

**U.S. CUSTOMS AND BORDER PROTECTION (CBP)
MIAMI SERVICE PORT
PASSENGER OPERATIONS**

STANDARD OPERATING PROCEDURES (SOP)

SOP# : **AP 29.18**

BASIS : CBP Directive 3340-006A, dated February 4, 2000
titled, Procedures for Examining Documents and
Papers

SUBJECT : **OPERATIONAL GUIDANCE FOR BORDER
SEARCH/EXAMINATION OF DOCUMENTS,
PAPERS, AND ELECTRONIC INFORMATION**

ACTION PARTY : All CBP Personnel

RESPONSIBLE PARTY : All CBP Managerial and Supervisory Personnel

1. PURPOSE.

To provide guidance and standard operating procedures for border search/examination of documents, papers and electronic information

2. POLICY.

U.S. Customs and Border Protection (CBP) has established standards to ensure that border search/examination of documents, papers and electronic information will be handled in an efficient and proficient manner. Implementation of these policies and procedures will ensure uniformity, establish accountability and promote communication.

3. RESPONSIBILITIES.

- 3.1 Assistant Port Director, Passenger Operations, shall ensure that this SOP complies with the requirements outlined in the above-referenced materials.
- 3.2 Station Chiefs, Passenger Operations, are responsible for managing the implementation of this SOP and monitoring its compliance with the established procedures.
- 3.3 CBP Managers and Supervisory personnel are responsible for ensuring that the procedures set forth in this SOP are followed.
- 3.4 CBP Officers are responsible for following the procedures set forth in this SOP.

4. BACKGROUND.

CBP's primary mission is to protect the American public against terrorists and their instruments of terror. With this priority mission in mind, the Offices of Anti-Terrorism and Field Operations generated operational guidance regarding the review and retention of paper documents and information in electronic devices and electronic storage media. Further, this operational guidance does not alter the authority or ability of officers to seize, disseminate, or retain documents and information in electronic media in the possession of subjects where there is *probable cause* to believe that such documents or information constitute evidence of a crime or are otherwise subject to seizure and forfeiture.

5. AUTHORITIES/REFERENCES

Weekly Muster 2007-11 titled, Operational Guidance for Border Search/Examination of Documents, Papers, and Electronic Information.

6. (b)(2) & (b)(7)(E)

6.1 (b)(2) & (b)(7)(E)

A. Guidance Relating to Initial Review

- (1) *Without individualized suspicion*, paper documents and electronic devices may be reviewed in the course of administering CBP, immigration or other laws enforced or administered by CBP.

B. Guidance Relating to Copying, Transmitting, and Retaining

- (1) CBP Officers may copy and transmit documents and information in electronic devices to appropriate agencies or entities *without individualized suspicion* where technical support is required, such as translation services.
- (2) For reasons other than technical assistance, officers may copy and transmit documents and information in electronic media to other agencies or entities only where *reasonable suspicion* exists that (b)(2) & (b)(7)(E) have information relating to terrorist activities or unlawful conduct. Reasonable suspicion is not required if (b)(2) & (b)(7)(E) provides consent. (b)(2) & (b)(7)(E)
(b)(2) & (b)(7)(E)

- (3) When technical assistance is required from an entity outside CBP, copies of documents or information shall be returned to CBP within 15 days from transmittal unless the Director, Field Operations in consultation with the appropriate legal counsel, approves extensions in seven-day increments. In cases where retention or dissemination of copies furthers the mission of another agency or entity, that agency or entity's existing legal authorities and policies will govern retention and/or dissemination.
- (4) Copies of documents or information returned to CBP, when determined to be of no relevance to Customs, immigration, or other laws enforced or administered by CBP will be destroyed.

Presenters Note: Discretionary authority is to be utilized to deny entry to persons that pose a known or possible threat to the United States. All officers must bear in mind that the authority to exercise discretion and make decisions affecting people's lives, carries with it the responsibility for ensuring that all actions advance the goals of professionalism, courtesy and respect for the position of public trust that we hold. (b)(2) & (b)(7)(E)

(b)(2) & (b)(7)(E)

(b)(2) & (b)(7)(E) all officers and managers must maintain the highest levels of professionalism, impartiality, and courtesy to the traveling public.

7. (b)(2) & (b)(7)(E)

7.1 All CBP officers shall comply with the following procedures.

A. CBP Officers Should Not Read Personal Correspondence.

- (1) CBP must guard the rights of individuals being inspected to ensure that their personal privacy is protected. Therefore, as a general rule, CBP officers should not read personal correspondence contained in passengers' privately owned conveyances, baggage, or on their person, except, as specified in 6.4.1.

B. Letter Class Mail.

- (1) CBP 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.
- (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].

C. CBP Officers May Glance at Documents and Papers.

- (1) As opposed to reading content, CBP officers may glance at documents and papers to see if they appear to be merchandise. This may include:
 - a. Books, pamphlets, printed/manuscript material
 - b. Monetary instruments.
 - c. Prohibited materials such as copyright violations, obscene, treasonous or seditious material (i.e., inciting or producing imminent lawless action).
 - d. 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.
 - e. Materials related to the importation or exportation of merchandise including documents required to be filed to import or export merchandise.

D. Reasonable Suspicion Required for Reading and Continued Detention.

- (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.
- (2) This may include referral to another agency necessary to assist in that determination.

E. Probable Cause Required for Seizures.

- (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.

F. Probable Cause or Consent Required to Copy.

- (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.
- (2) In circumstances when the inspecting CBP officer is uncertain whether probable cause exists, the officer may contact the Associate/Assistant Chief Counsel.

G. Identification Documents can be Photocopied.

- (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.

H. Attorney-Client Privilege.

- (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.
- (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.

I. Chain of Custody Required for Copies.

- (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.

J. Foreign Language Documents or Documents Requiring Special Expertise.

- (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.
- (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.
- (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.
- (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 CBP would return the documents if it is not in violation of law.

8. **MEASUREMENT.** Directors, Field Operations, at CBP Field Offices, 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.
9. **NO PRIVATE RIGHTS CREATED.** This SOP is an internal policy statement of U.S. Customs and Border Protection (CBP) and does not create or confer any rights, privileges, or benefits on any person or party.
10. **DISCLOSURE.** This SOP contains information, which may be exempt from disclosure to the public under the regulations of the Department of Homeland Security. No part of this Directive shall be disclosed to the public without express authority from U.S. CBP and Border Protection Headquarters.

Prepared by:

(b)(6) & (b)(7)(C), CBP Officer

Reviewed by:

(b)(6) & (b)(7)(C), Chief, Passenger Operations

Approved by:

(b)(6) & (b)(7)(C)
[Redacted Signature]

7/23/07
Date

Passenger Operations

(b)(6) & (b)(7)(C)
[Redacted Signature]

7/25/07
Date

Richard F. Vigna
Acting Port Director
Miami Service Port