

amendment of section 1861 by Pub. L. 109-177, title I, §102(b), Mar. 9, 2006, 120 Stat. 195, set out as an Effective Date of 2006 Amendment note under section 1805 of this title, which amended section 1861 of this title, effective Mar. 15, 2020, so that such section read as it read on Oct. 25, 2001, with certain exceptions.

Section 1801(b)(1)(C) of this title, referred to in subsec. (a)(2), was temporarily added by Pub. L. 108-458, title VI, §6001(a), Dec. 17, 2004, 118 Stat. 3742, and provided that, as used in subchapter I of this chapter, the term “agent of a foreign power” included any person other than a United States person who “engages in international terrorism or activities in preparation therefore”. Such amendment ceased to have effect on Mar. 15, 2020; see section 6001(b) of Pub. L. 108-458, set out as a Termination Date of 2004 Amendment note under section 1801 of this title.

PRIOR PROVISIONS

A prior section 601 of Pub. L. 95-511 was renumbered section 701 and was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110-261.

AMENDMENTS

2024—Subsec. (c)(3), (4). Pub. L. 118-49 added pars. (3) and (4).

2015—Subsec. (c)(1). Pub. L. 114-23 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this chapter, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and”.

2008—Subsec. (a)(1)(E), (F). Pub. L. 110-261, §101(c)(2), added subpars. (E) and (F).

Subsec. (a)(5). Pub. L. 110-261, §103(a), substituted “, orders,” for “(not including orders)”.

Subsecs. (c), (d). Pub. L. 110-261, §103(b), added subsecs. (c) and (d).

Subsec. (e). Pub. L. 110-261, §103(c), added subsec. (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-261, title IV, §403(b)(2), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(a)(2), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115-118, title II, §201(a)(2), Jan. 19, 2018, 132 Stat. 19; Pub. L. 118-31, div. G, title IX, §7902(a)(1), Dec. 22, 2023, 137 Stat. 1108; Pub. L. 118-49, §19(a)(2), Apr. 20, 2024, 138 Stat. 891, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the amendments made by section 403(b)(2) are effective two years after the date of enactment of the Reforming Intelligence and Securing America Act, Pub. L. 118-49, which was approved Apr. 20, 2024.

§ 1872. Declassification of significant decisions, orders, and opinions

(a) Declassification required

Subject to subsection (b), the Director of National Intelligence, in consultation with the Attorney General, shall conduct a declassification review, to be concluded as soon as practicable, but not later than 180 days after the commencement of such review, of each decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review (as defined in section 1871(e) of this title) that includes a significant construction or interpretation of any provision of law, including any novel or significant construction or interpretation of the term “specific

selection term”, and, consistent with that review, make publicly available to the greatest extent practicable each such decision, order, or opinion.

(b) Redacted form

The Director of National Intelligence, in consultation with the Attorney General, may satisfy the requirement under subsection (a) to make a decision, order, or opinion described in such subsection publicly available to the greatest extent practicable by making such decision, order, or opinion publicly available in redacted form.

(c) National security waiver

The Director of National Intelligence, in consultation with the Attorney General, may waive the requirement to declassify and make publicly available a particular decision, order, or opinion under subsection (a), if—

(1) the Director of National Intelligence, in consultation with the Attorney General, determines that a waiver of such requirement is necessary to protect the national security of the United States or properly classified intelligence sources or methods; and

(2) the Director of National Intelligence makes publicly available an unclassified statement prepared by the Attorney General, in consultation with the Director of National Intelligence—

(A) summarizing the significant construction or interpretation of any provision of law, which shall include, to the extent consistent with national security, a description of the context in which the matter arises and any significant construction or interpretation of any statute, constitutional provision, or other legal authority relied on by the decision; and

(B) that specifies that the statement has been prepared by the Attorney General and constitutes no part of the opinion of the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review.

(Pub. L. 95-511, title VI, §602, as added Pub. L. 114-23, title IV, §402(a)(2), June 2, 2015, 129 Stat. 281; amended Pub. L. 118-49, §7, Apr. 20, 2024, 138 Stat. 873.)

Editorial Notes

AMENDMENTS

2024—Subsec. (a). Pub. L. 118-49 inserted “, to be concluded as soon as practicable, but not later than 180 days after the commencement of such review,” after “shall conduct a declassification review”.

§ 1873. Annual reports

(a) Report by Director of the Administrative Office of the United States Courts

(1) Report required

The Director of the Administrative Office of the United States Courts shall annually submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate,

subject to a declassification review by the Attorney General and the Director of National Intelligence, a report that includes—

(A) the number of applications or certifications for orders submitted under each of sections 1805, 1824, 1842, 1861,¹ 1881a, 1881b, and 1881c of this title;

(B) the number of such orders granted under each of those sections;

(C) the number of orders modified under each of those sections;

(D) the number of applications or certifications denied under each of those sections;

(E) the number of appointments of an individual to serve as amicus curiae under section 1803 of this title, including the name of each individual appointed to serve as amicus curiae;

(F) the number of findings issued under section 1803(i) of this title that such appointment is not appropriate and the text of any such findings; and

(G) the number of times the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review exercised authority under chapter 21 of title 18 and a description of each use of such authority.

(2) Publication

The Director shall make the report required under paragraph (1) publicly available on an Internet Web site, except that the Director shall not make publicly available on an Internet Web site the findings described in subparagraph (F) of paragraph (1).

(b) Mandatory reporting by Director of National Intelligence

Except as provided in subsection (d), the Director of National Intelligence shall annually make publicly available on an Internet Web site a report that identifies, for the preceding 12-month period—

(1) the total number of orders issued pursuant to subchapters I and II and sections 1881b and 1881c of this title and a good faith estimate of—

(A) the number of targets of such orders;

(B) the number of targets of such orders who are known to not be United States persons; and

(C) the number of targets of such orders who are known to be United States persons;

(2) the total number of orders issued pursuant to section 1881a of this title, including pursuant to subsection (f)(2) of such section, and a good faith estimate of—

(A) the number of targets of such orders;

(B) the number of search terms concerning a known United States person used to retrieve the unminimized contents (or combined unminimized contents and noncontents information) of electronic communications or wire communications obtained through acquisitions authorized under such section, excluding the number of search terms used to prevent the return of information concerning a United States person;

(C) the number of queries concerning a known United States person of unminimized noncontents information relating to electronic communications or wire communications obtained through acquisitions authorized under such section, excluding the number of queries containing information used to prevent the return of information concerning a United States person;²

(D) the number of instances in which the Federal Bureau of Investigation opened, under the Criminal Investigative Division or any successor division, an investigation of a United States person (who is not considered a threat to national security) based wholly or in part on an acquisition authorized under such section;

(3) the total number of orders issued pursuant to subchapter III and a good faith estimate of—

(A) the number of targets of such orders, including—

(i) the number of targets of such orders who are known to not be United States persons; and

(ii) the number of targets of such orders who are known to be United States persons; and

(B) the number of unique identifiers used to communicate information collected pursuant to such orders;

(4) the number of criminal proceedings in which the United States or a State or political subdivision thereof provided notice pursuant to subsection (c) or (d) of section 1806 of this title (including with respect to information acquired from an acquisition conducted under section 1881a of this title) or subsection (d) or (e) of section 1825 of this title of the intent of the government to enter into evidence or otherwise use or disclose any information obtained or derived from electronic surveillance, physical search, or an acquisition conducted pursuant to this chapter;

(5) the total number of orders issued pursuant to applications made under section 1861(b)(2)(B)¹ of this title and a good faith estimate of—

(A) the number of targets of such orders; and

(B) the number of unique identifiers used to communicate information collected pursuant to such orders;

(6) the total number of orders issued pursuant to applications made under section 1861(b)(2)(C)¹ of this title and a good faith estimate of—

(A) the number of targets of such orders;

(B) the number of unique identifiers used to communicate information collected pursuant to such orders; and

(C) the number of search terms that included information concerning a United States person that were used to query any database of call detail records obtained through the use of such orders; and

(7) the total number of national security letters issued and the number of requests for in-

¹ See References in Text note below.

² So in original. Probably should be followed by "and".

formation contained within such national security letters.

(c) Timing

The annual reports required by subsections (a) and (b) shall be made publicly available during April of each year and include information relating to the previous calendar year.

(d) Exceptions

(1) Statement of numerical range

If a good faith estimate required to be reported under subparagraph (B) of any of paragraphs (3), (5), or (6) of subsection (b) is fewer than 500, it shall be expressed as a numerical range of “fewer than 500” and shall not be expressed as an individual number.

(2) Nonapplicability to electronic mail address and telephone numbers

Paragraph (3)(B) of subsection (b) shall not apply to orders resulting in the acquisition of information by the Federal Bureau of Investigation that does not include electronic mail addresses or telephone numbers.

(3) Certification

(A) In general

If the Director of National Intelligence concludes that a good faith estimate required to be reported under subsection (b)(2)(C) cannot be determined accurately because some but not all of the relevant elements of the intelligence community are able to provide such good faith estimate, the Director shall—

(i) certify that conclusion in writing to the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives;

(ii) report the good faith estimate for those relevant elements able to provide such good faith estimate;

(iii) explain when it is reasonably anticipated that such an estimate will be able to be determined fully and accurately; and

(iv) make such certification publicly available on an Internet Web site.

(B) Form

A certification described in subparagraph (A) shall be prepared in unclassified form, but may contain a classified annex.

(C) Timing

If the Director of National Intelligence continues to conclude that the good faith estimates described in this paragraph cannot be determined accurately, the Director shall annually submit a certification in accordance with this paragraph.

(e) Mandatory reporting by Director of Federal Bureau of Investigation

The Director of the Federal Bureau of Investigation shall annually submit to the Permanent Select Committee on Intelligence and the Committee on Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of

the Senate, a report describing the accountability actions taken by the Federal Bureau of Investigation in the preceding 12-month period for noncompliant querying of information acquired under section 1881a of this title and any such actions taken pursuant to section 1803(m) of this title, to include the number of ongoing personnel investigations, the outcome of any completed personnel investigations and any related adverse personnel actions taken.

(f) Mandatory reporting on section 1881a of this title by Director of Federal Bureau of Investigation

(1) Annual report

The Director of the Federal Bureau of Investigation shall annually submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report that includes—

(A) the number of United States person queries by the Federal Bureau of Investigation of unminimized contents or noncontents acquired pursuant to section 1881a(a) of this title;

(B) the number of approved queries using the Federal Bureau of Investigation’s batch job technology, or successor tool;

(C) the number of queries using the Federal Bureau of Investigation’s batch job technology, or successor tool, conducted by the Federal Bureau of Investigation against information acquired pursuant to section 1881a(a) of this title for which pre-approval was not obtained due to emergency circumstances;

(D) the number of United States person queries conducted by the Federal Bureau of Investigation of unminimized contents or noncontents acquired pursuant to section 1881a(a) of this title solely to retrieve evidence of a crime;

(E) a good faith estimate of the number of United States person query terms used by the Federal Bureau of Investigation to conduct queries of unminimized contents or noncontents acquired pursuant to section 1881a(a) of this title primarily to protect the United States person who is the subject of the query; and

(F) a good faith estimate of the number of United States person query terms used by the Federal Bureau of Investigation to conduct queries of unminimized contents or noncontents acquired pursuant to section 1881a(a) of this title where the United States person who is the subject of the query is a target or subject of an investigation by the Federal Bureau of Investigation.

(2) Public availability

Subject to declassification review by the Attorney General and the Director of National Intelligence, each annual report submitted pursuant to paragraph (1) shall be available to the public during the first April following the calendar year covered by the report.

(3) Quarterly report

Beginning on the date that is not later than 1 year after the effective date of this para-

graph, the Director of the Federal Bureau of Investigation shall submit a quarterly report to the congressional intelligence committees and to the Committees on the Judiciary of the House of Representatives and of the Senate that includes the number of U.S. person queries conducted during that quarter.

(g) Definitions

In this section:

(1) Contents

The term “contents” has the meaning given that term under section 2510 of title 18.

(2) Electronic communication

The term “electronic communication” has the meaning given that term under section 2510 of title 18.

(3) National security letter

The term “national security letter” means a request for a report, records, or other information under—

- (A) section 2709 of title 18;
- (B) section 3414(a)(5)(A) of title 12;
- (C) subsection (a) or (b) of section 1681u of title 15; or
- (D) section 1681v(a) of title 15.

(4) United States person

The term “United States person” means a citizen of the United States or an alien lawfully admitted for permanent residence (as defined in section 1101(a) of title 8).

(5) Wire communication

The term “wire communication” has the meaning given that term under section 2510 of title 18.

(Pub. L. 95–511, title VI, § 603, as added Pub. L. 114–23, title VI, § 602(a), June 2, 2015, 129 Stat. 292; amended Pub. L. 115–118, title I, § 102(b), Jan. 19, 2018, 132 Stat. 9; Pub. L. 118–49, §§ 11(a)(1), 12(a), 14(b), Apr. 20, 2024, 138 Stat. 878, 879, 882.)

Editorial Notes

REFERENCES IN TEXT

Section 1861 of this title, referred to in subsecs. (a)(1)(A) and (b)(5), (6), means section 1861 of this title prior to the amendment of section 1861 by Pub. L. 109–177, title I, § 102(b), Mar. 9, 2006, 120 Stat. 195, set out as an Effective Date of 2006 Amendment note under section 1805 of this title, which amended section 1861 of this title, effective Mar. 15, 2020, so that such section read as it read on Oct. 25, 2001, with certain exceptions.

This chapter, referred to in subsec. (b)(4), was in the original “this Act”, meaning Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, known as the Foreign Intelligence Surveillance Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

For the effective date of this paragraph, referred to in subsec. (f)(3), see Effective Date of 2024 Amendment note below.

AMENDMENTS

2024—Subsec. (a)(1)(G). Pub. L. 118–49, § 14(b), added subpar. (G).

Subsec. (b)(2)(B). Pub. L. 118–49, § 11(a)(1)(A), inserted “(or combined unminimized contents and noncontents information)” after “unminimized contents”.

Subsec. (d)(2). Pub. L. 118–49, § 11(a)(1)(B), amended par. (2) generally. Prior to amendment, par. (2) related

to nonapplicability to certain information, consisting of subpar. (A) relating to certain information held by or queries conducted by the Federal Bureau of Investigation and subpar. (B) relating to electronic mail address and telephone numbers.

Subsec. (e). Pub. L. 118–49, § 12(a)(2), added subsec. (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 118–49, § 11(a)(1)(C), added subsec. (f).

Subsec. (g). Pub. L. 118–49, § 12(a)(1), redesignated subsec. (e) as (g).

2018—Subsec. (b)(1). Pub. L. 115–118, § 102(b)(1)(A), substituted “good faith estimate of—” for “good faith estimate of the number of targets of such orders;” and added subpars. (A) to (C).

Subsec. (b)(2). Pub. L. 115–118, § 102(b)(1)(B), inserted “, including pursuant to subsection (f)(2) of such section,” after “section 1881a of this title” in introductory provisions, added subpars. (A) and (D), and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Subsec. (b)(3)(A). Pub. L. 115–118, § 102(b)(1)(C), substituted “orders, including—” for “orders; and” and added cls. (i) and (ii).

Subsec. (b)(4) to (7). Pub. L. 115–118, § 102(b)(1)(D), (E), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

Subsec. (d)(1). Pub. L. 115–118, § 102(b)(2)(A), substituted “(5), or (6)” for “(4), or (5)”.

Subsec. (d)(2)(A). Pub. L. 115–118, § 102(b)(2)(B), substituted “Paragraphs (2)(B), (2)(C), and (6)(C)” for “Paragraphs (2)(A), (2)(B), and (5)(C)” and inserted before period at end “, except with respect to information required under paragraph (2) relating to orders issued under section 1881a(f)(2) of this title”.

Subsec. (d)(3)(A). Pub. L. 115–118, § 102(b)(2)(C), substituted “subsection (b)(2)(C)” for “subsection (b)(2)(B)” in introductory provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2024 AMENDMENT

Pub. L. 118–49, § 11(a)(2), Apr. 20, 2024, 138 Stat. 879, provided that: “The amendments made by this subsection [amending this section] shall take effect on January 1, 2025.”

§ 1874. Public reporting by persons subject to orders

(a) Reporting

A person subject to a nondisclosure requirement accompanying an order or directive under this chapter or a national security letter may, with respect to such order, directive, or national security letter, publicly report the following information using one of the following structures:

(1) A semiannual report that aggregates the number of orders, directives, or national security letters with which the person was required to comply into separate categories of—

(A) the number of national security letters received, reported in bands of 1000 starting with 0–999;

(B) the number of customer selectors targeted by national security letters, reported in bands of 1000 starting with 0–999;

(C) the number of orders or directives received, combined, under this chapter for contents, reported in bands of 1000 starting with 0–999;

(D) the number of customer selectors targeted under orders or directives received, combined, under this chapter for contents, reported in bands of 1000 starting with 0–999;

(E) the number of orders received under this chapter for noncontents, reported in bands of 1000 starting with 0–999; and