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# ***Procedure 7***

# ***Physical Searches***



# Agenda

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- **Key changes to Procedure 7**
- **Definition Changes**
- **Structure of Procedure 7**



# Procedure for Physical Searches

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This procedure applies to physical searches for foreign intelligence or CI purposes that are conducted without prior consent by Defense Intelligence Components or anyone acting on their behalf. Physical searches conducted with prior consent may be conducted in accordance with Procedure 2



# Key Changes in Physical Searches

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- **Military commander's ability to conduct nonconsensual physical search of active-duty personnel or property for foreign intelligence and counterintelligence purposes is now changed**
  - ***New version requires a Foreign Intelligence Surveillance Act (FISA) warrant.***
- **The AG or the Foreign Intelligence Surveillance Court now must approve searches conducted inside or outside the United States to the extent required by the FISA and 50 U.S.C. § § 1821(5), 1827.**
- **Applications for nonconsensual searches will go through the DoD OGC to the Attorney General.**



# Key Changes in Physical Searches

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- Under new version only Defense Intelligence Components(DIC) with CI investigative authority are authorized to conduct physical searches of active-duty military personnel for intelligence purposes —but, still need a FISA warrant
- Does not prohibit DIC's with law enforcement authorities from conducting a criminal search.



# Key Definition Changes

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**(Updated) CONSENT:** The General Counsel or legal advisor of a Defense Intelligence Component will determine whether a notice or policy is adequate and lawful, **before the Component takes or refrains from taking action on the basis of implied consent**

**(Expanded) PHYSICAL SEARCH.** Any intrusion on a person or a person's property or possessions for the purpose of obtaining property, information, **or stored electronic data or communications and that would require a warrant for law enforcement purposes.** A physical search includes an intrusion that violates a reasonable expectation of privacy or that involves a trespass or otherwise physically occupying private property. It also includes the **examination of the interior of property or the scan of a person by technical means.**

**(Added) REASONABLE EXPECTATION OF PRIVACY.** The extent to which a person in particular circumstances has a reasonable belief that his or her activities, property, or communications are private. Whether a person's expectations are reasonable is fact-specific, and the law in this area is subject to change. The General Counsel or legal advisor of the Defense Intelligence Component should determine whether a person has a reasonable expectation of privacy.



# Procedure 7 Structure

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## Searches Directed Against Active-Duty Military Personnel

- Only CI elements of the Military Services with CI investigative authority may be authorized to conduct,
- Need AG approval or a FISA Warrant for searches inside and outside the U.S.
- Request for a warrant must come from: Secretary of Defense, the Dep SecDef, the USD(I), or the Secretary or the Under Secretary of a Military Department (MILDEP)
- There are emergency provisions = DoD OGC direct to AG



# Procedure 7 Structure

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## Searches Directed Against Other Persons (*other than non-active duty*) in the United States

- Except for searches against active-duty military (see prior slide), a DIC may not conduct a physical search of any person (foreign or US) or property in the US for intelligence purposes.
- But, can request the FBI conduct\*
- Request approval level: SecDef; the Deputy SecDef; the USD(I); the Secretary or the Under Secretary of a MILDEP; the DIRNSA/CHCSS; the Directors of: DIA, NGA, NRO.

\*Requires the foreign intelligence sought to be significant.



# Procedure 7 Structure

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## Searches of Other U.S. Persons (other than active duty) or Their Property *Outside* the United States

- A Defense Intelligence Component may conduct a physical search of the person or property of a U.S. person outside the United States who is not an active-duty Service member if all of the following conditions are met:
  - (a) The search is for an authorized foreign intelligence or CI purpose;
  - (b) The search is appropriately coordinated with the CIA; and
  - (c) The FISC or the AG has authorized the search
- **Request approval level:** SecDef; the Deputy SecDef; the USD(I); the Secretary or the Under Secretary of a MILDEP; the DIRNSA/CHCSS; the Directors: DIA, NGA, or NRO
- **Emergency provision:** A DIC head may request that the GC DoD seek authorization directly from the Attorney General



# Physical Searches

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**Questions?**