

Military Police

Interception of Wire and Oral Communications for Law Enforcement Purposes

**Headquarters
Department of the Army
Washington, DC
3 November 1986**

UNCLASSIFIED

SUMMARY of CHANGE

AR 190-53

Interception of Wire and Oral Communications for Law Enforcement Purposes

This Change 1 - -

- o Adds policy pertaining to Army law enforcement personnel authorized to monitor telephone conversations (para 1-4h).
- o Significantly changes the procedures governing interceptions of wire and oral communications (para 2-1a(2) (c)).
- o Adds procedures when the target of an interception abroad is a person not subject to UCMJ (para 2-2b(1)).
- o Significantly changes the procedures for pen register operations (para 3-2).
- o Changes annual and quarterly reports (paras 7-1b and 7-2).

Effective 3 December 1986

Military Police

Interception of Wire and Oral Communications for Law Enforcement Purposes

By Order of the Secretary of the Army:

JOHN A. WICKHAM, JR.
General, United States Army
Chief of Staff

Official:

R. L. DILWORTH
Brigadier General, United States Army
The Adjutant General

History. The original form of this regulation was first published on 1 November 1978. Since that time, interim changes I01 and I02 have been issued to amend the original. In this electronic version a Change 1 has been incorporated directly into the body of text. This change makes permanent many provisions originally initiated in the two interim changes, both of which have expired.

Summary. This regulation implements DOD Directive 5200.24. It provides legal and technical policy for Army law enforcement officials and legal officers. This regulation contains complex technical policies and procedures that may not be readily comprehensible to persons without

extensive legal training and experience. Questions concerning policies contained herein should be discussed with supervisory personnel and/or legal advisors.

Applicability. See paragraph 1–2.

Proponent and exception authority. Impact on New Manning System.

This regulation does not contain information that affects the New Manning System.

Army management control process.

This regulation is not subject to the requirements of AR 11–2. It does not contain internal control provisions.

Supplementation. Supplementation of this regulation is permitted, but not required. If supplements are issued, Army Staff agencies and major Army commands will furnish one copy of each supplement to HQDA (DAPE–HRE), WASH DC 20310; other commands will furnish one copy of each supplement to the next higher headquarters.

Interim changes. Users of this regulation will not implement interim changes unless the change document has been authenticated by The Adjutant General. (Interim changes expire 1 year after publication date.) If a formal printed change is not received by the time the

interim change expires, users will destroy the interim change.

Suggested improvements. The proponent agency of this regulation is the Office of The Deputy Chief of Staff for Personnel. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) direct to HQDA (DAPE–HRE–PO) WASH, DC 20310.

Changes.

Changes to the basic publication will not be indicated using the strikethrough and underscore method, and the tint method.

Distribution. Distribution of this issue has been made in accordance with DA Form 12–9A–R requirements for 190-series publications or as adjusted by the Publications Account Officer using the subscription card. AR 190–53 distribution is D for Active Army, D for ARNG, and A for USAR.

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*This regulation supersedes DAMI–DUI–C message 021847Z Aug 74, subj: Army Regulation 381–17, Wiretap, Investigative Monitoring and Eavesdrop Activities, as amended, (as the Department of Army policy for the Interception of wire and oral communications for law enforcement purposes) and DAMI–DOS message 142149Z Feb 77, subj: Requests for Approval to Trace Telephone Calls.

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Chapter 1 General

1-1. Purpose

This regulation provides Department of the Army (DA) 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.

1-2. Applicability and scope

a. The provisions of this regulation apply to all DA law enforcement activities. Army National Guard (ARNG) and US Reserve (USAR) law enforcement activities are subject to the provisions of this regulation only following mobilization or call to active Federal service. ARNG and USAR law enforcement activities are encouraged to comply with this regulation in the formulation of Standing Operating Procedures, unit policies, and the conduct of training to facilitate postmobilization employment.

b. This regulation does not affect Status of Forces or other specific agreements that may otherwise limit implementation of provisions in any particular geographical area abroad.

c. This regulation is not applicable to:

- (1) Signal Intelligence (SIGINT) activities (AR 381-3).
- (2) Administrative telephone monitoring and recording activities and command management monitoring activities (AR 105-23).
- (3) DA communication security activities (AR 380-53).
- (4) Monitoring telephone communications in DA Command and Control System (DACCS) Operations Centers (AR 525-1).
- (5) Interceptions arising from technical surveillance countermeasures surveys (AR 381-14).
- (6) Interceptions for foreign intelligence and counterintelligence purposes, except when the interception occurs during an investigation of criminal acts of espionage, sabotage, or treason conducted under the provisions of AR 381-20.
- (7) Recording of emergency telephone and/or radio communications at Military Police Operations desks (para 3-20; 3-21 and 3-22, AR 190-30).
- (8) Closed circuit video tape systems, to include those with an audio capability, employed for security purposes (para 3-23, AR 190-30).
- (9) The recording of interviews and interrogations by law enforcement personnel, providing the person being interviewed is on notice that the testimony or statement is being recorded (para 3-24, AR 190-30).

1-3. Definitions

The definitions of terms applicable to this regulation are as follows: See AR 190-45, Military Police Records and Forms; AR 195-2, Criminal Investigation Activities; and AR 310-25 for other applicable terms.

a. *Abroad.* Outside the United States. An interception takes place abroad when the interceptive 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 US District Court or the US 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 US District Court or a US 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 (including extensions) furnished to the subscriber or user by a communications common carrier or an Army leased, owned, or operated facility 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. See 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. See 18 U.S.C. 2510(4). The term "contents" includes any information concerning the identity of the parties of such communication or the existence, substance, purpose, or meaning of that communication. See 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 expectations. See 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 purpose of this regulation 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 regulation, the term “United States 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 or by an Army leased, owned, or operated facility in providing or operating such facilities for the transmission of interstate or foreign communications. See 18 U.S.C. 2510(1).

1-4. Policy

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

b. The only DA elements authorized to intercept wire and oral communications and conduct pen register operations under this regulation are the US Army Criminal Investigation Command (USACIDC) for investigations conducted under the provisions of AR 195-2; the US Army military police for investigations conducted under the provisions of AR 190-30; and the US Army Intelligence and Security Command and the 650th Military Intelligence Group for investigations of espionage, sabotage, and treason conducted under the provisions of AR 381-20.

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 paragraph 2-2a, this regulation, one of the following violations of the Uniform Code of Military Justice (UCMJ) has been, is being, or is about to be committed by a person subject to the UCMJ.

(a) 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.

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

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

(3) In the case of other interceptions abroad, conduct which would constitute one of the offenses listed in 18 USC 2516(1), if committed in the United States, has been, is being, or is about to be committed.

(a) An offense listed in 18 U.S.C. 2516(1).

(b) Fraud against the Government or any other offense dangerous to life, limb or property and punishable under Title 18 of the United States Code by death or confinement for more than 1 year.

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

e. Consensual interceptions of wire and oral communications shall be undertaken only when at least one of the parties to the conversation has consented to the interception and when the investigation involves:

(1) A criminal offense punishable, under the United States Code or UCMJ, by death or confinement for 1 year or more.

(2) A telephone call involving obscenity, harassment, extortion, bribery, bomb threat, or threat of bodily harm that has been made to a person authorized to use the telephone of a subscriber-user on an installation, building, or portion thereof, under DOD jurisdiction or control, and when the subscriber-user has also consented to the interception.

f. The prohibitions and restrictions of this regulation apply regardless of the official use or dissemination of the intercepted information. Any questions as to whether the use of a particular device may involve prohibited wire or oral interception shall be submitted with supporting facts through command channels to HQDA (DAPE-HRE) for resolution.

g. No otherwise privileged wire or oral communication intercepted in accordance with this regulation shall lose its privileged character.

h. Army law enforcement personnel are authorized to monitor telephone conversations, by use of an extension telephone instrument, with the consent of at least one party to the conversation, provided the monitoring is done solely for a valid law enforcement purpose. The fact that such monitoring occurred and a summary of the conversation should be included in the law enforcement report. Only those parts of the conversation dealing with the law enforcement purpose will be contained in the summary. Such monitoring is not considered an interception of wire or oral communication. Recordings of conversations under these circumstances, however, must comply with chapter 2 or AR 190–30, chapter 3, section VI.

1–5. Waivers

Waivers of the requirements enunciated in this regulation will be authorized on a case-by-case basis only when directed in writing by the Secretary of Defense. Waivers will be authorized only under the most limited circumstances and when consistent with applicable law. Request for waiver will be forwarded to HQDA (DAPE–HRE) for submission to OSD.

1–6. Responsibilities

a. In accordance with DOD Directive 5200.24, the DOD General Counsel or a single designee shall:

- (1) Determine whether to approve or deny Requests for Authorization to conduct nonconsensual interceptions.
- (2) Determine whether to seek Attorney General authorization for emergency nonconsensual interceptions.
- (3) In the absence of the Secretary of the Army, Under Secretary of the Army or the Army General Counsel determine whether to approve or deny Army requests to conduct consensual interceptions.
- (4) Provide overall policy guidance for the implementation of DOD Directive 5200.24.

b. In accordance with DOD Directive 5200.24, 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 ensure compliance with the provisions of DOD Directive 5200.24.

(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 appendix A and provide a copy of such reports to the DOD General Counsel.

(4) Receive those reports required by paragraph 7–1, this regulation, and provide a copy of such reports to the DOD General Counsel.

c. The Secretary of the Army, the Under Secretary of the Army, or the Army General Counsel shall:

(1) Ensure compliance with the policies and procedures set forth or referenced in DOD Directive 5200.24.

(2) Approve or deny requests to conduct consensual interceptions and pen register operations. This approval authority shall not be further delegated.

(3) Review requests for nonconsensual interception of wire or oral communications, prior to forwarding them to ASD(C).

d. The Deputy Chief of Staff for Personnel (DCSPER), HQDA, (DAPE–HRE), shall:

(1) Promulgate DA policy for activities conducted under this regulation and DOD Directive 5200.24.

(2) Have General Staff responsibility for interception activities conducted under the provisions of this regulation, except for those interceptions related to criminal acts of espionage, sabotage, and treason.

e. The Assistant Chief of Staff for Intelligence (ACSI), HQDA (DAMI–CI) has General Staff responsibility for interceptions conducted under the provisions of this regulation related to criminal acts of espionage, sabotage, and treason and is also designated as the HQDA point of contact to advise the DOD General Counsel and the ASD(C) of:

(1) Interception activities and related applications covered by this regulation.

(2) Compilation and forwarding of reports and other submissions to the ASD(C) as required by paragraph 7–1, this regulation.

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

f. The Judge Advocate General (TJAG), HQDA, shall assign military judges, certified in accordance with the provisions of Article 26(b) of the UCMJ to receive applications to conduct pen register operations and to issue orders authorizing such operations in accordance with paragraph 3–2, this regulation. 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 UCMJ. OTJAG shall, in the case of interceptions governed by 18 USC 2510–20

for which a court order has been obtained, advise the Army investigative or law enforcement official in charge of the operation on the requirements of 18 USC 2510–20 and review the compliance with such requirements.

Chapter 2

Procedures Governing Interceptions of Wire and Oral Communications

2–1. Nonconsensual interception in the United States

When an interception is deemed necessary for a criminal investigation, the following procedures are applicable:

a. The requesting major Army command (MACOM), shall prepare and forward a “Request for Authorization” to HQDA(DAPE–HRE). Requests for interceptions related to criminal acts of espionage, sabotage or treason will be sent to HQDA(DAMI–CI). Requests from the CG, USACIDC may be sent directly to the Army General Counsel with an information copy of the request provided HQDA(DAPE–HRE). 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 MACOM 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:
 - (a) The particular offense that has been, is being, or is about to be committed.
 - (b) A description of the type of communication sought to be intercepted with a statement of the relevance of that communication to the investigation.
 - (c) A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted.
 - (d) The identity of the person, if known, committing the offense and whose communications are to be intercepted.
- (3) A statement as to whether other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.
- (4) An identification of the type of equipment to be used to make the interception.
- (5) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the interception will not terminate automatically when the described type of communication has been first obtained, a description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.
- (6) The procedures to minimize the acquisition, retention, and dissemination of information unrelated to the purpose of the interception.
- (7) A complete statement of the facts concerning each previous application for approval of interceptions of wire or oral communications known to the applicant and involving any of the same persons, facilities or places specified in the application and the action taken thereon.
- (8) When the application is for an extension of an order, a statement setting forth the results thus far obtained from the interception, or an explanation of the failure to obtain such results.

b. Except for those requests submitted directly to the Army General Counsel from the CG, USACIDC; the ODCSPER or ACSI, HQDA, as appropriate, will receive and process requests to the Army General Counsel who will review all requests prior to forwarding them to the ASD(C). An information copy of all Request for Authorization, sent to the Army General Counsel, will be provided OTJAG (DAJA–CL). The Army General Counsel will ensure compliance with the requirements of paragraph 1–4*d*, this regulation, and all applicable laws. Approval or disapproval of all Requests for Authorization will be made in writing by the DOD General Counsel, or a single designee, based on the standards set forth in paragraph 1–4*d*, this regulation, and all applicable laws. An information copy of the written approval or disapproval will be provided OTJAG (DAJA–CL).

c. If the request is approved by the DOD General Counsel, the official making the request or a designated representative will coordinate directly with an attorney from the Department of Justice or from a U.S. Attorney’s office for preparation of documents necessary to obtain a court order in accordance with 18 U.S.C. 2518. These documents will be forwarded by the Department of Justice (DOJ) attorney to the Attorney General, or to the designated Assistant Attorney General, for approval in accordance with 18 U.S.C. 2516. Initial contact with the attorney from DOJ or from the U.S. Attorney’s office may be made while the request is being processed to the DOD General Counsel. In appropriate cases, the Army General Counsel may alert the Attorney General, or the designated Assistant Attorney General, or forthcoming interception requests while such requests are being processed.

d. Upon approval by the Attorney General, or the designated Assistant Attorney General, formal application for a court order will be made by the appropriate attorney from the Department of Justice, assisted, if required, by an appropriate military lawyer.

e. Upon receipt of a court order and initiation of the interception operation in accordance with the term of the court order, the MACOM investigative or law enforcement official in charge of the operation shall consult with

HQDA(DAJA-CL) for advice on the requirements of 18 U.S.C. 2510–20, and shall provide such information to that office as is needed to demonstrate compliance.

2–2. Nonconsensual interceptions abroad

Unless otherwise authorized by direction of the President or the Attorney General, the following procedures are applicable to interceptions for law enforcement purposes when the interception takes place abroad and when an Army element, or members thereof, conduct or participate in the interception; or when the interception takes place abroad, is targeted against a United States person, and is conducted pursuant to a request by an Army element.

a. When the target of the interception is a person subject to the UCMJ:

(1) The Request for Authorization shall include the information required by paragraph 2–1*a* of this regulation, and shall be forwarded by the requesting MACOM, installation or activity in the same manner as for consensual interceptions in the United States. Approval or disapproval of all Requests for Authorization shall be made in writing by the DOD General Counsel, or a single designee, based on the standards set forth in paragraph 1–4*d*, this regulation, and all applicable legal requirements.

(2) Upon written approval of the DOD General Counsel, the DA investigative or law enforcement officer of the MACOM making the request or a designated representative shall prepare a formal application for a court order in accordance with the procedure of 18 U.S.C. 2518(1). The application shall be submitted to a military judge assigned to consider such applications pursuant to paragraph 1–6*f*, this regulation.

(3) Only military judges assigned by the Judge Advocate General of the Army to receive applications for intercept authorization orders shall have the authority to issue such orders. The authority of military judges to issue intercept authorization orders shall be limited to interceptions conducted abroad and targeted against persons subject to the UCMJ.

(*a*) A military judge shall be ineligible to issue an order authorizing an interception if, at the time of application, the judge is involved in any investigation under Article 32 of the UCMJ; is engaged in any other investigative or prosecutorial function in connection with any case; or if the judge has previously been involved in any investigative or prosecutorial activities in connection with the case for which the intercept authorization order is sought.

(*b*) No military judge who has issued an order authorizing interceptions may act as the accuser, be a witness for the prosecution, or participate in any investigative or prosecutorial activities in the case for which an order was issued. A military judge who has issued an order authorizing interceptions is not qualified from presiding over the trial in the same case.

(*c*) A military judge otherwise qualified under paragraphs 2–2*a*(3)(*a*) and (6) of this regulation shall not be disqualified from issuing orders authorizing interceptions because the judge is a member for a Service different from that of the target of the interception or from that of the investigative or law enforcement officers applying for the order.

(4) The military judge may enter an *ex parte* order, as requested or as modified, authorizing or approving an interception of wire or oral communications if the judge determines on the basis of the facts submitted by the applicant that:

(*a*) There is probable cause to believe that a person subject to the UCMJ is committing, has committed, or is about to commit a particular offense enumerated in paragraph 1–4*d*(2), of this regulation.

(*b*) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.

(*c*) There is probable cause to believe that particular communications concerning that offense will be obtained through such interception.

(*d*) There is probable cause to believe that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(*e*) The interception will not violate the relevant Status of Forces Agreement or the applicable domestic law of the host nation.

(5) Each order authorizing an interception shall specify:

(*a*) The identity of the person, if known, whose communications are to be intercepted.

(*b*) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.

(*c*) A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates.

(*d*) The identity of the agency authorized to intercept the communications, and of the person authorizing the application.

(*e*) The period of time during which such interception is authorized, including a statement as to whether the interception shall terminate automatically when the described communication has been first obtained.

(6) Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not

otherwise subject to interception under this regulation, and shall be terminated upon attainment of the authorized objective.

(7) No order entered by a military judge may authorize an interception for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 60 days. Extensions of an order may be granted, but only upon application for an extension made in accordance with the procedures of 18 U.S.C. 2518(1), and after the military judge makes the findings required by paragraph 2-2a(4) above. The period of extension shall be no longer than is necessary to achieve the purpose for which it was granted and in no event for longer than 60 days. Applications for extensions must be forwarded through channels in the same manner as prescribed for original applications.

(8) The contents of communications intercepted pursuant to an order issued by a military judge shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of such communications shall be done in such a way as will protect the recording from editing or other alterations. Custody of recording shall be maintained in accordance with AR 195-5, Evidence Procedures. Recordings shall not be destroyed, except pursuant to paragraph 6-4, this regulation.

(9) The contents of a communication intercepted abroad, or evidence derived therefrom, is inadmissible in any court-martial proceeding, in any proceeding under Article 15 of the UCMJ, or in any other proceeding if the:

(a) Communication was intercepted in violation of this regulation or applicable law.

(b) Order of authorization under which it was intercepted is insufficient on its face.

(c) Interception was not made in conformity with the order of authorization.

b. When the target of an interception conducted abroad is a person who is not subject to the UCMJ:

(1) The Request for Authorization shall be prepared and forwarded for approval in accordance with the procedures in paragraphs 2-1a and b. The request may if appropriate, recommend that a judicial warrant be sought from a court of competent jurisdiction and will indicate sufficient facts to establish—

(a) Probable cause or belief that particular communications concerning the offense will be obtained through interception of wire or oral communications.

(b) Probable cause or belief that the facilities from which or the place where the wire or oral communications are to be intercepted are being used, or are about to be used in connection with the offense, or are leased to, listed in the name of, or commonly used by the target of the proposed interception.

(c) Whether normal investigative procedures have been tried and have failed, or they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

(2) The DOD General Counsel shall determine whether to approve the request, using the standards set forth in paragraph 1-4d. If the request is approved, the procedures set forth in paragraphs 2-1c through e will be followed to obtain an approved court order.

2-3. Emergency nonconsensual interceptions in the United States and abroad

If, in the judgment of the Secretary of the Army, the Under Secretary of the Army, or the Army General Counsel the emergency need for a nonconsensual interception precludes obtaining the advance written approval and court order required by paragraphs 2-1 and 2-2, they shall notify the DOD General Counsel who shall determine whether to seek the authorization of the Attorney General for an emergency nonconsensual interception in accordance with the procedures of 18 U.S.C. 2518(7).

2-4. Time limits for nonconsensual interceptions

Nonconsensual interceptions within the United States may be approved for a period not to exceed 30 days. Nonconsensual interceptions outside the United States may be approved for a period not to exceed 60 days. Renewal requests for specified periods of not more than 30 days each (60 days for interceptions outside the United States), shall be submitted to the approving authority for consideration in the same manner as prescribed for original applications. The interception in all instances shall be terminated as soon as the desired information is obtained, or when the interception proves to be nonproductive.

2-5. Consensual interceptions

a. The following procedures are applicable to all consensual interceptions of oral or wire communications:

(1) When one of the parties to the conversation consents to an intended interception of a communication, the MACOM investigative or law enforcement official shall prepare a request as prescribed for nonconsensual interceptions, except containing only the following information:

(a) A description of the facts and circumstances requiring the intended interception, the means by which it would be conducted, the place in which it would be conducted, and its expected duration.

(b) The names of all the persons whose conversations are expected to be intercepted and their roles in the crime being investigated. When the name of the nonconsenting party or parties is not known at the time the request is made, the official making the request shall supply such information within 30 days after termination of the interception. If such information is not known at the end of this period, it shall be supplied whenever it is later discovered.

(c) A statement that in the judgment of the person making the request the interception is warranted in the interest of effective law enforcement.

(2) An application for a court interception order or a court interception order is not necessary in this situation. Written approval of the request shall be made by the Secretary of the Army, the Under Secretary of the Army, the Army General Counsel or, in their absence, the DOD General Counsel or a single designee. This approval authority shall not be further delegated. Approval will be based on the standards set forth in paragraph 1-4e, this regulation, and all applicable legal requirements.

(3) The Army General Counsel is the official designated by the Secretary of the Army to act upon telephonic requests when emergency needs preclude advance written approval. A written record of such requests shall be submitted within 48 hours of the approval in the form of a request as prescribed in paragraph 2-5a(1), above. During normal duty hours call AUTOVON 227-4348 or 227-8029. After normal duty hours representatives of the Army General Counsel may be contacted through the Army Operations Center at AUTOVON 227-0218 or 227-0219.

b. The following restrictions are applicable to all consensual interceptions of oral or wire communications.

(1) Within the United States, approval shall be granted for a period of no more than 30 days. Abroad, approval may be granted for 60 days. Renewal requests for specified periods of not more than 30 days each (60 days for interception outside the United States) shall be submitted to the approving authority for consideration and shall be processed in the same manner as original applications. The interception in all instances shall be terminated as soon as the desired information is obtained, or when the interception proves to be nonproductive.

(2) The authorization for consensual interception of communications shall define clearly the manner in which the interception is to be accomplished. A "consensual interception" shall not involve the installation of equipment in violation of the constitutionality protected rights of any nonconsenting person whose communications will be intercepted.

c. Requests for consensual interceptions shall be submitted only under the conditions prescribed in paragraph 1-4e this regulation.

d. When a non-DOD agency wishes to use Army civilians or military personnel as a consenting party for an intended interception of a communication, prior notice will be provided to the Office of Army General Counsel who will provide further guidance.

Chapter 3

Procedures Governing the Use of Pen Registers and Similar Devices or Techniques

3-1. General

The procedures of this chapter apply the use of pen registers, touch-tone telephone decoders, and similar devices.

3-2. Approval

Pen register operations are approved by the same authorities and in the same manner, subject to the same restrictions, as consensual interceptions under the provisions of paragraph 2-5. A pen register operation will not be authorized if it would violate the relevant Status of Forces Agreement or the applicable domestic law of the host nation. The request for approval to conduct a pen register operation will include the following information:

a. The identity of the MACOM, installation, or activity investigative, or law enforcement officer making the application.

b. A complete statement of the facts and circumstances that support the applicant's belief that there is probable cause to believe that the operation will produce evidence of a crime. The statement should include a description of the offense involved, a description of the nature and location of the facilities from which the intercepted information originates, and the identity of the person, if known, who has committed, is about to commit, or is committing the offense and who is the target of the operation.

c. A statement of the period of time for which the operation is required to be maintained.

d. The statement that, in judgement of the person making the request, the operation is warranted in the interest of effective law enforcement.

3-3. Pen register operations which include nonconsensual interceptions of wire communications

When an operation under this section is to be conducted in conjunction with a nonconsensual interception of a wire communication under paragraph 2-1, the procedure of paragraph 2-1 will apply to the entire operation.

Chapter 4

Procedures Governing Telephone Tracing

4-1. General

When prior consent of one or more parties to a telephone tracing operation has been obtained, the use of telephone tracing equipment and techniques shall be authorized only after coordination with appropriate judge advocate personnel or other component legal counsel.

4-2. Tracing approval

The local military facility commander or CDR, USACIDC may approve consensual telephone tracing operations on military facilities. For use outside military jurisdiction, the local military commanders or CDR, USACIDC, in coordination with judge advocate personnel, shall coordinate with local civilian or host country authorities when appropriate. In all cases, tracing operations will be conducted in coordination with, and with the assistance of, the installation communications and electronics (C & E) element. Additionally, USACIDC personnel will not conduct or participate in telephone tracing operations without the prior consent of the appropriate USACIDC Region Commander.

Chapter 5

Interception Equipment

5-1. Control of interception equipment

a. The only DA activities authorized to procure or maintain equipment primarily useful for the interception of wire and oral communications described in this regulation are the U.S. Army Criminal Investigation Command (USACIDC); U.S. Army Intelligence and Security Command (INSCOM); Provost Marshals of MACOMs and subordinate commands during the conduct of interception operations upon prior approval of HQDA (DAPE-HRE); 650th Military Intelligence Group; Intelligence Materiel Development and Support Office (IMDSO) of the U.S. Army Materiel Development and Readiness Command (DARCOM); and the U.S. Army Military Police School and the U.S. Army Intelligence School, which may acquire, possess, or use such equipment for training purposes only. Such equipment, considered technical listening equipment (TLE), as defined in AR 381-143, Logistic Policies and Procedures, consists of devices and items of equipment designed primarily or used for wiretap, investigative monitoring or eavesdrop activities. This equipment does not include items such as common tape or video recorders; equipment normally available to telephone/signal facilities or activities; or other equipment not primarily designed or used for the interception of wire or oral communications. Items of equipment with an interception capability permanently installed as part of an Army leased, owned, or operated telephone/signal facility are exempted from the controls of this chapter and the reports required by chapter 7; however, their use to intercept wire or oral communications for law enforcement purposes shall be as prescribed by this regulation. The DA activities identified above shall establish control to ensure that only the minimum quantity of interception equipment (TLE) required to accomplish assigned missions is procured and retained in inventories. TLE may be acquired under the provisions of AR 381-143. Telecommunications requirements should be submitted under the provisions of AR 105-22.

b. Interception equipment (TLE) shall be safeguarded to prevent unauthorized access or use, with appropriate inventory records to account for all equipment at all times. Storage shall be centralized to the maximum extent possible consistent with operational requirements. When equipment is withdrawn from storage a record shall be made as to the times of withdrawal and of its return to storage. 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. The individual to whom the equipment is assigned shall account fully, in a written report, for the use made of the equipment during the time it was removed from storage. Copies of the completed inventories of equipment, the times of withdrawal and return, and the written reports of the agents specifying the uses made of the equipment shall be retained for at least 10 years.

5-2. Disposal of interception equipment

a. Federal law prohibits the sale or possession of any device by any person who knows or has reason to know that "the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire or oral communications" Accordingly, disposal outside the Government of such interception equipment is prohibited.

b. If there is any question as to what purpose an item of equipment is primarily useful for, then the officials involved should, in the exercise of due caution, prohibit its sale pending referral to the DOD General Counsel for a determination as to the proper classification of such devices under the law.

Chapter 6

Records Administration

6-1. General

All recordings and records of information obtained through interception activities conducted under the provisions of this regulation shall be safeguarded to preclude unauthorized access, theft, or use. Both the interest of the Government and the rights of private individuals involved shall be considered in the development of safeguarding procedures. Storage and access requirements for applications, orders, recordings, and other records of information obtained through interception activities will be as prescribed in AR 190-45; AR 195-2; AR 195-6; AR 340-17; AR 340-21; AR 381-20 and the AR 340-18 series of regulations.

6-2. Indexing

An index of interceptions (to include those made without proper authority) and a separate index of denied interception applications will be maintained by USACIDC for investigations conducted under the provisions of AR 195-2; by ODCSPER, HQDA for investigations conducted under the provisions of AR 190-30; and by OACSI, HQDA for investigations of criminal acts of espionage, sabotage, and treason conducted under the provisions of AR 381-20. These indices will exclude pen register operations conducted or requested in accordance with chapter 3, and telephone tracing operations conducted or requested in accordance with chapter 4, this regulation. These indices will be maintained as follows:

a. Interceptions. The records of consensual and nonconsensual interceptions shall be prepared and maintained to provide for centralized, readily accessible records or indices that include the following:

(1) Names, citizenship, and other available identifying data for each reasonably identifiable person intercepted (intentionally or otherwise), whether a case subject or not. If available, the social security number and the date and place of birth of the individuals intercepted and identified.

(2) The telephone numbers or radio telephone call signs involved in the interception.

(3) The case number or other identifier for the interception or the investigation concerned.

(4) The address of the location of the interception.

(5) The inclusive dates of the interception.

b. Denied interception applications. Records of all applications submitted to and disapproved by a Federal or military judge for authorization to conduct a nonconsensual interception of a wire or oral communication shall be prepared and maintained in a separate, centralized index which shall include the following information:

(1) Names and other available identifying data for each reasonably identifiable target of the interception applied for.

(2) The telephone numbers or radio telephone call signs involved in the application.

(3) The address of the location of the interception applied for.

(4) The case number or other identifier for the application.

(5) A statement of the other facts concerning the application and the reason that the application was refused.

6-3. Dissemination controls

a. The indices and records maintained pursuant to paragraph 6-2*b*, above shall be used only as required to satisfy the requirements of 18 U.S.C. 2518(1) (e); paragraphs 2-1*a*(7); 2-2*a*(1) and (2) (statement of prior applications) and paragraphs 7-1 and 7-2 (reports) of this regulation.

b. In all cases access to information obtained by interception activities conducted under the provisions of this regulation shall be restricted to those individuals having a defined need-to-know clearly related to the performance of their duties.

c. The information may be disseminated outside the Department of Defense only when:

(1) Required for the purposes described in 18 U.S.C. 2517.

(2) Required by law (including the Privacy Act of 1974, as amended, and the Freedom of Information Act of 1967, as amended), or order of a Federal court.

(3) Requested by a committee of the Congress and approved for release by the DOD General Counsel.

(4) Required by the provisions of Status of Forces or other international agreements.

d. Dissemination of the information described above shall be controlled in accordance with AR 190-45; AR 195-2; AR 340-17; AR 340-21; and AR 381-20, as appropriate. Procedures shall, in all circumstances, include sufficient records to provide an accurate audit trail reflecting dissemination of this information.

6-4. Retention and disposition of records

Notwithstanding the provisions of paragraph 6-1, records and recordings of interceptions shall be retained for at least 10 years after termination of the interception prior to disposal in accordance with appropriate records retirement

procedures. Additionally, if the interception was conducted in the United States under the provisions of 18 U.S.C. 2516, the records may be destroyed only pursuant to an order of the court involved.

Chapter 7

Reports

7-1. Reports to Office of the Secretary of Defense (OSD)

The ACSI, as the designee of the Secretary of the Army for submitting reports of activities conducted under this regulation, shall submit the following reports to the ASD(C):

a. Quarterly. For the quarters ending in March, June, September, and December, to be received by the 15th day of each following month, a report of all interceptions of wire and oral communications, pen register operations, and unsuccessful applications for nonconsensual interceptions conducted by the Army in the United States and abroad. This report shall include the information listed in appendix A. This report has been assigned Requirement Control Symbol DD-COMP(Q) 795.

b. Annually. By October 15, a complete inventory of all devices in the Army that are primarily useful for interception of wire or oral communications or for operations covered by chapter 3, this regulation. This report shall include a statement that the amount of equipment is being maintained at the lowest level consistent with operational requirements. This report shall be in the format provided in appendix B. This report has been assigned Interagency Requirement Control Number 1401-DOJ-AN.

7-2. Reports to Headquarters, Department of the Army (HQDA)

USACIDC, 650th Military Intelligence Group, INSCOM, and ODCSPER (DAPE-HRE) will provide OACSI, HQDA (DAMI-CIC), a quarterly report as prescribed in paragraph 7-1a not later than the 8th day of the month following the quarter indicated. The DA activities identified in paragraph 5-1a will provide to the Intelligence Materiel Development and Support Office (IMDSO), ATTN: DELEW-I-PM, an annual report as prescribed in paragraph 7-1b not later than 5 October. IMDSO will forward a consolidated report to HQDA (DAMI-CIC) by 10 October.

Appendix A

Information To Be Included in Reports of Interceptions and Pen Register Operations (RCS DD-COMP(Q) 795)

A-1. Consensual interceptions

- a.* Identity of activity/organization making this report.
- b.* Indicate whether the report is a wire or oral interception operation and whether the interception included the use of a pen register. (If more than one operation is authorized, a separate entry should be made for each).
- c.* Purpose of objective of operation. Specify offense being investigated and include a brief synopsis of the case.
- d.* Investigative case number of identifier for the operation.
- e.* Location of the operation.
- f.* Type of equipment used and method of installation.
- g.* Identity of the performing organizational unit. (Indicate if the interception was conducted for a military service other than the Army or for a non-DOD activity.)
- h.* Identity of Army investigation or law enforcement officer who requested or applied for the interception.
- i.* Approval authority and date of approval.
- j.* Length and dates for which operation was approved.
- k.* Actual date operation was initiated, and date terminated.
- l.* If operation was extended, state name of authority approving extension and dates to which extended.
- m.* State where tapes, transcripts, and notes are stored.
- n.* Evaluation of results of operation, including the use made of the information in subsequent investigation or prosecution.
- o.* The names and positions of persons authorized to approve consensual interceptions, including those persons authorized to approve emergency, telephonic requests.
- p.* Indicate whether the interception took place in the United States or abroad.

A-2. Nonconsensual interceptions in the United States

In addition to items *a—n* in paragraph A-1, above, add the following:

- a.* Identity of court and judge who issued the interception authorization order and date of order.
- b.* Nature and frequency of incriminating communications intercepted (specify dates and approximate duration of each communication).
- c.* Nature and frequency of other communications intercepted.
- d.* Number of persons whose communications were intercepted. Indicate number of United States persons known to have been intercepted and whether such persons were targets or incidentals.

A-3. Nonconsensual interceptions abroad

In addition to items *a—d* in paragraph A-2, above, add the following:

- a.* Number of persons located in the United States whose communications were intercepted.
- b.* In the report for the last quarter of each calendar year, include:
 - (1) The number of arrests (apprehensions) and trials resulting from each interception conducted during the year. Indicate the offense for each interception.
 - (2) The number of convictions resulting from the interceptions conducted during the year and the offenses for which convictions were obtained.

A-4. Pen register operations

Pen register operations conducted in conjunction with nonconsensual interceptions should be included in paragraph A-1 and A-2, above. For all other pen register operations include items *a—o* in paragraph A-1; items *a—d* in paragraph A-2, and indicate whether the operation was conducted in the United States or abroad.

A-5. Unsuccessful applications for nonconsensual interception authorization orders

(Only applications rejected by HQDA or higher authority need be reported.)

- a.* Identity of applying organizational unit. (Indicate if the application was on behalf of a military service other than the Army or on behalf of a non-DOD activity.)
- b.* Investigate case number or identifier for the application.
- c.* Identity of applying Army investigative or law enforcement officer.
- d.* Approval authority and date or approval of DOD request.
- e.* Identity of judge who denied the application and date of denial.
- f.* Offense specified in the application.
- g.* Whether the application was for a wire or oral intercepted order, and whether the application was for an interception in the United States or abroad.
- h.* Purpose or object of the interception applied for. Include a brief synopsis of the case.
- i.* If the application was for an extension, indicate the dates, duration and results of the previous interception.
- j.* Specific location of the interception applied for.
- k.* Number of United States persons named as targets in the application.
- l.* Reasons why the application was denied.

Appendix B

Wire and Oral Interception Apparatus and Devices Annual Inventory for Year Ending 30 October (IRCN 1401-DOJ-AN)

Identification of Reporting Component/Activity/Organization

Location of Devices (Show amounts in each area.)
(Applies to Part 1 only.)

Part Two: APPARATUS AND DEVICES DISPOSED OF DURING YEAR

Part Three: APPARATUS AND DEVICES ACQUIRED DURING THE

Part Four: (NARRATIVE): RESULTS OF THE USE OF DEVICES

A. A. Brief summary of types of cases for which used (such as drug abuse,

1. For interceptions of wire communications.

2. For interceptions of oral communications.

B. General statement as to value of the equipment in areas such as evidence

Figure B-1. Sample format of a Wire and Oral Interception Apparatus and Devices Annual Inventory sheet

B-1. Not Used

B-2. Not Used

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