

**§ 42.5 Responsibilities.**

(a) The Department of Defense General Counsel or a single designee, shall:

(1) Determine whether to approve or deny requests for authorization to conduct nonconsensual interceptions under this part (§ 42.7(a)(1) (i) and (ii)).

(2) Determine whether to seek Attorney General authorization for emergency nonconsensual interceptions (§ 42.7(a)(1)(iii)).

(3) In the absence of the Secretary of the military department concerned, or a designee, determine whether to approve or deny requests to conduct consensual interceptions (§ 42.7(a)(2)(i)).

(4) Provide overall policy guidance for the implementation of this part.

(b) The Assistant Secretary of Defense (Comptroller) (ASD(C)), or a designee, shall:

(1) In consultation with the DoD General Counsel, act for the Secretary of Defense to insure compliance with the provisions of this part.

(2) Receive, process, and transmit to the DoD General Counsel all requests from the heads of the DoD components, or their designees, for authority to conduct nonconsensual interception of wire and oral communications.

(3) Furnish to the Attorney General those reports required by § 42.7(f)(1) and provide a copy of such reports to the DoD General Counsel.

(4) Receive those reports required by § 42.7(f)(1) and provide a copy of such reports to the DoD General Counsel.

(c) The head of each DoD component or a designee shall insure compliance with the policies and procedures set forth or referenced in this part.

(d) The secretary of each military department, or a designee, shall:

(1) Determine whether to approve or deny requests to conduct consensual interceptions (§ 42.7(a)(2)(i)). This approval authority shall not be delegated to an official below the level of assistant secretary or assistant to the secretary of the military department.

(2) Review requests for nonconsensual interception of wire or oral communications (§ 42.7(a)(1)).

(3) Designate a control point of contact and so advise the DoD General Counsel and the ASD(C) for:

(i) Interception activities and related applications covered by this part.

(ii) Compilation of reports and forwarding other submissions to the ASD(C) as required by the provisions of this part.

(iii) Maintaining a file of information regarding all interceptions of wire and oral communications by any element of the Department.

(4) Furnish to the ASD(C) the reports required by § 42.7(f)(2).

(e) The judge advocate general of each military department shall assign military judges, certified in accordance with the provisions of article 26(b) of the Uniform Code of Military Justice, 10 U.S.C. 826(b):

(1) To receive applications for intercept authorization orders and to determine whether to issue such orders in accordance with § 42.7(a)(1)(ii)(A). The authorization of such military judges to issue intercept authorization orders shall be limited to interceptions occurring abroad and targeted against persons subject to the Uniform Code of Military Justice.

(2) To receive applications to conduct pen register operations and to issue orders authorizing such operations in accordance with § 42.7(b)(1). The authority of such military judges to issue orders authorizing pen register operations shall be limited to operations conducted on a military installation and targeted against persons subject to the Uniform Code of Military Justice.

**§ 42.6 Definitions.**

(a) *Abroad.* Outside the United States. An interception takes place abroad when the interception device is located and operated outside the United States and the target of the interception is located outside the United States.

(b) *Application for court order.* A document containing specified information prepared for and forwarded to a judge of the U.S. district court or the U.S. court of appeals, or a military judge.

(c) *Consensual interception.* An interception of a wire or oral communication after verbal or written consent for the interception is given by one or more of the parties to the communication.

(d) *Court order.* An order issued by a judge of a U.S. district court or a U.S. court of appeals or by a military judge

authorizing a wire or oral interception or a pen register operation.

(e) *Electronic, mechanical, or other device.* Any device or apparatus that can be used to intercept a wire or oral communication other than any telephone equipment furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and used by the subscriber or user in the ordinary course of its business or used by an investigative or law enforcement officer in the ordinary course of duty (18 U.S.C. 2510(5)).

(f) *Interception.* The aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device (18 U.S.C. 2510(4)). The term "contents" includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication (18 U.S.C. 2510(8)).

(g) *Oral communication.* Any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception, under circumstances justifying such expectation (18 U.S.C. 2510(2)).

(h) *Pen register.* A device connected to a telephone instrument or line that permits the recording of telephone numbers dialed from a particular telephone instrument. "Pen register" also includes decoder devices used to record the numbers dialed from a touch-tone telephone. "Pen register" does not include equipment used to record the numbers dialed for and duration of long-distance telephone calls when the equipment is used to make such records for an entire telephone system and for billing or communications management purposes.

(i) *Telephone tracing.* A technique or procedure to determine the origin, by telephone number and location, of a telephone call made to a known telephone instrument. The terms "lock-out" and "trapping" may also be used to describe this technique.

(j) *United States.* For the purposes of this part, the term "United States" includes the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(k) *United States person.* For purposes of this part the term "U.S. person" means a United States citizen, an alien admitted to the United States for permanent residence, a corporation incorporated in the United States, an unincorporated association organized in the United States and substantially composed of United States citizens or aliens admitted to the United States for permanent residence.

(l) *Wire communication.* Any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications. 18 U.S.C. 2510(1).

#### **§ 42.7 Procedures, record administration and reports.**

(a) *Procedures governing interception of wire and oral communications—(1) Non-consensual interception—(i) Nonconsensual interception in the United States.* When an interception is deemed necessary for a criminal investigation, the following procedures are applicable:

(A) The requesting component shall prepare and forward through channels a "request for authorization" to the Assistant Secretary of Defense (Comptroller), or an official designated by the ASD(C). This application shall be transmitted by expeditious means and protected to preclude unauthorized access or any danger to the officials or other persons cooperating in the case. Each request for authorization will contain the following information:

(1) The identity of the DoD investigative or law enforcement official making the application;

(2) A complete description of the facts and circumstances relied upon by the applicant to justify the intended interception, including:

(i) The particular offense that has been, is being, or is about to be committed;

(ii) A description of the nature and location of the facilities from which or the place where the communication is to be intercepted;