



United States Marshals Service POLICY DIRECTIVES

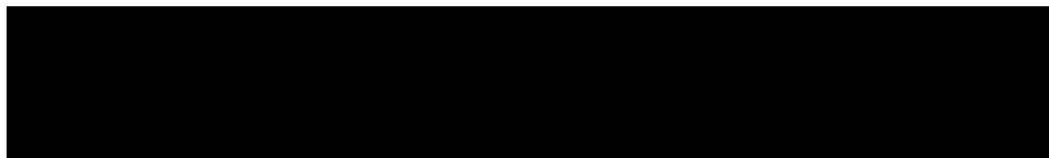
INVESTIGATIVE OPERATIONS

8.11 SEARCHES

A. General: The fourth amendment sets forth the requirement that no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (See [FRCrP 41-Search and Seizure](#) and [FRCrP 4-Arrest Warrant or Summons on a Complaint](#).)

1. The test of reasonableness is met by the production of facts and circumstances amounting to production of facts and circumstances amounting to probable cause to believe the evidence or person sought is located at the place or on the person to be Searched.
2. The fourth amendment protects people, not places. It protects a person's reasonable expectation of privacy against Government intrusion. This includes a persons home, and may include places where the public has access such as a public telephone booth, a union office, or areas of a store open to the general public. The test of a legitimate expectation of privacy under the fourth amendment is (1) whether the individual has a subjective expectation of privacy, and (2) whether that expectation is one that society is prepared to recognize as reasonable. Even though the fourth amendment is a limitation on the Government, it does not require the exclusion of evidence obtained through a search and seizure by a private citizen acting on his or her own without Government suggestion or participation. Where probable cause is shown, an individuals Constitutional Right of Privacy yields to the Government's right to search and seize.
3. The Right of Privacy is a personal right, not a property concept. It safeguards whatever an individual intends to be private under circumstances in which his or her expectation of privacy is reasonable. The protection includes his or her person, residence, vehicle, other personal property, conversations, and private papers or records.

4.



5. **A search may be conducted when:**

- a. A warrant is issued.
- b. A search takes place incident to a valid arrest.
- c. Consent to search by defendant or by person other than defendant is established.

- d. Emergency or exigent circumstance exist.
- e. A search takes place in a vehicle under certain circumstances.
- f. Evidence is located in open/plain view.
- g. Property is taken into lawful custody for inventorying purposes.

B. Securing a Search Warrant

- 1. Pursuant to [FRCrP 41](#), a search warrant issued on an affidavit sworn before a judge or magistrate judge, who determines whether probable cause exists may be based in whole or in part on hearsay evidence. The affidavit may be based in whole or in part on hearsay evidence. Court decisions are to be treated as guideposts to assist in making decisions as whether or not to secure a warrant, or to what extent an area can be searched incident to arrest. Although actual situations may not be identical to the legal precedents, familiarity with the leading cases on the point should enable an intelligent decision to be made, which will likely lead to the admission into evidence of the items seized. It is important to remember that search and seizure law is constantly evolving and what is valid today may not be valid tomorrow, and what is true in one judicial circuit may not be true in another. [REDACTED]

2. [REDACTED]

3. Affidavit

- a. The affidavit is a written sworn statement of facts supporting the request for the issuance of a search warrant.
- b. The affidavit will contain:
 - (1) Sufficient grounds for issuing the warrant.
 - (2) The basis supporting these grounds; i.e. probable cause, personal observation, information, etc.
 - (3) The nature of the property or person to be seized.
 - (4) The name of the person or exact address of the place to be searched.
 - (5) A physical description of the address.
- c. A magistrate judge may require additional testimony to support the affidavit.

4. Oral Testimony

- a. The requirement for an affidavit may be waived when the deputy seeking the warrant provides sufficient grounds to a U.S. Magistrate Judge or state judge that this action is necessary.

- b. The criteria needed to demonstrate the emergency circumstances will vary from case to case, but will probably include one of the following:
 - (1) The deputy requesting the warrant is a significant distance from any magistrate judge.
 - (2) The magistrate judge in the community where the search is to take place cannot be located.
 - (3) There is no substitute deputy available who could personally appear before the magistrate judge.
 - (4) Any delay in the issuance of a search warrant may result in the disappearance or destruction of the object of the search.

C. Requesting a Search Warrant by Telephone

1. **General:** (b) (7)(E) [REDACTED] the deputy will prepare a written statement containing a recitation of the emergency circumstances justifying the warrant. The grounds for issuance of a telephonic search warrant are the same as those required for any other search warrant. However, the statement does not have to be lengthy or elaborate.

2. **Procedures**

- a. (b) (7)(E) [REDACTED]
- b. (b) (7)(E) [REDACTED]
- c. (b) (7)(E) [REDACTED]
- d. (b) (7)(E) [REDACTED]
- e. (b) (7)(E) [REDACTED]
- f. (b) (7)(E) [REDACTED]
- g. (b) (7)(E) [REDACTED]
- h. (b) (7)(E) [REDACTED]

[Redacted]

i. (b) (7)(E)

D. Executing a Search Warrant

1. **Time:** Search warrants will be executed as soon as possible after issuance, and not later than the ten day limit imposed by [Rule 41, Federal Rules of Criminal Procedure \(FRCrP\)](#), or such earlier time as directed by the issuing magistrate judge. The issuing authority under Rule 41(a) is a Federal Magistrate or State Court of Record in the Federal District where the search took place. As a general rule, searches should be made during the hours from 6:00 a.m. to 10:00 p.m. local time. [21 U.S.C. § 879](#) provides for illegal drugs may be conducted at any time of the day or night.

2. **Announcement:** [18 U.S.C. § 3109](#) requires a deputy to announce his or her identity, authority, and purpose before entering to execute a search warrant. The announcement will not be lengthy or elaborate, but should leave no reasonable doubt that all persons involved understand the deputys intent. (b) (7)(E)

[Redacted]

3. **Exceptions to Announcement Requirement:** The announcement requirement of [18 U.S.C. § 3109](#) does not apply to the following:

a. (b) (7)(E)

b. (b) (7)(E)

c. (b) (7)(E)

4. Entry

a. The manner of entry to conduct the search will depend on the response of the person against whom the search is directed ([18 U.S.C. § 3109](#)). If the person complies with the entry demand, the deputies may enter immediately and conduct the search. (b) (7)(E)

[Redacted]

b. If the person behind the door remains silent or responds ambiguously to the entry demand, deputies must wait a reasonable time before making a forcible entry. (b) (7)(E)

[Redacted]

(b) (7)(E)

c.

(b) (7)(E)

5. **Entry by Ruse, Trickery, or Deception**

a. Unannounced entry to constitutionally protected premises to execute a search warrant by deceit or misrepresentation does not violate [18 U.S.C. § 3109](#), as long as the entry is accomplished without the use of force. If the ruse is unsuccessful, an announcement must be made before force may be used.

b.

(b) (7)(E)

E. **Scope of Search**

1. **Personal Safety:** After having entered the premises, deputies should take whatever reasonable steps necessary to protect themselves. (b) (7)(E)

(b) (7)(E)

2. **Duration of Search:** A search must be terminated when the evidence has been found and seized. When one of several items described in the warrant has been discovered, the search may continue for other evidence. If no evidence is found, the search must end when the deputies have exhausted all possible places where the evidence could be concealed.

3. **Intensity of Search**

a.

(b) (7)(E)

b.

(b) (7)(E)

F. Plain View Doctrine

1. Whenever deputies are lawfully present on a premise, and they observe evidence in plain view, such evidence may be seized even though it was not described in the warrant. In order to validate the seizure, a deputy must have probable cause to believe that the items observed in plain view are evidentiary in nature, and the discovery must be inadvertent or unanticipated. There must be a connection between the evidence seized and the commission of the crime.
2. The plain view doctrine will not permit the seizure of evidence from a premises where the deputy has no right to be, except where evidence is in plain view from a position where the deputy is lawfully located and he or she makes no specific attempts to access an area where he or she is not authorized to enter. (b) (7)(E)

G. Resistance or Interference

1. Under [18 U.S.C. § 2231](#) it is a felony to assault, resist, oppose, impede, intimidate, or interfere with a deputy attempting to execute a search warrant. Any person found in violation of this section is subject to immediate arrest by USMS personnel. A violation may be shown even though the person resisting does not use force or violence. In addition, if he or she assaults the deputy, the person can also be charged under [18 U.S.C. § 111](#). (b) (7)(E)
2. (b) (7)(E)
3. Warning the subject of a search warrant or an impending search, destruction or removal of evidence sought under a second warrant are violations of [18 U.S.C. § 2232](#). Attempts to rescue property already seized by the searching deputy are also violations.

H. Leaving Warrant, Seized Property Receipt and Return

1. Deputies who have executed a search warrant are required by law to give a copy of the warrant (and attached affidavit, where applicable) to the individual whose person, premises or property has been searched. The copy of the search warrant must be provided whether or not any evidence or other property was seized pursuant to the search warrant or any other law. In addition, a receipt must be given for any money, documents, or other property seized. Thus, items seized in plain view or a weapon taken for safety reasons, though not described in the warrant, should be included in the receipt.
2. [REDACTED] form can be utilized as a receipt or one can be prepared by hand. The receipt shall contain an itemized list of all property seized. Deputies shall ensure that the description of all seized items be adequate and accurate. The receipt should be prepared in triplicate. The original shall accompany the warrant upon return to the U.S. Magistrate Judge. One copy is given to the person searched, and the other retained in the case file.

3. If no person is present at a location where a search warrant is executed, and evidence is seized, a copy of the warrant (and the affidavit, where applicable), (b) (7)(E) or hand prepared receipt should be left in a conspicuous place at the location of the search.
4. If a search warrant is executed and a search conducted and no evidence or property is seized, (b) (7)(E) or hand prepared receipt should be completed noting that no items of evidence or property was seized, along with a copy of the warrant.
5. The return of the search warrant is the report to the issuing magistrate or district court judge that the warrant was executed. The return should be made as soon as possible after execution. On the back of the Federal Court Form AO 93, *Search Warrant* there is a section to be completed by the deputy that executed the search warrant and seized the evidence or property. The Form AO 93 must be completed accurately with a complete inventory of the property seized. Depending on local federal district court rules or the preference of the issuing magistrate or district court judge, (b) (7)(E) or hand prepared receipt can be attached to the Form AO 93 as the written inventory. The return on the original warrant will be made in the presence of the issuing judicial authority.

I. Securing the Premises

1. Upon conclusion of a search made under warrant, it is the responsibility of the searching deputies to make certain the place searched has been secured.

2. (b) (7)(E)

3. (b) (7)(E)

J. Claims for Damaged Property

1. Where damage to property results from the execution of the search warrant and/or arrest warrant, such as a broken door, the property owner may be entitled to compensation, even where there was legal justification for the entry and search. (b) (7)(E)

a. (b) (7)(E)

b. (b) (7)(E)

c. (b) (7)(E)

2. (b) (7)(E)

(b) (7)(E)

K. Emergency or Exigent Circumstances

1. To justify a warrantless search under emergency circumstances a majority of the following criteria must be evident:
 - a. A grave offense (i.e., a crime of violence) is involved.
 - b. A reasonable belief that the subject is armed.
 - c. Probable cause that the subject committed the offense.
 - d. A strong belief that the subject is on the premises.
 - e. Likelihood that the subject will escape while obtaining a warrant.
 - f. Entry, though not consented to, is peaceable.
 - g. Hot pursuit is involved.

L. Search Incidental to Arrest

1. General

- a. Following a full custody arrest the authority to search is an exception to the warrant requirement. This exception allows a full and complete search for weapons or implements of escape, and for evidence connected with the crime for which the person has been arrested.
- b. The purpose of the search is to protect the arresting deputy, prevent escape, and reserve any evidence in possession of the arrestee. The right to search follows from the arrest. The nature of the crime, whether felony or misdemeanor, violent or nonviolent, has no bearing on the right to search. The imposition of physical custody is the key to any such search.
- c. Any search incidental to arrest should be made by (b) (7)(E)
- d. If an invalid arrest is made (without probable cause), the incidental search of the arrested person is invalid and all evidence uncovered is subject to exclusion (the exception is the good faith doctrine).
- e. The arrest, even though lawful, may not be used as a pretext to search for evidence of a different, unrelated crime for which the deputies have not grounds to arrest or search. However, where the arrest is made in good faith, and evidence of an unrelated crime is discovered inadvertently in the course of a search, such evidence will be admissible.

2. Procedures

a. A search incidental to an arrest generally must be made at the time of arrest, or shortly thereafter. (b) (7)(E)

b. (b) (7)(E)

c. (b) (7)(E)

(1) (b) (7)(E)

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

(3) (b) (7)(E)

d. If the deputy decides the search should be conducted, he or she must be certain that:

(1)

(2)

(3)

e. (b) (7)(E)

f. (b) (7)(E)

SEARCH BY CONSENT

- A.** While not preferred, a search made with consent is lawful as an exception to the warrant requirement ([18 U.S.C. § 2236](#)). A consent is a relinquishment of Fourth Amendment rights by the consenting party. This is reasonable even in the absence of probable cause and where searching deputies cannot particularly describe the materials being sought.
1. Requirements for consent are:
 - a. Lawful possession
 - b. Voluntariness
 2. Deputies seeking permission to search without a warrant must obtain consent from a person authorized to give it.
 3. Only a person in lawful possession may give consent. Examples are:
 - a. Ownership is not the equivalent of lawful possession when the owner has temporarily yielded his or her right to possess, as in the case of landlord and tenant, or innkeeper and guest.
 - b. Nor is lawful presence the same as lawful possession. A guest or invitee lawfully on premises is generally not authorized to give up rights possessed by his or her host.
 4. When two or more persons jointly possess property, any of the individuals may consent to the search of those areas or things that are commonly possessed. Places or items of personal property reserved, or the exclusive use of one person may not be searched by consent of another. A consent search should not be undertaken when both joint possessors are present and one objects to the search.
 5. The rules relating to joint possession apply in a wide variety of relationships; e.g., husband and wife, paramours, business partners or confidantes in crime.
- B.** As a general rule, parents may consent to the search of a family dwelling when such search is directed against children who are supported by the parents and residing at the parents premises. On the other hand, the Fourth Amendment protection belongs to the parents, and children may not relinquish the parents rights by consenting to a search of the family home which is directed against the parents.
- C.** An employer may be barred from permitting a search of personal property reserved for the exclusive use of an employee.
- D.** In the absence of the resident manager the capacity of an employee or agent to permit the search of a business premises depends on the authority given to the employee by the employer or principal. In the absence of the resident manager, a deputy seeking consent to search a business premises should obtain consent from the highest ranking official available.
- E.** While a search warrant is preferred, business records may be searched by obtaining consent. Such consent should be from the custodian of records or other resident official in charge.
- F. Voluntary**
1. The critical issue in any consent search is whether the consent is voluntary; that is,

whether it is the result of free and unconstrained choice.

2. It is the Government's burden to prove that the consent was not coerced. Therefore, (b) (7)(E) [REDACTED] No single criterion is used to determine voluntariness. The full surrounding circumstance such as the number of deputies present, the time of the search, the manner of the request, the display of weapons and the physical and mental condition of the consentor will be taken into account. Formal custody alone will not invalidate a consent. Thus, a person under arrest may give permission to search his or her house, car or other property.
3. Use of physical force or threats, however, will render a consent involuntary. Likewise, fraud, deceit or misrepresentation will taint the consent; however, a consent to enter obtained by such means in an undercover operation is proper.
4. In order to establish a voluntary consent, the Government is not required to prove that a warning of the Fourth Amendment rights was administered prior to the consent. (b) (7)(E) [REDACTED]

G. Proof of Consent: Consent to search should be obtained in writing whenever possible on Form (b) (7)(E) [REDACTED] In the event that an individual gives his or her consent orally, but refuses to sign the [REDACTED]

H. Limitations of Consent: The consenting party controls the conditions of a search. He or she may revoke the consent, at which time deputies should terminate the search. He or she may otherwise limit the scope or time of the search and deputies must conform to such limitations.

I. Implied Consent: (b) (7)(E) [REDACTED]

J. Receipt and Certificate: A receipt is to be prepared and given to the consenting party for any property seized during a consent search. The receipt is to be in the form of an itemized list adequately and accurately describing all property taken, prepared in duplicate, with one copy given to the consentor and the original to be used to complete a Form [REDACTED] a copy of which should be placed in the file.

SEARCH OF VEHICLES

A. General

1. The same authority which allows searches of persons and premises applies to motor vehicles; thus, an automobile may be searched pursuant to a search warrant if it is located in the jurisdiction where the warrant is outstanding. It may also be searched by consent of a party having lawful possession of the vehicle, and it may be searched pursuant to the arrest of the driver or an occupant as long as the arrest occurs within or in close proximity to the vehicle.
2. The general rule, that a search incident to an arrest may extend to those areas within the

immediate control of the arrestee at the time of the arrest, does not permit the entry to locked trunks, since this area is not accessible to the arrestee. However, such places may be searched on probable cause alone if it is impractical to obtain a warrant or by consent of the arrestee or another in lawful possession of the vehicle. Due to their unique characteristics, motor vehicles may be entered or searched without warrant under circumstances which would not permit the same actions against fixed premises.

B. Search on Probable Cause Alone

1. A search of a motor vehicle found on the open road may be made without a warrant, consent, or arrest when deputies have reasonable grounds to believe that the vehicle contains evidence of a crime and it is impractical to obtain a search warrant. This rule is based on the view that a mobile vehicle is apt to leave while a warrant is being obtained. Although a search under this doctrine should be made where the vehicle is found, the search may occur at the place to which the vehicle is towed or transported, so long as the vehicle is still mobile and probable cause exists.
2. Since the authority to search is directed against the vehicle, search of the driver and occupants for evidence is not permissible, although a self-protective frisk may be used upon a reasonable suspicion that such persons are armed and may constitute a threat. The scope of the search of the vehicle is directly to the nature of the evidence sought. (b) (7)(E)
3. In certain circumstances, motor homes may be entered and searched without a warrant. If the motor home is mobile or in a setting that objectively indicates that is being used for transportation, the vehicle exception to the warrant requirement will apply.

FIREARMS DISCOVERED DURING SEARCH

- A. (b) (7)(E)
- B. (b) (7)(E)
- C. Evidence and tracing procedures for seized firearms will be conducted in accordance with USMS Policy Directive 8.13, [Evidence](#).