

**MEMORANDUM**

May 19, 2015

**Subject: Sunset of Section 215 of the USA PATRIOT Act of 2001**

You have asked for an analysis of the sunset date applicable to § 215 of the USA PATRIOT Act of 2001.<sup>1</sup> Section 215 broadens the types of records and other tangible things that can be made accessible to the government under § 501 of the Foreign Intelligence Surveillance Act of 1978 (FISA).<sup>2</sup> As originally enacted, § 215 was scheduled to expire on December 31, 2005.<sup>4</sup> Since then, the provision has been reauthorized several times, most recently through June 1, 2015. The current sunset provision states:

(b) Sections 206 and 215 Sunset.--

(1) In general.--Effective June 1, 2015, the Foreign Intelligence Surveillance Act of 1978 is amended so that sections 501, 502, and 105(c)(2) read as they read on October 25, 2001.

(2) Exception.--With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect

to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.

You have asked what time of day the amendment made by paragraph (1) of the sunset provision would occur on June 1, 2015. The Supreme Court has recognized that, in the absence of a congressional directive stating otherwise, "it is settled that where no other time is prescribed, they [statutes] take effect from their date. ... In such cases it is operative from the first moment of that day. Fractions of the day are not recognized."<sup>6</sup>

<sup>1</sup> P.L. 107-56.

<sup>2</sup> 50 U.S.C. § 1861.

<sup>3</sup> P.L. 107-56, § 224.

<sup>4</sup> ~~See, e.g., P.L. 109-160 (extension until February 3, 2006); P.L. 109-170 (extension until March 10, 2006); USA PATRIOT Improvement and Reauthorization Act of 2005, P.L. 109-177 (extension until December 31, 2009); Department of Defense Appropriations Act, 2010, P.L. 111-118, § 1004 (2009) (extension until February 28, 2010); P.L. 111-141 (extension until February 28, 2011); P.L. 112-3 (extension until May 27, 2011); P.L. 112-14 (extension until June 1, 2015).~~

<sup>5</sup> P.L. 109-177, § 102 as amended by P.L. 112-14.

<sup>6</sup> *Lapeyre v. United States*, 84 U.S. 191, 198 (U.S. 1873).

The sunset provision at issue does not specify a particular time of day on June 1, 2015, upon which the amendment is to be effective. Therefore, it would appear that the general presumption of effectiveness "from the first moment of that day" should control. More specifically, absent any reauthorization, beginning at 12:00 AM in the morning of June 1, 2015, §§ 501 and 502 of FISA would read as they read on October 25, 2001. However, it should also be noted that paragraph (2) of the sunset provision provides a grandfather clause authorizing the continued effect of the amendments made by § 215 beyond June 1, 2015, but only with respect to investigations that began, or any particular or potential offenses that took place, *before* the sunset date.

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