

§ 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