



445 FW 1
Searches and Seizures

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TABLE OF CONTENTS

General Topics	Abbreviated Sections/Questions
Purpose, Authorities, and Background	1.1 What is the purpose of this chapter? 1.2 What are the Constitutional guarantees? 1.3 What are the authorities for searches and seizures? 1.4 What terms do you need to know?
Searches/Seizures with Warrants	1.5 How does the Service determine whether or not a search and seizure of property is reasonable? 1.6 What violations related to searches and seizures should officers be aware of? 1.7 What are warrants? 1.8 When and where does an officer obtain a warrant? 1.9 How does an officer obtain a warrant? 1.10 How do officers execute warrants? 1.11 What may Service officers seize? 1.12 Does a Service officer need to itemize and provide a receipt when seizing property?
Searches/Seizures without Warrants	1.13 What is the exclusionary rule? 1.14 What do Service officers need to know about the Service-enforced statutes and warrantless searches? 1.15 What circumstances may call for a warrantless search? 1.16 When may officers conduct a search incident to an arrest? 1.17 When do exigent circumstances justify a warrantless search? 1.18 When may officers conduct a consent search? 1.19 When may officers search a vehicle? 1.20 When do officers conduct inventory searches of vehicles and personal property? 1.21 May officers conduct searches at the border or at the functional equivalent of the border (FEB)? 1.22 When may a Service officer conduct intrusive searches at the border or FEB? 1.23 What are the inspection and search authorities for international cargo, international mail, and interstate commerce shipments?
Lesser Intrusions and	1.24 Are there circumstances where a Service officer may obtain evidence without Courts considering it a search?

1.1 What is the purpose of this chapter? This chapter:

- A. Provides Service officers with guidance on searches and seizures,
- B. Describes Constitutional guarantees that protect people in the United States from unreasonable searches and seizures, and
- C. Describes the authority Service officers have when collecting evidence or seizing items connected with a violation of a law or regulation we enforce.

1.2 What are the Constitutional guarantees related to search and seizure that Service officers should know about? The Fourth Amendment to the Constitution gives people the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.

1.3 What are the statutory authorities and provisions for search and seizure?

A. The African Elephant Conservation Act. This statute gives Service officers the same search and seizure authority as the Endangered Species Act (see section 1.3E below) ([16 U.S.C. 4224\(e\)](#)).

B. The Airborne Hunting Act. This statute authorizes Service officers to search with or without a warrant ([16 U.S.C. 742j-1\(d\)](#)).

C. The Bald and Golden Eagle Protection Act. This statute authorizes Service officers to search with or without a warrant ([16 U.S.C. 668b\(a\)](#)).

D. The Bear River Migratory Bird Refuge Act. This statute authorizes Service officers to search with a warrant, but it is silent on the issue of searches without a warrant ([16 U.S.C. 690e\(a\)](#)).

E. The Endangered Species Act of 1973. This statute authorizes Service officers to “detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. . . . Such person . . . may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process . . . [and] may search and seize, with or without a warrant, as authorized by law” ([16 U.S.C. 1540\(e\)\(3\)](#)).

F. The Lacey Act Amendments of 1988 ([16 U.S.C. 3375\(b\)](#)):

(1) Authorizes Service officers to “...search and seize, with or without a warrant, in accordance with any guidelines which may be issued by the Attorney General . . . [and to] execute and serve any subpoena, arrest warrant, search warrant issued in accordance with rule 41 of the Federal Rules of Criminal Procedure, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this chapter.”

(2) This statute also specifies that (a Service officer) “. . . in coordination with the Secretary of the Treasury, may detain for inspection and inspect any vessel, vehicle, aircraft, or other conveyance or any package, crate, or other container, including its contents, upon the arrival of such conveyance or container in the United States or the customs waters of the United States from any point outside the United States or such customs waters, or, if such conveyance or container is being used for exportation purposes, prior to departure from the United States or the customs waters of the United States. Such person may also inspect and demand the production of any documents and permits required by the country of natal origin, birth, or reexport of the fish or wildlife.”

G. The Marine Mammal Protection Act of 1972. This statute authorizes Service officers to search with or without a warrant ([16 U.S.C. 1377\(d\)](#)).

H. The Migratory Bird Hunting Stamp Act. This statute gives Service officers the same search authority as the Migratory Bird Treaty Act ([16 U.S.C. 718f](#)).

I. The Migratory Bird Treaty Act. This statute authorizes Service officers to search with a search warrant. ([16 U.S.C. 706](#)).

J. The National Wildlife Refuge System Improvement Act of 1997. This statute authorizes Service officers to search with a warrant ([16 U.S.C. 668dd\(g\)](#)).

K. The Rhinoceros and Tiger Conservation Act of 1998. This statute gives Service officers the same search and seizure authority as the Endangered Species Act (see section 1.3E above) ([16 U.S.C. 5305a\(e\)](#)).

L. The Upper Mississippi River Wildlife and Fish Refuge Act. This statute authorizes Service officers to search with a warrant ([16 U.S.C. 727\(a\)](#)).

1.4 What terms do you need to know to understand this chapter?

A. Affiant. Person who makes an affidavit.

B. Affidavit. A written declaration made under oath before an authorized officer.

C. Curtilage. The curtilage is the area that protects the intimate activity associated with the sanctity of a person’s dwelling place and the privacies of life. Areas immediately appurtenant to a dwelling place may be considered curtilage. Such areas are generally enclosed in a way that indicates their connection to a dwelling. The Fourth Amendment protects this area against unreasonable searches.

D. Probable Cause. Probable cause is when an officer can objectively deduce from a set of facts that a person has committed, is committing, or is about to commit a crime. Probable cause for a search is established when facts are sufficiently strong to lead a reasonable, prudent person to believe that evidence of a crime is probably located in the place to be searched.

E. Property Seizure. A seizure of property occurs when there is some meaningful interference

with an individual's ownership interest in that property. A seizure does not include detention for inspection or refusal of wildlife items that are entering or leaving the United States at the border or functional equivalent of the border.

F. Search. A search is any Government intrusion into an area in which there would be a reasonable expectation of privacy. Courts use a two-prong test to determine whether a person has a reasonable expectation of privacy:

- (1) The individual must exhibit an actual subjective expectation of privacy, and
- (2) Society must be prepared to grant that expectation as objectively reasonable.

G. Service officer. Service officer means any Service special agent, wildlife inspector, refuge officer, or any other officer authorized to enforce Service statutes and regulations through delegated authority (e.g., through a Memorandum of Understanding (MOU), Memorandum of Agreement (MOA), and Deputy Game Warden Commission).

H. Service law enforcement officer. A Service law enforcement officer means any Service special agent, refuge officer, or any other armed officer authorized to enforce Service statutes and regulations through delegated authority (e.g., MOU, MOA, and Deputy Game Warden Commission).

1.5 How does the Service determine whether or not a search and seizure of property is reasonable?

A. Generally, for searches and seizures to be reasonable under the Fourth Amendment, they must:

- (1) Be supported by probable cause, and
- (2) Authorized by warrants that describe with reasonable precision any evidence or property to be seized.

B. Under certain circumstances, there are exceptions to the warrant requirements for some types of searches and seizures. Other types of lesser intrusions do not require probable cause. We describe these circumstances in [sections 1.15](#) through [1.25](#) of this chapter.

1.6 What violations related to searches and seizures should officers be aware of?

A. It is a violation of [18 U.S.C.](#) (Crimes and Criminal Procedure) for any person to:

- (1) Forcibly assault, resist, oppose, prevent, impede, intimidate, or interfere with any person authorized to serve a search warrant and to make seizures under a search warrant. Penalties are more severe if the person uses a deadly or dangerous weapon ([18 U.S.C. 111](#)).
- (2) Knowingly destroy, damage, waste, dispose of, or remove property to prevent its seizure ([18 U.S.C. 2232\(a\)](#)).
- (3) Forcibly rescue or dispossess, or attempt to rescue or dispossess, property after it has

been lawfully seized ([18 U.S.C. 2233](#)).

B. It is a violation of 18 U.S.C. for any officer to:

(1) Willfully exceed his/her authority, or to exercise it with unnecessary severity, when executing a search warrant ([18 U.S.C. 2234](#)).

(2) Procure a search warrant maliciously and without probable cause ([18 U.S.C. 2235](#)).

(3) Search a private dwelling without a warrant or to maliciously and without reasonable cause search any building or property. This subsection does not apply to an officer when making a lawful arrest or conducting a consent search ([18 U.S.C. 2236](#)).

1.7 What are warrants? A warrant:

A. Can be either a search warrant or a property seizure warrant.

B. Should designate the primary Service officer executing the warrant and any other authorized officer of the United States who may execute the warrant.

C. Refers to the affidavit(s) that supports it and states the name of the affiant. The facts constituting probable cause to support the issuance of a warrant are in the affidavit (also see [section 1.9C](#)).

D. Commands the authorized United States officer(s) to search the person or place named within a specified period of time not to exceed 10 days.

E. Designates the Magistrate Judge or other issuing official to whom the warrant must be returned.

F. Describes:

(1) The places to be searched, and

(2) The things to be seized with enough precision that anyone could identify them with reasonable effort. The descriptions may be on the face of the warrant, or in attachments that must be incorporated into the warrant by reference at the time the officer swears to the affidavit. Officers do not need to describe contraband in great detail, but they should thoughtfully identify and describe categories of tangible evidence, including as many categories as the facts support (e.g., wildlife, documents, photographs, computers, etc.). In some Districts, seizures of computers require specific language related to securing, copying, and returning computers.

1.8 When and where does a Service officer obtain a warrant?

A. When to Obtain a Warrant. A warrant is the best assurance that a search/seizure will be considered reasonable. Service officers must obtain a search or seizure warrant unless one is clearly not required. Evidence seized under authority of a valid warrant is usually admitted in court.

B. Where to Obtain a Warrant. Service officers obtain a search or seizure warrant from a Federal Magistrate Judge or U.S. District Court Judge in the court district where the property is located. Although a judge of a State court of record in that judicial district may also issue a search warrant, such a warrant is only available if an officer can show that a Federal Judge was not reasonably available. Service officers should seek counsel before resorting to a State Judge, and should only turn to State judges as a last resort.

1.9 How does a Service officer obtain a warrant? The Service officer prepares and submits the warrant documents to the issuing authority, normally a U.S. Magistrate Judge. The warrant documents consist of a warrant, application, and affidavit. The affidavit is attached to the application. The officer should write the warrant number on each page of the warrant documents, and the judge may require the officer to initial or sign and date each page.

A. Warrant. The warrant is a one-page Federal court form which, when issued (signed and stamped) by a U.S. Magistrate Judge, gives the Service officer authority to search or seize property.

B. Application for a Warrant. The Application for a Warrant is a Federal court form similar in appearance to the warrant. The application must:

(1) Have the affidavit attached, and

(2) Accompany the search warrant when it is presented to the U.S. Magistrate Judge.

C. Affidavit The affidavit states detailed and specific facts constituting probable cause to search/seize property. It is attached to and incorporated by reference into the application.

D. Hearsay. The affiant can partially or totally base probable cause for a warrant on the observations made and information gathered by other individuals, called "hearsay," if the affiant can establish the competency and reliability of the information. The affiant must also describe in the affidavit how he/she acquired the hearsay information, but the affidavit does not have to disclose the informant's identity. When an affiant uses hearsay information, special rules apply for testing the competency of the evidence. Under these rules, the affidavit may not merely assert that the Service officer has "reliable information from a credible person," but must contain enough specific facts to permit the Magistrate Judge to determine that:

(1) **The informant is a generally reliable person.** This requirement is satisfied if:

(a) The informant holds a trustworthy and reliable position (such as another law enforcement officer),

(b) The officer has determined the informant's reliability by questioning,

(c) The informant incriminated himself/herself by giving the information, or

(d) The informant gave reliable information in the past to the Service officer or other law enforcement officers, and

(2) The informant obtained his/her information in a manner that justifies relying on it.

This requirement is satisfied if the informant's information:

- (a) Comes from his/her personal observations,
- (b) Includes a number of precise details that suggest he/she personally observed the facts and that the information is more than rumor, or
- (c) Is corroborated by other evidence.

E. Consultation and Review. As early in the process as possible and before applying for a search warrant, if practical, Service officers should consult with an Assistant United States Attorney (AUSA) and request their review of the affidavit to ensure it contains sufficient probable cause to obtain a warrant. In some districts, the Magistrate Judge (or other issuing authority) will not accept an affidavit for a search warrant without the concurrence of an AUSA.

F. Issuance. A search warrant may be issued only on the basis of an affidavit(s) sworn to before a U.S. Magistrate Judge (or other issuing authority) that establishes probable cause and that describes the place to be searched or seized and the grounds for the search or seizure. The judge will require the affiant to appear personally and may examine him/her and any witnesses he/she may produce under oath. The judge may use a court reporter or recording equipment to record such proceedings, which will be included as part of the affidavit for the search warrant. Under limited circumstances, judges may authorize search warrant applications and approvals over the telephone.

1.10 How do Service officers execute warrants?

A. General Rules.

- (1) The Service officer named in the warrant and other authorized officers may execute the warrant.
- (2) The time during which the warrant may be served will be specified on the warrant, but is usually between 6:00 a.m. and 10:00 p.m. local time. If reasonable cause is shown, the issuing authority may specifically authorize on the warrant that it be served at any time, day or night. A daytime search may extend into the night, provided the Service officers executing the warrant act reasonably and do not continue the search as a form of harassment. Officers may serve warrants on any day of the week.
- (3) Officers must execute search warrants as soon as practical, but in all cases within 10 days of issuance. If an officer does not execute a warrant or obtain a renewal within those 10 days, then it is void and cannot be renewed. At that point the officer must file a new affidavit and get a new search warrant.
- (4) While searching for the property described in a warrant, a Service officer may also seize property related to a different crime but not described in the warrant, but only if the officer lawfully observes the item and the item is unlawful on its face. For example, an officer may not seize a television set not listed in a warrant where its illegality only became known when the officer checked a stolen property database for the serial number from the back of the TV.

(5) When a Service officer seizes property/evidence under a warrant, the officer must either:

(a) Give a copy of the warrant (without the application or affidavit) and a receipt for the property taken to the person from whom, or from whose premises, the property/evidence was taken, or

(b) If the person is not present, leave a copy of the warrant (without the application or affidavit) and a copy of the property receipt at the place from which the property was taken. (See [445 FW 3](#), Evidence and [sections 1.12](#) and [1.19 – 1.23](#) for more information on seized property.)

B. Execution of Search Warrant on Premises.

(1) A Service officer should attempt to execute a warrant when the owner, resident, or other responsible person is present at the premises being searched. The Service officer should announce that he/she is a Federal officer and that he/she has a search warrant. If the officer receives no response after such announcement or if the officer is refused admittance, the officer may break into the premises.

(2) The search may not commence until the search warrant has been properly served. If more than one Service officer executes the warrant, the other officer(s) do not need to enter the premises by the same entrance as the officer serving the warrant.

(3) A Service officer may stay on the premises only during the time reasonably necessary to search for and seize the property described in the warrant. The search should be as brief as is reasonably possible.

(4) A search warrant does not permit a search of all the people present during the search unless it specifies such a search. If there is reason to suspect that people on the premises are carrying items that reasonably could be objects of the search warrant, the officer may detain and search them to determine whether they are concealing items covered by the warrant.

C. Return of the Warrant. After conducting the search, the Service officer must promptly return the original warrant with a list of all items seized to the U.S. Magistrate Judge or other issuing authority. The officer may list seized items in the space provided on the back of the warrant or complete and attach a Seized Property Receipt (Form 3-155 or other document) as an inventory of property/evidence taken, to the U.S. Magistrate Judge or other issuing authority. See [445 FW 3.14](#), Evidence, and [sections 1.12](#) and [1.19 – 1.23](#) for more information on seized property and receipts.

1.11 What may Service officers seize? Service officers may seize the following items when they find them during a lawful search (Rule 41, Federal Rules of Criminal Procedure):

A. Contraband or Fruits of Crime. These are items that are unlawful to have, such as narcotics, certain firearms, or illegally taken or traded wildlife. If a warrant does not specifically list the contraband, the incriminating nature of the item(s) must be readily apparent.

B. Instruments of Crime. This is property designed or intended for use or that is or was used as the means of committing a crime (i.e., weapons, vehicles, burglary tools, game tracking and

spotting tools, specialized cages, and wildlife handling equipment).

C. Evidence of Crime. Any item that constitutes evidence of a crime is subject to seizure. However, officers may only seize items or property that appears reasonably necessary to aid in an apprehension or conviction. The item must appear to be related to the crime under investigation.

1.12 Does a Service officer need to itemize and provide a receipt when seizing property?

A. Yes. See [445 FW 3](#), Evidence, for detailed information about itemizing and providing receipts for seized property.

B. Whenever officers conduct a search but do not seize property, they must leave some documentation with the person involved that explains there was a search but no seizure. Officers should ask the owner of the property that was searched to sign the documentation. If possible, the owner should sign with another officer witnessing the signature. If the owner will not sign, the officer should document the refusal to sign. Officers should keep one copy of the documentation and leave one with the person who signed it.

(1) If officers conducted the search with a warrant, they should leave a copy of the warrant certifying that they took nothing from the premises.

(2) If they conducted the search without a warrant and took nothing, officers should prepare a certificate that, for example, says:

This is to certify that on {date} at {time} officers of the U.S. Fish and Wildlife Service, Department of the Interior, conducted a search of the premises at {address}. I certify that nothing was removed from my custody by Service officers of the U.S. Fish and Wildlife Service.”

1.13 What is the exclusionary rule? The exclusionary rule says that evidence Federal or State officers obtain by unreasonable (illegal) searches and seizures cannot be introduced in a criminal proceeding against the defendant.

A. Extent of Exclusions. Generally, all improperly obtained evidence is excluded. This includes all evidence obtained by exploiting improperly obtained evidence (i.e., “fruit of the poisonous tree”). The fruit is any information, object, or testimony that officers uncover or obtain, directly or indirectly, through the illegally seized evidence—items and information that officers would not have obtained if not for the initial illegally obtained evidence.

B. Standing. Because the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, only defendants whose Fourth Amendment rights have been violated are permitted to benefit from the rule’s protections. Courts have found that, “A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person’s premises or property has not had any of his Fourth Amendment rights infringed.” In order to claim the protection of the Fourth Amendment, “a defendant must demonstrate that he personally has an expectation of privacy in the place searched and that his expectation is reasonable . . .”

C. Non-criminal Proceedings. Many courts are applying the exclusionary rule to non-criminal proceedings when the Government imposes some penalty. For example, the State of Pennsylvania applied it in an automobile forfeiture proceeding for transporting narcotics. Service officers should assume that the exclusionary rule applies in Service civil penalty and forfeiture proceedings.

1.14 What do Service officers need to know about the Service-enforced statutes and warrantless searches?

A. Most of the Service-enforced statutes in [section 1.3](#) have specific language authorizing Service officers to execute search warrants. Some of these laws, however, are silent when it comes to specifically authorizing searches without warrants, as are most other statutes that outline the powers of Federal officers. In *Aiuppa v. United States*, 338 F.2d 146 (10th Cir. 1964), the 10th Circuit held that the Migratory Bird Treaty Act implicitly withheld power to make warrantless searches based on probable cause and only authorized searches based on a warrant, incidental to arrest, or by consent.

B. Since the *Aiuppa* decision, Congress amended many Service statutes to authorize warrantless searches. Some Service statutes provide authority to search with or without warrant, as authorized by law. The “authorized by law” provision means that searches must comply not only with the Constitution and Federal statutes, but also to the way the courts have interpreted these provisions.

1.15 What circumstances may call for a warrantless search? Under certain circumstances, there are exceptions to warrant requirements. These may include, but are not limited to:

A. Searches incident to arrest ([section 1.16](#)).

B. Exigent circumstances ([section 1.17](#)).

C. Consent searches ([section 1.18](#)).

D. Vehicle searches ([section 1.19](#)).

E. Inventory searches ([section 1.20](#)).

F. Border Searches ([section 1.21](#)).

1.16 When may Service officers conduct a search incident to an arrest?

A. General Rule. In the course of an arrest, a Service law enforcement officer may search the arrested person without a warrant for contraband, weapons, and other evidence. This guideline applies both to felonies and misdemeanors where the officer takes the accused into physical custody. The law allows a search incident to an arrest to protect the arresting officer and prevent the defendant from escaping, harming himself/herself or others, or destroying evidence.

B. Arrest Must Be Lawful. If the arrest is unlawful for any reason, the search incident to the

arrest is also unlawful, and any fruits of such a search are inadmissible in court. Such fruits include physical evidence obtained as a result of the search, confessions or incriminating statements made by the accused while illegally detained, and leads obtained during this time.

C. Scope of Search.

(1) A Service law enforcement officer may search the arrested person, everything in his/her immediate possession, and the immediate area into which the arrested person might reach to gain possession of a weapon or evidence that the person could destroy.

(a) The search may not extend to other rooms or even other areas within the same room unless this “area of reach” rule is met. For example, when an officer arrests a person in an automobile, the officer may search the glove compartment or under the seat or backseat, but a search of the trunk is probably not permissible.

(b) However, the Supreme Court, in *Maryland v. Buie*, 494 U.S. 325 (1990), upheld a detective’s protective sweep of a basement because the suspect had emerged from the basement, and the officer had a reasonable suspicion that someone else was down there. The Court found that, “The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene.”

(2) It is reasonable for the Service law enforcement officer to make a full body search for weapons and evidence incident to an arrest regardless of the nature of the crime for which the arrest was made. The rationale for such a search is to prevent the person arrested from bringing weapons or other contraband into the officer’s vehicle. Such searches may be conducted even if the officer does not believe the arrested person has a weapon or an opportunity to destroy evidence. See [section 1.22](#) for information about intrusive searches.

(3) Issuing a Violation Notice (Form 3-219) is not the same as an arrest. Service officers must not conduct a search incident to arrest based merely on the issuance of a Violation Notice or other citation.

(4) Because a search made incident to a lawful arrest must be limited in scope, Service officers should, if possible, obtain a search warrant at the same time as the arrest warrant if they anticipate the need to search the subject’s premises. When it is not possible to get a simultaneous search warrant or when an officer must make an arrest without a search warrant, officers should apply for a search warrant after the arrest. While one officer obtains the search warrant, another officer may remain on the premises to guard against any destruction of evidence.

(5) A search made incident to an arrest must be made at the same time and place as the arrest, unless circumstances surrounding a particular arrest justify substantial delay. For example, substantial delay may be justified where a search is indicated and appropriate personnel are not immediately available to conduct the search, such as a female Service officer to search a female suspect.

D. Engineered and Pretext Arrests.

(1) If officers maneuver or “engineer” an arrest to take place at a certain place so they can search those premises, the search may be invalid. Service officers should not deliberately delay making an arrest so that they will have an opportunity to search for other items (for example, waiting until the accused enters a car to arrest him/her so that officers can search the car).

(2) Courts may invalidate a search incident to an arrest if an officer deliberately made the arrest as a pretext for a search (for example, a traffic offense arrest as a pretext for a search of the car).

1.17 When do exigent circumstances justify a warrantless search?

A. General Rule. If probable cause is present, Service officers may immediately search for and seize evidence that they reasonably believe will be destroyed or removed to another location before they can secure a search warrant. The Supreme Court recognized that law enforcement officers encounter such exigent circumstances and ruled that where probable cause exists, warrantless searches are necessary to prevent the loss of evidence.

B. Hot Pursuit. Service officers may pursue a suspect into private premises if they have probable cause to arrest the suspect for a serious crime and there are exigent circumstances. The pursuit must be immediate and continuous from the point the subject is encountered. Misdemeanor violations are not considered “serious” crimes for this exception to the warrant requirement. Such circumstances must be documented as soon as is reasonably possible after the pursuit.

1.18 When may Service officers conduct a consent search?

A. General Rule. Service officers may conduct warrantless searches with consent. Probable cause is not required for a consent search. When a person consents to a search by a Service officer, he/she waives his/her Fourth Amendment right of protection from search without a warrant. However, courts will carefully examine any waiver of that Constitutional right. Before courts will admit evidence discovered as a result of a consent search, the Government must show by “clear and convincing” evidence that the person freely and voluntarily gave consent.

B. Consent.

(1) Consent to search must be voluntary.

(2) Consent should be in writing (see [section 1.18E](#) below for more information).

(3) The person must give consent without express or implied duress, coercion, or threats.

(4) If a Service officer claims the right to search (by showing a warrant, for example), any subsequent consent is not voluntary.

(5) Whether or not a person is voluntarily consenting is a question to be determined from all the circumstances, including, but not limited to:

(a) The time of day (e.g., a search conducted at 3 a.m. may be considered differently than a

search conducted at 12 p.m.). The courts review time issues based on all of the facts and circumstances known to the officer at the time of the search.

- (b) The number of Service officers present,
 - (c) Whether or not the subject had been arrested,
 - (d) Whether the officer advised the subject that he/she had a right to refuse consent, and
 - (e) Whether the person had the capacity to meaningfully consent to a search.
- (6) If a person is under arrest when he/she consents to a search of his/her premises or vehicle, the courts often rule that the person did not give consent voluntarily because his/her concurrence was induced by inherently coercive circumstances.

C. Authority to Consent.

- (1) A person in sole control of the premises or effects has a right and the authority to consent to a search of them.
- (2) Generally, a third person can, in the absence of the subject, consent to a search of the premises and items over which he/she has control, even if the premises or items are jointly controlled or owned. If the subject is present and objects, a third person's consent is not valid.
- (3) A landlord may have a property interest in the premises occupied by the tenant, but he/she has no right to joint access or control and cannot consent to a search of the property that he/she rents to another. Similarly, a hotel clerk cannot consent to a search of a guest's room. However, once the tenant or hotel guest checks out, abandons the premises, or is evicted, the landlord or hotel clerk may consent to the search.
- (4) An employee without managerial or agency powers cannot consent to a search of the property owned/managed by his/her employer. In corporate or business situations, Service officers should obtain consent from the highest ranking official on the premises. For a search of company records, it is sufficient to get the consent of the office manager who keeps those records under his/her control and supervision.
- (5) A partner in a business enterprise may give a valid consent against the other partners.
- (6) An employer's consent to a search of business premises is valid against an employee, but the consent does not cover that part of the employee's desk, locker, etc. reserved exclusively for storing the employee's personal possessions.
- (7) If both members of a married couple are present and one objects to a search of their common dwelling, the officer may not conduct a search without a warrant. In the absence of one spouse, the other spouse may not give consent to search the spouse's suitcase, desk, dresser, or other object or place exclusively owned or controlled by the spouse. If the subject previously refused consent to search, it is doubtful that the spouse's consent is valid. A minor child or other dependent has no ownership right in the premises other than that derived from the parents and cannot give valid consent to search against the parents.

(8) One spouse cannot give consent to search a business premises under the control of the other spouse, even when that business is located within the home, unless the consenting spouse has been given authority by the controlling spouse. Such authority cannot be implied from the marital relationship alone.

(9) A homeowner may consent to a search against a temporary, nonpaying guest staying in the dwelling. The host's consent may not be valid if the part of the home being searched is set aside for a long-term guest's exclusive use, or if the search is of an item, such as a suitcase, that is exclusively owned by the guest.

D. Scope of Consent.

(1) The consent should be as clear and explicit as possible.

(2) The person giving consent can restrict the search to specific objects or to only a specific part of the premises.

(3) The person may revoke consent at any time before the search is complete. A search must stop when the person revokes consent. However, Service officers may retain all evidence found before the revocation. Officers may use the information obtained to establish probable cause for a later warrant or an immediate arrest and incidental search of the people on the premises.

E. Written Consent. Service officers should obtain consent for a search in writing. When the person gives consent but refuses to sign the Consent to Search Form (Form 3-342), the officer should complete the form except for the signature. The officer should note on the form that the person either read it himself/herself or someone read it to him/her. The officer should record the exact language used by the person to give consent. If the person giving consent limits the search in any way, such as restricting it to specific objects or to only part of the premises, the officer should record the limitations on the form. If the officer obtains verbal consent but does not use the form or make a written record at the time, he/she should clearly document the consent in the investigative report.

1.19 When may Service officers search of a vehicle (not at a border)?

A. General Rule.

(1) If practical, Service officers should obtain a warrant to search a vehicle. The term "vehicle" in this section includes, but is not limited to, automobiles, cars, trucks, trailers, mobile homes, boats, all-terrain vehicles, snowmobiles, motorcycles, and airplanes.

(2) The courts have ruled that law enforcement officers may search a "mobile conveyance" or vehicle without a warrant if the officers have established probable cause to believe the vehicle contains contraband or evidence of a crime (see subsection 19.A(3) below for information about "mobile"). Once officers establish probable cause, they can search the vehicle immediately at the site where they seized it, or they can search later where it is impounded for safe keeping. The standard for probable cause to search a vehicle is the same as for obtaining a search warrant (see [section 1.4D](#)).

(3) A vehicle is mobile if it is moving or can be moved. If the vehicle cannot move or be moved, the “mobile” exception to the search warrant requirement does not apply.

B. Seized Vehicles.

(1) If a Service officer seizes a vehicle used in a crime (for example, a vehicle used to transport illegal wildlife) as evidence, the vehicle is subject to a later, more careful examination without a warrant like any other lawfully seized item.

(2) Service officers must take complete inventories of all seized or impounded vehicles and their contents as part of routine procedure (see [section 1.20](#)). (Also see [445 FW 3.6 – 3.12](#).) Such warrantless searches conducted to inventory seized vehicles have been upheld by the courts.

C. Abandoned Vehicles. Like other abandoned property, Service officers may seize and search an abandoned vehicle without a warrant and without probable cause. A vehicle is considered abandoned when a reasonable person coming upon the vehicle would believe the vehicle is abandoned, considering all of the facts and circumstances known to the person at that time.

D. Other Guidelines for Vehicles.

(1) Even if evidence justifies a vehicle search, Service officers may not necessarily search occupants of the vehicle if they have not been arrested (see [sections 1.10B4](#) and [1.16A](#)).

(2) If a Service officer has a right to search a vehicle and the operator refuses to allow him/her to proceed, the officer may use as much force as reasonable and necessary to search the vehicle under the circumstances.

(3) Service officers may use admissions or other events occurring between the time they stop the vehicle and the time the actual search begins to show probable cause for a search.

(4) If officers establish probable cause to believe a vehicle contains contraband or evidence of a crime, the officers may search any area of the vehicle where the contraband or evidence may be, including all containers and packages located in the vehicle into which that evidence could fit (locked or unlocked). However, if officers have probable cause to believe the contraband or evidence is only in a specific container or package within the vehicle, they must limit the search to that container or package.

(5) The “plain view” doctrine applies to vehicles. At night, Service officers may use anything revealed by shining a flashlight into the car (plain view) to show probable cause for a search (see [section 1.24A](#)).

1.20 When do Service officers conduct inventory searches of vehicles and personal property?

A. General Rule. During routine law enforcement duties, it is common for Service officers to take lawful custody of personal property that may not be subject to seizure (i.e., abandoned

vehicles, undeclared baggage, purses and wallets of persons placed under arrest, etc.). An inventory search is a warrantless search of personal property that is necessary to:

- (1) Protect the personal property and its contents,
- (2) Protect those who might come into contact with the personal property from harmful or dangerous substances or material that might be concealed in the property, and
- (3) Protect the officer and the Service from claims of theft of, or damage to, the personal property.

B. Vehicles. The term “vehicles” in this section includes, but is not limited to: automobiles, cars, trucks, trailers, mobile homes, boats, all-terrain vehicles, snowmobiles, motorcycles, airplanes, and any attachment to a vehicle, such as a trailer, camper, or camper shell.

C. Guidelines. During inventory searches, Service officers must follow these guidelines:

- (1) Service officers taking custody of personal property must conduct a thorough inventory search of it as soon as practicable.
- (2) Service officers must refuse any verbal or written offer that promises to hold them or the Service harmless in exchange for not completing a thorough inventory or limiting its scope.
- (3) The inventory search may include closed and locked containers and closed and locked areas of a vehicle, such as the trunk, the glove compartment, the console, and the camper.
- (4) The officers must note in the inventory any special qualities of the property that may help protect the officers and the Service from claims that property was damaged or stolen while in Government custody (e.g., significant damage to a vehicle).
- (5) If practicable, before forcibly opening a locked container or area of a vehicle, the officer should attempt to unlock the personal property with the appropriate keys, combinations, or other mechanisms. In situations requiring force, the officer must inflict only as much damage to the property as is necessary to open it safely and timely.
- (6) The officer may record the inventory on a Located Evidence List (Form 3-2069) or any form or document that he/she finds suitable. If the officer uses a property receipt, he/she should note clearly on the form “For Inventory Purposes Only.”
- (7) The inventory must be detailed and consistent with standard law enforcement practices. The nature and condition of the items found during an inventory search and their exact location as well as the inventory document itself, may become evidence in a subsequent criminal, civil, or administrative proceeding.
- (8) Officers must document completed inventories in a Report of Investigation and include them as an attachment to the report.
- (9) After the inventory is complete, Service officers must conduct one of the following actions for each item on the inventory:

(a) If officers have probable cause to believe an item is evidence, they should seize and process the item as evidence.

(b) If an item has no evidentiary value and cannot otherwise be lawfully retained, officers must return the item to the rightful owner as soon as practical.

(c) If an item was seized that has no evidentiary value, and it belongs to an incarcerated person, officers must secure the item and return it to the person. Officers may also release the item to the incarcerated person's designee at any time.

(10) After the inventory is complete, Service officers must provide a copy of the inventory document to the owner(s) of the property.

(11) Before returning inventoried property, officers should ask the owner of the property to make a statement that the property is or is not in the same condition as when the Service originally took custody. The owner may also make a statement that he/she has insufficient knowledge to make such a statement. The refusal to make a statement is not grounds for refusing to return property when its return is otherwise legally justified or required.

1.21 May Service officers conduct searches at the international border or at the functional equivalent of the border? Yes. The Endangered Species Act of 1973 (Act) gives Service officers broad authority to enforce the Act by conducting inspections of imports to or exports from the United States. Following is guidance for conducting inspections at international borders.

A. Purpose. International border searches are a well-recognized and a long-established exception to the probable cause and warrant requirements of the Fourth Amendment. Conducting any search, including border searches, must be reasonable. A warrantless border search may be considered unreasonable depending on the degree of intrusiveness of the search. Refuge officers may assist with international border searches when a Service special agent or wildlife inspector requests their assistance.

B. Routine Border Search. In a routine border search, a person entering or exiting the United States is subject to search of luggage, contents of pockets, and purse without any suspicion at all, for wildlife, wildlife parts or products, protected plants, documents, and any evidence of a violation.

C. Types of Borders.

(1) **Land Border.** The land border is the actual dividing line between the United States and Canada or Mexico. When a person or object crosses that line, the authority for a border search is established.

(2) **Sea Border.** The seaward boundaries of a State are fixed by statute as the boundaries each State recognized when it became a member of the union. States that did not set such boundaries may extend their boundaries to 3 geographic (nautical) miles from the mean low water mark. The mean low water mark is the line of the water on the coast, beach, or banks at the average low tide. The area of water between the mean low water mark and the seaward

boundary of the coastal States is known as the “territorial sea.” For bays and estuaries, a line is drawn from headland to headland and 3 nautical miles are measured from this baseline. The sea border is marked on nautical charts. Service officers should consult these charts if a question arises as to whether they are within the territorial sea. United States law is fully effective in the territorial sea, and any crime committed in this area is committed within the United States and in the State adjacent to the waters.

(a) Florida and Texas. Florida and Texas are the only Gulf Coast States with a seaward boundary into the Gulf of Mexico that extends to 9 nautical miles (3 marine leagues).

(b) Great Lakes. The boundary line in the Great Lakes that divides Canadian and U.S. waters is on nautical charts of the Great Lakes. This boundary line generally divides the Great Lakes in half and is usually physically identified by a buoy line.

(3) Air Border. The air border extends upward from the land or sea border.

(4) Functional Equivalent of the Border (FEB). An FEB is a location that functions like the border. The recognized FEBs are:

(a) Ocean ports where ships dock when entering the United States from international travel,

(b) Airports where international flights land,

(c) Customs bonded warehouses,

(d) Customs bonded shipments, and

(e) Customs mail branches housed in U.S. Postal Service facilities.

D. Inbound Border Searches. Service officers may conduct inbound border searches only in the following conditions:

(1) The Service officer must be enforcing statutes that allow us to conduct a search.

(2) The reasonable search is for wildlife, merchandise made of wildlife, protected plants, and any evidence of a violation.

(3) The officer conducts the search at the border or the FEB.

E. Outbound Border Searches. Service officers may conduct outbound border searches only in the following conditions:

(1) The Service officer must be enforcing statutes that allow us to conduct a search.

(2) The reasonable search is for wildlife, merchandise made of wildlife, protected plants, and any evidence of a violation.

(3) There is reasonable certainty that there will be a connection to the border or the functional

equivalent of the border.

(4) The officer conducts the search at the last practicable detention point before the export.

F. Baggage, Containers, and Conveyances. The Lacey Act and the Endangered Species Act authorize Service officers to detain for inspection and inspect any vessel, vehicle, aircraft, or other conveyance or any package, crate, or other container, including its contents, and all accompanying documents when imported or exported.

G. Pat Downs at the Border or FEB.

(1) Service law enforcement officers may conduct pat downs. They may pat down people during inbound and outbound searches, when applicable. The pat down search may only include the following:

(a) Patting the hands over the person's clothed body,

(b) Removing the person's shoes,

(c) Lifting the pant leg or hem of a skirt a few inches,

(d) Removing a belt,

(e) Examining or reaching into pockets,

(f) Rolling up shirtsleeves, and

(g) Removing a wig or hairpiece.

(2) A person may be subjected to a pat down search for wildlife, wildlife parts or products, protected plants, and any evidence of a violation.

(3) Service officers must not conduct pat down searches for merchandise on people of the opposite sex. (They may conduct pat down searches for weapons on people of the opposite sex, See [sections 1.16C\(2\)](#) and [1.22](#) below.) If a Service officer of the same sex is not available, the officer must request assistance from another agency to provide an officer of the same sex to conduct the search.

(4) Outer garments, suit coats, jackets, handbags, pockets, and baggage are considered containers and Service officers can search them without any suspicion as part of a routine border search.

(5) Service officers must distinguish between a pat down search for merchandise and a pat down search for weapons. If officers suspect that their safety or that of others may be in danger, they may pat down the person for weapons, regardless of the person's gender.

H. Partial Body Searches conducted at the Border or FEB. Partial body searches are intrusive and require approval from the appropriate Special Agent in Charge (SAC) or Regional

Chief of Refuge Law Enforcement. See [section 1.22B](#) for more guidance on partial body searches.

I. Body Cavity Searches Conducted at the Border or FEB. Body cavity searches to remove weapons, contraband, and evidence of criminal activity may only be conducted with written consent or by a court order. See [section 1.22C](#) for more guidance on body cavity searches.

J. Destructive Searches Conducted at the Border or FEB. Destructive searches are intrusive, and we require reasonable suspicion to conduct them. See [section 1.22D](#) for more guidance on destructive searches.

K. Use of Force While Conducting a Border Search.

(1) When working at the border or FEB, Service officers may make reasonable requests that help them perform their duties (for example, having travelers stand in line or instructing them where to sit or stand while being detained for clearance).

(2) Service officers may use reasonable force—force no greater than that which is reasonably necessary for the purpose—to overcome resistance to a lawful search (see [442 FW 2](#) for Service policy on use of force). Apart from personal searches, Service officers may physically restrain a person during a detention only if they reasonably believe that restraint is necessary to protect themselves or others, prevent destruction of evidence, or prevent the person from fleeing. Nothing in this chapter prohibits any officer from using the appropriate level of force necessary to defend himself/herself or others from an assault.

1.22 When may a Service officer conduct intrusive searches?

A. General Rule. Partial body searches, body cavity searches, and destructive searches are intrusive searches. Only Service law enforcement officers may conduct partial body and destructive searches, and only medical personnel may conduct body cavity searches. Service law enforcement officers must obtain approval from the appropriate SAC or Regional Chief of Refuge Law Enforcement to conduct an intrusive search. Non-consensual body cavity searches require a court order. Officers must submit a written report documenting the circumstances related to any intrusive search to the appropriate SAC or Regional Chief of Refuge Law Enforcement as soon as possible, but no later than 3 days after the search.

B. Partial Body Searches. A partial body search is the removal of some of the clothing on a person to recover weapons, contraband, and evidence of criminal activity that an officer reasonably suspects is concealed on the body.

(1) Service law enforcement officers are authorized to conduct partial body searches only with the approval of the appropriate SAC or Regional Chief of Refuge Law Enforcement.

(2) Only clothing covering the particular area of the body under suspicion may be removed.

(3) Officers may not touch the person during a partial body search unless the person refuses to remove any article of clothing or otherwise impedes the officer. If an officer thinks the person may resist the search, they may warn him/her that forcible resistance to a search violates Federal law ([18 U.S.C. 111](#)).

(4) Officers must not conduct partial body searches of people of the opposite sex, unless they have emergency or safety concerns. If an officer of the same sex is not available for the search, the officer should request assistance from another agency to provide an officer of the same sex.

(5) Officers should conduct partial body searches in a manner and within an area or location that provides an appropriate level of privacy and is excluded from public view.

C. Body Cavity Searches. A body cavity search is any visual or physical intrusion into the rectal or vaginal cavity. Body cavity searches must be conducted by medical personnel at an appropriate medical facility. The purpose of these searches is limited to remove weapons, contraband, and evidence of criminal activity. We require approval of the SAC or Regional Chief of Law Enforcement for body cavity searches.

(1) Consent for a body cavity search must be documented in writing, and officers must describe their observations concerning the person's maturity, intelligence, and education.

(2) Non-consensual body cavity searches require a court order. Non-consensual body cavity searches require a decision to proceed by the SAC or Regional Chief of Refuge Law Enforcement. After obtaining this authorization to proceed, the Service officer must contact the U.S. Attorney's office and request a warrant to authorize the search.

D. Destructive Searches. A destructive search is a search that will destroy an item(s) that an officer has reason to believe contains weapons, contraband, and other evidence of criminal activity. We require reasonable suspicion for destructive searches and the approval of the SAC or Regional Chief of Law Enforcement. If practical, officers should obtain search warrants before conducting destructive searches.

1.23 What are the inspection and search authorities for international cargo, international mail, and interstate commerce shipments?

A. International Cargo Inspection Authority. The Endangered Species Act of 1973 and the Lacey Act provide the authority for the Service to detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents upon importation or exportation within the United States and its territories. The Director delegates this inspection authority to the Service's Office of Law Enforcement, who further delegates it only to Service special agents and wildlife inspectors. The legal requirements for documentation, declaration, inspection, and clearance of wildlife shipments are in [50 CFR Part 14](#).

B. International Mail. Wildlife imported through international mail facilities must meet the same statutory and regulatory requirements as wildlife shipped by other means.

(1) Mail includes any posted parcel, packet, package, envelope, letter, aerogramme, box, card, or similar article or container.

(a) Letter class mail is any mail article, including packages, post cards, and aerogramme, mailed at the letter rate or equivalent category of postage. Letter class mail is the international

equivalent of our domestic first-class mail.

(b) Sealed letter class mail is mail sealed against postal inspection. Sealed letter class mail includes packages mailed at the express rate, the highest rate of postage available.

(2) Officers may not read or allow others to read any correspondence in letter class mail or sealed letter class mail without a search warrant or written authorization from the sender or addressee. Officers may not read or allow others to read any correspondence between school children or correspondence of the blind that are mailed at other than the letter rate.

(3) Officers may not inspect mail known or believed to contain only official documents addressed to officials of the U.S. government; mail addressed to ambassadors and ministers (chiefs of diplomatic missions) of foreign countries; and letter class mail known or believed to contain only correspondence or documents addressed to diplomatic missions, consular posts, or their officers, or to international organizations designated under the International Organizations Act. Officers may not inspect mail that is not letter class mail and is addressed to international organizations where the organization has certified under its official seal that the mail contains no prohibited articles.

(4) Inbound mail originates from foreign countries. Service officers may not open any sealed letter class mail that appears to contain only correspondence without a search warrant or written authorization from the sender or addressee. Officers may inspect sealed letter class mail when it appears to contain matter other than correspondence, provided there is reasonable cause to suspect the presence of wildlife or protected plants.

(5) Outbound mail is domestic mail transmitted for export by the U.S. Postal Service. A search warrant is required to inspect sealed letter class outbound mail under the postal laws of the United States ([39 U.S.C. 3623\(d\)](#)). The Department of Homeland Security (DHS) has specific and limited statutory exemptions to this search warrant requirement (see [19 U.S.C. 1583](#)). Service officers should coordinate outbound mail inspections with the DHS.

C. Wildlife Shipments in Interstate Commerce. Service officers must have a warrant or consent to inspect shipments in interstate commerce. They may, however, examine the outside of the container for compliance with Lacey Act marking and labeling requirements without a warrant.

1.24 Are there circumstances where a Service officer may observe and obtain evidence without courts considering it a search? Yes, officers may obtain evidence from areas where an individual has no reasonable expectation of privacy or where evidence is obtained absent Government intrusion. The following situations are examples:

A. Private Premises Open to Plain View. It is not unlawful for a Service officer to merely use his/her natural senses to observe that which is open to plain view, as long as the officer has not violated the Fourth Amendment to get to where the evidence could be plainly viewed.

(1) Whether or not officers can seize property in plain view depends on the circumstances under which they see or seize it. Plain view should be viewed not as an independent "exception" to the warrant requirement, but simply as an extension of whatever the prior justification for an officer's access to an object may be.

(2) The seizure of property in plain view when an officer is allowed on the premises involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity. However, it may be an invasion of privacy if the property is on private premises, and the officer has to go on private property to see it.

B. Open Fields. When Service officers enter onto open fields (not part of curtilage – see [section 1.4C](#)), their observations are reasonable under the Fourth Amendment. For example, officers entering on hunting club property that is not part of the curtilage can make observations leading to seizures which are covered under this open fields doctrine. The open fields doctrine applies even if the fields are constructed as part of a commercial enterprise (e.g., a hunting club operating for profit).

C. Abandoned Property. A Service officer may seize property discarded by a person outside of his/her home or his/her curtilage if the property is abandoned. An officer may consider property abandoned if given the facts a reasonable person would conclude that the owner of the property has relinquished all rights and reasonable expectation to the property.

D. Deception and Informers. It is not a violation of the Fourth Amendment to get information that a defendant volunteers to an informer, even if the defendant did not know that he/she was disclosing information to an informer who would relay that information to the Government. If the informer carries an electronic device that records the conversation, transmits it to a third person, or both, it is still not a search under the Fourth Amendment.

E. Private Searches. Fourth Amendment protections apply only to searches the Government conducts. Evidence obtained or seized by a private person acting purely on his/her own incentive and without any request or encouragement from a Government agent may be admissible.

F. Stop and Frisk. When a Service officer detains a person (not an arrest) in an investigatory field stop (or a confrontation not involving detention), he/she may frisk the subject for weapons by running his/her hands over the outer surfaces of the subject's clothing. The officer must have some objective basis (more than mere suspicion or a "hunch," but not probable cause) to believe that the subject may be armed and dangerous and that frisking is necessary to protect the officer or others.

(1) If the officer can feel a weapon when frisking, then the officer may conduct a more intensive search to locate and seize the weapon.

(2) If, in addition to reasonable grounds of safety, the officer has specific information that the subject has a weapon, he/she may immediately search for it without conducting a preliminary frisk. Such information should come from a reliable informant and does not need to be corroborated by other facts.

G. Domestic Mail - Classes of Mail other than First-Class. The Fourth Amendment fully protects first-class mail. Service officers may not search first-class mail. Postal authorities may only search first-class mail with a search warrant. Postal authorities can detain first-class mail for a reasonable time while they obtain a search warrant. Other classes of mail are subject to inspection. Service officers should coordinate domestic mail searches/inspections with postal inspection authorities of the U.S. Postal Service.

1.25 What types of Administrative Inspections may Service Officers conduct?

A. Administrative Inspections. Administrative inspections differ from other searches because their purpose is not to discover evidence for criminal prosecutions, but rather to license, regulate, or otherwise control activities that affect the public welfare or interest. If it appears the intent of the inspection is to discover evidence for criminal prosecution, courts will generally not admit such evidence in a criminal proceeding. In general, administrative inspections must still meet Fourth Amendment requirements for searches and seizures, whether they are of private residences or of business premises.

B. Regulations and Permits. Some Service regulations and permits require that entities conducting activities under those regulations or permits waive their Fourth Amendment rights and allow inspection of their premises and records at all reasonable times. The waivers are required because the activities require close supervision and inspection to protect the public interest.

(1) Wildlife inspectors should conduct such inspections only if the inspections are related to wildlife or protected plant import/export activities. Wildlife inspectors must have the approval of their Resident Agent in Charge.

(2) If the permit holder refuses to allow an administrative inspection as required by regulations or a permit, the Service officer may not enter the premises in question or inspect without a search warrant. Such refusal may, however, be grounds for suspension or revocation of the permit or for prosecution for a violation of the permit conditions.

(3) If the Service officer anticipates that the permit holder will refuse to allow such an inspection, the Service officer may obtain an Administrative warrant ahead of time. However, the permit holder may still avoid an administrative inspection if they relinquish their permit rather than undergo inspection. If an officer anticipates the permit holder may refuse an inspection, the officer should obtain a criminal search warrant, if possible, to ensure inspection.

For information on the specific content of this chapter, contact the Office of Law Enforcement. For more information about this Web page, contact Krista Holloway in the Division of Policy and Directives Management, at Krista.Holloway@fws.gov.

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