21 CFR Part 558

Animal Drugs, Feeds, and Related Products; New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by A. L. Laboratories, Inc., providing for use of bacitracin premixes to manufacture complete feeds containing 200 grams of bacitracin per ton for growing turkeys. The feed is used for control of transmissible enteritis complicated by bacitracin-susceptible organisms.

EFFECTIVE DATE: April 17, 1981.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: A. L. Laboratories, Inc., 452 Hudson Terrace, Englewood Cliffs, NJ 07632, filed a supplemental NADA (46-592) providing for use of a bacitracin methylene disalicylate premix containing either 10, 25, 40, or 50 grams of bacitracin per pound to manufacture a complete feed containing 200 grams of bacitracin per ton for growing turkeys. The feed is used to control transmissible enteritis caused or complicated by bacitracin-susceptible organisms.

Bacitracin methylene disalicylate at 50 to 200 grams per ton was in use for growing turkeys before October 10, 1962. The product was the subject of two National Academy of Sciences/National Research Council (NAS/NRC) notices published in the **Federal Register** of July 17, 1970 (DESI 0061NV, 35 FR 11531) and October 2, 1970 (DESI 0061NV, 35 FR 15408). The NAS/NRC notices concluded, and the agency concurred, that these products are probably effective for growth claims in poultry and probably not effective for therapeutic claims. The Bureau of Veterinary Medicine required new data to support therapeutic use as an aid in prevention or control of specific diseases caused by specific sensitive pathogens.

The revised claims represent a restricted use of the drug within the previously approved use. The wording of the therapeutic claim has been changed to reflect new knowledge about the drug's effectiveness and its use level.

Because bacitracin methylene disalicylate is currently permitted in 21 CFR 558.76 at 100 to 200 grams per ton for treatment of certain diseases in turkeys and because this revised claim is within that approved usage, approval of this supplement will not result in a significant increase in the number of food-producing animals receiving medication. The Bureau of Veterinary Medicine concludes that approval of this supplemental NADA poses no increased human risk from exposure to residues of the new animal drug. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category II supplemental approval which does not require reevaluation of the human safety data supporting the parent application. The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a signifcant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.76 is amended in paragraph (e)(1) in the table by adding new item (ix) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(e) * * *

(1) * * *

Bacitracin methylene disalicylate in grams per ton	Combinations in grams per ton	Indication for use	Limitations	Sponsors
*	*	* * *	*	*
(ix) 200		Turkeys; as an aid in the control of transmissible enteritis in growing turkeys complicated by organisms susceptible to bacitracin methylene disalicylate.		046573
*	*	* * *	*	*

Effective date. April 17, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 2, 1981.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 81-11367 Filed 4-16-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 940-81]

Audit Functions

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Department of Justice Regulations on the organization and management of the Department currently assign audit functions to the Justice Management Division but except from that assignment external audits of grantees and law enforcement assistance contractors. This order eliminates the restriction in order to permit the centralization, in the Internal Audit Staff of the Justice Management Division, of all audit functions of the Department.

EFFECTIVE DATE: April 19, 1981.

FOR FURTHER INFORMATION CONTACT: Glen E. Pommerening, Director, Internal Audit Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530 [(703) 756-6121].

SUPPLEMENTARY INFORMATION: This order pertains to agency management. It is not a rule within the meaning of, or subject to the requirement of either the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, or Executive Order No. 12291 ("Federal Regulation").

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301, 28 U.S.C. 510, and 42 U.S.C.

3781, 3786, paragraph (t) of § 0.76 of Title 28, Code of Federal Regulations, is revised to read as follows:

§ 0.76 Specific functions.

* * * * *

(t) Providing for auditing and investigative services for the Department's contracts, cooperative agreements, grants, and, where appropriate, subcontracts, subgrants and contracts under grants.

* * * * *

Dated: April 10, 1981.

William French Smith,

Attorney General.

[FR Doc. 81-11716 Filed 4-16-81; 8:45 am]

BILLING CODE 4410-01-M

Attorney General

28 CFR Part 16

[AAG/A Order No. 63-81]

Production or Disclosure of Material or Information; Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Federal Bureau of Investigation is amending its Privacy Act regulations by revoking an exemption for the National Crime Information Center (Justice/FBI-001) system.

DATES: This rule will be effective April 17, 1981.

ADDRESSES: Administrative Counsel, Justice Management Division, Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: William J. Snider (202-633-3452).

SUPPLEMENTARY INFORMATION: This rule is exempt from the application of E.O. No. 12291 pursuant to section 1(a)(3) thereof. As explained in the Notice Section of today's **Federal Register**, the Federal Bureau of Investigation (FBI) proposes to modify its system of records entitled National Crime Information Center (NCIC) (JUSTICE/FBI-001). This rule, amends 28 CFR 16.96 by revoking the exemption of this system from subsection (m) of the Privacy Act.

Since revocation of this exemption would be in the public interest, it has been determined that it is impracticable and unnecessary to provide opportunity for public comment and that it is contrary to the public interest to delay the effective date of this rule. This determination is made in accordance with 5 U.S.C. 553(b)(B).

Accordingly, pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793-78, 28 CFR 16.96 is hereby amended by revising paragraph (g) and removing paragraph (h)(6). Paragraph (g) as revised, is published below.

Dated: February 6, 1981.

Kevin D. Rooney,

Assistant Attorney General for Administration.

§ 16.96 of Title 28 of the Code of Federal Regulations is amended by revising paragraph (g) and removing paragraph (h)(6):

§ 16.96 Exemption of Federal Bureau of Investigation Systems—Limited access.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(8), (f) and (g): National Crime Information Center (NCIC) (JUSTICE/FBI-001). This exemption applies only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j).

* * * * *

[FR Doc. 81-11543 Filed 4-16-81; 8:45 am]

BILLING CODE 4410-02-M

28 CFR Part 59

[Order No. 942-81]

Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: As required by Title II of the Privacy Protection Act of 1980 (Pub. L. 96-440, Sec. 201 *et seq.*; 42 U.S.C. 2000aa-11, *et seq.*), these guidelines will govern the methods used by all federal officers and employees to obtain documentary materials in the possession of persons who are neither suspects in an offense, nor closely related to such suspects. The primary purpose of these guidelines is to limit the use of search warrants to obtain documentary materials held by third parties when less intrusive but equally effective means of obtaining such materials exist.

EFFECTIVE DATE: May 18, 1981.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Warlow, Criminal Division, United States Department of Justice, Room 2244a Main Justice, Washington, D.C. 20530, (202) 633-4528.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 1302-1304 of the **Federal Register** of January 6, 1981, and comments were invited for 30 days ending February 5, 1981. Comments were received from 9 sources, including associations of health and mental health care professionals, a press association, a business, an individual, the Attorney General's Office of the State of California, and the General Counsel of the Department of the Treasury. In addition, comments and suggestions were received from various components of the Department of Justice. The following summarizes the comments, suggestions and actions taken.

Approval Authority

The Department of the Treasury suggested that the requirement that all warrant applications for searches that might involve intrusions into recognized professional, confidential relationships be approved by a high-ranking Department of Justice official was not required under the Privacy Protection Act of 1980 (hereinafter cited as the "Act") and was unduly burdensome. Although it is correct that the Act does not require that the guidelines include such a provision, this requirement is incorporated as a means of evidencing special concern for the privacy interests that may be implicated in such a search. This requirement should not be overly burdensome, since it is anticipated that the number of such search warrant applications will be relatively small. In addition, centralizing this approval authority will facilitate collection of information on this category of searches which must be included in the annual Attorney General's report required under section 202 of the Act.

Criminal Tax Offenses

The Tax Division of the Department of Justice noted that established policy requires that any search for evidence of a criminal tax offense must be approved by the Tax Division. A footnote has been added to § 59.4 of the guidelines to make it clear that this policy is to continue.

Doctor-Like Therapeutic Relationships

Several comments were received that suggested that § 59.4(b)(5) of the proposed guidelines did not afford professionals involved in doctor-like therapeutic relationships the same degree of protection as that afforded third party physicians, attorneys, and clergymen under § 59.4(b)(1) of the proposed guidelines. Section 59.4(b)(5) of the proposed guidelines simply recognized that it is impossible to identify with absolute certainty all professional confidential relationships that are analogous to those which exist between doctor and patient. Accordingly, this section of the guidelines required that the United States Attorney examine the facts and circumstances of the case and determine whether privacy interests similar to those existing in a doctor-patient relationship would be implicated if a search were executed. If such a finding is made, then the same standards and procedures as those applicable to a search involving a third party physician are to be applied. Thus the guidelines do not afford a lesser degree of protection to these other doctor-like therapeutic relationships.

Non-Applicability

The Treasury Department urged that it be made clear that guidelines do not apply to border searches. The Office of Intelligence Policy and Review of the Department of Justice made a similar suggestion with respect to foreign intelligence or counterintelligence activities. It is the view of the Department of Justice that neither of these activities would be governed by the guidelines since the Act provides that the guidelines are to control methods used to obtain documents "in connection with the investigation or prosecution of an offense." Neither border searches nor foreign counterintelligence activities fall within this category. However, to resolve any ambiguity, the guidelines have been changed to reflect these concerns.

Audits and Inspections

It was suggested that § 59.3(b)(2) of the guidelines, which provides that the guidelines are not to be applicable to audits, examinations, or regulatory or compliance inspections pursuant to a federal statute or the terms of a federal contract, would expand such inspection or audit authority. The guidelines in no way expand such current authority. It was also suggested that certain regulatory inspections are described as "administrative searches" and that therefore this section of the guidelines should be amended to contain a reference to this term as well. Section 59.3(b)(2) has been changed accordingly.

Sanctions

It was suggested that civil penalties be available for violations of the guidelines and that any evidence obtained in violation of the guidelines be inadmissible as evidence. Application of either of these suggested sanctions is prohibited by section 202 of the Act.

Mental Health Records

It was suggested that certain mental health records be absolutely exempt from disclosure to law enforcement authorities. The Act does not require inclusion of such a requirement, no such absolute privilege is recognized in federal criminal law, and its inclusion in these guidelines would be unduly restrictive.

Title I of the Act

It was suggested that the guidelines be amended to make it absolutely clear that Title I of the Act controls the use of search and seizure to obtain documents which are held for the purposes of public communication. Section 59.3(c) of the guidelines has been changed accordingly.

United States Attorney Functions

Attorneys within the Department of Justice pointed out that although the proposed guidelines referred to certain functions to be performed by the United States Attorneys, certain cases are handled by components of the Divisions of the Department of Justice and not by the United States Attorneys' Offices. Therefore, the guidelines have been amended to make it clear that where a case is not being handled by a United States Attorney's Office, the functions of the United States Attorney, with respect to these guidelines, may be exercised by another appropriate supervisory official of the Department of Justice. The term "supervisory official of the Department of Justice" is defined in § 59.2(e).

Other Statutory Limitations

A concern was raised that the guidelines might be misinterpreted as superseding existing statutory limitations which govern access to, use of, and disclosure of, certain types of records. A new § 59.3(d) has been added to make it clear that this is not the case.

Availability of Subpoenas

Comments from within the Department of Justice noted that subpoenas may not be available throughout the course of an investigation, as is the case, for example, after indictment. Therefore, it was suggested that the availability of a legally enforceable form of process should be listed among the considerations having a bearing on the appropriateness of using a search warrant. This would be a consideration in borderline cases in which reliance on a subpoena or other form of legally enforceable process would not create an intolerable risk of compromising the availability or usefulness of the materials, but reliance on an informal request may not be prudent. Therefore, a new § 59.4(c)(2)(iv) has been added to incorporate this suggestion.

Interest in Preventing Disclosure

It was suggested that it was improper to provide that the third party's interest in preventing disclosure to the government could be a factor considered in assessing whether use of a search warrant would be appropriate. The rationale expressed was that a physician or psychiatrist would always seek to prevent disclosure of confidential information concerning his patients. However, the guidelines address only interests in improperly preventing disclosure, for example by altering, concealing, or destroying the materials. Furthermore, § 59.4(c) of the guidelines specifically provides that the fact that a third party may seek to assert a privilege or raise other grounds to challenge a subpoena is not a sufficient basis for the use of a search warrant.

Hospital and Clinic Records

It was suggested that information furnished or developed in a doctor-patient relationship but placed by the doctor in the custody of a hospital or clinic would not be regarded as being in the "private possession" of the physician, and thus would not be governed by § 59.4(b) of the guidelines. This result was not intended. A footnote has been added to § 59.4(b)(1) to clarify this point.

Physician's Notes

Inasmuch as § 59.4(b) of the proposed guidelines referred to confidential information "furnished" for the purposes of professional treatment or counseling, it was suggested that a physician's notes or other confidential information developed on a patient or client would not be included in this reference. The guidelines have been revised to refer to information "furnished or developed" for purposes of professional counseling or treatment.

Notice and Consent

It was suggested that the notice to and the consent of the subject of medical records be requirements incorporated in the guidelines. The Act does not require such provisions, and the suggested changes would be burdensome on effective law enforcement. Furthermore, such provisions were the subject of medical records privacy legislation that was before the 96th Congress. It is not the purpose of these guidelines to incorporate segments of that proposed legislation.

Relevance of Documents

It was suggested that the guidelines incorporate a requirement that materials sought by search warrant be relevant to the offense being investigated. Such relevance is already required under the Fourth Amendment (see also, Rule 41 of the Federal Rules of Criminal Procedure) and need not be reiterated here.

Functions of the Deputy Assistant Attorneys General

The proposed guidelines required that certain functions be performed by the "Attorney General or his designee." The "designee" could be any Department of Justice official at the level of Deputy Assistant Attorney General or above. It was contemplated that these functions would be routinely performed by the appropriate Deputy Assistant Attorneys General. However, the proposed guidelines would have required the issuance of specific delegation orders. In order to avoid the necessity of this additional process, the guidelines have been changed so that the Deputy Assistant Attorneys General may exercise these functions without a specific delegation of authority. However, a new section 59.5 has been added to make it clear that any of the functions or authorities of the Deputy Assistant Attorneys General may be exercised by a higher level official.

Regulatory Analysis: Not required for this rulemaking.

For the reasons set out in the preamble and under the authority given the Attorney General under section 201 of the Privacy Protection Act of 1980 (Sec. 201, Pub. L. 96–440, 94 Stat. 1879 (42 U.S.C. 2000a–11)), Title 28 of the *Code of Federal Regulations* is amended by adding a new Part 59 to read as follows:

PART 59—GUIDELINES ON METHODS OF OBTAINING DOCUMENTARY MATERIALS HELD BY THIRD PARTIES

Authority: Sec. 201, Pub. L. 96–440, 94 Stat. 1879 (42 U.S.C. 2000aa–11).

§ 59.1 Introduction.

(a) A search for documentary materials necessarily involves intrusions into personal privacy. First, the privacy of a person's home or office may be breached. Second, the execution of such a search may require examination of private papers within the scope of the search warrant, but not themselves subject to seizure. In addition, where such a search involves intrusions into professional, confidential relationships, the privacy interests of other persons are also implicated.

(b) It is the responsibility of federal officers and employees to recognize the importance of these personal privacy interests, and to protect against unnecessary intrusions. Generally, when documentary materials are held by a disinterested third party, a subpoena, administrative summons, or governmental request will be an effective alternative to the use of a search warrant and will be considerably less intrusive. The purpose of the guidelines set forth in this part is to assure that federal officers and employees do not use search and seizure to obtain documentary materials in the possession of disinterested third parties unless reliance on alternative means would substantially jeopardize their availability (*e.g.*, by creating a risk of destruction, etc.) or usefulness (*e.g.*, by detrimentally delaying the investigation, destroying a chain of custody, etc.). Therefore, the guidelines in this part establish certain criteria and procedural requirements which must be met before a search warrant may be used to obtain documentary materials held by disinterested third parties. The guidelines in this part are not intended to inhibit the use of less intrusive means of obtaining documentary materials such as the use of a subpoena, summons, or formal or informal request.

§ 59.2 Definitions.'

As used in this part—

(a) The term "attorney for the government" shall have the same meaning as is given that term in Rule 54(c) of the Federal Rules of Criminal Procedure;

(b) The term "disinterested third party" means a person or organization not reasonably believed to be—

(1) A suspect in the criminal offense to which the materials sought under these guidelines relate; or

(2) Related by blood or marriage to such a suspect;

(c) The term "documentary materials" means any materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, films or negatives, audio or video tapes, or materials upon which information is electronically or magnetically recorded, *but does not include* materials which constitute contraband, the fruits or instrumentalities of a crime, or things otherwise criminally possessed;

(d) The term "law enforcement officer" shall have the same meaning as the term "federal law enforcement officer" as defined in Rule 41(h) of the Federal Rules of Criminal Procedure; and

(e) The term "supervisory official of the Department of Justice" means the supervising attorney for the section, office, or branch within the Department of Justice which is responsible for the investigation or prosecution of the offense at issue, or any of his superiors.

§ 59.3 Applicability

(a) The guidelines set forth in this part apply, pursuant to section 201 of the Privacy Protection Act of 1980 (Sec. 201, Pub. L. 96–440, 94 Stat. 1879, (42 U.S.C. 2000aa–11)), to the procedures used by any federal officer or employee, in connection with the investigation or prosecution of a criminal offense, to obtain documentary materials in the private possession of a disinterested third party.

(b) The guidelines set forth in this part do not apply to:

(1) Audits, examinations, or regulatory, compliance, or administrative inspections or searches pursuant to federal statute or the terms of a federal contract;

(2) The conduct of foreign intelligence or counterintelligence activities by a government authority pursuant to otherwise applicable law;

(3) The conduct, pursuant to otherwise applicable law, of 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;

(4) Governmental access to documentary materials for which valid consent has been obtained; or

(5) Methods of obtaining documentary materials whose location is known but which have been abandoned or which cannot be obtained through subpoena or request because they are in the possession of a person whose identity is unknown and cannot with reasonable effort be ascertained.

(c) The use of search and seizure to obtain documentary materials which are believed to be possessed for the purpose of disseminating to the public a book, newspaper, broadcast, or other form of public communication is subject to Title I of the Privacy Protection Act of 1980 (Sec. 101, *et seq.*, Pub. L. 96–440, 94 Stat. 1879 (42 U.S.C. 2000aa, *et seq.*)), which strictly prohibits the use of search and seizure to obtain such materials except under specified circumstances.

(d) These guidelines are not intended to supersede any other statutory, regulatory, or policy limitations on access to, or the use or disclosure of particular types of documentary materials, including, but not limited to, the provisions of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401, *et seq.*), the Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1101, *et seq.*), and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended (42 U.S.C. 4541, *et seq.*).

§ 59.4 Procedures.[1]

(a) *Provisions governing the use of search warrants generally.*

(1) A search warrant should not be used to obtain documentary materials believed to be in the private possession of a disinterested third party unless it appears that the use of a subpoena, summons, request, or other less intrusive alternative means of obtaining the materials would substantially jeopardize the availability or usefulness of the materials sought, and the application for the warrant has been authorized as provided in paragraph (a)(2) of this section.

(2) No federal officer or employee shall apply for a warrant to search for and seize documentary materials believed to be in the private possession of a disinterested third party unless the application for the warrant has been authorized by an attorney for the government. Provided, however, that in an emergency situation in which the immediacy of the need to seize the materials does not permit an opportunity to secure the authorization of an attorney for the government, the application may be authorized by a supervisory law enforcement officer in the applicant's department or agency, if the appropriate United States Attorney (or where the case is not being handled by a United States Attorney's Office, the appropriate supervisory official of the Department of Justice) is notified of the authorization and the basis for justifying such authorization under this part within 24 hours of the authorization.

(b) *Provisions governing the use of search warrants which may intrude upon professional, confidential relationships.*

(1) A search warrant should not be used to obtain documentary materials believed to be in the private possession of a disinterested third party physician,[2] lawyer, or clergyman, under circumstances in which the materials sought, or other materials likely to be reviewed during the execution of the warrant, contain confidential information on patients, clients, or parishioners which was furnished or developed for the purposes of professional counseling or treatment, unless—

(i) It appears that the use of a subpoena, summons, request or other less intrusive alternative means of obtaining the materials would substantially jeopardize the availability or usefulness of the materials sought;

(ii) Access to the documentary materials appears to be of substantial importance to the investigation or prosecution for which they are sought; and

(iii) The application for the warrant has been approved as provided in paragraph (b)(2) of this section.

(2) No federal officer or employee shall apply for a warrant to search for and seize documentary materials believed to be in the private possession of a disinterested third party physician, lawyer, or clergyman under the circumstances described in paragraph (b)(1) of this section, unless, upon the recommendation of the United States Attorney (or where a case is not being handled by a United States Attorney's Office, upon the recommendation of the appropriate supervisory official of the Department of Justice), an appropriate Deputy Assistant Attorney General has authorized the application for the warrant. Provided, however, that in an emergency situation in which the immediacy of the need to seize the materials does not permit an opportunity to secure the authorization of a Deputy Assistant Attorney General, the application may be authorized by the United States Attorney (or where the case is not being handled by a United States Attorney's Office, by the appropriate supervisory official of the Department of Justice) if an appropriate Deputy Assistant Attorney General is notified of the authorization and the basis for justifying such authorization under this part within 72 hours of the authorization.

(3) Whenever possible, a request for authorization by an appropriate Deputy Assistant Attorney General of a search warrant application pursuant to paragraph (b)(2) of this section shall be made in writing and shall include:

(i) The application for the warrant; and

(ii) A brief description of the facts and circumstances advanced as the basis for recommending authorization of the application under this part.

If a request for authorization of the application is made orally or if, in an emergency situation, the application is authorized by the United States Attorney or a supervisory official of the Department of Justice as provided in paragraph (b)(2) of this section, a written record of the request including the materials specified in paragraphs (b)(3) (i) and (ii) of this section shall be transmitted to an appropriate Deputy Assistant Attorney General within 7 days. The Deputy Assistant Attorneys General shall keep a record of the disposition of all requests for authorizations of search warrant applications made under paragraph (b) of this section.

(4) A search warrant authorized under paragraph (b)(2) of this section shall be executed in such a manner as to minimize, to the greatest extent practicable, scrutiny of confidential materials.

(5) Although it is impossible to define the full range of additional doctor-like therapeutic relationships which involve the furnishing or development of private information, the United States Attorney (or where a case is not being handled by a United States Attorney's Office, the appropriate supervisory official of the Department of Justice) should determine whether a search for documentary materials held by other disinterested third party professionals involved in such relationships (*e.g.* psychologists or psychiatric social workers or nurses) would implicate the special privacy concerns which are addressed in paragraph (b) of this section. If the United States Attorney (or other supervisory official of the Department of Justice) determines that such a search would require review of extremely confidential information furnished or developed for the purposes of professional counseling or treatment, the provisions of this subsection should be applied. Otherwise, at a minimum, the requirements of paragraph (a) of this section must be met.

(c) *Considerations bearing on choice of methods.*

In determining whether, as an alternative to the use of a search warrant, the use of a subpoena or other 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] Notwithstanding the provisions of this section, any application for a warrant to search for evidence of a criminal tax offense under the jurisdiction of the Tax Division must be specifically approved in advance by the Tax Division pursuant to section 6-2.330 of the U.S. Attorneys' Manual.

[2] Documentary materials created or compiled by a physician, but retained by the physician as a matter of practice at a hospital or clinic shall be deemed to be in the private possession of the physician, unless the clinic or hospital is a suspect in the offense.

(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.

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.

Issued this 13th day of April 1981.

William French Smith,

Attorney General.

[FR Doc. 81-11715 Filed 4-16-81; 8:45 am]

BILLING CODE 4410-01-M

POSTAL SERVICE

39 CFR Part 776

Floodplain Management and Protection of Wetlands Procedures

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is adopting procedures for implementing Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands. These procedures set forth general policy criteria, and requirements. Specific guidance for administrative personnel is provided by a more detailed Postal Service publication, Environmental Procedures Handbook RE-6.

EFFECTIVE DATE: May 17, 1981.

FOR FURTHER INFORMATION CONTACT: Frank Rowan, (202) 245-4348.

SUPPLEMENTARY INFORMATION: On February 3, 1981, the Postal Service published for comment in the **Federal Register** the proposed procedures described above. 46 FR 10513. Interested persons were invited to submit written comments concerning the proposed procedures by March 5, 1981. No comments were received. Accordingly, the Postal Service is adopting the procedures as a final rule.

We are, however, correcting a printing error and making a few minor conforming changes to the text.

In view of the above considerations, the Postal Service adds new part 776 of title 39, Code of Federal Regulations, reading as follows:

Fred Eggleston,

Assistant General Counsel, Legislative Division.

PART 776—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS PROCEDURES

Sec.

Authority: 39 U.S.C. 401.

§ 776.1 Purpose and Policy.

(a) Executive Order 11988, Floodplain Management, was issued on May 24, 1977, under authority of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, et seq.) (NEPA), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001), and the Flood Disaster Protection Act of 1973 (P.L. 93-234, 87 Stat. 9451). Executive Order 11990, Protection of Wetlands, was issued on May 24, 1977, under authority of NEPA. The purpose of these Orders was to avoid adverse impacts associated with the occupancy and/or modification of floodplains; or the modification and destruction of wetlands.

(b) These procedures implement Executive Orders 11988 and 11990 and are adopted under the Postal Reorganization Act rather than the statutes listed in § 776.1(a) to the extent these statutes do not apply to the Postal Service under 39 U.S.C. 410(a).

(c) These procedures provide guidance:

(1) To avoid direct or indirect, long or short term adverse impact on floodplains and wetlands;

(2) To reduce the risk of flood loss;

(3) To minimize the impact of floods on human safety, health, and welfare;

(4) To restore and preserve the natural and beneficial values served by floodplains;

(5) To minimize the destruction, loss, or degradation of wetlands;

(6) To preserve and enhance the natural and beneficial values of wetlands; and

(7) To avoid direct or indirect support of floodplain development.

(d) These procedures are general in nature. Postal Service Handbook RE-6, *Environmental Procedures*, provides