

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

the addition of subsecs. (j) and (k), was executed by adding subsec. (i) after subsec. (h) to reflect the probable intent of Congress.

Subsec. (j). Pub. L. 114-23, §106, added subsec. (j).

Subsec. (k). Pub. L. 114-23, §107, added subsec. (k).

2011—Pub. L. 112-14 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

Pub. L. 112-3 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2010—Pub. L. 111-141 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2009—Pub. L. 111-118 amended directory language of Pub. L. 109-177, §102(b)(1). See 2006 Amendment note below.

2006—Pub. L. 109-177, §102(b)(1), as amended by Pub. L. 111-118, Pub. L. 111-141, Pub. L. 112-3, Pub. L. 112-14, Pub. L. 114-23, §705(a), (c), and Pub. L. 116-69, amended section effective Mar. 15, 2020, so as to read as it read on Oct. 25, 2001. Prior to amendment, section related to access to certain business records for foreign intelligence and international terrorism investigations.

Subsec. (a)(1). Pub. L. 109-177, §106(a)(1), substituted “Subject to paragraph (3), the Director” for “The Director”.

Subsec. (a)(3). Pub. L. 109-177, §106(a)(2), added par. (3).

Subsec. (b)(2). Pub. L. 109-177, §106(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.”

Subsec. (c). Pub. L. 109-177, §106(c), (d), amended subsec. (c) generally. Prior to amendment, text read as follows:

“(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section.

“(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).”

Subsec. (d). Pub. L. 109-177, §106(e), amended subsec. (d) generally. Prior to amendment, text read as follows: “No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section.”

Subsec. (d)(2)(C). Pub. L. 109-178, §4(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”

Subsec. (f). Pub. L. 109-178, §3, amended subsec. (f) generally. Prior to amendment, subsec. (f) provided for judicial proceedings relating to challenging an order to produce tangible things.

Pub. L. 109-177, §106(f)(2), added subsec. (f).

Subsecs. (g), (h). Pub. L. 109-177, §106(g), added subsecs. (g) and (h).

2001—Subsec. (a)(1). Pub. L. 107-108 inserted “to obtain foreign intelligence information not concerning a United States person or” after “an investigation”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-23, title I, §109(a), June 2, 2015, 129 Stat. 276, provided that: “The amendments made by sections

101 through 103 [amending this section] shall take effect on the date that is 180 days after the date of the enactment of this Act [June 2, 2015].”

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 102(b)(1) of Pub. L. 109-177 effective Mar. 15, 2020, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before Mar. 15, 2020, or with respect to any particular offense or potential offense that began or occurred before Mar. 15, 2020, see section 102(b) of Pub. L. 109-177, set out as a note under section 1805 of this title.

CONSTRUCTION OF PUB. L. 114-23

Pub. L. 114-23, title I, §109(b), June 2, 2015, 129 Stat. 276, provided that: “Nothing in this Act [see Tables for classification] shall be construed to alter or eliminate the authority of the Government to obtain an order under title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) as in effect prior to the effective date described in subsection (a) [see Effective Date of 2015 Amendment note above] during the period ending on such effective date.”

Pub. L. 114-23, title I, §110, June 2, 2015, 129 Stat. 276, provided that: “Nothing in this Act [see Tables for classification] shall be construed to authorize the production of the contents (as such term is defined in section 2510(8) of title 18, United States Code) of any electronic communication from an electronic communication service provider (as such term is defined in section 701(b)(4) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881(b)(4))) under title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.).”

§ 1862. Access to certain business records for foreign intelligence and international terrorism investigations

(a) Application for authorization

The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order authorizing a common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to release records in its possession for an investigation to gather foreign intelligence information or an investigation concerning international terrorism which investigation is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

(b) Recipient and contents of application

Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section 1803(a) of this title; or

(B) a United States Magistrate Judge under chapter 43 of title 28 who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the release of records under this section on behalf of a judge of that court; and

(2) shall specify that—

(A) the records concerned are sought for an investigation described in subsection (a); and

(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.