

(h) Privacy procedures**(1) In general**

The Attorney General shall ensure that appropriate policies and procedures are in place to safeguard nonpublicly available information concerning United States persons that is collected through the use of a pen register or trap and trace device installed under this section. Such policies and procedures shall, to the maximum extent practicable and consistent with the need to protect national security, include privacy protections that apply to the collection, retention, and use of information concerning United States persons.

(2) Rule of construction

Nothing in this subsection limits the authority of the court established under section 1803(a) of this title or of the Attorney General to impose additional privacy or minimization procedures with regard to the installation or use of a pen register or trap and trace device.

(Pub. L. 95-511, title IV, § 402, as added Pub. L. 105-272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2405; amended Pub. L. 107-56, title II, § 214(a), Oct. 26, 2001, 115 Stat. 286; Pub. L. 107-108, title III, § 314(a)(5), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 108-458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, §§ 105(c), 128(a), Mar. 9, 2006, 120 Stat. 195, 228; Pub. L. 111-259, title VIII, § 806(a)(2), Oct. 7, 2010, 124 Stat. 2748; Pub. L. 114-23, title II, §§ 201(a), 202(a), June 2, 2015, 129 Stat. 277; Pub. L. 115-118, title II, § 205(b)(4), Jan. 19, 2018, 132 Stat. 22.)

REFERENCES IN TEXT

Executive Order No. 12333, referred to in subsec. (a)(1), is set out as a note under section 3001 of this title.

Section 1805(b)(2)(C) of this title, referred to in subsec. (d)(2)(B)(ii)(II), was redesignated section 1805(c)(2)(C) of this title by Pub. L. 106-567, title VI, § 602(b)(1), Dec. 27, 2000, 114 Stat. 2851.

AMENDMENTS

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

2015—Subsec. (c)(3). Pub. L. 114-23, § 201(a), added par. (3).

Subsec. (h). Pub. L. 114-23, § 202(a), added subsec. (h).
2010—Subsec. (d)(2)(B)(ii)(II). Pub. L. 111-259 made technical amendment to directory language of Pub. L. 108-458. See 2004 Amendment note below.

2006—Subsec. (d)(2)(A). Pub. L. 109-177, § 128(a)(1), inserted “and” at end of cl. (ii) and substituted semicolon for period at end of cl. (iii).

Subsec. (d)(2)(C). Pub. L. 109-177, § 128(a)(2), (3), added subpar. (C).

Subsec. (e). Pub. L. 109-177, § 105(c), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), an order issued” for “An order issued”, and added par. (2).

2004—Subsec. (d)(2)(B)(ii)(II). Pub. L. 108-458, as amended by Pub. L. 111-259, substituted “Director of National Intelligence” for “Director of Central Intelligence”.

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

tion or information concerning international terrorism”.

Subsec. (c)(1). Pub. L. 107-108, § 314(a)(5)(A), inserted “and” after semicolon at end.

Subsec. (c)(2). Pub. L. 107-56, § 214(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “a certification by the applicant that the information likely to be obtained is relevant to an ongoing foreign intelligence or international terrorism investigation being conducted by the Federal Bureau of Investigation under guidelines approved by the Attorney General; and”.

Subsec. (c)(3). Pub. L. 107-56, § 214(a)(3), struck out par. (3) which read as follows: “information which demonstrates that there is reason to believe that the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device, has been or is about to be used in communication with—

“(A) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States; or

“(B) a foreign power or agent of a foreign power under circumstances giving reason to believe that the communication concerns or concerned international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States.”

Subsec. (d)(2)(A). Pub. L. 107-56, § 214(a)(4), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “shall specify—

“(i) the identity, if known, of the person who is the subject of the foreign intelligence or international terrorism investigation;

“(ii) in the case of an application for the installation and use of a pen register or trap and trace device with respect to a telephone line—

“(I) the identity, if known, of the person to whom is leased or in whose name the telephone line is listed; and

“(II) the number and, if known, physical location of the telephone line; and

“(iii) in the case of an application for the use of a pen register or trap and trace device with respect to a communication instrument or device not covered by clause (ii)—

“(I) the identity, if known, of the person who owns or leases the instrument or device or in whose name the instrument or device is listed; and

“(II) the number of the instrument or device; and”.

Subsec. (f). Pub. L. 107-108, § 314(a)(5)(B), substituted “terms of an order issued” for “terms of a court”.

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.

§ 1843. Authorization during emergencies**(a) Requirements for authorization**

Notwithstanding any other provision of this subchapter, when the Attorney General makes a determination described in subsection (b), the Attorney General may authorize the installation and use of a pen register or trap and trace device on an emergency basis to gather foreign intelligence information not concerning a

United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution if—

(1) a judge referred to in section 1842(b) of this title is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to install and use the pen register or trap and trace device, as the case may be, on an emergency basis; and

(2) an application in accordance with section 1842 of this title is made to such judge as soon as practicable, but not more than 7 days, after the Attorney General authorizes the installation and use of the pen register or trap and trace device, as the case may be, under this section.

(b) Determination of emergency and factual basis

A determination under this subsection is a reasonable determination by the Attorney General that—

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

(2) the factual basis for issuance of an order under such section 1842 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 evi-

dence 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.)

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”.

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 cal-