

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

(2) the factual basis for issuance of an order under such section 1842 of this title to approve the installation and use of the pen register or trap and trace device, as the case may be, exists.

(c) Effect of absence of order

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

(A) when the information sought is obtained;

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

(C) 7 days after the time of the authorization by the Attorney General.

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

(3) A denial of the application made under subsection (a)(2) may be reviewed as provided in section 1803 of this title.

(d) Privacy procedures

Information collected through the use of a pen register or trap and trace device installed under this section shall be subject to the policies and procedures required under section 1842(h) of this title.

(Pub. L. 95-511, title IV, §403, as added Pub. L. 105-272, title VI, §601(2), Oct. 20, 1998, 112 Stat. 2407; amended Pub. L. 107-56, title II, §214(b), Oct. 26, 2001, 115 Stat. 287; Pub. L. 110-261, title I, §108, July 10, 2008, 122 Stat. 2464; Pub. L. 114-23, title II, §202(b), June 2, 2015, 129 Stat. 278; Pub. L. 115-118, title II, §205(b)(5), Jan. 19, 2018, 132 Stat. 22.)

Editorial Notes

AMENDMENTS

2018—Subsec. (c)(3). Pub. L. 115-118 added par. (3).

2015—Subsec. (d). Pub. L. 114-23 added subsec. (d).

2008—Subsecs. (a)(2), (c)(1)(C). Pub. L. 110-261 substituted “7 days” for “48 hours”.

2001—Subsec. (a). Pub. L. 107-56, §214(b)(1), substituted “foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution” for “foreign intelligence information or information concerning international terrorism” in introductory provisions.

Subsec. (b)(1). Pub. L. 107-56, §214(b)(2), substituted “foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution” for “foreign intelligence information or information concerning international terrorism”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

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

§ 1844. Authorization during time of war

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

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

§ 1845. Use of information

(a) In general

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

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

(b) Disclosure for law enforcement purposes

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

(c) Notification of intended disclosure by United States

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

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

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

(e) Motion to suppress

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

(A) the information was unlawfully acquired; or

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

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

(f) In camera and ex parte review

(1) Whenever a court or other authority is notified pursuant to subsection (c) or (d), whenever a motion is made pursuant to subsection (e), or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before

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

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

(g) Effect of determination of lawfulness

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

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

(h) Binding final orders

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

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

§ 1846. Congressional oversight

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

(b) On a semiannual basis, the Attorney General shall also provide to the committees referred to in subsection (a) a report setting forth with respect to the preceding 6-month period—

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

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

(3) the total number of pen registers and trap and trace devices whose installation and use was authorized by the Attorney General on an emergency basis under section 1843 of this title, and the total number of subsequent orders approving or denying the installation and use of such pen registers and trap and trace devices;

(4) each department or agency on behalf of which the Attorney General or a designated attorney for the Government has made an application for an order authorizing or approving the installation and use of a pen register or trap and trace device under this subchapter;

(5) for each department or agency described in paragraph (4), each number described in paragraphs (1), (2), and (3); and

(6) a good faith estimate of the total number of subjects who were targeted by the installation and use of a pen register or trap and trace device under an order or emergency authorization issued under this subchapter, rounded to the nearest 500, including—

(A) the number of such subjects who are United States persons, reported to the nearest band of 500, starting with 0–499; and

(B) of the number of United States persons described in subparagraph (A), the number of persons whose information acquired pursuant to such order was reviewed or accessed by a Federal officer, employee, or agent, reported to the nearest band of 500, starting with 0–499.

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

(Pub. L. 95–511, title IV, § 406, as added Pub. L. 105–272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2410; amended Pub. L. 109–177, title I, §§ 109(b), 128(b), Mar. 9, 2006, 120 Stat. 204, 229; Pub. L. 114–23, title VI, § 605(c), June 2, 2015, 129 Stat. 298; Pub. L. 115–118, title I, § 107(b), title II, § 205(a)(3), Jan. 19, 2018, 132 Stat. 14, 21.)

Editorial Notes

AMENDMENTS

2018—Subsec. (b). Pub. L. 115–118, § 205(a)(3), struck out “and to the Committees on the Judiciary of the House of Representatives and the Senate” after “to the committees referred to in subsection (a)” in introductory provisions.

Subsec. (b)(6). Pub. L. 115–118, § 107(b)(1), added par. (6).

Subsec. (c). Pub. L. 115–118, § 107(b)(2), added subsec. (c).

2015—Subsec. (b)(4), (5). Pub. L. 114–23 added pars. (4) and (5).

2006—Subsec. (a). Pub. L. 109–177, § 128(b), inserted “, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,” after “Select Committee on Intelligence of the Senate”.

Subsec. (b)(3). Pub. L. 109–177, § 109(b), added par. (3).

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

§ 1861. Definitions

As used in this subchapter:

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

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

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

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

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

(Pub. L. 95–511, title V, § 501, as added Pub. L. 107–56, title II, § 215, Oct. 26, 2001, 115 Stat. 287; amended Pub. L. 107–108, title III, § 314(a)(6), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 109–177, title I, §§ 102(b)(1), 106(a)–(e), (f)(2), (g), Mar. 9, 2006, 120 Stat. 195–198; Pub. L. 109–178, §§ 3, 4(a), Mar. 9, 2006, 120 Stat. 278, 280; Pub. L. 111–118, div. B, § 1004(a), Dec. 19, 2009, 123 Stat. 3470; Pub. L. 111–141, § 1(a), Feb. 27, 2010, 124 Stat. 37; Pub. L. 112–3, § 2(a), Feb. 25, 2011, 125 Stat. 5; Pub. L. 112–14, § 2(a), May 26, 2011, 125 Stat. 216; Pub. L. 114–23, title I, §§ 101–107, title VII, § 705(a), (c), June 2, 2015, 129 Stat. 269–273, 300; Pub. L. 115–118, title II, § 205(b)(6), Jan. 19, 2018, 132 Stat. 22; Pub. L. 116–69, div. B, title VII, § 1703(a), Nov. 21, 2019, 133 Stat. 1143.)

Editorial Notes

CODIFICATION

Pursuant to Pub. L. 109–177, § 102(b)(1), as amended by Pub. L. 112–14, this section was amended, effective June 1, 2015, to read as it read on Oct. 25, 2001. The amendments made by Pub. L. 114–23, which was enacted June