



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

ORDER

AUG 27 2003

1600.17C

**Subject: USE OF ELECTRONIC RECORDING OR MONITORING EQUIPMENT
WITHIN THE U.S. DEPARTMENT OF TRANSPORTATION**

1. PURPOSE.

- a. This order prescribes the policy of the U.S. Department of Transportation (DOT) with regard to the use of equipment to listen to, record, or monitor conversations. Additionally it prescribes guidance pertaining to video monitoring and recording practices by DOT personnel conducting security operations or investigations. It also restricts the use of electronic devices to surreptitiously obtain data from information processing systems.
- b. Nothing in this order applies to the Office of the Inspector General (OIG) during the conduct of investigations as authorized by Federal laws. Further, nothing in this order shall be construed to impede, reduce, or eliminate any lawful rights of a person with a disability to use an assistive device, including, but not limited to, a teletypewriter or tape recorder, for his or her personal use.

2. CANCELLATION. DOT Order 1600.17B, dated September 21, 1990, Use of Recording or Monitoring Equipment, Practices, and the Listening-In or Recording of Telephone Conversations.

3. REFERENCES.

- a. Title 18, United States Code (U.S.C.)
- b. DOT Order 8000.8, January 9, 2001, Office of Inspector General Investigative Responsibilities.
- c. DOT Order 1600.26A, U.S. Department of Transportation Physical Security Program.
- d. DOT Order 1350.2, Departmental Information Resource Management Manual (DIRMM).

4. DEFINITIONS.

- a. Closed Circuit Television (CCTV) equipment. Video cameras, monitors, recorders, processors and other related equipment often connected together in a closed circuit by means of wire, fiber optic cables, or user-dedicated wireless networks.
- b. Determination. A written justification that specifies the need for conducting an operation that will involve the use of technologies to electronically monitor activities. A determination may be signed by the head or designee of the head of an Operating

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Administration (OA), or the head or designee of the head of the Bureau of Transportation Statistics (BTS). These officials may only approve determinations for their respective organizations. The Assistant Secretary for Administration is the approving authority for all other DOT elements.

- c. DOT contractor employees. Those persons hired by a contractor as an employee or subcontractor to perform tasks under a DOT contract. This term includes any consultant to DOT who is not actually a Federal employee.
- d. DOT employees. Those persons employed by DOT.
- e. Federal Government law enforcement agencies and organizations. Those organizations that are authorized by Federal statute to execute search warrants, make arrests, and carry firearms.
- f. Pen register. A device that records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include: (1) any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider, or (2) any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.
- g. Service monitoring. The monitoring of telephone conversations by supervisors to determine the quality of service being provided to the public.
- h. Telephone listening-in devices. Devices that can intercept telephone communications and can be used to listen-in to or record telephone conversations.
- i. Trap and trace device. A device that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

5. POLICY.

- a. DOT employees and DOT contractor employees, in the conduct of their Departmental duties, shall not engage in, attempt to influence any person to engage in, or acquiesce in the clandestine, surreptitious, or other covert use of audio, video, or other electronic recording or monitoring devices or practices, except as provided for in this order.
- b. DOT employees and DOT contractor employees, in the conduct of their official duties, have no explicit or implicit expectation of privacy while operating non-secure Government communications equipment. By using Government communications equipment the user consents to listening-in, monitoring, or recording of activities on said equipment by DOT employees pursuant to the policies established by this order.

- c. Nothing in this order is meant to apply to the conduct of approved video conferences, nor to restrict any DOT element from performing activities necessary to ensure the integrity of DOT's Information Technology (IT) networking infrastructure or computer systems. Monitoring of DOT IT systems is addressed in the Departmental Information Resource Management Manual, Chapter, 10, Information Technology Security Program.
- d. Recordings by DOT employees or contractors shall not be used by outside entities without the approval of the authority specified in paragraph 4b.

6. REQUIREMENTS.

a. Telephone monitoring and recording.

(1) Criteria. DOT employees and DOT contractor employees may listen-in to or record telephone conversations under only the following conditions.

- (a) Law enforcement/national security. When performed for law enforcement activities pursuant to DOT Order 8000.8, foreign intelligence, counterintelligence or communications security purposes when determined necessary by an official authorized to make the determination, following concurrence by the DOT General Counsel. Such determinations shall be in writing and shall be made in accordance with applicable laws, regulations and Executive Orders governing such activities. Communications security monitoring shall be conducted in accordance with procedures approved by the Attorney General.
- (b) Public safety. When performed for public safety purposes and when documented by a written determination by an official authorized to make the determination, following concurrence by the DOT General Counsel. The determination shall describe the public safety need, shall identify the segment of the public requiring protection, and shall cite examples of the possible harm from which the public requires protection.
- (c) Public service monitoring. When performed by an employee after the official authorized to make the determination states in writing that monitoring of such conversations is necessary for the purpose of measuring or monitoring DOT's performance in the delivery of service to the public; or improving the integrity, quality and utility of service provided to the public. Such monitoring will occur only on telephone lines used by DOT employees or DOT contractor employees to provide DOT-related information and service to the public.
- (d) All-party notification. When performed by an employee after informing all parties for a specific instance. This type of monitoring or recording includes telephone conferences, secretarial recordings and other administrative practices. Determinations are not required for these kinds of recordings.

(2) Procedures. DOT organizations and offices that plan to listen-in to or record telephone conversations under paragraph 6a(1)(a), (b), or (c) shall comply with the

following procedures:

(a) Prepare a written determination.

- 1 The organization or office shall prepare a written determination at least 30 days before the planned operational date, whenever feasible. The appropriate approving authority specified in paragraph 4b must sign the determination and provide the following information:
 - the operational need for listening-in to or recording telephone conversations;
 - the telephone lines and locations where the operation is to be performed;
 - the position titles of the DOT or contractor employees involved in the operation;
 - the general operating times and an expiration date for the operation;
 - the name and phone number of the responsible official in the DOT organization requesting authority to listen-in to or record telephone conversations;
 - a copy of any analysis, determination, policy or procedure that supports the application;
- 2 The determination must also provide specific information on the need for recording or monitoring for public safety or public service monitoring purposes as follows:
 - When the request involves listening-in to or recording telephone conversations for public safety purposes, the requesting DOT organization head or designee must identify the segment of the public needing protection and cite examples of the possible harm from which the public requires protection. Examples of these practices are police and fire department operations, air traffic control, and air/sea rescue operations.
 - When the request involves listening-in to or recording telephone conversations for public service monitoring purposes, the requesting DOT organization head or designee must provide a statement in writing explaining why such monitoring is necessary for measuring or monitoring the performance in the delivery of the DOT service to the public.
- 3 When compliance with (a)1, above, is not feasible, the required written determination shall be prepared as promptly as possible.

(b) Re-certification for recording or monitoring activities. At least every 2 years, a review shall be conducted for each determination authorizing listening-in or recording of telephone activities. DOT organizations involved in the conduct of listening-in or recording activities must submit documentation as described in paragraph 6a(2)(a) to the Secretary or his/her designee to continue telephone

monitoring activities. The responsible official of the DOT organization conducting the listening-in or recording of telephone conversations will immediately notify the Secretary or his/her designee in writing when the operation is terminated.

- (c) Public safety monitoring. DOT offices will comply with the following additional controls and procedures when recordings are associated with public safety monitoring:

- 1 An oral notification of the recording shall be included at the beginning and as a part of the call by the recording party; or the automatic superimposing of a distinct signal (e.g., beep tone) at regular intervals during the conversation.
- 2 Recordings and records shall be used, safeguarded and destroyed in accordance with DOT Order 1350.2.

- (d) Public service monitoring. DOT offices will comply with the following additional controls and procedures when the listening-in or recording is associated with public service monitoring:

- 1 Personnel who monitor or listen-in on telephone conversations shall be designated in writing by the head of the supervisory office.
- 2 The offices will provide a message on affected telephone lines that will inform callers that calls on those lines may be monitored or recorded for quality assurance purposes.
- 3 The offices shall take continuous, positive action (notices, pamphlets, periodic education, etc.) to inform callers of the monitoring.
- 4 Telephone instruments that are subject to being monitored shall be conspicuously labeled with a statement to that effect.
- 5 The number of calls to be monitored shall be kept to the minimum necessary to achieve the intended purpose.
- 6 Recordings and records pertaining to the listening-in to or recording of any conversations covered by this subpart shall be used, safeguarded and destroyed in accordance with the DOT records management program.

- (e) Determinations are not required for automatic message receiving machines/features used to receive incoming calls, provided that they do not fall under the requirements of paragraph 6a(1)(b) or paragraph 6a(1)(c).

- b. Non-telephone audio recordings and transmissions. The following procedures apply to the use of non-telephone recording, listening, or monitoring devices or practices:

- (1) Recordings by DOT employees and DOT contractor employees of meetings between two or more persons (i.e. supervisor and employee, COTR and contractor employee, DOT employee and member of the public, etc.) or conferences, briefings, hearings, etc., may be made only if either:
 - (a) The intention to record is announced at the beginning of the meeting, conference, etc.; or
 - (b) A requirement to maintain a record of the proceeding is established by the particular regulation, directive, or announcement under which the meeting, conference, etc., is convened.
- (2) The use of radio transmitters or other electronic devices by DOT employees or DOT contractor employees to transmit room audio outside of meetings, conferences, briefings, hearings, etc. must be announced to all persons present.
- (3) Recording equipment may be used on operational voice or broadcast telecommunications circuits, such as air/ground, ship/ship, ship/shore, law enforcement/security, and to record rail radio communications in connection with railroad operations as defined in 49 CFR Part 225.

c. Telephone Line Number Identification.

- (1) Equipment and technologies exist that can be used to determine the line number of an outgoing or incoming voice or data call. This equipment includes what is commonly known as a pen register and a trap and trace device. Telephone service providers often operate equipment that has the same capability as pen registers and trap and trace devices. The use of pen registers and trap and trace devices by DOT employees and DOT contractor employees is prohibited except in furtherance of law enforcement activities conducted pursuant to DOT Order 8000.8 and as authorized in chapter 206 of Title 18, U.S.C., Pen Registers and Trap and Trace Devices. DOT organizations should consult with their legal counsel for guidance concerning the use of these devices.
- (2) At some DOT facilities, a DOT organization provides an internal, in-house telephone service. At other locations, the service provider is a local communications company or another Government agency, such as the General Services Administration. Title 18, U.S.C., Chapter 206, specifically allows a provider of telephone service, without obtaining a court order, to use pen registers and trap and trace devices when the service relates to the operation, maintenance, and testing of a wire or electronic communication service, to the protection of the rights or property of the provider, or to the protection of users against unlawful use/abuse of the service. The service provider may also record that a wire or electronic communication was initiated or completed in order to protect the provider, or a user of that service, from fraudulent, unlawful, or abusive use of service; or where the consent of the user has been

obtained. Therefore, DOT organizations may use equipment that records the telephone numbers of calls made from or received by specific telephones only when the equipment is being used for administrative and billing purposes, or to prevent misuse of Government owned or leased telephone equipment. They may also use such equipment to assist in determining sources of threatening or harassing calls, including calls communicating bomb threats. Organizations should consult their legal counsel as necessary to resolve any questions about the use of this equipment.

(3) DOT organizations may install on individual telephones equipment commonly known as "caller ID" equipment.

- d. Portable electronic devices. Portable electronic devices, including personal data assistants, that have wireless communications capability shall not be used to surreptitiously retrieve information from a DOT computer, computer system, or other electronic device that processes information.
- e. Video Surveillance. Video equipment, including CCTV equipment, is commonly used to conduct video surveillance of people, places and things. The type of surveillance and the use of the information obtained from surveillance vary, depending on the organization's reason for conducting surveillance.

(1) Use of video surveillance for non-investigatory security operations and crime prevention. The use of video equipment to conduct video surveillance of open spaces for security operations and crime prevention is authorized only if the following conditions are met:

(a) Video cameras must be installed in locations that are open to the public or where no reasonable expectation of privacy exists. Examples of these areas include hallways, elevator lobbies, stairwells, credit union lobbies, reception areas, loading docks, parking garages, sidewalks, and conference facilities. If there is a question as to whether an area is classified as an open space, then the agency's servicing legal counsel should be consulted.

(b) No audio recordings shall be made in conjunction with the recording of video images.

(2) Use of video equipment in criminal investigations. Certain DOT organizations, pursuant to DOT Order 8000.8, are authorized by Federal law to conduct criminal investigations. Those organizations may use video equipment to perform video surveillance in the course of criminal investigations.

(a) Certain types of video surveillance are considered a "search" under the Fourth Amendment of the United States Constitution and therefore require a search warrant. Prior to commencing video surveillance the authorized DOT agency must coordinate with the appropriate legal authority to determine whether a search warrant is required.

- (b) If a search warrant is required, then the DOT organization must follow the procedures of the approving authority for obtaining a search warrant.
- (3) Use of video equipment in support of criminal investigations. The use of video equipment by DOT organizations to conduct surveillance in support of criminal investigations is authorized only when the investigation is carried out by a Federal, State, or local government law enforcement agency or organization. DOT organizations that provide this type of technical support as a line of business or on a voluntary basis are authorized to do so provided the following conditions are met:
- (a) The investigating agency submits a written request for the service.
 - (b) The legal counsel's office of the investigating agency has determined whether or not a search warrant is required for the surveillance. The investigating agency must furnish the DOT organization providing the service with a signed copy of the legal counsel's determination.
 - (c) Whenever a search warrant is required, it has been obtained via the Department of Justice or other appropriate prosecutor's office and issued by a court of competent jurisdiction and the investigating agency has provided the DOT organization with a copy of the warrant.
 - (d) Requests made by state or local government law enforcement agencies have been reviewed for legal adequacy by the legal counsel's office of the DOT servicing organization.
- (4) Use of video surveillance equipment for other purposes. There may be other situations in which video surveillance equipment could be useful. Except as already provided for in this order, DOT employees shall not use video equipment to conduct surveillance operations without first obtaining written permission from their agency's legal counsel.
- f. For the purpose of this order, recording equipment does not include devices that produce a printed or image record as an inherent feature of a telecommunications system such as a computer printer, facsimile machine, etc., provided such equipment is not used in contravention of paragraph 6 of this order.

7. RESPONSIBILITIES.

a. Assistant Secretary for Administration:

- (1) Serves as the executive agent for the Secretary and has overall Departmental responsibility for the implementation of the provisions of this order on behalf of the Secretary.

(2) Is designated to approve determinations on behalf of the Secretary within the Office of the Secretary of Transportation. This authority may be delegated to the Director of Security (M-40), but no lower.

b. Heads of OAs and the BTS:

(1) Are responsible for assuring compliance with the policies and requirements set forth by this order and are designated to act on behalf of the Secretary for approving determinations within their administrations.

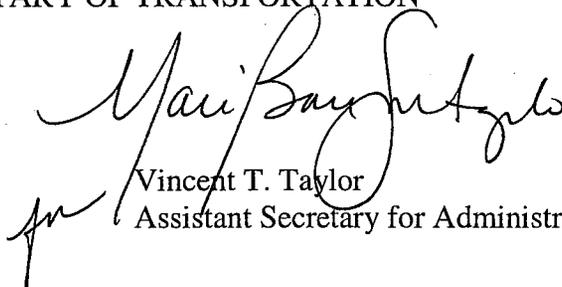
(2) May delegate the responsibility for approving determinations, at both the headquarters and field locations, under paragraphs 6a(1)(b) and 6a(1)(c). Delegations must be in writing and be no lower than at the associate administrator, regional administrator, or equivalent level.

(3) Shall maintain a record of the written determinations issued by their organization under paragraphs 6a(1)(b) and 6a(1)(c). Annual reporting of written determinations is not required. However, the OAs should be prepared to provide timely and accurate reports to the Office of Security (M-40), OST, upon request.

c. The Director, M-40, will act as the executive agent for the Assistant Secretary for Administration for the purpose of managing the provisions of this order.

8. IMPLEMENTING DIRECTIVES. Copies of implementing directives issued by the Secretarial offices and the heads of OAs shall be forwarded to the Director, M-40, within 90 days of the effective date of this order.

FOR THE SECRETARY OF TRANSPORTATION


Vincent T. Taylor
Assistant Secretary for Administration