

surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(c) Penalties

An offense described in this section is punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

(d) Federal jurisdiction

There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

(Pub. L. 95-511, title I, §109, Oct. 25, 1978, 92 Stat. 1796; Pub. L. 110-261, title I, §102(b), July 10, 2008, 122 Stat. 2459; Pub. L. 111-259, title VIII, §801(3), Oct. 7, 2010, 124 Stat. 2746.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, 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.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-259, §801(3)(A), substituted “section 1812 of this title;” for “section 1812 of this title;”.

Subsec. (a)(2). Pub. L. 111-259, §801(3)(B), substituted “title.” for “title..”

2008—Subsec. (a). Pub. L. 110-261 substituted “authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title.” for “authorized by statute” in pars. (1) and (2).

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.

§ 1810. Civil liability

An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 1801(a) or (b)(1)(A) of this title, respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 1809 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—

- (a) actual damages, but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater;
- (b) punitive damages; and
- (c) reasonable attorney’s fees and other investigation and litigation costs reasonably incurred.

(Pub. L. 95-511, title I, §110, Oct. 25, 1978, 92 Stat. 1796.)

§ 1811. Authorization during time of war

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 a period not to exceed fifteen calendar days following a declaration of war by the Congress.

(Pub. L. 95-511, title I, §111, Oct. 25, 1978, 92 Stat. 1796.)

§ 1812. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted

(a) Except as provided in subsection (b), the procedures of chapters 119, 121, and 206 of title 18 and this chapter shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.

(b) Only an express statutory authorization for electronic surveillance or the interception of domestic wire, oral, or electronic communications, other than as an amendment to this chapter or chapters 119, 121, or 206 of title 18 shall constitute an additional exclusive means for the purpose of subsection (a).

(Pub. L. 95-511, title I, §112, as added Pub. L. 110-261, title I, §102(a), July 10, 2008, 122 Stat. 2459.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, 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.

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.

§ 1813. Procedures for the retention of incidentally acquired communications

(a) Definitions

In this section:

(1) Covered communication

The term “covered communication” means any nonpublic telephone or electronic communication acquired without the consent of a person who is a party to the communication, including communications in electronic storage.

(2) Head of an element of the intelligence community

The term “head of an element of the intelligence community” means, as appropriate—

- (A) the head of an element of the intelligence community; or
- (B) the head of the department or agency containing such element.

(3) United States person

The term “United States person” has the meaning given that term in section 1801 of this title.

(b) Procedures for covered communications

(1) Requirement to adopt

Not later than 2 years after December 19, 2014, each head of an element of the intel-

ligence community shall adopt procedures approved by the Attorney General for such element that ensure compliance with the requirements of paragraph (3).

(2) Coordination and approval

The procedures required by paragraph (1) shall be—

(A) prepared in coordination with the Director of National Intelligence; and

(B) approved by the Attorney General prior to issuance.

(3) Procedures

(A) Application

The procedures required by paragraph (1) shall apply to any intelligence collection activity not otherwise authorized by court order (including an order or certification issued by a court established under subsection (a) or (b) of section 1803 of this title), subpoena, or similar legal process that is reasonably anticipated to result in the acquisition of a covered communication to or from a United States person and shall permit the acquisition, retention, and dissemination of covered communications subject to the limitation in subparagraph (B).

(B) Limitation on retention

A covered communication shall not be retained in excess of 5 years, unless—

(i) the communication has been affirmatively determined, in whole or in part, to constitute foreign intelligence or counterintelligence or is necessary to understand or assess foreign intelligence or counterintelligence;

(ii) the communication is reasonably believed to constitute evidence of a crime and is retained by a law enforcement agency;

(iii) the communication is enciphered or reasonably believed to have a secret meaning;

(iv) all parties to the communication are reasonably believed to be non-United States persons;

(v) retention is necessary to protect against an imminent threat to human life, in which case both the nature of the threat and the information to be retained shall be reported to the congressional intelligence committees not later than 30 days after the date such retention is extended under this clause;

(vi) retention is necessary for technical assurance or compliance purposes, including a court order or discovery obligation, in which case access to information retained for technical assurance or compliance purposes shall be reported to the congressional intelligence committees on an annual basis; or

(vii) retention for a period in excess of 5 years is approved by the head of the element of the intelligence community responsible for such retention, based on a determination that retention is necessary to protect the national security of the United States, in which case the head of such element shall provide to the congressional in-

telligence committees a written certification describing—

(I) the reasons extended retention is necessary to protect the national security of the United States;

(II) the duration for which the head of the element is authorizing retention;

(III) the particular information to be retained; and

(IV) the measures the element of the intelligence community is taking to protect the privacy interests of United States persons or persons located inside the United States.

(Pub. L. 113-293, title III, §309, Dec. 19, 2014, 128 Stat. 3998.)

CODIFICATION

Section was enacted as part of the Intelligence Authorization Act for Fiscal Year 2015, and not as part of the Foreign Intelligence Surveillance Act of 1978 which comprises this chapter.

DEFINITIONS

For definitions of “congressional intelligence committees” and “intelligence community” as used in this section, see section 2 of Pub. L. 113-293, set out as a note under section 3003 of this title.

SUBCHAPTER II—PHYSICAL SEARCHES

§ 1821. Definitions

As used in this subchapter:

(1) The terms “foreign power”, “agent of a foreign power”, “international terrorism”, “sabotage”, “foreign intelligence information”, “Attorney General”, “United States person”, “United States”, “person”, “weapon of mass destruction”, and “State” shall have the same meanings as in section 1801 of this title, except as specifically provided by this subchapter.

(2) “Aggrieved person” means a person whose premises, property, information, or material is the target of physical search or any other person whose premises, property, information, or material was subject to physical search.

(3) “Foreign Intelligence Surveillance Court” means the court established by section 1803(a) of this title.

(4) “Minimization procedures” with respect to physical search, means—

(A) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purposes and technique of the particular physical search, 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;

(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section 1801(e)(1) of this title, shall not be disseminated in a manner that identifies any United States person, without such person’s consent, unless such person’s identity is nec-