

## New Directives Issued for Searches of Electronic Devices at Border Crossings

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September 2, 2009

In 2008, directives from the Bush Administration and a U.S. Ninth Circuit Court of Appeals decision approved of random searches and seizures of laptops and other electronic devices from individuals entering the U.S. at an international border crossing. One of the concerns expressed by privacy advocates was the lack of parameters around the extent of the search and duration of the seizure. Border crossing officials could copy and retain information from the electronic device and keep the device for an indefinite period of time.

The Obama Administration has issued two new directives addressing some of these concerns, one for Immigration and Customs Enforcement agents and the other for U.S. Custom and Border Protection officers. While not eliminating the searches and seizures, the directives call for more supervisory involvement and control. Content copied from a seized device cannot be retained for more than seven days unless there is a legal basis for doing so. The maximum time for retaining the electronic device itself ordinarily should not exceed five days (unless extenuating circumstances exist) and any time period exceeding fifteen days requires supervisory approval. Certain information, such as attorney-client privileged documents and medical records, are subject to special handling procedures including consultation with border authority lawyers.

Even with the new directives in place, if you or your employees engage in international travel with a laptop, it's important to keep in mind that the contents of the laptop, including any proprietary or sensitive business information, may be subject to review at border entry points.