

§ 40.7 Cross-reference to Post-Employment Conflict of Interest Restrictions.

DoD employees and former DoD employees should refer to the OGE regulation, Post-Employment Conflict of Interest Restrictions, 5 CFR part 2641, for provisions on post-employment applicable to those who left DoD employment on or after January 1, 1991.

PART 42—INTERCEPTION OF WIRE AND ORAL COMMUNICATIONS FOR LAW ENFORCEMENT PURPOSES

Sec.

- 42.1 Reissuance and purpose.
- 42.2 Applicability and scope.
- 42.3 Policy.
- 42.4 Waivers.
- 42.5 Responsibilities.
- 42.6 Definitions.
- 42.7 Procedures, record administration and reports.
- 42.8 Information to be included in reports of interceptions and pen register operations.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 43 FR 39988, Sept. 8, 1978, unless otherwise noted.

§ 42.1 Reissuance and purpose.

This part reissues part 42 to update established policies, procedures, and restrictions governing interception of wire and oral communications and the use of pen registers and related devices for law enforcement purposes, both in the United States and abroad, in accordance with 47 U.S.C. 605 and 18 U.S.C. 2510-2520.

§ 42.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the military departments, the Organization of the Joint Chiefs of Staff, the defense agencies, and the unified and specified commands (hereafter referred to collectively as "DoD components").

(b) This part does not affect status of forces or other specific agreements that may otherwise limit implementation of its provisions in any particular geographical area abroad.

§ 42.3 Policy.

(a) The interception of wire and oral communications for law enforcement purposes is prohibited unless conducted in accordance with this part and applicable law.

(b) The only DoD components authorized to intercept wire and oral communications and conduct pen register operations under this part are the Departments of the Army, Navy, and Air Force. Within these components, authority to use this technique shall be limited to those offices specifically designated in writing by the head of the component.

(c) Interception of wire and oral communications is a special technique which shall not be considered as a substitute for normal investigative procedures and shall be authorized only in those circumstances where it is demonstrated that the information is necessary for a criminal investigation and cannot reasonably be obtained in some other, less intrusive manner.

(d) Nonconsensual interception of wire and oral communications is prohibited unless there exists probable cause to believe that:

(1) In the case of interceptions within the United States, a criminal offense listed in 18 U.S.C. 2516(1) has been, is being, or is about to be committed;

(2) In the case of interceptions abroad conducted pursuant to an order issued by a military judge under § 42.7(a)(1)(ii)(A), one of the following violations of the Uniform Code of Military Justice has been, is being, or is about to be committed by a person subject to the Uniform code of Military Justice under article 2, 10 U.S.C. 802:

(i) The offense of murder, kidnapping, gambling, robbery, bribery, extortion, espionage, sabotage, treason, fraud against the Government, or dealing in narcotic drugs, marihuana, or other dangerous drugs; or

(ii) Any other offense dangerous to life, limb, or property, and punishable by death or confinement for 1 year or more; or

(iii) Any conspiracy to commit any of the foregoing offenses.

(3) In the case of other interceptions abroad, one of the following offenses has been, is being, or is about to be committed: