

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

Pub. L. 103-359, title VIII, §807(c), Oct. 14, 1994, 108 Stat. 3453, provided that: “The amendments made by subsections (a) and (b) [enacting this subchapter and amending provisions set out as a note under section 1801 of this title] shall take effect 90 days after the date of enactment of this Act [Oct. 14, 1994], except that any physical search approved by the Attorney General of the United States to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of title III of the Foreign Intelligence Surveillance Act of 1978 [this subchapter] (as added by this Act), if that search is conducted within 180 days after the date of enactment of this Act pursuant to regulations issued by the Attorney General, which were in the possession of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the date of enactment of this Act.”

**§ 1822. Authorization of physical searches for foreign intelligence purposes**

**(a) Presidential authorization**

(1) Notwithstanding any other provision of law, the President, acting through the Attorney General, may authorize physical searches without a court order under this subchapter to acquire foreign intelligence information for periods of up to one year if—

(A) the Attorney General certifies in writing under oath that—

(i) the physical search is solely directed at premises, information, material, or property used exclusively by, or under the open and exclusive control of, a foreign power or powers (as defined in section 1801(a)(1), (2), or (3) of this title);

(ii) there is no substantial likelihood that the physical search will involve the premises, information, material, or property of a United States person; and

(iii) the proposed minimization procedures with respect to such physical search meet the definition of minimization procedures under paragraphs (1) through (4)<sup>1</sup> of section 1821(4) of this title; and

(B) the Attorney General reports such minimization procedures and any changes thereto to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate at least 30 days before their effective date, unless the Attorney General determines that immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) A physical search authorized by this subsection may be conducted only in accordance with the certification and minimization procedures adopted by the Attorney General. The Attorney General shall assess compliance with such procedures and shall report such assessments to the Permanent Select Committee on Intelligence of the House of Representatives and

<sup>1</sup>So in original. Probably should be “subparagraphs (A) through (D)”.

the Select Committee on Intelligence of the Senate under the provisions of section 1826 of this title.

(3) The Attorney General shall immediately transmit under seal to the Foreign Intelligence Surveillance Court a copy of the certification. Such certification shall be maintained under security measures established by the Chief Justice of the United States with the concurrence of the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless—

(A) an application for a court order with respect to the physical search is made under section 1821(4) of this title and section 1823 of this title; or

(B) the certification is necessary to determine the legality of the physical search under section 1825(g) of this title.

(4)(A) With respect to physical searches authorized by this subsection, the Attorney General may direct a specified landlord, custodian, or other specified person to—

(i) furnish all information, facilities, or assistance necessary to accomplish the physical search in such a manner as will protect its secrecy and produce a minimum of interference with the services that such landlord, custodian, or other person is providing the target of the physical search; and

(ii) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the search or the aid furnished that such person wishes to retain.

(B) The Government shall compensate, at the prevailing rate, such landlord, custodian, or other person for furnishing such aid.

**(b) Application for order; authorization**

Applications for a court order under this subchapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the Foreign Intelligence Surveillance Court. Notwithstanding any other provision of law, a judge of the court to whom application is made may grant an order in accordance with section 1824 of this title approving a physical search in the United States of the premises, property, information, or material of a foreign power or an agent of a foreign power for the purpose of collecting foreign intelligence information.

**(c) Jurisdiction of Foreign Intelligence Surveillance Court**

The Foreign Intelligence Surveillance Court shall have jurisdiction to hear applications for and grant orders approving a physical search for the purpose of obtaining foreign intelligence information anywhere within the United States under the procedures set forth in this subchapter, except that no judge (except when sitting en banc) shall hear the same application which has been denied previously by another judge designated under section 1803(a) of this title. If any judge so designated denies an application for an order authorizing a physical search under this subchapter, such judge shall provide immediately for the record a written statement of each reason for such decision and, on motion

of the United States, the record shall be transmitted, under seal, to the court of review established under section 1803(b) of this title.

**(d) Court of review; record; transmittal to Supreme Court**

The court of review established under section 1803(b) of this title shall have jurisdiction to review the denial of any application made under this subchapter. If such court determines that the application was properly denied, the court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

**(e) Expeditious conduct of proceedings; security measures for maintenance of records**

Judicial proceedings under this subchapter shall be concluded as expeditiously as possible. The record of proceedings under this subchapter, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of National Intelligence.

(Pub. L. 95-511, title III, §302, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3444; amended Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 110-261, title I, §109(b)(2)(B), July 10, 2008, 122 Stat. 2465; Pub. L. 111-259, title VIII, §806(a)(2), Oct. 7, 2010, 124 Stat. 2748.)

AMENDMENTS

2010—Subsecs. (a)(3), (4)(A)(ii), (e). Pub. L. 111-259 made technical amendment to directory language of Pub. L. 108-458. See 2004 Amendment note below.

2008—Subsec. (c). Pub. L. 110-261 inserted “(except when sitting en banc)” after “except that no judge”.

2004—Subsecs. (a)(3), (4)(A)(ii), (e). Pub. L. 108-458, as amended by Pub. L. 111-259, substituted “Director of National Intelligence” for “Director of Central Intelligence”.

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 3001 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 3001 of this title.

EX. ORD. NO. 12949. FOREIGN INTELLIGENCE PHYSICAL SEARCHES

Ex. Ord. No. 12949, Feb. 9, 1995, 60 F.R. 8169, as amended by Ex. Ord. No. 13383, §2, July 15, 2005, 70 F.R. 41933; Ex. Ord. No. 13475, §2, Oct. 7, 2008, 73 F.R. 60095, provided:

By the authority vested in me as President by the Constitution and the laws of the United States, includ-

ing sections 302 and 303 of the Foreign Intelligence Surveillance Act of 1978 (“Act”) (50 U.S.C. 1801, *et seq.*), as amended by Public Law 103-359 [50 U.S.C. 1822, 1823], and in order to provide for the authorization of physical searches for foreign intelligence purposes as set forth in the Act, it is hereby ordered as follows:

SECTION 1. Pursuant to section 302(a)(1) of the Act, the Attorney General is authorized to approve physical searches, without a court order, to acquire foreign intelligence information for periods of up to one year, if the Attorney General makes the certifications required by that section.

SEC. 2. Pursuant to section 302(b) of the Act, the Attorney General is authorized to approve applications to the Foreign Intelligence Surveillance Court under section 303 of the Act to obtain orders for physical searches for the purpose of collecting foreign intelligence information.

SEC. 3. Pursuant to section 303(a)(6) of the Act, the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by section 303(a)(6) of the Act in support of applications to conduct physical searches:

- (a) Secretary of State;
- (b) Secretary of Defense;
- [(c)] Director of National Intelligence;
- (d) Director of the Federal Bureau of Investigation,
- (e) Deputy Secretary of State;
- (f) Deputy Secretary of Defense;
- (g) Director of the Central Intelligence Agency;
- (h) Principal Deputy Director of National Intelligence; and
- (i) Deputy Director of the Federal Bureau of Investigation.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President, by and with the advice and consent of the Senate. The requirement of the preceding sentence that the named official must be appointed by the President with the advice and consent of the Senate does not apply to the Deputy Director of the Federal Bureau of Investigation.

**§ 1823. Application for order**

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

Each application for an order approving a physical search under this subchapter shall be made by a Federal officer in writing upon oath or affirmation to a judge of the Foreign Intelligence Surveillance Court. Each application shall require the approval of the Attorney General based upon the Attorney General’s finding that it satisfies the criteria and requirements for such application as set forth in this subchapter. Each application shall include—

- (1) the identity of the Federal officer making the application;
- (2) the identity, if known, or a description of the target of the search, and a description of the premises or property to be searched and of the information, material, or property to be seized, reproduced, or altered;
- (3) a statement of the facts and circumstances relied upon by the applicant to justify the applicant’s belief that—

- (A) the target of the physical search is a foreign power or an agent of a foreign power;
- (B) the premises or property to be searched contains foreign intelligence information; and
- (C) the premises or property to be searched is or is about to be owned, used, possessed