

Department of the Interior Departmental Manual

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Series: Law Enforcement and Security

Part 446: Law Enforcement

Chapter 8: Interception of Verbal Communications

Originating Office: Office of Managing Risk and Public Safety

446 DM 8

8.1 **Purpose.** This chapter establishes guidelines concerning consensual surveillance as an investigative tool without diminishing the protection afforded civil liberties. It establishes procedures governing the interception of verbal communications without the consent of all parties to the communication, in accordance with the Attorney General's memorandum on this subject to Heads and Inspectors General of Executive Departments and agencies, dated November 7, 1983, concerning "Procedures for Lawful, Warrantless Interceptions of Verbal Communications."

8.2 **Scope.** This chapter concerns the investigative use of electronic and mechanical devices to secretly overhear, transmit, or record private communications when one or more of the parties to the communication is a Federal law enforcement officer or one party is cooperating with a Federal law enforcement officer and has consented to the overhearing, transmitting, or recording of the communication. The consent of all participants is not necessary. This chapter does not restrict any form of monitoring when all parties to the communication consent, nor does it affect existing instructions on the related matter of electronic surveillance (eavesdropping) without the consent of any party.

8.3 **Policy.** The policy of the Department is to use electronic surveillance in accordance with The Fourth Amendment of the Constitution; Title III of the Omnibus Crime Control and Safe Street Act of 1968 as amended; Executive Order 11396, "Providing for the Coordination by the Attorney General of Federal Law Enforcement and Crime Prevention Programs,"; the Presidential Memorandum (untitled), dated June 30, 1965, concerning the utilization of mechanical or electronic devices to overhear non-telephone conversations and the inherent authority of the Attorney General as the chief law enforcement officer of the United States; and all other applicable Federal statutes.

8.4 **Communications Other Than Telephone Conversations.**

A. All bureaus/offices must, except in exigent circumstances as discussed below, obtain advance written authorization from the Director of the Office of Enforcement Operations, Department of Justice (DOJ), pursuant to paragraphs 8.5 or 8.6 of this chapter, whichever is applicable, before using any mechanical, electronic, or other device to overhear, transmit, or record private communications without the consent of all parties to the communication. Such

authorization is required before employing any such device, even if it is installed on premises under the control of the participants. (Also, see Chapter 8, Telephone Systems Handbook (377 DM)).

B. The following information must be set forth in any request for authorization to intercept a verbal communication without the consent of all parties to the communication:

(1) Reasons for Interception. The request must contain a reasonably detailed statement of the background and need for the interception.

(2) Offense. If an interception is for investigative purposes, the request must include a citation to the principal criminal statute involved.

(3) Danger. If an interception is for protection purposes, the request must explain the danger to the consenting party.

(4) Location of Devices. The request must state where the interception device will be hidden; i.e., on the person, in personal effects, or in a fixed location.

(5) Location of Interception. The request must specify the location and primary judicial district where the interception will take place. Interception authorization is not restricted to the original district. However, if the location of an interception changes, notice should be promptly given to the approving official. The record maintained on the request should reflect the location change.

(6) Time. The request must specify the length of time required for the interception. Initially, an authorization may be granted for up to 30 days from the day the interception is scheduled to begin. If there is need for continued interception, extensions for periods of up to 30 days may be granted. In special cases, e.g., "fencing" operations conducted by law enforcement officers, authorization for up to 60 days may be granted with similar extensions.

(7) Names. The request must give the names of persons, if known, whose communications the bureau/office expects to intercept and the relation of such persons to the matter under investigation or to the need for the interception.

(8) Trial Attorney Approval. The request must state that the requesting party or his or her authorized representative has discussed the facts of the surveillance with the U.S. Attorney, an Assistant U.S. Attorney, an Organized Crime Strike Force Attorney for the district in which the surveillance will occur or any previously designated DOJ attorney for a particular investigation, and that such attorney has stated that the surveillance is appropriate. Such statement may be made orally.

(9) Renewals. A request for renewal authority to intercept verbal communications must contain all the information required for an initial request. The renewal request must also refer to all previous authorizations and explain why an additional authorization

is needed.

C. When a communicating party consents to the interception of his or her verbal communications, the device may be concealed on his or her person, in personal effects, or in a fixed location. Each bureau/office engaging in such consensual interceptions must ensure that the consenting party will be present at all times when the device is operating.

D. In addition, each bureau/office must ensure:

(1) that no officer or person cooperating with the Government trespasses while installing a device in a fixed location, and

(2) that as long as the device is installed in the fixed location, the premises remain under the control of the Government or of the consenting party.

8.5 Interceptions Where Department of Justice Written Approval Is Required.

A. A request for authorization to intercept a verbal communication without the consent of all parties to the communication must be sent, by the bureau/office, directly to the Director of the Office of Enforcement Operations, Criminal Division, DOJ, for approval, when it is known that:

(1) the interception relates to an investigation of a member of Congress, a Federal judge, a member of Executive Branch at Executive Level IV or above or a person who has served in such capacity within the previous 2 years. This group includes Cabinet members, members of the White House staff and most Presidential appointees;

(2) the interception relates to an investigation of any public official and the offense investigated is one involving bribery, conflict of interest, or extortion relating to the performance of his or her official duties;

(3) the interception relates to an investigation of a Federal law enforcement official;

(4) the consenting or nonconsenting person is a member of the diplomatic corps of a foreign country;

(5) the consenting or nonconsenting person is or has been a member of the Witness Security Program and that fact is known to the bureau/office involved or its officers;

(6) the consenting or nonconsenting person is in the custody of the Bureau of Prisons or the U.S. Marshals Service; or

(7) the Attorney General, Deputy Attorney General, Associate Attorney General, Assistant Attorney General for the Criminal Division, or the U.S. Attorney in the district where an investigation is being conducted has requested the bureau/office conducting the investigation

to obtain prior written consent for making a consensual interception in a specific investigation.

B. Authority to engage in a consensual interception in situations set forth in paragraph 8.5 of this chapter may be given only by the Attorney General, the Deputy Attorney General, the Associate Attorney General, the Assistant Attorney General in charge of the Criminal Division, or the Director or Associate Director of the Criminal Division's Office of Enforcement Operations.

C. Even if the interception falls within one of the seven categories listed in paragraph 8.5A of this chapter, the procedures and rules outlined in paragraphs 8.4 through 8.6 of this chapter do not apply to:

- (1) extraterritorial interceptions;
- (2) foreign intelligence interceptions, including interceptions pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801, et seq.);
- (3) interceptions pursuant to the court-authorizations procedures of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (18 U.S.C. 2510, et seq.);
- (4) routine Bureau of Prisons interceptions of verbal communications which are not attended by a justifiable expectation of privacy;
- (5) interceptions of radio communications; and
- (6) interceptions of telephone communications.

D. If an interception requires written DOJ approval, verbal requests may be made by the bureau/office to the Director or Associate Director of the Office of Enforcement Operations, DOJ. Verbal requests must include all the information required for regular written requests. Such verbal requests should then be reduced to writing and submitted to the authorizing DOJ official as soon as possible after DOJ authorization has been obtained. During nonworking hours at the DOJ, verbal authorization for monitoring may be given by the Secretary, the Solicitor, or their designees. The authorizing agency official must then notify the Office of Enforcement Operations not later than 5 working days after the emergency authorization. The notification shall explain the emergency and shall contain the information required in paragraph 8.4B of this chapter.

8.6 Interceptions Where Department of Justice Oral Approval Is Sufficient.

A. In all cases not covered by paragraph 8.5A of this chapter, approval of requests to intercept verbal communication may be given by the bureau/office head or a designated high-ranking supervisory official at headquarters level. The requesting document must contain all items required to obtain authorization as set forth in paragraph 8.4B of this chapter, including the identity of the DOJ attorney granting the approval.

B. It is important that each request be received by the approving official, in sufficient time, prior to the intended monitoring, so that adequate time for considering the request and for notifying the requesting bureau/office of the appropriate decision is assured. It should be clearly understood that the use of consensual devices will not be authorized retrospectively.

C. If a request will not be received in sufficient time or exigent circumstances preclude requesting authorization in advance of the monitoring--such as the imminent loss of essential evidence or a threat to the immediate safety of an officer or informant--emergency monitoring may be verbally authorized by the head of the agency or his/her designee, who shall be a high-ranking supervisory official at headquarters level, if such official is satisfied that the specific conditions involved precluded the requesting party from making a written request for advance approval. The requesting party must submit a written notification to the official that authorized the monitoring not later than 5 days after the authorization is granted. The notification must state why advance authorization could not be obtained and must contain all the other items required to obtain authorization as set forth above in paragraph 8.4B of this chapter, including follow-up DOJ attorney authorization.

8.7 Telephone Conversations.

A. The monitoring of private conversations with the consent of one party to the conversation is permissible if one party to the conversation is a Federal law enforcement officer or one party is cooperating with a Federal law enforcement officer and has consented to the overhearing, transmitting, or recording of the conversation. The consent of all participants is not necessary. Additional policy and guidance regarding the listening-in or recording of telephone conversations is provided in 377 DM 1, "Telecommunications Management."

B. Bureaus/offices shall establish control procedures over monitoring of telephone conversations. Although the consent of all participants is not necessary, approval for such electronic surveillance or eavesdropping must be obtained from the bureau's Law Enforcement Administrator or other designated law enforcement officers in nonexigent circumstances.

C. In exigent circumstances precluding request for authorization in advance from designated law enforcement officials, an agent may institute emergency monitoring. The Law Enforcement Administrator or his/her designee shall be notified promptly of any such monitoring and of the specific conditions that precluded obtaining advance approval.

8.8 Security of Monitoring Devices.

A. The head of each investigative bureau/office shall be responsible for procuring and maintaining only the minimum number of monitoring devices that the bureau/office reasonably needs, to ensure compliance with this chapter. The equipment shall be stored, if feasible, in one central location or in a limited number of locations so as to facilitate administrative control.

B. An inventory shall be maintained on a current basis at each location where monitoring equipment is stored. All equipment must be accounted for at all times. When equipment is withdrawn from storage, a record shall be made as to time of withdrawal and of its

return to storage. By written reports, the law enforcement officer to whom the equipment is assigned shall account fully for the time he/she possessed the monitoring equipment and the uses he/she made of it. Equipment should be returned to storage when not in actual use except to the extent that returning the equipment would interfere with its proper utilization. Such records should be maintained in accordance with applicable records disposal schedules.

8.9 Reports.

A. Annual Reports. By October 15 of each year, the head of each bureau/office with investigative functions (those with statutory responsibilities in law enforcement) shall submit to the Assistant Secretary - Policy, Management and Budget, Attention: Office of Managing Risk and Public Safety (MRPS), an inventory of all of the bureau/office electronic, mechanical, or other devices which are intended for the surreptitious interception of telephone or verbal nonwire communications, including devices used to intercept communications pursuant to the warrant provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

B. Quarterly Reports. The head of each bureau/office must prepare quarterly reports summarizing the results of any interceptions authorized under this chapter during the quarter. The report must contain the following information broken down by offense or reason for interception:

- (1) The number of requests for authorization;
- (2) The number of emergency authorizations;
- (3) The number of times that the interceptions provided information which corroborated or assisted in corroborating the allegation or suspicion; and
- (4) The number of authorizations not used.

The quarterly reports must be submitted in January, April, July, and October of each year to the Director, MRPS. The MRPS will forward a Departmental report to the Office of Enforcement Operations in the Criminal Division, DOJ.

C. Exception. The Office of Inspector General submits the above quarterly and annual reports pertaining to its activities directly to the Office of Enforcement Operations, DOJ.

8.10 General Limitations. This chapter relates solely to the subject of consensual interception of verbal communications except where otherwise indicated. This chapter does not alter or supersede any current policies or directives relating to the subject of obtaining necessary approval for engaging in nonconsensual electronic surveillance or any other form of nonconsensual interception.

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