

grieved 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 IN-
TELLIGENCE 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 2, 2015, were directed to this section as it read prior to such reversion and were executed as if the reversion had not taken place, to reflect the probable intent of Congress and the extension of the provisions of this section to Dec. 15, 2019, by Pub. L. 114-23, §705(a), (c). See 2015 Amendment notes below.

PRIOR PROVISIONS

A prior section 1861, Pub. L. 95-511, title V, §501, as added Pub. L. 105-272, title VI, §602, Oct. 20, 1998, 112 Stat. 2410, defined terms used in this subchapter, prior to repeal by Pub. L. 107-56, title II, §215, Oct. 26, 2001, 115 Stat. 287.

AMENDMENTS

2019—Pub. L. 116-69 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2018—Subsec. (c)(4). Pub. L. 115-118 added par. (4).

2015—Pub. L. 114-23, §705(a), (c), amended directory language of Pub. L. 109-177, §102(b)(1). See Codification note above and 2006 Amendment note below.

Subsec. (b)(2)(A). Pub. L. 114-23, §103(a), added subpar. (A). Former subpar. (A) redesignated (B).

Pub. L. 114-23, §101(a)(1)(A), substituted “in the case of an application other than an application described in subparagraph (C) (including an application for the production of call detail records other than in the manner described in subparagraph (C)), a statement” for “a statement” in introductory provisions.

Subsec. (b)(2)(A)(iii). Pub. L. 114-23, §101(a)(1)(B), struck out “and” at end.

Subsec. (b)(2)(B). Pub. L. 114-23, §101(a)(2), redesignated subpar. (A) as (B). Former subpar. (B) redesignated (D).

Subsec. (b)(2)(C). Pub. L. 114-23, §101(a)(3), added subpar. (C).

Subsec. (b)(2)(D). Pub. L. 114-23, §101(a)(2), redesignated subpar. (B) as (D).

Subsec. (c)(1). Pub. L. 114-23, §104(a)(1), inserted “and that the minimization procedures submitted in accordance with subsection (b)(2)(D) meet the definition of minimization procedures under subsection (g)” after “subsections (a) and (b)”.

Subsec. (c)(2)(A). Pub. L. 114-23, §103(b)(1), inserted before semicolon at end “, including each specific selection term to be used as the basis for the production”.

Subsec. (c)(2)(F). Pub. L. 114-23, §101(b), added subpar. (F).

Subsec. (c)(3). Pub. L. 114-23, §103(b)(2), added par. (3).
Subsec. (d)(1). Pub. L. 114-23, §102(b)(1)(A), substituted “pursuant to an order issued or an emergency production required” for “pursuant to an order” in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 114-23, §102(b)(1)(B), substituted “such order or such emergency production” for “such order”.

Subsec. (d)(1)(B). Pub. L. 114-23, §102(b)(1)(C), substituted “the order or the emergency production” for “the order”.

Subsec. (d)(2)(A). Pub. L. 114-23, §102(b)(2)(A), substituted “an order or emergency production” for “an order”.

Subsec. (d)(2)(B). Pub. L. 114-23, §102(b)(2)(B), substituted “an order or emergency production” for “an order”.

Subsec. (e). Pub. L. 114-23, §105, amended subsec. (e) generally. Prior to amendment, text read as follows: “A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.”

Subsec. (f)(2)(A)(i). Pub. L. 114-23, §104(b)(1), substituted “the production order or any nondisclosure order imposed in connection with the production order” for “that order” and struck out at end “Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section 1803(e)(1) of this title.”

Subsec. (f)(2)(C)(ii), (iii). Pub. L. 114-23, §104(b)(2), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: “If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive, unless the judge finds that the certification was made in bad faith.”

Subsec. (g)(1). Pub. L. 114-23, §104(a)(3), substituted “The” for “Not later than 180 days after March 9, 2006, the” and inserted “, and update as appropriate,” after “adopt”.

Subsec. (g)(3). Pub. L. 114-23, §104(a)(2), added par. (3).

Subsec. (i). Pub. L. 114-23, §102(a), which directed adding subsec. (i) at the end of this section, effective after