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 401 of this title.

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)¹ of this title and any other information furnished under section 1804(d)¹ 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) of this section, 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;

¹ See References in Text note below.

(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) Directions

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

(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, or in circumstances where the Court finds, based upon specific facts provided in the application, that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons, 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 National 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.

(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) 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.

(g) 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.

(h) 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.

(i) 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.)

AMENDMENT OF SUBSECTION (c)(2)

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, provided that, effective Feb. 28, 2010, with certain exceptions, subsec. (c)(2) of this section is amended to read as it read on Oct. 25, 2001:

(2) direct—

(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.

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) and (h), 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

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 end 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.

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 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.

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, provided that:

“(1) IN GENERAL.—Effective February 28, 2010, the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.] is amended so that sections 501, 502, and 105(c)(2) [50 U.S.C. 1861, 1862, 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.”

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 401 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 401 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, Telegraphs, Telephones, and Radiotelegraphs.

§§ 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.

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) of this section, or whenever a motion is made pursuant to subsection (e) of this section, 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) of this section 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) of this section, 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 section 1805(e) 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)¹ 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.)

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.

Section 1804(a)(7)(B) of this title, referred to in subsec. (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

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”.

¹ See References in Text note below.

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).

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 to Administrative Office of the United States Court and to Congress

In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Court and to Congress a report setting forth with respect to the preceding calendar year—

- (a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this subchapter; and
- (b) the total number of such orders and extensions either granted, modified, or denied.

(Pub. L. 95-511, title I, § 107, Oct. 25, 1978, 92 Stat. 1795.)

§ 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 House Permanent Select Committee on Intelligence and the Senate 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; and

(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.

(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.)

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.

AMENDMENTS

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).

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;¹ or

(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.¹

(b) Defense

It is a defense to a prosecution under subsection (a) of this section 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.)

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

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).

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

¹ So in original.

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.)

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.

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.

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, material, 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 for-