

“(b) Repealed.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

“(c) SUNSET.—Except as provided in subsection (d), sections 2, 3, 4, and 5 of this Act [enacting sections 1805a to 1805c of this title and amending this section], and the amendments made by this Act [enacting sections 1805a to 1805c of this title and amending this section], shall cease to have effect 195 days after the date of the enactment of this Act.

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

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

EFFECTIVE DATE OF 2004 AMENDMENT

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

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

MEMBER ACCESS TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT AND FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW

Pub. L. 118-49, §5(d), Apr. 20, 2024, 138 Stat. 870, provided that: “The chair and ranking minority member of each of the congressional intelligence committees, the chairs and ranking members of the Committees on the Judiciary of the House of Representatives and of the Senate, the Majority and Minority Leaders of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives shall be entitled to attend any proceeding of the Foreign Intelligence Surveillance Court or any proceeding of the Foreign Intelligence Surveillance Court of Review. Each person entitled to attend a proceeding pursuant to this paragraph may designate not more than 2 staff members of such committee or office to attend on their behalf, pursuant to such procedures as the Attorney General, in consultation with the Director of National Intelligence may establish.”

§ 1804. Applications for court orders

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

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

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

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

(3) a sworn 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, in the case of a target that is a United States person alleged to be acting as an agent of a foreign power (as described in section 1801(b)(2)(B) of this title), that a violation of the criminal statutes of the United States as referred to in section 1801(b)(2)(B) of this title has occurred or is about to occur; and

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

(4) a statement of the proposed minimization procedures;

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

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

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

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

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

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

(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; and¹

(F) that none of the information included in the statement described in paragraph (3) was solely produced by, derived from information produced by, or obtained using the funds of, a political organization (as such term is defined in section 527 of title 26), unless—

(i) the political organization is clearly identified in the body of the statement described in paragraph (3);

¹ So in original. The word “and” probably should not appear.

(ii) the information has been corroborated; and

(iii) the investigative techniques used to corroborate the information are clearly identified in the body of the statement described in paragraph (3); and

(G) that none of the information included in the statement described in paragraph (3) is attributable to or derived from the content of a media source unless the statement includes a clear identification of each author of that content, and where applicable, the publisher of that content, information to corroborate that which was derived from the media source, and an explanation of the investigative techniques used to corroborate the information;

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

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

(9) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this subchapter should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter; and¹

(10) with respect to a target who is a United States person, a statement summarizing the investigative techniques carried out before making the application;

(11) in the case of an application for an extension of an order under this subchapter for a surveillance targeted against a United States person, a summary statement of the foreign intelligence information obtained pursuant to the original order (and any preceding extension thereof) as of the date of the application for the extension, or a reasonable explanation of the failure to obtain such information; and¹

(12) a certification by the applicant or declarant that, to the best knowledge of the applicant or declarant, the Attorney General or a designated attorney for the Government has been apprised of all information that might reasonably—

(A) call into question the accuracy of the application or the reasonableness of any assessment in the application conducted by the department or agency on whose behalf the application is made; or

(B) otherwise raise doubts with respect to the findings required under section 1805(a) of this title.²

(13) non-cumulative information known to the applicant or declarant that is potentially exculpatory regarding the requested legal findings or any assessment in the 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 1805 of this title.

(d) Personal review by Attorney General

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

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

² So in original. The period probably should be “; and”.

take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to supervise the making of such modification.

(Pub. L. 95-511, title I, §104, Oct. 25, 1978, 92 Stat. 1788; Pub. L. 106-567, title VI, §602(a), Dec. 27, 2000, 114 Stat. 2851; Pub. L. 107-56, title II, §218, Oct. 26, 2001, 115 Stat. 291; Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, §108(a)(1), Mar. 9, 2006, 120 Stat. 203; Pub. L. 110-261, title I, §104, July 10, 2008, 122 Stat. 2460; Pub. L. 111-259, title VIII, §806(a)(2), Oct. 7, 2010, 124 Stat. 2748; Pub. L. 118-49, §§6(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), 10(a)(1), (b)(1), Apr. 20, 2024, 138 Stat. 870-873, 875, 877.)

Editorial Notes

AMENDMENTS

2024—Subsec. (a)(3). Pub. L. 118-49, §6(a)(1), substituted “a sworn statement of” for “a statement of” in introductory provisions.

Subsec. (a)(3)(A). Pub. L. 118-49, §6(f)(1), inserted “, and, in the case of a target that is a United States person alleged to be acting as an agent of a foreign power (as described in section 1801(b)(2)(B) of this title), that a violation of the criminal statutes of the United States as referred to in section 1801(b)(2)(B) of this title has occurred or is about to occur” after “an agent of a foreign power”.

Subsec. (a)(6)(F). Pub. L. 118-49, §6(b)(1), added subpar. (F).

Subsec. (a)(6)(G). Pub. L. 118-49, §6(c)(1), added subpar. (G).

Subsec. (a)(10). Pub. L. 118-49, §6(d)(1), added par. (10).

Subsec. (a)(11). Pub. L. 118-49, §6(e)(1), added par. (11).

Subsec. (a)(12). Pub. L. 118-49, §10(a)(1), added par. (12).

Subsec. (a)(13). Pub. L. 118-49, §10(b)(1), added par. (13).

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

2008—Subsec. (a)(2) to (4). Pub. L. 110-261, §104(1)(A), (B), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: “the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application.”

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

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

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

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

Subsecs. (b) to (e). Pub. L. 110-261, §104(2)-(4), redesignated subsecs. (c) to (e) as (b) to (d), respectively, in subsec. (d)(1)(A) substituted “the Director of National Intelligence, or the Director of the Central Intelligence

Agency” for “or the Director of National Intelligence”, and struck out former subsec. (b) which related to exclusion of certain information respecting foreign power targets.

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

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2024 AMENDMENT

Pub. L. 118-49, §6(a)(5), Apr. 20, 2024, 138 Stat. 870, provided that: “The amendments made by this subsection [amending this section and sections 1823, 1881b, and 1881c of this title] shall apply with respect to applications made on or after the date that is 120 days after the date of enactment of this Act [Apr. 20, 2024].”

Pub. L. 118-49, §6(b)(3), Apr. 20, 2024, 138 Stat. 871, provided that: “The amendments made by this subsection [amending this section and section 1823 of this title] shall apply with respect to applications made on or after the date that is 120 days after the date of enactment of this Act [Apr. 20, 2024].”

Pub. L. 118-49, §6(c)(3), Apr. 20, 2024, 138 Stat. 872, provided that: “The amendments made by this subsection [amending this section and section 1823 of this title] shall apply with respect to applications made on or after the date that is 120 days after the date of enactment of this Act [Apr. 20, 2024].”

Pub. L. 118-49, §6(d)(2), Apr. 20, 2024, 138 Stat. 872, provided that: “The amendments made by this subsection [amending this section] shall apply with respect to applications made on or after the date that is 120 days after the date of enactment of this Act [Apr. 20, 2024].”

Pub. L. 118-49, §6(e)(3), Apr. 20, 2024, 138 Stat. 873, provided that: “The amendments made by this subsection [amending this section and section 1823 of this title] shall apply with respect to applications made on or after the date that is 120 days after the date of enactment of this Act [Apr. 20, 2024].”

Pub. L. 118-49, §6(f)(3), Apr. 20, 2024, 138 Stat. 873, provided that: “The amendments made by this subsection [amending this section and section 1823 of this title] shall apply with respect to applications made on or after the date that is 120 days after the date of enactment of this Act [Apr. 20, 2024].”

Pub. L. 118-49, §10(a)(6), Apr. 20, 2024, 138 Stat. 877, provided that: “The amendments made by this subsection [amending this section and sections 1823, 1842, 1862, 1881b, and 1881c of this title] shall apply with respect to applications made on or after the date that is 120 days after the date of enactment of this Act [Apr. 20, 2024].”

Pub. L. 118-49, §10(b)(6), Apr. 20, 2024, 138 Stat. 878, provided that: “The amendments made by this subsection [amending this section and sections 1823, 1842, 1862, 1881b, and 1881c of this title] shall apply with respect to applications made on or after the date that is 120 days after the date of enactment of this Act [Apr. 20, 2024].”

EFFECTIVE DATE OF 2008 AMENDMENT

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

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005,

70 F.R. 23925, set out as a note under section 3001 of this title.

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

ACCURACY PROCEDURES

Pub. L. 118-49, §10(a)(7), Apr. 20, 2024, 138 Stat. 877, provided that: “Not later than 180 days after the date of the enactment of this Act [Apr. 20, 2024], the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall issue procedures governing the review of case files, as appropriate, to ensure that applications to the Foreign Intelligence Surveillance Court under title I or III of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq., 1821 et seq.) that target United States persons are accurate and complete.”

Executive Documents

DESIGNATION OF CERTAIN OFFICIALS TO MAKE CERTIFICATIONS

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

§ 1805. Issuance of order

(a) Necessary findings

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

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

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

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

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

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

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

(b) Determination of probable cause

In determining whether or not probable cause exists for purposes of an order under subsection

(a)(2), a judge may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target.

(c) Specifications and directions of orders

(1) SPECIFICATIONS.—

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

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

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

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

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

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

(2) direct—²

(A) that the minimization procedures be followed;

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

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

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

(3) SPECIAL DIRECTIONS FOR CERTAIN ORDERS.—

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

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

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

¹ See References in Text note below.

² So in original.