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50 USC CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE

01/03/05

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Sec. 1801. Definitions

-STATUTE-

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; or

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

(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; or

(C) engages in international terrorism or activities in preparation therefore; 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 or international terrorism 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) or the Deputy Attorney General.

(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.

-SOURCE-

(Pub. L. 95-511, title I, Sec. 101, Oct. 25, 1978, 92 Stat. 1783; Pub. L. 106-120, title VI, Sec. 601, Dec. 3, 1999, 113 Stat. 1619; Pub. L. 107-56, title X, Sec. 1003, Oct. 26, 2001, 115 Stat. 392; Pub. L. 107-108, title III, Sec. 314(a)(1), (c)(2), Dec. 28, 2001, 115 Stat. 1402, 1403; Pub. L. 108-458, title VI, Sec. 6001(a), Dec. 17, 2004, 118 Stat. 3742.)

-STATAMEND-

AMENDMENT OF SECTION

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

-MISC1-

AMENDMENTS

2004 - Subsec. (b)(1)(C). Pub. L. 108-458, Sec. 6001, temporarily added subpar. (C). See Termination Date of 2004 Amendment note below.

2001 - Subsec. (f)(2). Pub. L. 107-56, Sec. 1003, as amended by Pub. L. 107-108, Sec. 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, Sec. 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).

TERMINATION DATE OF 2004 AMENDMENT

Pub. L. 108-458, title VI, Sec. 6001(b), Dec. 17, 2004, 118 Stat. 3742, provided that: "The amendment made by subsection (a)

[amending this section] shall be subject to the sunset provision in section 224 of Public Law 107-56 [18 U.S.C. 2510 note] (115 Stat. 295), including the exception provided in subsection (b) of such section 224."

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-108, title III, Sec. 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, Sec. 701, formerly title III, Sec. 301, Oct. 25, 1978, 92 Stat. 1798, as renumbered title IV, Sec. 401, and amended by Pub. L. 103-359, title VIII, Sec. 807(a)(1), (2), Oct. 14, 1994, 108 Stat. 3443; renumbered title VI, Sec. 601, and amended Pub. L. 105-272, title VI, Secs. 601(1), 603(a), Oct. 20, 1998, 112 Stat. 2404, 2412; renumbered title VII, Sec. 701, Pub. L. 108-458, title VI, Sec. 6002(a)(1), Dec. 17, 2004, 118 Stat. 3743, 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 provision 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]."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-567, title VI, Sec. 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. 106-567, title VI, Sec. 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."

-TRANS-

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.

-End-

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50 USC Sec. 1802

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TITLE 50 - WAR AND NATIONAL DEFENSE
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Sec. 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

-STATUTE-

(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.

-SOURCE-

(Pub. L. 95-511, title I, Sec. 102, Oct. 25, 1978, 92 Stat. 1786; Pub. L. 108-458, title I, Sec. 1071(e), Dec. 17, 2004, 118 Stat. 3691.)

-MISC1-

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

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.

-EXEC-

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

Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, 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)(7) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(7)), 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)(7) of the Act in support of applications to conduct electronic surveillance:

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

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.

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."

Jimmy Carter.

-End-

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50 USC Sec. 1803

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Sec. 1803. Designation of judges

-STATUTE-

- (a) Court to hear applications and grant orders; record of denial; transmittal to court of review
The Chief Justice of the United States shall publicly designate

11 district court judges from 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 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.

(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.

-SOURCE-

(Pub. L. 95-511, title I, Sec. 103, Oct. 25, 1978, 92 Stat. 1788; Pub. L. 107-56, title II, Sec. 208, Oct. 26, 2001, 115 Stat. 283; Pub. L. 108-458, title I, Sec. 1071(e), Dec. 17, 2004, 118 Stat. 3691.)

-REFTEXT-

REFERENCES IN TEXT

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

-MISC1-

AMENDMENTS

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 2004 AMENDMENT

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.

-End-

-CITE-

50 USC Sec. 1804

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TITLE 50 - WAR AND NATIONAL DEFENSE
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Sec. 1804. Applications for court orders

-STATUTE-

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

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

- (1) the identity of the Federal officer making the application;
- (2) the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;
- (3) the identity, if known, or a description of the target of the electronic surveillance;
- (4) 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;
- (5) a statement of the proposed minimization procedures;
- (6) a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;
- (7) a certification or certifications by the Assistant to the President for National Security Affairs or 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 -
 - (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;

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

(9) 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;

(10) 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; and

(11) 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.

(b) Exclusion of certain information respecting foreign power targets

Whenever the target of the electronic surveillance is a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title, and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the application need not contain the information required by paragraphs (6), (7)(E), (8), and (11) of subsection (a) of this section, but shall state whether physical entry is required to effect the surveillance and shall contain such information about the surveillance techniques and communications or other information concerning United States persons likely to be obtained as may be necessary to assess the proposed minimization procedures.

(c) Additional affidavits or certifications

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

(d) 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.

(e) 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, or the Director of National Intelligence, 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 modification under the preceding sentence, such official may not delegate the responsibility to supervise the making of any modification under that preceding sentence. Each such official shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to supervise the making of such modification.

-SOURCE-

(Pub. L. 95-511, title I, Sec. 104, Oct. 25, 1978, 92 Stat. 1788; Pub. L. 106-567, title VI, Sec. 602(a), Dec. 27, 2000, 114 Stat. 2851; Pub. L. 107-56, title II, Sec. 218, Oct. 26, 2001, 115 Stat. 291; Pub. L. 108-458, title I, Sec. 1071(e), Dec. 17, 2004, 118 Stat. 3691.)

-STATAMEND-

AMENDMENT OF SECTION

For termination of amendment by Pub. L. 107-56, see Termination Date of 2001 Amendment note below.

-MISC1-

AMENDMENTS

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, Secs. 218, 224, temporarily substituted "a significant purpose" for "the purpose". See Termination Date of 2001 Amendment note below.

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

EFFECTIVE DATE OF 2004 AMENDMENT

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.

TERMINATION DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-56 to cease to have effect Dec. 31, 2005, except amendment to continue in effect with respect to any particular foreign intelligence investigation that began before Dec. 31, 2005, or with respect to any particular offense or potential offense that began or occurred before Dec. 31, 2005, see section 224 of Pub. L. 107-56, set out as a note under section 2510 of Title 18, Crimes and Criminal Procedure.

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.

-End-

-CITE-

50 USC Sec. 1805

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER I - ELECTRONIC SURVEILLANCE

-HEAD-

Sec. 1805. Issuance of order

-STATUTE-

(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 President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;

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

(3) 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;

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

(5) 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) of this

title and any other information furnished under section 1804(d) of this title.

(b) Determination of probable cause

In determining whether or not probable cause exists for purposes of an order under subsection (a)(3) 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

An order approving an electronic surveillance under this section shall -

(1) specify -

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

(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;

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

(F) 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; and

(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, 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, 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.

(d) Exclusion of certain information respecting foreign power targets

Whenever the target of the electronic surveillance is a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title, and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the order need not contain the information required by subparagraphs (C), (D), and (F) of subsection (c)(1) of this section, but shall generally describe the information sought, the communications or activities to be subjected to the surveillance, and the type of electronic surveillance involved, including whether physical entry is required.

(e) 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, 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.

(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 section 1801(a)(5) or (6) 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 as defined in section 1801(b)(1)(A) of this title 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.

(f) Emergency orders

Notwithstanding any other provision of this subchapter, when the Attorney General reasonably determines that -

(1) 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; and

(2) the factual basis for issuance of an order under this subchapter to approve such surveillance exists;

he may authorize the emergency employment of electronic surveillance if a judge having jurisdiction under section 1803 of this title is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this subchapter is made to that judge as soon as practicable, but not more than 72 hours after the Attorney General authorizes such surveillance. If the Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this subchapter for the issuance of a judicial order be followed. 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 72 hours from the time of authorization by the Attorney General, whichever is earliest. 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. A denial of the application made under this subsection may be reviewed as provided in section 1803 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

(A) it is not reasonable to -

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

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

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

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

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

(h) Retention of certifications, applications and orders

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

(i) Bar to legal action

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

-SOURCE-

(Pub. L. 95-511, title I, Sec. 105, Oct. 25, 1978, 92 Stat. 1790; Pub. L. 98-549, Sec. 6(b)(3), Oct. 30, 1984, 98 Stat. 2804; Pub. L. 106-567, title VI, Sec. 602(b), Dec. 27, 2000, 114 Stat. 2851; Pub. L. 107-56, title II, Secs. 206, 207(a)(1), (b)(1), 225, Oct. 26, 2001, 115 Stat. 282, 295; Pub. L. 107-108, title III, Sec. 314(a)(2), (c)(1), Dec. 28, 2001, 115 Stat. 1402, 1403; Pub. L. 107-273, div. B, title IV, Sec. 4005(c), Nov. 2, 2002, 116 Stat. 1812; Pub. L. 108-458, title I, Sec. 1071(e), Dec. 17, 2004, 118 Stat. 3691.)

-STATAMEND-

AMENDMENT OF SECTION

For termination of amendment by Pub. L. 107-56, see Effective and Termination Dates of 2001 Amendments note below.

-COD-

CODIFICATION

As originally enacted, Pub. L. 107-56, Sec. 225, temporarily 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, Sec. 314(a)(2)(C), and Pub. L. 107-273, Sec. 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 and Termination Dates of 2001 Amendments notes below.

-MISC1-

AMENDMENTS

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, Sec. 225. See 2001 Amendment notes below.

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

Subsec. (c)(2)(B). Pub. L. 107-56, Secs. 206, 224, temporarily 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". See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (e)(1). Pub. L. 107-56, Secs. 207(a)(1), 224, temporarily 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. See Effective and Termination Dates of 2001 Amendments note below.

Subsec. (e)(2). Pub. L. 107-56, Secs. 207(b)(1), 224, as amended by Pub. L. 107-108, Sec. 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. See Effective and Termination Dates of 2001 Amendments note below.

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

Subsec. (h). Pub. L. 107-108, Sec. 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, Sec. 314(a)(2)(D), inserted "for electronic surveillance or physical search" before period at end.

Pub. L. 107-108, Sec. 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, Secs. 224, 225, as amended by Pub. L. 107-273, Sec. 4005(c), temporarily added subsec. (i) relating to bar of legal action. See Effective and Termination Dates of 2001 Amendments note below.

2000 - Subsecs. (b), (c). Pub. L. 106-567, Sec. 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, Sec. 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, Sec. 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 2004 AMENDMENT

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, Sec. 4005(c), Nov. 2, 2002, 116 Stat. 1812, provided that the amendment made by section 4005(c) is effective Oct. 26, 2001.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENTS

Pub. L. 107-108, title III, Sec. 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.

Amendment by Pub. L. 107-56 to cease to have effect Dec. 31, 2005, except amendment to continue in effect with respect to any particular foreign intelligence investigation that began before Dec. 31, 2005, or with respect to any particular offense or potential offense that began or occurred before Dec. 31, 2005, see section 224 of Pub. L. 107-56, set out as a Termination of 2001 Amendment note under section 2510 of Title 18, Crimes and Criminal Procedure.

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.

-End-

-CITE-

50 USC Sec. 1806

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER I - ELECTRONIC SURVEILLANCE

-HEAD-

Sec. 1806. Use of information

-STATUTE-

(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 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, 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) (!1) 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 or international terrorism 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) of this title or the entry of an order under section 1805 of this title.

-SOURCE-

(Pub. L. 95-511, title I, Sec. 106, Oct. 25, 1978, 92 Stat. 1793; Pub. L. 107-56, title V, Sec. 504(a), Oct. 26, 2001, 115 Stat. 364; Pub. L. 107-296, title VIII, Sec. 898, Nov. 25, 2002, 116 Stat. 2258.)

-REFTEXT-

REFERENCES IN TEXT

Section 1805(e) of this title, referred to in subsec. (j), was redesignated section 1805(f) of this title by Pub. L. 106-567, title VI, Sec. 602(b)(1), Dec. 27, 2000, 114 Stat. 2851.

-MISC1-

AMENDMENTS

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 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, Sec. 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."

-FOOTNOTE-

(!1) See References in Text note below.

-End-

-CITE-

50 USC Sec. 1807

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER I - ELECTRONIC SURVEILLANCE

-HEAD-

Sec. 1807. Report to Administrative Office of the United States Court and to Congress

-STATUTE-

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.

-SOURCE-

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

-End-

-CITE-

50 USC Sec. 1808

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER I - ELECTRONIC SURVEILLANCE

-HEAD-

Sec. 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

-STATUTE-

(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 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) 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.

(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.

-SOURCE-

(Pub. L. 95-511, title I, Sec. 108, Oct. 25, 1978, 92 Stat. 1795;
Pub. L. 106-567, title VI, Sec. 604(a), Dec. 27, 2000, 114 Stat. 2853.)

-MISC1-

AMENDMENTS

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

-End-

-CITE-

50 USC Sec. 1809

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER I - ELECTRONIC SURVEILLANCE

-HEAD-

Sec. 1809. Criminal sanctions

-STATUTE-

(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 statute; 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 statute.

(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.

-SOURCE-

(Pub. L. 95-511, title I, Sec. 109, Oct. 25, 1978, 92 Stat. 1796.)

-End-

-CITE-

50 USC Sec. 1810

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER I - ELECTRONIC SURVEILLANCE

-HEAD-

Sec. 1810. Civil liability

-STATUTE-

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

(a) actual damages, but not less than liquidated damages of

\$1,000 or \$100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

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

-SOURCE-

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

-End-

-CITE-

50 USC Sec. 1811

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER I - ELECTRONIC SURVEILLANCE

-HEAD-

Sec. 1811. Authorization during time of war

-STATUTE-

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.

-SOURCE-

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

-End-

-CITE-

50 USC SUBCHAPTER II - PHYSICAL SEARCHES

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER II - PHYSICAL SEARCHES

-HEAD-

SUBCHAPTER II - PHYSICAL SEARCHES

-End-

-CITE-

50 USC Sec. 1821

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER II - PHYSICAL SEARCHES

-HEAD-

Sec. 1821. Definitions

-STATUTE-

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", 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 foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 1801(f) of this title.

-SOURCE-

(Pub. L. 95-511, title III, Sec. 301, as added Pub. L. 103-359, title VIII, Sec. 807(a)(3), Oct. 14, 1994, 108 Stat. 3443; amended

Pub. L. 107-108, title III, Sec. 314(a)(3), Dec. 28, 2001, 115 Stat. 1402.)

-MISC1-

PRIOR PROVISIONS

A prior section 301 of Pub. L. 95-511 was renumbered section 601 and is set out as a note under section 1801 of this title.

AMENDMENTS

2001 - Par. (4)(D). Pub. L. 107-108 substituted "72 hours" for "24 hours".

EFFECTIVE DATE

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

-End-

-CITE-

50 USC Sec. 1822

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER II - PHYSICAL SEARCHES

-HEAD-

Sec. 1822. Authorization of physical searches for foreign intelligence purposes

-STATUTE-

(a) Presidential authorization

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

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

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

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

(iii) the proposed minimization procedures with respect to

such physical search meet the definition of minimization procedures under paragraphs (1) through (4) (!1) of section 1821(4) of this title; and

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

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

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

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

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

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

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

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

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

(b) Application for order; authorization

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

(c) Jurisdiction of Foreign Intelligence Surveillance Court

The Foreign Intelligence Surveillance Court shall have jurisdiction to hear applications for and grant orders approving a

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

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

The court of review established under section 1803(b) of this title shall have jurisdiction to review the denial of any application made under this subchapter. If such court determines that the application was properly denied, the court shall 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.

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

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

-SOURCE-

(Pub. L. 95-511, title III, Sec. 302, as added Pub. L. 103-359, title VIII, Sec. 807(a)(3), Oct. 14, 1994, 108 Stat. 3444; amended Pub. L. 108-458, title I, Sec. 1071(e), Dec. 17, 2004, 118 Stat. 3691.)

-MISC1-

AMENDMENTS

2004 - Subsecs. (a)(3), (4)(A)(ii), (e). Pub. L. 108-458 substituted "Director of National Intelligence" for "Director of Central Intelligence".

EFFECTIVE DATE OF 2004 AMENDMENT

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.

-EXEC-

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

Ex. Ord. No. 12949, Feb. 9, 1995, 60 F.R. 8169, provided:

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

Section 1. Pursuant to section 302(a)(1) of the Act, the Attorney General is authorized to approve physical searches, without a court order, to acquire foreign intelligence information for periods of

up to one year, if the Attorney General makes the certifications required by that section.

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

Sec. 3. Pursuant to section 303(a)(7) of the Act, the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by section 303(a)(7) of the Act in support of applications to conduct physical searches:

- (a) Secretary of State;
- (b) Secretary of Defense;
- (c) Director of Central Intelligence;
- (d) Director of the Federal Bureau of Investigation,
- (e) Deputy Secretary of State;
- (f) Deputy Secretary of Defense; and
- (g) Deputy Director of Central Intelligence.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President, by and with the advice and consent of the Senate.

William J. Clinton.

-FOOTNOTE-

(!1) So in original. Probably should be "subparagraphs (A) through (D)".

-End-

-CITE-

50 USC Sec. 1823

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER II - PHYSICAL SEARCHES

-HEAD-

Sec. 1823. Application for order

-STATUTE-

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

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

- (1) the identity of the Federal officer making the application;
- (2) the authority conferred on the Attorney General by the President and the approval of the Attorney General to make the application;
- (3) the identity, if known, or a description of the target of the search, and a detailed description of the premises or property to be searched and of the information, material, or property to be seized, reproduced, or altered;
- (4) a statement of the facts and circumstances relied upon by

the applicant to justify the applicant's belief that -

(A) the target of the physical search is a foreign power or an agent of a foreign power;

(B) the premises or property to be searched contains foreign intelligence information; and

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

(5) a statement of the proposed minimization procedures;

(6) a statement of the nature of the foreign intelligence sought and the manner in which the physical search is to be conducted;

(7) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive branch officers employed in the area of national security or defense and appointed by the President, by and with the advice and consent of the Senate -

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

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

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

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

(E) includes a statement explaining the basis for the certifications required by subparagraphs (C) and (D);

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

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

(b) Additional affidavits or certifications

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

(c) Additional information

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

(d) Personal review by Attorney General

(1)(A) Upon written request of the Director of the Federal Bureau of Investigation, the Secretary of Defense, the Secretary of State, or the Director of National Intelligence, 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 modification under the preceding sentence, such official may not delegate the responsibility to supervise the making of any modification under that preceding sentence. Each such official shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to supervise the making of such modification.

-SOURCE-

(Pub. L. 95-511, title III, Sec. 303, as added Pub. L. 103-359, title VIII, Sec. 807(a)(3), Oct. 14, 1994, 108 Stat. 3446; amended Pub. L. 106-567, title VI, Sec. 603(a), Dec. 27, 2000, 114 Stat. 2852; Pub. L. 107-56, title II, Sec. 218, Oct. 26, 2001, 115 Stat. 291; Pub. L. 108-458, title I, Sec. 1071(e), Dec. 17, 2004, 118 Stat. 3691.)

-STATAMEND-

AMENDMENT OF SECTION

For termination of amendment by Pub. L. 107-56, see Termination Date of 2001 Amendment note below.

-MISC1-

AMENDMENTS

2004 - Subsec. (d)(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, Secs. 218, 224, temporarily substituted "a significant purpose" for "the purpose". See Termination Date of 2001 Amendment note below.

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

EFFECTIVE DATE OF 2004 AMENDMENT

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.

TERMINATION DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-56 to cease to have effect Dec. 31, 2005, except amendment to continue in effect with respect to any particular foreign intelligence investigation that began before Dec. 31, 2005, or with respect to any particular offense or potential offense that began or occurred before Dec. 31, 2005, see section 224 of Pub. L. 107-56, set out as a note under section 2510 of Title 18, Crimes and Criminal Procedure.

OFFICIALS DESIGNATED TO MAKE CERTIFICATIONS

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

-End-

-CITE-

50 USC Sec. 1824

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER II - PHYSICAL SEARCHES

-HEAD-

Sec. 1824. Issuance of order

-STATUTE-

(a) Necessary findings

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

(1) the President has authorized the Attorney General to approve applications for physical searches for foreign intelligence purposes;

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

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

(A) the target of the physical search is a foreign power or an agent of a foreign power, except that no United States person may be considered an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

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

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

(5) the application which has been filed contains all statements and certifications required by section 1823 of this title, and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 1823(a)(7)(E) of this title and any other information furnished under section 1823(c) of this title.

(b) Determination of probable cause

In determining whether or not probable cause exists for purposes of an order under subsection (a)(3) 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

An order approving a physical search under this section shall -

(1) specify -

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

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

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

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

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

(2) direct -

(A) that the minimization procedures be followed;

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

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

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

(E) that the Federal officer conducting the physical search promptly report to the court the circumstances and results of the physical search.

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

(1) An order issued under this section may approve a physical search for the period necessary to achieve its purpose, or for 90 days, whichever is less, except that (A) an order under this section shall approve a physical search targeted against a foreign power, as defined in paragraph (1), (2), or (3) of section 1801(a) of this title, for the period specified in the application or for one year, whichever is less, and (B) an order under this section for a physical search targeted against an agent of a foreign power 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.

(2) Extensions of an order issued under this subchapter may be granted on the same basis as the original order upon an application for an extension and new findings made in the same manner as required for the original order, except that an extension of an order under this chapter for a physical search targeted against a foreign power, as defined in section 1801(a)(5) or (6) of this title, or against a foreign power, as defined in section 1801(a)(4) of this title, that is not a United States person, or against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title, may be for a period not to exceed one year if the judge finds probable cause to believe that no property of any individual United States person will be acquired during the period.

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

(e) Emergency orders

(1)(A) Notwithstanding any other provision of this subchapter, whenever the Attorney General reasonably makes the determination specified in subparagraph (B), the Attorney General may authorize the execution of an emergency physical search if -

- (i) a judge having jurisdiction under section 1803 of this title is informed by the Attorney General or the Attorney General's designee at the time of such authorization that the decision has been made to execute an emergency search, and
- (ii) an application in accordance with this subchapter is made to that judge as soon as practicable but not more than 72 hours after the Attorney General authorizes such search.

(B) The determination referred to in subparagraph (A) is a determination that -

- (i) an emergency situation exists with respect to the execution of a physical search to obtain foreign intelligence information before an order authorizing such search can with due diligence be obtained, and
- (ii) the factual basis for issuance of an order under this subchapter to approve such a search exists.

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

(3) In the absence of a judicial order approving such a physical search, the search shall terminate the earlier of -

- (A) the date on which the information sought is obtained;
 - (B) the date on which the application for the order is denied;
- or
- (C) the expiration of 72 hours from the time of authorization by the Attorney General.

(4) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the search, no information obtained or evidence derived from such search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General, if the information indicates a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 1822 of this title.

(f) Retention of applications and orders

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

-SOURCE-

(Pub. L. 95-511, title III, Sec. 304, as added Pub. L. 103-359, title VIII, Sec. 807(a)(3), Oct. 14, 1994, 108 Stat. 3447; amended Pub. L. 106-567, title VI, Sec. 603(b), Dec. 27, 2000, 114 Stat.

2853; Pub. L. 107-56, title II, Sec. 207(a)(2), (b)(2), Oct. 26, 2001, 115 Stat. 282; Pub. L. 107-108, title III, Sec. 314(a)(4), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 108-458, title I, Sec. 1071(e), Dec. 17, 2004, 118 Stat. 3691.)

-STATAMEND-

AMENDMENT OF SECTION

For termination of amendment by Pub. L. 107-56, see Termination Date of 2001 Amendment note below.

-REFTEXT-

REFERENCES IN TEXT

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

-MISC1-

AMENDMENTS

2004 - Subsec. (c)(2)(C). Pub. L. 108-458 substituted "Director of National Intelligence" for "Director of Central Intelligence".

2001 - Subsec. (d)(1). Pub. L. 107-56, Secs. 207(a)(2), 224, temporarily substituted "90 days," for "forty-five days," and temporarily inserted "(A)" after "except that" and ", and (B) an order under this section for a physical search targeted against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title may be for the period specified in the application or for 120 days, whichever is less" before period at end. See Termination Date of 2001 Amendment note below.

Subsec. (d)(2). Pub. L. 107-56, Secs. 207(b)(2), 224, temporarily inserted "or against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title," after "not a United States person,". See Termination Date of 2001 Amendment note below.

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

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

EFFECTIVE DATE OF 2004 AMENDMENT

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.

TERMINATION DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-56 to cease to have effect Dec. 31, 2005, except amendment to continue in effect with respect to any particular foreign intelligence investigation that began before Dec. 31, 2005, or with respect to any particular offense or potential offense that began or occurred before Dec. 31, 2005, see section 224 of Pub. L. 107-56, set out as a note under section 2510 of Title 18, Crimes and Criminal Procedure.

-End-

-CITE-

50 USC Sec. 1825

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
 CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
 SUBCHAPTER II - PHYSICAL SEARCHES

-HEAD-

Sec. 1825. Use of information

-STATUTE-

(a) Compliance with minimization procedures; lawful purposes

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

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

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

(c) Statement for disclosure

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

(d) Notification by United States

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

(e) Notification by States or political subdivisions

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

(f) Motion to suppress

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

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

- (A) the information was unlawfully acquired; or
- (B) the physical search was not made in conformity with an order of authorization or approval.

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

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

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

(h) Suppression of evidence; denial of motion

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

(i) Finality of orders

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

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

- (1) If an emergency execution of a physical search is authorized

under section 1824(d) (!1) of this title and a subsequent order approving the search is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to the search as the judge may determine in his discretion it is in the interests of justice to serve, notice of -

- (A) the fact of the application;
- (B) the period of the search; and
- (C) the fact that during the period information was or was not obtained.

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

(k) Coordination with law enforcement on national security matters

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

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

(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

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

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 1823(a)(7) of this title or the entry of an order under section 1824 of this title.

-SOURCE-

(Pub. L. 95-511, title III, Sec. 305, as added Pub. L. 103-359, title VIII, Sec. 807(a)(3), Oct. 14, 1994, 108 Stat. 3449; amended Pub. L. 107-56, title V, Sec. 504(b), Oct. 26, 2001, 115 Stat. 364; Pub. L. 107-296, title VIII, Sec. 899, Nov. 25, 2002, 116 Stat. 2258.)

-REFTEXT-

REFERENCES IN TEXT

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

-MISC1-

AMENDMENTS

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

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

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.

-FOOTNOTE-

(!1) See References in Text note below.

-End-

-CITE-

50 USC Sec. 1826

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER II - PHYSICAL SEARCHES

-HEAD-

Sec. 1826. Congressional oversight

-STATUTE-

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

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

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

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

-SOURCE-

(Pub. L. 95-511, title III, Sec. 306, as added Pub. L. 103-359, title VIII, Sec. 807(a)(3), Oct. 14, 1994, 108 Stat. 3451.)

-End-

-CITE-

50 USC Sec. 1827

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER II - PHYSICAL SEARCHES

-HEAD-

Sec. 1827. Penalties

-STATUTE-

(a) Prohibited activities

A person is guilty of an offense if he intentionally -

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

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

(b) Defense

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

(c) Fine or imprisonment

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

(d) Federal jurisdiction

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

-SOURCE-

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

-End-

-CITE-

50 USC Sec. 1828

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER II - PHYSICAL SEARCHES

-HEAD-

Sec. 1828. Civil liability

-STATUTE-

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

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

(2) punitive damages; and

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

-SOURCE-

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

-End-

-CITE-

50 USC Sec. 1829

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER II - PHYSICAL SEARCHES

-HEAD-

Sec. 1829. Authorization during time of war

-STATUTE-

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

-SOURCE-

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

-End-

-CITE-

50 USC SUBCHAPTER III - PEN REGISTERS AND TRAP AND TRACE
DEVICES FOR FOREIGN INTELLIGENCE PURPOSES 01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER III - PEN REGISTERS AND TRAP AND TRACE DEVICES FOR
FOREIGN INTELLIGENCE PURPOSES

-HEAD-

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

-End-

-CITE-

50 USC Sec. 1841

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER III - PEN REGISTERS AND TRAP AND TRACE DEVICES FOR
FOREIGN INTELLIGENCE PURPOSES

-HEAD-

Sec. 1841. Definitions

-STATUTE-

As used in this subchapter:

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

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

(3) The term "aggrieved person" means any person -

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

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

-SOURCE-

(Pub. L. 95-511, title IV, Sec. 401, as added Pub. L. 105-272, title VI, Sec. 601(2), Oct. 20, 1998, 112 Stat. 2404.)

-MISC1-

PRIOR PROVISIONS

A prior section 401 of Pub. L. 95-511 was renumbered section 601 and is set out as a note under section 1801 of this title.

-End-

-CITE-

50 USC Sec. 1842

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER III - PEN REGISTERS AND TRAP AND TRACE DEVICES FOR
FOREIGN INTELLIGENCE PURPOSES

-HEAD-

Sec. 1842. Pen registers and trap and trace devices for foreign intelligence and international terrorism investigations

-STATUTE-

(a) Application for authorization or approval

(1) Notwithstanding any other provision of law, the Attorney General or a designated attorney for the Government may make an application for an order or an extension of an order authorizing or approving the installation and use of a pen register or trap and trace device for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution which is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

(2) The authority under paragraph (1) is in addition to the authority under subchapter I of this chapter to conduct the electronic surveillance referred to in that paragraph.

(b) Form of application; recipient

Each application under this section shall be in writing under oath or affirmation to -

(1) a judge of the court established by section 1803(a) of this title; or

(2) a United States Magistrate Judge under chapter 43 of title 28 who is publicly designated by the Chief Justice of the United States to have the power to hear applications for and grant

orders approving the installation and use of a pen register or trap and trace device on behalf of a judge of that court.

(c) Executive approval; contents of application

Each application under this section shall require the approval of the Attorney General, or a designated attorney for the Government, and shall include -

(1) the identity of the Federal officer seeking to use the pen register or trap and trace device covered by the application; and

(2) a certification by the applicant that the information likely to be obtained is foreign intelligence information not concerning a United States person or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(d) Ex parte judicial order of approval

(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the installation and use of a pen register or trap and trace device if the judge finds that the application satisfies the requirements of this section.

(2) An order issued under this section -

(A) shall specify -

(i) the identity, if known, of the person who is the subject of the investigation;

(ii) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied;

(iii) the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied and, in the case of a trap and trace device, the geographic limits of the trap and trace order.(!1)

(B) shall direct that -

(i) upon request of the applicant, the provider of a wire or electronic communication service, landlord, custodian, or other person shall furnish any information, facilities, or technical assistance necessary to accomplish the installation and operation of the pen register or trap and trace device in such a manner as will protect its secrecy and produce a minimum amount of interference with the services that such provider, landlord, custodian, or other person is providing the person concerned;

(ii) such provider, landlord, custodian, or other person -

(I) shall not disclose the existence of the investigation or of the pen register or trap and trace device to any person unless or until ordered by the court; and

(II) shall maintain, under security procedures approved by the Attorney General and the Director of National Intelligence pursuant to section 1805(b)(2)(C) (!2) of this title, any records concerning the pen register or trap and trace device or the aid furnished; and

(iii) the applicant shall compensate such provider, landlord, custodian, or other person for reasonable expenses incurred by such provider, landlord, custodian, or other person in providing such information, facilities, or technical assistance.

(e) Time limitation

An order issued under this section shall authorize the installation and use of a pen register or trap and trace device for a period not to exceed 90 days. Extensions of such an order may be granted, but only upon an application for an order under this section and upon the judicial finding required by subsection (d) of this section. The period of extension shall be for a period not to exceed 90 days.

(f) Cause of action barred

No cause of action shall lie in any court against any provider of a wire or electronic communication service, landlord, custodian, or other person (including any officer, employee, agent, or other specified person thereof) that furnishes any information, facilities, or technical assistance under subsection (d) of this section in accordance with the terms of an order issued under this section.

(g) Furnishing of results

Unless otherwise ordered by the judge, the results of a pen register or trap and trace device shall be furnished at reasonable intervals during regular business hours for the duration of the order to the authorized Government official or officials.

-SOURCE-

(Pub. L. 95-511, title IV, Sec. 402, as added Pub. L. 105-272, title VI, Sec. 601(2), Oct. 20, 1998, 112 Stat. 2405; amended Pub. L. 107-56, title II, Sec. 214(a), Oct. 26, 2001, 115 Stat. 286; Pub. L. 107-108, title III, Sec. 314(a)(5), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 108-458, title I, Sec. 1071(e), Dec. 17, 2004, 118 Stat. 3691.)

-STATAMEND-

AMENDMENT OF SECTION

For termination of amendment by Pub. L. 107-56, see Termination Date of 2001 Amendment note below.

-REFTEXT-

REFERENCES IN TEXT

Executive Order No. 12333, referred to in subsec. (a)(1), is set out as a note under section 401 of this title.

Section 1805(b)(2)(C) of this title, referred to in subsec. (d)(2)(B)(ii)(II), was redesignated section 1805(c)(2)(C) of this title by Pub. L. 106-567, title VI, Sec. 602(b)(1), Dec. 27, 2000, 114 Stat. 2851.

The criminal laws of the United States, referred to in subsec. (c)(3), are classified generally to Title 18, Crimes and Criminal Procedure.

-MISC1-

AMENDMENTS

2004 - Subsec. (d)(2)(B)(ii)(II). Pub. L. 108-458 substituted "Director of National Intelligence" for "Director of Central Intelligence".

2001 - Subsec. (a)(1). Pub. L. 107-56, Secs. 214(a)(1), 224, temporarily substituted "for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution" for "for any investigation to gather foreign intelligence information or information concerning international terrorism". See Termination Date of 2001 Amendment note below.

Subsec. (c)(1). Pub. L. 107-108, Sec. 314(a)(5)(A), inserted "and" after semicolon at end.

Subsec. (c)(2). Pub. L. 107-56, Secs. 214(a)(2), 224, temporarily amended par. (2) generally. Prior to amendment, par. (2) read as follows: "a certification by the applicant that the information likely to be obtained is relevant to an ongoing foreign intelligence or international terrorism investigation being conducted by the Federal Bureau of Investigation under guidelines approved by the Attorney General; and". See Termination Date of 2001 Amendment note below.

Subsec. (c)(3). Pub. L. 107-56, Secs. 214(a)(3), 224, temporarily struck out par. (3) which read as follows:

"(3) information which demonstrates that there is reason to believe that the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device, has been or is about to be used in communication with -

"(A) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States; or

"(B) a foreign power or agent of a foreign power under circumstances giving reason to believe that the communication concerns or concerned international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States."

See Termination Date of 2001 Amendment note below.

Subsec. (d)(2)(A). Pub. L. 107-56, Secs. 214(a)(4), 224, temporarily amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

"(A) shall specify -

"(i) the identity, if known, of the person who is the subject of the foreign intelligence or international terrorism investigation;

"(ii) in the case of an application for the installation and use of a pen register or trap and trace device with respect to a telephone line -

"(I) the identity, if known, of the person to whom is leased or in whose name the telephone line is listed; and

"(II) the number and, if known, physical location of the telephone line; and

"(iii) in the case of an application for the use of a pen register or trap and trace device with respect to a communication instrument or device not covered by clause (ii) -

"(I) the identity, if known, of the person who owns or leases the instrument or device or in whose name the instrument or device is listed; and

"(II) the number of the instrument or device; and".

See Termination Date of 2001 Amendment note below.

Subsec. (f). Pub. L. 107-108, Sec. 314(a)(5)(B), substituted "terms of an order issued" for "terms of a court".

EFFECTIVE DATE OF 2004 AMENDMENT

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.

TERMINATION DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-56 to cease to have effect Dec. 31, 2005, except amendment to continue in effect with respect to any particular foreign intelligence investigation that began before Dec. 31, 2005, or with respect to any particular offense or

potential offense that began or occurred before Dec. 31, 2005, see section 224 of Pub. L. 107-56, set out as a note under section 2510 of Title 18, Crimes and Criminal Procedure.

-FOOTNOTE-

(!1) So in original. The period probably should be "; and".

(!2) See References in Text note below.

-End-

-CITE-

50 USC Sec. 1843

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER III - PEN REGISTERS AND TRAP AND TRACE DEVICES FOR
FOREIGN INTELLIGENCE PURPOSES

-HEAD-

Sec. 1843. Authorization during emergencies

-STATUTE-

(a) Requirements for authorization

Notwithstanding any other provision of this subchapter, when the Attorney General makes a determination described in subsection (b) of this section, the Attorney General may authorize the installation and use of a pen register or trap and trace device on an emergency basis to gather foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution if -

(1) a judge referred to in section 1842(b) of this title is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to install and use the pen register or trap and trace device, as the case may be, on an emergency basis; and

(2) an application in accordance with section 1842 of this title is made to such judge as soon as practicable, but not more than 48 hours, after the Attorney General authorizes the installation and use of the pen register or trap and trace device, as the case may be, under this section.

(b) Determination of emergency and factual basis

A determination under this subsection is a reasonable determination by the Attorney General that -

(1) an emergency requires the installation and use of a pen register or trap and trace device to obtain foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution before an order authorizing the installation and use of the pen register or trap and trace device, as the case may be, can with due diligence be obtained under section 1842 of this title; and

(2) the factual basis for issuance of an order under such

section 1842 of this title to approve the installation and use of the pen register or trap and trace device, as the case may be, exists.

(c) Effect of absence of order

(1) In the absence of an order applied for under subsection (a)(2) of this section approving the installation and use of a pen register or trap and trace device authorized under this section, the installation and use of the pen register or trap and trace device, as the case may be, shall terminate at the earlier of -

(A) when the information sought is obtained;

(B) when the application for the order is denied under section 1842 of this title; or

(C) 48 hours after the time of the authorization by the Attorney General.

(2) In the event that an application for an order applied for under subsection (a)(2) of this section is denied, or in any other case where the installation and use of a pen register or trap and trace device under this section is terminated and no order under section 1842 of this title is issued approving the installation and use of the pen register or trap and trace device, as the case may be, no information obtained or evidence derived from the use of the pen register or trap and trace device, as the case may be, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from the use of the pen register or trap and trace device, as the case may be, shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

-SOURCE-

(Pub. L. 95-511, title IV, Sec. 403, as added Pub. L. 105-272, title VI, Sec. 601(2), Oct. 20, 1998, 112 Stat. 2407; amended Pub. L. 107-56, title II, Sec. 214(b), Oct. 26, 2001, 115 Stat. 287.)

-STATAMEND-

AMENDMENT OF SECTION

For termination of amendment by Pub. L. 107-56, see Termination Date of 2001 Amendment note below.

-MISC1-

AMENDMENTS

2001 - Subsec. (a). Pub. L. 107-56, Secs. 214(b)(1), 224, temporarily substituted "foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution" for "foreign intelligence information or information concerning international terrorism" in introductory provisions. See Termination Date of 2001 Amendment note below.

Subsec. (b)(1). Pub. L. 107-56, Secs. 214(b)(2), 224, temporarily substituted "foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not

conducted solely upon the basis of activities protected by the first amendment to the Constitution" for "foreign intelligence information or information concerning international terrorism". See Termination Date of 2001 Amendment note below.

TERMINATION DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-56 to cease to have effect Dec. 31, 2005, except amendment to continue in effect with respect to any particular foreign intelligence investigation that began before Dec. 31, 2005, or with respect to any particular offense or potential offense that began or occurred before Dec. 31, 2005, see section 224 of Pub. L. 107-56, set out as a note under section 2510 of Title 18, Crimes and Criminal Procedure.

-End-

-CITE-

50 USC Sec. 1844

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER III - PEN REGISTERS AND TRAP AND TRACE DEVICES FOR
FOREIGN INTELLIGENCE PURPOSES

-HEAD-

Sec. 1844. Authorization during time of war

-STATUTE-

Notwithstanding any other provision of law, the President, through the Attorney General, may authorize the use of a pen register or trap and trace device without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by Congress.

-SOURCE-

(Pub. L. 95-511, title IV, Sec. 404, as added Pub. L. 105-272, title VI, Sec. 601(2), Oct. 20, 1998, 112 Stat. 2408.)

-End-

-CITE-

50 USC Sec. 1845

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER III - PEN REGISTERS AND TRAP AND TRACE DEVICES FOR
FOREIGN INTELLIGENCE PURPOSES

-HEAD-

Sec. 1845. Use of information

-STATUTE-

(a) In general

(1) Information acquired from the use of a pen register or trap and trace device installed pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States

person only in accordance with the provisions of this section.

(2) No information acquired from a pen register or trap and trace device installed and used pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Disclosure for law enforcement purposes

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

(c) Notification of intended disclosure by United States

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

(d) Notification of intended disclosure by State or political subdivision

Whenever any State or political subdivision thereof intends to enter into evidence or 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 State or political subdivision thereof against an aggrieved person any information obtained or derived from the use of a pen register or trap and trace device pursuant to this subchapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Motion to suppress

(1) Any aggrieved person against whom evidence obtained or derived from the use of a pen register or trap and trace device is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, or a State or political subdivision thereof, may move to suppress the evidence obtained or derived from the use of the pen register or trap and trace device, as the case may be, on the grounds that -

(A) the information was unlawfully acquired; or

(B) the use of the pen register or trap and trace device, as the case may be, was not made in conformity with an order of authorization or approval under this subchapter.

(2) A motion under paragraph (1) shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the aggrieved person concerned was not aware of the grounds of the motion.

(f) In camera and ex parte review

(1) Whenever a court or other authority is notified pursuant to subsection (c) or (d) of this section, 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 the use of a pen register or trap and trace device authorized by this subchapter or to discover, obtain, or suppress evidence or information obtained or derived from the use of a pen register or trap and trace device authorized by this subchapter, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority shall, notwithstanding any other provision of law and if the Attorney General files an affidavit under oath that disclosure or any adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the use of the pen register or trap and trace device, as the case may be, as may be necessary to determine whether the use of the pen register or trap and trace device, as the case may be, was lawfully authorized and conducted.

(2) In making a determination under paragraph (1), the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the use of the pen register or trap and trace device, as the case may be, or may require the Attorney General to provide to the aggrieved person a summary of such materials, only where such disclosure is necessary to make an accurate determination of the legality of the use of the pen register or trap and trace device, as the case may be.

(g) Effect of determination of lawfulness

(1) If the United States district court determines pursuant to subsection (f) of this section that the use of a pen register or trap and trace device was not lawfully authorized or conducted, the court may, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the use of the pen register or trap and trace device, as the case may be, or otherwise grant the motion of the aggrieved person.

(2) If the court determines that the use of the pen register or trap and trace device, as the case may be, was lawfully authorized or conducted, it may deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(h) Binding final orders

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

-SOURCE-

(Pub. L. 95-511, title IV, Sec. 405, as added Pub. L. 105-272, title VI, Sec. 601(2), Oct. 20, 1998, 112 Stat. 2408.)

-End-

-CITE-

50 USC Sec. 1846

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER III - PEN REGISTERS AND TRAP AND TRACE DEVICES FOR
FOREIGN INTELLIGENCE PURPOSES

-HEAD-

Sec. 1846. Congressional oversight

-STATUTE-

(a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all uses of pen registers and trap and trace devices pursuant to this subchapter.

(b) On a semiannual basis, the Attorney General shall also provide to the committees referred to in subsection (a) of this section and to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period -

(1) the total number of applications made for orders approving the use of pen registers or trap and trace devices under this subchapter; and

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

-SOURCE-

(Pub. L. 95-511, title IV, Sec. 406, as added Pub. L. 105-272, title VI, Sec. 601(2), Oct. 20, 1998, 112 Stat. 2410.)

-End-

-CITE-

50 USC SUBCHAPTER IV - ACCESS TO CERTAIN BUSINESS RECORDS
FOR FOREIGN INTELLIGENCE PURPOSES 01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER IV - ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN
INTELLIGENCE PURPOSES

-HEAD-

SUBCHAPTER IV - ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN
INTELLIGENCE PURPOSES

-End-

-CITE-

50 USC Sec. 1861 01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER IV - ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN
INTELLIGENCE PURPOSES

-HEAD-

Sec. 1861. Access to certain business records for foreign
intelligence and international terrorism investigations

-STATUTE-

(a) Application for order; conduct of investigation generally

(1) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an

order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(2) An investigation conducted under this section shall -

- (A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and
- (B) not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(b) Recipient and contents of application

Each application under this section -

(1) shall be made to -

- (A) a judge of the court established by section 1803(a) of this title; or
- (B) a United States Magistrate Judge under chapter 43 of title 28, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

(2) shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) of this section to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.

(c) Ex parte judicial order of approval

(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section.

(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a) of this section.

(d) Nondisclosure

No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section.

(e) Liability for good faith disclosure; waiver

A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.

-SOURCE-

(Pub. L. 95-511, title V, Sec. 501, as added Pub. L. 107-56, title II, Sec. 215, Oct. 26, 2001, 115 Stat. 287; amended Pub. L. 107-108, title III, Sec. 314(a)(6), Dec. 28, 2001, 115 Stat. 1402.)

-STATAMEND-

TERMINATION OF SECTION AND OF REPEAL OF PRIOR SECTION

For termination of section and of repeal of prior section 1861 by section 224 of Pub. L. 107-56, see Termination Date of 2001 Amendment note set out under section 2510 of Title 18, Crimes and Criminal Procedure.

-REFTEXT-

REFERENCES IN TEXT

Executive Order No. 12333, referred to in subsec. (a)(2)(A), is set out as a note under section 401 of this title.

-MISC1-

PRIOR PROVISIONS

A prior section 1861, Pub. L. 95-511, title V, Sec. 501, as added Pub. L. 105-272, title VI, Sec. 602, Oct. 20, 1998, 112 Stat. 2410, defined terms used in this subchapter, prior to repeal by Pub. L. 107-56, title II, Sec. 215, Oct. 26, 2001, 115 Stat. 287.

AMENDMENTS

2001 - Subsec. (a)(1). Pub. L. 107-108 inserted "to obtain foreign intelligence information not concerning a United States person or" after "an investigation".

-End-

-CITE-

50 USC Sec. 1862

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER IV - ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN
INTELLIGENCE PURPOSES

-HEAD-

Sec. 1862. Congressional oversight

-STATUTE-

(a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests for the production of tangible things under section 1861 of this title.

(b) On a semiannual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period -

(1) the total number of applications made for orders approving requests for the production of tangible things under section 1861 of this title; and

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

-SOURCE-

(Pub. L. 95-511, title V, Sec. 502, as added Pub. L. 107-56, title II, Sec. 215, Oct. 26, 2001, 115 Stat. 288; amended Pub. L. 107-108, title III, Sec. 314(a)(7), Dec. 28, 2001, 115 Stat. 1402.)

-STATAMEND-

TERMINATION OF SECTION AND OF REPEAL OF PRIOR SECTION

For termination of section and of repeal of prior section 1862 by section 224 of Pub. L. 107-56, see Termination Date of 2001 Amendment note set out under section 2510 of Title 18, Crimes and Criminal Procedure.

-MISC1-

PRIOR PROVISIONS

A prior section 1862, Pub. L. 95-511, title V, Sec. 502, as added Pub. L. 105-272, title VI, Sec. 602, Oct. 20, 1998, 112 Stat. 2411, related to access to certain business records for foreign intelligence and international terrorism investigations, prior to repeal by Pub. L. 107-56, title II, Sec. 215, Oct. 26, 2001, 115 Stat. 287. See section 1861 of this title.

AMENDMENTS

2001 - Subsecs. (a), (b)(1). Pub. L. 107-108 substituted "section 1861 of this title" for "section 1842 of this title".

-End-

-CITE-

50 USC Sec. 1863

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER IV - ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN
INTELLIGENCE PURPOSES

-HEAD-

Sec. 1863. Repealed. Pub. L. 107-56, title II, Sec. 215, Oct. 26, 2001, 115 Stat. 287

-MISC1-

Section, Pub. L. 95-511, title V, Sec. 503, as added Pub. L. 105-272, title VI, Sec. 602, Oct. 20, 1998, 112 Stat. 2412, related to congressional oversight. See section 1862 of this title.

-STATAMEND-

TERMINATION OF REPEAL

For termination of repeal by section 224 of Pub. L. 107-56, see Termination Date of 2001 Amendment note under section 2510 of Title 18, Crimes and Criminal Procedure.

-MISC1-

TERMINATION DATE OF REPEAL

Repeal by Pub. L. 107-56 to cease to have effect Dec. 31, 2005, see section 224 of Pub. L. 107-56, set out as a Termination Date of 2001 Amendment note under section 2510 of Title 18, Crimes and Criminal Procedure.

-End-

-CITE-

50 USC SUBCHAPTER V - REPORTING REQUIREMENT

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
SUBCHAPTER V - REPORTING REQUIREMENT

-HEAD-

SUBCHAPTER V - REPORTING REQUIREMENT

-End-

-CITE-

50 USC Sec. 1871

01/03/05

-EXPCITE-

TITLE 50 - WAR AND NATIONAL DEFENSE
 CHAPTER 36 - FOREIGN INTELLIGENCE SURVEILLANCE
 SUBCHAPTER V - REPORTING REQUIREMENT

-HEAD-

Sec. 1871. Semiannual report of the Attorney General

-STATUTE-

(a) Report

On a semiannual basis, the Attorney General shall submit to the Permanent Select Committee on Intelligence of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Committees on the Judiciary of the House of Representatives and the Senate, in a manner consistent with the protection of the national security, a report setting forth with respect to the preceding 6-month period -

(1) the aggregate number of persons targeted for orders issued under this chapter, including a breakdown of those targeted for -

- (A) electronic surveillance under section 1805 of this title;
- (B) physical searches under section 1824 of this title;
- (C) pen registers under section 1842 of this title; and
- (D) access to records under section 1861 of this title;

(2) the number of individuals covered by an order issued pursuant to section 1801(b)(1)(C) of this title;

(3) the number of times that the Attorney General has authorized that information obtained under this chapter may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding;

(4) a summary of significant legal interpretations of this chapter involving matters before the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review, including interpretations presented in applications or pleadings filed with the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review by the Department of Justice; and

(5) copies of all decisions (not including orders) or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review that include significant construction or interpretation of the provisions of this chapter.

(b) Frequency

The first report under this section shall be submitted not later than 6 months after December 17, 2004. Subsequent reports under this section shall be submitted semi-annually thereafter.

-SOURCE-

(Pub. L. 95-511, title VI, Sec. 601, as added Pub. L. 108-458, title VI, Sec. 6002(a)(2), Dec. 17, 2004, 118 Stat. 3743.)

-REFTEXT-

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, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title

note set out under section 1801 of this title and Tables.

-MISC1-

PRIOR PROVISIONS

A prior section 601 of Pub. L. 95-511 was renumbered section 701 and is set out as a note under section 1801 of this title.

-End-