

## **CUSTOMS DIRECTIVE**

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### **SUBJECT: PROCEDURES FOR EXAMINING DOCUMENTS AND PAPERS**

1 **PURPOSE.** This directive provides guidelines and procedures for examining documents and papers during all Customs operations at the border, functional equivalent of the border, and extended border.

#### **2 POLICY.**

2.1 The U.S. Customs Service will protect the rights of individuals against unreasonable search and seizure while still accomplishing its enforcement mission.

3 **AUTHORITIES/REFERENCES.** 19 C.F.R. 145.3; Ref. 3.740 LCCO; 19 U.S.C. 1305; National Stolen Property Act, 18 U.S.C. 2314; 18 U.S.C. 1426(h).

4 **EFFECTS ON OTHER DOCUMENTS.** The guidelines and procedures contained within this directive are currently contained within the Personal Search Handbook dated March 1997. These procedures will no longer be incorporated in the revised Personal Search Handbook HB #3300-04A dated November 1999.

#### **5 RESPONSIBILITIES.**

5.1 The Assistant Commissioner, Office of Field Operations, shall have policy oversight, which will include the formulation and implementation of guidelines and procedures.

5.2 The Assistant Commissioner, Office of Investigations, shall have oversight for investigative operations, which will include the implementation of guidelines and procedures set forth in this directive.

5.3 Special Agents in Charge (SAIC's) are responsible for ensuring that their subordinates get a copy of this directive and are familiar with its contents.

5.4 Directors, Field Operations, at Customs Management Centers are responsible for conducting ongoing reviews to evaluate procedures used for examining documents and papers.

5.5 Port Directors are required to update any necessary additional port-specific procedures for examining documents and papers and to ensure strict adherence to national policy.

5.6 Each Customs officer must know the limits of Customs authority, and must use this authority judiciously, conscientiously, and courteously.

## 6 PROCEDURES.

6.1 All Customs officers shall comply with the following procedures.

### 6.2 Customs Officers Should Not Read Personal Correspondence.

6.2.1 The U.S. Customs Service must guard the rights of individuals being inspected to ensure that their personal privacy is protected. Therefore, as a general rule, Customs officers should not read personal correspondence contained in passengers' privately owned conveyances, baggage, or on their person, **except**, as specified in 6.4.1.

### 6.3 Letter Class Mail.

6.3.1 Customs officers may not read or permit others to read correspondence contained in sealed "LC" mail (the international equivalent of First Class) without an appropriate search warrant or consent.

6.3.2 Only articles presently in the postal system are deemed "mail." Letters carried by individuals, for example, are not considered to be mail, even if they are stamped (see 19 C.F.R. 145.3). [Ref. 3.740 LCCO].

### 6.4 Customs Officers May Glance at Documents and Papers.

6.4.1 As opposed to reading content, Customs officers may glance at documents and papers to see if they appear to be merchandise. This may include:

- Books, pamphlets, printed/manuscript material
- Monetary instruments.
- Prohibited materials such as, copyright violations, obscene, treasonous or seditious material (i.e., inciting or producing imminent lawless action).
- Prohibited matter being imported in violation of 19 U.S.C. 1305, stolen property under the National Stolen Property Act, 18 U.S.C. 2314, or evidence of embargo violations.
- Materials related to the importation or exportation of merchandise including documents required to be filed to import or export merchandise.

### 6.5 Reasonable Suspicion Required for Reading and Continued Detention.

6.5.1 If, after glancing at the documents or papers, an officer reasonably suspects that they relate to any of the categories listed in section 6.4.1 of this directive, the officer may read the documents. He/she may continue to detain such documents for such further inquiry as may be reasonably necessary to make the determination whether to seize the documents.

6.5.2 This may include referral to another agency necessary to assist in that determination.

**6.6 Probable Cause Required for Seizures.**

6.6.1 If an officer has probable cause to believe that a document or paper is subject to seizure because it is prohibited, a fruit, instrumentality or evidence of a crime, or otherwise subject to forfeiture, it may be seized.

**6.7 Probable Cause or Consent Required to Copy.**

6.7.1 An officer must have probable cause to believe a document or paper is subject to seizure, to copy it. Documents and papers may be copied without probable cause when consent to do so is obtained from the person from whom the documents were seized, or if copying is incident to a lawful arrest.

6.7.2 In circumstances when the inspecting Customs officer is uncertain whether probable cause exists, the officer may contact the Associate/Assistant Chief Counsel.

**6.8 Identification Documents can be Photocopied.**

6.8.1 Passports (United States or foreign), Seaman's Papers, Airman Certificates, drivers licenses, state identification cards and similar governmental identification documents can be photocopied for legitimate, good-faith government purposes without any suspicion of illegality.

6.8.2 Certificates of Naturalization may never be copied (18 U.S.C. 1426(h)).

**6.9 Attorney-Client Privilege.**

6.9.1 As part of a border search, an attorney's files can be examined for the presence of drugs, currency or other monetary instruments, sales slips, invoices, or other documents evidencing foreign purchases.

6.9.2 Occasionally, an attorney will claim that the attorney-client privilege prevents the search of his documents and papers at the border. Files and papers being brought into the country by an attorney are subject to a routine search for merchandise. Implicit in the authority to search for merchandise is the authority to search for papers that indicate or establish that a current importation of merchandise might be occurring. Records of an importation are not privileged. However, correspondence, court papers, and other legal documents may be privileged. If an officer has probable cause to believe a document may be evidence of a crime, seek advice from the Associate/Assistant Chief Counsel or the U.S. Attorney's office.

**6.10 Chain of Custody Required for Copies.**

6.10.1 Whenever copies of documents are made, transfer of the copies should be accomplished through a chain of custody form (CF-6051) or other documentation that will show each individual who has had custody and access to such copies.

**6.11 Foreign Language Documents or Documents Requiring Special Expertise.**

6.11.1 If an officer reasonably suspects that a document or paper in a foreign language falls into a category that would allow it to be read, the document can be detained and forwarded to an appropriate translator, provided that such translations can be accomplished within a reasonable time.

6.11.2 The use of a facsimile (FAX) machine, when appropriate, is authorized. This same principle would apply to documents that need special expertise to determine their nature, such as documents relating to complex technology cases.

6.11.3 If after translation or review, probable cause to seize develops, the documents should be seized and/or copies retained. If not, the originals must be returned and all copies (e.g., fax) must be destroyed. The destruction must be appropriately documented.

6.11.4 Factors that a court might consider in determining the reasonableness of the time the documents are detained could be such things as the nature of the documents, whether the officer explained to the person the reason for the detention, and whether the person was given the option of continuing his journey with the understanding that Customs would return the documents if it is not in violation of law.

7 **MEASUREMENT.** Directors, Field Operations, at Customs Management Centers, SAIC's, and Port Directors will ensure that all TECS reports pertaining to the examinations of documents and papers are reviewed periodically to determine the effectiveness of the procedures contained within this directive, including whether there may be any improprieties in the conduct of these examinations.

8 **NO PRIVATE RIGHT CREATED.** This document is an internal policy statement of the U.S. Customs Service and does not create any rights, privileges, or benefits for any person or party.

Commissioner of Customs