

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 3340-006A, 2/4/00)**

ORIGINATING OFFICE: CC

DISTRIBUTION: P-33,G-01,G-03, G-07, G-08
CUSTOMS DIRECTIVE NO. 3340-006
DATE: June 12, 1986

SUBJECT: REVIEW, COPYING AND SEIZURE OF DOCUMENTS

REFERENCES: 19 USC 482, 19 USC 1305, 19 USC 1461, 19 USC 1467, 19 USC 1496, 19 USC 1499, 19 USC 1581, 19 USC 1582, 19 USC 1589 (and 1589a), 19 USC 507, and other statutes cited in text of this Directive 19 CFR 162.6 and 19 CFR 162.7 Customs Inspectors Handbook, Section 9.12 Customs Service Circular INS-1-00 of May 20, 1970

1. PURPOSE

To define and set forth procedures, limitations and guidelines for the review, photocopying and seizure of documents and papers.

2. BACKGROUND

The Constitution guarantees the protection of an individual's rights against unreasonable search and seizure as well as such First Amendment rights as freedom of speech and the press. The courts recognize that Customs authority for border search is of the broadest possible character, however, Customs officers must conduct the search in a reasonable and professional manner.

Since the issuance of the last circular on the review, copying and seizure of documents or papers, there has been a marked development in case law on the subject. Because Customs Service Headquarters is eager to update its policy consistent with these legal developments and to reiterate its support of Customs officers, this policy statement has been adopted.

Personal searches are often tedious and the examining officer is sometimes in a sensitive or dangerous position. It is difficult for Customs Service management to fully support the Customs officer when inquiries and complaints are received if there is no record of the action taken by the officer. These inquiries and complaints cover many areas, but there are none more sensitive than allegations that a personal search has violated a person's First and Fourth Amendment rights in the case of reviewing documents.

The Customs officer must not be intimidated by complaints or threats of letters of complaint. However, the Service will not condone the abuse of statutory

authority by any Customs officer who performs an unlawful search, seizure, or arrest, or a lawful one in an unreasonable manner.

Each Customs officer must know the limits of Customs authority, and must use this authority judiciously, conscientiously, and courteously. Customs officers should document those instances where searches have been performed which result in the photocopying or seizure of documents or papers.

3. SCOPE

This Directive applies to all Customs officers who may come across documents and papers in the conduct of a border search.

4. APPLICABILITY

This Directive applies to all searches performed by Customs officers at the border, or its functional equivalent (i.e., areas not actually at the border, but where all conditions for doing a border search exist, as for example, a search of the passengers of an airplane arriving in St. Louis nonstop from Mexico City) and in extended border search situations.

5. PROCEDURES

- a. The 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' baggage or on the person. However, Customs officers have the legal authority to scan documents and correspondence brought into or taken out of the United States to determine whether the documents or correspondence are:
 - i. evidence of the importation or exportation of merchandise (including description, value or terms of sale or consignment);
 - ii. imports subject to TSUS Schedule 2, Part 5 "Books, Pamphlets, and other printed and manuscript material";
 - iii. imported in violation of the copyright laws (17 USC 601-603);
 - iv. monetary instruments which are being imported or exported and are subject to reporting requirements (31 USC Chapter 53);
 - v. obscene, treasonous, seditious (i.e., inciting or producing imminent lawless action) or prohibited matter being imported in violation of 19 USC 1305;

- vi. stolen property under the National Stolen Property Act, 18 USC 2413;
 - vii. evidence of violations of an embargo under the Trading with the Enemy Act, 50 USC App. 1, et seq., or the International Emergency Economic Powers Act, 50 USC 1702, et seq.; or
 - viii. fruits, instrumentalities, or evidence of a U.S. crime, or otherwise criminally possessed.
- b. If after scanning the documents or papers, they appear to relate to any of the listed categories above, the officer may read the document or paper to determine what action is appropriate.
 - c. It is not immediately apparent whether the document is admissible or subject to seizure, but the officer has reasonable suspicion that it falls within one of the categories listed in i through viii above, it may be detained for a reasonable period of time (pursuant to 19 USC 1499 and 1582) until supervisory or appropriate enforcement personnel can make the determination as to admissibility, seizure, or referral to another agency which may have greater expertise.
 - d. If the officer has probable cause to believe that a document or paper is subject to seizure because it is prohibited or a fruit, instrumentality or evidence of a crime or criminally possessed, or evidence of a violation of any law enforced by Customs, it may be seized.
 - e. When documents or papers fall within categories which may be seized, they may also be copied, in appropriate circumstances, and referred to the Office of Enforcement. In questionable circumstances, where the inspecting Customs officer is uncertain, the Office of Enforcement or the Regional Counsel should be consulted. Customs officers should not copy documents which are not subject to seizure. Whenever copies are made, transfer of the copies should be accomplished through a chain of custody form or other documentation which will show each individual who has access to such copies.
 - f. Passports, seamen's papers and airmen's certificates are considered government property and may be reviewed or copied as necessary (See 19 USC 1581; 46 USC 7110; 46 USC 8701; 22 CFR 51.9; and 14 CFR 61.3(h)).
 - g. Customs officers are reminded that without an appropriate search warrant or consent, no Customs officer may read or permit others to read

correspondence contained in sealed letter class mail which is in postal channels. See 19 CFR 145.3. Letters carried by individuals, however, are not considered to be mail, even if they are stamped.

- h. In addition to the categories listed above, Customs officers should be advised that certain international or bilateral agreements may provide for the exchange of other types of documents or papers relating to tax, customs or other enforcement matters. In the absence of advance instructions in specific cases, the Regional Counsel's Office should be contacted immediately for advice whenever a Customs officer reasonably suspects that documents which have been scanned fall within the scope of an international agreement. No seizure, detention or photocopying should be made unless so advised.

6. ACTION

Supervisory Customs officers are required to ensure that the above procedures are followed.

Regional Commissioners and Headquarters Assistant Commissioners are responsible for ensuring that all Customs officers under their control receive this Directive.

This policy, these procedures and future reporting requirements are applicable to all Customs officers who perform border searches. This Directive does not limit the search authority of Customs officers. Our goal is for Customs officers to perform their enforcement duties in a manner that will not only insure the integrity of officers, but will also permit officers to perform a professional service for the public. This Directive is not intended to create or confer any rights, privileges or benefits for any private person, but is merely for internal guidance.

7. SUPERSEDED MATERIAL

Customs Service Circular INS-1-00 of May 20, 1970
Customs Service Letter ENF-3-05 CC:JG of Dec. 17, 1973

8. EXEMPTION

This Directive contains information which may be exempt from disclosure to the public under the regulations of the Department of the Treasury. It should not be disclosed to the public without express authority from Customs Headquarters.

Commissioner of Customs