

investments, and other commercially valuable information that a person has developed or obtained if—

(A) the person has taken reasonable measures to keep the information confidential; and

(B) the information is not generally known or readily ascertainable through proper means by the public.

(8) Technology

The term “technology” has the meaning given that term in section 16 of the Export Administration Act of 1979 (50 U.S.C. 4618) (as in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)).

(9) Trade secret

The term “trade secret” has the meaning given that term in section 1839 of title 18.

(10) United States person

The term “United States person” means—

(A) an individual who is a citizen or resident of the United States;

(B) an entity organized under the laws of the United States or any jurisdiction within the United States; or

(C) a person located in the United States.

(Pub. L. 113–291, div. A, title XVI, §1637, Dec. 19, 2014, 128 Stat. 3644.)

REFERENCES IN TEXT

The International Emergency Economic Powers Act, referred to in subssecs. (b)(1) and (d)(8), is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

CODIFICATION

This section was enacted as part of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, and not as part of the International Emergency Economic Powers Act which comprises this chapter.

CHAPTER 36—FOREIGN INTELLIGENCE SURVEILLANCE

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SUBCHAPTER I—ELECTRONIC SURVEILLANCE

§ 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;

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

(7) an entity not substantially composed of United States persons that is engaged in the international proliferation of weapons of mass destruction.

(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, irrespective of whether the person is inside the United States;

(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 indicate that such person may engage in such activities, 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;

(C) engages in international terrorism or activities in preparation therefor;

(D) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor; or

(E) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor, for or on behalf of a foreign power, or knowingly aids or abets any person in the conduct of such proliferation or activities in preparation therefor, or knowingly conspires with any person to engage in such proliferation or activities in preparation therefor; 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, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

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

(2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) “Electronic surveillance” means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a

particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of title 18;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) “Attorney General” means the Attorney General of the United States (or Acting Attorney General), 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.

(h) “Minimization procedures”, with respect to electronic surveillance, means—

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e)(1) of this section, shall not be disseminated in a manner that identifies any United States person, without such person’s consent, unless such person’s identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 1802(a) of this title, procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than 72 hours unless a court order under section 1805 of this title is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

(i) “United States person” means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 1101(a)(20) of title 8), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3) of this section.

(j) “United States”, when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(k) “Aggrieved person” means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(l) “Wire communication” means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) “Person” means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) “Contents”, when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(o) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(p) “Weapon of mass destruction” means—

(1) any explosive, incendiary, or poison gas device that is designed, intended, or has the capability to cause a mass casualty incident;

(2) any weapon that is designed, intended, or has the capability to cause death or serious bodily injury to a significant number of persons through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined in section 178 of title 18) that is designed, intended, or has the capability to cause death, illness, or serious bodily injury to a significant number of persons; or

(4) any weapon that is designed, intended, or has the capability to release radiation or radioactivity causing death, illness, or serious bodily injury to a significant number of persons.

(Pub. L. 95–511, title I, § 101, Oct. 25, 1978, 92 Stat. 1783; Pub. L. 106–120, title VI, § 601, Dec. 3, 1999, 113 Stat. 1619; Pub. L. 107–56, title X, § 1003, Oct. 26, 2001, 115 Stat. 392; Pub. L. 107–108, title III, § 314(a)(1), (c)(2), Dec. 28, 2001, 115 Stat. 1402, 1403; Pub. L. 108–458, title VI, § 6001(a), Dec. 17, 2004, 118 Stat. 3742; Pub. L. 109–177, title V, § 506(a)(5), Mar. 9, 2006, 120 Stat. 248; Pub. L. 110–261, title I, § 110(a), July 10, 2008, 122 Stat. 2465; Pub. L. 111–259, title VIII, § 801(1), Oct. 7, 2010, 124 Stat. 2746; Pub. L. 114–23, title VII, §§ 702, 703, June 2, 2015, 129 Stat. 300.)

AMENDMENT OF SECTION

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

AMENDMENTS

2015—Subsec. (b)(1)(A). Pub. L. 114–23, § 702(1), inserted “, irrespective of whether the person is inside the United States” before semicolon at end.

Subsec. (b)(1)(B). Pub. L. 114–23, § 702(2), struck out “of such person’s presence in the United States” after “circumstances” and substituted “may engage in such activities” for “may engage in such activities in the United States”.

Subsec. (b)(1)(E). Pub. L. 114–23, § 703, added subpar. (E) and struck out former subpar. (E) which read as follows: “engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor for or on behalf of a foreign power; or”.

2010—Subsecs. (a)(7) to (p). Pub. L. 111–259 realigned margins.

2008—Subsec. (a)(7). Pub. L. 110–261, § 110(a)(1), added par. (7).

Subsec. (b)(1)(D), (E). Pub. L. 110–261, § 110(a)(2), added subpars. (D) and (E).

Subsec. (e)(1)(B). Pub. L. 110–261, § 110(a)(3), substituted “sabotage, international terrorism, or the international proliferation of weapons of mass destruction” for “sabotage or international terrorism”.

Subsec. (p). Pub. L. 110–261, § 110(a)(4), added subsec. (p).

2006—Subsec. (g). Pub. L. 109–177 substituted “, 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” for “or the Deputy Attorney General”.

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

2001—Subsec. (f)(2). Pub. L. 107–56, § 1003, as amended by Pub. L. 107–108, § 314(c)(2), inserted “, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of title 18” before semicolon at end.

Subsec. (h)(4). Pub. L. 107–108, § 314(a)(1), substituted “72 hours” for “twenty-four hours”.

1999—Subsec. (b)(2)(D), (E). Pub. L. 106–120 added subpar. (D) and redesignated former subpar. (D) as (E).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–261, title IV, § 402, July 10, 2008, 122 Stat. 2473, provided that: “Except as provided in section 404 [set out as a note under this section], the amendments made by this Act [see Short Title of 2008 Amendment note below] shall take effect on the date of the enactment of this Act [July 10, 2008].”

TERMINATION DATE OF 2004 AMENDMENT

Pub. L. 108–458, title VI, § 6001(b), Dec. 17, 2004, 118 Stat. 3742, as amended by Pub. L. 109–177, title I, § 103,

Mar. 9, 2006, 120 Stat. 195; Pub. L. 111–118, div. B, § 1004(b), Dec. 19, 2009, 123 Stat. 3470; Pub. L. 111–141, § 1(b), Feb. 27, 2010, 124 Stat. 37; Pub. L. 112–3, § 2(b), Feb. 25, 2011, 125 Stat. 5; Pub. L. 112–14, § 2(b), May 26, 2011, 125 Stat. 216; Pub. L. 114–23, title VII, § 705(b), June 2, 2015, 129 Stat. 300, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall cease to have effect on December 15, 2019.

“(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.”

[Pub. L. 114–23, § 705(b), which delayed the June 1, 2015, termination of the amendment made by section 6001(a) of Pub. L. 108–458 by substituting “December 15, 2019” for “June 1, 2015” in section 6001(b)(1) of Pub. L. 108–458, set out above, was given effect in this section to reflect the probable intent of Congress, notwithstanding that Pub. L. 114–23 was enacted on June 2, 2015.]

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–108, title III, § 314(c), Dec. 28, 2001, 115 Stat. 1402, provided in part that the amendment made by section 314(c)(2) of Pub. L. 107–108 is effective as of Oct. 26, 2001, and as if included in Pub. L. 107–56 as originally enacted.

EFFECTIVE DATE; EXCEPTION

Pub. L. 95–511, title VII, § 701, formerly title III, § 301, Oct. 25, 1978, 92 Stat. 1798, as renumbered title IV, § 401, and amended by Pub. L. 103–359, title VIII, § 807(a)(1), (2), Oct. 14, 1994, 108 Stat. 3443; renumbered title VI, § 601, and amended Pub. L. 105–272, title VI, § 601(1), 603(a), Oct. 20, 1998, 112 Stat. 2404, 2412; renumbered title VII, § 701, Pub. L. 108–458, title VI, § 6002(a)(1), Dec. 17, 2004, 118 Stat. 3743, which provided that the provisions of this Act [enacting this chapter, amending sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note below] (other than titles III, IV, and V [enacting subchapters II, III, and IV, respectively, of this chapter]) and the amendments made hereby shall become effective upon the date of enactment of this Act [Oct. 25, 1978], except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act [enacting this subchapter] within ninety days following the designation of the first judge pursuant to section 103 of this Act [section 1803 of this title], was repealed by Pub. L. 110–261, title I, § 101(a)(1), July 10, 2008, 122 Stat. 2437.

SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114–23, § 1(a), June 2, 2015, 129 Stat. 268, provided that: “This Act [see Tables for classification] may be cited as the ‘Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015’ or the ‘USA FREEDOM Act of 2015.’”

SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112–238, § 1, Dec. 30, 2012, 126 Stat. 1631, provided that: “This Act [amending sections 1881 to 1881g of this title and provisions set out as notes under this section, section 1881 of this title, and section 2511 of Title 18, Crimes and Criminal Procedure] may be cited as the ‘FISA Amendments Act Reauthorization Act of 2012.’”

SHORT TITLE OF 2011 AMENDMENT

Pub. L. 112–14, § 1, May 26, 2011, 125 Stat. 216, provided that: “This Act [amending sections 1805, 1861, and 1862

of this title and provisions set out as notes under this section and section 1805 of this title] may be cited as the ‘PATRIOT Sunsets Extension Act of 2011’.”

Pub. L. 112-3, §1, Feb. 25, 2011, 125 Stat. 5, provided that: “This Act [amending sections 1805, 1861, and 1862 of this title and provisions set out as notes under this section and section 1805 of this title] may be cited as the ‘FISA Sunsets Extension Act of 2011’.”

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-261, §1(a), July 10, 2008, 122 Stat. 2436, provided that: “This Act [enacting section 1812 and subchapters VI and VII of this chapter, amending this section, sections 1803 to 1805, 1806, 1808, 1809, 1821 to 1825, 1843, and 1871 of this title, and section 2511 of Title 18, Crimes and Criminal Procedure, repealing sections 1805a to 1805c of this title and subchapter VI of this chapter, enacting provisions set out as notes under this section, section 1881 of this title, and section 2511 of Title 18, amending provisions set out as a note under section 1803 of this title, and repealing provisions set out as a note under this section] may be cited as the ‘Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008’ or the ‘FISA Amendments Act of 2008’.”

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110-55, §1, Aug. 5, 2007, 121 Stat. 552, provided that: “This Act [enacting sections 1805a to 1805c of this title, amending section 1803 of this title, and enacting provisions set out as a note under section 1803 of this title] may be cited as the ‘Protect America Act of 2007’.”

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-567, title VI, §601, Dec. 27, 2000, 114 Stat. 2850, provided that: “This title [enacting section 9A of the Classified Information Procedures Act, set out in the Appendix to Title 18, Crimes and Criminal Procedure, amending sections 402a, 1804, 1805, 1808, 1823, and 1824 of this title, and enacting provisions set out as notes under this section and section 1806 of this title] may be cited as the ‘Counterintelligence Reform Act of 2000’.”

SHORT TITLE

Pub. L. 95-511, §1, Oct. 25, 1978, 92 Stat. 1783, provided in part: “That this Act [enacting this chapter, amending sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note above] may be cited as the ‘Foreign Intelligence Surveillance Act of 1978’.”

SEVERABILITY

Pub. L. 110-261, title IV, §401, July 10, 2008, 122 Stat. 2473, provided that: “If any provision of this Act [see Short Title of 2008 Amendment note above], any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act, of any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.”

Pub. L. 106-567, title VI, §608, Dec. 27, 2000, 114 Stat. 2856, provided that: “If any provision of this title [see Short Title of 2000 Amendment note above] (including an amendment made by this title), or the application thereof, to any person or circumstance, is held invalid, the remainder of this title (including the amendments made by this title), and the application thereof, to other persons or circumstances shall not be affected thereby.”

TRANSITION PROCEDURES

Pub. L. 110-261, title IV, §404, July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112-238, §2(b), Dec. 30, 2012, 126 Stat. 1631, provided that:

“(a) TRANSITION PROCEDURES FOR PROTECT AMERICA ACT OF 2007 PROVISIONS.—

“(1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—Except as provided in paragraph (7), notwithstanding any other provision of law, any order, authorization, or directive issued or made pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b], as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue in effect until the expiration of such order, authorization, or directive.

“(2) APPLICABILITY OF PROTECT AMERICA ACT OF 2007 TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act [see Short Title of 2008 Amendment note above], any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

“(A) subject to paragraph (3), section 105A of such Act [50 U.S.C. 1805a], as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue to apply to any acquisition conducted pursuant to an order, authorization, or directive referred to in paragraph (1); and

“(B) sections 105B and 105C of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b, 1805c], as added by sections 2 and 3, respectively, of the Protect America Act of 2007, shall continue to apply with respect to an order, authorization, or directive referred to in paragraph (1) until the later of—

“(i) the expiration of such order, authorization, or directive; or

“(ii) the date on which final judgment is entered for any petition or other litigation relating to such order, authorization, or directive.

“(3) USE OF INFORMATION.—Information acquired from an acquisition conducted pursuant to an order, authorization, or directive referred to in paragraph (1) shall be deemed to be information acquired from an electronic surveillance pursuant to title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106 of such Act (50 U.S.C. 1806), except for purposes of subsection (j) of such section.

“(4) PROTECTION FROM LIABILITY.—Subsection (l) of section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b(l)], as added by section 2 of the Protect America Act of 2007, shall continue to apply with respect to any directives issued pursuant to such section 105B.

“(5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 103(e) of the Foreign Intelligence Surveillance Act [of 1978] (50 U.S.C. 1803(e)), as amended by section 5(a) of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556), shall continue to apply with respect to a directive issued pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b], as added by section 2 of the Protect America Act of 2007, until the later of—

“(A) the expiration of all orders, authorizations, or directives referred to in paragraph (1); or

“(B) the date on which final judgment is entered for any petition or other litigation relating to such order, authorization, or directive.

“(6) REPORTING REQUIREMENTS.—

“(A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act, any amendment made by this Act, the Protect America Act of 2007 (Public Law 110-55) [see Short Title of 2007 Amendment note above], or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 4 of the Protect America Act of 2007 [121 Stat. 555] shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

“(B) CERTIFICATION.—The certification described in this subparagraph is a certification—

“(i) made by the Attorney General;

“(ii) submitted as part of a semi-annual report required by section 4 of the Protect America Act of 2007;

“(iii) that states that there will be no further acquisitions carried out under section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b], as added by section 2 of the Protect America Act of 2007, after the date of such certification; and

“(iv) that states that the information required to be included under such section 4 relating to any acquisition conducted under such section 105B has been included in a semi-annual report required by such section 4.

“(7) REPLACEMENT OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—

“(A) IN GENERAL.—If the Attorney General and the Director of National Intelligence seek to replace an authorization issued pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b], as added by section 2 of the Protect America Act of 2007 (Public Law 110–55), with an authorization under section 702 of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881a] (as added by section 101(a) of this Act), the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Foreign Intelligence Surveillance Court (as such term is defined in section 701(b)(2) of such Act [50 U.S.C. 1881(b)(2)] (as so added)) a certification prepared in accordance with subsection (g) of such section 702 and the procedures adopted in accordance with subsections (d) and (e) of such section 702 at least 30 days before the expiration of such authorization.

“(B) CONTINUATION OF EXISTING ORDERS.—If the Attorney General and the Director of National Intelligence seek to replace an authorization made pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 522), by filing a certification in accordance with subparagraph (A), that authorization, and any directives issued thereunder and any order related thereto, shall remain in effect, notwithstanding the expiration provided for in subsection (a) of such section 105B, until the Foreign Intelligence Surveillance Court (as such term is defined in section 701(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (as so added)) issues an order with respect to that certification under section 702(i)(3) of such Act (as so added) at which time the provisions of that section and of section 702(i)(4) of such Act (as so added) shall apply.

“(8) EFFECTIVE DATE.—Paragraphs (1) through (7) shall take effect as if enacted on August 5, 2007.

“(b) TRANSITION PROCEDURES FOR FISA AMENDMENTS ACT OF 2008 PROVISIONS.—

“(1) ORDERS IN EFFECT ON DECEMBER 31, 2017.—Notwithstanding any other provision of this Act, any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), any order, authorization, or directive issued or made under title VII of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881 et seq.], as amended by section 101(a), shall continue in effect until the date of the expiration of such order, authorization, or directive.

“(2) APPLICABILITY OF TITLE VII OF FISA TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act, any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), with respect to any order, authorization, or directive referred to in paragraph (1), title VII of such Act, as amended by section 101(a), shall continue to apply until the later of—

“(A) the expiration of such order, authorization, or directive; or

“(B) the date on which final judgment is entered for any petition or other litigation relating to such order, authorization, or directive.

“(3) CHALLENGE OF DIRECTIVES; PROTECTION FROM LIABILITY; USE OF INFORMATION.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

“(A) section 103(e) of such Act [50 U.S.C. 1803(e)], as amended by section 403(a)(1)(B)(ii), shall continue to apply with respect to any directive issued pursuant to section 702(h) of such Act [50 U.S.C. 1881a(h)], as added by section 101(a);

“(B) section 702(h)(3) of such Act (as so added) shall continue to apply with respect to any directive issued pursuant to section 702(h) of such Act (as so added);

“(C) section 703(e) of such Act [50 U.S.C. 1881b(e)] (as so added) shall continue to apply with respect to an order or request for emergency assistance under that section;

“(D) section 706 of such Act [50 U.S.C. 1881e] (as so added) shall continue to apply to an acquisition conducted under section 702 or 703 of such Act (as so added); and

“(E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978, [50 U.S.C. 1881c] as added by section 101(a).

“(4) REPORTING REQUIREMENTS.—

“(A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section 101(c)(2), and sections 702(l) and 707 of such Act, [50 U.S.C. 1881a(l), 1881f] as added by section 101(a), shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

“(B) CERTIFICATION.—The certification described in this subparagraph is a certification—

“(i) made by the Attorney General;

“(ii) submitted to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on the Judiciary of the Senate and the House of Representatives;

“(iii) that states that there will be no further acquisitions carried out under title VII of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881 et seq.], as amended by section 101(a), after the date of such certification; and

“(iv) that states that the information required to be included in a review, assessment, or report under section 601 of such Act [50 U.S.C. 1871], as amended by section 101(c), or section 702(l) or 707 of such Act, as added by section 101(a), relating to any acquisition conducted under title VII of such Act, as amended by section 101(a), has been included in a review, assessment, or report under such section 601, 702(l), or 707.

“(5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS OVERSEAS.—

Any authorization in effect on the date of enactment of this Act [July 10, 2008] under section 2.5 of Executive Order 12333 [50 U.S.C. 3001 note] to intentionally target a United States person reasonably believed to be located outside the United States shall continue in effect, and shall constitute a sufficient basis for conducting such an acquisition targeting a United States person located outside the United States until the earlier of—

“(A) the date that authorization expires; or

“(B) the date that is 90 days after the date of the enactment of this Act [July 10, 2008].”

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 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 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 Gen-

eral may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the surveillance or the aid furnished which such carrier wishes to retain.

The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this subchapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the court having jurisdiction under section 1803 of this title, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 1805 of this title, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1)(A) of subsection (a) of this section unless such surveillance may involve the acquisition of communications of any United States person.

(Pub. L. 95-511, title I, § 102, Oct. 25, 1978, 92 Stat. 1786; Pub. L. 108-458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 111-259, title VIII, § 806(a)(2), Oct. 7, 2010, 124 Stat. 2748.)

AMENDMENTS

2010—Subsec. (a)(3), (4)(B). Pub. L. 111-259 made technical amendment to directory language of Pub. L. 108-458. See 2004 Amendment note below.

2004—Subsec. (a)(3), (4)(B). Pub. L. 108-458, as amended by Pub. L. 111-259, substituted "Director of National Intelligence" for "Director of Central Intelligence".

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.

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

Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, as amended by Ex. Ord. No. 13383, § 1, July 15, 2005, 70 F.R. 41933; Ex. Ord. No. 13475, § 1, Oct. 7, 2008, 73 F.R. 60095, provided:

By the authority vested in me as President by Sections 102 and 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802 and 1804), in order to provide as set forth in that Act [this chapter] for the authorization of electronic surveillance for foreign intelligence purposes, it is hereby ordered as follows:

1-101. Pursuant to Section 102(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(a)),