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less intrusive means of obtaining documentary materials would substantially jeopardize the availability or usefulness of the materials sought, the following factors, among others, should be considered:

(1) Whether it appears that the use of a subpoena or other alternative which gives 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 sought; considerations, among others, bearing on this issue may include:

(i) Whether a suspect has access to the materials sought;

(ii) Whether there is a close relationship of friendship, loyalty, or sympathy between the possessor of the materials and a suspect;

(iii) Whether the possessor of the materials is under the domination or control of a suspect;

(iv) Whether the possessor of the materials has an interest in preventing the disclosure of the materials to the government;

(v) Whether the possessor's willingness to comply with a subpoena or request by the government would be likely to subject him to intimidation or threats of reprisal;

(vi) Whether the possessor of the materials has previously acted to obstruct a criminal investigation or judicial proceeding or refused to comply with or acted in defiance of court orders; or

(vii) Whether the possessor has expressed an intent to destroy, conceal, alter, or transfer the materials;

(2) The immediacy of the government's need to obtain the materials; considerations, among others, bearing on this issue may include:

(i) Whether the immediate seizure of the materials is necessary to prevent injury to persons or property;

(ii) Whether the prompt seizure of the materials is necessary to preserve their evidentiary value;

(iii) Whether delay in obtaining the materials would significantly jeopardize an ongoing investigation or prosecution; or

(iv) Whether a legally enforceable form of process, other than a search warrant, is reasonably available as a means of obtaining the materials.

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The fact that the disinterested third party possessing the materials may have grounds to challenge a subpoena or other legal process is not in itself a legitimate basis for the use of a search warrant.

§ 59.5 Functions and authorities of the Deputy Assistant Attorneys General.

The functions and authorities of the Deputy Assistant Attorneys General set out in this part may at any time be exercised by an Assistant Attorney General, the Associate Attorney General, the Deputy Attorney General, or the Attorney General.

§ 59.6 Sanctions.

(a) Any federal officer or employee violating the guidelines set forth in this part shall be subject to appropriate disciplinary action by the agency or department by which he is employed.

(b) Pursuant to section 202 of the Privacy Protection Act of 1980 (sec. 202, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa-12)), an issue relating to the compliance, or the failure to comply, with the guidelines set forth in this part may not be litigated, and a court may not entertain such an issue as the basis for the suppression or exclusion of evidence.

PART 60—AUTHORIZATION OF FEDERAL LAW ENFORCEMENT OFFICERS TO REQUEST THE ISSUANCE OF A SEARCH WARRANT

Sec.

60.1 Purpose.

60.2 Authorized categories.

60.3 Agencies with authorized personnel.

AUTHORITY: Rule 41(h), Fed. R. Crim. P (18 U.S.C. appendix).

§ 60.1 Purpose.

This regulation authorizes certain categories of federal law enforcement officers to request the issuance of search warrants under Rule 41, Fed. R. Crim. P., and lists the agencies whose officers are so authorized. Rule 41(a) provides in part that a search warrant may be issued "upon the request of a federal law enforcement officer," and defines that term in Rule 41(h) as "any

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government agent, * * * who is engaged in the enforcement of the criminal laws and is within the category of officers authorized by the Attorney General to request the issuance of a search warrant." The publication of the categories and the listing of the agencies is intended to inform the courts of the personnel who are so authorized. It should be noted that only in the very rare and emergent case is the law enforcement officer permitted to seek a search warrant without the concurrence of the appropriate U.S. Attorney's office. Further, in all instances, military agents of the Department of Defense must obtain the concurrence of the appropriate U.S. Attorney's Office before seeking a search warrant.

[Order No. 826-79, 44 FR 21785, Apr. 12, 1979, as amended by Order No. 1026-83, 48 FR 37377, Aug. 18, 1983]

§ 60.2 Authorized categories.

The following categories of federal law enforcement officers are authorized to request the issuance of a search warrant:

(a) Any person authorized to execute search warrants by a statute of the United States.

(b) Any person who has been authorized to execute search warrants by the head of a department, bureau, or agency (or his delegate, if applicable) pursuant to any statute of the United States.

(c) Any peace officer or customs officer of the Virgin Islands, Guam, or the Canal Zone.

(d) Any officer of the Metropolitan Police Department, District of Columbia.

(e) Any person authorized to execute search warrants by the President of the United States.

(f) Any civilian agent of the Department of Defense not subject to military direction who is authorized by statute or other appropriate authority to enforce the criminal laws of the United States.

(g) Any civilian agent of the Department of Defense who is authorized to enforce the Uniform Code of Military Justice.

(h) Any military agent of the Department of Defense who is authorized to

enforce the Uniform Code of Military Justice.

(i) Any special agent of the Office of Inspector General, Department of Transportation.

(j) Any special agent of the Investigations Division of the Office of Inspector General, Small Business Administration.

(k) Any special agent of the Office of Investigations and the Office of Labor Racketeering of the Office of Inspector General, Department of Labor.

(l) Any special agent of the Office of Investigations of the Office of Inspector General, General Services Administration.

(m) Any special agent of the Office of Inspector General, Department of Housing and Urban Development.

(n) Any special agent of the Office of Inspector General, Department of Interior.

(o) Any special agent of the Office of Inspector General, Veterans Administration.

(p) Any special agent of the Office of Inspector General, Social Security Administration.

(q) Any special agent of the Office of Inspector General, Department of Health and Human Services.

[Order No. 826-79, 44 FR 21785, Apr. 12, 1979, as amended by Order No. 1026-83, 48 FR 37377, Aug. 18, 1983; Order No. 1143-86, 51 FR 26878, July 28, 1986; Order No. 1188-87, 52 FR 19138, May 21, 1987; Order No. 1327-89, 54 FR 9431, Mar. 7, 1989; Order No. 2000-95, 60 FR 62734, Dec. 7, 1995]

§ 60.3 Agencies with authorized personnel.

The following agencies have law enforcement officers within the categories listed in § 60.2 of this part:

(a) *National Law Enforcement Agencies:*

(1) Department of Agriculture:
National Forest Service
Office of the Inspector General

(2) Department of Defense:
Defense Investigative Service
Criminal Investigation Command, U.S. Army
Naval Investigative Service, U.S. Navy

Office of Assistant Inspector General for Investigations, Office of Defense Inspector General

Office of Special Investigation, U.S. Air Force

(3) Department of Health and Human Services:

Center for Disease Control
Food and Drug Administration
Office of Investigations, Office of the Inspector General

(4) Department of the Interior:

Bureau of Indian Affairs
Bureau of Sport Fisheries and Wildlife

National Park Service

(5) Department of Justice:

Drug Enforcement Administration
Federal Bureau of Investigation
Immigration and Naturalization Service

U.S. Marshals Service

(6) Department of Transportation:

U.S. Coast Guard
Office of Inspector General, Department of Transportation

(7) Department of the Treasury:

Bureau of Alcohol, Tobacco, and Firearms

Executive Protective Service

Internal Revenue Service

Criminal Investigation Division

Internal Security Division, Inspection Service

U.S. Customs Service

U.S. Secret Service

(8) U.S. Postal Service:

Inspection Service

Office of Inspector General

(9) Department of Commerce: Office of Export Enforcement

(10) Small Business Administration: Investigations Division of the Office of Inspector General

(11) Department of State: Diplomatic Security Service

(12) Department of Labor: Office of Investigations and Office of Labor Racketeering of the Office of Inspector General

(13) General Services Administration: Office of Inspector General

(14) Department of Housing and Urban Development: Office of Inspector General

(15) Department of the Interior: Office of Inspector General

(16) Veterans Administration: Office of Inspector General

(17) Environmental Protection Agency: Office of Criminal Investigations

(18) Social Security Administration, Office of Inspector General

(b) *Local Law Enforcement Agencies:*

(1) District of Columbia Metropolitan Police Department

(2) Law Enforcement Forces and Customs Agencies of Guam, The Virgin Islands, and the Canal Zone.

[Order No. 826–79, 44 FR 21785, Apr. 12, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §60.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

PART 61—PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

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APPENDIX B TO PART 61—DRUG ENFORCEMENT ADMINISTRATION PROCEDURES RELATING TO THE IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

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APPENDIX F TO PART 61—FEDERAL BUREAU OF INVESTIGATION PROCEDURES RELATING TO THE IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

AUTHORITY: 28 U.S.C. 509, 510; 5 U.S.C. 301; Executive Order No. 11991.