

READ THIS BEFORE ANY SEARCH OR SEIZURE

Notice to all law enforcement officers and other government officers, employees, or agents:

This device contains work product material and other documentary materials of a person intending them for use in preparing material for publication and protected by Title 42 U.S. Code, section 2000aa, as attached.

This device, data stored on it, and any premises where it is found or to be searched for or seized are also subject to the provisions of 28 CFR 50.10 and the guidelines in the Justice Manual, JM 9-19.

Note that those regulations and guidelines require Federal officers to obtain prior approval for searches, seizures, or applications for warrants for search and/or seizure of this device or data.

I do not consent to any search or seizure of this device, any data stored on it, or any premises on which it is found.

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**

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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

October 26, 2022

MEMORANDUM TO ALL DEPARTMENT EMPLOYEES

FROM: THE ATTORNEY GENERAL

SUBJECT: NEW REGULATIONS REGARDING OBTAINING INFORMATION
FROM OR RECORDS OF MEMBERS OF THE NEWS MEDIA; AND
REGARDING QUESTIONING, ARRESTING, OR CHARGING
MEMBERS OF THE NEWS MEDIA

A free and independent press is vital to the functioning of our democracy. In recognition of the important national interest in a free and independent press, on July 19, 2021, I issued a memorandum revising the Department's policy regarding the use of compulsory legal process for the purpose of obtaining information from or records of members of the news media. I also asked the Deputy Attorney General to undertake a review to further explain, develop, and codify protections for the news media in regulations. After the conclusion of that review, which involved consultation with relevant internal and external stakeholders, including federal prosecutors and members of the media, I am today issuing the revised regulations, which can be found at 28 CFR 50.10.

The revisions codify the July 2021 directive that the Department will no longer use compulsory legal process for the purpose of obtaining information from or records of members of the news media acting within the scope of newsgathering, except in limited circumstances. Other revisions are intended to clarify the scope of the policy, specify the standards and approvals required in matters in which compulsory legal process is still permitted, tighten procedures for the review and safeguarding of information, and fill gaps in the previous regulations.

To ensure consistent application and understanding of this policy throughout the Department, the relevant Justice Manual provisions will be updated with further guidance, and the Criminal Division's Office of Enforcement Operations will provide comprehensive training across the Department regarding the new policy's substance, standards, approval levels, and consultation requirements.

I am grateful to the many Department personnel who participated in the review process that resulted in the revised regulations.

dated August 19, 2022, and effective September 15, 2022 . . .”.

c. On page 54881, column 1, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .” is corrected to read “. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .”; and two other instances of “FAA Order JO 7400.11F . . .” are corrected to read “FAA Order JO 7400.11G . . .”.

§ 71.1 [Corrected]

e. On page 54882, column 1, under Amendatory Instruction 2, “. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .” is corrected to read “. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .”.

45. For Docket No. FAA–2022–0823; Airspace Docket No. 21–AEA–23 (87 FR 54882; September 8, 2022)

Correction

a. On page 54882, column 2, under **ADDRESSES**, “. . . FAA Order JO 7400.11F . . .” is corrected to read “. . . FAA Order JO 7400.11G . . .”.

b. On page 54882, column 3, under History, “. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .” is corrected to read “. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .”.

c. On page 54883, column 3, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .” is corrected to read “. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .”; and two other instances of “FAA Order JO 7400.11F . . .” are corrected to read “FAA Order JO 7400.11G . . .”.

§ 71.1 [Corrected]

d. On page 54883, column 2, under Amendatory Instruction 2, “. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .” is corrected to read “. . . FAA Order JO 7400.11G,

Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .”.

46. For Docket No. FAA–2022–0026; Airspace Docket No. 21–AA–68 (87 FR 54883; September 8, 2022)

Correction

a. On page 54883, column 3, under **ADDRESSES**, “. . . FAA Order JO 7400.11F . . .” is corrected to read “. . . FAA Order JO 7400.11G . . .”.

b. On page 54884, column 1, under History, “. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .” is corrected to read “. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .”.

47. For Docket No. FAA–2022–0824; Airspace Docket No. 21–ASO–33 (87 FR 54884; September 8, 2022)

Correction

a. On page 54884, column 2, under **ADDRESSES**, “. . . FAA Order JO 7400.11F . . .” is corrected to read “. . . FAA Order JO 7400.11G . . .”.

b. On page 54884, column 2, under History, “. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .” is corrected to read “. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .”.

c. On page 54884, column 3, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .” is corrected to read “. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .”; and two other instances of “FAA Order JO 7400.11F . . .” are corrected to read “FAA Order JO 7400.11G . . .”.

§ 71.1 [Corrected]

d. On page 54885, column 3, under Amendatory Instruction 2, “. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .” is corrected to read “. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .”.

47. For Docket No. FAA–2022–0774; Airspace Docket No. 22–AGL–26 (87 FR 55683; September 12, 2022)

Correction

a. On page 55683, column 1, under **ADDRESSES**, “. . . FAA Order JO

7400.11F . . .” is corrected to read “. . . FAA Order JO 7400.11G . . .”.

b. On page 55683, column 2, under History, “. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .” is corrected to read “. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .”.

c. On page 55683, column 2, under Availability and Summary of Documents for Incorporation by Reference, “. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .” is corrected to read “. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .”; and two other instances of “FAA Order JO 7400.11F . . .” are corrected to read “FAA Order JO 7400.11G . . .”.

§ 71.1 [Corrected]

e. On page 55684, column 2, under Amendatory Instruction 2, “. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .” is corrected to read “. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .”.

Issued in Washington, DC, on, October 27, 2022.

Mark E. Gauch,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2022–23764 Filed 11–2–22; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 50

[Docket No. OAG 179; AG Order No. 5524–2022]

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 regulations setting forth the policy of the Department of Justice regarding the use of compulsory legal process, including subpoenas, search warrants, and certain court orders for the purpose of obtaining information from or records of members of the news media. The rule

also amends the Department's regulations establishing its policy regarding questioning, arresting, or charging members of the news media.

DATES: This rule is effective on November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Ashley Dugger, Acting Director, Office of Enforcement Operations, Criminal Division, (202) 514-6809.

SUPPLEMENTARY INFORMATION:

Discussion

On July 19, 2021, the Attorney General issued a memorandum revising the Department's policy regarding the use of compulsory legal process for the purpose of obtaining information from or records of members of the news media. The memorandum asked the Deputy Attorney General to undertake a review process to further explain, develop, and codify in regulations the protections provided for in the memorandum. After the conclusion of that review and consultation with relevant internal and external stakeholders, the Attorney General is issuing this final rule to revise the existing provisions in the Department's regulations at 28 CFR 50.10.

The revisions replace the regulations' prior balancing test and codify the Attorney General's July 2021 directive that the Department of Justice will no longer use compulsory legal process for the purpose of obtaining information from or records of members of the news media acting within the scope of newsgathering, except in limited circumstances. Other revisions are intended to clarify the scope of the policy, specify the approvals required in the circumstances in which compulsory legal process is allowed, tighten procedures for the review and safeguarding of information, and fill gaps in the previous regulations.

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), (d).

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, Media, News, Search warrants, Subpoena.

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) A free and independent press is vital to the functioning of our democracy. 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 and actions, whether criminal or civil, that might unreasonably impair newsgathering. The policy is not intended to shield from accountability members of the news media who are subjects or targets of a criminal investigation for conduct outside the scope of newsgathering.

(2) The Department recognizes the important national interest in protecting journalists from compelled disclosure of information revealing their sources, sources they need to apprise the American people of the workings of their Government. For this reason, with the exception of certain circumstances set out in this section, the Department of Justice will not use compulsory legal process for the purpose of obtaining information from or records of members of the news media acting within the scope of newsgathering.

(3) In determining whether to seek, when permitted by this policy, information from or records of members of the news media, the Department must consider 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 a free press in fostering Government accountability and an open society, including by protecting members of the news media from compelled disclosure of information revealing their sources. These interests have long informed the Department's view that the use of compulsory legal process to seek information from or records of non-consenting members of the news media constitutes an extraordinary measure, not a standard investigatory practice.

(b) *Scope and definitions*—(1) *Covered persons and entities.* The policy in this section governs the use of certain law enforcement tools and actions, whether criminal or civil, to obtain information from or records of members of the news media.

(2) *Definitions.* (i) *Compulsory legal process* consists of subpoenas, search warrants, court orders issued pursuant to 18 U.S.C. 2703(d) and 3123, interception orders issued pursuant to 18 U.S.C. 2518, civil investigative demands, and mutual legal assistance treaty requests—regardless of whether issued to members of the news media directly, to their publishers or employers, or to others, including third-party service providers of any of the foregoing, for the purpose of obtaining information from or records of members of the news media, and regardless of whether the compulsory legal process seeks testimony, physical or electronic documents, telephone toll or other communications records, metadata, or digital content.

(ii) *Newsgathering* is the process by which a member of the news media collects, pursues, or obtains information or records for purposes of producing content intended for public dissemination.

(A) Newsgathering includes the mere receipt, possession, or publication by a member of the news media of Government information, including classified information, as well as establishing a means of receiving such information, including from an anonymous or confidential source.

(B) Except as provided in paragraph (b)(2)(ii)(A) of this section, newsgathering does not include criminal acts committed in the course of obtaining information or using information, such as: breaking and entering; theft; unlawfully accessing a computer or computer system; unlawful surveillance or wiretapping; bribery; extortion; fraud; insider trading; or aiding or abetting or conspiring to engage in such criminal activities, with the requisite criminal intent.

(3) *Exclusions.* (i) The protections of the policy in this section do not extend to any person or entity where there is a reasonable ground to believe the person 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, 3 CFR, 2001 Comp., p. 786;

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

(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 to commit the crimes of providing material support or resources to terrorists or designated foreign terrorist organizations, providing or collecting funds to finance acts of terrorism, or receiving military-type training from a foreign terrorist organization, as those offenses are defined in 18 U.S.C. 2339A, 2339B, 2339C, and 2339D; or

(H) Aiding, abetting, or conspiring in illegal activity with a person or organization described in paragraphs (b)(3)(i)(A) through (G) of this section.

(ii) The determination that an exclusion in paragraph (b)(3)(i) of this section applies must be made by the Assistant Attorney General for National Security.

(c) *Compulsory legal process for the purpose of obtaining information from or records of a member of the news media acting within the scope of newsgathering.* Compulsory legal process for the purpose of obtaining information from or records of a member of the news media acting within the scope of newsgathering is prohibited except under the circumstances set forth in paragraphs (c)(1) through (3) of this section. (Note that the prohibition in this paragraph (c) on using compulsory legal process applies when a member of the news media has, in the course of newsgathering, only received, possessed, or published government information, including classified information, or has established a means

of receiving such information, including from an anonymous or confidential source.) The Department may only use compulsory legal process for the purpose of obtaining information from or records of a member of the news media acting within the scope of newsgathering, as follows:

(1) To authenticate for evidentiary purposes information or records that have already been published, in which case the authorization of a Deputy Assistant Attorney General for the Criminal Division is required;

(2) To obtain information or records after a member of the news media agrees to provide or consents to the provision of the requested records or information in response to the proposed compulsory legal process, in which case authorization as described in paragraph (i) of this section is required; or

(3) When necessary to prevent an imminent or concrete risk of death or serious bodily harm, including terrorist acts, kidnappings, specified offenses against a minor (as defined in 34 U.S.C. 20911(7)), or incapacitation or destruction of critical infrastructure (as defined in 42 U.S.C. 5195c(e)), in which case the authorization of the Attorney General is required.

(d) *Compulsory legal process for the purpose of obtaining information from or records of a member of the news media not acting within the scope of newsgathering.* (1) The Department may only use compulsory legal process for the purpose of obtaining information from or records of a member of the news media who is not acting within the scope of newsgathering:

(i) When the member of the news media is the subject or target of an investigation and suspected of having committed an offense;

(ii) To obtain information or records of a non-member of the news media, when the non-member is the subject or target of an investigation and the information or records are in a physical space, device, or account shared with a member of the news media;

(iii) To obtain purely commercial, financial, administrative, technical, or other information or records unrelated to newsgathering; or for information or records relating to personnel not involved in newsgathering;

(iv) To obtain information or records related to public comments, messages, or postings by readers, viewers, customers, or subscribers, over which a member of the news media does not exercise editorial control prior to publication;

(v) To obtain information or records of a member of the news media who may be a victim of or witness to crimes or

other events, or whose premises may be the scene of a crime, when such status (as a victim or witness or crime scene) is not based on or within the scope of newsgathering; or

(vi) To obtain only subscriber and other information described in 18 U.S.C. 2703(c)(2)(A), (B), (D), (E), and (F).

(2) Compulsory legal process under paragraph (d)(1) of this section requires the authorization of a Deputy Assistant Attorney General for the Criminal Division, except that:

(i) To obtain information or records after a member of the news media agrees to provide or consents to the provision of the requested records or information in response to the proposed compulsory legal process, such compulsory legal process requires authorization as described in paragraph (i) of this section governing voluntary questioning and compulsory legal process following consent by a member of the news media; and

(ii) To seek a search warrant for the premises of a news media entity requires authorization by the Attorney General.

(e) *Matters where there is a close or novel question as to the person's or entity's status as a member of the news media or whether the member of the news media is acting within the scope of newsgathering.* (1) When there is a close or novel question as to the person's or entity's status as a member of the news media, the determination of such status must be approved by the Assistant Attorney General for the Criminal Division.

(2) When there is a close or novel question as to whether the member of the news media is acting within the scope of newsgathering, the determination of such status must be approved by the Assistant Attorney General for the Criminal Division. When the Assistant Attorney General finds that there is genuine uncertainty as to whether the member of the news media is acting within the scope of newsgathering, the determination of such status must be approved by the Attorney General.

(f) *Compelled testimony.* (1) Except as provided in paragraph (f)(2) of this section, members of the Department must obtain the authorization of the Deputy Attorney General when seeking to compel grand jury or trial testimony otherwise permitted by this section from any member of the news media.

(2) When the compelled testimony under paragraph (f)(1) of this section has no nexus to the person's or entity's activities as a member of the news media, members of the Department must obtain the authorization of a Deputy

Assistant Attorney General for the Criminal Division and provide prior notice to the Deputy Attorney General.

(3) Such authorization may only be granted when all other requirements of this policy regarding compulsory legal process have been satisfied.

(g) *Exhaustion.* (1) Except as provided in paragraph (g)(2) of this section, the official authorizing the compulsory legal process must find the following exhaustion conditions are met:

(i) The Government has exhausted all reasonable avenues to obtain the information from alternative, non-news-media sources.

(ii) The Government has pursued negotiations with the member of the news media in an attempt to secure the member of the news media's consent to the production of the information or records to be sought through compulsory legal process, unless the authorizing official determines that, for compelling reasons, such negotiations would pose a clear and substantial threat to the integrity of the investigation or pose the risks described in paragraph (c)(3) of this section.

Where the nature of the investigation permits, the Government must have explained to the member of the news media the Government's need for the information sought in a particular investigation or prosecution, as well as its willingness or ability to address the concerns of the member of the news media.

(iii) The proposed compulsory legal process is narrowly drawn. It must be directed at material and relevant information regarding a limited subject matter, avoid interference with unrelated newsgathering, cover a reasonably limited period of time, avoid requiring production of a large volume of material, and give reasonable and timely notice of the demand as required by paragraph (j) of this section.

(2) When the process is sought pursuant to paragraph (d)(1), (i), or (l) of this section, the authorizing official is not required to find that the exhaustion conditions in paragraphs (g)(1)(i) and (ii) of this section have been satisfied, but should consider requiring those conditions as appropriate.

(h) *Standards for authorizing compulsory legal process.* (1) In all matters covered by this section, the official authorizing the compulsory legal process must take into account the principles set forth in paragraph (a) of this section.

(2) Except as provided in paragraph (h)(3) of this section, when the member of the news media is not the subject or target of an investigation and suspected of having committed an offense, the

official authorizing the compulsory legal process must take into account the following considerations:

(i) In criminal matters, there must be reasonable grounds to believe, based on public information or information from non-news-media sources, that a crime has occurred, and that the information sought is essential to a successful investigation or prosecution. The compulsory legal process may not be used to obtain peripheral, nonessential, or speculative information.

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

(3) When paragraph (h)(2) of this section would otherwise apply, but the compulsory legal process is sought pursuant to paragraph (i) or (l) of this section, the authorizing official is not required to, but should, take into account whether the information sought is essential to a successful investigation, prosecution, or litigation as described in paragraphs (h)(2)(i) and (ii) of this section.

(4) When the member of the news media is the subject or target of an investigation and suspected of having committed an offense, before authorizing compulsory legal process, the authorizing official is not required to, but should, take into account the considerations set forth in paragraphs (h)(2)(i) and (ii) of this section as appropriate.

(i) *Voluntary questioning and compulsory legal process following consent by a member of the news media.*

(1) When the member of the news media is not the subject or target of an investigation and suspected of having committed an offense, authorization by a United States Attorney or Assistant Attorney General responsible for the matter must be obtained in order to question a member of the news media on a voluntary basis, or to use compulsory legal process if the member of the news media agrees to provide or consents to the provision of the requested records or information in response to the proposed process. When there is any nexus to the person's activities as a member of the news media, such authorization must be preceded by consultation with the Criminal Division.

(2) When the member of the news media is the subject or target of an

investigation and suspected of having committed an offense, authorization by a Deputy Assistant Attorney General for the Criminal Division must be obtained in order to question a member of the news media on a voluntary basis, or to use compulsory legal process if the member of the news media agrees to provide or consents to the provision of the requested records or information in response to the proposed process.

(j) *Notice of compulsory legal process to the affected member of the news media.* (1) Members of the Department must provide notice to the affected member of the news media prior to the execution of authorized compulsory legal process under paragraph (c) of this section unless the authorizing official determines that, for compelling reasons, such notice would pose the risks described in paragraph (c)(3) of this section.

(2) Members of the Department must provide notice prior to the execution of compulsory legal process authorized under paragraphs (d)(1)(ii) through (vi) of this section to a member of the news media that is not the subject or target of an investigation and suspected of having committed an offense, unless the authorizing official determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation or would pose the risks described in paragraph (c)(3) of this section and so informs the Deputy Attorney General in advance.

(3) If the member of the news media has not been given notice under paragraph (j)(1) or (2) of this section, the United States Attorney or Assistant Attorney General responsible for the matter must provide notice to the member of the news media as soon as it is determined that such notice would no longer pose the concerns described in paragraph (j)(1) or (2) of this section, as applicable.

(4) In any event, such notice must be given to the affected member of the news media within 45 days of the Government's receipt of a complete return made pursuant to all forms of compulsory legal process included in the same authorizing official's authorization under paragraph (c) or (d)(1)(ii) through (vi) of this section, except that the authorizing official may authorize delay of notice for one additional 45-day period if the official determines that, for compelling reasons, such notice continues to pose the same concerns described in paragraph (j)(1) or (2) of this section, as applicable.

(5) Members of the Department are not required to provide notice to the affected member of the news media of compulsory legal process that was

authorized under paragraph (d)(1)(i) of this section if the affected member of the news media is the subject or target of an investigation and suspected of having committed an offense.

(i) The authorizing official may nevertheless direct that notice be provided to the affected member of the news media.

(ii) If the authorizing official does not direct that such notice be provided, the official must so inform the Deputy Attorney General, and members of the Department who are responsible for the matter must provide the authorizing official with an update every 90 days regarding the status of the investigation. That update must include an assessment of any harm to the investigation that would be caused by providing notice to the member of the news media. The authorizing official will consider such update in determining whether to direct that notice be provided.

(6) Notice under the policy in this section may be given to the affected member of the news media or a current employer of that member if that employer is also a member of the news media.

(7) A copy of any notice to be provided to a member of the news media shall be provided to the Director of the Office of Public Affairs and to the Director of the Criminal Division's Office of Enforcement Operations at least 10 business days before such notice is provided, and immediately after such notice is provided to the member of the news media.

(k) *Non-disclosure orders.* (1) In seeking authorization to use compulsory legal process to obtain information from or the 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 compulsory legal process not to disclose the existence of the compulsory legal process to any other person or entity and shall articulate the need for such non-disclosure order.

(2) An application for a non-disclosure order sought in connection with compulsory legal process under paragraph (c) of this section may only be authorized if the authorizing official determines that, for compelling reasons, disclosure would pose the risks described in paragraph (c)(3) of this section and the application otherwise complies with applicable statutory standards and Department policies.

(3) An application for a non-disclosure order sought in connection with compulsory legal process under paragraphs (d)(1)(ii) through (vi) of this section regarding a member of the news media that is not the subject or target of

an investigation and suspected of having committed an offense may only be authorized if the authorizing official determines that, for compelling reasons, disclosure would pose a clear and substantial threat to the integrity of the investigation or would pose the risks described in paragraph (c)(3) of this section and the application otherwise complies with applicable statutory standards and Department policies.

(4) An application for a non-disclosure order sought in connection with compulsory legal process under paragraph (d)(1)(i) of this section regarding a member of the news media that is a subject or target of an investigation and suspected of having committed an offense may be authorized if the application otherwise complies with applicable statutory standards and Department policies.

(5) Members of the Department must move to vacate any non-disclosure order when notice of compulsory legal process to the affected member of media is required (after any extensions permitted) by paragraph (j) of this section.

(l) *Exigent circumstances involving risk of death or serious bodily harm.* (1) A Deputy Assistant Attorney General for the Criminal Division may authorize the use of compulsory legal process that would otherwise require authorization from the Attorney General or the Deputy Attorney General if the Deputy Assistant Attorney General for the Criminal Division determines that:

(i) The exigent use of such compulsory legal process is necessary to prevent the risks described in paragraph (c)(3) of this section; and

(ii) Those exigent circumstances require the use of such compulsory legal process before the authorization of the Attorney General or the Deputy Attorney General can, with due diligence, be obtained.

(2) In authorizing the exigent use of compulsory legal process, a Deputy Assistant Attorney General for the Criminal Division should take into account the principles set forth in paragraph (a) of this section; ensure that the proposed process is narrowly tailored to retrieve information or records required to prevent or mitigate the associated imminent risk; and require members of the Department to comply with the safeguarding protocols described in paragraph (p) of this section.

(3) As soon as possible after the approval by a Deputy Assistant Attorney General for the Criminal Division of a request under paragraph (l)(1) of this section, the Deputy Assistant Attorney General must provide notice to the

designated authorizing official, the Deputy Attorney General, and the Director of the Office of Public Affairs. Within 10 business days of the authorization under paragraph (l)(1) of this section, the United States Attorney or Assistant Attorney General responsible for the matter shall provide a statement to the designated authorizing official containing the information that would have been provided in a request for prior authorization.

(m) *Arresting or charging a member of the news media.* (1) Except as provided in paragraph (m)(2) of this section or in circumstances in which prior authorization is not possible, members of the Department must obtain the authorization of the Deputy Attorney General to seek a warrant for an arrest, conduct an arrest, present information to a grand jury seeking a bill of indictment, or file an information against a member of the news media.

(2) Except in circumstances in which prior authorization is not possible, when the arrest or charging of a member of the news media under paragraph (m)(1) of this section has no nexus to the person's or entity's activities as a member of the news media, members of the Department must obtain the authorization of a Deputy Assistant Attorney General for the Criminal Division and provide prior notice to the Deputy Attorney General.

(3) When prior authorization was not possible, the member of the Department must ensure that the designated authorizing official is notified as soon as possible.

(n) *Applications for authorizations under this section.* (1) Whenever any authorization is required under this section, the application must be personally approved in writing by the United States Attorney or Assistant Attorney General responsible for the matter.

(2) Whenever the authorizing official under this section is the Attorney General or the Deputy Attorney General, the application must also be personally approved in a memorandum by the Assistant Attorney General for the Criminal Division.

(3) The member of the Department requesting authorization must provide all facts and applicable legal authority necessary for the authorizing official to make the necessary determinations, as well as copies of the proposed compulsory legal process and any other related filings.

(4) Whenever an application for any authorization is made to the Attorney General or the Deputy Attorney General under this section, the application must

also be provided to the Director of the Office of Public Affairs for consultation.

(o) *Filter protocols.* (1) In conjunction with the use of compulsory legal process, the use of filter protocols, including but not limited to keyword searches and filter teams, may be necessary to minimize the potential intrusion into newsgathering-related materials that are unrelated to the conduct under investigation.

(2) While the use of filter protocols should be considered in all matters involving a member of the news media, the use of such protocols must be balanced against the need for prosecutorial flexibility and the recognition that investigations evolve, and should be tailored to the facts of each investigation.

(3) Unless compulsory legal process is sought pursuant to paragraph (i) or (l) of this section, members of the Department must use filter protocols when the compulsory legal process relates to a member of the news media acting within the scope of newsgathering or the compulsory legal process could potentially encompass newsgathering-related materials that are unrelated to the conduct under investigation. The Attorney General or the Deputy Attorney General may waive the use of filter protocols only upon an express finding that there is a *de minimis* risk that newsgathering-related materials that are unrelated to the conduct under investigation would be obtained pursuant to the compulsory legal process and that any filter protocol would pose a substantial and unwarranted investigative burden.

(4) Members of the Department should consult the Justice Manual for guidance regarding the use of filter protocols to protect newsgathering-related materials that are unrelated to the conduct under investigation.

(p) *Safeguarding.* Any information or records that might include newsgathering-related materials obtained from a member of the news media or from third parties pursuant to the policy in this section must be closely held so as to prevent disclosure of the information to unauthorized persons or for improper purposes. Members of the Department must consult the Justice Manual for specific guidance regarding the safeguarding of information or records obtained from a member of the news media or from third parties pursuant to this section and regarding the destruction and return of information or records as permitted by law.

(q) *Privacy Protection Act.* All authorizations pursuant to this section must comply with the provisions of the

Privacy Protection Act (PPA), 42 U.S.C. 2000aa(a) *et seq.* Members of the Department must consult the Justice Manual for specific guidance on complying with the PPA. Among other things, members of the Department are not 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.

(r) *Anti-circumvention.* Members of the Department shall not direct any third party to take any action that would violate a provision of this section if taken by a member of the Department.

(s) *Failure to comply.* Failure to obtain the prior authorization required by this section may constitute grounds for an administrative reprimand or other appropriate disciplinary action.

(t) *General provision.* This section 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: October 26, 2022.

Merrick B. Garland,
Attorney General.

[FR Doc. 2022-23679 Filed 11-2-22; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2022-0728]

Special Local Regulations; Englewood Beach Waterfest; Gulf of Mexico; Englewood, FL

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation during the Englewood Beach Waterfest. During the enforcement period, all persons and vessels, except those persons and vessels participating in the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area without obtaining permission from the



THE UNITED STATES
DEPARTMENT OF JUSTICE

9.000 - DOCUMENTARY MATERIAL HELD BY THIRD PARTIES

9-19.200	Introduction
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9-19.200 - INTRODUCTION

This chapter focuses on the means by which federal prosecutors may obtain, for evidentiary purposes, documentary material believed to be in the possession of disinterested third parties. These provisions have been drafted to be consistent with the previously published Attorney General's "Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties," 28 C.F.R., Part 59, as well as with Section 201 of Title II of the Privacy Protection Act of 1980, 42 U.S.C. §§ 2000aa *et seq.*

The intent of the regulations (28 C.F.R., Part 59) is to protect against unnecessary invasions of personal privacy and to recognize the potential for such invasions when the government seeks to obtain documentary materials from third parties not themselves under investigation. The general thrust of these guidelines is that a search warrant should not be used to obtain documentary materials from a non-suspect, except where the use of a subpoena or other less intrusive means would jeopardize the availability or usefulness of the materials sought.

For Government attorneys contemplating the use of a search warrant directed at seizing materials from disinterested third parties, different provisions apply depending on whether the person from whom the materials are sought is: (1) a disinterested third party (see [JM 9-19.210](#)); (2) a disinterested third party who is a physician, lawyer, or clergyman (see [JM 9-19.220](#) and 230); or (3) a person possessing the materials sought for the purposes of public communication (e.g., a newspaper, book, or broadcast) (see [JM 9-19.240](#)). The use of search warrants directed at seizing documentary materials from the media or any "person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of communication" is strictly regulated by statute, see 42 U.S.C. §§ 2000aa, *et seq.* Search warrants directed at seizing materials from other categories of disinterested third parties are governed by the regulations promulgated in accordance with that statute, see 28 C.F.R., Part 59.

[updated January 2020]

9-19.210 - PROCEDURES WHERE MATERIALS SOUGHT ARE IN POSSESSION OF A DISINTERESTED THIRD PARTY OTHER THAN A PERSON POSSESSING THE MATERIALS FOR PURPOSES OF PUBLIC COMMUNICATION

Normally a search warrant should not be used to obtain documentary materials held by a disinterested third party. A search warrant may be sought, however, if the use of a subpoena or other less intrusive means would substantially jeopardize the availability or usefulness of the materials sought. Except as provided in JM 9-19.220, the application for such a warrant must be authorized by an attorney for the government. "Attorney for the government" is defined in the regulations as having the same meaning as found in Rule 1(b) of the Federal Rules of Criminal Procedure and includes all United States Attorneys and Assistant United States Attorneys. In addition, the Department takes the position that the phrase "Attorney General or an authorized assistant" set forth in Rule 1(b) as part of the definition of the term "attorney for the government" is broad enough to include all Department of Justice attorneys assigned to investigate or prosecute cases and their supervisors.

An exception to the authorization requirement may be made in emergency situations, where the immediacy of the need to seize the materials does not permit an opportunity to secure authorization from the attorney for the government. In such situations the application may be authorized by a supervisory law enforcement officer in the applicant's department or agency. However, the United States Attorney or supervising Department of Justice attorney (in a case in which a division of the Department is directly handling the investigation or prosecution) must be notified of the authorization and its justifying basis within 24 hours of the authorization. 28 C.F.R. § 59.4(a).

[updated October 2012] [cited in JM 9-19.200; JM 9-19.230]

9-19.220 - PROCEDURES WHERE PRIVILEGED MATERIALS SOUGHT ARE IN POSSESSION OF A DISINTERESTED THIRD PARTY PHYSICIAN, LAWYER, OR CLERGYMAN

A similar but somewhat different procedure is followed when the disinterested third party is a physician, lawyer, or clergyman and the materials sought or other materials likely to be reviewed during the execution of the search warrant contain confidential information concerning patients, clients, or parishioners that was furnished or developed for the purposes of professional counseling or treatment. As with other disinterested third parties, a search warrant should normally not be used to obtain such confidential materials. A warrant should be used only if the use of a subpoena, or other less intrusive means of obtaining the materials, such as a request, (1) would substantially jeopardize the availability or usefulness of the materials sought; (2) access to the materials is of substantial importance to the investigation or prosecution for which they are sought; and (3) the application of the warrant has been approved by the appropriate Deputy Assistant Attorney General (DAAG) upon the recommendation of the United States Attorney or supervising Department of Justice attorney (in a case in which a division of the Department is directly handling the investigation or prosecution). The appropriate DAAG would be a DAAG for the division which supervises the underlying offense being investigated or prosecuted.

If the documentary materials were created or compiled by a physician but, as a matter of practice, the physician's files are maintained at a hospital or clinic, the files, for purposes of these regulations, are to be deemed in the private possession of the physician; therefore, the regulations would apply if the physician is a disinterested third party. Such records would, however, not be deemed in the private possession of the physician if the hospital or clinic itself were a suspect.

Again, an exception to the authorization requirement may be made in emergency situations where there is an immediate need to seize the materials and not enough time to secure DAAG approval. In such situations, the application may be authorized by the United States Attorney or the supervising Department of Justice attorney. However, the appropriate DAAG must be notified of the authorization and its justifying basis within 72 hours of the authorization. However, in these cases (physician, lawyer, or clergyman), there is no provision for an emergency authorization by a

supervisory law enforcement officer in the applicant's department or agency (as is the case where the materials sought are held by other disinterested third parties). 28 C.F.R. § 59.4(b)(1) and (2).

[cited in [JM 9-19.200](#); [JM 9-19.210](#); [JM 9-19.221](#); [JM 9-19.230](#)]

9-19.221 - REQUEST FOR AUTHORIZATION TO A DEPUTY ASSISTANT ATTORNEY GENERAL

Where the materials sought are in the possession of a disinterested third party physician, lawyer, or clergyman, application for a warrant must be approved by the appropriate Deputy Assistant Attorney General as described in [9-19.220](#). The request for authorization from the Deputy Assistant Attorney General should be made in writing and include a copy of the warrant application as well as a brief description of the facts and circumstances that form the basis for the recommendation of the authorization. In addition, the request must include a statement that it is authorized by the United States Attorney or the supervising Department of Justice attorney. If the request for authorization is made orally, or if, in an emergency situation, the application is authorized by the United States Attorney or the supervising Department of Justice attorney, a written record, as described above, must be sent to the Deputy Assistant Attorney General within seven days. 28 C.F.R. § 59.4(b)(3).

[updated December 2006] [cited in [JM 9-13.420](#)]

9-19.230 - PROCEDURES WHERE MATERIALS SOUGHT ARE IN POSSESSION OF A DISINTERESTED THIRD PARTY PROFESSIONAL INVOLVED IN A DOCTOR-LIKE THERAPEUTIC RELATIONSHIP

There may be additional third-party professionals (e.g., psychologists, psychiatric social workers, or nurses) who possess materials containing private information similar to that held by doctors. The regulations are intended to cover these relationships as well. In such cases, the United States Attorney (or supervising Department of Justice attorney) should determine whether a search for such materials would involve review of extremely confidential information furnished or developed for purposes of professional counseling or treatment, and if it would, the provisions described in [JM 9-19.220](#) for obtaining materials from physicians, lawyers, or clergymen must be followed. At a minimum, the requirements for third party search warrants described in [JM 9-19.210](#) must be observed in all cases. 28 C.F.R. § 59.4(b)(5).

9-19.240 - PROCEDURES WHERE MATERIALS SOUGHT ARE IN POSSESSION OF A PERSON HOLDING THEM IN RELATION TO SOME FORM OF PUBLIC COMMUNICATION

Search warrants directed at seizure of any work product materials or other documentary 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 are governed by Title I of the Privacy Act of 1980 ("PPA"), 42 U.S.C. §§ 2000aa, *et seq.*

The PPA prohibits the use of search warrants to obtain any work product materials or other documentary 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, except under the following limited circumstances: (1) when there is probable cause to believe that the person possessing the materials has committed a criminal act to which the materials relate, unless the alleged offense is the receipt, possession, communication, or withholding of the materials or the information contained within, in which case a search warrant may not be sought unless the alleged offense involves classified materials or child pornography; or (2) when 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.

If the pertinent documents do *not* involve work product materials, the Government may also seek a search warrant under the following additional circumstances: (1) when there is reason to believe that giving notice pursuant to a subpoena duces tecum would result in the destruction, alteration, or concealment of such materials; or (2) when the materials have not been produced in response

to a court order directing compliance with a subpoena and either all appellate remedies have been exhausted or there is reason to believe that the delay caused by further proceedings relating to the subpoena would threaten the interests of justice. Considerations pertinent to the determination as to whether giving advance notice of the Government's interest in obtaining the materials would be likely to result in the destruction, alteration, concealment, or transfer of the materials may be found at 28 C.F.R. § 59.4(c).

The PPA provides that violations of the Act may result in the imposition of civil penalties against the Government. Government attorneys should be particularly aware of the potential for triggering the protections of the PPA in executing computer searches, since computers that may contain non-protected evidence of a crime, such as child pornography, often also contain legitimate, PPA-protected materials, such as draft newsletters on topics of public interest.

All applications for warrants issued under the PPA must be authorized by a Deputy Assistant Attorney General of the Criminal Division. Questions and requests for approval regarding computer-related search warrants should be directed to the Computer Crime and Intellectual Property Section (CCIPS) of the Criminal Division. Whenever proposed computer-related searches involve the traditional media, CCIPS will coordinate its review with the Policy and Statutory Enforcement Unit, of the Criminal Division's Office of Enforcement Operations. Questions and requests for approval regarding all non-computer media-related searches should be directed to the PSEU at (202) 305-4023.

[updated January 2020] [cited in JM 9-19.200]

9-19.400 - NON-APPLICABILITY IN CERTAIN SITUATIONS

The guidelines applicable to obtaining documentary materials held by disinterested third parties (other than those held in relation to some form of public communication) do not apply to certain types of investigatory activities and searches. These include audits; examinations; regulatory, compliance, or administrative inspections; foreign intelligence or counterintelligence activities by a government authority pursuant to otherwise applicable law; border and customs searches; access to documentary materials for which valid consent has been obtained; and access to documentary materials that have been abandoned at a known location or that cannot be obtained by a subpoena because they are in the possession of a person whose identity is not known and cannot be determined with reasonable effort.

The guidelines do not supersede any other statutory, regulatory, or policy limitations on access to or the use or disclosure of particular types of documentary materials.

9-19.500 - SANCTIONS

Any Federal officer or employee who violates the guidelines set forth in 28 C.F.R. § 59 is subject to appropriate disciplinary action by the agency or department by which he/she is employed. See 28 C.F.R. § 59.6.

9-19.700 - CONTACT POINTS FOR ADVICE AND APPROVAL

In cases involving offenses supervised by the Criminal Division, questions as to the provisions governing methods of obtaining documentary materials held by disinterested third parties, as well as inquiries concerning the Deputy Assistant Attorney General's authorization, should be directed to the Policy and Statutory Enforcement Unit of the Office of Enforcement Operations (OEO), at (202) 305-4023.

For offenses under the jurisdiction of the Tax Division, contact the Chief of the appropriate regional Criminal Enforcement Section of the Tax Division.

For offenses under the jurisdiction of the Civil Rights Division, contact the Chief of the Criminal Section of the Civil Rights Division at (202) 514-3204.

For offenses under the jurisdiction of any other division contact the office of the Assistant Attorney General or Deputy Assistant Attorney General for the appropriate division.

[updated October 2010]

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