

set out as an Effective Date of 2006 Amendment note under section 1805 of this title, which amended section 1861 of this title, effective Mar. 15, 2020, so that such section read as it read on Oct. 25, 2001, with certain exceptions.

AMENDMENTS

2018—Subsec. (a)(1)(D). Pub. L. 115–118, §205(a)(4)(A), substituted “contents,” for “contents”.

Subsec. (a)(3). Pub. L. 115–118, §205(a)(4)(B), substituted “comply into” for “comply in the into” in introductory provisions.

SUBCHAPTER VI—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

§ 1881. Definitions

(a) In general

In this subchapter, the terms “agent of a foreign power”, “Attorney General”, “contents”, “electronic surveillance”, “foreign intelligence information”, “foreign power”, “person”, “United States”, and “United States person” have the meanings given such terms in section 1801 of this title, except as specifically provided in this subchapter.

(b) Additional definitions

In this subchapter:

(1) Congressional intelligence committees

The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

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

(2) Foreign Intelligence Surveillance Court; Court

The terms “Foreign Intelligence Surveillance Court” and “Court” mean the court established under section 1803(a) of this title.

(3) Foreign Intelligence Surveillance Court of Review; Court of Review

The terms “Foreign Intelligence Surveillance Court of Review” and “Court of Review” mean the court established under section 1803(b) of this title.

(4) Electronic communication service provider

The term “electronic communication service provider” means—

(A) a telecommunications carrier, as that term is defined in section 153 of title 47;

(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18;

(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18;

(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or

(E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

(5) Intelligence community

The term “intelligence community” has the meaning given the term in section 3003(4) of this title.

(Pub. L. 95–511, title VII, §701, as added Pub. L. 110–261, title I, §101(a)(2), July 10, 2008, 122 Stat. 2437; amended Pub. L. 115–118, title II, §205(a)(5), Jan. 19, 2018, 132 Stat. 21.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112–238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115–118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.

Editorial Notes

PRIOR PROVISIONS

A prior section 701 of Pub. L. 95–511 was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110–261.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–118, §205(a)(5)(A), substituted “In this subchapter, the terms” for “The terms”.

Subsec. (b). Pub. L. 115–118, §205(a)(5)(B)(i), inserted introductory provisions.

Subsec. (b)(5). Pub. L. 115–118, §205(a)(5)(B)(ii), made technical amendment to reference in original act which appears in text as reference to section 3003(4) of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–96, div. A, §1002, Dec. 22, 2017, 131 Stat. 2045, which temporarily extended the effective date of the amendments made by section 403(b) of Pub. L. 110–261 to Jan. 19, 2018, was repealed by its own terms upon the enactment, on Jan. 19, 2018, of section 201(a) of Pub. L. 115–118, which amended the dates specified in section 403(b) of Pub. L. 110–261, and by Pub. L. 115–120, div. B, §2002, Jan. 22, 2018, 132 Stat. 31, which was effective on Jan. 22, 2018.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112–238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115–118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

[Pub. L. 115–118, title II, §201(c), Jan. 19, 2018, 132 Stat. 19, provided that: “The amendments made to the FISA Amendments Act of 2008 (Public Law 110–261) by this section [amending sections 1881 to 1881g of this title and provisions set out as notes under section 1801 of this title and section 2511 of Title 18, Crimes and Criminal Procedure] shall take effect on December 31, 2017.”]

§ 1881a. Procedures for targeting certain persons outside the United States other than United States persons

(a) Authorization

Notwithstanding any other provision of law, upon the issuance of an order in accordance with subsection (j)(3) or a determination under subsection (c)(2), the Attorney General and the Director of National Intelligence may authorize jointly, for a period of up to 1 year from the effective date of the authorization, the targeting

of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

(b) Limitations

An acquisition authorized under subsection (a)—

(1) may not intentionally target any person known at the time of acquisition to be located in the United States;

(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;

(3) may not intentionally target a United States person reasonably believed to be located outside the United States;

(4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States;

(5) may not intentionally acquire communications that contain a reference to, but are not to or from, a target of an acquisition authorized under subsection (a), except as provided under section 103(b) of the FISA Amendments Reauthorization Act of 2017; and

(6) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

(c) Conduct of acquisition

(1) In general

An acquisition authorized under subsection (a) shall be conducted only in accordance with—

(A) the targeting and minimization procedures adopted in accordance with subsections (d) and (e); and

(B) upon submission of a certification in accordance with subsection (h), such certification.

(2) Determination

A determination under this paragraph and for purposes of subsection (a) is a determination by the Attorney General and the Director of National Intelligence that exigent circumstances exist because, without immediate implementation of an authorization under subsection (a), intelligence important to the national security of the United States may be lost or not timely acquired and time does not permit the issuance of an order pursuant to subsection (j)(3) prior to the implementation of such authorization.

(3) Timing of determination

The Attorney General and the Director of National Intelligence may make the determination under paragraph (2)—

(A) before the submission of a certification in accordance with subsection (h); or

(B) by amending a certification pursuant to subsection (j)(1)(C) at any time during which judicial review under subsection (j) of such certification is pending.

(4) Construction

Nothing in subchapter I shall be construed to require an application for a court order

under such subchapter for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States.

(d) Targeting procedures

(1) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to—

(A) ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and

(B) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

(2) Judicial review

The procedures adopted in accordance with paragraph (1) shall be subject to judicial review pursuant to subsection (j).

(e) Minimization procedures

(1) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence, shall adopt minimization procedures that meet the definition of minimization procedures under section 1801(h) of this title or section 1821(4) of this title, as appropriate, for acquisitions authorized under subsection (a).

(2) Judicial review

The minimization procedures adopted in accordance with paragraph (1) shall be subject to judicial review pursuant to subsection (j).

(3) Publication

The Director of National Intelligence, in consultation with the Attorney General, shall—

(A) conduct a declassification review of any minimization procedures adopted or amended in accordance with paragraph (1); and

(B) consistent with such review, and not later than 180 days after conducting such review, make such minimization procedures publicly available to the greatest extent practicable, which may be in redacted form.

(f) Queries

(1) Procedures required

(A) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence, shall adopt querying procedures consistent with the requirements of the fourth amendment to the Constitution of the United States for information collected pursuant to an authorization under subsection (a).

(B) Record of United States person query terms

The Attorney General, in consultation with the Director of National Intelligence, shall ensure that the procedures adopted under subparagraph (A) include a technical

procedure whereby a record is kept of each United States person query term used for a query.

(C) Judicial review

The procedures adopted in accordance with subparagraph (A) shall be subject to judicial review pursuant to subsection (j).

(2) Access to results of certain queries conducted by FBI

(A) Court order required for FBI review of certain query results in criminal investigations unrelated to national security

Except as provided by subparagraph (E), in connection with a predicated criminal investigation opened by the Federal Bureau of Investigation that does not relate to the national security of the United States, the Federal Bureau of Investigation may not access the contents of communications acquired under subsection (a) that were retrieved pursuant to a query made using a United States person query term that was not designed to find and extract foreign intelligence information unless—

- (i) the Federal Bureau of Investigation applies for an order of the Court under subparagraph (C); and
- (ii) the Court enters an order under subparagraph (D) approving such application.

(B) Jurisdiction

The Court shall have jurisdiction to review an application and to enter an order approving the access described in subparagraph (A).

(C) Application

Each application for an order under this paragraph shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subparagraph (B). Each application shall require the approval of the Attorney General based upon the finding of the Attorney General that the application satisfies the criteria and requirements of such application, as set forth in this paragraph, and shall include—

- (i) the identity of the Federal officer making the application; and
- (ii) an affidavit or other information containing a statement of the facts and circumstances relied upon by the applicant to justify the belief of the applicant that the contents of communications described in subparagraph (A) covered by the application would provide evidence of—
 - (I) criminal activity;
 - (II) contraband, fruits of a crime, or other items illegally possessed by a third party; or
 - (III) property designed for use, intended for use, or used in committing a crime.

(D) Order

Upon an application made pursuant to subparagraph (C), the Court shall enter an order approving the accessing of the contents of communications described in subparagraph (A) covered by the application if the Court finds probable cause to believe that such

contents would provide any of the evidence described in subparagraph (C)(ii).

(E) Exception

The requirement for an order of the Court under subparagraph (A) to access the contents of communications described in such subparagraph shall not apply with respect to a query if the Federal Bureau of Investigation determines there is a reasonable belief that such contents could assist in mitigating or eliminating a threat to life or serious bodily harm.

(F) Rule of construction

Nothing in this paragraph may be construed as—

- (i) limiting the authority of the Federal Bureau of Investigation to conduct lawful queries of information acquired under subsection (a);
- (ii) limiting the authority of the Federal Bureau of Investigation to review, without a court order, the results of any query of information acquired under subsection (a) that was reasonably designed to find and extract foreign intelligence information, regardless of whether such foreign intelligence information could also be considered evidence of a crime; or
- (iii) prohibiting or otherwise limiting the ability of the Federal Bureau of Investigation to access the results of queries conducted when evaluating whether to open an assessment or predicated investigation relating to the national security of the United States.

(3) Definitions

In this subsection:

- (A) The term “contents” has the meaning given that term in section 2510(8) of title 18.
- (B) The term “query” means the use of one or more terms to retrieve the unminimized contents or noncontents located in electronic and data storage systems of communications of or concerning United States persons obtained through acquisitions authorized under subsection (a).

(g) Guidelines for compliance with limitations

(1) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence, shall adopt guidelines to ensure—

- (A) compliance with the limitations in subsection (b); and
- (B) that an application for a court order is filed as required by this chapter.

(2) Submission of guidelines

The Attorney General shall provide the guidelines adopted in accordance with paragraph (1) to—

- (A) the congressional intelligence committees;
- (B) the Committees on the Judiciary of the Senate and the House of Representatives; and
- (C) the Foreign Intelligence Surveillance Court.

(h) Certification**(1) In general****(A) Requirement**

Subject to subparagraph (B), prior to the implementation of an authorization under subsection (a), the Attorney General and the Director of National Intelligence shall provide to the Foreign Intelligence Surveillance Court a written certification and any supporting affidavit, under oath and under seal, in accordance with this subsection.

(B) Exception

If the Attorney General and the Director of National Intelligence make a determination under subsection (c)(2) and time does not permit the submission of a certification under this subsection prior to the implementation of an authorization under subsection (a), the Attorney General and the Director of National Intelligence shall submit to the Court a certification for such authorization as soon as practicable but in no event later than 7 days after such determination is made.

(2) Requirements

A certification made under this subsection shall—

(A) attest that—

(i) there are targeting procedures in place that have been approved, have been submitted for approval, or will be submitted with the certification for approval by the Foreign Intelligence Surveillance Court that are reasonably designed to—

(I) ensure that an acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and

(II) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States;

(ii) the minimization procedures to be used with respect to such acquisition—

(I) meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate; and

(II) have been approved, have been submitted for approval, or will be submitted with the certification for approval by the Foreign Intelligence Surveillance Court;

(iii) guidelines have been adopted in accordance with subsection (g) to ensure compliance with the limitations in subsection (b) and to ensure that an application for a court order is filed as required by this chapter;

(iv) the procedures and guidelines referred to in clauses (i), (ii), and (iii) are consistent with the requirements of the fourth amendment to the Constitution of the United States;

(v) a significant purpose of the acquisition is to obtain foreign intelligence information;

(vi) the acquisition involves obtaining foreign intelligence information from or

with the assistance of an electronic communication service provider; and

(vii) the acquisition complies with the limitations in subsection (b);

(B) include the procedures adopted in accordance with subsections (d) and (e);

(C) be supported, as appropriate, by the affidavit of any appropriate official in the area of national security who is—

(i) appointed by the President, by and with the advice and consent of the Senate; or

(ii) the head of an element of the intelligence community;

(D) include—

(i) an effective date for the authorization that is at least 30 days after the submission of the written certification to the court; or

(ii) if the acquisition has begun or the effective date is less than 30 days after the submission of the written certification to the court, the date the acquisition began or the effective date for the acquisition; and

(E) if the Attorney General and the Director of National Intelligence make a determination under subsection (c)(2), include a statement that such determination has been made.

(3) Change in effective date

The Attorney General and the Director of National Intelligence may advance or delay the effective date referred to in paragraph (2)(D) by submitting an amended certification in accordance with subsection (j)(1)(C) to the Foreign Intelligence Surveillance Court for review pursuant to subsection (i).¹

(4) Limitation

A certification made under this subsection is not required to identify the specific facilities, places, premises, or property at which an acquisition authorized under subsection (a) will be directed or conducted.

(5) Maintenance of certification

The Attorney General or a designee of the Attorney General shall maintain a copy of a certification made under this subsection.

(6) Review

A certification submitted in accordance with this subsection shall be subject to judicial review pursuant to subsection (j).

(i) Directives and judicial review of directives**(1) Authority**

With respect to an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

(A) immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the acquisition and produce a minimum of inter-

¹ See References in Text note below.

ference with the services that such electronic communication service provider is providing to the target of the acquisition; and

(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain.

(2) Compensation

The Government shall compensate, at the prevailing rate, an electronic communication service provider for providing information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

(3) Release from liability

No cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

(4) Challenging of directives

(A) Authority to challenge

An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition to modify or set aside such directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such petition.

(B) Assignment

The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established under section 1803(e)(1) of this title not later than 24 hours after the filing of such petition.

(C) Standards for review

A judge considering a petition filed under subparagraph (A) may grant such petition only if the judge finds that the directive does not meet the requirements of this section, or is otherwise unlawful.

(D) Procedures for initial review

A judge shall conduct an initial review of a petition filed under subparagraph (A) not later than 5 days after being assigned such petition. If the judge determines that such petition does not consist of claims, defenses, or other legal contentions that are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, the judge shall immediately deny such petition and affirm the directive or any part of the directive that is the subject of such petition and order the recipient to comply with the directive or any part of it. Upon making a determination under this subparagraph or promptly thereafter, the judge shall provide a written statement for the record of the reasons for such determination.

(E) Procedures for plenary review

If a judge determines that a petition filed under subparagraph (A) requires plenary re-

view, the judge shall affirm, modify, or set aside the directive that is the subject of such petition not later than 30 days after being assigned such petition. If the judge does not set aside the directive, the judge shall immediately affirm or affirm with modifications the directive, and order the recipient to comply with the directive in its entirety or as modified. The judge shall provide a written statement for the record of the reasons for a determination under this subparagraph.

(F) Continued effect

Any directive not explicitly modified or set aside under this paragraph shall remain in full effect.

(G) Contempt of Court

Failure to obey an order issued under this paragraph may be punished by the Court as contempt of court.

(5) Enforcement of directives

(A) Order to compel

If an electronic communication service provider fails to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel the electronic communication service provider to comply with the directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such petition.

(B) Assignment

The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established under section 1803(e)(1) of this title not later than 24 hours after the filing of such petition.

(C) Procedures for review

A judge considering a petition filed under subparagraph (A) shall, not later than 30 days after being assigned such petition, issue an order requiring the electronic communication service provider to comply with the directive or any part of it, as issued or as modified, if the judge finds that the directive meets the requirements of this section and is otherwise lawful. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

(D) Contempt of Court

Failure to obey an order issued under this paragraph may be punished by the Court as contempt of court.

(E) Process

Any process under this paragraph may be served in any judicial district in which the electronic communication service provider may be found.

(6) Appeal

(A) Appeal to the Court of Review

The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may

file a petition with the Foreign Intelligence Surveillance Court of Review for review of a decision issued pursuant to paragraph (4) or (5). The Court of Review shall have jurisdiction to consider such petition and shall provide a written statement for the record of the reasons for a decision under this subparagraph.

(B) Certiorari to the Supreme Court

The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(j) Judicial review of certifications and procedures

(1) In general

(A) Review by the Foreign Intelligence Surveillance Court

The Foreign Intelligence Surveillance Court shall have jurisdiction to review a certification submitted in accordance with subsection (g)¹ and the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1), and amendments to such certification or such procedures.

(B) Time period for review

The Court shall review a certification submitted in accordance with subsection (g)¹ and the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1) and shall complete such review and issue an order under paragraph (3) not later than 30 days after the date on which such certification and such procedures are submitted.

(C) Amendments

The Attorney General and the Director of National Intelligence may amend a certification submitted in accordance with subsection (g)¹ or the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1) as necessary at any time, including if the Court is conducting or has completed review of such certification or such procedures, and shall submit the amended certification or amended procedures to the Court not later than 7 days after amending such certification or such procedures. The Court shall review any amendment under this subparagraph under the procedures set forth in this subsection. The Attorney General and the Director of National Intelligence may authorize the use of an amended certification or amended procedures pending the Court's review of such amended certification or amended procedures.

(2) Review

The Court shall review the following:

(A) Certification

A certification submitted in accordance with subsection (h) to determine whether

the certification contains all the required elements.

(B) Targeting procedures

The targeting procedures adopted in accordance with subsection (d) to assess whether the procedures are reasonably designed to—

(i) ensure that an acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and

(ii) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

(C) Minimization procedures

The minimization procedures adopted in accordance with subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 1801(h) of this title or section 1821(4) of this title, as appropriate.

(D) Querying procedures

The querying procedures adopted in accordance with subsection (f)(1) to assess whether such procedures comply with the requirements of such subsection.

(3) Orders

(A) Approval

If the Court finds that a certification submitted in accordance with subsection (h) contains all the required elements and that the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the certification and the use, or continued use in the case of an acquisition authorized pursuant to a determination under subsection (c)(2), of the procedures for the acquisition.

(B) Correction of deficiencies

If the Court finds that a certification submitted in accordance with subsection (h) does not contain all the required elements, or that the procedures adopted in accordance with subsections (d), (e), and (f)(1) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

(i) correct any deficiency identified by the Court's order not later than 30 days after the date on which the Court issues the order; or

(ii) cease, or not begin, the implementation of the authorization for which such certification was submitted.

(C) Requirement for written statement

In support of an order under this subsection, the Court shall provide, simulta-

neously with the order, for the record a written statement of the reasons for the order.

(D) Limitation on use of information

(i) In general

Except as provided in clause (ii), if the Court orders a correction of a deficiency in a certification or procedures under subparagraph (B), no information obtained or evidence derived pursuant to the part of the certification or procedures that has been identified by the Court as deficient concerning any United States person shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired pursuant to such part of such certification or procedures shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of the United States person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(ii) Exception

If the Government corrects any deficiency identified by the order of the Court under subparagraph (B), the Court may permit the use or disclosure of information obtained before the date of the correction under such minimization procedures as the Court may approve for purposes of this clause.

(4) Appeal

(A) Appeal to the Court of Review

The Government may file a petition with the Foreign Intelligence Surveillance Court of Review for review of an order under this subsection. The Court of Review shall have jurisdiction to consider such petition. For any decision under this subparagraph affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of the reasons for the decision.

(B) Continuation of acquisition pending rehearing or appeal

Any acquisition affected by an order under paragraph (3)(B) may continue—

- (i) during the pendency of any rehearing of the order by the Court en banc; and
- (ii) if the Government files a petition for review of an order under this section, until the Court of Review enters an order under subparagraph (C).

(C) Implementation pending appeal

Not later than 60 days after the filing of a petition for review of an order under paragraph (3)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order re-

garding, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the review.

(D) Certiorari to the Supreme Court

The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(5) Schedule

(A) Reauthorization of authorizations in effect

If the Attorney General and the Director of National Intelligence seek to reauthorize or replace an authorization issued under subsection (a), the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Court the certification prepared in accordance with subsection (h) and the procedures adopted in accordance with subsections (d), (e), and (f)(1) at least 30 days prior to the expiration of such authorization.

(B) Reauthorization of orders, authorizations, and directives

If the Attorney General and the Director of National Intelligence seek to reauthorize or replace an authorization issued under subsection (a) by filing a certification pursuant to subparagraph (A), that authorization, and any directives issued thereunder and any order related thereto, shall remain in effect, notwithstanding the expiration provided for in subsection (a), until the Court issues an order with respect to such certification under paragraph (3) at which time the provisions of that paragraph and paragraph (4) shall apply with respect to such certification.

(k) Judicial proceedings

(1) Expedited judicial proceedings

Judicial proceedings under this section shall be conducted as expeditiously as possible.

(2) Time limits

A time limit for a judicial decision in this section shall apply unless the Court, the Court of Review, or any judge of either the Court or the Court of Review, by order for reasons stated, extends that time as necessary for good cause in a manner consistent with national security.

(l) Maintenance and security of records and proceedings

(1) Standards

The Foreign Intelligence Surveillance Court shall maintain a record of a proceeding under this section, including petitions, appeals, orders, and statements of reasons for a decision, under security measures adopted by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

(2) Filing and review

All petitions under this section shall be filed under seal. In any proceedings under this sec-

tion, the Court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

(3) Retention of records

The Attorney General and the Director of National Intelligence shall retain a directive or an order issued under this section for a period of not less than 10 years from the date on which such directive or such order is issued.

(m) Assessments² reviews, and reporting

(1) Semiannual assessment

Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1) and the guidelines adopted in accordance with subsection (g) and shall submit each assessment to—

(A) the Foreign Intelligence Surveillance Court; and

(B) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(i) the congressional intelligence committees; and

(ii) the Committees on the Judiciary of the House of Representatives and the Senate.

(2) Agency assessment

The Inspector General of the Department of Justice and the Inspector General of each element of the intelligence community authorized to acquire foreign intelligence information under subsection (a), with respect to the department or element of such Inspector General—

(A) are authorized to review compliance with the targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1) and the guidelines adopted in accordance with subsection (g);

(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States-person identity and the number of United States-person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed; and

(D) shall provide each such review to—

(i) the Attorney General;

(ii) the Director of National Intelligence; and

(iii) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(I) the congressional intelligence committees; and

(II) the Committees on the Judiciary of the House of Representatives and the Senate.

(3) Annual review

(A) Requirement to conduct

The head of each element of the intelligence community conducting an acquisition authorized under subsection (a) shall conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to acquisitions authorized under subsection (a)—

(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States-person identity;

(ii) an accounting of the number of United States-person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed; and

(iv) a description of any procedures developed by the head of such element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, and the results of any such assessment.

(B) Use of review

The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element and, as appropriate, the application of the minimization procedures to a particular acquisition authorized under subsection (a).

(C) Provision of review

The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to—

(i) the Foreign Intelligence Surveillance Court;

(ii) the Attorney General;

(iii) the Director of National Intelligence; and

(iv) consistent with the Rules of the House of Representatives, the Standing

² So in original. Probably should be followed by a comma.

Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(I) the congressional intelligence committees; and

(II) the Committees on the Judiciary of the House of Representatives and the Senate.

(4) Reporting of material breach

(A) In general

The head of each element of the intelligence community involved in the acquisition of abouts communications shall fully and currently inform the Committees on the Judiciary of the House of Representatives and the Senate and the congressional intelligence committees of a material breach.

(B) Definitions

In this paragraph:

(i) The term “abouts communication” means a communication that contains a reference to, but is not to or from, a target of an acquisition authorized under subsection (a).

(ii) The term “material breach” means significant noncompliance with applicable law or an order of the Foreign Intelligence Surveillance Court concerning any acquisition of abouts communications.

(Pub. L. 95–511, title VII, §702, as added Pub. L. 110–261, title I, §101(a)(2), July 10, 2008, 122 Stat. 2438; amended Pub. L. 114–23, title III, §301, June 2, 2015, 129 Stat. 278; Pub. L. 115–118, title I, §§101(a)(1), (b)(1), 103(a), (b)(5), 104, title II, §205(a)(6), Jan. 19, 2018, 132 Stat. 4, 6, 10, 12, 13, 21.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, §403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112–238, §2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115–118, title II, §201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2023, this section is repealed.

Editorial Notes

REFERENCES IN TEXT

Section 103(b) of the FISA Amendments Reauthorization Act of 2017, referred to in subsection (b)(5), is section 103(b) of Pub. L. 115–118, which is set out as a note below.

This chapter, referred to in subsections (f)(1)(B) and (g)(2)(A)(iii), 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.

Subsection (i), referred to in subsection (h)(3), was redesignated subsection (j) of this section by Pub. L. 115–118, title I, §101(a)(1)(A), Jan. 19, 2018, 132 Stat. 4.

Subsection (g), referred to in subsection (j)(1), was redesignated subsection (h) of this section by Pub. L. 115–118, title I, §101(a)(1)(A), Jan. 19, 2018, 132 Stat. 4.

Senate Resolution 400 of the 94th Congress, referred to in subsection (l), was agreed to May 19, 1976, and was subsequently amended by both Senate resolution and public law. The Resolution, which established the Senate Select Committee on Intelligence, is not classified to the Code.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–118, §101(b)(1)(A), substituted “with subsection (j)(3)” for “with subsection (i)(3)”.

Subsec. (b)(5), (6). Pub. L. 115–118, §103(a), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(1)(B). Pub. L. 115–118, §101(b)(1)(B)(i), substituted “with subsection (h)” for “with subsection (g)”.

Subsec. (c)(2). Pub. L. 115–118, §101(b)(1)(B)(ii), substituted “to subsection (j)(3)” for “to subsection (i)(3)”.

Subsec. (c)(3)(A). Pub. L. 115–118, §101(b)(1)(B)(iii)(I), substituted “with subsection (h)” for “with subsection (g)”.

Subsec. (c)(3)(B). Pub. L. 115–118, §101(b)(1)(B)(iii)(II), substituted “to subsection (j)(1)(C)” for “to subsection (i)(1)(C)” and “under subsection (j)” for “under subsection (i)”.

Subsec. (d)(2). Pub. L. 115–118, §101(b)(1)(C), substituted “to subsection (j)” for “to subsection (i)”.

Subsec. (e)(2). Pub. L. 115–118, §101(b)(1)(D), substituted “to subsection (j)” for “to subsection (i)”.

Subsec. (e)(3). Pub. L. 115–118, §104, added par. (3).

Subsecs. (f) to (h). Pub. L. 115–118, §101(a)(1), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (h)(2)(A)(i). Pub. L. 115–118, §205(a)(6), inserted “targeting” before “procedures in place” in introductory provisions.

Subsec. (h)(2)(A)(iii). Pub. L. 115–118, §101(b)(1)(E)(i), substituted “with subsection (g)” for “with subsection (f)”.

Subsec. (h)(3). Pub. L. 115–118, §101(b)(1)(E)(ii), substituted “with subsection (j)(1)(C)” for “with subsection (i)(1)(C)”.

Subsec. (h)(6). Pub. L. 115–118, §101(b)(1)(E)(iii), substituted “to subsection (j)” for “to subsection (i)”.

Subsecs. (i), (j). Pub. L. 115–118, §101(a)(1)(A), redesignated subsecs. (h) and (i) as (i) and (j), respectively. Former subsec. (j) redesignated (k).

Subsec. (j)(1). Pub. L. 115–118, §101(b)(1)(F)(i), substituted “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)” for “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” in subpars. (A) to (C).

Subsec. (j)(2)(A). Pub. L. 115–118, §101(b)(1)(F)(ii)(I), substituted “with subsection (h)” for “with subsection (g)”.

Subsec. (j)(2)(D). Pub. L. 115–118, §101(b)(1)(F)(ii)(II), added subpar. (D).

Subsec. (j)(3)(A). Pub. L. 115–118, §101(b)(1)(F)(iii)(I), substituted “with subsection (h)” for “with subsection (g)” and “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)” for “targeting and minimization procedures adopted in accordance with subsections (d) and (e)”.

Subsec. (j)(3)(B). Pub. L. 115–118, §101(b)(1)(F)(iii)(II), substituted “with subsection (h)” for “with subsection (g)” and “with subsections (d), (e), and (f)(1)” for “with subsections (d) and (e)” in introductory provisions.

Subsec. (j)(5)(A). Pub. L. 115–118, §101(b)(1)(F)(iv), substituted “with subsection (h)” for “with subsection (g)” and “with subsections (d), (e), and (f)(1)” for “with subsections (d) and (e)”.

Subsecs. (k), (l). Pub. L. 115–118, §101(a)(1)(A), redesignated subsecs. (j) and (k) as (k) and (l), respectively. Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 115–118, §§101(a)(1)(A), 103(b)(5)(A), redesignated subsec. (l) as (m) and substituted “reviews, and reporting” for “and reviews” in heading.

Subsec. (m)(1). Pub. L. 115–118, §101(b)(1)(G)(i), substituted “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)” for “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and “with subsection (g)” for “with subsection (f)” in introductory provisions.

Subsec. (m)(2)(A). Pub. L. 115–118, § 101(b)(1)(G)(ii), substituted “targeting, minimization, and querying procedures adopted in accordance with subsections (d), (e), and (f)(1)” for “targeting and minimization procedures adopted in accordance with subsections (d) and (e)” and “with subsection (g)” for “with subsection (f)”.

Subsec. (m)(4). Pub. L. 115–118, § 103(b)(5)(B), added par. (4).

2015—Subsec. (i)(3)(D). Pub. L. 114–23 added subpar. (D).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–118, title I, § 101(a)(2), Jan. 19, 2018, 132 Stat. 2474, as amended by Pub. L. 112–238, § 2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115–118, title II, § 201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, as amended by Pub. L. 112–238, § 2(a)(1), Dec. 30, 2012, 126 Stat. 1631; Pub. L. 115–118, title II, § 201(a)(1), Jan. 19, 2018, 132 Stat. 19, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2023.

CONGRESSIONAL REVIEW AND OVERSIGHT OF ABOUTS COLLECTION

Pub. L. 115–118, title I, § 103(b), Jan. 19, 2018, 132 Stat. 10, provided that:

“(1) DEFINITIONS.—In this subsection:

“(A) The term ‘abouts communication’ means a communication that contains a reference to, but is not to or from, a target of an acquisition authorized under section 702(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(a)).

“(B) The term ‘material breach’ means significant noncompliance with applicable law or an order of the Foreign Intelligence Surveillance Court concerning any acquisition of abouts communications.

“(2) SUBMISSION TO CONGRESS.—

“(A) REQUIREMENT.—Notwithstanding any other provision of law, and except as provided in paragraph (4), if the Attorney General and the Director of National Intelligence intend to implement the authorization of the intentional acquisition of abouts communications, before the first such implementation after the date of enactment of this Act [Jan. 19, 2018], the Attorney General and the Director of National Intelligence shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a written notice of the intent to implement the authorization of such an acquisition, and any supporting materials in accordance with this subsection.

“(B) CONGRESSIONAL REVIEW PERIOD.—During the 30-day period beginning on the date written notice is submitted under subparagraph (A), the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives shall, as appropriate, hold hearings and briefings and otherwise obtain information in order to fully review the written notice.

“(C) LIMITATION ON ACTION DURING CONGRESSIONAL REVIEW PERIOD.—Notwithstanding any other provision of law, and subject to paragraph (4), unless the Attorney General and the Director of National Intelligence make a determination pursuant to section

702(c)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(c)(2)), the Attorney General and the Director of National Intelligence may not implement the authorization of the intentional acquisition of abouts communications before the end of the period described in subparagraph (B).

“(3) WRITTEN NOTICE.—Written notice under paragraph (2)(A) shall include the following:

“(A) A copy of any certification submitted to the Foreign Intelligence Surveillance Court pursuant to section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a), or amendment thereto, authorizing the intentional acquisition of abouts communications, including all affidavits, procedures, exhibits, and attachments submitted therewith.

“(B) The decision, order, or opinion of the Foreign Intelligence Surveillance Court approving such certification, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion.

“(C) A summary of the protections in place to detect any material breach.

“(D) Data or other results of modeling, simulation, or auditing of sample data demonstrating that any acquisition method involving the intentional acquisition of abouts communications shall be conducted in accordance with title VII of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881 et seq.), if such data or other results exist at the time the written notice is submitted and were provided to the Foreign Intelligence Surveillance Court.

“(E) Except as provided under paragraph (4), a statement that no acquisition authorized under subsection (a) of such section 702 shall include the intentional acquisition of an abouts communication until after the end of the 30-day period described in paragraph (2)(B).

“(4) EXCEPTION FOR EMERGENCY ACQUISITION.—

“(A) NOTICE OF DETERMINATION.—If the Attorney General and the Director of National Intelligence make a determination pursuant to section 702(c)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(c)(2)) with respect to the intentional acquisition of abouts communications, the Attorney General and the Director of National Intelligence shall notify the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives as soon as practicable, but not later than 7 days after the determination is made.

“(B) IMPLEMENTATION OR CONTINUATION.—

“(i) IN GENERAL.—If the Foreign Intelligence Surveillance Court approves a certification that authorizes the intentional acquisition of abouts communications before the end of the 30-day period described in paragraph (2)(B), the Attorney General and the Director of National Intelligence may authorize the immediate implementation or continuation of that certification if the Attorney General and the Director of National Intelligence jointly determine that exigent circumstances exist such that without such immediate implementation or continuation intelligence important to the national security of the United States may be lost or not timely acquired.

“(ii) NOTICE.—The Attorney General and the Director of National Intelligence shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives notification of a determination pursuant to clause (i) as soon as practicable, but not later than 3 days after the determination is made.

“(5) REPORTING OF MATERIAL BREACH.—[Amended this section.]

“(6) APPOINTMENT OF AMICI CURIAE BY FOREIGN INTELLIGENCE SURVEILLANCE COURT.—For purposes of section 103(i)(2)(A) of the Foreign Intelligence Surveillance Act

of 1978 (50 U.S.C. 1803(i)(2)(A)), the Foreign Intelligence Surveillance Court shall treat the first certification under section 702(h) of such Act (50 U.S.C. 1881a(h)) or amendment thereto that authorizes the acquisition of abouts communications as presenting a novel or significant interpretation of the law, unless the court determines otherwise."

§ 1881b. Certain acquisitions inside the United States targeting United States persons outside the United States

(a) Jurisdiction of the Foreign Intelligence Surveillance Court

(1) In general

The Foreign Intelligence Surveillance Court shall have jurisdiction to review an application and to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if the acquisition constitutes electronic surveillance or the acquisition of stored electronic communications or stored electronic data that requires an order under this chapter, and such acquisition is conducted within the United States.

(2) Limitation

If a United States person targeted under this subsection is reasonably believed to be located in the United States during the effective period of an order issued pursuant to subsection (c), an acquisition targeting such United States person under this section shall cease unless the targeted United States person is again reasonably believed to be located outside the United States while an order issued pursuant to subsection (c) is in effect. Nothing in this section shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other subchapter of this chapter.

(b) Application

(1) In general

Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application, as set forth in this section, and shall include—

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

(B) the identity, if known, or a description of the United States person who is the target of the acquisition;

(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

(i) a person reasonably believed to be located outside the United States; and

(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(D) a statement of proposed minimization procedures that meet the definition of mini-

mization procedures under section 1801(h) or 1821(4) of this title, as appropriate;

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

(F) a certification made by the Attorney General or an official specified in section 1804(a)(6) of this title that—

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

(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

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

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

(v) includes 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;

(G) a summary statement of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition;

(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

(I) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

(J) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

(2) Other requirements of the Attorney General

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

(3) Other requirements of the judge

The judge may require the applicant to furnish such other information as may be necessary to make the findings required by subsection (c)(1).

(c) Order

(1) Findings

Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified by the Court approving the acquisition if the Court finds that—