

EN Part 4 Chapter 1

Detection Technology

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CUSTOMS ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 3

PERSONAL BAGGAGE, GOODS, AND CONVEYANCE EXAMINATION POLICY AND PROCEDURES

EN Part 4 Chapter 3 Personal Baggage, Goods, and Conveyance Examination

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to physically examine personal baggage, conveyances, and goods upon arrival in and departure from Canada when deemed necessary.
2. All examinations will be conducted in strict adherence to our core values; examinations will be proficient and discrete to the extent possible with respect to clients and their property.

DEFINITIONS

3. Refer to Part 11 – Glossary.

AUTHORITIES

Customs Act

Public's Obligation to Assist Customs

4. Subsection 13(b) – Requires persons reporting imported goods to answer truthfully questions respecting the goods, present, unload the conveyance and open and/or unpack any package or container.

Customs Controlled Areas

5. Section 11.2 – Allows the designation of areas as customs controlled areas.
Section 11.3 – Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.

Examination of Goods

6. Subsections 99(1)(a), (b), and (c) – Authorizes customs officers to conduct examinations anytime up to the time of release of such goods, baggage, conveyances, or mail that are brought into Canada or anytime prior to their export from Canada.
7. Subsections 99(1)(d) and (e) - Allows customs officers to examine goods, baggage, or conveyances that have been released but are still in an area under Customs control if they suspect on reasonable grounds that errors have been made in the declaration, value, or classification or a contravention has occurred.

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8. Subsection 99(1)(f) – Authorizes customs officers to stop, board, and search any conveyance or any goods it is carrying, and direct that the conveyance be moved to a customs office or other suitable location for search and examination where the officer suspects on reasonable grounds that the Act or any Act of Parliament they administer or enforce has been or might be contravened in respect of the conveyance or the goods.
9. Section 99.1 – Authorizes officers to stop and question a person and examine their imported goods whom they have reasonable grounds to suspect have entered Canada without presenting themselves to Customs.

Note: Examples of when officers might use this power are when monitoring a customs office after hours and at alternative reporting stations. This section also gives authorization to the Royal Canadian Mounted Police (RCMP) to deal with persons encountered away from Customs ports of entry.

10. Sections 111 & 112 – Provides for acquiring and executing a search warrant in order to conduct a customs examination away from a customs area or in places not subject to Customs control.
11. Subsection 115(1) – States officers may make one or more photocopies for evidentiary purposes of any record, book, or document that is seized under this Act.

Note: Photocopying documents constitutes a seizure within the meaning of section 8 of the *Charter of Rights and Freedoms*.

The Canadian Charter of Rights and Freedoms

12. Section 8 – States everyone has the right to be secure against unreasonable search or seizure.
13. In *R. v. Simmons*, the Supreme Court of Canada held that for persons entering Canada the degree of personal privacy reasonably expected at customs is lower than it is in most situations. It held that questioning and searches performed by customs officers are reasonable based on a standard of reasonable grounds to “suspect” and are considered a legal delay and not a detention. It divided the types of searches that customs officers perform into three categories based on the Charter issues that these searches raise. The first category of search involves the routine questioning of persons arriving in Canada, the inspection of baggage, pockets, wallets, and purses, and the pat down of the outer layers of

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clothing. The Court viewed these as part of routine processing, which does not raise *Charter* concerns.

Note: Refer to Part Six, Chapter Six, Personal Search for the second and third category of searches.

14. The Supreme Court of Canada in *R. v. Monney* re-affirmed the decision of *R. v. Simmons* and held that the types of searches that customs officers perform are divided into three categories based on the *Charter* issues that these searches raise.
15. In *R. v. Jacoy*, the Supreme Court of Canada held that examinations for the most part are to be conducted systematically and progressively, with increasing intensity as circumstances warrant, which include referrals for examination based on intelligence.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

16. Subsection 12(1) – Requires every person or entity referred to in subsection (3) to report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.
17. Subsection 16(1) – Authorizes officers to stop, board and search any conveyance, examine anything in or on it and open or cause to be opened any package or container in or on it, if the officer suspects on reasonable grounds that there are currency or monetary instruments of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and direct the conveyance to be moved to a customs office or other suitable place for the search, examination or opening.
18. Subsection 16(2) – Authorizes officers to search baggage, examine anything in it and open or cause to be opened any package or container in it, if the officer suspects on reasonable grounds that it contains currency or monetary instruments that are of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and direct that baggage be moved to a customs office or other suitable place for the search, examination or opening.
19. Subsection 17(1) – Authorizes officers to examine any mail that is being imported or exported and open or cause to be opened any such mail that the officer suspects on reasonable grounds contains currency or monetary instruments of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1).

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20. Subsection 17(2) – Prohibits officers from opening or causing to be opened any mail that weighs 30 grams or less unless the person to whom it is addressed consents or the person who sent it consents or has completed and attached to the mail a label in accordance with article 116 or the Detailed Regulations of the Universal Postal Convention.
21. Subsection 17(3) – Authorizes officers to cause mail that weighs 30 grams or less to be opened in the officer's presence by the person to whom it is addressed, the person who sent it or a person authorized by either of those persons.

PURPOSE AND SCOPE

22. The purpose of this policy is to provide guidelines to customs officers for conducting physical examinations of personal baggage, goods, which includes examining and photocopying personal papers and journals; and conveyances.
23. This policy also guides customs officers in pocket, purse, and wallet searches for evidence.
24. This policy applies to all CBSA officers.

POLICY GUIDELINES

Point of Finality

25. Officers will ensure the point of finality has been reached prior to undertaking any examination of personal baggage, goods, or conveyances.

Note: Refer to Part Three, Chapter Three, Reporting, Questioning, and Referral Policy and Procedures for more information pertaining to reaching the point of finality.

Reasons to Examine

26. Examinations of personal baggage, goods, and conveyances will be conducted if it is necessary to:
 - a) verify or determine that a person and their baggage, goods, and conveyance comply with the laws and regulations administered by customs and other government departments (OGD's) (i.e. declaration verification, tariff classification, valuation);

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- b) conduct examinations of identified persons, baggage, goods, and conveyances such as those selected by enforcement systems or deemed as possibly suspect by an alert or lookout; and
- c) confirm or negate officers' suspicions based on reasonable grounds and indicators of non-compliance.

Note: If referring a person to secondary who is deemed to be of high-risk, officers must ensure that officers in secondary are informed of this risk. Accordingly, they should communicate their concerns orally, by radio or telephone, prior to the person's arrival at secondary. Refer to the CBSA Policy on the Use of Force and the section dealing with the high-risk persons.

Conduct

27. All examinations are to be conducted in a courteous and professional manner.

Note: Professional and courteous conduct extends to selecting, conducting, and reporting of examinations, as well as responses to inquiries by interested parties on examination matters, in addition to the treatment and respectful handling of goods.

28. Officers will not respond in kind to individuals who may be upset and/or hostile about having their goods, baggage, or conveyance examined.
29. All examinations will be conducted in a thorough, methodical, and proficient manner.

Health and Safety

30. When conducting examinations, officers will take measures to protect the health and safety of fellow officers, the public and themselves.
31. Officers will ensure conveyances cannot be moved, vehicles are turned off and keys are removed before and during examinations.

Note: During examinations, officers must be aware of the danger of needles, broken glass, razor blades, knives, and other sharp or pointed objects, exhaust fumes, and the possible high temperatures associated to engine and exhaust components. Officers will not freely run their hands in pocket compartments or visually limited areas of vehicles or luggage without a visual examination.

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Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, and/or X-ray equipment may assist in the examination of visually limited areas of vehicles and luggage.

32. The CBSA will support decisions to tactically reposition at any point in a situation and/or to elicit aid when an officer perceives an undue risk to their safety, that of another officer, and/or a member of the general public.
33. Officers will take the necessary preventative measures by wearing appropriate equipment to protect their health and safety during examinations, such as gloves, goggles, breathing masks, or other appropriate equipment.

General

34. Personal baggage, conveyances, and goods will be examined when deemed necessary at their point of entry or departure.
35. Officers will not be deterred from undertaking an examination based on a persons' objections.
36. Officers will record in their notebook situations or incidents in which they deal with upset or hostile persons, such as the time, the person's actions, statements, and physical condition, and any witnesses to an incident.
37. Officers may use contraband detection equipment and tools, including detector dog teams, to assist them in the examination of personal baggage, goods, and conveyances, when deemed appropriate.

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, x-ray systems may assist in the examination of visually limited areas of vehicles or luggage.

38. Officers will familiarize themselves with indicators, concealment methods, and other related information by reading intelligence bulletins, alerts, and other relevant publications available.
39. Officers will request that all persons in a vehicle exit and stand at a safe distance until an examination is completed.

Note: Discretion must be used when, for example, invalid persons, infants, and sleeping children are involved.

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40. Persons will normally be allowed to view examinations of their baggage, goods, and conveyance but will be kept at a safe distance to avoid any intentional or incidental interference.
41. Officers will require Canadian residents to establish the origin of their goods when they appear to be new or there are indicators that the goods are in the process of being unlawfully imported.
42. In instances where proof of origin or lawful importation is unavailable, enforcement action (e.g. seizure) will only be taken when a customs officer has reasonable grounds to believe the goods are in contravention of the *Customs Act*.

Note: In these cases, reasonable grounds to believe are physical or documentary evidence, statements made by the person, or information received from intelligence sources.

Note: Refer to Part Five, Chapter Two, Travellers Seizure and Ascertained Forfeiture Policy and Procedures.

43. Enforcement action will not be taken if an officer does not have reasonable grounds to believe goods are in contravention of the *Customs Act*.
44. Regardless of the type of referral, examining officers must ensure each examination is well-focused without ignoring the possibility that a contravention exists that is unrelated to the reasons behind the initial referral.

Note: Refer to Part Three, Chapter Three, Reporting, Questioning, and Referral Policy and Procedures for information on referral types.

45. Officers will observe persons' reactions to examinations, as they may indicate a more detailed examination is required.
46. Officers will progressively intensify the level of examination when indicators exist that lead to reasonable grounds to suspect that baggage, goods, or a conveyance contains contraband, undeclared or falsely reported goods.
47. Officers will progressively intensify the level of examination when contraband, undeclared or falsely reported goods or evidence is discovered.
48. All examinations will be treated as if the goods are potential evidence.

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49. Examinations will terminate when suspicions have been negated or there are no grounds to suspect that further examination could lead to the detection of a contravention.

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Pocket, Purse, and Wallet Examinations

50. Although, according to the Supreme Court of Canada, pocket, purse, and wallet examinations are part of a “routine examination”, they will not be conducted as a matter of routine unless prior indicators exist that evidence may be found.

Note: Officers must not confuse pocket searches as defined in these policies and procedures with frisks for officer safety as described in Use of Force training and Part Six, Chapter One, Arrest and Detention Policy and Procedures.

51. Where indicators exist or undeclared or falsely reported goods are discovered, officers are justified in performing searches for evidence in pockets, purses, wallets, envelopes, or any other reasonable container to discover evidence in the form of receipts, goods, or references to the goods discovered.
52. Pocket, purse, and wallet examinations will only be conducted when in the officer’s judgement it is safe to do so (i.e. the person is cooperative).
53. All examinations of pockets, purses, and wallets will be carried out with as much discretion and privacy as possible, as such examinations are more personal in nature than baggage examinations.
54. Officers may confirm that pockets that cannot be turned out (i.e. cargo, hidden, or security pockets) are empty by patting the pocket area.

Note: Touching a person to detect undeclared items, other than patting the pocket area, is considered to be part of a personal search and therefore the procedures in Part 6, Chapter 6, Personal Search must be followed (i.e. the person must be under arrest or detention). The intrusiveness of such a search intensifies until the reason for the search has been negated.

55. Where it is operationally viable, these types of examinations will be conducted in the presence of another officer to safeguard against any unwarranted allegations of wrongdoing and for officer safety.

Note: It is recommended that officers of the same sex as the person be used whenever possible to conduct pocket, purse, and wallet examinations.

56. Where a second officer is not available, officers will not touch a person of the opposite sex but will conduct an examination of purses and wallets and visually inspect those pockets that can be turned out or examined without touching the person (e.g. outside jacket pockets).

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57. Officers will enter the details of all pocket, purse, and wallet examinations in their notebook in order to be ready and able to clearly articulate the reasons for conducting this type of examination.

Outer Clothing Examination

58. Under the *Simmons* decision, a customs officer may examine the outer most layer of clothing (i.e. pocket examinations) to discover evidence or indicators that a further examination is necessary.
59. Outer layers of clothing include items that when removed, could not reasonably be expected to expose the person in a manner considered inappropriate. For example, an officer may request the removal of hats, coats or footwear. The removal of such items must be relative to the suspected offence and not considered to be embarrassing.
60. Such articles as turbans, wigs and religious items will not normally be considered "outer clothing" for the purposes of this section. Officers will not request the removal of articles such as wigs, turbans or religious items as a matter of routine. The removal of these articles, and other similar items, could be considered demeaning to the person wearing them and not without stigma. The removal of such items must be relative to the suspected offence.
61. Searches of outer clothing may involve asking the person to remove the contents of their pockets and, when necessary, the officer patting the outermost layer of clothing to ensure that the pockets are empty and that no additional pockets exist. In addition, the officer may request that an outer layer of clothing be removed.
62. The officer must be able to articulate reasons for advancing a search to this extent.
63. When a person refuses to comply with an officer's request to examine an article of outer clothing (i.e. modesty or culture) the officer will not compel the person to do so. If reasonable indicators exist an officer may request a personal search.

Note: Refer to Part six, Chapter six, Personal Search Policy and Procedures.
64. Searches of the outer most layer of clothing to uncover evidence should not be contemplated if an officer has health and safety concerns.

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65. A search of the outer layers of clothing and a frisk search for officer safety are not one and the same. Each has its own distinct purpose and legal authorization. It is the responsibility of the customs officer to determine what type of search /examination is appropriate in each situation and proceed accordingly.
66. When possible an officer of the same sex as the person being examined will conduct searches of outer clothing.
67. Officers' requesting outer layers of clothing to be removed for examination should take persons to as private a location as the secondary area allows.
68. In the case of jackets and coats, officers must question persons to ensure that they are appropriately clothed underneath the item in question prior to requesting its removal.
69. Officers will enter the details of all outer clothing examinations in their notebook in order to be ready and able to clearly articulate the reasons for conducting this type of examination.

Recreational Vehicles

70. To prevent allegations of theft or misconduct while examining recreational vehicles such as trailers and motorhomes, officers may allow one of the occupants to observe the interior examination and, when necessary, assist in opening compartments.
71. When examining a recreational vehicle with none of the occupants present, it is recommended that two officers conduct the examination. Where this is not possible, the examining officer will document in their notebook the circumstances surrounding the examination.

Mandatory Referral Examinations

72. Persons referred to secondary for mandatory reasons, such as duty payment or form completion, will not have their baggage, goods, or conveyance examined as a matter of routine.

Selective Referral Examinations

73. Examinations as a result of a selective referral may be more comprehensive than a cursory examination of baggage, conveyances, and goods.

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74. Examinations resulting from selective referrals will include a methodical examination of all baggage and in the case of conveyances, areas such as gas tanks, engine compartments, spare tire wells, tires, and undercarriage.

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, and/or X-ray equipment may assist in the examination of visually limited areas of vehicles and luggage.

Intensive Examinations

75. Officers will conduct systematic and intensive examinations of personal baggage, conveyances, and goods when they are the subject of a lookout or a target, or where the reasonable grounds to suspect a contravention is occurring is based on a number of indicators.
76. Officers must have reasonable grounds and must be able to clearly articulate such grounds before cutting, drilling, and/or dismantling is undertaken during an examination.

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, and/or X-ray equipment may assist in the examination of visually limited areas of vehicles and luggage.

77. Whenever possible, prior to proceeding with an examination that may involve disassembling, dismantling, or damaging baggage, goods, or conveyances, the examining officer will consult with their superintendent. Where this is not possible or not practical, the superintendent is to be notified of the examination and results as soon as possible.
78. Officers must keep detailed notebook entries of intensive examinations as they may be required to state the reasonable grounds more precisely than for lower intensity examinations.
79. When the examination is the result of a lookout, the officer will input a report to the "Add Exam Results" field of the Integrated Customs Enforcement System (ICES). The officer will also complete an Occurrence Reporting System (ORS) report for any intensive examination, including lookouts and targets, and, where applicable, forward the report in a timely manner to the responsible Regional Intelligence Officer (RIO) and/or Targeter.

Note: For non-automated ports the Examination Report must be completed manually.

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Examination of Personal Papers and Journals

80. Private papers and personal journals will not be reviewed unless there is reason to believe that the papers or journals contain receipts for goods, refer to the acquisition of the goods, or may afford evidence of an offence.
81. Officers will only examine personal papers such as private correspondence and private journals when it is substantiated that there has been a contravention of the *Customs Act*.

Note: “Examining personal papers and journals” for evidence contained therein and “reading personal papers or journals” are not one and the same.

Photocopying and Electronic Scanning of Personal Papers and Journals

82. Under no circumstances, are documents of any nature unrelated to the administration or enforcement of the *Customs Act* to be photocopied unless they are seized for some other purpose under lawful authority, or permission to photocopy the document is received from the owner or person in possession of the document. For example, personal identification of persons entering Canada may not be photocopied and passed to the police for intelligence purposes. In all instances, individuals are to be advised when documents are photocopied.
83. Officers will photocopy or electronically scan only those passages of records, books, or documents, or items of relevance to a contravention.
84. If documents are found that are believed to be related to seized goods, officers will photocopy or electronically scan the pertinent portions and certify them as being true copies of the originals, provided that the copies are clearly legible and the officer is satisfied the matter will not result in the prosecution of a person. Otherwise, the originals will be held.
85. If the original documents are held, officers will provide the person with a receipt (Form E352 – Evidence Seizure Receipt) and photocopies of the original documents, and advise them the originals will be returned when the case is finalized.

Note: If copying facilities are not available, officers will advise the person that copies will be provided as soon as possible.

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Examination Damages

86. Officers will take photographs before and after examinations when it is likely there will be a complaint as a result of conducting an examination, there is pre-existing damage, they suspect that damage may be caused as the result of an examination, or they are going to dismantle or remove permanent fixtures or parts, or drill, cut, or break an item to determine if it is concealing goods.

Note: Photographs taken prior to examination will record any existing damage. Photographs taken after examination will document the extent of the damage caused, if any.

87. Examining officers will photograph any unexpected accidental damage to personal baggage, goods, or conveyances resulting from an examination.
88. In cases of pre-existing damage or when damage is caused by an examination, officers will record all of the relevant information in their notebook.
89. When an examination causes damage, officers will prepare a report for management indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent, and its suspected or actual cause.

Examination Related Costs

90. Customs may pay for affected goods to be brought back to their original state or will make monetary amends when an examination is non-resultant and damage has occurred.
91. Customs will not normally pay for damages to baggage, goods, or conveyances when they are or have been used in contravention of and seized under the *Customs Act*. Goods seized by Customs belong to the Crown from the moment of seizure.

Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter Nine, Section Three, Financial Administration Volume, Finance and Administration Manual.

ROLES AND RESPONSIBILITIES

Customs Officers

92. Customs officers are responsible for:

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- a) adhering to this policy and procedures; and
- b) maintaining in safe and good working order all contraband detection equipment used in examinations.

Customs Port of Entry Managers and Superintendents

93. Customs port of entry managers and superintendents are responsible for:

- a) ensuring that the policy and procedures relative to the examination of personal baggage, goods, and conveyances are adhered to at their office;
- b) providing direction and support to customs officers; and
- c) taking appropriate corrective action on policy and procedure breaches.

Customs Contraband, Intelligence and Investigations

94. Customs Contraband, Intelligence and Investigations (CCII) is responsible for:

- a) developing, modifying, and approving all enforcement policies related to the examination of personal baggage, goods, and conveyances;
- b) monitoring adherence with this policy; and
- c) providing guidance to regional managers and superintendents.

PROCEDURES

General

95. Confirm the existing primary report and ask all persons what goods comprise the value reported. For example, if a person has reported \$100 worth of goods after an absence of 48 hours, it would be appropriate to ask the following:

"You have reported that you were absent from Canada for 48 hours and that you are importing goods worth \$100. What are the goods that you are importing and what are their individual values?"

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96. Ask the person(s) to identify their baggage, if they are aware of the contents and if they packed it themselves.

97. Ask the person(s) to place any suitcases, packages, or containers on the secondary counter and to open them.

Note: In the case of baggage, it will suffice to have a person present, unlock, unzip, or unclasp their suitcase(s) for examination. The officer will then remove what clothing or goods are necessary for the examination.

98. Take any necessary health and safety precautions (i.e. wearing of gloves, goggles, masks, etc.).

99. Conduct a thorough, methodical, and proficient examination of any baggage, goods, and conveyance based on the level of intensity dictated by the referral and indicators.

100. Ask persons clarifying questions, if necessary.

101. Watch for reactions and listen to any comments made by involved persons.

102. Arrest and remove any person from the area who you have reasonable grounds to believe is intentionally obstructing or hindering an examination.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

103. When the officer is satisfied that the goods and conveyance match the persons' report, the officer will advise the person(s) that they are free to leave or where they must go to complete further processing. The traveller is responsible for re-packing his luggage. As a common courtesy, the officer should offer to assist travellers with the re-packing of bags once the contents have been inspected.

104. Progressively intensify the level of examination when indicators exist that lead to reasonable grounds to suspect that baggage, goods, or a conveyance contains contraband, undeclared, or falsely reported goods or when contraband, undeclared or falsely reported goods, or evidence is discovered.

105. In cases where undeclared goods are discovered, continue the examination until satisfied that all undeclared goods and evidence have been found.

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106. Where an intensive examination is required, examine all compartments in the conveyance, baggage, seams of clothing, contents of bottles (i.e. lotion, liquor, etc.), cans and jars, gifts, etc.
107. Utilize contraband detection equipment (e.g., Ionscan, X-ray, probe, etc.) and any other appropriate equipment and tools (i.e., mirrors, screwdrivers, ratchets, etc.) to verify or negate suspicions.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures.

108. Employ detector dog teams to verify or negate suspicions.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures and the Detector Dog Service Operations Manual.

109. Immediately and discreetly take steps to ensure control is maintained over the goods, conveyance, and any persons involved, and alert the superintendent if you suspect or discover the presence of illicit contraband or that some other serious infraction is being committed.

110. If officers discover illicit contraband commodities, they will immediately arrest, advise, and caution any suspect(s) that are present.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

111. Remove any involved persons from the area when illicit contraband is found, a conveyance seized, or a person is placed under arrest.

112. Notify the shift superintendent of the removal of persons from the normal stream of traffic.

113. Superintendents will take appropriate steps to provide any assistance that may be required.

114. Where an examination reveals undeclared or falsely reported goods or contraband imported for commercial purposes that meet the threshold for referral for prosecution, the superintendent will ensure that Investigations is advised.

Note: Refer to Part Nine, Chapter One, Investigations Referrals Policy and Procedures.

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115. Record the details of intensive, resultant, or unusual examinations in your notebook.

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116. Complete in full an ICES Examination Report and if necessary, an ORS report and, where applicable, forward it to the responsible Regional Intelligence Officer and/or Targeter for all intensive examinations and examinations conducted as the result of a lookout or target.

Note: For non-automated ports, the Examination Report must be completed manually.

Land Border

117. Request the driver of the vehicle to turn off the ignition and remove the keys.
118. Request all occupants exit the vehicle, remove all loose money, wallets and purses from the vehicle. Direct all occupants to stand at a reasonable distance where they can still view the examination until the examination is complete.
119. If there is concern for the safety of the officer examining a recreational vehicle, an assisting officer should be present. If the assistance of another officer cannot be secured, the examining officer may request that all persons wait outside the vehicle.
120. Ensure the examination area is safe including the positioning of the conveyance and that it cannot be moved during examination.
121. Ask the driver to remove any suitcases, packages, or containers from the vehicle, including the trunk, place them on the secondary counter, and open them.
122. Where a cursory examination is all that is dictated, conduct a systematic and methodical search of the conveyance including
123. Where an intensive examination is required, examine all areas of the conveyance including the

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, and/or X-ray equipment may assist in the examination of visually limited areas of vehicles and luggage.

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124. When there are reasonable grounds to suspect that goods are concealed within a conveyance, the superintendent may approve that a qualified person (i.e. licensed mechanic) dismantle the conveyance.

Note: Detention of a traveller may also be necessary. Refer to Part 6, Chapter 1, Arrest and Detention, for information on detention procedures.

125. Obtain ignition keys from the driver as soon as you suspect that a conveyance will be seized.

126. When employing the services of a detector dog team, ensure only the dog and handler are in and around the conveyance unless the handler requests the assistance of another officer.

127. If a detector dog team is used in the examination of a motorhome and an occupant insists on being present, they may be permitted as long as it is safe to do so and they do not interfere with the search and stay out of the way of the dog and handler.

Pocket, Purse, and Wallet Examinations

128. Secure baggage and conveyance (where applicable).

129. Separate travelling companions and request another officer watch them closely to ensure that they do not destroy or discard evidence and do not communicate with one another.

130. Escort the person to a private area.

131. Whenever possible, request the assistance of another officer.

Note: It is recommended that officers of the same sex as the person be used whenever possible to conduct pocket, purse, and wallet examinations.

132. Ask the person to empty the contents of their pockets, purse, and/or wallet onto a counter or table.

133. Ask the person to count their currency out loud and note the information in your notebook.

134. Ask the person to turn out their coat, jacket, and trouser pockets.

135. Examine pockets, purse, wallet, and the contents.

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136. Officers may confirm that pockets that cannot be turned out (i.e. cargo, hidden or security pockets) are empty by patting the pocket area.
137. If required, ask the person to lift their feet and display the bottom of their shoes.
138. Record the details of the pocket, purse, and wallet examination in your notebook.

Outer Clothing Examination

139. Take the person to as private a location as possible within secondary.
140. Ask the person to remove the outer layer of clothing (i.e. hat, jacket, coat, shoes, or boots) to be examined.
141. In the case of jackets and coats, ensure that the person is appropriately clothed underneath the item in question prior to requesting its removal.
142. Where a person refuses to comply with an officer's request to remove an article of outer clothing for examination for reasons of modesty or culture, do not compel the person to do so.
143. Enter the details of the outer clothing examination in your notebook.

REFERENCES

144. *Customs Act*
The Canadian Charter of Rights and Freedoms
Finance and Administration Manual
Detector Dog Service Operations Manual

CUSTOMS ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 4

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to physically examine commercial shipments upon arrival in or prior to departure from Canada when deemed necessary.

DEFINITIONS

2. Refer to Part 11 – Glossary.

AUTHORITIES

Customs Act

Customs Controlled Areas

3. Section 11.2 - Allows the designation of areas as customs controlled areas. Section 11.3 - Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.

Authority to Examine

4. Section 99(1)(a) – Authorizes customs officers to examine goods and any container or conveyance that may contain goods upon importation up to the time of release.
5. Section 99(1)(c) – Authorizes customs officers to examine any goods that have been reported under Section 95 at any time up to the time of exportation.

Note: These provisions include the authority to examine in-transit commercial shipments that have arrived in Canada and the baggage of their passengers regardless of the reason for arrival.

6. Section 99(1)(d) – Authorizes customs officers to examine goods and take samples in reasonable amounts, if officers suspect an error has been made in reporting, a refund or drawback is requested, or if they suspect on reasonable grounds that a contravention in respect of any goods has or might be occurring.
7. Section 99(1)(f) – Authorizes the examination of any goods and conveyance a customs officer suspects on reasonable grounds contains goods that are in contravention of the Act.

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Note: This reference pertains to situations where a conveyance has been released and an officer wishes to examine it or where a conveyance is being exported and no goods have been reported under Section 95.

8. Sections 111 and 112 – Provides for acquiring and executing a search warrant in order to conduct a customs examination away from a customs area or in places not subject to customs control.

Public's obligation to assist Customs

9. Section 13 – Importers, exporters, transporters, and their representatives are obligated to answer truthfully questions asked with respect to commercial shipments. They must also present the goods, remove any covering, unload any conveyance, and open or unpack any package or container that a customs officer wishes to examine.
10. Section 21 – Transporters will provide free access to customs officers to their warehouses, storage sites, etc. for the examination of goods that have been imported but not released.
11. Section 27 – Operators of sufferance warehouses, bonded warehouses, and duty free shops will provide access to customs officers to their premises for the examination of imported goods.

BACKGROUND

12. One of the key activities of customs commercial enforcement is the physical examination of goods. Under the authority of the *Customs Act*, examinations allow Customs to either confirm that goods have been properly reported and accounted for or to intercept goods and persons who are not complying with Canadian laws.
13. Due to limited resources and trade considerations, it is neither possible nor desirable to examine every shipment that is imported or is about to be exported. Customs is, therefore, committed to using its resources to selectively focus enforcement activities on shipments considered to be of greatest potential risk to the Canadian economy and/or society. To meet this challenge, Customs is constantly improving its' approach to protection activities to effectively focus on examining high-risk while facilitating low-risk whenever possible. To support this approach, customs has invested in state-of-the-art contraband detection technology to enhance our ability to stop contraband goods from entering Canada and to further enhance our ability to protect Canadians.
14. The location of certain customs offices in built up areas where land is not available for the construction of modern examination facilities has

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necessitated that conveyances (e.g. tractor trailers) be referred to facilities inland from the first point of arrival where the initial report is made. The risk of flight when targeted "high-risk" shipments are referred for examination requires that these referrals be escorted to ensure arrival at the examination facility.

PURPOSE AND SCOPE

15. The purpose of this policy is to provide guidelines to customs officers on conducting physical examinations of commercial shipments of goods.
16. This policy also provides guidelines on escorting conveyances carrying high-risk shipments to inland ports when the examination facilities at the port of entry are unsuitable or non-existent.
17. This policy applies to all customs personnel.

POLICY GUIDELINES

Reasons to Examine

18. Examinations of commercial shipments will be conducted when necessary to:
 - a) verify or determine that a particular shipment, transporter, importer, or exporter complies with the laws and regulations administered by Customs and other government departments (OGD's);
 - b) ensure that documentation presented to report or account for goods, accurately describes those goods;
 - c) provide additional information or to take samples of goods in order to assist compliance verification in verifying the tariff, value, etc., of the goods after they have been released;
 - d) follow-through on examinations of identified shipments such as those selected by commercial or enforcement systems or deemed as possibly suspect by an alert or lookout; and
 - e) confirm or negate officers' suspicions based on indicators of non-compliance.

Point of Finality

19. Customs officers will ensure that the point of finality has been reached prior to undertaking the examination of any commercial goods.

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Note: Refer to Part Three, Chapter Three, Reporting, Questioning, and Referral Policy and Procedures for guidelines on reaching the point of finality.

Conduct

20. All examinations will be conducted in a thorough, methodical, and proficient manner.

Health and Safety

21. Throughout all examinations, customs officers will take measures to protect the health and safety of themselves and the public.
22. Officers will ensure containers and conveyances cannot be moved during examinations and insist that land conveyances be turned off and the keys removed before and throughout examinations of shipments on-board.

Note: Refer to Part Four, Chapter Five, Container Examination; Chapter Six, Commercial Aircraft Examination; Chapter Eight, Commercial Marine Vessel Examination; and Chapter Ten, Commercial Motor Vehicle Examination Policies and Procedures.

23. Where there is a concern for officer safety due to a threat of violence, examinations will be conducted by two or more officers when possible.
24. The CBSA will support decisions to tactically reposition at any point in a situation and to elicit aid when an officer perceives an undue risk to their safety, that of another officer, and/or a member of the general public.
25. Due to the potential for interference, including violence, shipments suspected of containing narcotics, pornography, or weapons will not be examined in front of transporters, importers, exporters, or their representatives, or at their premises.
26. Officers will familiarize themselves with the dangers associated with commercial commodities (i.e. fumigants, dangerous goods, etc.) and the measures and deterrents needed to avoid risks posed to health and safety.

Note: Refer to Part Four, Chapter Five, Container Examination Policy and Procedures, Appendix A, Contraband Examination Procedures for Fumigated Marine Containers.

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Note: Refer to the Material Safety Data Sheets accessible through the Canadian Centre for Occupational Health and Safety website at <http://www.ccohs.ca/>, and/or the CANUTEC website at <http://www.tc.gc.ca/canutec/> for information regarding dealing with dangerous goods.

27. Customs officers will be familiar with and follow the guidelines outlined in the Transport Canada handbook titled Dangerous Goods – Initial Emergency Response Guide that must be maintained at every customs office, including the meanings of the various placards and labels that Transport Canada requires be clearly displayed on shipments and conveyances carrying dangerous goods.

Note: For further information and support on the examination of dangerous goods, contact the Interdepartmental Programs Unit – Section A, Admissibility Programs Division, Operations Branch.

28. Officers will familiarize themselves with the Export and Import of Hazardous Waste Regulations of the *Canadian Environmental Protection Act* and the specific shipping documentation requirements for dangerous goods shipments.

Note: Hazardous Waste Training is available at

29. Officers will review documentation thoroughly to determine the types of goods declared and check conveyances and containers for dangerous goods labels and placards before opening a shipment, conveyance, or container.
30. Officers will take the necessary preventative measures to protect their health and safety, such as wearing gloves, goggles, breathing apparatus, dust masks, dosimeters, or whatever equipment is appropriate. Equipment must be in compliance with CSA standards and used accordingly to manufacturers and management instructions.
31. Officers will advise their superintendent immediately when they have reasonable cause to believe that examining a commercial shipment poses a significant risk to their health or the health of the public.
32. Superintendents will suspend the examination, investigate the situation, and when necessary notify and request the assistance of the appropriate authorities (i.e. Environment Canada).

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Note: Officers have the right to suspend the exam if they believe it poses a threat to their health or the health of the public. Refer to Canada Labour Code, Part II, Section 128.

33. Examinations will not be reinitiated until it is determined that, with the necessary preventative measures and precautions, little to no danger exists or the risk to health and safety has been removed.

Note: Refer to Part Two, Chapter Four, Hazardous Waste Policy and Procedures and Chapter Seven, Precursor Chemicals Policy and Procedures.

General

34. Officers will only conduct examinations for purposes outside the purview of Customs (i.e. counterfeit goods) when a shipment has been specifically targeted for that reason (e.g. lookout for a particular shipment.)
35. Commercial shipments will be examined for customs purposes when deemed necessary at their point of entry or departure or at an inland destination where customs service is available.
36. In cases of bonded carriers, if an examination is warranted but facilities or personnel are unavailable, the load must be sealed with a high security seal, applicable documentation prepared, and the inland office alerted of the need to examine the shipment.
37. Commercial shipments to be examined at land border Designated Commercial Offices (DCOs) will only be offloaded and reloaded by authorized service providers specifically hired for this purpose by the CBSA.

Note: Refer to Appendix A for detailed policy pertaining to offloading of commercial shipments at DCOs.

38. Seals will not be used to secure shipments of suspected illicit contraband to go in bond for examination. They will be examined at the first point of arrival or escorted to an approved place of examination.

Note: See Escorting of High-Risk Shipments below.

39. Officers are responsible for responding to questions concerning the examination process,

Note: Refer to Part 3, Chapter 3, Reporting, Questioning and Referral Policy and Procedures

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40. Officers will not be deterred from undertaking an examination based on importer, exporter, transporter, or their representatives' objections.
41. Officers will record in their notebook incidents of dealings with upset or hostile persons, such as the time, the person's actions, statements, and physical condition, and any witnesses to an incident.
42. Transporters, importers, exporters, and/or their representative, when physically present, may be allowed to view their commercial shipment examinations, except when a controlled delivery is anticipated or specialized techniques or equipment is used to conduct the examination.

Note: Examinations will not be delayed in order to await the arrival of any of the above interested parties.

43. Transporters, importers, exporters, and/or their representatives viewing an examination must be kept at a reasonable distance to avoid any intentional or non-intentional interference.
44. Officers may arrest and remove any person from the area who they have reasonable grounds to believe is intentionally obstructing an examination.

Note: Arrest is not a compliance tool, therefore, officers will only arrest if the intention is to lay charges.

45. Officers will ask persons to leave the area when contraband is found or the transporter, importer, exporter, or their representative is placed under arrest.
46. Officers will familiarize themselves with indicators, concealment methods, high-risk commodities, and related information by reading intelligence bulletins, alerts, and other relative publications available at the port.
47. Officers will use contraband detection equipment and tools to assist them in the examination of commercial shipments.

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, x-ray, gamma ray systems, and detector dog teams may assist in the examination of visually limited areas.

48. Regardless of the type of referral, examining officers must ensure each examination is well-focused without ignoring the possibility that a contravention exists that is unrelated to the reasons behind the referral.

Note: Refer to Part Three, Chapter Three, Reporting, Questioning, and Referral Policy and Procedures.

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49. Officers will review all documentation relating to commercial shipments before undertaking an examination. The seal should be examined for any discrepancies from the number listed on the shipping documents and any seal anomalies noted, such as a broken seal, differing seal numbers from that listed on the manifest.
50. Officers will ensure that when representative sampling is required, samples will be collected from different parts of the load (i.e., front, middle, back and bottom) when it is impractical to examine all goods in a shipment.
51. Throughout examinations, officers will be alert to the presence of indicators that could suggest discrepancies such as contraband, undeclared, or falsely reported goods.
52. Officers will observe interested persons reactions to examinations that may indicate a more detailed examination is required.
53. Officers will progressively intensify the level of examination when indicators raise suspicions that a shipment contains contraband, undeclared, or falsely reported goods or when contraband, undeclared or falsely reported goods, or evidence is discovered.
54. Officers will immediately and discreetly take steps to ensure control is maintained over goods and any persons observing, and alert their superintendent when they suspect or discover the presence of illicit contraband or that some other serious infraction is being committed. Superintendents will take appropriate steps to provide any assistance that may be required.
55. When undeclared goods are discovered or a contravention identified, officers will not conclude the examination until they are satisfied that all undeclared goods and evidence have been found.
56. Officers will obtain the conveyance ignition keys from the transporter when indicators and/or evidence suggest a conveyance will be seized.
57. Officers will immediately arrest, advise, and caution any suspects present when they discover illicit contraband commodities or goods.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

58. Where an examination reveals unreported or falsely reported goods or contraband imported for commercial purposes that meet the thresholds for referral, the superintendent will ensure that Investigations is advised.

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Note: Refer to Part Nine, Chapter One, Investigations Referrals Policy and Procedures.

59. Examinations will terminate when there are no longer grounds to suspect that further examination could lead to the detection of a contravention.
60. Results of examinations will be recorded on the appropriate examination and accounting documents, and in commercial and enforcement systems.

Escorting of High-Risk Shipments

61. When examination facilities are not located at the first point of arrival in Canada, high-risk shipments and conveyances will be escorted to an offsite examination facility that is the closest and/or that has the space, tools, and equipment required to conduct a thorough examination.
62. All high-risk shipments will be escorted, when they are required to be examined at a customs examination facility that is not located at the customs office where the primary report is made.
63. All examinations of the cab of a tractor-trailer will be carried out prior to the vehicle leaving the border area.
64. Escorts of conveyances and shipments will be carried out using CBSA vehicles.
65. Customs officers will obey all traffic laws while driving escort.
66. The law enforcement agency of jurisdiction will be contacted for assistance if a conveyance attempts to take flight while en route.
67. Under no circumstances will customs officers engage in a pursuit of a vehicle that is attempting to flee.

Mandatory Referral Examinations

68. Examinations undertaken on the basis of mandatory referrals will generally be limited to a standard examination of a part of the shipment until the officer is satisfied that the conditions required for release of the goods have been met.
69. When the requirements are not met, officers will continue to examine the goods until they are satisfied that all irregularities have been identified.
70. Shipments or portions of shipments not meeting all of the mandatory requirements will not be released until all conditions have been met.

Random Referral Examinations

71. Officers will conduct examinations of randomly referred shipments according to the level of intensity dictated by indicators discovered during the examination. Where a high security seal was removed from the load in order to examine the contents, a CBSA high security seal should be re-attached and the new seal number annotated in the cargo documentation of the carrier.

Selective Referral Examinations

72. As the result of a selective referral, officers will determine the intensity of examinations based on the indicators that prompted the selection and that are uncovered during the examination.
73. Officers will complete an Intelligence Report in the Occurrence Reporting System for all examinations conducted as the result of a lookout or target and forward the report in a timely manner to the responsible Regional Intelligence Officer (RIO) and/or targeter.

Intensive Examinations

74. Officers will conduct full and intensive examinations of commercial shipments that are the subject of a lookout or a target.

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, x-ray, gamma ray systems and detector dog teams may assist in the examination of visually limited areas.

75. When any part of an examination involves cutting, drilling, and/or dismantling, officers should have multiple indicators to support such action is necessary and must be able to clearly articulate the indicators and their suspicions.
76. Officers must keep detailed notebook entries of intensive examinations as they may be required to state the grounds more precisely than for lower intensity examinations.
77. Officers will complete an Intelligence Report in the Occurrence Reporting System for all intensive examinations and, where applicable, forward the report in a timely manner to the responsible Regional Intelligence Officer (RIO) and/or targeter.

Examination Damages

78. Officers will take photographs before, during, and after examinations if there is pre-existing damage, they suspect that damage may be caused as the result of an examination, or they are going to dismantle or remove permanent fixtures or parts, or drill, cut, or break an item to determine if it is concealing illicit contraband.

Note: Photographs taken prior to examination will record any existing damage and assist officers in restuffing the load as they found it. Pictures taken during examination will document the equipment and techniques used. Photographs taken after examination will document the extent of the damage caused, if any.

79. Examining officer(s) will photograph damage when an examination results in accidental damage to a commercial shipment.
80. In cases of pre-existing damage or when damage is caused by an examination, officers will record all of the relevant information in their notebooks.
81. When an examination causes damage, officers will prepare a report for management indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent, its suspected or actual cause, and include all supporting photographs.

Examination Related Costs

82. Persons, companies, or their representatives reporting goods are liable for costs incurred to make shipments available for examination, (i.e., transportation to examination site, unloading the conveyance, opening packages, storage, etc.).
83. Customs may pay for affected goods to be brought back to their original state or will make monetary amends when an examination is non-resultant and damage has occurred.
84. Customs will not normally pay for damages to goods when they have been found to be in contravention of and seized under the *Customs Act*. Goods seized by Customs belong to the Crown from the moment of seizure.

Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter Nine, Section Three, Financial Administration Volume, Finance and Administration Manual.

ROLES AND RESPONSIBILITIES

Customs Officers

85. Customs officers are responsible for:

- a) adhering to this policy and procedures; and
- b) maintaining in safe and good working order all contraband detection equipment used in examinations.

Regional Management and Superintendents

86. Regional management and superintendents are responsible for:

- a) ensuring that the policy and procedures relative to the examination of commercial shipments are adhered to at their port;
- b) providing direction and support to customs officers;
- c) taking appropriate corrective action on policy and procedure breaches; and
- d) liaising with importers, exporters, brokers, transporters, and their representatives.

Customs Contraband, Intelligence and Investigations

87. Customs Contraband, Intelligence and Investigations (CCII) is responsible for:

- a) developing, modifying, and approving all enforcement policies related to the examination of commercial shipments;
- b) providing guidance to regional management and superintendents; and
- c) monitoring adherence to this policy and procedures by the regions.

PROCEDURES

88. Request the driver of land vehicles turn off the ignition and remove the keys.

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89. Ensure the examination area is safe including the positioning of containers and conveyances, and that they cannot be moved during examination. Keep conveyance occupants, importers, exporters, and their representatives at a reasonable distance but where they can still view the examination.
90. Review all documentation relating to the commercial shipment in order to be familiar with the commodity, quantity, value, etc.
91. Take any necessary health and safety precautions (i.e. wearing of gloves, goggles, masks, etc.).
92. Ensure containers are solidly placed on suitable, safe supports before examining the underside.

Note: Refer to Part Four, Chapter Five, Container Examination Policy and Procedures.

93. Conduct a thorough, methodical, and proficient examination of the shipment based on the level of intensity dictated by the referral and indicators.

Note: Officers are to ensure that packages that are opened, examined and non-resultant are resealed. Officers should indicate on the package and the shipping documents that the goods have been examined by Customs.

94. Take samples of commodities when necessary.
95. Watch for reactions and listen to comments from importers, exporters, transporters, and their representatives. Record any pertinent reactions and comments in your notebook.
96. Intensify examinations as indicators lead to grounds to suspect that a contravention exists.
97. Consult with the superintendent, whenever possible, before proceeding to an examination that involves disassembling, dismantling, or perhaps damaging goods. Where this is not possible or not practical, notify the superintendent of the examination and results as soon as possible.
98. Photograph the shipment, before, during, and after any examination that involves disassembling, dismantling, or damaging goods.
99. Employ contraband detection equipment (e.g., ionscan, X-ray, probe, etc) and any other appropriate equipment and tools (e.g., mirrors, screwdrivers, ratchets, etc.) to verify or negate suspicions.

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Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures.

100. When employing the services of a detector dog team, ensure only the dog and handler are in and around the conveyance or goods unless the handler requests the assistance of another officer.

Note: It is recommended that when required the examining officer be requested to assist.

101. Record the details of intensive, resultant, or unusual examinations in your notebook.
102. Complete in full an Intelligence Report in the Occurrence Reporting System and, where applicable, forward it to the responsible RIO and/or targeter for all intensive examinations and examinations conducted as the result of a lookout or target.
103. Accurately record examination results on the appropriate examination and accounting documents, and in commercial and enforcement systems.

Escorting High-Risk Shipments

104. Arrange for the use of a CBSA vehicle.
105. Contact the examination facility you will be escorting the conveyance and shipment to and advise of your intentions.

Note: This will allow space to be made available if necessary and tools and equipment to be prepared.
106. Review the route that will be taken with the driver.
107. Explain to the driver that you must be in constant visual contact with the conveyance at all times during the trip, therefore, they must wait if you are held up at a light or for whatever other reason.
108. Check that the CBSA vehicle you will be driving has a full tank of gas and is in good working order.
109. Drive behind the conveyance and maintain visual contact with it at all times during the trip.
110. Obey all traffic signs, signals, and laws.
111. Do not under any circumstances pursue the vehicle if it attempts to flee.

REFERENCES

112. *Customs Act*
Canadian Environmental Protection Act –
 Export and Import of Hazardous Waste Regulations
 Finance and Administration Manual
 Transport Canada's Dangerous Goods –
 Initial Emergency Response Guide
 Canadian Centre for Occupational Health and Safety website at
 <http://www.ccohs.ca/>
 CANUTEC website at
 <http://www.tc.gc.ca/canutec/>
 CBSA Offload Policy
 Canada Labour Code Part II – Occupational Health and Safety

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 4

COMMERCIAL SHIPMENT EXAMINATION

Appendix A

OFFLOAD POLICY

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APPENDIX A

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to support responsible border management by ensuring the availability of a national service provider to offload vehicles selected for examination in a timely and efficient manner, while simultaneously supporting the health, safety and security of CBSA employees and users of border facilities.

DEFINITIONS

2. Refer to Glossary.

LEGISLATIVE AUTHORITIES

Customs Act

3. Section 13 – States that every person who reports goods under section 12 inside or outside Canada or is stopped by an officer in accordance with sections 99.1 will:
 - a) answer truthfully any question asked by an officer with respect to the goods; and
 - b) if an officer so requests, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of the conveyance, or open or unpack any package or container that the officer wishes to examine.
4. Subsection 99(1) – Authorizes officers at any time up to the time of release, to examine any goods that have been imported and open or cause to be opened any package or container of imported goods and take samples of imported goods in reasonable amounts.

Canada Labour Code Part II – Occupational Health and Safety Regulations

5. Section 124 – States that every employer will ensure that the health and safety at work of every person employed by the employer is protected.

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BACKGROUND

6. The Canada Border Services Agency (CBSA) is committed to ensuring that the manner in which commercial examinations are conducted at land border ports of entry supports the movement of legitimate trade while recognizing the needs of the importing community and providing Canadians with a secure and efficient border operation. As such, the CBSA national offload policy supports the following four key objectives:
 - a) provide a secure facility in which only persons with pre-approved CBSA security clearance will be granted access;
 - b) ensure that facilities and resources are conducive to the operation of a responsible compliance verification program;
 - c) maintain operational efficiencies while providing clients with the standard of service that is expected of the CBSA; and
 - d) provide a safe and healthy working environment for employees and others lawfully in its premises.
7. This policy supports key CBSA initiatives, namely the Compliance Improvement Plan and its sub-plan the Border Management Plan (BMP).

PURPOSE AND SCOPE

8. The purpose of this policy is to establish guidelines by which commercial examinations at the land border are to be conducted in a manner promoting predictability, consistency, timeliness, and efficiency.
9. This policy will ensure that only those persons with pre-approved CBSA security clearance will be granted access to any facility in which commercial examinations occur.
10. This policy applies to all CBSA employees working at all Designated Commercial Offices (DCOs) at land border ports of entry.

POLICY GUIDELINES

11. Under no circumstances will the CBSA bear any responsibility for costs associated with the offload process nor have involvement in the financial transactions between the offload service provider and clients.

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Note: The legal obligation to report and present goods to Customs for examination as established in the *Customs Act* obliges such persons to assume all financial costs associated with the offload and reload process.

12. Once a shipment has been identified for examination by the CBSA, the carrier will be notified immediately and provided with the name(s) and phone number(s) of the pre-approved service provider(s).
13. After a carrier has been notified that their shipment is to be examined, they will have two (2) hours to complete appropriate business transactions with the service provider and present their goods for examination. Failure to present the goods within this time period will be deemed a contravention of the *Customs Act* and appropriate penalties will be assessed.
14. In instances where an offload and subsequent examination cannot take place at the DCO (e.g., perishable goods, etc.) the policy and procedures outlined earlier in this chapter will apply.
15. At no time will an employee of the CBSA at a DCO operate forklifts or tow motors, open containers, or engage in the offload or reload process.
16. The CBSA will award contracts to pre-approved service provider(s) who will provide offloading services at each of the DCOs.

Note: To be approved, the service provider must successfully meet or exceed the following conditions as established by the CBSA:

- a) all laborers have valid enhanced security clearance;
- b) a minimum of one laborer, per offload, will possess valid licences/certificates to operate offloading equipment and possess proper training designation to operate such equipment;
- c) the service provider provides all equipment required for conducting offloads and reloading including forklifts;
- d) the service provider is bonded and carries appropriate liability insurance;
- e) the service provider is on site during core hours, and at all other times will report within two (2) hours;
- f) the service provider will perform the entire process of offloading and reloading within the standards set by the CBSA – maximum of six (6) hours for a full offload of bulk goods, and four (4) hours for a full offload of palletized goods; and

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- g) the service provider will offer competitive fixed pricing for offload services and will be responsible to collect all fees relating to the offload service directly from the client.

ROLES AND RESPONSIBILITIES

Customs Officers

17. Customs officers are responsible for:

- a) identifying suspect conveyances for examination and promptly informing carriers that their shipment will be examined;
- b) providing carriers with name(s) and number(s) of security-cleared offload service provider(s);
- c) conducting secondary examinations including the operation of x-ray equipment and other appropriate examination tools;
- d) adhering to the policy and procedures related to customs examinations; and
- e) properly recording all information, including reason and type of examination performed, time that the carrier was notified, duration of offloads and examination processes, and actual examination results.

Superintendents

18. Superintendents are responsible for:

- a) ensuring that only security-cleared offload service providers including laborers are granted access to commercial examination facilities;
- b) ensuring that all Custom officers involved in commercial motor vehicle examinations have received the designated training for conducting commercial vehicle examinations, identifying hazardous materials, and appropriate health and safety precautions;
- c) identifying the approach and method for examinations and ensuring that all such information pertaining to offload and examination processes are properly recorded;
- d) monitoring time standards and reporting any time delays to program support officers; and

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- e) ensuring that the policies and procedures related to customs examinations are adhered to by customs officers, transport companies, and offload personnel.

Program Support Officers

19. Program support officers are responsible for:

- a) providing and updating lists of security-cleared offload service providers;
- b) ensuring that those companies selected to perform offload services agree to CBSA established time and cost standards as well as other CBSA criteria related to conducting offloads; and
- c) contacting the Release and Warehouse Program Division should any issue(s) relating to the policy arise.

Customs Operational Policy and Coordination and Field Operations

20. Customs Operational Policy and Coordination and Field Operations, Release and Warehouse Programs is responsible for:

- a) in consultation with the Customs Contraband, Intelligence and Investigations, developing, modifying, and approving all policies and procedures related to commercial examination offloads;
- b) establishing criteria and appropriate evaluation standards to be used for identifying offload service providers;
- c) evaluating and approving potential offload service providers;
- d) engaging the import/export community in determining appropriate and acceptable time and cost standards;
- e) meeting with BMP representatives to ensure program effectiveness; and
- f) monitoring application of the policy.

ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 5

CONTAINER EXAMINATION POLICY AND PROCEDURES

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of containers in accordance with the provisions set out in the *Customs Act* and in recognition of the requirement for safety.

DEFINITIONS

2. Refer to Part 11 – Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 - Allows the designation of areas as customs controlled areas. Section 11.3 - Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
4. Section 13 – Importers, exporters, transporters, and their representatives are obligated to answer truthfully questions asked with respect to commercial shipments and present the goods, remove any covering, unload any conveyance, and open or unpack any package or container that a officer wishes to examine.
5. Section 21 - Transporters will provide free access to warehouses, storage sites, etc. to officers for the examination of goods that have been imported but not released.
6. Section 27 - Operators of sufferance warehouses, bonded warehouses, and duty free shops will provide access to their premises to officers for the examination of imported goods.
7. Section 99(1)(a) – Authorizes officers to examine goods and any containers or conveyance that may contain goods upon importation and up to the time of release.
8. Section 99(1)(c) – Authorizes officers to examine any goods that have been reported under Section 95 at any time up to the time of exportation.

Note: These provisions include the authority to search in-transit containers and cargo regardless of their destination.

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Container Examination

9. Section 99(1)(f) – Authorizes the examination of any goods and conveyance a officer suspects on reasonable grounds contains goods that are in contravention of the Act.

Note: This reference pertains to situations where a conveyance has been released and an officer wishes to examine it or where a conveyance is being exported and no goods have been reported under Section 95.

PURPOSE AND SCOPE

10. The purpose of this policy is to provide guidelines to CBSA officers in conducting container examinations in CBSA facilities and at container terminals. The latter is also known as dockside examination.
11. It is also the purpose of this policy to address health and safety issues regarding hazards encountered while inspecting containers and their cargo. In particular, it includes procedures for dealing with fumigated containers, or containers that have tested positive for airborne chemicals.

Note: See Appendix A, Contraband Examination Procedures for Containers testing positive for airborne chemicals

12. This policy applies to all CBSA personnel in all modes of transportation.

BACKGROUND

13. In 1988, a central container examination facility was established in Halifax to support a pilot project aimed at developing a structured and logical way of identifying and examining high-risk containers. Primarily, the project involved testing a system that assisted in the selection and examination of potentially high-risk containers at the point of entry. Selections were made using targeting methods and examinations were conducted in a more methodical and thorough manner.
14. Due to the success of the pilot, in 1989, a national Marine Container Program was announced and facilities were created in Montreal and Vancouver. Since then, the program has extended to other ports and the results of targeting and quality examinations have proven to be effective.
15. To support targeting and container examination, the Enforcement Branch developed training specific to these areas. Although this training is set in the marine environment, it is applicable to all modes of transportation, including land and rail.

POLICY GUIDELINES

Note: Refer to Part Four, Chapter Four, Commercial Shipment Examination Policy and Procedures for guidelines regarding the examination of cargo/commercial goods.

General

16. Officers must be trained in the Work Place Hazardous Material Information System (WHMIS) prior to handling any hazardous materials, including dräger-tubes.
17. Officers unloading, unpacking and/or shipping Hazardous Materials, including dräger-tubes, must be trained for the Transportation of Dangerous Goods.
18. At least two CBSA officers are required to examine a container and its cargo.

Note: This ensures a safe working environment, as well as, ensuring credibility if contraband is discovered.

19. To conduct a marine container examination, it is recommended that officers have successfully completed the Container Contraband Examination Course (CCEC).

Note: The Marine In-Service Training is a prerequisite for the CCEC.

20. Officers will use contraband detection equipment (i.e. X-ray), tools, and detector dog teams to assist them in the examination of containers, whenever possible and when deemed appropriate.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures.

Note: It is only through continuous use and practice that officers will become proficient in the use of contraband detection tools and equipment. Similarly, detector dog teams also improve their proficiency and teamwork abilities through training and operational application.

21. Officers will familiarize themselves with indicators, concealment methods, and other related information by reading intelligence bulletins, alerts, and other relevant publications available at the port.

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Container Examination

22. Any container or cargo damages noted before, during, or after an examination must be photographed, documented, and immediately reported to the superintendent on duty.
23. All container examination results will be recorded in TITAN using the TITAN Exam Report.

Note: See Appendix B for a sample of the TITAN Marine and TITAN Air Exam Reports or TITAN QRG.

24. Any problems encountered in following this policy or in the performance of an examination are to be reported immediately to the CBSA superintendent or manager.

Health and Safety

25. Officers will wear all provided personal protective equipment required by the type of examination that is being conducted.
26. All personal protective equipment must meet the standards established by the Canada Labour Code, Treasury Board Secretariat (TBS), National Joint Council (NJC), Occupational Health and Safety (OHS), Protective Equipment and Clothing Directive, and be CSA approved where applicable.
27. Respiratory protection will be worn when and as required, as per the Respiratory Protection Program, and must meet the standards established by that program.

Note: The Respiratory Protection Program is currently being updated. For questions related to the RPP, please contact Jeremy Adams at (613) 957-8264 or Jeremy.Adams@cbsa-asfc.gc.ca.

28. When examining containers of dangerous goods, officers are to ensure they are wearing the appropriate personal protective equipment. If involved as a first responder during the initial phase of a dangerous goods/hazardous materials incident, officers should reference the latest edition of the Transport Canada handbook. The handbook is titled Emergency Response Guidebook and is maintained at every CBSA office.
29. Officers will only examine containers placed securely on the ground or other secure supporting surface (e.g. truck chassis no more than two metres in height).

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Container Examination

30. Officers will place high-visibility pylons (cones or other similar equipment) around the working perimeter of containers that are about to undergo an examination.

Note: This will indicate to other workers that an examination is being performed on this area and there are persons working in the area. The CBSA is to inform the terminal operators of the significance of the high-visibility pylons to ensure they advise their employees accordingly.

31. Officers will advise their superintendent immediately when they have reasonable cause to believe that examining a commercial shipment poses a significant risk to the public or their health.
32. Superintendents will suspend the examination, investigate the situation, and when necessary notify and request the assistance of the appropriate authorities (i.e. Environment Canada).

Note: Officers have the right to refuse dangerous work if they believe it poses a threat to their health or safety. Refer to *Canada Labour Code*, Part II, Section 128.

33. Examinations will not recommence until it is determined that, with the necessary preventative measures and precautions, no danger, as defined by the *Canada Labour Code*, exists.

Note: Refer to Part Two, Chapter Four, Hazardous Waste Policy and Procedures and Chapter Seven, Precursor Chemicals Policy and Procedures.

34. Containers to be examined dockside will be located using a computer system that gives access to a container yards' stowage plan. If no access to this system is available, officers will contact the stowage operation of the terminal to get the location information.
35. Prior to examination, testing for airborne chemicals (such as fumigants and solvents) is necessary for all marine intermodal containers. Ventilation may also be required.

Note: See Appendix A, Contraband Examination Procedures for Containers testing positive for airborne chemicals.

36. Officers are permitted to tactically reposition or withdraw from any situation during an examination where they believe it poses a significant and unavoidable risk to the public and/or themselves.

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Container Examination

Escorting of High Risk Shipments

37. All high-risk shipments will be escorted, when they are required to be examined at a CBSA examination facility that is not located where the primary report is made.
38. Escorts of conveyances and shipments will be carried out using CBSA vehicles.
39. BSOs will obey all traffic laws while driving escort.
40. The law enforcement agency of jurisdiction will be contacted for assistance if a conveyance attempts to take flight while en route.
41. Under no circumstances will CBSA officers engage in a pursuit of a high-risk vehicle attempting to flee.

ROLES AND RESPONSIBILITIES

CBSA Officers

42. CBSA officers are responsible for:
 - a) abiding by this policy and procedures;
 - b) conducting themselves and performing their duties in accordance with the training provided;
 - c) being vigilant in protecting the health and safety of themselves and the public;
 - d) identifying suspect containers and processing them in accordance with the applicable CBSA policy and procedures;
 - e) successfully completing the Work Place Hazardous Material Information System (WHMIS) training
 - f) successfully completing the Transportation of Dangerous Goods training, where applicable
 - g) successfully completing the Container Contraband Examination Course where applicable;
 - h) completing reports and inputting results of container examinations into the TITAN Examination Report;

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- i) maintaining in safe and good order their personal protective equipment and all contraband detection equipment used in examinations;
 - I) reporting any defective equipment to their supervisor immediately;
 - II) maintaining all equipment logs as per manufacturers' instructions and the Canada Labour Code; and
- j) completing all required documentation.

CBSA Superintendents

43. CBSA superintendents are responsible for:

- a) promoting, monitoring, and ensuring adherence to this policy and procedures;
- b) ensuring officers receive the required training and equipment;
- c) correcting any breach of procedures or health and safety requirements;
- d) ensuring exam results are clear and complete; and
- e) reviewing and filing all examination reports.

Marine Centre of Expertise

44. Marine Centre of Expertise (MCE) is responsible for:

- a) developing, designing, and delivering training pertaining to container examination;
- b) providing advice on training material to field operation upon request;
- c) researching and developing new practices and procedures for efficient container examinations on behalf of Headquarters;
- d) conducting testing of contraband detection equipment related to container examination where required or requested by the Enforcement Branch;
- e) assisting the program areas in the development of methods, procedures, policies, and tools in support of the container examination program;

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Container Examination

- f) providing assistance to officers when requested; and
- g) exchanging examination techniques, information, training aids, and materials with other Marine Training Facilities to maintain a high level of expertise.

Enforcement Branch

45. Enforcement Branch is responsible for:

- a) developing, modifying, and approving all policies, procedures and training material regarding container examinations in accordance with court jurisprudence;
- b) providing policy direction for course content;
- c) providing advice and clarification on policy issues;
- d) developing, providing, and supporting examination techniques and tools;
- e) monitoring adherence with this policy by the regions;
- f) approve all MCE training material for container examination as per section 44A; and
- g) providing guidance to the field with respect to tools and equipment provided by the Detection Technology Section.

PROCEDURES

Note: Refer to Part Four, Chapter Four, Commercial Shipment Examination Policy and Procedures for guidelines regarding the examination of cargo/commercial goods.

Note: The following section is divided into four parts. The first two are 'Dockside Examination' and 'Container Examination Facilities'. They deal with specific container examination procedures particular to each environment. The third part, titled 'General', details procedures applicable to both environments. The fourth provides guidelines for the examination of different types of containers, in particular, the health and safety precautions that must be taken.

Dockside Examination

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Container Examination

46. Locate the container to be examined through the container yard's stowage computer system.
47. If access to the system is unavailable, contact the stowage operation in the terminal to determine the location of the container.
48. Request that the container be placed in a designated safe area normally used for dockside examinations if its location prohibits conducting a safe examination or if the container is stacked.
49. Make all the necessary arrangements with terminal personnel to prepare a safe examination area if the normal area for dockside examinations is unavailable or unsuitable.
50. Ensure the area of the examination is at a distance considered to be safe from any cargo handling and moving vehicles.
51. Ask if there is any work in progress in the examination area before proceeding to the location of the container.
52. Take all necessary health and safety precautions based on the location of the container, any work being conducted in the area, and the stated contents of the container.
53. Ensure that the container is placed securely on the ground or other secure supporting surface such as a truck chassis that is no more than two metres in height.
54. Be aware of the terminal policy and procedures for circulating and working at a container terminal.

Note: Terminal policy and procedures can be obtained by contacting the terminal superintendent.

55. When circulating on foot or with a vehicle in a terminal, stay in areas that are designated for pedestrians or vehicles unless otherwise required for operational reasons.
56. Wear personal protective equipment at all times when circulating on foot.

Note: This includes but is not limited to hard hats, high visibility vests, and safety boots.
57. Never walk under moving containers or where cargo is being moved overhead.

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Container Examination

58. When driving in a vehicle, always activate the flashing or rotating lights.
59. When driving in container rows, always drive down the centre of the row.

Note: This will lessen the possibility of a collision with a container that is being moved.

60. During examinations, park vehicles in designated areas of the terminal in accordance with terminal procedures when practical and safe to do so.
61. Stay a safe distance away from the container and machinery when a container is brought to the examination area.

Note: This greatly reduces the risk of being injured.

62. If a full de-stuff is required, move the container to a suitable facility, preferably a container examination facility.

Container Examination Facility

63. Ensure the container trailer is supported with a portable dolly leg and chocked prior to beginning the examination.

General

64. Always wear the appropriate CBSA provided personal protective equipment during examinations. For example, wear:
 - a) safety glasses and leather gloves when operating power tools such as drills and saws;
 - b) safety glasses and protective gloves when performing "NIK" tests;
 - c) respiratory protection and safety goggles when examining cargo that could result in airborne particles being inhaled or created;
 - d) head protection where there is a risk of head injury (e.g. examination of the underside of the container); and
 - e) leather, latex, or Nitrile gloves depending on the nature of the cargo being inspected.

Note: Respirators are selected and issued to provide protection against identified and assessed potential respiratory hazards and are only to be

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Container Examination

- used by fit tested and trained personnel pursuant to the Respiratory Protection Program.
65. Place high-visibility pylons around the container prior to examination.
 66. When a container is ready for examination, read the container. Look for information on the container such as:
 - a) match the container number with the documentation to confirm it is the right one;
 - b) who is the owner, importer, etc.;
 - c) what is the weight;
 - d) what is the size;
 - e) what type of container is it;
 - f) warnings for fumigants, dangerous goods, or controlled atmosphere;
 - g) special handling procedures; and
 - h) markings indicating special equipment required to handle the cargo or contents.
 67. Examine the exterior of the container to determine if any modifications were done to the structure and to determine if the container shows any damage.
 68. Notify the superintendent on duty and take pictures whenever damage to the container is observed, damage has been caused as a result of the examination, or the seal has been tampered with.
 69. Record in the TITAN report and notebook, details of the container damage such as:
 - a) type;
 - b) extent;
 - c) location; and
 - d) references to photos.

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Container Examination

70. When an examination causes damage, officers will prepare a report for management indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent, its suspected or actual cause, and include all supporting photographs.

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Container Examination

Before Opening the Container Doors

71. Prior to opening the container doors, visually inspect all seals and record their exact location, type, condition, and numbers in your notebook and on the examination report.

Note: This is critical in case a controlled delivery is to be done.

72. Determine if seals have been tampered with, altered, or replaced and check them against the available documentation. PIP program members have committed to seal their containers using a high security seal. Where officers become aware that a high security seal was not applied, or shows signs of tampering, they should advise their Regional Intelligence Officers as per standard Occurrence Reporting System (ORS) procedures.

73. Check door gear to determine if the container can be opened without breaking the seal. Before opening the doors, record in your notebook the doors' condition and take pictures if required.

Note: If so, it may be an indication that contraband may be present.

Note: Pictures may be used to facilitate a controlled delivery.

74. Test for airborne chemicals (such as fumigants and solvents). Ventilation may also be required.

Note: See Appendix A, Contraband Examination Procedures for Containers testing positive for airborne chemicals

75. Verify the nature of the cargo through documentation before opening container doors, especially if leaks are noted.
76. Read documentation for any special instructions regarding the cargo and take all the necessary precautions to protect your health and safety and that of the public.

Opening the Container Doors

77. Request that an employee of the terminal/facility open the container doors when you are ready to proceed with the examination.
78. Stay away from the container doors to prevent being injured, as they can swing open unexpectedly if the cargo shifted inside the container during its voyage.

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Container Examination

79. The use of safety door gear equipment such as tie downs to hold the doors in place is recommended to prevent the unexpected swinging open of the doors or exit of cargo.
80. Once the doors are open, take pictures of the interior of the container and its cargo.

Note: Photos may need to be submitted as evidence and they also assist in the reloading of goods as they were originally.

Examination

81. Examine cargo in accordance with CBSA policy and procedures.

Note: Refer to Part Four, Chapter Four, Commercial Shipment Examination Policy and Procedures.

82. Ensure proper cargo handling equipment is used when unloading any cargo.
83. Examining Officers should be familiar with their local SOP's in regards to the discovery of contraband.
84. When damage to cargo is discovered, whether or not it is pre-existing or caused by the examination:
 - a) immediately suspend the examination;
 - b) notify the superintendent on duty who may request, through the shipping line, the attendance of a surveyor to assess the damage;
 - c) take pictures and record the detail of the damages in the TITAN examination report and your notebook; and
 - d) consult with superintendent for further steps.

Note: Terminal employees will follow local terminal procedures and ensure all other appropriate personnel are notified.

85. When safe and practical, thorough examination of the structure of the container shall take place.
86. In cases where no damage has been caused to the cargo by CBSA and no officers will be present for the re-loading of the cargo, the following must be noted in the TITAN examination report and officer notebook;

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Container Examination

"No damage during examination. Officers absent when cargo re-loading was done."

Container Types

Insulated Containers

87. No special procedures are required for insulated containers.

Refrigerated Containers

88. If a refrigerated container is at a pressure higher than 1 atmosphere get a line specialist to attend.
89. Ensure that you do not enter an oxygen deficient environment. Refrigerated containers may be filled with CO₂ to help preserve certain fruits etc.
90. Refrigerated containers are designed to maintain temperatures between -25°C and +25°C and as such special considerations must be given to minimize cargo damage and maintain the safety of the examination officers.
91. Ensure the refrigeration unit is turned-off before inspecting the shipment.

Note: This will help in preventing potential cargo damage.

92. Carefully plan the examination so that it can be done efficiently and quickly to prevent any damage to the cargo. Taking note of the 'set temperature' and that it is in agreement with the 'recording temperature' can facilitate the planning of the examination.
93. Take detailed notes throughout the examination to ensure any damage caused is recorded.
94. Be aware of the risk of slipping and frostbite during the examination of the interior of refrigerated containers. Fans may also start automatically.

Bulk Containers

95. Use door straps every time you open one of these containers.
96. Be extremely careful when conducting bulk container examinations, as the cargo can shift easily and without warning.
97. Do not insert any body parts through roof hatch covers on bulk containers.

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Container Examination

Note: Bulk containers are designed to transport bulk dry merchandise such as malt and grains and may be difficult to examine through regular access doors when the container is full.

98. Wear the required personal protection equipment and take the appropriate safety measures based on the nature of the cargo.

Tank Containers

99. Tank containers meet the definition of a confined space and shall not be entered by CBSA personnel unless trained in confined space entry.

Note: Tank containers are designed to transport liquid cargo such as foodstuffs and chemicals (i.e., alcohol, juice, vegetable oils, flammable, oxidizing agents, toxic substances, corrosives, etc.).

100. Be aware that the tank may have an oxygen deficient atmosphere and be Immediately Dangerous to Life and Health (IDLH), and may emit dangerous, explosive, and/or toxic vapours.

Note: See Appendix A for more information regarding IDLH.

101. Serious considerations must be given to the exact nature of the cargo, the reasons for referrals and the familiarity of the examining officers with the physical features of the container prior to considering cargo examination.

Note: Tank containers can have features such as refrigeration units, electrical/steam heating, or insulation that require special safety measures and handling procedures.

102. Depending on the cargo, special handling equipment and training may be required to carry out the examination. As well, emergency plans must be formulated in advance of the examination. Consultation with industry experts may be required.

103. Entry into the container should be minimized. Consideration should be given to maximize the utilization of contraband detection equipment.

104. When examining the structure of a tank container, be aware that they generally have a spill box and it may contain liquid. Liquid may be present anywhere on the container.

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Container Examination

105. To examine the interior of the container, use a dipstick in conjunction with a calibration chart, known as a strapping chart, to measure the amount of commodity in the tank.

Note: If there is a presence of a hazardous substance in the container, do not use the dipstick in conjunction with a calibration chart to measure the amount of commodity in the tank.

Controlled Atmosphere Containers

106. Some refrigerated containers have a “controlled atmosphere” capability that may represent additional safety risks for anyone entering such containers.

Note: A controlled atmosphere container (CA) refers to a container where the atmosphere is controlled to give an optimal blend of oxygen, carbon dioxide, and nitrogen. By controlling the atmosphere, the longevity of perishable products is augmented. As a consequence, entering such a container is very dangerous for those who are unaware of what they are dealing with. Oxygen levels inside the containers may not be sufficient to support life.

107. If it has been established that the controlled atmosphere system is also running, then specific steps must be taken prior to entry.

- a) If the refrigeration unit is running, wait five minutes before starting to remove the cargo for examination. This allows fresh air to enter and circulate in the container.
- b) If the refrigeration unit is not running, allow the container to ventilate for at least 30 minutes.

REFERENCES

108. *Customs Act*

Canada Labour Code, PART II, and its OHS Regulations
Container Contraband Examination Course
TBS NJC Personal Protective Equipment and Clothing Directive
Emergency Response Guide Book
Respiratory Protection Program

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 5

CONTAINER EXAMINATION POLICY AND PROCEDURES

Appendix A

**CONTRABAND EXAMINATION PROCEDURES FOR CONTAINERS THAT
TEST POSITIVE FOR AIRBORNE CHEMICALS**

CONTRABAND EXAMINATION PROCEDURES FOR FCONTAINERS THAT TEST POSITIVE FOR AIRBORNE CHEMICALS

I) INTRODUCTION

Since 1989, the Canada Border Services Agency (CBSA) has operated the Container Examination Program at Canada's major marine ports of entry. The program involves the selection of containers, which are of high risk for contraband, to be examined by officers in container examination facilities or dockside at the point of arrival in Canada. The examinations may include the complete or partial offload of the cargo from the container, the extensive use of detection technology to examine the cargo and/or a physical examination of the cargo and the container.

Using both internal and external resources the CBSA has developed procedures for the examination of a container, which may have been fumigated. Various subject matter experts were contacted including a number of chemical companies that manufacture fumigants, a certified pest control company, the Pest Management Regulatory Board, Agriculture Canada, Transport Canada, Health Canada, CANUTEC, Canadian Food Inspection Agency, Australian Customs Services, and the CBSA Laboratory.

The CBSA delivers a training course for examining containers at the Marine Centre of Expertise (MCE) in Halifax. The training course outlines a systematic and methodical approach to the examination of containers with an emphasis on the health and safety of everyone involved.

Health and Safety Legal Requirements

When facing an exposure to a fumigant, the CBSA employees will comply with the Canada Labour Code, Part II, the Canada Occupational Health and Safety Regulations, Part X (Hazardous Substances) and the Treasury Board Secretariat's Occupational Health and Safety Directive, Part X (Hazardous Substances).

The COHS Regulations and the Hazardous Substances Directive require that an employee be kept free from exposure to a concentration of an airborne chemical agent, other than grain dust or airborne chrysotile asbestos, in excess of the value for that chemical agent adopted by the American Conference of Governmental Industrial Hygienists (ACGIH), in its publication entitled *Threshold Limit Values (TLV's) and Biological Exposure Indices (BEI's)*, as amended from time to time.

APPENDIX A

II) EXPOSURE LEVELS AND LIMITS

Threshold Limit Value (TLV)

Threshold limit values refer to airborne concentrations of substances and represent conditions under which it is believed that nearly all workers may be repeatedly exposed day after day without adverse health conditions.

Threshold Limit Value- Time Weighted Average (TLV- TWA)

The permissible eight-hour exposure concentration to chemicals in a workday and over a forty-hour work week is the Time Weighted Average.

Threshold Limit Value- Short Term Exposure Levels (TLV- STEL)

The short-term exposure level to chemicals (1) cannot exceed a continuous fifteen-minute exposure period and (2) should not occur more than four times daily. A minimum of sixty minutes between potential exposures is required.

Immediately Dangerous To Life And Health (IDLH)

This concentration could (1) result in death or irreversible health effects, or (2) prevent escape from the contaminated environment within 30 minutes.

Action Level

This is an industry safety factor that is employed. It is generally half of the Threshold Limit Value- Time Weighted Average (TLV-TWA).

Ceiling Level

The Ceiling Level or Ceiling Value is the maximum permissible concentration of a hazardous material in the working environment. This level should not be exceeded at any time. It is usually (but not invariably) set somewhat above the relevant time-weighted average for the chemical.

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Container Examination

APPENDIX A

	ACTION LEVEL (PPM)	TLV-STEL (PPM)	TLV-TWA (PPM)	IDLH (PPM)		
METHYL BROMIDE	0.5	N/A	1	250		
PHOSPHINE GAS	0.15	1PPM	0.3	50		
SULFURYL FLUORIDE	2.5	10	5			
BENZENE	0.5	1.0	0.5	500		
TOLUENE	10	NA	20	500		
Formaldehyde	0.2 ppm*	N/a	**	N/a		

* Any observed colour change is to be considered positive for formaldehyde, and therefore the container being tested will require ventilation.

**For the chemical FORMALDEHYDE, there is no identified TLV-TWA, rather only a ceiling value. This value is 0.3 ppm.

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Container Examination

APPENDIX A

III) COMMONLY USED FUMIGANTS

A) METHYL BROMIDE (MeBr)

Methyl bromide is also known as bromomethane, bromogas, bromosol, brozone, celfume, dowfume, edco, embafume, fumigant1, halon 1001, fumigant MEBR, iscabrome, kayafume, CH₃Br, MB, MBX, MBC, metafume, methogas, monobromomethane, pestmaster, perfume, rotex, terrogas 100, or zytox. Methyl bromide is a non-corrosive, colourless gas that is odourless unless it reacts with certain substances. The reaction may vary with the type of cargo. The types of commodities, which may react with methyl bromide to produce an odour, include:

salt rock	photo paper
soaps and powders	rayon
rubber	charcoal
hair and fur	leather
woollens	

Upon release, methyl bromide boils or vaporizes at 3.6°C producing toxic vapours heavier than air. These vapours and liquids are highly toxic by all means of exposure to humans.

Methyl bromide is the most commonly used fumigant. It is usually used for the effective control of stored grain insects, which can be found in agricultural products, foodstuffs and wood products, including wood packaging materials

How is Methyl Bromide Used?

Methyl bromide is released into a container once it has been loaded and prior to export, or applied to the cargo directly prior to loading. The gas is emitted from cans or cylinders and the fumigant is active almost immediately. In most cases, the empty cans are removed and the container is then shipped. However, it is also common to see these empty cans sitting in various places in the container once it has reached its destination.

It is not uncommon to encounter containers that still contain gas. This is legal, provided that that container is properly labelled, is accompanied by the proper paperwork, and meets all of Transport Canada's requirements.

The CBSA will utilize an action level for exposure to methyl bromide. The action level (0.5 ppm) is an industry safety factor, generally ½ of the TLV-TWA. The CBSA has opted to use this level to ensure that under no circumstance will its employees be over exposed to methyl bromide.

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Container Examination

APPENDIX A

Reference: American Conference of Governmental Industrial Hygienists
Threshold Limit Values and Biological Exposure Indices (ACGIH).

Protective Clothing

Full-face shield or safety glasses should be worn. Do not wear goggles. Do not use gloves. Loose fitting or well ventilated long-sleeved shirt and pants should be worn. Jewellery, gloves, tight clothing, rubber protective clothing or boots should not be worn.

Signs and Symptoms of Exposure/Overexposure

Signs and symptoms appear slowly and can include: dizziness, blurred vision, lassitude, sensation of fatigue, staggering gait, slurred speech, nausea, vomiting, lack of appetite and loss of muscle coordination. High concentrations cause lung damage.

If you or anyone is exhibiting these symptoms, or have been exposed to methyl bromide, you must get medical attention immediately.

Report from the CBSA Laboratory on Methyl Bromide

Detection of Methyl Bromide in Cargo Containers

Methyl bromide (MeBr) is a highly volatile compound with a considerable vapour pressure even at -30°C (see the table that follows). On releasing of liquid MeBr from a cylinder during fumigation, the liquid evaporates rapidly even at low temperatures. CBSA officers searching a previously fumigated container have essentially no chance of encountering liquid MeBr (barring an accidental opening of a leftover cylinder). Venting should be an effective means for the removal of the vapours of MeBr from the containers, even at low temperatures encountered in winter months in Canada.

Detection Tools

The dräger detector tubes are used for monitoring MeBr vapours in the air. The dräger-tubes contain porous silica treated with a special chemical. The air is drawn through the tube and if MeBr vapours are present, a characteristic colour change develops which is very specific for MeBr. The detection range of the dräger-tube is between 0.5 to 30 ppm MeBr.

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The following table lists the vapour pressure of methyl bromide at different temperatures. Equilibrium vapour pressure means that the vapour is in contact with some un-evaporated liquid; it is a maximum concentration of the vapours which can exist at a given temperature. At +3.6 °C, the boiling point of MeBr, its vapour pressure is equal to atmospheric pressure (i.e. 1 atm or 1,000,000 ppm).

Methyl Bromide
Equilibrium Vapour Pressure at Various Temperatures

Temperature (°C)	Vapour Pressure (atm)	Vapour Pressure (ppm)
50	5.8	5,794,521
40	4.2	4,206,077
30	3.0	2,989,216
20	2.1	2,075,479
10	1.4	1,404,391
3.6	1.0	1,000,000
0	0.92	923,502
-10	0.59	588,235
-20	0.36	361,567
-30	0.21	213,521
-40	0.12	120,523
-50	0.06	64,631

B) PHOSPHINE

Phosphide is also known as phostoxin, gas toxin, hydrogen phosphide, aluminum phosphide, magnesium phosphide, and phosphine.

The phosphide fumigant releases phosphine gas into the air. Phosphine gas is highly toxic and has an odour similar to that of garlic. The effect on a person in contact with the gas is similar to being under an anaesthetic. We are testing for phosphine gas, which is a product of the phosphide fumigant.

How is Phosphide Used?

Phosphide can be found in pellet or tablet form. The pellets or tablets are put in small cloth bags, which are then strategically placed throughout the container. They are usually hung from the container walls or ceiling. A compressed gas is also used, applied by hose to the container from a refillable cylinder, prior to loading.

Unlike methyl bromide, phosphine is not immediately active upon distribution. The phosphide pellets or tablets release the phosphine gas slowly after reaching certain temperature and moisture levels. When the temperature or moisture levels are not adequate, the phosphide tablets or pellets may not totally dissipate before the container reaches Canada or arrives at its destination.

If tablets or pellets are discovered at the time of examination, it is a potentially dangerous situation. These tablets or pellets may continue to release toxic gas and expose the examining officer to dangerous vapours. If phosphide pellets or tablets are discovered inside a container during an examination, the local pest control company needs to be contacted to remove and dispose of them. Do not attempt to handle the tablets or pellets.

It should be noted that shipments from colder routings (North Atlantic shipping routes) are more likely to have phosphide tablets, which have not activated because of the atmospheric conditions. These shipments should be placed at a higher risk for phosphides than shipments from warmer routings such as Africa or Asia.

The CBSA will utilize an action level for exposure to phosphine. The action level (0.15 ppm) is an industry safety factor, generally $\frac{1}{2}$ of the TLV-TWA. The CBSA has opted to use this level to ensure that under no circumstance will its employees be over exposed to phosphine.

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Reference: American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLV's) and Biological Exposure Indices

Protective Clothing

Gloves are recommended in case of exposure to tablets, pellets or dust. Ensure that you wash hands thoroughly after use. Aerate gloves and other contaminated clothing in a well-ventilated area prior to laundering. Although eye protection such as goggles or a full-face shield is recommended during the fumigation process, they are not required during the examination process.

*The phostoxin tablet prepac consists of a gas-permeable polymeric material containing Phostoxin tablets-R (release phosphine gas). Each tablet prepac strip is roughly 4" x 14" and contains 33 of the round tablets. Phostoxin tablets-R weigh approximately 3 grams each and release 1 gram of hydrogen phosphine gas. The prepac strips are sealed into gas-tight aluminum foil pouches, which are then packed into covered metal pails.

Do not attempt to handle or dispose of inactivated pellets or tablets at anytime.

Signs and Symptoms of Exposure/Overexposure

Signs and symptoms can include:

Severe irritation, headache, coughing, shortness of breath, wheezing, phlegm, abdominal pain, nausea, vomiting, thirst, drowsiness, double vision, dizziness, disturbances in gait, tremors and coma.

If you or anyone is exhibiting these symptoms or is known to have been exposed to phosphine, you must get medical attention immediately.

Report from the CBSA Laboratory on Phosphine Gas

Detection of Phosphine in Cargo Containers

Phosphine is a much more volatile compound than MeBr and, under normal conditions, it should be easily vented from a fumigated container. The vapour pressure of phosphine at various temperatures is shown in Table 3. The main potential hazards for CBSA officers entering the container are phosphide tablets, which have not activated. The concentration of phosphine in the air is monitored by means of specific dräger-tubes.

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The vapour pressure of phosphine is shown in the following table. It is evident that phosphine is a very volatile compound that does not condense even at -50°C.

Phosphine
Equilibrium Vapour Pressure at Various Temperatures

Temperature (°C)	Vapour Pressure (atm)	Vapour Pressure (ppm)
50	71.5	71,530,000
40	59.5	59,490,000
30	48.9	48,870,000
20	39.6	39,610,000
10	31.6	31,640,000
0	24.9	24,860,000
-10	19.2	19,170,000
-20	14.5	14,490,000
-30	10.7	10,700,000
-40	7.7	7,700,000
-50	5.4	5,380,000

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C) SULFURYL FLOURIDE

Sulfuryl fluoride is also known as Vikane, ProFume, SuFl.

Sulfuryl fluoride is a broad-spectrum post harvest fumigant. Sulfuryl fluoride is an alternative to methyl bromide. It is a non-flammable, odourless, colorless gas that distributes quickly and rapidly vaporizes. It is a non-corrosive gas with a very low reactivity. Just as it rapidly penetrates the materials and commodities it is used on, it can also be rapidly aerated.

The main route of exposure to sulfuryl fluoride is inhalation. Its physical properties are not toxic dermally, and ingestion is unlikely in this environment. Further research and studies are currently being conducted on this product. Sulfuryl fluoride has been shown to control all life stages of insects and eggs.

How is Sulfuryl Fluoride Used?

Due to the variables in structures various environments and the pest species to be controlled, each fumigation is different as is the amount of sulfuryl fluoride needed per unit area. It is an odourless, colorless gas and at low concentrations, non-irritating to mucous membranes and gives no warning of its presence.

The CBSA will utilize an action level for exposure to sulfuryl fluoride. The action level (2.5 ppm) is an industry safety factor, generally $\frac{1}{2}$ of the TLV-TWA. The CBSA has opted to use this level to ensure that under no circumstance will its employees be over exposed to sulfuryl fluoride.

Reference: American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLV's) and Biological Exposure Indices.

Protective Clothing

No special skin protection is recommended. However, if the liquid were to come in contact with the skin and becomes confined to the skin it may cause freezing. Although eye protections such as goggles or full-face shields are recommended during the fumigation process they are not required for the examination process.

Signs and Symptoms of Exposure/Overexposure

Signs and symptoms are difficult to detect as there are no particular warning signs. However, early symptoms include respiratory irritation and central nervous system depression followed by excitation, slowed movement, reduced awareness of surroundings, slow and garbled speech.

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If you or anyone is exhibiting these symptoms, or is known to have been exposed to sulfuryl fluoride, you must get medical attention immediately.

D) BENZENE

Benzene is obtained primarily from crude petroleum. It is used mainly as a raw ingredient for manufacturing dyes, detergents, explosives, rubber, plastics, pharmaceuticals, industrial solvents and as a constituent of motor fuels.

Benzene is also known as benzol, coal tar naptha, phenol hydride, and cyclohexatrine.

How is benzene used?

At this time, it is not thought that benzene is used as a fumigant, rather as a by-product of the above commodities.

The CBSA will utilize an action level for exposure to benzene. The action level (0.5 ppm) is an industry safety factor, generally ½ of the TLV-TWA. The CBSA has opted to use this level to ensure that under no circumstance will its employees be over exposed to benzene.

Reference: American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLV's) and Biological Exposure Indices.

Protective clothing

Full-face shield or safety glasses should be worn when there is a risk of liquid benzene contaminating the eyes. Gloves and appropriate loose fitting or well ventilated long-sleeved shirt and pants should be worn to prevent exposure to the skin.

Signs and Symptoms of Exposure/Overexposure

Signs and symptoms can include eye irritation, headache, coughing, nausea, vomiting, staggered gait, dizziness, dermatitis, anorexia, and a potential occupational carcinogen.

If you or anyone is exhibiting these symptoms or is known to have been exposed to benzene, you must get medical attention immediately.

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E) TOLUENE

Toluene is a common solvent, used in paint, paint thinners, adhesives, lacquers, rubbers, and is also used in high-octane fuels.

Toluene is also known as methyl benzol, methyl benzene, phenyl methane, and toluol.

How is Toluene used?

At this time, it is not thought that toluene is used as a fumigant, rather as a by-product of the above commodities.

The CBSA will utilize an action level for exposure to toluene. The action level (10 ppm) is an industry safety factor, generally $\frac{1}{2}$ of the TLV-TWA. The CBSA has opted to use this level to ensure that under no circumstance will its employees be over exposed to toluene.

Reference: American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLV's) and Biological Exposure Indices.

Protective clothing

Full-face shield or safety glasses should be worn when there is a risk of liquid toluene contaminating the eyes. Gloves and appropriate loose fitting or well ventilated long-sleeved shirt and pants should be worn to prevent exposure to the skin.

Signs and Symptoms of Exposure/ Overexposure

Signs and symptoms can include eye and nose irritation, headache, nausea, confusion, muscle fatigue, dizziness, dermatitus, and liver and kidney damage.

If you or anyone is exhibiting these symptoms or is known to have been exposed to toluene, you must get medical attention immediately.

IV OTHER CHEMICALS

A) Formaldehyde

Formaldehyde is a toxic chemical widely used as a disinfectant and preservative. It is also used in textile finishing and in the production of resins used in wood products. Formaldehyde can also be found in some plastics, coatings, paints, varnishes and industrial chemicals.

How is Formaldehyde used?

At this time, it is not thought that formaldehyde is used as a fumigant, rather as a by-product of the above commodities.

Protective clothing

Nitrile or butyl rubber gloves and appropriate loose fitting or well ventilated long-sleeved shirt and pants should be worn to prevent exposure to the skin. Safety glasses should also be worn.

Signs and symptoms of exposure/overexposure

Exposure to moderate levels of formaldehyde (hundreds of ppb or greater) can cause a number of irritant symptoms, including temporary burning of the eyes or nose, and a sore throat. It is corrosive to the eyes and skin and can cause permanent eye injury and severe burns. Formaldehyde is a skin sensitizer and may cause a severe allergic skin reaction. It may be fatal if inhaled or otherwise taken into the body.

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V TESTING EQUIPMENT

Fumigation techniques are designed to dissipate the fumigant long before a CBSA officer may be accessing the container and its cargo. However, situations may occur where the fumigant has not dissipated and officers must be prepared to follow the proper procedures. These include testing for the presence of fumigants and/or solvents, aerating the container (if necessary) before completing the examination or deferring the exam until the appropriate qualified person has deemed it safe to enter the container.

IMPORTANT: At no time should a container be opened without first testing for fumigants and/or solvents to ensure that the container is safe to examine.

The Dräger Accuro Gas Detector Pump

The Dräger Accuro Gas Detector Pump is designed and calibrated specifically for use with short-term dräger-tubes for on-the-spot measurements. The air sample is sucked strokewise through the dräger-tube using the pump. Air samples from containers must be tested using all 5 recommended dräger-tubes (See table). The dräger gas detector pump requires a new dräger-tube for every test.

The CBSA has tested and evaluated the testing equipment; it is safe and user friendly for the officer to operate. Using the Dräger Accuro Gas Detector Pump does not put the officer at risk of inhaling or being in physical contact with the fumigant and/or solvent.

The manufacturer's operating instructions are included with these devices. They should be studied and followed at all times.

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Recommended Dräger gas detection tubes

GAS	TUBE #	PPM	IDEAL TEST TEMP.	Measurement Time (Approx.)
PHOSPHINE	Phosphine 0.1/a	0.1 - 4 ppm	0 - 50°C	6 minutes
PHOSPHINE	Phosphine 0.01/a	0.01 - 1.0 ppm	2 - 40°C	3 - 8minutes
METHYL BROMIDE	Methyl Bromide 0.5/a	0.5 - 30 ppm	0 - 40°C	2 - 5 minutes
SULFURYL FLUORIDE	Sulfuryl Fluoride 1/a	1 - 5 ppm	0 - 40°C	3 minutes
BENZENE	Benzene 0.5/c	0.5 - 10 ppm	5 - 40°C	20 minutes
TOLUENE	Toluene 5/b	5 - 300 ppm	2 - 40°C	1 - 5 minutes
FORMELDA HYDE	Formaldehyde 2/ a	0.2-5 ppm	2 - 40°C	30 seconds

For any additional information regarding the use, maintenance, and storage of this equipment please contact Dräger Canada.

Maintenance

Records must be kept for the Dräger Accuro Gas Detector Pumps indicating a description of the equipment (serial and model numbers) as well as date of acquisition.

In addition, the COHS Regulations, Section 10.19 requires that the date and result of each sample test and inspection of the pump be recorded. Further, the date and nature of any maintenance work performed on the equipment and the names of the persons who performed the maintenance of the equipment must be recorded.

N.B A copy of the record page for both the inspection and maintenance of these devices immediately follows this section.

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Daily Maintenance

To ensure that the pump is operating properly at all times, the pump should be checked before each measurement to ensure that there are no leaks and that the suction is adequate.

Before each measurement, to verify that there are no leaks, insert an unopened dräger-tube into the pump and squeeze it completely. Once you have released the position of the pump, observe it for one minute to ensure that the body of the pump has not changed. If it has not changed, there are no leaks. If it does change there may be leaks and another pump should be used.

To check the suction of the pump remove the unopened tube used in the previous step and simply squeeze the pump and then release it. The pump should open immediately. If it does, it is operating properly however, if it does not, another should be used.

It is recommended that the Dräger Accuro Gas Detector Pump be serviced at a minimum, on an annual basis. The servicing will follow the manufacturer's guidelines and ensure the instrument is calibrated to draw the proper volume of air. The equipment should receive more frequent servicing if they are dropped, mistreated or the officer does not believe the instrument is performing correctly.

Servicing and replacement can be obtained from:

Dräger Canada Limited
Phone 1-905-821-8988
Fax: 1-905-821-2565 or toll free 1-877-372-4371.

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DRÄGER ACCURO GAS DETECTOR PUMP RECORD

Serial / Model No. _____ Date of Acquisition _____

- **NOTE:** Dräger Accuro Gas Detector Pumps must be checked minimally, on a monthly basis for damage and malfunction. It is recommended that the Dräger gas detector pumps be serviced at a minimum, annually. The servicing will ensure the instrument is calibrated to draw the proper volume of air. The pump should be leak tested daily.

DATE	BADGE NUMBER	TIME USED	VISUAL INSPECTION	REMARKS

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V) EXAMINATION PROCEDURES FOR FUMIGATED CONTAINERS

- Carefully review the cargo information to ensure that you are aware of the commodity and country of origin of the goods and container. These two factors will be very important at identifying containers, which may have been fumigated, however, not bear a placard.
- Check the exterior of the container for placards and labels, as well as damages, alterations, unusual markings, tape on vents and door seals.

N.B. Do not assume that if a placard is not visible that a container has not been fumigated.

- If a fumigant placard is visible or there is an indication on the cargo documents, check in the CANUTEC manual (otherwise known as the Emergency Response Handbook) to ensure that you are aware of the nature of the hazard as well as the appropriate steps and procedures to follow.
- If the fumigant is not known and cannot be determined by using the equipment available, or you have reason to believe that the container is unsafe for examination due to the presence of an unknown substance, you will immediately initiate the S.I.N. principle- "Secure, Isolate and Notify".

The S.I.N. principle should be affected in all instances when officers, for any reason, are not able to negate the risk or believe that the container in question could pose a potential threat or incident.

Reference: CBSA All Hazards manual 2006

A) TESTING FOR FUMIGANTS

You must always test for all 6 chemicals, whether the container is placarded or not.

- Drill two holes (1/4 inches in width) close to the bottom of the container, to insert the dräger-tube: one at the front of the container and a second hole at the back of the container (on or close to the doors). Do not drill holes in refrigerated containers; procedures for testing these containers are currently under review.
- Insert the dräger-tube into the hole and follow the manufacturer's instructions to conduct the test for methyl bromide, phosphine, sulfuryl fluoride, benzene, toluene, and formaldehyde.

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B) EVALUATION OF DRÄGER-TUBES

The following guidelines are outlined in the *Dräger-Tubes Handbook p. 36.*

- Continuously observe the tube during measurement in order to notice the discoloration of the tube. The discoloration can occur abruptly when high concentrations are present.
- Assess the indication immediately following the evaluation and record it in the test ledger. Although some may be tempted to keep the test tube, it should be noted that even tubes that are capped may show a change in result over time.
- Use sufficient lighting, not direct sunlight as the UV rays may cause discoloration.
- Always compare the reading with an unused tube, which will assist in evaluating the discoloration.

C) POSITIVE FOR FUMIGANT GASES AND/OR SOLVENTS

Note: The following procedures are to be administered when testing for the 6 chemicals aforementioned (methyl bromide, phosphine, sulfuryl fluoride, benzene, toluene, and formaldehyde).

- Remove the container from the facility entrance or bay doors to the staging area or to the area identified for aeration.
- In order to facilitate aeration, the doors of the container must be opened. The doors of a container testing positive can only be opened by persons wearing supplied air respirators.
- A 20-foot exclusion zone around the opened door must be maintained to prevent potential exposures of non-protected persons.
- Security of the container must be addressed during the aeration of the container.
- Ventilate containers for a minimum of 6 hours with the use of a ventilation fan or ventilate the container for a minimum of 12 hours without the use of a ventilation fan.

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- Since the efficiency of the ventilation is highly dependent on the contents of the container and how tightly it is packed, additional testing is absolutely necessary in all cases to ensure that the chemical level is below the acceptable level. Doors must be closed, and it is required to wait **at least 15 minutes** before re-testing.
 - If no positive readings are indicated after the second test(s), begin the container off-load and examination.
 - If the dräger-tube(s) continue to show positive results, then liability is placed back to the shipping agent/line.
- Periodic tests for fumigants and/or solvents should be conducted throughout the examination.
- The off-loading and inspection should be done with great care. Attention should be given to locate any physical traces of the fumigant and/or solvent left on the cargo, its packaging or the container.
- Any irregularities or questions concerning fumigant and solvent testing procedures should be directed to your supervisor who may be required to contact the local designated pest control company.

Note: If phosphide pellets or tablets are discovered inside a container during an examination, the local designated pest control company needs to be contacted to remove and dispose of them. Do not attempt to handle the tablets or pellets.

D) NEGATIVE FOR FUMIGANTS

- Conduct the examination with care.
- Periodic tests for fumigants and/or solvents should be conducted throughout the examination.
- Stay alert for chemical residues or any hidden bags with inactivated pellets or tablets, or pellets or tablets that might have fallen out of the bag.

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- Subsequent tests for phosphine gas should be conducted if phosphide bags, pellets, tablets, or ashes are discovered. Any spent phosphide pellets or tablets will be in an ash form and should also be tested by the Dräger Accuro Gas Detector Pump prior to examination. If a negative result is achieved, the ash should be left untouched and the examination resumed.
- Testing of phosphide bags must be conducted as close as possible to the bag to determine whether the fumigant is active.
- If a positive test result occurs after testing any bags, pellets, tablets, or ash discovered during the examination, close the container doors and follow the positive for phosphine gas fumigant test procedures.
- Once the container has been made safe, continue the offload and examination.
- Gloves should be worn when handling cargo fumigated by phosphide and aerated along with any contaminated clothing in a well-ventilated area prior to laundering.

E) WINTER SAMPLING

The CBSA laboratory has conducted research, and the following equipment and procedures have been implemented for the testing of fumigants and/or solvents using dräger-tubes in situations where external temperature does not meet ambient operating condition requirements.

DRÄGER-TUBE	<u>AMBIENT OPERATING CONDITION</u>
Methyl Bromide 0.5/a	0 – 40 °C
Phosphine 0.1/a	2 – 40 °C
Phosphine 0.01/a	0 – 40 °C
Sulfuryl Fluoride 1/a	0 – 40 °C
Benzene 0.5/c	5 – 40 °C
Toluene 5/b	2 – 40 °C

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Formaldehyde	2 – 40 °C
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i) Testing equipmentPCXR4: The Premier Personal Sample Pump

The PCXR4 is a constant flow air sampler that is battery-operated and suited for a variety of applications, such as for industrial hygiene studies and environmental testing. It is designed to be used with collecting devices such as filters, impingers, sorbent tubes and sample bags.

In order to conduct fumigant sampling, the LSSD has recommended the use of this PCXR4 portable pump, to extract the air from the container into 10L Tedlar bags. This pump will be used at its maximum pumping flow rate of 5L/min. The sampling time from the container will take 1 minute and 20 seconds.

The NiCad battery pack provides a minimum 8-hour continuous run time. The battery pack is rechargeable and easy to charge.

Maintenance

The PCXR4 pump is fitted with a filter/trap inside a clear plastic intake port housing. This prevents particles from being drawn into the pump mechanism. The filter must be visually checked, on a regular basis, to ensure that it doesn't become clogged. If maintenance is necessary, follow manufacturer's procedure.

Teflon and tygon tubing must be visually checked on a regular basis to ensure that it doesn't become clogged. Tubing must be replaced when necessary.

Tedlar Bags

Tedlar sample bags have a single polypropylene fitting and can be used to remove sample for analysis. It is equipped with a syringe port with Teflon lined septum and a hose connection that acts as a shut-off valve.

The LSSD have implemented the following guidelines when using these sample bags. The analyses of the 6 targeted compounds (methyl bromide, phosphine, sulfuryl fluoride, benzene, toluene and formaldehyde) with dräger-tubes require a total air volume of 5.1L. The 10L Tedlar bag should

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only be filled up to 8L. The remaining volume of air (2.9L) in the bag could be used for additional analysis if required.

The 10L Tedlar bag can be reused up to 100 times, as long as it is properly treated and adequately cleaned after testing.

Maintenance

To reuse these sample bags, it is important to follow the following procedures.

- When the sample gives negative readings for all targeted compounds, the bag will need to be emptied and can be reused right away.
- If the content of the bag gave one positive reading (or more), the bag can be cleaned with outside air (by pumping outside air into the used bag) or it can be emptied and discarded as regular waste.

Note: It is important to remember that emptying the bags must always be done outdoors.

ii) Testing Procedure

Note: The following procedures apply to the sampling of all 6 chemicals

- Connect the “intake tube” that will go in the container to the intake/filtering housing located on the right side of the pump. Connect the “bag sampling tube” on the top of the pump.
- To take an air sample from the container you must first place the intake tube in the container.
- Once secure, turn the black switch to “ON” and wait 30 seconds (this will flush the pump and tubing with the air from the container).
- Open the valve of the 10L Tedlar bag and connect the bag to the other end of the “bag sampling tube”.
- Wait 1 minute and 20 seconds (this should correspond to approximately 8L), then close the valve on the bag and disconnect the bag.
- Take the “intake tube” out of the container, wait 30 seconds (this will flush the pump and tubing with ambient air) and turn the switch to “OFF”.

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- To conduct the analysis of the air in the bag using dräger-tubes, bring the bag inside the CEF and wait 15 minutes to allow the air sample to warm up to room temperature.
- Connect the dräger-tube to the bag using a small piece of Tygon tubing (3/16 inches) and perform the standard dräger-tube analysis.

F) EXPIRATION, STORAGE AND DISPOSAL OF DRÄGER-TUBES

- Each box of dräger-tubes is stamped with an expiration date. The tubes are suitable for use through to the last day of the month of expiration. The accuracy of the tubes cannot be confirmed if used after the expiration date.
- Dräger-tubes must be stored in original package at room temperature.

G) DISPOSAL OF TUBES

- Dräger detector tubes, both expended and expired, are to be considered hazardous waste as they contain chemical compounds that could potentially be hazardous to workers health and to the environment. Due to the potential hazard, these tubes must be stored, transported and disposed of in accordance with the applicable Federal Legislation.
- The following three considerations are to be applied when handling dräger detector tubes:
 - a. Border Services Officers must be trained in the Work Place Hazardous Material Information System (WHMIS) prior to handling any hazardous materials, including dräger-tubes.
 - b. Border Services Officers unloading, unpacking and/or shipping Hazardous Materials, including dräger-tubes, must be trained for the Transportation of Dangerous Goods.
 - c. Dräger-tubes are to be disposed at a landfill provincially licensed to receive hazardous waste.
- To facilitate and arrange the disposal of tubes, please communicate with the assigned regional Public Works and Government Services Canada (PWGSC) contact.

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H) SUSPICION OF UNKNOWN FUMIGANT/CHEMICAL AGENT OR THREAT

- If the fumigant is not known, therefore is not methyl bromide, phosphine, sulfuryl fluoride, benzene, toluene or formaldehyde, or you have reason to believe that the container is unsafe for examination due to the presence of an unknown substance, you will immediately initiate the S.I.N. principle- “Secure, Isolate and Notify”.

Reference All Hazards Manual 2006-Excerpt below

- The SIN principle should be affected in all instances when officers, for any reason are not able to negate the risk, or believe that the container in question could pose a potential threat or incident.

The SIN Principle

Secure the Site

- Notify management of the situation immediately.
- Once you have described the problem, the superintendent will then determine the next course of action such as contacting the chief or emergency team or the local pest control company.
- Management will take the necessary steps to secure the site as per the Chemical, Biological, Radiological, Nuclear and Explosives (CBRNE) policies and procedures.

Isolate the Threat

There are three ways to protect yourself from exposure to chemical, biological, and radiological agents and from explosive devices. These methods are: Time, Distance and Shielding. *The basic idea is that you can reduce your risk of injury or death by minimizing the **time** you are exposed to the potential threat, increasing the **distance** between yourself and the threat by moving as far away from it as possible, and by placing a barrier/**shield** between yourself and the threat.*

Also, your first priority is the health and safety of yourself, your fellow workers and the public.

You can minimize the **time** spent exposed to the hazard by:

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- avoiding contact with suspect materials: Don't touch wet surfaces, stay clear of smoke or fumes. Don't touch your eyes, tongue, or mucous membranes with contaminated fingers.

If you have reason to suspect that the potential threat is a biological or chemical agent, move to an area that is uphill, upwind, and away from the building exhaust systems.

Remember, an explosion confined within a structure may cause structural collapse or building debris hazards. Do not use radios or cell phones and be ever vigilant for secondary devices.

You can protect yourself by placing a barrier or **shield** between yourself and the potential hazard. Such shielding may include structural barriers such as walls. Another aspect of isolating the threat, especially when biological, chemical or radiological agents may have been involved, is to control and isolate people who have been injured or may have been exposed.

Officers need to urge those who may have been exposed to a biological agent to remain in a safe location away from the potential threat and to await evaluation and assistance by emergency personnel. Where possible, attempt to account for all personnel that were in the area.

Officers should remind those who may have been exposed to a biological/chemical agent that they may not show immediate symptoms therefore, it is important for all who may have been exposed to seek medical care. Otherwise, they may become sick later.

Notify the Authorities

- Immediately notify your manager. If your superintendent is not available, then you must notify the next available manager in the chain of command (the chief).
- It is management's responsibility (the superintendent and/or the chief) to notify the local emergency response team as quickly as possible if required or a local pest control company for direction.

As stated above, it is management's role to notify the emergency first responders and to request their help. However, when you discover what you strongly suspect is a CBRNE threat, and neither the superintendent nor the chief are readily available, you must take on their responsibility for notifying the first responders or pest control company if required. In either of these exceptions,

EN Part 4 Chapter 5

Container Examination

APPENDIX A

please be sure to notify the superintendent or the chief as soon as possible after you notify the first responders.

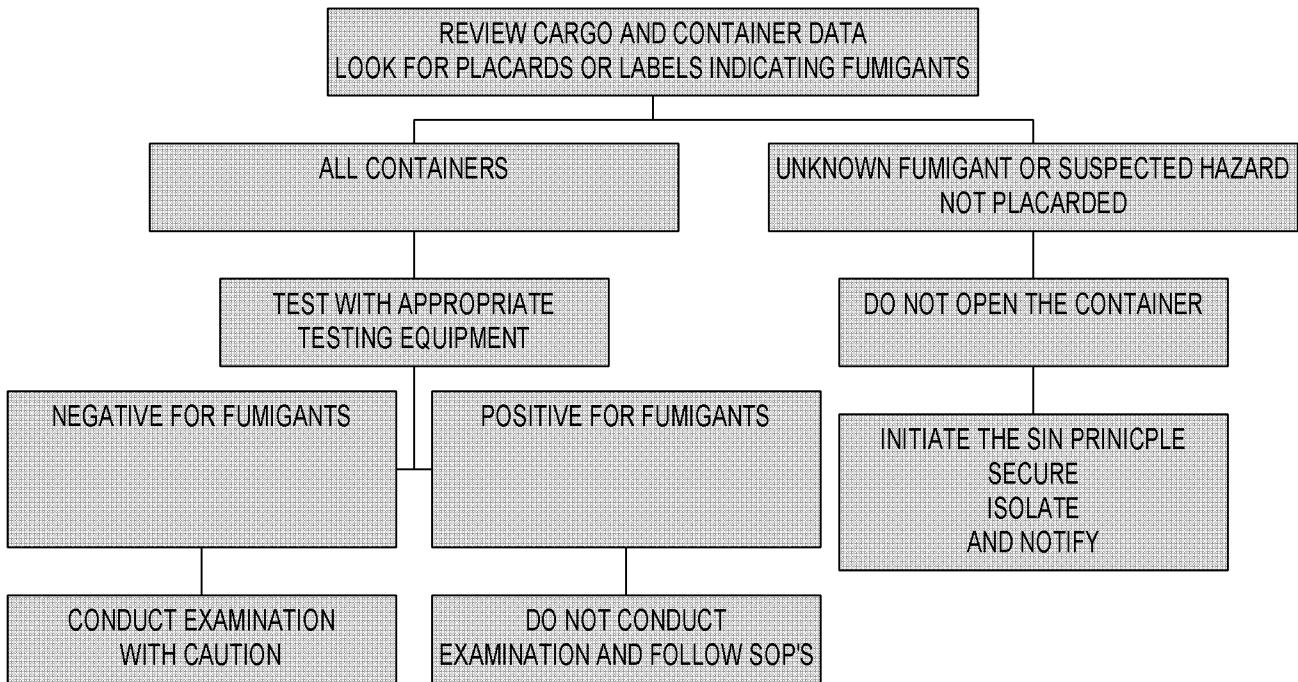
Please follow your local emergency plan for the management and notification process during an emergency/incident.

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Container Examination

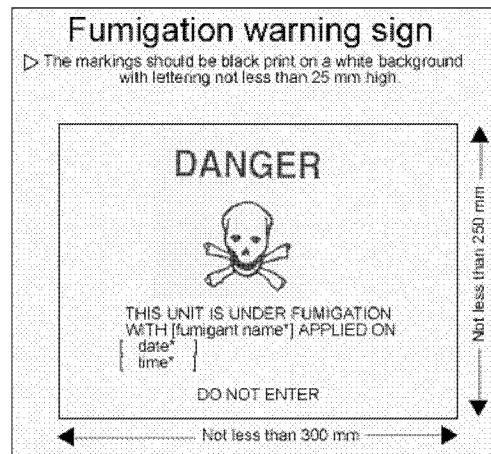
APPENDIX A

EXAMINATION OF FUMIGATED CONTAINERS



APPENDIX A

Examples of Fumigation Placards and Labels



Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 5

CONTAINER EXAMINATION POLICY AND PROCEDURES

Appendix B

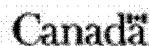
CONTAINER TARGETING AND EXAMINATION REPORT

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Container Examination

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 Canadian Nuclear Safety Commission Agence canadienne de la sécurité nucléaire	PROTECTED A / PROTÉGÉ A																			
Container Radiation Examination Report Rapport de ciblage et d'examen de conteneur																				
<input type="checkbox"/> Rad. Alarm <input type="checkbox"/> Rad. Sel.		Priority / Priorité																		
0. Alarm Information / Information d'alarme <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Alarm ID / Numéro de l'alarme</td> <td style="width: 50%;">Source Location / Emplacement de la source</td> </tr> <tr> <td>Date and Time Alarm Received / Date et heure où l'alarme a été reçue</td> <td>Fest Dose Rate / Taux de dose</td> </tr> <tr> <td>Uniformity / Uniformité</td> <td>Activity Source / Source de radiation</td> </tr> <tr> <td><input type="checkbox"/> Uniform <input type="checkbox"/> Non Uniform</td> <td><input type="checkbox"/> Gammes <input type="checkbox"/> Neutrons <input type="checkbox"/> Both</td> </tr> <tr> <td colspan="2">Comments / Commentaires</td> </tr> </table>			Alarm ID / Numéro de l'alarme	Source Location / Emplacement de la source	Date and Time Alarm Received / Date et heure où l'alarme a été reçue	Fest Dose Rate / Taux de dose	Uniformity / Uniformité	Activity Source / Source de radiation	<input type="checkbox"/> Uniform <input type="checkbox"/> Non Uniform	<input type="checkbox"/> Gammes <input type="checkbox"/> Neutrons <input type="checkbox"/> Both	Comments / Commentaires									
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Uniformity / Uniformité	Activity Source / Source de radiation																			
<input type="checkbox"/> Uniform <input type="checkbox"/> Non Uniform	<input type="checkbox"/> Gammes <input type="checkbox"/> Neutrons <input type="checkbox"/> Both																			
Comments / Commentaires																				
1. Container / Conteneur <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Container Number / Numéro du conteneur</td> <td style="width: 50%;">Seat Number / Numéro de siège</td> </tr> <tr> <td>Net Weight / Poids net</td> <td></td> </tr> <tr> <td>Spec. Radio</td> <td></td> </tr> <tr> <td>Container Type / Type du conteneur</td> <td></td> </tr> <tr> <td>Danger Content Number / Numéro de caractère du risque</td> <td></td> </tr> <tr> <td>B.R. Loading Number / Numéro de charge du B.R.</td> <td>Mutagenic Material / Matériaux mutagéniques</td> </tr> <tr> <td>Container Height / Hauteur du conteneur</td> <td>Cells and Tissue of Interest Areas / Cellules et tissus des zones de感兴趣</td> </tr> <tr> <td colspan="2">Routing - Transportation / Transport (00000-00000-00000)</td> </tr> <tr> <td colspan="2">Commodity / Marchandise</td> </tr> </table>			Container Number / Numéro du conteneur	Seat Number / Numéro de siège	Net Weight / Poids net		Spec. Radio		Container Type / Type du conteneur		Danger Content Number / Numéro de caractère du risque		B.R. Loading Number / Numéro de charge du B.R.	Mutagenic Material / Matériaux mutagéniques	Container Height / Hauteur du conteneur	Cells and Tissue of Interest Areas / Cellules et tissus des zones de感兴趣	Routing - Transportation / Transport (00000-00000-00000)		Commodity / Marchandise	
Container Number / Numéro du conteneur	Seat Number / Numéro de siège																			
Net Weight / Poids net																				
Spec. Radio																				
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Routing - Transportation / Transport (00000-00000-00000)																				
Commodity / Marchandise																				
2. Vessel / Navire <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Vessel Name</td> <td style="width: 33%;">Vessel Main Address / Adress</td> <td style="width: 34%;">Vessel Number / Numéro du navire</td> </tr> </table>			Vessel Name	Vessel Main Address / Adress	Vessel Number / Numéro du navire															
Vessel Name	Vessel Main Address / Adress	Vessel Number / Numéro du navire																		



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Canadian Border Services Agency / Agence des services frontaliers du Canada

PROTECTED A / PROTÉGÉ A

3. Trading Partners / Partenaires du commerce

Importer Name / Nom de l'importateur:	Exporter name / Nom de l'exportateur:	Address / Adresse:
Shipper Name / Nom du transporteur:	Consignee / Consignataire:	Address / Adresse:

4. Referral Information / Information sur le renvoi

Reason for referral / Raison pour le renvoi:

- address discrepancies
- container type/goods inconsist
- Dosimeter
- export country/goods inconsist
- goods to weight relationship
- high risk commodity
- importer/goods inconsistent
- low volume importer
- Portal
- routing
- shipping cost
- terrorism source country
- VACIS Ops
- Other
- Carbone
- CoPrincipal/Owner/Suspect/IlegAct
- drug source country
- first time importer
- GR-135
- importer and vendor the same
- lookout
- Out turn operations
- risk impossible to assess
- shipper/vendor volume in CCS
- special instruction
- transhipment country
- value/commodity relationship

Referrals Comments / Commentaires sur les renvois:

5. Special Instructions / Instructions Spéciales

6. Officer / Agent

Officer Name / Nom de l'agent:
77777

7. Prior to Examination / Avant l'examen

Location of Examination / Lieu de l'examen:

Verify Container # / Numéro du conteneur vérifié:	Print name of Officier / Nom imprimé de l'agent:
<input type="checkbox"/> Verified	<input type="checkbox"/> Affixed <input type="checkbox"/> Not Affixed

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Container Examination

APPENDIX B



PROTECTED A / PROTÉGÉ A

8. Examination / Examen

Seal # / Numéro de scellé:	Condition of Seal / Condition du scellé:	
Location of Seal / Emplacement du scellé:	<input type="checkbox"/> Seal intact <input type="checkbox"/> Seal not closed <input type="checkbox"/> No seal present <input type="checkbox"/> Original seal found in ctrnr	<input type="checkbox"/> Seal broken <input type="checkbox"/> Seal number doesn't match <input type="checkbox"/> Signs of tamper <input type="checkbox"/> Seal Matches Documentation
Seal # / Numéro de scellé:	Condition of Seal / Condition du scellé:	
Location of Seal / Emplacement du scellé:	<input type="checkbox"/> Seal intact <input type="checkbox"/> Seal not closed <input type="checkbox"/> No seal present <input type="checkbox"/> Original seal found in ctrnr	<input type="checkbox"/> Seal broken <input type="checkbox"/> Seal number doesn't match <input type="checkbox"/> Signs of tamper <input type="checkbox"/> Seal Matches Documentation
Seal # / Numéro de scellé:	Condition of Seal / Condition du scellé:	
Location of Seal / Emplacement du scellé:	<input type="checkbox"/> Seal intact <input type="checkbox"/> Seal not closed <input type="checkbox"/> No seal present <input type="checkbox"/> Original seal found in ctrnr	<input type="checkbox"/> Seal broken <input type="checkbox"/> Seal number doesn't match <input type="checkbox"/> Signs of tamper <input type="checkbox"/> Seal Matches Documentation
Seal # / Numéro de scellé:	Condition of Seal / Condition du scellé:	
Location of Seal / Emplacement du scellé:	<input type="checkbox"/> Seal intact <input type="checkbox"/> Seal not closed <input type="checkbox"/> No seal present <input type="checkbox"/> Original seal found in ctrnr	<input type="checkbox"/> Seal broken <input type="checkbox"/> Seal number doesn't match <input type="checkbox"/> Signs of tamper <input type="checkbox"/> Seal Matches Documentation
Date and time examination started / Date et heure du début de l'examen (yyyy-mm-dd hh:mm:ss)	Date and time seal broken / Date et heure où le sceau a été cassé (yyyy-mm-dd hh:mm:ss)	
Exam Resultant / Résultat d'examen:	Alert Negated / Indicateur d'avertissement: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Negated <input type="checkbox"/> Confirmed

9. Cargo Examination / Examen du fret

Type of Exam / Type d'examen:	<input type="checkbox"/> Tailgate <input type="checkbox"/> Destuff Full <input type="checkbox"/> Selective Radiation	<input type="checkbox"/> Destuff Partial <input type="checkbox"/> RADNET
Pictures Taken / Photos prises:	Number of Pictures taken / Nombre de photos prises:	Videos Taken / Vidéos prises:
<input type="checkbox"/> No <input type="checkbox"/> Yes		<input type="checkbox"/> No <input type="checkbox"/> Yes

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Container Examination

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Canadian Border Services Agency / Agence des services frontaliers du Canada

PROTECTED A / PROTÉGÉ A

10. Tool Utilization / Utilisation d'outils

- | | |
|--------------------------------------|---|
| <input type="checkbox"/> Buster | <input type="checkbox"/> Carbone |
| <input type="checkbox"/> Cargo X-ray | <input type="checkbox"/> Dosimeter |
| <input type="checkbox"/> Drill | <input type="checkbox"/> Forced Air Entry |
| <input type="checkbox"/> GR135 | <input type="checkbox"/> Ion Scan |
| <input type="checkbox"/> Itemiser 3 | <input type="checkbox"/> K9 |
| <input type="checkbox"/> NIK | <input type="checkbox"/> Nook Looker |
| <input type="checkbox"/> Probe | <input type="checkbox"/> Snake |
| <input type="checkbox"/> VACIS | <input type="checkbox"/> Other (see comments) |

11. ION Scan Samples / Échantillons - spectromètre de mobilité ionique

Lot/Code / Code de lot	Angle/angle : Angle/angle	CM1A / CM1B	Segments / Segments
1			
2			
3			
4			
5			

12. Referred to / Renvoyé à

- | | |
|---|---|
| <input type="checkbox"/> Can. Nuclear Safety Commission | <input type="checkbox"/> Canada Food Inspection Agency |
| <input type="checkbox"/> Commercial | <input type="checkbox"/> Container Examination Facility |
| <input type="checkbox"/> Department of National Defence | <input type="checkbox"/> Environment Canada |
| <input type="checkbox"/> Goods Seized | <input type="checkbox"/> Health Canada |
| <input type="checkbox"/> Immigration | <input type="checkbox"/> Intelligence |
| <input type="checkbox"/> Investigation | <input type="checkbox"/> Pier Examination Team |
| <input type="checkbox"/> RCMP | <input type="checkbox"/> Transport Canada |
| <input type="checkbox"/> US CSP | <input type="checkbox"/> Other Action |

13. Enforcement / Exécution

Goods Seized / Biens saisis (check)	Quantity / Quantité	Enforcement / Exécution
<input type="checkbox"/> Alcohol		None completed as a result of actions (if applicable) / Non terminé à la suite d'actions effectuées
<input type="checkbox"/> Drugs - Cocaine		K19:
<input type="checkbox"/> Drugs - Ecstasy		
<input type="checkbox"/> Drugs - Hashish		K19S:
<input type="checkbox"/> Drugs - Heroin		
<input type="checkbox"/> Drugs - Marijuana		K24:
<input type="checkbox"/> Drugs - Opium		
<input type="checkbox"/> Drugs - Other		K26:
<input type="checkbox"/> Khat		
<input type="checkbox"/> Firearms		K27:
<input type="checkbox"/> Jewellery		
<input type="checkbox"/> Pornography		K138:
<input type="checkbox"/> Strategic Goods		
<input type="checkbox"/> Tobacco		
<input type="checkbox"/> Other		HCSC315:

Canada

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Container Examination

APPENDIX B



Canadian Border Services Agency
Agence des services frontaliers du Canada

PROTECTED A / PROTÉGÉ A

14. New Seal / Nouveau sceau

Date Number / Numéro de date :

Date when issued / Date de remise : 15/03/09

15. Container Released from Examination / Conteneur relâché suite à l'examen

Date received / Date reçue : 15/03/09

16. Officers / Agents

Inspector Name / Nom de l'inspecteur :

Supervisor Name / Nom de l'agent de surveillance :

17. Comments / Commentaires

Container Exam Comments / Commentaires sur l'examen :

Tools Comments / Commentaires sur les outils :

Canada

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Container Examination

APPENDIX B



PROTECTED A / PROTÉGÉ A

Air Cargo Examination Report
Rapport d'examen de fret aérien

1.0 Number / Numéro de rapport

1.) Cargo Information / Information sur le fret	
* IATA - PAXN-NZCZ - NZCZP	<input type="checkbox"/> Major Air Transport / Flotte de volée principale
Merchandise / Marchandise	<input type="checkbox"/> Hazardous Material / Matériau dangereux <input type="checkbox"/> Yes <input type="checkbox"/> No
* Routing or Manifest / Itinéraire de la marchandise	

2.) Conveyance Information / Information sur le moyen de transport		
* Carrier / Transporteur	* Flight Number / Numéro de vol	IATA or Flight / Classe d'avion/Numéro de vol

3.) Consignee Information / Information sur le destinataire		
* Consignee / Destinataire	* Telephone / Téléphone	* Address / Adresse

4.) Referral Information / Information sur le renvoi		
<input type="checkbox"/> Reason for Refusal / Raison pour le refus <input type="checkbox"/> address discrepancies <input type="checkbox"/> CoPrincipal Owner/Suspect/Illegal Act <input type="checkbox"/> export country/goods inconsistent <input type="checkbox"/> goods to weight relationship <input type="checkbox"/> importer and vendor the same <input type="checkbox"/> lookout <input type="checkbox"/> risk impossible to assess <input type="checkbox"/> shipper/vendor volume in CCS <input type="checkbox"/> special instruction <input type="checkbox"/> transhipment country <input type="checkbox"/> VACIS Ops. <input type="checkbox"/> Portal <input type="checkbox"/> GR-135 <input type="checkbox"/> Other <small>ICER / RGFA</small> <small>Refusal Comments / Commentaires relatifs au refus</small> <small>Special instructions / Instructions spéciales :</small>		<input type="checkbox"/> container type/goods inconsistent <input type="checkbox"/> drug source country <input type="checkbox"/> first time importer <input type="checkbox"/> high risk commodity <input type="checkbox"/> importer/goods inconsistent <input type="checkbox"/> low volume importer <input type="checkbox"/> routing <input type="checkbox"/> shipping cost <input type="checkbox"/> terrorism source country <input type="checkbox"/> value/commodity relationship <input type="checkbox"/> Out turn operations <input type="checkbox"/> Carbone <input type="checkbox"/> Dosimeter

5.) Referring Officer / Agent responsable du renvoi	
<small>* Service Number / Numéro d'agent</small>	

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EN Part 4 Chapter 5

Container Examination

APPENDIX B



PROTECTED A / PROTÉGÉ A

Section 2: To be completed by examination officers / À être complétée par les fouilleurs

6.) Exam Information / Information sur l'examen

* Location of Examination / Emplacement de l'examen : 2007/08/15 Date past time : Date et heure du 15/08/2007 de l'examen : 2007/08/15-13:10 hrs.

* Description* (Where applicable, note country of origin, brand name, quantity, volume, CNT, type of material, method of packing, etc.)

Type of packaging / Type de emballage:

- Bag
 Case
 Roll

- Barrel
 Carton

Pallets / Plateaux :

- Drilled Not Drilled

Holes made / Trous dans les plateaux :

- Taken Not Taken

Shows signs of:

- 0 Adult / Adulte

Cargo Examined / Marchandise examinée :

- Yes No

Patches / Patches :

- Yes No

Percentage examined / Pourcentage examiné :

0

Examination Result(s) / Résultat(s) d'examen :

- Yes No

7.) Cargo Damages / Dommages des marchandises

Prior to off-load During the examination During the reload

Cargo - Content Address / Transporteur - destinataire :

- Yes No

Cargo Damage Comments / Commentaires sur les dommages des marchandises :

8.) Tool Utilization / Utilisation d'outils

<input type="checkbox"/> Cargo X-ray	<input type="checkbox"/> Drill
<input type="checkbox"/> Ion Scan	<input type="checkbox"/> K9
<input type="checkbox"/> Vehicle & Cargo Inspection Syst	<input type="checkbox"/> Other (see comments)

Tools Utilized and Used / Outils utilisés et utilisés :

9.) ION Scan Samples / Échantillons - spectromètre de mobilité ionique

Location / Endroit	Attribute / Attribut	Date / Date	Remarks / Remarques
--------------------	----------------------	-------------	---------------------

10.) Referred to / Renvoi à

<input type="checkbox"/> Commercial	<input type="checkbox"/> Intelligence
<input type="checkbox"/> RCMP	<input type="checkbox"/> Immigration
<input type="checkbox"/> Canada Food Inspection Agency	<input type="checkbox"/> Environment Canada
<input type="checkbox"/> Transport Canada	<input type="checkbox"/> Health Canada
<input type="checkbox"/> Goods Seized	<input type="checkbox"/> Other (See Exam Comments)

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EN Part 4 Chapter 5

Container Examination

APPENDIX B



PROTECTED A / PROTÉGÉ A

11.) Enforcement / Execution

Goods Seized / Marchandises saisies	Owner / Détenteur	Enforcement / Exécution
Alcohol		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Drugs - Cocaine		K19:
Drugs - Ecstasy		
Drugs - Hashish		K19S:
Drugs - Heroin		
Drugs - Marijuana		K24:
Drugs - Opium		
Drugs - Other		K26:
Khat		
Firearms		K27:
Jewellery		
Pornography		K138:
Strategic Goods		
Tobacco		
Other		HCSC315:

Enforcement Comments / Commentaires pour les mesures d'exécution:

12.) Goods Released from Examination / Marchandises relâchées suite à l'examen

Date and Time Examined or Compteur d'heure et de date à laquelle l'examen a été complété: (yyyy-mm-dd hh:mm:ss.ss)

2008/01/31-01:07 hrs.

13.) Officers / Agents

Inspector's Station Number / Numéro d'inspecteur associé:
 Inspector's Office Number / Numéro d'agent du représentant:
 Dog Handler's Office Number / Numéro d'agent du berger des chiens

14.) Comments / Commentaires

Examination Comments / Commentaires sur l'examen:

* Mandatory Field

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ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 6

AIRCRAFT EXAMINATION POLICY AND PROCEDURES

EN Part 4 Chapter 6

Aircraft Examination

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of aircraft in accordance with the provisions set out in the *Customs Act*.

DEFINITIONS

2. Refer to Part 11 – Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 – Allows the designation of areas as customs controlled areas.
Section 11.3 – Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
4. Section 13 – Importers, exporters, transporters, and their representatives are obligated to answer truthfully questions asked with respect to commercial shipments and present the goods, remove any covering, unload any conveyance, and open or unpack any package or container that a border services officer wishes to examine.
5. Section 15 – Requires any person who finds or has in their possession goods that are illegally imported to report to an officer that they have found the goods or have them in their possession.
6. Section 21 – Transporters will provide free access to border services officers to their warehouses, storage sites, etc. for the examination of goods that have been imported but not released.
7. Sub-section 99(1)(a) – Authorizes border services officers to examine goods and any containers or conveyance that may contain goods upon importation and up to the time of release.
8. Sub-section 99(1)(c) – Authorizes border services officers to examine any goods that have been reported under Section 95 at any time up to the time of exportation.

Note: These provisions include the authority to examine in-transit aircraft that have landed in Canada and the baggage of its passengers, regardless of the reason for landing.

9. Sub-section 99(1)(f) – Authorizes the examination of any goods and conveyance a border services officer suspects on reasonable grounds contains goods that are in contravention of the Act.

Note: This sub-section pertains to situations where a conveyance has been released and an officer wishes to examine it or where a conveyance is being exported and no goods have been reported under Section 95.

PURPOSE AND SCOPE

10. The purpose of this policy is to provide guidelines to border services officers in the examination of aircraft.
11. It is also the purpose of this policy to emphasize the importance of health and safety when examining aircraft, as well as maintaining the integrity and airworthiness of the aircraft.
12. This policy applies to all border services officers.

BACKGROUND

13. Given the access to aircraft arriving from all over the world that many airport employees have in order to perform their duties, it is not surprising that a few are drawn into internal conspiracies by criminal organizations involved in contraband smuggling through international airports. It is the CBSA's responsibility to combat the illegal smuggling operations of these organizations.
14. Frequently, contraband is found concealed within aircrafts that have been placed there by individuals with detailed knowledge of, and access to, the aircraft. For example, contraband has been concealed in the avionics, behind panels, and in cargo areas of airplanes. In an effort to combat this method of smuggling, the CBSA has developed an aircraft examination course that provides border services officers with detailed knowledge of aircraft and smuggling concealment methods.

EN Part 4 Chapter 6

Aircraft Examination

POLICY GUIDELINES

15. To engage cooperation between local port offices and air carriers, memoranda of understanding (MOU's) may be created, as desirable, in order to identify the manner in which the CBSA offices will contact the carrier to inform them of examinations, or request the presence of maintenance personnel. These agreements are drafted and agreed to at the local level, using a template that was developed by Enforcement Branch. The template can be found in Appendix B.
16. The examination of aircraft will vary in intensity.
17. An examination may include inspection of overhead compartments, seat pockets, bar seals and visual inspection of the cabin or cargo bays.
18. Intensive examinations of aircraft will only be conducted by officers who have successfully completed the CBSA Commercial Aircraft Examination Course.
19. Officers may conduct inspections of equipment, compartments and areas of the aircraft provided they can be accessed easily or accessed only with the removal of snaps, zippers, velcro, quick-turn screws, latches, tape seals, and locks. Anything dismantled or removed must be replaced.
20. Officers will never:
 - a) remove rivets of any nature;
 - b) remove screws of any nature that are on the outside of the aircraft;
 - c) dismantle electrical components; or
 - d) operate electrical components of an aircraft.
21. Officers may remove some inside access panels or components. Any parts of the aircraft that are removed or displaced by an officer during an examination must be reattached or replaced at the conclusion of the examination. In those cases where the examination of an aircraft will involve the removal of access panels or components and officers are not comfortable doing this on their own, they will make arrangements to secure the assistance of a qualified aircraft mechanic.
22. Aircraft operators will be informed when examinations are being conducted.

23. Even if the examination does not require a mechanic (see paragraphs above), officers may permit and encourage operators to have a qualified mechanic present to assist in the examination. This is left to the officers' discretion, with full consideration of the circumstances.
24. All necessary precautions must be taken with respect to aviation safety when conducting aircraft examinations.
25. When an officer suspects that goods are concealed behind or inside panels, seats, carpets, tires, etc., they will take the appropriate steps to have the parts removed and perform a complete inspection. This may involve the assistance of a qualified mechanic.

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, pole cameras, detector dog teams, etc. may assist in the examination of visually limited areas of an aircraft. Intrinsically safe flashlights and non-magnetic screwdrivers may be recommended.

26. In-transit aircraft stopping to refuel prior to the continuation of their journey, may be examined on the basis that the aircraft has arrived from a foreign country but such examination will normally only be undertaken in those cases where information is available indicating that a contravention may be occurring.

Note: For example, there is an intelligence lookout in place or there are indicators present that suggest an examination is necessary.

27. Officers will not proceed with an examination of a foreign military aircraft requested by another department or agency unless the reasons to do so are confirmed and a senior officer gives authorization.

Note: The examination of foreign military aircraft is a sensitive area. A mistake could result in an international incident. The reasons to undertake an examination of this nature are usually conveyed by another agency or department such as the Department of National Defence (DND) or Foreign Affairs Canada.

28. After all examinations are finished the Notice of Aircraft Inspection (K158) will be completed indicating all areas of the aircraft that were examined and it is recommended that the types of contraband detection equipment used during the examination be noted, as well.

EN Part 4 Chapter 6

Aircraft Examination

Note: A copy of the completed form must immediately be given to an airline mechanic. If a mechanic is not available, the form is to be left on the flight deck of the aircraft. A copy of the form will be retained on file at the CBSA office that carried out the examination.

Note: See Appendix A for a copy of the K158.

29. Officers may arrest crew or passengers for obstructing or hindering with an examination and remove them from the area.

Note: A charge for Obstruction must be handled through the police agency of jurisdiction and must show clear evidence of intent. Refer to Part 6, Chapter 1, Arrest & Detention Policy & Procedures and Part 9, Chapter 1 and 2, Prosecution Policy & Procedures.

30. Any problems encountered in following this policy or in the performance of an examination are to be reported immediately to the responsible superintendent or manager.

ROLES AND RESPONSIBILITIES

CBSA Officers

31. Border services officers are responsible for:

- a) identifying suspected conveyances and processing them in accordance with CBSA policy and procedures;
- b) successfully completing the Commercial Aircraft Examination Course;
- c) conducting secondary examinations of aircraft, when deemed necessary;
- d) maintaining in safe and good use all contraband detection equipment used in examinations;
- e) adhering to this policy and procedures; and
- f) completing and delivering the Notice of Aircraft Inspection (form K158) to a qualified mechanic or airline operator or representative.

First Line Supervisors

32. First Line Supervisors are responsible for:

- a) ensuring that the policies and procedures related to aircraft examinations are adhered to by border services officers;
- b) taking appropriate corrective action on any breaches of this policy; and
- c) monitoring form K158 for completeness and accuracy.

Enforcement Branch

33. The Enforcement Programs Directorate is responsible for:
- a) developing, modifying, and approving all polices and procedures in accordance with court jurisprudence;
 - b) ongoing development and support of examination techniques and tools;
 - c) monitoring adherence with this policy by the regions;
 - d) researching and developing new practices for efficient, safe and effective examinations; and
 - e) providing guidance upon request to officers examining aircraft.
34. The Enforcement Branch Training Division is responsible for
- a) developing and designing training related to aircraft examination;
 - b) delivering the Train the Trainer - Commercial Aircraft Examination Course; and
 - c) monitoring the delivery of the Commercial Aircraft Examination Course by certified instructors to BSO's.

PROCEDURES

Commercial Airlines

Note: For detailed procedures refer to the Commercial Aircraft Examination Course.

35. Take all the necessary precautions with respect to aviation safety before, during, and after an aircraft examination.

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Aircraft Examination

36. Conduct examinations of aircrafts when deemed necessary.
37. Inform aircraft operators an intensive examination is being conducted by means of a K158.
38. If required, request that the aircraft operator assign a qualified mechanic to be present and assist during an intensive examination.
39. Immediately report any problems encountered in following this policy or in the performance of an examination to the responsible superintendent/ supervisor or manager. This includes damage incurred as a result of the examination, and damage found during the course of the examination.
40. Complete the Notification of Aircraft Inspection (K158) in full including all areas of the aircraft that were examined.

Note: See Appendix A for a copy of the K158.

41. Immediately deliver a copy of the K158 to the airline mechanic or, if unavailable, the copy is to be left on the flight deck of the aircraft.
42. File a copy of the K158 with the responsible CBSA office.

Offsite Examinations aircraft

43. Park vehicles in an area where they will not interfere with traffic and where it is safe to do so.
44. While approaching the aircraft, be aware of your surroundings as well as any indicators that may be present.
45. Before any examination, ensure that the following steps are followed:
 - a) wear proper clothing and footwear;
 - b) ensure proper tools are available to conduct intensive examinations;
 - c) complete a risk assessment;
 - d) ensure your communications equipment is functional and adequate;
 - e) contact the office to inform of time arrival on scene;

- f) keep the office informed of progress of examination and have scheduled check in calls for high risk situations (i.e. every 20 minutes) and
 - g) ensure it is safe to board the aircraft at this time.
46. Advise the owner/operator/captain what is required from himself/herself, the crewmembers and passengers.
47. Provide the opportunity for all persons to fulfill reporting obligations (i.e., ensure all passengers are thoroughly questioned).
48. Arrange with the owner/operator/captain for access to all areas.
49. Advise your superintendent and co-workers of the potential health and safety issues present.
50. Review documentation and proceed with the pilot's interview.
51. Compare the information provided by the pilot to the aircraft's documentation and targeting information.
52. Immediately advise the superintendent upon discovering prohibited, restricted, controlled or regulated goods.
53. Advise the pilot upon discovery of prohibited, restricted, controlled, or regulated goods when deemed necessary.
54. Immediately report any damage caused by an examination to the pilot.
55. Contact the superintendent in cases of seizure or unusual problems.
56. Inform the owner/operator/pilot when an intensive examination is about to be conducted and when it is safe to do so, request that he/she be present throughout the examination.
57. Request the services of an aircraft mechanic if deemed necessary.

Note: An intensive examination involves the dismantling of parts, which could affect the aircraft's safety and operation.

58. Address questions to the owner/operator/pilot on all areas being examined.
59. Use a systematic and thorough approach for all examinations no matter how large or small the area.

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Aircraft Examination

60. Use all tools available whenever possible to avoid dismantling parts and to reduce the chances of breaking any components.
61. Logbooks can yield significant amount of information and should be examined.
62. Report any problems encountered in following this policy and procedures or in the performance of an examination to the responsible CBSA superintendent or manager.
63. Complete in full an intelligence report in the occurrence reporting system and, where applicable, forward it to the responsible regional intelligence officer and/or targeter for any examinations that yield results or are unusual and all examinations conducted as the result of a lookout or target.

Note: For non-automated ports, the examination report must be completed manually.

64. Find a vacant spare room at the airport when it is necessary to conduct a personal search of a person.

Note: Refer to Part 6, Chapter 7, Personal Search Policy and Procedures and follow the guidelines provided for all personal searches.

65. Make the room or area as safe and secure as possible before proceeding with the personal search.

Notice of Aircraft Examination (K158) Completion

Note: See Appendix A for a copy of the K158.

66. Date of Examination: Enter the date in the format YYYY/MM/DD
67. Aircraft Registration Number: Enter registration number of the aircraft.
Eg C-ABCD
68. Airline and Flight Number: Enter the flight number. Eg AAA-1234
69. Cabin Search: Enter the time that the physical search of the cabin commenced and ended in the appropriate field.
70. Airport: Enter either the port code of the airport or the initials of the airport.
Eg 396 or PETIA

71. Mechanic present: Enter whether or not an authorized mechanic was available and present at the time of the examination.
72. Exterior Search: Enter the time that the physical search of the exterior of the aircraft commenced and ended in the appropriate field.
73. Team Leader: Enter the badge number of the officer filling out the form, identified as Team Leader.
74. CBSA Contact Telephone Number: Enter the number at which an airline representative may contact an on-duty supervisor at the port of examination should they have any concerns.
75. Aircraft Diagram: Indicate, by way of an "x", the general area of any panels that were opened in either the cabin or the cargo/baggage holds. The upper portion indicates the Cabin, and the lower portion indicates the Holds.
76. Areas examined by Canada Border Services Officers: Indicate either yes or no, as to whether or not an area was examined, to ALL of the areas in the list. If any panels were accessed, indicate the panel number and location in the space provided.
77. Comments/Damages: This section can be used for additional details as needed. Any damage found or incurred during the examination of the aircraft is to be entered in this section in complete detail.
78. Notice Given to (Name/Title): Print the name of the person to whom the notice is given at the completion of the examination. If no one is available, indicate that in the space provided.
79. Airline Signature of Receipt: The person to whom the notice is given should place their signature/initials in this space.
80. Upon completion of the form, the White top copy is provided to the airline mechanic or, if unavailable, the copy is to be left on the flight deck of the aircraft. The Canary middle copy is to be filed at the local CBSA office, and the Blue bottom copy is to be left in the book.

REFERENCES

81. *Customs Act*
Customs Commercial Aircraft Examination Course

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 6

COMMERCIAL AIRCRAFT EXAMINATION POLICY AND PROCEDURES

Appendix A

NOTIFICATION OF AIRCRAFT INSPECTION (K158)

Canada Border
Services AgencyAgence des services
frontaliers du Canada

Appendix A

NOTICE OF AIRCRAFT EXAMINATION / AVIS D'INSPECTION D'UN AÉRONEF					
Date of Examination / YYYY/MM/DD Date de l'examen AAAAMMJJ:	Aircraft Registration Number / N° d'immatriculation de l'aéronef:	Airline and Flight Number / Transporteur aérien et n° de vol:			
Cabin Search / Fouille de la cabine Time Commenced / Heure - début:	Time Ended / Heure - fin:	Airport / Aéroport:	Mechanic present / Mécanicien présent: Yes / oui <input type="checkbox"/> No / non <input type="checkbox"/>		
Exterior Search / Fouille de l'extérieur Time Commenced / Heure - début:	Time Ended / Heure - fin:	Team Leader / Chef d'équipe:	CBSA Contact Telephone Number / ASFC n° de téléphone du contact:		
AIRCRAFT DIAGRAM / SCHÉMA DE L'AÉRONEF			CABIN / CABINE		
HOLDS / SOUTE					
Areas examined by Canada Border Services officers / Secteurs examinés par les agents des Services frontaliers du Canada					
COCKPIT / POSTE DE PILOTAGE		Y/N	CABIN / CABINE		Y/N
Panel Accessed / Panneau visité:		<input type="checkbox"/> <input checked="" type="checkbox"/>	Galley/ Offices:		<input type="checkbox"/> <input checked="" type="checkbox"/>
If Yes-List / Si oui-Listez:			Ceiling compartments / Compartiments plafond:		<input type="checkbox"/> <input checked="" type="checkbox"/>
EXTERIOR OF AIRCRAFT / EXTÉRIEUR DE L'AÉRONEF		<input type="checkbox"/> <input checked="" type="checkbox"/>	Life Raft Compartment / Armoire pour canot de sauvetage:		<input type="checkbox"/> <input checked="" type="checkbox"/>
Fuel Access Panel / Panneau d'accès au carburant:		<input type="checkbox"/> <input checked="" type="checkbox"/>	Oxygen Panels / Panneaux d'oxygène:		<input type="checkbox"/> <input checked="" type="checkbox"/>
Panels / Hatch Opened / Panneau / trappe ouvertes:		<input type="checkbox"/> <input checked="" type="checkbox"/>	Crew Quarters / Quartiers de l'équipage:		<input type="checkbox"/> <input checked="" type="checkbox"/>
If Yes-List / Si oui-Listez:			Passenger Doors / Portes des passagers:		<input type="checkbox"/> <input checked="" type="checkbox"/>
CARGO HOLDS EXAMINED / SOUTES À FRET EXAMINÉES		<input type="checkbox"/> <input checked="" type="checkbox"/>	Panel Accessed / Panneau visité:		<input type="checkbox"/> <input checked="" type="checkbox"/>
Front Hold / Soute avant:		<input type="checkbox"/> <input checked="" type="checkbox"/>	If Yes-List / Si oui-Listez:		
Rear Hold / Soute arrière:		<input type="checkbox"/> <input checked="" type="checkbox"/>	LAVATORIES / TOILETTES		<input type="checkbox"/> <input checked="" type="checkbox"/>
Bulk Hold / Soute à vrac:		<input type="checkbox"/> <input checked="" type="checkbox"/>	Toilet Shrouds / Gaines de protection des toilettes:		<input type="checkbox"/> <input checked="" type="checkbox"/>
Air Stairs / Escaliers intégrés:		<input type="checkbox"/> <input checked="" type="checkbox"/>	Sink Cabinet / L'armoire sous l'évier:		<input type="checkbox"/> <input checked="" type="checkbox"/>
Spares / Récharges:		<input type="checkbox"/> <input checked="" type="checkbox"/>	Oxygen Panels / Panneaux d'oxygène:		<input type="checkbox"/> <input checked="" type="checkbox"/>
Catering Equipment / Équipement de traiteur:		<input type="checkbox"/> <input checked="" type="checkbox"/>	Amenities / Commodités:		<input type="checkbox"/> <input checked="" type="checkbox"/>
Baggage Examined Airlside / Bagages examinés - Côte piste:		<input type="checkbox"/> <input checked="" type="checkbox"/>	Panel Accessed / Panneau visité:		<input type="checkbox"/> <input checked="" type="checkbox"/>
Cargo Examined Airlside / Fret examiné - Côte piste:		<input type="checkbox"/> <input checked="" type="checkbox"/>	If Yes-List / Si oui-Listez:		
Tail Section / Section arrière:		<input type="checkbox"/> <input checked="" type="checkbox"/>	AVIONICS BAYS / COMPARTIMENTS AVIONIQUES		<input type="checkbox"/> <input checked="" type="checkbox"/>
Lower Galley / Offre intérieur:		<input type="checkbox"/> <input checked="" type="checkbox"/>	Spares / Récharges:		<input type="checkbox"/> <input checked="" type="checkbox"/>
Panels Removed - Accessed / Panneaux enlevés - visités:		<input type="checkbox"/> <input checked="" type="checkbox"/>	Panels Accessed / Panneau visité:		<input type="checkbox"/> <input checked="" type="checkbox"/>
If Yes-List / Si oui-Listez:			If Yes-List / Si oui-Listez:		
COMMENTS / COMMENTAIRES (DAMAGES/ DOMMAGES):					
Notice Given to (Name/Title)			Airline Signature of Receipt:		
Avis donné à (nom et titre)			Signature du transporteur aérien:		

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 6

COMMERCIAL AIRCRAFT EXAMINATION POLICY AND PROCEDURES

Appendix B

MEMORANDUM OF UNDERSTANDING TEMPLATE

Agreement Between Canada Border Services Agency and “Canadian Airline Operator”

This agreement on Standard Operating Procedures endeavors to strengthen the lines of communication and cooperation between the Canada Border Services Agency (CBSA) and **(Airline Name)** in regards to the examination of **(Airline Name)** aircraft at **(Name of Airport)** Airport.

The CBSA will contact **(Airline Name)** maintenance at XXX-XXX-XXXX (**Local airline maintenance contact phone number**) if they require assistance in the removal of any panels. **(Airline Name)** maintenance will dispatch a mechanic to assist where required in the removal and replacement of panels and electrical components.

The Notice of Customs Inspection (K158) will identify the time and recipient of the call to the **(Airline Name)** as well as the arrival time of the mechanic. The K158 form will be used by CBSA to notate the removed panels by designating them by area, for example "rear hold back wall panel"; or "port" or "starboard side panel 3", meaning the third panel from the back of the hold. For consistency the side panels will be counted from the rear wall of the hold. Upon completion of the examination, the K158 is to be given to the mechanic, or if none attending, left in the cockpit of the aircraft.

(Airline Name) should note the approximate time of all requests for assistance from CSBA in their daily synopsis. Both parties will use these times to monitor the effectiveness of this arrangement.

It is anticipated that this new procedure will improve the communication and cooperation between the CBSA and the **(Airline Name)** and further enhance the good working relationship between the two organizations. This agreement is subject to amendment with the consent of both parties. Any such amendments will be put in writing in a new agreement. This agreement is also subject to termination by either party upon written notice by either party.

ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 8

COMMERCIAL MARINE VESSEL EXAMINATION POLICY AND PROCEDURES

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of commercial marine vessels in accordance with the provisions set out in the *Customs Act* and in recognition of the requirement for safety aboard and around vessels.

DEFINITIONS

2. Refer to Part 11 – Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 - Allows the designation of areas as customs controlled areas.
Section 11.3 - Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
4. Section 13 – Importers, exporters, transporters, and their representatives are obligated to answer truthfully questions asked with respect to commercial shipments and present the goods, remove any covering, unload any conveyance, and open or unpack any package or container that a customs officer wishes to examine.
5. Section 99(1)(a) – Authorizes officers to examine goods and any container or conveyance that may contain goods upon importation up to the time of release.
6. Section 99(1)(c) – Authorizes officers to examine any goods that have been reported under Section 95 at any time up to the time of exportation.

Note: These provisions include the authority to examine in-transit vessels that have docked in Canada and the baggage of their passengers regardless of the reason for docking.

7. Section 99(1)(f) – Authorizes the examination of any goods and conveyance an officer suspects on reasonable grounds contains goods that are in contravention of the Act.

Note: This reference pertains to situations where a conveyance has been released and an officer wishes to examine it or where a conveyance is being exported and no goods have been reported under Section 95.

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Commercial Marine Vessel Examination

Canada Shipping Act

8. The *Canada Shipping Act* regulates the shipping industry. It gives CBSA officials the right to board vessels, review documentation, and advise the Canadian Coast Guard and/or Ship Safety Branch of Transport Canada of any discrepancies or problems. It also requires the Captain to produce documentation for CBSA officials.

PURPOSE AND SCOPE

9. The purpose of this policy is to provide guidelines to CBSA personnel in conducting marine vessel examinations, also known as vessel rummages, including confined space entry.
10. It is also the purpose of this policy to emphasize the importance of health and safety when boarding and examining vessels or working in close proximity to vessels.
11. This policy applies to all CBSA personnel.

BACKGROUND

12. In 1993 the CBSA launched a feasibility study to ascertain CBSA personnel training needs in the marine mode. It was determined that, due to lack of training, officers were boarding and examining vessels without sufficient knowledge of their components or the associated health and safety issues. The study recommended that a Marine Centre of Expertise (MCE) be established to train CBSA personnel working in the marine environment. With the help of Her Majesty Customs and Excise, the MCE was created, running its' first course in March 1996, and officially opening in October of that same year.
13. The MCE delivers training in vessel rummage, including confined space entry, as well as container and pleasure craft examinations. It is considered one of the world leaders in the delivery of quality marine training in the customs environment and has generated significant interest both with domestic and international law enforcement agencies.
14. With MCE training, CBSA officers now have the expertise to conduct thorough vessel examinations in a professional and safe manner. They are also in the best position to identify and interdict illicit contraband that may be hidden onboard commercial marine vessels.

POLICY GUIDELINES

General

15. The examination of a commercial marine vessel will be divided into two distinct operations: Vessel Rummage and Confined Space Entry.
16. There must be at least two officers present when examining a vessel.

Note: For officer safety, due to the numerous hazards encountered onboard a vessel, officers will always work in pairs. This is also beneficial when presenting evidence in court.

17. Officers may arrest vessel crew or dockworkers for obstructing or refusing to comply with an examination request, and remove them from the area.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

18. All vessel examination results must be recorded in the Customs Enforcement Library. Where the Library is not available, examination reports will be sent to the regional office for input.
19. A Rummage Information and Safety Checklist (K154) must be completed for all vessel examinations and copied to the Targeting Unit and to file.

Note: See Appendix A for a copy of the Rummage Information and Safety Checklist (K154).

20. Any problems encountered in following this policy and procedures or in the performance of an examination are to be reported immediately to the responsible CBSA superintendent or manager.

Health and Safety

21. When completing a vessel rummage or enforcement action, or when there is an unknown risk, a minimum of two officers is required to board a vessel.
22. To conduct a rummage, CBSA officers must have successfully completed the Vessel Rummage Course (VRC) delivered by the MCE.
23. Officers who have received the Marine In-Service training and are accompanied by a VRC trained Officer will be allowed to board vessels for

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Commercial Marine Vessel Examination

bond audit, crew musters and general rummage of the accommodations area.

Note: The Marine In-Service training is a prerequisite for the VRC.

24. A radio communication system shall be in place to ensure CBSA personnel can communicate between each other while onboard a ship. Regular and frequent radio checks should be conducted to ensure/confirm effective/efficient communication.
25. At least one member of a boarding team must have a cellular phone for the purpose of summoning help as required.

Note: Cellular phones are only to be used in areas designated by the Master of the ship.

26. Prior to boarding a vessel, the Rummage Coordinator, will conduct a detailed health and safety risk assessment of the targeted vessel and will share this information with the examination team(s) at a pre-boarding briefing session.
27. The Rummage Coordinator will take the appropriate steps to ensure all required personal protection equipment is made available to CBSA' personnel prior to their boarding the vessel.
28. The requirements outlined in Section 16 of the Treasury Board Occupational Health and Safety Personal Protective Equipment and Clothing Directive and the Canadian Labour Code Part II must be met where these standards are applicable, (i.e. when the vessel is not moored to the wharf).

Note: Refer to Appendix B for a copy of Section 16 of the Treasury Board Occupational Health and Safety Personal Protective Equipment and Clothing Directive.

29. Life vests and buoyancy devices worn by CBSA' personnel must be non-cumbersome and must meet the following requirements: Canadian General Standards Boards Standard: (CGSB) CAN/CGSB-65.7-M88, Standard for Personal Flotation Devices.
30. All pieces of safety equipment must meet the requirements established by the Canada Labour Code, Occupational Health and Safety Regulations, and the Treasury Board Occupational Health and Safety Personal Protective Equipment and Clothing Directive, and be CSA approved where applicable.

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Commercial Marine Vessel Examination

31. The Canada Labour Code and Occupational Health and Safety Regulations require that CBSA officers use only intrinsically safe battery powered equipment and contraband detection equipment in some locations (e.g. tankers) and that the equipment be CSA approved.
32. While working dockside or on deck, officers will wear CBSA approved protective footwear, hardhats, and high-visibility vests at all times.
33. At all times while onboard or around a vessel, CBSA personnel are to continually perform a risk assessment of the work area and take appropriate action to protect themselves against any present and/or potential hazards, including the using/wearing of personal protective equipment (PPE). Examples of personal protective equipment are, hard hats, eye protection, respirator, hearing protection, gloves, barrier cream, safety footwear, etc.
34. Where there is a risk of hypothermia due to the potential of falling into icy water or working in extreme cold weather, suitable insulated protective clothing will be provided to employees.
35. Through discussion with the ships Master, emergency procedures, identified hazards and related precautions will be discussed and conveyed to the examination team members as part of the pre-rummage briefing. Information in the pre-rummage briefing will include but not be limited to:
 - a) ascertain if the vessel has motorized lifeboats;
 - b) determine if there are sufficient spaces for team members on motorized lifeboats;
 - c) identify the location of motorized lifeboats;
 - d) determine which shipboard doors automatically lock down in the case of an emergency;
 - e) identify emergency evacuation routes and exits;
 - f) request and make notes on instructions from the Captain pertaining to the appropriate steps the examination team members should take in case of an emergency; and
 - g) identify the location of fire extinguisher, axes, hoses, etc.
36. If available, the Rummage Coordinator will attain a copy of a ships diagram depicting the location of all emergency equipment and escape routes.

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Commercial Marine Vessel Examination

37. Where there is insufficient space for team members on motorized lifeboats, the Rummage Coordinator will make arrangements for suitable lifeboats to be brought to the site prior to undertaking any vessel examination.
38. In a situation where any evacuation exits are blocked, the Rummage Coordinator will arrange with the Captain for these areas to be made easily accessible prior to undertaking any vessel examination.
39. In the event of an emergency while on board, CBSA's personnel should obey the direction of the vessel's officers and crew.
40. Officers are permitted to tactically reposition or withdraw from any situation during an examination where they believe it poses a significant and unavoidable risk to the public and/or themselves.
41. Officers will report any identified health and safety issues immediately to the Rummage Coordinator.
42. Officers will wear all provided personal protective and all other equipment as required by the type of examination that is being conducted.
43. When working on a tanker, specific precautions must be taken to eliminate the risk of fire and explosion such as:
 - a) using only flashlights that have been approved by a competent authority for use in flammable atmosphere;
 - b) using only portable radios that are intrinsically safe;
 - c) smoking only in areas designated by the Master of the ship;
 - d) completely forbidding any smoking or naked lights (open flame) on decks and any other places where there is a risk that petroleum gas may be present;
 - e) restricting the use of pagers and cell phone in areas designated by the Master of the ship, for example the accommodation area (pgers and cell phones must be turned off while outside, on, or near the tank deck); and
 - f) restricting the use of battery-powered tools and contraband detection equipment to areas other than tank deck unless such tools and equipment is intrinsically safe.

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44. Smoking is prohibited on any ships while bunkering, except in those areas designated by the Master of the ship.
45. While in a refinery complex, officers will only smoke in designated areas that have been established by the refinery plant.
46. When hazardous materials are encountered, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards), CANUTEC guidelines and Material Safety Data sheets accessible through websites such as the Canadian Centre for Occupational Health and Safety website.
47. Prior to any cargo hold inspections:
 - a) the Captain must be questioned as to present and previous cargo to determine if there are any risks involved with the cargo or hold itself;
 - b) the hold must be well ventilated and tested with a multi-gas detector by a person trained in its' use to ensure it is not a life threatening area; and
 - c) adequate lighting must be available inside the cargo hold, either fixed or portable.

Note: Cargo holds are sometimes considered a confined space due to their configuration and their atmosphere.

48. Working within the confined spaces of a refinery exposes CBSA personnel to additional hazards. It is recommended, the Rummage Coordinator meet with the local refinery representative prior to the ships visit to determine the safety measures that must be followed while officers are in a refinery plant. The use of the Remote Operated Vehicles (ROV) may require a hot-work or electrical work permit issued by the refinery.
49. The Rummage Coordinator will brief all CBSA personnel on the identified hazards and the health and safety measures that must be taken when they are in a refinery plant.

Vessel Rummage

50. Upon boarding a vessel, the Rummage Coordinator will immediately meet with the Captain, complete the required sections of the Rummage Information and Safety Checklist (K154), and then advise the boarding team of the health and safety issues that could be encountered.

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51. In order to examine a running piece of machinery or electrical component, particularly in the engine room, a qualified vessel's engineer will be advised and consulted. The engineer may have to be present for certain inspections.

Note: Refer to the MCE Practical Exercise Handbook for guidelines on other inspections where an engineer may be required to be present.

52. Officers' may search the Captain's cabin as they would any other area of the ship and will do so in a professional manner and with respect to the Captain's privacy.
53. Officers can request access to the Captain's safe to examine for verification purposes.
54. As the safe may contain large sums of money for the crew's wages, ships' stores, and other business transactions, it is recommended that two officers be present.
55. Officers will request that the Captain take possession of any money in the safe and count it to ensure it is all there prior to returning it to the safe and locking it.
56. If refused access to the safe, the Rummage Coordinator will decide whether or not to pursue the matter based on indicators.

Note: Some shipping lines consider the Captain's safe foreign soil and advise the Captain that CBSA has no right to access it. However, the Captain's safe is not considered foreign soil to CBSA and if the Rummage Coordinator decides to pursue this matter due to indicators, officers may access it.

57. Examinations of crews' quarters will be done in a professional manner and with respect to the crewmembers privacy.

Confined Space Entry

58. Only officers who are trained and certified in Shipboard Confined Space Entry delivered by the MCE are permitted to conduct a confined space entry examination.
59. All inspections of confined space will be conducted in accordance with the Shipboard Confined Space Procedures developed by the MCE.

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Commercial Marine Vessel Examination

Note: The Shipboard Confined Space Procedures are updated annually by the MCE. To be placed on the distribution list contact the Manager, Marine Centre of Expertise.

Hull Examinations

60. Ships hulls have been used extensively for the smuggling of contraband. They can be examined with a remote operated vehicle (ROV), by divers or by dry-docking the ship.
61. Refer to ROV standard operating procedures and the draft policy for the use of divers.

Note: A Safety Precautions for Hull Examinations of Ships policy for the use of ROV's and divers will be added once it has received final approval.

ROLES AND RESPONSIBILITIES

CBSA Officers

62. CBSA officers are responsible for:
 - a) abiding by this policy and procedures;
 - b) successfully completing the Vessel Rummage Course and when required, the Shipboard Confined Space Entry Course prior to undertaking either of these tasks;
 - c) conducting examinations in accordance with the training given at the MCE and this policy and procedures;
 - d) conducting examinations as per the roles and responsibilities assigned by the Rummage Coordinator;
 - e) guiding co-workers who have not taken or successfully completed the Vessel Rummage Course;
 - f) being vigilant in protecting their health and safety and that of the public;
 - g) taking all necessary precautions against all identified hazards before, during, and after a vessel examination;

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- h) maintaining in safe and good working order personal tools, personal protection equipment, and shared equipment used for examinations, including contraband detection equipment;
- i) maintaining all equipment logs as per Shipboard Confined Space Procedures and as directed by the manufacturers instructions;
- j) reporting to the Rummage Coordinator any problems encountered before, during, or after an examination;
- k) completing reports and inputting results of vessel rummages into the Customs Enforcement Library; and
- l) reporting to the superintendent and/or manager any problems encountered while performing their duties.

Rummage Coordinators

63. Rummage Coordinators are responsible for:

- a) abiding by this policy and procedures;
- b) taking all necessary precautions against identified hazards before, during, and after a vessel examination;
- c) briefing examination team members on identified hazards, the location of emergency equipment, evacuation routes, exits, and vessel emergency procedures;
- d) coordinating the roles and responsibilities of all examination team members to ensure all areas that require examination are covered;
- e) completing the Rummage Information and Safety Checklist (K-154) and search report; and
- f) reporting any breaches of policy or procedure, any damage caused by an examination, and all enforcement actions to the superintendent or manager.

CBSA Superintendents

64. CBSA superintendents are responsible for:

- a) ensuring adherence to this policy and procedures;

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Commercial Marine Vessel Examination

- b) ensuring all marine officers receive the required training and equipment;
- c) guiding and supporting CBSA officers in the performance of their duties;
- d) promoting and monitoring procedures and health and safety requirements and correcting any breaches;
- e) assessing ports for rescue service availability and designating them at the appropriate level as stated in the Shipboard Confined Space Procedures;
- f) maintaining and storing all Confined Space Entry Permits as required by the Canada Labour Code – Part II, Health and Safety Regulations and Shipboard Confined Space Procedures; and
- g) approving changes to examination procedures, when circumstances dictate.

Marine Centre of Expertise (MCE)

65. The Marine Centre of Expertise is responsible for:

- a) developing, designing, and delivering all training related to vessel rummage;
- b) delivering training related to confined space entry;
- c) providing advice on training material related to vessel rummage and confined space entry upon request;
- d) researching and developing new practices for efficient, safe, and effective examinations when requested;
- e) conducting testing of contraband detection equipment related to marine examination when requested;
- f) developing procedures for confined space and vessel examinations;
- g) providing on-site guidance and assistance to vessel rummage and confined space entry teams when requested and circumstances dictate;
- h) administering the Shipboard Confined Space Entry program and annually re-certifying confined space entry team members; and

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- i) exchanging information and techniques with other domestic and international marine training facilities;
- j) Assisting program areas in the development of methods, procedures, policies and tools in the support of marine training and examination activities.

Enforcement Branch

66. Enforcement Branch is responsible for:

- a) developing, modifying, and approving all policies, procedures and training material for vessel and confined space examination in accordance with court jurisprudence;
- b) approve all MCE training material for the Vessel Rummage and Confined Space Entry Courses;
- c) providing policy direction for course content;
- d) monitoring adherence to this policy and procedures by the regions;
- e) developing examination techniques and tools;
- f) providing guidance to the field pertaining to the tools and instruments used in contraband detection; and
- g) providing guidance and support to the MCE on the Vessel Rummage and Confined Space Entry Courses, when required.

PROCEDURES

Arrival and Boarding

- 67. Park vehicles in a designated area where they will not interfere with cargo handling machinery and trains.
- 68. Ensure that the safety net is in place and secured before accessing the accommodation ladder.
- 69. When climbing the accommodation ladder hold on to the handrail with at least one hand.
- 70. Wear an approved personal flotation device and/or approved insulated protective clothing when boarding a vessel where drowning hazards are present such as:

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- a) a vessel at anchor;
 - b) a moored vessel; or
 - c) from a pilot boat or other vessel onto a vessel that is underway.
71. Climb the accommodation ladder or the Jacob's ladder only when it is safe to do so when boarding a vessel:
- a) at anchor;
 - b) moored; or
 - c) from a pilot boat or other vessel onto a vessel that is underway.
72. Follow directions given by the aircraft's pilot when boarding from a helicopter to a vessel that is:
- a) at anchor;
 - b) moored; or
 - c) underway.

Rummage Coordinator

73. Carry out the pre-boarding briefing, inform the search team members of the reasons of the search (i.e. target, lookout, etc.), assign roles to team members and outline search expectations.
74. Inform the ships' Captain that CBSA has boarded his ship for the purpose of conducting a search.
75. Request, if applicable, ships papers and documents such as safety certificates, ships logs, ships plans, and any other documents that may be relevant to the search. Make the request to the Captain.

Note: Refer to D3-5-1 Vessels in International Service for the detailed list of safety certificates.

76. Contact the Ships' Safety Branch of Transport Canada when certificates are expired, irregular, or if deficiencies are noted or suspected.
77. Advise the Captain of what is required from his crewmembers and if mustering of the crew will take place.

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78. Coordinate with the Captain for access to all crew cabins and to have a ship's officer (or suitable alternative) present for cabin examinations.
79. Complete the Rummage Information and Safety Checklist (K-154).
80. Advise team members of the potential health and safety issues present as soon as the information has been obtained from the ships captain.
81. Inform the examination team of emergency evacuation procedures and ship's alarms; Abandon Ship Alarm, Fire Alarm, and General Alarm.
82. Inform the examination team of the presence/absence of asbestos containing materials (ACM's) on the vessel.

Note: If the presence of ACM's is confirmed or the captain is unable to confirm the presence of ACM's , proceed according to the Asbestos-related Rummage Procedures and Respiratory Protection Program.
83. Coordinate the roles and responsibilities of all examination team members to ensure all areas that require examination are covered.
84. Review vessel's customs documentation and proceed further with the Captain's interview.
85. Compare the information provided by the Captain to the vessel's customs documentation and targeting information, and modify the focus and depth of the search as required.
86. Request the presence of crewmembers through the Captain when the examination of the crews' quarters is underway and if their presence is required.
87. Advise the Captain, when deemed necessary, upon discovery of prohibited, restricted, controlled, or regulated goods.
88. Immediately report any damage caused by an examination to the Captain, especially damage to life saving equipment. Officers will record any damage caused by an examination in their notebooks.
89. Contact the superintendent in cases of enforcement actions or unusual problems.
90. Complete the Vessel Examination Report and transmit it to the Targeting Unit for input into the Customs Enforcement Library.

Examination Team Members

Note: For detailed vessel examination procedures refer to the Vessel Rummage Course, Practical Exercise Manual, and the Shipboard Confined Space Procedures.

91. Complete the required Confined Space Entry Permit when required.
92. Use a systematic and thorough approach for all examinations no matter how large or small the area.
93. Consider the use of all tools whenever possible to facilitate the work, to avoid dismantling deck heads and to reduce the chances of breaking any components.

Note: The use of contraband detection equipment (e.g. inspection mirrors, flashlights, fibrescopes, probes, pole cameras, etc.) may assist in the examination of visually limited areas of a vessel.

94. Use vessel plans (i.e. General Arrangement, Ventilation Plan, Capacity Plan, etc.) when looking for void spaces and false bulkheads that could conceal contraband.
95. Address all requests for crew assistance or problems through the Rummage Coordinator who will take it up with the Captain.
96. Request, through the Rummage Coordinator, that the crew be mustered and confined to an area when it is determined that it is the most practical approach or there are serious health and safety concerns.
97. Inform the appropriate ship's officer when an intensive examination is to be conducted and request that they be present throughout the examination. Such examination would include the dismantling of machinery and could affect the ship's operation.
98. Address questions to the ship's officer most familiar with the area being examined (i.e. Chief Officer regarding decks, Chief Engineer regarding the engine room).
99. When examining the Captain's cabin:
 - a) request the Captain open the safe;
 - b) have two officers present to avoid false accusations of robbery;

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- c) ask the Captain to remove and take possession of all currency and monetary instruments during the safe examination; and
- d) instruct the Captain to count the currency and monetary instruments to ensure it is all present prior to returning it to the safe and locking it.

Note: Cargo ships and cruise ships (including the crew, passengers and stores thereon) do not have to report currency or monetary instruments totalling or in excess of \$10,000 if they have a final destination outside of Canada and will not be spending or leaving any more than \$10,000 while in Canada.

100. If the Captain refuses to open the safe, advise the Rummage Coordinator who will decide whether or not to pursue the matter based on indicators.

Note: Some shipping lines consider the Captains' safe foreign soil and advise the Captain that CBSA has no right to access it. However, the Captain's safe is not considered foreign soil to CBSA and if the Rummage Coordinator decides to pursue this matter due to indicators, officers may access it.

101. When examining crew quarters, interview the officer or crewmember that resides in a cabin while another officer examines the accommodation.

102. As part of the examination, consider the inspection of all specialized access areas referred to in the Practical Exercise Handbook developed by the MCE (i.e., fire extinguishers, vertical manhole covers, etc.).

103. When the ventilation system is examined, wear safety glasses (to protect against flying particles of dust, rust, etc.) and a half-mask respirator equipped with P100 filters to protect against breathing airborne particles.

104. Never introduce body parts into a ventilation system before it has been shutdown and isolated, and it is safe to do so.

105. When possible, walk the deck on the opposite side of the loading or unloading machinery when it is in operation.

106. Searching areas where overhead loading/unloading activities places the officers at risk and must be avoided.

107. Remove all pieces of jewellery, your badge, and any metal instruments that are not required during engine room examinations to greatly reduce the chances of electrical shock.

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108. Be sure to carefully examine life rafts, and safety and fire-fighting equipment.

Note: Life saving equipment must be treated with care.

109. Immediately report any damage caused by an examination, in particular any damage to life saving equipment, to the Rummage Coordinator who will advise the Captain.

Note: Damage to this type of equipment can delay the departure of the vessel due to shipping regulations.

110. Immediately advise the Rummage Coordinator upon discovery of prohibited, restricted, controlled, or regulated goods.

111. Provide a list of areas searched to the Rummage Coordinator when the examination is complete. Officers will take personal notes throughout the rummage.

Note: See Appendix A for a copy of the Rummage Information and Safety Checklist (K154).

Personal Search

Note: Refer to Part Six, Chapter Seven, Personal Search Policy and Procedures.

112. Use a vacant spare cabin/room for conducting the personal search.

113. Make the cabin/room as safe and secure as possible prior to escorting the person in for the search.

114. Advise the Rummage Coordinator if no vacant spare cabin/room is available and ask that they ask the Captain to designate a room for this purpose.

115. Ensure the cabin/room designated by the Captain is as safe and secure as possible prior to escorting the person in for the search.

Hull Examinations

Note: A Safety Precautions for Hull Examinations of a Ship policy for the use of ROV's and divers will be added once it has received final approval.

REFERENCES

116. *Customs Act*
Criminal Code
Canada Shipping Act
Canada Labour Code
A Guide for Customs Officers – *Canada Shipping Act* (out of circulation)
Vessel Rummage Course
Shipboard Confined Space Procedures
Treasury Board Occupational Health and Safety Hazardous Confined Spaces Directives
CCRA Respiratory Protection Program
Treasury Board Occupational Health and Safety Personal Protective Equipment and Clothing
Directive D3-5-1 Vessels in International Service

Part 4

EXAMINATIONS – GOODS AND CONVEYANCES

Chapter 8

COMMERCIAL MARINE VESSEL EXAMINATION

Appendix A

RUMMAGE INFORMATION AND SAFETY CHECKLIST (K154)

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APPENDIX A

 Canada Customs and Revenue Agency Agence des douanes et du revenu du Canada	
Rummage Information & Safety Checklist (R.I.S.C.)	
APRIL 2002	
COMPLETED BY: NAME: _____ SIGNATURE: _____ TEAM: _____ DATE: _____ K154 (02)	
HUMAN HEALTH PROBLEMS (e.g. Cholera, Typhoid): YES <input type="checkbox"/> NO <input type="checkbox"/> STOWAWAYS: YES <input type="checkbox"/> NO <input type="checkbox"/> ANIMALS ON BOARD: YES <input type="checkbox"/> NO <input type="checkbox"/> REPAIRS DURING VOYAGE (e.g. fumigation or welding): YES <input type="checkbox"/> NO <input type="checkbox"/> REPAIRS TO BE CARRIED OUT IN PORT: YES <input type="checkbox"/> NO <input type="checkbox"/> If Yes to ANY of the above, please give details: _____	
TYPE OF CARGO: FULL DISCHARGE: PART DISCHARGE: LOADING: PART LOADING DETAILS FOR PART DISCHARGE/LOADING (i.e. Ports, Hold No., etc.):	
STOWAGE PLAN OBTAINED: YES <input type="checkbox"/> NO <input type="checkbox"/> ANY HAZARDOUS OR DANGEROUS CARGO: YES <input type="checkbox"/> NO <input type="checkbox"/> DETAILS (i.e. Location, Risk, etc.):	
3. HEALTH & SAFETY EQUIPMENT TO BE USED. Tick <input checked="" type="checkbox"/> when checked and in good working order.	
Breathing Apparatus <input type="checkbox"/> Multigas Monitors <input type="checkbox"/> Safety Harnesses and Lines <input type="checkbox"/> Rechargeable Lantern <input type="checkbox"/> Motion Sensor <input type="checkbox"/> Intrinsically Safe Flashlights <input type="checkbox"/> First Aid Kit(s) <input type="checkbox"/> Foot Protection <input type="checkbox"/> Eye Protection <input type="checkbox"/> Ear Protectors <input type="checkbox"/> Head Protection <input type="checkbox"/> High Visibility Jackets/Vest <input type="checkbox"/> Respirators (dust) <input type="checkbox"/> Safety Goggles <input type="checkbox"/> Other (please specify) <input type="checkbox"/> Radios <input type="checkbox"/>	

VESSEL:	DATE:	TIME:
R.I.S.C. (RUMMAGE INFORMATION & SAFETY CHECK LIST)		
Parts 1,2 and 3 to be completed by search coordinator. Part 4 to be completed during the rummage.		
1. PERSONNEL SEARCH CO-ORDINATOR: TEAM LEADERS: () () () ALL TEAM MEMBERS NAMES & CALL SIGNS: () () () () () Continue under Section 3 if necessary. Name(s) of certified First Aiders:		
Ensure that a suitable First aid kit is available on board the vessel. Plan of action agreed by team members in event of emergency: YES <input type="checkbox"/> NO <input type="checkbox"/> Communications established: RADIO: (agreed frequency)		
2. VESSEL DETAILS BERTH/PORT: LENGTH OF STAY: LAST PORT: NEXT PORT: CREW LIST OBTAINED: YES <input type="checkbox"/> NO <input type="checkbox"/> *IF NO, Number of crew: Nationality: CHECKS (PIRS, CPIC, MAVIS, etc.): YES <input type="checkbox"/> NO <input type="checkbox"/> AGENT: GENERAL ALARM: FIRE ALARM: FIXED FIRE FIGHTING SYSTEM: ALARMS: ER - CO2 <input type="checkbox"/> HALON <input type="checkbox"/> AUDIO <input type="checkbox"/> VISUAL <input type="checkbox"/>		
COPY OF GA PLAN OBTAINED: YES <input type="checkbox"/> NO <input type="checkbox"/> COPY OF CAPACITY PLAN OBTAINED: YES <input type="checkbox"/> NO <input type="checkbox"/> ANY HEALTH AND SAFETY RISKS THAT HAVE BEEN BROUGHT TO YOUR ATTENTION, NOTIFIED TO ALL TEAM MEMBERS: YES <input type="checkbox"/> NO <input type="checkbox"/> ALL CUSTOMS PERSONNEL ON BOARD WORKING TO AN AGREED WORKING PATTERN: YES <input type="checkbox"/> NO <input type="checkbox"/> OFFICIAL VEHICLE ACCESSIBLE FOR EMERGENCIES AND PARKED IN AN APPROVED PLACE: YES <input type="checkbox"/> NO <input type="checkbox"/> ALL CUSTOMS PERSONNEL ON BOARD ARE AWARE OF THE ALARM MUSTER AND EVACUATION PROCEDURES FOR THE VESSEL: YES <input type="checkbox"/> NO <input type="checkbox"/> WERE ANY ACMS USED IN THE CONSTRUCTION OF THIS VESSEL OR HAVE THERE BEEN ANY ACMS USED IN ANY REPAIRS OF THE VESSEL SINCE ITS CONSTRUCTION? YES <input type="checkbox"/> NO <input type="checkbox"/> OTHER SAFETY MATTERS OR COMMENTS:		
NAME: BADGE: SIGNATURE: DATE:		

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Commercial Marine Vessel Examination

4. A HEALTH & SAFETY ASSESSMENT OF EACH AREA
SHOULD BE COMPLETED PRIOR TO RUMMAGE

(A) AFT DECK - ✓ when rummaged, D when detector dog used.

1. GENERAL RUMMAGE	B. DECK STORES
2. ROPEs	(A)
3. WINCHES	(B)
4. VENTS	(C)
5. STEERING GEAR	(D)

(B) MAIN DECK - ✓ when rummaged, D when detector dog used.

1. GENERAL RUMMAGE	9. MASTS
2. FOREDECK	10. DECK HOUSES/STORES
3. FOREPEAK GENERAL	(1)
4. FOREPEAK STORES	(2)
(A)	(3)
(B)	(4)
(C)	(5)
(D)	(6)
5. CHAIN LOCKER	11. HATCH COAMINGS
6. PAINT STORE	12. CO2 ROOM
7. BOW THRUSTER SPACE	13. PUMP ROOM
8. VENTS	14. WINCHES
	15. PIPE TUNNELS

(C) SUPERSTRUCTURE - ✓ when rummaged, D when detector dog used.

1. GENERAL RUMMAGE	5. SCUPPERS
2. AIR CONDITIONING ROOM	6. FUNNEL
3. BATTERY ROOM	7. NAMEBOX
4. STORES	8. MONKEY ISLAND
(A)	9. LIFEBOATS
(B)	
(C)	

(G) CABINS - All levels (as marked on attached crew list)

ENGINE ROOM

(H) FUNNEL - ✓ when rummaged, D when detector dog used.

1. GENERAL RUMMAGE	3. HEADER TANKS
2. MIST BOX	4. VENTILATION TRUNKING

(I) FUNNEL TO LOWER LEVEL - ✓ when rummaged, D when detector dog used.

1. GENERAL RUMMAGE	10. PRESSURE VESSELS
2. WORKSHOP	(A)
3. CONTROL ROOM	(B)
4. ELECTRICIANS WORKSHOP	(C)
5. STORES	11. VENTS
(A)	12. INCINERATOR
(B)	13. FRESH WATER GENERATOR
(C)	14. SEWAGE PLANT
6. MAIN ENGINE	15. OTHER
7. SCAVENGE SPACE	(A)
8. PURIFIER ROOM	(B)
9. PURIFIERS	(C)

(J) LOWER LEVEL - ✓ when rummaged, D when detector dog used.

1. GENERAL RUMMAGE ABOVE	
2. GENERAL RUMMAGE BELOW	
3. BILGE FILTERS	
4. TUNNEL ESCAPE	
5. OILY WATER SEPARATOR	
6. VENTILATING TRUNKING	

CONFINED SPACES

ENTRY PERMIT COMPLETED AND ATTACHED YES NO

If no, explain:

ACCOMMODATION

(D) UPPER DECK - ✓ when rummaged, D when detector dog used.

1. WHEELHOUSE	7. ALLEYWAY
2. MASTERS CABIN	8. DECKHEADS
3. RADIO ROOM	9. PANTRY
4. RADIO OFFICER	10. BOND
5. PILOTS CABIN	11. STORES (A)
6. OWNERS CABIN	(B)
	(C)

(E) MAIN DECKS - ✓ when rummaged, D when detector dog used.

1. CHIEF ENGINEER	11. CARGO CONTROL ROOM
2. CHIEF OFFICER	12. STORES
3. SHIPS OFFICE	(A)
4. SPARE CABINS	(B)
(A)	(C)
(B)	(D)
(C)	13. SAUNA
(D)	14. LOCKERS
5. HOSPITAL	15. LAUNDRY
6. B/R CHANGING ROOM	16. DRYING ROOM
7. OFFICER'S MESS	17. LIBRARY
8. TOILETS/WASHROOM	18. ELEVATOR
9. ALLEYWAY DECKHEADS	19. LOUNGE
10. AIR CONDITIONING ROOM	20. SPORTS ROOM
	21. OFFICER'S BAR

(F) LOWER DECK - ✓ when rummaged, D when detector dog used.

1. CREW MESS	6. COLD STORES
2. CREW BAR	7. TALLY OFFICE
3. GALLEY	8. CREW CHANGING ROOM
4. DRY PROVISIONS	9. TOILETS
5. SPARE CABINS	10. LOCKERS
(A)	(A)
(B)	(B)
(C)	(C)
(D)	(D)

(K) STEERING GEAR - ✓ when rummaged, D when detector dog used.

1. RUDDER TRUNKING	3. FRESH WATER PORT
2. AFTER PEAK TANK	4. FRESH WATER STARBOARD

(L) FOREPEAK - ✓ when rummaged, D when detector dog used.

1. FOREPEAK TANK	2. CHAIN LOCKER BILGE
------------------	-----------------------

(M) ENGINE ROOM - ✓ when rummaged, D when detector dog used.

1. SETTLING TANKS A	3. STORAGE TANKS A
B	(A)
C	(B)
D	(C)
2. SERVICE TANKS A	4. DRAIN TANKS A
B	(B)
C	(C)
D	(D)
	5. COFFERDAMS A
	(B)

(N) OTHER - ✓ when rummaged, D when detector dog used.

HOLD	NO 3
NO 1	NO 4
NO 2	NO 5

BALLAST TANKS (FLUME, WING, TRIM, ETC) - ✓ when rummaged,

D when detector dog used.

A	C
B	D

DUCT KEEL SWIMMING POOL COFFERDAM

OTHER (PLEASE SPECIFY)	- ✓ when rummaged, D when detector dog used.

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 8

COMMERCIAL MARINE VESSEL EXAMINATION

Appendix B

**TREASURY BOARD OCCUPATIONAL HEALTH AND SAFETY PROTECTIVE
EQUIPMENT AND CLOTHING DIRECTIVE EXCERPT**

APPENDIX B

TREASURY BOARD OCCUPATIONAL HEALTH AND SAFETY PROTECTIVE EQUIPMENT AND CLOTHING DIRECTIVE EXCERPT

16. Drowning hazards

16.1 Where, in accordance with subsections 1.1 and 1.3, at any work location where there is a danger of drowning, departments shall ensure that:

- a. written procedures covering:
 - b. (i) the emergency procedures to be followed,
 - (ii) the responsibilities of all persons involved, and
 - (iii) the location of all emergency equipmentare available to, and explained to, all employees at the work location;
- c. every employee exposed to the danger is provided with a life jacket or buoyancy device that meets the *Canadian General Standards Board Standard (CGSB) CAN/CGSB-65.7-M88, Life Jackets, Inherently Buoyant Type*, as amended from time to time, or *65.11-M88, Standard for Personal Flotation Devices*, as amended from time to time, or ensure that the employee is protected by a safety net or is wearing a fall-protection device;
- d. appropriate emergency equipment, including an inherently buoyant powered boat, that meets the requirements of *Transport Publication #1332 Construction Standard for Small Vessels*, is provided and held in readiness;
- e. that a qualified person is available to operate all the emergency equipment.

16.2 Where the workplace is a wharf, dock, pier, quay or other similar structure, a ladder that extends at least two rungs below water level shall be attached to the face of the structure every 60m along its length.

16.3 Where there is a risk of hypothermia due to falling into icy water, suitable insulated protective clothing shall be provided to employees who are so exposed.

CUSTOMS ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 9

MARINE PLEASURE CRAFT EXAMINATION POLICY AND PROCEDURES

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of marine pleasure craft in accordance with the provisions set out in the *Customs Act* and in recognition of the requirement for safety aboard and around marine pleasure craft.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 allows the designation of areas as customs controlled areas. Section 11.3 allows owners or operators of customs controlled areas to grant access to authorized or prescribed persons only.
4. Section 13 stipulates that every person reporting goods under section 12 of the *Customs Act* is obligated to answer truthfully questions asked with respect to the goods and present the goods, remove any covering, unload any conveyance and open or unpack any package or container that an officer wishes to examine.
5. Section 99(1)(a) authorizes officers to examine goods and any containers or conveyance that may contain goods, upon importation up to the time of release.
6. Section 99(1)(c) authorizes officers to examine any goods that have been reported under Section 95, at any time up to the time of exportation.

Note: These provisions include the authority to examine in-transit marine pleasure craft that have docked in Canada and the baggage of their passengers, regardless of the reason for docking.

7. Section 99(1)(f) authorizes the stopping and boarding of any conveyance, and the examination of any goods and conveyance that an officer suspects on reasonable grounds contains goods that are in contravention of the Act.

Note: This reference pertains to situations where a conveyance has been released and an officer wishes to examine it or where a conveyance is being exported and no goods have been reported under section 95.

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Marine Pleasure Craft Examination

8. Section 99.1 allows officers, who on reasonable grounds to suspect that a person has entered Canada without presenting himself or herself in accordance with subsection 11(1), to stop that person to question the person and examine any goods imported by that person within a reasonable time after the person has entered Canada.

Canada Shipping Act

9. The *Canada Shipping Act* requires certain watercraft to be registered or carry an issued license number.
10. Section 63.1 stipulates that it is an offence to operate a registered vessel without registration aboard.

Small Vessel Regulations – *Canada Shipping Act*

11. Section 15 stipulates that owners of licensed vessels are required to produce their license upon request of an officer.

PURPOSE AND SCOPE

12. The purpose of this policy is to provide guidelines to CBSA personnel for conducting marine pleasure craft examinations.
13. It is also the purpose of the policy to emphasize the importance of health and safety when boarding and searching marine pleasure craft.
14. This policy applies to all CBSA personnel.

BACKGROUND

15. In 1993, the CBSA launched a feasibility study to ascertain CBSA personnel training needs in the marine mode. It was determined that, due to lack of training, officers were boarding and examining vessels without sufficient knowledge of their components or the associated health and safety issues. The study recommended that a Marine Centre of Expertise (MCE) be established, in part, to train CBSA personnel working in the marine environment. With the help of Her Majesty's Customs and Excise of the United Kingdom, the MCE was created, running its first course in March 1996, and officially opening in October of that same year.

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Marine Pleasure Craft Examination

16. The MCE delivers training in vessel rummage, including confined space entry, as well as container and pleasure craft examinations. It is considered one of the world leaders in the delivery of quality marine training in the customs environment and has generated significant interest both with domestic and international law enforcement agencies.
17. With MCE training, officers now have the expertise to conduct thorough vessel examinations in a professional and safe manner. They are also in the best position to identify and interdict illicit contraband that may be hidden onboard marine pleasure crafts.

POLICY GUIDELINES

General

18. There must be at least two officers present when examining a marine pleasure craft at a remote location or when there is high or unknown risk. In other situations (i.e., off-site non-remote locations) the examination may be performed by one or more officers based on risk.
19. Officers may arrest crew or passengers for obstructing or hindering with an examination and remove them from the area.

Note: Refer to Part 6, Chapter 1, Arrest and Detention and Part 9, Chapter 2, Prosecution Procedures.

20. Any problems encountered in following this policy or in the performance of an examination are to be reported immediately to the responsible CBSA superintendent or manager.

Health and Safety

21. Health and safety information may be gathered by the targeting team or Telephone Reporting Centre in advance of the actual boarding. Such information should be used or kept in mind as part of the boarding of the vessels, the examination and the dealings with the crew.

Note: This will also enhance the effectiveness as well as the focus and depth of the examination.

22. Officers must wear appropriate personal protection equipment at all times when required.

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Marine Pleasure Craft Examination

Note: Personal protection equipment includes, but is not limited to CBSA approved footwear and flotation devices.

Note: Refer to the Treasury Board Handbook of Occupational Safety and Health, Personal Protective Equipment and Clothing Directive and the Canada Occupational Safety and Health Regulations, Part XII - Safety Material, Equipment, Devices and Clothing Directive.

23. The requirements of the Treasury Board Personal Protective Equipment and Clothing Directive must be met where these standards are applicable.

Note: Refer to Part Four, Chapter Eight, Commercial Marine Vessel Examination Policy and Procedures, Appendix B for a copy of section 16 of the Treasury Board Personal Protective Equipment and Clothing Directive.

24. Life vests and buoyancy devices worn by CBSA's personnel must meet the following requirements: Canadian General Standards Boards Standard: (CGSB) CAN/CGSB-65.7-M88, Standard for Personal Flotation Devices.
25. Where there is a risk of falling into icy water, suitable insulated protective clothing will be provided to employees.
26. Officers are permitted to tactically reposition or withdraw from any situation, if in their judgement there is an undue risk to their safety, that of another officer and/or a member of the general public.

Note: Refer to section 128(1) of the Canada Labour Code.

27. All pieces of safety equipment must meet the requirements established by the Canada Labour Code, Marine Occupational Safety and Health Regulations, and the Treasury Board Personal Protective Equipment and Clothing Directive and be Canadian Standards Association (CSA) approved where applicable.
28. After assessing the risks in an area, officers will take appropriate action to protect themselves against hazards.
29. When working in a noisy environment, officers will wear CSA approved hearing protection.
30. Officers will identify and report health and safety issues to the superintendent and their co-workers.

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Marine Pleasure Craft Examination

31. Smoking is permitted only in areas designated by the owner/operator/captain. This does not include areas outside the owner/operator/captain's designation where crew or passengers may choose to smoke.
32. When encountering hazardous materials onboard a marine pleasure craft, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards) and Canadian Transport Emergency Centre (CANUTEC) guidelines and Material Safety Data Sheets accessible through the Canadian Centre for Occupational Health and Safety website.
33. Prior to any enclosed space inspections, the area must be well ventilated and evaluated to ensure it is safe to examine.

Pleasure Craft Examination

34. Upon boarding a pleasure craft and when practical, officers should meet with the person in charge to request documentation and perform a document review before proceeding with an interview.
35. Provide the opportunity for all persons to fulfill their reporting obligations (i.e., all passengers are thoroughly questioned to ensure point of finality has been reached).
36. For safety reasons, notify the vessel's operator and ensure machinery or electrical components are turned off and locked out, prior to examining a piece of machinery or electrical component, particularly in the engine room/compartment.
37. Examinations of pleasure crafts will be completed in a professional manner. Privacy of individuals on board should be respected during the examination as much as practicable.

ROLES AND RESPONSIBILITIES

CBSA Officers

38. CBSA officers are responsible for:
 - a) abiding by these policies and procedures;
 - b) conducting examinations in accordance with training and this policy and procedures;

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Marine Pleasure Craft Examination

- c) conducting examinations as per the roles and responsibilities assigned;
- d) maintaining in working order; personal tools, personal protection equipment, and shared equipment used for examinations;
- e) maintaining all equipment logs as per *Canada Labour Code* and as directed by the manufacturers' instructions;
- f) practicing due diligence in protecting their health and safety and that of the public;
- g) taking necessary precautions with respect to marine pleasure craft, crew and officer safety before, during and after a marine pleasure craft examination;
- h) completing reports and inputting results of marine pleasure craft examinations into the Customs Enforcement Library and
- i) reporting to the superintendent and/or manager any problems or issues encountered while performing their duties.

CBSA Superintendents

39. CBSA superintendents are responsible for:

- a) ensuring adherence to this policy and procedures;
- b) ensuring all officers who work in the marine environment receive the required training and equipment;
- c) guiding and supporting officers in the performance of their duties;
- d) promoting, monitoring, and correcting any breach of procedural or health and safety requirements and
- e) approving changes to examination procedures, if circumstances dictate.

Marine Centre of Expertise

40. The Marine Centre of Expertise (MCE) is responsible for:

- a) developing, designing and delivering training related to marine pleasure craft examination;

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- b) researching and developing new practices for efficient, safe, and effective marine pleasure craft examinations;
- c) conducting testing of contraband detection equipment related to marine examination;
- d) developing procedures for marine pleasure craft examinations;
- e) providing on-site guidance and assistance upon request to officers examining marine pleasure crafts when feasible and circumstances dictate and
- f) exchanging information and techniques with other domestic and international marine training facilities.

The Enforcement Programs Directorate

41. Enforcement Programs Directorate is responsible for:

- a) developing, modifying and approving all policies and procedures for marine pleasure craft examination in accordance with court jurisprudence;
- b) monitoring adherence to this policy and procedures by the regions;
- c) developing examination techniques and tools;
- d) providing guidance to the field pertaining to the tools and instruments used in contraband detection and
- e) providing guidance and support to the MCE and regions on marine pleasure craft examination when required.

PROCEDURES

Note: Refer to the Small Vessel Examination Course material from the Marine Centre of Expertise for detailed procedural guidelines.

Arrival and Boarding

42. Park vehicles in an area where they will not interfere with traffic and where it is safe to do so.

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43. While approaching the vessel, be aware of your surroundings as well as any indicators that may be present.
44. Pay attention to the outside of the hull for ropes or wires, which may be holding objects to the hull beneath the water. The use of a remote operated vehicle or diver may be required.
45. Before any examination, ensure that the following steps are followed:
 - a) wear proper clothing and footwear;
 - b) ensure proper tools are available to conduct intensive examinations;
 - c) ensure personal flotation devices are available and of the appropriate type;
 - d) complete a risk assessment and look for items that may include but are not limited to:
 - i) fuel in the vessel's bilge;
 - ii) leaking fuel tanks;
 - iii) excessively smoking engines;
 - iv) hidden persons;
 - v) weapons;
 - vi) slippery, broken, steep or missing ladders;
 - vii) debris and garbage about the decks;
 - viii) missing planks or holes in the deck;
 - ix) slippery decks;
 - x) presence of butane and propane gas leaks;
 - xi) presence of pyrotechnics;
 - xii) low overhead;
 - xiii) open hatches or scuttles;
 - xiv) poor lighting or
 - xv) exposed wiring.
 - e) ensure communications equipment is functional and adequate;
 - f) contact the office to inform of arrival on scene and time of boarding vessel;
 - g) keep the office informed of progress of examination and have scheduled check in calls for high risk situations (i.e. every 20 minutes) and
 - h) ensure it is safe to board the vessel at this time.

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Marine Pleasure Craft Examination

46. Wear an approved personal flotation device and/or approved insulated protective clothing when boarding a vessel where drowning hazards are present such as:
 - a) a vessel at anchor or
 - b) a moored vessel.

Note: Marine pleasure craft should always be stopped before boarding unless operational requirements dictate otherwise.
47. When boarding a small marine pleasure craft from a small boat, step as near amidships as possible. Avoid stepping on the gunnels to improve safety and prevent falls. Pay attention to the lively motion of the vessels. Ensure suitable footing and handholds prior to proceeding on to the vessel.
48. When boarding a larger marine pleasure craft, if possible, use the step on the transom or the aft gunnels to make boarding fairly easy and safe.
49. Whenever boarding a marine pleasure craft, keep your hands free. Load your personal gear on the boat's deck then board.
50. Always keep in mind that walking surfaces aboard may be covered with dew, spray or rain and might be slippery and/or icy.
51. Advise the owner/operator/captain what is required from himself/herself, the crewmembers and passengers.
52. Provide the opportunity for all persons to fulfill reporting obligations (i.e., ensure all passengers are thoroughly questioned).
53. Arrange with the owner/operator/captain for access to all areas.
54. Advise your superintendent and co-workers of the potential health and safety issues present.
55. Inform your superintendent and co-workers of the presence/absence of asbestos on the vessel.

Note: If the presence of asbestos is confirmed or unknown (suspected), proceed according to the Asbestos-related Rummage Procedures and Respiratory Protection Program.
56. Review documentation and proceed with the captain's interview.

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57. Compare the information provided by the captain to the ship's documentation and targetting information.
58. Request that the crew be mustered and confined to an area when it is determined that it is the most practical approach or there are serious health and safety concerns.
59. Immediately advise the superintendent upon discovering prohibited, restricted, controlled or regulated goods.
60. Advise the captain upon discovery of prohibited, restricted, controlled, or regulated goods when deemed necessary.
61. Immediately report any damage caused by an examination to the captain.
62. Contact the superintendent in cases of seizure or unusual problems.
63. Inform the owner/operator/captain when an intensive examination is about to be conducted and when it is safe to do so, request that he/she be present throughout the examination.

Note: An intensive examination involves the dismantling of parts, which could affect the vessel's safety and operation.

64. Address questions to the owner/operator/captain on all areas being examined.
65. Use a systematic and thorough approach for all examinations no matter how large or small the area.
66. Use all tools available whenever possible to avoid dismantling parts and to reduce the chances of breaking any components.
67. Radio equipment and navigational equipment can yield significant amount of information and should not be neglected.
68. When the ventilation system is examined, wear safety glasses to protect against flying particles of dust, rust, etc. and a dust mask to avoid breathing airborne particles.
69. Never introduce body parts into a ventilation system before it has been shutdown, isolated and secured.
70. Include life rafts, safety equipment, pyrotechnics and fire-fighting equipment in examinations.

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Marine Pleasure Craft Examination

Note: Remember that life rafts packed in a fibreglass container must be unpacked and re-packed by qualified personnel only. All life saving equipment must be treated with care.

71. Immediately report any damage, particularly to life saving equipment, to the superintendent and owner/operator/captain.

Note: Damage to life saving equipment can delay the departure of the craft due to shipping regulations.

72. If any confined spaces are encountered onboard a marine pleasure craft, act according to the Shipboard Confined Space Procedures.

Note: Refer to Part 4, Chapter 8, Commercial Marine Vessel Examinations Policy and Procedures for information regarding examinations of confined spaces.

73. Report any problems encountered in following this policy and procedures or in the performance of an examination to the responsible CBSA superintendent or manager.

74. Complete in full an intelligence report in the occurrence reporting system and, where applicable, forward it to the responsible regional intelligence officer and/or targeter for any examinations that yield results or are unusual and all examinations conducted as the result of a lookout or target.

Note: For non-automated ports, the examination report must be completed manually.

Personal Search

Note: Refer to Part 6, Chapter 7, Personal Search Policy and Procedures and follow the guidelines provided for all personal searches.

75. Find a vacant spare room/cabin when it is necessary to conduct a personal search of a person.
76. If no room/cabin can be located, request that the owner/operator/captain identify a room or space that can be used for this purpose.
77. Make the room or area as safe and secure as possible before proceeding with the personal search.

REFERENCES

78. *Customs Act*
Criminal Code
Canada Shipping Act
Canada Labour Code
A Guide for Customs Officers
Vessel Rummage Course
Small Vessel Examination Course
Shipboard Confined Space Procedures
Treasury Board Occupational Safety and Health Hazardous Confined Space Directive
Treasury Board Occupational Safety and Health Personal Protective Equipment and Clothing Directive

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Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 10

**COMMERCIAL MOTOR VEHICLE EXAMINATION POLICY AND
PROCEDURES**

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of commercial motor vehicles in accordance with the provisions set out in the *Customs Act* and in recognition of the requirement for safety.

DEFINITIONS

2. Refer to Part 11- Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 – Allows the designation of areas as customs controlled areas.
Section 11.3 – Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
4. Section 13 – Importers, exporters, transporters, and their representatives are obligated to answer truthfully questions asked with respect to commercial shipments and present the goods, remove any covering, unload any conveyance, and open or unpack any package or container that a customs officer wishes to examine.
5. Sub-section 99(1)(a) – Authorizes customs officers to examine goods and any containers or conveyance that may contain goods upon importation and up to the time of release.
6. Sub-section 99(1)(c) – Authorizes customs officers to examine any goods that have been reported under Section 95 at any time up to the time of exportation.
7. Sub-section 99(1)(f) – Authorizes the examination of any goods and conveyance a customs officer suspects on reasonable grounds contains goods that are in contravention of the Act.

Note: This sub-section pertains to situations where a conveyance has been released and an officer wishes to examine it or where a conveyance is being exported and no goods have been reported under Section 95.

PURPOSE AND SCOPE

8. The purpose of this policy is to provide guidelines to customs officers in the secondary examination of commercial motor vehicles.
9. It is also the purpose of this policy to emphasize the importance of health and safety when examining commercial motor vehicles.

POLICY GUIDELINES

General

Note: Refer to Part Four, Chapter Four, Commercial Shipment Examination Policy and Procedures and Chapter Five, Container Examination Policy and Procedures for guidelines regarding the examination of commercial goods and marine containers.

10. It is recommended that officers complete the Commercial Motor Vehicle Examination Course delivered by Customs Contraband, Intelligence and Investigations (CCII) approved facilitators.
11. Officers may conduct roving activities on commercial motor vehicle (CMV) drivers and passengers pre-PIL, where pre-PIL is within Canada, and within the secondary area.

Note: Refer to Part Three, Chapter Four, Roving Policy and Procedures.

12. Commercial motor vehicles will be examined at their point of entry or departure.
13. The examination of commercial motor vehicles may vary in intensity.
14. All examinations will be conducted in a systematic manner.
15. All examinations will be conducted in a courteous and professional manner.
16. Officers will be respectful of drivers' personal belongings, in particular the sleeper compartment of the cab, as this is where drivers live while on the road.
17. Officers will record in their notebook incidents of dealings with upset or hostile drivers or passengers, such as the time, the driver's/passenger(s) actions, statements, and physical condition, and any witnesses to an incident.

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18. Officers will use contraband detection equipment, tools, and detector dog teams to assist them in the examination of CMV's, whenever possible and when deemed appropriate.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures.

19. Officers will familiarize themselves with indicators, concealment methods, and other related information by reading intelligence bulletins, alerts, and other relevant publications available at the port.
20. Officers will request that all persons in a CMV exit and stand at a reasonable distance until an examination is completed.

Note: Discretion must be used when travellers such as invalid persons, infants, or sleeping children are involved.

21. Drivers will be allowed to view examinations of their CMV but will be kept at a reasonable distance to avoid any intentional interference.
22. If a person hinders an officer during an examination, the officer should attempt to defuse the situation. As a last resort, and after consultation with management, the person may be arrested and removed from the area.

Note: Refer to Part 6, Chapter 1, Arrest and Detention and Part 9, Chapter 2, Prosecution Procedures.

23. If contraband is found and the conveyance seized or the person placed under arrest, they may also be removed from the area.
24. Drivers referred to secondary for mandatory reasons, such as documentation presentation, duty payment, or form completion will not have their belongings or CMV examined as a matter of routine.
25. Regardless of the type of referral, examining officers must ensure each examination is well-focused without ignoring the possibility that a contravention exists that is unrelated to the reasons behind the referral.

Note: Refer to Part Three, Chapter Three, Reporting, Questioning, and Referral Policy and Procedures for information on referral types.

26. Officers will observe driver and passenger reactions to examinations, as they may indicate that a more detailed examination is required.

27. Officers will progressively intensify the level of examination when indicators exist that lead to reasonable grounds to suspect that a CMV contains contraband, undeclared, or falsely reported goods or when contraband, undeclared or falsely reported goods, or evidence is discovered.
28. All items encountered in an examination will be treated as potential evidence.
29. Officers will complete an Examination Report for all resultant and unusual examinations and, where applicable, forward the report through their superintendent in a timely manner to the responsible Regional Intelligence Officer (RIO) and/or Targeting Unit.
30. Any problems encountered in following this policy or in the performance of an examination are to be reported immediately to the responsible Customs superintendent or manager.

Health and Safety

31. When conducting examinations, officers will take measures to protect the health and safety of the public and themselves.
32. Officers must always wear the appropriate CBSA-provided personal protective equipment during examinations. For example, wear:
 - a) safety glasses and leather gloves when operating power tools such as drills and saws;
 - b) safety glasses when performing “NIK” tests;
 - c) respiratory protection and safety goggles when examining cargo that could result in airborne particles being inhaled or created;

Note: Respirators are only to be used by personnel who are trained under the Respiratory Protection Program.
 - d) head protection where there is a risk of head injury (e.g. examination of the underside of the container); and
 - e) leather, latex, or Nitrile gloves depending on the nature of the cargo being inspected.

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Commercial Motor Vehicle Examination

33. Officers will ensure CMV's cannot be moved during examinations and insist that they be turned off, the keys removed, and the air brakes applied before and throughout examinations.
34. By assessing each area they enter, officers will take appropriate action to protect themselves against any present hazards.
35. During examinations, officers must be aware of the danger from needles, broken glass, razor blades, knives, and other sharp or pointed objects, exhaust fumes, the possible high temperatures associated to engine and exhaust components, and acid from battery boxes.
36. Officers will not freely run their hands into pocket compartments, void areas, under the mattress, etc. in CMV's without a visual examination or, if necessary, will use inspection mirrors and flashlights, fibrescopes, probes, or X-ray equipment first.
37. Prior to any trailer/container interior examination, the trailer/container must be well ventilated for at least 10 minutes.
38. Where fumigants have been used or there is a possibility they have been used on cargo currently or previously carried in a trailer/container, officers will follow the CBSA policy and procedures for dealing with fumigated marine containers.

Note: Refer to Part Four, Chapter Five, Container Examination Policy and Procedures, Appendix A, Contraband Examination Procedures for Fumigated Marine Containers.

39. When hazardous materials are encountered, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards), CANUTEC guidelines and Material Safety Data sheets accessible through the Canadian Centre for Occupational Health and Safety website.
40. In cases where an examination is being conducted specifically for prohibited goods such as drugs or weapons, precautionary measures must be taken to ensure Customs control over the goods and to ensure the examining officer's safety.
41. Where there is a concern for officer safety, examinations will be conducted by two or more officers.
42. Officers are permitted to withdraw from any situation during an examination where they believe it poses a significant and unavoidable risk to the public and/or themselves.

Intensive Examinations

43. Examinations as a result of a lookout or target must be more comprehensive than a cursory examination of belongings and conveyances.
44. Examinations resulting from a lookout or target will include inspection of areas such as gas tanks, engine compartments, spare tire wells, tires, undercarriage, and the walls, ceiling, and floor of the sleeper.
45. Officers will conduct full and intensive examinations of CMV's when they are the subject of a lookout or a target, or where reasonable grounds to suspect a contravention are based on a number of indicators.
46. If an officer suspects that a shipment contains prohibited items, such as weapons or drugs, an examination must be conducted at the earliest time possible.
47. Before cutting, drilling, and/or dismantling are undertaken during an examination, officers must have reasonable grounds and must be able to clearly articulate them.
48. Before proceeding to an examination that may involve disassembling, dismantling, or perhaps damaging baggage, goods, or conveyances, whenever possible, the examining officer will consult with their superintendent. Where this is not possible or not practical, the superintendent is to be notified of the examination and results as soon as possible.
49. When an officer has reasonable grounds to suspect that goods are concealed behind or inside panels, seats, carpets, tires, gas tanks, engine compartments, etc., they will take the appropriate steps to remove or have the parts removed and perform a complete examination.
50. Officers will not dismantle electrical components and will engage a qualified mechanic for these purposes.
51. Officers must keep detailed notebook entries of intensive examinations as they may be required to state the reasonable grounds more precisely than for lower intensity examinations.
52. Officers will complete an Examination Report for all intensive examinations, including lookouts and targets, and, where applicable, forward the report through their superintendent in a timely manner to the responsible Regional Intelligence Officer (RIO) and/or Targeting Unit.

Examination of Personal Papers and Journals

Note: Refer to Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the examination of personal papers and journals.

Photocopying and Electronic Scanning of Personal Papers and Journals

Note: Refer to Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the photocopying and electronic scanning of personal papers and journals.

Examination Damages

53. Officers will take photographs before and after examinations when:

- a) it is likely there will be a complaint as a result of conducting an examination;
- b) there is pre-existing damage;
- c) they suspect that damage may be caused during an examination;
- d) they are going to dismantle or remove permanent fixtures or parts; or
- e) drill, cut, or break an item to determine if it is concealing goods.

Note: Photographs taken prior to examination will record any existing damage. Photographs taken after examination will document the extent of the damage caused, if any.

54. Examining officers will photograph any unexpected accidental damage resulting from an examination.

55. In cases of pre-existing damage or when damage is caused by an examination, officers will record all of the relevant information in their notebooks.

56. When an examination causes damage, officers will prepare a report for management indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent, and its suspected or actual cause.

Examination Related Costs

57. Customs may pay for affected items to be brought back to their original state or will make monetary amends when an examination is non-resultant and damage has occurred.
58. Customs will not normally pay for damages to personal belongings or conveyances when they are or have been used in contravention of and seized under the *Customs Act*. Goods seized by Customs belong to the Crown from the moment of seizure.

Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter Nine, Section Three, Financial Administration Volume, Finance and Administration Manual.

ROLES AND RESPONSIBILITIES

Customs Officers

59. Customs officers are responsible for:
 - a) adhering to this policy and procedures;
 - b) identifying suspect CMV's and processing them in accordance with CBSA policy and procedures;
 - c) completing the Commercial Motor Vehicle Examination Course, where possible;
 - d) taking all necessary precautions against all identified hazards before, during, and after a CMV examination;
 - e) keeping detailed notes on all unusual or intensive CMV examinations; and
 - f) completing an Examination Report for all intensive examinations of CMV's.

Customs Superintendents

60. Customs superintendents are responsible for:
 - a) ensuring that the policies and procedures related to CMV examinations are adhered to by customs officers;

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- b) scheduling officers for the Commercial Motor Vehicle Examination Course, when possible;
- c) guiding and supporting customs officers in the performance of their duties;
- d) promoting and monitoring procedures and health and safety requirements and correcting any breaches;
- e) taking appropriate corrective action on any breaches of this policy;
- f) monitoring Examination Reports for completeness and accuracy; and
- g) forwarding Examination Reports to the applicable RIO and/or Targeting Unit.

Customs Contraband, Intelligence and Investigations

61. Customs Contraband, Intelligence and Investigations (CCII) is responsible for:
- a) developing, modifying, and approving all polices and procedures pertaining to CMV examination in accordance with court jurisprudence;
 - b) ongoing development and support of examination techniques and tools;
 - c) providing guidance to the field pertaining to the tools and instruments used in contraband detection;
 - d) monitoring adherence with this policy by the regions; and
 - e) updating, coordinating, and delivering CMV examination training courses.

PROCEDURES

Note: For additional information refer to the Commercial Motor Vehicle Examination Course developed by CCII.

Selective Examination

62. Take all the necessary precautions with respect to health and safety before, during, and after a CMV examination.

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63. Review cargo documentation.
64. Conduct a visual examination of the CMV including sleeper and trailer.
65. Conduct a cursory examination of the interior of the tractor and trailer, and the cargo.
66. Record any peculiarities and indicators in your notebook.
67. Increase the intensity of examination as indicators dictate.

Intensive Level

68. Obtain information from the driver such as:
 - a) place of residence;
 - b) driver certification:
 - i) commercial drivers licence (CDL);
 - ii) medical certification;
 - c) load pick-up location;
 - d) load drop off location; and
 - e) type of cargo.
69. Examine the exterior of the tractor including but not limited to the:
 - a)
 - b)
 - c)
 - d)
 - e)
 - f)
 - g)

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h)

i)

j)

k)

70. Examine the tractor interior including but not limited to the:

a)

b)

c)

d)

e)

71. Examine documentation comparing them to the drivers' statements, such as:

a)

b)

c)

d)

e)

f)

g)

72. Examine the cargo looking for indicators, such as:

a)

b)

c)

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- d)
- e)
- 73. Utilize contraband detection equipment and the detector dog team whenever possible and when appropriate.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures.
- 74. Immediately report any problems encountered in following this policy or in the performance of an examination to the responsible Customs superintendent or manager.
- 75. Complete an Examination Report for all intensive, resultant, and unusual CMV examinations.
- 76. Send a copy of the Examination Report to the RIO and/or Targeting Unit.
- 77. Give copies of the Examination Report to the superintendent for dissemination to the RIO and/or Targeting Unit and for filing.

REFERENCES

- 78. *Customs Act*
Commercial Motor Vehicle Examination Course
North American Emergency Response Guidebook – A Guidebook for First Responders During the Initial Phase of a Hazardous Materials/Dangerous Goods Incident
Finance and Administration Manual

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Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 11

RAIL EXAMINATION POLICY AND PROCEDURES

Part 4 Chapter 11

Rail Examination

POLICY STATEMENT

1. It is the policy of the Customs Border Services Agency (CBSA) to conduct examinations of passenger and freight trains in accordance with the provisions set out in the *Customs Act* and in recognition of the requirement for health and safety.

DEFINITIONS

2. Refer to Part 11 – Glossary

AUTHORITIES

Customs Act

3. Section 11.2 allows the designation of areas as customs controlled areas. Section 11.3 authorizes owners or operators of customs controlled areas to grant access to authorized or prescribed persons only.
4. Section 13 obligates importers, exporters, transporters, and their representatives to answer truthfully questions asked with respect to commercial shipments and present the goods, remove any covering, unload any conveyance, and open or unpack any package or container that a CBSA officer wishes to examine.
5. Subsection 99(1)(a) authorizes CBSA officers to examine goods and any containers or conveyance that may contain goods upon importation and up to the time of release.
6. Subsection 99(1)(c) authorizes CBSA officers to examine any goods that have been reported under section 95 at any time up to the time of exportation.
7. Subsection 99(1)(e) authorizes officers who suspect on reasonable grounds that the *Customs Act* or the regulations or any other act of Parliament might be contravened, to open or cause to be opened any package or container to examine the goods.
8. Subsection 99(1)(f) authorizes the examination of any goods and conveyance a CBSA officer suspects on reasonable grounds contains goods that are in contravention of the *Customs Act*.

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Rail Examination

Note: This subsection pertains to situations where a conveyance has been released and an officer wishes to examine it or where a conveyance is being exported and no goods have been reported under section 95.

BACKGROUND

9. In April 1995, a rail threat assessment was conducted, as there was very limited reliable information on the risk associated to rail freight and passenger trains. The assessment drew a number of conclusions, including:
 - a) rail cargo posed the same high risk as cargo arriving by marine;
 - b) the CBSA needed to conduct pre-arrival targeting on rail cargo;
 - c) the ability to trace cargo arriving by rail was essential;
 - d) suitable examination facilities at high risk points of entry must be established and/or trains be required to remain intact until they reached a point where examinations could be conducted (i.e. Designated Marshalling Yards); and
 - e) train crew were not high risk.
10. Since the publication of the rail threat assessment, resources have been dedicated to the rail mode to ensure continuous improvements in the CBSA's ability to identify, intercept, and interdict contraband in this area. These include, but are not limited, to the establishment of a centralized targeting unit, the identification and set-up of centralized examination facilities, and where proper examination space does not exist, the provision of suitable examination space by rail companies.

PURPOSE AND SCOPE

11. The purpose of this policy is to provide guidelines to CBSA officers in the secondary examination of rail cars and locomotives.
12. It is also the purpose of this policy to emphasize the importance of health and safety when examining trains.
13. This policy applies to all CBSA personnel.

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Rail Examination

POLICY GUIDELINES

Note: Refer to Part 4:

- a) Chapter 3, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines on the examination of travellers and their goods.
- b) Chapter 4, Commercial Shipment Examination Policy and Procedures for guidelines regarding the examination of commercial goods.
- c) Chapter 5, Container Examination Policy and Procedures for guidelines regarding the examination of containers on rail cars.
14. Trains will be examined, when deemed necessary, at the first point of operational intervention at Canadian borders where trains cross or at a CBSA approved inland rail yard or warehouse.
15. Examination facilities provided by rail companies must meet the CBSA Operations Branch standards, including the following minimum requirements:
 - a) be accessible and have access to a paved main thoroughfare;
 - b) have sufficient parking available at the facility for CBSA vehicles;
 - c) have large enough examination space to permit the offload of a conveyance;
 - d) the examination space is clean and well lit;
 - e) the examination space is climate controlled to permit offloads in any season;
 - f) the examination site meets security requirements; and
 - g) labour and equipment is made available to conduct the examination.
16. If an officer has to unload or move a rail car or locomotive to examine it, the moving will be done by and at the expense of the carrier.
17. Officers must have authorization from the rail company to be on railway company property or on rolling stock or any other rail equipment whether it is on or off duty.

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18. Officers will familiarize themselves with indicators, concealment methods, trends, and other related information by reading intelligence bulletins, alerts, and other relevant publications available at the port.

Note: Refer to the Rail Contraband Examination Program – Train Examination Procedures Manual.

19. All examinations will be conducted in a thorough, methodical, and proficient manner.
20. All examinations are to be conducted in a courteous and professional manner. Officers will not respond in kind to individuals who may be upset and/or hostile about having their conveyance examined.
21. Officers will not be deterred from undertaking an examination based on a rail worker or company representatives' objections.
22. Officers will use contraband detection equipment, tools, and detector dog teams to assist them in the examination of rail cars and locomotives, whenever possible and when deemed appropriate.

Note: Refer to Part 4, Chapter 1, Contraband Detection Equipment Policy and Procedures.

23. CBSA may pay for affected items to be brought back to their original state or will make monetary amends when an examination is non-resultant and damage has occurred.
24. CBSA will not normally pay for damages to personal belongings, cargo or conveyances when they are or have been used in contravention of and seized under the *Customs Act*.

Note: Seized goods belong to the Crown from the moment of seizure.

Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter 9, Section 3, Financial Administration Volume, Finance and Administration Manual.

ROLES AND RESPONSIBILITIES

CBSA Officers

25. CBSA officers are responsible for:
 - a) adhering to this policy and procedures;

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Rail Examination

- b) identifying suspect rail cars and locomotives and processing them in accordance with CBSA policy and procedures;
- c) completing the necessary training required to work effectively and safely in rail yards;
- d) taking all necessary precautions against all identified hazards before, during, and after rail examinations;
- e) maintaining in safe and good working order all contraband detection equipment used in examinations;
- f) keeping detailed notes on all unusual or intensive rail examinations; and
- g) completing a Container Targeting and Examination Report for all rail examinations.

CBSA Superintendents

26. CBSA superintendents are responsible for:

- a) ensuring that the policies and procedures related to rail examinations are adhered to by CBSA officers;
- b) ensuring officers have the training required to work effectively and safely in rail yards;
- c) guiding and supporting CBSA officers in the performance of their duties;
- d) promoting and monitoring procedures and health and safety requirements and correcting any breaches;
- e) taking appropriate corrective action on any breaches of this policy;
- f) monitoring Container Targeting and Examination Reports for completeness and accuracy;
- g) ensuring all Container Targeting and Examination Reports are entered into the Customs Enforcement Library; and
- h) forwarding Container Targeting and Examination Reports describing resultant or unusual examinations to the applicable regional intelligence officer and/or targeting unit.

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Rail Examination

The Enforcement Directorate

27. The Enforcement Directorate is responsible for:
 - a) developing, modifying, and approving all polices and procedures pertaining to rail examination in accordance with court jurisprudence;
 - b) ongoing development and support of examination techniques and tools;
 - c) providing guidance to the field pertaining to the tools and instruments used in contraband detection;
 - d) monitoring adherence with this policy by the regions; and
 - e) developing, coordinating, and delivering rail examination training courses.

PROCEDURES

Note: Refer to the Rail Contraband Examination Program – Train Examination Procedures Manual for detailed procedural guidelines.

28. Notify rail companies of planned examinations.
29. Notify rail companies if the examination, either planned or underway, is likely to cause a schedule delay or, if they require a train, rail car, or locomotive to be moved to a sidetrack.

Note: Notification to rail companies should be done at the last possible moment to remove the opportunity for train crew or yard crew to dispose of any contraband that may be secreted on or about the train. In addition, as few people as possible should be notified of the train check to ensure that the security of the operation is not compromised.

30. Obtain proper authorization from the rail company before entering into any shop, building, rail yard or other work area in a rail yard, onto tracks or on rolling stock or any other rail equipment.
31. Treat all items encountered in an examination as if they are potential evidence.

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32. Progressively intensify the level of examination when indicators exist that lead to reasonable grounds to suspect that a rail car or locomotive contains contraband, undeclared or falsely reported goods or when contraband, undeclared or falsely reported goods, or evidence is discovered.
33. Be alert to individuals who may be watching an examination take place. Only those people who are required to be present during an examination should be on-site when the examination is taking place.

Note: Intermodal yards are not controlled environments. There are many groups of people involved in the operations of an intermodal yard and the possibility of an internal conspiracy exists.

34. Record in the notebook, incidents of dealings with upset or hostile persons, such as the time, their actions, statements, and physical condition, and any witnesses to an incident.
35. If a person intentionally obstructs or hinders an officer during an examination, they may be arrested and removed from the area. The rail yardmaster and rail police should be immediately notified. Reports are to be submitted to the rail police and the responsible CBSA chief.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

36. Notify the yardmaster immediately, if removing contraband, a seized conveyance or a person placed under arrest.
37. Notify the rail police when placing a person under arrest, because the rail police have their own procedures to follow when an incident occurs on rail company property.
38. Complete a Container Targeting and Examination Report for all locomotion and railcar examinations.

Note: See Appendix A for a sample of the Container Targeting and Examination Report.

39. Forward Container Targeting and Examination Reports on resultant or unusual examinations, through the superintendent, to the responsible regional intelligence officer and/or Targeting Unit. All reports will be input into the Container Targeting and Examination Database in the Customs Enforcement Library.

Note: Refer to Part 7, Chapter 2, Customs Enforcement Library Policy and Procedures.

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40. Immediately report any problems encountered in following these policies and procedures or in the performance of an examination to the responsible CBSA superintendent or manager.

Health and Safety

41. Exercise extreme caution and take measures to protect your health and safety and that of the public.
42. Comply with each rail companies' rules, procedures, and policies.

Note: Each rail company has their own Health and Safety and Accident Prevention Guidelines.

43. Review the applicable rail companies' Health and Safety and Accident Prevention Guidelines prior to working on their lines or in their yards.

Note: A record of the review of the applicable rail companies' Health and Safety and Accident Prevention Guidelines and/or any training session provided by the rail company or CBSA will be placed on the officer's personnel file.

44. Be aware of dangers such as:
 - a) approaching trains and cars are often silent and can move with little or no warning;
 - b) rail cars are often moved using their own momentum without the assistance of a locomotive; and
 - c) locomotives do not normally use audible devices such as a bell or horn in the rail yard when performing switch moves.

45. Make arrangements in advance, to meet the appropriate rail personnel and ensure they place visible blue flags (daytime) or blue lights (night time), secured with the rail workers personal locks at the front and rear of the train, rail car or locomotive when officers are working on the equipment.

Note: Blue signals warn of persons present and that no equipment is to be moved on that particular rail. The only person who can remove a blue signal is the person who put it in place. To ensure this, rail company persons placing signals will lock them with their own personal lock and the officer will take possession of the keys or fuses for the particular lock during the examination process.

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46. Officers must be satisfied that rail cars will not be moved during examinations.
47. Perform a safety and health risk assessment of each area entered to protect against any present or potential hazards.
48. Prior to any rail/marine container interior examination, testing for fumigants may be necessary. Ventilation may also be required.

Note: Refer to Part 4, Chapter 5, Container Examination Policy and Procedures for detailed guidelines regarding the examination of containers.

49. During examinations, be aware of the danger from needles, broken glass, razor blades, knives, and other sharp or pointed objects, exhaust fumes, the possible high temperatures associated with engine and exhaust components, and acid from battery boxes.
50. In cases where an examination is being conducted specifically for prohibited goods such as drugs or weapons, take precautionary measures to ensure CBSA control over the goods and to ensure the examining officer's safety.
51. At least two officers are required to examine a container and its cargo during a rail examination.

Note: This ensures a safe working environment as well as ensuring credibility, if contraband is discovered.

52. Officers are permitted to tactically reposition or withdraw from any situation during an examination where they believe it poses a significant and unavoidable health and safety risk to the public and/or themselves.

Personal Protection Equipment

53. A record of all protection equipment provided by the employer shall be kept, per CLC OSH Regs. *Part I, Part XII Safety Materials, Equipment, Devices and Clothing 12.14(1) & (2)*.
54. Officers will wear all provided personal protective equipment required by the type of examination that is being conducted.
55. All personal protective equipment must meet the standards established by the Canada Labour Code and be CSA approved where applicable.
56. While working in a rail yard or on rail property, officers **must** wear:
 - a) protective eyewear;

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- b) protective headwear (hard hats);
- c) high visibility safety vests;
- d) CSA approved protective footwear (steel toed boots);
- e) work gloves; and
- f) hearing protectors (ear plugs).

Note: Personal protection equipment is a legal requirement in an intermodal yard and when working on rail property.

Eyewear

57. Eye and face protective equipment must meet Canadian Standards Association (CSA) requirements.

Note: Any equivalent or superior standards are also acceptable.

Note: The minimum acceptable eye protection is clear lens safety spectacles with side shields.

58. Where industrial safety spectacles are worn, either non-prescription or prescription, they must be equipped at each side with a side shield.

Note: This does not relieve the officer from the responsibility of wearing a suitable type of cover goggle, in addition, where required.

59. Where eye protection is required and non-safety prescription glasses are used, a suitable type of cover goggle must be worn over the glasses.

60. Contact lenses, in and of themselves, do not provide eye protection in the industrial sense and must not be worn in a hazardous environment without appropriate covering safety eyewear.

61. The wearing of seamless bifocal lenses is approved as long as they meet CSA standards (where applicable).

Hardhats

62. All officers must wear CSA approved hard hats wherever there is a hazard of head injury in the work place and as per rail company policy.

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Note: On CP property, high visibility hard hats are required that are fluorescent orange in colour displaying retro-reflective markings.

Note: Persons while in vehicles, machines, and motorcars with enclosed cabs and windshields are exempt from wearing hardhats unless performing repairs or maintenance work. Vehicles with operating windows, whether open or closed, still constitute an enclosed vehicle.

High Visibility Vests

63. Where officers are regularly exposed to contact with moving vehicles during work, they must wear high visibility vests that have both fluorescent and retro-reflective properties:
 - a) while working around, protecting or flagging vehicular traffic at a road/railway grade crossing;
 - b) at night time;
 - c) whenever weather conditions obscure or reduce visibility;
 - d) in railway tunnels; and
 - e) wherever else local management establishes that vests must be worn.
64. All high visibility personal protective equipment must be worn outside of all other clothing and be fully fastened.
65. In environments where loose clothing may be caught by moving equipment or other stationary objects, high visibility personal protective equipment must have tear away properties.

Note: For example, the use of Velcro fastening strips.

Footwear

66. Officers must wear safety footwear that provides the necessary support and protection for ankles and feet to prevent or significantly lessen the incidence and severity of injury.
67. Other than in an office environment, officers must wear CSA approved safety footwear that is in good condition and meets the specified minimum requirements.
68. Where a safety boot is required, it must be laced and the laces must be tied securely to provide adequate support for the ankle

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69. Where there is a hazard of slipping in the workplace, non-slip footwear must be worn.

Fall Protection Systems

70. Officers will use a fall protection system (CSA Standards Z259), as per the regulations respecting Occupational Health and Safety made under Part II of the Canada Labour Code, to get on top of and examine the roof or interior of an open top, cylindrical or covered hopper, boxcar, etc. at a height of more than 2.4 meters above the nearest permanent safe level or above any moving parts of machinery, surface or thing.
71. Only officers trained in fall-protection systems will use such systems to reach the roof/top of a rail car.
72. Officers may attach a fall-arrest device to an adjacent platform once they have climbed on top of a rail car. Various factors such as free fall, fall clearance and careful anchorage location must be taken into consideration at all times before deploying a fall protection system.
73. Officers who are not trained in fall-arrest may climb the side of rail cars using permanently affixed ladders to inspect for contraband, and may climb a ladder at a height of more than 2.4 meters above the nearest permanent safe level, if they can use at least one hand to hold onto the ladder, but may not climb on top of rail cars.

Other Personal Protection Equipment

74. Dependent on the location and type of examination, other personal protective equipment will be worn as required, including but not limited to:
 - a) intrinsically safe (non-sparking and non-conducting) flashlights;

Note: These are required when searching locomotives.

- b) leather, insulated, resistant work gloves;
- c) hearing protection;
- d) skin protection and sun protection;

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- e) respiratory protection will be worn when and as required, as per the Respiratory Protection Program, and must meet the standards established by that program. Refer to

for a link to the

Respiratory Protection Program procedures document; and

- f) dust masks

Note: Refer to *the Canada Occupational Health and Safety Regulations – Canada Labour Code, Part II, Part XII Safety Materials, Equipment, Devices and Clothing.*

Walking in a Rail Yard or Near Rail Tracks

75. When walking around a rail yard or near rail tracks, officers must:

- a) verify that the radio communication equipment is working properly;
- b) inform the yardmaster of CBSA presence and location within the rail yard;
- c) never run, always walk;
- d) never stand on or in-between the tracks;
- e) never step on rails, switches, guard rails, interlocking machinery or connections;
- f) walk a few feet away from tracks;
- g) be careful of debris, rocks, mud, water, snow, and ice;
- h) be alert and prepared for the movement of railroad equipment at all times even on adjacent tracks;
- i) carefully check in all directions before stepping across track, roadway, street, aisle, conveyor line or other similar area; and
- j) understand and be aware of rail yard sounds, hand signals, and light signals.

Walking on or Near Trains

76. When walking on or near trains, officers must:

- a) never climb on a moving car;

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- b) never cross under engines/cars/couplers, never work under engines/cars/couplers, and never work while standing on main tracks, sidings, yards or storage tracks, without taking proper safety precautions;
- c) never jump off any equipment, it is strictly prohibited;
- d) never be caught between engine and car, between cars which are moving or about to move or between cars while coupling is being made;
- e) never step or climb on coupling links, striker castings, sliding centre sills, coupler shanks, angle cocks, train lines, journal boxes, uncoupling levers, truck sides or brake wells;
- f) only use the proper running boards, ladders, and hand holds, where provided when climbing on or off equipment;
- g) always maintain "three point contact" when climbing on a car;
- h) ensure firm handhold and secure footing at all times while on equipment;
- i) always make sure there is a car length between themselves and a car when walking around a car in case of sudden movement;
- j) move to a safe place and, if practicable, clear off all tracks and move at least 20 feet from any main track switch stand when a train, engine or equipment is approaching; and
- k) stay clear of air lines between cars.

Train Examination Equipment and Tools

77. Train Examination Kits must comprise the detection tools and rail equipment necessary to do a thorough examination. These include but are not limited to:
- a) mobile x-ray machines,
 - b) ionscans,
 - c) ionscan swabs,
 - d) buster kits,
 - e) fibre scopes,

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- f) DISTO/Laser Range Finder (or other measuring device such as a tape measure),
- g) extendible mirrors and flashlights,
- h) long probes,
- i) nook lookers,
- j) NIK tests,
- k) radiation detection equipment,
- l) hand tools including but limited to pry bars, drill bits, bolt cutters, etc., and
- m) personal protection equipment.

Note: Refer to Part 4, Chapter 1, Contraband Detection Equipment Policy and Procedures.

78. Officers will use contraband detection equipment, tools, and detector dog teams to assist them in the examination of rail cars and locomotives whenever possible and when deemed appropriate.

Note: It is only through continuous use and practice that officers will become proficient in the use of contraband detection tools and equipment. Similarly, detector dog teams also improve their proficiency and teamwork abilities through training and operational application.

79. Officers WILL NOT freely run their hands into pocket compartments, void areas, etc. in rail cars or locomotives without a visual examination or, if necessary, the use of inspection mirrors and flashlights, fibrescopes, probes or x-ray equipment first.

Hazardous Materials

80. Where fumigants have been used or there is a possibility they have been used on cargo currently or previously carried in a container, officers will follow the CBSA policy and procedures for dealing with fumigated marine containers.

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Note: Refer to Part 4, Chapter 5, Container Examination Policy and Procedures, Appendix A, Contraband Examination Procedures for Fumigated Marine Containers for the document in full or to the Contraband Examination Procedures for Fumigated Marine Containers, Rail Contraband Examination Program – Train Examination Procedures Manual for a partial reprint of specific sections.

81. When hazardous materials are encountered, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards), CANUTEC guidelines and Material Safety Data Sheets accessible through the Canadian Centre for Occupational Health and Safety website and contact a rail commodity specialist.

Note: Refer to D3-6-6, Rail Cargo for marking and labelling requirements on rail cars carrying dangerous goods.

Intensive Examinations

82. Examinations as a result of a selective referral must be more intensive than an examination of belongings and conveyances.
83. Officers will conduct full and intensive examinations of rail cars and locomotives when they are the subject of a lookout or a target or where the reasonable grounds to suspect a contravention is based on a number of indicators.
84. If an officer suspects that a shipment contains prohibited items, such as weapons or drugs, an examination must be conducted at the earliest time possible.
85. Before cutting, drilling, and/or dismantling are undertaken during an examination, officers must have reasonable grounds and must be able to clearly articulate them.
86. Before proceeding to an examination that may involve disassembling, dismantling or perhaps damaging baggage, goods or conveyances, whenever possible, the examining officer will consult with their superintendent. Where this is not possible or not practical, the superintendent is to be notified of the examination and results as soon as possible.
87. When an officer has reasonable grounds to suspect that goods are concealed behind or inside panels, seats, carpets, engine compartments, etc., they will take the appropriate steps to remove or have the parts removed and perform a complete examination.

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88. Officers WILL NOT dismantle electrical components and will engage a qualified mechanic for these purposes.
89. Officers must keep detailed notebook entries of intensive examinations as they may be required to state the reasonable grounds more precisely than for lower intensity examinations.

Examination of Personal Papers and Journals

Note: Refer to Part 4, Chapter 3, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the examination of personal papers and journals.

Photocopying and Electronic Scanning of Personal Papers and Journals

Note: Refer to Part 4, Chapter 3, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the photocopying and electronic scanning of personal papers and journals.

Examination Damages

90. Officers will take photographs before and after examinations when:
 - a) it is likely there will be a complaint as a result of conducting an examination;
 - b) there is pre-existing damage;
 - c) they suspect that damage may be caused during an examination;
 - d) they are going to dismantle or remove permanent fixtures or parts; or
 - e) drill, cut or break an item to determine if it is concealing contraband.

Note: Photographs taken prior to examination will record any existing damage. Photographs taken after examination will document the extent of the damage caused, if any.

91. Examining officers will photograph any unexpected accidental damage resulting from an examination.
92. In cases of pre-existing damage or when damage is caused by an examination, officers will record all of the relevant information in their notebooks.

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93. When an examination causes damage, officers will prepare a report for management indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent, and its suspected or actual cause.

REFERENCES

94. *Customs Act*
Rail Contraband Examination Program – Train Examination Procedures Manual
D-Memorandum
Treasury Board of Canada – Handbook of Occupational Health and Safety
Canadian Labour Code Part II
Marine Centre of Expertise – Contraband Examination Procedures for Fumigated Marine Containers
North American Emergency Response Guidebook – A Guidebook for First Responders During the Initial Phase of a Hazardous Materials/Dangerous Goods Incident
Finance and Administration Manual

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 11

RAIL EXAMINATION POLICY AND PROCEDURES

Appendix A

CONTAINER TARGETING AND EXAMINATION REPORT

Part 4 Chapter 11

Rail Examination

APPENDIX A

CONTAINER TARGETING AND EXAMINATION REPORT
RAPPORT DE CIBLAGE ET D'EXAMEN DE CONTENEUR

Targeting Office / Bureau de ciblage: *	
File Number / Numéro de dossier:	
Date (yyy/mm/dd) / Date (aaaa/mm/jj): * / * / * *	

1.) Container / Conteneur

Container Number / Numéro du conteneur:		Seal Number / Numéro de scellement:
Net Weight / Poids net: *		Gross Weight / Poids brut: *
Size / Taille:		Container Type / Type de conteneur: *
Commodity / Marchandise:	Quantity / Quantité:	Hazardous Materials / Matières dangereuses: *
Bill of Lading Number / Numéro de connaissance: A-G *		ETA of Shipment / HAP de l'expédition: * / * / * * / hrs./h
Container Terminal / Terminal à conteneurs:		Routing-transshipment / Itinéraire – Transbordement:
Cargo Control Document Number / Numéro de contrôle du fret:		Country of Export / Pays d'exportation:

2.) Vessel / Navire

Vessel / Navire:	Vessel Main Agent / Agent maritime principal:	Voyage Number / Numéro de voyage:
Shipping Line / Compagnie de transport maritime: A-G *	Shipping Line / Compagnie de transport maritime: G-M *	Shipping Line / Compagnie de transport maritime: N-Z *
Other/ Autres:		

3.) Trading Partners / Partenaires commerciaux

(If shipment is consolidated, include all importers. / Si l'expédition est groupée, indiquer tous les importateurs.) *							
IMPORTER : Name, telephone, address, and business number / IMPORTATEUR : Nom, téléphone, adresse et numéro d'entreprise: * * * * * * *							
EXPORTER : Name, telephone, address and vendor number / EXPORTATEUR : Nom, téléphone, adresse et numéro du vendeur: * * * * * * *							

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APPENDIX A

4.) Referral Information / Information sur le renvoi

Type of referral / Type de renvoi: * *	Intelligence or Lookout Information / Information pouvant servir au renseignement - Information sur l'avis de surveillance: * *
Reason for referral / Raison du renvoi: *	
* *	

5.) Special Instructions / Instructions spéciales

--

6.) Queries / Demandes d'information

* *

7.) Container Hold / Retenue du conteneur

Date hold sent to shipping line / Date d'envoi de l'avis de retenue: * / * / * * / hrs./h
--

8.) Officer(s) / Agent(s)

Name / Nom:	Badge Number / Numéro d'insigne:
Date and time commenced / Date et heure - Début: * / * / * * / hrs./h	Time completed / Date et heure - Fin: * / * / * * / hrs./h

Section 2: To be completed by examination officers / Doit être remplie par les agents examinateurs

9.) Prior to Examination / Avant l'examen

Location of Examination / Emplacement de l'examen:	Date container picked up from pier / Date de ramassage du conteneur au quai: * / * / * * / hrs./h
Verify Container number / Vérifier le numéro du conteneur: *	Placards or Warning Labels / Plaques-étiquettes ou étiquettes de danger: *
Fumigant / Fumigation: *	20 ft. chassis / Châssis de 20 pi: *

10.) Examination / Examen

Seal # and condition of seal / Numéro et état du scellement: * * ✓ * * ✓ * * * * ✓	
Type of Examination / Type d'examen: *	Pictures / Photos: *
Date and time examination commenced / Date et heure du début de l'examen: * / * / * * / hrs./h	Time seal broken / Moment où le scellement a été brisé: * / * / * * / hrs./h

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APPENDIX A

11.) Cargo Examination / Examen du fret

Description: (Note country of origin, brand name, quantity, volume, CA#, type of material, method of marking, etc. where applicable / Prendre en note le pays d'origine, le nom de la marque, la quantité, le volume, le n° CA, le type de matériau, la méthode de marquage, etc. s'il y a lieu.)

Type of packaging / Type d'emballage:	Pallets / Palettes: * *
Piece count / Compte de pièces: *	Shown / Indiqué: Actual / Réel:
Cargo / Fret: * *	Percentage examined / Pourcentage examiné:

12.) Cargo Damages / Dommages aux marchandises

Prior to off-load / Avant le déchargement: *
During the examination / Pendant l'examen: *
During the reload / Pendant le rechargeement: *
Pictures / Photos: *
Shipping Line / Compagnie de transport maritime: *

13.) Container Examination / Examen du conteneur

Select Action / Choisir la mesure: * * * * * * * * * * * * * * * * * * * *
* * * * * * * * * * * * * * * * * * *
Comments / Commentaires :

14.) Tool Utilization / Utilisation d'outils

* * * * * * * * * * * * * * * * * *	
Comments / Commentaires :	Detector Dog / chien détecteur:

15.) ION Scan Samples / Échantillons - Spectromètre de mobilité ionique

Quantity / Quantité:	Location / Endroit:	(Values, Delta, Amplitude, Windows, etc. / Valeurs, delta, amplitude, fenêtres, etc.):
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16.) Referrals / Renvois

*

17.) Enforcement / Exécution

Enforcement / Exécution: *	Action / Mesure d'exécution: * * * * * * * * *
Goods Seized / Marchandises saisies: * * * * * * * * *	Details / Détails:

18.) New Seal / Nouveau scellement

Seal Number / Numéro de scellement:	Date / Date: * / * / * * / hrs/h
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Part 4 Chapter 11

Rail Examination

APPENDIX A

19.) Container Release / Mainlevée du conteneur

Date container released / Date de mainlevée du conteneur:
* / * / * * / hrs./h

20.) Officers / Agents

Names and badge numbers / Noms et numéros d'insigne:

Customs Superintendent / Surintendant des douanes:

CUSTOMS ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 12

POSTAL EXAMINATION POLICY AND PROCEDURES

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of international mail in accordance with the provisions set out in the *Customs Act*.

DEFINITIONS

2. Refer to "Glossary".

AUTHORITIES

Canada Post Corporation Act

3. Subsection 42(1) – All mail arriving in Canada from a place outside Canada that contains or is suspected to contain anything the importation of which is prohibited, controlled or regulated under the *Customs Act* or any other Act of Parliament shall be submitted to a customs officer".

Customs Act

4. Subsection 12(3)(a.1) – In the case of goods imported by courier or as mail, goods shall be reported by the person who exported the goods to Canada.
5. Subsection 99(1)(b) – An officer may at any time up to the time of release, examine any mail that has been imported and, subject to this section, open or cause to be opened any such mail that the officer suspects on reasonable grounds contains any goods referred to in the *Customs Tariff*, or any goods the importation of which is prohibited, controlled or regulated under any other Act of Parliament, and take samples of anything contained in such mail in reasonable amounts.
6. Subsection 99(1)(c.1) – An officer may at any time up to the time of exportation, examine any goods that have been reported under section 95 and open or cause to be opened any package or container of such goods and take samples of such goods in reasonable amounts.
7. Subsection 99(1)(e) – An officer may, where the officer suspects on reasonable grounds that this Act or the regulations of any other Act of Parliament administered or enforced by him or any regulation thereunder have been or might be contravened in respect of any goods, examine the goods and open or cause to be opened any package or container thereof.

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Postal Examination

8. Subsection 99(1)(f) – An officer may where the officer suspects on reasonable grounds that this Act or the regulations of any other Act of Parliament administered or enforced by him or any regulations thereunder have or might be contravened in respect of any conveyance or any goods thereon, stop, board, and search the conveyance, examine any goods thereon and open or cause to be opened any package or container thereof and direct that the conveyance be moved to a customs office or other suitable place for the search, examination, or opening.
9. Subsection 99(2) – An officer may not open or cause to be opened any mail that is being imported or exported and that weighs thirty grams or less unless the person to whom it is addressed consents or the person who sent it has completed and attached to the mail a label in accordance with article RE 601 of the Letter Post Regulations of the Universal Postal Convention.
10. Subsection 99(3) – An officer may cause imported mail, or mail that is being exported, that weighs thirty grams or less to be opened in his or her presence by the person to whom it is addressed, the person who sent it or a person authorized by either of those persons.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

11. Subsection 17(1) - An officer may examine any mail that is being imported or exported and open or cause to be opened any such mail that the officer suspects on reasonable grounds contains currency or monetary instruments of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1). (The threshold is \$10,000 Canadian).
12. Subsection 17(2) - 17(1) operates under the restriction that an officer may not open or cause to be opened any mail that weighs 30 grams or less unless the person to whom it is addressed consents or the person who sent it consents or has completed and attached to the mail a label in accordance with article 116 of the Detailed Regulations of the Universal Postal Convention.

Tobacco Act

13. Section 13 prohibits a person in Canada, other than a retailer or a manufacturer, to cause tobacco products to be mailed by ordering them, for consideration, from a foreign supplier.
14. Under the terms of a Memorandum of Understanding with Health Canada, customs investigators have been designated as “inspectors” pursuant to the *Tobacco Act* and are authorized to enforce section 13 of the *Tobacco Act*.

PURPOSE AND SCOPE

15. The purpose of this policy is to provide guidelines to customs officers in the examination of international mail.
16. This policy applies to all customs officers.

POLICY GUIDELINES

General

17. Customs officers must have reasonable grounds to suspect that an international mail item is carrying “goods” before they can open and examine it. Passports are considered goods. Currency, while not considered “goods” under the *Customs Act*, can be examined under the authority of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.
18. Officers may conduct selective, mandatory or random examinations (including blitzes) to determine the presence of prohibited, regulated or controlled goods and to verify declarations and look for invoices.
19. When declarations do not accurately report the value, descriptions, quality or country of origin, and the officer finds evidence that the exporter made a deliberate attempt to evade duties or taxes or otherwise circumvent customs requirements, the goods may be subject to an administrative monetary penalty (AMP) or seizure. (See Part 5, Chapter 1 Commercial Seizures, Ascertained Forfeitures and Administrative Monetary Penalties).
20. When seizure action is applicable, the Customs Seizure Receipt (form K19) is sent to the exporter and the Notice of Seizure (form K138) is sent to the addressee. If there is evidence that the addressee is involved with the exporter, the addressee’s name is added to the seizure document as an associate.
21. Officers will not open international mail items weighing less than thirty grams without the consent of the addressee, sender, or a person authorized by either of these persons. It is acceptable for an officer to open the item on their behalf if they so agree in writing.

Note: The thirty-gram rule applies to the contents of international mail items. Therefore, if an item is suspect, the weight of packaging can be

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Postal Examination

- estimated and subtracted from the overall weight to determine if the contents weight less or more than thirty grams.
22. Consent will only be sought if the officer has reasonable grounds to suspect that the mail item weighing less than thirty grams contains prohibited, regulated, or controlled goods.
 23. If permission is refused, mail will be returned to the Canada Post Corporation (CPC) as undeliverable. Even if an officer suspects the package of containing contraband such as drugs, the package must be returned to CPC.
 24. All examinations will be conducted in a thorough, methodical, and proficient manner.
 25. Officers will utilize the necessary contraband detection tools and equipment whenever possible and when deemed appropriate.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures.
 26. Officers may use non-intrusive examination techniques such as x-rays on items weighing thirty grams or less, but cannot use intrusive detection devices such as probes. Techniques that do not allow personal correspondence to be read and do not cause the package to be opened are acceptable. Detector dogs are acceptable if there is no danger that a dog will inadvertently cause a package to be opened.
 27. All items encountered in an examination will be treated as if they are potential evidence.
 28. Officers will familiarize themselves with indicators, concealment methods, and other related information by reading intelligence bulletins, alerts, and other relevant publications available at the port.
 29. Officers will record in their notebook and in the Postal Import Control System (PICS) the details of all resultant examinations. Officers may also record non-resultant examinations if they believe the information is important to share (e.g. to report that a targeted examination revealed no contraband).
 30. Officers will key into the Occurrence Reporting System, for the Regional Intelligence Officer and/or Targeting Unit, reports on all resultant

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- examinations. They may also key information on non-resultant examinations if they deem there is a reason to do so.
31. All mail items that are opened and examined are to be identified as opened and examined by closing the items with customs tape, Form E608, *Opened by Customs* or stamping the mail item "Examined by Customs."
 32. Any problems encountered in following this policy or in the performance of an examination are to be reported immediately to the responsible customs superintendent or manager.

Health and Safety

33. When conducting examinations, officers will take measures to protect themselves and the health and safety of those around them.
34. Officers will take the necessary preventative measures such as wearing gloves, goggles, breathing masks, or whatever equipment is appropriate, to protect their health and safety during examinations.
35. When hazardous materials are encountered, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards), CANUTEC guidelines, and Material Safety Data sheets accessible through the Canadian Centre for Occupational Health and Safety website at www.ccohs.ca.
36. When required, officers through their superintendent will call responsible agencies that have the expertise to deal with hazardous materials that have been encountered.

Note: Refer to D5-1-4 for detailed guidelines pertaining to international mail containing intoxicating liquors and dangerous materials.

Items Subject to Solicitor-Client Privilege

37. Officers will not normally open letters or packages addressed to/from a lawyer's office to/from individuals or entities that clearly contain only documents, as the documents are potentially privileged.

Note: Letters and packages marked as "solicitor-client privilege" or "documents" meet the criteria and will be treated as privileged.
38. Packages containing passports may be examined under section 99 of the *Customs Act* and may be detained under section 101 of the *Customs Act*. Passports are not considered documents subject to solicitor-client privilege.

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39. Letters or packages subject to solicitor-client privilege should be released or accounted for in the normal manner unless there are reasonable grounds to suspect the letter or package contains more than documents subject to privilege. The item may then be opened (subject to the 30 gram rule) to determine admissibility, tariff treatment or the presence of contraband, unreported goods or falsely reported goods.

Note: Documents within may also be scanned to the "minimum extent necessary to establish whether it is properly the subject of solicitor-client privilege" (Dickson J. – *Solosky v. The Queen {1980}*).

40. Unreported, falsely reported, or illicit goods discovered within letters or packages sent between lawyers' offices and individuals or entities may be removed and dealt with in accordance with seizure and administrative monetary penalties (AMP's) policies.

Note: Refer to Part Five, Chapters One through Five for policy and procedures relating to seizures and AMP's.

41. Documents may be retained and copied as evidence of a contravention if they are clearly not subject to solicitor-client privilege (e.g., invoices). Where there is a suggestion of any degree the documents are subject to privilege, the documents should be sealed and either returned for processing or sealed in an evidence bag and set aside for review by a court for confirmation of privilege.
42. Packages addressed to/from a lawyer or a law firm that clearly contain casual or commercial goods do not attract solicitor-client privilege and may be processed in the normal manner.

Examination of Personal Papers and Journals

Note: Refer to Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the examination of personal papers and journals.

43. Officers will not read any correspondence contained in an international mail item. However, if an item has been seized (and only if it has been seized) officers are permitted to scan the correspondence to the minimum amount necessary to determine if the correspondence should be referred to Citizenship and Immigration Canada.

Note: The term correspondence does not include invoices, order forms, cheques, newspapers, magazines, books, catalogues, blank forms,

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manuscripts, or recorded mass storage devices such as tapes, microfilm, or discs (unless the devices contain personal material).

Note: Refer to D-5-1-1 and R-5-1-1 for additional information regarding international mail containing personal papers and journals.

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Seizures of foreign tobacco imported by mail pursuant to the *Tobacco Act*

44. Undeclared tobacco products should be seized under the *Customs Act* with no terms of release.
45. Declared tobacco products, mailed to an individual in commercial quantities, should be detained under section 101 of the *Customs Act* and the case should be referred to Investigations. CBSA Investigators (acting as Health Canada tobacco inspectors) may then conduct a *Tobacco Act* investigation.
46. Investigators will consider seizure and prosecution pursuant to the *Tobacco Act* if:
 - a) there is reason to believe that the tobacco products are destined to end users in Canada;
 - b) there is evidence that the person in Canada caused the goods to be mailed by ordering them for consideration;
 - c) the importer is a repeat offender or acted with indifference or premeditation;
 - d) there is no *Customs Act* offence (i.e. the tobacco products were declared); or
 - e) the amount of tobacco meets Health Canada's prosecution guidelines.
47. If tobacco products imported by international mail are consigned to a Canadian **retailer or manufacturer**, they must be provided with an opportunity to meet the marking and labelling requirements of the *Tobacco Act*, the *Excise Act*, provincial tobacco regulations and to pay the applicable duties and taxes. The CBSA, via Investigations, should contact Health Canada in cases involving suspected violations of the Tobacco Product Information Regulations by retailers or manufacturers.

International Mail Examination Damages

Note: Refer to D5-1-5 for detailed procedures pertaining to the handling of damaged international mail items and their contents, and the areas of responsibility for repackaging.

48. Officers will take photographs before and after examinations when:

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- a) it is likely there will be a complaint as a result of conducting an examination;
 - b) there is pre-existing damage;
 - c) they suspect that damage may be caused during an examination;
 - d) they are going to dismantle or remove permanent fixtures or parts; or
 - e) drill, cut, or break an item to determine if it is concealing goods.
49. Where feasible X-ray photographs of the item should be included.
50. Examining officers will photograph any unexpected accidental damage resulting from an examination.
51. In some instances international mail items are received in Canada with the wrapping in damaged condition. CPC is responsible for the repair to the packaging of any item damaged while in the course of post or while in customs control. When a mail item with a damaged wrapper is found at the primary sorting area, the particulars and extent of damage are to be noted on the outside cover of the item and the endorsement initialled by both customs and CPC. In cases of pre-existing damage discovered during secondary examination, or when damage is caused by an examination, officers will record all of the relevant information in their notebooks, in PICS and in the damage log.
52. When an examination causes damage, officers will record it in the Damage Log and prepare a report for the superintendent indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent, and its suspected or actual cause as well as making a notation in PICS.

Examination Related Costs

53. The CBSA may pay for affected items to be brought back to their original state or will make monetary amends when an examination is non-resultant and damage has occurred.
54. The CBSA will not normally pay for damages to personal belongings when they are or have been used in contravention of and seized under the *Customs Act*. Goods seized by customs belong to the Crown from the moment of seizure.

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Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter Nine, Section Three, Financial Administration Volume, Finance and Administration Manual.

55. Damages will not be paid for that occurs before or after customs processing.

ROLES AND RESPONSIBILITIES

Customs Officers

56. Customs officers are responsible for:
- a) adhering to this policy and procedures;
 - b) identifying suspect international mail items and processing them in accordance with CBSA policy and procedures;
 - c) taking all necessary precautions against all identified hazards before, during, and after mail examinations;
 - d) maintaining in safe and good working order all contraband detection equipment used in examinations;
 - e) keeping detailed notes on all resultant mail examinations; and
 - f) keying reports on resultant mail examinations, into the Occurrence Reporting System (ORC) for the Regional Intelligence Officer and/or Targeting Unit and advising their superintendent. Reports on non-resultant examinations may also be keyed if the officer believes the information will be important.

Note; Positive or negative results should be noted in PICS.

Customs Superintendents

57. Customs superintendents are responsible for:
- a) ensuring that the policies and procedures related to mail examinations are adhered to by customs officers;
 - b) guiding and supporting customs officers in the performance of their duties;

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Postal Examination

- c) promoting and monitoring proper examination procedures and compliance with health and safety requirements, and correcting any breaches;
- d) ensuring all required health and safety equipment is available;
- e) taking appropriate corrective action on any breaches of this policy; and
- f) ensuring reports on resultant examinations are keyed into ORS for the Regional Intelligence Officer and/or Targeting Unit and advising officers on which non-resultant examinations are important to share through this reporting system.

Customs Contraband, and Intelligence and Investigations

58. Customs Contraband, Intelligence and Investigations (CCII) is responsible for:
- a) developing, modifying, and approving policies and procedures pertaining to international mail examination in accordance with court jurisprudence;
 - b) ongoing development and support of examination techniques and tools;
 - c) providing guidance to the field pertaining to the tools and instruments used in contraband detection; and
 - d) monitoring adherence with this policy by the regions.

PROCEDURES

Note: Refer to Memorandums D5-1 and R5-1 for guidelines on the processing and examination of international mail.

REFERENCES

59. *Customs Act*
Finance and Administration Manual
D Memorandums

CUSTOMS ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 13

COURIER EXAMINATION POLICY AND PROCEDURES

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of international courier items in accordance with the provisions set out in the *Customs Act*.

DEFINITIONS

2. Refer to "Glossary".

AUTHORITIES

Customs Act

3. Section 11.2 – Allows the designation of areas as customs controlled areas.
Section 11.3 – Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
4. Subsection 12(3)(b) – Requires that goods imported on board a conveyance arriving in Canada must be reported to the CBSA by the person in charge of the conveyance.
5. Section 13 – Importers, exporters, transporters, and their representatives are obligated to answer truthfully questions asked with respect to commercial shipments and present the goods, remove any covering, unload any conveyance, and open or unpack any package or container that a CBSA officer wishes to examine.
6. Sub-section 99(1)(a) – Authorizes CBSA officers to examine goods and any containers or conveyance that may contain goods upon importation and up to the time of release.
7. Sub-section 99(1)(c) – Authorizes CBSA officers to examine any goods that have been reported under section 95 at any time up to the time of exportation.
8. Subsection 99(1)(e) – Authorizes CBSA officers who suspect on reasonable grounds that this Act or the regulations of any other Act of Parliament might be contravened, to open or cause to be opened any package or container in order to examine the goods.

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9. Subsection 99(1)(f) - Authorizes officers who suspect on reasonable grounds that this Act or the regulations of any other Act of Parliament might be contravened, to stop, board, and search a conveyance, to open or cause to be opened any package or container in order to examine the goods, and direct the conveyance be moved to a CBSA office or other suitable place for the search, examination, or opening.

PURPOSE AND SCOPE

10. The purpose of this policy is to provide guidelines to CBSA officers in the examination of international courier items.
11. This policy applies to all CBSA officers.

POLICY GUIDELINES

General

12. CBSA officers will conduct a review of arrival or pre-arrival courier documentation and target suspect courier shipments for examination. There are no national standards for review times. Local CBSA offices and on-site couriers will come to mutually acceptable time limits.
13. Officers may do selective, mandatory or random examinations to determine the presence of prohibited, regulated or controlled goods and to verify declarations and look for invoices.
14. All examinations will be conducted in a thorough, methodical, and proficient manner.
15. Officers will utilize the necessary contraband detection tools and equipment, and detector dog teams whenever possible and when deemed appropriate.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures.

16. All items encountered in an examination will be treated as if they are potential evidence.

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17. Officers will familiarize themselves with indicators, concealment methods, and other related information by reading intelligence bulletins, alerts, and other relevant publications available at the port.
18. Officers will record in their notebook the details of any resultant examinations. Officers may also record results of non-resultant examinations if they believe the information is significant.
19. Officers will key into the Occurrence Reporting System, for the Regional Intelligence Officer and/or Targeting Unit, reports on all resultant examinations. They may also key information on non-resultant examinations if they deem there a reason to do so. For example, the officer may report that a targeted examination revealed no contraband.
20. Officers will advise the superintendent of any examinations resulting in enforcement action and of any examinations that involve problems or extenuating circumstances.
21. Officers will follow procedures set out locally between the courier and the CBSA in the event that goods are removed from a warehouse.

Enforcement Action Documentation

22. Commercial shipments are subject to administrative monetary penalties.
23. When the person who caused the goods to be imported is an individual importing goods for personal use, the applicable enforcement action is seizure rather than an administrative monetary penalty even if the person is using the services of a broker.
24. Normally, goods that may be subject to enforcement actions should be removed from the Cargo/Release list by way of a form Y50. The importer or agent must then present an individual accounting package for the shipment and any subsequent enforcement action is in the name of the importer.
25. When specified goods (e.g. tobacco, alcohol, firearms, child pornography, and drugs) are encountered and enforcement action is warranted, the name of the principal on seizure receipts or notices of penalty assessments may be either the exporter or importer based on the following:
 - a) the exporter is named when, immediately following an examination, enforcement action is taken based on the exporter's declaration (i.e. there are no links between the importer and the contravention). If the officer finds evidence that confirms that the importer knew of the attempt

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to contravene the *Customs Act*, the importer may be named as an associate.

- b) the importer is named when a declaration was requested and received (i.e. a link exists between the importer and the contravention).

Note: See Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and Administrative Monetary Penalties, for information on goods specified by means of Ministerial Directive.

Health and Safety

26. When conducting examinations, officers will take measures to protect the health and safety of themselves and those around them.
27. Officers will take the necessary preventative measures such as wearing gloves, goggles, breathing masks, or whatever equipment is appropriate, to protect their health and safety during examinations.
28. During examinations, officers must be aware of the danger from needles, broken glass, razor blades, knives, and other sharp or pointed objects.
29. When hazardous materials are encountered, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards), CANUTEC guidelines and Material Safety Data sheets accessible through the Canadian Centre for Occupational Health and Safety website at www.ccohs.ca. These sheets should be posted in readily accessible areas.

Items Subject to Solicitor-Client Privilege

30. Officers will not normally open letters or packages addressed to/from lawyer's offices to/from individuals or entities if they clearly contain only documents, as they are potentially privileged.

Note: Letters and packages addressed to/from a lawyer's office or marked as "solicitor-client privilege" or "documents" meet the criteria and will be treated as privileged.

Note: Packages containing passports may be examined under section 99 of the *Customs Act* and may be detained under section 101 of the *Customs Act*. Passports are not considered documents subject to solicitor-client privilege.

Note: In the courier stream, there is no restriction on examining letters weighing less than 30 grams without permission, as is the case in the postal stream.

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31. Letters or packages subject to solicitor-client privilege should be released or accounted for in the normal manner unless there are reasonable grounds to suspect the letter or package contains more than documents subject to privilege. The item may then be opened to determine admissibility, tariff treatment or the presence of contraband (e.g. monetary instruments), unreported goods or falsely reported goods. However, such openings should not be conducted without cause.

Note: Documents within may also be scanned to the "minimum extent necessary to establish whether it is properly the subject of solicitor-client privilege" (Dickson J. – *Solosky v. The Queen {1980}*).

32. Unreported, falsely reported, or illicit goods discovered within letters or packages sent between lawyers' offices and individuals or entities may be removed and dealt with in accordance with seizure and Administrative Monetary Penalty (AMP) policies.

Note: Refer to the AMPS Reference Manual and EN Manual, Part Five, Chapters One through Five for policy and procedures relating to seizures and AMPs.

33. Documents may be retained and copied as evidence of a contravention if they are clearly not subject to solicitor-client privilege (e.g., an invoice for goods). Where there is a suggestion of any degree the documents are subject to privilege, the documents should be either returned for processing or sealed in an evidence bag and set aside for review by a court for confirmation of privilege.

Note: Refer to Part Five, Chapters One through Five for policy and procedures relating to handling of evidence.

34. Packages addressed to/from a lawyer or a law firm that clearly contain casual or commercial goods do not attract solicitor-client privilege and may be processed normally.

Note: This should be evident from the declaration label that is attached to the package.

Examination of Personal Papers and Journals

Note: Refer to Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the examination of personal papers and journals.

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Courier Examination

35. Officers will not read any correspondence contained in an international courier item, except in certain seizure circumstances. However, if an item has been seized (and only if it has been seized) officers are permitted to scan the correspondence to the minimum amount necessary to determine if further action is required.

Note: The term correspondence does not include invoices, order forms, cheques, newspapers, magazines, books, catalogues, blank forms, manuscripts, or recorded mass storage devices such as tapes, microfilm, or discs.

Photocopying and Electronic Scanning of Personal Papers and Journals

Note: Refer to Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the photocopying and electronic scanning of personal papers and journals.

Identification Documents

36. Officers in the postal or courier stream may have reason to suspect that identification documents:
- were fraudulently or improperly obtained or used,
 - are intended to be used fraudulently or improperly,
 - will be used in such a manner as to contravene the purposes of the *Immigration and Refugee Protection Act (IRPA)*; or
 - will induce an error in the administration of the *IRPA*.
37. Such suspicion would be generated if for example, there is a Field Operational Support System (FOSS) lookout on the consignee or the name does not match the consignee.
38. When officers have reason to suspect that identification documents should be referred for further investigation, the officer will:
- advise the Regional Intelligence Officer (RIO) who will contact an investigations officer and/or an immigration intelligence officer as required;

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- b) if the documents were hidden, consider seizing them under section 110 of the *Customs Act* using the allegation of non-report but do not release the documents until advised by the RIO;
- c) if not seized, detain the documents on form K24, Non-Monetary General Receipt, pursuant to section 101 of the *Customs Act* until advised that they are in compliance with the *IRPA*;
- d) do not forward either a seizure notice or a detention notice prior to RIO approval;
- e) if it is determined that the documents should be seized, a CBSA officer may:
 - i) seize the documents,
 - ii) provide the original officer (if not the same) with a copy of form IMM 5079, Notice of Mail Seizure Under Subsection 140(1) of the *Immigration and Refugee Protection Act*,
 - iii) provide the original officer (if not the same) with a copy of form IMM Record of Examination/Seizure of Documents From International Mail and Courier Services, and
 - iv) ensure the importer and exporter are advised of the results as per *IRPA* enforcement policy and procedures;
- f) faxing the form to the applicable office (during its business hours) or to the 24/7 office for their region for entry into the FOSS system;

Examination Damages

39. Where cameras are available, officers will take photographs before and after examinations when:
- a) it is likely there will be a complaint as a result of conducting an examination;
 - b) there is pre-existing damage;
 - c) they suspect that damage may be caused during an examination;
 - d) they are going to dismantle or remove permanent fixtures or parts; or
 - e) drill, cut, or break an item to determine if it is concealing goods.

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Courier Examination

Note: Photographs taken prior to examination will record any existing damage. Photographs taken after examination will document the extent of the damage caused, if any.

40. Examining officers will photograph any accidental damage resulting from an examination.
41. In cases of pre-existing damage or when damage is caused by an examination, officers will record all of the relevant information in their notebooks.
42. When an examination causes damage, officers will prepare a report for the superintendent indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent, and its suspected or actual cause.

Examination Related Costs

43. The CBSA may pay for affected items to be brought back to their original state or may make monetary amends when an examination is non-resultant and damage has occurred.
44. The CBSA will not normally pay for damages to personal belongings or conveyances when they are or have been used in contravention of and seized under the *Customs Act*. Goods seized by the CBSA belong to the Crown from the moment of seizure.

Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter Nine, Section Three, Financial Administration Volume, Finance and Administration Manual.

ROLES AND RESPONSIBILITIES

CBSA Officers

45. CBSA officers are responsible for:
 - a) adhering to this policy and procedures;
 - b) identifying suspect international courier items and processing them in accordance with the CBSA policy and procedures;
 - c) taking all necessary precautions against all identified hazards before, during, and after courier examinations;

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- d) maintaining in safe and good working order all contraband detection equipment used in examinations;
- e) keeping detailed notes on all unusual or resultant courier examinations; and
- f) keying reports on resultant courier examinations into the Occurrence Reporting System (ORS) for the Regional Intelligence Officer and/or Targeting Unit and advising their superintendent of any enforcement actions. Reports on non-resultant examinations may also be keyed if the officer believes the information should be shared.

CBSA Superintendents

46. CBSA superintendents are responsible for:

- a) ensuring that the policies and procedures related to courier examinations are adhered to by CBSA officers;
- b) guiding and supporting CBSA officers in the performance of their duties;
- c) promoting and monitoring proper examination procedures and compliance with health and safety requirements and correcting any breaches;
- d) ensuring all required health and safety equipment is available;
- e) taking appropriate corrective action on any breaches of this policy; and
- f) ensuring reports on resultant examinations are keyed into ORS for the Regional Intelligence Officer and/or Targeting Unit and advising officers on which non-resultant examinations are important to share through this reporting system.

Enforcement Branch

47. The Enforcement Branch (EB) is responsible for:

- a) developing, modifying, and approving all policies and procedures pertaining to international courier examination in accordance with court jurisprudence;
- b) ongoing development and support of examination techniques and tools;

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- c) providing guidance to the field pertaining to the tools and instruments used in contraband detection; and
- d) monitoring adherence with this policy by the regions.

PROCEDURES

Note: Refer to Part Four, Chapter Four, Commercial Shipment Examination Policy and Procedures.

REFERENCES

- 48. *Customs Act*
Finance and Administration Manual
D Memorandums
Courier Imports Remission Order

CUSTOMS ENFORCEMENT MANUAL

Part 5

ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND CONVEYANCES

Chapter 1

COMMERCIAL SEIZURES, ASCERTAINED FORFEITURES, AND ADMINISTRATIVE MONETARY PENALTIES

EN Part 5 Chapter 1 Commercial Seizures, Ascertained Forfeitures, and AMPS

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to use the Administrative Monetary Penalty System (AMPS) as its main enforcement tool in addition to seizure and ascertained forfeiture in certain circumstances and for certain commodities.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 7.1 – States that any information provided to an officer in the administration or enforcement of this Act, the *Customs Tariff* or the *Special Imports Measures Act* or under any other Act of Parliament that prohibits, controls, or regulates the importation or exportation of goods must be true, accurate, and complete.
4. Subsection 12(1) – States that all goods that are imported must be reported at the nearest CBSA office except under certain circumstances or subject to prescribed conditions.
5. Section 13 – States that every person who reports goods under section 12 or is stopped by an officer under section 99.1 must:
 - a) answer truthfully questions asked by the officer respecting the goods; and
 - b) if requested by an officer, present the goods and make them ready for examination.
6. Section 15 – Requires persons who have or find in their possession goods that have been imported and believes on reasonable grounds are prohibited, controlled, or regulated and have not been lawfully imported or the duties owing on the goods have not been paid must report the goods to an officer.
7. Subsection 32(1) – States that every importer is legally liable to fully account for goods being imported and, except under prescribed or

EN Part 5 Chapter 1 Commercial Seizures, Ascertained Forfeitures, and AMPS

- regulated conditions, to pay the duties lawfully payable prior to the release of the goods.
8. Section 95 – States that all goods that are exported must be reported at the time and place of exportation.
 9. Subsections 97.25(1) and (2) – States that goods reported for exportation under section 95 or imported on behalf of a debtor and conveyances used in the importation of goods that are the subject of a notice served under section 109.3:
 - a) are subject to a lien for the amount owed by the debtor; and
 - b) may be detained by an officer at the expense of the debtor or the person on whom the notice (109.3) was served until the total amount is paid.
 10. Subsections 97.25(3) and (4) – Authorizes the Minister, after thirty days notice to the debtor at their last known address, to direct the sale of imported goods, goods reported for export, or conveyances that have been detained. The section authorizes the Minister to apply any proceeds to amounts owed by the debtor, expenses incurred by the Government of Canada, and duties and taxes owing, and remit any surplus to the debtor.
 11. Subsection 109.1(1) – Every person who fails to comply with any provision of an Act or a regulation designated by the regulations made under subsection (3) is liable to a penalty of not more than twenty-five thousand dollars, as the Minister may direct.
 12. Subsection 109.1(2) – Every person who fails to comply with any term or condition of a license issued under this Act or the Customs Tariff or any obligation undertaken under section 4.1 is liable to a penalty of not more than twenty-five thousand dollars, as the Minister may direct.
 13. Subsection 109.1(3) – The Governor in Council may make regulations:
 - a) designating any provisions of this Act, the *Customs Tariff*, or the *Special Import Measures Act* or of any regulation made under any of those Acts; and
 - b) establishing short-form descriptions of the provisions designated under paragraph (a) and providing for the use of those descriptions.
 14. Subsection 109.2(1) – In this section, “designated goods” includes firearms, weapons, ammunition, and any other goods classified under chapter 93 of the List of Tariff Provisions set out in the schedule to the Customs Tariff or under tariff item No. 9898.00.00 of that List.

EN Part 5 Chapter 1 Commercial Seizures, Ascertained Forfeitures, and AMPS

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15. Subsection 109.2(2) – Every person is liable to a penalty equal to double the total of the duties that would be payable on like tobacco products or designated goods released in like condition at the rates of duties applicable to like tobacco products or designated goods at the time the penalty is assessed, or to such lesser amount as the Minister may direct, if the person:
 - a) removes tobacco products or designated goods or causes tobacco products or designated goods to be removed from a CBSA office, sufferance warehouse, bonded warehouse, or duty free shop in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts, or
 - b) sells or uses tobacco products or designated goods designated as ships' stores in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts,
16. Subsection 109.3(1) – A penalty to which a person is liable under sections 109.1, or 109.2 may be assessed by an officer and, if an assessment is made, an officer shall serve on the person a written notice of that assessment by sending it by registered or certified mail or delivering it to the person.
17. Subsection 109.3(2) – A person shall not be assessed penalties under both sections 109.1 and 109.2, in respect of the same contravention of this Act, or the *Customs Tariff* or the regulations made under those Acts.
18. Subsection 109.3(3) – An assessment under subsection (1) may be made in addition to a seizure under this Act or a demand for payment under section 124, in respect of the same contravention of this Act or the regulations.
19. Section 109.4 – A penalty assessed against a person under section 109.3 shall become payable on the day the notice of assessment of the penalty is served on the person.
20. Section 109.5 – Subject to subsection (2), a person on whom a notice of assessment of a penalty has been served under section 109.3 shall pay, in addition to the penalty, interest at the prescribed rate for the period beginning on the day after the notice was served on the person and ending on the day the penalty has been paid in full, calculated on the outstanding balance of the penalty. Subsection (2) stipulates that interest is not payable if the person pays the penalty in full within thirty days after the date of the notice of assessment.

EN Part 5 Chapter 1 Commercial Seizures, Ascertained Forfeitures, and AMPS

21. Subsection 110(1) – Authorizes officers that have reasonable grounds to believe that this Act or its regulations have been contravened with regard to goods, to seize without terms of release:
 - a) goods; or
 - b) any conveyance they have reasonable grounds to believe was used in respect of the goods either at or after the time of the contravention.
22. Subsection 110(2) – Authorizes officers to seize as forfeit conveyances when they have reasonable grounds to believe that this Act or its' regulations have been contravened respecting the conveyance or regarding persons transported by the conveyance.
23. Subsection 110(3) – Authorizes officers to seize anything that they believe on reasonable grounds is evidence of a contravention when they believe on reasonable grounds that this Act or its' regulations have been contravened.
24. Subsection 110(4) – States that officers who seize goods or a conveyance as forfeit under subsections (1) or (2) must take reasonable measures to give notice of the seizure to any person they believe on reasonable grounds is entitled to make application under section 138 regarding the goods or conveyance.
25. Sections 117, 118, and 119 – Authorize border services officers to release any seized goods, conveyances, or perishables to the person from whom they were seized or to a person they authorize, on receipt of a sum of money equal to the value of the goods plus the duties and taxes where applicable or such lesser amount as the Minister may direct. Spirits, wine, specially denatured alcohol, raw leaf tobacco or tobacco products shall not be returned to the person from whom they were seized or any other person unless they were seized in error.
26. Section 124 – Provides the authority to effect ascertained forfeitures in respect of goods or conveyances when the goods or conveyance is not found or if the seizure thereof would be impractical.
27. Section 138 – States that when goods or a conveyance is seized as forfeit under this Act or a conveyance is detained under subsection 97.25(2), any person, other than the person who was in possession of the conveyance at the time it was seized or detained, who claims a third party interest in the conveyance has ninety days after the seizure or detention to apply for a decision under section 139.

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28. *Designated Provisions (Customs) Regulations* – These describe contraventions that attract AMP's.

BACKGROUND

29. On October 7, 2002, the Administrative Monetary Penalty System (AMPS) became effective and authorizes border services officers to assess monetary penalties for contraventions of the *Customs Act*, *Customs Tariff*, and the regulations pursuant to these Acts.
30. The purpose of the AMPS is to provide border services officers with a means to deter non-compliance by its' clients and to assist them in meeting their obligation to comply with Canada's trade, tax, and border legislation.
31. AMPS imposes monetary penalties in proportion to the type, frequency, and severity of the infraction. Most penalties are graduated, increase in amount with repetitive non-compliance and also take the contravention history of the client into consideration. AMP's are applied against the business as opposed to seizures, which are applied against goods.
32. AMPS replaces the need for most commercial seizures and ascertained forfeitures. These two enforcement actions, however, are still applied for certain contraventions i.e., sections 7.1, 12, 13, 15, 95, and 96 of the *Customs Act* when the maximum penalty of \$25,000 is reached. Seizures and ascertained forfeitures are also applied for certain contraventions when they involve specified goods. In addition, criminal prosecution procedures continue to be undertaken where warranted due to the seriousness of an offence or the potential for harm to society.
33. AMPS applies to contraventions involving commercial traders and service providers including importers, exporters, brokers, warehouse and duty free shop operators, carriers, and freight forwarders. Contraventions involving travellers with "casual" or non-commercial goods continue to be subject to travellers' seizure and ascertained forfeiture enforcement actions.

PURPOSE AND SCOPE

34. The purpose of this policy is to outline the guidelines to be followed when dealing with commercial seizures and ascertained forfeitures and how they relate to AMPS contraventions as reflected in the Presidential Directive under Appendix "A".

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35. This policy applies to all employees of the CBSA who are responsible for the administration and enforcement of the *Customs Act*, *Customs Tariff*, and the regulations pursuant to these Acts.

POLICY GUIDELINES

Note: Refer to the Master Penalty Document for contraventions pertaining to the application of AMPS at the following website.

Note: Refer to the AMPS Reference Manual for guidelines pertaining to the application of AMPs. This reference manual is not currently available on a web site.

Note: Refer to Part 5, Chapter 2, Travellers' Seizure and Ascertained Forfeiture Policy and Procedures for guidelines for dealing with contraventions involving travellers with "casual" or non-commercial goods.

Seizure of Specified Goods in addition to an AMP

36. In addition to any AMP issued in respect of contraventions, C021, C022, C025, C031, C066, C069, C203, C344, C345, C346, C348, C358, C359, C360, C361, C366 and C367 listed in the regulations made pursuant to subsection 109.1(1) of the *Customs Act*, border services officers **will** seize the following specified goods and hold them with no terms of release:
 - a) alcohol, including ethyl alcohol, spirits, beer, malt liquors, and wine;
 - b) tobacco and all tobacco products;
 - c) prohibited weapons, devices, munitions, parts, and components set out in 9898.00.00;
 - d) firearms;
 - e) drugs and substances as set out in the *Controlled Drugs and Substances Act*;
 - f) child pornography;
 - g) conveyances that have been specifically modified or manufactured and used for smuggling purposes; and

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- h) controlled goods whose export would pose a security risk.
- 37. In cases where specified goods are not available for seizure and would have been seized were they available, officers will apply an ascertained forfeiture in addition to any AMP applied.

Seizure or Ascertained Forfeiture in Lieu of an AMP

- 38. Where the maximum AMP amount allowed per contravention is exceeded (i.e. \$25,000) and the contravention is in breach of sections 7.1, 12, 13, 15, 95, or 96 of the *Customs Act* (non-report, untrue statements, false information), officers will either seize the goods or apply an ascertained forfeiture in lieu of an AMP.

Note: This does not apply to specified goods.

Note: Refer to Chapter 3 of the AMPS Reference Manual: Determining Appropriate Enforcement Measures.

- 39. Where goods have been seized in lieu of an AMP that exceeded the maximum allowable and the contravention is in breach of sections 7.1, 12, 13, 15, 95, or 96 of the *Customs Act* (non-report, untrue statements, false information) and contraventions, C021, C022, C025, C031, C066, C069, C203, C344, C345, C346, C348, C358, C359, C360, C361, C366 and C367 terms of release will be offered.

Note: In these cases, terms of release will be calculated according to the methods used to calculate the AMP.

Note: See Appendix A for a listing of terms of release.

- 40. Where ascertained forfeiture has been applied in lieu of an AMP that exceeded the maximum allowable (\$25,000) and the contravention is in breach of sections 7.1, 12, 13, 15, 95, or 96 of the *Customs Act* (non-report, untrue statements, false information) and contraventions, C021, C022, C025, C031, C066, C069, C203, C344, C345, C346, C348, C358, C359, C360, C361, C366 and C367 officers will calculate the amount demanded using the same rates as would apply to an AMP (see Appendix A).

Seizure and Ascertained Forfeiture Documents and Allegations

- 41. Seizures of commercial goods will be documented in the Integrated Customs Enforcement System (ICES) or for non-automated customs offices a K19 must be completed manually.

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Note: Refer to ICES User Reference Manual, Chapter Eight, Commercial Commodity.

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42. Officers will complete seizure documentation manually when terms of release are offered. The manual seizure will be sent to the Enforcement Branch, Intelligence Directorate, for input in recovery mode. ICES can be used when goods are seized and no terms of release are offered.

Issuing Officer Reports

43. Reports should deal with the specifics and not contain any personal comments. Under no circumstances will border services officers contact Recourse Directorate for assistance in the decision-making process leading to seizure action.
44. Officers will use the following generic allegation when issuing a K19:

“The goods listed below / on the attached statement are seized under paragraph 110(1)(a) of the *Customs Act* in respect of a contravention of (list section number) of the (list Act or regulation); and the conveyance listed below / on the attached statement is seized under paragraph 110(1)(a) of the *Customs Act* because it was modified or used for smuggling.”

45. Officers will document ascertained forfeitures on a Notice of Ascertained Forfeiture.

Assessment and Collection of Duties and Taxes

46. Officers will collect duties and taxes separate from the penalty amount required for the return of seized goods or as the penalty payment.
47. Officers will not collect duties and taxes on specified goods that have been seized and held as forfeit
48. Officers will assess duties and taxes against other goods when an ascertained forfeiture has been issued because the goods have already entered the country and are not available for seizure.

Detention

49. Goods may not be detained pending payment of an AMPS penalty. Recipients have 30 days in which to pay these penalties.
50. If Collections has determined that the person reporting the goods is a debtor to the Crown, the goods may be detained under section 97.25 of the *Customs Act* until the amount previously owed is paid.

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Liaison with Regional Investigations

51. Officers will refer matters meeting the criteria for prosecution to Investigations for further action.

Note: Refer to Part Nine, Chapters One and Two, Customs Prosecution Policy and Customs Prosecution Procedures.
52. Officers may seize goods as evidence under the authority of subsection 110(3) of the *Customs Act*.
53. An investigator will provide guidance regarding what evidence to seize. Investigators will follow the guidelines stipulated in the Enforcement Branch policy regarding the seizure of goods.
54. Officers will document seizure actions where goods are seized as evidence on an Evidence Seizure Receipt (E352).
55. When a situation involving unlawfully imported or exported goods are encountered beyond a CBSA point of entry, the Investigations Division/RCMP will normally issue an AMP. However, Investigations/RCMP may use seizure action when the physical control of the goods is required even if the penalty amount would not exceed \$25,000.

Release of Goods Subject to Enforcement Action

56. Border services officers must ensure that goods comply with all federal and provincial legislation for which the CBSA has responsibility.

Release Conditional on Exportation

57. Officers will consider requests for export of seized goods offered for release on a case-by-case basis.
58. Officers will not allow the export of seized goods offered for release in instances where they have reasonable grounds to believe that the goods will be re-introduced into Canada in an unlawful manner.
59. Export of goods seized and offered for release must be carried out under customs supervision, either by physical escort by customs to the point of exit from Canada or through completed and certified export transportation documents. An AMP is still issuable and payable.

Note: Include copies of export documents in the appropriate seizure files.

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Third Party Notification

60. The officer seizing goods or conveyances will, at the time of the seizure, take positive steps to determine if there are or could be third parties (e.g. rental car owners) involved.
61. Where it is determined that the person from whom the goods or conveyances are seized is not the actual owner of the goods, or it is apparent that there is an outstanding lien against the goods (this may be indicated on a sales receipt, or an insurance or registration slip), the owner, mortgage, or lien-holder must be notified that the goods are under seizure and that they may make application under section 138 of the *Customs Act*.
62. Notification under section 110(4) to the owner, mortgage, or lien-holder will be in the form of a completed Notice of Seizure (K138).

Note: Circumstances of the actual seizure are confidential between the CBSA and the person from whom the goods or conveyance was seized and should not be quoted in the notification.

63. A copy of each form K138 sent must be forwarded immediately to the Adjudications Division.

Appraisal

Note: Refer to Part Two, Chapter Five, Jewellery Policy and Procedures for guidelines on jewellery appraisal.

64. When assessing a penalty on goods which require an appraisal, officers will exercise care to calculate a value for duty that is fair and equitable, bearing in mind the circumstances of the case and the condition of the goods involved.

Correction Procedures (commercial seizures, traveller seizures, ascertained forfeitures and AMPS)

Note: See Chapters 7 and 8 of the AMPS Reference Manual for policy and procedures for correcting enforcement actions.

65. Section 127.1 (1) of the *Customs Act*, allows the Minister to cancel a seizure, or cancel or reduce an ascertained forfeiture or AMPS penalty within 30 days of the seizure, penalty or the demand for payment if there was no contravention or if there was an error with respect to the amount assessed, collected or demanded. The authorities of the Minister for this

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section have been delegated to the regional management of the CBSA (Superintendent, Chief, Manager).

66. The following procedures apply only to seizures under the *Customs Act* and not to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, or to Administrative Monetary Penalty System infractions (AMPS).
67. A correction may be initiated within 30 days by either regional management or at the request of a client. Client initiated requests must be made to the issuing office. If the request is made anywhere else, it must be forwarded to the issuing office.
68. The issuing office must inventory a client request and the final dispensation of all reviews (maintained, amended, cancelled, transferred) for audit purposes in ICS.
69. An enforcement action may be cancelled when it is evident that:
 - a) it was applied to the wrong client;
 - b) there was no contravention;
 - c) it was issued with an error in the amount calculated.
70. Section 127.1(1) of the *Customs Act* does not authorize the reduction of a seizure, but a seizure may be cancelled and a new one issued when it is simply a matter of a calculation error or the wrong client.
71. The Enforcement Branch will ensure that the seizure is cancelled in the Integrated Customs Enforcement System (ICES).
72. Section 127.1(1) of the *Customs Act* authorizes a designated officer to cancel or amend an AMP or an ascertained forfeiture in a lesser amount.

Requests transferred to the Recourse Directorate

73. A request must be transferred to the Recourse Directorate if:
 - a) it is determined that a contravention has occurred;
 - b) it cannot be processed within 30 days from the date of issuance;
 - c) there are aggravating or mitigating circumstances that should be taken into consideration;

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- d) the correction request was received from a 3rd or other 1st party (not the party identified on the seizure/ascertained forfeiture, nor his agent or representative).

Appeal Procedures

- 74. Section 129. (1) of the *Customs Act* allows a person to submit a written notice of appeal of an AMP, seizure or ascertained forfeiture within 90 days of issuance.
- 75. Officers will accept late claims, acknowledge receipt and forward the late claims to Recourse for their consideration and action.
- 76. When a claim is in respect of goods that have been disposed of for any reason, Recourse must be notified immediately.
- 77. Officers, superintendents, and managers must ensure that the following is sent to Recourse as soon as possible:
 - a) original redress request(s);
 - b) copies of acknowledgements letter(s) to client;
 - c) comments of officers involved concerning all the points raised in the request(s);
 - d) other comments superintendents or managers may deem appropriate;
 - e) originals of any correspondence received regarding the enforcement action.
 - f) copies of any letters of criticism, including complaints against officers dealing with the penalty action;
 - g) reports resulting from the investigation of complaints; and
 - h) anything that may appear to be a claim from a lien-holder or third party interest pursuant to section 138 of the *Customs Act*.
- 78. Cases will be held open until the seizing/assessing customs office is notified of a ministerial decision and, where applicable, subsequent instructions are issued by Recourse concerning disposition of any goods remaining on hand.

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79. Where an appeal is filed or a case is being held open for further investigation or other reasons, disposition of goods remaining on hand and the closing of cases must be withheld pending notification (i.e., third party orders, Federal Court Appeals).

Note: From the time an appeal and/or third party claim is received, the case becomes the responsibility of Customs Appeals under the procedure set out in sections 129 to 141 of the *Customs Act*.

80. Officers have an active role in the adjudications process. By supplying additional comments and evidence, when requested by the adjudicator or when the officer believes it is required, the officer contributes to the quality of the decision. It is imperative that officers review all submissions made by the public and all correspondence sent out by Recourse to better understand how to document future enforcement actions.
81. Refer to the Redress chapter of the AMPS Reference Manual for further details on how to process a request for redress.

REFERENCES

82. *Customs Act*
Memorandum D22-1-1
www.ccra.gc.ca/customs/general/amps/menu-e.html
AMPS Reference Manual
ICES User Reference Manual

Part 5

**ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND
CONVEYANCES**

Chapter 1

**COMMERCIAL SEIZURES, ASCERTAINED FORFEITURES, AND
ADMINISTRATIVE MONETARY PENALTIES**

Appendix A

**PRESIDENTIAL DIRECTIVE FOR THE SEIZURE AND ASCERTAINED
FORFEITURE OF COMMERCIAL GOODS AND CONVEYANCES**

EN Part 5 Chapter 1 Commercial Seizures, Ascertained Forfeitures, and AMPS

APPENDIX A

**Presidential Directive for the Seizure and Ascertained Forfeiture of
Commercial Goods and Conveyances**

The schedule of terms of release for seized goods or as a demand under paragraph 124(1)(b) of the *Customs Act* is found in Appendix A.

Pursuant to subparagraph 117(1)(a)(ii) and subsection 119.1(1) of the *Customs Act*, and to the Delegation Instrument signed by the President of the Canada Border Services Agency, in which the powers of the President in respect of the above-noted statutory authorities have been delegated to me, I hereby direct that, in respect of commercial contraventions, established in accordance with the Regulations made under section 109.1 of the *Customs Act*, the amounts of money indicated in the schedule outlined in Appendix A will be required for the return of goods that are seized under authority of subsection 110(1) of the *Act* for a contravention of section 7.1, 12, 13, 15, 95 or 96 of the *Act*.

Pursuant to paragraph 124(1)(b) of the *Customs Act*, and to the Delegation Instrument signed by the President of the Canada Border Services Agency, in which the power of the President in respect of the aforementioned authority has been delegated to me, I hereby direct that, in respect of commercial contraventions established in accordance with the Regulations made under section 109.1 of the *Customs Act*, the amounts of money indicated in the schedule outlined in Appendix A will be demanded under authority of section 124 of the *Act* for a contravention of section 7.1, 12, 13, 15, 95 or 96 of the *Act*.

The criteria outlined in Appendix B to this Directive will limit the circumstances and conditions for the initiation of an action under subsection 110(1) or (2) or paragraph 124(1)(b) of the *Customs Act* in respect of commercial goods and conveyances.

This directive becomes effective as of the date of signature.

Original signed by 23/07/07
Caroline Xavier
Director General
Policy and Program
Date

EN Part 5 Chapter 1 Commercial Seizures, Ascertained Forfeitures, and AMPS

APPENDIX A

Development Directorate

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APPENDIX A
Appendix A

Schedule of Amounts of Money for the Return of Seized Goods or as a Demand under Paragraph 124(1)(b) of the Customs Act:

Contravention	First Contravention	Second Contravention	Third and Subsequent Contraventions
Non-report in respect of imports (s.12) C366 & C367	20% of the value for duty.	40% of the value for duty.	60% of the value for duty.
Untrue statements in respect of imports (s.13) C025	20% of the value for duty.	40% of the value for duty.	60% of the value for duty.
Possession of illegally imported goods (s. 15) C031	20% of the value for duty.	40% of the value for duty.	60% of the value for duty.
Non-report in respect of exports of goods subject to export control (s.95 & 96) C345	20% of the value of the goods.	40% of the value of the goods.	60% of the value of the goods.
Untrue statements in respect of export of goods subject to export control (s.95) C346	20% of the value of the goods.	40% of the value of the goods.	60% of the value of the goods.
False information in respect of imports or exports (s. 7.1) C348	20% of the value for duty (imports) or the value of the goods (exports).	40% of the value for duty (imports) or the value of the goods (exports).	60% of the value for duty (imports) or the value of the goods (exports).
Failure to report goods at time of release (interim accounting) (s.7.1) C360 & C361	20% of the value for duty.	40% of the value for duty.	60% of the value for duty.

EN Part 5 Chapter 1 Commercial Seizures, Ascertained Forfeitures, and AMPS

APPENDIX A
Appendix B

**Criteria for Initiation of an Action under Subsection 110(1) or (2) or for
making a demand under Paragraph 124(1)(b) of the *Customs Act***

**A. Goods to be seized as forfeit in addition to an Administrative
Monetary Penalty**

In addition to any Administrative Monetary Penalty issued specifically in respect of contraventions C021, C022, C025, C031, C066, C069, C203, C344, C345, C346, C348, C358, C359, C360, C361, C366 and C367 the following goods are to be seized as forfeit:

- Alcohol including ethyl alcohol, spirits, beer, malt liquors and wine;
- Tobacco and all tobacco products;
- Prohibited weapons, munitions, devices, parts or components as set out under tariff item 9898.00.00;
- Firearms;
- Drugs and substances as defined in the *Controlled Drugs and Substances Act*;
- Child Pornography;
- Conveyances that have been modified and used for smuggling;
- Controlled goods whose export would pose a security risk.

Where the goods mentioned above are not available for seizure, in addition to any Administrative Monetary Penalty issued in respect thereof, a demand under paragraph 124(1)(a) of the *Customs Act* may be made for an amount of money equal to the value for duty of the goods at import or the value of the goods at export as the case may be. A demand may also be issued for any duties and taxes applicable.

**B. Seizure or Ascertained Forfeiture in lieu of an Administrative
Monetary Penalty**

(1) When the amount of money that would be assessed as an Administrative Monetary Penalty in accordance with section 109.1 of the *Customs Act* would exceed \$25,000 in any one case involving a contravention of section 7.1, 12, 13, 15, 95 or 96 of the *Act*, an action in respect of the goods, with the exception of goods noted above, may be taken under subsection 110(1) of the *Act*, or an amount may be demanded under authority of paragraph 124(1)(b) of the *Act*, in lieu of the Administrative Monetary Penalty. The amounts indicated in Appendix A shall apply to the return of the goods or to the demand under paragraph 124(1)(b) of the *Act*.

EN Part 5 Chapter 1 Commercial Seizures, Ascertained Forfeitures, and AMPS

APPENDIX A

(2) Only the Investigations Division and the members of the RCMP may use seizure action in the circumstance that follows. When the amount of money that would be assessed as an Administrative Monetary Penalty in accordance with section 109.1 of the *Customs Act* would not exceed \$25,000, but the physical control of the goods is required, the goods may be seized pursuant to subsection 110(1) of the *Act*. The amounts indicated in Appendix A shall apply for the return of the goods.

(3) When the amount of money that would be assessed as an Administrative Monetary Penalty in accordance with section 109.1 of the *Customs Act* would not exceed \$25,000 and the existence of a Business Number cannot be established, commercial goods that accompany a person may be seized pursuant to subsection 110(1) of the *Act*. The amounts indicated in Appendix A shall apply for the return of the goods.

C. Conveyances

Conveyances used in the unlawful importation, exportation or transportation of goods shall not be seized unless the conveyance has been specifically modified or manufactured for smuggling purposes. Conveyances that have been specifically modified or manufactured with the addition of false or hidden compartments and used in the unlawful importation, exportation or transportation of goods, may be subject to seizure under subsection 110(1) or ascertained forfeiture under section 124 of the *Customs Act*. When a specifically modified or manufactured conveyance is seized, it will be held as forfeit and no return is authorized. This applies in addition to any other enforcement action.

D. Seizure of Goods as Evidence

Whenever the criteria for prosecution in accordance with the Agency's guidelines for the initiation of prosecutions under the *Customs Act* are met, in addition to an Administrative Monetary Penalty, officers are authorized to seize the goods under authority of subsection 110(3) of the *Act* as evidence of an offence.

E. Separate Collection of Duty and Taxes

When goods are seized under authority of subsection 110(1) of the *Customs Act* for a contravention of section 7.1, 12, 13, 15, 95 or 96 of the *Act*, or, if a demand is made under authority of paragraph 124(1)(b) of the *Act* in respect of a contravention of section 7.1, 12, 13, 15, 95 or 96 of the *Act*, in accordance with the conditions listed above, in addition to the amounts required for the return of

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APPENDIX A

the goods or as a demand for payment, the person shall be required to pay any applicable outstanding duties that are owing.

CBSA ENFORCEMENT MANUAL

Part 5

ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND CONVEYANCES

Chapter 2

TRAVELLER SEIZURES AND ASCERTAINED FORFEITURES

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Traveller Seizures

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EN Part 5 Chapter 2

Traveller Seizures

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to use seizure as its main enforcement tool when dealing with travellers' infractions. The Administrative Monetary Penalty System (AMPS) is to be used when dealing with commercial infractions.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 7.1 – States that any information provided to an officer in the administration or enforcement of this Act, the *Customs Tariff* or the *Special Imports Measures Act* or under any other Act of Parliament that prohibits, controls, or regulates the importation or exportation of goods must be true, accurate, and complete.
4. Subsection 11(1) – States that all persons arriving in Canada shall enter only at a CBSA office designated for that purpose that is open for business and without delay, present himself or herself and answer truthfully any questions asked by an officer.
5. Subsection 12(1) – States that all goods that are imported must be reported at the nearest CBSA office that is open for business except under certain circumstances or subject to prescribed conditions.
6. Section 13 – States that every person who reports goods under section 12 or is stopped by an officer under section 99.1 shall:
 - a) answer truthfully questions asked by the officer respecting the goods; and
 - b) if requested by an officer, present the goods and make them available for examination.
7. Subsection 32(1) – States that no goods shall be released prior to their being accounted for and duty paid except under prescribed or regulated conditions.

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8. Subsection 101 – States that goods that have been imported or about to be exported may be detained until an officer is satisfied they have been dealt with in accordance to this Act or any Act of Parliament.
9. Subsection 110(1) – States that an officer, who believes on reasonable grounds that this Act or regulations have been contravened, may seize as forfeit any goods or conveyance that was made use of in respect to the goods.
10. Subsection 124(1) – States that an officer who believes on reasonable grounds that a person has contravened the provisions of this Act or regulations regarding goods or conveyance, the officer may, if the goods or conveyance are not found or the seizure is not practical, demand an amount of money equal to the value of the goods and the duties and taxes owing, or a lesser amount as the Minister may direct.

POLICY GUIDELINES

Contraventions

11. A contravention is a failure to comply with any legislation, regulation or condition of licensing or undertaking administered by the CBSA. A contravention may occur through an act of commission, or through an act of omission. An importer who does something contrary to the *Customs Act*, such as making a false statement, is contravening the Act by commission. An importer who fails to do something required by the *Customs Act*, such as failing to declare some goods, is contravening the Act by virtue of that omission.

Detention

12. Under the authority of section 101 of the *Customs Act*, officers may detain goods that have been imported or about to be exported until the officer is satisfied that the goods have been dealt with in accordance with the *Customs Act* or any other Act of Parliament.

Seizure

13. Seizures are remedies for civil violations as opposed to criminal offences. For this reason, although high standards of evidence must be maintained, the burden of proof required to support a civil action is less than that required for a criminal prosecution.
14. Seizures of goods are civil actions “in rem” or against goods. Prosecutions are criminal actions “in personam”, or against the person. Therefore, where there has been a contravention of a “civil” provision of the *Customs Act*, it would be preferable to rely on that provision. As an example, the failure to comply with the

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- reporting of goods requirement would attract a civil charge pursuant to sections 12 and 110 of the *Customs Act* rather than a charge of smuggling pursuant to section 159.
15. The prohibitions and offences detailed by sections 153 through 159 inclusive of the *Customs Act* should not be used at the time of seizure. These are more appropriately used for criminal charges. Criminal Investigations Division (CID) may recommend charges under all sections of the *Customs Act*. (see Part 9 Chapters 1 and 2, Prosecution Policy).

Seizure Policy

16. While the *Customs Act* provides for the seizure of all goods and conveyances (subsection 2(1) of the *Customs Act* defines conveyance as any vehicle, aircraft or water-borne craft or any other contrivance that is used to move persons or goods), it is not the policy of the CBSA to take seizure action in all cases. It is recognized that not all contraventions of the *Customs Act* or the regulations are intentional on the part of the person who contravenes them. Negligence, carelessness and lack of knowledge on the part of the importer are mitigating factors worthy of consideration when deciding whether or not to proceed with a seizure action.

In instances involving travellers, it is the policy of the CBSA to extend the benefit of doubt, in lieu of forfeiture and seizure, when it appears evident that the traveller was not aware of CBSA requirements. In such instances, the traveller is to be allowed all entitlements for which they qualify.

17. Seizures result in a referral rate for the person indicated as the principal in a seizure action. The referral rate lessens periodically and returns to normal within 6 years.
18. The referral rate for a person identified as an associate does not increase but an inquiry in the Primary Automated Lookout System (PALS) or the Integrated Primary Inspection Line (IPIL) on the name will reveal information pertaining to the person's association with a seizure action.
19. Officers may seize conveyances used in the unlawful importation of goods (section 110 (1) of the *Customs Act*) or the unlawful transportation of persons (section 110 (2) of the *Customs Act*). However, it is not the policy of the CBSA to seize a conveyance in every case. For goods seized in paragraphs 95 or 100 the conveyance should also be seized whenever a Level 2 or 3 is warranted (as per paragraphs 85 and 86).
20. In cases involving public conveyances e.g. bus, ferry, where passengers are discovered with unreported goods, the conveyance is not to be seized. If it is determined that the person in charge of the conveyance is implicated then the conveyance may be seized.

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21. Forfeiture means the loss of proprietary rights, as associated with goods or conveyances. This takes effect at the time of a contravention. The Crown becomes the lawful owner at this time and through the act of seizure takes possession of its own property.
22. The seizure provisions of the *Customs Act* only allow for seizure action where there is a contravention of the *Customs Act* or the regulations written pursuant to that Act. Seizures involving contraventions of other acts or their regulations are not authorized under the *Customs Act*.

Note: Goods may be detained under the authority of section 101 until other government department or agency requirements have been met.

23. In instances where there are multiple occupants of a single vehicle in which undeclared goods are found:
 - a) if the amount of goods per individual cannot be determined, officers may create one K19 seizure receipt, identify one principal, assess an amount equal to the aggregate value of goods and seize the conveyance if appropriate; or
 - b) If the amount of goods per individual can be determined, officers may create a K19 seizure receipt for each individual based on the amount of goods per individual, and document the seizure of the conveyance if warranted, on only one of the seizure receipts.
24. When completing the K19 there should only be one principal identified on the form.
25. In the following sections of this chapter, terms of release are specified for the various contraventions. It should be emphasized that the Minister has set these terms of release pursuant to subparagraph 118(a)(ii) of the *Customs Act*.

Threshold for Initiation of Seizure Action

26. While there is no minimum threshold established by law for the initiation of a seizure action, administratively it may not be practical in all instances. It is recommended that CBSA officers use their discretion before proceeding with such enforcement action when the value for duty of the undeclared or unlawfully imported goods is below \$100.00.

Exceptions (subject to reasonable discretion):

27. Seizure action should not normally be taken on alcohol and tobacco products on quantities less than the following:

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- a) 1 L of liquor;
 - b) 1 L of wine;
 - c) 2 dozen beers (or approximately 8.5 litres);
 - d) 200 cigarettes;
 - e) 400 g tobacco; or
 - f) 400 tobacco sticks.
28. In instances where a seizure is issued for less than the above noted recommended minimum, no conveyance seizure should be applied.
29. In situations involving repeat offenders, officers may use their discretion for seizure action on low value goods. In cases where individuals have not been deterred by a previous warning or enforcement action, seizure or higher-level terms of release should be applied.

ALLEGATIONS

Section 12 allegations

30. The allegation of **non-report** of an import will be used for seizures against travellers who have not reported the importation of personal goods, regardless of the method of concealment used to unlawfully introduce the goods into Canada. The appropriate wording is as follows: "The said goods are seized under section 110 of the *Customs Act* because they have been unlawfully imported by reason of non-report, contrary to the provisions of section 12 of the said Act."

Section 7.1 allegations

31. The allegation of **inaccurate information pertaining to an import** will normally be used when a person has given untrue, inaccurate or incomplete information (other than value) to an officer, either verbally or in writing, in regards to goods being imported. This includes a false description. The appropriate wording is as follows: The said goods are seized under section of 110 of the *Customs Act* because the information provided to the CBSA pertaining to the import of these goods was not true, accurate or complete in contravention of **section 7.1** of the *Customs Act*.

Note: The allegation of inaccurate information (contravening section 7.1) applies when a person declares an import but provides a false country of origin with intent to evade duties and taxes or permit requirements. This includes situations in

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which a person has stated that goods are Canadian goods returned when in fact they are being imported for the first time. People do not necessarily know the rules of origin and discretion should be used in each case before a seizure is applied for origin.

32. The allegation of **undervaluation** will normally be used when a person has given a false value to an officer, either verbally or in writing, in regards to goods being imported. The appropriate wording is as follows: The said goods are seized under section 110 of the *Customs Act* because the value provided to the CBSA pertaining to the import of these goods was not true, accurate or complete in contravention of **section 7.1** of the *Customs Act*.

Section 11 allegations

33. The allegation of **failure to report inwards** will normally be used to describe infractions where a person enters Canada and fails to forthwith report to a CBSA office that is open for business. This is a contravention of section 11 of the *Customs Act*. The conveyance becomes subject to seizure and the appropriate wording is as follows: "That the said vehicle/vessel/aircraft was used to transport persons into Canada in contravention of the *Customs Act*".
34. The allegation of **running the port** will normally be used to describe the act of passing through, failing to remain at, or, leaving the confines of, a CBSA office in defiance of an officer's instructions. This is a contravention of section 11 of the *Customs Act*. The conveyance becomes subject to seizure and the appropriate wording is as follows: "That the said vehicle/vessel/aircraft was removed from a CBSA office without having been released by an officer". This section is also cross-referenced with section 18 of the *Immigration and Refugee Protection Act* (*IRPA*) - Entering (and remaining) in Canada so that officers can consider potential IRPA violations on port runners when they are located in Canada and returned to the port.
35. The allegation of **failure to transport passengers and crew** will normally be used to describe the situation where the person in charge of a conveyance fails to transport passengers or crew to a CBSA office for presentation. This is a contravention of section 11(3) of the *Customs Act*. The conveyance becomes subject to seizure and the appropriate wording is as follows: "That the person in charge of this conveyance failed to transport passengers or crew for presentation at a CBSA office". Under AMPS this allegation is committed by a person in charge of a commercial conveyance, e.g., bus, commercial aircraft. C018 is the appropriate allegation to use in such cases.
36. There are regulations written pursuant to Section 11 of the *Customs Act*, which govern the presentation of persons arriving in Canada. When a **contravention of**

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the ***Presentation of Persons Regulations*** occurs, the conveyance used to transport such persons becomes subject to seizure. The Minister has directed that under these specific circumstances terms of release will be offered on the basis of a fixed monetary amount.

Multiple allegations involving a conveyance

37. In instances of multiple contraventions by the same or different people in one conveyance, the conveyance cannot be seized more than once.
38. If a person has contravened section 11 or its regulation (for example by failing to present himself, passengers or crew), and has also contravened section 7.1 or 12 (for example by inaccurately reporting or failing to report goods), the officer will seize the conveyance and select the most appropriate section 11 allegation (see allegations above). The officer may issue a second K19 seizure receipt for inaccurate information or the failure to report goods in accordance with section 7.1 or 12 but would not apply a conveyance penalty.
39. Where no section 11 allegation is applicable, officers can document both section 7.1 and section 12 contraventions on the same K19 seizure report along with any applicable conveyance penalty. The conveyance penalty applies to the aggregate of goods.

Undeclared Conveyances

40. CBSA officers may encounter contraventions involving undeclared or improperly entered foreign or non-duty paid conveyances. When a traveller has been given the opportunity to make a full and complete declaration at primary concerning any purchases or acquisitions abroad and fails to declare the acquisition of the conveyance being used to enter Canada, such conveyance may be seized as being not reported. The non-report allegation shall apply.

Prohibited Conveyances

41. Foreign vehicles imported from other than the United States may be prohibited entry under tariff item 9897. Should a prohibited vehicle (that is a vehicle that would not qualify for an exemption of the prohibited status under normal circumstances) be seized for a contravention of the *Customs Act*, release may be offered conditional on exportation.
42. The decision to allow exportation should be considered on a case-by-case basis. Exportation may be refused, for example when the importer has made previous attempts to import the same prohibited vehicle.

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43. The foregoing procedure will also apply to vehicles falsely declared to the CBSA with the intention of waiving the prohibition. Such cases will be most commonly encountered in instances where vehicles imported from other than the United States are declared as settler's effects, or personal effects of returning residents, or with vehicles declared as gifts.

Non-Report of Conveyance Repairs, Tires and Accessories

44. Repairs that were eligible for remission (i.e. incidental to a trip, necessitated by an accident or unforeseen wear, and made solely to enable the safe return of the vehicle to Canada) may be subject to seizure when not reported. Officers may offer terms of release of 5 per cent of the value of unreported repairs, where the value of the repairs is greater than \$2,000.
45. When an officer believes the unreported repairs were not necessary for a safe return (e.g. upgrading wheels to mag wheels), the officer may issue a seizure and offer terms of release as per the tables provided later in this chapter.
46. The allegation would be: "That certain repairs made to the vehicle abroad were not reported and entered at the CBSA".

Note: See Memorandum D8-2-1 Canadian Goods Abroad for information on dutiable repairs.

47. Non-report of tires is treated in the same manner as dutiable repairs.
48. Where repairs to vehicles or goods are of a substantial value or there is suspicion of fraud, the matter should be reported to Investigations.
49. Undeclared installed accessories may be treated in the same manner as dutiable goods. The only exception is that a conveyance seizure should not be applied when undeclared installed accessories are necessary to make it possible for the conveyance to be driven back to Canada. This policy is based on the theory that the conveyance cannot be "made use of", in the meaning of section 110(1)(b) of the *Customs Act*, to transport an integral part of itself. For example, installed articles such as engine accessories, mufflers, tail pipes and wheels, when seized, would not attract a conveyance seizure and normally would be released on the terms of release applicable to dutiable repairs.
50. A conveyance seizure may apply when seizing undeclared, uninstalled accessories such as radios, antennas, seat covers, body ornaments, wheel covers, tape decks, speakers, etc., because they are not necessary for the operation of the vehicle.

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51. When a conveyance is first imported (not a Canadian good returned), the value must include not only the purchase price but also all upgrades. If the upgrades or repairs are not included in the declared value, the conveyance may be seized using the allegation of undervaluation.

Modified Conveyances

52. A modified conveyance for CBSA purposes is defined as a conveyance that has been modified from the manufacturer's original design by adding compartments or manufacturing access to areas otherwise inaccessible, for the specific purpose of illegally importing goods.
53. Modifications that fall within this definition may include but are not limited to:
 - a) a false wall built in the nose, ceiling or sides of a trailer;
 - b) the welding of a compartment to the chassis of a conveyance;
 - c) partitioning of a gas tank; and
 - d) adding a secret door to access a compartment or area not originally accessible on a conveyance.
54. When goods subject to seizure are found behind false panels or within hidden compartments, the conveyance is to be seized. It is not to be offered for release without consideration of the nature and quantity of the goods seized, the amount of revenue evaded, the market value of the conveyance and the extent of the modifications.
55. When a conveyance has been modified and there is no contravention relating directly to the modification (e.g. a modified gas tank is empty), the conveyance cannot be seized on those grounds.
56. Where only minor quantities of dutiable goods or prohibited goods are seized, release may be offered in the normal manner, providing the modifications are not extensive and that prior to release they are rendered inoperable. Any costs incurred by the CBSA for rendering the modifications inoperable are to be added to the terms of release but not included on the seizure receipt.
57. The modification costs should be itemized on a K24 (*Non-Monetary General Receipt*).
58. When a contravention has been detected and there are reasonable grounds to believe that the conveyance had been used on previous occasions to conceal non-reported goods, although no previous seizures had been made, terms of

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- release need not be offered. In all such instances, officers must justify their actions in their reports.
59. In the case of a repeat offender, whether using the same modified conveyance as had been seized on a previous occasion or different conveyance modified for the same purpose, no terms of release should be offered, regardless of the above considerations.

Towed Conveyances

60. The *Customs Act* defines a conveyance as any vehicle, aircraft or water-borne craft or any other contrivance that is used to move persons or goods. When encountering situations where towed conveyances e.g. car-camper trailer, are involved in the unlawful importation, exportation or transportation of goods or the unlawful transportation of persons, the following guidelines should be used for seizure action.
61. If the towing conveyance containing the goods is modified, it is seized with no terms of release.
62. If the towed conveyance containing the goods is modified, it is seized with no terms of release.
63. If both the towed and towing conveyances containing goods are modified both should be seized with no terms of release.

Note: The officer should perform two separate seizures in this instance.

64. If commercial unreported goods are found in an unmodified conveyance (towed or towing) it is not seized but an AMP is applied to the carrier or importer.
65. If non-commercial unreported goods are found in an unmodified conveyance (towed or towing) it is seized and terms of release are offered

Note: A second conveyance can be entered in ICES. When a second conveyance is entered, ICES will automatically indicate that it was not seized.

Conveyances Used in Drug Smuggling

66. Seized conveyances used to smuggle drugs may be offered for release in accordance with the Terms of Release as specified under Part 2, Chapter 6 – Drugs, of the Enforcement Manual. When drugs are seized, the HC 3515 will continue to be used for the detailed description of the goods. A brief description and the approximate weight of the drugs should be shown on the form K19 used to document the seizure of the conveyance. The schedule of the special terms of

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release for conveyances used in smuggling personal use quantities of drugs is included later in this chapter.

Conveyances Used in Unlawful Importations of Undeclared Firearms and Prohibited Weapons

67. Conveyances used by individuals to unlawfully import firearms and prohibited weapons may be subject to seizure. The schedule of terms of release is found later in this chapter. (See Part 2 Chapter 3 Firearms and Weapons)
68. Officers are encouraged to use discretion in seizing conveyances if the prohibited weapon is not a firearm (e.g. a switchblade). However, there may be instances where it is preferable to take a further deterrent action in addition to seizing the prohibited weapon, especially when there is evidence of intent to smuggle. In such cases, officers may seize the conveyance and offer it for release. The schedule of terms of release is found later in this chapter.

Third Party Notification

69. An officer seizing goods or conveyances will, at the time of the seizure, take positive steps to determine if there are or could be third parties involved.
70. Where it is determined that the person from whom the goods or conveyances are seized is not the actual owner of the goods, or it is apparent that there is an outstanding lien against the goods (this may be indicated on a sales receipt, or an insurance or registration slip), the owner, mortgage, or lien-holder must be notified that the goods are under seizure and that they may make application under section 138.
71. Notification under subsection 110(4) to the owner, mortgage, or lien-holder will be in the form of a completed Notice of Seizure (K138).

Note: Circumstances of the actual seizure are confidential between CBSA and the person from whom the goods or conveyance was seized and should not be quoted in the notification.

72. A copy of each K138 form must be forwarded immediately to the Adjudications Division if an appeal is filed

TERMS OF RELEASE - GOODS

73. The terms of release for seizures of personal goods unlawfully imported by travellers into Canada is dependent on two factors:
 - a) the group that the commodity falls into; and

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- b) the level of the infraction.

The Groups

- 74. The CBSA's categorizes commodities under three groups to alleviate the necessity for officers involved in enforcement actions to devote an inordinate amount of time classifying goods in order to arrive at a terms of release factor.

Group 1

- 75. Group 1 includes clothing, footwear, textiles (including towels), bedding, curtains, carpets, jewellery and watches. The principle behind the division of goods was established on the basis that commodities attracting a combined rate of duties and taxes of 25 per cent or more should fall under a separate group - Group 1 - and they should attract higher terms of release due to the potential for higher revenue loss.

Group 2

- 76. Group 2 covers other goods attracting combined rates of duties and taxes of less than 25 per cent. The terms of release for violations involving such goods are less than those in Group 1 because of the lesser potential for revenue loss. Group 2 includes all goods except for group 1 goods, alcoholic beverages and tobacco products.

Group 3

- 77. Group 3 was created to cover the exceptions to group 1 and 2, namely all alcoholic beverages and tobacco products. These were treated separately as there are no terms of release.

Levels of Infractions

- 78. For the purposes of determining the appropriate terms of release applicable to the range of violations, three levels or degrees were established to recognize the culpability of the individual. The terms of release with few exceptions have been based on a factor calculated on a percentage of the value of the goods.
- 79. It is important to realize that terms of release for seized goods are only offered subsequent to the actual physical seizure authorized by section 110 of the *Customs Act*.
- 80. The authority for return of goods seized is pursuant to section 117 of the *Customs Act*, which specifies that an officer may, subject to this or any other Act of Parliament, return any goods that have been seized under this Act to the person

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from whom they were seized or to any person authorized by the person from whom they were seized on receipt of:

- a) an amount of money of a value equal to
 - i) the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto
 - (A) at the time of seizure, if the goods have not been accounted for under subsection 32(1), (2) or (5) or if duties or additional duties have become due on the goods under paragraph 32.2(2)(b) in circumstances to which subsection 32.2(6) applies, or
 - (B) at the time the goods were accounted for under subsection 32(1),(2) or (5), in any other case, or
 - ii) such lesser amount as the Minister may direct; or
- b) where the Minister so authorizes, security satisfactory to the Minister.

Level 1

81. Level 1 applies to violations of lesser culpability. The degree to which the importer carried out a scheme to contravene the *Customs Act* was not furthered beyond an initial ineffectual attempt. This level might generally be applied to offences of omission, rather than commission. Commission offences require more active involvement by the importer.

Level 2

82. Level 2 applies to violations where the circumstances demonstrate an active attempt by the importer to contravene the *Customs Act*. It is also applicable to instances involving repeat offenders, where it has become apparent that a stronger deterrent factor is required.

Level 3

83. Level 3 applies to circumstances where evidence exists of a more sophisticated scheme involving devices to facilitate the violation or where the individual concerned has been the subject of previous seizure action.

Non-Report and Inaccurate Information

84. Level 1 is applied when:

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- a) goods are not reported to CBSA or goods are reported but inaccurate information is given concerning acquisition, entitlements or description; and
 - b) the goods are not concealed; and
 - c) a full disclosure of the true facts concerning the goods is made at the time of the discovery.
85. Level 2 is applied when the circumstances are the same as for level 1 but:
- a) goods are concealed or disguised, or
 - b) inaccurate information is given concerning the goods following their discovery; or
 - c) the person has been the subject of a previous seizure action.
86. Level 3 is applied when the circumstances are the same as for level 2 but:
- a) false documents or receipts are presented for the goods; or
 - b) goods are concealed within false compartments; or
 - c) the person has been subject to previous seizure action.

Undervaluation

87. Level 1 is applied when:
- a) goods are reported for a value less than their actual transaction value but no falsified documents were presented; and
 - b) full disclosure is made prior to the discovery of documentary evidence
88. Level 2 is applied when :
- a) No falsified documents were presented however documentary evidence is found, revealing the actual value of the goods is more than reported before full disclosure is made; or
 - b) the person has been subject of a previous enforcement action.

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89. Level 3 is applied when the same criteria exist as for level 2, except the person is in possession of, and attempts to use falsified documents to support the undervaluation.

TERMS OF RELEASE – CONVEYANCES

90. The Special Terms of Release for Conveyances Used in Smuggling Personal Use Quantities of Drugs are as follows:

Amount	Marijuana	Hashish	Hashish Oil	Controlled Drugs	Hallucinogens	Cocaine/Opiates
*\$220	over 8 grams but not over 15 grams	over 2 grams but not over 4 grams	1 gram or less	over 10 pills but not over 20 pills	over 1 dosage but not over 4 dosages	1 gram or less \$400
\$440	over 15 grams but not over	over 4 grams but not	over 1 gram but not over	over 20 pills but not over 40	over 4 dosages but not over 8 dosages	

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	30 grams	over 8 grams	2 grams	pills		
\$550	over 30 grams but not over 60 grams	over 8 grams but not over 16 grams	over 2 grams but not over 4 grams	over 40 pills but not over 60 pills	over 8 dosages but not over 12 dosages	
\$660	over 60 grams but not over 100 grams	over 16 grams but not over 24 grams	over 4 grams but not over 6 grams	over 60 pills but not over 80 pills	over 12 dosages but not over 16 dosages	
\$770	over 100 grams but not over 150 grams	over 24 grams but not over 32 grams	over 6 grams but not over 8 grams	over 80 pills but not over 110 pills	over 16 dosages but not over 20 dosages	
\$880	over 150 grams but not over 200 grams	over 32 grams but not over 40 grams	over 8 grams but not over 10 grams	over 110 pills but not over 140 pills	over 20 dosages but not over 24 dosages	
\$990	over 200 grams but not over 250 grams	over 40 grams but not over 46 grams	over 10 grams but not over 12 grams	over 140 pills but not over 160 pills	over 24 dosages but not over 28 dosages	
\$1100	over 250 grams but not over 300 grams	over 46 grams but not over 56 grams	over 12 grams but not over 14 grams	over 160 pills but not over 180 pills	over 28 dosages but not over 32 dosages	

For amounts in excess of the above stated sums:

over 300 grams: \$4 for each additional gram	over 56 grams: \$20 for each additional gram	over 14 grams: \$70 for each additional gram	over 180 pills: \$8 for each additional pill	over 32 dosages: \$40 for each additional dosage	over 1 gram: \$400 for each gram
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*Note: This amount may be applied in instances of smaller quantities if the individual is known to have a previous history of drug smuggling.

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Special Terms of Release for Conveyances Used in Smuggling Commercial Quantities of Drugs

91. See AMPS Master Penalty Document. Also refer to Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures, and AMPS Policy and Procedures for further details.
92. Only conveyances that have been modified for smuggling purposes will be seized. There are no terms of release and an AMP penalty applies as well.

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93. The terms of release for the return of seized conveyances for firearms and weapons (customs tariff 98.98) as well as penalty amounts for ascertained forfeitures are as follows:

Commodity	Amounts of Money for the Return of Seized Conveyances for Non-Report and Inaccurate Information		
	<u>First Contravention</u>	<u>Second Contravention</u>	<u>Third and Subsequent Contraventions</u>
Non-Restricted Firearms	50% of the terms of release offered for the firearm	100% of the terms of release offered for the firearm	100% of the terms of release offered for the firearm
Restricted or Prohibited Firearms	\$1000/ firearm	\$2000/ firearm	\$3000/ firearm
Prohibited Weapons (other than firearms)	\$500/ item		
Prohibited Ammunition	\$500/ commodity group		
Prohibited Devices (e.g. handgun barrel, silencer, large-capacity cartridge magazine, replica firearm)	\$500/ commodity group		
Components or parts designed exclusively for use in manufacturing or assembling automatic firearms	\$500/ commodity group		

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94. The terms of release for the return of seized conveyances for allegations of failure to report inward, running the port, contravention of the *Presentation of Persons Regulations* and Failure to transport passengers/crew as well as penalty amounts for ascertained forfeitures are as follows:

IMPORTATION Sec 11			
Failure to report Inward	<u>First Contravention</u>	<u>Second Contravention</u>	<u>Third and subsequent Contraventions</u>
	\$1000	\$2000	\$3000
Running the port	\$1000	\$2000	\$3000
Contravention of <i>Presentation of Persons Regulations</i>	\$1000	\$2000	\$3000
Failure to transport passengers/crew	\$1000	\$2000	\$3000

95. The terms of release for non-report or inaccurate information (excluding alcohol and tobacco) are as follows:

NON-REPORT Sec. 12 AND INACCURATE INFORMATION Sec. 7.1			
Group 1 - Clothing, footwear, textiles, towels, bedding, curtains, carpets, jewellery and watches	<u>Level 1</u> 30% of value	<u>Level 2</u> 50% of value	<u>Level 3</u> 70% of value
Group 2 - All other goods, except alcohol and tobacco	25% of value	40% of value	55% of value
Conveyance Terms of release	N/A	50% of the terms of release for the goods	100% of the terms of release for the goods

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96. The terms of release for undervaluation (excluding alcohol and tobacco) are as follows:

UNDERVALUATION Sec. 7.1			
Group 1 - Clothing, footwear, textiles, towels, bedding, curtains, carpets, jewellery and watches	<u>Level 1</u> 30% of u.v. amount	<u>Level 2</u> 50% of u.v. amount	<u>Level 3</u> 70% of u.v. amount
Group 2 - All other goods, except alcohol and tobacco	25% of u.v. amount	40% of u.v. amount	55% of u.v. amount
Conveyance Terms of release	N/A	N/A	N/A

97. When undervaluation is alleged, terms of release apply to the undervalued portion only, however an amount equal to duties and taxes applicable to the declared portion is to be added to the total if such amount has not already been paid. If an amount has been paid, it should still be shown in the calculation of the terms of release; however a note should appear beside it cross referring to the transaction number preceded by the words "Paid on..." Such amount will then be credited (not charged) against the total deposit amount.
98. Whenever a payment of duty and/or taxes is owing on a portion of the value of goods subject to seizure, such payment should not be processed in a normal method on an accounting document. All monies payable in regards to goods subject to forfeiture should be included in the terms of release. In cases of undervaluation or inaccurate information, where a portion of duty and/or taxes must be accounted for, that portion will be assessed on the form K 19S as a duty factor and form part of the total deposit required for terms of release. The duty factor: is an amount of money equal to the duty and/or taxes payable on lawfully entered goods.
99. Examples of undervaluation are as follows:

- a) **Level 1, group 2:** A traveller declares at primary that he bought a car for \$1,000.00 and doesn't present a receipt. At the secondary examination, the officer having some doubts about the declared value of the car, questions the traveller on that purchase. The traveller admits that the car is undervalued and voluntarily discloses the actual value of \$4,000.00. The calculation is:

Terms of release -	25% of	= \$ 750.00
\$3,000.00		
on \$1,000.00 Duty factor	= \$ 138.48	
TOTAL	\$ 888.48	

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Note: If duty had been paid on the \$1,000.00 declared, the calculation would be done as follows:

TERMS OF RELEASE - 25% of	= \$ 750.00
\$3,000.00	
on \$1,000.00 Duty factor	= <u>\$ 000.00</u>
TOTAL	\$ 750.00

- b) **Level 2, group 2:** A traveller declares at primary that he bought a car for \$1,000.00 but does not have a receipt to present. The officer finds hidden in a book, on the dashboard, a receipt for the same car for the amount of \$4,000.00. The calculation is:

TERMS OF RELEASE - 40% of	= \$1,200.00
\$3,000.00	
on \$1,000.00 Duty factor	= <u>\$ 138.48</u>
TOTAL	\$1,338.48

- c) **Level 3, group 2:** A traveller declares at primary that he bought a car for \$1,000.00. At the secondary level he presents a receipt for \$1,000.00. The officer finds hidden in a book, on the dashboard, a receipt for the same car for the amount of \$4,000.00. The calculation is:

TERMS OF RELEASE - 55% of	= \$1,650.00
\$3,000.00	
on \$1,000.00 Duty factor	= <u>\$ 138.48</u>
TOTAL	\$1,788.48

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100. The terms of release amounts for alcoholic beverages and tobacco products are as follows:

NON-REPORT (Sec. 12), INACCURATE INFORMATION or UNDERVALUATION (Sec 7.1)			
Group 3 - All alcoholic beverages and tobacco products	<u>Level 1</u> no terms of release	<u>Level 2</u> no terms of release	<u>Level 3</u> no terms of release
Conveyance Terms of release	N/A	\$40/200 cigs \$120/Kg. Tobacco \$10/Ltr. Alc \$10/24 beer \$2/Ltr. Wine	\$55/200 cigs \$160/Kg. Tobacco \$12/Ltr. Alc \$12/24 beer \$3/Ltr. wine

Note: Cigars, tobacco sticks, and other such products manufactured from tobacco, but not specifically mentioned should be treated as tobacco with the same terms of release applied.

Unconditionally Duty Free and Tax Exempt or 0 Per Cent Rated Goods

101. When unconditionally duty free and tax exempt or 0 per cent rated goods are not reported the following terms of release shall apply:

Level 1 and less than \$2000 value, forced accounting;
 Level 1 and \$2000 or over in value, 5 per cent of value;
 Level 2 or 3 and less than \$1000 value, forced accounting; or
 Level 2 or 3 and \$1000 or over in value, 10 per cent of value.

Exemptions and Entitlements

102. For a returning resident to qualify for an exemption on personal goods, two conditions must be fulfilled:

- a) the goods must be reported by that person at time of return to Canada (see tariff heading number 98.04); and
- b) the returning resident must have been absent the length of time specified by one of the classification numbers, whether it be 24 hours, 48 hours, or 7 days. A declaration of the length of absence is not a pre-requisite for this entitlement.

103. Once both of the foregoing conditions are met the additional entitlement of the preferential rates allowed pursuant to classification number 9804.30.00.00 may be extended, but only to a maximum of the originally declared values.

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104. Officers will only give returning residents the benefit of personal exemptions on the value of goods that have been properly declared under classification numbers 9804.10.00 or 9804.20.00. In cases of nil declarations, no exemptions or preferential rates will be allowed. Exemption entitlements should be documented on declaration forms with copies to the seizure report.

105. Examples of the application of exemptions is as follows:

a) A returning resident declares \$200 in clothing after an absence of 48 hours. During the secondary examination undeclared jewellery is found totalling \$400. Thus, the officer would:

- i) allow a portion of an exemption of \$200 under 9804.10.00.00 (48 hrs absence); and
- ii) seize on the balance of \$400

b) A returning resident declares a jewellery item worth \$1050, and claims the \$750 exemption entitlement after a stated absence of seven days pursuant to classification number 9804.20.00.00. The overage of \$300 would normally attract the beneficial duty rate pursuant to classification number 9804.30.00.00.

Following secondary examination evidence is discovered which reveals that the returning resident has made an intentional false declaration and was only absent for six days. The officer would:

- i) allow a \$400 exemption under 9804.10.00.00 (48 hrs. absence);
- ii) allow \$300 at the beneficial duty rate under 9804.30.00.00; and
- iii) seize on \$350 (difference between the claimed and actual personal exemption entitlement)

c) A returning resident declares to CBSA the purchase of a television set having a value of \$500 and an exemption entitlement of \$400 after an absence of 48 hours pursuant to classification number 9804.10.00.00. The overage of \$100 would normally attract the beneficial duty rate pursuant to classification number 9804.30.00.00. Following secondary examination, a purchase receipt is found which shows the true value of the goods to be \$700, resulting in an undervaluation of \$200. The officer would:

- i) allow a \$400 exemption under 9804.10.00.00 (48 hrs. absence);
- ii) allow \$100 at the beneficial duty rate; and
- iii) seize on the \$200 balance

Former Residents and Settlers

106. In the case of former residents and settlers, contraventions may occur with respect to inaccurate information given concerning the ownership, possession and use

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requirements, or for the accommodation of others. Where it is suspected that inaccurate information has been given, the officer should request the importer to produce a receipt and/or bill of lading for the goods. If doubt still remains, but there is insufficient evidence to take seizure action, the officer may extend the benefit of doubt and allow entry of the goods under tariff item 9805.00.00 or 9807.00.00, or may release the goods on payment of the applicable duty and taxes.

Note: When completing accounting documents with respect to a declaration of goods using tariff item 9805.00.00 or 9807.00.00, officers should ensure that the traveller reads and fully understands the conditions of the applicable tariff item.

Special Notes

107. When demanding a monetary deposit as terms of release pursuant to a seizure of goods, it is important to understand that all money demanded is considered to be a penalty. In any instances where duties and taxes become a consideration for terms of release pursuant to a seizure, they are only used as factors to calculate the prescribed penalty.
108. Non-residents who wish to export seized goods (except those goods with no terms of release), may be given the opportunity to export them provided that the officer is satisfied that the goods are not intended for consumption in Canada. Release for export should not be considered automatic, with every case being judged individually. When release for export (under CBSA supervision) is deemed appropriate, the normal terms of release should be calculated in accordance with the group of goods and level of offence. The total of goods and conveyance terms of release thus determined may then be reduced by 20 per cent in recognition of the export.
109. As an example, group 1, level 2 goods are seized having a value of \$1,000. The normal terms of release would be $\$1,000 \times 60\% = \600 with a conveyance terms of release (if applicable) of $\$600 \times 50\% = \300 for a total terms of release amounting to \$900. If terms are contingent on export the total dollars should be reduced by 20 per cent, i.e. $\$900 - (\$900 \times 20\%) = \$720$. It is not intended that the terms of release percentage be reduced.

Prohibited Goods (Customs Tariff 98.97 & 98.99)

110. Unlawfully imported prohibited goods may be seized using the form K19. This would include goods such as those listed in the *Customs Tariff* as prohibited.
111. No terms of release are to be offered for unlawfully-imported prohibited goods.
112. For conveyances used in the transport of unlawfully-imported prohibited goods:

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- a) when a level 1 seizure is warranted and the total value of the goods is less than \$200, the conveyance should not be seized;
- b) when a level 2 or 3 seizure is warranted (e.g. repeat offender) and the total value of the goods is less than \$200, the terms of release are calculated at a flat rate of \$50; and
- c) when a level 1,2 or 3 seizure is warranted and the total value of the goods is \$200 or more, the conveyance may be seized and the terms of release are calculated at 25% of the total value of the goods.

113. In no case should the conveyance terms of release exceed the value of the conveyance.
114. No conveyance seizure should be applied when the conveyance itself is the object of the unlawful importation.

Prohibited and Restricted Firearms and Prohibited Weapons

115. When an undeclared restricted firearm, prohibited firearm or prohibited weapon is found in the possession of a non-resident or returning resident, the weapon may be seized and no terms of release are to be offered. (See Part 2 Chapter 3 Firearms and Weapons)
116. Non-restricted firearms may be offered for release provided that the person has the proper permits. Such weapons are classified as Group 2 goods and terms of release would be 25, 40 or 55 per cent of their value, depending on the level of the contravention. Terms of release for the conveyance would be either 50 per cent or 100 per cent of the terms offered for the goods, depending on the level of contravention.

If an undeclared restricted or prohibited firearm is seized from a traveller BSO's are advised to contact the regional Criminal Investigations Division (CID), Regional Intelligence Officer (RIO), RIFLO or local Police (for consideration of *Criminal Code* and/or *Customs Act* charges).

Alternate Inspection Programs (CANPASS, NEXUS, FAST etc.)

117. For participants in accelerated release programs, the same seizure thresholds will apply however the terms of release will be one level higher. Also, the participant may become ineligible for accelerated release programs (i.e. NEXUS, CANPASS or FAST/CDRP) or if already a member, participation may be cancelled. Conveyances, however, are not applied at one level higher just because the person is an accelerated program participant. Officers should refer to the applicable program regarding its policies and procedures for removal. The

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following is a link to a site containing information on alternative reporting methods for travellers.

Provincial Sales Taxes

118. Where goods are seized and there is an agreement in place between CBSA and the provincial government concerning the collection of provincial sales taxes, CBSA officers are reminded to ensure that these taxes are collected separately at the time of the release of the goods. Provincial Sales taxes are not duties as defined in section 2 of the *Customs Act* and therefore, cannot be used in calculating terms of release for the goods. The PST is collected on the manual form K21, Cash Receipt, at non-automated locations or on the automated K21 at locations equipped with TEPS.

Duty Free Store Purchases

119. When duty free store purchases are found and there does not appear to have been a deliberate attempt to not report the goods, the traveller should be extended the benefit of doubt and allowed any entitlement, with duty and taxes collected on any overage. Officers are also encouraged to use discretion when dealing with non-residents who are in possession of undeclared alcohol or tobacco products purchased at a duty free store. When such items are for personal consumption it is appropriate to waive seizure action, allow the traveller their entitlement and collect duty and taxes on excess amounts.

120. While the foregoing deals with goods purchased at Canadian or foreign duty free stores and not reported to CBSA, a number of regions have identified problems with respect to Canadian land border duty free stores. These problems may be outlined as follows:

- a) persons already in Canada, purchase goods at a Canadian duty free store, but do not leave the country (e.g. by walking to the store or by driving the wrong way on a one way road to avoid entering the United States); or
- b) persons entering Canada purchase goods at a Canadian duty free store after having been cleared through CBSA and then proceed into Canada.

121. The following procedures have been developed to cover the aforementioned problems. If similar problems exist at duty free stores located at airports these procedures may also be applied:

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- a) In the case of a first time contravention involving either of the above two situations, where it is unclear as to whether it was a deliberate act, officers are encouraged to use their discretion. If the purchaser and the goods are still at the compound a warning may be issued to the person and the goods allowed to be either duty or tax paid or returned to the duty free store. If it is found that the purchaser has left the compound with the goods, they should be requested to return and pay the applicable duties and taxes. This may not be possible in the case of U.S. or foreign visitors. If the duty free store purchase is of significant value, the matter may be referred to CBSA Investigations for follow up action.
- b) In the case of contraventions where it is determined that it was a deliberate act, the goods and any conveyance used may be seized, bearing in mind that seizure action is not normally taken unless the amount of revenue exceeds the specified thresholds. An allegation of non-report should be used, with terms of release offered as a level 2 contravention on the form K19S.
- c) In the case of repeat contraventions or contraventions involving goods of high value, where it is determined that a higher deterrent factor is warranted, terms of release detailed under a level 3 contravention should be offered, as well as consideration of criminal prosecution.

Ascertained Forfeitures

- 122. Section 124 of the *Customs Act* provides the authority to effect ascertained forfeitures in respect of goods or conveyances when: "the goods or conveyance is not found or if the seizure thereof would be impractical."
- 123. Generally the detection and enforcement of violations triggering ascertained forfeitures occur after the fact, that is, after the physical goods have left CBSA's control. Because of the foregoing this type of action is usually carried out by Investigations.
- 124. Ascertained forfeitures, because of the circumstances under which they occur, rely on a different standard of evidence, and they are documented on a K9 form, Notice of Ascertained Forfeiture. It is therefore recommended that in instances when officers feel that they have no alternative but to proceed with such enforcement action, they should request, through their immediate supervisors, to contact Investigations for guidance and advice on how to proceed.

Voluntary Disclosures

- 125. The Agency encourages voluntary disclosure of information relating to the possession of goods unlawfully imported into Canada.

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126. Accordingly, revenue assessed as a result of bona fide voluntary disclosures should be collected by way of an accounting document rather than by seizure action.
127. There will, however, be instances when individuals will seek to circumvent seizure action once it becomes evident that their importing practices are being investigated. It is therefore recommended that when an officer believes this to be the case, the relevant information should be referred to either Investigations or a Regional Intelligence Officer.
128. All accounting documents concerning voluntary disclosures should be annotated with the following statement: "Acceptance of these duties does not limit either the importer's liability or the Agency's ability to seize or take subsequent action against the goods or the importer."

Release of Seized Goods

129. CBSA officers must ensure that prior to releasing goods they comply with all federal and provincial legislation for which CBSA has administrative responsibility.

Note: Seizure action does not remove the status of restricted or prohibited goods.
130. Seized goods covered by the Import Control List must only be released for retention in Canada on the presentation of an appropriate permit once terms for release have been met.

Preferred Payment Options

131. Cash, certified cheque, money order or a valid credit card are acceptable methods of payment.
132. It is not the CBSA policy to accept security in lieu of payment of terms of release.
133. Where a person is unable to make a deposit in cash, certified cheque, money order or credit card, without unreasonable delay or inconvenience, officers may accept an uncertified cheque drawn on a Canadian bank for the portion of the deposit that cannot be made in cash or equivalent, for release of a conveyance only, provided that the officer is satisfied of the good faith of the person tendering the cheque.

Prosecutions

134. Superintendents and border services officers are reminded that in addition to civil enforcement action CBSA Investigations may undertake criminal prosecution. For further information refer to EN manual Part 9 Chapter 1, paragraphs 12-16 which describes "Referrals to Investigations" and "Prosecutions Categories".

Request for Correction

135. Section 127(1) of the Customs Act provides certain designated officers with the authority to cancel a seizure made under section 110 of the Customs Act within 30 days after seizure.
136. CBSA must be satisfied that there was no contravention or that there was a contravention but the amounts assessed, collected, demanded or taken as security are in error.
137. After the 30 day period has expired, all requests for cancellations, whether client or CBSA-initiated, must be sent to Adjudications who will determine whether the request is timely.

Adjudications

138. Officers should refer a traveller to the provisions of section 129 of the *Customs Act*, which are clearly embodied on the seizure form.
139. Under no circumstances will CBSA officers contact the Recourse Directorate for assistance in the decision-making process leading to seizure action.
140. All appealed CBSA enforcement actions, whether made by a CBSA officer, Investigations, or the RCMP must be reported immediately to the Director General (Recourse Directorate) under section 128 of the *Customs Act*.
141. Reports should deal with the specifics of a seizure and not contain any personal comments.
142. Officers are encouraged to take an active role in the adjudications process and to supply additional comments and evidence in matters, where a request has been made to do so by the adjudicator or where the officer feels it is required.
143. It is imperative that the seizing officer review all submissions made by the public and all correspondence sent out by the Recourse Directorate.
144. Officers must treat appeals received with concern and immediate attention.
145. Officers will treat any objection or enquiry concerning a seizure as an appeal. However, the objection or enquiry must be in writing.

Note: Clients have 90 days after the date of seizure or of service of a notice served pursuant to section 129 of the *Customs Act* in which to request a Minister's decision on the validity of the enforcement action.

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146. Officers will not accept late claims as valid appeals, but will acknowledge receipt and forward it to the Recourse Directorate for their consideration
147. When a claim is in respect of goods that have been disposed of for any reason, the Recourse Directorate must be notified immediately. If the seizure is not upheld, and should the client want to take release of the seized goods, the CBSA must compensate the client for the goods in accordance with the applicable procedures for lost or damaged goods. Where a contravention has been upheld following an appeal and the goods have been inadvertently disposed of or sold off, the client is to be compensated for the value of the goods less the amount of the terms of release.
148. Officers, superintendents, and managers must ensure that as soon as possible after receipt the following are forwarded to the Recourse Directorate:
- a) original appeals;
 - b) copies of acknowledgements;
 - c) comments of officers involved concerning all the points raised in a claim;
 - d) whatever other comments superintendents or managers may deem appropriate;
 - e) originals of any correspondence received on CBSA seizures;
 - f) clear copies of any letters of criticism, including complaints against officers dealing with a seizure action;
 - g) reports resulting from the investigation of complaints; and
 - h) anything that may appear to be a claim from a lien-holder or third party interest pursuant to section 138 of the *Customs Act*.
149. Cases will be held open until the seizing CBSA office is notified of a ministerial decision and, where applicable, the Recourse Directorate issues subsequent instructions concerning disposition of any goods remaining on hand.
150. Where an appeal is filed or a case is being held open for further investigation or other reasons, disposition of goods remaining on hand and the closing of cases must be withheld pending notification (e.g. third party orders, Federal Court Appeals).

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Note: From the time an appeal and/or third party claim is received, the case becomes the responsibility of the Recourse Directorate under the provisions set out in sections 129 to 141 of the *Customs Act*.

REFERENCES

151. *Customs Act*

Customs Tariff Act

ICES User Reference Manual

Controlled Drugs and Substances Act

CUSTOMS ENFORCEMENT MANUAL

Part 5

ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND CONVEYANCES

Chapter 3

CRIMINAL CODE – SEIZURE OF EVIDENCE AND GOODS

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to seize goods under the authority of subsection 489(2) of the *Criminal Code* in accordance with the following policy and procedures.

DEFINITIONS

2. Refer to "Chapter 11 - Glossary".

AUTHORITIES

Criminal Code

3. Subsection 489(2) – authorizes customs officers, while conducting their normal duties, to seize without a warrant anything that they believe on reasonable grounds:
 - a) has been obtained by the commission of an offence against this or any other act of Parliament;
 - b) has been used in the commission of an offence against this or any other act of Parliament; or
 - c) will afford evidence in respect of an offence against this or any other act of Parliament.

PURPOSE AND SCOPE

4. The purpose of this policy is to provide guidelines for the seizure of goods pursuant to subsection 489(2) of the *Criminal Code*.
5. This policy applies to all CBSA personnel.

BACKGROUND

6. Certain federal statutes contain provisions that make it an offence for a person to import, export, or possess certain goods. These types of statutory provisions address the behaviour of the person (*in personam*). They do not, however, prohibit, control, regulate, or otherwise provide any manner in which the goods themselves are to be dealt with.

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7. Provisions that prohibit, control, and regulate goods are called *in rem* provisions. Customs officers can only detain goods under authority of section 101 of the *Customs Act* when the statutory provision is *in rem*. Officers are unable to detain goods under the *Customs Act* in those cases where the statute only creates an *in personam* offence.
8. When there is evidence of a criminal offence under the *Customs Act*, officers may seize evidence under section 110(3). Officers should consult with Investigations before taking seizure action.
9. When goods are in compliance with the *Customs Act* but have been obtained, used, or are evidence of the commission of an offence under any other act of Parliament, designated customs officers have the authority to seize goods under subsection 489(2) of the *Criminal Code* where the statutory provision is *in personam*. Such as:
 - a) importing goods obtained by crime (*Criminal Code* s. 357), (e.g. stolen property);
 - b) importing instruments for forging or falsifying credit cards (*Criminal Code*, subsection 342.01);
 - c) importing counterfeit money (*Criminal Code*, section. 450);
 - d) importing gaming machines (*Criminal Code*, section 202);
 - e) importing commercial quantities of drug paraphernalia (*Criminal Code*, subsection 462.2); and
 - f) forging a trade-mark with intent to deceive (*Criminal Code*, section 407).

POLICY GUIDELINES

10. The primary responsibility of all customs officers remains the enforcement and application of the *Customs Act* and its regulations as well as the laws of other government departments (OGDs) for which it has responsibility.
11. The *Customs Act* will take precedent over the *Criminal Code* in matters dealing with *in personam* offences concerning the importation, exportation, or possession of imported/exported goods.
12. The completion of customs processes may be suspended, if action under the *Criminal Code* is considered.

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Note: For example, the goods are in compliance with the *Customs Act*, but duties and taxes have not yet been collected.

13. Travellers' goods that are not in compliance with the *Customs Act* may be seized under the *Customs Act*.
14. Commercial goods that are not in compliance with the *Customs Act* should be dealt with in accordance with AMPS policy.

Note: Refer to Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and Administrative Monetary Penalties Policy and Procedures.

15. Goods seized under the *Customs Act* that are to be used as evidence of an offence under another act must remain under customs documentary control at all times.
16. Officers will refer, with the exception of drugs, all incidents of smuggling or fraud under the *Customs Act* to Investigations through the Regional Intelligence Officer (RIO) unless otherwise indicated in a local standard operating procedure (SOP).

Note: Refer to Part 9, Chapter 1, Customs Prosecution Policy, and Part 9, Chapter 2, Customs Prosecution Procedures.

17. Action under subsection 489(2) of the *Criminal Code* will normally be taken when there is clear and concise information received from the RCMP and/or OGD, which states the nature of the offence, provides sufficient information to identify the shipment and the RCMP and/or OGD is willing to lay a charge in relation to the act.

Note: This policy does not apply to goods that are evidence of an offence for which an individual has been arrested. In these cases, the evidence obtained is incidental to the arrest.

18. Goods that are clearly in contravention of OGD legislation may be seized under subsection 489(2) of the *Criminal Code* when there is no prior intelligence information if, prior to actual seizure, a RIO consults with the RCMP and they are willing to take possession of the goods if a seizure is made, and are willing to lay a charge in relation to the contravention.

Note: Based on information received from the RCMP, the final decision to seize will be made by the customs officer.

19. Officers will advise the importer/owner when goods are seized under subsection 489(2) of the *Criminal Code* and inform the importer/owner of the goods being seized, the legislative authority contravened and the allegation.

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20. The RCMP and/or OGD will be responsible for the storage and handling of all goods seized under subsection 489(2) of the *Criminal Code*.
21. In cases where the RCMP or other police force cannot take immediate custody of seized goods, they will be responsible for any storage costs incurred by the CBSA.
22. The RCMP and/or OGD will be responsible for reporting the seizure to the court in accordance with subsection 489.1 of the *Criminal Code*.
23. Goods seized under subsection 489(2) of the *Criminal Code* will remain subject to customs duties and controls and must be returned to customs for accounting and payment of applicable duties and taxes unless the court orders them forfeit and condemned for destruction or to be exported.

Working with Other Police Forces

24. In agreement with the RCMP, the CBSA may enter into arrangements with provincial or municipal police forces to take custody of goods seized under subsection 489(2) of the *Criminal Code*.

Note: This only applies to offences of the *Criminal Code* and not to offences of any other federal or provincial statute.

Note: This does not apply to joint forces operations (JFO's) that are conducted between the CBSA and other police forces.
25. In the absence of local arrangements, all subsection 489(2) of the *Criminal Code* matters will be referred to the RCMP through the appropriate RIO.

26. Referrals to the police or to OGD's are considered disclosures of customs information pursuant to section 107 of the *Customs Act*. These disclosures must be made in accordance with the procedures described in D1-16-1, D1-16-2 and Part 7, Chapter 5, Disclosure of Customs Information Policy and Procedures.

Intelligence Based Seizures

27. For subsection 489(2) of the *Criminal Code* intelligence-based seizures to be carried out, intelligence information must have been received by an RIO from the RCMP or an OGD.
28. Officers will ensure that the appropriate RIO is informed immediately when information is received directly by district or port staff from the RCMP or an OGD.

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Criminal Code – Seizure of Evidence and Goods

- Note: The RIO will then contact the involved RCMP or OGD office for verification and further information.
29. Officers will not take action on a subsection 489(2) of the *Criminal Code* occurrence prior to making contact with the appropriate RIO.
 30. Information received from the RCMP or an OGD must include:
 - a) the section of the federal statute being contravened;
 - b) a clear description of the goods;
 - c) the specific justification for seizing the goods; and
 - d) a clear indication from the RCMP that they will charge the individual.
 31. When an RIO receives information directly from an OGD, they must contact the RCMP prior to taking any action to ensure they are aware of the situation and will accept responsibility for the goods once they are seized.
 32. Although intelligence information will be provided by the RCMP or an OGD, customs officers will only seize goods under authority of subsection 489(2) of the *Criminal Code* when they **believe on reasonable grounds** the goods have been obtained by, or used in, the commission of a criminal offence or will afford evidence of a criminal offence that has been committed or is being committed. Officers will document their reasonable grounds in their notebook.
 33. Although based on information received by the RCMP, the final decision to seize will be that of the customs officer.
 34. Customs officers will not delay the release of shipments and/or conduct examinations for the sole purpose of determining whether goods are evidence of a criminal offence. A lookout on a particular commodity, which may include guidelines in the form of indicators, provided by the RCMP, an OGD or other police service, is to be considered for informational purposes only.
 35. Officers may conduct examinations at their own discretion and subject to operational requirements when the RCMP, OGD, or other police force have given specific direction as to a quantity they are interested in for prosecution purposes and have expressed a willingness to take action if such goods are identified, or they have provided other specific information such as the name of a particular offending importer which allows shipments to be specifically targeted.

ROLES AND RESPONSIBILITIES

Customs Officers

36. Customs officers are responsible for:
- a) ensuring these policy and procedure guidelines are followed;
 - b) contacting the regional intelligence officer (RIO) before seizing goods under the authority of subsection 489(2) of the *Criminal Code*; and
 - c) ensuring goods seized under subsection 489(2) of the *Criminal Code* are documented and turned over to the RCMP and when necessary, stored safely.

Managers and Superintendents

37. Managers and superintendents are responsible for:
- a) ensuring compliance with these policy and procedure guidelines; and
 - b) ensuring the required communication takes place between the district/port office and the RIO.

Regional Intelligence Officers

38. Regional intelligence officers are responsible for:
- a) ensuring policy and procedure guidelines are followed;
 - b) contacting Investigations;
 - c) ensuring that lookouts are issued, maintained, and removed, as required; and
 - d) working with Investigations, local police or RCMP, OGDs, and other enforcement agencies to ensure cooperation with the terms of this policy including the eventual return of the goods to customs unless they are otherwise disposed of in an acceptable manner.

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Criminal Code – Seizure of Evidence and Goods

Investigations

39. Customs investigators are responsible for:
- a) acknowledging receipt of all referrals received;
 - b) conducting investigations and considering prosecutions related to offences under the *Customs Act*, *Customs Tariff Act*, *Export and Import Permits Act*, *Cultural Properties Act*, and other acts that control the import and export of goods;
 - c) working with RIO's, the RCMP and other enforcement agencies to identify opportunities for joint investigations/prosecutions on a case-by-case basis, whether the goods were seized under the *Customs Act* or *Criminal Code*;
 - d) consulting with the Department of Justice to determine whether a prosecution is warranted; and
 - e) advising the referring agency of the status of the investigation.

Customs Contraband, Intelligence and Investigations

40. Customs Contraband, Intelligence and Investigations (CCII) is responsible for:
- a) monitoring compliance with this policy and procedures;
 - b) receiving feedback and recommendations from the field and addressing concerns; and
 - c) developing and maintaining appropriate policy as required.

PROCEDURES

41. Take control of the goods and document all actions you have taken to maintain the continuity of the evidence.
42. Follow procedures as outlined in Part 6, Chapter 7, Criminal Code Offences for processing persons suspected of being in possession of property obtained by crime. The Exhibit Control Form (K129), used for transferring the goods to the appropriate police force, is attached as Appendix A. Also the Evidence Seizure Receipt (E352), used to identify seized goods, is attached as appendix B.

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Criminal Code – Seizure of Evidence and Goods

43. Normally, the RCMP and/or OGD is responsible for reporting the seizure to the court in accordance with subsection 489(1) of the *Criminal Code*.

Note: In British Columbia the CBSA reports the seizure to the court.

44. When the criminal prosecution has been completed, acquit the entry by:
- the normal accounting process;
 - a written notice from the RCMP that the goods have been destroyed;
 - a written notice from the RCMP that the goods have been exported; or
 - a notice that the courts have ordered the goods forfeit.

REFERENCES

45. *Customs Act*
Customs Tariff Act
Criminal Code of Canada
Trademarks Act
ICES User Reference Manual

Part 5

**ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND
CONVEYANCES**

Chapter 3

CRIMINAL CODE – SEIZURE OF EVIDENCE AND GOODS

Appendix A

EXHIBIT CONTROL FORM (K129)

EN Part 5 Chapter 3

Criminal Code – Seizure of Evidence and Goods

APPENDIX A



Canada Customs and Revenue Agency Agence des douanes et du revenu du Canada

EXHIBIT CONTROL
CONTRÔLE DES PIÈCES À CONVICTION

Reference no. — N° de référence
Other reference no. — Autre n° de référence
Customs office — Bureau de douane
Date

Re — Objet

I Je _____ am _____ at _____ by _____ _____	came into possession of the following described goods on sous entré en possession des objets décrits ci-après le
--	---

EXHIBITS LISTED BELOW ARE TO BE GIVEN ITEM NUMBERS IN CONSECUTIVE ORDER LES PIÈCES ÉNUMÉRÉES CI-DESSOUS RECEVront UN N° EN ORDRE CONSÉCUTIF	
Item no. N° de pièce	Description

CERTIFIED CORRECT — CERTIFIÉ CONFORME			
Customs Officer — Agent des douanes	Date	Superintendent or person in charge of exhibits Superviseur ou responsable des pièces à conviction	Date

CERTIFIED CORRECT / CERTIFIÉ CONFORME				
Item no. N° de pièce	Recipient (signature) — Destinataire (signature)	Agency — Organisme	Date	Witness (signature) — Témoin (signature)

K122 (026)

Canada

Part 5

**ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND
CONVEYANCES**

Chapter 3

CRIMINAL CODE – SEIZURE OF EVIDENCE AND GOODS

Appendix B

EVIDENCE SEIZURE RECEIPT (E352)

EN Part 5 Chapter 3

Criminal Code – Seizure of Evidence and Goods

APPENDIX B

 Canada Border Services Agency Agence des services frontaliers du Canada		EVIDENCE SEIZURE RECEIPT - REÇU DE SAISIE DE LA PREUVE					
PROTECTED WHEN COMPLETED <small>Note: This information on this form is subject to enhance the law, especially as it concerns the laws relating to the importation and exportation of goods and is protected under the provisions of the Privacy Act. This form is exempt from personal information form, Customs Intelligence Recovery manual No. CICR4 CP01/10.</small>		PROTÉGÉ LORSQUE REMPLI <small>Note: Les renseignements qui constituent ce formulaire sont protégés par la loi sur l'amélioration de la confidentialité des documents relatifs à l'importation et l'exportation des marchandises et sont protégés par les dispositions de la loi sur la protection des renseignements personnels. Ce formulaire est exempté de la forme de demande d'information personnelle concernant les règles de la division des renseignements d'ACBQ CP01/10.</small>					
Surname - Nom de famille : _____ Given name(s) - Prénom(s) : _____ Address - Adresse : _____ Statement of evidence - Exposé de la preuve : _____		Evidence seizure ref. N° de file de la saisie : _____ File ref. no. - N° de ref. ca. : _____ Date : _____ C.P. : _____					
<input type="checkbox"/> The goods described have been seized under section 43(2) of the Customs Act, as it is believed on reasonable grounds that the goods will affect evidence in respect of a contravention of the Customs Act or the regulations. <input type="checkbox"/> The goods described have been seized under section 43(2) of the Criminal Code, as it is believed on reasonable grounds that the goods will affect evidence in respect of an offence against the Criminal Code or any other Act.		<input type="checkbox"/> Les marchandises indiquées ont été saisies en vertu de l'article 43(2) de la Loi sur les douanes, puisqu'il y a, pour elles, motifs raisonnables, qu'elles constituent des éléments de preuve par rapport à une infraction à la loi sur les douanes ou au règlement mentionné. <input type="checkbox"/> Les marchandises indiquées ont été saisies en vertu de l'article 43(2) du Code criminel puisqu'il y a, pour elles, motifs raisonnables, qu'elles constituent des éléments de preuve par rapport à une infraction au Code criminel ou à une autre loi mentionnée.					
Seizing officer - Agent responsable de la saisie : _____		Seizing officer's signature - Signature de l'agent : _____					
RETURN OF EVIDENCE - RENVOI DE LA PREUVE <small>The above evidence was returned on - La preuve susmentionnée a été renvoyée le -</small> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Date - Date : _____</td> <td style="width: 50%;">Location - Lieu : _____</td> </tr> <tr> <td>Person in charge of evidence - Recommandé au sujet de la preuve : _____</td> <td>Customer officer - Agent des douanes : _____</td> </tr> </table>				Date - Date : _____	Location - Lieu : _____	Person in charge of evidence - Recommandé au sujet de la preuve : _____	Customer officer - Agent des douanes : _____
Date - Date : _____	Location - Lieu : _____						
Person in charge of evidence - Recommandé au sujet de la preuve : _____	Customer officer - Agent des douanes : _____						
E52 (04/10)		CBSA COPY - EXEMPLAIRE DE L'ACBQ					

Canada

ENFORCEMENT MANUAL

Part 5

ENFORCEMENT ACTIONS – GOODS, DOCUMENTS EVIDENCE AND CONVEYANCES

Chapter 4

AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE MONETARY PENALTIES (NON-COMMERCIAL)

Table of Contents

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to use the Agriculture and Agri-food Administrative Monetary Penalty System (AAAMPS) as an efficient, fair and transparent alternative to prosecution, and as a supplement to existing enforcement measures, for persons who fail to declare food, plant and animal goods at points of entry when importing into Canada. The purpose is to preserve and protect the health of Canadians, the economy, the natural resources, and the biodiversity of our environment.

Note: Refer to Part 5, Chapter 2, Traveller Seizures and Ascertained Forfeitures when seizing commodities for contraventions of the *Customs Act Enforcement Manual - Traveller Seizures*.

DEFINITIONS

2. Refer to Part 11 – Glossary for other definitions..
 - a) Agriculture and Agri-food Administrative Monetary Penalty System (AAAMPS): It is a system of administrative monetary penalties used for the enforcement of several *Acts* set out in section 11 of the *Canadian Food Inspection Agency Act* when violations of these are detected. These Acts include the Canada Agricultural Products Act, the Farm Debt Mediation Act, the Feeds Act, the Fertilizers Act, the Health of Animals Act, the Meat Inspection Act, the Pest Control Products Act, the Plant Protection Act and the Seeds Act.
 - b) Automated Import Reference System (AIRS) is an on-line tool maintained by the Canadian Food Inspection Agency (CFIA) used to determine if a good is a regulated good.

AUTHORITIES

Health of Animals Act

3. Section 16.1 states that where a person imports into Canada any animal, animal product, animal by-product, animal food or veterinary biologic, or any other thing used in respect of animals or contaminated by a disease or toxic substance, the person shall, either before or at the time of importation, present the animal, animal product, animal by-product, animal food, veterinary biologic or other thing to an inspector, officer or CBSA officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer.

Note: "Animal" includes an embryo and fertilized egg or ovum. By CFIA definition, regulated live animals are hatching eggs, honeybees, turtles and tortoises, birds and mammals.

Health of Animals Regulations

4. Section 34(1) states that no person shall import milk or milk products into Canada from a country other than the United States or from a part of such a country, unless (a) the country or part of the country is designated as free of foot and mouth disease pursuant to section 7; and b) the person produces a certificate of origin signed by an official of the government of the country of origin that shows that the country of origin or part of such a country is the designated country or part thereof referred to in paragraph (a).
5. Section 7 (1) states that for the purpose of preventing the introduction of a disease into Canada from an animal or thing imported into Canada, the Minister may designate a country or part of a country as being free of a disease or as posing a negligible risk for a disease.
6. Section 34 (2) states that subject to subsection (3), no person shall import unfertilized bird eggs or egg products into Canada from a country other than the United States or from a part of such a country, unless:
 - a) the country of origin or part of such a country is designated as free of avian pneumoencephalitis (Newcastle disease) and fowl plague pursuant to section 7;
 - b) the person produces a certificate of origin signed by an official of the government of the country of origin that shows that the country of origin or part of such a country is the designated country or part thereof referred to in paragraph (a); and
 - c) the eggs are packed in containers that are clean and free from dirt and residue of eggs.
7. Section 34 (3) Paragraph (2)(a) does not apply to eggs imported into Canada if they are transported under seal of an inspector direct from the place of entry to a registered processed egg station approved by the Minister.
8. Section 40 states that no person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with Part IV of the Health of Animal Regulations.

Plant Protection Act

9. Section 2 states that the purpose of this Act is to protect plant life and the agricultural and forestry sectors of the Canadian economy by preventing the importation, exportation and spread of pests and by controlling or eradicating pests in Canada.

Plant Protection Regulations

10. Section 39 states that every person shall, at the time of importation into Canada of any thing that is a pest, is or could be infested or constitutes or could constitute a biological obstacle to the control of a pest, declare that thing to an inspector or CBSA officer at a place of entry set out in subsection 40(1).
11. Section 40 (1) lists the CBSA offices designated as places of entry where things shall be presented for inspection and admittance to Canada.
12. Section 40 (2) states that a thing shall be presented at a place of entry set out in subsection (1) during regular working hours fixed by the Minister.
13. Section 40 (3) states that an inspector or CBSA officer may require in writing that any thing entering Canada be directed to another place of entry or place inside Canada, for the purpose of inspecting the thing.
14. Section 40 (4) states that where, pursuant to subsection (3), an inspector or CBSA officer has required a thing to be directed to another place of entry or place inside Canada, no person shall:
 - a) move the thing to any place except the place indicated; or
 - b) open any conveyance or unpack any package containing the thing, except as authorized by any inspector or CBSA officer. SOR/97-151, s. 29; SOR/97-292, s. 32.

Canadian Food Inspection Agency Act

15. Section 11 (5) states that the CBSA is responsible for the enforcement of the program legislation referred to in paragraph (b) of the definition "program legislation" in section 2 of the *Canada Border Services Agency Act* as that program legislation relates to the delivery of passenger and initial import inspection services performed at airports and other Canadian border points other than import service centres.

Canada Border Services Agency Act

16. Section 2: "program legislation" means any other Act of Parliament or any instrument made under it, or any part of such an Act or instrument, (b) that the Governor in Council or Parliament authorizes the Minister, the Agency, the President or an employee of the Agency to enforce, including the Agriculture and Agri-Food Administrative Monetary Penalties Act, the Canada Agricultural Products Act, the Feeds Act, the Fertilizers Act, the Fish Inspection Act, the Health of Animals Act, the Meat Inspection Act, the Plant Protection Act and the Seeds Act.

Agriculture and Agri-Food Administrative Monetary Penalty Act

17. Section 3 states that the purpose of this Act is to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the agri-food Acts.

Agriculture and Agri-Food Administrative Monetary Penalties Regulations

18. Schedule 1 lists the short-term description of possible violations to the Health of Animals Act, the Plant Protections Act and their respective regulations and classifies the severity thereof.

Customs Act

19. Subsection 12(1) states that all goods that are imported must be reported at the nearest CBSA office that is open for business except under certain circumstances or subject to prescribed conditions.
20. Section 101 authorizes CBSA officers to detain goods that have been imported, or that are intended for export, until such time that the officers are satisfied that the goods have been dealt with in accordance with the *Customs Act* and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods and any regulations made there under.
21. Subsection 110(1) states that an officer, who believes on reasonable grounds that this Act or regulations have been contravened, may seize as forfeit any goods or conveyance that was made use of in respect to the goods.

PURPOSE AND SCOPE

22. The purpose of this policy is to outline the CBSA's policy with regards to the detention of regulated foods, plants or animals and the application of the Agriculture and Agri-food Administrative Monetary Penalty (AAAMP). It provides procedures for border service officers on the application of AAAMPs.
23. This policy applies to all CBSA officers in all modes of transportation.

BACKGROUND

24. The AAAMP system is a set of agriculture and agri-food administrative monetary penalties for the enforcement of several Acts specified in section 11 of the CFIA Act.
25. Historically AAAMPS were issued by the Canada Food Inspection Agency (CFIA). However, with the creation of the Canada Border Services Agency in 2003, Border Services Officers (BSOs) were given the responsibilities of a CFIA inspector for services performed at border points.
26. BSOs may now issue AAAMPs pursuant to the Health of Animal's Act and its regulations and the Plant Protection Act and its regulations. This authority applies to non-commercial imports at points of entry in all modes.
27. The *CBSA Act* particularly references the *AAAMP Act* as an Act that the CBSA is authorized to enforce.

POLICY GUIDELINES

28. A regulated food plant or animal good is an animal, plant or their product that is prohibited entry into Canada or controlled in such a way that it requires a certificate or inspection procedure.
29. When people fail to declare verbally or in writing (E311 Card) all regulated food, plants and animals, and their by-products, in their possession to a BSO at a point of entry, they may be subject to an AAAMP.
30. Unregulated goods cannot be subject to an AAAMP.
31. To determine if a good is a regulated good, the BSO should consult the Automated Import Reference System (AIRS), which is an on-line tool maintained by the CFIA. Automated Import Reference System

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Agriculture and Agri-food Administrative Monetary Penalties

32. The BSO may also contact an Import Service Centre (ISC) or a CFIA inspector or veterinarian.
33. The CFIA in cooperation with the CBSA has established three regional ISC's that provide service 7 days a week.

Eastern	7am to 11pm	1-877-493-0468	fax-514-493-0468
Central	7am to midnight	1-800-835-4486	fax-416-661-3039
Western	7am to midnight	1-888-732-6222	fax- 604-666-9240
34. When an undeclared, regulated good is found the BSO must determine if all import requirements have been met (e.g. Certificates or permits).
35. It is not the CBSA policy to take penalty action in all cases. It is recognizable that not all contraventions are intentional on the part of the person who contravenes them. Negligence, carelessness and lack of knowledge on the part of the importer are mitigating factors worthy of consideration when deciding whether or not to proceed with a penalty.
36. There is no need to prove "intent" to issue an AAAMP. The BSO must be able to explain the reasonable grounds that caused the belief that a contravention occurred and the violator must be properly identified.
37. It is not the CBSA policy to take numerous enforcement actions for the same action, however, where warranted, the CBSA may also seize the food, plant and animal under the *Customs Act* for failure to report or for providing false statements. Officers should reference seizure thresholds indicated in Part 5, Chapter 2, Traveller Seizure and Ascertained Forfeiture Enforcement Manual - Traveller Seizures.
38. The policy also recognizes that there are instances where an infraction may occur where the seriousness of the offence and the evidence of intent on the part of the traveller is significant enough to consider prosecution (e.g. concealment in a hidden compartment in luggage or on a person). In these instances the BSO's should contact their local investigation divisions to discuss the particulars of the file before proceeding with an AAAMPS penalty as section 5 of the AAAMP Act does not allow the CBSA to proceed with both enforcement actions at the same time. For further information please refer to Part 6 Chapter 1, Part 9 Chapter 2 - paragraph 9.
39. The CBSA uses the Notice of Violation (NOV) (form CBSA 134) to issue a warning or penalty, advise a person of the reason for the issuance of an AAAMP, their rights (review by the Minister or Review Tribunal) and obligations (payment options). Notice of Violation.

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Agriculture and Agri-food Administrative Monetary Penalties

40. If a penalty is issued the severity will be based on a violation classification (minor, serious or very serious). The schedule from the *Agriculture and Agri-Food Administrative Monetary Penalties Regulations* indicates degrees of severity based on the goods being imported. AA-AMPS regulations.
41. Penalty amounts can range from \$100 to \$400 for traveler violations depending on whether the infraction is considered minor (\$100), serious (\$200), or very serious (\$400).
42. There are two options for payment. If the person does not wish to dispute the penalty and pays within 15 calendar days (often at the point of entry), the penalty will be reduced by 50% of the amount. After calendar 15 days the full amount applies. By paying the penalty, the traveler is deemed to have committed the violation.
43. Prohibited goods or goods that require permits and don't have the permit are inadmissible.
44. Inadmissible goods that are seized by or abandoned to the CBSA are the responsibility of the CBSA to dispose of. However, when goods which are live, protected by the Convention on the International Trade of Endangered Species (CITES), or deemed rare/endangered are intercepted, CFIA holds them in quarantine until they are released to a zoo, animal rescue centre etc. Also, if they are not considered rare, such as finches, swallows, rabbits, etc and cannot or will not be shipped back, CFIA holds them in quarantine and the CFIA veterinarian euthanizes them when he/she is available, usually the next day.
45. In appealed CBSA enforcement actions, the Adjudications Section or the Tribunal and Court Appeals Section of the Recourse Directorate may contact the BSO for additional information or evidence (depending on whether the client requested a Ministerial or Tribunal Review). The Adjudications Section is responsible for the ministerial review process. The Tribunal and Court Appeals Section is responsible for coordinating and preparing the briefing package for Tribunal Reviews on behalf of the CBSA.

ROLES AND RESPONSIBILITES

46. Border Service Officers (BSO) are responsible for:
 - a) detecting and intercepting regulated food, plants or animals that are not covered by appropriate permits;
 - b) possessing a general awareness of regulated food, plants and animals and knowing where to locate detailed information;

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Agriculture and Agri-food Administrative Monetary Penalties

- c) being familiar with current permits and related documents; and
 - d) assessing whether an AA AMP warning or penalty should be issued;
 - e) interviewing relevant witnesses;
 - f) completing necessary forms;
 - g) gathering, and protecting all evidence, including photographs and physical exhibits;
 - h) issuing AAAMPS; and
 - i) maintaining the complete file at the point of entry.
47. CBSA Superintendents are responsible for:
- a) ensuring compliance with this policy and procedures;
 - b) providing the necessary assistance and support to BSOs; and
 - c) ensuring the timely circulation of all intelligence reports, lookouts, alerts and targets.
48. Regional Operations is responsible for:
- a) Facilitating the exchange of timely information or intelligence concerning individuals suspected of importing food, plants or animals without the required permits; and
 - b) Liaising with other agencies involved in the control of food, plant or animal imports.
49. Headquarters Admissibility Branch is responsible for providing guidance in the application of AAAMPS.
50. Headquarters Enforcement Branch, Criminal Investigations Divisions is responsible for providing guidance related to prosecutions.

PROCEDURES

51. Ensure the FPA primary questions are asked.

EN Part 5 Chapter 4

Agriculture and Agri-food Administrative Monetary Penalties

52. Record the responses to primary questions and any clarifying questions necessary to determine specifically what FPA goods are being declared.
53. If applicable, create a violation case file with all evidence to prove the violation assessment. Consider calling regional investigations if the seriousness of the offence and the degree of intent on the part of the traveller is significant enough that prosecution should be considered.
54. Record the name, address, phone number, and birth date.
55. Take a copy of photo identification (passport, drivers license or other ID).
56. Copy other relevant documents (e.g. airline ticket, invoice etc). In blank space or margins, sign and date all copies and note badge number, NOV number and case number. Note "Certified True Copy" on all.
57. Take a certified true copy of E311 or E67 form.
58. Photograph undeclared item(s) with appropriate written comments. Photographs clearly showing the restricted/prohibited product(s) that are the subject of the violation are in most instances sufficient evidence to prove a violation. Digital photos are the preferred form as they can be placed on the file immediately when taken. The date, time, signature and badge number of BSO taking the photo and a note describing the good should be written on the back of the photo or photocopies.
59. Print out AIRS information.
60. Complete a report of any ISC communication, identifying the Center, name of the agent, date and time and information transmitted.
61. Retain the interpreter's statement, if applicable.
62. Retain any statements or notes made by BSO(s) witnessing these events if applicable.
63. Complete the Inspector's Non-Compliance Report for Travellers at Points of Entry, CBSA 142. The CBSA 142 is to be completed for all violations which result in the issuance of an FPA AAAMP warning or a monetary penalty. The CBSA142 is accessible at: [Inspector's Non-compliance Report](#).
64. Complete the Traveller's Interception Report, BSF156 when an undeclared, regulated FPA commodity is discovered during secondary examination. This document forms the basic report on the violation case file. The BSF 156 is also used as a receipt for the person, as a tag for the intercepted items for use in accounting of the source of the seizure and in returning treated items

to their owners, as a record for the local CBSA office to enable officers to respond to inquiries and complaints, to enable BSOs to maintain records of agricultural inspections, to allow for the forecasting and justification of resources and facilities, and as a source of data for risk analysis. The form has three copies. The white copy will be presented to the traveler, the blue copy will be attached to the goods and the green copy will remain with CBSA at the Port of Entry (POE). The BSF156 is accessible at Traveller's Interception Report.

65. Complete the Certificate of Service BSF166 if the NOV is not served in the presence of the individual. The main objective of BSF 166 is to serve primarily as an instrument for statistical purposes, and also, to allow for rapid and accurate recording of information relevant to inspection at all POEs for persons referred for a secondary. The BSF 166 is accessible at Certificate of Service.
66. Complete a Notice of Violation, CBSA 134 (the E311 card may assist when available). Each NOV with penalty or warning carries a unique violation number composed of the airport 3-letter IATA code in addition to a series of sequential numbers, and contains sections for both warnings and penalties. The NOV is accessible at Notice of Violation.
67. The following are example allegations:
 - a) Failure to declare Plant and Plant Products: The above named person, committed a violation, namely: fail to declare (name of thing) as prescribed contrary to: Sec. 39, *of the Plant Protection Regulations*.
 - b) Failure to present live animals: The above named person, committed a violation, namely: fail to present an animal or thing, to wit: (Name animal or thing), contrary to: Sec.
 - c) Failure to meet egg products import requirements: The above named person, committed a violation, namely: import unfertilized eggs from a country that is not designated free from Newcastle disease and avian influenza, contrary to: Sec. 34. (2) (a), *of the Health of Animals Regulations*.
 - d) Failure to meet meat import requirements: The above named person, committed a violation, namely: import an animal by-product, to wit: meat, without meeting the prescribed requirements, contrary to: Sec 40 *of the Health of Animals Regulations*.

- e) Failure to provide certificates for import of milk or milk products: The above named person, committed a violation, namely: import an animal product, to wit: milk or milk products, without the required certificate, contrary to: Sec. 34. (1) (b), of the *Health of Animals Regulations*.
 - f) Failure to provide import certificate for hatching eggs The above named person, committed a violation, namely: import hatching eggs without the required certificate, contrary to: Sec. 16. (1), of the *Health of Animals Regulations*.
68. Issue a K19 Seizure receipt if seizure under the *Customs Act* is also warranted.

REFERENCES

- 69. *Health of Animals Act*
Health of Animals Regulations
Plant Protection Act
Plant Protection Regulations
Canadian Food Inspection Agency Act
Agriculture and Agri-food Administration Monetary Penalties Act
Agriculture and Agrifood Administrative Monetary Penalties Regulations
Customs Act
Automated Import Reference System (AIRS)

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS - PERSONS

Chapter 1

ARREST AND DETENTION POLICY AND PROCEDURES

EN Part 6 Chapter 1

Arrest and Detention

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to arrest and detain suspect persons when the arrest and detention is lawful and is conducted in accordance with these policy guidelines.

DEFINITIONS

2. See Glossary.

AUTHORITIES

Criminal Code

3. Sections 25 and 27 – Provides officers with the legal authority to use as much reasonable force as is necessary in the administration and enforcement of their duties.
4. Section 26 – A peace officer may be held criminally liable for the use of excessive force. The pertinent sections of the *Criminal Code of Canada* are 25, 26, 27, 34, 35, 36, and 37. Failure to exercise sound judgement could lead to legal ramifications.

Note: It is the officer who is responsible for the health and safety of persons who must be restrained.

5. Subsection 495(1) – Authorizes officers to arrest persons found committing or known to have committed a criminal offence.
6. Subsection 495(2) – Sets limitations on when an officer will arrest persons found committing or known to have committed a criminal offence.
7. Section 496 – Provides officers the authority to issue an Appearance Notice to a person who has not been arrested as per the limitations described in subsection 495(2).
8. Section 497 – Authorizes officers to release from custody persons arrested, with or without warrant, for an offence described in section 496 if public interest and court appearance are satisfied.
9. Subsection 503(1) – Authorizes officers who arrest a person with or without warrant, to detain the person in custody and requires them to take the person before a justice within twenty-four hours after their arrest.

EN Part 6 Chapter 1

Arrest and Detention

Charter of Rights and Freedoms

10. Section 9 – Everyone has the right not to be arbitrarily detained or imprisoned.
11. Section 10 – Everyone has the right on arrest or detention
 - a) to be informed promptly of the reasons therefore;
 - b) to retain and instruct counsel without delay and to be informed of that right; and
 - c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Note: The Supreme Court of Canada has said that the words “arrest” and “detention” both indicate some form of compulsory restraint.

Customs Act

12. Section 160 – Lists the particular sections of the *Customs Act*, that if violated are punishable by either indictment or summary conviction. Officers, therefore, may arrest for contraventions of those sections listed.
13. Subsection 163.5(1) – Authorizes designated officers, when at a customs office and performing their normal duties, to make an arrest for a criminal offence under any other Act of Parliament.

Note: See Appendix A for the relevant authorities, limitations, and a list of commonly encountered offences for which officers may arrest.

PURPOSE AND SCOPE

14. The purpose of this policy is to outline guidelines on arrest in accordance with section 495 and detention in accordance with subsection 503(1) of the *Criminal Code* any time an officer is in a legal position to make an arrest or detention, whether it is under the *Customs Act*, the *Excise Act* or the *Criminal Code*.
15. The policy also provides guidelines for the frisk of persons and the use and maintenance of handcuffs by officers.

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Arrest and Detention

16. This policy applies to all border services officers (BSO's) in the performance of their duties under the *Customs Act*, the *Excise Act* or the *Criminal Code*.

BACKGROUND

17. In the past, BSO's as peace officers were accorded powers of arrest that were limited to enforcing the *Customs Act* and certain provisions of the *Criminal Code* such as those that related to the assault or obstruction of a peace officer in the performance of their duties.

Note: See Appendix B for a listing of specific criminal offences related to officer assault and obstruction.

18. In 1998, Bill C-18, *An Act to Amend the Customs Act and Criminal Code*, received Royal Assent. The legislation provides designated border services officers customs officers with the authority to arrest for any criminal offence encountered at a customs office while performing normal duties, or when acting in accordance with section 99.1 of the *Customs Act*. In particular, these offences include child abduction, possession of stolen property, and impaired driving. Designated officers also have the authority to enforce outstanding warrants for arrest under the *Criminal Code*.

Note: Refer to *Criminal Code Offences Policy and Procedures* for guidelines pertaining to designated and non-designated officers.

POLICY GUIDELINES

General

19. Except in exigent circumstances, officers will notify their superintendent of an arrest or detention as soon as possible.
20. Superintendents will review decisions concerning the detention or arrest of a person and discontinue the detention or arrest where it is evident that charges will not be laid or the person's presence at the CBSA office is no longer required.
21. Officers will caution importers or their agent concerning the making of statements when, during the course of a seizure or penalty action involving high value goods, it becomes apparent that the threshold for the initiation of prosecution action has been exceeded and criminal charges may also be laid.

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Detention

22. Persons are deemed to be detained under the *Charter of Rights and Freedoms* and are entitled to all the provisions of section 10 of the Charter when they are not free to leave the confines of the CBSA area once all routine CBSA processing has been completed.
23. As soon as a decision to detain a suspect is made, as in the case of a personal search, a suspect must be informed that they are being detained, advised of the reason for the detention and cautioned.
24. Suspects must indicate they understand, be asked if they wish to contact counsel, and be informed that they will be provided with access to a telephone if they wish to do so.

Arrest

25. Officers will make an arrest, subject to restrictions in 495(2) of the *Criminal Code*, in situations concerning serious infractions of the law and where the criteria found in the CBSA Prosecution Policy are met. These include offences involving:
 - a) narcotics;
 - b) firearms;
 - c) prohibited goods such as child pornography;
 - d) controlled or regulated goods, including all permit and Other Government Department (OGD) requirements;
 - e) evasion of revenues exceeding \$1000.00 in commercial cases;
 - f) evasion of revenues exceeding \$2000.00 in personal cases; and
 - g) assault or obstruction.
26. Designated officers will make an arrest, subject to restrictions in 495(2) of the *Criminal Code*, for *Criminal Code* infractions where the criteria found in the *Criminal Code Offences Policy and Procedures* are met.

Note: Refer to Part 6, Chapter 7, *Criminal Code Offences Policy and Procedures*.

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27. Officers may arrest non-residents of Canada involved in smuggling goods into Canada in a wilful and premeditated manner and/or in instances involving the smuggling of high value goods.
28. Officers may arrest Canadian residents, subject to the restrictions in 495(2) of the *Criminal Code*, involved in the smuggling of high value goods.
29. Officers will not arrest a person under the age of 12, as they cannot be convicted of an offence.
30. For matters involving *Customs Act* offences, the Criminal Investigation Division (CID) will be contacted and apprised of the situation.
31. In cases of doubt relating to *Customs Act* offences, the CID will be consulted for guidance.
32. In cases of criminal prosecutions involving offences that are the primary responsibility of the CBSA such as the *Customs Tariff, Export and Import Permit Act*, etc. the regional Investigations office will be contacted and advised of the situation.

Rights of the Individual

33. When a person is not free to leave the custody of an officer or the confines of a customs office because they are the subject of enquiries, the person is considered detained and their rights under the *Canadian Charter of Rights and Freedoms* must be respected.
34. When a person is detained or placed under arrest, their rights under the *Canadian Charter of Rights and Freedoms* must be respected.
35. Persons must be informed promptly of the reasons for their arrest or detention, that they have the right to retain and instruct counsel without delay, and be cautioned regarding the making of statements.
36. A person who is detained in accordance with the Charter for customs purposes will be advised of their right to counsel and cautioned regarding the making of statements. This is regardless of whether the person is also considered detained in accordance with the Charter for immigration purposes.
37. Customs processing must be concluded before persons are removed for Immigration detention.

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38. A person who is detained or arrested must be allowed the opportunity to contact counsel of their choice before any further action is taken (e.g., interview, search to recover evidence, etc.) except when a personal search is already underway. In these cases, persons will be given the opportunity to contact counsel as soon as the personal search is complete.

Arrest of Foreign Nationals

39. Officers will inform arrested persons identified as being a foreign national (a person who is not a Canadian citizen including a stateless person) of their entitlement to contact the embassy or consulate officials of their home country once all arrest formalities have been completed.
40. Officers will allow arrested foreign nationals to contact the embassy or consulate officials of their home country. This is in addition to being allowed to contact counsel.

Note: In the case of an arrest for an impaired driving violation, the contacting of embassy or consulate officials will not delay any breath testing that must be performed.

Note: Refer to Part 6, Chapter 7, *Criminal Code Offences Policy and Procedures*.

41. Officers will notify Citizenship and Immigration Canada (CIC) as soon as possible after the arrest of a foreign national, including foreign nationals temporarily residing in Canada (e.g. work or student visas, Minister's Permit).
42. Officers will advise the CID or police when they arrive to take custody of a foreign national that they have been informed of their entitlement to contact embassy or consulate officials and whether contact has been made.

Frisks

43. It is strongly recommended that officers of the same sex as the person to be frisked conduct frisks.

Note: It is recognized that in certain situations and at smaller ports this will not always be possible.

44. A frisk for weapons will always be conducted whenever a person is being detained or arrested, or if an officer has reason to suspect that a person is carrying a concealed weapon or the officer or public's safety is at risk.

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45. Prior to placing an individual in a detention cell or secure area the person must be frisked for weapons, including but not limited to razor blades, lock picks, pins, and plastic explosives.
46. Evidence frisks are not to be conducted to solely disprove a person's declaration unless there are indicators or other evidence to suggest the person has misstated or purposely concealed the truth.
47. A frisk for evidence will always also entail a frisk for weapons. A frisk for weapons, however, will not necessarily constitute a frisk for evidence.
48. Frisks, whether for weapons and/or evidence, will only be conducted by patting down the outer clothing that is covering a person's body.
49. All frisks will be carried out with as much discretion and privacy as possible.
50. Frisks will be conducted in the presence of another officer to safeguard against any unwarranted allegations of wrongdoing.
51. Where available, officers will use a metal detector wand to augment a manual frisk.

Note: Before using the wand, persons must be asked if they are wearing a pacemaker or other similar heart device. Those who identify themselves as wearing one should only be frisked manually.

52. In the event that a prohibited or restricted weapon is found, the person is to be immediately placed under arrest, advised, and cautioned.
53. Officers will discontinue personal searches when they find that because of a frisk for evidence and/or weapons their reasonable grounds for conducting a further personal search have disappeared.

Handcuffs

54. Based on risk, officers have the authority to handcuff persons who are lawfully arrested or detained. Officers must assess the risk and act on reasonable grounds when deciding to handcuff a person. Reasonable grounds may include, but is not limited to, threat posed to the officer, another officer, members of the public, protecting the person, potential flight risk, and/or preventing the destruction of evidence.
55. Officers will apply handcuffs using techniques learned in training.

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56. Officers will not at any time, nor under any circumstances, handcuff a person to any object.
57. Officers will not handcuff themselves to a detained or arrested subject.
58. Officers are authorized to carry only handcuffs that have been approved and issued by the CBSA.
59. Officers will carry their issued handcuffs on their person in an easily accessible manner while on duty.
60. CBSA approved handcuffs will be issued after officers have successfully completed approved training.

Use of Force

61. Officers may only use force in respect of the duties they are authorized to perform in the course of their duties as officers of the CBSA. The CBSA will not support officers who use force outside of the scope of their duties, employment and (legal) authority.
62. Officers will only use as much force as is necessary, i.e. the use of reasonable force to defend themselves and the public, to control subject behaviour, or to administer or enforce the law. The amount of force to be used will be that which is proportional to the exhibited behaviour.
63. Officers must select the use of force option(s) that is the most reasonable intervention option(s) based on their assessment of the risk, situational factors and exhibited behaviour. Use of force options range from officer presence to the use of deadly force and include the use of control techniques, intermediate devices (OC spray), impact weapons (baton) and firearms (duty-firearm) (refer to the IMIM in Appendix "A").
64. The CBSA will support officers who use force so long as it is necessary to defend themselves, follow officers, employees of other government departments, persons in custody or members of the public, or to execute their duties, provided their actions are in accordance with the law and are justified, reasonable and consistent with CBSA policy and training.
65. Officers will attempt to control persons without jeopardizing their own safety.

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Dispensing Prescription Medication

66. Officers will remove prescription medications from arrested persons and follow CBSA policy and procedures for dispensing them when necessary.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures for detailed guidelines.

Taking of Notes and Completion of Documentation

67. Whenever an arrest is made, officers will take appropriate notes and record these notes in the BSF556 Officers Notebook.
68. Whenever an arrest is made, officers will complete the identification and arrest sections of the Personal Search and Arrest Report (E350) found in the Integrated Customs Enforcement System (ICES) and, for *Criminal Code* offences, the *Criminal Code* Incident Report (E641).

Note: Non-automated ports must complete a paper version of the Personal Search and Arrest Report (E350).

Note: Refer to the ICES User Reference Manual, Chapter 20 for procedures on completing the Personal Search and Arrest (E350) window contents.

Note: Refer to *Criminal Code* Offences Policy and Procedures, Appendix C for a sample of the E641.

Release from Arrest

69. Where a person has been arrested and it is subsequently determined that charges against the person will not be laid, the person will be released from arrest immediately upon completion of CBSA processes.
70. Persons who are arrested and against whom charges will be laid may be released from arrest by:
- compelling their appearance in court by way of a summons, which will be issued by the responsible police agency;

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- b) the CID or responsible police agency; or
- c) a designated officer upon issuance of an Appearance Notice (Form 9).

Note: Refer to Part 6, Chapter 7, *Criminal Code Offences Policy and Procedures* and Appendix B of the same chapter for a sample of Form 9.

ROLES AND RESPONSIBILITIES

Border Services Officers

71. Border Services Officers (BSO) are responsible for:

- a. enforcing the *Customs Act*, *Criminal Code*, and other federal statutes in accordance with legislative requirements, established policies, and standard operating procedures;
- b. ensuring arrests and subsequent release of individuals are completed in accordance with legislative requirements and these policy and procedure guidelines;
- c. notifying the superintendent as soon as possible when an arrest has occurred;
- d) wearing their issued handcuffs at all times while on duty and ensuring that they are maintained and in good working order;
- e) reporting arrests by completing a Personal Search and Arrest (E350) in ICES or, for non-automated ports, completing a paper copy of the E350 report;
- f) completing a *Criminal Code* Incident Report (E641) when required;

Note: Refer to Part 6, Chapter 7, *Criminal Code Offences*, Appendix C for a sample of the E641.

- i. completing a Use of Force Report (E642) if required;

Note: Refer to part 6, Chapter 5, *Use of Force*, Appendix B for a sample of the E642.

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- ii. maintaining an open line of communication with the police agency of jurisdiction for their area; and
- iii. recording and maintaining detailed notes of an occurrence in the issued BSF556 Officers Notebook and preparing the necessary documentation for further investigation and prosecution.

CBSA Superintendent

72. CBSA superintendents are responsible for:

- a) ensuring adherence with these policies and procedures;
- b) evaluating the reasonable grounds as presented by an officer and where warranted authorizing the use of urinalysis or monitored bowel movements; and
- c) taking appropriate corrective action on any breaches of this policy.

Intelligence Directorate and Criminal Investigations Division

73. Intelligence Directorate and Criminal Investigations Division (CID) is responsible for:

- a) developing, modifying, and approving policies in accordance with court jurisprudence, related to the administration of the detention and/or arrest of persons; and
- b) monitoring adherence with this policy by the regions.

PROCEDURES

Rights and Cautions

74. If possible, remove the person from public view prior to the detention or arrest.

Note: This may not be possible with *Criminal Code* offence related arrests and detentions, as the prevention of the continuation of the offence takes precedents (i.e., impaired driving).

Note: Refer to Part 6, chapter 7, *Criminal Code Offences Policy and Procedures*.

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75. Conduct the detention or arrest in a calm professional manner.
76. Ensure that you have the person's attention. Do not touch them to gain their attention.
77. Confirm verbally that the person is paying attention.
78. Inform the person that they are being detained or arrested and of the reason for it.

Note: Refer to Part 6, Chapter 7, *Criminal Code Offences Policy and Procedures* for statements relating to *Criminal Code* offences (i.e., I am arresting you for impaired driving).

- a) When exercising powers of arrest use one of the following statements:

“I am arresting you for:

- i) failing to properly declare the goods in your possession as required by the *Customs Act*,
 - ii) smuggling or attempting to smuggle into Canada goods, the importation of which is prohibited, controlled, or regulated by or pursuant to the *Customs Act* or any Act of Parliament,
 - iii) under the provisions of the *Criminal Code*, assaulting/obstructing a peace officer,
 - iv) hindering or attempting to hinder or prevent me from carrying out my duties as authorized under the *Customs Act*.”
- b) In cases of detention, modify the previous statement by substituting the words “I am arresting you for” with “I am detaining you for suspicion of”.

Note: Officers are advised against quoting specific sections to arrested individuals as it is not necessary to do so until such time as a criminal charge is laid.

79. Confirm verbally that the person understands the enforcement action.
80. Note the time of arrest or detention and any answer received in your notebook.
81. Read the person the following statement concerning their right to counsel:

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"It is my duty to inform you that you have the right to retain and instruct counsel without delay.

You have the right to obtain legal advice without charge from duty counsel. Duty counsel is available at: _____ during the following hours:
_____.

You have the right to apply for legal assistance without charge through the Provincial Legal Aid Program. The Legal Aid telephone number in this area is: _____. Their office is located at: _____ and office hours are from: _____.

Do you understand what has been said to you?"

Note: For *Criminal Code* offences such as impaired driving, it may be necessary for the officer to utilize the police agency of jurisdiction wording concerning the individuals right to counsel for court purposes.

82. If a person gives an indication that they do not understand the right to counsel, take steps to facilitate their understanding. This may require going beyond the mechanical recitation of the above notification.
83. If a language problem is identified, take all reasonable steps to obtain an interpreter or other person capable of speaking the language of the person.
84. Note the time right to counsel was read, understood, and any answer received in your notebook.
85. When satisfied that the advisement is understood, ask the person the following question:
"Do you wish to retain and instruct counsel or have access to legal aid?"
86. Note the information provided, the time, and any answer received in your notebook.
87. Allow the suspect to contact counsel of choice if requested.

Note: If a call takes place in a closed or private room, the door to the room may be closed only if the suspect can still be observed (i.e., through a window). If a call takes place in an open room, all officers will maintain an appropriate distance so that the conversation is private and cannot be overheard.

88. To ensure that any statement or admission of guilt, etc. made by a person after detention or arrest is admissible evidence in court, caution the

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individual concerning such statements by reading the following caution immediately after notifying the person of the right to counsel:

"You need not say anything. You have nothing to hope from any promise or favour, or nothing to fear from any threat, whether or not you do say anything. Anything you do say may be used in evidence. Do you understand?"

89. Note the time and any answer received in your notebook.
90. If a person has waived their right to counsel, frequently advise them that they may change their mind and invoke their right to counsel at any time in the process.
91. At any time when a person has admitted to unlawful conduct and has not been previously cautioned, immediately caution them concerning the making of any further statements.

Arrest of Foreign Nationals

92. Determine if in fact the person being arrested is a foreign national, in other words, a citizen of another country.
93. After arresting, advising of their right to contact counsel, and cautioning against making statements, advise foreign nationals that in addition to their right to contact counsel they are also entitled to contact the embassy or consulate of their home country. Foreign nationals may contact their embassy or consulate and counsel while under detention as well.

Note: In the case of an arrest for an impaired driving violation, the contacting of embassy or consulate officials will not delay any breath testing that must be performed.

Note: Refer to Part 6, chapter 7, *Criminal Code Offences Policy and Procedures*.

94. Allow the person to contact the embassy or consulate of their home country if they wish to.

Note: The embassy or consulate officials contacted will ensure that the arrested person's rights under Canadian law are protected and will, if requested, notify the person's family of the arrest. While embassy or consulate officials may assist the person in obtaining legal counsel, they will not, as a matter of course, make any arrangements for the person's release.

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95. Record in your notebook who was called, if contact was made, and the time of the call.
96. Notify Citizenship and Immigration Canada (CIC) as soon as possible of the arrest of any foreign national.
97. Advise the CID or police if they attend to take custody that the person was advised of their entitlement and whether or not contact was made.

Frisk for Weapons

98. Immediately after a suspect has been advised of their rights or as a simultaneous action, frisk for weapons as a safety precaution.

Note: It is not necessary that a person be first cautioned before a frisk is performed. While it is preferable to provide the cautions in advance, the frisk may be performed as a simultaneous action.

Note: It is strongly recommended that officers of the same sex as the person to be frisked conduct frisks. It is recognized that in certain situations and at smaller ports this will not always be possible.

99. Prior to placing a person in a detention cell or secure area conduct a frisk by following these steps:
 - a) secure the baggage, conveyance, and, when deemed necessary, any travelling companions;
 - b) escort the person away from the public area and into an interview room or other private area;
 - c) request the assistance of another officer;
 - d) ask the person to remove any over coat, jacket, sweater, blazer, etc.;
 - e) pat down any removed article;
 - f) position the person and yourself in the most safe and secure manner possible;
 - g) lightly pat down with the palms of your hands the outer clothing of the person including:
 - i) sides, front, and back of arms and legs; and

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- ii) sides, front, and back of the torso.
- h) ask the person to lift their feet to display the undersides of their shoes or boots;
- i) be aware of the possible presence of plastic explosives;
- j) where available, use the metal detector wand;
- k) before using the wand, ask the person if they are wearing a pacemaker or other similar heart device and those who identify themselves as wearing one should only be frisked manually;
- l) set the wand to a low sensitivity so that razor blades and, in the event of handcuffing, pins and other small devices that could be used to pick the handcuff lock will be detected;
- m) make light contact with the person's clothing;

Note: The wand is sensitive along its length and circumference.

- n) pass the metal detector wand over:
 - i) the sides of the arms and legs;
 - ii) their complete front and back profiles; and
 - iii) boots and shoes.

Note: Be aware that large metal belt buckles may make it difficult to detect a weapon hidden behind the buckle or near the waistband. In some cases, a weapon may be hidden within the buckle itself and for this reason metal belt buckles should be examined manually.

- 100. In the event that a prohibited or restricted weapon is found, place the person under arrest, advise and caution them.

Handcuffing

General

- 101. Handcuff arrested persons and detained persons in accordance with the policy guidelines.

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102. Recognize and remember handcuffs:

- a) have limitations;
- b) do not fully immobilize the individual;
- c) do not mean that a threat no longer exists simply because the person is restrained;
- d) do not negate the possibility of an attempt at escape or an injury to an officer.;
- e) can turn into a dangerous weapon if not properly applied; and
- f) can be removed if:
 - i) a person has slender hands and wrists and can slide the handcuffs off;
 - ii) they are not double locked, as they can be opened by shimmying the device; or
 - iii) a person has not been properly frisked and/or observed and has access to a lock pick device.

103. Record in your BSF556 Officers Notebook the time, circumstances, and whether force was required whenever you place a person in handcuffs.

104. When an arrested person is going to undergo a personal search, remove handcuffs once in the search room.

Note: It is not advisable to remove handcuffs from a person who is violent. In such instances, delay a thorough search until sufficient aid has arrived (e.g., additional officers or police).

105. When turning an arrested person over to another agency, allow the receiving officer to place their handcuffs on the person before removing the CBSA issued handcuffs.

106. Do not leave a person in custody in handcuffs unguarded.

Note: Handcuffs are by no means foolproof and should be used as a temporary restraining device only.

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107. In each instance where handcuffs are used, record the necessary information on the Personal Search and Arrest (E350) in ICES and in your notebook. For non-automated CBSA offices, the E350 report must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for procedures for completing the Personal Arrest and Search (E350) window contents.

108. Immediately report the loss of any handcuffs to the superintendent on duty.

Handcuff Application

Note: The following are "general" guidelines only. The techniques taught in the approved training are constantly evolving and improving. Officers, therefore, will use the techniques taught in training when there is a discrepancy between these guidelines and the training techniques.

109. Ensure handcuffs are in the single lock position (pre-loaded) so that they are ready for immediate use.

110. Ensure you have the physical means to apply the handcuffs before attempting to do so, as the application of handcuffs may precipitate violence from the person.

111. When practical, approach the suspect from the side or rear and remain alert for any unexpected moves.

112. Frisk the person for weapons or objects that could be used to pick the handcuff lock.

113. Attempt to keep the person off balance when applying the handcuffs and keep yourself in a well-balanced position to control the handcuffing procedure.

114. Apply the handcuffs as quickly as possible to eliminate time for the suspect to resist being handcuffed.

115. Press the handcuffs onto each wrist, rather than striking them; this will reduce the potential for injury to the suspect's wrist.

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116. Close the jaw and conduct a visual inspection to ensure the skin is not pinched in the jaw and that circulation is not restricted.

Note: Never place your finger(s) between the jaws of the handcuffs and the individual's wrist.

117. Ensure handcuffs fit snugly on a person's wrists but, at the same time, are not overly tightened so as to restrict blood flow to the hands.

118. Once both wrists are secured, immediately double lock the handcuffs to prevent the suspect from tightening them or picking the lock.

119. Never handcuff a person to yourself, a fixed object, to a vehicle, or other mobile object.

120. Do not allow one end of the handcuffs to be secured to one wrist and the other end left loose. The loose cuff could be used as a weapon against you.

121. When removing handcuffs, keep the suspect off his/her balance to discourage escape or attack.

122. To ensure further safety when removing handcuffs, have another officer present.

123. When transferring custody of a person, allow the officer to place their handcuffs on the person before removing yours.

Handcuff Maintenance

124. Ensure that your issued handcuffs are:

- a) in good working order;
- b) inspected frequently, cleaned, and lightly oiled (recommended monthly);
- c) kept free of dirt and other foreign substances particularly in the ratchet and key hole where dirt may hinder handcuff functioning; and
- d) repaired or replaced if damaged.

Officer Safety

125. Use technical aids such as metal detector wands, goggles, and latex gloves as deemed appropriate.

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126. Be aware of the location of First Aid Kits and what to do in cases of emergency.
 127. Keep calm however provoked or difficult to maintain control in all situations.
 128. When the potential for assault exists and you believe any attempts to use force to control a person would jeopardize your own safety:
 - a) leave the immediate area or interview room as soon as possible;
 - b) request assistance from the shift superintendent or others as appropriate;
 - c) call the local police agency immediately; and
 - d) follow police instructions.
 129. If you are prevented from leaving the interview room or immediate area:
 - a) activate the alarm system or shout for help to nearby staff;
 - b) use force to defend yourself against an unprovoked assault, as long as you use no more force than is necessary to prevent the assault or the repetition of it. Do not attempt to apprehend or restrain the individual unless there is no other option.
- Note: Refer to Part 6, Chapter 5, Use of Force Policy and Procedures.
130. Following the incident:
 - a) obtain a medical examination and report if you have been assaulted;
 - b) protect and preserve any physical evidence;
 - c) prepare a complete report of what you experienced or witnessed;
 - d) forward the medical report and incident report to your supervisor; and
 - e) record the details of the incident in your notebook.
- Note: Refer to Memorandum R1-12-1, Officers Assaulted or Obstructed on Duty.

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131. Be aware of first aid and emergency arrangements that may be needed by colleagues or the travelling public.

Contacting Counsel

132. If a person is not permitted to contact counsel immediately after being arrested or detained, it is a *prima facie* violation of the *Charter of Rights and Freedoms*, therefore:

- a) proceed with extreme care in continuing the investigation before allowing the person detained or arrested to contact counsel; and
- b) make detailed notes of the circumstances in your notebook.

Note: If the arrest is made while a personal search is in progress, complete the search prior to allowing the person to contact counsel.

133. If the person elects to contact counsel, they will be permitted every reasonable opportunity to do so. If they get no answer, or a busy signal, they will be allowed to try again or to call someone else.

134. Officers will give the person as long as is necessary and as many attempts as are necessary to contact counsel.

135. If a person's attempt to contact counsel results in an unreasonable delay and they still wish to contact counsel, suggest that they attempt to contact a different lawyer or duty counsel.

136. If the person elects to contact counsel:

- a) do not suggest the name of counsel to the person;
- b) provide access to a telephone and a telephone book or list of lawyers in the area and ensure the list includes the local Legal Aid phone number;
- c) once the person has determined the counsel they wish to contact, dial the number and make the initial contact with counsel to confirm that this is in fact who is being contacted;
- d) pass the phone to the person and provide them privacy while maintaining careful observation of the person to ensure they do not dispose of any evidence;

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- e) maintain an appropriate distance from the person to permit the call to be private and so that the conversation with counsel cannot be overheard; and
- f) record in your notebook the time that the attempt to contact counsel was made, the telephone number called, any conversation you had with counsels office, and whether or not the contact of counsel was successful.

137. If long distance charges are involved allow the call to be charged to the CBSA office.

138. Allow a person to telephone a family member to assist in contacting counsel if they request to do so. A call to a family member is not to be considered as an opportunity to retain and instruct counsel. In such cases, permit the person subsequent opportunities to contact counsel.

139. If during the person's telephone call, counsel asks to speak to the arresting officer or the superintendent, accommodate the request. Limit these conversations with counsel to the reasons for the arrest or detention and any procedure that is expected to follow. Do not get involved in arguments or debates with counsel.

Contacting Police

140. Once a person is under arrest and been advised of their rights and cautions, contact the CID or the local police agency of jurisdiction, depending on the offence, to advise of the:

- a) situation;
- b) time of arrest;
- c) reason for arrest; and
- d) approximate time the CBSA procedure is expected to conclude; and ask them to attend and take custody of the individual at that time.

Note: The law requires that the person be either released or taken before a justice of the peace within 24 hours of the arrest. It is therefore imperative that the officer advises the CID or police of the actual time that the arrest was made.

141. Make note of the time police were contacted and who was spoken to.

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142. Pending the arrival of the CID or police and following the conclusion of the CBSA enquiries, place the arrested person in a detention facility or in a secure area of the CBSA facility, preferably out of public view, and monitor them carefully until the CID or police agency of jurisdiction assumes custody.

Note: Refer to Care and Control of Persons in Custody Policy and Procedures and follow the guidelines pending the arrival of the CID or police agency of jurisdiction.

143. When the CID or police arrive to take custody of an arrested person, do not delay the transfer of custody pending the arrival of counsel. If counsel does arrive, it is sufficient to advise them that their client is in the custody of the CID or police.

144. Except for matters referred to the CID, when an arrest is made for an offence under an Act other than the *Customs Act* (e.g. *Criminal Code* offence), notify the responding police agency of jurisdiction following procedures outlined in the local agreement/Memorandum of Understanding (MOU).

145. If the CID or police agency of jurisdiction will not take the case, release the person from arrest and complete normal CBSA processes and procedures, if applicable.

146. If the CID or police cannot attend but agree to lay the information for the charge (in other words, proceed with the offence), determine if it is feasible to issue an Appearance Notice (Form 9) to the accused.

Note: Refer to *Criminal Code Offences* Policy and Procedures for guidelines for the completion of Form 9 and Appendix B of the same chapter for a sample of Form 9.

147. Where the officer or their superintendent feels strongly that police should lay a criminal charge but they are unable or unwilling to respond, CID should be contacted.

Statements and Secondary Cautions

148. If counsel has advised their client not to make any statements until their arrival, refrain from attempting to obtain any further statements.
149. Make careful and complete notes of any spontaneous remarks that are made, including the time at which they are made in your notebook.

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150. Gather information on the identification and possible actions of the person, such as:

- a) criminal record;
- b) the possibility that he or she may disappear if released;
- c) the potential destruction of further evidence; and
- d) whether or not it is in the public interest to release them.

151. If a person volunteers relevant information, record all discussions *verbatim* in your notebook to the best of your abilities.

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152. Notes taken during interviews should include:

- a) periodic recordings of the time;
- b) details of any questions asked;
- c) answers given;
- d) persons involved;
- e) evidence found;
- f) the condition of the accused at the time of the offence or investigation; (i.e., mental and physical health, any impairment, etc.);
- g) the ability of the accused to understand the discussion and questions asked; and
- h) a record of all persons who have contact with the accused.

153. Should another officer, superintendent, senior officer or other person in authority, who was not present during the original caution and questioning, enter the room where the person is held or where an interview is being conducted, this officer must immediately give a secondary caution upon entering the room. They will read the following caution:

“If you have spoken to any border services officer, police officer, or to anyone in authority or if such a person has spoken to you in connection with this case, I want it clearly understood that I do not want it to influence you in making any statement.”

Documentation

154. Whenever an individual is arrested or detained, complete the Personal Search and Arrest (E350) in ICES or, for non-automated ports, complete a paper copy of the E350 report.

Note: Refer to the ICES User Reference Manual, Chapter 20 for procedures regarding completion of the Personal Search and Arrest (E350) window contents.

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Detention in Custody

155. When an individual is arrested, hold them in custody until such time as the CBSA enquiries are complete and the person is either released or turned over to the CID or the police agency of jurisdiction.
156. Consider all persons under arrest as a potential threat to the safety of the public and staff at any CBSA facility, as well as to their own physical well being (e.g., suicide or attempted suicide).
157. Place persons under arrest in a sterile CBSA standard detention cell or, where a sterile CBSA standard detention cell is not available, in a secure area of the office, where possible out of public view, and follow the policies and procedures pertaining to the care and control of persons in custody.

Note: Refer to Care and Control of Persons in Custody Policy and Procedures.

REFERENCES

158. *Customs Act*
Criminal Code
Canadian Charter of Rights and Freedoms
D and R Memorandum
ICES User Reference Manual

Part 6

SEARCHES AND ENFORCEMENT ACTIONS - PERSONS

Chapter 1

ARREST AND DETENTION POLICY AND PROCEDURE

Appendix A

**AUTHORITIES, LIMITATIONS, AND COMMONLY ENCOUNTERED
OFFENCES FOR WHICH BORDER SERVICES OFFICERS MAY ARREST**

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Authority for Arrest

Criminal Code

495(1) – A peace officer may arrest without warrant:

- (a) a person who has committed an indictable offence or who, on reasonable and probable grounds, he believes has committed or is about to commit an indictable offence, or
- (b) a person whom he finds committing a criminal offence, or
- (c) a person in respect of whom he has reasonable and probable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

Limitations to Arrest

Criminal Code:

495(2) – A peace officer shall not arrest a person without warrant for

- (a) an indictable offence mentioned in section 553,
- (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or
- (c) an offence punishable on summary conviction,
in any case where
 - (d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence, or
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence, may be satisfied without so arresting the person, and

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(e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend in court in order to be dealt with according to law.'

Common Arrest Offences

<u>Act</u>	<u>Section</u>	<u>Offence</u>	<u>Procedure</u>
<i>Customs Act</i>	153 (a)	Making false or deceptive statements with respect to the importation of goods.	Dual
	153 (c)	Wilfully evading or attempting to evade the payment of duties or compliance with the Act.	Dual
	153.1	Hindering a border services officer.	
	159	Smuggling goods subject to duties or goods prohibited, controlled, or regulated by an Act of Parliament.	Dual
<i>Criminal Code</i>	129	Obstructing a Peace Officer.	Dual
	253(a)	Operating a vehicle, vessel, aircraft, or railway equipment while impaired by alcohol or a drug.	Dual
	253(b)	Operating a vehicle, vessel, aircraft or railway equipment having consumed alcohol over .08	Dual
	270(1)	Assaulting a Peace Officer.	Dual
	279-283	Kidnapping, Hostage taking and Abduction	Kidnapping - Indictable Hostage Taking –

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Indictable
Abduction –
Indictable
depending on
section

<u>Act</u>	<u>Section</u>	<u>Offence</u>	<u>Procedure</u>
	270.1(1)	Disarming a peace officer.	Dual
	354	Possession of Property Obtained by Crime	Dual when under \$5000 CAD
	357	Bringing into Canada Property Obtained by Crime	Indictable

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SEARCHES AND ENFORCEMENT ACTIONS - PERSONS

Chapter 1

ARREST AND DETENTION POLICY AND PROCEDURE

Appendix B

OFFENCES AGAINST A BORDER SERVICES CUSTOMS OFFICER

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APPENDIX B

Offences Relating to a Public or Peace Officer

When performing any duty in the administration of the *Customs Act* or *Excise Act*, border services officers (BSO) are both peace officers and public officers, as defined in Section 2 of the *Criminal Code*. There are nine sections of the *Criminal Code* and one in the *Customs Act*, which may be used to charge those who wilfully resist, obstruct, assault, or hinder BSO's officers engaged in the lawful execution of their duty.

Criminal Code

Obstruction

Section 129 – Every one who

- (a) resists or wilfully obstructs a public officer or peace officer in the execution of his duty or
- (b) any person lawfully acting in aid of such an officer, omits, without reasonable excuse, to assist a public officer or peace officer in the execution of his duty in arresting a person or in preserving the peace, after having reasonable notice that he is required to do so, or
- (c) resists or wilfully obstructs any person in the lawful execution of a process against lands or goods or in making a lawful distress or seizure, is guilty
- (d) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
- (e) an offence punishable on summary conviction.

Causing a Disturbance

Section 175

(1) Every one who

- (a) not being in a dwelling-house, causes a disturbance in or near a public place, by
 - (i) fighting, screaming, shouting, swearing, singing, or using insulting obscene language,

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(ii) by being drunk, or

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- (iii) by impeding or molesting other persons,
 - (b) openly exposes or exhibits an indecent exhibition in a public place,
 - (c) loiters in a public place and in any way obstructs persons who are in that place, or
 - (d) disturbs the peace and quiet of the occupants of a dwelling house by discharging firearms or by other disorderly conduct in a public place or who, not being an occupant of a dwelling-house comprised in a particular building or structure, disturbs the peace and quiet of the occupants of a dwelling-house comprised in the building or structure by discharging firearms or by other disorderly conduct in any part of building or structure to which, at the time of such conduct, the occupants of two or more dwelling-houses comprised in the building or structure have access as of right or by invitation, express or implied, is guilty of an offence punishable on summary conviction.
- (2) In the absence of other evidence, or by way of corroboration of other evidence, a summary conviction court may infer from the evidence of a peace officer relating to the conduct of a person or persons, whether ascertained or not, that a disturbance described in paragraph (1)(a) or (d) or an obstruction described in paragraph (1)(c) was caused or occurred.

Common Nuisance

Section 180

- (1) Every one who commits a common nuisance and thereby
 - (a) endangers the lives, safety or health of the public; or
 - (b) causes physical injury to any person is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.
- (2) For the purposes of this section, every one commits a common nuisance who does an unlawful act or fails to discharge a legal duty and thereby
 - (a) endangers the lives, safety, health, property or comfort of the public; or
 - (b) obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of Her Majesty in Canada.

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Assault

Section 265

- (1) A person commits an assault when
- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
 - (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has, present ability to effect his purpose; or
 - (c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.
- (2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.
- (3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of
- (a) the application of force to the complainant or to a person other than the complainant;
 - (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
 - (c) fraud; or
 - (d) the exercise of authority.
- (4) Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

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Section 266 – Every one who commits an assault is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or
- (b) an offence punishable on summary conviction.

Assault with a Weapon or Causing Bodily Harm

Section 267

- (1) Every one who, in committing an assault,
 - (a) carries, uses or threatens to use a weapon or an imitation thereof, or
 - (b) causes bodily harm to the complainant, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

Aggravated Assault

Section 268

- (1) Every one commits an aggravated assault who wounds, maims, disfigures, or endangers the life of the complainant.
- (2) Every one who commits an aggravated assault is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Section 269 – Every one who unlawfully causes bodily harm to any person is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

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Assault of a Peace Officer

Section 270

- (1) Every one commits an offence who
 - (a) assaults a public officer or peace officer engaged in the execution of his duty or a person acting in aid of such an officer;
 - (b) assaults a person with intent to resist or prevent the lawful arrest or detention of himself or another person; or
 - (c) assaults a person
 - (i) who is engaged in the lawful execution of a process against lands or goods or in making a lawful distress or seizure, or
 - (ii) with intent to rescue anything taken under lawful process, distress, or seizure.
- (2) Every one who commits an offence under subsection (1) is guilty of
 - (a) an indictable offence and liable to imprisonment for a term not exceeding five years; or
 - (b) an offence punishable on summary conviction.

Disarming a Peace Officer

Subsection 270.1

- (1) Everyone commits an offence who,
 - (a) disarms or attempts to disarm a peace officer in the execution of his duty;
 - (b) interferes with equipment issued to a peace officer.
- (2) Defines “weapon” for the purposes of subsection (1) as any thing that is designed to be used to cause injury or death to, or to temporarily incapacitate, a person.
- (2) Everyone who commits an offence under section 270.1 is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

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Customs Act

Hindering an Officer

Section 153.1 – No person shall, physically or otherwise, do or attempt to do any of the following:

- (a) interfere with or molest an officer doing anything that the officer is authorized to do under this Act: or
- (b) hinder or prevent an officer from doing anything that the officer is authorized to do under this Act.

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 2

CARE AND CONTROL OF PERSONS IN CUSTODY POLICY AND PROCEDURES

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to ensure the security and safety of all persons under arrest or detention.

DEFINITIONS

2. See Glossary.

PURPOSE AND SCOPE

3. The purpose of this policy is to provide guidelines for detention procedures and the care of persons while in custody at CBSA border offices and Inland Enforcement offices, pending their transfer to the Criminal Investigations Division (CID), responding police agency, Immigration holding centres or their release.
4. This policy applies to all Border Services Officers (BSO).

POLICY GUIDELINES

Access to Policy and Procedures

5. A copy of this policy and procedures will be available at all times in close proximity to detention cells and secure areas where persons are held in custody.
6. Local policies on care and control of persons held in custody may be added.
7. All officers involved in the care and control of persons held in custody will be aware of the location of this policy and procedures.

General

8. A person in the custody of a BSO will be treated with decency and provided all the rights accorded them by law.
9. Officers are responsible for the well being and protection of all persons in their custody and are to take precautions that ensure that persons are protected from harm to themselves or from others.

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Care and Control of Persons in Custody

10. All persons lawfully arrested or detained will be placed in a CBSA standard detention cell or held in a secure area of the CBSA facility, preferably out of public view pending the arrival of the ID or responding police agency, or the persons' release.

Note: Refer to the Facility Guide for detailed guidelines pertaining to CBSA standard detention cells.

Note: In situations where the Vehicular Transport of Persons Under Arrest or Detention policy is applied, the subject may be transported to the responding police agency location or an alternate CBSA facility. Refer to the Vehicular Transport of Persons Under Arrest or Detention policy in the EN manual Part 6 Chapter 8 for further information.

11. Where a CBSA standard detention cell is not available and another law enforcement agency is on site and has access to a detention cell, arrangements may be made by written agreement, for the use of their detention cell.

12. All persons will be monitored carefully until the ID or responding police agency assumes custody, or they are released.
13. A detention log, **K159**, will be kept in close proximity to the detention cell or the secure area of the CBSA facility where persons are held in custody at all CBSA offices.

14. Officers will ensure that persons held in custody are protected from harm to themselves or from others, as long as this does not seriously jeopardize the officers' health and safety.

15. Emergency fire and evacuation procedures must be posted in close proximity to the detention cell and secure area where persons are held in custody.

Note: See "Emergency and Evacuation" in the Procedures section of this chapter.

16. Monitoring duties must be posted in close proximity to the detention cell or secure area where persons are held in custody.

Note: See "Monitoring and Observation" that follows.

17. Female and male persons are not to be held in the same detention cell.

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Care and Control of Persons in Custody

18. Persons detained in custody and subject to the provisions of the *Youth Criminal Justice Act* are to be kept separate from detained adults.
19. At no time is a person under the age of 12 to be placed in a detention cell.
20. Personal searches will not be conducted in a detention cell, unless the cell is specifically designated for that purpose (e.g. dual purpose detention cell/search room).
21. Notices in both official languages informing the arrested or detained person of their right to counsel must be posted in a conspicuous place in close proximity to the detention cell or secure area where persons are held in custody.
22. A Canadian Police Information Centre (CPIC) query will be conducted on all persons in custody unless the check was previously conducted during the course of normal CBSA processes and arrest/detention procedures.
23. Prior to placing an individual in a detention cell, officers must ensure that the cell or area is sterile (clean and clear), and make note of this in their notebook and the detention log.
24. Officers will ensure, to the best of their ability, that persons held in a secure area of the CBSA facility, do not have easy access to any moveable objects and/or furniture that could be used to cause injury or escape.

Note: This includes but is not limited to such items as staplers, extra chairs or seating, pictures, manuals, floor or desk lamps, etc.

25. Where persons are held in custody, all reasonable measures must be taken to remove any article or item that could be used to cause injury or escape, including but not limited to belts, shoelaces, matches, lighters, and ties.
26. If a person is held in a secure area, the officer must remain with them at all times.
27. Except in an emergency, a BSO should open the detention cell door **only** when there are adequate BSOs or a police officer from the responding police agency present.

Note: For the purposes of this policy, adequate CBSA personnel means a minimum of two BSOs and where it is operationally viable at least one should be the same sex as the person under arrest or detention.

28. Except in an emergency and where operationally viable, an officer should not enter the detention cell where a person of the opposite sex is being held

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Care and Control of Persons in Custody

unless accompanied by an officer of the same sex as the person, or by a police officer from the responding police agency.

Note: Refer to the “Emergency and Evacuation” section of this policy.

Care and Health of Persons Held in Custody

29. Information from any medical alert card, bracelet, or necklace must be recorded in the detention log and in the officer's notebook.
30. Medical alert necklaces must be removed and stored with the persons' personal effects. At the discretion of the officer, an arrested or detained person may retain a medical alert bracelet.
31. In the case of a person who wears prosthetics (false limbs), it must be removed for searching prior to placing the person in a detention cell.
32. If the persons' medical condition requires special consideration or handling, the immediate supervisor on duty is to be advised immediately.

Note: The *Privacy Act* regulates the collection, retention, use, and disclosure of personal information, including medical information obtained relating communicable disease. Unless there is a demonstrated or reasonably foreseeable threat to the health and safety of others, or a warrant pursuant to a provincial health statute or a court order exists, medical information indicating the person is infected with a communicable disease must not be collected, retained, or disclosed.

33. In the case of a person with an apparent sickness, suspected of having acute alcohol poisoning, suspected of having a drug overdose, or they are injured or not fully conscious, even if the person denies same, follow local procedures and ensure that:
 - a) the person receives immediate medical attention;
 - b) the person is examined by a medical practitioner; and
 - c) the person is not placed in a detention cell unless a medical examination conducted by a medical practitioner finds the person fit to be held in a detention cell.

| Note: “Not fully conscious” means that a person is unable to communicate, respond to simple directions, or to move themselves a short distance.

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Care and Control of Persons in Custody

34. Officers will advise the immediate supervisor on duty if a person refuses medical assistance.
35. Officers will document refusals in their notebook and the detention log.
36. Regardless of the above, officers will request medical attention if the persons' condition is obviously serious whether the person consents or not.
37. Officers will remove prescription medication, insulin, and/or anaphylactic shock kits from persons held in custody and hold them with their personal effects. Officers will label these items with the person's name and any information they provide concerning dosage and use.

Note: See "Dispensing of Prescription Medications" in the Procedures section of this chapter.

38. Except under extreme emergency circumstances, CBSA personnel will not directly administer medication (i.e., via syringe/needle) regardless of their medical training (i.e., paramedic).

Note: The CBSA does not have the appropriate medical equipment available should a person have a negative reaction to medication administered.

Emergency and Evacuation Procedures

39. Emergency Fire and Evacuation procedures must be posted in close proximity to detention cells and secure areas where persons are held in custody.
40. At each CBSA office where there is a detention cell, all officers must be given an orientation of the cell area and procedures.
41. Officers who have care and control of an arrested or detained person must know what their responsibilities are in the event of a fire or other life threatening occurrence (e.g. bomb threats, gas leaks, etc.)
42. Officers will make every effort to remove persons in custody from immediate danger areas as quickly as possible if their actions will not pose a serious risk to their own health and safety.

Control of Detention Cell Keys

43. There must be a safe and secure system for the control, accountability, and security of detention cell keys.

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Care and Control of Persons in Custody

44. All officers in receipt of detention cell keys are responsible for their security and safe return.
45. Keys will be exchanged hand to hand and never thrown, slid, or placed on a desk or other surface.
46. Officers will not allow an arrested or detained person to have possession, hold, or examine detention cell keys or to become familiar with their storage location.
47. The loss of a detention cell key must be reported immediately to the immediate supervisor on duty.
48. Any malfunction or change in the detention cell lock workings must be brought to the attention of the immediate supervisor on duty immediately.
49. The unauthorized use, alteration, and/or duplication of detention cell keys without the prior approval of the port manager is strictly prohibited.
50. A duplicate set of detention cells keys, appropriately tagged, and safely stored must be readily available in case of an emergency.
51. All reference to cell key storage or location must be avoided within hearing range of an arrested or detained person or non-agency personnel.

Religious Devotion

52. The CBSA will not interfere with the religious rights of any person held in custody except where this is a risk to the safety of the officer and/or the security of the person.

Note: The safety of officers and the security of persons in custody are paramount and take precedent over individual acts of religious devotion.
53. Persons practicing the Sikh religion must have their kirpans (ceremonial dagger or sword) removed from them upon arrest or detention.
54. If it is deemed necessary, officers may unsheathe kirpans preferably out of view of the owner whenever possible.
55. Officers will document the removal of the kirpan on a Personal Search and Arrest Report **E350** in ICES and keep it with the individuals' personal effects.

Note: At non-automated sites, a paper copy of the E350 must be completed.

56. Officers will instruct arrested and detained persons practicing the Sikh religion who are wearing a kes or pagari (turban) to remove it for a search of the material and hair. Where practical, this will be done in private (e.g. search room).
57. After the search, officers will allow persons to replace their kes or pagari if the person is not displaying signs of depression or suicide.

Monitoring and Observation

58. Where it is operationally viable persons held in custody are to be monitored and observed by an officer of the same sex.
59. An officer will not be assigned any additional tasks while performing monitoring and observation duties of a person placed in a secure area.
60. Officers performing monitoring and observation duties of a person held in a cell may undertake simple tasks such as completion of arrest/detention paperwork, photocopying, etc. as long as the tasks do not interfere with the officers primary responsibility of monitoring and observing the person held in the cell.
61. Officers must conduct physical detention cell inspections frequently, irregularly, and at least once every 15 minutes.
62. Officers will record physical checks in the detention log and their notebook, including the persons' responses and the condition of the cell.
63. Officers will maintain constant visual observation of persons held in a secure area of the CBSA facility other than a detention cell.
64. Officers will record in the detention log and their notebook all observations and the results of physical checks of persons held in custody.
65. When doing a physical check of a detention cell, officers must ensure that the person is breathing properly and is conscious. If in doubt, the person must be awakened.
66. At CBSA offices where CCTV or video monitoring equipment is installed in a detention cell, officers responsible for monitoring and observing persons held in the cell will stay in close proximity to and frequently check the monitor in addition to physically checking the person at least once every 15 minutes.

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Care and Control of Persons in Custody

Note: The installation of a Closed Circuit TV (CCTV) or video monitoring equipment in a detention cell **does not replace a physical check**. The installation of CCTV and video monitoring equipment is to enhance the level of safety and care of the arrested or detained person within a detention cell.

67. CCTV/video monitoring equipment will not capture audio signals.
68. At CBSA offices where CCTV or video monitoring equipment is installed, the equipment must be maintained in working order. Any and all malfunctions, including concerns about picture quality or camera angles, must be documented and reported to the superintendent on duty who will take appropriate steps to remedy the situation.
69. Any person held in custody that has been identified with some form of physical or medical problem will be observed and monitored with extra attention.
70. If a person being held in a detention cell is believed to be suicidal, a **constant** visual and physical check is required. On the recommendation of the officers involved with the person, the immediate supervisor on duty will make the decision for a constant visual and physical check.

Note: “Constant visual and physical check” means that the arrested or detained person is kept under **continuous surveillance** from the time it was determined that the constant watch is required until it is discontinued by the immediate supervisor on duty, the taking into custody of the person by the ID or responding police agency, or the person is released from custody. The immediate supervisor on duty will record in the detention log the reason for withdrawing the constant watch.

Cutting Instrument

71. Officers monitoring persons held in detention cells must have access to an instrument for cutting down persons attempting to commit suicide by hanging.
72. All officers will receive instruction and be proficient in the use of the cutting device.
73. The cutting instrument is not to be left in the immediate area of the cell, but will be retained in an area out of view of persons being held in custody.

Note: At the discretion of local management this cutting instrument may be attached to the detention cell key. This will avoid delays in the location of the instrument should a hanging occur.

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Care and Control of Persons in Custody

Meals

74. No eating utensils will be provided to a person held in custody.
75. Officers will advise restaurant or food providers not to leave toothpicks, skewers, or similar materials in meals.
76. Officers will take into consideration requests for religious special diets if the request can be accommodated reasonably. However, it is recognized that not all CBSA office locations will have the ability to meet this demand.

Note: Religious diets are defined as meals or dietary restrictions required by a recognized religious denomination.

77. Officers will not hand persons in custody meals wrapped in cellophane or other packaging products.

Note: When requested during Ramadan, detainees may be given pre-packaged meals thereby giving them the option to eat when the sun is down)

Release of Arrested or Detained Person

78. Officers will release persons held in custody in accordance with the Arrest and Detention Policy and Procedures and the *Criminal Code Offences* Policy and Procedures.

ROLES AND RESPONSIBILITITES

Border Service Officer (BSO)

79. BSOs are responsible for:
 - a) adhering to this policy and procedures;
 - b) ensuring that persons under arrest or detention are protected from harm to themselves or from others;
 - c) ensuring that they are familiar with Emergency and Evacuation Procedures with respect to persons being held in custody;
 - d) ensuring that the detention log is kept up to date in accordance with procedures; and

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- e) ensuring that the immediate supervisor on duty is informed promptly or as soon as is practical, of any problems concerning persons held in custody.

Immediate Supervisors

80. Immediate supervisors are responsible for:

- a) ensuring all officers are familiar with this policy and procedures;
- b) ensuring all officers are familiar with Emergency and Evacuation Procedures related to persons arrested or detained and held in custody;
- c) ensuring that this policy and procedures, the detention log, and emergency and fire procedures are kept in a location close to the cell, are easily accessible, and are up to date in accordance with procedures;
- d) ensuring an extra detention cell key and cutting instrument are easily accessible;
- e) reallocate or reassign staff to ensure officer will not be assigned any additional tasks while performing monitoring and observation duties of a person placed in a secure area; and
- f) taking appropriate corrective action on any breaches of this policy.

Managers/Chiefs

81. Managers/chiefs are responsible for:

- a) ensuring compliance with this policy and procedures; and
- b) ensuring officers receive any necessary training.

Enforcement Branch

82. The Borders Enforcement division is responsible for:

- a) developing, modifying, and approving policies in accordance with court jurisprudence, related to the administration and the care and control of individuals under arrest or detention being held in custody; and
- b) monitoring adherence to this policy by the regions.

PROCEDURES

General

83. When a person is arrested or detained, hold them in custody until such time as the enquiries are completed and the person is either released or turned over to the Criminal Investigations Division (CID) or the responding police agency.

Note: Refer to Arrest and Detention Policy and Procedures.

84. Consider all persons held in custody as a potential threat to the safety of the public and staff at any CBSA facility, as well as their own physical well being (e.g. suicide or attempted suicide)
85. Prior to placing persons under arrest or detention in a sterile detention cell or secure area of the CBSA facility, conduct a frisk for weapons.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Arrest and Detention Policy and Procedures for guidelines on conducting frisks.

86. Place persons under arrest or detention in a sterile detention cell or secure area of the CBSA facility.

Note: In situations where the Vehicular Transport of Persons Under Arrest or Detention policy is applied, the subject may be transported to the responding police agency location or an alternate CBSA facility. Refer to the Vehicular Transport of Persons Under Arrest or Detention policy in the EN manual Part 6 Chapter 8 for further information.

87. Conduct a physical check of persons held in a detention cell frequently, irregularly, and at least once every 15 minutes.
88. Maintain constant visual observation of persons held in a secure area of the CBSA facility.
89. When a person is being held in custody pending transfer to the CID or responding police agency, or their release:
 - a) Conduct a CPIC check, if it has not been conducted during the normal process or the arrest/detention process.

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- b) Whenever possible use verbal persuasion to avoid a physical confrontation.
- c) Conduct a frisk of the person for weapons if not conducted during the arrest/detention process.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Weapons include but are not limited to razor blades, lock picks, pins, and plastic explosives.

- d) Ask the person to remove all personal articles carried on their person;
- e) In the case of a person who wears a prosthetic (false limbs), have them remove the prosthetic themselves.

Note: Wherever possible, the removal of a prosthetic should be done with due sensitivity while recognizing the safety of officers and the public, and the security of the person are paramount and take precedence.

Note: Some prosthetics use strapping to secure them in place. This strapping could be used for the purposes of hanging or as a weapon. Also, metal hooks (claw hands) should be removed for protection purposes, as they can be quickly converted to a weapon. Other prosthetics, which have pieces that could be used to injure the wearer or others, should be removed if the wearer displays aggression or violent behaviour.

- f) Deal with ambulatory aids, such as crutches, braces, or wheelchairs on an individual basis. Remove these aids if the person is aggressive. If this is done, consider providing constant observation or monitoring.
- g) Take all reasonable measures to remove any article that could be used for escape or injury. This includes but is not limited to belts, jogging pant cords, shoelaces, matches, lighters, and ties.
- h) Place articles in an evidence bag.
- i) Record the articles on the personal effects record section of the Personal Search and Arrest E350 in ICES or for non-automated CBSA offices complete a paper copy of the E350.

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- j) Seal the evidence bag and mark it with the person's name and the words "personal effects". These articles will be turned over to the CID or police upon their arrival, or to the person upon their release.
- k) Seize any article that constitutes evidence of the offence. Make detailed notes of seizure (time of seizure, seized article, concealed area, etc.) in your notebook.
- l) Secure and maintain continuity of evidence.
- m) Note any allegations and/or observations in your notebook.
- n) Remove handcuffs prior to placing a person in the detention cell unless the person has a known history of violence or has shown violent tendencies.
- o) Ascertain if the person is on any prescription medication or if they have any other medical requirements or conditions (e.g. diabetes, heart problems, etc.)
- p) Note any requirements or conditions on the Personal Search and Arrest Report E350 in ICES or for non-automated CBSA offices complete a paper copy of the E350.
- q) Remove all prescription drugs or other drug substances from the person.

Note: See Care and Health of Persons Held in Custody in the Policy section of this chapter and Dispensing Prescription Medication procedures that follow.

- r) Provide persons with medical conditions requiring food or fluids at regular intervals with an appropriate food or drink when requested or when the situation warrants.
- s) Provide an appropriate meal if the person so desires whenever a person is detained in custody over meal periods (0600 – 0800, 1100 – 1300, or 1700 – 1900).

Note: The cost of the meal must not exceed the meal allowance for government employees. Expenses may be paid from petty cash or as the region deems appropriate.

- t) When a meal is provided, note the following information in the detention log and your notebook:
 - i) name of individual;

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- ii) type of meal requested including religious, medical, or dietary restrictions;
 - iii) type of meal provided;
 - iv) date and time given;
 - v) persons comments, if any, relating to the meal provided; and
 - vi) cost of the meal.
- u) Ensure that no utensils or other items that could injure the person or any other person such as toothpicks or skewers are provided with the meal.
 - v) Offer food and beverage whenever a person is being held in custody outside the normal meal periods indicated above, but the detention in custody exceeds three hours (e.g. 1930 to 2330 or 0100 to 0500).
- Note: Food need be nothing more than a light snack.
- w) Document in the detention log and your notebook each time the person is removed from the cell or secure area including:
 - i) reason for removal from the cell;
 - ii) time of removal;
 - iii) assisting officer; and
 - iv) time the person was placed back in the cell or secure area.
 - x) Each time a person held in custody is removed from a detention cell and the policy to handcuff applies, place them in handcuffs.

Note: Refer to Arrest and Detention Policy and Procedures for guidelines on handcuffing.

- y) Advise any relieving officer of any unusual conditions or behaviour of the person being held in custody.
- z) Ensure all documentation is completed and any property (e.g. personal effects) and/or evidence is available prior to turning the person over to the CID or responding police agency.

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aa) Ensure that the receiving officer signs/initials each document as required and that they receive appropriate copies.

Note: Refer to Arrest and Detention Policy and Procedures and *Criminal Code Offences Policy and Procedures*.

Observation and Monitoring

90. When doing a physical check, ensure that the person is breathing properly and is conscious.
91. If in doubt, awaken them. Utilize loud audible commands to rouse the person.
92. Do not enter the detention cell or touch the person.
93. Should the person not respond to arousal requests or commands, immediately notify the immediate supervisor on duty.
94. Request the assistance of the immediate supervisor or another officer for back-up, preferably of the same sex as the person, if you intend to enter the detention cell.

Note: Be aware at all times of the possibility of an escape attempt.

Sick or Injured Person

95. If an arrested or detained person becomes ill or is injured while in custody, attend to the persons needs.
96. Advise the immediate supervisor on duty immediately.
97. Except in the case of an emergency, do not enter the detention cell unless accompanied by another officer, preferably of the same sex as the person.
98. Administer first aid, if you are qualified and it is required.
99. Request immediate medical attention and arrange for an ambulance.
100. Ensure that the CID or responding police agency who will be receiving custody of the individual is apprised of the situation, including details concerning the hospital or clinic where the person has been taken and the officers suspicions concerning the cause of the ailment (e.g. existing medical condition, attempted suicide, etc.)

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101. If the person requires hospital treatment or to be taken to a clinic, arrange to accompany them with another officer.

Note: One accompanying officer should be the arresting officer, and at least one should be the same sex as the person.

Dispensing Prescription Medication

102. Request permission from the immediate supervisor on duty to dispense medication on the request of the person.

103. In all instances where the immediate supervisor on duty does not approve the persons' request, arrange for immediate medical attention.

104. Ensure a second officer is present when prescription medications are provided to the person.

Note: For the purposes of the above section "a second officer" means: two BSOs, one BSO and an immediate supervisor; one BSO and one officer from another government department, or one BSO and one officer from the police agency of jurisdiction.

105. In all cases where a syringe must be used to administer prescription medication, attain the services of a medical practitioner to administer the medication. Where an emergency situation precludes this, advise the immediate supervisor on duty and request they contact a medical facility immediately for instructions.

Note: Except under extreme emergency circumstances, CBSA personnel will not directly administer medication (i.e., via syringe/needle) regardless of their medical training (i.e., paramedic). The CBSA does not have the appropriate medical equipment available should a person have a negative reaction to medication administered.

106. Prior to complying with a request for access to prescribed medications, ensure:

- a) the name on the medication container matches the name of the person;
- b) there is only one type of pill in the container;
- c) the container label and contents do not appear to be tampered with or substituted;
- d) the medication is given and self-administered in accordance with the directions on the container label; and

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- e) the date and time of the last dosage administered as stated by the person held in custody, is consistent with directions written on the label and with the request of the person.
107. When complying with a request for administration of prescribed medication, note the following in your notebook and the detention log:
- a) persons name;
 - b) name of medication, type of container, and the dosage;
 - c) date and time medication was provided;
 - d) officers name and badge number;
 - e) name and badge number of second officer present;
 - f) name and badge number of immediate supervisor on duty who authorized the request;
 - g) date and time of the last dosage as stated by the person; and
 - h) the persons' signature.
- Note: If the person refuses to provide a signature, make notes to this effect.
108. Only provide a single dose of prescription medication at one time.
109. Do not allow the person in custody to have care and control of the full prescription medication under any circumstances.
110. In instances where:
- a) doubt exists regarding the content of the container;
 - b) the person requested medications in excess of the prescribed dosage;
 - c) the person refuses prescription medication;
 - d) the person exhibits signs of alcohol or drug consumption; or
 - e) doubt exists regarding the safety of the person, officer, or other person present;

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- f) advise the immediate supervisor on duty to contact the prescribing physician, a physician at a medical facility, or arrange for an ambulance to attend.

REFERENCES

- 112. Royal Canadian Mounted Police (RCMP) Policy and Procedures
- Ontario Provincial Police (OPP) Policy and Procedures
- Ottawa-Carleton Regional Police Services Policy and Procedures

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 3

**ARREST AND DETENTION OF YOUNG PERSONS POLICY AND
PROCEDURES**

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to search, arrest, and detain young persons when the search, arrest, and detention is lawful and is conducted in accordance with the *Youth Criminal Justice Act* and these policy and procedure guidelines.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Note: In addition to the requirements on arrest and detention legislated by the *Youth Criminal Justice Act*, all authorities for arrest and detention as per the *Criminal Code*, *Charter of Rights and Freedoms*, and the *Customs Act* apply to young persons. Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures, Authorities.

Youth Criminal Justice Act

3. Subsection 25(2) – States that every detained or arrested young person must be advised that they have the right to retain and instruct counsel and be given an opportunity to do so.
4. Subsection 25(9) – A statement that a young person has the right to be represented by counsel must be included in or attached to all documents.
5. Subsection 26(2) – Stipulates that upon issuance of an appearance notice and release of a young person their parent must be advised in writing.
6. Subsection 26(4) – States that if a parent cannot be located or is unavailable then notice will be given to:
 - a) an adult relative known to them and likely to assist; or
 - b) an adult known by them and likely to assist.
7. Subsection 26(6) – States that any notice given must include:
 - a) the young persons' name,
 - b) the charge against them,

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- c) the time and place of appearance, and
 - d) a statement that the young person has a right to retain and instruct counsel.
8. Subsection 26(8) – Advises that a notice given in writing may be served personally or be sent by confirmed delivery service.
9. Subsection 30(7) – Requires peace officers to transfer arrested young persons held in custody as soon as practicable to the police so that they may be placed in a designated temporary facility.
10. Subsection 146(2) – An oral or written statement given by a young person is only admissible when:
- a) the statement was voluntary;
 - b) before the statement was made, the officer clearly explained in language appropriate to their age and understanding that:
 - i. they are under no obligation to give a statement;
 - ii. any statement given by them may be used as evidence in proceedings against them;
 - iii. they have the right to consult another person in accordance with paragraph (c); and
 - iv. any statement made by them is required to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise;
 - c) before the statement was made, they were given a reasonable opportunity to consult with:
 - i. counsel; and
 - ii. a parent, or in the absence of a parent, an adult relative, or in the absence of a parent and an adult relative any other appropriate adult chosen by the young person; and
 - d) where they consult any person pursuant to paragraph (c), they have been given a reasonable opportunity to make the statement in the presence of that person.

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11. Subsection 146(3) – The requirements set out in paragraph (2)(b), (c), and (d) do not apply to oral statements if they are made spontaneously by the young person before the officer has a reasonable opportunity to comply with the requirements.
12. Subsection 146(4) – A young person may waive their rights under paragraph (2)(c) or (d) but the waiver must be videotaped or be made in writing. When it is in writing, it must contain a statement signed by the young person that they have been apprised of the right being waived.

PURPOSE AND SCOPE

13. The purpose of this policy is to provide guidelines on the search, arrest, and detention of young persons in accordance with the *Youth Criminal Justice Act* whenever a border services officer (BSO) is in a legal position to search, arrest, or detain a young person whether it is under the *Customs Act* or the *Criminal Code*.
14. This chapter is to be used in conjunction with Part Six, Chapter One, Arrest and Detention, Chapter Two, Care and Control of Persons in Custody, and Chapter Seven, Personal Search.
15. This policy applies to all BSO's in the performance of their duties under the *Customs Act*, *Criminal Code*, or the *Excise Tax Act*.

BACKGROUND

16. The *Youth Criminal Justice Act* (YCJA) came into force on April 1, 2003, replacing the *Young Offenders Act*. It contains special provisions respecting young persons 12 years of age or more, but under 18 years of age. It focuses on the importance of accountability, the protection of society, the special needs of young persons, and their rights. The YCJA intends to ensure that the nature of the system's response to an offence should reflect the needs and individual circumstances of a young person
17. The YCJA is based on a “Declaration of Principles”, which state the intention of the Act pertaining to dealings with young offenders. It asserts that the youth justice system must reflect the fact that young persons lack the maturity of adults. It also recognizes that the youth system must be different from the adult system in many respects, including that accountability is consistent with young persons' reduced level of maturity,

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procedural protections are enhanced, rehabilitation and reintegration are given special emphasis, and the importance of timely intervention is recognized.

Note: See Appendix A for a copy of the *Youth Criminal Justice Act* "Declaration of Principles".

18. While the *Young Offenders Act* permitted the use of alternative measures, the YCJA goes further by providing guidance as to the appropriate use of alternative measures, the types of alternatives, and what their objectives should be. Alternatives offered include Extrajudicial Measures that increase the use of effective and timely non-court responses to less serious offences, expanded Youth Sentencing options, and Custody and Supervision opportunities not previously offered.

POLICY GUIDELINES

General

19. Officers will be cognizant of the need to speak to and explain to young persons all the proceedings in a manner that is appropriate to their age and level of understanding.

Rights and Cautions

20. When a person being arrested appears to be under 18 years of age but older than 12 years of age, the reason for their arrest, their rights, and cautions must be read to them by the BSO.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

21. Immediately following arrest formalities of a possible young person (i.e., reasons for arrest, rights, and cautions), Border services officers (BSO's) must ask them to state their age and produce identification.
22. If the person is a young person, officers must explain the reason for the arrest, their rights, and the caution again in words that are appropriate to their age and understanding.
23. (BSO's), when arresting young persons will comply with the arrest policy and procedures for young persons including the use of the specific Notice

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Upon Arrest and Right to Counsel for young persons that is used by the police agency of jurisdiction.

Contacting Counsel and Parent or Other Person

24. Officers will advise young persons under arrest that they may phone a parent or other appropriate adult person to notify them of the situation.

Note: There is no legal obligation to allow an arrested young person to contact a parent or other appropriate adult person. It is the CBSA policy, however, to extend this privilege.

Note: A young person's wish to contact a parent or other appropriate adult person does not negate their right to contact counsel.

25. Officers will not contact a parent or other adult person on behalf of a young person unless they are expressly asked to by a young person or where the law requires.
26. Officers must advise young persons of their right at any stage in the proceedings to retain and instruct counsel without delay.
27. At any stage in the proceedings, officers must allow young persons to contact, retain, and instruct counsel without delay.

Note: The right to counsel belongs to the young person. It is not exercised through a parent or guardian.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures for guidelines pertaining to contacting counsel.

Statements from Young Persons

28. Until the time that an arrest of a young person is made or should have been made, officers are authorized to ask them questions.
29. Once an arrest is made of a young person, officers may continue questioning but must strictly follow this policy and procedures, otherwise, additional information obtained beyond the point of arrest may not be admissible as evidence in court.
30. Officers will advise young persons of their right to contact a parent or other adult person and their right to contact and consult counsel prior to the taking of any statement.

Note: A young person's right to contact a parent or other appropriate adult person is in addition to their right to contact counsel.

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31. Officers will allow a young person to consult both a parent or other appropriate adult person and counsel on the telephone and/or in person, as they wish, prior to the taking of any statement.

Note: A parent or other appropriate adult chosen by a young person must not be a co-accused, or be under investigation regarding the same offence.

32. If it is their wish, a young person must be given the opportunity to have private, face-to-face conversations for a reasonable period of time with their parent or other appropriate adult person and/or counsel prior to the taking of any statement.
33. Officers will periodically remind young persons of their right to contact and consult counsel throughout their dealings with them.
34. If a young person wishes to waive their right to contact a parent or other appropriate adult person prior to taking of a statement, it must be in written format on the *Youth Criminal Justice Act – Waiver of Right to Consult a Person* (E368-2)

Note: See Appendix B for a copy of form E368-2.

35. If a young person wishes to waive their right to contact counsel, it must be recorded in writing and signed by the young person.
36. Officers must ensure the parent or other appropriate adult person and/or counsel that has been consulted is present during the oral or handwritten taking of any statement unless the young person has waived their right to consult a person and/or counsel or if the young person does not wish them to be present during the taking of any statement.

Handcuffing

37. Based on risk, officers have the authority to handcuff persons who are lawfully arrested or detained. Officers must assess the risk and act on reasonable grounds when deciding to handcuff a person. Reasonable grounds may include, but are not limited to, threat posed to the officer, another officer, members of the public, protecting the person, potential flight risk, and/or preventing the destruction of evidence.
38. Handcuffs will not be used on persons under 12 years of age.

Note: Officers must use their judgement and discretion, and must not jeopardize officer or public safety.

Care and Control in Custody

39. Young persons detained in custody are to be kept separate from detained adults.

Note: The YCJA requires that young persons who are detained in custody be kept separate from "adult" offenders. The exception to this requirement is in cases of temporary restraint immediately following their arrest. As CBSA detentions are considered only temporary restraints it is not a legal requirement, however, it is CBSA policy to hold young persons separate from adults.

40. Young persons under arrest and held in custody must be transferred into police custody as soon as is practicable so that they may be placed in a designated temporary facility.

Note: YCJA refers to designated temporary facilities as youth facilities that have been designated for temporary detention by the province.

Contacting Police

41. When contacting police, BSO's must advise them of the fact that they are dealing with a young person.

Appearance Notice and Notice to Parent or Other Appropriate Adult

42. Where a designated officer has issued a Form 5.1 *Youth Criminal Justice Act - Appearance Notice to a Young Person* they must complete a Form 3.1 *Youth Criminal Justice Act - Notice to Parent or other Appropriate Adult*.

Note: Refer to Part Six, Chapter Eight, *Criminal Code Offences Policy and Procedures* for guidelines pertaining to the issuance of Appearance Notices.

Note: See Appendix C for a copy of Form 3.1 *Youth Criminal Justice Act – Notice to Parent or other Appropriate Adult*.

Note: See Appendix D for a copy of Form 5.1 *Youth Criminal Justice Act – Appearance Notice to a Young Person*.

43. Where a parent is not available, designated officers must complete a Form 3.1 *Youth Criminal Justice Act*

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Note: Refer to Part Six, Chapter Eight, *Criminal Code* Offences Policy and Procedures for guidelines pertaining to the issuance of Appearance Notices.

44. A written notice to parent, guardian, adult relative, or other adult may be served personally or sent by mail.

Personal Search

Note: Refer to Part Six, Chapter Seven, Personal Search Policy and Procedures for detailed guidelines.

45. Officers will advise young persons of their right to consult a parent or other appropriate adult person **and** counsel in a manner that is appropriate to their age and level of understanding if, prior to conducting a personal search of a young person, they have reasonable grounds to **believe** they have committed an offence.
46. Officers will advise young persons who they have reasonable grounds to **suspect** have committed an offence that, if they wish, they may contact a parent or other appropriate adult person prior to undergoing a personal search.

Note: There is no legal obligation to allow a young person suspected of having committed an offence that is to be the subject of a personal search to contact a parent or other appropriate adult person. It is CBSA policy, however, to extend this privilege.

47. Officers will allow a parent or other appropriate adult to be present during a personal search if this is the young person's wish and if that person can attend the CBSA office where the search is to be conducted within a reasonable time after being initially contacted. The parent or other appropriate adult will be allowed to be present during a personal search unless they create undue risk to officer or public safety.

Note: There is no legal obligation to allow a parent or other appropriate adult person to be present during a personal search. It is CBSA policy, however, to extend this privilege.

ROLES AND RESPONSIBILITIES

Border Services Officers (BSO's)

48. BSO's are responsible for abiding by this policy and procedures.

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CBSA Superintendents

49. CBSA Superintendents are responsible for:
- a) ensuring BSO's abide by this policy and procedures; and
 - b) taking the appropriate disciplinary action against breaches of this policy and procedures.

Intelligence and the Criminal Investigations Division (CID)

50. Intelligence and the Criminal Investigations Division is responsible for:
- a) developing, modifying, and approving all policies related to enforcement activities pertaining to young persons;
 - b) providing guidance to the field in enforcement activities related to young persons; and
 - c) monitoring adherence to this policy and procedures by the regions.

PROCEDURES

Rights and Cautions

51. Read the reason for arrest, rights, and caution verbatim from your notebook to the young person.
52. Ascertain if the person you are dealing with is in fact a young person by asking them their age and requesting to see identification.
53. Explain in words appropriate to their age and understanding the reason for their arrest, their rights, and the caution, and what they mean if they are a young person.
54. Record in your notebook what you explained and any responses given by the young person.

Contacting Counsel and Parent or Other Person

55. Advise the arrested young person that they may call their parent or, if they are unavailable, another appropriate adult person (i.e., guardian, relative,

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friend of family) and, if they wish, allow them a reasonable opportunity to do so.

Note: There is no legal obligation to allow an arrested young person to contact a parent or other appropriate adult person. It is CBSA policy, however, to extend this privilege.

56. Advise the arrested young person of their right to contact and consult counsel.
57. Allow all reasonable opportunity for the young person to contact counsel.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures for guidelines pertaining to contacting counsel.

58. Explain to the young person that their wish to contact their parent or an appropriate adult person does not negate their right to contact counsel.
59. Inform the young person of the existence and availability of the applicable systems of duty counsel, free preliminary legal advice, and legal aid in the jurisdiction.
60. Refrain from questioning the young person until they have been able to talk to a parent or appropriate adult person and/or counsel.
61. Provide a private room that is in the view of the BSO's and ample time for the young person to consult with their parent or appropriate adult person and/or counsel if this is their wish.
62. Complete in full the *Young Criminal Justice Act – Waiver of Right to Consult a Person* (E368-2), if a young person wishes to waive their right to contact a parent or other appropriate adult person.

Note: See Appendix B for a copy of form E368-2.

63. Clearly write down the details of a young person's waiver of their right to contact counsel if this is their wish and have the young person sign the waiver.
64. Advise the young person that they can change their mind and proceed to exercise their right to contact a parent or appropriate adult person and/or counsel at any time even if they have previously chosen to give a statement without speaking to, or having present, a parent or appropriate adult and/or counsel.

Statements from Young Persons

65. The following steps must occur before a young person makes a voluntary statement:
- a) Advise the young person that they are under no obligation to make a statement.
 - b) Advise them that any statement made by them may be used as evidence in proceedings against them.
 - c) Caution the young person that they have the right to consult counsel and a parent or other appropriate adult.
 - d) Caution the young person that any statement they make must be made in the presence of counsel and/or a parent or other appropriate adult, unless the young person desires otherwise.
 - e) Give the young person a reasonable opportunity to consult with counsel and a parent or other appropriate adult.

Note: A parent or other appropriate adult chosen by a young person must not be a co-accused, or be under investigation regarding the same offence.

- f) Give the young person a reasonable opportunity to give the statement in the presence of the person with whom they have consulted, if consultation with counsel and/or a parent or other adult has occurred.

Note: All explanations made to the young person must be in language appropriate to their age and understanding.

66. If they decline to contact counsel, instruct the young person to make a statement in writing indicating that they have been informed of their right to retain and instruct counsel and have waived this right, and have them sign it.

Care and Control in Custody

67. Place the young person alone in the detention cell or secure area of the CBSA facility whenever possible.

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68. Do not place young persons in a detention cell or secure area of the CBSA facility with any adult.

Note: Refer to Part Six, Chapter Two, Care and Control of Persons in Custody Policy and Procedures for detailed detention guidelines.

Appearance Notice and Notice to Parent or Other Person

69. BSO's will ensure that the agency of jurisdiction (e.g. local police agency) is in agreement with proceeding with the formal court process prior to the officer issuing the Appearance Notice. If the police agency is not in agreement, the agency of jurisdiction can attend and consider other options.

70. If you have issued an Appearance Notice (*Youth Criminal Justice Act* Form 5.1) to a young person, and, if the parent is available, issue a Notice to the parent (*Youth Criminal Justice Act* Form 3.1). Include:

- a) the name of the young person;
- b) the charge against the young person;
- c) the time and place of appearance; and
- d) a statement that the young person has the right to be represented by counsel.

Note: See Appendix C for a copy of Form 3.1 *Youth Criminal Justice Act* and Appendix D for a copy of Form 5.1 *Youth Criminal Justice Act*.

71. If you have issued an Appearance Notice (*Youth Criminal Justice Act* Form 5.1) to a young person, and, a parent is not available but another adult with a legal duty to the young person is available, issue a Notice (*Youth Criminal Justice Act* Form 3.1) to the other adult. Include:

- a) the name of the young person;
- b) the charge against the young person;
- c) the time and place of appearance; and
- d) a statement that the young person has the right to be represented by counsel.

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72. Serve a copy of the Appearance Notice to the parent or other appropriate adult person if they are present. If not, forward the documents by mail to the designated individual.

Personal Search

Note: Refer to Part Six, Chapter Seven, Personal Search Policy and Procedures for detailed guidelines.

73. Advise the young person of their right to contact a parent or other appropriate adult person **and** counsel if you have reason to **believe** they have committed an offence.
74. Offer the young person the opportunity to contact a parent or other appropriate adult person if you have reason to **suspect** they have committed an offence.

Note: There is no legal obligation to allow a young person suspected of having committed an offence that is to be the subject of a personal search to contact their parents or other appropriate adult person. It is CBSA policy, however, to extend this privilege.

75. Allow a parent or other appropriate adult person to be present during the personal search of a young person if it is the young persons wish and if the parent or other adult can attend the CBSA office where the search is to be conducted within a reasonable time after initial contact with the parent or other adult. The parent or other appropriate adult will be allowed to be present during a personal search unless they create undue risk to officer or public safety.

Note: There is no legal obligation to allow a parent or other appropriate adult person to be present during a personal search if it is the young person's wish. It is CBSA policy, however, to extend this privilege.

REFERENCES

76. *Customs Act*
Youth Criminal Justice Act
Young Offenders Act
Criminal Code
Charter of Rights and Freedoms

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 3

**ARREST AND DETENTION OF YOUNG PERSONS POLICY AND
PROCEDURES**

Appendix A

**YOUTH CRIMINAL JUSTICE ACT
DECLARATION OF PRINCIPLE**

APPENDIX A

YOUTH CRIMINAL JUSTICE ACT
DECLARATION OF PRINCIPLE

"Policy for Canada with respect to young offenders

3. (1) The following principles apply in this Act:

- (a) the youth criminal justice system is intended to
 - (i) prevent crime by addressing the circumstances underlying a young person's offending behaviour,
 - (ii) rehabilitate young persons who commit offences and reintegrate them into society, and
 - (iii) ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public;
- (b) the criminal justice system for young persons must be separate from that of adults and emphasize the following:
 - (i) rehabilitation and reintegration,
 - (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
 - (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,
 - (iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and
 - (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;
- (c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should
 - (i) reinforce respect for societal values,
 - (ii) encourage the repair of harm done to victims and the community,
 - (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and

APPENDIX A

(iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and

(d) special considerations apply in respect of proceedings against young persons and, in particular,

(i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,

(ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,

(iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and

(iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

(2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1).

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Appendix B

SAMPLE YOUTH CRIMINAL JUSTICE ACT – WAIVER OF RIGHT TO CONSULT A PERSON (E368-2)

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Arrest and Detention of Young Persons

APPENDIX B



Canada Border Services Agency

Agence des services frontaliers du Canada

**YOUTH CRIMINAL JUSTICE ACT
WAIVER OF RIGHT TO CONSULT A PERSON**

**LOI SUR LE SYSTÈME DE JUSTICE PÉNALE POUR LES
ADOLESCENTS RENONCIATION AU DROIT DE CONSULTER**

Date	Time – Heure
Location – Endroit	

I
Je, _____,

residing at
domicilié(e) à _____

born on
né(e) le _____

declare being informed that I am detained concerning
déclare avoir été informé(e) que je suis présentement détenu(e) concernant _____

I have also been informed of my right to consult counsel and a parent. In the absence of my parent, I can consult with any other adult. This other adult may be another relative, or in the absence of a relative, any other adult of my choice, providing that person is not a co-accused or under investigation in respect to the same offence. I am also aware that the person of my choice can be present when I make this statement.

J'ai également été informé(e) que je peux me prévaloir de mon droit de consulter un avocat et un parent. En l'absence d'un parent, je peux consulter toute autre personne adulte. Cet autre adulte peut être une personne apparentée ou, en l'absence d'une telle personne, un autre adulte de mon choix, pourvu que cette personne ne soit pas coaccusée ou ne fasse pas l'objet d'une enquête relative à la même infraction. Je suis également au courant que la personne de mon choix peut être présente lorsque je fais cette déclaration.

I hereby renounce

Par la présente, je renonce à

- my right to consult counsel;
me prévaloir de mon droit de consulter un avocat;
- my right to consult my parent or another person;
me prévaloir de mon droit de consulter un parent ou une autre personne;
- that a person of my choice be present at my statement.
ce qu'une personne de mon choix assiste à la prise de ma déclaration.

Signature	Witnesses – Témoins
_____	_____

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SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

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**ARREST AND DETENTION OF YOUNG PERSONS POLICY AND
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Appendix C

**FORM 3.1 *YOUTH CRIMINAL JUSTICE ACT* – NOTICE TO PARENT OR
ADULT WITH A LEGAL DUTY TO A YOUNG PERSON**

EN Part 6 Chapter 3

Arrest and Detention of Young Persons

APPENDIX C

Form 3.1
Subsection 26(1)

In the Youth Justice Court for {district}

NOTICE to a parent or adult with a legal duty to a young person

Canada
{province / territory, district}

A young person's right to legal counsel. The young person has the right to have a lawyer provided to advise and represent him/her. The young person can hire their own lawyer, can ask Legal Aid for a lawyer, or can ask a Judge in the Youth Justice Court to appoint a lawyer for him/her.

To: {name of responsible adult}

A peace officer has reasonable grounds to believe that {name of young person} broke the law by:

{set out offence(s)}

{name of young person} has a right to be represented by a lawyer in court.

We believe that you are {his / her}:

- parent
- legal guardian
- adult relative {-- specify relationship, if known}, or
- an adult who knows this young person and is likely to be of assistance to the {him/her}.

This notice is to inform you that {name of young person}:

- has been arrested regarding the offence(s) and is being detained {place and address}.
- has received an appearance notice
- has made a promise to appear
- has entered into a recognizance
- has been commanded by summons to appear

{date}

{place}

{name of signator}

{title of signator}

Contact # for further information_____

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SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

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**ARREST AND DETENTION OF YOUNG PERSONS POLICY AND
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Appendix D

**FORM 5.1 *YOUTH CRIMINAL JUSTICE ACT* – APPEARANCE NOTICE TO A
YOUNG PERSON**

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Arrest and Detention of Young Persons

APPENDIX D

Form 5.1
Criminal Code
Sections 496, 497

In the Youth Justice Court for {district}

**Appearance Notice by a Peace Officer
To a Young Person not yet charged with an Offence**

Canada
{province / territory, district}

A young person's right to legal counsel The young person has the right to have a lawyer provided to advise and represent him/her. The young person can hire their own lawyer, can ask Legal Aid for a lawyer, or can ask a Judge in the Youth Justice Court to appoint a lawyer for him/her.

To: {name of young person} of {address}

A peace officer has stated that he/she has reasonable grounds to believe that you committed the following offence(s):

{set out offence(s)}

You must go to the Youth Justice Court at {place}, on {date}, at {time} in order to be dealt with according to law.

You must go to {place}, on {date}, at {time} for the purposes of the *Identification of Criminals Act*.
[Ignore if not filled in]

This is to warn you that it is a criminal offence, under subsection 145(5) of the *Criminal Code*, for you to fail to comply with either of these directions, where it applies to you, unless you have a lawful excuse for not going.

{time}

{date}

{place}

{name of peace officer}

{title - peace officer, etc.}

{signature of the peace officer}

{signature of the young person}

CUSTOMS ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 4

FOREIGN REPRESENTATIVES POLICY AND PROCEDURES

EN Part 6 Chapter 4

Foreign Representatives

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to afford foreign representatives their privileges and immunities as required under federal and international law.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

3. Immunities for foreign missions and international organizations, which includes diplomatic missions and consular posts, hereafter known as foreign representatives, are set out in federal law by the:
 - a) *Foreign Missions and International Organizations Act* (1991); and
 - b) *Privileges and Immunities (North American Treaty Organization) Act* (1985)

in accordance with the international laws of the:

- c) Vienna Convention on Diplomatic Relations (1961);
- d) Vienna Convention on Consular Relations (1963); and
- e) Convention on the Privileges and Immunities of the United Nations (1946).

Note: Where there are inconsistencies between the *Foreign Missions and International Organizations Act* and any other federal or provincial legislation, the Act prevails.

Foreign Missions and International Organizations Act

4. Article 26 – Affords freedom of movement and travel within Canada to members of foreign missions.
5. Article 31.1 – Allows diplomatic agents immunity from the criminal, civil, and administrative jurisdiction of Canada.

EN Part 6 Chapter 4

Foreign Representatives

6. Article 31.2 – Affirms that a diplomatic agent is under no obligation to give evidence as a witness.
7. Article 36.1 – States that Canada permits the entry of and grants exemption from all Customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:
 - a) articles for the official use of the mission;
 - b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.
8. Article 36.2 – Declares that the personal baggage of a diplomatic agent is exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of Canada. In these cases, inspections must only be conducted in the presence of the diplomatic agent or of his authorized representative.
9. Article 41.1 – Instructs that, without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of Canada.

PURPOSE AND SCOPE

10. The purpose of this policy is to provide guidelines to customs officers regarding their authorities pertaining to foreign representatives and the rights and privileges of these individuals as set out in federal and international law.
11. This policy applies to all CBSA officers.

BACKGROUND

12. Canada is obliged under federal and international law to grant certain immunities and privileges to diplomatic personnel and foreign representatives that have significant implications for customs officers. Immunities are protections from law enforcement processes and are founded on principles of international conduct. Those entitled to immunities include members of diplomatic missions, consular posts, and international

EN Part 6 Chapter 4

Foreign Representatives

organizations, collectively referred to in this document as foreign representatives.

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Foreign Representatives

13. The international community has acknowledged that foreign representatives must not be subject to any possible interference, pressure, or harassment by the receiving state if they are to perform their functions efficiently. Immunities, however, are not for the benefit of individuals. Canada, therefore, does not accept the abuse of immunities by foreign representatives. Without prejudice to their immunities, they have a duty to respect the laws and regulations of Canada.
14. The Office of Protocol at Foreign Affairs Canada (FAC), regulates the immunities of foreign representatives in Canada. While most foreign representatives are conscientiously law-abiding, some may commit offences, but their immunities do not exonerate them. After Customs has dealt with offences by foreign representatives, the Royal Canadian Mounted Police (RCMP) will be advised. The RCMP will liaise with FAC. Either the RCMP or FAC will take action against offenders as warranted by the nature, the gravity, and the circumstances of the offences. The provision of information to the RCMP is covered under a 1991 agreement between the two agencies and is in accordance with section 107 of the *Customs Act*.
15. In March 2001, the Office of Protocol, FAC, developed an impaired driving policy (see Appendix C). The policy applies to officials of embassies, high commissions, consular posts, and foreign organizations in Canada. The policy is based on the position that the operation of a motor vehicle by persons enjoying privileges and immunities in Canada is not a right but a privilege.
16. Under the Office of Protocol, FAC, Impaired Driving Policy, foreign representatives will lose their driving privileges at the first instance of an impaired driving related offence. The loss of privilege will occur on the basis of a Customs or police report substantiating that a foreign representative was driving while impaired. FAC encourage police forces to lay charges for impaired driving related offences, but will take action to revoke the foreign representative's licence regardless of whether charges are laid.

POLICY GUIDELINES

Foreign Representatives

Identification of Foreign Representatives

17. Officers will only recognize identity cards issued to foreign representatives by the Office of Protocol, FAC. FAC identify cards are the only form of

EN Part 6 Chapter 4

Foreign Representatives

identification that positively establishes the identity and the status of persons claiming immunities in Canada.

Note: Refer to D-Memorandum 21-1-1 Customs Privileges for Diplomatic Missions, Consular Posts, and International Organizations for the correct alpha coding of diplomatic, consular, international organization, and United Nations personnel identity cards issued by the Office of Protocol, FAC and Appendix A, Categories of Persons Entitled to Customs Privileges under the *Foreign Missions and International Organizations Act* (FMIO).

18. Officers will not recognize identity cards issued to foreign representatives by any state other than Canada.
19. Upon first arrival in Canada, foreign representatives may not have been issued an identity card yet and may only have a diplomatic, consular, or official passport from their home country. Diplomatic passports do not automatically grant diplomatic privileges. Officers must verify the status of these persons by contacting the Office of Protocol – FAC, RCMP Diplomatic Security Liaison officer, at (613) 992-8055 or after hours at (613) 292-1723.
20. Officers may treat persons claiming immunity as they would any other person encountered during the course of performing their normal duties if they cannot produce an Office of Protocol issued foreign representative identity card that indicates their designation.

Note: It is important to note that at a consular post, there are two types of consular officers. The “honorary consular officers” (i.e. Honorary Consul Generals, Honorary Consuls, Honorary Vice-Consuls and Honorary Consular Agents), are Canadian citizens or permanent residents of Canada, and therefore are not entitled to any customs privileges or other immunities, with the exception of acts performed in the course of their official duties (i.e. examination of diplomatic/consular bags). Refer to Memorandum D21-1-1.

Offences by Foreign Representatives

21. Officers must respect the immunities of foreign representatives even if they are committing or have committed an offence under any Act of Parliament.

Note: Failure to do so may cause international embarrassment to Canada, and may expose the officers themselves to serious legal consequences. Such actions may also result in the reciprocal mistreatment of Canadian foreign representatives abroad.