

The Foreign Intelligence Surveillance Act of 1978
(Redlined to Reflect Amendments After September 11, 2001)

I assembled this document very quickly in an effort to track amendments to FISA made by the USA PATRIOT ACT and subsequent legislation. I cannot promise that it is perfect, and I welcome corrections at any time.

– David Kris
August 31, 2007

1. The original version of the Foreign Intelligence surveillance Act, Pub. L. No. 95-511, 92 Stat. 1783 (1978), and amendments made by the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984), the Intelligence Authorization Act for Fiscal Year 1995, Pub. L. No. 103-359, 108 Stat. 3423 (1994), the Intelligence Authorization Act for Fiscal Year 1999, Pub. L. No. 105-272, 112 Stat. 2396 (1998), and the Intelligence Authorization Act for Fiscal Year 2001, Pub. L. No. 106-567, 114 Stat. 2831 (2000), are in plain black text.

2. Amendments made by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), are in red and ~~red-strikeout~~ text.

3. Amendments made by the Intelligence Authorization Act for Fiscal Year 2002, Pub. L. No. 107-108, 115 Stat. 1394 (2001), and the 21st Century Department of Justice Appropriations Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), are in green and ~~green-strikeout~~ text.

4. Changes made by the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), are in yellow and ~~yellow-strikeout~~ text.

5. Changes made by the Intelligence Reform and Preventing Terrorism Act of 2004 (IRTPA), Pub. L. No. 108-458, 118 Stat. 3638 (2004), are in purple and ~~purple-strikeout~~ text.

6. Changes made by the USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, 120 Stat. 192 (2006), and the USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006, Pub. L. 109-178, 120 Stat. 278 (2006), are in blue and ~~blue-strikeout~~ text.

7. Changes made by the Protect America Act of 2007, S. 1927, are in orange and ~~orange-strikeout~~ text.

50 U.S.C. § 1801. DEFINITIONS

As used in this subchapter:

(a) “Foreign power” means –

- (1) a foreign government or any component thereof, whether or not recognized by the United States;
- (2) a faction of a foreign nation or nations, not substantially composed of United States persons;
- (3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;
- (4) a group engaged in international terrorism or activities in preparation therefor;
- (5) a foreign-based political organization, not substantially composed of United States persons; 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 [sic];
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, United States Code;**

(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~~, the Deputy Attorney General, or, upon the designation

of the Attorney General, the Assistant Attorney General designated as the Assistant Attorney General for National Security under section 507A of title 28, United States Code.

(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 ~~twenty-four hours~~ 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.

50 U.S.C. § 1802. ELECTRONIC SURVEILLANCE AUTHORIZATION WITHOUT COURT ORDER; CERTIFICATION BY ATTORNEY GENERAL; REPORTS TO CONGRESSIONAL COMMITTEES; TRANSMITTAL UNDER SEAL; DUTIES AND COMPENSATION OF COMMUNICATION COMMON CARRIER; APPLICATIONS; JURISDICTION OF COURT

(a)(1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this subchapter to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that –

(A) the electronic surveillance is solely directed at –

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

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

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

(C) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 1801(h) of this title; and if the Attorney General reports such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

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

(3) The Attorney General shall immediately transmit under seal to the court established under section 1803(a) of this title a copy of his certification. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the ~~Director of Central Intelligence~~ ~~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 Central Intelligence~~ ~~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 [sic] 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.

50 U.S.C. § 1803. DESIGNATION OF JUDGES

(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 ~~seven district court judges~~ **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 for his decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established in subsection (b) 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 Central Intelligence~~ Director of National Intelligence.

(d) Tenure

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

(e)(1) Three judges designated under subsection (a) who reside within 20 miles of the District of Columbia, or, if all of such judges are unavailable, other judges of the court established under subsection (a) as may be designated by the presiding judge of such court, shall comprise a petition review pool which shall have jurisdiction to review petitions filed pursuant to section ~~501(f)(1)~~ 105B(h) or 501(f)(1).

(2) Not later than 60 days after the date of the enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005, the court established under subsection (a) shall adopt and, consistent with the protection of national security, publish procedures for the review of petitions filed pursuant to section ~~501(f)(1)~~ 105B(h) or 501(f)(1) by the panel established under paragraph (1). Such procedures shall provide that review of a petition shall be conducted in camera and shall also provide for the designation of an acting presiding judge.

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

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

- (A) All of the judges on the court established pursuant to subsection (a).
- (B) All of the judges on the court of review established pursuant to subsection (b).
- (C) The Chief Justice of the United States.
- (D) The Committee on the Judiciary of the Senate.
- (E) The Select Committee on Intelligence of the Senate.
- (F) The Committee on the Judiciary of the House of Representatives.

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

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

50 U.S.C. § 1804. APPLICATIONS FOR COURT ORDERS

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

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

- (1) the identity of the Federal officer making the application;
- (2) the 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 **specific** 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 ~~the purpose~~ 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) Requirements regarding certain application

(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 Central Intelligence~~ **Director of National Intelligence**, the Attorney General shall personally review under subsection (a) an application under that subsection for a target described in section 1801(b)(2) of this title.

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

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

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

clearly established in the event the Attorney General is disabled or otherwise unavailable to make such determination.

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

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

50 U.S.C. § 1805. ISSUANCE OF ORDER

(a) Necessary findings

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

- (1) the 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) Probable cause

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

(1) Specifications

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

(A) the identify, if known, or a description of the ~~target of the electronic surveillance~~-specific target of the electronic surveillance identified or described in the application pursuant to section 104(a)(3);

(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~~ Directions

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

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person, **or in circumstances where the Court finds where the Court finds, based upon specific facts provided in the application, that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons,** furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

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

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

(3) Special Directions for Certain Orders

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

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

(B) the facts and circumstances relied upon by the applicant to justify the applicant's belief that each new facility or place at which the electronic

surveillance is directed is or was being used, or is about to be used, by the target of the surveillance;

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

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

(d) 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 Act for a surveillance targeted against an agent of a foreign power, as defined in section 101(b)(1)(A) who is not a United States person may be for the period specified in the application or for 120 days, whichever is less.

(2) Extensions of an order issued under this subchapter may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order, except that (A) an extension of an order under this chapter for a surveillance targeted against a foreign power, as defined in 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 Act for a surveillance targeted against an agent of a foreign power as defined in section 101(b)(1)(A) who is not a United States person may be for a period not to exceed 1 year.

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

(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 ~~twenty-four hours~~ 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 ~~twenty-four hours~~ 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) 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 Act for electronic surveillance or physical search.

50 U.S.C. § 1805A. CLARIFICATION OF ELECTRONIC SURVEILLANCE OF PERSONS OUTSIDE THE UNITED STATES

Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance directed at a person reasonably believed to be located outside of the United States.

50 U.S.C. § 1805B. ADDITIONAL PROCEDURE FOR AUTHORIZING CERTAIN ACQUISITIONS CONCERNING PERSONS LOCATED OUTSIDE THE UNITED STATES

(a) Notwithstanding any other law, the Director of National Intelligence and the Attorney General, may for periods of up to one year authorize the acquisition of foreign intelligence information concerning persons reasonably believed to be outside the United States if the Director of National Intelligence and the Attorney General determine, based on the information provided to them, that –

(1) there are reasonable procedures in place for determining that the acquisition of foreign intelligence information under this section concerns persons reasonably believed to be located outside the United States, and such procedures will be subject to review of the Court pursuant to section 105C of this Act;

- (2) the acquisition does not constitute electronic surveillance;
- (3) the acquisition involves obtaining the foreign intelligence information from or with the assistance of a communications service provider, custodian, or other person (including any officer, employee, agent, or other specified person of such service provider, custodian, or other person) who has access to communications, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications;
- (4) a significant purpose of the acquisition is to obtain foreign intelligence information; and
- (5) the minimization procedures to be used with respect to such acquisition activity meet the definition of minimization procedures under section 101(h).

This determination shall be in the form of a written certification, under oath, supported as appropriate by affidavit of appropriate officials in the national security field occupying positions appointed by the President, by and with the consent of the Senate, or the Head of any Agency of the Intelligence Community, unless immediate action by the Government is required and time does not permit the preparation of a certification. In such a case, the determination of the Director of National Intelligence and the Attorney General shall be reduced to a certification as soon as possible but in no event more than 72 hours after the determination is made.

- (b) A certification under subsection (a) is not required to identify the specific facilities, places, premises, or property at which the acquisition of foreign intelligence information will be directed.
- (c) The Attorney General shall transmit as soon as practicable under seal to the court established under section 103(a) a copy of a certification made under subsection (a). Such certification shall be maintained under security measures established by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless the certification is necessary to determine the legality of the acquisition under section 105B.
- (d) An acquisition under this section may be conducted only in accordance with the certification of the Director of National Intelligence and the Attorney General, or their oral instructions if time does not permit the preparation of a certification, and the minimization procedures adopted by the Attorney General. The Director of National Intelligence and 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 section 108(a).

(e) With respect to an authorization of an acquisition under section 105B, the Director of National Intelligence and Attorney General may direct a person to –

(1) immediately provide the Government with all information, facilities, and assistance necessary to accomplish the acquisition in such a manner as will protect the secrecy of the acquisition and produce a minimum of interference with the services that such person is providing to the target; and

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

(f) The Government shall compensate, at the prevailing rate, a person for providing information, facilities, or assistance pursuant to subsection (e).

(g) In the case of a failure to comply with a directive issued pursuant to subsection (e), the Attorney General may invoke the aid of the court established under section 103(a) to compel compliance with the directive. The court shall issue an order requiring the person to comply with the directive if it finds that the directive was issued in accordance with subsection (e) and is otherwise lawful. Failure to obey an order of the court may be punished by the court as contempt of court. Any process under this section may be served in any judicial district in which the person may be found.

(h)(1)(A) A person receiving a directive issued pursuant to subsection (e) may challenge the legality of that directive by filing a petition with the pool established under section 103(e)(1).

(B) The presiding judge designated pursuant to section 103(b) shall assign a petition filed under subparagraph (A) to one of the judges serving in the pool established by section 103(e)(1). Not later than 48 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the directive. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the directive or any part of the directive that is the subject of the petition. If the assigned judge determines the petition is not frivolous, the assigned judge shall, within 72 hours, consider the petition in accordance with the procedures established under section 103(e)(2) and provide a written statement for the record of the reasons for any determination under this subsection.

(2) A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that such directive does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the directive, the judge shall immediately affirm such directive, and order the recipient to comply with such directive.

(3) Any directive not explicitly modified or set aside under this subsection shall remain in full effect.

(i) The Government or a person receiving a directive reviewed pursuant to subsection (h) may file a petition with the Court of Review established under section 103(b) for review of the decision issued pursuant to subsection (h) not later than 7 days after the issuance of such decision. Such court of review shall have jurisdiction to consider such petitions and shall provide for the record a written statement of the reasons for its decision. On petition for a writ of certiorari by the Government or any person receiving such directive, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

(j) Judicial proceedings under this section shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, 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.

(k) All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review *ex parte* and *in camera* any Government submission, or portions of a submission, which may include classified information.

(l) Notwithstanding any other law, no cause of action shall lie in any court against any person for providing any information, facilities, or assistance in accordance with a directive under this section.

(m) A directive made or an order granted under this section shall be retained for a period of not less than 10 years from the date on which such directive or such order is made.

50 U.S.C. § 1805C. SUBMISSION TO COURT REVIEW OF PROCEDURES

(a) No later than 120 days after the effective date of this Act, the Attorney General shall submit to the Court established under section 103(a), the procedures by which the Government determines that acquisitions conducted pursuant to section 105B do not constitute electronic surveillance. The procedures submitted pursuant to this section shall be updated and submitted to the Court on an annual basis.

(b) No later than 180 days after the effective date of this Act, the court established under section 103(a) shall assess the Government's determination under section 105B(a)(1) that those procedures are reasonably designed to ensure that acquisitions conducted pursuant to section 105B do not constitute electronic surveillance. The court's review shall be limited to whether the Government's determination is clearly erroneous.

(c) If the court concludes that the determination is not clearly erroneous, it shall enter an order approving the continued use of such procedures. If the court concludes that the determination is clearly erroneous, it shall issue an order directing the Government to submit new procedures within 30 days or cease any acquisitions under section 105B that are implicated by the court's order.

(d) The Government may appeal any order issued under subsection (c) to the court established under section 103(b). If such court determines that the order was properly entered, 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 of the United States, which shall have jurisdiction to review such decision. Any acquisitions affected by the order issued under subsection (c) of this section may continue during the pendency of any appeal, the period during which a petition for writ of certiorari may be pending, and any review by the Supreme Court of the United States.

50 U.S.C. § 1806. USE OF INFORMATION

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

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

(b) Statement for disclosure

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

(c) Notification by United States

Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the

authority of this subchapter, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Notification by States or political subdivisions

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

(e) Motion to suppress

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

- (1) the information was unlawfully acquired; or
- (2) the surveillance was not made in conformity with an order of authorization or approval.

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

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

Whenever a court or other authority is notified pursuant to subsection (c) or (d) of this section, or whenever a motion is made pursuant to subsection (e) of this section, or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to electronic surveillance or to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance under this chapter, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review

in camera and ex parte the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the surveillance only where such disclosure is necessary to make an accurate determination of the legality of the surveillance.

(g) Suppression of evidence; denial of motion

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

(h) Finality of orders

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

(i) Destruction of unintentionally acquired information

In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any 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) 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)(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this title 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 104(a)(7)(B) or the entry of an order under section 105.

50 U.S.C. § 1807. REPORT TO ADMINISTRATIVE OFFICE OF THE UNITED STATES COURT AND TO CONGRESS

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

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

50 U.S.C. § 1808. REPORT OF ATTORNEY GENERAL TO CONGRESSIONAL COMMITTEES; LIMITATION ON AUTHORITY OR RESPONSIBILITY OF INFORMATION GATHERING ACTIVITIES OF CONGRESSIONAL COMMITTEES; REPORT OF CONGRESSIONAL COMMITTEES TO CONGRESS

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

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

~~(A) each criminal case in which information acquired under this Act 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.~~

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

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

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

(C) the total number of emergency employments of electronic surveillance under section 105(f) and the total number of subsequent orders approving or denying such electronic surveillance.

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

50 U.S.C. § 1809. CRIMINAL SANCTIONS

(a) Prohibited activities

A person is guilty of an offense if he intentionally –

(1) engages in electronic surveillance under color of law except as authorized by 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.

50 U.S.C. § 1810. CIVIL LIABILITY

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

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

(b) punitive damages; and

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

50 U.S.C. § 1811. AUTHORIZATION DURING TIME OF WAR

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

50 U.S.C. § 1821. DEFINITIONS

As used in this subchapter:

(1) The terms “foreign power”, “agent of a foreign power”, “international terrorism”, “sabotage”, “foreign intelligence information”, “Attorney General”, “United States person”, “United States”, “person”, 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 ~~24 hours~~ 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.

50 U.S.C. § 1822. AUTHORIZATION OF PHYSICAL SEARCHES FOR FOREIGN INTELLIGENCE PURPOSES

(a) Presidential authorization

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

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

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

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

(iii) the proposed minimization procedures with respect to such physical search meet the definition of minimization procedures under paragraphs (1) through (4) 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 Central Intelligence~~ **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 Central Intelligence~~ 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 Central Intelligence~~ Director of National Intelligence.

50 U.S.C. § 1823. APPLICATION FOR AN ORDER

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

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

- (1) the identity of the Federal officer making the application;
- (2) the 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 ~~the purpose~~ 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) Requirements regarding certain applications

(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 Central Intelligence~~

Director of National Intelligence, the Attorney General shall personally review under subsection (a) an application under that subsection for a target described in section 1801(b)(2) of this title.

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

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

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

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

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

50 U.S.C. § 1824. ISSUANCE OF AN ORDER

(a) Necessary findings

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

(1) the 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) Probable cause

In determining whether or not probable cause exists for purposes of an order under subsection (a)(3), 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 Central Intelligence~~ **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; review of circumstances under which information was acquired, retained, or disseminated

(1) An order issued under this section may approve a physical search for the period necessary to achieve its purpose, or for ~~forty-five~~ 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 ~~101(b)(1)(A)~~ who is not a United States person may be for the period specified in the application or for 120 days, whichever is less.

(2) Extensions of an order issued under this subchapter may be granted on the same basis as the original order upon an application for an extension and new findings made in the same manner as required for the original order, except that an extension of an order under this chapter for a physical search targeted against a foreign power, as defined in 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 ~~101(b)(1)(A)~~ who is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no property of any individual United States person will be acquired during the period.

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

(e) Emergency orders

(1)(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 ~~24 hours~~ 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 ~~24 hours~~ 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.

50 U.S.C. § 1825. USE OF INFORMATION

(a) Compliance with minimization procedures; lawful purposes

Information acquired from a physical search conducted pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures

required by this subchapter. No information acquired from a physical search pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

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

Where a physical search authorized and conducted pursuant to section 1824 of this title involves the residence of a United States person, and, at any time after the search the Attorney General determines there is no national security interest in continuing to maintain the secrecy of the search, the Attorney 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) 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)(1) Federal officers who conduct physical searches to acquire foreign intelligence information under this title 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 303(a)(7) or the entry of an order under section 304.

50 U.S.C. § 1826. CONGRESSIONAL OVERSIGHT

On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, ~~and the Committee on the Judiciary of the 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~~ and the Committee on the Judiciary of the House of Representatives 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-; ~~and~~

(4) the total number of emergency physical searches authorized by the Attorney General under section 304(e) and the total number of subsequent orders approving or denying such physical searches.

50 U.S.C. § 1827. PENALTIES

(a) Prohibited activities

A person is guilty of an offense if he intentionally –

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

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

(b) Defense

It is a defense to a prosecution under subsection (a) 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.

50 U.S.C. § 1828. CIVIL LIABILITY

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

- (1) actual damages, but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater;
- (2) punitive damages; and
- (3) reasonable attorney's fees and other investigative and litigation costs reasonably incurred.

50 U.S.C. § 1829. AUTHORIZATION DURING TIME OF WAR

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

50 U.S.C. § 1841. DEFINITIONS

As used in this subchapter:

- (1) The terms “foreign power”, “agent of a foreign power”, “international terrorism”, “foreign intelligence information”, “Attorney General”, “United States person”, “United States”, “person”, and “State” shall have the same meanings as in section 1801 of this title.
 - (2) The terms “pen register” and “trap and trace device” have the meanings given such terms in section 3127 of Title 18.
 - (3) The term “aggrieved person” means any person –
 - (A) whose telephone line was subject to the installation or use of a pen register or trap and trace device authorized by subchapter IV of this chapter; or
 - (B) whose communication instrument or device was subject to the use of a pen register or trap and trace device authorized by subchapter IV to capture incoming electronic or other communications impulses.
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50 U.S.C. § 1842. PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS

(a)(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 gather foreign intelligence information or information concerning international terrorism~~ 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) Each application under this section shall be in writing under oath or affirmation to –

(1) a judge of the court established by section 1803 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) 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 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 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.~~

~~(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.~~

(d)(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 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~~

(A) shall specify –

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

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

(iii) the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility to which the pen register or trap and trace

device is to be attached or applied and, in the case of a trap and trace device, the geographic limits of the trap and trace order;

(B) shall direct that –

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

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

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

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

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

(C) shall direct that, upon the request of the applicant, the provider of a wire or electronic communication service shall disclose to the Federal officer using the pen register or trap and trace device covered by the order –

(i) in the case of the customer or subscriber using the service covered by the order (for the period specified by the order) –

(I) the name of the customer or subscriber;

(II) the address of the customer or subscriber;

(III) the telephone or instrument number, or other subscriber number or identifier, of the customer or subscriber, including any

temporarily assigned network address or associated routing or transmission information;

(IV) the length of the provision of service by such provider to the customer or subscriber and the types of services utilized by the customer or subscriber;

(V) in the case of a provider of local or long distance telephone service, any local or long distance telephone records of the customer or subscriber;

(VI) if applicable, any records reflecting period of usage (or sessions) by the customer or subscriber; and

(VII) any mechanisms and sources of payment for such service, including the number of any credit card or bank account utilized for payment for such service; and

(ii) if available, with respect to any customer or subscriber of incoming or outgoing communications to or from the service covered by the order –

(I) the name of such customer or subscriber;

(II) the address of such customer or subscriber;

(III) the telephone or instrument number, or other subscriber number or identifier, of such customer or subscriber, including any temporarily assigned network address or associated routing or transmission information; and

(IV) the length of the provision of service by such provider to such customer or subscriber and the types of services utilized by such customer or subscriber.

~~(e) An~~(e)(1) Except as provided in paragraph (2), an order issued under this section shall authorize the installation and use of a pen register or trap and trace device for a period not to exceed 90 days. Extensions of such an order may be granted, but only upon an application for an order under this section and upon the judicial finding required by subsection (d). The period of extension shall be for a period not to exceed 90 days.

(2) In the case of an application under subsection (c) where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an order, or an extension of an order, under this section may be for a period not to exceed one year.

(f) 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) in accordance with the terms ~~of a court~~ of an order issued under this section.

(g) 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.

50 U.S.C. § 1843. AUTHORIZATION DURING EMERGENCIES

(a) Notwithstanding any other provision of this subchapter, when the Attorney General makes a determination described in subsection (b), the Attorney General may authorize the installation and use of a pen register or trap and trace device on an emergency basis to gather ~~foreign intelligence information or information concerning international terrorism~~ 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(a)(1) 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) 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 or information concerning international terrorism~~ 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(c) 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)(1) In the absence of an order applied for under subsection (a)(2) approving the installation and use of a pen register or trap and trace device authorized under this section, the installation and use of the pen register or trap and trace device, as the case may be, shall terminate at the earlier of –

(A) when the information sought is obtained;

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

(C) 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) 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(b)(2) 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.

50 U.S.C. § 1844. AUTHORIZATION DURING TIME OF WAR

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

50 U.S.C. § 1845. USE OF INFORMATION

(a)(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) 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) 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) 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)(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)(1) Whenever a court or other authority is notified pursuant to subsection (c) or (d), whenever a motion is made pursuant to subsection (e), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to the use of a pen register or trap and trace device authorized by subchapter IV of this chapter 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 subchapter IV of 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 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)(1) If the United States district court determines pursuant to subsection (f) that the use of a pen register or trap and trace device was not lawfully authorized or conducted, the court may, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the use of the pen register or trap and trace device, as the case may be, or otherwise grant the motion of the aggrieved person.

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

(h) Orders granting motions or requests under subsection (g), decisions under this section that the use of a pen register or trap and trace device was not lawfully authorized or conducted, and

orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to the installation and use of a pen register or trap and trace device shall be final orders and binding upon all courts of the United States and the several States except a United States Court of Appeals or the Supreme Court.

50 U.S.C. § 1846. CONGRESSIONAL OVERSIGHT

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

(b) On a semiannual basis, the Attorney General shall also provide to the committees referred to in subsection (a) 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; **and**

(3) **the total number of pen registers and trap and trace devices whose installation and use was authorized by the Attorney General on an emergency basis under section 403, and the total number of subsequent orders approving or denying the installation and use of such pen registers and trap and trace devices.**

50 U.S.C. § 1861. DEFINITIONS

As used in this subchapter:

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

~~(2) The term “common carrier” means any person or entity transporting people or property by land, rail, water, or air for compensation.~~

~~(3) The term “physical storage facility” means any business or entity that provides space for the storage of goods or materials, or services related to the storage of goods or materials, to the public or any segment thereof.~~

~~(4) The term “public accommodation facility” means any inn, hotel, motel, or other establishment that provides lodging to transient guests.~~

~~(5) The term “vehicle rental facility” means any person or entity that provides vehicles for rent, lease, loan, or other similar use to the public or any segment thereof.~~

~~**50 U.S.C. § 1862. ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS**~~

~~(a) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order authorizing a common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to release records in its possession for an investigation to gather foreign intelligence information or an investigation concerning international terrorism which investigation is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.~~

~~(b) Each application under this section—~~

~~(1) shall be made to—~~

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

~~(B) a United States Magistrate Judge under chapter 43 of Title 28, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the release of records under this section on behalf of a judge of that court; and~~

~~(2) shall specify that—~~

~~(A) the records concerned are sought for an investigation described in subsection (a); and~~

~~(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.~~

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

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

~~(d)(1) Any common carrier, public accommodation facility, physical storage facility, or vehicle rental facility shall comply with an order under subsection (c).~~

~~(2) No common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, or officer, employee, or agent thereof, shall disclose to any person (other than those officers, agents, or employees of such common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose information to the Federal Bureau of Investigation under this section) that the Federal Bureau of Investigation has sought or obtained records pursuant to an order under this section.~~

50 U.S.C. § 1863. CONGRESSIONAL OVERSIGHT

~~(a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests for records under this subchapter.~~

~~(b) On a semiannual basis, the Attorney General shall provide to the Committees on the 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 records under this subchapter; and~~

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

50 U.S.C. § 1861 – ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE AND INTERNATIONAL TERRORISM INVESTIGATIONS

~~(a)(1) **The Director** Subject to paragraph (3), 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.

(3) In the case of an application for an order requiring the production of library circulation records, library patron lists, book sales records, book customer lists, firearms sales records, tax return records, educational records, or medical records containing information that would identify a person, the Director of the Federal Bureau of Investigation may delegate the authority to make such application to either the Deputy Director of the Federal Bureau of Investigation or the Executive Assistant Director for National Security (or any successor position). The Deputy Director or the Executive Assistant Director may not further delegate such authority.

(b) Each application under this section –

(1) shall be made to –

(A) a judge of the court established by section 103(a); or

(B) a United States Magistrate Judge under chapter 43 of title 28, United States Code, 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) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.~~

(2) shall include –

(A) a statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to

protect against international terrorism or clandestine intelligence activities, such things being presumptively relevant to an authorized investigation if the applicant shows in the statement of the facts that they pertain to –

(i) a foreign power or an agent of a foreign power;

(ii) the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

(iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation; and

(B) an enumeration of the minimization procedures adopted by the Attorney General under subsection (g) that are applicable to the retention and dissemination by the Federal Bureau of Investigation of any tangible things to be made available to the Federal Bureau of Investigation based on the order requested in such application.

~~(c)(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.~~

(c)(1) Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an ex parte order as requested, or as modified, approving the release of tangible things. Such order shall direct that minimization procedures adopted pursuant to subsection (g) be followed.

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

(2) An order under this subsection –

(A) shall describe the tangible things that are ordered to be produced with sufficient particularity to permit them to be fairly identified;

(B) shall include the date on which the tangible things must be provided, which shall allow a reasonable period of time within which the tangible things can be assembled and made available;

(C) shall provide clear and conspicuous notice of the principles and procedures described in subsection (d);

(D) may only require the production of a tangible thing if such thing can be obtained with a subpoena duces tecum issued by a court of the United States in

aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things; and

(E) shall not disclose that such order is issued for purposes of an investigation described in subsection (a).

~~(d) 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.~~

(d)(1) No person shall disclose to any other person that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section, other than to –

(A) those persons to whom disclosure is necessary to comply with such order;

(B) an attorney to obtain legal advice or assistance with respect to the production of things in response to the order; or

(C) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

(2)(A) A person to whom disclosure is made pursuant to paragraph (1) shall be subject to the nondisclosure requirements applicable to a person to whom an order is directed under this section in the same manner as such person.

(B) Any person who discloses to a person described in subparagraph (A), (B), or (C) of paragraph (1) that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section shall notify such person of the nondisclosure requirements of this subsection.

(C) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under subparagraph (A) or (C) of paragraph (1) shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

(e) 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.

(f)(1) In this subsection –

(A) the term “production order” means an order to produce any tangible thing under this section; and

(B) the term “nondisclosure order” means an order imposed under subsection (d).

(2)(A)(i) A person receiving a production order may challenge the legality of that order by filing a petition with the pool established by section 103(e)(1). Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section 103(e)(1).

(ii) The presiding judge shall immediately assign a petition under clause (i) to 1 of the judges serving in the pool established by section 103(e)(1). Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the production order or nondisclosure order. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established under section 103(e)(2).

(iii) The assigned judge shall promptly provide a written statement for the record of the reasons for any determination under this subsection. Upon the request of the Government, any order setting aside a nondisclosure order shall be stayed pending review pursuant to paragraph (3).

(B) A judge considering a petition to modify or set aside a production order may grant such petition only if the judge finds that such order does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the production order, the judge shall immediately affirm such order, and order the recipient to comply therewith.

(C)(i) A judge considering a petition to modify or set aside a nondisclosure order may grant such petition only if the judge finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.

(ii) If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive, unless the judge finds that the certification was made in bad faith.

(iii) If the judge denies a petition to modify or set aside a nondisclosure order, the recipient of such order shall be precluded for a period of 1 year from filing another such petition with respect to such nondisclosure order.

(D) Any production or nondisclosure order not explicitly modified or set aside consistent with this subsection shall remain in full effect.

(3) A petition for review of a decision under paragraph (2) to affirm, modify, or set aside an order by the Government or any person receiving such order shall be made to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions. The court of review shall provide for the record a written statement of the reasons for its decision and, on petition by the Government or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(4) Judicial proceedings under this subsection shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, 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.

(5) All petitions under this subsection shall be filed under seal. In any proceedings under this subsection, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions thereof, which may include classified information.

(g) Minimization Procedures.

(1) In General. – Not later than 180 days after the date of the enactment of the USA PATRIOT Improvement and Reauthorization Act of 2005, the Attorney General shall adopt specific minimization procedures governing the retention and dissemination by the Federal Bureau of Investigation of any tangible things, or information therein, received by the Federal Bureau of Investigation in response to an order under this title.

(2) Defined. – In this section, the term “minimization procedures” means –

(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the production of tangible things, to minimize the 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 101(e)(1), shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance; and

(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.

(h) Use of Information.

Information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this title 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 adopted pursuant to subsection (g). No otherwise privileged information acquired from tangible things received by the Federal Bureau of Investigation in accordance with the provisions of this title shall lose its privileged character. No information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this title may be used or disclosed by Federal officers or employees except for lawful purposes.

50 U.S.C. § 1862 – CONGRESSIONAL OVERSIGHT

(a) ~~On a semiannual basis~~ annual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate concerning all requests for the production of tangible things under section ~~504~~ 402.

(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~~ In April of each year, the Attorney General shall submit to the House and Senate Committees on the Judiciary and the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence a report setting forth with respect to the preceding calendar year—

(1) the total number of applications made for orders approving requests for the production of tangible things under section ~~504~~ 402.

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

(3) the number of such orders either granted, modified, or denied for the production of each of the following:

(A) Library circulation records, library patron lists, book sales records, or book customer lists.

(B) Firearms sales records.

(C) Tax return records.

(D) Educational records.

(E) Medical records containing information that would identify a person.

(c)(1) In April of each year, the Attorney General shall submit to Congress a report setting forth with respect to the preceding year –

(A) the total number of applications made for orders approving requests for the production of tangible things under section 501; and

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

(2) Each report under this subsection shall be submitted in unclassified form.

50 U.S.C. § 1871. SEMIANNUAL REPORT OF THE ATTORNEY GENERAL

(a) Report

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

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

(A) electronic surveillance under section 105;

(B) physical searches under section 304;

(C) pen registers under section 402; and

(D) access to records under section 501;

(2) the number of individuals covered by an order issued pursuant to section 101(b)(1)(C);

(3) the number of times that the Attorney General has authorized that information obtained under this Act 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 Act 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 Act.

(b) Frequency

The first report under this section shall be submitted not later than 6 months after the date of enactment of this section. Subsequent reports under this section shall be submitted semi-annually thereafter.

Section 106A of the USA PATRIOT Improvement and Reauthorization Act – Audit on Access to Certain Business Records for Foreign Intelligence Purposes.

(a) Audit

The Inspector General of the Department of Justice shall perform a comprehensive audit of the effectiveness and use, including any improper or illegal use, of the investigative authority provided to the Federal Bureau of Investigation under title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.).

(b) Requirements

The audit required under subsection (a) shall include –

(1) an examination of each instance in which the Attorney General, any other officer, employee, or agent of the Department of Justice, the Director of the Federal Bureau of Investigation, or a designee of the Director, submitted an application to the Foreign Intelligence Surveillance Court (as such term is defined in section 301(3) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(3))) for an order under section 501 of such Act during the calendar years of 2002 through 2006, including –

(A) whether the Federal Bureau of Investigation requested that the Department of Justice submit an application and the request was not submitted to the court (including an examination of the basis for not submitting the application);

(B) whether the court granted, modified, or denied the application (including an examination of the basis for any modification or denial);

(2) the justification for the failure of the Attorney General to issue implementing procedures governing requests for the production of tangible things under such section in a timely fashion, including whether such delay harmed national security;

(3) whether bureaucratic or procedural impediments to the use of such requests for production prevent the Federal Bureau of Investigation from taking full advantage of the authorities provided under section 501 of such Act;

(4) any noteworthy facts or circumstances relating to orders under such section, including any improper or illegal use of the authority provided under such section; and

(5) an examination of the effectiveness of such section as an investigative tool, including–

(A) the categories of records obtained and the importance of the information acquired to the intelligence activities of the Federal Bureau of Investigation or any other Department or agency of the Federal Government;

(B) the manner in which such information is collected, retained, analyzed, and disseminated by the Federal Bureau of Investigation, including any direct access to such information (such as access to “raw data”) provided to any other Department, agency, or instrumentality of Federal, State, local, or tribal governments or any private sector entity;

(C) with respect to calendar year 2006, an examination of the minimization procedures adopted by the Attorney General under section 501(g) of such Act and whether such minimization procedures protect the constitutional rights of United States persons;

(D) whether, and how often, the Federal Bureau of Investigation utilized information acquired pursuant to an order under section 501 of such Act to produce an analytical intelligence product for distribution within the Federal Bureau of Investigation, to the intelligence community (as such term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))), or to other Federal, State, local, or tribal government Departments, agencies, or instrumentalities; and

(E) whether, and how often, the Federal Bureau of Investigation provided such information to law enforcement authorities for use in criminal proceedings.

(c) Submission Dates

(1) Prior Years

Not later than one year after the date of the enactment of this Act, or upon completion of the audit under this section for calendar years 2002, 2003, and 2004, whichever is earlier, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for calendar years 2002, 2003, and 2004.

(2) Calendar Years 2005 and 2006

Not later than December 31, 2007, or upon completion of the audit under this section for calendar years 2005 and 2006, whichever is earlier, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for calendar years 2005 and 2006.

(d) Prior Notice to Attorney General and Director of National Intelligence; Comments

(1) Notice

Not less than 30 days before the submission of a report under subsection (c)(1) or (c)(2), the Inspector General of the Department of Justice shall provide such report to the Attorney General and the Director of National Intelligence.

(2) Comments

The Attorney General or the Director of National Intelligence may provide comments to be included in the reports submitted under subsections (c)(1) and (c)(2) as the Attorney General or the Director of National Intelligence may consider necessary.

(e) Unclassified Form

The reports submitted under subsections (c)(1) and (c)(2) and any comments included under subsection (d)(2) shall be in unclassified form, but may include a classified annex.

Section 224 of the USA PATRIOT Act – Sunset

~~(a) In General—Except as provided in subsection (b), this title and the amendments made by this title (other than sections 203(a), 203(e), 205, 208, 210, 211, 213, 216, 219, 221, and 222, and the amendments made by those sections) shall cease to have effect on December 31, 2005.~~

~~(b) Exception.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in subsection (a) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.~~

Section 102 of the USA PATRIOT Improvement and Reauthorization Act – Sunset

(a) In General

Section 224 of the USA PATRIOT Act is repealed.

(b) Sections 206 and 215 Sunset

(1) In General.

Effective December 31, 2009, the Foreign Intelligence Surveillance Act of 1978 is amended so that sections 501, 502, and 105(c)(2) read as they read on October 25, 2001.

(2) Exception.

With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect

to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.

Section 6001 of the IRTPA – Sunset [Note amendment to this provision made by Section 103 of the USA PATRIOT Improvement and Reauthorization Act, set out immediately below.]

(b) Sunset

The amendment made by subsection (a) [50 U.S.C. § 1801(b)(1)(C), the “lone wolf” provision] shall be subject to the sunset provision in section 224 of Public Law 107-56 (115 Stat. 295), including the exception provided in subsection (b) of such section 224.

Section 103 of the USA PATRIOT Improvement and Reauthorization Act – Extension of Sunset Relating to Individual Terrorists as Agents of Foreign Powers

Section 6001(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 118 Stat. 3742) is amended to read as follows:

(b) Sunset

(1) In General

Except as provided in paragraph (2), the amendment made by subsection (a) shall cease to have effect on December 31, 2009.

(2) Exception

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

Section 4 of the Protect America Act – Reporting to Congress

On a semi-annual basis the Attorney General shall inform the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House

of Representatives, concerning acquisitions under this section during the previous 6-month period. Each report made under this section shall include –

(1) a description of any incidents of non-compliance with a directive issued by the Attorney General and the Director of National Intelligence under section 105B, to include –

(A) incidents of non-compliance by an element of the Intelligence Community with guidelines or procedures established for determining that the acquisition of foreign intelligence authorized by the Attorney General and Director of National Intelligence concerns persons reasonably to be outside the United States; and

(B) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issue a directive under this section; and

(2) the number of certifications and directives issued during the reporting period.

Section 6 of the Protect America Act – Effective Date; Transition Procedures

(a) EFFECTIVE DATE. – Except as otherwise provided, the amendments made by this Act shall take effect immediately after the date of the enactment of this Act.

(b) TRANSITION PROCEDURES. – Notwithstanding any other provision of this Act, any order in effect on the date of enactment of this Act issued pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall remain in effect until the date of expiration of such order, and, at the request of the applicant, the court established under section 103(a) of such Act (50 U.S.C. 1803(a)) shall reauthorize such order as long as the facts and circumstances continue to justify issuance of such order under the provisions of the Foreign Intelligence Surveillance Act of 1978, as in effect on the day before the applicable effective date of this Act. The Government also may file new applications, and the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) shall enter orders granting such applications pursuant to such Act, as long as the application meets the requirements set forth under the provisions of such Act as in effect on the day before the effective date of this Act. At the request of the applicant, the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)), shall extinguish any extant authorization to conduct electronic surveillance or physical search entered pursuant to such Act. Any surveillance conducted pursuant to an order entered under this subsection shall be subject to the provisions of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as in effect on the day before the effective date of this Act.

(c) SUNSET. – Except as provided in subsection (d), sections 2, 3, 4, and 5 of this Act, and the amendments made by this Act, shall cease to have effect 180 days after the date of the enactment of this Act.

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