

retary 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) 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) 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) 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 modification 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 III, § 303, as added Pub. L. 103-359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3446; amended Pub. L. 106-567, title VI, § 603(a), Dec. 27, 2000, 114 Stat. 2852; 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. 110-261, title I, § 107(a), July 10, 2008, 122 Stat. 2462; Pub. L. 111-259, title VIII, § 806(a)(2), Oct. 7, 2010, 124 Stat. 2748.)

AMENDMENTS

2010—Subsec. (d)(1)(A). Pub. L. 111-259 made technical amendment to directory language of Pub. L. 108-458. See 2004 Amendment note below.

2008—Subsec. (a)(2). Pub. L. 110-261, § 107(a)(1)(A)-(C), redesignated par. (3) as (2), struck out “detailed” before “description of the premises”, and struck out former par. (2) which read as follows: “the authority conferred on the Attorney General by the President and the approval of the Attorney General to make the application;”.

Subsec. (a)(3). Pub. L. 110-261, § 107(a)(1)(B), (D), redesignated par. (4) as (3) and inserted “or is about to be” before “owned” in subpar. (C). Former par. (3) redesignated (2).

Subsec. (a)(4), (5). Pub. L. 110-261, § 107(a)(1)(B), redesignated pars. (5) and (6) as (4) and (5), respectively. Former par. (4) redesignated (3).

Subsec. (a)(6). Pub. L. 110-261, § 107(a)(1)(B), (E), 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) to (9). Pub. L. 110-261, § 107(a)(1)(B), redesignated pars. (8) and (9) as (7) and (8), respectively. Former par. (7) redesignated (6).

Subsec. (d)(1)(A). Pub. L. 110-261, § 107(a)(2), substituted “the Director of National Intelligence, or the Director of the Central Intelligence Agency” for “or the Director of National Intelligence”.

2004—Subsec. (d)(1)(A). Pub. L. 108-458, as amended by Pub. L. 111-259, 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. (d). Pub. L. 106-567 added subsec. (d).

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.

EFFECTIVE DATE

Section effective 90 days after Oct. 14, 1994, with exception for certain physical searches approved by the Attorney General to gather foreign intelligence information, see section 807(c) of Pub. L. 103-359, set out as a note under section 1821 of this title.

OFFICIALS DESIGNATED TO MAKE CERTIFICATIONS

For provisions listing officials designated by President to make certifications required by subsec. (a)(7) of this section, see Ex. Ord. No. 12949, § 3, Feb. 9, 1995, 60 F.R. 8169, set out as a note under section 1822 of this title.

§ 1824. Issuance of order**(a) Necessary findings**

Upon an application made pursuant to section 1823 of this title, the judge shall enter an ex

parte order as requested or as modified approving the physical search if the judge 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 physical search is a foreign power or an agent of a foreign power, except that no United States person may be considered 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) the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from an agent of a foreign power or a foreign power;

(3) the proposed minimization procedures meet the definition of minimization contained in this subchapter; and

(4) the application which has been filed contains all statements and certifications required by section 1823 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 1823(a)(6)(E) of this title and any other information furnished under section 1823(c) 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), 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

An order approving a physical search under this section shall—

(1) specify—

(A) the identity, if known, or a description of the target of the physical search;

(B) the nature and location of each of the premises or property to be searched;

(C) the type of information, material, or property to be seized, altered, or reproduced;

(D) a statement of the manner in which the physical search is to be conducted and, whenever more than one physical search is authorized under the order, the authorized scope of each search and what minimization procedures shall apply to the information acquired by each search; and

(E) the period of time during which physical searches are approved; and

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified landlord, custodian, or other specified person furnish the applicant forthwith 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;

(C) that such landlord, custodian, or other person 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;

(D) that the applicant compensate, at the prevailing rate, such landlord, custodian, or other person for furnishing such aid; and

(E) that the Federal officer conducting the physical search promptly report to the court the circumstances and results of the physical search.

(d) Duration of order; extensions; assessment of compliance

(1) An order issued under this section may approve a physical search for the period necessary to achieve its purpose, or for 90 days, whichever is less, except that (A) an order under this section shall approve a physical search targeted against a foreign power, as defined in paragraph (1), (2), or (3) of section 1801(a) of this title, for the period specified in the application or for one year, whichever is less, and (B) an order under this section for a physical search targeted against an agent of a foreign power who is not a United States person may be for the period specified in the application or for 120 days, whichever is less.

(2) Extensions of an order issued under this subchapter may be granted on the same basis as the original order upon an application for an extension and new findings made in the same manner as required for the original order, except that an extension of an order under this chapter for a physical search targeted against a foreign power, as defined in paragraph (5), (6), or (7) of section 1801(a) of this title, or against a foreign power, as defined in section 1801(a)(4) of this title, that is not a United States person, or against an agent of a foreign power who is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no property of any individual United States person will be acquired during the period.

(3) At or before the end of the period of time for which a physical search is approved by an order or an extension, or at any time after a physical search is carried out, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(e) Emergency orders

(1) Notwithstanding any other provision of this subchapter, the Attorney General may authorize the emergency employment of a physical search if the Attorney General—

(A) reasonably determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information before an order authorizing such physical search can with due diligence be obtained;

(B) reasonably determines that the factual basis for issuance of an order under this subchapter to approve such physical search exists;

(C) informs, either personally or through a designee, a judge of the Foreign Intelligence

Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

(D) makes an application in accordance with this subchapter to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such physical search.

(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this subchapter for the issuance of a judicial order be followed.

(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

(4) A denial of the application made under this subsection may be reviewed as provided in section 1803 of this title.

(5) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search 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 from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(6) The Attorney General shall assess compliance with the requirements of paragraph (5).

(f) Retention of applications and orders

Applications made and orders granted under this subchapter shall be retained for a period of at least 10 years from the date of the application.

(Pub. L. 95-511, title III, §304, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3447; amended Pub. L. 106-567, title VI, §603(b), Dec. 27, 2000, 114 Stat. 2853; Pub. L. 107-56, title II, §207(a)(2), (b)(2), Oct. 26, 2001, 115 Stat. 282; Pub. L. 107-108, title III, §314(a)(4), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, §105(b), Mar. 9, 2006, 120 Stat. 195; Pub. L. 110-261, title I, §§107(b), (c)(1), 110(c)(3), July 10, 2008, 122 Stat. 2463, 2464, 2467; Pub. L. 111-259, title VIII, §§801(5), 806(a)(2), Oct. 7, 2010, 124 Stat. 2746, 2748.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(2), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, as amended, 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

2010—Subsec. (b). Pub. L. 111-259, §801(5), substituted “subsection (a)(2)” for “subsection (a)(3)”.

Subsec. (c)(2)(C). Pub. L. 111-259, §806(a)(2), made technical amendment to directory language of Pub. L. 108-458. See 2004 Amendment note below.

2008—Subsec. (a). Pub. L. 110-261, §107(b)(1), (c)(1), redesignated pars. (2) to (5) as (1) to (4), respectively, inserted “or is about to be” before “owned” in par. (2)(B), substituted “1823(a)(6)(E)” for “1823(a)(7)(E)” in par. (4), and struck out former par. (1) which read as follows: “the President has authorized the Attorney General to approve applications for physical searches for foreign intelligence purposes;”.

Subsec. (d)(2). Pub. L. 110-261, §110(c)(3), substituted “paragraph (5), (6), or (7) of section 1801(a)” for “section 1801(a)(5) or (6)”.

Subsec. (e). Pub. L. 110-261, §107(b)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) related to the power of the Attorney General to authorize the emergency employment of a physical search and required an application be made to a judge within 72 hours after the authorization.

2006—Subsec. (d)(1)(B), (2). Pub. L. 109-177 substituted “who is not a United States person” for “as defined in section 1801(b)(1)(A) of this title”.

2004—Subsec. (c)(2)(C). Pub. L. 108-458, as amended by Pub. L. 111-259, §806(a)(2), substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2001—Subsec. (d)(1). Pub. L. 107-56, §207(a)(2), substituted “90 days,” for “forty-five days,” and inserted “(A)” after “except that” and “”, and (B) an order under this section for a physical search targeted against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title may be for the period specified in the application or for 120 days, whichever is less” before period at end.

Subsec. (d)(2). Pub. L. 107-56, §207(b)(2), inserted “or against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title,” after “not a United States person,”.

Subsec. (e)(1)(A)(ii), (3)(C). Pub. L. 107-108 substituted “72 hours” for “24 hours”.

2000—Subsecs. (b) to (f). Pub. L. 106-567 added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

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.

EFFECTIVE DATE

Section effective 90 days after Oct. 14, 1994, with exception for certain physical searches approved by the Attorney General to gather foreign intelligence information, see section 807(c) of Pub. L. 103-359, set out as a note under section 1821 of this title.

§ 1825. Use of information

(a) Compliance with minimization procedures; lawful purposes

Information acquired from a physical search 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 information acquired from a physical search pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Notice of search and identification of property seized, altered, or reproduced

Where a physical search authorized and conducted pursuant to section 1824 of this title involves the residence of a United States person, and, at any time after the search the Attorney General determines there is no national security interest in continuing to maintain the secrecy of the search, the Attorney General shall provide notice to the United States person whose residence was searched of the fact of the search conducted pursuant to this chapter and shall identify any property of such person seized, altered, or reproduced during such search.

(c) 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.

(d) Notification by United States

Whenever the United States 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 a physical search pursuant to the authority of this subchapter, the United States shall, prior to the trial, hearing, or the 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 United States intends to so disclose or so use such information.

(e) 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 a physical search 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.

(f) Motion to suppress

(1) Any person against whom evidence obtained or derived from a physical search 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 search on the grounds that—

(A) the information was unlawfully acquired; or

(B) the physical search was not made in conformity with an order of authorization or approval.

(2) 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.

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

Whenever a court or other authority is notified pursuant to subsection (d) or (e), or whenever a motion is made pursuant to subsection (f), 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 a physical search authorized by this subchapter or to discover, obtain, or suppress evidence or information obtained or derived from a physical search authorized by this subchapter, 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 provision of law, if the Attorney General files an affidavit under oath that disclosure or any 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 physical search as may be necessary to determine whether the physical search 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 physical search, or may require the Attorney General to provide to the aggrieved person a summary of such materials, only where such disclosure is necessary to make an accurate determination of the legality of the physical search.

(h) Suppression of evidence; denial of motion

If the United States district court pursuant to subsection (g) determines that the physical search was not lawfully authorized or con-