(2) The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded, and shall be transmitted to the following:

(A) All of the judges on the court established pursuant to subsection (a).

(B) All of the judges on the court of review established pursuant to subsection (b).

(C) The Chief Justice of the United States.

(D) The Committee on the Judiciary of the Senate.

(E) The Select Committee on Intelligence of the Senate.

(F) The Committee on the Judiciary of the House of Representatives.

(G) The Permanent Select Committee on Intelligence of the House of Representatives.

(3) The transmissions required by paragraph (2) shall be submitted in unclassified form, but may include a classified annex.

(i)[1] Compliance with orders, rules, and procedures

Nothing in this chapter shall be construed to reduce or contravene the inherent authority of the court established under subsection (a) to determine or enforce compliance with an order or a rule of such court or with a procedure approved by such court.

(Pub. L. 95–511, title I, § 103, Oct. 25, 1978, 92 Stat. 1788; Pub. L. 107–56, title II, § 208, Oct. 26, 2001, 115 Stat. 283; Pub. L. 108–458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109–177, title I, §§ 106(f)(1), 109(d), Mar. 9, 2006, 120 Stat. 197, 205; Pub. L. 110–55, § 5(a), Aug. 5, 2007, 121 Stat. 556; Pub. L. 110–261, title I, § 109(a)–(b)(2)(A), (c), (d), title IV, § 403(a)(1)(B)(ii), July 10, 2008, 122 Stat. 2464, 2465, 2474.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c), (f), (g)(1), and (i), 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

2008—Subsec. (a). Pub. L. 110–261, § 109(a)–(b)(2)(A), designated existing provisions as par. (1), inserted ''at least'' before ''seven of the United States judicial circuits'' and ''(except when sitting en banc under paragraph (2))'' before ''shall hear'', and added par. (2).

Subsec. (e)(1), (2). Pub. L. 110–261, § 403(a)(1)(B)(ii), which directed substitution of ''1861(f)(1) or 1881a(h)(4)'' for ''1805b(h) or 1861(f)(1)'', was executed by making the substitution for ''1861(f)(1)'' to reflect the probable intent of Congress and termination of the temporary amendment by Pub. L. 110–55, § 5(a). See 2007 Amendment note and Effective and Termination Dates of 2007 Amendment note below.

Subsecs. (f), (g). Pub. L. 110–261, § 109(c), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (i). Pub. L. 110–261, § 109(d), added subsec. (i).

2007—Subsec. (e). Pub. L. 110–55, §§ 5(a), 6(c), temporarily substituted ''1805b(h) or 1861(f)(1)'' for ''1861(f)(1)'' in pars. (1) and (2). See Effective and Termination Dates of 2007 Amendment note below.

2006—Subsecs. (e), (f). Pub. L. 109–177 added subsecs. (e) and (f).

2004—Subsec. (c). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2001—Subsec. (a). Pub. L. 107–56 substituted ''11 district court judges'' for ''seven district court judges'' and inserted ''of whom no fewer than 3 shall reside within 20 miles of the District of Columbia'' after ''judicial circuits''.

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.

EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Pub. L. 110–55, § 6, Aug. 5, 2007, 121 Stat. 556, as amended by Pub. L. 110–182, § 1, Jan. 31, 2008, 122 Stat. 605; Pub. L. 110–261, title IV, § 403(a)(3), July 10, 2008, 122 Stat. 2474, provided that:

''(a) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this Act [enacting sections 1805a to 1805c of this title and amending this section] shall take effect immediately after the date of the enactment of this Act [Aug. 5, 2007].

''[(b) Repealed. Pub. L. 110–261, title IV, § 403(a)(3), July 10, 2008, 122 Stat. 2474.]

''(c) SUNSET.—Except as provided in subsection (d), sections 2, 3, 4, and 5 of this Act [enacting sections 1805a to 1805c of this title and amending this section], and the amendments made by this Act [enacting sections 1805a to 1805c of this title and amending this section], shall cease to have effect 195 days after the date of the enactment of this Act.

''(d) AUTHORIZATIONS IN EFFECT.—Authorizations for the acquisition of foreign intelligence information pursuant to the amendments made by this Act, and directives issued pursuant to such authorizations, shall remain in effect until their expiration. Such acquisitions shall be governed by the applicable provisions of such amendments and shall not be deemed to constitute electronic surveillance as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)).''

[Repeal by Pub. L. 110–261 of section 6(b) of Pub. L. 110–55, set out above, 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.]

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 401 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 401 of this title.

§ 1804. Applications for court orders

(a) Submission by Federal officer; approval of Attorney General; contents

Each application for an order approving electronic surveillance under this subchapter shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 1803 of this title. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this subchapter. It shall include—

[1] So in original. No subsec. (h) has been enacted.

(1) the identity of the Federal officer making the application;

(2) the identity, if known, or a description of the specific target of the electronic surveillance;

(3) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(4) a statement of the proposed minimization procedures;

(5) a description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

(6) a certification or certifications by the Assistant to the President for National Security Affairs, an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that a significant purpose of the surveillance is to obtain foreign intelligence information;

(C) that such information cannot reasonably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and

(E) including a statement of the basis for the certification that—

(i) the information sought is the type of foreign intelligence information designated; and

(ii) such information cannot reasonably be obtained by normal investigative techniques;

(7) a summary statement of the means by which the surveillance will be effected and a statement whether physical entry is required to effect the surveillance;

(8) a statement of the facts concerning all previous applications that have been made to any judge under this subchapter involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application; and

(9) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this subchapter should not automatically terminate when the described type of information has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter.

(b) Additional affidavits or certifications

The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(c) Additional information

The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 1805 of this title.

(d) Personal review by Attorney General

(1)(A) Upon written request of the Director of the Federal Bureau of Investigation, the Secretary of Defense, the Secretary of State, the Director of National Intelligence, or the Director of the Central Intelligence Agency, the Attorney General shall personally review under subsection (a) of this section an application under that subsection for a target described in section 1801(b)(2) of this title.

(B) Except when disabled or otherwise unavailable to make a request referred to in subparagraph (A), an official referred to in that subparagraph may not delegate the authority to make a request referred to in that subparagraph.

(C) Each official referred to in subparagraph (A) with authority to make a request under that subparagraph shall take appropriate actions in advance to ensure that delegation of such authority is clearly established in the event such official is disabled or otherwise unavailable to make such request.

(2)(A) If as a result of a request under paragraph (1) the Attorney General determines not to approve an application under the second sentence of subsection (a) of this section for purposes of making the application under this section, the Attorney General shall provide written notice of the determination to the official making the request for the review of the application under that paragraph. Except when disabled or otherwise unavailable to make a determination under the preceding sentence, the Attorney General may not delegate the responsibility to make a determination under that sentence. The Attorney General shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event the Attorney General is disabled or otherwise unavailable to make such determination.

(B) Notice with respect to an application under subparagraph (A) shall set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application under the second sentence of subsection (a) of this section for purposes of making the application under this section.

(C) Upon review of any modifications of an application set forth under subparagraph (B), the official notified of the modifications under this paragraph shall modify the application if such official determines that such modification is warranted. Such official shall supervise the making of any modification under this subparagraph. Except when disabled or otherwise unavailable to supervise the making of any modi-

fication under the preceding sentence, such official may not delegate the responsibility to supervise the making of any modification under that preceding sentence. Each such official shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to supervise the making of such modification.

(Pub. L. 95–511, title I, § 104, Oct. 25, 1978, 92 Stat. 1788; Pub. L. 106–567, title VI, § 602(a), Dec. 27, 2000, 114 Stat. 2851; Pub. L. 107–56, title II, § 218, Oct. 26, 2001, 115 Stat. 291; Pub. L. 108–458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109–177, title I, § 108(a)(1), Mar. 9, 2006, 120 Stat. 203; Pub. L. 110–261, title I, § 104, July 10, 2008, 122 Stat. 2460.)

AMENDMENTS

2008—Subsec. (a)(2) to (4). Pub. L. 110–261, § 104(1)(A), (B), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;''.

Subsec. (a)(5). Pub. L. 110–261, § 104(1)(B), (C), redesignated par. (6) as (5) and struck out ''detailed'' before ''description''. Former par. (5) redesignated (4).

Subsec. (a)(6). Pub. L. 110–261, § 104(1)(B), (D), redesignated par. (7) as (6) and substituted ''Affairs,'' for ''Affairs or'' and ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—'' for ''Senate—'' in introductory provisions. Former par. (6) redesignated (5).

Subsec. (a)(7). Pub. L. 110–261, § 104(1)(B), (E), redesignated par. (8) as (7) and substituted ''summary statement of'' for ''statement of''. Former par. (7) redesignated (6).

Subsec. (a)(8) to (11). Pub. L. 110–261, § 104(1)(A), (B), redesignated pars. (9) and (10) as (8) and (9), respectively, and struck out par. (11) which read as follows: ''whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.'' Former par. (8) redesignated (7).

Subsecs. (b) to (e). Pub. L. 110–261, § 104(2)–(4), redesignated subsecs. (c) to (e) as (b) to (d), respectively, in subsec. (d)(1)(A) substituted ''the Director of National Intelligence, or the Director of the Central Intelligence Agency'' for ''or the Director of National Intelligence'', and struck out former subsec. (b) which related to exclusion of certain information respecting foreign power targets.

2006—Subsec. (a)(3). Pub. L. 109–177 inserted ''specific'' before ''target''.

2004—Subsec. (e)(1)(A). Pub. L. 108–458 substituted ''Director of National Intelligence'' for ''Director of Central Intelligence''.

2001—Subsec. (a)(7)(B). Pub. L. 107–56 substituted ''a significant purpose'' for ''the purpose''.

2000—Subsec. (e). Pub. L. 106–567 added subsec. (e).

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.

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 401 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 401 of this title.

DESIGNATION OF CERTAIN OFFICIALS TO MAKE CERTIFICATIONS

For designation of certain officials to make certifications required by subsec. (a)(7) of this section, see Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, set out under section 1802 of this title.

§ 1805. Issuance of order

(a) Necessary findings

Upon an application made pursuant to section 1804 of this title, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

(1) the application has been made by a Federal officer and approved by the Attorney General;

(2) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power: *Provided*, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(3) the proposed minimization procedures meet the definition of minimization procedures under section 1801(h) of this title; and

(4) the application which has been filed contains all statements and certifications required by section 1804 of this title and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 1804(a)(7)(E)[1] of this title and any other information furnished under section 1804(d)[1] of this title.

(b) Determination of probable cause

In determining whether or not probable cause exists for purposes of an order under subsection (a)(2) of this section, a judge may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target.

(c) Specifications and directions of orders

(1) Specifications

An order approving an electronic surveillance under this section shall specify—

(A) the identity, if known, or a description of the specific target of the electronic surveillance identified or described in the application pursuant to section 1804(a)(3) of this title;

[1] See References in Text note below.