Subsec. (e)(2). Pub. L. 107–56, § 207(b)(1), as amended by Pub. L. 107–108, § 314(c)(1), inserted ''(A)'' after ''except that'' and '', and (B) an extension of an order under this chapter for a surveillance targeted against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title may be for a period not to exceed 1 year'' before period at end.

Subsec. (f). Pub. L. 107–108, § 314(a)(2)(B), substituted ''72 hours'' for ''twenty-four hours'' in two places in concluding provisions.

Subsec. (h). Pub. L. 107–108, § 314(a)(2)(C), transferred subsec. (h) added by section 225 of Pub. L. 107–56 to appear after the subsec. (h) redesignated by section 602(b)(2) of Pub. L. 106–567, and redesignated the transferred subsec. (h) as subsec. (i). See Codification note above.

Subsec. (i). Pub. L. 107–108, § 314(a)(2)(D), inserted ''for electronic surveillance or physical search'' before period at end.

Pub. L. 107–108, § 314(a)(2)(C), transferred subsec. (h) added by section 225 of Pub. L. 107–56 to appear after the subsec. (h) redesignated by section 602(b)(2) of Pub. L. 106–567, and redesignated the transferred subsec. (h) as subsec. (i). See Codification note above.

Pub. L. 107–56, § 225, as amended by Pub. L. 107–273, § 4005(c), added subsec. (i) relating to bar of legal action.

2000—Subsecs. (b), (c). Pub. L. 106–567, § 602(b)(1), (2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 106–567, § 602(b)(1), (3), redesignated subsec. (c) as (d) and substituted ''subsection (c)(1)'' for ''subsection (b)(1)''. Former subsec. (d) redesignated (e).

Subsecs. (e) to (h). Pub. L. 106–567, § 602(b)(1), redesignated subsecs. (d) to (g) as (e) to (h), respectively.

1984—Subsec. (f)(2)(C). Pub. L. 98–549 substituted ''section 705'' for ''section 605'' in the original to accommodate renumbering of sections in subchapter VI (section 601 et seq.) of chapter 5 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, by section 6(a) of Pub. L. 98–549. Because both sections translate as ''section 605 of Title 47'', the amendment by Pub. L. 98–549 resulted in no change in text.

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 2006 AMENDMENT

Pub. L. 109–177, title I, § 102(b), Mar. 9, 2006, 120 Stat. 195, as amended by Pub. L. 111–118, div. B, § 1004(a), Dec. 19, 2009, 123 Stat. 3470, provided that:

''(1) IN GENERAL.—Effective February 28, 2010, the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.] is amended so that sections 501, 502, and 105(c)(2) [50 U.S.C. 1861, 1862, and 1805(c)(2)] read as they read on October 25, 2001.

''(2) EXCEPTION.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.''

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.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–273, div. B, title IV, § 4005(c), Nov. 2, 2002, 116 Stat. 1812, provided that the amendment made by section 4005(c) is effective Oct. 26, 2001.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–108, title III, § 314(c), Dec. 28, 2001, 115 Stat. 1402, provided in part that the amendment made by section 314(c)(1) of Pub. L. 107–108 is effective as of Oct. 26, 2001, and as if included in Pub. L. 107–56 as originally enacted.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–549 effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98–549, set out as a note under section 521 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

§§ 1805a to 1805c. Repealed. Pub. L. 110–261, title IV, § 403(a)(1)(A), July 10, 2008, 122 Stat. 2473

Section 1805a, Pub. L. 95–511, title I, § 105A, as added Pub. L. 110–55, § 2, Aug. 5, 2007, 121 Stat. 552, related to clarification of electronic surveillance of persons outside the United States.

Section 1805b, Pub. L. 95–511, title I, § 105B, as added Pub. L. 110–55, § 2, Aug. 5, 2007, 121 Stat. 552, related to additional procedure for authorizing certain acquisitions concerning persons located outside the United States.

Section 1805c, Pub. L. 95–511, title I, § 105C, as added Pub. L. 110–55, § 3, Aug. 5, 2007, 121 Stat. 555, related to submission to court review of procedures.

EFFECTIVE DATE OF REPEAL

Repeal 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.

§ 1806. Use of information

(a) Compliance with minimization procedures; privileged communications; lawful purposes

Information acquired from an electronic surveillance conducted pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this subchapter. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this subchapter shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Statement for disclosure

No information acquired pursuant to this subchapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Notification by United States

Whenever the Government intends to enter into evidence or otherwise use or disclose in any

trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this subchapter, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Notification by States or political subdivisions

Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this subchapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Motion to suppress

Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) In camera and ex parte review by district court

Whenever a court or other authority is notified pursuant to subsection (c) or (d) of this section, or whenever a motion is made pursuant to subsection (e) of this section, or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to electronic surveillance or to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance under this chapter, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the surveillance only where such disclosure is necessary to make an accurate determination of the legality of the surveillance.

(g) Suppression of evidence; denial of motion

If the United States district court pursuant to subsection (f) of this section determines that the surveillance was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(h) Finality of orders

Orders granting motions or requests under subsection (g) of this section, decisions under this section that electronic surveillance 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 a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

(i) Destruction of unintentionally acquired information

In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents indicate a threat of death or serious bodily harm to any person.

(j) Notification of emergency employment of electronic surveillance; contents; postponement, suspension or elimination

If an emergency employment of electronic surveillance is authorized under section 1805(e) of this title and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person

named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

(1) the fact of the application;

(2) the period of the surveillance; and

(3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

(k) Coordination with law enforcement on national security matters

(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this subchapter may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 1804(a)(7)(B)[1] of this title or the entry of an order under section 1805 of this title.

(Pub. L. 95–511, title I, § 106, Oct. 25, 1978, 92 Stat. 1793; Pub. L. 107–56, title V, § 504(a), Oct. 26, 2001, 115 Stat. 364; Pub. L. 107–296, title VIII, § 898, Nov. 25, 2002, 116 Stat. 2258; Pub. L. 110–261, title I, §§ 106, 110(b)(1), July 10, 2008, 122 Stat. 2462, 2466.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), 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.

Section 1804(a)(7)(B) of this title, referred to in subsec. (k)(2), was redesignated section 1804(a)(6)(B) of this title by Pub. L. 110–261, title I, § 104(1)(B), July 10, 2008, 122 Stat. 2461.

AMENDMENTS

2008—Subsec. (i). Pub. L. 110–261, § 106, substituted ''communication'' for ''radio communication''.

Subsec. (k)(1)(B). Pub. L. 110–261, § 110(b)(1), substituted ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction'' for ''sabotage or international terrorism''.

2002—Subsec. (k)(1). Pub. L. 107–296, in introductory provisions, inserted ''or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)'' after ''law enforcement officers''.

2001—Subsec. (k). Pub. L. 107–56 added subsec. (k).

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 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

REPORT ON MECHANISMS FOR DETERMINATIONS OF DISCLOSURE OF INFORMATION FOR LAW ENFORCEMENT PURPOSES

Pub. L. 106–567, title VI, § 604(b), Dec. 27, 2000, 114 Stat. 2853, provided that:

''(1) The Attorney General shall submit to the appropriate committees of Congress a report on the authorities and procedures utilized by the Department of Justice for determining whether or not to disclose information acquired under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for law enforcement purposes.

''(2) In this subsection, the term 'appropriate committees of Congress' means the following:

''(A) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

''(B) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.''

§ 1807. Report to Administrative Office of the United States Court and to Congress

In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Court and to Congress a report setting forth with respect to the preceding calendar year—

(a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this subchapter; and

(b) the total number of such orders and extensions either granted, modified, or denied.

(Pub. L. 95–511, title I, § 107, Oct. 25, 1978, 92 Stat. 1795.)

§ 1808. Report of Attorney General to Congressional committees; limitation on authority or responsibility of information gathering activities of Congressional committees; report of Congressional committees to Congress

(a)(1) On a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, and the Committee on the Judiciary of the Senate, concerning all electronic surveillance under this subchapter. Nothing in this subchapter shall be deemed to limit the authority and responsibility of the appropriate committees of each House of Congress to obtain such information as they

[1] See References in Text note below.