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This media, data stored on it, and any devices or premises where it is found or is to be searched for or seized are also subject to the provisions of 28 CFR 50.10, as available at:

<https://www.gpo.gov/fdsys/pkg/CFR-2012-title28-vol2/pdf/CFR-2012-title28-vol2-sec50-10.pdf>

and the guidelines in the U.S. Attorneys' Manual, as available at:

<https://www.justice.gov/usam/usam-9-13000-obtaining-evidence#9-13.400>

and

<https://www.justice.gov/usam/usam-9-19000-documentary-material-held-third-parties#9-19.240>

"In January 2015, the Attorney General issued an updated policy, reflected in 28 C.F.R. 50.10, regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media.... See Memorandum from the Attorney General to All Department Employees (Jan. 14, 2015); Memorandum from the Attorney General to All Department Employees (Feb. 21, 2014); Report on Review of News Media Policies (July 2013). To achieve this balance, the policy mandates robust review and evaluation by the Criminal Division of requests for authorization to use covered law enforcement tools, and oversight by senior Department officials.... To satisfy the mandatory consultation requirement, members of the Department must submit to the Policy and Statutory Enforcement Unit (PSEU) at pseu@usdoj.gov a memorandum describing the relevant facts and addressing the relevant considerations. In addition to the PSEU email address, members of the Department may contact PSEU for any questions by calling (202) 305-4023. Members of the Department may not employ the use of the investigative tool at issue until the Criminal Division has responded in writing."

To avoid violations of these statutes, regulations and guidelines, all Federal officers and agents are strongly urged to contact the U.S. Department of Justice, Policy and Statutory Enforcement Unit (PSEU) at [<pseu@usdoj.gov>](mailto:pseu@usdoj.gov) or (202) 305-4023 before any attempt or further attempt to seize or search this media, data, device, and/or premises, and before any attempt to question, arrest, or charge me. To avoid liability for violations of rights including rights protected by 42 USC 2000aa, government officers, employees, and agents are strongly urged to contact my attorney before attempting to search or seize this media or any data stored on it.

I do not consent to any search or seizure of this media or device, any data stored on it, or any premises on which it is found or to be searched for. I invoke all of my rights, including my right to remain silent and my right to the assistance of counsel. Do not question me without my attorney present.

CHAPTER 21A—PRIVACY PROTECTION**SUBCHAPTER I—FIRST AMENDMENT PRIVACY PROTECTION****PART A—UNLAWFUL ACTS**

Sec.
2000aa. Searches and seizures by government officers and employees in connection with investigation or prosecution of criminal offenses.

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2000aa-5. Border and customs searches.
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SUBCHAPTER I—FIRST AMENDMENT PRIVACY PROTECTION**PART A—UNLAWFUL ACTS**

§ 2000aa. Searches and seizures by government officers and employees in connection with investigation or prosecution of criminal offenses

(a) Work product materials

Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate: *Provided, however*, That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, or 798 of title 18, or section 2274, 2275, or 2277 of this title, or section 783 of title 50, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18); or

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being.

(b) Other documents

Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize documentary materials, other than work product materials, possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate: *Provided, however*, That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, or 798 of title 18, or section 2274, 2275, or 2277 of this title, or section 783 of title 50, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18);

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being;

(3) there is reason to believe that the giving of notice pursuant to a subpoena duces tecum would result in the destruction, alteration, or concealment of such materials; or

(4) such materials have not been produced in response to a court order directing compliance with a subpoena duces tecum, and—

(A) all appellate remedies have been exhausted; or

(B) there is reason to believe that the delay in an investigation or trial occasioned by further proceedings relating to the subpoena would threaten the interests of justice.

(c) Objections to court ordered subpoenas; affidavits

In the event a search warrant is sought pursuant to paragraph (4)(B) of subsection (b) of this section, the person possessing the materials shall be afforded adequate opportunity to submit an affidavit setting forth the basis for any contention that the materials sought are not subject to seizure.

(Pub. L. 96-440, title I, §101, Oct. 13, 1980, 94 Stat. 1879; Pub. L. 104-208, div. A, title I, §101(a) [title I, §121[6]], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-30.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-208, §101(a) [title I, §121[6](1)], inserted “, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18” before parenthesis at end.

Subsec. (b)(1). Pub. L. 104-208, §101(a) [title I, §121[6](2)], inserted “, or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of title 18” before parenthesis at end.

EFFECTIVE DATE

Section 108 of title I of Pub. L. 96-440 provided that: “The provisions of this title [enacting this subchapter] shall become effective on January 1, 1981, except that insofar as such provisions are applicable to a State or any governmental unit other than the United States, the provisions of this title shall become effective one year from the date of enactment of this Act [Oct. 13, 1980].”

SHORT TITLE

Section 1 of Pub. L. 96-440 provided: “That this Act [enacting this chapter and provisions set out as notes under this section] may be cited as the ‘Privacy Protection Act of 1980’.”

PART B—REMEDIES, EXCEPTIONS, AND DEFINITIONS

§ 2000aa-5. Border and customs searches

This chapter shall not impair or affect the ability of a government officer or employee, pursuant to otherwise applicable law, to conduct searches and seizures at the borders of, or at international points of, entry into the United States in order to enforce the customs laws of the United States.

(Pub. L. 96-440, title I, §105, Oct. 13, 1980, 94 Stat. 1880.)

§ 2000aa-6. Civil actions by aggrieved persons

(a) Right of action

A person aggrieved by a search for or seizure of materials in violation of this chapter shall have a civil cause of action for damages for such search or seizure—

(1) against the United States, against a State which has waived its sovereign immunity under the Constitution to a claim for damages resulting from a violation of this chapter, or against any other governmental unit, all of which shall be liable for violations of this chapter by their officers or employees while acting within the scope or under color of their office or employment; and

(2) against an officer or employee of a State who has violated this chapter while acting within the scope or under color of his office or employment, if such State has not waived its sovereign immunity as provided in paragraph (1).

(b) Good faith defense

It shall be a complete defense to a civil action brought under paragraph (2) of subsection (a) of this section that the officer or employee had a reasonable good faith belief in the lawfulness of his conduct.

(c) Official immunity

The United States, a State, or any other governmental unit liable for violations of this chapter under subsection (a)(1) of this section, may not assert as a defense to a claim arising under this chapter the immunity of the officer or employee whose violation is complained of or his reasonable good faith belief in the lawfulness of his conduct, except that such a defense may be asserted if the violation complained of is that of a judicial officer.

(d) Exclusive nature of remedy

The remedy provided by subsection (a)(1) of this section against the United States, a State, or any other governmental unit is exclusive of any other civil action or proceeding for conduct constituting a violation of this chapter, against the officer or employee whose violation gave rise to the claim, or against the estate of such officer or employee.

(e) Admissibility of evidence

Evidence otherwise admissible in a proceeding shall not be excluded on the basis of a violation of this chapter.

(f) Damages; costs and attorneys’ fees

A person having a cause of action under this section shall be entitled to recover actual damages but not less than liquidated damages of \$1,000, and such reasonable attorneys’ fees and other litigation costs reasonably incurred as the court, in its discretion, may award: *Provided, however,* That the United States, a State, or any other governmental unit shall not be liable for interest prior to judgment.

(g) Attorney General; claims settlement; regulations

The Attorney General may settle a claim for damages brought against the United States under this section, and shall promulgate regulations to provide for the commencement of an administrative inquiry following a determination of a violation of this chapter by an officer or employee of the United States and for the imposition of administrative sanctions against such officer or employee, if warranted.

(h) Jurisdiction

The district courts shall have original jurisdiction of all civil actions arising under this section.

(Pub. L. 96-440, title I, §106, Oct. 13, 1980, 94 Stat. 1880.)

§ 2000aa-7. Definitions

(a) “Documentary materials”, as used in this chapter, means materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, motion picture films, negatives, video tapes, audio tapes, and other mechanically, magnetically¹ or electronically recorded cards,

¹ So in original. Probably should be “magnetically”.

tapes, or discs, but does not include contraband or the fruits of a crime or things otherwise criminally possessed, or property designed or intended for use, or which is or has been used as, the means of committing a criminal offense.

(b) “Work product materials”, as used in this chapter, means materials, other than contraband or the fruits of a crime or things otherwise criminally possessed, or property designed or intended for use, or which is or has been used, as the means of committing a criminal offense, and—

(1) in anticipation of communicating such materials to the public, are prepared, produced, authored, or created, whether by the person in possession of the materials or by any other person;

(2) are possessed for the purposes of communicating such materials to the public; and

(3) include mental impressions, conclusions, opinions, or theories of the person who prepared, produced, authored, or created such material.

(c) “Any other governmental unit”, as used in this chapter, includes the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any local government, unit of local government, or any unit of State government.

(Pub. L. 96-440, title I, § 107, Oct. 13, 1980, 94 Stat. 1881.)

SUBCHAPTER II—ATTORNEY GENERAL GUIDELINES

§ 2000aa-11. Guidelines for Federal officers and employees

(a) Procedures to obtain documentary evidence; protection of certain privacy interests

The Attorney General shall, within six months of October 13, 1980, issue guidelines for the procedures to be employed by any Federal officer or employee, in connection with the investigation or prosecution of an offense, to obtain documentary materials in the private possession of a person when the person is not reasonably believed to be a suspect in such offense or related by blood or marriage to such a suspect, and when the materials sought are not contraband or the fruits or instrumentalities of an offense. The Attorney General shall incorporate in such guidelines—

(1) a recognition of the personal privacy interests of the person in possession of such documentary materials;

(2) a requirement that the least intrusive method or means of obtaining such materials be used which do not substantially jeopardize the availability or usefulness of the materials sought to be obtained;

(3) a recognition of special concern for privacy interests in cases in which a search or seizure for such documents would intrude upon a known confidential relationship such as that which may exist between clergyman and parishioner; lawyer and client; or doctor and patient; and

(4) a requirement that an application for a warrant to conduct a search governed by this subchapter be approved by an attorney for the

government, except that in an emergency situation the application may be approved by another appropriate supervisory official if within 24 hours of such emergency the appropriate United States Attorney is notified.

(b) Use of search warrants; reports to Congress

The Attorney General shall collect and compile information on, and report annually to the Committees on the Judiciary of the Senate and the House of Representatives on the use of search warrants by Federal officers and employees for documentary materials described in subsection (a)(3) of this section.

(Pub. L. 96-440, title II, § 201, Oct. 13, 1980, 94 Stat. 1882.)

§ 2000aa-12. Binding nature of guidelines; disciplinary actions for violations; legal proceedings for non-compliance prohibited

Guidelines issued by the Attorney General under this subchapter shall have the full force and effect of Department of Justice regulations and any violation of these guidelines shall make the employee or officer involved subject to appropriate administrative disciplinary action. However, an issue relating to the compliance, or the failure to comply, with guidelines issued pursuant to this subchapter may not be litigated, and a court may not entertain such an issue as the basis for the suppression or exclusion of evidence.

(Pub. L. 96-440, title II, § 202, Oct. 13, 1980, 94 Stat. 1883.)

CHAPTER 21B—RELIGIOUS FREEDOM RESTORATION

Sec.	
2000bb.	Congressional findings and declaration of purposes.
2000bb-1.	Free exercise of religion protected.
2000bb-2.	Definitions.
2000bb-3.	Applicability.
2000bb-4.	Establishment clause unaffected.

§ 2000bb. Congressional findings and declaration of purposes

(a) Findings

The Congress finds that—

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(2) laws “neutral” toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in *Employment Division v. Smith*, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) Purposes

The purposes of this chapter are—



Office of the Attorney General
Washington, D. C. 20530

January 14, 2015

MEMORANDUM TO ALL DEPARTMENT EMPLOYEES

FROM:  THE ATTORNEY GENERAL

SUBJECT: UPDATED POLICY REGARDING OBTAINING INFORMATION
FROM, OR RECORDS OF, MEMBERS OF THE NEWS MEDIA; AND
REGARDING QUESTIONING, ARRESTING, OR CHARGING MEMBER
OF THE NEWS MEDIA

On February 21, 2014, I issued revisions to the Department's policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media. Based on comments from federal prosecutors and other interested parties, including news media representatives through their participation in the News Media Dialogue Group, I determined that additional revisions were necessary.

This final rule revises the existing provisions in the Department's regulations at 28 C.F.R. § 50.10. The revisions are intended to ensure consistent interpretation and application of the policy; clarify and expand the scope of the policy; and ensure the highest level of oversight when members of the Department seek to obtain information from, or records of, a member of the news media.

The most significant change is the elimination of the phrase "ordinary newsgathering activities," which has been replaced throughout with "newsgathering activities." The change mandates that, unless one of the exceptions identified in paragraphs (c)(3) or (d)(4) is applicable, when the investigative or prosecutorial need for information or records relates to newsgathering activities, the Attorney General must authorize the issuance of all subpoenas to members of the news media; the use of all subpoenas or court orders issued pursuant to 18 U.S.C. §§ 2703(d) or 3123 to obtain communications records or business records as defined by paragraphs (b)(3)(i) and (b)(3)(iii); and all applications for warrants to search the premises or property, or to obtain from third-party communication service providers the communications records or business records of members of the news media.

Given the elimination of the phrase "ordinary newsgathering activities," the policy reflects additional revisions that are necessary to strike the proper balance between law enforcement and free press interests. For example, the changes ensure the highest level of Department oversight by providing that the Attorney General must both determine that the affected member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, and authorize the use of the requested law enforcement tool. *See* 28 C.F.R. §§ 50.10(c)(1), (c)(4)(i), and (c)(5)(i). The revised policy does not, however, require the Attorney General to take into account the considerations identified in paragraphs (c)(4)(ii) – (viii) or (c)(5)(ii) – (viii). The changes also permit, but do not require, that notice be provided to the affected member of the news media. *See* 28 C.F.R. § 50.10(e)(1).

Mandatory Consultation with the Criminal Division

The Department currently is in the process of revising the USAM to provide further guidance regarding the application of the policy. In the meantime, *before* (1) issuing a subpoena to a member of the news media; (2) using a subpoena or court order to obtain from a third party communications records or business records of a member of the news media; (3) applying for a warrant to search the premises, property, communications records, or business records of a member of the news media; or (4) questioning, arresting, or charging a member of the news media as to any offense that he or she is suspected of having committed in the course of, or arising out of, newsgathering activities, members of the Department are required to consult with the Policy and Statutory Enforcement Unit of the Criminal Division's Office of Enforcement Operations (PSEU), at pseu@usdoj.gov or (202) 305-4023. In particular, members of the Department must consult with PSEU in the following circumstances, or regarding the following determinations:

- When there is a question regarding whether an individual or entity is a "member of the news media."
- Whether an individual or entity is not covered by, and therefore not entitled to the protections of, the policy, pursuant to 28 C.F.R. § 50.10(b)(1)(ii), which expressly provides that the protections of the policy do not extend to any individual or entity in certain circumstances (*e.g.*, where there are reasonable grounds to believe that the individual or entity is a foreign power or an agent of a foreign power).
- Whether the conduct at issue of the affected member of the news media constitutes or relates to "newsgathering activities."
- Whether records sought constitute "communications records" or "business records" as defined by the policy. *See* 28 C.F.R. § 50.10(b)(3).
- Whether a proposed subpoena or court order falls within one of the exceptions to the Attorney General authorization requirement and, therefore, may be authorized by the United States Attorney or Assistant Attorney General responsible for the matter. *See* 28 C.F.R. § 50.10(c)(3)(ii).
- Whether a member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, *see* 28 C.F.R. §§ 50.10(c)(4)(i), (c)(5)(i), and (e); or suspected having committed an offense in the course of, or arising out of, newsgathering activities, *see* 28 C.F.R. § 50.10(f).

To satisfy the consultation requirement, *before* employing the use of a law enforcement tool covered by the Department's policy, members of the Department shall submit to PSEU a written request for consultation, and shall not employ the use of the tool until the Criminal Division has provided a written response.

Enforcement of Subpoenas Issued By Other Executive Branch Departments or Agencies

Although not expressly covered by 28 C.F.R. § 50.10, members of the Department must consult with PSEU before taking steps to enforce subpoenas issued to members of the news media, or to compel compliance with subpoenas or court orders issued to third parties for communications records or business records of members of the news media, which subpoenas or court orders were issued in the first instance by other Executive Branch departments or agencies.

Questions

Any questions regarding this policy should be directed to PSEU at pseu@usdoj.gov or (202) 305-4023.

Attachment

(g) Inspection

Within 1,000 flight hours after the effective date of this AD: Do a detailed inspection of the bonding lead routing above the 120VU shelf for damage (*i.e.*, wire chafing, evidence of burning) or incorrect routing, in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–92–0025, dated November 7, 2013 (for Model ATR42–500 airplanes); or ATR Service Bulletin ATR72–92–1034, dated November 7, 2013 (for Model ATR72–212A airplanes).

(h) Corrective Actions

(1) If, during the inspection required by paragraph (g) of this AD, any incorrect routing is found: Before further flight, modify the bonding lead routing above the 120VU shelf, in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–92–0025, dated November 7, 2013 (for Model ATR42–500 airplanes); or ATR Service Bulletin ATR72–92–1034, dated November 7, 2013 (for Model ATR72–212A airplanes).

(2) If, during the inspection required by paragraph (g) of this AD, any damage (*i.e.*, wire chafing, evidence of burning) is found: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or ATR—GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European

Aviation Safety Agency Airworthiness Directive 2014–0056, dated March 7, 2014, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2014-0530-0002>.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) ATR Service Bulletin ATR42–92–0025, dated November 7, 2013.

(ii) ATR Service Bulletin ATR72–92–1034, dated November 7, 2013.

(3) For service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email continued.airworthiness@atr.fr; Internet <http://www.aerochain.com>.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on December 19, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–30914 Filed 1–20–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE**28 CFR Part 50**

[Docket No. 145; AG Order No. 3486–2015]

Policy Regarding Obtaining Information From, or Records of, Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the policy of the Department of Justice regarding the use of subpoenas, certain court orders, and search warrants, to obtain information from, or records of, members of the news media. The rule also amends the Department's policy

regarding questioning, arresting, or charging members of the news media.

DATES: This rule is effective on January 21, 2015.

FOR FURTHER INFORMATION CONTACT:

Monique Roth, Director, Office of Enforcement Operations, Criminal Division, (202) 514–6809.

SUPPLEMENTARY INFORMATION:**Discussion**

On February 21, 2014, the Attorney General issued revisions to the Department's policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media. In response to comments from federal prosecutors and other interested parties, including news media representatives, the Attorney General is issuing this final rule to revise the existing provisions in the Department's regulations at 28 CFR 50.10.

Most of the revisions are intended to ensure both consistent interpretation and application of the policy and the highest level of oversight when members of the Department seek to obtain information from, or records of, a member of the news media. Other substantive revisions are intended to clarify the scope of the policy.

Regulatory Certifications

Administrative Procedure Act, 5 U.S.C. 553

Because, for purposes of the Administrative Procedure Act, this regulation concerns general statements of policy, or rules of agency organization, procedure, or practice, notice and comment and a delayed effective date are not required. See 5 U.S.C. 553(b)(A).

Regulatory Flexibility Act

Because this final rule is not promulgated as a final rule under 5 U.S.C. 553 and was not required under that section to be published as a proposed rule, the requirements for the preparation of a regulatory flexibility analysis under 5 U.S.C. 604(a) do not apply. In any event, the Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to administrative matters affecting the Department.

Executive Orders 12866 and 13563—Regulatory Planning and Review

This action has been drafted and reviewed in accordance with Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, section 1(b), Principles of Regulation. This rule is limited to agency organization, management, or personnel matters as described by section 3(d)(3) of Executive Order 12866, and therefore is not a “regulation” as defined by that Executive Order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 of February 5, 1996.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 of August 4, 1999, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4.

Congressional Review Act

This action pertains to agency management and does not substantially affect the rights or obligations of non-agency parties; accordingly, this action is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure, Crime, News, Media, Subpoena, Search warrants.

Accordingly, for the reasons stated in the preamble, part 50 of title 28 of the

Code of Federal Regulations is amended as follows:

PART 50—STATEMENTS OF POLICY

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1162; 28 U.S.C. 509, 510, 516, and 519; 42 U.S.C. 1921 *et seq.*, 1973c; and Pub. L. 107–273, 116 Stat. 1758, 1824.

■ 2. Section 50.10 is revised to read as follows:

§ 50.10 Policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media.

(a) *Statement of principles.* (1) Because freedom of the press can be no broader than the freedom of members of the news media to investigate and report the news, the Department’s policy is intended to provide protection to members of the news media from certain law enforcement tools, whether criminal or civil, that might unreasonably impair newsgathering activities. The policy is not intended to extend special protections to members of the news media who are subjects or targets of criminal investigations for conduct not based on, or within the scope of, newsgathering activities.

(2) In determining whether to seek information from, or records of, members of the news media, the approach in every instance must be to strike the proper balance among several vital interests: Protecting national security, ensuring public safety, promoting effective law enforcement and the fair administration of justice, and safeguarding the essential role of the free press in fostering government accountability and an open society.

(3) The Department views the use of certain law enforcement tools, including subpoenas, court orders issued pursuant to 18 U.S.C. 2703(d) or 3123, and search warrants to seek information from, or records of, non-consenting members of the news media as extraordinary measures, not standard investigatory practices. In particular, subpoenas or court orders issued pursuant to 18 U.S.C. 2703(d) or 3123 may be used, after authorization by the Attorney General, or by another senior official in accordance with the exceptions set forth in paragraph (c)(3) of this section, only to obtain information from, or records of, members of the news media when the information sought is essential to a successful investigation, prosecution, or litigation; after all reasonable alternative attempts have been made to obtain the information from alternative sources;

and after negotiations with the affected member of the news media have been pursued and appropriate notice to the affected member of the news media has been provided, unless the Attorney General determines that, for compelling reasons, such negotiations or notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(4) When the Attorney General has authorized the use of a subpoena, court order issued pursuant to 18 U.S.C. 2703(d) or 3123, or warrant to obtain from a third party communications records or business records of a member of the news media, the affected member of the news media shall be given reasonable and timely notice of the Attorney General’s determination before the use of the subpoena, court order, or warrant, unless the Attorney General determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(b) *Scope.*—(1) *Covered individuals and entities.* (i) The policy governs the use of certain law enforcement tools to obtain information from, or records of, members of the news media.

(ii) The protections of the policy do not extend to any individual or entity where there are reasonable grounds to believe that the individual or entity is—

(A) A foreign power or agent of a foreign power, as those terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801);

(B) A member or affiliate of a foreign terrorist organization designated under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a));

(C) Designated as a Specially Designated Global Terrorist by the Department of the Treasury under Executive Order 13224 of September 23, 2001 (66 FR 49079);

(D) A specially designated terrorist as that term is defined in 31 CFR 595.311 (or any successor thereto);

(E) A terrorist organization as that term is defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi));

(F) Committing or attempting to commit a crime of terrorism, as that offense is described in 18 U.S.C. 2331(5) or 2332b(g)(5);

(G) Committing or attempting the crime of providing material support or

resources to terrorists, as that offense is defined in 18 U.S.C. 2339A; or

(H) Aiding, abetting, or conspiring in illegal activity with a person or organization described in paragraphs (b)(1)(ii)(A) through (G) of this section.

(2) *Covered law enforcement tools and records.* (i) The policy governs the use by law enforcement authorities of subpoenas or, in civil matters, other similar compulsory process such as a civil investigative demand (collectively “subpoenas”) to obtain information from members of the news media, including documents, testimony, and other materials; and the use by law enforcement authorities of subpoenas, or court orders issued pursuant to 18 U.S.C. 2703(d) (“2703(d) order”) or 18 U.S.C. 3123 (“3123 order”), to obtain from third parties “communications records” or “business records” of members of the news media.

(ii) The policy also governs applications for warrants to search the premises or property of members of the news media, pursuant to Federal Rule of Criminal Procedure 41; or to obtain from third-party “communication service providers” the communications records or business records of members of the news media, pursuant to 18 U.S.C. 2703(a) and (b).

(3) *Definitions.* (i)(A) “Communications records” include the contents of electronic communications as well as source and destination information associated with communications, such as email transaction logs and local and long distance telephone connection records, stored or transmitted by a third-party communication service provider with which the member of the news media has a contractual relationship.

(B) Communications records do not include information described in 18 U.S.C. 2703(c)(2)(A), (B), (D), (E), and (F).

(ii) A “communication service provider” is a provider of an electronic communication service or remote computing service as defined, respectively, in 18 U.S.C. 2510(15) and 18 U.S.C. 2711(2).

(iii) (A) “Business records” include work product and other documentary materials, and records of the activities, including the financial transactions, of a member of the news media related to the coverage, investigation, or reporting of news. Business records are limited to those generated or maintained by a third party with which the member of the news media has a contractual relationship, and which could provide information about the newsgathering techniques or sources of a member of the news media.

(B) Business records do not include records unrelated to newsgathering activities, such as those related to the purely commercial, financial, administrative, or technical, operations of a news media entity.

(C) Business records do not include records that are created or maintained either by the government or by a contractor on behalf of the government.

(c) *Issuing subpoenas to members of the news media, or using subpoenas or court orders issued pursuant to 18 U.S.C. 2703(d) or 3123 to obtain from third parties communications records or business records of a member of the news media.* (1) Except as set forth in paragraph (c)(3) of this section, members of the Department must obtain the authorization of the Attorney General to issue a subpoena to a member of the news media; or to use a subpoena, 2703(d) order, or 3123 order to obtain from a third party communications records or business records of a member of the news media.

(2) Requests for the authorization of the Attorney General for the issuance of a subpoena to a member of the news media, or to use a subpoena, 2703(d) order, or 3123 order to obtain communications records or business records of a member of the news media, must be personally endorsed by the United States Attorney or Assistant Attorney General responsible for the matter.

(3) *Exceptions to the Attorney General authorization requirement.* (i)(A) A United States Attorney or Assistant Attorney General responsible for the matter may authorize the issuance of a subpoena to a member of the news media (e.g., for documents, video or audio recordings, testimony, or other materials) if the member of the news media expressly agrees to provide the requested information in response to a subpoena. This exception applies, but is not limited, to both published and unpublished materials and aired and unaired recordings.

(B) In the case of an authorization under paragraph (c)(3)(i)(A) of this section, the United States Attorney or Assistant Attorney General responsible for the matter shall provide notice to the Director of the Criminal Division’s Office of Enforcement Operations within 10 business days of the authorization of the issuance of the subpoena.

(ii) In light of the intent of this policy to protect freedom of the press, newsgathering activities, and confidential news media sources, authorization of the Attorney General will not be required of members of the

Department in the following circumstances:

(A) To issue subpoenas to news media entities for purely commercial, financial, administrative, technical, or other information unrelated to newsgathering activities; or for information or records relating to personnel not involved in newsgathering activities.

(B) To issue subpoenas to members of the news media for information related to public comments, messages, or postings by readers, viewers, customers, or subscribers, over which the member of the news media does not exercise editorial control prior to publication.

(C) To use subpoenas to obtain information from, or to use subpoenas, 2703(d) orders, or 3123 orders to obtain communications records or business records of, members of the news media who may be perpetrators or victims of, or witnesses to, crimes or other events, when such status (as a perpetrator, victim, or witness) is not based on, or within the scope of, newsgathering activities.

(iii) In the circumstances identified in paragraphs (c)(3)(ii)(A) through (C) of this section, the United States Attorney or Assistant Attorney General responsible for the matter must—

(A) Authorize the use of the subpoena or court order;

(B) Consult with the Criminal Division regarding appropriate review and safeguarding protocols; and

(C) Provide a copy of the subpoena or court order to the Director of the Office of Public Affairs and to the Director of the Criminal Division’s Office of Enforcement Operations within 10 business days of the authorization.

(4) *Considerations for the Attorney General in determining whether to authorize the issuance of a subpoena to a member of the news media.* (i) In matters in which a member of the Department determines that a member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the member of the Department requesting Attorney General authorization to issue a subpoena to a member of the news media shall provide all facts necessary for determinations by the Attorney General regarding both whether the member of the news media is a subject or target of the investigation and whether to authorize the issuance of such subpoena. If the Attorney General determines that the member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the

Attorney General's determination regarding the issuance of the proposed subpoena should take into account the principles reflected in paragraph (a) of this section, but need not take into account the considerations identified in paragraphs (c)(4)(ii) through (viii) of this section.

(ii)(A) In criminal matters, there should be reasonable grounds to believe, based on public information, or information from non-media sources, that a crime has occurred, and that the information sought is essential to a successful investigation or prosecution. The subpoena should not be used to obtain peripheral, nonessential, or speculative information.

(B) In civil matters, there should be reasonable grounds to believe, based on public information or information from non-media sources, that the information sought is essential to the successful completion of the investigation or litigation in a case of substantial importance. The subpoena should not be used to obtain peripheral, nonessential, cumulative, or speculative information.

(iii) The government should have made all reasonable attempts to obtain the information from alternative, non-media sources.

(iv)(A) The government should have pursued negotiations with the affected member of the news media, unless the Attorney General determines that, for compelling reasons, such negotiations would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. Where the nature of the investigation permits, the government should have explained to the member of the news media the government's needs in a particular investigation or prosecution, as well as its willingness to address the concerns of the member of the news media.

(B) The obligation to pursue negotiations with the affected member of the news media, unless excused by the Attorney General, is not intended to conflict with the requirement that members of the Department secure authorization from the Attorney General to question a member of the news media as required in paragraph (f)(1) of this section. Accordingly, members of the Department do not need to secure authorization from the Attorney General to pursue negotiations.

(v) The proposed subpoena generally should be limited to the verification of published information and to such surrounding circumstances as relate to

the accuracy of the published information.

(vi) In investigations or prosecutions of unauthorized disclosures of national defense information or of classified information, where the Director of National Intelligence, after consultation with the relevant Department or agency head(s), certifies to the Attorney General the significance of the harm raised by the unauthorized disclosure and that the information disclosed was properly classified and reaffirms the intelligence community's continued support for the investigation or prosecution, the Attorney General may authorize members of the Department, in such investigations, to issue subpoenas to members of the news media. The certification, which the Attorney General should take into account along with other considerations identified in paragraphs (c)(4)(ii) through (viii) of this section, will be sought not more than 30 days prior to the submission of the approval request to the Attorney General.

(vii) Requests should be treated with care to avoid interference with newsgathering activities and to avoid claims of harassment.

(viii) The proposed subpoena should be narrowly drawn. It should be directed at material and relevant information regarding a limited subject matter, should cover a reasonably limited period of time, should avoid requiring production of a large volume of material, and should give reasonable and timely notice of the demand.

(5) *Considerations for the Attorney General in determining whether to authorize the use of a subpoena, 2703(d) order, or 3123 order to obtain from third parties the communications records or business records of a member of the news media.* (i) In matters in which a member of the Department determines that a member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the member of the Department requesting Attorney General authorization to use a subpoena, 2703(d) order, or 3123 order to obtain from a third party the communications records or business records of a member of the news media shall provide all facts necessary for determinations by the Attorney General regarding both whether the member of the news media is a subject or target of the investigation and whether to authorize the use of such subpoena or order. If the Attorney General determines that the member of the news media is a subject or target of an investigation relating to an offense

committed in the course of, or arising out of, newsgathering activities, the Attorney General's determination regarding the use of the proposed subpoena or order should take into account the principles reflected in paragraph (a) of this section, but need not take into account the considerations identified in paragraphs (c)(5)(ii) through (viii) of this section.

(ii)(A) In criminal matters, there should be reasonable grounds to believe, based on public information, or information from non-media sources, that a crime has been committed, and that the information sought is essential to the successful investigation or prosecution of that crime. The subpoena or court order should not be used to obtain peripheral, nonessential, cumulative, or speculative information.

(B) In civil matters, there should be reasonable grounds to believe, based on public information, or information from non-media sources, that the information sought is essential to the successful completion of the investigation or litigation in a case of substantial importance. The subpoena should not be used to obtain peripheral, nonessential, cumulative, or speculative information.

(iii) The use of a subpoena or court order to obtain from a third party communications records or business records of a member of the news media should be pursued only after the government has made all reasonable attempts to obtain the information from alternative sources.

(iv)(A) The government should have pursued negotiations with the affected member of the news media unless the Attorney General determines that, for compelling reasons, such negotiations would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(B) The obligation to pursue negotiations with the affected member of the news media, unless excused by the Attorney General, is not intended to conflict with the requirement that members of the Department secure authorization from the Attorney General to question a member of the news media as set forth in paragraph (f)(1) of this section. Accordingly, members of the Department do not need to secure authorization from the Attorney General to pursue negotiations.

(v) In investigations or prosecutions of unauthorized disclosures of national defense information or of classified information, where the Director of National Intelligence, after consultation

with the relevant Department or agency head(s), certifies to the Attorney General the significance of the harm raised by the unauthorized disclosure and that the information disclosed was properly classified and reaffirms the intelligence community's continued support for the investigation or prosecution, the Attorney General may authorize members of the Department, in such investigations, to use subpoenas or court orders issued pursuant to 18 U.S.C. 2703(d) or 3123 to obtain communications records or business records of a member of the news media. The certification, which the Attorney General should take into account along with the other considerations identified in paragraph (c)(5) of this section, will be sought not more than 30 days prior to the submission of the approval request to the Attorney General.

(vi) Requests should be treated with care to avoid interference with newsgathering activities and to avoid claims of harassment.

(vii) The proposed subpoena or court order should be narrowly drawn. It should be directed at material and relevant information regarding a limited subject matter, should cover a reasonably limited period of time, and should avoid requiring production of a large volume of material.

(viii) If appropriate, investigators should propose to use search protocols designed to minimize intrusion into potentially protected materials or newsgathering activities unrelated to the investigation, including but not limited to keyword searches (for electronic searches) and filter teams (reviewing teams separate from the prosecution and investigative teams).

(6) When the Attorney General has authorized the issuance of a subpoena to a member of the news media; or the use of a subpoena, 2703(d) order, or 3123 order to obtain from a third party communications records or business records of a member of the news media, members of the Department must consult with the Criminal Division before moving to compel compliance with any such subpoena or court order.

(d) *Applying for warrants to search the premises, property, communications records, or business records of members of the news media.* (1) Except as set forth in paragraph (d)(4) of this section, members of the Department must obtain the authorization of the Attorney General to apply for a warrant to search the premises, property, communications records, or business records of a member of the news media.

(2) All requests for authorization of the Attorney General to apply for a warrant to search the premises,

property, communications records, or business records of a member of the news media must be personally endorsed by the United States Attorney or Assistant Attorney General responsible for the matter.

(3) In determining whether to authorize an application for a warrant to search the premises, property, communications records, or business records of a member of the news media, the Attorney General should take into account the considerations identified in paragraph (c)(5) of this section.

(4) Members of the Department may apply for a warrant to obtain work product materials or other documentary materials of a member of the news media pursuant to the "suspect exception" of the Privacy Protection Act ("PPA suspect exception"), 42 U.S.C. 2000aa(a)(1), (b)(1), when the member of the news media is a subject or target of a criminal investigation for conduct not based on, or within the scope of, newsgathering activities. In such instances, members of the Department must secure authorization from a Deputy Assistant Attorney General for the Criminal Division.

(5) Members of the Department should not be authorized to apply for a warrant to obtain work product materials or other documentary materials of a member of the news media under the PPA suspect exception, 42 U.S.C. 2000aa(a)(1), (b)(1), if the sole purpose is to further the investigation of a person other than the member of the news media.

(6) A Deputy Assistant Attorney General for the Criminal Division may authorize, under an applicable PPA exception, an application for a warrant to search the premises, property, communications records, or business records of an individual other than a member of the news media, but who is reasonably believed to have "a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication." 42 U.S.C. 2000aa(a), (b).

(7) In executing a warrant authorized by the Attorney General or by a Deputy Assistant Attorney General for the Criminal Division investigators should use search protocols designed to minimize intrusion into potentially protected materials or newsgathering activities unrelated to the investigation, including but not limited to keyword searches (for electronic searches) and filter teams.

(e) *Notice to affected member of the news media.* (1)(i) In matters in which the Attorney General has both determined that a member of the news media is a subject or target of an

investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, and authorized the use of a subpoena, court order, or warrant to obtain from a third party the communications records or business records of a member of the news media pursuant to paragraph (c)(4)(i), (c)(5)(i), or (d)(1) of this section, members of the Department are not required to provide notice of the Attorney General's authorization to the affected member of the news media. The Attorney General nevertheless may direct that notice be provided.

(ii) If the Attorney General does not direct that notice be provided, the United States Attorney or Assistant Attorney General responsible for the matter shall provide to the Attorney General every 90 days an update regarding the status of the investigation, which update shall include an assessment of any harm to the investigation that would be caused by providing notice to the affected member of the news media. The Attorney General shall consider such update in determining whether to direct that notice be provided.

(2)(i) Except as set forth in paragraph (e)(1) of this section, when the Attorney General has authorized the use of a subpoena, court order, or warrant to obtain from a third party communications records or business records of a member of the news media, the affected member of the news media shall be given reasonable and timely notice of the Attorney General's determination before the use of the subpoena, court order, or warrant, unless the Attorney General determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm.

(ii) The mere possibility that notice to the affected member of the news media, and potential judicial review, might delay the investigation is not, on its own, a compelling reason to delay notice.

(3) When the Attorney General has authorized the use of a subpoena, court order, or warrant to obtain communications records or business records of a member of the news media, and the affected member of the news media has not been given notice, pursuant to paragraph (e)(2) of this section, of the Attorney General's determination before the use of the subpoena, court order, or warrant, the United States Attorney or Assistant Attorney General responsible for the

matter shall provide to the affected member of the news media notice of the order or warrant as soon as it is determined that such notice will no longer pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. In any event, such notice shall occur within 45 days of the government's receipt of any return made pursuant to the subpoena, court order, or warrant, except that the Attorney General may authorize delay of notice for an additional 45 days if he or she determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. No further delays may be sought beyond the 90-day period.

(4) The United States Attorney or Assistant Attorney General responsible for the matter shall provide to the Director of the Office of Public Affairs and to the Director of the Criminal Division's Office of Enforcement Operations a copy of any notice to be provided to a member of the news media whose communications records or business records were sought or obtained at least 10 business days before such notice is provided to the affected member of the news media, and immediately after such notice is, in fact, provided to the affected member of the news media.

(f) *Questioning, arresting, or charging members of the news media.* (1) No member of the Department shall subject a member of the news media to questioning as to any offense that he or she is suspected of having committed in the course of, or arising out of, newsgathering activities without first providing notice to the Director of the Office of Public Affairs and obtaining the express authorization of the Attorney General. The government need not view the member of the news media as a subject or target of an investigation, or have the intent to prosecute the member of the news media, to trigger the requirement that the Attorney General must authorize such questioning.

(2) No member of the Department shall seek a warrant for an arrest, or conduct an arrest, of a member of the news media for any offense that he or she is suspected of having committed in the course of, or arising out of, newsgathering activities without first providing notice to the Director of the Office of Public Affairs and obtaining

the express authorization of the Attorney General.

(3) No member of the Department shall present information to a grand jury seeking a bill of indictment, or file an information, against a member of the news media for any offense that he or she is suspected of having committed in the course of, or arising out of, newsgathering activities, without first providing notice to the Director of the Office of Public Affairs and obtaining the express authorization of the Attorney General.

(4) In requesting the Attorney General's authorization to question, to seek an arrest warrant for or to arrest, or to present information to a grand jury seeking an indictment or to file an information against, a member of the news media as provided in paragraphs (f)(1) through (3) of this section, members of the Department shall provide all facts necessary for a determination by the Attorney General.

(5) In determining whether to grant a request for authorization to question, to seek an arrest warrant for or to arrest, or to present information to a grand jury seeking an indictment or to file an information against, a member of the news media, the Attorney General should take into account the considerations reflected in the Statement of Principles in paragraph (a) of this section.

(g) *Exigent circumstances.* (1)(i) A Deputy Assistant Attorney General for the Criminal Division may authorize the use of a subpoena or court order, as described in paragraph (c) of this section, or the questioning, arrest, or charging of a member of the news media, as described in paragraph (f) of this section, if he or she determines that the exigent use of such law enforcement tool or technique is necessary to prevent or mitigate an act of terrorism; other acts that are reasonably likely to cause significant and articulable harm to national security; death; kidnapping; substantial bodily harm; conduct that constitutes a specified offense against a minor (for example, as those terms are defined in section 111 of the Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. 16911), or an attempt or conspiracy to commit such a criminal offense; or incapacitation or destruction of critical infrastructure (for example, as defined in section 1016(e) of the USA PATRIOT Act, 42 U.S.C. 5195c(e)).

(ii) A Deputy Assistant Attorney General for the Criminal Division may authorize an application for a warrant, as described in paragraph (d) of this section, if there is reason to believe that the immediate seizure of the materials at issue is necessary to prevent the death

of, or serious bodily injury to, a human being, as provided in 42 U.S.C. 2000aa(a)(2) and (b)(2).

(2) Within 10 business days of the approval by a Deputy Assistant Attorney General for the Criminal Division of a request under paragraph (g) of this section, the United States Attorney or Assistant Attorney General responsible for the matter shall provide to the Attorney General and to the Director of the Office of Public Affairs a statement containing the information that would have been provided in a request for prior authorization.

(h) *Safeguarding.* Any information or records obtained from members of the news media or from third parties pursuant to this policy shall be closely held so as to prevent disclosure of the information to unauthorized persons or for improper purposes. Members of the Department should consult the United States Attorneys' Manual for specific guidance regarding the safeguarding of information or records obtained from members of the news media or from third parties pursuant to this policy.

(i) *Failure to comply with policy.* Failure to obtain the prior approval of the Attorney General, as required by this policy, may constitute grounds for an administrative reprimand or other appropriate disciplinary action.

(j) *General provision.* This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Dated: January 14, 2015.

Eric H. Holder, Jr.,
Attorney General.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0654]

RIN 1625-AA00

Safety Zone; SFOBB Demolition Safety Zone, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the San



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9-13.100 - Out of Court Identification Procedures

See the Criminal Resource Manual at 238 et seq. for a discussion of the law on lineups and showups, photographic lineups, fingerprinting, handwriting, voice exemplars and voice prints and other physical evidence issues.

[updated July 1998]

9-13.200 - Communications with Represented Persons

Department attorneys are governed in criminal and civil law enforcement investigations and proceedings by the relevant rule of professional conduct that deals with communications with represented persons. 28 U.S.C. Section 530B. In determining which rule of professional conduct is relevant, Department attorneys should be guided by 28 C.F.R. Part 77 (1999). Department attorneys are strongly encouraged to consult with their Professional Responsibility Officers or supervisors—and, if appropriate, the Professional Responsibility Advisory Office—when there is a question regarding which is the relevant rule or the interpretation or application of the relevant rule. See also the Criminal Resource Manual at 296 through 298.

[updated May 2005] [cited in Criminal Resource Manual 703]

9-13.300 - Polygraphs—Department Policy

The Department opposes all attempts by defense counsel to admit polygraph evidence or to have an examiner appointed by the court to conduct a polygraph test. Government attorneys should refrain from seeking the admission of favorable examinations that may have been conducted during the investigatory stage for the following reasons.

Though certain physiological reactions such as a fast heart beat, muscle contraction, and sweaty palms are believed to be associated with deception attempts, they do not, by themselves, indicate deceit. Anger, fear, anxiety, surprise, shame, embarrassment, and resentment can also produce these same physiological reactions. S. Rep. No. 284, 100th Cong., 2d Sess. 3-5 (1988). Moreover, an individual is less likely to produce these physiological reactions if he is assured that the results of the examination will not be disclosed without his approval. Given the present theoretical and practical deficiencies of polygraphs, the government takes the position that polygraph results should not be introduced into evidence at trial. On the other hand, in respect to its use as an investigatory tool, the Department recognizes that in certain situations, as in testing the reliability of an informer, a polygraph can be of some value. Department policy therefore supports the limited use of the polygraph during investigations. This limited use should be effectuated by using the trained examiners of the federal investigative agencies, primarily the FBI, in accordance with internal procedures formulated by the agencies. *E.g.*, R. Ferguson, Polygraph Policy Model for Law Enforcement, *FBI Law Enforcement Bulletin*, pages 6-20 (June 1987). The case agent or prosecutor should make clear to the possible defendant or witness the limited purpose for which results are used and that the test results will be only one factor in making a prosecutive decision. If the subject is in custody, the test should be preceded by Miranda warnings. Subsequent admissions or confessions will then be admissible if the trial court determines that the statements were voluntary. *Wyrick v. Fields*, 459 U.S. 42 (1982); *Keiper v. Cupp*, 509 F.2d 238 (9th Cir. 1975).

See the Criminal Resource Manual at 259 et seq. for a discussion of case law on polygraph examinations.

9-13.400 Obtaining Information From, or Records of, Members of the News Media; and Questioning, Arresting, or Charging Members of the News Media.

In January 2015, the Attorney General issued an updated policy, reflected in 28 C.F.R. 50.10, regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media. The updated policy is intended to ensure that, in determining whether to seek information from, or records of, members of the news media, the Department strikes the proper balance among several vital interests: protecting national security, ensuring public safety, promoting effective law enforcement and the fair administration of justice, and safeguarding the essential role of the free press in fostering government accountability and an open society. See Memorandum from the Attorney General to All Department Employees (Jan. 14, 2015); Memorandum from the Attorney General to All Department Employees (Feb. 21, 2014); Report on Review of News Media Policies (July 2013). To achieve this balance, the policy mandates robust review and evaluation by the Criminal Division of requests for authorization to use covered law enforcement tools, and oversight by senior Department officials.

This section provides guidance regarding the interpretation and application of the policy reflected in 28 C.F.R. 50.10; instruction regarding the process for securing the necessary approvals; and information regarding the **mandatory consultation requirements** that are noted where applicable throughout this section and summarized in subsection M herein. See Memorandum from the Attorney General to All Department Employees (Jan. 14, 2015). To satisfy the mandatory consultation requirement, members of the Department must submit to the Policy and Statutory Enforcement Unit (PSEU) at pseu@usdoj.gov a memorandum describing the relevant facts and addressing the relevant considerations. In addition to the PSEU email address, members of the Department may contact PSEU for any questions by calling (202) 305-4023. Members of the Department **may not employ** the use of the investigative tool at issue until the Criminal Division has responded in writing.

Because obtaining information from, or records of, members of the news media; and questioning, arresting, or charging members of the news media, requires balancing critical law enforcement and free press-related interests, obtaining the Attorney General's authorization to use the law enforcement tools covered by this policy (or consulting with the Criminal Division, as required) often is time intensive. Accordingly, to ensure appropriate consideration, **members of the Department should submit requests for authorization or consultation pursuant to this policy at least 30 days before the anticipated use of the covered law enforcement tool.**

A. Statement of Principles.

1. The Department's policy is intended to provide protection to members of the news media from certain law enforcement tools, whether criminal or civil, that might unreasonably impair newsgathering. The policy is not intended to extend special protections to members of the news media who are the subject or targets of criminal investigations for conduct not based on, or within the scope of, newsgathering activities. 28 C.F.R. 50.10(a)(1). The policy also is not intended to inhibit the ability of law enforcement authorities to engage with members of the news media for the purpose of seeking the voluntary (i.e., without compulsion) production or disclosure of records, materials, or information; or to question or interview members of the news media on a voluntary basis when such questioning does not concern criminal conduct the member of the news media is suspected of having committed in the course of, or arising out of, newsgathering activities.

The policy does not define "member of the news media." Rather, whether an individual or an entity is a member of the news media is a fact-specific inquiry, and should be determined on a case-by-case basis. The policy also does not define "newsgathering activities," which determination affects whether the Attorney General, as opposed to the United States Attorney

or the Assistant Attorney General responsible for the matter, must authorize the use of a particular law enforcement tool. See 28 C.F.R. 50.10(c)(3)(ii) and (d)(4).

When there is a question regarding whether an individual or entity is a member of the news media, members of the Department must consult with the PSEU before employing the use of a covered law enforcement tool. Members of the Department must also consult with the PSEU regarding whether the conduct at issue of the affected member of the news media constitutes or relates to "newsgathering activities."

2. In determining whether to seek information from, or records of, members of the news media, the approach in every instance must be to strike the proper balance between several vital interests: protecting national security, ensuring public safety, promoting effective law enforcement and the fair administration of justice, and safeguarding the essential role of the free press in fostering government accountability and an open society. 28 C.F.R. 50.10(a)(2).
3. The Department views the use of certain law enforcement tools, including subpoenas, court orders issued pursuant to 18 U.S.C. 2703(d) or 3123, and search warrants to seek information from, or records of, non-consenting members of the news media as extraordinary measures, not standard investigatory practices. 28 C.F.R. 50.10(a)(3).
4. When the Attorney General has authorized the use of a subpoena, court order issued pursuant to 18 U.S.C. 2703(d) or 3123, or warrant to obtain from a third party the communications records or business records of a member of the news media, the affected member of the news media shall be given reasonable and timely notice of the Attorney General's determination before the use of the subpoena, court order, or warrant, unless the Attorney General determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. 28 C.F.R. 50.10(a)(4); *see also* 28 C.F.R. 50.10(e).

B. Scope.

1. *Covered Individuals and Entities*

- i. The policy governs the use of certain law enforcement tools to obtain information from, or records of, members of the news media; and the questioning, arresting, or charging of members of the news media.
- ii. The protections of the policy do not extend to any individual or entity where there are reasonable grounds to believe that the individual or entity is a foreign power or an agent of a foreign power; a member or an affiliate of a foreign terrorist organization; designated a specially designated global terrorist; a specially designated terrorist; a terrorist organization; committing or attempting to commit a crime of terrorism; committing or attempting to commit the crime of providing material support or resources to a terrorist organization; or aiding, abetting, or conspiring in illegal activity with such individuals or entities. 28 C.F.R. 50.10(b)(1)(ii).

Members of the Department must consult with the PSEU regarding whether an individual or entity is not covered by, and therefore not entitled to the protections of, the policy, pursuant to 28 C.F.R. 50.10(b)(1)(ii). The Criminal Division will

consult with the National Security Division, as appropriate.

2. Covered Law Enforcement Tools and Records

- i. The policy governs the use by law enforcement authorities of subpoenas to obtain information from members of the news media, including documents, testimony, and other materials; and the use by law enforcement authorities of subpoenas, or court orders issued pursuant to 18 U.S.C. 2703(d) (2703(d) order) or 18 U.S.C. 3123 (3123 order), to obtain from third parties "communications records" or "business records" of members of the news media, as those terms are defined in 28 C.F.R. 50.10(b)(3). 28 C.F.R. 50.10(b). **Members of the Department shall consult with the PSEU regarding whether particular records sought constitute communications records or business records as defined by this policy.**
- ii. The policy governs applications for warrants to search the premises or property of members of the news media, pursuant to Federal Rule of Criminal Procedure 41; or to obtain from third-party "communication service providers" the communications records or business records of members of the news media, pursuant to 28 U.S.C. 2703(a) and (b). *Id.*
- iii. The policy governs questioning members of the news media about, arresting members of the news media for, or charging members of the news media with criminal conduct they are suspected of having committed in the course of, or arising out of, newsgathering activities.

3. *Subpoenas or Court Orders Issued or Obtained by Other Executive Branch Departments or Agencies.* Although not expressly addressed in 28 C.F.R. 50.10, members of the Department must consult with the Criminal Division before taking steps to enforce subpoenas issued to member of the news media, or to compel compliance with subpoenas or court orders issued to third parties for communications records or business records of member of the news media, which subpoenas were issued or court orders obtained in the first instance by other Executive Branch departments or agencies. To satisfy the consultation requirement, members of the Department shall submit to the PSEU a memorandum describing the factual and legal background of the matter. Members of the Department may not proceed with any efforts to enforce or compel compliance with any subpoenas or court orders until the Criminal Division has responded in writing to the request for consultation.

C. Issuing Subpoenas to Members of the News Media, or Using Subpoenas or Court Orders Issued Pursuant to 18 U.S.C. 2703 or 3123 to Obtain From Third Parties Communications Records or Business Records of Members of the News Media.

1. Except as set forth in 28 C.F.R. 50.10(c)(3), members of the Department must obtain the authorization of the Attorney General to issue a subpoena to a member of the news media; or to use a subpoena, 2703(d) order, or 3123 order to obtain from a third party communications

records or business records of a member of the news media. 28 C.F.R. 50.10(c)(1).

2. Requests for the authorization of the Attorney General for the issuance of a subpoena to a member of the news media; or to use a subpoena, 2703(d) order, or 3123 order to obtain communications records or business records of a member of the news media, must be personally endorsed by the United States Attorney or Assistant Attorney General responsible for the matter. 28 C.F.R. 50.10(c)(2).

3. *Exceptions to the Attorney General Authorization Requirement*

i. **Consent of Member of the News Media.** The United States Attorney or Assistant Attorney General responsible for the matter may authorize the issuance of a subpoena to a member of the news media, if the member of the news media expressly agrees to provide the requested information in response to a subpoena. 28 C.F.R. 50.10(c)(3)(i). In such circumstances, the United States Attorney or Assistant Attorney General responsible for a matter shall provide notice to the Director of the Criminal Division's Office of Enforcement Operations within 10 business days of the authorization of the issuance of the subpoena. *Id.*

ii. **Information Sought Not Related to Newsgathering Activities**

a. The United States Attorney or Assistant Attorney General responsible for the matter may authorize the issuance of a subpoena to a member of the news media for purely commercial, financial, administrative, technical, or other information unrelated to newsgathering activities; or for information or records relating to personnel not involved in newsgathering activities. 28 C.F.R. 50.10(c)(3)(ii)(A). **Before issuing a subpoena to a member of the news media pursuant to this provision, members of the Department must consult with the PSEU.**

b. The United States Attorney or Assistant Attorney General responsible for the matter may authorize the issuance of a subpoena to a member of the news media for information related to public comments, messages, or postings by readers, viewers, customers, or subscribers, over which the member of the news media does not exercise editorial control prior to publication. 28 C.F.R. 50.10(c)(3)(ii)(B). **Before issuing a subpoena to a member of the news media pursuant to this provision, members of the Department must consult with the PSEU.**

c. The United States Attorney or Assistant Attorney General responsible for the matter may authorize the use of subpoenas to obtain information from, or the use of subpoenas, 2703(d) orders, or 3123 orders to obtain communications records or business records of, members of the news media who may be perpetrators or victims of, or witnesses to, crimes or other events, when such status (as a perpetrator, victim, or witness) is not based on, or within the scope of, newsgathering activities. 28 C.F.R. 50.10(c)(3)(ii)(C). **Before issuing a subpoena or applying for a court order pursuant to this provision, members of the Department must consult with the PSEU.**

- d. **Criminal Division Consultation and Notice.** In the circumstances identified in 28 C.F.R. 50.10(c)(3)(ii), the United States Attorney or Assistant Attorney General responsible for the matter must consult with the Criminal Division regarding appropriate review and safeguarding protocols; and provide a copy of the subpoena or court order to the Director of the Office of Public Affairs and to the Director of the Criminal Division's Office of Enforcement Operations within 10 business days of the authorization. 28 C.F.R.50.10(c)(3)(iii).
4. In seeking the authorization of the Attorney General to issue a subpoena to a member of the news media, members of the Department shall address the considerations identified in 28 C.F.R. 50.10(c)(4).
- i. **Member of the news media as subject or target.** In matters in which a member of the Department determines that a member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the member of the Department requesting Attorney General authorization to issue a subpoena to a member of the news media shall provide all facts necessary to a determination by the Attorney General regarding both whether the member of the news media is a subject or target of the investigation and whether to authorize the issuance of such subpoena. 28 C.F.R. 50.10(c)(4)(i). If the Attorney General determines that the member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the Attorney General's determination should take into account the principles reflected in 28 C.F.R. 50.10(a), but need not take into account the considerations identified in 28 C.F.R. 50.10(c)(4)(ii) – (viii). *Id.* **Members of the Department must consult with the PSEU regarding whether a member of the news media is a subject or target of an investigation related to an offense committed in the course of, or arising out of, newsgathering activities.**
- ii. **Director of National Intelligence Certification.** In investigations or prosecutions of unauthorized disclosures of national defense information or classified information, the member of the Department requesting Attorney General authorization to issue a subpoena to a member of the news media shall obtain from the Director of National Intelligence (DNI) a document certifying (1) the significance of the harm raised by the unauthorized disclosure, (2) that the information disclosed was properly classified, and (3) re-affirmance of the intelligence community's support for the investigation or prosecution. 28 C.F.R. 50.10(c)(4)(vi). **Because securing the necessary certification from the DNI may take considerable time, members of the Department are encouraged to initiate the process at least 30 days in advance of seeking the Attorney General's authorization, and must coordinate with the National Security Division in seeking the DNI certification.**
5. In seeking the authorization of the Attorney General to use a subpoena, 2703(d) order, or 3123 order to obtain from a third party the communications records or business records of a member of the news media, members of the Department shall address the considerations identified in 28 C.F.R. 50.10(c)(5).

- i. **Member of the news media as subject or target.** In matters in which a member of the Department determines that a member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the member of the Department requesting Attorney General authorization to use a subpoena, 2703(d) order, or 3123 order to obtain from a third party the communications records or business records of a member of the news media shall provide all facts necessary to a determination by the Attorney General regarding both whether the member of the news media is a subject or target of the investigation and whether to authorize the use of such subpoena or court order. 28 C.F.R. 50.10(c)(5)(i). If the Attorney General determines that the member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the Attorney General's determination should take into account the principles reflected in 28 C.F.R. 50.10(a), but need not take into account the considerations identified in 28 C.F.R. 50.10(c)(5)(ii) – (viii). *Id.* **Members of the Department must consult with the PSEU regarding whether a member of the news media is a subject or target of an investigation related to an offense committed in the course of, or arising out of, newsgathering activities.**
- ii. **Director of National Intelligence Certification.** In investigations or prosecutions of unauthorized disclosures of national defense information or classified information, the member of the Department requesting Attorney General authorization to use a subpoena, 2703(d) order, or 3123 order to obtain from a third party the communications records or business records of a member of the news media shall obtain from the Director of National Intelligence a document certifying (1) the significance of the harm raised by the unauthorized disclosure, (2) that the information disclosed was properly classified, and (3) re-affirmance of the intelligence community's support for the investigation or prosecution. 28 C.F.R. 50.10(c)(5)(v). **Because securing the necessary certification from the DNI may take considerable time, members of the Department are encouraged to initiate the process at least 30 days in advance of seeking the Attorney General's authorization, and must coordinate with the National Security Division in seeking the DNI certification.**

6. Consultation with Criminal Division before Moving to Compel.

- i. When the Attorney General has authorized the issuance of a subpoena to a member of the news media; or the use of a subpoena, 2703(d) order, or 3123 order to obtain from a third party communications records or business records of a member of the news media, members of the Department shall consult with the Criminal Division *before moving to compel compliance with any such subpoena or court order.* 28 C.F.R. 50.10(c)(6). To satisfy the consultation requirement, members of the Department shall submit to the PSEU a memorandum (2) describing the facts, including communications with the affected member of the news media and other events, that transpired since the Attorney General's authorization; and (2) explaining why compulsion is necessary.
- ii. Although not expressly addressed in 28 C.F.R. 50.10, members of the Department must consult with the Criminal Division before taking steps to enforce subpoenas issued to member of the news media, or to compel compliance with subpoenas or court orders

issued to third parties for communications records or business records of member of the news media, which subpoenas were issued or court orders obtained in the first instance by other Executive Branch departments or agencies. To satisfy the consultation requirement, members of the Department shall submit to the PSEU a memorandum describing the factual and legal background of the matter. Members of the Department may not proceed with any efforts to enforce or compel compliance with any subpoenas or court orders until the Criminal Division has responded in writing to the request for consultation.

7. Non-Disclosure Orders Directed to News Media Entities or Third-Party Communication Service Providers

- i. In seeking authorization of the Attorney General, pursuant to 28 C.F.R. 50.10(c), or a Deputy Assistant Attorney General for the Criminal Division, pursuant to 28 C.F.R. 50.10(g), to issue a subpoena to a news media entity; or to use of a subpoena, 2703(d) order, or 3123 order to obtain from a third party communications records or business records of a member of the news media, members of the Department must indicate whether they intend to seek an order directing the recipient of the subpoena or court order, if authorized, not to disclose the existence of the subpoena or court order to any other person or entity, and shall articulate the need for such non-disclosure order. Any authorization must expressly indicate whether a non-disclosure order may be sought.
- ii. **Consultation with Criminal Division before Seeking Non-Disclosure Orders Directed to News Media Entity when US Attorney or Assistant Attorney General Authorizes Issuance of Subpoena.** If an Assistant Attorney General or a United States Attorney authorizes the issuance of a subpoena to a news media entity pursuant to 28 C.F.R. 50.10(c)(3), before seeking an order directing the recipient of the subpoena not to disclose the existence of the subpoena to any other person or entity, the responsible Assistant Attorney General or United States Attorney must consult with the Criminal Division regarding the need for such order, and may not seek the non-disclosure order until or unless expressly authorized to do so in writing by the Attorney General, the Deputy Attorney General, the Assistant Attorney General for the Criminal Division, or a Deputy Assistant Attorney General for the Criminal Division.

8. **Notice to Criminal Division of Factual or Legal Developments.** When the Attorney General, an Assistant Attorney General, or a United States Attorney has authorized the use of a covered law enforcement tool to obtain information from, or records of, a member of the news media, members of the Department who requested and obtained such authorization shall immediately apprise the Criminal Division of any subsequent changes to or developments in the facts or circumstances relevant to the decision making process (e.g., considerations identified in 28 C.F.R. 50.10(c)(4), (c)(5), (d)(3), or (f)). When such disclosure of changed facts or circumstances is made, the member of the Department may not issue the subpoena or move to compel compliance with the same unless expressly authorized to do so in writing by the Attorney General, the Deputy Attorney General, the Assistant Attorney General for the Criminal Division, or a Deputy Assistant Attorney General for the Criminal Division.

D. Applying for Warrants to Search the Premises, Property, Communications Records, or Business Records of Members of the News Media. 1

1. Except as set forth in 28 C.F.R. 50.10(d)(4), members of the Department must obtain the authorization of the Attorney General to apply for a warrant to search the premises, property, communications records, or business records of a member of the news media. 28 C.F.R. 50.10(d)(1).
2. All requests for the authorization of the Attorney General to apply for a warrant to search the premises, property, communications records, or business records of a member of the news media must personally be endorsed by the United States Attorney or Assistant Attorney General responsible for the matter. 28 C.F.R. 50.10(d)(2).
3. In seeking the authorization of the Attorney General to apply for a warrant to search the premises, property, communications records, or business records of a member of the news media, members of the Department should address both the requirements of the Privacy Protection Act (PPA), 42 U.S.C. 2000aa – 2000aa- 7, and the considerations identified in 28 C.F.R. 50.10(c)(5). 28 C.F.R. 50.10(d)(3).
 - i. **Member of the news media as subject or target.** In matters in which a member of the Department determines that a member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the member of the Department requesting Attorney General authorization to apply for a warrant to search the premises, property, communications records, or business records of a member of the news media shall provide all facts necessary to a determination by the Attorney General regarding both whether the member of the news media is a subject or target of the investigation and whether to authorize the application for the warrant. See 28 C.F.R. 50.10(c)(5)(i). If the Attorney General determines that the member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, the Attorney General's determination should take into account both the requirements of the PPA and the principles reflected in 28 C.F.R. 50.10(a), but need not take into account the considerations identified in 28 C.F.R. 50.10(c)(5)(ii) – (viii). ***Id.* Members of the Department must consult with the PSEU regarding whether a member of the news media is a subject or target of an investigation related to an offense committed in the course of, or arising out of, newsgathering activities.**
 - ii. **Director of National Intelligence Certification.** In investigations or prosecutions of unauthorized disclosures of national defense information or classified information, the member of the Department requesting Attorney General authorization to apply for a warrant to search the premises, property, communications records, or business records of a member of the news media shall obtain from the Director of National Intelligence a document certifying (1) the significance of the harm raised by the unauthorized disclosure, (2) that the information disclosed was properly classified, and (3) re-affirmance of the intelligence community's support for the investigation or prosecution. 28 C.F.R. 50.10(c)(5)(v). **Because securing the necessary certification from the DNI may take considerable time, members of the Department are encouraged to initiate**

the process at least 30 days in advance of seeking the Attorney General's authorization, and must coordinate with the National Security Division in seeking the DNI certification.

4. Members of the Department may be authorized to apply for a warrant to obtain work product or other documentary materials of a member of the news media pursuant to the "suspect exception" of the Privacy Protection Act (PPA), 42 U.S.C. 2000aa(a)(1), (b)(1), when the member of the news media is a subject or target of a criminal investigation for conduct not based on, or within the scope of, newsgathering activities. In such instances, members of the Department must secure authorization from a Deputy Assistant Attorney General for the Criminal Division to apply for the warrant. 28 C.F.R. 50.10(d)(4). For example, if a member of the news media is the subject or target of a criminal investigation concerning the production or distribution of child pornography or an investigation concerning extortion, and the conduct is not based on, or within the scope of, such individual's newsgathering activities, an application for a warrant to search the individual's premises, property, communications records, or business records must be approved by a Deputy Assistant Attorney General for the Criminal Division.

Members of the Department must consult with the PSEU regarding whether the conduct at issue is based on, or within the scope of, newsgathering activities.

5. Members of the Department should not be authorized to apply for a warrant to obtain work product materials or other documentary materials of a member of the news media under the PPA suspect exception, see 42 U.S.C. 2000aa(a)(1) and (b)(1), if the sole purpose is to further the investigation of a person other than the member of the news media. 28 C.F.R. 50.10(d)(5).
6. **Searches of Non-Media Premises, Property, Communications Records, or Business Records.** 2 A Deputy Assistant Attorney General (DAAG) for the Criminal Division may authorize an application for a warrant to search the premises, property, or communications records of an individual **other than a member of the news media**, e.g., an academic, but who is reasonably believed to have "a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication." 42 U.S.C. 2000aa(a), (b). See 28 C.F.R. 50.10(d)(6).

- i. If the request involves the contemplated search of electronic or digital records, members of the Department shall submit a request to the Criminal Division's Computer Crime and Intellectual Property Section (CCIPS).
- ii. If the request involves only the contemplated search of physical premises, property, or records, members of the Department shall submit a request to the PSEU.
- iii. The Criminal Division DAAG will determine (1) whether the individual or entity whose premises, property, or records may be searched is protected by the PPA; and, if so, (2) whether the information sought constitutes "work product materials" or "other documents" as defined by the PPA; and, if so, (3) whether the PPA's suspect exception or another exception to the general prohibition on the search and seizure of such materials is applicable.

7. In executing a warrant authorized by the Attorney General or by a Deputy Assistant Attorney General for the Criminal Division, investigators should use protocols designed to minimize intrusion into potentially protected materials or newsgathering activities unrelated to the investigation, including but not limited to keyword searches (for electronic searches) and filter teams. 28 C.F.R. 50.10(d)(7). Members of the Department should include proposed search and review protocols in their requests for authorization.

E. Notice to Affected Member of the News Media.

1. In matters in which the Attorney General has both determined that a member of the news media is a subject or target of an investigation relating to an offense committed in the course of, or arising out of, newsgathering activities, and authorized the use of a subpoena, court order, or warrant to obtain from a third party the communications records or business records of a members of the news media pursuant to 28 C.F.R. 50.10(c)(4)(i), (c)(5)(i), or (d)(1), members of the Department are not required to provide notice of the Attorney General's authorization to the member of the news media. See 28 C.F.R. 50.10(e)(1)(i). The Attorney General may, nevertheless, direct that notice be provided. If the Attorney General does not direct that notice be provided, the United States Attorney or Assistant Attorney General responsible for the matter shall provide to the Attorney General within 90 days of the authorization (and every 90 days thereafter) an update regarding the status of the investigation, which update shall include an assessment of any harm that would be caused to the investigation if notice were provided to the affected member of the news media. The Attorney General shall consider such updates in determining whether to direct that notice provided.
2. Except as provided in 28 C.F.R. 50.10(e)(1), when the Attorney General has authorized the use of a subpoena, court order, or warrant to obtain from a third party communications records or business records of a member of the news media, the affected member of the news media shall be given reasonable and timely notice of the Attorney General's determination before the use of the subpoena, court order, or warrant, unless the Attorney General determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. 28 C.F.R. 50.10(e)(2). The mere possibility that notice to the affected member of the news media, and potential judicial review, might delay the investigation is not, on its own, a compelling reason to delay notice. *Id.*
3. When the Attorney General has authorized the use of a subpoena, court order, or warrant to obtain communications records or business records of a member of the news media, and the affected member of the news media has not been given notice, pursuant to 28 C.F.R. 50.10(e)(2), of the Attorney General's determination before the use of the subpoena, court order, or warrant, the United States Attorney or Assistant Attorney General responsible for the matter **shall** provide to the affected member of the news media notice of the subpoena, court order, or warrant as soon as it is determined that such notice will no longer pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. 28 C.F.R. 50.10(e)(3). In any event, such notice shall occur within 45 days of the government's receipt of any return made pursuant to the subpoena, court order, or warrant, *except that* the Attorney General may authorize delay of

notice for an additional 45 days if he or she determines that for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation, risk grave harm to national security, or present an imminent risk of death or serious bodily harm. *Id.* No further delays may be sought beyond the 90-day period. *Id.*

4. The United States Attorney or Assistant Attorney General responsible for the matter shall provide to the Director of the Office of Public Affairs and to the Director of the Criminal Division's Office of Enforcement Operations a copy of any notice to be provided to the affected member of the news media at least 10 business days before such notice is provided, *and* immediately after such notice is, in fact, provided to the affected member of the news media. 28 C.F.R. 50.10(e)(4).

F. Questioning, Arresting, or Charging Members of the News Media.

1. No member of the Department shall subject a member of the news media to questioning as to any offense which he or she is suspected of having committed in the course of, or arising out of, newsgathering activities without first providing notice to the Director of the Office of Public Affairs and obtaining the express authorization of the Attorney General. 28 C.F.R. 50.10(f)(1).
 - i. The government need not view the member of the news media as a subject or target of an investigation, or have the intent to prosecute the member of the news media, to trigger the requirement that the Attorney General must authorize such questioning. *Id.* **Before questioning a member of the news media, members of the Department must consult with the PSEU whenever the proposed questioning may relate to an offense the member of the news media "is suspected of having committed in the course of, or arising out of, newsgathering activities" even if the government does not view the member of the news media as a subject or target of an investigation, or have the intent to prosecute the member of the news media.**
 - ii. If law enforcement authorities intend to question the member of the news media about criminal conduct he or she is suspected of having committed in the course of, or arising out of, newsgathering activities, the Attorney General must authorize any such questioning. Conversely, if, at the time the request is made, law enforcement authorities do not intend to question the member of the news media about criminal conduct he or she is suspected of having committed in the course of, or arising out of, newsgathering activities, the Attorney General need not authorize such questioning. **Before questioning a member of the news media, members of the Department must consult with the PSEU whenever the proposed questioning may relate to an offense the member of the news media "is suspected of having committed in the course of, or arising out of, newsgathering activities."**
 - iii. This requirement is not intended to inhibit the ability of law enforcement authorities to question or interview members of the news media on a voluntary basis when such questioning does *not* concern criminal conduct the member of the news media is suspected of having committed in the course of, or arising out of, newsgathering activities. For example, members of the Department do not need authorization, pursuant

to 28 C.F.R. 50.10, to contact a member of the news media for the purpose of alerting such person to their status as a victim of or witness to a crime, or to question on a voluntary basis such person about their status as a victim of or witness to a crime – even if such status as a victim or witness is related to newsgathering activities. **Before questioning or interviewing a member of the news media in connection with their status as a victim of or witness to a crime, members of the Department must consult with the PSEU to confirm such status.**

2. No member of the Department shall seek a warrant for an arrest, or conduct an arrest, of a member of the news media for any offense which he or she is suspected of having committed in the course of, or arising out of, newsgathering activities without first providing notice to the Director of the Office of Public Affairs and obtaining the express authorization of the Attorney General. 28 C.F.R. 50.10(f)(2). **Before seeking an arrest warrant for, or arresting, a member of the news media, members of the Department must consult with the PSEU regarding whether the member of the news media engaged in the conduct at issue "in the course of, or arising out of, newsgathering activities."**
3. No member of the Department shall present information to a grand jury seeking a bill of indictment, or file an information, against a member of the news media for any offense which he or she is suspected of having committed in the course of, or arising out of, newsgathering activities without first providing notice to the Director of the Office of Public Affairs and obtaining the express authorization of the Attorney General. 28 C.F.R. 50.10(f)(3). **Before charging a member of the news media, members of the Department must consult with the PSEU regarding whether the member of the news media engaged in the conduct at issue "in the course of, or arising out of, newsgathering activities."**
4. In requesting the Attorney General's authorization to question, to seek an arrest warrant for, or to arrest, or to present information to a grand jury seeking an indictment or to file an information against, a member of the news media as provided in 28 C.F.R. 50.10(f)(1) – (f)(3), a member of the Department shall provide all facts necessary for a determination by the Attorney General. 28 C.F.R. 50.10(f)(4). To do so, the member of the Department should submit to the PSEU a memorandum describing the offense under investigation, the status of the investigation, and the role of the member of the news media in the conduct at issue and the relationship to such person's newsgathering activities; and a discussion of the rationale for the proposed questioning, arrest, or charging of the member of the news media in light of the purposes of the policy as set forth in 28 C.F.R. 50.10(a).

G. Exigent Circumstances.

1. A Deputy Assistant Attorney General for the Criminal Division may authorize the use of a subpoena or court order, as described in 28 C.F.R. 50.10(c), or the questioning, arrest, or charging of a member of the news media, as described in 28 C.F.R. 50.10(f), if he or she determines that the exigent use of such law enforcement tool is necessary to prevent or mitigate an act of terrorism; other acts that are reasonably likely to cause significant and articulable harm to national security; death; kidnapping; substantial bodily harm; conduct that constitutes a specified offense against a minor (for example, as those terms are defined in section 111 of the Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. 16911), or