

**FOREIGN INTELLIGENCE SURVEILLANCE COURT**  
**RULES OF PROCEDURE**  
*Effective \_\_\_\_\_, 2010*

**Title I. Scope of Rules; Amendments**

**Rule 1. Scope of Rules.** These rules, which are promulgated pursuant to 50 U.S.C. § 1803(g), govern all proceedings in the Foreign Intelligence Surveillance Court (“the Court”). Issues not addressed in these rules or the Foreign Intelligence Surveillance Act, as amended (“the Act”), may be resolved under the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure.

**Rule 2. Amendment.** Any amendment to these rules must be promulgated in accordance with 28 U.S.C. § 2071.

**Title II. National Security Information**

**Rule 3.** In all matters, the Court and its staff shall comply with the security measures established pursuant to 50 U.S.C. § 1803(c) and § 1822(e), as well as Executive Order 13526, “Classified National Security Information” (or its successor). Each member of the Court’s staff must possess security clearances at a level commensurate to the individual’s responsibilities.

**Title III. Structure and Powers of the Court**

**Rule 4. Structure.**

(a) **Composition.** In accordance with 50 U.S.C. § 1803(a), the Court consists of United States District Court Judges appointed by the Chief Justice of the United States.

(b) **Presiding Judge.** The Chief Justice designates the “Presiding Judge.”

**Rule 5. Authority of the Judges.**

(a) **Scope of Authority.** Each Judge may exercise the authority vested by the Act and such other authority as is consistent with Article III of the Constitution and other statutes and laws of the United States, to the extent not inconsistent with the Act.

(b) **Referring Matters to Other Judges.** Except for matters involving a denial of an application for an order, a Judge may refer any matter to another Judge of the Court with that Judge’s consent. If a Judge directs the government to supplement an application, the Judge may direct the government to present the renewal of that application to the same Judge. If a matter is presented to a Judge whose tenure on the Court expires while the

matter is pending, the Presiding Judge shall re-assign the matter.

**(c) Supplementation.** The Judge before whom a matter is pending may order a party to furnish any information that the Judge deems necessary.

#### **Title IV. Matters Presented to the Court**

##### **Rule 6. Means of Requesting Relief from the Court**

**(a) Application.** The government may, in accordance with 50 U.S.C. § 1804, § 1823, § 1842, § 1861, § 1881b(b), § 1881c(b), or § 1881d(a), file an application for a Court order (“application”).

**(b) Certification.** The government may, in accordance with 50 U.S.C. § 1881a(g), file a certification concerning the targeting of non-United States persons reasonably believed to be located outside the United States (“certification”).

**(c) Petition.** A party may, in accordance with Sections 1861(f) and 1881a(h) and the Supplemental Procedures in Titles VI and VII of these Rules, file a petition for review of a production or nondisclosure order issued under 50 U.S.C. § 1861 or for review or enforcement of a directive issued under 50 U.S.C. § 1881a (“petition”).

**(d) Motion.** A party seeking relief, other than pursuant to an application, certification, or petition permitted under the Act and these Rules, must do so by motion (“motion”).

##### **Rule 7. Filing Applications, Certifications, Petitions, Motions, or Other Papers (“Submissions”)**

**(a) Filing.** A submission is filed by delivering it to the Clerk or as otherwise directed by the Clerk in accordance with Rule 7(k).

**(b) Original and One Copy.** Except as otherwise provided, a signed original and one copy must be filed with the Clerk.

**(c) Form.** Unless otherwise ordered, a party must file all papers:

(1) on 8½-by-11-inch opaque white paper; and

(2) typed (double-spaced) or reproduced in a manner that produces a clear black image.

**(d) Electronic Filing.** The Clerk, when authorized by the Court, may accept and file submissions by any reliable, and appropriately secure, electronic means.

**(e) Facsimile or Scanned Signature.** The Clerk may accept for filing a submission bearing a facsimile or scanned signature in lieu of the original signature. Upon acceptance, a submission bearing a facsimile or scanned signature is the original Court record.

**(f) Citations.** Each submission must contain citations to pertinent provisions of the Act.

**(g) Contents.** Each application and certification filed by the government must be approved and certified in accordance with the Act, and must contain the statements and other information required by the Act.

**(h) Contact Information in Adversarial Proceedings.**

**(1) Filing by a Party Other Than the Government.** A party other than the government must include in the initial submission the party's full name, address, and telephone number, or, if the party is represented by counsel, the full name of the party and the party's counsel, as well as counsel's address, telephone number, facsimile number, and bar membership information.

**(2) Filing by the Government.** In an adversarial proceeding, the initial submission filed by the government must include the full names of the attorneys representing the United States and their mailing addresses, telephone numbers, and facsimile numbers.

**(i) Information Concerning Security Clearances in Adversarial Proceedings.** A party other than the government must:

**(1)** state in the initial submission whether the party (or the party's responsible officers or employees) and counsel for the party hold security clearances,

**(2)** describe the circumstances in which such clearances were granted, and

**(3)** identify the federal agencies and the classification levels and compartments involved.

**(j) Ex Parte Review.** At the request of the government in an adversarial proceeding, the Judge must review *ex parte* and *in camera* any submissions by the government, or portions thereof, which may include classified information. If the government files *ex parte* a submission that contains classified information, the government must file and serve on the non-governmental party an unclassified or redacted version. The unclassified or redacted version, at a minimum, must clearly articulate the government's legal arguments.

**(k) Instructions for Delivery to the Court.** A party may obtain instructions for making submissions permitted under the Act and these Rules by contacting the Clerk at (202) 357-6250.

**Rule 8. Service.**

**(a) By a Party Other than the Government.** A party other than the government must, at or before the time of filing a submission permitted under the Act and these Rules, serve a copy on the government. Instructions for effecting service must be obtained by contacting the Security and Emergency Planning Staff, United States Department of Justice, by telephone at (202) 514-2094.

**(b) By the Government.** At or before the time of filing a submission in an adversarial proceeding, the government must, subject to Rule 7(j), serve a copy by hand delivery or by overnight delivery on counsel for the other party, or, if the party is not represented by counsel, on the party directly.

**(c) Certificate of Service.** A party must include a certificate of service specifying the time and manner of service.

**Rule 9. Time and Manner of Submission of Applications.**

**(a) Proposed Applications.** Except when an application is being submitted following an emergency authorization pursuant to 50 U.S.C. § 1805(e), § 1824(e), § 1843, § 1881b(d), or § 1881c(d) (“emergency authorization”), or as otherwise permitted by the Court, proposed applications must be submitted by the government no later than seven days before the government seeks to have the matter entertained by the Court. Proposed applications submitted following an emergency authorization must be submitted as soon after such authorization as is reasonably practicable.

**(b) Final Applications.** Unless the Court permits otherwise, the final application, including all signatures, approvals, and certifications required by the Act, must be filed no later than 10:00 a.m. Eastern Time on the day the government seeks to have the matter entertained by the Court.

**(c) Proposed Orders.** Each proposed application and final application submitted to the Court must include any pertinent proposed orders.

**(d) Number of Copies.** Notwithstanding Rule 7(b), unless the Court directs otherwise, only one copy of a proposed application must be submitted and only the original final application must be filed.

**(e) Notice of Changes.** No later than the time the final application is filed, the government must identify any differences between the final application and the proposed application.

**Rule 10. Computation of Time.** Except as otherwise provided, the following rules apply in computing a time period specified by applicable statute, rule, or Court order:

**(a) Day of the Event Excluded.** Exclude the day of the event that triggers the period.

**(b) Compute Time Using Calendar Days.** Time must be computed using calendar days, not business days.

**(c) Include the Last Day.** Except when calculating the time for filing an application following an emergency authorization, include the last day of the period; but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday.

**Rule 11. Notice and Briefing of Novel Issues.**

**(a) Notice to the Court.** If a submission by the government for Court action involves an issue not previously presented to the Court — including, but not limited to, a novel issue of technology or law — the government must inform the Court in writing of the nature and significance of that issue.

**(b) Submission Relating to New Techniques.** Prior to requesting authorization to use a new surveillance or search technique, the government must submit a memorandum to the Court that:

(1) explains the technique;

(2) describes the circumstances of the likely implementation of the technique;

(3) discusses any legal issues apparently raised; and

(4) describes the proposed minimization procedures to be applied.

At the latest, the memorandum must be submitted as part of the first proposed application or other submission that seeks to employ the new technique.

**(c) Novel Implementation.** When requesting authorization to use an existing surveillance or search technique in a novel context, the government must identify and address any new minimization or other issues in a written submission made, at the latest, as part of the application or other filing seeking such authorization.

**(d) Legal Memorandum.** If an application or other request for action raises an issue of law not previously considered by the Court, the government must file a memorandum of law in support of its position on each new issue. At the latest, the memorandum must be submitted as part of the first proposed application or other submission that raises the issue.

**Rule 12. Submission of Targeting and Minimization Procedures.** In a matter involving Court review of targeting or minimization procedures, such procedures may be set out in full in the government's submission or may be incorporated by reference to procedures approved in a prior docket. Procedures that are incorporated by reference to a prior docket may be supplemented, but not otherwise modified, in the government's submission. Otherwise, proposed procedures must be set forth in a clear and self-contained manner, without resort to cross-referencing.

**Rule 13. Correction of Misstatement or Omission; Disclosure of Non-Compliance.**

**(a) Correction of Material Facts.** If the government discovers that a submission to the Court contained a misstatement or omission of material fact, the government, in writing, must immediately inform the Judge to whom the submission was made of:

- (1) the misstatement or omission;
- (2) any necessary correction;
- (3) the facts and circumstances relevant to the misstatement or omission;
- (4) any modifications the government has made or proposes to make in how it will implement any authority or approval granted by the Court; and
- (5) how the government proposes to dispose of or treat any information obtained as a result of the misstatement or omission.

**(b) Disclosure of Non-Compliance.** If the government discovers that any authority or approval granted by the Court has been implemented in a manner that did not comply with the Court's authorization or approval or with applicable law, the government, in writing, must immediately inform the Judge to whom the submission was made of:

- (1) the non-compliance;
- (2) the facts and circumstances relevant to the non-compliance;
- (3) any modifications the government has made or proposes to make in how it will implement any authority or approval granted by the Court; and

- (4) how the government proposes to dispose of or treat any information obtained as a result of the non-compliance.

**Rule 14. Motions to Amend Court Orders.** Unless the Judge who issued the order granting an application directs otherwise, a motion to amend the order may be presented to any other Judge.

**Rule 15. Sequestration.** Except as required by Court-approved minimization procedures, the government must not submit material for sequestration with the Court without the prior approval of the Presiding Judge. To obtain such approval, the government must, prior to tendering the material to the Court for sequestration, file a motion stating the circumstances of the material's acquisition and explaining why it is necessary for such material to be retained in the custody of the Court.

**Rule 16. Returns.**

(a) **Time for Filing.**

(1) **Search Orders.** Unless the Court directs otherwise, a return must be made and filed either at the time of submission of a proposed renewal application or within 90 days of the execution of a search order, whichever is sooner.

(2) **Other Orders.** The Court may direct the filing of other returns at a time and in a manner that it deems appropriate.

(b) **Contents.** The return must:

(1) notify the Court of the execution of the order;

(2) describe the circumstances and results of the search or other activity including, where appropriate, an inventory;

(3) certify that the execution was in conformity with the order or describe and explain any deviation from the order; and

(4) include any other information as the Court may direct.

## **Title V. Hearings, Orders, and Enforcement**

**Rule 17. Hearings.**

(a) **Scheduling.** The Judge to whom a matter is presented or assigned must determine whether a hearing is necessary and, if so, set the time and place of the hearing.

(b) **Ex Parte.** Except as the Court directs or the Rules provide otherwise, a hearing must be *ex parte* and conducted within the Court's secure facility.

(c) **Appearances.** Unless excused, the government official providing the factual information in an application or certification and an attorney for the applicant must attend the hearing, along with other representatives of the government, and any other party, as the Court may direct or permit.

(d) **Testimony; Oath; Recording of Proceedings.** A Judge may take testimony under

oath and receive other evidence. The testimony may be recorded electronically or as the Judge may otherwise direct, consistent with the security measures referenced in Rule 3.

**Rule 18. Court Orders.**

(a) **Citations.** All orders must contain citations to pertinent provisions of the Act.

(b) **Denying Applications.**

(1) **Written Statement of Reasons.** If a Judge denies the government's application, the Judge must immediately provide a written statement of each reason for the decision and cause a copy of the statement to be served on the government.

(2) **Previously Denied Application.** If a Judge denies an application or other request for relief by the government, any subsequent submission on the matter must be referred to that Judge.

(c) **Expiration Dates.** An expiration date in an order must be stated using Eastern Time and must be computed from the date and time of the Court's issuance of the order, or, if applicable, of an emergency authorization.

(d) **Electronic Signatures.** The Judge may sign an order by any reliable, appropriately secure electronic means, including facsimile.

**Rule 19. Enforcement of Orders.**

(a) **Show Cause Motions.** If a person or entity served with a Court order (the "recipient") fails to comply with that order, the government may file a motion for an order to show cause why the recipient should not be held in contempt and sanctioned accordingly. The motion must be referred to the Judge who entered the underlying order.

(b) **Proceedings.**

(1) An order to show cause must:

(i) confirm that the underlying order was issued;

(ii) schedule further proceedings; and

(iii) afford the recipient an opportunity to show cause why the recipient should not be held in contempt.

(2) A Judge must conduct any proceeding on a motion to show cause *in camera*. The Clerk must maintain all records of the proceedings in conformance with 50 U.S.C. § 1803(c).

(3) If the recipient fails to show cause for noncompliance with the underlying order, the Court may find the recipient in contempt and enter any order it deems necessary and appropriate to compel compliance and to sanction the recipient for noncompliance with the underlying order.

(4) If the recipient shows cause for noncompliance or if the Court concludes that the order should not be enforced as issued, the Court may enter any order it deems appropriate.

**Title VI. Supplemental Procedures for Proceedings Under Section 702(h) of the Act, 50 U.S.C. § 1881a(h)**

**Rule 20. Scope.** Together with the generally-applicable provisions of these Rules concerning filing, service, and other matters, these supplemental procedures apply in proceedings under 50 U.S.C. § 1881a(h).

**Rule 21. Petition to Modify or Set Aside a Directive.** An electronic communication service provider (“provider”), who receives a directive issued under 50 U.S.C. § 1881a(h)(1), may file a petition to modify or set aside such directive under 50 U.S.C. § 1881a(h)(4). A petition may be filed by the provider’s counsel.

**Rule 22. Petition to Compel Compliance With a Directive.** In the event a provider fails to comply with a directive issued under 50 U.S.C. § 1881a(h)(1), the government may, pursuant to 50 U.S.C. § 1881a(h)(5), file a petition to compel compliance with the directive.

**Rule 23. Contents of Petition.** The petition must:

- (a) state clearly the relief being sought;
- (b) state concisely the factual and legal grounds for modifying, setting aside, or compelling compliance with the directive at issue;
- (c) include a copy of the directive and state the date on which the directive was served on the provider; and
- (d) state whether a hearing is requested.

**Rule 24. Response.**

- (a) **By Government.** The government may, within seven days following notification under Rule 28(b) that plenary review is necessary, file a response to a provider’s petition.
- (b) **By Provider.** The provider may, within seven days after service of a petition by the government to compel compliance, file a response to the petition.

**Rule 25. Length of Petition and Response; Other Papers.**

- (a) **Length.** Unless the Court directs otherwise, a petition and response each must not exceed 20 pages in length, including any attachments (other than a copy of the challenged directive).
- (b) **Other papers.** No supplements, replies, or sur-replies may be filed without leave of the Court.

**Rule 26. Notification of Presiding Judge.** Upon receipt, the Clerk must notify the Presiding Judge that a petition to modify, set aside, or compel compliance with a directive issued under 50



U.S.C. § 1881a(h)(1) has been filed. If the Presiding Judge is not reasonably available when the Clerk receives a petition, the Clerk must notify each of the local Judges, in order of seniority on the Court, and, if necessary, each of the other Judges, in order of seniority on the Court, until a Judge who is reasonably available has received notification. The reasonably available Judge who receives notification will be the acting Presiding Judge (“Presiding Judge”) for the case.

**Rule 27. Assignment.**

- (a) **Presiding Judge.** As soon as possible after receiving notification from the Clerk that a petition has been filed, and no later than 24 hours after the filing of the petition, the Presiding Judge must assign the matter to a Judge in the petition review pool established by 50 U.S.C. § 1803(e)(1). The Clerk must record the date and time of the assignment.
- (b) **Transmitting Petition.** The Clerk must transmit the petition to the assigned Judge as soon as possible but no later than 24 hours after being notified of the assignment by the Presiding Judge.

**Rule 28. Review of Petition to Modify or Set Aside a Directive.**

**(a) Initial Review Pursuant to 50 U.S.C. § 1881a(h)(4)(D).**

- (1) A Judge must conduct an initial review of a petition to modify or set aside a directive within five days after being assigned such petition.
- (2) If the Judge determines that the provider’s claims, defenses, or other legal contentions are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, the Judge must promptly deny such petition, affirm the directive, and order the provider to comply with the directive. Upon making such determination or promptly thereafter, the Judge must provide a written statement of reasons. The Clerk must transmit the ruling and statement of reasons to the provider and the government.

**(b) Plenary Review Pursuant to 50 U.S.C. § 1881a(h)(4)(E).**

- (1) If the Judge determines that the petition requires plenary review, the Court must promptly notify the parties. The Judge must provide a written statement of reasons for the determination.
- (2) The Judge must affirm, modify, or set aside the directive that is the subject of the petition within the time permitted under 50 U.S.C. § 1881a(h)(4)(E) and § 1881a(j)(2).
- (3) The Judge may hold a hearing or conduct proceedings solely on the papers filed by the provider and the government.

**(c) Burden.** Pursuant to 50 U.S.C. § 1881a(h)(4)(C), a Judge may grant the petition only if the Judge finds that the challenged directive does not meet the requirements of 50 U.S.C. § 1881a or is otherwise unlawful.

**(d) Continued Effect.** Pursuant to 50 U.S.C. § 1881a(h)(4)(F), any directive not explicitly modified or set aside by the Judge remains in full effect.

**Rule 29. Review of Petition to Compel Compliance Pursuant to 50 U.S.C. § 1881a(h)(5)(C).**

(a) The Judge reviewing the government's petition to compel compliance with a directive must, within the time permitted under 50 U.S.C. § 1881a(h)(5)(C) and § 1881a(j)(2), issue an order requiring the provider to comply with the directive or any part of it, as issued or as modified, if the Judge finds that the directive meets the requirements of 50 U.S.C. § 1881a and is otherwise lawful.

(b) The Judge must provide a written statement of reasons for the determination. The Clerk must transmit the ruling and statement of reasons to the provider and the government.

**Rule 30. *In Camera* Review.** Pursuant to 50 U.S.C. § 1803(e)(2), the Court must review a petition under 50 U.S.C. § 1881a(h) and conduct related proceedings *in camera*.

**Rule 31. Appeal.** Pursuant to 50 U.S.C. § 1881a(h)(6) and subject to Rules 54 through 59 of these Rules, the government or the provider may petition the Foreign Intelligence Surveillance Court of Review ("Court of Review") to review the Judge's ruling.

**Title VII. Supplemental Procedures for Proceedings Under Section 501(f) of the Act, 50 U.S.C. § 1861(f)**

**Rule 32. Scope.** Together with the generally-applicable provisions of these Rules regarding filing, service, and other matters, these supplemental procedures apply in proceedings under 50 U.S.C. § 1861(f).

**Rule 33. Petition Challenging Production or Nondisclosure Order.**

(a) **Who May File.** The recipient of a production order or nondisclosure order under 50 U.S.C. § 1861 ("petitioner") may file a petition challenging the order pursuant to 50 U.S.C. § 1861(f). A petition may be filed by the petitioner's counsel.

(b) **Time to File Petition.**

(1) **Challenging a Production Order.** The petitioner must file a petition challenging a production order within 20 days after the order has been served.

(2) **Challenging a Nondisclosure Order.** A petitioner may not file a petition challenging a nondisclosure order issued under 50 U.S.C. § 1861(d) earlier than one year after the order was entered.

(3) **Subsequent Petition Challenging a Nondisclosure Order.** If a Judge denies a petition to modify or set aside a nondisclosure order, the petitioner may not file a subsequent petition challenging the same nondisclosure order earlier than one year after the date of the denial.

**Rule 34. Contents of Petition.** A petition must:

- (a) state clearly the relief being sought;
- (b) state concisely the factual and legal grounds for modifying or setting aside the challenged order;
- (c) include a copy of the challenged order and state the date on which it was served on the petitioner; and
- (d) state whether a hearing is requested.

**Rule 35. Length of Petition.** Unless the Court directs otherwise, a petition may not exceed 20 pages in length, including any attachments (other than a copy of the challenged order).

**Rule 36. Request to Stay Production.**

- (a) **Petition Does Not Automatically Effect a Stay.** A petition does not automatically stay the underlying order. A production order will be stayed only if the petitioner requests a stay and the Judge grants such relief.
- (b) **Stay May Be Requested Prior to Filing of a Petition.** A petitioner may request the Court to stay the production order before filing a petition challenging the order.

**Rule 37. Notification of Presiding Judge.** Upon receipt, the Clerk must notify the Presiding Judge that a petition challenging a production or nondisclosure order has been filed. If the Presiding Judge is not reasonably available when the Clerk receives the petition, the Clerk must notify each of the local Judges, in order of seniority on the Court, and, if necessary, each of the other Judges, in order of seniority on the Court, until a Judge who is reasonably available has received notification. The reasonably available Judge who receives notification will be the acting Presiding Judge (“Presiding Judge”) for the case.

**Rule 38. Assignment.**

- (a) **Presiding Judge.** Immediately after receiving notification from the Clerk that a petition has been filed, the Presiding Judge must assign the matter to a Judge in the petition pool established by 50 U.S.C. § 1803(e)(1). The Clerk must record the date and time of the assignment.
- (b) **Transmitting Petition.** The Clerk must transmit the petition to the assigned Judge as soon as possible but no later than 24 hours after being notified of the assignment by the Presiding Judge.

**Rule 39. Initial Review.**

- (a) **When.** The Judge must review the petition within 72 hours after being assigned the petition.
- (b) **Frivolous Petition.** If the Judge determines that the petition is frivolous, the Judge must:
  - (1) immediately deny the petition and affirm the challenged order;

- (2) promptly provide a written statement of the reasons for the denial; and
- (3) provide a written ruling, together with the statement of reasons, to the Clerk, who must transmit the ruling and statement of reasons to the petitioner and the government.

**(c) Non-Frivolous Petition.**

- (1) **Scheduling.** If the Judge determines that the petition is not frivolous, the Judge must promptly issue an order that sets a schedule for its consideration. The Clerk must transmit the order to the petitioner and the government.
- (2) **Manner of Proceeding.** The judge may hold a hearing or conduct the proceedings solely on the papers filed by the petitioner and the government.

**Rule 40. Response to Petition; Other Papers.**

- (a) **Government's Response.** Unless the Judge orders otherwise, the government must file a response within 20 days after the issuance of the initial scheduling order pursuant to Rule 39(c). The response must not exceed 20 pages in length, including any attachments (other than a copy of the challenged order).
- (b) **Other Papers.** No supplements, replies, or sur-replies may be filed without leave of the Court.

**Rule 41. Rulings on Non-frivolous Petitions.**

- (a) **Written Statement of Reasons.** If the Judge determines that the petition is not frivolous, the Judge must promptly provide a written statement of the reasons for modifying, setting aside, or affirming the production or nondisclosure order.
- (b) **Affirming the Order.** If the Judge does not modify or set aside the production or nondisclosure order, the Judge must affirm it and order the recipient promptly to comply with it.
- (c) **Transmitting the Judge's Ruling.** The Clerk must transmit the Judge's ruling and written statement of reasons to the petitioner and the government.

**Rule 42. Failure to Comply.** If a recipient fails to comply with an order affirmed under 50 U.S.C. § 1861(f), the government may file a motion seeking immediate enforcement of the affirmed order. The Court may consider the government's motion without receiving additional submissions or convening further proceedings on the matter.

**Rule 43. In Camera Review.** Pursuant to 50 U.S.C. § 1803(e)(2), the Court must review a petition under 50 U.S.C. § 1861(f) and conduct related proceedings *in camera*.

**Rule 44. Appeal.** Pursuant to 50 U.S.C. § 1861(f)(3) and subject to Rules 54 through 59 of these Rules, the government or the petitioner may petition the Court of Review to review the Judge's ruling.

## **Title VIII. En Banc Proceedings**

**Rule 45. Standard for Hearing or Rehearing En Banc.** Pursuant to 50 U.S.C. § 1803(a)(2)(A), the Court may order a hearing or rehearing en banc only if it is necessary to secure or maintain uniformity of the Court's decisions, or the proceeding involves a question of exceptional importance.

**Rule 46. Initial Hearing En Banc on Request of a Party.** The government in any proceeding, or a party in a proceeding under 50 U.S.C. § 1861(f) or 50 U.S.C. § 1881a(h)(4)-(5), may request that the matter be entertained from the outset by the full Court. However, initial hearings en banc are extraordinary and will be ordered only when a majority of the Judges determines that a matter is of such immediate and extraordinary importance that initial consideration by the en banc Court is necessary, and en banc review is feasible in light of applicable time constraints on Court action.

**Rule 47. Rehearing En Banc on Petition by a Party.**

**(a) Timing of Petition and Response.** A party may file a petition for rehearing en banc permitted under 50 U.S.C. § 1803(a)(2) no later than 30 days after the challenged order or decision is entered. In an adversarial proceeding in which a petition for rehearing en banc is permitted under § 1803(a)(2), a party must file a response to the petition within 14 days after filing and service of the petition.

**(b) Length of Petition and Response.** Unless the Court directs otherwise, a petition for rehearing en banc and a response to a petition for rehearing en banc each must not exceed 15 pages, including any attachments (other than the challenged order or decision).

**Rule 48. Circulation of En Banc Petitions and Responses.** The Clerk must, after consulting with the Presiding Judge and in a manner consistent with applicable security requirements, promptly provide a copy of any timely-filed en banc petition permitted under 50 U.S.C. § 1803(a)(2), and any timely-filed response thereto, to each Judge.

**Rule 49. Court-Initiated En Banc Proceedings.** A Judge to whom a matter has been presented may request that all Judges be polled with respect to whether the matter should be considered or reconsidered en banc. On a Judge's request, the Clerk must, after consulting with the Presiding Judge and in a manner consistent with applicable security requirements, promptly provide notice of the request, along with a copy of pertinent materials, to every Judge.

**Rule 50. Polling.**

**(a) Deadline for Vote.** The Presiding Judge must set a deadline for the Judges to submit their vote to the Clerk on whether to grant a hearing or rehearing en banc. The deadline must be communicated to all Judges at the time the petition or polling request is circulated.

**(b) Vote on Stay.** In the case of rehearing en banc, the Presiding Judge may request that all Judges also vote on whether and to what extent the challenged order or ruling should be stayed or remain in effect if rehearing en banc is granted, pending a decision by the en banc Court on the merits.

**Rule 51. Stay Pending En Banc Review.**

**(a) Stay or Modifying Order.** In accordance with 50 U.S.C. § 1803(a)(2)(B) and § 1803(f), the Court en banc may enter a stay or modifying order while en banc proceedings are pending.

**(b) Statement of Position Regarding Continued Effect of Challenged Order.** A petition for rehearing en banc and any response to the petition each must include a statement of the party's position as to whether and to what extent the challenged order should remain in effect if rehearing en banc is granted, pending a decision by the en banc Court on the merits.

**Rule 52. Supplemental Briefing.** Upon ordering hearing or rehearing en banc, the Court may require the submission of supplemental briefs.

**Rule 53. Order Granting or Denying En Banc Review.**

**(a) Entry of Order.** If a majority of the Judges votes within the time allotted for polling that a matter be considered en banc, the Presiding Judge must direct the Clerk to enter an order granting en banc review. If a majority of the Judges does not vote to grant hearing or rehearing en banc within the time allotted for polling, the Presiding Judge must direct the Clerk to enter an order denying en banc review.

**(b) Other Issues.** The Presiding Judge may set the time of an en banc hearing and the time and scope of any supplemental hearing in the order granting en banc review. The order may also address whether and to what extent the challenged order or ruling will be stayed or remain in effect pending a decision by the en banc Court on the merits.

**Title IX. Appeals**

**Rule 54. How Taken.** An appeal to the Court of Review, as permitted by law, may be taken by filing a petition for review with the Clerk.

**Rule 55. When Taken.**

**(a) Generally.** Except as the Act provides otherwise, a party must file a petition for review no later than 60 days after the decision or order as to which review is sought is entered.

**(b) Effect of En Banc Proceedings.** Following the timely submission of a petition for rehearing en banc permitted under 50 U.S.C. § 1803(a)(2) or the grant of rehearing en

banc on the Court's own initiative, the time otherwise allowed for taking an appeal runs from the date on which such petition is denied or dismissed or, if en banc review is granted, from the date of the decision of the en banc Court on the merits.

**Rule 56. Stay Pending Appeal.** In accordance with 50 U.S.C. § 1803(f), the Court may enter a stay of an order or an order modifying an order while an appeal is pending.

**Rule 57. Motion to Transmit the Record.** Together with the petition for review, the party filing the appeal must also file a motion to transmit the record to the Court of Review.

**Rule 58. Transmitting the Record.** The Clerk must arrange to transmit the record under seal to the Court of Review as expeditiously as possible, no later than 30 days after an appeal has been filed. The Clerk must include a copy of the Court's statement of reasons for the decision or order appealed from as part of the record on appeal.

**Rule 59. Oral Notification to the Court of Review.** The Clerk must orally notify the Presiding Judge of the Court of Review promptly upon the filing of a petition for review.

## **Title X. Administrative Provisions**

### **Rule 60. Duties of the Clerk.**

**(a) General Duties.** The Clerk supports the work of the Court consistent with the directives of the Presiding Judge. The Presiding Judge may authorize the Clerk to delegate duties to staff in the Clerk's office or other designated individuals.

**(b) Maintenance of Court Records.** The Clerk:

- (1) maintains the Court's docket and records — including records and recordings of proceedings before the Court — and the seal of the Court;
- (2) accepts papers for filing;
- (3) keeps all records, pleadings, and files in a secure location, making those materials available only to persons authorized to have access to them; and
- (4) performs any other duties, consistent with the usual powers of a Clerk of Court, as the Presiding Judge may authorize.

**Rule 61. Office Hours.** Although the Court is always open, the regular business hours of the Clerk's Office are 9:00 a.m. to 5:00 p.m. daily except Saturdays, Sundays, and legal holidays. Except when the government submits an application following an emergency authorization, or when the Court otherwise directs, any filing outside these hours will be recorded as received at the start of the next business day.

**Rule 62. Release of Court Records.**

**(a) Publication of Opinions.** The Judge who authored an order, opinion, or other decision may *sua sponte* or on motion by a party request that it be published. Upon such request, the Presiding Judge, after consulting with other Judges of the Court, may direct that an order, opinion or other decision be published. Before publication, the Court may, as appropriate, direct the Executive Branch to review the order, opinion, or other decision and redact it as necessary to ensure that classified information is appropriately protected pursuant to Executive Order 13526 (or its successor).

**(b) Other Records.** Except when an order, opinion, or other decision is published or provided to a party upon issuance, the Clerk may not release it, or other related record, without a Court order. Such records must be released in conformance with the security measures referenced in Rule 3.

**(c) Release of Court Records to Congress.** The government may provide copies of Court orders, opinions, decisions, or other Court records, to Congress, pursuant to 50 U.S.C. § 1871(a)(5), § 1871(c), or § 1881f(b)(1)(D), or any other statutory requirement, without prior motion to and order by the Court. The government, however, must contemporaneously notify the Court in writing whenever it provides copies of Court records to Congress and must include in the notice a list of the documents provided.

**Rule 63. Practice Before Court.** An attorney may appear on a matter with the permission of the Judge before whom the matter is pending. An attorney who appears before the Court must be a licensed attorney and a member, in good standing, of the bar of a United States district or circuit court, except that an attorney who is employed by and represents the United States or any of its agencies in a matter before the Court may appear before the Court regardless of federal bar membership. All attorneys appearing before the Court must have the appropriate security clearance.