

HTSUS	Tariff shift and/or other requirements
3808.20	A change to subheading 3808.20 from any other subheading, except from fungicides of Chapter 28 or 29.
3808.30	A change to subheading 3808.30 from any other subheading, except from herbicides, antisprouting products and plant-growth regulators of Chapter 28 or 29; or A change to a mixture of subheading 3808.30 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients.
3808.40	A change to subheading 3808.40 from any other subheading.
3808.90	A change to subheading 3808.90 from any other subheading, except from rodenticides and other pesticides of Chapter 28 or 29; or A change to a mixture of subheading 3808.90 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients.

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**Chapter 72 Note:** Notwithstanding the specific rules of this chapter, hot-rolled flat-rolled steel which is cold-reduced (by cold rolling) shall be treated as a good of the country in which the cold-rolled steel is produced.

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**George J. Weise,**

*Commissioner of Customs.*

Approved: June 19, 1995.

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

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## 19 CFR Part 162

RIN 1515-AB72

### Search Warrants

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Customs Regulations by removing a regulation limiting the authority of Customs officers to whom search warrants are issued. The current regulation restricts such officers from removing letters, documents and other

records in certain circumstances. The regulation is inconsistent with the current state of the law.

**DATES:** Comments must be received on or before September 11, 1995.

**ADDRESSES:** Written comments (preferably in triplicate) may be submitted to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., Suite 4000, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Lars-Erik Hjelm, Office of the Chief Counsel (202-927-6900).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 162.14, Customs Regulations (19 CFR 162.14) provides that Customs officers to whom a search warrant is issued may not remove letters, other documents and records, unless such letters, other documents and records are instruments of crime which are seized pursuant to a lawful arrest. The authority for this regulation, which has been in effect since at least 1915, is 19 U.S.C. 1595. Until 1986, section 1595 only authorized Customs to obtain warrants for merchandise.

In 1986, section 1595 was expanded to allow Customs to seize “\* \* \* any document \* \* \* which is evidence of a violation of \* \* \* any law enforced or administered by the United States Customs Service.” Public Law 99-570, October 27, 1986.

Another statute indicating that the authority of Customs officers with warrants to seize documents has expanded is 19 U.S.C. 1589a(2). This statute makes it clear that Customs officers have authority for any warrant, including a Federal Rules of Criminal Procedure Rule 41 warrant. A Rule 41 warrant can be issued for documents constituting evidence of crimes. See Public Law 98-573, October 30, 1984; Fed. R. Crim. Proc. Rule 41. The sources cited clearly indicate Congress’ intent to provide Customs with the authority to search for and seize documentary evidence.

The Supreme Court has made it clear that officers may seize incriminating evidence in plain view during the course of a lawful search. See *United States v. Thompson*, 495 F. 2d 165 (D.C. Cir. 1974); *United States v. Michaelian*, 803 F. 2d 1042 (9th Cir. 1986). Also see *Horton v. California*, 496 U.S. 128 (1990), in which the Supreme Court held that the Fourth Amendment does

not prohibit the warrantless seizure of evidence in plain view even though the discovery of the evidence was not inadvertent. Although inadvertence is a characteristic of most legitimate plain-view searches, it is not a necessary condition.

#### Proposal

Inasmuch as § 162.14, Customs Regulations, no longer reflects the state of the law regarding the search and seizure authority of Customs officers, Customs intends to delete § 162.14 from the Customs Regulations.

#### Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Suite 4000, 1099 14th Street NW., Washington, DC.

**Authority:** This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 66, 1624.

The Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and based upon the information set forth above, it is certified that the proposed change in the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed change is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

This document does meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

#### Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

**George J. Weise,**

*Commissioner of Customs.*

Approved: June 20, 1995.

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

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