

# **CBSA ENFORCEMENT MANUAL**

## **Part 1**

### **INTRODUCTION**

#### **Chapter 1**

#### **INTRODUCTION TO CBSA ENFORCEMENT**

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## INTRODUCTION

1. Detection and prevention of border-related offences such as smuggling, fraud or wilful non-compliance with immigration, trade and tax laws depends on the knowledge and commitment of the Canada Border Service Agency's (CBSA) workforce. They ensure the success of our enforcement program by applying their training, good judgment, skills and tools in a fair and responsible manner.

## PURPOSE

2. The CBSA Enforcement Manual is intended as a support and guide for CBSA officers in the execution of their enforcement related responsibilities
3. This when complete, will entirely replace the Customs Enforcement Manual published in 1993 and all of its' subsequent amendments and bulletins.
4. The CBSA Enforcement Manual provides clearly defined boundaries through comprehensive policy statements. The manual also provides methods for achieving optimal results through logical procedural steps.
5. Where applicable, references to related sources of information are also provided.
6. The manual is divided into parts to reflect CBSA policy and procedures relating to enforcement priorities, selection, examinations, sanctions, systems and prosecutions.

## PRIORITIES BASED ON RISK MANAGEMENT

7. Risk management is a systematic method of identifying, evaluating, analyzing, and controlling potential adverse events and consequences. Effective risk management decisions must reflect a balance between social and economic benefits and the costs associated with control activities.
8. Successful risk management takes four factors into account:
  - the potential existence of non-compliance;
  - the magnitude of the non-compliance;
  - the damage that non-compliance will cause; and
  - our ability to deal with the non-compliance.

9. Included in the cases of non-compliance routinely detected by officers are goods ranging from relatively low value general merchandise to large shipments of illicit drugs that would have a significant impact on the social and economic welfare of the country. In order to make effective use of our enforcement resources, the focus of our enforcement activity is directed at prohibited goods (i.e. narcotics, pornography, weapons), counter-terrorism, export control, commercial fraud, and other identified areas of high risk.

## ENFORCEMENT ACTIONS

10. CBSA enforcement is supported by a sanctions regime that imposes penalties in proportion to the type, frequency, and severity of the infraction. Also, non-compliance has a negative impact on traveller and trader performance records, and results in the withdrawal of previously designated privileges and increased targeting for examinations. Cases of criminal activity, such as fraud and smuggling, are subject to seizure and criminal prosecution.
11. As well as stopping the criminal offences involved in the cross-border movement of contraband and inadmissible people, we have designated officers with added powers to arrest and detain individuals who have outstanding arrest warrants or who are suspected of *Criminal Code* offences such as impaired driving or abduction.

## ENFORCEMENT OBJECTIVES

12. CBSA enforcement objectives are a key element of our enforcement strategy. Listed below are those objectives:
  - a) detection and correction of violations as quickly as possible and in the least intrusive manner in light of the applicable law. Correction includes the collection of monies owing. Persons should not realize economic gain by non-compliance;
  - b) deterrence of future violations by the same party or by other parties;
  - c) equitable treatment of the regulated community through a uniform approach to enforcement responses; that is, similar cases are treated in a similar way;
  - d) punishment of serious wilful wrongdoing by imposition of criminal sanctions;
  - e) effective use of enforcement resources using the least resource-intensive response that permits compliance goals to be achieved; and



- f) International co-operation, co-ordination, and liaison to contribute to the international effort to minimize fraud, smuggling, and international trafficking in narcotics and other illicit substances.

### **CUSTOMS OPERATING PRINCIPLES ON ENFORCEMENT (COPE)**

- 13. All personnel involved in enforcement activities must adhere to the guiding principles of the Customs Operating Principles on Enforcement (COPE).

Note: See Appendix A for a full copy of the COPE document.

- 14. The COPE document contains national guidelines, developed, monitored and maintained by the Enforcement Branch. They are designed to eliminate any duplication of effort and potential for confusion by firmly establishing, on a national level, the roles and responsibilities of the parties directly involved in the enforcement program. These include the regional enforcement organizations (Intelligence and Criminal Investigations) and the regional border operations. For example, officers requiring functional guidance regarding the seizure or detention of goods or people are to contact their regional enforcement organization, as this is one of their roles as outlined in the COPE document.
- 15. As part of its' stated purpose, the national COPE document requires each region, in consultation with the Enforcement Branch, to develop a regional document to further expand and specifically clarify how the actual enforcement responsibilities are to be shared between regional enforcement organizations and border operations. This regional document is referred to as the Regional Operational Practices on Enforcement (ROPE).

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#### **CUSTOMS OPERATING PRINCIPLES ON ENFORCEMENT (COPE)**

## INTRODUCTION

1. Customs Operating Principles on Enforcement (COPE) is a national guideline intended to protect the integrity and consistency of the enforcement mandate. It clearly outlines the expectations, roles, and responsibilities of all parties directly involved in the enforcement program. It also serves to communicate the importance of enforcement and eliminate any duplication of effort and potential for confusion.
2. The document focuses on establishing an environment where all parties, through understanding and co-operation, will collectively contribute to the achievement of our enforcement objectives.

## PURPOSE

3. To provide a national standard of enforcement roles and responsibilities for regional enforcement organizations and border operations by:
  - a) acknowledging that border managers maintain primary responsibility for program delivery relating to all enforcement activities within their districts;
  - b) identifying roles and responsibilities of regional organizations and border operations relating to enforcement;
  - c) providing the standard that all regions will utilize in their development of enforcement plans and structures; and
  - d) promoting the development of a document called the Regional Operational Practices on Enforcement (ROPE) that will outline the Regions adaptation of national standards.

## ROLES AND RESPONSIBILITIES

### Regional Enforcement Organizations

#### Intelligence Division

4. Provide functional guidance to border operations in areas of enforcement related to intelligence interdiction activities.

Note: Specific areas of responsibility must be defined in the ROPE document.

5. Primary contact for all outside enforcement agencies in matters relating to intelligence activities and in particular to specific functions, exercises, operations, and targets.

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Note: Specific areas of responsibility should be defined in the ROPE document and relate to all outside agencies and related enforcement concerns.

6. Conduct CBSA enforcement activities in co-operation with other customs services or other government departments, and participate in joint forces operations with other enforcement agencies.
7. Administration and control of all intelligence programs within the region including analysis services and risk assessments.
8. Administration and control of the informant and source development programs.
9. Conduct surveillance operations as part of on-going active intelligence gathering activities.

Note: It is recognized that Managers of the Intelligence Division and the Criminal Investigations Division shall advise each other of on-going surveillance operations.

10. Co-ordinate and control special regional enforcement exercises relating to intelligence interdiction activities.

Note: District operations should be informed and consulted.

12. Provide briefings to ports of entry regarding the Intelligence organizations roles and responsibilities, methods of communication, and follow-up practices and procedures.
13. Identify future enforcement needs within the region. Proactively plan, develop, and implement initiatives to meet these needs.

Note: Enforcement initiatives should be developed in cooperation with the district when applicable.

14. Keep the Regional Director informed of all intelligence activities and advise on enforcement issues and needs pertaining to the region.
15. Ensure that regional communications methods are efficient and effective in providing current, up-to-date enforcement information such as the delivery of lookouts.
16. Develop, implement, and maintain target information and indicators for both traveller and commercial operations for the use of border operations in their enforcement programs.

17. Serve as regional liaison with the Enforcement Branch and border operations regarding the administration and maintenance of specialized enforcement tools, equipment, and systems, such as x-ray machines, trace-detection systems, ICES, PIRS, and CPIC.

Note: Ownership, maintenance responsibilities, and reporting relationships should be further defined in the ROPE document.

18. Participate in public awareness and information seminars relating to the CBSAs enforcement initiatives and programs.
19. Participate in regional media relations relating to enforcement.
20. Co-ordinate and assist in inter-district enforcement exercises and/or programs within the region.

### **Criminal Investigations Division**

21. Provide functional guidance to border operations in areas of enforcement related to criminal investigations activities.

Note: Specific areas of responsibility must be defined in the ROPE document.

22. Primary contact for all outside enforcement agencies in matters relating to criminal investigations activities and in particular to specific functions, exercises, operations, and targets.

Note: Specific areas of responsibility should be defined in the ROPE document and relate to all outside agencies and related enforcement concerns.

23. Conduct CBSA enforcement activities in co-operation with other customs services or other government departments, and participate in joint forces operations with other enforcement agencies.
24. Administration and control of all criminal investigations programs within the region.
25. Conduct surveillance operations as part of on-going active criminal investigations activities.

Note: It is recognized that Managers of the Intelligence Division and the Criminal Investigations Division shall advise each other of on-going surveillance operations.

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26. Co-ordinate and control special regional investigations exercises that have a high probability of prosecution with potential for national/ministerial attention.

Note: District operations should be informed and consulted.

28. Provide briefings to ports of entry regarding the Criminal Investigations organizations roles and responsibilities, methods of communication, and follow-up practices and procedures.

29. Identify future investigations needs within the region. Proactively plan, develop, and implement initiatives to meet these needs.

Note: Enforcement initiatives should be developed in cooperation with the district when applicable.

30. Keep the Regional Director General informed of all investigations activities and advise on enforcement issues and needs pertaining to the region.

31. Ensure that regional communications methods are efficient and effective in providing current, up-to-date investigations information.

32. Participate in regional media relations relating to investigations.

33. Co-ordinate and assist in inter-district investigations exercises and/or programs within the region.

**Client Services**

34. Provide functional guidance to border operations in AMPS related activities.

Note: Specific areas of responsibility must be defined in the ROPE document.

35. Primary contact for all outside enforcement agencies in matters relating to AMPS.

Note: Specific areas of responsibility should be defined in the ROPE document and relate to all outside agencies and related enforcement concerns.

36. Provide advice to border operations with a view to ensure that systems and procedures provide an effective and efficient overall enforcement capability.

37. In consultation with the districts, identify regional enforcement training needs. Communicate these requirements to the Enforcement Branch, Training,

Learning and Development Section and provide necessary resources to assist in the development and delivery of training.

Note: Specific areas of responsibility for co-ordination of training will be defined in the ROPE document.

## Border Operations

38. Conduct enforcement activities, including drug interdiction, and traveller and commercial examination, at ports of entry.

Note: The regional enforcement organization may initiate and/or participate in enforcement exercises at ports of entry. The district and regional enforcement organizations must jointly agree to the exercise plans.

39. Border operations must contact the Intelligence Division in cases involving significant seizures of suspected drugs.
40. Border operations must contact the Intelligence Division and Criminal Investigations Division in all cases involving section 489(2) of the *Criminal Code*.
41. Border operations must contact the Investigations Division in situations involving a potential prosecution under the *Customs Act* except in cases involving drinking and driving related offences, individuals subject to outstanding warrants, individuals in possession of property obtained by crime, and/or abduction/kidnapping offences.

Note: Specific procedures will be outlined in ROPE.

42. Conduct compliance verification of both travellers and commercial carriers employing established reporting procedures as well as those systems and procedures that permit specialized CBSA clearance practices such as telephone reporting, ships stores and spares regulations, CANPASS/EPPS, selective boarding, and other initiatives designed to facilitate traffic and volumes.
43. Conduct sampling exercises of travellers, carriers, and commercial importers in order to determine compliance rates.
44. Monitor compliance at ports of entry that are not staffed on a 24-hour basis.
45. Conduct CBSA enforcement activities at the port of entry in co-operation with other government departments or enforcement agencies.

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Note: All enforcement exercises conducted with or on behalf of an outside enforcement agency must be coordinated through the appropriate regional enforcement organization as identified in the ROPE document. This does not include situations where police assistance is requested because of a threat to the security or personal safety of an officer in the line of duty, or when a traveller/carrier runs the port or leaves the confines of a port of entry without authorization.

46. Monitor activities at areas such as marine terminals, bonded and sufferance warehouses and airport ramp areas.

Note: The regional enforcement organization will be responsible for surveillance conducted as part of an on-going investigation, intelligence, and/or interdiction operation.

47. Provide the Regional Intelligence Officer (RIO) with a copy of all "port" lookouts in a timely manner.
48. Identify the future enforcement needs of the border operation. Proactively plan, develop, and implement initiatives to meet these needs.

Note: Enforcement initiatives should be developed in cooperation with regional enforcement organizations.

49. Establish District enforcement priorities and set specific enforcement accountabilities for employees.
50. Keep the Regional Director General informed of all enforcement activities and advise of enforcement issues and needs pertaining to border operations.
51. In consultation with regional enforcement organizations, identify enforcement training needs and provide the appropriate regional organizations with a needs assessment.

**Regional Operational Practices on Enforcement (ROPE)**

52. Each region will develop a Regional Operational Practices on Enforcement (ROPE) document that supports the Customs Operating Principles on Enforcement (COPE) document. It will state in detail how the enforcement responsibilities are to be shared within that region.

Note: In developing this document, consultation must be held with the Enforcement Branch in order to preserve the integrity of the enforcement program



53. The ROPE serves two basic purposes:

- a) provide specific procedures; and
- b) allow for deviations from COPE.

54. Provide specific procedures regarding:

- a) joint enforcement efforts involving both the regional enforcement organization and border operations;
- b) identifying the work location and activities of enforcement teams within the district operation;
- c) establishing media relations guidelines regarding enforcement issues; and
- d) identifying regional responsibility centres for the implementation, coordination, monitoring, and/or delivery of national programs, enforcement systems, and training programs.

55. Authorize deviations from the national guidelines as set out in COPE to address specific regional issues and needs.

Note: Such deviations must be submitted to the Enforcement Branch for review and advice.

56. The development, maintenance and monitoring of the ROPE document is the responsibility of the Regional Director General.

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### **CBSA Enforcement Manual Maintenance**

## POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to document the enforcement policy related to the *Customs Act*, the *Immigration and Refugee Protection Act (IRPA)*, and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* in the Enforcement Manual (EN Manual).

## PURPOSE AND SCOPE

2. The purpose of the EN Manual is to provide the Border Service Officers (BSOs) with the most current and up to date enforcement policies and procedures. The purpose of this appendix is to explain how the EN Manual is maintained.

## POLICY

3. The CBSA EN Manual is maintained and updated regularly to add new policy or to revise existing policy.
4. Each chapter of the EN Manual is the responsibility of one primary section within the Enforcement Branch. Other impacted sections may contribute information when appropriate.
5. There are three levels of policy change;
  - A. **High:** Major policy changes must be approved at the Director General level and communicated to the field by means of an Enforcement Bulletin before being incorporated into the EN Manual. As well, the Union must be consulted on all high impact policy changes.
  - B. **Medium:** Medium policy changes may be approved at the Director level. Consultations will be done accordingly.
  - C. **Low:** Minor clarifications, grammar, formatting or translation errors or updates to reflect new titles must be approved at the manager level.
6. The most current version of the EN Manual is available on the Intranet. In accordance with the government's sustainable development strategy, no hard copies will be made available.

7. All questions must go through the immediate supervisor. If the question cannot be answered via the supervisor, or the regional program services office, please forward the question to the following designated email address which can be selected from the global address list:

**OFFICE OF PRIMARY INTEREST (OPI) AND OFFICE OF COLLATERAL INTEREST (OCI) TABLE**

8. The following table identifies the office of primary interest (OPI) for each chapter as well as the offices of collateral interest (OCI).

Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
Part 1- Introduction	Introduction	Horizontal Policy and Planning (HPP)	
	Health and Safety	Horizontal Policy and Planning (HPP)	
Part 2 – Enforcement Priorities	Chapter 1 – Alcohol and Tobacco	Borders Enforcement Division (BED), Corporate Programs	Intelligence Directorate {Intelligence Development and field support Division}
	Chapter 2 – Currency and Monetary Instruments	BED - Enforcement and Corporate Programs	Intelligence Directorate (BID)
	Chapter 3 – Firearms and Weapons	BED	Criminal Investigations Division, Borders Intelligence Division
	Chapter 4 – Reserved		
	Chapter 5 – Jewellery and Watches	BED - Enforcement and Corporate Programs	
	Chapter 6 – Drugs and Precursor Chemicals	A) <u>BED</u> - Point of entry - related enforcement B) <u>OC&amp;CI</u> (Intel)	

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Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
		National/International strategies	
	Chapter 7 – Reserved		
	Chapter 8 – Obscenity and Hate Propaganda	Intelligence Directorate BID	Prohibited Importations Unit, Partnership Division, Admissibility Branch
	Chapter 9 – Reserved		
	Chapter 10 – Endangered Species – Cites	Intelligence Directorate BID	BED - Enforcement and Corporate Programs, Criminal Investigations Division
	Chapter 11 – Counter-Terrorism	Intelligence Directorate NSD/Counter Terrorism Section	BED - Enforcement and Corporate Programs
	Chapter 12 – Our Missing Children	BED - Enforcement and Corporate Programs	Intelligence Directorate
	Chapter 13 – Counter Proliferation Section	Intelligence Directorate NSD/Counter Proliferation Section	BED - Enforcement and Corporate Programs, Criminal Investigations Division, Intelligence Directorate (SEC)
	Chapter 14 – Child Pornography	BED - Enforcement and Corporate Programs	Prohibited Importations Unit, Partnership Division, Admissibility Branch, Criminal Investigations Division,

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Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
			Intelligence Directorate BID
Part 3 – Selection	Chapter 1 – Targeting	BED - Enforcement and Corporate Programs	
	Chapter 2 – Targeting Obscenity and Hate Propaganda	BED - Enforcement and Corporate Programs	Prohibited Importations Unit, Partnership Division, Admissibility Branch
	Chapter 3 – Reporting, Questioning & Referral	BED - Enforcement and Corporate Programs	
	Chapter 4 - Roving	BED - Enforcement and Corporate Programs	
	Chapter 5 - API/PNR and PAXIS	BED - Enforcement and Corporate Programs	
	Chapter 6 - Surveillance	Intelligence Directorate BID	Criminal Investigations Division
Part 4 – Examination – Goods and Conveyances	Chapter 1 – Detection Equipment	BED - Enforcement and Corporate Programs	Intelligence Directorate
	Chapter 2 - Reserved		
	Chapter 3 – Personal Baggage, Goods, and Conveyances Examination	BED - Enforcement and Corporate Programs	Criminal Investigations Division (searching electronic media)
	Chapter 4 – Commercial Shipment Examination	BED - Enforcement and Corporate Programs	

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<b>Part</b>	<b>Name of Chapter</b>	<b>OPI (Office of Primary Interest) (Section)</b>	<b>OCI (Office of Collateral Interest) (Section)</b>
	Chapter 5 – Container Examination	BED - Enforcement and Corporate Programs	Intelligence Directorate (CSI)
	Chapter 6 – Aircraft Examination	BED - Enforcement and Corporate Programs	
	Chapter 7 - Reserved		
	Chapter 8 – Commercial Marine Vessel Exam	BED - Enforcement and Corporate Programs	
	Chapter 9 – Marine Pleasure Craft Examination	BED - Enforcement and Corporate Programs	
	Chapter 10 – Commercial Motor Vehicle Exam	BED - Enforcement and Corporate Programs	
	Chapter 11 – Rail Examination	BED - Enforcement and Corporate Programs	
	Chapter 12 – Postal Examination	BED - Enforcement and Corporate Programs	Intelligence Directorate BID
	Chapter 13 – Courier Examination	BED - Enforcement and Corporate Programs	

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<b>Part</b>	<b>Name of Chapter</b>	<b>OPI (Office of Primary Interest) (Section)</b>	<b>OCI (Office of Collateral Interest) (Section)</b>
Part 5 – Enforcement Actions Goods, Documents, Evidence, and Conveyances	Chapter 1 – Commercial Seizures, Ascertained Forfeitures & Administrative Monetary Penalties	Horizontal Policy and Planning (HPP)	Criminal Investigations Division BED - Enforcement and Corporate Programs
	Chapter 2 – Travellers Seizure and Ascertained Forfeiture	Horizontal Policy and Planning (HPP)	Criminal Investigations Division BED - Enforcement and Corporate Programs
	Chapter 3 – Criminal Code-Seizure of Evidence and Goods	Criminal Investigations Division	BED - Enforcement and Corporate Programs
	Chapter 4 – Agriculture and Agri-food Administrative Monetary Penalty System	Horizontal Policy and Planning (HPP)	BED - Enforcement and Corporate Programs, Criminal Investigations Division
Part 6 – Searches and Enforcement Actions - Persons	Chapter 1 – Arrest and Detention	BED - Enforcement and Corporate Programs	Inland Enforcement Division, Criminal Investigations Division
	Chapter 2 – Care and Control of Persons in Custody	BED - Enforcement and Corporate Programs	IED – Inland Enforcement Division; Criminal Investigations Division



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Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
	Chapter 3 – Arrest and Detention of Young Persons	BED - Enforcement and Corporate Programs	Criminal Investigations Division, Inland Enforcement Division
	Chapter 4 – Foreign Representatives	Intelligence Directorate BID and NSD	BED - Enforcement and Corporate Programs
	Chapter 5 – Use of Force	BED - Enforcement and Corporate Programs	Inland Enforcement Division, Intelligence Directorate Criminal Investigations Division
	Chapter 6 – Personal Search	BED - Enforcement and Corporate Programs	
	Chapter 7 – Criminal Code Offences	BED - Enforcement and Corporate Programs	Intelligence Directorate Criminal Investigations Division
	Chapter 8 – Transportation of Persons Under Arrest and Detention	Horizontal Policy and Planning (HPP)  “Part 1 - Guiding Principles” only	Inland Enforcement Division, Criminal Investigations Division, Borders Intelligence Division (BID)
	Chapter 9 – Reserved		
	Chapter 10 – Reserved		

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<b>Part</b>	<b>Name of Chapter</b>	<b>OPI (Office of Primary Interest) (Section)</b>	<b>OCI (Office of Collateral Interest) (Section)</b>
Part 7 – Customs Enforcement Systems, Information, and Intelligence	Chapter 1 – Integrated Customs Enforcement System (ICES)	Interoperability	BED - Enforcement and Corporate Programs, Intelligence Directorate (BED/FPLS)
	Chapter 2 – Enforcement Library	Interoperability	BED - Enforcement and Corporate Programs, Intelligence Directorate (BED)
	Chapter 3 - Reserved		
	Chapter 4 – Reserved		
	Chapter 5 – Reserved		
	Chapter 6 – Reserved		
	Chapter 7 – Integrated Primary Inspection Line, Secondary Processing and Passage History	Interoperability	BED - Enforcement and Corporate Programs, Intelligence Directorate BED/FPLS
Part 8 – Document-ation and Reports	Chapter 1 – Notebooks	BED - Enforcement and Corporate Programs	Inland Enforcement Division; Criminal Investigations Division
	Chapter 2-Enforcement Forms	Horizontal Policy and Planning (HPP)	BED - Enforcement and Corporate Programs
Part 9 – Investigations and Criminal Proceedings	Chapter 1 – Customs and Prosecutions Policy	Criminal Investigations Division	
	Chapter 2 – Customs Prosecutions Procedures	Criminal Investigations Division	

Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
	Chapter 3 – Statements and Evidence	Criminal Investigations Division	BED - Enforcement and Corporate Programs
	Chapter 4 – Court	Criminal Investigations Division	BED - Enforcement and Corporate Programs
Part 10 – Reserved			
Part 11 – Glossary	Glossary	Horizontal Policy and Planning (HPP)	

## ROLES AND RESPONSIBILITIES

### Enforcement Branch – Horizontal Policy and Planning

9. Horizontal Planning and Policy Division (HPP) will:

- a) direct all questions or requests for changes to the OPI
- b) receive the chapter with approved changes from the OPI;
- c) maintain quality control;
- d) obtain translation of changes;
- e) correct grammar, translation and formatting errors;
- f) advise the Regional Directors of Program Services of approved changes and request that they advise us if there are any major concerns;
- g) liaise with the Enforcement Branch intranet web development team; and
- h) act as the OPI for the introduction, the glossary, the chapters on forms and the chapters on seizure policy.

### **Borders Enforcement Division**

10. The Borders Enforcement Division (BED) is responsible for the content of EN Manual chapters on border enforcement policy and procedures.
11. The content of the chapters is the responsibility of one or more of the managers of the Air and Highway section, the Marine, Rail, and Postal section, the Fumigant section, the Detection Technology section, or the CBRN section of BED.
12. Recommendations for changes to the EN Manual chapters may come from another HQ area, a region, or may be initiated by a manager.
13. When a change recommendation comes from HPP it will be directed through the Enforcement and Corporate Programs section who will download and forward the chapter with the requested changes to the appropriate manager.
14. The manager will make and identify the changes, using highlighting, the track change tool, or sidebar.
15. The manager will consult with the OCI and the appropriate HQ areas and resolve any outstanding issues.
16. Once the changes have been finalized, the manager will forward the chapter to the Enforcement and Corporate Programs along with a list of those who were consulted.
17. The Enforcement and Corporate Programs section will manage the approval process.
18. The Enforcement and Corporate Programs section will side bar the changed paragraphs and prepare a synopsis of the change for readers.
19. The Enforcement and Corporate Programs section will forward the changed and updated chapter/document, the synopsis, and the list of those who were consulted to HPP.

### **Criminal Investigations Division**

20. The Criminal Investigations Division is responsible for the content of EN Manual chapters on investigation policy and investigation procedures.
21. A manager in the Criminal Investigations Division will:

- a) make changes to the chapter and identify the changes;
- b) consult with appropriate HQ areas and settle any outstanding issues;
- c) sidebar the changes and provide a sentence to explain what was changed;
- d) ensure the changes have been approved at the proper level; and
- e) forward the amended chapter, explanatory sentence and the list of those consulted to HPP.

### **Intelligence Division**

22. The Intelligence Division is responsible for contents of EN Manual Chapters on intelligence policy and procedures.

23. Managers in the Intelligence Division will:

- a) review and submit changes for the chapters that fall under their jurisdiction;
- b) consult with the OPI, OCI and the appropriate HQ areas to resolve any outstanding issues;
- c) ensure proper approval is received to any proposed changes to the chapters/policies or procedures; and
- d) forward changes to the appropriate chapter, an explanation of the changes and a list of who was consulted to HPP.

### **Office of Collateral Interest**

24. The offices of collateral interest will:

- a) review changes to the EN Manual within two weeks of receipt of a request from HPP; and
- b) deal directly with the OPI to come to a consensus on any controversial policy.

### **Regional Program Services**

25. The Regional Program Services will:

- a) direct requests for changes through the OPI;
- b) advise HPP of impending changes to be problematic; and
- c) advise local offices when changes are uploaded.

## **ENFORCEMENT MANUAL**

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### **Chapter 2**

#### **HEALTH AND SAFETY**





## POLICY STATEMENT

1. CBSA officers, including Investigators, Hearing Officers, Enforcement Officers and Intelligence Officers, work in a wide variety of environments, including within CBSA inland offices, at ports of entry and at various field locations that may include both public and private places not owned or controlled by the CBSA, as well as overseas locations.
2. As such, health and safety considerations are paramount in the nature of the work undertaken by those CBSA Officers.

## DEFINITIONS

3. Refer to Part 11 - Glossary.

## AUTHORITIES

4. The CBSA is responsible for providing its employees with a healthy and safe work environment in accordance with the **Canada Labour Code** (*Code*), Part II. Generally speaking, the *Code* establishes the legislative framework and outlines the duties and responsibilities of the employer and employees pertaining to their health and safety.
5. You can find a specific section of the *Canada Labour Code* through the index at the following link:  
<http://laws.justice.gc.ca/en/showtdm/cs/L-2>
6. The **Canada Occupational Health and Safety Regulations** (*COHSR*) identifies, in much greater detail, the specific requirements in order to ensure a healthy and safe work place. Wherever a duty of the employer prescribes specific requirements, there will be a corresponding regulation to explain the detail of those requirements.
7. You can find a specific subject *COHSR* regulations through the index at the following link: <http://laws.justice.gc.ca/en/showtdm/cr/SOR-86-304//?showtoc=&instrumentnumber=SOR-86-304>
8. In addition to legislative requirements, all activities undertaken by CBSA employees must be in accordance with the Government of Canada's policies and procedures regarding Occupational Health and Safety (OHS), and with the National Joint Council OHS Directives.

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## Health and Safety

9. The federal government must provide employees with a healthy and safe work environment. The **Treasury Board** (TB) has developed health and safety policies that apply to departments and agencies listed in Schedule I, Part I of the *Public Service Staff Relations Act*.
10. Under the TB policies the CBSA must establish and maintain effective occupational safety and health (OSH) programs consistent with Treasury Board policies, standards and procedures, in addition to the Canada Labour Code requirements.
11. You can find a specific TB OHS Policy at the following link: [http://www.tbs-sct.gc.ca/hr-rh/osh-sst/index\\_e.asp](http://www.tbs-sct.gc.ca/hr-rh/osh-sst/index_e.asp)
12. **National Joint Council** (NJC) of the Public Service of Canada is the Forum of Choice for co-development, consultation and information sharing between the government as employer and public service bargaining agents. Through NJC, the parties work together to resolve problems and establish terms of employment that apply across the public service, which includes health and safety.
13. You can find a specific NJC OHS Directive at the following link: <http://www.njc-cnm.gc.ca/doc.php?did=142&lang=en>

## PURPOSE AND SCOPE

14. The purpose of this policy is to identify the CBSA's commitment to and responsibility for the health and safety of its employees. The CBSA is committed to the prevention of accidents and injury to health through the provision and maintenance of a healthy and safe work place.

## POLICY GUIDELINES

15. The health and safety of employees at the CBSA is paramount. Every employee of the CBSA is entitled to, and has the right to expect to be provided with a healthy and safe work place.
16. It is the policy of the CBSA to meet its duties and responsibilities for the health and safety of its employees by adhering to relevant health and safety legislative requirements, standards, policies and procedures by assigning specific and general responsibilities to protect their health and safety and that of their fellow employees while at work.

## EN Part 1 Chapter 2

## Health and Safety

17. The CBSA will endeavour to take the necessary steps to provide instruction, training and supervision to ensure the health and safety of its employees, and to inform them of their rights, duties and responsibilities to protect their health and safety and that of their fellow employees while at work.
18. The CBSA will undertake to facilitate employee consultation and participation in work place health and safety activities, through the establishment of health and safety committees and representatives. Their role is to assist in the development and implementation of health and safety policies and procedures and the maintenance of safe work place practices and conditions, and to conduct ongoing inspections of the work place
19. The CBSA expects that all employees will protect their own health and safety by complying with prevailing legislation, regulations, standards and with safe practices and procedures established by the CBSA, and that employees must report any health hazards, unsafe conditions, practices and accidents to their immediate supervisor.
20. The CBSA will ensure that all managers and supervisors who are responsible for health and safety are made aware of their duties and responsibilities, including the investigation of hazards, complaints and accidents.

## ROLES AND RESPONSIBILITIES

21. The CBSA's Occupational Health and Safety Section, Labour Relations and Compensation Directorate, Human Resources Branch, is responsible for the overall occupational health and safety program within the CBSA. Visit the website at:
22. All staff are reminded that the CBSA provides an Employee Assistance Program (EAP) to its employees. The EAP program provides confidential assistance, information, and advice to employees and their families who voluntarily seek help with issues that are affecting their personal happiness or performance at work. It is fully supported by CBSA management, and the unions that represent CBSA employees. Further information on the EAP can be obtained confidentially from the regional EAP contact persons.
23. It is possible that from time to time a CBSA Officer may feel that an OHS related issue might be impacting on their psychological health. Should an Officer develop concerns of this nature, it is advisable they discuss the matter with a member of their regional Management, and identify potential solutions, including the assistance of EAP.

**EN Part 1 Chapter 2**

**Health and Safety**

24. Many individual policies within the CBSA have information relating to health and safety obligations and requirements specifically referenced within. Officers should consult the policies pertaining to the activities they are conducting for specific Health and Safety instructions.

# **CBSA ENFORCEMENT MANUAL**

## **Part 2**

### **ENFORCEMENT PRIORITIES**

#### **Chapter 1**

##### **ALCOHOL and TOBACCO**



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## POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer its responsibilities with respect to alcohol and tobacco products in accordance with the provisions set out in the *Customs Act*, the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Criminal Code* and court jurisprudence.

Note: Hereafter, any reference to alcohol is intended to include spirits, wine and beer. Any reference to tobacco products is intended to include manufactured tobacco or cigars. "Blunts", a combination of tobacco, paper and a flavouring compound are also considered to be a tobacco product.

## DEFINITIONS

2. Refer to Part 11- Glossary

## AUTHORITIES

### ***Customs Act***

3. Section 99 - Stipulates that a CBSA officer has the right to examine goods by opening, or causing to be opened, any container or package and may take a reasonable amount as a sample.
4. Paragraph 109.1(1) - Stipulates that every person who fails to comply with any provision of an Act or a regulation designated by the regulations made under paragraph (3) is liable to a penalty of not more than \$25,000, as the Minister may direct.
5. Paragraph 109.2(2) - Stipulates that 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 customs 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



## EN Part 2 Chapter 1

## Alcohol and Tobacco

- 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.
- 6. Section 110 - Stipulates that a CBSA officer may, with reasonable grounds, seize goods involved in a contravention of the *Customs Act* as well as the conveyance used in the contravention.
- 7. Subsection 117(2) - Provides that if spirits, wine, specially denatured alcohol, raw leaf tobacco or tobacco products are seized under this Act, they shall not be returned to the person from whom they were seized or any other person unless they were seized in error.
- 8. Section 118 - Authorizes CBSA officers to release any seized conveyances 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.
- 9. Paragraph 142.1(1) - Provides that if spirits, wine, raw leaf tobacco or tobacco products are abandoned or forfeited under the *Customs Act*, they may, subject to regulations, be sold, destroyed or otherwise dealt with.
- 10. Section 159 - Stipulates that it is an offence to smuggle or attempt to smuggle any goods subject to duties, or any goods the importation of which is prohibited, controlled, or regulated by or pursuant to this or any other Act of Parliament.
- 11. Section 160 - Stipulates that a person who contravenes certain sections of the *Customs Act*, for example tobacco smuggling, is guilty of an indictable offence or an offence punishable by summary conviction and is liable to a fine and/or imprisonment.

### Customs Tariff

- 12. Rates of duty for spirits and tobacco products are listed in Section IV and Section XXI of the *Customs Tariff*.

### Excise Act 2001

- 13. Subsection 35(1) of the *Excise Act, 2001* - Stipulates that imported tobacco products or raw leaf are to be packaged in a package that has prescribed information printed on it and to be stamped before it is released under the *Customs Act*, for entry into the duty-paid market.

## EN Part 2 Chapter 1

## Alcohol and Tobacco

14. Schedules 1, 2, and 3 of the *Excise Act, 2001* provides rates of duty on tobacco products, additional duty on cigars and rates of special duties on certain manufactured tobacco.
15. Schedules 4, 5, and 6 of the *Excise Act, 2001* provides rates of duty on spirits, special duties on spirits, and duty on wine.

### ***Excise Act***

16. Schedule II of the *Excise Act* provides rates of duty on beer and malt liquor.

## **PURPOSE AND SCOPE**

17. The purpose of this policy is to outline the CBSA's position with respect to its role in the detention, determination and disposal of alcohol and tobacco products.
18. This policy applies to all employees of the CBSA and relates to goods entering Canada through any means (e.g. postal, marine, travellers).

## **POLICY GUIDELINES**

19. This policy deals with both personal and commercial seizures.
20. While the *Customs Act* provides for the seizure of all goods and conveyances that have been forfeited, 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 factors worthy of consideration when deciding whether or not to proceed with a penalty action.
21. When a conveyance is made use of in the importation of intentionally non-reported goods or goods subject to seizure for untrue statements, the conveyance becomes subject to seizure. In cases involving public conveyances, 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.

## **ROLES & RESPONSIBILITIES**

### **CBSA Officers**

22. CBSA officers are responsible for:

- a) being aware of current intelligence, trends, methods of operating, concealment methods, routings, and other information associated with alcohol and tobacco smuggling;
- b) conducting compliance verification of both travelers and commercial shipments;
- c) determining the proper enforcement action; and
- d) collecting duties and taxes.

### **Regional Intelligence Officers**

23. Regional Intelligence Officers (RIOs) are responsible for:

- a) facilitating the exchange of timely information or intelligence concerning individuals and organizations suspected of involvement in the smuggling of alcohol and tobacco product activities;
- b) participating in Joint Force Operations (JFO's) related to tobacco and alcohol issues;
- c) maintaining liaison with other law enforcement officers and other officials at the municipal, provincial and federal levels who deal with tobacco and alcohol issues; and
- d) contacting the CBSA lab regarding unusual or suspicious samples of alcohol and tobacco products.

### **Regional Investigators**

24. Investigators are responsible for reviewing referrals resulting from alcohol and tobacco product seizures to determine whether or not a criminal prosecution should be considered, or whether a further investigation is warranted.

## EN Part 2 Chapter 1

## Alcohol and Tobacco

### Investigation Division

25. The Investigation Division is responsible for prosecuting all offences under the *Customs Act*.

### Intelligence Directorate

26. The Intelligence Directorate is responsible for:
- a) maintaining up-to-date enforcement data;
  - b) providing operational support and guidance to RIOs and Regional Intelligent Analysts; and
  - c) providing CBSA representation on international, intra-agency committees and working groups related to alcohol and tobacco issues.

### PROCEDURES

28. When a CBSA officer has determined that there has been a contravention of the *Customs Act* with respect to alcohol and/or tobacco products and seizure action is deemed warranted, the officers are to:
- a) seize the goods; and
  - b) offer no terms of release.

29. If the contravention involves the Courier or Low Value Shipment (LVS) streams, seizure action is to be made against the exporter. The importer/consignee is to be listed on the seizure report as an associate.

Note: Any declared tobacco products found in the LVS stream must be removed from this stream using a form Y50 and put into the regular courier stream.

30. If the seizure involves alcohol and/or tobacco products equal to, or over the thresholds stated in EN Part 9, Chapter 1, paragraph 16, (Customs Prosecution Policy), CBSA officers must contact the Criminal Investigations Division.
31. For seizures of alcohol and/or tobacco products equal to, or over the amounts listed below, CBSA officers must send a K153 Significant Seizure Report to the Organized Crime and Contraband Intelligence Section of the

## EN Part 2 Chapter 1

## Alcohol and Tobacco

Intelligence Development and Field Support Division as soon as is operationally possible:

- a) 40 litres of liquor;
  - b) 25 cases of beer;
  - c) 30 litres of wine with duties and taxes evaded over \$2,000.00;
  - d) 25 cartons of cigarettes;
  - e) 100 cigars; or
  - f) five kilos of loose tobacco.
32. If the seizure involves a commercial importation, apply the appropriate Administrative Monetary Penalty (AMP) in accordance with Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and AMPS.
  33. If the seizure is against a traveller, apply a conveyance penalty as stipulated in Part 5, Chapter 2, Traveller Seizures and Ascertained Forfeitures.
  34. If the seizure involves a commercial importation, do not apply a conveyance penalty unless the vehicle has been modified and used for smuggling.
  35. If a substance such as Betel Nut is found mixed with tobacco, this substance is to be treated as a tobacco product.
  36. To determine the dollar values for tobacco product seizures, CBSA officers are to use the average retail price in the destination province. For example, Ontario marked cigarettes found in British Columbia should be assigned a value consistent with the Ontario market. If there is no indication that the cigarettes will be forwarded, the value for the seizing province will be used. Counterfeit cigarettes should be valued based on this standard.

### Disposal of Seized Alcohol and Tobacco Products

37. Paragraph 142.1(1) of the *Customs Act* states that if spirits, specially denatured alcohol, wine, raw leaf tobacco or a tobacco product is abandoned or finally forfeited under this Act, the Minister may sell, destroy or otherwise deal with it. Subject to the regulations, the sale under subsection (1) of:
  - a) spirits or specially denatured alcohol may only be to a spirits licensee;
  - b) wine may only be to a wine licensee; and
  - c) raw leaf tobacco or a tobacco product may only be to a tobacco licensee.

## Stamping and Marking of Tobacco Products

38. The *Excise Act, 2001*, requires that imported tobacco products or raw leaf tobacco be packaged in a package that has prescribed information printed on it, and be stamped before it is released under the *Customs Act*, for entry into the duty-paid market.

Note: The following is a link to the *Excise Act, 2001* - Stamping and Marking of Tobacco Products Regulations.

### Stamping and Marking Regulations - Excise Act 2001

39. Refer to D memo 18-2-1, *Imported Tobacco Products and the Return of Canadian Manufactured Products*, for procedures regarding importing tobacco products and the return of Canadian manufactured tobacco products.
40. Refer to D memo 18-3-1, *Reporting and Accounting of Excise Duties on Imported Tobacco, Tobacco Products, Wine and Spirits, and Release of Those Goods* for procedures regarding commercial importations of wine, spirits, raw leaf tobacco and tobacco products.

## REFERENCES

41. *Customs Act*  
*Customs Tariff*  
*Excise Act*  
*Excise Act, 2001*  
Stamping and Marking of Tobacco Products Regulations  
D memo 18-2-1 *Imported Tobacco Products and the Return of Canadian Manufactured Products*  
D memo 18-3-1 *Reporting and Accounting of Excise Duties on Imported Tobacco, Tobacco Products, Wine and Spirits, and Release Those Goods*

## RESPONSIBLE OFFICE

**Office of Primary Interest:** Borders Enforcement Division

**Office of Collateral Interest:** Intelligence Development and Field Support Division

## **ENFORCEMENT MANUAL**

### **Part 2**

## **ENFORCEMENT PRIORITIES**

### **Chapter 2**

## **CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES**





## POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer and enforce Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and its regulations.

## DEFINITIONS

2. Refer to Part 11 - Glossary.

## AUTHORITIES

*The Proceeds of Crime (Money Laundering) and Terrorist Financing Act*  
(PCMLTFA)

3. Part 2 – Provides the obligation to report to a Border Services Officer (BSO) the cross-border movement of currency or monetary instruments of a value equal to or greater than a determined threshold, as well as the authority for the Canada Border Services Agency (CBSA) to administer and enforce Part 2 of the Act.

*Cross-Border Currency and Monetary Instruments Reporting Regulations*

4. Establishes the threshold amount for currency reporting at CAN \$10,000 or its equivalent after conversion, the general manner of reporting, retention, the prescribed amount of the penalties, and administrative details.

## PURPOSE AND SCOPE

5. The purpose of this policy is to provide guidelines to CBSA officers in the event of imports or exports of currency or monetary instruments totalling CAN \$10,000 or greater.
6. This policy applies to all CBSA officers in all modes of transportation.

## BACKGROUND

7. Organized crime and money laundering are problems that affect all Canadians. Money laundering is a serious criminal offence entailing the illegal movement of funds, estimated to be billions of dollars, through Canada each year. The impact of organized crime and money laundering goes beyond easily recognized consequences such as violence and economic losses to include less visible social costs.
8. Money laundering is the process by which "dirty money" generated by criminal activities is converted into assets that cannot be easily traced back to their illegal origins. A significant proportion is linked to profits from the illicit drug trade but proceeds from other crimes, including burglaries and cigarette smuggling, are also involved. Money laundering activities, when carried out through financial institutions, can have an adverse effect on their reputations.
9. In the past several years, the federal government has taken a number of steps against organized crime and terrorist financing activities. New provisions were added in the *Criminal Code* and other federal statutes, such as the *Customs Act*, to target criminal organizations and to seize the proceeds of their illegal activities.
10. The detection of money associated to the proceeds of crime at the border had been particularly problematic, as CBSA officers did not have the authority to question persons on importation or exportation of currency under the *Customs Act*. Illegal money encountered during the normal customs process was only seized under the high standards of the *Criminal Code*.
11. In view of these gaps, the federal government incorporated the mandatory reporting of suspicious transactions and cross-border movements of currency and monetary instruments into the new *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Part 2 of the PCMLTFA, from which the Cross-Border Currency and Monetary Instruments Reporting Regulations stem, came into effect January 6, 2003. Part 2 imposes on every person and entity the obligation to report the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed threshold of CAN \$10,000. The objective of the Act is to implement specific measures to detect and deter money laundering and terrorist financing activities. It also facilitates the investigation and prosecution of money laundering offences and terrorist financing offences by requiring the reporting of suspicious financial transactions and the cross-border movements of currency and monetary instruments.

## POLICY GUIDELINES

Note: Unless otherwise specified, all references to “currency” and “monetary instruments” refer to those equal to or greater than Can \$10,000, or its equivalent in a foreign currency.

### General

12. There is no limitation on the total amount of currency or monetary instruments that may be brought into or taken out of Canada, nor is it illegal to do so.
13. Foreign currency will be considered to have the same value of Canadian currency based on the Bank of Canada official conversion rate of the day. You can find the official conversion rate of the day on the Customs Commercial System (CCS) or the Bank of Canada website.

Note: If no official conversion rate is set out for that currency, use the conversion rate that the person or entity would use for that currency in the normal course of business at the time of the importation or exportation.

14. The reporting of currency must be made in writing on the appropriate form (E677, E667, and/or E668) and must be signed and submitted by the importer/exporter.

The Cross-Border Currency or Monetary Instruments Report – Individual (E677) form is used to report situations where the importer or exporter physically carries the currency or monetary instruments across the border.

The Cross-Border Currency or Monetary Instruments Report – General (E667) form is used to report all other situations such as when mailing, shipping by courier, or transporting on someone else's behalf. In the case of mail, the exporter who is sending the currency or monetary instruments to Canada is required to affix a Customs Declaration form CN23 on the outside of the mail item and include a completed E667 currency report inside the item.

The Cross-Border Currency or Monetary Instruments Report Made by Person in Charge of Conveyance (E668) form is used to consolidate all currency and monetary instruments transported by the person in charge of a conveyance. In addition, the importer or exporter also has to complete an E667.

## EN Part 2 Chapter 2      Cross-Border Currency and Monetary Instruments Reporting

15. CBSA officers may question persons regarding the possession of currency or monetary instruments, in accordance with their authorities under the PCMLTFA.
16. Where a completed currency report is submitted and complies with the conditions of this policy, it will be considered to meet the reporting requirements of the PCMLTFA.

Note: The requirements for import and export reporting require the same forms and data.

17. Monetary instruments means the following instruments in bearer form (blank, cash, to the bearer) or in such other form as title to them passes on delivery, namely,
  - (a) securities, including stocks, bonds, debentures and treasury bills; and
  - (b) negotiable instruments, including bank drafts, cheques, promissory notes, travellers' cheques and money orders, other than warehouse receipts or bills of lading.

Note: For greater certainty, this definition does not apply to securities or negotiable instruments that bear restrictive endorsements or a stamp for the purposes of clearing or are made payable to a named person and have not been endorsed.

### Importing – Individuals

18. Currency that is in the possession of a person must be reported at the point that the person reports to CBSA.

### Importations by Mail

19. If a Universal Postal Convention (UPC) declaration form indicates currency or monetary instruments, however, the E667 currency report is either missing or incomplete, the currency will be retained and a retention notice will be issued to the exporter or if unattainable to the importer.
20. The exporter who is sending the currency or monetary instruments to Canada must affix a UPC declaration form to the outside and include a completed E667 currency report inside of the item.
21. Currency that is mailed from a location outside of Canada to another destination outside of Canada but transits through Canada by post are not required to be reported (e.g. St. Pierre et Miquelon).



## EN Part 2 Chapter 2

## Cross-Border Currency and Monetary Instruments Reporting

### Importations by Rail

22. The person in charge of a conveyance must report currency at the CBSA office that is nearest the place of importation open for business.
23. If currency is in the possession of a person, it is that person's responsibility to report it to the CBSA at the CBSA office nearest to the place of importation that is open for business.
24. Currency that is in the possession of a crewmember aboard a freight train must be reported immediately at a place specified by an officer. The crewmember will be processed as a traveller.

### Commercial Importations by Air

25. Currency, which is transported by an air transportation company, may be reported at the CBSA office of the airport of destination as shown on the air waybill (provided the money is not offloaded before its destination).
26. The person in charge of a conveyance must present the completed currency report.

### Reporting in the Air Travellers Mode

27. Primary questioning regarding currency is not required as the completion of a Customs Declaration Card (E311) fulfills the primary reporting requirements.

Note: The E311 has been updated to include primary currency questions. Where cards without the appropriate currency fields are presented to CBSA, an oral interview concerning currency may be conducted.

### Importing by Marine Vessel

28. Currency or monetary instruments on board a cargo or cruise ship entering Canada whose final destination is a place other than Canada, do not have to be reported provided that the currency or monetary instruments will not leave the ship.
29. Currency and monetary instruments on board a cargo or cruise ship, carried on behalf of the shipping line entering Canada whose final destination is Canada, must be reported.
30. Declarations must be accompanied by the appropriate cross-border currency and monetary instruments report forms.

**EN Part 2 Chapter 2**

**Cross-Border Currency and Monetary Instruments Reporting**

31. Where permitted by the CBSA's process, crewmembers and passengers may report currency and monetary instruments using a Customs Declaration Card (E311).
32. A currency reporting form must also be submitted at the time of report.
33. The reporting requirements for passengers, merchants, and crewmembers are an individual responsibility.

Note: Under these circumstances there is no liability on behalf of the cargo or cruise ship.

**Reporting at Point of Clearance**

34. When a person onboard a commercial carrier arrives in Canada and whose destination is another place in Canada where there is a CBSA office, a currency report may be made at the point of entry.
35. A currency declaration must be made when a person disembarks at a point where they are required to report to the CBSA.

**In-transit Passengers**

36. Persons aboard a commercial passenger conveyance transiting through Canada are not required to report currency in their possession.
37. Other than to be transferred under the CBSA's control to another commercial conveyance for departure to a place outside of Canada, currency will not be removed from an in-transit area.
38. A currency report must be made if a person disembarks at a point that they are required to report to CBSA.

**Preclearance**

39. At locations where a Preclearance Area has been designated under the *Preclearance Act*, the CBSA will not exercise any authority to enforce the PCMLTFA once a preclearance officer has cleared individuals for the purpose of entry into the United States.

**Telephone Reporting Centres - Importation**

40. Telephone Reporting Centers (TRC) may be utilized for currency declarations (i.e. CANPASS Aircraft and Private Boat).

## EN Part 2 Chapter 2

## Cross-Border Currency and Monetary Instruments Reporting

41. Persons reporting to a CBSA officer by phone are permitted to make a currency declaration.

### Self-reporting Modes

42. As the PCMLTFA requires that currency be reported to an officer, the various methods of self-reporting to the CBSA (CANPASS Highway, NEXUS, etc.) may not be used to report currency.

### Any Other Case of Importation

43. In any other case a person on whose behalf currency is imported will report the currency at the place of importation.

### Emergency Importations

44. In an emergency, the person in charge of a conveyance who must unload currency or monetary instruments from the conveyance before being able to make or submit an importation report in accordance with these regulations may submit the importation report by telephone or other expedient means and, as soon as possible after that, must make or submit a report.

### Export Reporting - Individuals

45. Currency that is in the possession of a person must be reported at the CBSA office located nearest to the place of exportation that is open for business.

### Exportations by Mail

46. For currency exportations by mail, the exporter must make the report.

Note: One copy of the report must be placed inside the mailed item. Another copy must be mailed or submitted to the nearest CBSA office prior to or at the time of mailing.

### Commercial Exportations

47. The exporter of currency, which is exported by a courier or transported on someone's behalf, must make a currency report.
48. The person in charge of a conveyance will present the completed currency report at the place of exportation.



## EN Part 2 Chapter 2      Cross-Border Currency and Monetary Instruments Reporting

### Exporting – Marine vessels

49. Currency and monetary instruments on board a cruise or a cargo ship, as “cash to master” or carried on behalf of the shipping line departing from Canada will have to be reported using the appropriate cross-border currency and monetary instruments report forms at the time of departure.

Note: This does not include ships that are departing from Canada that imported currency or monetary instruments that were not required to report the currency or monetary instruments upon import.

### Telephone Reporting Centres - Exportation

50. No provisions exist to utilize the Telephone Reporting Centre to declare the exportation of currency.

### Other Exportations

51. In any other case, a person on whose behalf currency is being exported must make a currency declaration.
52. Currency reports must be made at the CBSA office at the place of exportation.

### Reporting Exceptions - Diplomats

53. In accordance with these policy guidelines, it is the policy of the CBSA to give precedence to the provisions of the *Foreign Missions and International Organizations Act* over the reporting requirements of the PCMLTFA.

### Reporting Exceptions - Bank of Canada

54. The PCMLTFA exempts the Bank of Canada from all import/export of currency reporting requirements.

### Exemption Applicable to Imported Shares

55. A person or entity is not required to make a report under subsection 12(1) of the PCMLTFA with respect to stocks, bonds and debentures imported into Canada by courier or as mail if the importer is a financial entity or a securities dealer as defined in subsection 1(2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* or a transfer agent.

## EN Part 2 Chapter 2

## Cross-Border Currency and Monetary Instruments Reporting

### Duty to Answer and Comply

56. Upon report of currency, a person making the report is obliged to answer truthfully any questions that an officer asks with respect to the information required to be in the report.
57. Upon request by an officer, a person making a report is required to present the currency, unload any conveyance or part of a conveyance or baggage, and open or unpack any package or container that the officer wishes to examine.

### Cancellation of Reports

58. A person who declares currency may up to the time of a full report advise that they no longer wish to proceed with the importation or exportation.
59. A person who does not submit a currency report will be allowed to withdraw their intent to import or export their currency and/or monetary instruments.

Note: This right does not apply to **unreported** currency or monetary instruments.

### Verification

60. When a person has made a currency report; an officer may examine the currency for the purposes of verifying the report.

### Search of Persons

61. When an officer suspects on reasonable grounds that the PCMLTFA has been violated or that a person is attempting to circumvent the PCMLTFA, the officer may search any person:
  - a) who has arrived in Canada, within a reasonable time after their arrival in Canada
  - b) about to leave Canada, at any time before their departure
  - c) who has had access to an area for use by persons about to leave Canada, and who leaves that area but does not leave Canada, within a reasonable time after they leave the area.

### Examination of Conveyances

62. An officer, in order to determine whether there is an amount of currency or monetary instruments equal to or greater than CAN \$10,000 on or about the conveyance and that the currency has not been reported, may stop, board, and examine a conveyance, examine anything in or on it, open or cause to be opened any package or container in or on it, and direct the conveyance to be moved to a CBSA office or other suitable place for an examination.

Note: Conveyances cannot be seized under the PCMLTFA.

### Search of Baggage

63. An officer, in order to determine whether there is an amount of currency or monetary instruments equal to or greater than CAN \$10,000 in the baggage and that the currency has not been reported, may examine the baggage and anything in it, open or cause to be opened a package or container in it, and direct that the baggage be moved to a CBSA office or other suitable place for an examination.

### Search of Mail

64. Officers may examine and open any mail that weighs more than :  
that the officer suspects on reasonable grounds contains currency or monetary instruments equal to or greater than CAN \$10,000. This is to be done in the presence of another officer when and if feasible.
65. Officers may not examine or open any mail that weighs : or less  
unless the person to whom it is addressed consents or the person who sent it consents or has completed and attached a label in accordance with article 116 of the *Detailed Regulations of the Universal Postal Convention*.

### Report Discrepancies

66. Officers are encouraged to use discretionary powers to allow persons to amend currency reports.

Note: It is recognized that not all contraventions of the PCMLTFA will be intentional. Negligence, carelessness, and lack of knowledge on the part of a person making a report are factors worthy of consideration when deciding whether or not to proceed with a penalty action.

### Discretionary Powers

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67. It is the policy of the CBSA not to seize or levy a penalty for every error in currency reporting.

Note: It is recognized that during the verification of currency, occasionally errors will be encountered.

68. There is no legal provision relating to errors made regarding amounts being reported and it is not mandatory to apply a penalty.

69. It is the responsibility of the officer to determine if a penalty is reasonable under the circumstances.

Note: It is recognized that not all errors are intentional. Negligence, carelessness, and lack of knowledge on the part of a person making a report are factors worthy of consideration when deciding whether or not to proceed with a penalty.

### **Benefit of Doubt**

70. It is the policy of the CBSA to extend the benefit of the doubt to persons when it appears evident that they were not aware of the CBSA's requirements.

Note: For the purposes of administering the PCMLTFA, officers are encouraged to use the same benefit of the doubt as is utilized when enforcing the *Customs Act*.

### **Retention Pending Full Report**

71. When a person indicates to an officer that they have currency or monetary instruments, the officer may retain the currency or monetary instruments pending completion of the report. The physical retention and safekeeping of the currency or monetary instruments will be done in accordance with the CBSA policies and procedures published in the Comptrollership Manual, Finance Volume.

Note: It is CBSA policy not to perform courtesy holds of currency and monetary instruments.

72. A notice will be given or sent by registered mail without delay.

Note: The regulations require that a notice be sent within 60 days of retention.

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Note: providing a copy of the K24 (Non–Monetary Receipt) will fulfill a CBSA officer’s “notice” obligation of the PCMLTFA.

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73. The currency will no longer be retained, if the importer or exporter satisfies the officer that the reporting requirements have been met or that they have decided not to proceed with the importation or exportation within the seven days following the issuance of the notice.
74. When the requirements are not met within the prescribed period the currency or monetary instruments will be considered abandoned to the Crown.
75. The prescribed seven-day reporting period will be replaced with a 30-day period for the purposes of a courier or mail shipment.

**Seizures**

76. If a person has not specifically been questioned concerning currency, penalties will not normally be levied unless there is clear evidence of intent to contravene the PCMLTFA.
77. Officers, who believe on reasonable grounds that subsection 12(1) of the PCMLTFA (reporting requirements) has been violated, may seize as forfeit currency or monetary instruments, as per subsection 18(1) of the PCMLTFA.
78. An officer must impose the prescribed penalty when a seizure occurs.
79. The following terms of release will be offered for currency or monetary instruments:

**Level 1**

- a) \$250, in the case of a person or entity who:
  - I. has not concealed the currency or monetary instruments,
  - II. has made a full disclosure of the facts concerning the currency or monetary instruments on their discovery, and
  - III. has no previous seizures under the PCMLTFA.

**Level 2**

- b) \$2,500, in the case of a person or entity who:
  - I. has concealed the currency or monetary instruments, other than by means of using a false compartment in a conveyance, or
  - II. has made a false statement with respect to the currency or monetary instruments, or
  - III. has a previous seizure under the PCMLTFA, other than in respect of any type of concealment or for making false statements with respect to the currency or monetary instruments.

**Level 3**

- c) \$5,000, in the case of a person or entity who:
- I. has concealed the currency or monetary instruments by using a false compartment in a conveyance, or
  - II. has a previous seizure under the PCMLTFA for any type of concealment or for making a false statement with respect to the currency or monetary instruments seized under the PCMLTFA:

80. No terms of release are offered for currency or monetary instruments suspected to be related to proceeds of crime or terrorist finances:

**Level 4**

No terms of release: Officers who suspect on reasonable grounds that non-reported currency or monetary instruments are proceeds of crime or terrorist finances, may seize currency with no terms of release.

81. It is the policy of the CBSA that when a search reveals currency or monetary instruments other than that which was reported, only the undeclared portion is subject to seizure.
82. When seizing monetary instruments issued by a financial institution, the seizing officer will suspend the items by immediately notifying the appropriate financial institution by telephone.
83. CBSA officers have the discretion to leave a minimal amount of money (humanitarian reasons) to a person when they cannot pay the penalty imposed for non-reporting of currency and they are left without resources.

Note: The amount of money to be left for a person may be what the officer considers reasonable for the circumstances (e.g. money for food, gas or tolls and distance from residence). The officer should ensure that notes are taken as to the amount of money left in the custody of the traveller and the reasons.

Note: This money is not included in the actual amount seized.

84. When seizing currency and/or monetary instruments, it is imperative that detailed notes be taken. Notes should provide a clear articulation of the indicators gathered, supporting the decision to seize.

### Establishing Proceeds of Crime Criteria Under the PCMLTFA

85. To seize with no terms of release, CBSA officers must have reasonable grounds to suspect that currency or monetary instruments are proceeds of crime or terrorist finances.

Note: Proceeds of crime means any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of “the commission in Canada of an enterprise crime offence or a designated substance offence, or an act or omission anywhere that, if it had occurred in Canada, would have constituted an enterprise crime offence or a designated substance offence.”

Note: The officer must have reasonable grounds to suspect. A reasonable suspicion is not arbitrary, not random, and not based on irrelevant factors. Mere suspicion without an articulable reason is not enough, but a suspicion based on the experience of an officer together with the facts of a given case will be sufficient.

86. Persons who fail to properly report currency or monetary instruments will not be arrested for violations of the PCMLTFA, regardless of whether or not the seized currency or monetary instruments are suspected proceeds of crime.

Note: Failure to properly report currency or monetary instruments is a civil offence.

87. When currency or monetary instruments are reported and there are reasonable grounds to suspect that they are proceeds of crime or terrorist finances, they cannot be seized under the PCMLTFA. In consultation with the Integrated Proceeds of Crime unit (IPOC), they could be seized under the *Criminal Code*.

### Written Notice

88. Giving a person a copy of a seizure receipt will fulfill a CBSA officer's “written notice” obligation of the PCMLTFA.

Note: The PCMLTFA legislates that an officer who seizes currency must give the person “written notice” of the seizure and of the right to appeal. Providing a copy of the K19C –Seizure Receipt – Cross-Border Currency and Monetary Instruments satisfies this obligation.

### Disposition



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89. The moment currency is seized it becomes the property of the Crown.

Note: As the person from whom it was seized no longer owns the property, the penalty may not be withdrawn from the currency that has been seized.

90. Seizing officers should attempt to determine when a person would be able to gain the release of the seized currency or monetary instruments.

Note: A person may not have the means to pay for the release of the seized currency or monetary instruments at the time of the seizure.

91. Should a person indicate that they wish to make the seizure payment within a reasonable amount of time, the currency or monetary instruments should be held under the CBSA's control pending release.

92. The hold-for-payment process is intended to allow persons/entities to gain release of their seized currency or monetary instruments within a reasonable amount of time. Depositing or forwarding it to Public Works and Government Services Canada / Seized Property Management (PWGSC/SPM) may delay its return.

Note: Should the circumstances of the seizure provide any security concerns, the currency or monetary instruments are to be deposited or transferred to PWGSC/SPM immediately.

93. Upon payment of the penalty, currency will be returned to either the importer/exporter or rightful owner.
94. You must ensure that the disposition of the currency is recorded on the Confirmation of the Return of Seized Currency and/or Monetary Instruments (Appendix B), the K19 and/or the Integrated Customs Enforcement System (ICES). Currency and Monetary instruments that are seized and not subsequently released are to be forwarded to PWGSC/SPM in accordance with established procedures for handling public funds received at the port of entry.

### **Forfeiture**

95. All retained currency or monetary instruments will become forfeited, following the completion of the notification period:
- a) 30 days after the day on which the retention notice was given for importations or exportations by courier or as mail;

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- b) In any other case, seven days after the day on which the retention notice is given or sent.
- 96. All forfeited currency and monetary instruments must be deposited or forwarded to PWGSC/SPM.
- 97. Circumstances of the forfeiture must be forwarded to the National Currency Coordinator at Headquarters (e-mail [currency@cbsa-asfc.gc.ca](mailto:currency@cbsa-asfc.gc.ca)).

### **Transfer of Monies**

- 98. Currency that is or becomes forfeited or is seized and the financial penalties associated with the PCMLTFA must be promptly deposited to the credit of the Receiver General and transferred by the Interdepartmental Settlement process to PWGSC or, if the currency is not acceptable for deposit by Canadian financial institutions, forwarded directly to PWGSC/SPM.
- 99. The safekeeping and physical movement of the currency and monetary instruments shall be done in accordance with CBSA financial policy and procedures published in the Comptrollership Manual, Finance Volume. The transportation of such monetary items either for deposit to the credit of the Receiver General or directly to PWGSC/SPM shall be in accordance with secure transportation procedures prescribed by the CBSA Corporate Security and Internal Affairs Division or by PWGSC/SPM.
- 100. Should the approved standards be considered inappropriate due to the circumstances of the seizure, local management may authorize an alternate method for moving the currency.
- 101. Officer safety will remain the highest concern, and must be taken into consideration when transferring money.

### **Request for Review of a Seizure Process**

- 102. Within 30 days after the date of the seizure, the Adjudications Division or a border services officer may:
  - a) cancel the seizure, or cancel or refund the penalty if it is satisfied that there was no contravention; or
  - b) reduce the penalty or refund the excess amount of the penalty collected if there was a contravention but the Adjudications Division considers that there was an error with respect to the penalty assessed or collected.

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103. Within 90 days after the date of the seizure, the person from whom the currency was seized, or the lawful owner, has the right to request a decision from the Minister in the enforcement action.

Note: The PCMLTFA details the provisions for disputes of currency seizures.

104. The Adjudications Division has been delegated to act on behalf of the Minister in the seizure of currency.
105. The request for review must be sent to the Adjudications Division.
106. When a dispute is received, Adjudications Division will act on behalf of the President.

Note: The PCMLTFA requires that the President, without delay, serve written notice (Notice of Reasons for Action) of the circumstances of the seizure to the person who requested a review.

107. The Adjudications Division will forward to the appellant, by registered mail, a letter outlining the reasons for the seizure.
108. When money laundering or terrorist financing charges are laid in connection with a seizure, the Adjudications Division may delay rendering a decision to no later than 30 days after the conclusion of the court proceedings.
109. If the Adjudications Division finds that there has been no contravention, they will notify PWGSC/SPM to refund the penalty that was paid for return of the currency; or to return the monetary instruments; or return an amount equal to the value of the money seized.
110. A person, who has requested an appeal, may within 90 days after being notified of the decision, appeal to the Federal Court.
111. When brought before the Federal Court of Canada, Trial Division, the matter will be turned over to the Department of Justice.
112. Adjudications will continue to oversee and instruct legal counsel on the proceedings and will have the final say in the disposition of any appeal.

### **Third Party Claims**

113. A third party claiming interest in seized currency may, within 90 days after a seizure, make an application in writing to the court for a third party claim.

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114. The court receiving the request must hear the appeal within 30 days of receiving the application.
115. It is the responsibility of the third party making the claim to serve notice of an application and of a hearing to the President, or an officer designated by the President (Adjudications Division).
116. When civil litigation becomes necessary, third party cases will be turned over to the Justice Department and the Adjudications Division will oversee and instruct legal counsel on the proceedings and will have the final say in the position taken by the CBSA in contesting a third party application.
- Note: The applicant must prove that their interest in the currency was acquired in good faith prior to the contravention; that the applicant is innocent of any complicity resulting in the contravention; and that they exercised reasonable care to ensure that the currency would be reported.
117. On final forfeiture of currency and in accordance with the court order, the Adjudications Division on behalf of the President will instruct the Minister of Public Works and Government Services to return to the applicant any seized currency or monetary instruments or an amount calculated on the basis of their interest as declared in the court order.
118. Either the CBSA or the third party making the application may appeal an order made by the court.

**Disclosure by the CBSA**

119. Information obtained under the PCMLTFA is not CBSA information and has to be used and disclosed only as provided for under the PCMLTFA.
120. The exception to the disclosure of information is the forwarding of reports presented by individuals and entities to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).
121. Officers may disclose information to FINTRAC if they have reasonable grounds to suspect that the information would be of assistance to FINTRAC in the detection, prevention, or deterrence of money laundering or terrorist financing.
122. Information obtained under the PCMLTFA may be used internally when it is relevant to the administration and enforcement of that Act, the *Customs Act* or in determining whether a person is a person described in sections 34 to

42 of the *Immigration and Refugee Protection Act* or is relevant to an offence under any of sections 117 to 119, 126 and 127 of that Act.

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123. Information gathered as a result of the administration or enforcement of the PCMLTFA may be disclosed, to the appropriate police force, if an officer has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering or terrorist financing offence.
124. If an officer decides to disclose information gathered under the PCMLTFA, the Act requires that the officer record in writing the reasons for the decision. It is the policy of the CBSA that such disclosures of information be conducted by the CBSA Integrated Proceeds of Crime (IPOC) members or by a person acting on their behalf (Intelligence staff).

### **Disclosure by FINTRAC**

125. The PCMLTFA permits the disclosure of information to the CBSA where FINTRAC determines that information is relevant to an offence related to the importation of goods, which are prohibited, controlled or regulated under the *Customs Act* or is relevant in determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act* or is relevant to an offence under any of sections 117 to 119, 126 and 127 of that Act and money laundering or the financing of terrorist activities

### **Disclosure during Court proceedings**

126. It is the policy of the Agency that the procedures detailed in the Customs Enforcement Manual, Part 9, Chapter 4, will be followed when a BSO receives a subpoena to testify regarding the PCMLTFA. A person served with a subpoena is required to comply with the order as it pertains to legal proceedings that relate to the administration or enforcement of the PCMLTFA.

### **Disclosure to the Department of Citizenship and Immigration**

127. The PCMLTFA allows the CBSA to disclose information obtained during the enforcement or administration of the PCMLTFA to Citizenship and Immigration Canada (CIC) when it would be relevant in determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act*.

Note: FINTRAC may disclose information directly to CIC if they believe that the information is relevant to promoting the objectives of the *Immigration and Refugee Protection Act* (IRPA).

### **Counterfeit Currency/Monetary Instruments**

128. Counterfeit currency and monetary instruments are not considered legal tender and are therefore outside of the realm of the PCMLTFA. They should be processed as described in the Customs R-Memorandum 17-1-5.

## **ROLES AND RESPONSIBILITIES**

### **CBSA Officers**

129. CBSA officers are responsible for:
- a) facilitating the reporting of currency and monetary instruments equal to or greater than CAN \$10,000 under the PCMLTFA;
  - b) seizing non-reported currency and monetary instruments equal to or greater than CAN \$10,000 under the PCMLTFA, when appropriate;
  - c) adhering to the personal search policy and procedures;
  - d) exercising diligence, due care and comply with the relevant financial control policies, guidelines and procedures; and
  - e) updating the appropriate checklist.

### **CBSA Managers and Superintendents**

130. CBSA managers and superintendents are responsible for:
- a) ensuring compliance with this policy and procedures;
  - b) providing the necessary assistance and support to CBSA officers;
  - c) ensuring breaches of this policy or procedures are dealt with accordingly;
  - d) evaluating the reasonable grounds to suspect that currency or monetary instruments are proceeds of crime as presented by a CBSA officer;
  - e) ensuring that the policies and procedures related to personal searches are adhered to by CBSA officer; and
  - f) ensuring that the appropriate checklist has been completed.

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### Regional Intelligence Officers

131. Regional Intelligence Officers within Integrated Proceeds of Crime Units (IPOC), or person acting on their behalf, are responsible for facilitating the exchange of timely information or intelligence concerning individuals and organizations suspected of involvement in money laundering or terrorist financing activities.

### Enforcement Branch

132. The Enforcement Branch is responsible for:
- a) ensuring that all reports are forwarded to FINTRAC;
  - b) notifying FINTRAC and PWGSC/SPM of all currency seizures;
  - c) overseeing the administration of the regulations and the cross-border currency reporting program;
  - d) consulting with regional or headquarters officials and providing advice and guidance, as required; and
  - e) Approving the acquiring of tools used in the administration of the cross-border currency reporting program.

## PROCEDURES

### Reporting

133. When referring a person for examination, ask them if they are in possession of currency or monetary instruments equal to or greater than a value of CAN \$10,000, after conversion.
134. When a person declares that they are in possession of currency or monetary instruments equal to or greater than a value of CAN \$10,000, ask additional primary questions when required.

Note: Persons will be offered the opportunity to make a full and complete declaration.

### Common Elements to All Modes

Note: For all modes of importation and exportation, common elements exist and they are as follows.



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135. Review the documentation (E677, E667 and/or E668) to ensure that all fields are completed.
136. If all fields are completed, initial, date stamp, and retain the currency report (E677 or E667 and/or E668) for processing.
137. Do not provide the person/carrier a receipt.

Note: Acceptance of the reports fulfills the reporting requirements of the individual/courier/transporter. No further documentation will be required.

138. Release the person/courier/transporter if you do not feel that a secondary examination or verification is required.

### **Reporting Procedures in the Highway Travellers Mode**

139. Ask persons entering Canada specifically whether they have in their possession, or in their vehicle, currency or monetary instruments that are equal to or greater than a \$10,000 Canadian value.
140. If a person declares that they have currency or monetary instruments greater than CAN \$10,000, advise them that they are required to submit a currency report.

Note: Refer to the Appendices for a sample of the forms.

141. If a person is in possession of a completed currency report, accept the report at primary.
142. If a person is not in possession of a completed currency report or if a secondary examination/verification is required, refer them to secondary.
143. When making a secondary referral:
  - a) indicate the currency declaration on the E67; and
  - b) indicate the amount of currency and country of origin in the E67 comments field (i.e. \$12,000 USD).

Note: The E67 Secondary Referral card has been modified to include a currency field.

### **Reporting in the Highway Commercial Mode**

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144. The importer/exporter of currency is required to report currency brought in or out of Canada by courier or transporter.

Note: At the primary inspection line a person in charge of a conveyance may present a completed currency report form or make a verbal declaration indicating that they are in possession of currency or monetary instruments.

145. Refer couriers and transporters making verbal declarations for documentation.

### **Reporting in the Air Travellers Mode**

146. When an E311 or primary questioning indicates a currency declaration, ask the person if they have a completed currency report.
147. If a person presents a completed currency report, accept the report at primary.
148. If a person is not in possession of a completed currency report, or if an examination/verification is required, refer them to secondary.
149. Mark the E311 to indicate that a currency report is required, indicate the amount of currency and country of origin.

### **Reporting in the Marine Mode**

150. The Ship Master will indicate on the Ships Stores Declaration (E1) if they are in possession or control of currency or monetary instruments totalling CAN \$10,000 or more.
151. If the Ship Master declares an amount of CAN \$10,000 or more, the E1 must be submitted with a completed currency report (E667 and E668).
152. Crewmembers with CAN \$10,000 or more in currency or monetary instruments must declare it on the Crew's Effects Declaration (Y14) or the Customs Declaration Card (E311) and be accompanied by a completed currency report.
153. If a person declares that they have currency or monetary instruments greater than CAN \$10,000, advise them that they are required to submit a currency report.

Note: Refer to the Appendices for a sample of the forms.

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154. If a person is in possession of a completed currency report, accept the report at primary.
155. If a person is not in possession of a completed currency report or if a secondary examination/verification is required, refer them to secondary.

### **Mail**

156. When processing declared currency, open the package and retrieve the currency report.
157. If the currency report is complete, consider the reporting requirements of the PCMLTFA to be met.
158. If a UPC declaration form indicates currency or monetary instruments, however the report is either missing or incomplete, retain the currency.
159. Issue a retention notice to the exporter.

Note: Upon receipt of the retention notice, the exporter must report the currency at the CBSA office indicated on the notice. Report to the CBSA office and completion of the currency report forms, will fulfill the reporting requirements of the PCMLTFA.

160. If the exporter's address is not known, notify the importer.

### **Telephone Reporting Centres**

161. When a currency report is made by telephone, where a Telephone Reporting Centre is available to clear the CBSA, complete the currency report form on the person's behalf.

Note: No signature will be required on the form.

### **Verification**

Note: Where a person has made a currency report; an officer does not require reasonable grounds to examine the currency for the purposes of verifying the report.

162. When it is determined that the currency report is to be verified, when possible, count the currency and monetary instrument in the presence of another officer and the client out of the view of the public.

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163. When it is determined that currency is to be retained or seized, count it in the presence of another officer.
164. When possible, as the officer counting the currency, take notes indicating the currency denominations and total values.
165. As the observing officer, initial the notes indicating that you witnessed the handling of the currency.
166. As the observing officer, ensure that you take notes regarding the handling of the currency as you may be considered as part of the chain of custody should legal proceedings result from the detention/seizure.
167. Handle currency, which is to be detained or seized, as if it were undeclared or prohibited goods.

Note: Refer to the Enforcement Manual, Part 9 Chapter 3 for the procedures for the handling of physical evidence. When currency is transferred to another entity as evidence, follow up with the entity regularly.

168. The safekeeping, handling and control of currency or monetary instruments seized for forensic purposes may be required and conducted by the Police in accordance with Departmental policy and procedures identified in the FAM.

### Personal Searches

Note: The personal search process is similar to the *Customs Act*.

169. When conducting a personal search for currency, instead of reading section 98 of the *Customs Act*, read to the person section 15 of the PCMLTFA:

"I have reasonable grounds to suspect that you are carrying non-reported currency or monetary instruments above the prescribed amount on or about your person and I am detaining you for the purposes of a personal search as authorized by section 15 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*."

### Retention

170. List the currency and monetary instruments on a K24 and give the importer or exporter the written notice identifying that the currency has been retained.

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171. When currency sent by courier or mail is being retained, notify the exporter.

172. If the exporter's address is not known, notify the importer.

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### Commercial Retention Procedures

173. Detain currency and/or monetary instruments by completing a K24 when you examine a parcel/shipment, which has been declared as currency or monetary instruments, but the appropriate currency report forms are not present or are incomplete.
174. Communicate the retention to the exporter by sending them a copy of the K24.
175. If the address of the exporter is not known, send the receipt to the importer.
176. In either case, ensure a signature is required upon delivery.
177. Place a copy of the K24 with the currency.
178. Complete the physical retention of the currency and/or monetary instruments according to district standards (i.e. safes, vaults).

### Postal Retention Procedures

179. When declared currency or monetary instruments are encountered, however the package does not contain a completed currency report:
  - a) produce a currency/monetary instruments retention form from the Postal Import Control System (PICS);
  - b) forward the PICS letter to the exporter; and
  - c) if the exporter's address is not known, send the letter to the importer.

### Release

180. Release currency and/or monetary instruments when you are in receipt of the appropriate currency report or you are satisfied that a report has been made.
181. Cancel the K24 or PICS letter by referencing the name and date on the currency report(s).
182. Should the importer or exporter advise the CBSA within the prescribed period that they do not wish to proceed with the entry, release the currency or monetary instruments by:

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- a) canceling the K24 or PICS letter by referencing the name and date on the currency report(s);
- b) noting on the K24 that the request for entry or exit has been withdrawn; and
- c) forwarding any incomplete currency reports to the Database unit of the Enforcement Branch.

### PCMLTFA Seizures (ICES)

Note: The seizure documentation and process for PCMLTFA seizures are similar to *Customs Act* seizures.

Note: All of the *Enforcement Manual* procedures regarding the handling of evidence and the gathering of intelligence are applicable to seizures under the PCMLTFA.

Note: PCMLTFA seizures in the postal and courier stream may only be made against the exporter. There are no reporting requirements on the importer (recipient) of the currency or monetary instruments.

183. Enter seizure information into ICES by selecting the allegation “Non-Report of Currency or Monetary Instruments” from the appropriate drop box:

Note: The commodity drop box has been updated to include:

- a) Currency or Monetary Instruments (for levels 1-3); and
- b) Suspected Proceeds of Crime (for No Terms of Release).

### PCMLTFA Seizures (Manual)

Note: A seizure form (K19C) has been developed to include information regarding the PCMLTFA. The K19C will allow the officer to select the appropriate currency allegation and commodity. A form K19C-1 Currency Inventory Sheet has also been developed. See Appendix A for examples of both forms.

184. If the K19C is not available, write the following allegation on the seizure documentation (K19S):

“The said currency or monetary instruments are seized under subsection 18(1) of the *Proceeds of Crime (Money Laundering) and*

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*Terrorist Financing Act because they were not reported contrary to the provisions of subsection 12(1) of that Act.”*

185. Ensure that subsection 12(1) of the PCMLTFA is also written on the K19S:

*“Proceeds of Crime (Money Laundering) and Terrorist Financing Act 12(1). Every person or entity referred to in subsection (3) must 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.”*

186. Write in the commodity as either:

- a) Currency or Monetary Instruments (for levels 1-3); or
- b) Suspected Proceeds of Crime (for No Terms of Release).

187. Complete the form K19C-1, Currency Inventory Sheet.

188. Fax the completed K19C and the K19C-1 to the Information Sharing Section at (613) 952-4145 for input into ICES.

### **Establishing Suspected Proceeds of Crime Criteria Under the PCMLTFA**

189. Bearing in mind the definitions of proceeds of crime and reasonable grounds, officers may seize suspected proceeds of crime or terrorist finances as forfeit.

190. As the seizing officer, take notes of all reasonable grounds.

191. A CPIC check should be conducted for all suspected proceeds of crime seizure.

192. Contact the Integrated Proceeds of Crime Unit (IPOC) or the Intelligence office as soon as reasonably possible.

Note: The IPOC and Intelligence unit will advise whether they will present themselves at the port.

### **Establishing Proceeds of Crime Criteria Under the *Criminal Code***

193. Border Services Officers (BSO's) who establish reasonable grounds to believe that they have proceeds of crime or terrorist finances, which have been reported, are to contact their IPOC unit or their Regional Intelligence office.



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194. Seizures under the *Criminal Code* often involve a lengthy investigation. The physical seizure of the currency normally follows only after such an investigation. The IPOC unit or Regional Intelligence office will be able to advise the officer on a case-by-case basis.
195. An arrest for laundering proceeds of crime will only occur under the guidance of the IPOC unit or Regional Intelligence office. Should the circumstance warrant, an arrest would be made under the authority of subsection 495(1) of the *Criminal Code*. Only a designated officer at a designated port of entry may make the arrest.
196. Currency or monetary instruments seized under the *Criminal Code* will not be placed on customs seizure documentation (K19). The currency or monetary instruments will be recorded on an E352 – Evidence Seizure Receipt. The BSO will write on the E352 that the currency or monetary instruments are being held as “suspected proceeds of crime”.
197. The BSO will also complete a K129 Evidence Control Form. The BSO will cross out the reference that the goods are seized under the *Customs Act* and write in “suspected proceeds of crime”.
198. When the currency or monetary instruments are transferred to IPOC or the police, the E352 will be cancelled with the K129 number. The E352 may be given to the person from whom the currency was seized as a receipt.
199. For detailed processes regarding arrest and seizure under the *Criminal Code*, refer to the policy and procedures for *Criminal Code* offences in the Enforcement Manual, Part 6, Chapter 7.
200. All actions involving “laundering proceeds of crime” will be reported to the National Currency Coordinator at [Currency@cbsa-asfc.gc.ca](mailto:Currency@cbsa-asfc.gc.ca).

### Suspending Monetary Instruments

201. In order to protect the value of the seized monetary instruments, suspend the items by immediately notifying the appropriate financial institution by telephone.
202. For travellers’ cheques, provide the financial institution with the following information:
  - a) serial numbers;
  - b) quantity of checks by denomination;
  - c) date and place of purchase;

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**Cross-Border Currency and Monetary Instruments Reporting**

- d) name of CBSA contact; and
- e) inform them that the PCMLTFA has been violated.

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**Cross-Border Currency and Monetary Instruments Reporting**

Note: Major Companies Issuing Travelers Cheques, with 24-Hour service:

American Express	1-800-525-7641
Bank of America	1-415-241-3491
Citicorp	1-800-645-6556
MasterCard	1-800-223-9920
Thomas Cook Bankers	1-800-223-7373 or 212-921-3677
VISA International	1-800-227-6811

203. Do not release the name of the purchaser and/or the person from whom the monetary instruments were seized to the financial institution.
204. Include the time and name of the person notified at the issuing bank or other financial institution in your notes.
205. For all other monetary instruments, contact the Enforcement Branch for guidance at:

**Transferring Procedures**

206. The Receipt and Deposit of Public Money Regulations requires that the terms of release of currency seizure and the forfeited currency be deposited promptly to a CBSA bank account to the credit of the Receiver General. They will respectively be recorded to revenue code 8702 (level 1, 2, 3) and 8701 (forfeit, level 4) during the K10 process (Customs Revenue Report).

Note: A summary of deposits into General Revenue, for the Cross Border Currency Reporting program, must be provided on a monthly basis to CBSA Finance.

207. If it is not already notated on K-10 form, write the seizure reference number and file with the seizure reports.
208. CBSA Finance and PWGSC/SPM will proceed with an interdepartmental settlement (IS) to transfer the funds.
209. For forfeited currency other than in Canadian or American dollars, make reasonable efforts to convert the amount in Canadian funds.

Note: When this proves to be unfeasible, transfer the currency to PWGSC/SPM.

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210. If a commercial bank charges a fee for counting or converting the currency, pay the fee from the seized amount. In reporting the seized currency, report the net amount, and specify the amount of the fee paid to the commercial bank.
211. Send forfeited monetary instruments to PWGSC/SPM by courier.
212. If the instruments are blank in the “pay to” field, make them out to the Receiver General for Canada.
213. If there are various monetary instruments with different information on each one, contact the Enforcement Branch for details prior to transferring them to PWGSC/SPM.
214. Seized monetary instruments and non-exchangeable currency that could not be deposited by the CBSA and transferred through the IS process for any reason, are to be sent to PWGSC/SPM at:
- Public Works and Government Services Canada  
Seized Property Management Directorate  
12C1, Place du Portage, Phase III  
11 Laurier Street  
Gatineau, Québec  
K1A 0S5
215. Ensure the courier shipment requires a signature on both ends of delivery.
216. Keep a copy of the courier bill of lading with the seizure records.
217. When a seizure is recorded in ICES, the transfer will be noted in the appropriate disposition field. When the seizure and disposition occur simultaneously, and recorded in ICES, the Currency Coordinator will be considered to have been notified.
218. When a seizure is recorded manually, or when currency/monetary instruments is transferred to PWGSC/SPM or to another entity (Police), the officer will notify the Enforcement Branch by sending an email to  
referencing:
- a) date of the seizure/retention;
  - b) date of transfer;
  - c) seizure/reference number;
  - d) amount transferred;
  - e) type of currency;
  - f) method of transfer (i.e. courier); and

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g) name of the responsible officer.

219. Print and file a copy of the electronic message to the Enforcement Branch with the physical seizure reports.

220. Direct concerns regarding the transfer of currency or the payment of associated expenses to the Enforcement Branch at

### **Amendments to Reports**

221. When a report is to be modified:

- a) amend the original currency report with the corrected data;
- b) ensure the person making the report initials the changes;
- c) note the circumstances of the discrepancy in the comments field of the currency report; and
- d) ensure you make personal notes regarding the details of the situation.

Note: Acceptance of the reports fulfills the reporting requirements of the individual/courier/transporter. No further documentation will be required.

Note: CBSA officers have the discretionary power to allow persons or entities to amend their currency reports. Where the situation warrants the officer may commence with seizure action or the officer may choose to modify the currency report.

222. If you do not feel a secondary examination or verification is required, release the individual/courier/transporter.

### **Currency Report Forms**

223. Forward all reports received to the Enforcement Branch through inter-office mail in a reusable envelope or by first class mail using a single gum-sealed envelope with no security marking where interoffice mail is not available.

Note: The data will be captured and forwarded by the CBSA to FINTRAC.

224. Batch reports weekly and forward them to:  
Information Sharing Section  
Enforcement Branch

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Cross-Border Currency and Monetary Instruments Reporting

10<sup>th</sup> Floor Sir Richard Scott Building  
191 Laurier Avenue West  
Ottawa, ON K1A 0L8

**REFERENCES**

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

*Cross-Border Currency and Monetary Instruments Reporting Regulations*

*Customs Act*

*Immigration and Refugee Protection Act*

*Criminal Code of Canada*

Comptrollership Manual, Finance Volume

**Part 2**

**ENFORCEMENT PRIORITIES**

**Chapter 2**

**CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS  
REPORTING POLICY AND PROCEDURES**

**Appendix A**

**SEIZURE RECEIPT CURRENCY AND MONETARY INSTRUMENTS (K19C)**

**AND**

**CURRENCY INVENTORY SHEET (K19C-1)**






## EN Part 2 Chapter 2

## Cross-Border Currency and Monetary Instruments Reporting

## APPENDIX A

	<b>Canada Customs and Revenue Agency</b> Agence des douanes et du revenu du Canada	<b>SEIZURE RECEIPT</b> <b>CURRENCY AND</b> <b>MONETARY INSTRUMENTS</b>	<b>SAISIE DOUANIÈRE</b> <b>ESPÈCES ET</b> <b>INSTRUMENTS MONÉTAIRES</b>	<div style="border: 1px solid black; padding: 2px;"> <b>PROTECTED WHEN COMPLETED - PROTÉGÉ UNE FOIS REMPLI</b> </div> <div style="border: 1px solid black; padding: 2px;">           Seizure no. - N° de saisie: _____ Date: YYYY - AAAA MM DD - JJ         </div> <div style="border: 1px solid black; padding: 2px;">           Customs office - Bureau de douane: _____         </div>
Last name, first name, middle names - Nom de famille, prénoms: _____				

EN Part 2 Chapter 2

Cross-Border Currency and Monetary Instruments Reporting

APPENDIX A



Canada Border  
Services Agency  
Agence des services  
frontaliers du Canada

Currency Inventory Sheet - Feuille d'inventaire des espèces

Seizure No. / No. de Saisie \_\_\_\_\_

Date \_\_\_\_\_

Location / Endroit \_\_\_\_\_

Time / Heure \_\_\_\_\_

Officers / Agents \_\_\_\_\_

Page \_\_\_\_\_

Bill Count / Nombre de billets	\$ Value / Valeur en \$	1	5	10	20	50	100	Total Value of Each Bundle Valeur totale de chaque liasse
Bundle / Liasse _____								
Bundle / Liasse _____								
Bundle / Liasse _____								
Bundle / Liasse _____								
Bundle / Liasse _____								
Bundle / Liasse _____								
Bundle / Liasse _____								
Bundle / Liasse _____								
Bundle / Liasse _____								
Bundle / Liasse _____								
TOTAL / TOTALE								

K19C-1  
Printed in Canada - Imprimé au Canada

**Part 2**

**ENFORCEMENT PRIORITIES**

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**CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS  
REPORTING POLICY AND PROCEDURES**

**Appendix B**

**Confirmation of the Return of Seized Currency and/or Monetary  
Instruments Upon Payment of Penalty**



**Protected once completed**

**Confirmation of the Return of Seized Currency and/or Monetary Instruments  
Upon Payment of Penalty**

The following statement is to be filled out and signed by the seizing officer or supervisor and the person or representative of the entity in whose hands the currency/monetary instruments were seized.

I, \_\_\_\_\_, confirm that my seized currency and/or monetary  
(Client name)

instruments ( \_\_\_\_\_ ): \_\_\_\_\_, in the  
(Type) (Seizure #)

amount of \_\_\_\_\_, have been returned in full, upon payment  
(Seized amount - including currency code)

of penalty in the amount of \_\_\_\_\_.  
(Penalty amount)

\_\_\_\_\_  
Person/authorized representative of entity

\_\_\_\_\_  
CBSA Officer

\_\_\_\_\_  
Badge Number

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Upon completion, one copy is to be given to the client/authorized representative and one copy is to be kept on file.

07/03/08



**Part 2**

**ENFORCEMENT PRIORITIES**

**Chapter 2**

**CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING  
POLICY AND PROCEDURES**

**Appendix C**

**CURRENCY CHECKLISTS**





**APPENDIX C**

**Cross-Border Currency Reporting (CBCR) Program  
Seizure Checklist**

**For Currency or Monetary Instruments**

When currency or monetary instruments are released on payment of penalty (level 1, 2, or 3), the following checklist is to be completed and included on file:

<b>Copy of the K19 or K19C to be included on file.</b> K19/K19C#: _____	<b>Yes</b> <input type="checkbox"/>	<b>No</b> <input type="checkbox"/>
<b>Superintendent notification as per Enforcement Manual Part 2, Chapter 2, Par. 126(c).</b> Superintendent Name: _____ Badge #: _____	<b>Yes</b> <input type="checkbox"/>	<b>No</b> <input type="checkbox"/>
<b>Copy of the Confirmation of the Return of Seized Currency and/or Monetary Instruments Upon Payment of Penalty letter to be completed and signed by the seizing officer or supervisor as well as the subject, and included on file.</b>	<b>Yes</b> <input type="checkbox"/>	<b>No</b> <input type="checkbox"/>
<b>Copy of the K21 generated upon payment of penalty is included on file.</b> K21#: _____	<b>Yes</b> <input type="checkbox"/>	<b>No</b> <input type="checkbox"/>
<b>When the penalty amount collected is deposited into general revenue (under financial coding number 8702), a copy of the K10 is included on file as per Enforcement Manual Part 2, Chapter 2, Par.203.</b> K10#: _____	<b>Yes</b> <input type="checkbox"/>	<b>No</b> <input type="checkbox"/>

\_\_\_\_\_  
Superintendent Signature

\_\_\_\_\_  
Badge #

APPENDIX C

Cross-Border Currency Reporting (CBCR) Program  
Seizure Checklist

For Suspected Proceeds of Crime

When currency or monetary instruments are seized as suspected proceeds of crime (level 4), the following checklist is to be completed and included on file:

<b>Copy of the K19 or K19C to be included on file.</b>  K19/K19C#: _____	<b>Yes</b>  <input type="checkbox"/>	<b>No</b>  <input type="checkbox"/>
<b>Superintendent notification as per Enforcement Manual Part 2, Chapter 2, Par. 126(c).</b>  Superintendent Name: _____ Badge #: _____	<b>Yes</b>  <input type="checkbox"/>	<b>No</b>  <input type="checkbox"/>
<b>Seized currency / monetary instruments counted in the presence of a second officer, as per EN Manual Part 2, Chapter 2, par. 159.</b> Officer Name: _____ Badge #: _____	<b>Yes</b>  <input type="checkbox"/>	<b>No</b>  <input type="checkbox"/>
<b>Notify an RIO, as per EN Manual Part 2, Chapter 2, par. 188.</b> RIO Name: _____ Badge #: _____	<b>Yes</b>  <input type="checkbox"/>	<b>No</b>  <input type="checkbox"/>
<b>If the currency and/or monetary instruments are temporarily transferred to the RCMP or a police force, a copy of the K129 is included on file upon transfer.</b>  K129#: _____  <b>Please check the appropriate box when the currency and/or monetary instruments is returned by the RCMP or police force</b>	<b>Release</b>	<b>Return</b>
	<b>Yes</b> <input type="checkbox"/>	<b>Yes</b> <input type="checkbox"/>
	<b>No</b> <input type="checkbox"/>	<b>No</b> <input type="checkbox"/>
	<b>N/A</b> <input type="checkbox"/>	<b>N/A</b> <input type="checkbox"/>
<b>If the seizure contains monetary instruments, the financial institution needs to be contacted in order to place a hold on them and preserve their value, as per EN Manual Part 2, Chapter 2, par. 197. Please check the appropriate box, if you have contacted the financial institution.</b>	<b>Yes</b>  <input type="checkbox"/>	<b>No</b>  <input type="checkbox"/>
<b>If the currency and/or monetary instruments are to be deposited into general revenue (under financial coding number 8701), a copy of the K10 is included on file as per Enforcement Manual Part 2, Chapter 2, Par.203.</b> K10#: _____	<b>Yes</b>  <input type="checkbox"/>	<b>No</b>  <input type="checkbox"/>
<b>If the currency and/or monetary instruments are to be forwarded directly to PWGSC/SPM by the port, the courier bill of lading is included on file, as per EN Manual Part 2, Chapter 2, par. 212.</b>  Ref#: _____	<b>Yes</b>  <input type="checkbox"/>	<b>No</b>  <input type="checkbox"/>
<b>Notify the Cross-Border Currency Reporting Program coordinator by email, as per EN Manual Part 2, Chapter 2, par. 214.</b>	<b>Yes</b>  <input type="checkbox"/>	<b>No</b>  <input type="checkbox"/>

\_\_\_\_\_  
Superintendent Signature

\_\_\_\_\_  
Badge #

## **CBSA ENFORCEMENT MANUAL**

### **Part 2**

## **ENFORCEMENT PRIORITIES**

### **Chapter 3**

## **FIREARMS AND WEAPONS**



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## EN Part 2 Chapter 3

## Firearms and Weapons

### POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to control the importation of firearms, weapons and other devices, in order to ensure compliance with Tariff Item No. 9898.00.00, as well as the *Firearms Act* and the *Criminal Code*.

### DEFINITIONS

2. Refer to Part 11 - Glossary.

### AUTHORITIES

#### *Customs Act*

3. Section 11 of this Act requires every person arriving in Canada to report to a CBSA officer and to answer truthfully any question asked by the officer in the performance of his or her duties under this Act or any other Act of Parliament.
4. Section 12 requires all goods imported into Canada be reported to the CBSA.
5. Subsection 99(1) authorizes the examination of any goods and conveyances that a CBSA officer suspects on reasonable grounds to contain goods that are in contravention of the Act.
6. Section 101 authorizes the detention of controlled goods that have been imported or are about to be exported. The officer may release the goods once he or she is satisfied that the goods have been dealt with in accordance with this Act, and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods.
7. Section 107 authorizes the disclosure of customs information to certain prescribed persons.
8. Section 110 stipulates that an officer may, on reasonable grounds, seize goods involved in a contravention of the *Customs Act* as well as the conveyance used in the contravention.
9. Section 159 stipulates that it is an offence to smuggle or attempt to smuggle any goods subject to duties, or any goods the importation of which is

## EN Part 2 Chapter 3

## Firearms and Weapons

prohibited, controlled, or regulated by or pursuant to this or any other Act of Parliament.

10. Section 160 stipulates that a person who contravenes specific provisions of the *Customs Act*, for example weapon smuggling, is guilty of an indictable offence and liable to a fine and/or imprisonment or an offence punishable by summary conviction and liable to a fine and/or imprisonment.

### *Customs Tariff*

11. Section 136 stipulates that all goods enumerated or referred to in tariff item no. 9898.00.00 are prohibited entry into Canada. This includes firearms, prohibited weapons, restricted weapons, prohibited devices, prohibited ammunition and components or parts designed exclusively for use in the manufacture of or assembly into automatic firearms.

### *Firearms Act*

12. Section 2 provides definitions of terms used in the *Firearms Act*.
13. Sections 43 through 53 explain the mechanisms and/or restrictions for which a business may export or import a firearm, prohibited weapon, restricted weapon, prohibited device, component or part designed exclusively for use in the manufacture of or assembly into an automatic firearm or prohibited ammunition.

### *Criminal Code*

14. Sections 2 and 84 provide the legal definitions of firearms, weapons, and terms related therein.
15. Section 88(1) states that it is an offence to carry or possess a weapon, an imitation of a weapon, a prohibited device or any ammunition or prohibited ammunition for a purpose dangerous to the public peace or for the purpose of committing an offence.
16. Section 91(1) states that it is an offence to possess a firearm without a licence and a registration certificate.
17. Section 100(1) states that it is an offence to possess a firearm for the purpose of trafficking, knowing that the person is not authorized to do under the *Firearms Act* and any other Act of Parliament.
18. Section 103(1) states that it is an offence to import or export without authorization a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any prohibited ammunition, or any component or part

## EN Part 2 Chapter 3

## Firearms and Weapons

designed exclusively for use in the manufacture of or assembly into an automatic firearm.

19. Section 117.11 states that any question arising as to whether a person is the holder of an authorization, a licence or a registration certificate, the onus is on the accused to prove that the person is the holder of the authorization, licence or registration certificate.

### PURPOSE AND SCOPE

20. The purpose of this policy is to guide CBSA officers in the interdiction of prohibited or restricted firearms, weapons, and other devices and outline the appropriate enforcement mechanisms available under the *Customs Act* and other Acts of Parliament.
21. This policy does not cover instructions that determine the admissibility of firearms and weapons and the adequate documentation required. For such instructions refer to D19-13-2 Importing and Exporting Firearms, Weapons, and Devices – *Customs Tariff, Criminal Code, Firearms Act, and Export and Import Permits Act*.  
<http://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-13-2-eng.html>
22. This policy applies to all CBSA officers in all modes of transportation.

### POLICY GUIDELINES

23. Firearms and weapons are high-risk commodities and their interdiction is therefore a CBSA enforcement priority.
24. Prohibited and restricted firearms, weapons, and devices are defined and outlined in D19-13-2 Importing and Exporting Firearms, Weapons, and Devices as well as in the glossary of this manual. D19-13-2 also provides detailed information regarding detention and release procedures.
25. CBSA officers have many tools at their disposal to control the import and export of inadmissible firearms and weapons and must choose the appropriate action, depending on the circumstances.
26. Officers not trained or equipped to use duty firearms are expected to seize and safely handle firearms encountered in the normal course of their duties.
27. Seizure of any undeclared firearm is warranted when the traveller was given the opportunity to declare the firearm by completing a declaration card or by responding to questioning, and did not declare it.



## EN Part 2 Chapter 3

## Firearms and Weapons

28. Seizure of any other undeclared weapon deemed prohibited, such as mace, pepper spray, or knives is warranted when it has been established that the traveller knew of its prohibited status and understanding this, did not declare it.
29. To establish this knowledge factor, the CBSA officer, as part of the primary examination, will specifically ask the traveller if he/she is carrying any weapon such as pepper spray, mace or knives and advise them of the prohibited status of such weapons. In many instances, travellers may not realize that certain items are prohibited and they are not intentionally trying to smuggle them into Canada.
30. When a prohibited weapon is declared in response to the questioning, or to the information about the prohibited status of weapons such as pepper spray, mace or knives, the item is considered declared and may be detained rather than seized.
31. When a firearm is declared in response to questioning, a restricted or prohibited firearm may then be detained rather than seized.
32. When the importer was not questioned, but subsequent examination reveals a weapon or firearm, an officer may extend the benefit of the doubt to that person unless there are specific reasons to indicate that he or she intended to smuggle the item into Canada.
33. When seizure action is unwarranted, it is nonetheless advisable that individuals be informed about legislation concerning prohibited firearms and weapons. The inadmissible weapons/firearms may be detained in accordance with Memorandum D19-13-2.
34. A CBSA office may hold inadmissible detained weapons/firearms to be later returned, depending on the circumstances. For example, a recently purchased firearm may be held on a K24 for a maximum of 40 days while a resident who holds a firearms licence attempts to obtain the appropriate documentation.
35. There are no terms of release for seized prohibited or restricted firearms or weapons. Firearms, which are **not** classified as prohibited or restricted (mainly long rifles and shotguns) may be offered for release provided the person has the required documentation.
36. When seized weapons or firearms are imported for commercial purposes, an administrative monetary penalty may also be applied. The regional Investigations office should be contacted and they will review the case for

## EN Part 2 Chapter 3

## Firearms and Weapons

possible investigation and prosecution (See Part 9, Chapter 2, Investigations Procedures).

37. A conveyance penalty may be applied to the traveller who has used his/her conveyance to contravene the *Customs Act*. If the conveyance was modified and used for smuggling purposes, there are no terms of release.

### Arrest/Prosecution

38. A number of cases involving undeclared weapons or firearms may not involve an arrest and/or subsequent prosecution.
39. When a traveller has been arrested for *Customs Act* offences related to firearms or prohibited weapons, Investigations is to be notified for possible prosecution.
40. Prosecution may be considered pursuant to the *Criminal Code* and/or the *Customs Act*. Investigations will consult local police to decide and determine the best approach according to the circumstances.

### Allegation

41. Normally, the allegation for a seizure is "non-report".
42. When seizing a shipment that has been declared as containing toy guns, and where the CBSA officer suspects them to be prohibited replica firearms (i.e. officer believes the importer/exporter had the intention to circumvent the law rather than simply a classification error) the officer should use the allegation "untrue statements". "Non-report" may not be upheld under appeal because the goods were in fact reported.
43. If there is a probability of prosecution, the allegation will be that of "smuggling".

### Sources for determining the status of a firearm or weapon

44. For information determining the status of a weapon or firearm and for information on the documentation required, CBSA officers should refer to memorandum D19-13-2 Importing and Exporting Firearms, Weapons, and Devices.

## ROLES AND RESPONSIBILITIES

### CBSA Officers

## EN Part 2 Chapter 3

## Firearms and Weapons

45. CBSA officers are responsible for:

- a) questioning travellers about firearms and weapons;
- b) observing, targeting, selecting, and examining conveyances, baggage, goods, and commercial shipments for firearms and weapons when reported to the CBSA;
- c) detecting and intercepting prescribed materials or devices, such as explosives or firearms and prevent their importation into or transit through Canada;
- d) liaising with the regional intelligence officers and Investigations;
- e) arresting persons attempting to smuggle weapons or firearms into or out of Canada, in accordance with Section 495 of the *Criminal Code*;
- f) being aware of current trends, modus operandi, concealment methods, unusual routings, etc. as they pertain to firearms and weapons and source countries;
- g) awareness, recognition, collection and submission of information valuable for intelligence gathering purposes;
- h) thoroughly reviewing all lookouts, alerts, and targets;
- i) handling exhibits properly and ensuring that adequate custody of the item is maintained;
- j) duly completing all necessary arrest and seizure documentation (including the K153 Significant Seizure Reports and IMS Occurrence reports when appropriate); and
- k) collecting and submitting information and evidence for prosecution and providing it to investigations/police.

### **CBSA Superintendents**

46. CBSA Superintendents are responsible for:

- a) ensuring compliance with these policies and procedures;
- b) providing necessary assistance and support to CBSA officers;
- c) ensuring completion and timely dissemination of reports concerning weapons/firearms and smugglers;

## EN Part 2 Chapter 3

## Firearms and Weapons

- d) ensuring timely circulation of all intelligence reports, lookouts, alerts, and targets;
- e) ensuring timely contact with Investigations;
- f) sending locally collected intelligence to the Regional Intelligence Officer (RIO); and
- g) taking necessary action when breaches of this policy and/or procedures occur.

### Regional Intelligence Officers

47. RIO's are responsible for:

- a) receiving, analyzing, and disseminating intelligence (exercising discretion) in a timely manner on suspected and known weapons smugglers, concealment methods, source countries, etc.;
- b) collecting intelligence information and developing lookouts and alerts;
- c) issuing lookouts and alerts on suspects and known firearms/weapons smuggling related persons, conveyances, shipments, etc.;
- d) providing expertise prior to involvement by another enforcement agency;
- e) maintaining open communication and sharing of information with Investigations, the Royal Canadian Mounted Police (RCMP) and other law enforcement agencies; and
- f) providing notes, reports and other evidence of involvement to Investigations/police in a timely manner and when requested to do so by Investigations/police.

### Regional Investigations

48. Regional Investigations is responsible for:

- a) responding to the local CBSA office when contacted after an arrest for a firearms/weapons arrest;
- b) investigating the case, gathering evidence and making a recommendation to the Director of Investigations in the region as to whether or not charges should be laid under the *Customs Act*;

## EN Part 2 Chapter 3

## Firearms and Weapons

- c) consulting with local police and crown agents as to whether or not charges should be laid under the *Criminal Code* and/or the *Customs Act*; and
- d) liaising with RIO's in gathering of intelligence.

### Enforcement Branch

49. The Enforcement Branch is responsible for:

- a) developing, modifying, and approving policies in accordance with the interpretation and application of the *Firearms Act*, the *Criminal Code* and the *Customs Act*;
- b) collecting information and developing intelligence;
- c) issuing lookouts and national alerts to CBSA officers, the US Department of Homeland Security and other foreign agencies on suspected and known firearms/weapons smuggling related persons, conveyances, shipments, etc.;
- d) disseminating lookouts and alerts provided by other countries on suspected and known firearms/weapons smuggling related persons, conveyances, shipments, etc.;
- e) sharing weapon/firearm intelligence with partners; and
- f) providing support to the field.

### PROCEDURES

- 50. Ask all non-residents entering Canada, particularly those entering by vehicle from the United States, whether they have in their possession, or in their vehicle, any firearms or other weapons. It is also advisable to ask returning residents, where appropriate, if they have any firearms or other weapons in their possession, or if firearms make up part of their declaration.
- 51. If a traveller has not been specifically questioned about firearms or other weapons, and an undeclared firearm or weapon is subsequently found, do not take seizure action unless there is evidence of intent on the part of the traveller to smuggle the firearm or weapon.

## EN Part 2 Chapter 3

## Firearms and Weapons

52. Be alert to the possibility that a returning resident may have included the value of a firearm or weapon in his or her report but will not have specifically mentioned the firearm or weapon. Before any examination is undertaken, the traveller should be questioned as to the nature of the goods included in his/her report and if any weapons are being imported. If weapons are reported as the result of such questioning, they are considered declared and are not subject to seizure.
53. Refer to Customs Memorandum D19-13-2 Importing and Exporting Firearms, Weapons, and Devices, for instructions on processing any weapon or firearm that is being properly declared.
54. If the goods are inadmissible but seizure action is unwarranted, the person may arrange for export.
55. If export is not feasible and seizure not warranted, detain inadmissible firearms and weapons:
  - a) advise the person that the goods are restricted or prohibited in Canada;
  - b) advise that the goods will be held for 70 days (40 days detention, plus 30 days in the unclaimed list) after which they will be disposed of; and,
  - c) provide a K24 receipt.
56. Seize improperly declared firearms and weapons if warranted.
57. Ensure that a full description of the firearm or weapon is indicated on the form K19S. The description should include the type of firearm or weapon (e.g., knife, handgun, rifle, shotgun, etc.), the make, model, serial number and calibre of firearms, the type of action (e.g., revolver or pistol in the case of a handgun, semi-automatic, fully automatic, etc.). This information is needed to facilitate future Police Information Retrieval System (PIRS) input and will assist considerably in the subsequent analysis of firearm and weapons seizures and/or for prosecution purposes as evidence.
58. Consider seizing the conveyance if it was used in the contravention (e.g. gun hidden in the trunk of a car) and the goods are for personal use.
59. Consider issuing an Administrative Monetary Penalty Assessment (AMP) if the goods were imported for commercial purposes.
60. Do not offer terms of release for prohibited or restricted firearms or weapons.
61. Offer terms of release for weapons/firearms that are not classified as prohibited or restricted if the person has the required permits. Terms of release equal 25, 40 or 55 per cent of the value for duty, depending on the level of the contravention.

## EN Part 2 Chapter 3

## Firearms and Weapons

62. When a conveyance seizure is applicable:

- a) offer terms of release for the conveyance of either 50 per cent or 100 per cent of the terms offered for the firearm, depending on the level of contravention, if the firearm is not restricted or prohibited;
- b) offer terms of release for the conveyance of either \$1000 for each firearm for a first contravention, \$2000 per firearm for second contraventions and \$3000 per firearm for third and subsequent contraventions, if the firearm is restricted or prohibited;
- c) offer terms of release of a sum of \$500 per weapon seized if the item is a prohibited weapon other than a firearm (e.g. switchblade knife);
- d) offer terms of release of a sum of \$500 per commodity group seized for prohibited ammunition, prohibited devices (e.g. handgun barrel, silencer, large-capacity magazine, replica firearm) or components or parts designed exclusively for use in manufacturing or assembling automatic firearms; or
- e) offer terms of release for the conveyance in the normal manner applicable to undeclared goods if it is an undeclared rifle and shotgun.

Note: Officers are encouraged to use reasonable discretion when seizing conveyances if the restricted or prohibited weapon is not a firearm (e.g. switchblade knife, *shuriken*, etc.). However, there may be instances where it is preferable to take further deterrent action in addition to seizing the weapon. This may occur in instances where there is evidence of intent on the part of the traveller to smuggle the weapon.

- 63. Even if terms of release are paid, do not release any seized weapon or firearm until all required permits and certificates are provided. Also, do not release if Investigations advises that the weapon or firearm is to be kept as evidence.
- 64. Advise the RIO of any significant seizure of firearms and/or weapons.
- 65. Advise Investigations when the traveller has been placed under arrest.
- 66. When referral criteria are met, it is advisable (based on officer discretion) that the person in question be arrested pursuant to Section 495 of the *Criminal Code* for having contravened Section 159 of the *Customs Act* (smuggling).

Note: See Part 6 Chapter 1, Arrest and Detention.

## EN Part 2 Chapter 3

## Firearms and Weapons

67. Notify the applicable prosecuting agency (CBSA Investigations and/or local police), which will either arrive to take custody of the firearm/weapon and the person or will advise the CBSA officer to release the person.
68. If the traveller is not being arrested but the seizure is being executed nonetheless, inform the traveller that the seizure is a civil action under the *Customs Act*. The fact that criminal charges have not been laid does not affect the seizure of the goods in question.
69. Record in the notebooks the actual time of arrest and the time at which the advice regarding counsel and the caution were provided.
70. Photograph any novel or unique methods of concealment for intelligence and photograph all concealment as evidence for criminal prosecution.
71. Forward copies of photographs and negatives (where possible) with the seizure reports to the RIO. The RIO may send the photographs to the Enforcement Branch for intelligence gathering purposes. Provide the photographs to the Investigator who responded to the port of entry as the photograph will be used as evidence in the prosecution.
72. Complete a K153 Significant Seizure Report if applicable.
73. Be prepared to provide evidence for the Crown and support to the prosecuting agency (CBSA Investigations and/or local police) if the need arises.
74. Where possible, all firearms and weapons that have been seized, detained or held for export are to be sealed in exhibit envelopes (Evidence Bags and Labels — forms R 635 and R 636). The label portion of the envelope should state the officer's initials and badge number, the date, time and place of action, the suspect or owner's name, the appropriate seizure, exhibit or K24 reference number. Firearms and weapons that cannot be placed in exhibit envelopes should be controlled by completing and attaching an E360 Evidence and Seizure Label.
75. Whenever a firearm or weapon is being turned over to prosecuting agency for use as an exhibit in a court proceeding, list the item on form K129, Exhibit Control. The officer receiving the exhibit will sign and date each copy of the form in the space provided. The officer who witnesses the transfer will also initial each copy in the appropriate space. The original of the form should then be attached to the exhibit or the evidence bag; the second copy given to the receiving officer and the third copy should be placed with the Customs file relating to the goods.



## EN Part 2 Chapter 3

## Firearms and Weapons

76. During criminal proceedings, a form K128 Notice should be attached to the exhibit before it is placed in the evidence bag. This notice serves to alert the judge that the exhibit has been seized under the *Customs Act*. It does not prevent a judge from making an order under the *Criminal Code* and, if such an order is made, it must be complied with. In such instances, a copy of the court order is to be attached to the seizure file and an additional copy forwarded to the Recourse Directorate.
77. In addition, complete form K127, Notice to Crown Counsel, and attach to the case reports given to the Crown Counsel. This notice explains the provisions of the *Customs Act* in greater detail than the Form K128.

### Handling of Firearms

78. To ensure officers own safety, as well as that of others in the area, it is imperative that officers become aware of the various types of firearms that may be encountered and the proper methods of handling them.
79. The CBSA does not require that officers handle firearms. If an officer does not feel comfortable handling firearms, or is unsure as to how to handle a particular firearm, the officer is required to secure the weapon and summon the assistance of someone who is familiar with it.
80. For general guidelines on handling a firearm see Customs Memorandum D19-13-2 at <http://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-13-2-eng.html>

### REFERENCES

81. *Customs Act*  
*Customs Tariff*  
*Criminal Code*  
*Firearms Act*  
*Canada Evidence Act*  
D19-13-2 Importing and Exporting Firearms and Weapons

## **CUSTOMS ENFORCEMENT MANUAL**

### **Part 2**

### **ENFORCEMENT PRIORITIES**

### **Chapter 5**

### **JEWELLERY AND WATCHES**



## POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer its responsibilities with respect to jewellery in accordance with the provisions set out in the *Customs Act*, the *Customs Tariff* and the *Excise Tax Act*.

## DEFINITIONS

2. Refer to Part 11 – Glossary

## AUTHORITIES

### ***Customs Act***

3. Sections 48 to 53 - Explain how the value of goods is determined.
4. Section 98 - Stipulates that officers have the authority to search any person who has arrived in Canada, or who is about to leave Canada, if the officer has reasonable grounds.
5. Section 99 - Stipulates that officers have the authority to examine goods by opening, or causing to be opened, any container or package and may take a reasonable amount as a sample.
6. Section 101 - Authorizes officers to detain goods, which 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.
7. Paragraph 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.
8. Section 110 stipulates that an officer may, with reasonable grounds, seize goods involved in a contravention of the *Customs Act* as well as the conveyance used in the contravention.

## EN Part 2 Chapter 5

## Jewellery and Watches

9. Section 159 - Stipulates that it is an offence to smuggle or attempt to smuggle any goods subject to duties, or any imported goods that are prohibited, controlled, or regulated by or pursuant to this or any other Act of Parliament.
10. Section 160 - Stipulates that a person who contravenes certain sections of the *Customs Act*, for example jewellery smuggling, is guilty of an indictable offence or an offence punishable by summary conviction, and is liable to a fine and/or imprisonment.

### ***Customs Tariff***

11. Chapter 71 of section XIV of the *Customs Tariff* gives the harmonized code for natural or cultured pearls; precious or semi-precious stones; precious metals; metals clad with precious metal, and articles thereof; imitation jewellery and coin.  
<http://www.cbsa.gc.ca/general/publications/tariff2005/ch71ne.pdf>
12. Chapter 91 of Section XVIII of the *Customs Tariff* gives the harmonized code for clocks and watches, musical instruments, parts and accessories thereof.  
<http://www.cbsa.gc.ca/general/publications/tariff2005/ch91ne.pdf>

### ***Excise Tax Act***

13. On May 2, 2006, the Minister of Finance tabled a Ways and Means Motion to eliminate tax on goods outlined in sections 5, 5.1 and 5.2 of Schedule 1 to the *Excise Tax Act*. These goods are:
  - a) clocks with a duty paid value or sale price of \$50 or more;
  - b) articles made in whole or in part of natural shells or semi-precious stones;
  - c) jewellery, including diamonds and other precious or semi-precious stones, for personal use or adornment of the person; and
  - d) goldsmiths' and silversmiths' products

Note: The excise tax on these products is eliminated, effective May 2, 2006. The excise tax on watches was eliminated earlier.

## EN Part 2 Chapter 5

## Jewellery and Watches

14. For more information on the elimination of the Excise Tax on Jewellery products please consult:  
<http://www.cra-arc.gc.ca/E/pub/et/etsl60/etsl60-e.html>

### PURPOSE AND SCOPE

15. The purpose of this policy is to provide the appropriate methods of determining the value for duty of goods imported or exported in contravention of the *Customs Act*.
16. This policy applies to all employees of the CBSA and relates to jewellery imported to, or exported, from Canada through any means (e.g. postal, marine, travellers).

### POLICY GUIDELINES

17. It is the CBSA policy to issue a seizure and offer terms of release when a traveller has contravened the *Customs Act* by not declaring, misdescribing or undervaluing jewellery to evade duties and taxes.
18. It is CBSA policy to issue a Notice of Penalty Assessment (NPA) for commercial contraventions.
19. Jewellery can be seized as evidence pursuant to section 110(3) of the *Customs Act*. In such instances the jewellery will likely be returned to the importer once all of the legal proceedings are complete and the duties and taxes are paid. When a CBSA officer is considering seizing the jewellery as evidence, the Investigation Division must be consulted.

### Appraisal

20. The value of the jewellery must be determined to issue an enforcement action, such as a seizure or an Administrative Monetary Penalty (AMP).
21. The primary basis for determining the value for duty is the transaction value method under section 48 of the *Customs Act*. Under this method, the value for duty is based on the receipt or invoice price paid (or payable) for goods, when sold for export to Canada, to a purchaser residing in Canada. Where there is no sale or price paid or payable, section 48 does not apply.
22. In the case of seized jewellery where the transaction value (section 48) cannot be ascertained or the sale was not for export to Canada, a CBSA officer may utilize section 49 to 53 to determine a value for the purposes of establishing the terms of release.

**EN Part 2 Chapter 5**

**Jewellery and Watches**

23. In these circumstances, the value for duty will most often be determined under the provisions of section 53 of the *Customs Act*, the residual method. Section 53 allows CBSA officers to arrive at a value for duty, which is consistent with the intent of the valuation legislation. The intent is to ensure that the value determined is fair, neutral, objective and reflects commercial reality.
24. Arriving at a value under section 53 will usually involve obtaining a fair, equitable and commercially realistic appraisal from a Canadian gemologist. The gemologist report may be required as evidence to support a criminal charge by investigators and the gemologist may be required to testify.
25. When a CBSA officer requests an appraisal, the requesting office is responsible for payment. When the RCMP requests an appraisal as a result of a CBSA seizure made by them, they may send the appraisal invoice to the Regional Compliance Verification Unit.
26. CBSA officers must reduce the gemologist's appraised value to reflect various charges included in the value, such as freight and insurance to, and in, Canada; duties and taxes; as well as an amount for profit, costs and general expenses usually associated with the sale of identical or similar goods in Canada (78 percent of the appraised value when imported for resale or 56 percent of the appraised value when imported for personal use). The adjusted consumer price may then be considered the value for duty pursuant to section 53 of the *Customs Act*.
27. For the purpose of making adjustments to a gemologist's appraisal to obtain a value for duty, watches are not included in the definition of jewellery.
28. If the jewellery was not acquired on the current voyage, but perhaps has been in the traveller's family possession abroad for a number of years, old receipts may be used in determining the value for duty.
29. The CBSA recommends that settlers and travellers have an appraisal from a gemologist when importing or travelling with jewellery. Jewellery cannot be listed on a form Y38 Identification of Articles for Temporary Exportation (see the Travellers Processing Manual, Part 6 Chapter 2). Jewellery requires an appraisal report with a signed and dated photograph. Watches with serial numbers may be listed on a Y38.

## EN Part 2 Chapter 5

## Jewellery and Watches

### General

30. Engagement rings and wedding rings may be imported into Canada on a temporary basis without payment of duties when the recipient will subsequently take up permanent residence outside of Canada (see Customs Memorandum D2-1-3).
31. The CBSA assists National Resources Canada (NRCan) in administering certain provisions of the *Export and Import of Rough Diamonds Act*. This act requires that a Kimberley Process Certificate accompany all imports and exports of rough diamonds. Additional information regarding this program is contained in Memorandum D19-6-4, Kimberley Process - Export and Import of Rough Diamonds.
32. Precious and semi-precious gemstones that have been set or mounted are included in group one for the purpose of arriving at a penalty factor for seizure action (see Part 5 Chapter 2 Traveller Seizures and Ascertained Forfeitures).
33. The proper date to use for calculating exchange rates is the one in effect on the date of direct shipment to Canada, and not the date of purchase.
34. Officers should contact the Investigations Division if the value of the jewellery exceeds the prosecution threshold as per Part 9 Chapter 1.
35. For extensive details on determining value, refer to D13 - Valuation of the Customs D-Memoranda (<http://www.cbsa-asfc.gc.ca/menu/D13-e.html>).

### ROLES & RESPONSIBILITIES

#### CBSA Officers

36. CBSA officers are responsible for:
  - a) conducting compliance verification of both travellers and commercial shipments;
  - b) determining the proper enforcement action; and
  - c) determining the value for duty in cases of enforcement actions.



## EN Part 2 Chapter 5

## Jewellery and Watches

- d) In cases where the prosecution thresholds are met, the Investigation Division or the Regional Intelligence Officer (RIO) should be contacted before the goods or the person(s) are released, to determine if a criminal prosecution, further investigation or further intelligence gathering, is warranted.

### Investigators

- 37. Investigators are responsible for reviewing referrals resulting from jewellery seizures to determine whether or not a criminal prosecution should be considered, or whether further investigation is warranted.

### Regional Intelligence Officers (RIO)

- 38. Regional Intelligence Officers are responsible for facilitating the exchange of timely information or intelligence concerning individuals and organizations suspected of involvement in the smuggling of jewellery activities.

### Investigation Division

- 39. The Investigation Division is responsible for prosecuting all offences under the *Customs Act* and should be contacted immediately whenever there is reason to believe that a seizure may lead to criminal charges based on CBSA prosecution policies.

### Intelligence Directorate

- 40. The Intelligence Directorate is responsible for:
  - a) maintaining up-to-date enforcement data; and
  - b) providing operational support and guidance.

## PROCEDURES

- 41. When an invoice is presented for the goods (transaction value), the officer should accept the value and should not request an appraisal. If the officer believes the value is low, the details of the import may be referred to Investigations.
- 42. When an officer finds undeclared jewellery or evidence of undervaluation (e.g. second invoice), the officer may take the appropriate enforcement

## EN Part 2 Chapter 5

## Jewellery and Watches

action. In the absence of commercial invoices regarding the goods, the officer must obtain a determination of the value for duty.

Note: For information on appropriate enforcement action please see Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and AMPS as well as Part 5, Chapter 2, Travellers Seizure and Ascertained Forfeiture.

43. If necessary, officers will request an appraisal from a gemologist. In cases involving watches, a recognized jeweller should confirm the authenticity of the watch.
44. Watches are considered a group one item for the purposes of the calculation of terms of release. However watches are not considered jewellery for the purposes of reducing an appraisal value.
45. An officer will reduce the gemologist's appraised value of jewellery (not including watches) by the following amounts:
  - a) when imported for resale, 78 percent of the appraised value; or
  - b) when imported for personal use, 56 per cent of the appraised value.
46. If the gemologist appraises gold and silver items by weight rather than the cost of a similar item in Canada, do not reduce the value.

## LEGISLATIVE AND POLICY REFERENCES

47. *Customs Act*  
*Customs Tariff*  
*Excise Tax Act*.  
D-Memoranda  
Travellers Processing Manual

## **ENFORCEMENT MANUAL**

### **Part 2**

## **ENFORCEMENT PRIORITIES**

### **Chapter 6**

## **DRUG AND PRECURSOR CHEMICAL POLICY AND PROCEDURES**



EN Part 2 Chapter 6

Drugs and Precursor Chemicals

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## POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to interdict substances controlled by Health Canada legislation and regulations.

## DEFINITIONS

2. Refer to Part 11 - Glossary.

## AUTHORITIES

### Customs Act

3. Section 11 requires every person arriving in Canada to report to a CBSA officer and to answer truthfully any questions asked by an officer in the performance of his or her duties under this *Act* or any other Act of Parliament.
4. Section 12 requires that all goods that are imported be reported to the CBSA.
5. Section 13 requires every person reporting goods under section 12, to present goods to the officer and answer truthfully any question asked by the officer with respect to the goods.
6. Section 98 provides that an officer may search any person who the officer suspects on reasonable grounds has goods concealed on or about their person that may contravene the *Act*, could be evidence of a contravention of the *Act*, or the importation or exportation of which is prohibited, controlled or regulated by this or any other act of Parliament.
7. Subsection 99(1) authorizes the examination of any goods and conveyances that a CBSA officer suspects on reasonable grounds contains goods that are in contravention of the *Act*.
8. Section 101 authorizes the detention of controlled goods that have been imported or are about to be exported. The officer will release the goods once he or she is satisfied that the goods have been dealt with in accordance with this *Act*, and any other *Act* of Parliament that prohibits, controls or regulates the importation or exportation of goods.
9. Section 107 authorizes the disclosure of customs information to certain persons.

## EN Part 2 Chapter 6

## Drugs and Precursor Chemicals

10. Section 110 stipulates that an officer may, with reasonable grounds, seize goods involved in a contravention of the *Customs Act* as well as the conveyance used in the contravention.
11. Section 159 stipulates that it is an offence to smuggle or attempt to smuggle any goods subject to duties, or any goods the importation of which is prohibited, controlled, or regulated by or pursuant to this or any other Act of Parliament.
12. Section 160 stipulates that a person who contravenes certain sections of the *Customs Act*, for example drug smuggling, is guilty of an indictable offence or an offence punishable by summary conviction and is liable to a fine and/or imprisonment.

### Controlled Drugs and Substances Act (CDSA)

13. Subsection 4(1) stipulates that, except as authorized under the regulations, no person shall possess a substance included in Schedule I, II, or III of the *CDSA*.
14. Section 5 stipulates that no person shall traffic, or possess for the purpose of trafficking, a substance included in Schedule I, II, III or IV.
15. Section 6 stipulates that, except as authorized under the regulations, it is an offence to import into Canada or export from Canada a substance included in Schedules I, II, III, IV, V or VI of the *CDSA*.
16. Section 7 stipulates that, except as authorized under regulations, no person shall produce a substance included in Schedules I, II, III or IV.
17. Schedule I includes dangerous drugs and narcotics, such as phencyclidine, heroin and cocaine. Schedule II lists cannabis and its derivatives. Schedule III includes drugs such as amphetamines and lysergic acid diethylamide (LSD). Schedule IV includes drugs such as barbiturates, which while dangerous, have therapeutic uses. Schedule VI lists precursor chemicals, which can be employed in the manufacture of substances listed in schedules I to IV.
18. The *Benzodiazepines and Other Targeted Substances Regulations* authorize Health Canada to issue import and export permits for targeted substances and allows for a traveller to import personal use quantities with a labelled prescription. Targeted substances are listed in Schedule I of the regulations.



EN Part 2 Chapter 6

Drugs and Precursor Chemicals

19. *Precursor Control Regulations* are designed to control chemicals that can be used in the production of illicit drugs.

**Criminal Code**

20. Subsection 462.2 stipulates that it is an offence to knowingly import into Canada, export from Canada, manufacture, promote, or sell instruments or literature for illicit drug use. Those who are guilty of this offence may receive a summary conviction.

Note: Prohibition of drug literature has been found to violate the *Canadian Charter of Rights and Freedoms* and therefore, while a reference to literature remains in the *Criminal Code*, it is of no force and effect.

21. Subsection 495(1) authorizes officers to arrest persons found committing or known to have committed a criminal offence (e.g. smuggling narcotics).

**Food and Drug Act and Food and Drug Regulations**

22. These regulations restrict the import of drugs listed in Schedule F. Drugs covered by an import permit and prescribed drugs for personal use may be imported.

**Charter of Rights and Freedom**

23. Section 8 states everyone has the right to be secure against unreasonable search or seizure.
24. Section 9 states everyone has the right not to be arbitrarily detained or imprisoned.
25. Section 10 states everyone has the right on arrest or detention:
- a) to be informed promptly of the reasons for arrest or detention;
  - 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.
26. Subsection 24(1) states that anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy, as the court considers appropriate and just in the circumstances.

## PURPOSE AND SCOPE

27. The purpose of this policy is to guide CBSA officers in the interdiction of controlled or regulated drugs and inform them of the appropriate enforcement action under the *Customs Act* and other Acts of Parliament.
28. This policy applies to all CBSA officers in all modes of transportation.

## BACKGROUND

29. Drugs are a high-risk commodity and the interdiction of illegal drugs is therefore a CBSA enforcement priority.
30. Canadian law enforcement is committed to working with their U.S. counterparts to combat drug trafficking. Joint threat assessments and operations have expanded intelligence sharing, investigative cooperation and training opportunities.
31. The Trans-national Intelligence Section of the Strategic Intelligence Analysis Division publish a monthly drug report of significant drug seizures, which is available on a PROTECTED basis.
32. CBSA selection techniques and search procedures have withstood close examination in recent drug-related court cases.
33. However, the CBSA lost a court case that involved smuggling of a prohibited good because no false statements were made. A legal opinion says while CBSA may seize a prohibited good if it is not declared, such goods should not be seized under the *Customs Act* unless it can be shown that a *Customs Act* contravention occurred. The fact that the drug is prohibited and the importer has no permit is not enough to warrant seizure under the *Customs Act*. A false statement, non-report or some indication that there was intent to smuggle must also be present. Border Service Officers (BSO's) should contact their regional Criminal Investigations office if there is an indication of a false statement, non-report or some indication that there was intent to smuggle for potential Customs Act charges.
34. Designated officers have been given the authority to seize drugs under the Criminal Code for illegal possession, import or export in rare circumstances when no contravention of the *Customs Act* occurred.

## POLICY GUIDELINES

### Types of Enforcement Actions

35. CBSA officers have many tools at their disposal to control the import and export of inadmissible drugs and must choose the appropriate action depending on the circumstance. They may:

a) arrest a person for smuggling (section 159 of the *Customs Act*).

Note: In rare circumstances, when smuggling did not occur, a designated officer may arrest for illegal import or possession of certain drugs (as per section 4 or 6 of the CDSA).

b) seize any substance if it is not properly declared (as per section 12 and subsection 110(1) of the *Customs Act*);

c) seize a substance as evidence of an offence (as per section 489(2) of the Criminal code);

d) seize a conveyance used to commit an offence (as per subsection 110(2) of the *Customs Act*)

i) if modified and used for smuggling, seize as forfeit;

ii) if modified but the compartment was empty, treat as an unmodified conveyance but notify the Intelligence Officer;

iii) if unmodified and the importer is subject to both seizure of the goods and an administrative monetary penalty (commercial goods), do not seize the conveyance; or

iv) if unmodified and the goods are not subject to an administrative monetary penalty (non-commercial), seize the conveyance and offer terms of release (see Appendix A to determine terms, the amount cannot exceed the value of the vehicle).

e) issue an administrative monetary penalty to a non-compliant person with a commercial shipment (section 109.1 of the *Customs Act*);

f) detain any substance if unsure of the admissibility (section 101 of the *Customs Act*); or

g) when seizure action is not warranted, allow a person to abandon as forfeit a substance that is inadmissible.

## EN Part 2 Chapter 6

## Drugs and Precursor Chemicals

36. When the CDSA is contravened, it is the responsibility of the police to decide whether to lay charges.

### Types of inadmissible drugs

37. Drugs that are illegal to possess, import or export are listed in Schedules I, II and III, of the CDSA (e.g. cocaine).
38. Drugs that are illegal to import or export are listed in Schedules IV of the CDSA (e.g. anabolic steroids).

However, some of the drugs listed in Schedule IV are admissible if imported by a pharmacist or practitioner with a permit or by a traveller with labelled prescription packaging. These targeted drugs (e.g. Lorazepam) are listed in Schedule I of the *Benzodiazepines and Other Targeted Substances Regulations*.

39. Precursor chemicals are illegal to import or export and are listed in Schedule VI of the CDSA.

For a list of exceptions to this rule see the Precursor Control Regulations

40. The Food and Drugs Act and the Food and Drug Regulations restrict some food, drugs, vitamins and cosmetics. See Schedule F for a list of drugs that are restricted to import permit holders or personal use imports.

See also Policy on Importations of Drugs for Human Use including Natural Health Products into Canada: POL-0019 for Health Canada's policy on imports.

41. It is the responsibility of Health Canada to determine if a product is admissible.

### Sources for determining the status of a substance

42. CBSA officers may e-mail Status@hc-sc.gc.ca to obtain information about whether a substance is a controlled drug.
43. Officers may also contact the regional Health Products and Food Branch inspectors.

### Forfeiting inadmissible drugs

44. Individuals attempting to import controlled substances (e.g. nutritional supplements, diet pills) are often unaware of their prohibition. Such goods are often legally purchased and reported.
45. A CBSA officer may prevent the forfeiture of such controlled substances from appearing to be the result of an enforcement action, which subsequently may cause the person to be unnecessarily referred for a secondary examination every time they seek entry into Canada.
46. If this is the case, the CBSA officer will select the Integrated Customs Enforcement System (ICES) allegation "Forfeited – Narcotics, Controlled drugs, Restricted drugs, Chemicals". By recording the substances as "forfeited", the HC/SC3515 *Drug Offence and Disposition Report* will be processed. This is not a seizure and no K19s seizure report is produced.
47. As with all other commodities (e.g. weapons), it will be up to the officer to determine if a seizure or abandonment is warranted. Not all contraventions of the *Customs Act* are intentional on the part of the person who contravenes them. Negligence, carelessness and lack of knowledge on the part of the importer are factors worthy of consideration when deciding whether to proceed with an enforcement action.

### General

48. The provisions of the Statement of Principles Between Canada Customs and the RCMP must be followed in all instances where the CBSA interacts with the RCMP on drug related matters.
49. Officers will use contraband detection equipment, tools, and detector dog teams to assist them in examinations for controlled, regulated or prohibited drugs, whenever possible and when deemed appropriate.

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

50. 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 CBSA office.

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51. When speaking to arrested persons, their legal representative, or other persons, officers will refer to the substances as "suspected" in any conversations or reports (for example, suspected marijuana, or suspected cocaine). Identification of the type of drug will only be determined through laboratory analysis.
52. Every individual has a right under authority of section 129 of the *Customs Act* to appeal an enforcement action. The *K19S Seizure Receipt* serves as an individual's notice of their appeal rights.

### Importation of Drugs by the Police or Agents Working Under Police Control

#### Street drugs

53. This section covers the importation of drugs by a peace officer for enforcement purposes, such as controlled deliveries to suspected drug smugglers. The drugs are referred to as street drugs.
54. Officers will only allow police (or agents working under police control) to enter Canada with scheduled drugs if they have been named on a certificate stating they are immune from prosecution for contravention of provisions of the CDSA (e.g. possession, trafficking and import/export).
55. The Assistant Commissioner of the RCMP (Federal Sections) issues certificates of immunity to the police/agents.
56. A police officer's certificate of immunity covers a time period and is valid for multiple importations.
57. CBSA Officers will create an HC/SC 3515 in ICES (or manual) to create a seizure number and enter the drug data.
58. The local Intelligence and Contraband officer will notify the appropriate port of entry when police/agents are expected to bring drugs into Canada and have a certificate of immunity from CDSA offences.
59. CBSA officers must also complete a K129 Exhibit Control form to transfer the drugs to the police officer.

Note: While the import of drugs declared by police/agents with immunity certificates is a seizure of a substance scheduled and controlled under Health Canada legislation, technically it is not a section 110 *Customs Act* seizure. The input of the information into the ICES system is merely a way for the Government of Canada to take possession of the controlled substance, document legal entry of the substance by the police service,

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and legally transfer the drug exhibits to the control of the police service. However, if undeclared, the controlled substance, may be seized under section 159 of the *Customs Act* regardless of whether the officer or agent has a certificate of immunity (it is advisable to contact the Intelligence Officer before seizing).

### State drugs

60. This section covers the importation of drugs that have been provided by a foreign government for use as evidence in court proceedings or for testing. The drugs are referred to as state drugs.
61. The peace officer in possession of the drugs must have a Health Canada-issued import permit describing the drugs.
62. CBSA officers must complete a Drug Offense and Disposition report, HC/SC 3515, without processing a seizure in ICES (i.e. complete hard copies only, leaving defendant information blank). The Health Canada import permit number will be shown as the Customs file reference number on the HC/SC 3515.
63. CBSA officers must also complete a K129 Exhibit Control form to transfer the drugs to the police officer.

### **Drug Couriers**

64. Officers will continually be on the alert for multiple drug couriers travelling in the same mode of travel and/or on the same conveyance (e.g. aircraft).

### **Handling of Drugs and Drug Paraphernalia - Health and Safety**

65. Officers will use caution when examining for drugs to avoid harmful traps that drug smugglers may set.
66. Officers will not freely run their hands into pocket compartments, void areas, etc. of conveyances without a visual examination or, if necessary, the use of inspection mirrors and flashlights, fibrescopes, probes, or X-ray equipment first.
67. Officers will wear latex gloves when handling suspected drugs to protect themselves from contamination and to ensure fingerprint evidence is preserved.
68. If drugs in powdered form are discovered, officers must wear protective breathing masks.

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69. Officers will use extreme caution when handling drug paraphernalia, such as hypodermic needles. If accidentally pricked, cut, etc., immediate medical attention will be sought and an accident report filed.
70. Officers may use Narcotic Identification Kits (NIK) to identify suspected drugs.
71. Officers will not, under any circumstances, attempt to identify a drug by taste or smell.

### Drug Paraphernalia

72. Although section 462.2 of the *Criminal Code* stipulates that it is an offence to import or export drug paraphernalia (e.g. hash pipes, roach clips, rolling papers), both the RCMP/police and the CBSA recognize that many articles have dual purposes and seldom seize when no measurable amount of drug is detected.
73. It is CBSA policy, however, to notify the RCMP/police when the officer believes the paraphernalia would be of interest to law enforcement.
74. When seizure is warranted, if there is both a contravention of the *Customs Act* and a contravention of the *Criminal Code*, officers will seize under the *Customs Act* before notifying police.
75. If the police choose not to seize the shipment, officers will treat the drug paraphernalia like any other product. Once all customs processing is complete (and this may include payment of terms of release), the goods may be released.
76. The fact that the paraphernalia may have been used does not make it automatically subject to seizure.
77. Officers encountering drug paraphernalia contaminated with a measurable quantity of drug will follow procedures for drug interdiction.

### Precursor Chemicals

78. The Precursor Control Regulations provide controls on the import, export and distribution of these chemicals and are designed to control chemicals that can be used in the production of illicit drugs:



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79. There are currently 29 precursor chemicals that are recognized and listed within the *Controlled Drug and Substances Act*. These are found in Schedule VI of the *Act* and are the following:

SCHEDULE VI

PART 1

CLASS A PRECURSORS<sup>1</sup>

1. Acetic anhydride
2. N-Acetylanthranilic acid (2-acetamidobenzoic acid) and its salts
3. Anthranilic acid (2-aminobenzoic acid) and its salts
4. Ephedrine (erythro-2-(methylamino)-1-phenylpropan-1-ol), its salts and any plant containing ephedrine or any of its salts
5. Ergometrine  
(9,10-didehydro-N-(2-hydroxy-1-methylethyl)-6-methylethyl-8-carboxamide) and its salts
6. Ergotamine (12'-hydroxy-2'-methyl-5'-(phenylmethyl)ergotaman-3',6',18-trione) and its salts
7. Isosafrole (5-(1-propenyl)-1,3-benzodioxole)
8. Lysergic acid (9,10-didehydro-6-methylethyl-8-carboxylic acid) and its salts
9. 3,4-Methylenedioxyphenyl-2-propanone (1-(1,3-benzodioxole)-2-propanone)
10. Norephedrine (Phenylpropanolamine) and its salts
11. 1-Phenyl-2-propanone
12. Phenylacetic acid and its salts
13. Piperidine and its salts
14. Piperonal (1,3-benzodioxole-5-carboxaldehyde)
15. Potassium permanganate
16. Pseudoephedrine (threo-2-(methylamino)-1-phenylpropan-1-ol), its salts and any plant containing pseudoephedrine or any of its salts
17. Safrole (5-(2-propenyl)-1,3-benzodioxole) and any essential oil containing more than 4% safrole
18. Gamma-butyrolactone (dihydro-2(3H)-furanone)
19. 1,4-butanediol
20. Red Phosphorus
21. White Phosphorus
22. Hypophosphorous acid, its salts and derivatives
23. Hydriodic acid

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<sup>1</sup> Each Class A precursor includes synthetic and natural forms.

## PART 2 CLASS B PRECURSORS<sup>1</sup>

1. Acetone
2. Ethyl ether
3. Hydrochloric acid
4. Methyl ethyl ketone
5. Sulphuric acid
6. Toluene

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<sup>1</sup> Each Class B precursor includes synthetic forms.

80. Class A precursors require licences and permits for import and export as well as for production and distribution. No person other than a licensed dealer may produce, package, sell or provide a class A precursor.
81. Class B precursors require registration for import, export and production for sale and permits for export to specific countries. Class B exports also require a Health Canada export permit when destined to certain designated countries.

NOTE: The Health Canada Precursor export permit may only be applied to a single complete shipment, although the permit may encompass more than one Class A precursor for the same shipment. Permits for multiple or partial shipments will not be authorized and all goods authorized by the permit must enter Canada at the same time.

82. A Health Canada permit is not required for individual importations under thresholds that are outlined in s.11 of the *Precursor Control Regulations* which states the following:

### Individuals

1) An individual entering or returning to Canada and having in their possession a Class A precursor that is a preparation or mixture may import the preparation or mixture if

(a) the preparation or mixture is intended to treat a medical condition of the individual or an accompanying person for whom the individual is responsible;

(b) in the case of a preparation or mixture containing ephedra, ephedrine or pseudoephedrine, the preparation or mixture is packaged and labelled as a consumer product and the total quantity imported of the precursor contained in the preparation or mixture does not exceed

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- (i) in the case of ephedra, 20 g,
  - (ii) in the case of ephedrine, 0.4 g, and
  - (iii) in the case of pseudoephedrine, 3 g; and
- (c) in the case of a preparation or mixture containing ergometrine or ergotamine, the preparation or mixture is packaged in a container with a label showing that it was dispensed under prescription in a pharmacy or hospital or by a physician and the total quantity imported of the precursor contained in the preparation or mixture does not exceed the lesser of
- (i) a single prescribed course of treatment, and
  - (ii) a 90-day supply, based on the normal daily dose for the precursor.

2) An individual leaving Canada and having in their possession a Class A precursor that is a preparation or mixture may export the preparation or mixture if the requirements of subsection (1) are met, with any modifications that the circumstances require.

83. When a precursor chemical shipment arrives at the border without a valid health permit, it will be detained until the importer or exporter complies with the regulations. Acceptable documentation for the import and export of precursor chemicals is an original, valid Health Canada permit.
84. When verifying the validity of a permit, ensure the permit contains the following information:
- a)
    - i) permit number;
    - ii) licenced dealer's name, address and business number;
    - iii) the name or description of the chemical composition of the precursor and the Harmonized System (HS) code;
    - iv) if it is a salt, the name of the salt;
    - v) if a preparation or mixture, its brand name and the names of all precursors that it contains;
    - vi) the quantity;
    - vii) name and address of exporter,
    - viii) means of transportation,
    - ix) name of any country of transit or transshipment;
    - x) name of the carrier
    - xi) port of entry

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- b) Verify the permit is original (no duplicates, photocopies or fraudulent or tampered with permits will be accepted);
- c) Ensure the importer, quantity and description of the goods listed on the permit are the same as those listed in the customs documentation.

Note: discrepancies between the actual date of entry and proposed date of entry listed on the permit, or between the actual carrier and proposed carrier listed on the permit should not be grounds to detain the shipment. These are data elements to assist targeting and risk management).

- d) Verify the validity date of the permit.
- e) Ensure the goods contained in the shipment are the same as those described on the permit and customs documentation.
- f) Validate the permit with CBSA date stamp and initial if there are no discrepancies.

A discrepancy between the goods and the import documentation should give rise to further enquiry and the goods should be detained pending clarification. If there are reasonable grounds (intelligence lookouts, indicators) to suspect that an importer has misdescribed a chemical or if unidentified chemicals are found, the BSO will detain the shipment and immediately contact the Intelligence Officer.

**Note: At no time will a BSO, in the course of their examination, open any container holding precursor chemicals. If necessary, the Intelligence Officer will contact the CBSA Laboratory for assistance regarding examination of chemical precursor shipments.**

- 85. If shipment is declared but a Health Canada permit is not presented, the CBSA officer will detain the shipment and query the importer and the company in available databases. If a national lookout or RCMP lookout is intercepted, contact the local regional Precursor Chemical Intelligence Officer and/or the RCMP.
- 86. High risk importers who are identified during an indices check should be subjected to a secondary examination.
- 87. If an importer makes untrue statements regarding, or fails to declare/report, a precursor chemical importation the allegations are Non-report of a prohibited, controlled or regulated narcotic (chemical); or Untrue Statement of a prohibited, controlled or regulated narcotic (chemical), the CBSA officer will determine if the contravention is personal or commercial.

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88. If the goods are non-commercial:

- a) Seize the goods with No Terms of Release in accordance with the seizure procedures outlined in Part 5 of this manual and apply the seizure process in ICES.
- b) Contact the Regional Chemical Precursor Diversion Intelligence Officer. If unidentified chemicals are found, inform the Intelligence Officer who will contact the CBSA laboratory and who will also contact the RCMP to determine if charges will be laid under the *Controlled Drugs and Substances Act*.
- c) Copy all commercial documents, records and personal identification and seizure documents (including the HC/SC-3515) and submit with the seizure documents to the Intelligence Officer.

89. If the goods are commercial:

- a) Seize the goods with no Terms of Release in ICES. In addition to seizure of goods, apply the relevant AMPS penalty using ICS-Enforcement. Precursor chemicals are defined as “specified goods” in the AMPS system and for commercial shipments the penalty will be based on the AMPS system.  
Note: Warning Letters should not be issued in cases where there is a failure to declare exports of controlled, regulated or prohibited goods.
- b) Contact the Regional Chemical Precursor Diversion Intelligence Officer. Under no circumstances shall a BSO open any container that is said to hold hazardous precursor chemicals; if unidentified chemicals are found, inform the Intelligence Officer who will contact the CBSA Laboratory for assistance. The Intelligence Officer will also contact the RCMP regarding any possible charges under the *Controlled Drugs and Substances Act*.
- c) Copy all commercial documents, records, and personal identification and submit it with the seizure documents to the Intelligence Officer. The Intelligence Officer will contact the CBSA Laboratory in order to determine the procedure for transport and testing of seized precursor chemicals;
- d) All export documents; records and personal identification will be recorded and forwarded along with the enforcement records to the Intelligence Officer.

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- e) Until further notice from Health Canada or the Intelligence Officer, the seized precursor chemical shipment will be held under CBSA control. The Intelligence Officer will contact the CBSA Laboratory in order to determine the procedure for disposal/transport/testing of seized precursor chemicals.

### Exhibit Control

- 90. Seizing officers will maintain constant control over all exhibits and ensure the chain of custody is not broken until the exhibits are turned over to the appropriate police agency. This protects the integrity and admissibility of evidence in potential court proceedings.
- 91. In order to ensure the chain of custody remains unbroken, all transfers to other agencies or persons must be signed off and accounted for. Until the suspected drugs are given to the police, the sealed exhibit must be locked in a secure location, such as a safe.

Note: Refer to Part 9, Chapter 3, Statements and Evidence.

## ROLES AND RESPONSIBILITIES

### CBSA Officers

- 92. CBSA officers are responsible for:
  - a) complying with this policy and these procedures;
  - b) interdicting suspected drugs and drug paraphernalia;
  - c) liaising with the Intelligence Officer;
  - d) arresting persons attempting to smuggle drugs into or out of Canada, under authority of section 495(1) of the *Criminal Code* subject to the restrictions under section 495(2) of the *Criminal Code*;
  - e) observing, targeting, selecting, and interviewing individuals to determine if they may be attempting to smuggle drugs when reporting to the CBSA;
  - f) observing, targeting, selecting, and examining conveyances, baggage, goods, and commercial shipments for drugs when reported to the CBSA;

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- g) being aware of current intelligence, trends, modus operandi, concealment methods, unusual routings, etc. as they pertain to drugs and source countries;
- h) awareness, recognition, collection and submission of information with intelligence value;
- i) thoroughly reviewing all lookouts, alerts, and targets;
- j) handling exhibits properly and ensuring the chain of custody is maintained;
- k) completing, as soon as practical, all necessary arrest and seizure documentation (including the K153 Significant Seizure Reports and IMS Occurrence reports when appropriate); and
- l) assisting the RCMP with drug-related matters when appropriate.

### **CBSA Superintendents**

93. CBSA superintendents are responsible for:

- a) ensuring compliance with this policy and these procedures;
- b) providing the necessary assistance and support to CBSA officers;
- c) ensuring completion and timely dissemination of reports concerning drugs and drug smugglers;
- d) ensuring the timely circulation of all intelligence reports, lookouts, alerts, and targets;
- e) sending locally collected drug intelligence to the Intelligence Officer; and
- f) taking the necessary action when breaches of this policy and/or procedures occur.

### **Intelligence Officers**

94. Intelligence Officers are responsible for:

- a) receiving, analyzing, and disseminating intelligence (exercising discretion) in a timely manner on suspected and known drug smugglers, concealment methods, source countries, etc.;

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- b) collecting intelligence information and developing lookouts and alerts;
- c) issuing lookouts and alerts on suspect and known drug smuggling related persons, conveyances, shipments, etc.;
- d) providing expertise prior to RCMP involvement;
- e) participating on controlled deliveries, search warrants and surveillance related to imports and exports of narcotics;
- f) interviewing people suspected of smuggling narcotics; and
- g) maintaining open communication and sharing of information with the RCMP and other law enforcement agencies.

### The Enforcement Branch

95. The Enforcement Branch is responsible for:

- a) developing, modifying, and approving policies in accordance with court jurisprudence, related to the administration of the *CDSA* and the *Customs Act*;
- b) collecting information with which to develop intelligence;
- c) issuing lookouts and national alerts to CBSA officers on suspected and known drug smuggling related persons, conveyances, shipments, etc.;
- d) disseminating lookouts and alerts from other countries pertaining to suspected and known drug smuggling related persons, conveyances, shipments, etc.;
- e) sharing drug intelligence with partners;
- f) producing national drug intelligence products;
- g) foreign liaison concerning the international movement of drugs; and
- h) providing support to the field.

### PROCEDURES



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## Drugs and Precursor Chemicals

Refer to Part Six, Chapter Six, Personal Search Policy and Procedures, for guidelines pertaining to dealings with body packers and internal carriers.

### CDSA-listed drugs

96. When drugs are not declared or inaccurately declared, there is a contravention of the *Customs Act* and normally these drugs are seized.

Note: In rare circumstances where the officer believes the importer did not intend to contravene the law (e.g. a traveller from South America has tea leaves with traces of cocaine), the officer may choose to document the drugs as forfeit rather than seized.

97. A seizing officer will:

- a) determine if there are sufficient indicators to support a belief that the substance is a drug (e.g. testing it with the narcotics identification kit);

Note: It is sometimes hard to determine if a commercially packaged product is admissible. To confirm the admissibility of suspicious products use one of the following methods:

- i. use product labels to identify the substance and the CDSA schedules to verify admissibility;
  - ii. use prior experience with similar products;
  - iii. if significant, call or e-mail the product details to Health Canada for a decision; or
  - iv. if significant, send a sample for analysis to the CBSA Laboratory, Laboratory & Scientific Services Directorate, for screening. Procedures for contacting the Lab may be found on their website.
- b) advise the Intelligence Officer if applicable;
- c) if the substance is believed to be a drug, it is advisable that the individual be arrested under authority of section 495(1) of the *Criminal Code* for having contravened section 159 of the *Customs Act* (smuggling);

Note: Arrest is at the discretion of the officer but is generally advisable to ensure the person is detained until the officer has ascertained whether the person is of interest to the RCMP/police, and to ensure that anything said is admissible in court should additional drugs be found.

- d) make the following statements about the reasons for the arrest:

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"I am arresting you for 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 an Act of Parliament."

- e) seize the drugs as per section 110 of the *Customs Act* (usually the allegation is smuggling as per section 159 of the *Customs Act*);

Note: If the drugs are found in a commercial shipment or if the traveller has a commercial quantity of drugs, an officer may issue an AMP where it is practical to do so. It is not necessarily practical to issue an AMP to a courier with no known address who is about to be deported. The contravention is failure to report goods over \$1600.

- f) notify the RCMP (or local police depending on the local agreement) who will either arrive to take custody of the drugs and the person or will advise the CBSA officer to release the person;
- g) complete the form HC/SC 3515 Drug Offence and Disposition report and the K19S Seizure receipt in the Integrated Customs Enforcement System (ICES) as well as the Smuggling of Narcotics, Controlled, and Restricted Drugs Window;

Note: For non-automated ports, a Drug Offence and Disposition Report (HC/SC 3515) and K19S Customs Seizure receipt must be completed manually and sent to an automated port to be entered into ICES in recovery;

Note: For a product that contains a small percentage of drugs ( eg. steroids in a body building food supplement), enter an estimated quantity of drug seized in the appropriate field. Otherwise, the statistics are misrepresented and the seizure and conveyance penalty amounts are excessive. Note the full description of the quantity and the product in the narrative.

- h) apply a conveyance penalty under section 110(2) as follows;
  - i) if conveyance was not modified for the purpose of smuggling and if no AMP was applied (i.e. non-commercial infraction), offer terms of release in accordance with the terms outlined in Appendix A (the terms of release cannot exceed the value of the conveyance);
  - ii) if unmodified and the importer is subject to both seizure of the goods and an administrative monetary penalty (commercial goods), do not seize the conveyance; or
  - iii) if the conveyance was modified for the purpose of, and used for smuggling drugs, do not offer terms of release.

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Note: At times, it may also be appropriate to seize the conveyance as evidence related to a criminal offence.

### **CDSA-listed drugs not subject to seizure**

98. Officers who encounter a traveller or parcel with drugs but no permit, will decide if there are sufficient indicators to support a belief that the importer intended to smuggle the drugs.

Note: Generally, the fact that the goods have arrived in Canada supports a belief of intention to smuggle, but there are occasions where an officer will decide that seizure is not warranted.

99. In the traveller stream, if the officer decides seizure is not warranted:
- a) advise the person that the arrest is no longer in force;
  - b) advise the person that the drugs are inadmissible and must be forfeited (generally export is prohibited);
  - c) complete a HC/SC 3515 Drug Offence and Disposition Report selecting the "forfeited" allegation. The RCMP collects and disposes of the drugs according to local arrangements and requires the report. ICES is being amended to create a receipt for the traveller but in the meantime, a K24 Non-Monetary General Receipt may be provided to the client if one is requested;
  - d) at the conclusion of the examination and CBSA processing, allow the person to leave;

Note: The "forfeit" allegation option allows a person to avoid the targeting problems associated with an ICES record (e.g. being targeted for an examination for the next six years) because the information is not transferred to the PALS system. However, their name will appear should an officer do a query or start to key a second incident into ICES.

100. In the courier and postal streams if the officer decides not to seize the drugs and the RCMP/police do not wish to seize the drugs:
- a) advise the importer that the drugs are inadmissible and must be forfeited (generally export is prohibited); and
  - b) complete a HC/SC 3515 Drug Offence and Disposition Report selecting the "forfeited" allegation. The RCMP collects and destroys the drugs according to local arrangements and requires the report. ICES is being amended to create a receipt for the traveller but in the mean time, a K24 Non-Monetary General Receipt may be provided to the client if one is requested.

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### Drugs regulated by the *Food and Drug Act*

101. Officers will not admit commodities with ingredients listed by Health Canada as unacceptable health risks (e.g. certain food supplements or health products).
102. Officers will detain, rather than seize, personal use prescription drugs in most cases. Seizure may be warranted if there are indicators of intent to smuggle and knowledge that the goods are restricted (e.g. the traveller has had the product detained before).
103. If an officer is unsure if a product meets the *Food and Drug Act* regulations for import, the officer should contact Health Canada for advice.
104. If the product is inadmissible but seizure is unwarranted:

- a) Postal: insert a form letter to advise the exporter that the drugs are inadmissible and return to Canada Post;
- b) Courier: advise the courier that the goods are inadmissible by means of a K24 Non-Monetary General Receipt, hold the package until sure that the importer has not arranged export or is not contesting the Health Canada determination (no more than 60 days) and then complete an HC/SC 3515 in ICES with an allegation of forfeited (ICES is being amended to produce a receipt in lieu of the K24);
- c) Traveller: advise the traveller that the goods are inadmissible and, unless the traveller exits Canada with the goods, complete an HC/SC 3515 in ICES with an allegation of forfeited and give the traveller a copy of a receipt (the K24 may be used until ICES is amended);

Note: Detain the goods for 60 days if the person intends to request a permit or an admissibility ruling from Health Canada.

- d) Hold the goods that are not exported until the RCMP collects and destroys the drugs according to local arrangements.

Note: See D19-9-1 Importation of Human Use Drugs for information on what quantities constitute personal use.

### General

105. When an officer identifies a traveller as a courier, alert all other officers and the Intelligence Officer about the possibility of other couriers being on the same conveyance (e.g. aircraft) or in the area.
106. Photograph any novel or unique methods of concealment.

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107. Forward copies of photographs and the negatives (where possible) with the seizure reports for subsequent transmittal to the Intelligence Officer who was previously contacted. The Intelligence Officer may send the photos to the Enforcement Branch for intelligence purposes.
108. Complete a K153 Significant Seizure Report if applicable.
109. For conveyance seizures;
  - a) Complete the seizure receipt window in ICES for the conveyance used in importing the drugs.

Note: For non-automated ports, a Customs Seizure Receipt (K19S) must be manually completed.

Note: Refer to the ICES User Reference Manual for instructions on the completion of all seizure windows.
  - b) Ensure that the following charge is included in the ICES seizure receipt window or on the K19S:

“The said conveyance was made use of in the importation of goods subject to forfeiture under the *Customs Act*.”
  - c) At non-automated ports, ensure the HC/SC 3515 Drug Offence and Disposition Report is cross-referenced to the K19S.
  - d) If an individual is also in possession of other goods subject to seizure, use the seizure receipt window in ICES for the seizure of these goods and the conveyance. Where the K19S is completed manually, be sure to calculate the total amount for release of the conveyance by adding the suggested amount from Appendix A and the amount appropriate for other non-reported goods. Enter the total amount on the receipt copy of the K19S.
110. Do not seize conveyances solely because they have been modified presumably for smuggling, if the compartment does not contain any contraband. Do, however, advise the Intelligence Officer.
111. Ensure all exhibits turned over are marked or labelled showing the date, time, initials of the seizing officer, and seizure number.
112. Seal all seized drugs in exhibit envelopes (Customs Evidence Bags — R635 or R636) and ensure the seizing officer initials and records their

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badge number on the envelope as well as recording the date, time, place, suspect's name, and exhibit/seizure number.

113. Use exhibit numbers in series, such as 1, 2, 3, on each envelope and the seizure number as the prime reference.

Note: In the case of internal carriers, place the drugs from the first bowel movement in two separate evidence bags as follows:

- a) Place one single piece of evidence (pellet, condom, or balloon) in an evidence bag and mark it 1A;
- b) Place the remainder of the first bowel movement in a second evidence bag and mark it 1B;
- c) Place further bowel movements in separate bags and mark them sequentially, coinciding with each movement i.e., the second bowel movement will be placed in an evidence bag and marked 2, the third 3, and so on.

Note: Refer to Part Six, Chapter Six, Personal Search Policy and Procedures for detailed guidelines for dealing with body packers and internal carriers.

114. If materials are unavailable to permanently mark the exhibit envelope, staple an Evidence and Seizure Label (E360) to the envelope.
115. Lock the suspected drugs in a secure safe if the police are unable to attend immediately.
116. Note all details of the seizure and any arrests in your notebook including the date, times of specific procedures, suspects names, dates of birth, addresses, criminal records, appearance, any statements made by suspects, how the drugs were concealed, wrapped, discovered, and handled, etc.
117. Be prepared to give evidence for the prosecution during trial, if necessary.

### Drug Paraphernalia

118. The decision to detain or release drug paraphernalia (after customs processing) rests with the local police agency of jurisdiction. If the police choose not to press charges, the goods are admissible.

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## Drugs and Precursor Chemicals

119. If the paraphernalia is in commercial quantities or there are exceptional circumstances (e.g. a traveller who is a second-time offender or has paraphernalia with measurable quantities of residue) CBSA officers will contact the police for a decision regarding admissibility.

Note: For small quantities (e.g. a hash pipe whose residue is too small to measure), a traveller should be encouraged to abandon paraphernalia rather than wait while the officer calls police for a decision.

### Deemed paraphernalia but no *Customs Act* Contravention

120. If the RCMP/police deem the goods to be paraphernalia and want it as evidence, but there is no *Customs Act* contravention:

- a) detain the goods under section 101 of the *Customs Act*;
- b) issue a form K24, Non-Monetary General Receipt;
- c) document the paraphernalia on a K129, Exhibit Control Form; and
- d) transfer the paraphernalia to the police as evidence of an offence under the *Criminal Code*.

Note: See Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures.

### Deemed paraphernalia and a *Customs Act* Contravention

121. If the goods are deemed by the police to be paraphernalia and there is a contravention of the *Customs Act*:

- a) seize the personal goods under section 110 of the *Customs Act* offering no terms of release;
- b) apply an Administrative Monetary Penalty (AMP) to a maximum of \$25,000 if the goods are commercial quantities; and
- c) transfer the paraphernalia to the police as evidence of an offence under the *Criminal Code*.

### *Customs Act* Contravention but not inadmissible paraphernalia

122. If the goods are not inadmissible paraphernalia but there is a contravention of the *Customs Act*:



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## Drugs and Precursor Chemicals

- a) apply an Administrative Monetary Penalty (AMP) to a maximum of \$25,000 (or seize with terms of release calculated in the same manner as the AMP if in excess of \$25,000), if the goods are commercial quantities; or
  - b) seize with terms of release (but no conveyance penalty) if the goods are for personal use.
123. If the goods are not deemed by the police to be paraphernalia and there is no contravention of the *Customs Act*, the goods are admissible.
124. The discovery of paraphernalia provides reasonable grounds to suspect the presence of undeclared drugs and justifies further examination of goods, examination of a conveyance and, with other indicators, a personal search.
125. Seize drug paraphernalia as evidence of drug smuggling if there are measurable quantities of drug residue or the paraphernalia was discovered during a drug seizure.

Note: A measurable quantity is defined as a sufficient quantity to be tested with a NIK Test Kit to reveal solid results.

### Disposal of Drugs

#### CDSA Drugs

126. CBSA officers are not authorized to destroy scheduled drugs.
127. Turn all drugs over to the RCMP with the applicable copies of the HC/SC 3515 Drug Offence and Disposition Report.
128. Store the drugs in a secure area until the police collect them. This may occur at the time of their discovery or later as per a local agreement for scheduled pick-ups.
129. Where no secure storage exists (e.g. a small CBSA office) and pick-up by the police is not immediate, officers must deliver the drugs and HC/SC 3515 Drug Offence and Disposition Report forms to the district office. Create an audit trail with signature(s) obtained from the person(s) receiving the drugs.

Note: Transfers are to be made by using CBSA Mail Courier, CBSA officer hand-to-hand delivery, or a bonded courier service. If required, a Customs Notice – Unclaimed Goods (E 44) may be used to account for the transfer, however, the first and fifth copies of the E 44 should be destroyed.

130. The police are responsible for the destruction of the drugs.

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## Drugs and Precursor Chemicals

Note: Normally, the RCMP is responsible for testing to substantiate prosecution. However, occasionally, the CBSA will seize drugs and issue a conveyance penalty but the RCMP chooses not to prosecute. Should the person choose to appeal the conveyance penalty, CBSA will need proof that the substance was a drug.

### Food and Drug Act Controlled Drugs

131. The Health Canada Inspectors are responsible for pick-up and destruction of FDA-controlled drugs.

Note: Under direction of Health Canada Inspectors, local arrangements may be made however, to ensure CBSA destruction, or to transfer of the FDA-controlled drugs to the RCMP if it is more practical for all agencies to dispose of the drugs in this manner.

132. If the Health Canada inspector collects the FDA-controlled drugs, the inspector completes HC/SC 0023 Health Canada Seizure form and the HC/SC 6010 Refusal form as appropriate. No HC3515 is completed.
133. All FDA-controlled drugs should be referred to Health Canada Inspectors at following Health Products and Food Branch Inspectorate Operational Centres

#### ATLANTIC OPERATIONAL CENTRE

Health Products and Food Branch Inspectorate  
16th floor, suite 1625  
1505 Barrington Street  
Halifax, Nova Scotia  
B3J 3Y6  
Tel: (902) 426-2160  
Fax: (902) 426-6676

#### QUEBEC OPERATIONAL CENTRE

Health Products and Food Branch Inspectorate  
1001 St-Laurent Street West  
Longueuil, Québec  
J4K 1C7  
Tel: (450) 646-1353  
Fax: (450) 928-4455

#### ONTARIO OPERATIONAL CENTRE

Health Products and Food Branch Inspectorate  
2301 Midland Avenue  
Scarborough, Ontario

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M1P 4R7

Tel: (416) 973-1600

Fax: (416) 973-1954

### MANITOBA AND SASKATCHEWAN OPERATIONAL CENTRE

Health Products and Food Branch Inspectorate

510 Lagimodière Blvd

Winnipeg, Manitoba

R2J 3Y1

Tel: (204) 984-1341

Fax: (204) 984-2155

### WESTERN OPERATIONAL CENTRE

Health Products and Food Branch Inspectorate

4th Floor

4595 Canada Way

Burnaby, British-Colombia

V5G 1J9

Tel: (604) 666-3704

Fax: (604) 666-314

## **Sending samples to CBSA or Health Canada Laboratories for analysis**

134. If analysis is required, forward the required sample(s) to either the CBSA Laboratory in Ottawa or one of the Drug Analytical Services Laboratories, Health Canada, in Burnaby, Winnipeg, Toronto or Longueuil by registered mail or bonded courier.

Note: The CBSA Laboratory provides an enhanced screening service for unknown materials that Border Service Officers suspect as being CDSA violations or need to confirm the identity of for other reasons. Health Canada performs analysis of narcotics primarily for court purposes. Materials that are strongly suspected to be narcotics and likely to result in criminal charges are analyzed by Health Canada. CBSA performs analysis of *unknowns* for port of entry officers that may result eventually in the same charges.

## **Importation of Drugs by the Police or Agents Working Under Police Control**

### Street Drugs

135. Verify that the Intelligence Officer is aware of the transaction.
136. If the drugs are street drugs (to be used for enforcement purposes, such as a controlled delivery):

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## Drugs and Precursor Chemicals

- a) allow only police or agents working under police control to enter Canada with scheduled drugs;
- b) ensure any such officer is named on a RCMP-issued Certificate of Immunity stating:
  - i) the number of the certificate;
  - ii) the certificate was issued by the Assistant Commissioner of the RCMP (Federal Sections);
  - iii) the name of the officer(s);
  - iv) the fact that the officers named have immunity from CDSA possession, trafficking and import/export offences; and
  - v) the period of time for which it is valid.
- c) complete the HC/SC 3515 Drug Offence and Disposition Report in ICES, cross-referencing the police officer's Certificate of Immunity number. Only complete fields 2, 24, 25, 26, 28, 29, 34, 35, and 39 of the HC/SC 3515 Drug Offence and Disposition Report. To protect the security of the operation, input "anonymous" in the defendant name field and other personal information fields until the control delivery or investigation is complete and then update the record later through the correction process. Cross-reference the police officer's certificate of immunity number in the body of the document;
- d) ensure the police sign the HC/SC 3515 Drug Offence and Disposition Report before turning the drugs over to their custody for controlled delivery or whatever action has been approved through the proper channels; and
- e) immediately forward a copy of the HC/SC 3515 Drug Offence and Disposition Report and any accompanying narrative reports to the Intelligence Development and Field Liaison Section of the Enforcement Branch by fax at (613) 957-8555 so that they may maintain control of the file.

Note: Advance notice or, at a minimum, declaration for controlled delivery is required. Undeclared drugs must be seized under the *Customs Act* regardless of whether the police officer or agent has a Certificate of Immunity.

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## Drugs and Precursor Chemicals

### State drugs

137. If the goods are state drugs (provided by a foreign government for use as evidence in a court proceeding and covered by a permit):
- a) advise the Intelligence Officer, Intelligence and Contraband Division of the drug import and the circumstances surrounding it;
  - b) ensure the drugs are as described on the Health Canada-issued import permit;
  - c) complete a hard copy HC/SC 3515 (i.e. do not use the ICES system and do not give the form a seizure number);
  - d) complete a K129 Exhibit Control form, noting:  
  

“The goods listed on this document have been reported as required under the *Customs Act* and are being imported as evidence for investigation and/or prosecution purposes.”
  - e) acquit the K129 by inputting the RCMP case number;
  - f) ensure the police sign the HC/SC 3515 Drug Offence and Disposition Report and the K129 Exhibit Control form before turning the drugs over to their custody;
  - g) document everything in the notebook;
  - h) immediately forward a copy of the HC/SC 3515 Drug Offence and Disposition Report and any accompanying narrative reports to the Intelligence Development and Field Liaison Section of CCII by fax at (613) 957-8555 so that they may maintain control of the file.

### **Appeal Rights**

138. CBSA officers are to provide all persons, from who suspected drugs are seized, a copy of the K19S Seizure Receipt, which serves as an individual's notice of their appeal rights. The Integrated Customs Enforcement System (ICES) produces a K19S Seizure *Receipt* for drug seizures as well as the HC3515 Drug Offence and Disposition Report.
139. In cases where the K19S Seizure receipt must be mailed (e.g. postal and courier modes), and the name or address is unknown, file the receipt with the office copy of the HC3515 Drug Offence and Disposition Report.

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## Drugs and Precursor Chemicals

140. Where possible, it is recommended that CBSA offices retain seized drugs during the 90-day appeal period. Failing to be able to provide a sample for analysis may result in the seizure being not upheld. If a traveler appeals a seizure based on classification, the CBSA will be required to arrange for an analysis of the seized drugs.

Note: The retention of seized drugs will not be applicable to situations involving prosecution, as the evidence will immediately be turned over to the RCMP. As the prosecuting agency is responsible for obtaining an analysis of the suspected drugs, the CBSA will not be required to hold the evidence.

### Forms and Reports

141. Give as much detail in reports as possible. Specifically:

- a) record full names, addresses, and dates and places of birth of all persons involved or accompanying the offender. Show date of birth numerically as: year, month, and day;
- b) show last or surname in capital letters, e.g. SMITH;
- c) describe in detail where the drug was found, including a description of any wrapper or packaging;
- d) list indicators found that lead the officer to believe drugs were being carried/concealed and how the drugs were finally detected;
- e) indicate the suspected type of drug found e.g. suspected hashish, marijuana, heroin, opium, cocaine, LSD;
- f) enter the gross weight of packaging and product in the description portion of the exhibit entry and use expertise to enter the "best estimate" of the weight of the drugs for the ICES quantity.
- g) give a physical count and description of capsules, tablets, or pills, e.g. 5 yellow pills with a line on one side and the letter M in a circle on the other. Do not use terms such as "one bottle of pills" or "a small quantity."
- h) provide details of interviews/interrogations and cautions, rights, or advisements given and any responses received.
- i) record the street value of the drugs based upon values issued by the Enforcement Branch .

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**Drugs and Precursor Chemicals**

j) indicate, where possible, the source of the drugs and their destination.

142. Use as much detail and emphasize accuracy as much as possible.

Note: The Enforcement branch and the Intelligence Officer may use the ICES seizure information or your HC/SC 3515 Drug Offence and Disposition Report to develop an intelligence file.

143. See Appendix B for the distribution of forms.

**REFERENCES**

144. *Customs Act*  
*Criminal Code*  
*Controlled Drugs and Substances Act*  
*Canada Evidence Act*  
*Food and Drugs Act*  
Food and Drugs Regulations  
ICES User Reference Manual  
Health Canada's Policy on Importations of Drugs For Human Use Including Natural Health Products Into Canada (POL-0019)

**RESPONSIBLE OFFICE**

Office of Primary Interest: Borders Intelligence Division  
Office of Collateral Interest: Strategic Export Control, Borders Enforcement Division and Training



**Part Two**

**ENFORCEMENT PRIORITIES**

**Chapter Six**

**DRUG AND PRECURSOR CHEMICAL POLICY AND PROCEDURES**

**Appendix A**

**SPECIAL TERMS OF  
RELEASE FOR CONVEYANCES  
USED IN DRUG SMUGGLING**



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Drugs and Precursor Chemicals

APPENDIX A

APPENDIX A: SPECIAL TERMS OF RELEASE FOR CONVEYANCES USED IN  
SMUGGLING PERSONAL USE QUANTITIES OF DRUGS

Amount	Marijuana	Hash- ish	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 30 grams	over 4 grams but not over 8 grams	over 1 gram but not over 2 grams	over 20 pills but not over 40 pills	over 4 dosages but not over 8 dosages	
\$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	over 12 grams but not over 14	over 160 pills but not over 180 pills	over 28 dosages but not over 32 dosages	

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APPENDIX A

		grams	grams			
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**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.

Commercial

See AMPS Master Penalty Document. Also refer to Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures, and AMPS Policy and Procedures for further details.

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.

**Part Two**

**ENFORCEMENT PRIORITIES**

**Chapter Six**

**DRUG AND PRECURSOR CHEMICAL POLICY AND PROCEDURES**

**Appendix B**

**DISTRIBUTION OF FORMS**



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Drugs and Precursor Chemicals

APPENDIX B

APPENDIX B: DISTRIBUTION OF FORMS

Send To:	HC/SC 3515	K 19A	K19S
Traveller			Original
Adjudications		Yes	Departmental
CBSA Office	Copy #4	Yes	Seizing Office Copy
Intelligence	Copy #2	Yes	Intelligence Copy
Police	Copies 1,3,5,6,7	Yes, if completed	None
Region	Photocopy	Yes	Region Copy

## **CUSTOMS ENFORCEMENT MANUAL**

### **Part 2**

### **ENFORCEMENT PRIORITIES**

#### **Chapter 8**

### **OBSCENITY AND HATE PROPAGANDA**





## POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer its responsibilities with respect to the identification and classification of prohibited material fairly and responsibly, in accordance with the provisions set out in the *Customs Act*, the *Customs Tariff*, the *Criminal Code* and the related court jurisprudence, while, at all times, respecting the principles and rights outlined in the *Canadian Charter of Rights and Freedoms*. For the purposes of this policy, prohibited material includes obscenity, hate propaganda, and goods of a treasonable or seditious nature. Child pornography is addressed separately in Part 2, Chapter 14 of this manual.

## AUTHORITIES

### ***Customs Act***

2. Section 58 – Authorizes designated CBSA officers to determine the tariff classification of imported goods at or before the time of accounting.
3. Section 60 – Allows for an importer to request a re-determination of the tariff classification of their goods within 90 days of the original classification under Section 58.
4. Section 98 – Stipulates that CBSA officers have the right to search any person who has arrived in Canada, or who is about to leave Canada, if the officer has reasonable grounds to suspect that the person has secreted on or about his person anything that would be considered contraband.
5. Section 99 – Stipulates that a CBSA officer has the right to examine goods by opening, or causing to be opened, any container or package and may take a reasonable amount as a sample.
6. 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.
7. Section 102 – Allows for an importer to export prohibited material.
8. Section 142 – Authorizes the disposal of prohibited material by CBSA officers in accordance with specific guidelines.

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**Obscenity and Hate Propaganda**

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**Customs Tariff**

9. Section 136 - Stipulates that all goods enumerated or referred to in tariff item No. 9899.00.00 are prohibited entry into Canada.
10. Tariff Item 9899.00.00 - Includes all books, printed paper, drawings, paintings, prints, photographs or representations of any kind that are deemed to be obscene within subsection 163(8) of the *Criminal Code*, that constitute hate propaganda within the meaning of subsection 320(8) of the *Criminal Code*, that are of a treasonable character, within the meaning of section 46 of the *Criminal Code*, and that are of a seditious character, within the meaning of sections 59 and 60 of the *Criminal Code*.

**Criminal Code**

11. Subsection 46(2) – States that, without lawful authority, it is a criminal offence for anyone to communicate or make available to an agent of a state other than Canada, military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada (goods of a treasonable nature).
12. Paragraph 59(4)(b) and Subsection 61(b) – State that, without lawful authority, it is a criminal offence for anyone to publish or circulate any writing that advocates the use of force as a means of accomplishing a governmental change within Canada (goods of a seditious nature).
13. Subsection 163(8) – States that any publication, a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, will be deemed obscene (obscenity).
14. Subsections 319(1) and 319(2) – State that it is a criminal offence for anyone to communicate statements, other than in private conversation, that incite hatred or wilfully promote hatred against any identifiable group (hate propaganda).
15. Subsection 320(8) – States that any writing, sign or visual representation that advocates or promotes genocide, or that promotes or incites hatred against an identifiable group, distinguished by colour, race, religion, ethnic origin or sexual orientation, constitutes hate propaganda.

## PURPOSE AND SCOPE

16. The purpose of this policy is to outline the CBSA's position with respect to its role in the detention, determination and disposal of specific prohibited material, namely obscenity, hate propaganda and treasonable and seditious material.

Note: Hereafter, any reference to hate propaganda is intended to include treasonable and seditious material.

17. This policy applies to all employees of the CBSA and relates to both commercial and personal goods physically entering Canada through any means (e.g. postal, marine, air, land, rail).
18. The scope of this policy applies to material generated from all forms of media (e.g. audio, visual, written word, electronic) that is suspected of constituting prohibited material. Prohibited material may be in the form of personal or commercial literature, photographs, DVDs, videocassettes, audiocassettes, compact disks, books, magazines, recordings, computer diskettes, CD-ROMs, CD-Rs, DVD±Rs and numerous other formats, including electronic material that is physically stored on laptop computers, hard drives, cellular telephones, digital cameras, media cards, portable "jump drives", PDAs (Palm Pilot, BlackBerry), etc.

Note: The CBSA deals only with the physical importation of goods and is not responsible for electronic, or other non-physical, transmissions, such as those sent via the Internet.

## BACKGROUND

19. As a result of ongoing program monitoring, and to address the specific administrative concerns expressed by the Supreme Court of Canada, the classification function for obscenity and hate propaganda is centralized in the Prohibited Importations Unit (PIU) at Headquarters in Ottawa.
20. Centralizing the classification function within the PIU ensures more accurate, consistent and defensible prohibitions, through the establishment of a centre of expertise where officer education and training, time and resources, are specifically dedicated to this sensitive and specialized work.

## **POLICY GUIDELINES**

21. CBSA officers should not hesitate to contact the PIU, at 613-954-7049, if they require assistance in handling suspect obscenity or hate propaganda.
22. CBSA officers must use all available tools to properly target and classify prohibited material, including the Technical Reference System (TRS), lookouts, bulletins and the related Memoranda D9-1-1 (obscenity), D9-1-15 (hate propaganda) and D9-1-17 (general procedures for handling obscenity and hate propaganda).
23. CBSA officers must always remain current with the indicators of obscenity and hate propaganda, and with all other related information, by reading the related D-Memoranda, notices, intelligence bulletins, alerts, and other relevant publications.

## **TARGETING**

24. Effective targeting is an essential element in ensuring the identification of suspect obscenity and hate propaganda.
25. Officers are reminded that the CBSA must not target importers in relation to suspect obscenity or hate propaganda. Targeting is to be based primarily on known exporters, known export locations (specific addresses or geographical areas), the nature of the goods being imported (commodities known to be suspect) and/or information disseminated through the PIU and/or Regional or Headquarters Intelligence channels.
26. Please refer to Part 3, Chapter 2 (Targeting Obscenity and Hate Propaganda) of this manual for more specific information on targeting suspect obscenity and hate propaganda.

## **ROLES & RESPONSIBILITIES**

### **CBSA Officers**

27. CBSA officers are responsible for:
  - a) selecting and examining shipments that meet the targeting criteria as suspect obscenity or hate propaganda or that are the subject of a lookout or that are selected randomly for examination;

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## Obscenity and Hate Propaganda

- b) searching the TRS database, within the Customs Commercial System (CCS), without delay, in order to determine whether the identical item has been previously determined by the PIU;
- c) using the most recent TRS decision relating to an identical item in order to classify the material as prohibited (by completing the header, Part A and Part B of the Form K27), or immediately releasing the item, in accordance with a valid TRS decision, subject to the collection of any duties and taxes owing;
- d) further examining the item for the presence of the undue exploitation of sex (obscenity) or the targeting of an identifiable group (hate propaganda) in determining whether material should be immediately released, or detained for the purpose of classification, if the identical item has not been previously determined, according to the TRS;
- e) detaining the item, by completing the header and Part A of the Form K27, and immediately forwarding the suspect material, for which there is no valid TRS decision, to the PIU for determination, only in cases where the item is deemed to be suspect; and
- f) immediately releasing the item, subject to the collection of any duties and taxes owing, in cases where the item is determined not to be suspect.

### Regional Intelligence Officers (RIO)

28. Regional Intelligence Officers are responsible for:

- a) assessing the validity and level of risk associated with current intelligence pertaining to importations of prohibited material;
- b) issuing regional lookouts for medium-risk to high-risk importations and for maintaining files that specifically show the link(s) to previous ruling(s) related to prohibited material, and/or current intelligence;
- c) re-evaluating importation lookouts in order to re-determine the level of risk, no less than every 90 days; and
- d) removing importation lookouts when the risk is no longer deemed to be medium to high.

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**Obscenity and Hate Propaganda**

**Regional Intelligence Analysts (RIA)**

29. Regional Intelligence Analysts are responsible for:

- a) setting importation targets in automated and/or manual systems for medium-risk to high-risk importations and for maintaining records showing the link(s) to previous ruling(s) related to prohibited material, and/or current intelligence;
- b) re-evaluating importation targets in order to re-determine the level of risk, no less than every 90 days; and
- c) removing importation targets when the risk is no longer deemed to be medium to high.

**Headquarters - Enforcement Branch**

30. The Enforcement Branch, Intelligence Directorate, is responsible for:

- a) maintaining up-to-date enforcement data (e.g. K27 information);
- b) providing operational support and guidance to RIOs and RIAs;
- c) issuing national lookouts for medium-risk to high-risk importations and for maintaining records showing their links to previous rulings related to prohibited material, and/or current intelligence;
- d) liaising with and supporting the PIU in order to facilitate the identification of medium-risk to high-risk importations of obscenity and hate propaganda; and
- e) liaising with foreign customs and law enforcement agencies in order to facilitate the identification of medium-risk to high-risk producers and distributors of obscenity and hate propaganda.

**Headquarters - Prohibited Importations Unit (PIU)**

31. The Prohibited Importations Unit is responsible for:

- a) making all determinations of obscenity and hate propaganda;
- b) maintaining the TRS database of all obscenity and hate propaganda classification decisions for reference, targeting and detention/determination purposes;



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**Obscenity and Hate Propaganda**

- c) providing assistance to CBSA officers, and other CBSA staff, in order to facilitate decision-making concerning the possible detention of suspect importations;
- d) providing training to assist personnel with the identification of suspect material and to ensure that the procedures for dealing with suspect obscenity and hate propaganda are understood and followed;
- e) monitoring the quality of decision-making, both at the detention and determination levels, and the accuracy of completed Form K27s;
- f) producing regular reports, including specific statistics, on the CBSA's work in relation to obscenity and hate propaganda;
- g) interpreting, on behalf of the CBSA, applicable legislation and court jurisprudence as it relates to obscenity and hate propaganda;
- h) developing policy and procedures, on behalf of the CBSA, as they relate to obscenity and hate propaganda, including D-Memoranda (D9-1-1, D9-1-15 and D9-1-17); and
- i) providing advance opinions on the admissibility of material upon request from importers who encounter difficulty in determining whether goods are in compliance with relevant guidelines, prior to importation.

**Headquarters – Prohibited Importations Unit - Customs Disputes Section**

32. The Customs Disputes Section is responsible for:

- a) making all re-determinations, at the appeal of the importer, relating to goods classified as obscenity and hate propaganda; and
- b) managing all litigation arising from a re-determination of obscenity or hate propaganda.

**PROCEDURES**

**Detentions and Determinations**

33. Specific procedures relating to the detention and determination of suspect obscenity and hate propaganda are set out in Memorandum D9-1-17, *Canada Border Services Agency's Policy on the Determination of Obscenity and Hate Propaganda*.

### Control and Disposal of Prohibited Material

34. Particular care must be taken to ensure that adequate control is maintained over prohibited material until its final disposition. Obscenity and hate propaganda must always be held in bond (Queen's Warehouse).
35. Within 90 days following a determination or re-determination of obscenity or hate propaganda, importers have the right to abandon, export or appeal (administratively or to the courts).
36. In the case of goods abandoned to the Crown, the destruction of these goods may take place immediately, provided that the importer has signed the designated abandonment area on the Form K27. Destruction must be in accordance with the provisions set out in the *Finance and Administration Manual, Material Management Volume*, Chapter 2, Section 6, Subsection 2, as elaborated upon below, beginning at Paragraph 40.
37. In instances where the importer requests that their prohibited obscenity or hate propaganda be exported within 90 days of the date of determination, it must be made clear to the importer that this exportation provision allows only for prohibited material to be removed from Canada under CBSA control and at the full expense and arrangement of the importer, following the normal procedures related to a controlled export from Canada, using the Form E15. All requests for the exportation of prohibited material should immediately be referred to the PIU.

Note: Canada Post's legislation prohibits the transport of prohibited goods through the mail and therefore a customs bonded carrier, in possession of a valid license issued by the CBSA, must be used to export any prohibited material that is being held inland. A customs bonded carrier has the right to refuse to carry prohibited goods and may choose to exercise this option. As a result, the export process often proves difficult to arrange and can be very costly to the importer.

38. In instances where an importer requests a re-determination of a classification of obscenity or hate propaganda, within 90 days of the date of determination, the Customs Disputes Section of the PIU will be responsible for handling the appeal and will request that the prohibited goods be removed from controlled storage and forwarded to the PIU in Ottawa for review and re-determination. Any requests for re-determination received at another CBSA location, in error, should immediately be forwarded to the Customs Disputes Section.

**EN Part 2 Chapter 8**

**Obscenity and Hate Propaganda**

39. Prohibited goods that have not been abandoned, exported or appealed within 90 days following the date of determination are considered to be forfeit to the Crown.
40. The destruction of forfeit goods is not to take place until at least 120 days after the date of determination (30 days of grace following the statutory waiting period of 90 days).
41. Prohibited goods may not be recycled or resold and must be destroyed in a secure, controlled environment, in accordance with the provisions set out in the *Finance and Administration Manual, Material Management Volume*, Chapter 2, Section 6, Subsection 2.
42. The following methods of destruction are acceptable for prohibited obscenity and hate propaganda:
  - a) running a magnet over a videocassette and subsequently ensuring that the tape has been completely erased;
  - b) drilling holes into videocassettes or disks (CDs, DVDs, etc.) and subsequently ensuring that they are no longer capable of being played;
  - c) exposing film products to direct sunlight or heat and subsequently ensuring that they can no longer be viewed;
  - d) shredding any paper documents (books, magazines, documents), as per the destruction of classified waste;
  - e) incinerating or pulverizing any prohibited material; or
  - f) by other means, as approved and directed by the PIU.

**LEGISLATIVE AND POLICY REFERENCES**

43. *Customs Act*  
*Customs Tariff* and its *Schedule* (Section XXI)  
*Criminal Code*  
*Canadian Charter of Rights and Freedoms*  
Memorandum D9-1-1  
Memorandum D9-1-15  
Memorandum D9-1-17

## **CUSTOMS ENFORCEMENT MANUAL**

### **Part 2**

### **ENFORCEMENT PRIORITIES**

#### **Chapter 10**

#### **CONVENTION ON THE INTERNATIONAL TRADE OF ENDANGERED SPECIES (CITES)**



## En Part 2 Chapter 10 Convention on the International Trade of Endangered Species

### POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to assist in the protection of endangered or threatened plant and animal species by enforcing controls at points of importation and exportation on behalf of Environment Canada.

### DEFINITIONS

2. Refer to Part 11 - Glossary.

### AUTHORITIES

#### *Customs Act*

3. Section 99 authorizes the examination of any goods and conveyances a CBSA officer suspects on reasonable grounds contains goods that are in contravention of the Act.
4. Section 101 authorizes the detention of controlled goods that have been imported or are about to be exported. The officer will release the goods once he or she is satisfied that the goods have been dealt with in accordance with this Act and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods.

#### *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA)*

5. Section 6(1) states that no person shall import into Canada any animal or plant that was taken or any animal or plant or any part or derivative of an animal or plant, that was possessed, distributed or transported in contravention of any law of any foreign state.
6. Section 6(2) states that, subject to the regulations, no person shall, except under and in accordance with a permit issued pursuant to subsection 10(1), import into Canada or export from Canada any animal or plant or any part or derivative of an animal or plant.

## En Part 2 Chapter 10 Convention on the International Trade of Endangered Species

### PURPOSE AND SCOPE

7. The purpose of this policy is to guide CBSA officers in the detection, interception, detention, seizure and care of illegal importations/exportations of protected or endangered plant and animal species and their parts or derivatives under the *Customs Act* and the *WAPPRIITA*.
8. This policy applies to all CBSA officers in all modes of transportation.

### BACKGROUND

9. Canada is a signatory to the Convention on International Trade in Endangered Species (CITES). This Convention is an international agreement through which more than 150 countries exercise control over the import, export and transit of various plant and animal species and their derivatives, parts and products as listed in the Convention. The objective of CITES is to protect these species against overexploitation caused, in part, by international trade.
10. CITES is administered by Environment Canada. The *Wild Animal and Plant Protection and Regulation on International and Interprovincial Trade Act (WAPPRIITA)* establishes Environment Canada's permit system for plants and animals protected by CITES. The CBSA assists Environment Canada by controlling their importation and exportation.
11. There are thousands of plant and animal species protected under CITES. Each is listed according to the level of protection afforded in one of three appendices to the Convention.

Note: See Appendix A for a summary of the appendices.

12. Trade in these species is controlled by a permit system, whose requirements become stricter as a species becomes endangered (Appendix I being the most strict). This control ensures the conservation of species whose trade is permitted and protects the most endangered species.
13. The Border and Compliance and Monitoring Division, Operations Branch is responsible for D19-7-1, Convention on International Trade in Endangered Species (CITES). This memorandum outlines the policy and procedures on the control of animals and plants at customs points of entry and exit. The Agriculture, Environment and Trade Unit can be reached at 613-954-7138.

## En Part 2 Chapter 10 Convention on the International Trade of Endangered Species

14. This chapter of the Enforcement Manual will concentrate on the enforcement actions to be taken should a shipment be non-compliant with the *Customs Act* and/or *WAPPRITA*.

### POLICY GUIDELINES

15. CBSA officers will contact the Canadian Wildlife Service in all situations where doubt exists whether a plant, animal, derivative, part or product (hereafter referred to as species or specimens) is controlled by CITES and requires a valid permit prior to import or export.
16. Officers will also contact Environment Canada for assistance when in doubt about a permit. A list of Environment Canada offices may be found in Appendix D of Memorandum D19-7-1 Convention on International Trade in Endangered Species. Also, Customs Memorandum D19-0-0, Directory of Other Government Departments and Agencies, can be used as a source of contact information.
17. Officers will ensure that although the format of the CITES permit may vary from one country to another, the contents comply with the requirements of the Convention.
18. Importers must be in possession of a CITES import and/or export and/or re-export permit before trade is commenced, based on the appendix under which the specimen falls. Regular CITES export and import permits issued after the fact cannot be accepted. In exceptional cases, however, Environment Canada may authorize a special import permit.
19. CBSA officers will familiarize themselves with the two main CITES enforcement tools: the Canadian CITES Control List ([http://www.cites.ec.gc.ca/eng/sct5/preq\\_e.cfm](http://www.cites.ec.gc.ca/eng/sct5/preq_e.cfm)) and the CITES Identification Guide ([http://www.cites.ec.gc.ca/eng/sct5/sct5\\_1\\_e.cfm](http://www.cites.ec.gc.ca/eng/sct5/sct5_1_e.cfm)).
20. CBSA officers will be aware of the Guidelines for Transport and Preparation for Shipment of Live Wild Animals and Plants (<http://www.cites.org/eng/resources/transport/index.shtml>). These guidelines dictate the size and type of container holding the species, food and water availability and ventilation.
21. CBSA officers will contact Environment Canada immediately, if they suspect or determine that a specimen is found to be in inadequate conditions.
22. Officers will contact the Canadian Food Inspection Agency, Animal Health Branch, if a species has died (or is dying) during transport.



## En Part 2 Chapter 10 Convention on the International Trade of Endangered Species

23. Officers will detain all suspected plants and animals being imported or exported in contravention of the *WAPPRIITA*.
24. All pertinent facts including the times of detention, arrest, advisements and cautions must be included in the CE-1 Customs Notebook.

### Health and Safety

25. Officers will ensure all health and safety standards are met, including:
  - a) avoiding any handling of goods or species;
  - b) assessing potential hazards before handling cages and boxes;
  - c) avoiding handling jute bags or other soft containers that may contain venomous specimens;
  - d) avoiding handling any raw mammal skins and hunting trophies;
  - e) inspecting plants, especially artificially propagated ones, in a well ventilated area;
  - f) ensuring only those people directly involved in an inspection are present and
  - g) in the event of an accident, following standard occupational health and safety procedures and guidelines.

## ROLES AND RESPONSIBILITIES

### CBSA Officers

26. CBSA officers are responsible for:
  - a) detecting and intercepting goods that contravene the *Customs Act* or *WAPPRIITA*;
  - b) being aware of current intelligence, trends, method of operating, concealment methods, routings, etc. associated with CITES contraventions;
  - c) possessing a general awareness of endangered plants and animals and knowing where to locate detailed information;

## **En Part 2 Chapter 10 Convention on the International Trade of Endangered Species**

- d) being familiar with current CITES permits and related documents as described in the policy guidelines;
- e) preparing notes on all examinations and completing reports when necessary.

### **CBSA Superintendents**

27. CBSA superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) providing the necessary assistance and support to CBSA officers;
- c) ensuring that Environment Canada is contacted to make determinations of species;
- d) ensuring that CBSA investigators are immediately contacted when there are international violations of the Customs Act or WAPPRIITA and
- e) ensuring the timely circulation of all intelligence reports, lookouts, alerts and targets.

### **Regional Intelligence Officers**

28. Regional intelligence officers (RIO) are responsible for:

- a) facilitating the exchange of timely information or intelligence concerning individuals and organizations suspected of involvement in the illegal trade of species regulated under CITES;
- b) liaising with other agencies involved in the control of species regulated under CITES and
- c) ensuring the CBSA investigator, in addition to the CWS regional authority, is informed as soon as possible of significant detentions/seizures of CITES listed fauna and flora, if local procedures have designated an RIO as the first point of contact.

### **CBSA Investigators**

29. The Customs Investigation Division is responsible for:

## En Part 2 Chapter 10 Convention on the International Trade of Endangered Species

- a) conducting investigations regarding *Customs Act* and WAPPRIITA violations detected at ports of entry;
- b) laying charges under either or both Acts when warranted and
- c) consulting with other agencies on all potential prosecutions and investigations involving species regulated under CITES.

### PROCEDURES

- 30. Refer to D19-7-1, Convention on International Trade in Endangered Species for the policy and procedures to determine which species need permits. Some species, while listed in CITES, may be exempt permits due to their status as personal effects, household effects or tourist souvenirs.
- 31. Ensure that the shipment is in compliance with the *Customs Act*. If there is a contravention of the *Customs Act* (e.g. smuggled plants or animals), the officer may seize the specimens under the *Customs Act* before proceeding with the enforcement of WAPPRIITA on behalf of Environment Canada.
- 32. Officers processing customs-compliant plants and animals must verify:
  - a) the permit quantity and description against the goods and/or the CBSA documents;
  - b) the effective date and the expiry date of the permit;
  - c) the originality of the permit (the permit is not a photocopy or forgery) and
  - d) that the document is signed by the appropriate government authority.
- 33. Examine the specimens to determine if:
  - a) the size of the container is suitable for the specimens being transported;
  - b) the design and construction of the container is appropriate;
  - c) the container is suitably labelled (e.g., "Live Animals", "Poisonous or Dangerous Animals", "This Way Up", etc.);
  - d) food and water is provided and accessible (if appropriate);
  - e) the container is adequately ventilated and

## En Part 2 Chapter 10 Convention on the International Trade of Endangered Species

f) the specimens appear healthy.

Note: CBSA officers will contact Environment Canada immediately, if they suspect or determine that a specimen is found to be in inadequate condition.

34. If all the documents and the specimens are in satisfactory order, validate the certificate and release the goods.
35. If the officer is not satisfied that the description given is consistent with the shipment, the shipment should be detained pending identification by Environment Canada.
36. If the officer suspects there are issues with the WAPPRIITA (e.g. missing certificates, suspicion of fraudulent documents, missing signatures) or if the specimens are not being cared for properly (e.g. no ventilation), the officer may detain the specimen for further inspection by the CWS and the CID, if there is a suspicion of fraud.

### Travellers Imports:

37. Refer any traveller who declares a CITES controlled item for secondary examination.

Note: Personal Effects: a CITES permit is not required for CITES Appendix I, II and III items that, at the time of import or export, are part of an individual's clothing or accessories or are contained in an individual's personal baggage and that they have owned and possessed in their ordinary county of residence (provided the goods are not sold or disposed of within 90 days or are not live animals).

Tourists souvenirs: a CITES export permit from the country visited will not be required for residents of Canada returning with souvenirs of CITES Appendix II or III species, if imported in their accompanying baggage or as part of their clothing or accessories (live animals, live plants and Appendix 1 species require all appropriate CITES permits). See D memorandum 19-7-1 on CITES for more information.

38. If the officer is not satisfied that the goods have been dealt with in accordance with *WAPPRIITA*:
  - a) inform the traveller that the goods are being detained under section 101 of the *Customs Act* for the purpose of identification and if found to be a CITES listed species, they will have ninety days to obtain a release of

## En Part 2 Chapter 10 Convention on the International Trade of Endangered Species

the goods or re-export; otherwise they will be forfeited under the *Customs Act* and disposed of by Environment Canada;

- b) give the traveller an Environment Canada "Goods Detained" pamphlet;
- c) issue a K24 Non-monetary General Receipt (see Appendix B) and include the country of export on the document as well as whether duty and taxes were paid;
- d) contact Environment Canada;

Note: Environment Canada is responsible for the immediate issuance of penalties in less serious offences and/or prosecution under the *WAPPRIITA*. CBSA officers have no authority to seize plants or animals on behalf of Environment Canada for violations of the *WAPPRIITA*.

- e) inform the Customs Investigations Division, who share joint authority to investigate and prosecute *WAPPRIITA* offences involving species regulated under CITES and
  - f) proceed with a progressive secondary examination, if applicable.
39. The specimens may be detained until presentation of a special import permit from Environment Canada, or until the goods are abandoned to the Crown or exported from Canada (if allowed by Environment Canada).

Note: Normally, a traveller cannot obtain a permit after the fact, but Environment Canada will make some exceptions and applications may be directed to the local office. See Memorandum D19-7-1 for details on the conditions and the addresses of the Environment Canada offices.

### Exports

40. If the goods have not been dealt with in accordance with *WAPPRIITA* and there are no indicators of fraudulent intent:
- a) inform the exporter that the goods are being detained under section 101 of the *Customs Act* and that they have ninety days to obtain a permit or remove the goods from the export stream. Otherwise, they will be forfeited and disposed of by Environment Canada;
  - b) issue a K26 Export Notice of Detention (see Appendix C);

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- c) issue an Administrative Monetary Penalty, if the shipment is commercial (C005 – Permit information is incorrect, C315 – Failure to provide export permit, C345 – Failure to report goods subject to export control or C346 – Failure to answer truthfully with respect to export);

Note: Refer to Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and Administrative Monetary Penalties.

- d) contact Environment Canada; and

Note: Environment Canada is responsible for the immediate issuance of penalties in less serious offences and/or prosecution under WAPPRIITA. CBSA officers have no authority to seize plants or animals on behalf of Environment Canada, but CBSA may apply an administrative monetary penalty for failing to provide required permits.

- e) inform the Customs Investigation Division, who share joint authority to investigate and prosecute WAPPRIITA offences related to CITES-listed goods.

- 41. The specimens may be detained until presentation of an export permit or until the goods are abandoned to the Crown or returned to the exporter (if allowed by Environment Canada).

### Commercial Imports

- 42. If the goods have not been dealt with in accordance with *WAPPRIITA*:

- a) inform the importer that the goods are being detained under section 101 of the *Customs Act* for the purpose of identification, and if found to be a CITES-listed species, they will have ninety days to obtain a release of the goods or re-export. Otherwise, they will be forfeited under the *Customs Act* and disposed of by Environment Canada.
- b) issue a K26, Notice of Detention and reference the cargo control document;
- c) issue an administrative monetary penalty (C005- permit information is incorrect, C071 – failure to provide permit, or C348 – Intentional provision of false information in a permit);
- d) contact Environment Canada and

Note: Environment Canada is responsible for the immediate issuance of penalties in less serious offences and/or prosecution under

## **En Part 2 Chapter 10 Convention on the International Trade of Endangered Species**

WAPPRIITA. CBSA officers have no authority to seize plants or animals on behalf of Environment Canada, but CBSA may apply an administrative monetary penalty for failing to provide required permits.

- e) inform the Customs Investigations Division, who share joint authority to investigate and prosecute WAPPRIITA offences of all detained commercial importations of CITES-listed goods.

- 43. The specimens may be detained until presentation of a special import permit from Environment Canada, or until the goods are abandoned to the Crown or exported from Canada (if allowed by Environment Canada).

### **Detention**

- 44. Detain specimens in a safe manner. For example, keep natural enemies away from each other. Do not keep tropical plants in a cool temperature, etc.
- 45. Find a suitable detention location. On occasion, a zoo, kennel or university facility may be appropriate. CBSA is responsible for the cost of detention facilities. Contact Environment Canada for guidance, if necessary.
- 46. When a suitable detention facility cannot be found or the animals appear stressed while the search is ongoing, officers may release detained animals on Customs Form E29B Temporary Admission Permit. A written note from Environment Canada regarding the disposition of the animals will cancel the E29B.

Note: For more information on the temporary import permit process, refer to D Memorandum 8-1-4.

- 47. Monitor all persons and specimens involved in the investigation to ensure their health and safety.
- 48. Ensure all documents and packaging are unaltered and secured for evidentiary purposes, if required.

### **Disposal**

- 49. Dispose of inadmissible specimens in accordance with CITES requirements and Environment Canada's instructions, if they are eventually forfeited to the Crown.

Note: Refer to Memoranda D19-7-1 Convention on International Trade in Endangered Species (CITES) and the accompanying R19-7-1.

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**REFERENCES**

50. *Customs Act*  
*Criminal Code*  
*Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*  
CITES Appendices 1, 2 & 3 –<http://www.cites.org/eng/append/index.shtml>  
CITES Species Checklist: (ultimate reference for nomenclature) -  
<http://www.cites.org/eng/resources/species.html>  
Identification Guide - [http://www.cites.ec.gc.ca/eng/sct5/sct5\\_1\\_e.cfm](http://www.cites.ec.gc.ca/eng/sct5/sct5_1_e.cfm)  
Control List 2003 - [http://www.cites.ec.gc.ca/eng/sct5/preq\\_e.cfm](http://www.cites.ec.gc.ca/eng/sct5/preq_e.cfm)  
CITES homepage - [http://www.cites.ec.gc.ca/eng/sct0/index\\_e.cfm](http://www.cites.ec.gc.ca/eng/sct0/index_e.cfm)  
Memoranda D19-7-1 Convention on International Trade in Endangered Species  
Memorandum D19-0-0 Directory of Other Government Departments and Agencies  
Memorandum of Understanding with Environment Canada  
<http://7.28.66.49/pl/organization/IIAD/FPAD/MOU/fed/E/ENVIRONMENT%20CANADA%20B2.0%2012-10-00%20.pdf>  
<http://7.28.66.49/pl/organization/IIAD/FPAD/MOU/fed/E/ENVIRONMENT%20B2.1%2018-07-01.pdf>

**Part 2**

**ENFORCEMENT PRIORITIES**

**Chapter 10**

**CONVENTION ON THE INTERNATIONAL TRADE OF ENDANGERED  
SPECIES (CITES)**

**Appendix A**

**CITES APPENDICES**



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APPENDIX A

CITES APPENDICES

Appendix	Species Listed in Appendix	Documents that Must Accompany the Specimen(s)
I	Endangered species.	Two documents: Import Permit and Export Permit or Re-export Certificate.
II	Species that could become endangered, if trade is not regulated.	One document: Export permit or Re-export Certificate.
III	Species that could become endangered in listing countries, if trade is not regulated	One document: An Export Permit from the country that listed the species or a Certificate of Origin from a country that did not list the species.



**Part 2**

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**CONVENTION ON THE INTERNATIONAL TRADE OF ENDANGERED  
SPECIES (CITES)**

**Appendix B**

**NON-MONETARY GENERAL RECEIPT (K 24) SAMPLE**



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APPENDIX B

Canada Customs and Revenue Agency Agence des douanes et du revenu du Canada		NON-MONETARY GENERAL RECEIPT REÇU GLOBAL POUR ÉLÉMENTS NON MONÉTAIRES	
<p>Reçu de l'importateur - Recp. de</p> <p>Agent (if applicable) - Agent de (s'il y a lieu)</p>		<p>Customs office - Bureau de douane</p> <p>Original reference no. - N° de référence original</p> <p>Date: Y/A M DJ</p>	
<p>DESCRIPTION OF GOODS OR CURRENCY/MONETARY INSTRUMENTS DESCRIPTION DE MARCHANDISES OU DESPÈCES/INSTRUMENTS MONÉTAIRES</p> <p>Qty. - Qte</p> <p>DESCRIPTION (make, model, serial number) - DESCRIPTION (marque, modèle, n° de série)</p> <p>VALUÉ - VALEUR</p>		<p>Goods were Marchandises ont été</p> <p>Goods are Marchandises sont</p> <p><input type="checkbox"/> properly reported <input type="checkbox"/> correctement déclarées</p> <p><input type="checkbox"/> held <input type="checkbox"/> retenues</p> <p><input type="checkbox"/> unlawfully imported <input type="checkbox"/> illégalement importées</p> <p><input type="checkbox"/> abandoned <input type="checkbox"/> abandonnées</p>	
<p>1. The owner/importer of the goods or currency/monetary instruments described hereunder, abandon them to the Crown, knowing there is no recourse for subsequent claim. Je, le propriétaire ou l'importateur des marchandises ou espèces/instruments monétaires décrits ci-dessous, les cède à la Couronne en sachant que je ne puis présenter de demande ultérieure à leur égard.</p> <p>Signature of owner/importer - Signature du propriétaire ou de l'importateur</p> <p>Date: Y/A M DJ</p>		<p>2. The described currency/monetary instruments are held pending the completion of a currency report. You have 7 days to meet the reporting requirements of subsection 22(1) of the <i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i>. To complete the importation requirements, you must present a currency report to Customs. Should you fail to do so within 7 days of the issuance of this notice, the currency/monetary instruments will be forfeited. The 7 day period is replaced by 30 days in postal or courier mode.</p> <p>Les espèces/instruments monétaires décrits sous-jacents, en attente de l'accomplissement d'une déclaration des espèces. Vous avez 7 jours pour vous conformer aux exigences de déclaration du paragraphe 22(1) de la Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes. De manière à respecter les exigences d'importation, vous devez soumettre une déclaration des espèces aux douanes. Tout manquement à ce délai dans les 7 jours de l'émission de cette notice entraîne la confiscation des espèces/instruments monétaires. La période de 7 jours est remplacée par une période de 30 jours dans le mode postal.</p>	
<p>TRANSFER RECORD - REGISTRE DE MUTATION</p> <p>Transferred to Quantity/Importeur</p> <p>Transféré au dépositaire de douane</p> <p>Owner's signature - Signature du propriétaire</p> <p>Holder's signature - Signature de l'importateur</p> <p>Storage charges - Frais d'entreposage</p> <p>Daily charge Coté quotidien</p> <p>Days - Jours</p> <p>GST - TVA</p> <p>Charge - Transport</p> <p>TOTAL</p>		<p>DISPOSITION - ELIMINATION</p> <p><input type="checkbox"/> Goods destroyed Marchandises détruites</p> <p><input type="checkbox"/> Date paid Date acquittée</p> <p><input type="checkbox"/> Goods surplus Marchandises excédentaires</p> <p><input type="checkbox"/> Customs officer's signature Signature de l'agent des douanes</p> <p><input type="checkbox"/> Export Exportation</p> <p><input type="checkbox"/> Import Importation</p> <p><input type="checkbox"/> Other Autre</p> <p><input type="checkbox"/> Payment of duties Paiement des droits</p> <p><input type="checkbox"/> Amount - Montant</p> <p><input type="checkbox"/> Permit Permis</p> <p><input type="checkbox"/> Export Exportation</p> <p><input type="checkbox"/> Import Importation</p> <p><input type="checkbox"/> Other Autre</p> <p><input type="checkbox"/> Payment of duties Paiement des droits</p> <p><input type="checkbox"/> Amount - 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**Part 2**

**ENFORCEMENT PRIORITIES**

**Chapter 10**

**CONVENTION ON THE INTERNATIONAL TRADE OF ENDANGERED  
SPECIES (CITES)**

**Appendix C**

**EXPORT NOTICE OF DETENTION (K 26) SAMPLE**



# En Part 2 Chapter 10 Convention on the International Trade of Endangered Species

## APPENDIX C



Canada Customs and Revenue Agency  
Agence des douanes et du revenu du Canada

### NOTICE OF DETENTION

### AVIS DE RETENUE

Exporter/Importer - Exportateur/Importateur

--

Detention No. - N° de détention		
Other reference No. - Autre n° de référence		
Customs office - Bureau de douane		
Date	Y - A	M D - J

#### Part A - Partie A

The goods described below are detained under Section 101 of the Customs Act. You are advised that these goods may not be exported from or imported into Canada until a customs officer is satisfied that these goods comply with the Customs Act and any other Act of Parliament that prohibits, controls, or regulates the exportation or importation of goods, and any regulations made thereunder.

Les marchandises décrites ci-dessous sont détenues en conformité à l'article 101 de la Loi sur les douanes. Vous êtes avisé que ces marchandises ne peuvent être exportées du ou importées au Canada sans qu'un agent de douane soit satisfait que ces marchandises sont en conformité avec la Loi sur les douanes et toute autre loi fédérale prohibant, contrôlant et réglementant les exportations ou importations, ainsi qu'à leurs

Description of goods (specify details and attach documents if available) - Désignation des marchandises (spécifiez les détails et attachez les documents disponibles)

--

Shipper's reference No. - N° de référence de l'expéditeur

Location of goods - Localisation des marchandises

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The goods described above are being detained for the following reasons: - Les marchandises décrites ci-haut sont détenues pour les raisons suivantes :

--

You are required to contact the following address concerning the requirements that have to be met. - Vous devez communiquer à l'adresse suivante concernant les exigences requises.

--

Customs office (name and address) - Bureau de douane (nom et adresse)

Badge No. - N° d'insigne

Signature of issuing officer - Signature de l'agent	

#### Part B - Partie B

I acknowledge receipt of this notice - J'accuse réception de cet avis

Signature	Date
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#### Part C - Partie C

Disposition of the goods - Dispositions prises à l'égard des marchandises

Document No. - N° du document	Date

K26 (90)

Printed in Canada - Imprimé au Canada

Canada

# **CUSTOMS ENFORCEMENT MANUAL**

## **Part 2**

### **ENFORCEMENT PRIORITIES**

#### **Chapter 11**

##### **COUNTER-TERRORISM POLICY AND PROCEDURES**



## POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to detect and control individuals suspected of engaging in terrorist activities that are attempting to enter Canada.

## DEFINITIONS

2. Refer to Part 11, Glossary.

## AUTHORITIES

3. All procedures must be conducted in accordance with the *Charter of Rights and Freedoms*, the *Customs Act*, the *Criminal Code of Canada*, the *Youth Criminal Justice Act*, the *Anti-Terrorism Act*, and the CBSA Code of Ethics and Conduct.

### *Customs Act*

4. Section 11.2 – The Minister may designate an area as a CBSA - Customs Controlled Area. Regulations pertaining to Customs Controlled Areas must be followed.
5. Section 11 – Requires every person arriving in Canada to report to Customs and to answer truthfully any questions asked by an officer in the performance of his or her duties under this Act or any other Act of Parliament.
6. Section 12 – Requires that all goods that are imported to Canada be reported to Customs.
7. Section 13 – Requires every person reporting goods under section 12, to present goods to an officer and answer truthfully any question asked by an officer with respect to the goods.
8. Section 98 – Stipulates that customs officers have the right to search any person who has arrived in Canada or is about to leave Canada if the officer has reasonable grounds to suspect that the person has secreted on or about his person anything that would be considered contraband.
9. Section 99 – Stipulates that a customs officer has the right to examine goods by opening or causing to be opened any container or package and may take a reasonable amount as a sample.

## EN Part 2 Chapter 11

## Counter-terrorism

10. Section 107.1 – Allows for Advance Passenger Information (API) data on each person to be provided before the arrival to Canada. The API data consists of: surname, first name and initials of any middle names; date of birth; citizenship or nationality; gender; passport or travel document number and reservation record locator or file number. All commercial transporters must provide an officer access to its reservation system or, upon request, provide in writing all reservation information on passengers to be carried to Canada.

### *Charter of Rights and Freedoms*

11. Section 8 – Everyone has the right to be secure against unreasonable search or seizure.
12. Section 9 – Everyone has the right not to be arbitrarily detained or imprisoned.
13. 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.

### *Immigration and Refugee Protection Act (IRPA)*

14. Section 6(1) – The Minister may designate any persons or class of persons as officers to carry out any purpose of any provision of this Act, and shall specify the powers and duties of the officers so designated.

### *Shared Border Accord (1995)*

15. Under the Smart Border Action Plan, Canada and the United States declared their willingness to share Advanced Passenger Information (API) and Passenger Name Records (PNR) on high-risk travellers destined to either country in order to identify high-risk travellers and facilitate the flow of legitimate persons across the border.

### *Anti-Terrorism Act*



**EN Part 2 Chapter 11**

**Counter-terrorism**

16. Section 2(b) – a person who plays a role in the administration of criminal justice (vi) a peace officer within the meaning of any of paragraphs (b), (c), (d), (e) and (g) of the definition "peace officer", and (ix) an employee of the Canada Border Services Agency who is involved in the investigation of an offence under an Act of Parliament.

**PURPOSE AND SCOPE**

17. The purpose of this policy is to outline the guidelines to be followed by CBSA officers in the event of the processing of a suspected terrorist.
18. This policy applies to all CBSA officers in all modes of transportation.

**BACKGROUND**

19. Terrorism by definition is the unlawful use or threatened use of force or violence by a person or an organized group against people or property with the intention of intimidating or coercing societies or governments, often for ideological or political reasons. Terrorism is an international problem affecting most nations in the world either through direct acts of violence or indirectly through feelings of fear, alarm and/or, vulnerability. Canada works closely with other governments in combating this very real threat through political, economic, humanitarian, and military means.
20. The *Public Safety Act 2002* enacts a number of provisions to increase security at the border, particularly in the air mode. This Act deals with measures for implementing the Biological and Toxin Weapons Convention in order to enhance public safety.
21. Under the *Anti-terrorism Act* the Government of Canada is determined to take steps to combat terrorism and terrorist activities at home and abroad. Tough anti-terrorism measures strike an appropriate balance between respecting Canadian values of fairness and respect for human rights while helping to ensure that Canadians and the global community are better protected. The Act includes measures to identify, prosecute, convict and punish terrorist groups; provides investigative tools to law enforcement and national security agencies; and ensures that Canadian values of respect and fairness are preserved and the root causes of hatred are addressed through stronger laws against hate crimes and propaganda.
22. Under the direction of the Department of Public Safety and Emergency Preparedness, Canada has implemented the National Counter-Terrorism Plan, a principle feature of which is the coordination of Canada's counter-

terrorism program in connection with threats or incidents. The plan outlines the roles and responsibilities of all levels of government as well as police services in the event of terrorist incidents. Key players in the plan at the federal level include the CBSA, the Royal Canadian Mounted Police (RCMP), Citizenship and Immigration Canada (CIC), the Department of National Defence (DND), and the Canadian Security Intelligence Service (CSIS).

23. There is no doubt that the CBSA plays an important role in protecting our country and others from terrorist threats and actions. We are our nation's first line of defence against these types of activities. In fact, a CBSA officer at the primary point of entry is the first person a potential terrorist will encounter if they attempt to enter Canada through normal channels. It should be noted that terrorists attempting to enter Canada generally pose little or no immediate threat to CBSA officers. Their main objective is simply to gain access into the country or through it, without attracting any attention, in order to accomplish their goal.
24. The successful detection, interception, and control of terrorists and terrorist related cross-border activities are dependent upon the CBSA's continued vigilance. With the continued support of the government and the citizens of Canada, the CBSA remains committed to the fight against terrorism.

## POLICY GUIDELINES

25. Officers will thoroughly question, observe, and closely examine passports, immigration papers, and other travel documents, as well as goods for indications of suspected terrorist activities or connections.
26. Officers will use counter-terrorism tools to assist in targeting potential terrorists for further examination. This information will be made available for officers via automated databases.
27. Officers must keep up-to-date with information contained in targets, National Security lookouts, and alerts for all indicators that may lead to the identification and interception of suspected terrorists.
28. Officers will keep up-to-date with and thoroughly read intelligence information and other relevant publications so that they are cognizant of document manipulation and forgeries, trends, modus operandi, concealment methods, routings, current global affairs, etc. related to terrorist organizations and activities.

## EN Part 2 Chapter 11

## Counter-terrorism

29. Officers will notify a superintendent as soon as possible of any contact with a known or suspected terrorist and request assistance.
30. Officers will immediately notify the Regional Intelligence Officer (RIO) responsible for counter-terrorism or the duty RIO of any contact with a suspected terrorist.

Note: The RIO will contact all external points of contact (i.e. RCMP, CSIS).

Note: The National Risk Assessment Centre is the point of contact in communicating with all International Customs Services.

31. CBSA officers are not authorized to arrest or detain suspected terrorists.
32. If a suspected terrorist is not a Canadian citizen, officers must immediately contact Citizenship and Immigration Canada (CIC) and notify the counter-terrorism RIO on duty.

Note: If there is no permanent CIC presence at a port of entry by which a suspected terrorist is entering, CBSA officers assume all powers, duties, and functions of a CIC officer under the authority of Section 6(1) of the *Immigration and Refugee Protection Act*.

33. Officers must at all times be aware of and avoid or minimize any threat to their safety and that of the public.

## ROLES AND RESPONSIBILITIES

### CBSA Officers

34. CBSA officers are responsible for:
  - a) identifying and intercepting suspected or known terrorists;
  - b) acting as agents for CIC if there is no CIC presence at the port of entry;
  - c) detecting, detaining and intercepting illegal materials or devices, such as chemical, biological, radiological or nuclear material, explosives or firearms and preventing their importation into or transit through Canada;
  - d) visually screening arriving passengers and conveyances;
  - e) assessing the risk associated with conveyances, passengers, and goods arriving in Canada;

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**Counter-terrorism**

- f) possessing a general awareness of current intelligence, trends, modus operandi, concealment methods, routings, etc. associated with terrorist activities;
- g) thoroughly reviewing all lookouts, alerts, and targets;
- h) being familiar with current travel documentation requirements and design including travel tickets, rental agreements, passports, visas, and other identification, as well as commercial documentation requirements;
- i) where appropriate, utilizing contraband detection equipment when detecting illegal materials, devices or contraband;
- j) reporting the outcome of interceptions of all lookouts, alerts, and targets to the issuer and/or via an ICES Notepad entry and/or ORS Report;
- k) taking appropriate notes on all encounters with suspected terrorists and completing detailed reports for the RIO, CBSA managers and superintendents; and
- l) being prepared to appear in Court and testify as a crown witness, as to their dealings in these matters.

35. CBSA managers and superintendents are responsible for:

- a) ensuring when dealing with suspected terrorists that the health and safety of all staff, individuals, members of the public are protected;
- b) ensuring the safety and security of their environment, property and intellectual assets;
- c) ensuring compliance with all policies and procedures;
- d) providing guidance and support to CBSA officers;
- e) ensuring that the RIO is contacted and briefed;
- f) ensuring the timely circulation of all intelligence reports, lookouts, alerts, and targets;
- g) ensuring completion and timely dissemination of reports concerning suspect terrorists; and

- h) taking corrective action for any breaches by CBSA officers of this policy and procedures.

### **Regional Intelligence Officers**

36. Regional Intelligence Officers (RIO) are responsible for:

- a) receiving, analyzing, and disseminating intelligence in a timely manner on suspected and known terrorists, terrorist activities, and hate propaganda;
- b) exercising discretion regarding dissemination;
- c) maintaining open communication with CBSA managers, superintendents, and officers;
- d) providing functional guidance, training and disclosure of information;
- e) liaising with other agencies involved in counter-terrorism (i.e. CSIS, RCMP, etc); and
- f) liaising with the Counter-Terrorism and Counter-Proliferation Section, Enforcement Branch.

### **Counter-Terrorism and Counter-Proliferation Section, Enforcement Branch**

37. The Counter-Terrorism and Counter-Proliferation Section is responsible for:

- a) receiving, analyzing, and disseminating intelligence in a timely manner on suspected and known terrorists, terrorist activities, and hate propaganda;
- b) exercising discretion regarding dissemination;
- c) liaising with and ensuring effective communications with other departments and agencies involved in counter-terrorism;
- d) establishing guidelines for the CBSA on counter-terrorism measures;
- e) assisting in the development and delivery of training for both CBSA personnel and other agencies involved in counter-terrorism; and
- f) operating the Command Centre on a 24-hour basis when required. The Command Centre will be available for assistance to RIOs.

### **National Risk Assessment Centre, Enforcement Branch**

38. National Risk Assessment Centre is responsible for:

- a) receiving, analyzing, and disseminating intelligence or information in a timely manner on suspected and known terrorists, terrorist activities, and hate propaganda;
- b) exercising all due diligence and discretion regarding information dissemination in accordance with section 107 of the *Customs Act* and the *Privacy Act*;
- c) liaising with and ensuring effective communications with other departments and agencies involved in counter-terrorism;
- d) liaising with and ensuring effective communications as the point of contact for the United States, Department for Homeland Security, National Targeting Centre in establishing guidelines for the CBSA on counter-terrorism measures;
- e) assisting in the development and delivery of training for both CBSA personnel and other agencies involved in counter-terrorism; and operating the Command Centre on a 7/24-hour basis;
- f) acting as the international point of contact for the United States, Department for Homeland Security, National Targeting Centre;
- g) acting as the international point of contact for all international customs services; and
- h) providing support and functional guidance to officers in the field when possible.

### **PROCEDURES**

- 39. Ensure accepted health, safety and, security precautions are taken when dealing with a suspected terrorist.
- 40. Remain calm and professional at all times.
- 41. Conduct routine primary questioning and database checks.
- 42. If the suspect is a Canadian citizen:

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Counter-terrorism

- a) escort the suspect to the secondary area for further processing, if suspicion is raised during primary processing;
- b) refer all travelling companions and/or associates;
- c) ensure suspect persons are under constant observation or escort;
- d) immediately notify the superintendent of any contact with a suspected terrorist;
- e) immediately notify the counter-terrorism RIO on duty;
- f) conduct a thorough progressively intensive examination;
- g) if there has been a *Customs Act*, *Criminal Code*, *Anti-Terrorism Act* infraction or there is an outstanding warrant on the suspected terrorist, the individual may be detained/arrested; otherwise, a CBSA officer cannot detain the individual;

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

- h) If suspicions cannot be confirmed but still exist, and the suspect must be released, notify the RIO who is responsible for counter-terrorism in your jurisdiction or the issuer of the lookout as soon as possible. In the case of a shared lookout from the United States the National Risk Assessment Centre is to be notified;

Note: The RIO will contact the RCMP and request they attend and take custody of the person as soon as possible. If the RCMP chooses not to attend or if they are unavailable, allow the person to proceed into Canada when the secondary exam is completed.

- i) for any further guidance, contact the RIO who is responsible for counter-terrorism issues in your jurisdiction;
- j) record all details in your customs notebook; and
- k) complete an intelligence report for the RIO and Targeting Unit.

43. If the suspect is not Canadian:

- a) immediately notify the CBSA superintendent of any contact with a suspected terrorist;

- b) escort the suspect to CIC for further processing if suspicion is raised during primary processing;



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## Counter-terrorism

Note: CIC is responsible for contacting CSIS to participate in a joint interview with the suspected terrorist. Before this interview takes place, however, the suspect will be escorted to customs secondary where the CIC officer will observe the CBSA officer conducting a baggage and/or conveyance examination under the authority of the *Immigration and Refugee Protection Act*. The CIC officer may seize any documents that could be used as evidence under the *Immigration and Refugee Protection Act* and the CBSA officer may seize any contraband under the *Customs Act*.

- c) immediately notify the counter-terrorism RIO on duty;

Note: The RIO should notify the National Risk Assessment Centre/ Command Centre, as soon as possible under these circumstances.

- d) once the examination is completed, the CBSA officer relinquishes control of the suspect to CIC;
- e) ensure suspect persons are under constant observation and request assistance from another CBSA officer to contact CIC if suspicion is raised during a secondary examination; and
- f) relinquish control of the suspect to CIC.

### 44. If there is no CIC officer available:

- a) Immediately notify the counter-terrorism RIO on duty;
- b) escort the suspect to secondary and conduct a baggage examination;

Note: This examination will be completed under the authority of the *Immigration and Refugee Protection Act* (IRPA), as you are now acting as a CIC officer;

Note: Refer to Part Six, Chapter Nine, Assistance to Immigration and Part Ten, Chapter One, Citizenship and Immigration Canada Memorandum of Understanding.

- c) seize any evidence of inadmissibility under the IRPA and any contraband under the *Customs Act*;
- d) interview the suspect for the purposes of determining admissibility to Canada under IRPA;

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**Counter-terrorism**

- e) if, based on the interview or secondary examination results, you suspect the individual to be inadmissible to Canada, conduct an inland removal and advise the suspect that he/she must re-apply for entry at a CIC-serviced office;
- f) record all details in your customs notebook;
- g) complete an ICES notepad entry; and
- h) complete an intelligence report for the RIO and CIC.

**REFERENCES**

- 45. *Customs Act*  
*Anti-Terrorism Act*  
*Public Safety Act 2002*  
*Immigration and Refugee Protection Act*  
*Canadian Charter of Rights and Freedoms*  
*Criminal Code of Canada*  
CBSA Code of Ethics and Conduct

**CUSTOMS ENFORCEMENT MANUAL**

**Part 2**

**ENFORCEMENT PRIORITIES**

**Chapter 12**

***Our Missing Children* POLICY AND PROCEDURES**

30/09/04



## **POLICY STATEMENT**

1. It is the policy of the Canada Border Services Agency (CBSA) to detect and intercept children at ports of entry that have been reported missing and/or are being abducted, and returning them to their rightful guardian(s).

## **DEFINITIONS**

2. Refer to "Glossary".

## **AUTHORITIES**

### *Customs Act*

3. Subsection 163.5 (1) – Authorizes designated customs officers performing the normal duties of a customs officer at a customs office to take enforcement action pertaining to criminal offences under any other Act of Parliament.
4. Subsection 163.5 (3) – Authorizes designated customs officer to arrest a person and detain them until they can be placed in the custody of a police agency of jurisdiction.

### *Criminal Code*

5. Subsection 279(1) – It is an offence for a person to kidnap a person with intent to confine or imprison, to transport from Canada, to hold for ransom or hold to service against the person's will.
6. Subsection 280 (1) – It is an offence for a person, other than a parent or guardian, to abduct a person under sixteen years of age.

Note: The term "guardian" includes any person who has in law or in fact the custody or control of another person.

7. Subsection 281 – It is an offence to unlawfully take, entice away, conceal, detain, receive or harbour a person under fourteen years of age with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person.

8. Subsection 282 – It is an offence for a parent or guardian to unlawfully take, entice away, conceal, detain, receive or harbour a child under the age of 14. Persons charged under this section must have the intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the child. This section applies if there is a valid Canadian custody order in place.
9. Subsection 283 (1) – The parent, guardian, or person having the lawful care or charge of a person under the age of fourteen years is guilty of abduction under this section if they take, entice away, conceal, detain, receive, or harbour that person whether or not there is a Canadian custody order in relation to that person.

## PURPOSE AND SCOPE

10. The purpose of this policy is to guide CBSA officers in the detection and interception of children who are missing or have been or are in the process of being abducted and to return them to their lawful parents or guardians.
11. This policy applies to all CBSA officers in all modes of transportation.

## BACKGROUND

12. The *Our Missing Children* (OMC) Program is an initiative between five federal government departments: the CBSA, the Royal Canadian Mounted Police (RCMP), Citizenship and Immigration Canada (CIC), the Department of Foreign Affairs Canada (FAC), and Justice Canada.
13. The goal of the *Our Missing Children* Program is to help ensure the safety and security of children crossing international borders and to provide intelligence services to aid in the investigation of missing children cases. Since 1986 when the CBSA officially became involved in missing children programs, CBSA officers have made many successful recoveries of missing and abducted children.

## The AMBER Alert System

14. AMBER is an alert system established in the United States – and since adopted in Canada – to publicize child abductions. It uses electronic highway signs and designated local broadcasters to announce the child's name and description, and the description of any vehicle suspected to be involved in the abduction. The acronym stands for "America's Missing: Broadcast Emergency Response."

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***Our Missing Children***

15. When child abduction occurs in a region where Amber is operating, police prepare an alert containing information such as the child's and/or abductor's description and other relevant information. A special press release is sent to television and radio stations designated as "Emergency Broadcasters" under the protocols set up during the Cold War. Getting the alert on the air immediately is a priority, as time is a factor in safe child rescues.
16. There are five categories of missing children: parental abductions, stranger abductions, runaway children, throwaway children and smuggled/trafficked children.
17. Parental abductions are the most common type, with one of the parents or legal guardians taking a child away from the other parent or legal guardian. This could involve either the non-custodial parent or guardian taking the child from the custodial parent or guardian, or the custodial parent or guardian preventing the child from seeing the non-custodial parent or guardian. Younger children are most likely to be abducted (newborn to eight years old) and both genders are equally at risk.
18. Contrary to popular belief, stranger abductions are the least common type. Persons included in this category are relatives, non-related persons known to the child, and true strangers. True stranger abductions are the most rare in Canada and usually involve sexual assault and homicide. Three-quarters of the victims of stranger abductions are female.
19. Runaway children are those who leave the home voluntarily, whereas throwaways are those who are forced from the home by their parent(s) or legal guardian. Throwaway children have run away but not been missed by, searched for, or reported to the police by their legal caretakers, are not allowed home after running away, or have been abandoned or deserted. Runaways tend to be between the ages of 12-15 and largely female while throwaways are usually 16-17 years of age and of either gender.

**POLICY GUIDELINES**

**Identifying a Missing or Abducted Child**

20. Officers will familiarize themselves with indicators that suggest the relationship between an accompanying adult or parent/guardian and a child may be questionable. For example:

Note: Refer to Part Two of the Traveller Processing Manual for additional information.

21. Officers will follow the instructions on an urgent border alert (such as an AMBER alert) or lookout.
22. Officers will use additional questions to establish preliminary information such as identification and travel information when they are dealing with children being brought across the border.
23. Officers will use direct questioning if they suspect that they are dealing with a situation involving a missing or abducted child.

Note: Persons are under no obligation to answer any questions that do not pertain to their goods or to their admission into Canada.

#### **Contacting Absent Parent or Guardian**

24. Officers will **always** conduct database checks for missing children alerts or lookouts prior to phoning an absent parent or guardian to establish a child's custodial arrangements.
25. CBSA officers must ask the accompanying adult for the phone number of the absent parent or guardian and explain why they wish to call.

Note: There may be very legitimate reasons as to why the absent parent or guardian should not be called.

26. Officers will not release travel information to an absent parent or guardian.

#### **Interviewing a Child**

27. Children will only be questioned if all attempts to contact the absent parent or guardian have failed.
28. Officers must advise the accompanying adult of the reasons for questioning a child before interviewing the child.



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## *Our Missing Children*

29. If possible, a female officer should interview girls and a male officer interview boys.
30. When interviewing a child, officers will ensure that the child is always within eyesight but out of the hearing range of the accompanying adult.
31. Officers will only continue questioning as long as the child appears comfortable.

### **Enforcement Action**

32. Designated officers affecting an arrest of an accompanying adult will make every attempt to do so out of the visual range of the child.
33. CBSA officers will release accompanying adults and children when they are satisfied that the relationship between them is legitimate and all other customs processing is complete.

## **ROLES AND RESPONSIBILITIES**

### **CBSA Officers**

34. CBSA officers are responsible for:
  - a) identifying and intercepting suspected missing or abducted children;
  - b) observing, targeting, selecting, and interviewing individuals to determine if they may be involved in a potential abduction;
  - c) being aware of current intelligence, trends, unusual routings, etc. as they pertain to missing and abducted children;
  - d) thoroughly reading information contained in targets, National Security lookouts, and alerts for all indicators that may lead to the identification and interception of missing and abducted children;
  - e) possessing knowledge of current travel documentation requirements and design including travel tickets, rental agreements, passports, visas, and other identification; and
  - f) taking notes on all encounters with suspected abductors and completing the *Our Missing Children* Recovery Report (E514) to forward to the OMC Regional Coordinator.

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Note: See Appendix A for a copy of the *Our Missing Children* Recovery Report (E514).

### **Regional Coordinators**

35. Regional Coordinators are responsible for:

- a) the ongoing training of staff pertaining to operational procedures, existing and new policies, etc;
- b) issuing and maintaining missing children border alerts received from the headquarters OMC coordinator;
- c) reporting the outcome of interceptions of all lookouts, alerts, and targets to the issuer and/or via an ICES Notepad entry and/or ORS Report;
- d) coordinating training sessions with the RCMP, CIC, Foreign Affairs Canada and local Canadian and American law enforcement agencies;
- e) establishing and maintaining contacts with the local police and other child find organizations;
- f) performing public outreach to community; and
- g) maintaining a record of regional recoveries.

### **CBSA Superintendents**

36. CBSA superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) providing the necessary assistance and support to CBSA officers;
- c) ensuring the timely circulation of all intelligence reports, lookouts, alerts, and targets; and
- d) taking corrective action on any breaches by CBSA officers of this policy and procedures.

### **Regional Intelligence Officer (RIO)**

37. The Regional Intelligence Officer (RIO) is responsible for:

- a) receiving, analyzing, and disseminating intelligence and lookouts in a timely manner on suspected and known abduction cases;

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## *Our Missing Children*

- b) collecting and evaluating raw information concerning actual, suspected and potential infractions of the *Customs Act* and other federal statutes;
- c) developing and managing case files using the principles and procedures for Case Management;
- d) liaising with other agencies involved in the OMC Program (e.g. CIC, RCMP, etc);
- e) providing functional guidance and expertise to front-line personnel; and
- f) participating in specialized activities.

### **The Enforcement Branch**

38. The Enforcement Branch is responsible for:

- a) developing, modifying, and approving policies in accordance with court jurisprudence, related to the administration of the *Our Missing Children* Program;
- b) issuing lookouts and national alerts to CBSA offices, and the United States Department of Homeland Security regarding missing and abducted children;
- c) disseminating lookouts and alerts from other countries pertaining to missing and abducted children;
- d) verifying data through databases (e.g. CPIC and NCIC) regarding missing and abducted children; and
- e) providing support to the field.

## **PROCEDURES**

### **Parental or Stranger Abduction**

#### ***Identifying an Abducted Child***

- 39. Conduct routine primary questioning.
- 40. Request and closely review identification (i.e. birth certificate and/or passport) for any child present.

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## Our Missing Children

41. Use IPIL to query and track the movement of children in case of differing family names for the parent and the child.
42. Distribute the Tip Sheet and allow the adult and child to proceed if no further suspicions are raised.

Note: See Appendix B for the Tip Sheet which outlines procedures to follow when travelling with a child (carrying valid identification, relevant legal documents, etc.)

43. Request to see documents that explain why a child is travelling with someone other than a parent or guardian (e.g. letters or custody orders from a parent, guardian, or the court). Review the offered documents closely.
44. Proceed to additional questioning if suspicions are raised.
45. Refer adult and child when suspicions still exist to:
  - a) Citizenship and Immigration Canada (CIC) if they are non-residents; or
  - b) Customs secondary if they are Canadian citizens.
46. Conduct database queries to confirm or negate suspicions.

### **Contacting Absent Parent or Guardian**

47. If database queries are negative but concerns still exist:
  - a) Request a telephone number for the absent parent or guardian from the accompanying adult.
  - b) Call the absent parent or guardian and state:
    - i) your name;
    - ii) port of entry; and
    - iii) the reason for the call.
  - c) Be polite and courteous at all times and attempt not to alarm them.
  - d) Do not divulge any further travel information to the absent parent or guardian.

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- e) Request that the absent parent or guardian clearly state whether or not the accompanying adult has permission to travel into Canada with the child.
48. Continue to try to contact the absent parent or guardian if initial contact was not made and suspicions still exist.

**Interviewing a Child**

49. If the absent parent or guardian cannot be contacted:
- a) Explain to the accompanying adult that you wish to interview the child.
  - b) Make sure that during the interview with the child, the accompanying adult can see but not hear the child and place the child with their back to the adult.
  - c) Speak at the child's level, using language that he or she can understand.
  - d) Attempt to ascertain whether the child is with the accompanying adult of their own free will and with the consent of the absent parent or guardian.
50. Record as much information as possible if there are a number of indicators present, no records in the database exist, and interviews with the child and accompanying adult have not confirmed or negated suspicion. Take note of the:
- a) physical description of the child and any other persons present;
  - b) vehicle type, colour, year, plate identification and number;
  - c) driver's license number; and
  - d) vehicle registration number;
51. Make every attempt to determine the subjects' destination address.
52. Complete the *Our Missing Children* (OMC) Recovery Report (E514) and forward it to the OMC Regional Coordinator.

Note: The Regional Coordinator will forward a copy to the National Coordinator for intelligence purposes.

Note: See Appendix A for a copy of the E514.

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## *Our Missing Children*

### Enforcement Action

53. Notify the originating agency if there is a lookout or an alert for the child.
54. Notify the police agency of jurisdiction if the originating agency is unable to attend.
55. Remove the child from the immediate area if an arrest of the accompanying adult is warranted.
56. Request that a designated officer make the arrest.

Note: Refer to Part 6, Chapter 7, Criminal Code Offences Policy and Procedures, Processing Persons Suspected of Abduction/Kidnapping.

57. Complete the *Our Missing Children* Recovery Report (E514).

Note: See Appendix A for a copy of the E514.

58. Call the local police agency and request that they attend and take custody of the offender.

Note: Refer to Part 6, Chapter 1, Arrest and Detention and Part 6, Chapter 2, Care and Control of Persons in Custody.

59. Keep the child safe and comfortable at all times.

Note: Recognise that you are a stranger and that they may be nervous or frightened.

60. Forward the *Our Missing Children* Recovery Report (E514) to the OMC Regional Coordinator.

Note: Information on the E514 is used for statistical purposes and is forwarded on to the OMC National Coordinator for intelligence purposes.

### Runaway Child/Throwaway Child

61. Contact the originating agency or the local police, local child and family services or youth services (depending on your location) if a runaway or throwaway child is encountered. Contact your OMC Regional Coordinator if you are unsure whom to call.

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Note: It is not a criminal offence to be a runaway. However, if the child is under the age of 15, CBSA officers must contact either a police agency or a youth protective agency.

62. Try to convince the child to call home, another family member, or Operation Go Home (1-800-668-4663) if youth services are not available.
63. Give the child information on Operation Go Home if they are unwilling to call.
64. Complete the *Our Missing Children* Recovery Report (E514) and forward it to the OMC Regional Coordinator.

Note: See Appendix A for a copy of the E514. This form may also be found electronically on the Intranet.

REFERENCES

65. *Customs Act*  
*Criminal Code*  
Traveller's Processing Manual, Part 2, Chapter 2  
*Our Missing Children* Program Officer's Handbook

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**Part 2**

**ENFORCEMENT PRIORITIES**

**Chapter 12**



***Our Missing Children* POLICY AND PROCEDURES**

**Appendix A**

***Our Missing Children* RECOVERY REPORT (E514)**

30/05/04



 Gouvernement du Canada Government of Canada				<b>PROTECTED (when completed)</b> <b>PROTÉGÉ (une fois rempli)</b> The information on this form is collected for statistical records and is protected under the provisions of the Privacy Act. The form is stored in personnel information files. Investigations require no. RUC PPU 100. Les renseignements qui figurent sur ce formulaire sont recueillis dans le but de conserver des données et sont protégés par la Loi sur l'accès à l'information. Les enquêtes exigent le no. RUC PPU 100.	
<b>Our Missing Children Recovery Report</b>		<b>Rapport d'incident de nos enfants disparus</b>			
P.O.S. Identification No. / N° d'identification du S.O.B.R.		CRIC Number - N° du CRIC		ICES file - N° du B.E.D.	
Region - Région		Country - Pays		Port of Entry - Bureau de détermination	
Incident Type - Genre d'incident		Intercepted By - Intercepté grâce à :			
A <input type="checkbox"/> Missing - Absent <input type="checkbox"/> Missing - Absent <input type="checkbox"/> Missing - Absent <input type="checkbox"/> Missing - Absent		B <input type="checkbox"/> Lost - Perdu <input type="checkbox"/> Lost - Perdu <input type="checkbox"/> Lost - Perdu <input type="checkbox"/> Lost - Perdu			
Mode of Transportation / Moyen de transport		C <input type="checkbox"/> Intelligence Only - Renseignements seulement			
<input type="checkbox"/> Vehicle - Véhicule <input type="checkbox"/> Bus - Autobus <input type="checkbox"/> Train <input type="checkbox"/> Air - Avion		D <input type="checkbox"/> Other - Autre <input type="checkbox"/> Other - Autre <input type="checkbox"/> Other - Autre <input type="checkbox"/> Other - Autre			
Plate No. - N° de plaque		Province/State - Province/État		Registration No. - N° d'immatriculation	
<b>Child Data - Information sur l'enfant</b>					
<b>Child 1 - Enfant 1</b>					
Name - Nom		Sex - Sexe		Address - Adresse	
Date of Birth (YYYYMMDD) / Date de naissance (AAAA/MM/JJ)		Citizenship - Citoyenneté		Type of Identification - Genre d'identification	
Destination in Canada - Destination au Canada		Type of Identification - Genre d'identification			
<b>Child 2 - Enfant 2</b>					
Name - Nom		Sex - Sexe		Address - Adresse	
Date of Birth (YYYYMMDD) / Date de naissance (AAAA/MM/JJ)		Citizenship - Citoyenneté		Type of Identification - Genre d'identification	
Destination in Canada - Destination au Canada		Type of Identification - Genre d'identification			
<b>Abductor Data - Information sur le ravisseur</b>					
<b>Abductor 1 - Ravisseur 1</b>					
Name - Nom		Sex - Sexe		Address - Adresse	
Date of Birth (YYYYMMDD) / Date de naissance (AAAA/MM/JJ)		Citizenship - Citoyenneté		Type of Identification - Genre d'identification	
Destination in Canada - Destination au Canada		Type of Identification - Genre d'identification			
Occupation - Emploi		Relationship to Child - Lien avec l'enfant			
<b>Results - Résultats</b>					
Reporting Agency / Organisme qui a rapporté l'incident					
<b>Officer Involved - Officier impliqué</b>		<b>Officer Involved - Officier impliqué</b>		<b>Officer Involved - Officier impliqué</b>	
Name - Nom		Name - Nom		Name - Nom	
Department - Ministère		Department - Ministère		Department - Ministère	
Badge No. - N° d'insigne		Badge No. - N° d'insigne		Badge No. - N° d'insigne	
Telephone No. - N° de téléphone		Telephone No. - N° de téléphone		Telephone No. - N° de téléphone	
Signature		Signature		Signature	
Please attach photocopies and other relevant information - Veuillez annexer à la présente toutes photocopies et tous renseignements pertinents.					
<b>ONCE COMPLETED - UNE FOIS REMPLI</b> Port Staff: Make a photocopy for your POE file and send the original to your Regional Coordinator. Personnel du bureau: Faire une photocopie pour vos dossiers et envoyer l'original à votre coordonnateur régional. Regional Coordinator: Send the original to your National Coordinator and keep a photocopy for your records. Coordonnateur régional: Envoyer l'original au coordonnateur national et conserver une photocopie dans vos dossiers.					





**Part 2**

**ENFORCEMENT PRIORITIES**

**Chapter 12**

***Our Missing Children* POLICY AND PROCEDURES**

**Appendix B**

**TIPS FOR PARENTS AND LEGAL GUARDIANS**



**APPENDIX B**

**TIPS FOR PARENTS AND LEGAL GUARDIANS**

The Royal Canadian Mounted Police; Canada Border Services Agency; Citizenship and Immigration Canada; Foreign Affairs Canada; and the Department of Justice are working together to protect abducted children and runaways who are encountered crossing the Canadian border. In co-operation with other Canadian and US agencies, and with law enforcement agencies in more than 40 countries, they exchange information and assist each other in finding missing children and reuniting them with their parents or legal guardians.

Since 1986, Customs Inspectors and Immigration Officers have recovered over 1,300 runaway/abducted children at the border. These officials are on full alert for children who need protection and therefore, pay extra attention to children as they enter Canada. A child or youth traveling without proper identification, or in the company of adults other than their legal guardian, may be subjected to a more thorough interview. This additional scrutiny is aimed at ensuring the safety of the child.

The following tips may be useful in helping you avoid delays when entering Canada.

- Always carry proper identification for yourself and the child(ren), such as a birth certificate, citizenship card, passport, baptismal certificate, Record of Landing (IMM 1000), Certificate of Indian Status or Permanent Resident Card.
- If you have legal custody of the child(ren), have copies of relevant legal documents, such as custody rights.
- If you are not the parent or legal guardian of the child(ren), carry a letter of permission or authorization for you to have custody when entering Canada. A letter would also facilitate entry for any one parent traveling with their child(ren). If possible, this permission should contain contact telephone numbers for the parent or legal guardian.
- If you are traveling as part of a caravan, be sure that you are in the same vehicle as your child(ren) when you arrive at the border.

If you are traveling with children and encounter a few more questions than normal from our Customs Inspectors or Immigration Officers, please be patient. The protection and safety of children is everybody's concern.

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***Our Missing Children***

**APPENDIX B**

For more information please contact:

our missing children  
c/o RCMP  
National Missing Children Services  
1200 Vanier Parkway, P.O. Box 8885  
Ottawa, Ontario K1G 3M8  
Telephone (613) 990-8585 (24h)  
Facsimile (613) 993-5430

For general program information please contact 1-877-318-3576 or visit our website at  
<http://www.ourmissingchildren.ca>



# **CUSTOMS ENFORCEMENT MANUAL**

## **Part 2**

### **ENFORCEMENT PRIORITIES**

#### **Chapter 13**

##### **STRATEGIC EXPORT CONTROL**



## POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to promote voluntary compliance with export legislation while ensuring that the legislation is fully respected. Exporters are encouraged to voluntarily comply with export control requirements by obtaining required export permits, licences or certificates in advance of any attempt to export controlled goods.
2. Where non-compliance is detected, and there is evidence that the exporter did not exercise due diligence in complying with the legislation, monetary penalties or seizure action may be effected. In addition, criminal prosecution may be warranted depending upon the circumstances of the case.

## DEFINITIONS

3. Refer to Part 11, Chapter 1, Glossary.

## AUTHORITIES

4. All procedures must be conducted in accordance with the *Customs Act*, the *United Nations Act*, the *Export and Import Permits Act*, and their regulations.

### *Customs Act*

5. Subsection 95(1) requires all goods that are exported to be reported in the prescribed manner at the prescribed time and place.
6. Subsection 95(3) requires every person reporting goods under section 95 to present the goods to an officer and answer truthfully any question asked by an officer with respect to the goods.
7. Paragraph 99(1)(c) stipulates that a CBSA officer has the right to examine goods reported under section 95 by opening, or causing to be opened, any container or package and by taking a reasonable amount as a sample.
8. Paragraph 99(1)(e) stipulates that a CBSA officer has the right to examine any goods suspected, on reasonable grounds, of containing goods subject to export controls, by opening, or causing to be opened, any container or package (regardless of whether the goods have been reported for export).

**EN Part 2 Chapter 13**

**Strategic Export Control**

9. Section 101 stipulates that goods tendered for export may be detained by an officer until he/she is satisfied that the goods are in compliance with the export control requirements.
10. Section 109.3 authorizes an officer to assess an administrative monetary penalty for failing to comply with designated provisions of the *Customs Act*, *Customs Tariff* and regulations made pursuant thereto.
11. Section 110 stipulates that a CBSA officer may seize goods, conveyances, or any other thing when he/she believes on reasonable grounds that the *Customs Act* or regulations have been contravened or that the goods afford evidence of a contravention.
12. Section 124 provides a CBSA officer with the authority to effect ascertained forfeitures in respect of goods and conveyances when the goods or the conveyance are not found or if the seizure would be impractical.

*Export and Import Permits Act (EIPA)*

13. Section 13 stipulates that an export permit is required to export all goods included in the Export Control List and to export any goods destined to a country on the Area Control List.
14. Section 15 stipulates that no person shall knowingly do anything in Canada to assist in the shipment, transshipment or diversion of goods included in the Export Control List to an ineligible destination.
15. Section 17 stipulates that no person shall wilfully supply false or misleading information in relation to an export permit application or in connection with the use of an export permit.
16. Section 24 stipulates that CBSA officers must satisfy themselves that an exporter is in compliance with the *EIPA* and its regulations before allowing any goods to be exported.
17. Section 25 authorizes CBSA officers to use all of their powers under the *Customs Act* to enforce the provisions of the *EIPA* and its regulations.

*United Nations Act (UNA) and its regulations*

18. The *United Nations Act* and its regulations are the main legislative authorities in place to impose trade sanctions. Current information about Canadian economic sanctions can be found on the Department of Foreign Affairs and International Trade internet site ([www.dfait-](http://www.dfait-)

[maeci.gc.ca/trade/sanctions-en.asp](http://maeci.gc.ca/trade/sanctions-en.asp)). Most of these regulations place restrictions on the export of arms and related materials.

## PURPOSE AND SCOPE

19. The purpose of this policy is to provide guidelines to be followed by CBSA officers when processing strategic goods, which are known or suspected, to be subject to export controls. Strategic goods and technologies include arms, ammunition, implements of war, weapons-related materials or any goods or technologies whose unauthorized export might be contrary to Canadian security, political and international interests.
20. This policy applies to CBSA officers dealing with commercial export shipments in all modes of transportation. For export infractions involving travellers, refer to Part 5, Chapter 2, Travellers Seizures and Ascertained Forfeitures.

## BACKGROUND

21. Canada is a committed participant in all international regimes aimed at preventing the spread of weapons of mass destruction and other destabilizing technologies. The proliferation of chemical, biological and nuclear weapons and their delivery systems has a destabilizing effect on peaceful regional and global relationships and is therefore considered a threat to the security of Canada.
22. The numerous terrorist attacks since 2001 and the reports that terrorists are trying to acquire weapons of mass destruction, has caused Canada and other nations to be concerned about unconventional threats from previously unknown entities.
23. With this in mind, the focus of Canada's counter proliferation efforts includes preventing the unauthorized export of strategic goods and technology to individuals, organizations and countries of concern for weapons proliferation.
24. The *EIPA* and the *UNA* are the main legislative instruments that allow the government to determine which goods should be controlled for export from Canada. The *EIPA*'s export controls mainly apply to strategic goods and technologies. Other legislation is used to control non-strategic goods, including endangered plants and animals, rough diamonds, cultural property and environmental waste. The *UNA* mainly applies trade sanctions. Goods are controlled for one or more of the following reasons:



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## Strategic Export Control

- a) *To fulfill Canada's bilateral obligations:* Items or their components that were produced or manufactured in the United States, and imported into Canada, are controlled because Canada has made an agreement with the United States to monitor the export of these items to non-US destinations.
  - b) *To meet international counter proliferation commitments:* Counter proliferation regimes such as the Missile Technology Control Regime, the Australia Group and the Nuclear Suppliers Group define goods that should be controlled to prevent the spread of weapons of mass destruction and delivery systems. Canada has agreed to include those goods on its list of goods and technologies controlled under the *EIPA*.
  - c) *To comply with international sanctions:* The *UNA* is one of the most important mechanisms in Canada to impose trade sanctions and it includes controls on goods destined to certain countries to meet our commitments under United Nations or other international sanctions regimes.
25. CBSA is responsible for enforcing export control requirements. Dedicated export control teams are in place in strategic locations throughout Canada to conduct export enforcement based on the principles of risk management and intelligence-based targeting.

## POLICY GUIDELINES

- 26. Export control officers will facilitate the movement of goods by selective enforcement based on risk management principles.
- 27. Officers will closely scrutinize all shipments, believed or suspected on reasonable grounds, to contain goods subject to export controls, as well as all shipments destined to countries, organizations or individuals of concern for weapons proliferation.
- 28. Officers will use export control tools and resources to assist in targeting potential shipments for further examination. Intelligence information will be made available to officers via the Integrated Customs Enforcement System (ICES) and via regional intelligence officers assigned to the export control portfolio.
- 29. Officers must keep up-to-date with information contained in targets, export control lookouts and alerts to facilitate the recognition of all indicators that may lead to the identification and interception of shipments of controlled goods.





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## Strategic Export Control

30. Officers will keep up-to-date with and thoroughly read, intelligence information and other relevant publications so that they are cognizant of document manipulation techniques, methods of operating, concealment methods, transshipment routings, current global affairs, etc. related to weapons procurement and other illegal export activities.
31. Officers will provide the Strategic Export Control Section, with details concerning any shipment suspected to be in contravention of export control legislation.
32. Officers will notify the regional intelligence officer (RIO) responsible for export control and/or the local Intelligence office, of any shipments suspected to contain weapons of mass destruction or related materials, or of any significant export-related detentions, seizures or queries.
33. Officers must at all times be aware of and avoid or minimize any threat to their safety and that of the public.
34. Enforcement action in the form of detention, seizure, ascertained forfeiture and/or administrative monetary penalties may be taken against non-compliant exporters once a point of finality has been reached. The point of finality represents the stage in the exporting process at which it has been demonstrated conclusively the intent to export specific goods from Canada. Refer to Customs Memorandum D20-1-1 regarding when the point of finality is reached for export control under the *Customs Act* and the *EIPA*.

## ROLES AND RESPONSIBILITIES

### CBSA Officers

35. CBSA officers tasked to the export control function are responsible for:
  - a) possessing a general awareness of current intelligence, trends, *modus operandi*, concealment methods, routings, etc. associated with weapons proliferation and other illegal export activities;
  - b) referring to the booklet "The Guide to Canada's Export Controls" to help target shipments;
  - c) thoroughly reviewing all export control lookouts, alerts and targets;
  - d) examining export documentation prior to and after the departure of goods from Canada;

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- e) conducting physical exams of commercial shipments;
- f) detaining shipments suspected of non-compliance with export controls;
- g) providing details to the Strategic Export Control Section of any shipment suspected of contravening export controls;
- h) contacting exporters to advise of detained shipments or to obtain additional information about goods to be exported;
- i) issuing Administrative Monetary Penalties (AMPs), or initiating seizures with or without terms of release, depending on the circumstances;
- j) notifying RIOs and/or Intelligence offices of suspected shipments of weapons of mass destruction, related materials or significant export-related detentions, seizures or queries;
- k) reporting the outcome of interceptions of all lookouts, alerts and targets to the issuer and/or via an ICES Notepad entry and/or ORS Report;
- l) providing support to the RIO for export-related intelligence collection;
- m) referring serious export violations to their regional Investigations section for further investigation and potential prosecution (via the RIO unless local procedures state otherwise); and
- n) being prepared to appear in court and testify as a crown witness, in their export control enforcement activities.

**CBSA Superintendents**

36. CBSA superintendents who oversee export control teams are responsible for:
- a) providing guidance and support to CBSA officers;
  - b) ensuring compliance with all policies and procedures;
  - c) ensuring the timely circulation of all intelligence reports, lookouts, alerts, and targets;
  - d) implementing and coordinating special projects, along with the RIO; and
  - e) ensuring the flow of intelligence between the export control team and the RIO is maintained.



### Regional Intelligence Officers

37. Regional intelligence officers (RIOs) assigned to the export control portfolio are responsible for:
- a) cultivating sources and informants with information about suspected violations of export legislation;
  - b) issuing and maintaining lookouts;
  - c) ensuring compliance with policies and procedures;
  - d) implementing and coordinating special projects;
  - e) assisting in gathering evidence in support of export violations;
  - f) being prepared to appear in court and testify as a crown witness regarding export control enforcement activities;
  - g) receiving, analyzing, and disseminating intelligence in a timely manner on companies and individuals known or suspected to be involved in illegal export activities;
  - h) maintaining open communication with CBSA managers, superintendents and officers;
  - i) providing functional guidance, training and advice to export control teams;
  - j) developing and maintaining effective working relationships with other agencies involved in Canada's counter proliferation efforts (i.e. RCMP, CSIS etc);
  - k) liaising with the Strategic Export Control Section; and
  - l) liaising with the CBSA investigations division when an exporter is under investigation or an exporter may be prosecuted because of a *Customs Act* or *EIPA* offence.

### Regional Intelligence Analyst

38. The regional intelligence analyst is responsible for analyzing tactical, operational and strategic intelligence data and preparing intelligence reports on trend analysis.

### Strategic Export Control Section, Enforcement Branch

39. The Strategic Export Control Section, is responsible for:

- a) providing functional guidance and direction to regional export control teams;
- b) coordinating all communications between CBSA and the Department of Foreign Affairs and International Trade (DFAIT), Statistics Canada, the Canadian Nuclear Safety Commission, the Department of National Defence and other federal or international entities involved in controlling exports;
- c) providing intelligence liaison between CBSA and the headquarters of the RCMP, CSIS and the Department of National Defence in counter proliferation matters;
- d) receiving, analyzing and disseminating intelligence in a timely manner on companies and individuals, known or suspected, to be involved in illegal export activities;
- e) developing guidelines, strategies and priorities for CBSA's export control program; and
- f) assisting in the development and delivery of training for both CBSA personnel and other agencies involved in counter proliferation.

### The Investigations Division, Enforcement Branch

40. The investigations division is responsible for:

- a) conducting investigations of alleged violations of the *Customs Act* and the *EIPA* and the *UN Act*;
- b) executing search warrants in support of investigations;
- c) working with DFAIT and the Department of Justice to initiate prosecutions;
- d) prosecuting alleged violators of the *Customs Act*; and
- e) assisting foreign border administrations with any Canadian components of their investigations of border offences; and

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- f) providing investigation-related training to export control teams and intelligence officers (e.g. how to handle physical evidence or how officer actions impact successful investigations and prosecutions).

### Export Controls Division, DFAIT (International Trade)

41. The Export Controls Division of DFAIT is responsible for:

- a) administering the export provisions of the *EIPA*;
- b) reviewing export permit applications received from exporters, and determining if a permit should be issued;
- c) consulting with other government departments concerning politically-sensitive or militarily-sensitive export permit applications;
- d) conducting technical assessments of export shipments detained by CBSA to determine if an export permit is required;
- e) consulting with CBSA regarding enforcement action in cases where an export shipment is determined to be in violation of the *EIPA*; and
- f) liaising with CBSA investigators in cases being considered for prosecution under the *EIPA*.

### The Department of Foreign Affairs and International Trade (Foreign Affairs)

42. The Department of Foreign Affairs and International Trade (DFAIT) is responsible for administering the *United Nations Act*, which imposes trade sanctions and liaising with CBSA investigators and/or the RCMP in cases being considered for prosecution under the *UN Act*.

## PROCEDURES

### Documentation Review

43. Not all goods require an export declaration. There are several formats in which an export declaration may be submitted to the CBSA. For details about documentary requirements for exports, please refer to Memorandum D20-1-1, *Export Reporting*. Additional details about documentary requirements for goods controlled under the *EIPA* can be found in Memorandum D19-10-3, *Export and Import Permits Act, Exportations*. Also see 19-11-1, *United Nations Act – Trade Sanctions*.

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44. When goods are tendered for export, officers should ensure that:
- a) all required documentation has been submitted for the shipment;
  - b) all documentation is complete; and
  - c) the documentation has been submitted to the CBSA in accordance with the reporting timeframes specified in the *Reporting of Exported Goods Regulations*.
45. Export documentation should be reviewed to ensure the shipment is in compliance with export control requirements. If an export permit has been presented, CBSA officers should compare the permit and export declaration to ensure the following:
- a) the permit has a permit number;
  - b) the permit is valid and has not expired;
  - c) the exporter and consignee named on the permit are the same as the exporter and consignee named on the export declaration;
  - d) the goods listed on the export permit are the same as those listed on the export declaration;
  - e) the quantity on the export declaration does not exceed the quantity listed on the permit;
  - f) the permit has been signed by a DFAIT permit officer; and
  - g) the value and quantity of the shipment is recorded on the permit.
46. In cases, where an export permit has been amended, a copy of the amendment letter must be presented with the export permit before the goods may be released.
47. Commercial shipments are often accompanied by additional documentation that may be reviewed by the CBSA officer to ensure the export is in compliance with Canadian legislation. This documentation may include ship manifests, air waybills, bills of lading, house bills, commercial invoices, certificates of origin, letters of credit, purchase orders and other documents showing information on shipping values, contents and destination. CBSA officers who detect a combination of any of the following documentary indicators should subject the shipment to additional scrutiny:

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Note: This list is not exhaustive – other documentary indicators may be detected.

- a) discrepancies between documents concerning the exporter, the consignee, the description of the goods or their final destination;
- b) exporter, consignee, freight forwarder or transportation company has been the subject of past enforcement action;
- c) exporter, consignee, freight forwarder or transportation company is the subject of a lookout;
- d) intelligence is available concerning the exporter, consignee, freight forwarder or transportation company;
- e) exporter's name is misspelled;
- f) a freight forwarder or transportation company is identified as the exporter;
- g) a freight forwarder, transportation company or trading company is identified as the consignee;
- h) an exporter or consignee is an individual, but a commercial quantity of goods is being shipped;
- i) an exporter's or consignee's business is not compatible with the nature of the goods being shipped (i.e. laboratory equipment being sent to a construction company);
- j) exporter's or consignee's address is incomplete or is listed as a P.O. Box, a residential address or the location of a mailbox rental business (i.e. Mailboxes Etc.);
- k) the consignee is located in a country appearing on the Area Control List, or in a risk country for diversion or transshipment;
- l) the goods are destined to a country, organization or facility of concern for weapons proliferation;
- m) the declared quantity, weight, value or insurance coverage is illogical or unusually high or low for the commodity being shipped;
- n) vague description of the goods;



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- o) there are indicators that goods are manufactured to military specifications;
- p) the packaging is incompatible with the nature of the goods;
- q) shipment is prepaid or cash paid;
- r) routing is geographically and/or economically illogical;
- s) instructions requiring "rush delivery" or "hold for pick up," or consignee contact instructions consisting of only a phone number; or
- t) transshipment costs are paid by a party not involved with the freight movement.

### Examination of Goods

- 48. A CBSA officer should examine goods, if he/she suspects that the goods are subject to export controls. The examination can be done because of a document review, a gamma-ray or VACIS scan or other information. The examination of the goods must be thorough and sufficient information must be collected to allow DFAIT to establish the control status of the goods.
- 49. The RIO will provide assistance in obtaining background checks or intelligence.
- 50. An export control examination should focus on physical indicators that can demonstrate whether or not the exporter contravened export legislation. Physical indicators may also be used to complement indicators found during a review of the export documentation. Physical indicators include:
  - a) commodity in the container is different than what is indicated on the export declaration or manifest;
  - b) one or more boxes are different from the rest of the shipment (packaging, colour, weight, size, shape, content);
  - c) special markings on boxes (i.e. underlining, tape, marker, words, names of cities or villages in another country than the declared destination, different consignee, different consignee address, indication of previous shipments including airway bill numbers);
  - d) excess boxes within the shipment;
  - e) contents are unusually bulky or heavier than declared;

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- f) unclaimed package;
  - g) inconsistent packaging within the shipment, or the packaging is unusual for declared commodity;
  - h) container type is inconsistent with declared commodity;
  - i) over-packaging;
  - j) discovery of other export or shipping documents within the container;
  - k) altered labels (i.e. appear removed, portions missing, sticker applied on top of label, origin markings on box exteriors are removed or disguised);
  - l) no markings as to the origin of the goods;
  - m) items appear to be altered (i.e. new screws on back cover, different heads on some screws); and
  - n) no technical literature with technological goods.
51. When conducting an examination, the examining officer must accurately record (preferably in the officer's notebook) the contents of the shipment. The officer's notes should include a description of the contents of each box within the examined shipment.
52. Useful information that may be gathered during an examination includes any technical literature found, markings of the goods (including manufacturer, model, name of item, serial numbers, manufacture date and origin), and documents or markings indicating that the shipment is destined to a place other than the one declared. Photographs should be taken where the pictures would identify attempts at concealment, or intent to circumvent controls.

### Detention of Goods

53. Goods may be detained, if there are indicators, from the documentation review or the physical examination, to suggest that the shipment is in contravention of export control requirements. For example, the following situations may lead to goods being detained:
- a) review of the export documentation indicates that the goods are subject to permit requirements and no permit was supplied;

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- b) the exporter presents an invalid permit, an expired permit, or a permit that appears to have been tampered with;
- c) examination reveals a discrepancy between the actual goods and the goods declared;
- d) the permit supplied does not cover the goods exported; or
- e) commodities are unknown to the CBSA officer and require further examination by a specialist to determine their control status.

54. The following procedures apply to the detention of goods tendered for export:

- a) after examination, seal the boxes, mark the tape and box with initials and badge number, and affix detention stickers to the shipment;
- b) create a manual K26 detention notice for signature by a representative at the warehouse, to ensure that they are aware of the detention and the goods are not released accidentally for export. If the warehouse where the detention was undertaken has a secure area to store CBSA detentions, have the freight moved to that location;
- c) input the detention into ICES and generate a K26 detention notice to provide to the exporter, if requested. If the detention is made at a non-automated port, prepare a detention package and number it according to the manual numbering sequence allotted by the port;
- d) fax the detention package to the Strategic Export Control Section and the RIO. The detention package includes the export declaration, supporting documentation, manifest, K26 Detention Notice, ICES printout, technical specifications and photographs, if available;

Note: Communication with the RIO varies by region and officers should follow the local operating procedures. For example, in some locations, the procedure is to send only significant cases to the RIO. In other locations, the procedure is to send only the ORS report rather than the full paper detention package.

- e) advise the exporter of the detention by telephone and send a copy of the K26 Detention Notice to the exporter by registered mail (or by fax, if a fax is requested);

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- f) the Strategic Export Control Section will provide all relevant information to DFAIT to obtain a determination of whether the goods are controlled under the *EIPA* (or *UNA*). If DFAIT requires additional information about the goods, this will be communicated to CBSA officers via the Strategic Export Control Section;
  - g) in some cases, CBSA officers may need to contact the exporter to obtain additional technical specifications or missing documentation;
  - h) CBSA officers should ensure the ICES narrative report is complete and contains sufficient detail to support allegations that an infraction has occurred; and
  - i) CBSA officers may discuss the file with the RIO for further findings to support the control status of the goods.
55. Detained goods remain under CBSA control pending determination of their control status and until all export control requirements have been met. There is no avenue of appeal available to the exporter while the goods are under detention.
56. If DFAIT assesses the goods are not controlled under the *EIPA* (or *UNA*), they may be released for export as long as all reporting and documentary requirements have been met.
57. To release the goods, a CBSA officer will sign the K26 Detention Notice to indicate that the shipment may be released for export, and arrangements should be made with the warehouse to have the goods re-enter the shipment process.

### Enforcement Actions with terms of release

58. CBSA officers may seize with terms of release or apply and administrative monetary penalty when:
- a) the *Customs Act* or the *EIPA* was contravened;
  - b) the Strategic Export Control Section has confirmed that release would not pose a security risk; and
  - c) no prosecution is pending.

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59. CBSA officers will apply an AMP up to the limit of \$25,000, or if the limit is exceeded, seize the goods and offer terms of release. Officers will calculate the amount to be paid using the same calculation method as would be used if an AMP was applicable.

### Releasing the goods for export

60. CBSA officers will release goods for export when:
- a) export permits have been obtained, and the exporter has provided all necessary documentation to DFAIT and CBSA; and
  - b) the exporter has paid the terms of release for any applicable seizure.
61. Do not release goods for export when they have been seized with no terms of release.

### Releasing the goods to the exporter

62. In some cases, an exporter may decide not to complete their export transaction once he/she learns that an export permit is required for the goods under detention.
63. CBSA officers will return the goods if:
- a) the exporter requests to retract the export; and
  - b) the goods were not seized with no terms of release.
64. If the goods are to be returned, CBSA officers will follow the following steps:
- a) if the local operating procedure so specifies, request that the exporter sign a withdrawal request as per the following example.

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Canada Border Services Agency  
Export Control Unit  
Address  
Phone and fax  
Date

REQUEST FOR EXPORT WITHDRAWAL OF GOODS UNDER  
DETENTION

This is to request the return of goods, manifested on air waybill # \_\_\_\_\_ and detained under detention # \_\_\_\_\_. It is understood that these goods are controlled under the *Export and Import Permits Act* and an Export Permit is required from International Trade Canada, Export Control Division, 125 Sussex Drive, E, C-6 (EPE), Ottawa, Ontario, K1A 0G2, (613) 996-2387. Therefore, it is agreed that there will be no attempt to export these goods or similar goods in the future without the required Export Permit.

Date  
Company Name  
Position  
Name  
Signature

- b) if not already done, issue any applicable AMP (or seizure with terms of release if the AMP exceeds \$25,000);
- c) advise all parties of the decision to withdraw;
- d) terminate the detention and release the goods back to the exporter, prior to payment of the AMP or after payment of the terms of release of a seizure;
- e) write on the waybill and the K26 Notice of Detention that the shipment may be returned to the exporter, but export is not permissible;
- f) if a Request for Export Withdrawal was signed, fax a copy of the form to the Export Control RIO and the Strategic Export Control Section and keep the original on file to support future enforcement actions should a CBSA officer find that the exporter is attempting to export like goods, through the same or another carrier, without proper documentation.

### Seizing goods as forfeit

65. CBSA officers will seize as forfeit and apply an AMP for contraventions C025, C031, C345, C346 and C348, C354, C358, C398, C360 C361, C366 and C367 when the following goods are involved:
  - a) Strategic goods whose export would cause a security risk as determined by the Strategic Export Control Section;
  - b) Firearms and all goods classified under tariff item 9898.00.00 (prohibited weapons, devices, munitions, and parts or components); and
  - c) Alcohol, tobacco, drugs or child pornography.
66. CBSA officers will seize goods as evidence when advised to do so by the Investigation Division, who will first consult with the Strategic Export Control Section.
67. The following steps should be taken, if seizure with no terms of release is under consideration:
  - a) the Strategic Export Control Section will receive a determination from DFAIT which states that the goods in question are controlled under the *EIPA* or *UNA* and require a permit for export;
  - b) if appropriate, the Strategic Export Control Section will discuss the case with DFAIT and seek concurrence for seizure as forfeit;
  - c) the Strategic Export Control Section and RIO will involve the Investigations Division early in the process. Investigations will advise on the correct procedures to follow to ensure viable evidence. Investigations will also provide functional guidance to the CBSA officers and RIO's to ensure no CBSA officers inadvertently request and obtain information outside the auspices of legal search under the Charter of Rights and Freedoms. Despite best intentions, this could jeopardize a successful prosecution;
  - d) DFAIT will provide the Strategic Export Control Section with written confirmation that they would like the goods to be seized with no terms of release. The Strategic Export Control Section will provide a copy of this written request to the CBSA officer, who will complete the seizure process;
  - e) CBSA officers will gather all available information concerning the nature of the infraction, any past enforcement actions involving the exporter,

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and any other information that would support prosecution of the exporter;

- f) CBSA officers will complete a Notice of Penalty Assessment or a seizure report in ICES and generate a K19 Seizure Receipt;
- g) When the goods are seized as evidence, the CBSA officer will also complete an E352 Evidence of Seizure Receipt which states that the goods have been seized under section 489(2) of the Criminal Code, or section 110 of the *Customs Act*, as it is believed on reasonable grounds that the goods will afford evidence of an offence;
- h) CBSA officers will contact the warehouse and inform them that the goods are under seizure, providing a copy of the K19 receipt as required;
- i) CBSA officers will arrange for storage of the goods in accordance with regional procedures;
- j) CBSA officers will contact the exporter or his/her agent and inform them that the goods have been seized with no terms of release and provide a copy of the K19 and E352 via fax and registered mail; the *Customs Act* seizure can be appealed and the K19 will provide the exporter with information concerning procedures and timeframes for appeal;
- k) CBSA officers will forward a copy of the seizure package to the RIO for review and follow-up;
- l) the RIO officer will forward a copy of the seizure package to the Customs Investigations Division

Note: The file is generally referred through the RIO to avoid duplication, but in some locations, the CBSA officer contacts the investigator directly.



### *United Nations Act Contraventions*

68. Procedures for offences under the *UNA* can differ from offences under the *EIPA* in that either the CBSA or RCMP may prosecute the offences. Where DFAIT has determined that there is an infraction of the *United Nations Act*, DFAIT will inform the Strategic Export Control Section, who will then inform the RIO. The RIO will inform the Customs Investigations Division. DFAIT will also inform the Department of Justice Legal Branch of their findings. The Department of Justice and the Royal Canadian Mounted Police (RCMP) may proceed with the execution of a seizure, laying of charges and prosecution for offences under the *United Nations Act*. The CBSA officer must cancel the detention notice with a K129 Exhibit Control Form, which authorizes the transfer of the goods to the RCMP. The RCMP will then document the seizure under the *UNA*.

### **Ascertained Forfeiture after export**

69. In some cases, document verification will occur after the goods have been exported from Canada. If an exported shipment is suspected of being controlled, a copy of all available documentation should be forwarded to the Strategic Export Control Section with a request to query DFAIT concerning the control status of the goods.
70. If, based on the available documentation, the queried goods are determined to be controlled under the *EIPA*, AMPs or ascertained forfeiture may be applied in respect of the shipment. Ascertained forfeitures rely on a different standard of evidence, and require guidance from the Customs Investigations Division when they are being considered.

### **REFERENCES**

71. *Customs Act*  
*Export and Import Permits Act*  
*United Nations Act*  
D19-10-3, *Export and Import Permits Act*, Exportations  
D19-11-1, *United Nations Act* – Trade Sanctions  
D20-1-1, Export Reporting  
D22-1-1, Administrative Monetary Penalty System

## **CUSTOMS ENFORCEMENT MANUAL**

### **Part 2**

### **ENFORCEMENT PRIORITIES**

#### **Chapter 14**

#### **CHILD PORNOGRAPHY**



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## POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to interdict suspected child pornography material, in accordance with the provisions set out in the *Customs Act*, the *Customs Tariff*, the *Criminal Code of Canada* and court jurisprudence. This policy addresses only the issue of child pornography. Obscenity and hate propaganda are addressed separately in Part 2, Chapter 8 of this manual.
2. It is the policy of the CBSA to give preference to prosecution under the *Criminal Code* rather than prosecution under the *Customs Act* due to the extremely serious nature of the crime, however there are some situations where *Customs Act* charges may be laid.

## AUTHORITIES

### *Customs Act*

3. Section 98 – Authorizes officers to search any person who has arrived in Canada, or who is about to leave Canada, if the officer has reasonable grounds to suspect that the person has secreted on or about his person anything that would be considered contraband.
4. Section 99 – Authorizes an officer to examine goods by opening, or causing to be opened, any container or package and may take a reasonable amount as a sample.
5. Section 101 – Authorizes officers to detain goods which 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.
6. Section 107 – Authorizes provision, use, and disclosure of customs information to prescribed persons under prescribed circumstances.
7. Section 110 – Authorizes officers to seize goods and conveyances that they believe, on reasonable grounds, are in contravention of the *Customs Act* or the associated regulations; also authorizes seizure of anything that they believe will afford evidence of the contravention.

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**Child Pornography**

8. Subsection 119.1(1) stipulates that the Minister may authorize an officer to sell, destroy or otherwise deal with goods that have been seized under the *Customs Act*.
9. Section 142 – Authorizes the disposal of abandoned or forfeit goods in accordance with specific guidelines.
10. Section 159 – Makes it an offence to smuggle into Canada, whether clandestinely or not, any goods the importation of which is prohibited, controlled or regulated by or pursuant to the *Customs Act* or any other Act of Parliament.
11. Section 160 – Contains the general offences and punishments relating to violations under the Customs Act.

***Customs Tariff***

12. Section 136 - Stipulates that all goods enumerated or referred to in Tariff Item No. 9899.00.00 are prohibited entry into Canada.
13. Tariff Item 9899.00.00 - Includes all photographic, film, video or other visual representations, including those made by mechanical or electronic means, or written material, that are child pornography within the meaning of section 163.1 of the *Criminal Code*.

***Criminal Code***

14. Subsection 7(4.1) – deems sexual offences against children committed outside of Canada (including “child sex tourism”), to be committed in Canada.
15. Subsection 163.1(1) – Defines child pornography as:
  - a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means;
  - i) that shows a person who is or is depicted as being under the age of 18 years and is engaged in or is depicted as engaged in explicit sexual activity, or
  - ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of 18 years; or

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- b) any written material or visual representation that advocates or counsels sexual activity with a person under the age of 18 years that would be an offence under this Act; or
  - c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act; or
  - d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act.
16. Subsection 163.1(6) – Provides defence for a “legitimate purpose related to the administration of justice or to science, medicine, education or art” and “does not pose an undue risk of harm to persons under the age of eighteen years”.
17. Subsections 163.1(2), (3), (4), (4.1) – State that it is an offence to make, distribute, sell possess, or access child pornography.
18. Subsection 172.1(1) – States that it is an offence to use a computer to communicate with children for the purpose of facilitating the commission of a sexual offence.

**PURPOSE AND SCOPE**

19. The purpose of this policy is to outline the CBSA’s position with respect to its role in the interception, identification, detention, disposal and investigation of offences relating to the importation of child pornography.
20. This policy applies to all employees of the CBSA and relates to goods entering Canada through all modes.

**BACKGROUND**

21. Section 163.1 of the *Criminal Code* was created to make it an offence to possess and/or import material determined to be child pornography. The *Custom Tariff* was also amended to complement the changes to the *Criminal Code* with respect to child pornography. In February 1997, the World Customs Organization declared child pornography to be “contraband”.

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## Child Pornography

22. Since the inception of section 163.1 in 1993, several Bills have been passed in the House of Commons resulting in Criminal Code amendments relating to child pornography and child sexual exploitation. These Acts were passed with the objective of further protecting children from exploitation.
23. Bill C-27, "An Act to Amend the Criminal Code" in relation to child prostitution, child sex tourism, criminal harassment, and female genital mutilation, was proclaimed into force on July 27, 1997. Bill C27 extended the jurisdiction of the already existing child sex and child pornography laws making all of them extraterritorial.
24. Enacted July 23, 2002, Bill C-15A brought into force child exploitation laws dealing with two main issues:
  - a) Child pornography on the Internet, making it an offence to transmit or send child pornography from one person to another, post or link to child pornography on a website, and export child pornography;
  - b) Using the Internet to lure children.
25. Bill C-2, which came into force November 1, 2005, broadened the definition of child pornography to include both written and audio material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of 18 years that would be an offence under the *Criminal Code*. As a result, written material no longer has to advocate or counsel illegal sexual activity with a person under the age of 18 to fall under the definition of child pornography.

## POLICY GUIDELINES

26. Determinations of intercepted suspected child pornography material are to be made regionally by specialized units of responding police agencies who are considered "legal subject matter experts". Officers should contact their Regional Intelligence Officer (RIO) for assistance in this regard. However, the Prohibited Importations Unit may assist by offering tariff classification guidance in cases of grey area material.
27. CBSA officers should contact their Regional Intelligence Officer (RIO) if they require assistance in dealing with suspect child pornography.
28. Depictions of child pornography include material that visually represents children (or persons being depicted as being under the age of 18) showing



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## Child Pornography

a sexual organ or the anal region as the dominant characteristic of the image, for a sexual purpose.

Note: The material must be sexual in nature. The material must be of a nature that no other reasonable purpose could be attributed, other than the exploitation of children or persons being depicted as being under the age of 18, for sexual purposes.

29. It is not necessary for individuals to actually be under the age of 18 in order for the material to be classified as child pornography. If an individual is depicted as a juvenile (i.e., visually represented as being under 18 years of age), the material may still fall within the child pornography guidelines. This aspect of child pornography is called "dress-down" and involves visual representation whereby an adult has been made to appear to be a juvenile.
30. The following will generally constitute child pornography:
  - a) depictions of sexual activities involving children or juveniles;
  - b) descriptions that advocate or counsel sexual activities with children, that is which actively induce, promote or encourage the practice of sexual relations with children, or contend that such relations are a healthy part of the sexual and social development of children; or
  - c) written and audio material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under the *Criminal Code*.
31. While it is the policy of the CBSA to interdict and seize all material suspected and determined to be child pornography, prosecutions will not necessarily ensue in all instances.

## TARGETING

32. Effective targeting is an essential element in ensuring the identification of suspect child pornography.
33. CBSA officers must use all available tools in targeting child pornography. Targeting is to be based primarily on known importers, exporters, known export locations (specific addresses or geographical areas), the nature of the goods being imported (commodities known to be suspect) and/or information disseminated through regional or headquarters intelligence channels.

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**Child Pornography**

34. Officers should also be aware of high-risk geographical locations for child sex tourism.

## ROLES & RESPONSIBILITIES

### CBSA Officers

35. CBSA officers are responsible for:

- a) selecting and examining shipments that meet the criteria as suspect child pornography or that are the subject of a lookout or that are selected randomly for examination;
- b) referencing, as required, all departmental databases (e.g. the Integrated Customs Enforcement System (ICES)), in order to check the exporter, enforcement history and other relevant information in order to support a determination of child pornography;
- c) contacting the RIO in order to report the finding of suspect child pornography, as well as regional investigators where local standard operating procedures dictate;
- d) completing the Notice of Detention (K26) in instances where the officer is unsure about the classification of material as it relates to child pornography or further examination is required;
- e) completing the Customs Seizure Receipt (K19), Evidence Seizure Receipt (E352) and *Exhibit Control* (K129) forms, when material is determined to be child pornography; and
- f) completing Occurrence Reporting System (ORS) reports, with specific details pertaining to the subject(s) of interest, for all attempted importations of suspected child pornography material.

### Regional Intelligence Officers

36. Regional Intelligence Officers are responsible for:

- a) acting as the first point of contact between the officer at the point of entry and domestic and international law enforcement agencies;
- b) assisting officers to acquire legal determinations of suspected child pornography material from subject matter experts within responsible police agencies in the regions;
- c) assessing the validity and level of risk associated with current intelligence pertaining to importation of child pornography;

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## Child Pornography

- d) identifying and targeting high risk traffic to maximize interceptions;
- e) issuing regional lookouts for medium-risk to high-risk importations and maintaining files which specifically show the link(s) to previous ruling(s) related to child pornography, and/or current intelligence;
- f) maintaining lookouts;
- g) when appropriate, contacting and consulting with Investigations;
- h) follow-up on all interceptions of material featuring child pornography by contacting the appropriate police agency;
- i) working closely with and supporting domestic police and foreign customs agencies and police in targeting suspected offenders and coordinating controlled deliveries with police agencies on behalf of the CBSA;
- j) reviewing all ORS reports in regards to suspicious incidents and/or subjects of interest relating to child pornography or child sexual exploitation; and
- k) completing and maintaining IMS files on significant interceptions of child pornography material.

### Regional Intelligence Analysts (RIA)

37. Regional Intelligence Analysts are responsible for:

- a) setting importation targets in automated and/or manual systems for medium-risk to high-risk importations and maintaining records showing the link(s) to previous ruling(s) related to child pornography, and/or current intelligence; and
- b) removing importation targets when the risk is no longer deemed to be medium to high.

### CBSA Investigators

38. CBSA Investigators are responsible for:

- a) liaising with their Director, RIO's, the Prohibited Importations Unit and law enforcement agencies;
- b) conducting investigations regarding *Customs Act* violations;

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- c) laying charges under the *Customs Act* when warranted;
- d) consulting the Royal Canadian Mounted Police (RCMP) and other enforcement agencies to identify opportunities for joint investigations on a case-by-case basis; and
- e) providing feedback to officers regarding the results of referrals.

### Headquarters – Prohibited Importations Unit (PIU)

39. The Prohibited Importations Unit is responsible for:

- a) providing advice and guidance on the distinction between child pornography and obscenity; and
- b) in instances where the classification of suspected material is not immediately clear, providing opinions on the classification of material as child pornography under *Customs Tariff* Item 9899.00.00, once the suspect material has been properly detained on a Form K26.

### Headquarters – Enforcement Branch, Field & Partnership Liaison Section (FPLS)

40. The FPLS section is responsible for the national coordination of the CBSA's child pornography program. The national coordinator is responsible for:

- a) providing field support to regional intelligence offices, including provision of information relating to departmental policy, legislative and legal amendments, significant seizures, emerging issues, enforcement initiatives and trends; and
- b) facilitating communication as liaison to foreign and domestic bodies.

## PROCEDURES

### Accompanied Goods

41. CBSA officers should conduct a routine primary questioning and/or examination. If there is reason for suspicion, the individual and goods should be referred for a progressive examination.

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## Child Pornography

42. CBSA officers may examine laptop computers or other electronic storage devices ( e.g. digital cameras, MP3 players) as part of a routine secondary examination. This could include opening the laptop, turning it on and perhaps calling up a few files. Officers may also play any disks (e. g CDs, DVDs, floppies, cassettes, etc.) However, officers must keep in mind that just turning on a laptop could result in evidence being lost, through no fault of the officer. It is critical that evidence be preserved in order to enable prosecution of offenders and identification of victims. These devices should only be examined to the extent necessary to determine if they are admissible or should be detained/seized. More extensive examinations must be conducted by someone qualified in computer forensics do a proper search of the system.
43. When a traveller is found to have one electronic device with (suspected) child pornography, consideration should be given to detaining other electronic devices in their possession.
44. In cases where the examination reveals that the goods are suspected child pornography, or that there is child pornography on the importer's laptop, camera, MP3 player, disk, books, etc., the Regional Intelligence Officer (RIO) should be notified immediately. If the goods are determined to be child pornography, they are subject to seizure with no terms of release. The importer does **not** have the option of abandoning or exporting the goods. Books containing child pornography are considered goods.
45. When a determination of child pornography can be made at the time of importation, the individual may be arrested and the suspect child pornography and child-pornography containing devices (including power cords) may be immediately seized, isolated and secured in such a manner so as to preserve the chain of evidence. Only items that have been viewed, and found to contain or be child pornography should be documented on the K19 Customs Seizure Receipt. It is up to the police to decide what other items they want documented on the E352 Seizure of Evidence Receipt and transferred to their responsibility on the K129 Exhibit Control form. Officers should ensure that full descriptions of the traveler, the prohibited material and the circumstances of the situation are included in their customs notebook. Following the arrest, the police must be contacted.
46. If the police have not seized the devices as evidence because they do not intend to prosecute, and the devices are determined by the CBSA to contain child pornography, terms of release may be offered on the devices if the pornography is removed. An expert, at the importers expense, must do the removal.

47. When the determination of child pornography involves an unreasonable delay, the individual should be permitted to leave, once his/her identity, residence and destination have been established and all other customs procedures have been completed. The suspect goods and devices (viewed and not viewed), should be detained, using a form K26, *Notice of Detention*, pending classification. This should also be the procedure in cases where CBSA officers are uncertain about whether the goods fall under the *Criminal Code* definition (i.e. the age of the subjects in the suspect material are thought to be under eighteen, but the officer cannot be certain). Officers should ensure that full descriptions of the traveler, the prohibited material and the circumstances of the situation are included in their customs notebook. The RIO should be immediately advised of the detention and should assist in ensuring the proper classification of the materials as quickly as possible.

Note: The form K27, *Notice of Detention/Determination*, is **not** to be used to detain suspect child pornography. The K27 is for obscenity and hate propaganda only and the final determination offers the importer the option to export. It is not the agency's policy to allow the export of child pornography.

48. Once the material is determined to be child pornography, the goods, books and devices that contain the material are seized (including power cords, items that were not viewed etc.). The seizure of child pornography is made under the *Customs Act* using an allegation of non-report (section 12) or untrue statements (section 13). The seizure must be documented on a form K19, *Customs Seizure Receipt*. The forms E352, *Evidence Seizure Receipt*, and K129, *Exhibit Control*, must also be completed when the material, books or devices are turned over to a police force to be used as evidence of an offence under the *Criminal Code*. See Part 5, Chapter 3 *Criminal Code* Seizure of Evidence and Goods. The E352 Evidence Seizure Receipt may contain more items than the K19 Customs Seizure Receipt if the police chose to seize more than what the CBSA could determine contained child pornography.
49. There will be instances when goods, such as laptops, digital cameras, or DVDs, etc. are found to contain both suspected child pornography and obscene material. In these instances, CBSA officers should deal with the suspected child pornography first, due to the fact that it is a serious *Criminal Code* offense, by detaining and documenting the goods on a form K26, *Notice of Detention*. If it is later determined that the suspect material is not child pornography, but obscene material is still present on the laptop, digital camera, DVD, etc., then the goods should be re-documented on a Form K27, *Notice of Detention/Determination* and dealt with in accordance with

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## Child Pornography

Memorandum D9-1-17 and the Enforcement Manual Part 2, Chapter 8  
Obscenity and Hate Propaganda.

### Unaccompanied Goods

50. Unaccompanied shipments are those that arrive outside of the presence of the importer, generally via the postal or courier streams.
51. CBSA officers should conduct a routine primary examination. If there is reason for suspicion, the goods should be referred for a progressive examination. In the case of mail, it may only be opened when the officer has reasonable grounds to believe that it contains goods which must be classified under the *Customs Tariff*, which includes prohibited goods.
52. In cases where the examination of goods (e.g. books, magazines, videos, etc.) reveals that suspected child pornography may be present:
  - a) isolate and secure the goods so as to preserve the chain of evidence;
  - b) retain all wrappers, envelopes, etc., relating to the goods;
  - c) note full descriptions and circumstances in the customs notebook;
  - d) detain the goods on form K26, Notice of Detention, pending determination;  
  
Note: The form K27, Notice of Detention/Determination, is **not** to be used to detain suspect child pornography. The K27 is for obscenity and hate propaganda only and the final determination offers the importer the option to export. It is not the agency's policy to allow the export of child pornography.
  - e) notify the RIO as soon as possible;
  - f) request assistance in obtaining the determination, if necessary; and
  - g) do not send the Notice of Detention to the importer prior to contacting the RIO.
53. If the goods are determined to be child pornography:
  - a) seize the goods for non-compliance with the *Customs Act*;
  - b) document the seizure on a form K19, *Customs Seizure Receipt*;



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## Child Pornography

- c) use the allegation “untrue statement” on seizure documentation if the material forms part of a declared book, magazine etc. but otherwise use the allegation “non-report”.
  - d) apply Administrative Monetary Penalty (AMP), in addition to a seizure if the enforcement action is against a commercial entity;
  - e) in the postal stream, issue the seizure and AMP to the exporter but if there is evidence that confirms that the importer knowingly imported the suspected child pornography material, the importer should be named as an associate in the seizure documentation; and
  - f) send a copy of the seizure documentation to the RIO.
54. If the material is turned over to a police force to be used as evidence of an offence under the *Criminal Code*;
- a) complete form E352, Evidence Seizure Receipt; and
  - b) complete form K129, Exhibit Control.
- Note: See Part 5, Chapter 3 *Criminal Code* Seizure of Evidence and Goods.
55. If the prohibited goods are part of a multiple item shipment, no action is to be taken to forward any portion of the shipment and/or to notify the importer of the seizure action until advised to do so by an RIO. A controlled delivery may be attempted.
56. There will be instances when goods, such as laptops, digital cameras, or DVDs, etc. are found to contain both suspected child pornography and obscene material. In these instances, CBSA officers should deal with the suspected child pornography first, due to the fact that it is a serious *Criminal Code* offense, by detaining and documenting the goods on a form K26, *Notice of Detention*. If it is later determined that the suspect material is not child pornography, but obscene material is still present on the laptop, digital camera, DVD, etc., then the goods should be re-documented on a form K27, *Notice of Detention/Determination* and dealt with in accordance with Memorandum D9-1-17 and the Enforcement Manual Part 2, Chapter 8 Obscenity and Hate Propaganda. .

## Prosecutions

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**Child Pornography**

57. When child pornography is intercepted, the case will be referred to the appropriate police agency for prosecution pursuant to the *Criminal Code*.
58. In addition to *Criminal Code* charges by the responsible police agency, *Customs Act* charges for smuggling child pornography may be pursued by Investigations. The appropriate course of action will be jointly determined by the police, Investigations, and the Department of Justice on a case-by-case basis.
59. When a person is found smuggling or attempting to smuggle child pornography into Canada, that person may be arrested as per section 495 of the *Criminal Code*.
60. Where local Standard Operating Procedures (SOP's) advise that Investigations are to be contacted directly, officers are responsible for informing the RIO of the occurrence and completing an occurrence report via the Occurrence Reporting System (ORS).
61. Where there is a potential for intelligence to be gleaned from a child pornography interdiction, the RIO is to be notified at the time of the occurrence.
62. Enforcement of the *Criminal Code* remains the responsibility of the police. Regional Investigations and Intelligence and Contraband offices are to work closely with the police to establish local protocols for dealing with child pornography offences.

**LEGISLATIVE AND POLICY REFERENCES**

63. *Customs Act*  
*Customs Tariff Act* and its *Schedule* (Section XXI)  
*Criminal Code*  
*Canadian Charter of Rights and Freedoms*  
Departmental Memorandum D9-1-17  
The Policy on Analysis (Intelligence Process)  
The Traveler Processing Manual (Part 9, Chapter 3)



**ENFORCEMENT MANUAL**

**Part 2**

**ENFORCEMENT PRIORITIES**

**Chapter 14**

**CHILD PORNOGRAPHY**

**APPENDIX A**

**STANDARD OPERATING PROCEDURE**



**EN Part 2 Chapter 14**  
**APPENDIX A**

**Child Pornography**

**PURPOSE**

The purpose of these *Standard Operating Procedures* are to provide a quick reference, based on the *CBSA Enforcement Manual, Part 2, Chapter 14*, to guide all employees of the CBSA in the identification, detention, and seizure of child pornography.

**WHAT IS AND IS NOT CHILD PORNOGRAPHY**

What <b>is</b> child pornography?	What is <b>not</b> child pornography?
<p><b>Visual representations, written material, or audio recordings that depict:</b></p> <ul style="list-style-type: none"> <li>Children (or persons being depicted as being under the age of 18) showing a sexual organ or anal region for a <b><u>sexual purpose</u></b>.</li> <li>Children engaged in explicit sexual activity (an example is a fully clothed child performing oral sex on an adult).</li> </ul>	<p>Visual representations, written material, or audio recordings that depict:</p> <ul style="list-style-type: none"> <li>Children in the bathtub.</li> <li>Nude children on the beach.</li> <li>Children being potty trained.</li> <li>Children wrestling naked.</li> <li>Naked children in a swimming pool.</li> </ul>

**Age Indicators**

Always consider the following age indicators and be sure that they are noted in your notebook, seizure narrative, and “will say” statement:

## STANDARD OPERATING PROCEDURES

All actions taken during the examination and seizure process should be completed with the objective of a successful enforcement action and prosecution against the individual(s).

Electronic evidence is easily altered and file artefacts (created, modified, and accessed dates) necessary to establish knowledge and control of the material will be overwritten by booting up the computer and viewing files. Take notes of all actions performed while searching electronic evidence.

### Accompanied Goods

Passwords should be requested and noted prior to the examination of electronic devices.

### Child Pornography determined

When child pornography has been positively identified and is in the possession of the individual:

- a. Secure and isolate the goods to preserve the chain of evidence.
- b. Arrest and read rights and cautions to the individual in possession of child pornography.
- c. Advise that the prohibited goods are under seizure.
- d. Advise the superintendent.
- e. Contact RIO and/or Criminal Investigations depending on local operating procedures. Contact local police, if necessary.
- f. Use latex gloves and anti-static bags to preserve evidence.
- g. Remove batteries from devices prior to securing in separate evidence bags to ensure devices cannot connect to wireless network; some devices may lose data when the battery is disconnected; consult Criminal Investigations if uncertain.
- h. If anti-static bags are not available, use paper envelopes for items sensitive to static electricity – e.g. hard drives.
- i. Seal anti-static bag or paper envelope in an evidence bag.
- j. Use separate evidence bags for laptops, cameras, cell phones, etc; ensure that all power cords, batteries etc., for the devices are included.
- k. Take detailed notes (for a list of indicators refer to page 7):
  - Circumstances of situation
  - Full description of individual
  - Time of discovery

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**APPENDIX A**

**Child Pornography**

- Type of commodity
- Nature of sexual act
- Detection tool used
- Record file name and path of image
- Comments made implicating ownership, origin of the material, etc.
- l. Check available databases (ICES, PIRS, CPIC, FOSS, NCIC) for individual's history.
- m. Turn individual over to responding officer, whether Investigator or police (be sure to have considered the individual's admissibility under IRPA).
- n. Forms to be completed:
  - K19 Seizure Receipt
  - E350 Search and Arrest
  - K153 Significant Seizure Report
  - E352 Evidence Seizure Receipt
  - K129 Exhibit Control
  - K127 Notice to Crown Counsel (not necessary if goods are turned over directly to a CBSA Investigator).
- o. Write a "will say" statement prior to the arrival of the responding officer, whenever possible, but no later than shift end.
- p. Complete Occurrence Reporting System (ORS) reports.

**Child Pornography pending determination**

When the determination of child pornography requires clarification to ensure the depiction(s) meet the definition of child pornography (s. 163.1, Criminal Code of Canada, see Appendix B):

- a. Secure and isolate the goods to preserve the chain of evidence.
- b. Detain the individual, read rights and cautions, and interview accordingly.
- c. Advise the superintendent.
- d. Contact RIO and/or Criminal Investigations depending on local operating procedures. If possible, consult with local police.
- e. Continue examination in search of an identifiable depiction of child pornography. Be sure to use latex gloves to preserve evidence.
- f. Examine all accompanying laptops, cameras, cell phones, etc; ensure that all power cords, batteries etc., for the devices are included.
- g. Take detailed notes (for a list of indicators refer to page 7):
  - Circumstances of situation



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## Child Pornography APPENDIX A

- Full description of individual
- Time of discovery
- Type of commodity
- Nature of sexual act
- Detection tool used
- Record file name and path of image
- Comments made implicating ownership, origin of the material, etc.
- h. Check available databases (ICES, PIRS, CPIC, FOSS, NCIC) for individual's history.
- i. Obtain as much information as possible about where the individual lives and, if a visitor, where they will be while in Canada; make copies of all identification documents.
- j. If depictions cannot be clearly determined as child pornography, and indicators do not warrant further forensic examination, release the individual and their goods.
- k. If indicators warrant a forensic examination, (for example, encryption present, filenames indicative of child pornography but not able to open), in consultation with Criminal Investigations, detain the device(s) using form K26, forward the device to Criminal Investigations using form K129, and release the individual.
- l. Complete an ORS report.

### Unaccompanied Goods

#### Child Pornography determined

When child pornography has been positively identified and the individual is not present:

- a. Secure and isolate the goods to preserve the chain of evidence.
- b. Use latex gloves and anti-static bags to preserve evidence.
- c. Remove batteries from devices prior to securing in separate evidence bags to ensure devices cannot connect to wireless network; some devices may lose data when the battery is disconnected; consult Criminal Investigations if uncertain.
- d. If anti-static bags are not available, use paper envelopes for items sensitive to static electricity – e.g. hard drives.
- e. Seal anti-static bag or paper envelope in an evidence bag.
- f. Advise the superintendent as soon as practicable.
- g. Contact RIO and/or Criminal Investigations depending on local operating procedures. Contact local police, if necessary.
- h. Use separate evidence bags for laptops, cameras, cell phones, etc; ensure that all power cords, etc., for the devices are included.
- i. Take detailed notes (for a list of indicators refer to page 7):

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**APPENDIX A**

**Child Pornography**

- Circumstances of situation
- Time of discovery
- Type of commodity
- Nature of sexual act
- Detection tool used
- Record file name and path of image
- Record any passwords
- j. Check available databases (ICES, PIRS, CPIC, FOSS, NCIC) for individual's history.
- k. Complete the appropriate forms:
  - K19 Seizure Receipt
  - K153 Significant Seizure Report
  - E352 Evidence Seizure Receipt
  - K129 Exhibit Control
  - K127 Notice to Crown Counsel (not necessary if goods are turned over directly to a CBSA Investigator)
- l. Complete Occurrence Reporting System (ORS) reports.

**Child Pornography pending determination**

When the determination of child pornography requires clarification to ensure the depiction(s) meet the definition of child pornography (s. 163.1, *Criminal Code of Canada*, see Appendix B):

- a. Secure and isolate the goods to preserve the chain of evidence.
- b. Continue examination in search of an identifiable image of child pornography. Be sure to use latex gloves to preserve evidence.
- c. Advise the superintendent.
- d. Contact RIO and/or Criminal Investigations depending on local operating procedures. If possible, consult with local police.
- e. Examine all accompanying laptops, cameras, cell phones, etc; ensure that all power cords, etc., for the devices are included.
- f. Take detailed notes (for a list of indicators refer to page 7):
  - Circumstances of situation
  - Full description of individual
  - Time of discovery
  - Type of commodity

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**Child Pornography  
APPENDIX A**

- Nature of sexual act
  - Detection tool used
  - Record file name and path of image
  - Record any passwords
- g. Check available databases (ICES, PIRS, CPIC, FOSS, NCIC) for individual's history.
- h. If depictions cannot be clearly determined as child pornography, and indicators do not warrant further forensic examination, release the goods.
- i. If indicators warrant a forensic examination, (for example, encryption present, filenames indicative of child pornography but not able to open), in consultation with Criminal Investigations, detain the device(s) using form K26, and forward the device to Criminal Investigations using form K129.
- j. Complete an ORS report.

INDICATORS

Accompanied Goods:

Unaccompanied Goods:

### DEFINITION OF CHILD PORNOGRAPHY

Section 163.1(1) of the *Criminal Code of Canada*.

A photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means;

- that shows a person who is or is depicted as being under the age of 18 years and is engaged in or is depicted as engaged in explicit sexual activity, or
- the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of 18 years; or
- any written material or visual representation that advocates or counsels sexual activity with a person under the age of 18 years that would be an offence under this *Act*; or
- any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this *Act*; or
- any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this *Act*.

**Office of Primary Interest:**

Enforcement and Corporate Programs Section  
Borders Enforcement Division  
Enforcement Programs Directorate  
Enforcement Branch  
Canada Border Services Agency  
[epe@cbsa-asfc.gc.ca](mailto:epe@cbsa-asfc.gc.ca)

## **CBSA ENFORCEMENT MANUAL**

### **Part 2**

## **ENFORCEMENT PRIORITIES**

### **Chapter 15**

## **TRAFFICKING IN PERSONS**

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## **POLICY STATEMENT**

1. CBSA's policy objective, as concerns TIP, remains consistent with its overall mandate of managing Canada's borders and fighting cross-border crime:
  - a) to detect instances of TIP;
  - b) to prevent suspected human traffickers from transporting potential victims of TIP (VTIP);
  - c) to assist in the safety and security of potential victims by referring them to appropriate government services; and
  - d) to support the investigation and prosecution of trafficking offenders.

## **DEFINITIONS**

2. Trafficking in Persons: TIP is a crime which involves the recruitment, transportation, or harbouring of persons for the purpose of exploitation (typically in the sex industry or for forced labour). TIP, and related conduct, is criminalized through three specific offences in the *Criminal Code* (see sections 279.01-279.03, as well as an offence under the *Immigration and Refugee Protection Act* (IRPA) (see sections A118, A120 and A121).
3. Human Smuggling: TIP is often confused with human smuggling. Human smuggling refers to the illegal movement of people across a border. Trafficked persons are always deprived of liberty when they arrive at their destination whereas smuggled migrants are free to go on arrival.
4. Temporary Resident Permit (TRP): Normally, persons who do not meet the requirements of the IRPA are refused permanent resident or temporary resident visas abroad, denied entry at a Port of Entry (POE), or refused processing within Canada. However, in some cases, there may be compelling reasons for a Citizenship and Immigration Canada (CIC) Officer to issue a TRP to allow a person who does not meet the requirements of the Act to enter or remain in Canada (see A24(1)). All potential foreign national VTIPs must be referred to CIC for an interview on immigration options including consideration of a TRP. The TRP provides a response to the vulnerable situation of certain foreign nationals who are victims of trafficking by providing them with a means of legalizing their status in Canada, where appropriate. The potential VTIP does not need to cooperate with a law enforcement investigation in order to receive a TRP referral to CIC.

## **AUTHORITIES**

### **Criminal Code**

#### 5. Key Criminal Code offences relevant to trafficking in persons:

- a) Passport forgery, s.57
- b) Fraudulent use of certificate of citizenship, s.58
- c) Keeping a common bawdy-house, s.210(1)
- d) Transporting a person to a bawdy-house, ss.211, 212(1)(f) & (g)
- e) Controlling or living off the avails of prostitution of another, s.212
- f) Administering stupefying thing for the purpose of illicit sex, s.212(1)(i)
- g) Living off the avails of the prostitution of a person under 18 years of age, ss.212(2) & (2.1)
- h) Obtaining or attempting to obtain the sexual services of a person under 18 years of age, s.212(4)
- i) Causing bodily harm or death by criminal negligence, ss.220 & 221
- j) Homicide, ss.222, 224, 226 & 229-236
- k) Uttering threats, s.264.1
- l) Assault, ss.265-268
- m) Sexual assault, ss.271-273
- n) Kidnapping, ss.279 (1) & (1.1)
- o) Forcible confinement, s.279(2)
- p) Child abduction (non-parental), ss.280 & 281
- q) Theft, ss.322 & 334
- r) Robbery, s.343-344
- s) Extortion, s.346 (1)
- t) Criminal interest rate, s.347
- u) Forgery and uttering forged documents, ss.366-368
- v) Fraud, s.380
- w) Criminal breach of contract, s.422
- x) Intimidation, ss.423 & 423.1
- y) Proceeds of crime, ss.462.3 & 462.31-462.49
- z) Conspiracy, s.465
- aa) Participation in criminal organization activities, s.467.11
- bb) Commission of offence for criminal organization, s.467.12
- cc) Instructing commission of offence for criminal organization, s.467.13

### **Trafficking in Persons**

- 6. Subsection 279.01 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable:

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- a) to imprisonment for life if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or
- b) to imprisonment for a term of not more than fourteen years in any other case.

### Consent

7. Subsection 279.01 (2) No consent to the activity that forms the subject matter of a charge under subsection (1) is valid.

### Material benefit

8. 279.02 Every person who receives a financial or other material benefit, knowing that it results from the commission of an offence under subsection 279.01(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.

### Withholding or destroying documents

9. 279.03 Every person who, for the purpose of committing or facilitating an offence under subsection 279.01(1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status is guilty of an indictable offence and liable to imprisonment for a term of not more than five years, whether or not the document is of Canadian origin or is authentic.

### Exploitation

10. 279.04 For the purposes of sections 279.01 to 279.03, a person exploits another person if they:
- a) cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service; or
  - b) cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.

### **Immigration and Refugee Protection Act**

## Offence – Trafficking in Persons

11. 118. (1) No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.
12. 118 (2) For the purpose of subsection (1), “organize”, with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons.

## Penalties

13. 120. A person who contravenes section 118 or 119 is guilty of an offence and liable on conviction by way of indictment to a fine of not more than \$1,000,000 or to life imprisonment, or to both.

## Aggravating factors

14. 121. (1) The court, in determining the penalty to be imposed under subsection 117(2) or (3) or section 120, shall take into account whether:
- a) bodily harm or death occurred during the commission of the offence;
  - b) the commission of the offence was for the benefit of, at the direction of or in association with a criminal organization;
  - c) the commission of the offence was for profit, whether or not any profit was realized; and
  - d) a person was subjected to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation, as a result of the commission of the offence.

## Definition of “criminal organization”

15. (2) For the purposes of paragraph (1)(b), “criminal organization” means an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence.

## ***PURPOSE AND SCOPE***

16. The purpose of this document is to provide guidelines to CBSA Officers in order to detect and intercept individuals involved in TIP cases.
17. This policy applies to all CBSA Officers dealing with persons in all modes of transportation.

## ***BACKGROUND***

18. For background information on TIP, refer to Appendix A.

## ***POLICY GUIDELINES***

### **General**

19. All CBSA Officers are responsible for thoroughly reading the TIP Policy and Procedures Manual including the indicators found in Appendix B which contains information which may assist in the identification and interception of a suspected human trafficker, and/or a potential VTIP.
20. The CBSA Officer will separate the potential VTIP from the suspected human trafficker.
21. A victim-centered approach should be adopted when dealing with potential VTIPs taking into consideration their special needs.
22. The CBSA Officer will notify their Superintendent or Manager of a suspected TIP case as soon as possible.
23. The Superintendent or Manager will immediately review information concerning the suspected TIP case and provide direction and support.
24. The CBSA Officer will determine the next steps concerning the potential VTIP including referrals to the respective officials.
25. The CBSA Officer will determine the appropriate enforcement action against the suspected human trafficker.

## ***ROLES AND RESPONSIBILITIES***

### **Migration Integrity Officer**

26. Migration Integrity Officer (MIO) is responsible for:

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- a) working in key locations overseas with international partners, local immigration and law enforcement agencies, and airlines to combat irregular migration, including human smuggling and TIP;
- b) supporting document integrity and anti-fraud activities by detecting and intercepting fraudulent documents or fraudulently obtained travel documents;
- c) receiving, analysing, and disseminating intelligence and lookouts in a timely manner on suspected and known TIP cases;
- d) assisting in the gathering and analysis of information to identify regional or global patterns related to anti-fraud and TIP;
- e) researching, monitoring, and the reporting of suspected cases and incidents but also host country conditions with respect to TIP;
- f) interviewing individuals for TIP intelligence/information or for further investigation;
- g) liaising as soon as possible with various foreign and domestic government and non-government officials including CIC Anti-Fraud Officers, CBSA MIOs, POEs, the Illegal Migration Intelligence section at National Headquarters, police agencies, non governmental organizations, and other partners responsible for TIP upon interception of information indicating potential TIP activity involving Canada as a transit or destination country;
- h) immediately notifying the partners responsible for TIP as indicated in subsection g of the imminent arrival in Canada, of suspected human traffickers and/or potential VTIPs; and
- i) training or awareness raising for decision makers (Visa Officers) and airline staff to be mindful of TIP.

### **CBSA Border Services Officer (POE)**

27. CBSA Border Services Officer is responsible for:

- a) referring potential VTIPs and suspected traffickers to secondary examination at the POE;
- b) obtaining information to determine if the individual may be involved in a TIP situation;
- c) seizing and holding any means of transportation, document, or other item if the officer believes on reasonable grounds that it was fraudulently or improperly

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obtained or used or that the seizure is necessary to prevent its fraudulent or improper use or to carry out the purposes of this Act (see A140);

- d) notifying the Superintendent as soon as possible when encountering a suspected TIP case;
- e) taking detailed notes on all encounters involving suspected TIP cases;
- f) immediately notifying the lead police agency (RCMP or local police agency) of the suspected TIP case;
- g) immediately notifying the Regional Intelligence Officer (RIO) of the suspected TIP case who in turn will coordinate further action with all the implicated CBSA partners, the lead police agency, CIC, and any other necessary partners;
- h) forwarding all notes to the RIO for further investigation and case guidance, and
- i) referring potential foreign national VTIP cases to CIC for an interview on immigration options including consideration of a TRP.

### **CBSA Inland Enforcement Officer**

28. CBSA Inland Enforcement Officer is responsible for:

- a) obtaining information to determine if the individual may be involved in a TIP situation;
- b) notifying management as soon as possible when encountering a suspected TIP case;
- c) taking detailed notes on all encounters involving suspected TIP cases;
- d) immediately notifying the lead police agency of the suspected TIP case;
- e) immediately notifying the RIO of the suspected TIP case who in turn will coordinate further action with all the implicated CBSA partners, the lead police agency, CIC, and any other necessary partners;
- f) forwarding all notes to the RIO for further investigation and case guidance, and
- g) referring potential foreign national VTIP cases to CIC for an interview on immigration options including consideration of a TRP.

### **CBSA Superintendent or Manager**

29. CBSA Superintendent or Manager is responsible for:



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- a) ensuring compliance with the TIP policy and procedures;
- b) being aware of current intelligence trends and lookouts as they pertain to TIP;
- c) providing the necessary direction and support to the CBSA Officer; and
- d) ensuring the timely circulation of all intelligence reports, lookouts, alerts, and targets.

### Regional Intelligence Officer

30. Regional Intelligence Officer is responsible for:

- a) providing guidance on how to proceed with a suspected human trafficker and/or potential VTIP and on the collection of intelligence information that is required to determine whether the case proves to be a TIP incident;
- b) reviewing the information provided by BSOs and Inland Enforcement Officers in relation to suspected TIP cases;
- c) communicating case details with NHQ including the Illegal Migration Intelligence section and the MIO responsible for the area of the world the VTIP was transported from;
- d) liaising with the lead police agency responsible for the TIP investigation;
- e) contacting the Regional CBSA Criminal Investigations office in order to establish if there are possible links to existing IRPA investigations including human smuggling;
- f) contacting the Organized Crime and Contraband Intelligence section at NHQ if a TIP case has ties to organized crime;
- g) receiving, analysing and disseminating intelligence and lookouts in a timely manner on suspected and known TIP cases;
- h) developing and managing case files, maintaining a record of regional TIP activities and forwarding this information to the NHQ AF/HT section; and
- i) liaising with various partners involved in TIP issues.

### Regional Criminal Investigator

31. Regional Criminal Investigator is responsible for:

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- a) upon referral of TIP case information, determining if there are possible links to existing IRPA investigations including human smuggling;
- b) should sufficient links be found, liaising with the lead police agency investigating the suspected TIP case and the RIO.

### **Headquarters Illegal Migration Intelligence section, Intelligence Development and Field Support Division**

32. Headquarters Illegal Migration Intelligence section is responsible for:

- a) assisting in the coordination of Anti-Fraud and TIP intelligence activities internationally and domestically (through MIOs and RIOs) in support of immigration program integrity;
- b) providing functional guidance and program support to regional management and functional support to CBSA staff;
- c) assisting in the gathering and analysis of information to identify regional or global patterns related to AF/HT;
- d) compiling basic data regarding possible and confirmed TIP cases across Canada; and
- e) liaising with CIC NHQ and other agencies when any TIP cases are brought to their attention.

### **Headquarters Intelligence Risk Assessment and Analysis Division**

33. Headquarters Intelligence Risk Assessment and Analysis Division is responsible for:

- a) producing intelligence assessments that categorize risk/threat posed by the movement of people and goods overseas, at ports of entry and inland in support of operations, planning, policy and program decision makers; and
- b) providing a focus on global trends in irregular migration and their impact on Canada.

### **Headquarters Strategic Analysis and Coordination section, Horizontal Policy and Planning Division**

34. Headquarters Strategic Analysis and Coordination Section is responsible for:

- a) coordinating all enforcement policies related to TIP; and

- b) coordinating all enforcement training related to TIP.

## **PROCEDURES**

### **Identifying a potential victim of trafficking in persons (VTIP)**

- 35. The CBSA Officer should distinguish a potential VTIP from a regular instance of human smuggling.
- 36. The CBSA Officer will familiarize himself or herself with indicators found in Appendix B that assist in determining whether or not the individual, who is encountered at the POE or Inland, is a VTIP.
- 37. The CBSA Officer will refer to ENF 32 / IP 12 OP 16 / Passports and Travel Documents for information on unacceptable types of passports and travel documents and document fraud.
- 38. Link can be found at:

### **Identifying a potential child VTIP**

- 39. The CBSA Officer must be fully alert to children who need protection and should pay extra attention to children as they enter Canada.
- 40. A child or youth travelling without proper identification or in the company of adults other than their legal guardian may require careful examination.
- 41. This additional scrutiny is for the sole purpose of ensuring the safety of the child.
- 42. The CBSA Officer will familiarize himself or herself with the following indicators:
  - a) indicators that TIP may have occurred;
  - b) abduction indicators; and
  - c) missing children indicators.
- 43. The CBSA Officer should refer to the TIP indicators found in Appendix B, the abduction indicators found in ENF 21 Recovering Missing, Abducted and Exploited Children and the missing children indicators found in ENF 21, Appendix A, Missing Children Indicators
- 44. No person under the age of 18 can consent to prostitution or other exploitative activity.

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45. The CBSA Officer should be aware in addition to being trafficked; he or she may have also been abducted and/or smuggled.
46. A child may manifest fears differently than an adult, and may require special needs.
47. Any person under the age of 18 who is transported for an exploitive purpose is being trafficked.
48. All persons under the age of 18 who are potential VTIPs are, by definition, missing or abducted children and should be treated as such.
49. The CBSA Officer may contact the Office for Missing Children 24 hours a day, 7 days a week, to request information or assistance on any missing child related issue.
50. National Risk Assessment Centre (NRAC) manages the CBSA Our Missing Children operational responsibilities.
51. The CBSA Officer will refer to ENF 21 Recovering Missing, Abducted and Exploited Children for information on primary and secondary examination procedures intended to assist officers to identify and recover missing, abducted and exploited children at the port of entry.
52. Link to ENF 21 can be found at:

### Potential VTIP's health and safety

53. The CBSA Officer must exercise reasonable care for the protection and well being of themselves and potential VTIPs.
54. The CBSA Officer is expected to take precautions that will help ensure that these persons are protected from harm to themselves or others.
55. The CBSA Officer will ensure the potential VTIP is separated from the possible trafficker as soon as possible.
56. If the potential VTIP is encountered in the course of a joint-force operation, in the course of an inland investigation, or during the execution of a warrant, this may entail requesting that the lead police agency attend.

### Interviewing a potential VTIP

Note: Persons who have been trafficked are victims of a crime and should be treated as such despite their immigration status or possible violation(s) of IRPA or other law(s).

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57. The potential VTIP is not required to cooperate with the CBSA, or the lead police agency investigating the case.
58. The CBSA Officer should ensure the potential VTIP's physical comfort to the greatest extent and allow for frequent breaks if necessary.
59. The CBSA Officer will notify their Superintendent or Manager of a potential VTIP case as soon as possible.
60. The Superintendent or Manager will assist the officer in determining whether sufficient evidence exists to refer cases to the proper channels for further investigation.
61. Should sufficient evidence exist, the lead police agency should be contacted as soon as a potential VTIP (who may be a Canadian citizen, permanent resident, aboriginal, or foreign national) is encountered.
62. The CBSA Officer will contact the RIO who in turn will coordinate further action with partners.
63. All foreign national VTIP cases will be immediately referred by the CBSA Officer to CIC.
64. The interviewing guidelines for potential VTIPs are attached as Appendix C.

### **Interviewing a potential child VTIP**

65. A potential child VTIP should be treated with the utmost discretion and sensitivity.
66. The interviewing guidelines for a child can be found in ENF 21, Section 13, Child Interviewing Guidelines.
67. Additional information can also be found in EN Manual, Part 2 Chapter 12, Our Missing Children.

### **Identifying a suspected human trafficker**

68. The CBSA Officer will familiarize himself or herself with the indicators that TIP may have occurred (see Appendix B).

### **Interviewing a suspected human trafficker at a POE**

69. The BSO at the POE will conduct database checks to obtain information on the individuals' status.

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70. The BSO will question the suspected human trafficker to establish preliminary information such as the individual's name, citizenship, etc.
71. All questions put forth to an individual to determine if they are a suspected human trafficker will directly relate to their admissibility to Canada.
72. For example, if a suspected human trafficker has satisfied an officer of their status as a Canadian citizen or permanent resident, officers must provide Charter and Caution warnings before asking any questions that may further a criminal investigation.
73. For additional information on additional and direct questioning, see EN Manual, Part 3, Chapter 3, Additional and Direct Questioning, Paragraphs 19 - 36
74. The BSO will seize and hold any means of transportation, document or other item if the officer believes on reasonable grounds that it was fraudulently or improperly obtained or used or that the seizure is necessary to prevent its fraudulent or improper use or to carry out the purposes of this Act (see A140).
75. The BSO will notify their Superintendent of such a case as soon as possible.
76. The Superintendent will assist the officer in determining whether sufficient evidence exists to refer cases to the proper channels for further investigation.
77. Should sufficient evidence exist, the BSO will immediately notify the lead police agency of the suspected TIP case.
78. The BSO will contact the RIO who in turn will coordinate further action with implicated partners.
79. For guidance on interviewing techniques in a case involving a suspected human trafficker, the BSO will contact the RIO.

### **Arrest and detention of a suspected human trafficker at the POE or Inland**

80. The CBSA would coordinate the arrest and detention of a suspected human trafficker encountered at the POE or Inland with the lead police agency that is investigating the case.
81. A CBSA Officer may arrest or detain a suspected human trafficker who is a Canadian citizen or permanent resident or foreign national under s.495 of the *Criminal Code* until the appropriate investigative authority arrives.
82. A CBSA Officer would follow standard arrest and detention procedures in the case of a suspected human trafficker who is a foreign national.

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83. Any arrest or detention for criminal investigation should always be followed by the Charter and Caution warnings and in the case of a foreign national, their rights under the Vienna Convention (see Enforcement Manual, Part 6, Chapter 1, paragraphs 39-42 and ENF 7, Section 17.3).
84. Links to Enforcement Manual Part 6 and ENF 7 can be found at:
85. Under A138(1) of IRPA, an officer has the authority and powers of a peace officer to enforce the Act, including the arrest, detention or removal from Canada of any person.
86. An officer may detain a person on entry into Canada under the authority of A55(3) where:
- a) the officer considers it necessary to do so in order for the examination to be completed; or
  - b) the officer has reasonable grounds to suspect that the permanent resident or foreign national is inadmissible on grounds of security or for violating human or international rights.
87. Officers may arrest and detain on entry into Canada and within Canadian territory under the authority of A55(1) and A55(2) where:
- a) the officer has reasonable grounds to believe the person is inadmissible and is a danger to the public; or
  - b) the person is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister's delegate under A44(2); or
  - c) the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.
88. Link to ENF 20 can be found at:

### Document evidence of TIP

89. Secure any physical evidence such as travel documents in the individual's possession as per the seizure regulations R252-258.
90. For additional information on search, seizure, fingerprinting, and photographing, refer to the ENF 12 manual.

91. Link to ENF 12 can be found at:

### **RIO assistance on TIP cases**

92. The RIO will provide guidance on how to proceed with the individual and on the collection of intelligence information that is required to determine whether the case proves to be a TIP incident.

93. The RIOs in the eight regions provide access to CBSA assistance through a 24-hour duty phone number.

94. The CBSA Officer will forward all notes to the RIO for further investigation.

95. The RIO will communicate case details with various partners involved in TIP cases.

Note: For a list of regional and NHQ Intelligence TIP contacts, refer to Appendix F.

### **Contact the lead police agency**

96. Investigations into alleged TIP offences are the primary responsibility of the lead police agency (RCMP or local police agency) under the *Criminal Code* or IRPA.

97. The lead police agency will perform a preliminary interview with the potential VTIP.

98. The potential VTIP must then provide concurrence for the lead police agency to coordinate their case.

99. Should the lead police agency encounter a potential VTIP without status in Canada prior to the CBSA, they will contact the RIO to provide the information obtained from the individual.

### **Contact CIC**

100. The CBSA Officer will contact CIC as soon as a potential foreign national VTIP is encountered.

101. CIC has a key role to play in assisting in the protection of a foreign national VTIP.

102. All encountered victims or potential VTIPs who are foreign nationals, should be immediately referred by the CBSA Officer to CIC for an interview on immigration options including consideration of a TRP.



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103. If the CBSA is planning a law enforcement operation where potential VTIPs may be encountered, CIC should be informed in advance so that they can be prepared to evaluate and assist victims.
104. For additional information on TRPs for VTIPS, refer to Inland Processing (IP) 1 Temporary Resident Permits Section 16.
105. Link to the IP 1 manual can be found at:
106. In cases where a refugee claim is not made or a person is not granted legal status in Canada, the file will be returned to CBSA for next steps.

Note: For CIC regional contact information, see Appendix G.

### Inadmissibility report

107. A potential VTIP may come to the CBSA's attention as a foreign national in Canada either with or without status.
108. A44(1) states that "An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister".
109. The A44 report may then be held in abeyance pending the outcome of the interview with CIC.
110. A TRP cannot be issued to an in-status foreign national.

### Removal order issuance

111. The CBSA Officer may decide that a removal order should not be issued.
112. Subsection 44(2) of IRPA, provides the Minister's Delegate with the discretion, albeit limited, as to whether or not to issue a removal order.
113. After the BSO at the POE has conducted an examination and where appropriate, an A44 report has been written, the Minister's Delegate may defer the examination pursuant to A23 to the local CIC office to continue the interview of the potential VTIP.
114. Alternatively, after an Inland Enforcement Officer has conducted an interview and where appropriate, an A44 report has been written, the Minister's Delegate shall refer the potential VTIP to a CIC office.

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115. The CBSA officer will complete an Entry for Further Examination or Admissibility Hearing IMM 5396B form.
116. Link to the IMM 5396B form can be found at:  
!
117. The CBSA Officer will provide instructions on where and when to report, and may impose conditions on the potential VTIP.
118. The CBSA Officer will complete an Acknowledgement of Conditions of the *Immigration and Refugee Protection Act* IMM1262E form.
119. Link to the IMM1262E can be found at:
120. The CBSA Officer shall send an e-mail to NHQ at [cbsa-humantrafficking@cbsa-asfc.gc.ca](mailto:cbsa-humantrafficking@cbsa-asfc.gc.ca) and to [NHQ-VTIP-TDP@cic.gc.ca](mailto:NHQ-VTIP-TDP@cic.gc.ca) with only the FOSS # of the subject, and a brief note indicating "file has been referred to CIC for possible issuance of a TRP".
121. The CBSA Officer will provide a copy of all relevant information to the CIC office.
122. If the CIC officer does not issue a TRP, then the file may be returned to the originating office for further action.

### Individual is not yet a VTIP

123. If the CBSA Officer has reason to believe that the foreign national is not a VTIP, however is at risk of becoming a VTIP, the officer should contact the RIO who in turn would immediately notify all implicated partners.
124. In addition, the RIO would immediately notify partners of cases involving potential victims. CIC would be notified of foreign national victim cases.
125. The RIO who in turn will run checks or consult with partner agencies if necessary.
126. If there are no immediate concerns about safety or flight risk or unwillingness to appear, and the foreign national is admissible and has not made a refugee claim, the CBSA Officer may follow standard procedures.
127. The CBSA Officer should send an email to NHQ at [cbsa-humantrafficking@cbsa-asfc.gc.ca](mailto:cbsa-humantrafficking@cbsa-asfc.gc.ca) and to CIC at [NHQ-VTIP-TDP@cic.gc.ca](mailto:NHQ-VTIP-TDP@cic.gc.ca) with only the FOSS # of the subject, and a brief note indicating "file has been flagged and referred to RIO re: possible VTIP case".

### Transportation and Accommodation of VTIP

128. When the RCMP is the lead police agency in a TIP investigation, the RCMP should coordinate the transportation of the foreign national VTIP to the local CIC office for an immigration interview and for all VTIPs including foreign national VTIPs to accommodation (the RCMP cannot speak for a local police agency or another agency).
129. Depending on the circumstances, the CBSA, the local police agency, or another agency may be involved in coordinating the VTIP's transportation.

### TRP issuance

130. An initial short-term, fee-exempt TRP can be issued by CIC to provide VTIPs with a reflection period to consider their options (such as remaining in Canada; returning home; choosing to assist in the investigation of or criminal proceedings against the traffickers); to allow them to recover from physical or mental trauma; to allow them to escape the influence of the traffickers; and to facilitate any other purpose the CIC officer believes to be relevant.
131. Essential medical care, social counselling assistance, and other health service benefits are provided under the Interim Federal Health (IFH) Program.
132. CIC has the exclusive authority to issue a TRP. A short-term TRP can be issued to VTIPs for up to 180 days, which also allows the victim to apply for a work permit. A long term TRP may be issued up to three years should individual circumstances warrant.
133. A TRP can be issued whether or not there is law enforcement involvement.
134. VTIPs are not required to assist authorities in an investigation or prosecution against their traffickers to receive a referral to CIC or to receive a TRP.
135. CIC processes VTIP TRPs as soon as possible.
136. Once a TRP has been issued by CIC, the victim is granted legal temporary resident status in Canada and no removal order is issued at this time.
137. Recipients of such a permit may have access to accommodations through provincial/territorial social services or non-government organizations (NGOs).
138. The TRP may be cancelled by CIC at any time should the circumstances warrant.
139. The CIC Ministerial instructions regarding the issuance of TRPs to VTIPs are found in CIC Manual, IP 1 Temporary Resident Permits, Appendix G, Ministerial Instructions

140. Link can be found at:

### **Arrest and Detention of a potential VTIP**

141. When a potential VTIP without legal status is identified in Canada and the local CIC office is unavailable for an interview, the CBSA should ensure the custody of this individual by releasing the individual on terms and conditions into the care of a non-government organization, or placing the individual in an immigration holding centre or placing the individual into the care of a family member.

Note: CBSA should immediately contact local Child Protection Services when a potential child VTIP is encountered.

142. As a potential VTIP may be without documents or lacking other resources (money, a safe place of residence, friends or contacts other than the human trafficker), releasing of the individual may place them back in the custody of their human trafficker.

143. It should be underlined that a VTIP may have experienced serious physical or emotional trauma and any decision regarding detention should take into consideration the following:

- a) any measures taken should be done as to avoid the re-victimization of the VTIP;
- b) availability of alternative arrangements such as the residence of the individual's family members, local shelters, police safe houses, and child care agencies or child protection services for the care and protection of minor children;
- c) the anticipated length of detention;
- d) the risk of continued control by the human smugglers or traffickers who brought the potential VTIP to Canada;
- e) the type of detention facility envisaged and its conditions;
- f) the availability of accommodation that allows for the segregation of any minor children from adult detainees; and
- g) the availability of appropriate services in the facility, including counselling.

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144. Detention should not be considered except as a last resort to separate the VTIP from the control of the suspected human trafficker while protection needs can be considered and thereby ensure the VTIP is able to attend a hearing.
145. An officer may detain a person on entry into Canada under the authority of A55(3) where:
- a) the officer considers it necessary to do so in order for the examination to be completed; or
  - b) the officer has reasonable grounds to suspect that the permanent resident or foreign national is inadmissible on grounds of security or for violating human or international rights.
146. Officers may arrest and detain on entry into Canada and within Canadian territory under the authority of A55(1) and A55(2) where:
- a) the officer has reasonable grounds to believe the person is inadmissible and is a danger to the public; or
  - b) the person is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister's delegate under A44(2); or
  - c) the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.
147. A potential VTIP without legal status in Canada and who is considered a high risk or security threat will be placed in secure custody.

### Follow up with CIC

148. The CBSA Officer shall obtain confirmation from the CIC Officer when the TRP determination has been completed and confirm whether or not a TRP was issued.

### Services for VTIPs

149. Provinces and territories administer numerous programs and services that may be available to VTIPs including: health care, emergency housing, social services including emergency financial assistance and legal aid assistance under which eligibility is based primarily upon financial need.
150. All provinces and territories have child protection laws and agencies responsible for assisting children in need focused on the principle of the best interest of the child.

### **Other measures available**

151. Foreign nationals who are VTIPs may avail themselves of a number of legislative and administrative measures in order to remain in Canada either temporarily or permanently. These include stays of removal, temporary resident permits, refugee protection claims, applications for humanitarian and compassionate considerations and pre-removal risk assessments.

### **Repatriation of VTIPs**

152. In some instances, the VTIP may wish to return to their country of citizenship or legal permanent residence.

153. A VTIP with legal status in Canada can voluntarily depart Canada, as the individual is not under any removal order.

154. If there will be a delay in their return, the client should be referred for an interview with CIC to determine if a TRP is warranted.

155. This will allow for the client to have the benefits associated with the TRP for the duration of time they are in Canada.

156. This may often occur when a travel document is required.

157. The CBSA Inland Removals office is responsible for making removal arrangements.

### **Repatriation of child VTIPs**

158. Children who are foreign nationals in need of protection are handled through existing Canadian programs for vulnerable children.

159. The Government of Canada works with provincial/territorial children's aid societies and the appropriate authorities from the child's country of citizenship to ensure the best interests of the child.

160. The Hague Convention, through provincial authorities, may be used when attempting to return the child home.

161. Special precautions are taken to ensure that returning children is in their best interests and that prior to return, a suitable care-giver such as a parent, other relative, other adult care-taker, a government agency or a child-care agency in the country of origin has agreed and is able to take responsibility for the child and provide him or her with appropriate care and protection.

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162. An appointed member of the social services of the foreign country and/or the child's parents or legal guardian must receive the child in the country of origin.

### **VTIP who violates IRPA after a TRP has been issued**

163. When a CBSA Officer encounters a foreign national who has been issued a TRP as a VTIP and is subsequently found to be inadmissible under a different section of IRPA, the CBSA Officer will determine whether an inadmissibility report should be written.

164. However, before issuing a removal order, the CBSA Minister's Delegate will consult with CIC.

165. CIC has the exclusive designated authority to cancel a TRP but will take into consideration the recommendation by CBSA.

166. CIC will then decide whether the VTIP will be authorized to remain in Canada on the strength of a new TRP or whether the TRP should be cancelled allowing enforcement proceedings to commence.

167. Factors taken into consideration include the overall safety and security of Canadians, suspected for recidivism and rehabilitation, humanitarian and compassionate factors and overall risk to the VTIP if removed from Canada.

168. Each case will be assessed on a case-by-case basis.

### **Removal order proceedings**

169. When the determination has been to not issue a TRP, when the period of validity of a TRP expires without TRP renewal or when CIC cancels a TRP, CIC will inform the CBSA.

170. The file will then be returned to the originating office for action.

171. The removal order will be enforced and the foreign national will be removed from Canada.

172. A foreign national subject to a removal order, which is in force, may apply for a pre-removal risk assessment (PRRA), which assesses the risks the individual may face if repatriated to his or her country of nationality or permanent residence.

173. A positive assessment of risk usually permits the individual to apply for permanent resident status and remain in Canada.

174. A VTIP who has contravened IRPA, has had their TRP cancelled by CIC and who is subject to an enforceable removal order, will be removed from Canada.

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### **Appendix A**

## **BACKGROUND ON TRAFFICKING IN PERSONS**





## **Appendix A - Background on Trafficking in Persons**

1. Trafficking in Persons (TIP) is a crime which involves the recruitment, transportation or harbouring of persons for the purpose of exploitation (typically in the sex industry or forced labour). The types of trafficking include international TIP and domestic TIP. TIP may occur across or within borders, often involves extensive organized crime networks and violates the basic human rights of its victims. However, the core of TIP is exploitation of the individual and transportation within or across borders need not occur. TIP is criminalized through three specific offences in the *Criminal Code* (see sections 279.01-279.03, as well as an offence under the *Immigration and Refugee Protection Act* (IRPA) (see sections A118, A120 and 121).
  
2. Circumstances that make a person vulnerable to being trafficked include poverty, gender-based inequality, lack of education and opportunity, lack of information, inadequate social programs, war and conflict situations and political unrest. Human trafficker's recruitment techniques include  
  
In some cases, TIP victims (VTIPs) may know what type of work they will perform but be deceived about the working conditions, or the degree of personal liberty or freedom of movement they will possess. Runaways and throwaways are vulnerable groups, which may also be targeted by human traffickers. Human traffickers may also obtain victims through kidnapping or abduction.
  
3. General indicators of victims
  
  
  
  
  
  
  
  
  
  
4. TIP causes a number of direct and indirect harmful consequences to its victims, their communities and society as a whole. Human traffickers exert control over VTIPs through confinement, psychological abuse, physical or sexual abuse, threats against individuals and/or their families or loved ones, fear of police is exploited, passports/identification are taken, and they are deprived of necessities of life. VTIPs fear for their own personal safety, and the safety of loved ones which can cause additional emotional trauma and stress. VTIPs may also experience shame, low self-esteem and a sense of powerlessness. VTIPs can suffer from posttraumatic stress disorder as a result of years of mistreatment. TIP provides

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funds for organized criminal gangs to operate. These gangs use the proceeds of TIP to expand their other illegal activities and entrench themselves in communities.

5. The Canada Border Services Agency (CBSA) is engaged in fighting TIP by detecting and preventing trafficking operations and associated activities and the transport of victims to Canada. The CBSA provides assistance to international governments and transportation industry partners, with the common goal of deterring trafficking organizations from using Canada as a destination or transit country. The CBSA provides assistance in the investigation and prosecution of trafficking offenders. The CBSA works with key partner agencies in Canada, such as Citizenship and Immigration Canada (CIC), the Royal Canadian Mounted Police (RCMP), local police agencies and non-government organizations, in ensuring that VTIPs are provided with the necessary referrals and assistance.
6. VTIPs may be smuggled into Canada in a clandestine manner, or may enter legitimately and may or may not overstay their status. Alternatively, human traffickers may use deception or false documents to fraudulently obtain visas or assist VTIPs to be admitted at a Port of Entry (POE). VTIPs may or may not be aware that they have entered Canada illegally. They may cooperate with the trafficker in the mistaken belief they are being smuggled to a better life in Canada. They likely will attempt to pass through the POE by misrepresenting themselves as genuine temporary residents.
7. Usually, the potential VTIP does not realise he or she has been trafficked until arrival at the final destination, where they are confined and exploited. In some cases, human traffickers subsequently exploit persons who enter Canada as legitimate visitors. The VTIP can be forced to provide their labour or services in a variety of settings including through domestic work, factory or farm work or in the sex industry.
8. The CBSA Officer assessing irregular migrants at the POE or in the course of ongoing investigations into human smuggling or raids on criminal enterprises, which involve irregular migrants, may encounter individuals they suspect are VTIPs. It is essential that the potential VTIP be distinguished from a regular instance of human smuggling. Identifying VTIPs who are in transit can be difficult; exploitation may not yet have occurred, and potential victims would be unaware of the human traffickers' true intent. At this stage, potential VTIPs may view human traffickers as assisting them.
9. While some POE Border Services Officers (BSOs) have the designated authority to issue a TRP, a BSO is not authorized to issue the special coded TRP to potential VTIPs. The CBSA Officer should be aware of the indicators that a person may have been trafficked; and when in the judgment of the officer, an adequate number of indicators are present; the individual should be referred to CIC for a detailed

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examination. The case should be carefully documented and all information passed on to the Regional Intelligence Officer (RIO) or other CBSA Officer(s) designated as a point of contact for TIP cases, to the lead police agency investigating the case to ensure the safety of the possible victim is protected and to assist law enforcement efforts to investigate, and to the CIC Officer. For potential VTIP cases not involving foreign nationals, the case information should be forwarded to the RIO or other designated CBSA contact and the lead police agency.

10. The RCMP has established a Human Trafficking National Coordination Centre (HTNCC) within the Immigration and Passport Branch at Headquarters in Ottawa. The Centre will facilitate cooperation and coordination among law enforcement for human trafficking investigations to combat human trafficking in Canada and abroad. With these new developments, CBSA has experienced increased collaboration and partnership with the RCMP and law enforcement agencies across Canada, not only in the area of prosecution, but also in terms of developing prevention and protection initiatives.
11. The CBSA strives to obtain intelligence on the methods and routes used for the trafficking of foreign nationals into Canada, develop indicators and practices that will allow us to prevent or interdict the transport of VTIPs into Canada for exploitation, to penetrate and disrupt trafficking rings, and support the prosecution of human traffickers. For the CBSA to succeed at these objectives it is essential that VTIPs are identified and encouraged to come forward.

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## **INDICATORS THAT TRAFFICKING IN PERSONS MAY HAVE OCCURRED**

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***Appendix B - Indicators That Trafficking in Persons (TIP) May Have Occurred***

**Important considerations:**

The following indicators are found in both the United Nations Toolkit on TIP as well as in case material such as reports from confirmed international TIP cases. They outline variables that Enforcement Officers saw repeatedly in actual or suspected TIP cases and variables that are being used as potential indicators.

It is important to note that not all of these indicators were present in every identified TIP case, as each TIP case presents a unique and/or sometimes similar but not identical combination of indicators from which a pattern is then discerned. It is the pattern, not the presence of indicators alone that is used to identify a potential victim of trafficking in persons (VTIP).

In addition, as there may be other factors that are not listed here which could be indicative of a potential exploitative/trafficking in person situation, the Canada Border Services Agency Officer should keep an open mind when reviewing and considering a potential TIP case.

**Potential indicators:**

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- **False documentation/ documentation withheld:** The VTIP may be unfamiliar with their biographical data or documents containing such data. They may be legitimate first time passport holders and were never in control or even examined their travel documents or identification. This is often the case for minors or individuals from rural areas of some countries where literacy and education opportunities are limited. The human traffickers usually immediately seize and withhold all identity documents from their victims.
- **Travel arrangements:** The VTIPs travel and other arrangements are made by a third party who they recently met, or by someone who claims to be their family member, agent or employer or any combination thereof. Human traffickers have also included, in many documented cases, family members (including parents and husbands) who would have easy and often legal access to a VTIP's travel documents and who could make travel and accommodation arrangements for VTIPs without raising suspicion.
- **Fees/Debts:** VTIPs claim to have made repayment arrangements with the person who facilitated their entry, employment, and accommodations upon arrival in the country of destination. This is the most common reason given by human traffickers to VTIPs for their exploitative relationship. The debt VTIPs are forced to pay is often large amounts.
- **Unrealistic Offers:** The potential VTIPs would provide Visa Officers or POE Officers with descriptions of working conditions or other opportunities that sound too good to be true.
- **Unfamiliar with their environment / confined to living quarters.** VTIPs have provided examples such as not knowing which countries they were in, which and how many coins are needed to operate a pay phone in that they could not read or understand how to use the foreign currency which would enable them to contact their family to advise them of their situation.
- **Little or no contact with family members or friends:** This refers to little or no contact with people in Canada or in their country of origin. Human traffickers want to isolate their victims in most circumstances and if any freedom of communication is given, it can be lost if the human trafficker loses trust with the VTIP. This and other possible penalties such as loss of privileges are strong incentives for victims to obey their traffickers and deny their victimization.
- **Limited linguistic skills:** In the case of sexual exploitation, even with limited language skills, VTIPs are quite familiar with sex-related words or provide scripted responses about sexual scenarios in a language otherwise unknown to them.



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**Additional indicators for children:**

For additional information on indicators, contact the Illegal Migration Intelligence Section, Intelligence Development and Field Support Division, Intelligence Directorate, Enforcement Branch at or through their work e-mail address at [cbsa-humantrafficking@cbsa-asfc.gc.ca](mailto:cbsa-humantrafficking@cbsa-asfc.gc.ca)

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### **Appendix C**

## **FORCED LABOUR**



## ***Appendix C – Forced Labour***

Forced labour is any work or service that a person is obliged to do against his or her will without payment or under threat.

There are certain categories of workers that are more vulnerable to coercion than others. Some are at risk because of their ethnic background, relative poverty or irregular migrant status.

It is important to make the distinction between poor working conditions versus a forced labour situation. Human Resources and Skills Development Canada (HRSDC) regulates working conditions in Canada.

Human traffickers may subsequently exploit persons who enter Canada legally as legitimate visitors, students, or workers.

**According to the International Labour Organization (ILO), some of the most common forms of forced labour include:**

***Debt-induced forced labour:*** Commonly referred to as “bonded labour” but also widely known as “debt bondage”. This involves the taking of a loan or wage advance by a worker from an employer or labour recruiter, in return for which the worker pledges his or her labour and sometimes that of family members in order to repay the loan. The terms of the loan or work, however, may be such that the worker is trapped for years without being able to pay back the loan.

***Forced labour in prisons:*** Labour exacted from prison workers is not generally considered forced labour under international law. However, involuntary work performed by prisoners who have not been convicted in a court of law and whose work is not supervised by a public authority is considered forced labour. Similarly, involuntary work performed by a prisoner for the benefit of a private undertaking is also considered forced labour.

***Forced labour outcomes of human trafficking:*** Trafficking in persons has become a truly global enterprise. It is often linked to organised crime and involves deceptive recruitment, racketeering and blackmailing to obtain a cut of migrant workers' earnings.

**The following presents a non-exhaustive list of economic sectors in which cases of forced labour and human trafficking have been identified as a significant problem in many countries:**

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**Special attention should be given to the following categories of workers as most “at risk” of forced labour:**

**Identifying forced labour in practice**

<b>Lack of consent to work (the "route into" forced labour)</b>	<b>Menace of a penalty (the means of keeping someone in forced labour)</b>
<ul style="list-style-type: none"> <li>• Birth/descent into "slave" or bonded status</li> <li>• Physical abduction or kidnapping</li> <li>• Sale of person into the ownership of another</li> <li>• Physical confinement in the work location – in prison or in private detention</li> <li>• Psychological compulsion, i.e. an order to work, backed up by a credible threat of a penalty for non-compliance</li> <li>• Induced indebtedness (by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges, etc.)</li> <li>• Deception or false promises about types and terms of work</li> <li>• Withholding and non-payment of wages</li> <li>• Retention of identity documents or other valuable personal possessions</li> </ul>	<ul style="list-style-type: none"> <li>• Physical violence against worker or family or close associates</li> <li>• Sexual violence</li> <li>• (Threat of) supernatural retaliation</li> <li>• Imprisonment or other physical confinement</li> <li>• Financial penalties</li> <li>• Denunciation to authorities (police, immigration, etc.) and deportation</li> <li>• Exclusion from future employment</li> <li>• Exclusion from community and social life</li> <li>• Removal of rights or privileges</li> <li>• Deprivation of food, shelter or other necessities</li> <li>• Shift to even worse working conditions</li> <li>• Loss of social status</li> </ul>

For additional information on forced labour please refer to the Commission for Labor Cooperation and ILO websites:

[http://www.naalc.org/migrant/english/mgtabcn\\_en.shtml](http://www.naalc.org/migrant/english/mgtabcn_en.shtml)

[http://www.ilo.org/global/Themes/Forced\\_Labour/lang--en/index.htm](http://www.ilo.org/global/Themes/Forced_Labour/lang--en/index.htm)

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### **Appendix D**

## **VICTIM OF TRAFFICKING IN PERSONS INTERVIEWING GUIDELINES**



***Appendix D – Victim of Trafficking in Persons interviewing guidelines***

A victim of trafficking in persons (VTIP) may have been physically and/or sexually assaulted, confined, restrained and/or subjected to psychological abuse. Fear for one's own personal safety, and the safety of loved ones can cause additional emotional trauma and stress. The VTIP may also experience shame, low self-esteem and a sense of powerlessness. The VTIP may suffer from post-traumatic stress disorder.

The Canada Border Services Agency (CBSA) officer should be aware that individuals react to violence and trauma in various ways, and not all VTIPs exhibit identical or even similar symptoms.

- The VTIP may be easily intimidated and have difficulty communicating.
- The VTIP may be generally terrorized beyond the ability to react normally.
- The VTIP may fear or mistrust authorities. Also realize that in some source countries, police may not be willing or able to help the victim, and may even assist traffickers, therefore VTIPs assume that the same conditions exist here in regards to assistance from police.
- Some VTIPs may not perceive themselves as victims but rather that they do what they have to do to pay off their debt to a trafficker.

The CBSA Officer should be conscious of cultural and gender issues that may affect communication, including both verbal and non-verbal signals. VTIPs who are victims of sexual violence should, whenever possible, be given the option of choosing the gender of the interviewing officer. In some cases, the VTIP is likely to be unable or unwilling to cooperate. Consider that there might be a requirement for gender based interviewing since a woman who was recently trafficked may not want to speak to a male officer.

Once commencing the interview, it is important to proceed with extreme tact and sensitivity.

- The CBSA Officer should ensure the potential VTIPs physical comfort to the greatest extent possible and allow for frequent breaks if necessary.
- The CBSA Officer should reassure the potential VTIP that they will not be deported and will receive help and sympathetic treatment.
- The CBSA Officer should not expect to establish trust or a rapport; the period of reflection afforded by the temporary resident permit (TRP) is intended in part to allow the individual to recover trust and the ability to cooperate, should the individual choose to do so.



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At the first encounter, avoid causing any further harm and avoid any course of action or line of questioning that might traumatize the individual further. Engage in as little questioning as possible, and conduct your interaction with the individual in a non-confrontational manner. Use non-threatening body language. Listen to the VTIP's story and realize that the truth may take some time to surface as these victims and their families are threatened with violence in the event that they cooperate with the police. Should the officer encounter resistance, questioning should be put on hold.

For further assistance on interview questions and techniques please refer to Appendix H of IP1:

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### **Appendix E**

## **INTERVIEWING QUESTIONS AND TIPS**



***Appendix E – Interviewing questions and tips***

The International Organization for Migration has developed these interview questions.

**Typical interview questions might include, but are not limited to, the following:**

For additional information on interview pointers and questions please refer to the IOM Handbook on Direct Assistance for Victims of Trafficking:  
<http://www.iom.int/jahia/Jahia/counter-trafficking/cache/offonce/lang/en>

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### **Appendix F**

## **CANADA BORDER SERVICES AGENCY (CBSA) CONTACT INFORMATION**

**Appendix F – CBSA Contact Information**

**CBSA Regional and NHQ Intelligence Contact numbers:  
To request assistance of the CBSA frontline intelligence community  
regarding human smuggling or trafficking in persons (TIP)**

CBSA – 24 Hour Contact for Regional Intelligence Officers (RIOs):	
Vancouver/British Columbia	
Alberta North/ Regina/Saskatchewan	
Calgary/Alberta South	
Manitoba	
Toronto/GTA	
Niagara/Ft. Erie	
Windsor/St. Clair/London	
Ottawa/Northern Ontario	
Cornwall	
Lansdowne	
Québec	
Atlantic	
CBSA National Headquarters can be reached at:	
<b>Illegal Migration Intelligence Section</b> Intelligence Development and Field Support Division, Intelligence Directorate, Enforcement Branch	<a href="mailto:cbsa-humantrafficking@cbsa-asfc.gc.ca">cbsa-humantrafficking@cbsa-asfc.gc.ca</a>

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### **Appendix G**

## **CITIZENSHIP AND IMMIGRATION CANADA (CIC) CONTACT INFORMATION**

**Appendix G - CIC contact information**

Any information relating to cases that involve international human trafficking elements (cases that involve foreign nationals in Canada with no legal immigration status, temporary immigration status or pending refugee claims) must be sent to CIC Headquarters [NHQ-VTIP-TDP@cic.gc.ca](mailto:NHQ-VTIP-TDP@cic.gc.ca).

The regional contacts below are to be used by law enforcement for referral of international trafficking cases. Individuals occupying these positions are subject to change, but contacts will be updated as soon as possible if a change occurs, however, CIC can always be reached via the email address above.

To reach any of the contacts by email, the naming standard is [firstname.lastname@cic.gc.ca](mailto:firstname.lastname@cic.gc.ca).

NATIONAL HEADQUARTERS			
Location	Name	Position	Phone Number
Operational Management and Coordination (Ottawa, ON)	Melissa Gomes	Senior Program Advisor	613-952-9318
Immigration Branch (Ottawa, ON)	Sarah Wells	Policy Analyst	613-952-3082
QUEBEC			
Location	Name	Position	Phone Number
Regional Office (Montreal, QC)	Annie Lafleur Nicole Grenier (Back-up)	Regional Program Advisor Regional Program Advisor	514-283-7702 514-496-2461
Montreal, QC	Dianne Clement	Manager	514-283-0243
All other offices in Quebec Region (Sherbrooke, Gatineau, Trois Rivières and Quebec)	Diane Rouillard	Manager	819-564-5685
ATLANTIC			
Regional Office (Halifax, NS)	Mary Fifield	Regional Program Advisor	902-426-6167
Moncton, NB	Francine LeBlanc	Immigration Officer	506-851-3696
Charlottetown, PEI	Sarah Joncas	Immigration Officer	902-368-0833



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Halifax, NS	Elizabeth Campbell	Immigration Officer	902-426-8915
St. John's, NFLD	Michele Renouf	Immigration Officer	709-772-3066
<b>ONTARIO</b>			
Regional Headquarters (Toronto, ON)	Wendy Quirion	Regional Program Advisor	416-952-1494
GTA Cases	Olga Pankiw	Manager (CIC Etobicoke)	416-952-6707
Windsor, ON	Rob Bruce	Manager	519-985-4746
London, ON	Nathan Haley	Immigration Officer	519-691-8152
Kitchener, ON	Adam Reid	Immigration Officer	519-571-6812
Hamilton, ON	Marina Teofilovic	Supervisor	905-570-8089
Niagara Falls, ON	Antoinette Giacci	Immigration Officer	905-354-4564
Barrie, ON	Karen Ceschia	Manager	705-727-4379
Sudbury, ON	Bill Abercrombie Roch Dauphinais (Back-up)	Manager Immigration Officer	705-671-0727 705-669-2028
Sault Ste. Marie, ON	Roch Dauphinais Bill Abercrombie (Back-up)	Immigration Officer Manager	705-669-2028 705-671-0727
Thunder Bay, ON	Kellee Sedgwick	Immigration Officer	807-624-2155
Ottawa, ON	Liliann Thomas	Manager	613-995-5114
<b>BC and YUKON</b>			
Regional Headquarters (Vancouver, BC)	Norman Hopkins	Regional Program Advisor	604-666-0300
Vancouver / Lower Mainland area of BC	Darcy Bromley	A/Supervisor (CIC Vancouver)	604-666-6901
Vancouver Island; the rest of BC (except southern interior); Yukon	Darlana Ball	Supervisor (CIC Victoria)	250-363-0258
Southern Interior / Kootenay areas (includes Kamloops, Okanagan, Cranbrook, and all Kootenay locations)	Daryll Cannon	Manager (CIC Kelowna)	250-470-4863

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**APPENDIX G**

<b>PRAIRIES and NORTHWEST TERRITORIES</b>			
Regional Headquarters (Winnipeg, MB)	Jacques Therrien	Regional Program Advisor	204-984-0977
CIC Winnipeg	Brian Huzel	Supervisor	204-983-1257
CIC Regina	John Kudas	Manager	306-780-7183
CIC Saskatoon	Carol Oliver	Manager	306-975-4444
CIC Edmonton	Leah Gabretensae	Supervisor	780-495-2318
CIC Calgary	Vanessa Bissonnette	Supervisor	403-292-8877

## **CUSTOMS ENFORCEMENT MANUAL**

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### **SELECTION**

#### **Chapter 2**

#### **TARGETING OBSCENITY AND HATE PROPAGANDA**



## POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer its responsibilities with respect to the identification and classification of prohibited material fairly and responsibly, in accordance with the provisions set out in the *Customs Act*, the *Customs Tariff*, the *Criminal Code* and the related court jurisprudence, while, at all times, respecting the principles and rights outlined in the *Canadian Charter of Rights and Freedoms*. For the purposes of this policy, prohibited material includes obscenity, hate propaganda, and goods of a treasonable or seditious nature.

## AUTHORITIES

### Customs Act

2. Section 58 – Authorizes designated CBSA officers to determine the tariff classification of imported goods at or before the time of accounting.
3. Section 98 – Stipulates that CBSA officers have the right to search any person who has arrived in Canada, or who is about to leave Canada, if the officer has reasonable grounds to suspect that the person has secreted on or about his person anything that would be considered contraband.
4. Section 99 – Stipulates that a CBSA officer has the right to examine goods by opening, or causing to be opened, any container or package and may take a reasonable amount as a sample.
5. Section 101 – Authorizes CBSA officers to detain goods which 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.

### Customs Tariff

6. Section 136 – Stipulates that all goods enumerated or referred to in tariff item No. 9899.00.00 are prohibited entry into Canada.

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7. Tariff Item 9899.00.00 – Includes all books, printed paper, drawings, paintings, prints, photographs or representations of any kind that are deemed to be obscene within subsection 163(8) of the *Criminal Code*, that constitute hate propaganda within the meaning of subsection 320(8) of the *Criminal Code*, that are of a treasonable character, within the meaning of section 46 of the *Criminal Code*, and that are of a seditious character, within the meaning of sections 59 and 60 of the *Criminal Code*.

**Criminal Code**

8. Subsection 46(2) – States that, without lawful authority, it is a criminal offence for anyone to communicate or make available to an agent of a state other than Canada, military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada (goods of a treasonable nature).
9. Paragraph 59(4)(b) and Subsection 61(b) – States that, without lawful authority, it is a criminal offence for anyone to publish or circulate any writing that advocates the use of force as a means of accomplishing a governmental change within Canada (goods of a seditious nature).
10. Subsection 163(8) – States that any publication, a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, will be deemed obscene (obscenity).
11. Subsections 319(1) and 319(2) – States that it is a criminal offence for anyone to communicate statements, other than in private conversation, that incite hatred or wilfully promote hatred against any identifiable group (hate propaganda).
12. Subsection 320(8) – States that any writing, sign or visual representation that advocates or promotes genocide, or that promotes or incites hatred against an identifiable group, distinguished by colour, race, religion, ethnic origin or sexual orientation, constitutes hate propaganda.

## PURPOSE AND SCOPE

13. The purpose of this policy is to outline the CBSA's role in targeting suspect obscenity, hate propaganda and treasonable and seditious material, and to provide guidelines for the use of CBSA officers, on identifying and examining these types of materials.

Note: Hereafter, any reference to hate propaganda is intended to include treasonable and seditious material.

14. The policies and procedures relating to the subsequent detention, determination and disposal of obscenity and hate propaganda are set out in Part 2, Chapter 8 (Obscenity and Hate Propaganda) of this manual.
15. Additional detail on obscenity is provided in Memorandum D9-1-1, while hate propaganda is addressed in Memorandum D9-1-15.
16. This policy applies to all employees of the CBSA and relates to both commercial and personal goods physically entering Canada through any means (e.g. postal, marine, air, land, rail).
17. The scope of this policy applies to material generated from all forms of media (e.g. audio, visual, written word, electronic) that is suspected of constituting prohibited material. Prohibited material may be in the form of personal or commercial literature, photographs, DVDs, videocassettes, audiocassettes, compact disks, books, magazines, recordings, computer diskettes, CD-ROMs, CD-Rs, DVD±Rs and numerous other formats, including electronic material that is physically stored on laptop computers, hard drives, cellular telephones, digital cameras, media cards, portable "jump drives", PDAs (Palm Pilot, BlackBerry), etc.

Note: The CBSA deals only with the physical importation of goods and is not responsible for electronic or other non-physical transmissions, such as those sent via the Internet.

## BACKGROUND

18. In December 2000, in *Little Sisters Book and Art Emporium et al v. The Minister of Justice and the Minister of National Revenue*, the Supreme Court of Canada ruled that, while targeting is “not necessarily unconstitutional”, there must be sufficient evidence to support the practice of specific targeting. The court indicated that the prohibition of previous shipments addressed to a particular importer is not sufficient evidence to support targeting other shipments addressed to that same importer. The court also indicated that “targeting shipments that, on the basis of experience or other information, are more likely than others to contain prohibited goods” is otherwise acceptable.

## POLICY GUIDELINES

19. CBSA officers should not hesitate to contact the Prohibited Importations Unit (PIU), at 613-954-7049, if they require assistance in targeting suspect obscenity or hate propaganda.
20. CBSA officers must use all available tools to properly target prohibited material, including the Technical Reference System (TRS), lookouts, bulletins and the related Memoranda D9-1-1 (obscenity), D9-1-15 (hate propaganda) and D9-1-17 (general procedures for handling obscenity and hate propaganda).

## ROLES & RESPONSIBILITIES

### CBSA Officers

21. CBSA officers are responsible for:
  - a) reading all related intelligence bulletins, alerts, notices, and other relevant publications, including Memoranda D9-1-1 and D9-1-15, in a timely manner, in order to remain current with the lookouts and indicators relating to obscenity and hate propaganda;
  - b) selecting and examining shipments that meet the targeting criteria as suspect obscenity or hate propaganda or that are the subject of a lookout or that are selected randomly for examination; and
  - c) releasing, detaining or prohibiting the goods in accordance with the policies and procedures set out in Part 2, Chapter 8 (Obscenity and Hate Propaganda) of this manual and in Memorandum D9-1-17.



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### Regional Intelligence Officers (RIO)

22. Regional Intelligence Officers are responsible for:

- a) assessing the validity and level of risk associated with current intelligence pertaining to importations of prohibited material;
- b) issuing regional lookouts for medium-risk to high-risk importations and for maintaining files that specifically show the link(s) to previous ruling(s) related to prohibited material, and/or current intelligence;
- c) re-evaluating importation lookouts in order to re-determine the level of risk, no less than every 90 days; and
- d) removing importation lookouts when the risk is no longer deemed to be medium to high.

### Regional Intelligence Analysts (RIA)

23. Regional Intelligence Analysts are responsible for:

- a) setting importation targets in automated and/or manual systems for medium-risk to high-risk importations and for maintaining records showing the link(s) to previous ruling(s) related to prohibited material, and/or current intelligence;
- b) re-evaluating importation targets in order to re-determine the level of risk, no less than every 90 days; and
- c) removing importation targets when the risk is no longer deemed to be medium to high.

### Headquarters – Enforcement Branch

24. The Enforcement Branch, Intelligence Directorate, is responsible for:

- a) maintaining up-to-date enforcement data (e.g. K27 information);
- b) providing operational support and guidance to RIOs and RIAs;

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- c) issuing national lookouts for medium-risk to high-risk importations and for maintaining records showing their links to previous rulings related to prohibited material, and/or current intelligence;
- d) liaising with and supporting the PIU in order to facilitate the identification of medium-risk to high-risk importations of obscenity and hate propaganda; and
- e) liaising with foreign customs and law enforcement agencies in order to facilitate the identification of medium-risk to high-risk producers and distributors of obscenity and hate propaganda.

### Headquarters - Prohibited Importations Unit (PIU)

25. The Prohibited Importations Unit is responsible for:

- a) providing policies, procedures, advice and guidance to all CBSA staff on the practice of targeting obscenity and hate propaganda;
- b) maintaining the TRS database of all obscenity and hate propaganda classification decisions for reference and targeting purposes; and
- c) producing, and distributing within the CBSA, a Quarterly List of Known Exporters.

### PROCEDURES

- 26. Effective targeting is an essential element in ensuring the identification of suspect obscenity and hate propaganda.
- 27. By applying appropriate targeting criteria and using a risk management approach during the examination of goods, CBSA officers will ensure accurate detentions.
- 28. Only relevant and up-to-date targeting criteria may be used to select importations for examination.
- 29. Material should only be targeted for closer examination, as suspect obscenity or hate propaganda, when it meets one or more of the following targeting criteria:
  - a) The invoice description of the goods, and/or any other available documentation, describes the importation and gives an indication that the shipment may contain suspect material (e.g. titles that have been

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previously prohibited by the CBSA as obscenity or hate propaganda, works by authors, publishers or producers whose other works have been prohibited as obscenity or hate propaganda, etc.).

- b) The exporter is known to deal in obscenity or hate propaganda.
  - c) The geographic origin of the exporter, production or publishing company is known in relation to obscenity or hate propaganda.
  - d) There is specific information provided through CBSA Intelligence channels relating to the shipment.
  - e) There is information known about the goods suggesting that it would lend itself to possible obscenity or hate propaganda.
30. The CBSA must not target importers in relation to suspect obscenity or hate propaganda. An importer's previous attempts at importing material that was ultimately prohibited as obscenity or hate propaganda, is not an approved targeting criterion.
31. The rate for referral for further examination will vary in accordance with the level of risk assigned to the importation.
32. The CBSA will maintain current data relating to the classification of obscenity and hate propaganda for reference and targeting purposes, including the TRS database and a Quarterly List of Known Exporters.
33. Random examinations generated by automated systems and examinations for verifying importer declarations are considered to be acceptable practices, as they complement a principled approach to targeting.

## REFERENCES

34. *Customs Act*  
*Customs Tariff and its Schedule (Section XXI)*  
*Criminal Code*  
*Canadian Charter of Rights and Freedoms*  
Memorandum D9-1-1  
Memorandum D9-1-15  
Memorandum D9-1-17

## **CUSTOMS ENFORCEMENT MANUAL**

### **Part 3**

### **SELECTION**

#### **Chapter 3**

#### **REPORTING, QUESTIONING, AND REFERRAL POLICY AND PROCEDURES**



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## Reporting, Questioning, and Referral

### POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to analyze declaration and importation reports and documentation, ask clarifying and probing questions when suspicions arise, and refer persons and goods for further examination when contraband smuggling is suspected.

### DEFINITIONS

2. Refer to Part 11 – Glossary.

### AUTHORITIES

#### *Customs Act*

3. Section 11 – Obliges every person seeking entry into Canada to present themselves to a border services officer (BSO) and to answer truthfully questions asked by an officer in the performance of his or her duties under the *Customs Act* or any other Act of Parliament for which the officer has administrative responsibility.
4. Section 12 – Requires persons and importers to make a report of all goods they are importing.
5. Section 13 – Obliges persons and importers to make a truthful declaration, answer questions truthfully, and present their goods for examination.
6. Section 32(1) – Requires importers to account for their goods and pay the applicable duties before they are released.

### PURPOSE AND SCOPE

7. The purpose of this policy is to provide guidelines to BSOs on:
  - a) the questioning of persons regarding admissibility and declarations;
  - b) additional and direct questioning to either confirm or deny suspicion; and
  - c) selecting and referring persons, goods, and conveyances for secondary examination in instances of suspected contraband smuggling.

8. This policy applies to all CBSA personnel.

## **POLICY GUIDELINES**

### **Point of Finality**

9. Before releasing or referring persons, goods, or conveyances for secondary examination, BSOs must reach a point of finality regarding a report or accounting made regarding the person, goods, or conveyance.
10. In most circumstances, if the point of finality has not been reached, a BSO should not take enforcement action because the person, importer, etc. has not had the opportunity to fulfill their reporting obligations.

### **Travellers Stream**

11. Travellers must be given every opportunity to make a true and complete report of themselves and the goods in their possession.
12. The point of finality has been reached once the officer is satisfied that the traveller has been given every opportunity to make a full and complete declaration and no further declaration is forthcoming.
13. The point of finality is normally reached at primary unless alternate reporting methods are used.

Note: In instances when the point of finality cannot be reached at primary (e.g. too many people in vehicle), the traveller is to be referred to secondary with the referral card clearly indicating the reason for referral. The secondary officer will take the necessary action to reach the point of finality.

14. Based on the declaration, once the point of finality is reached, the primary officer will release the person directly, refer them for additional processing (e.g. documentation of reported goods, payment of duties and taxes, etc.), or refer them for examination.
15. Once the point of finality is reached, if a person is found to be in possession of unreported goods, or it is found that the report made was not truthful, enforcement action may be taken against the goods, the individual, or both.
16. When alternative reporting methods are used, the point of finality is reached the moment a person makes a conscious choice to utilize the alternative method that is available or for which they are approved to use.



Note: For telephone reporting point of finality is the completion of the telephone declaration or advance phone call. However, primary must be re-opened before an examination is conducted.

17. For the point of finality to be reached, it is not necessary to have a person sign or complete any document regarding their declaration or admissibility.
18. The point of finality is not reached if a person has provided an open or approximate declaration (i.e. "about" \$250 worth of goods) and is referred without further confirmation or elaboration of their declaration.

Note: For further details on primary processing, refer to the Traveller Processing Manual.

### **Additional and Direct Questioning**

19. Additional questions to those normally asked at primary and direct questioning techniques may be necessary to either confirm or negate an officer's suspicions.
20. Additional questions and the use of direct questioning techniques, however, will not be used as a matter of routine.
21. BSOs are authorized to ask questions they believe are relevant to the performance of their duties, including questions that, at times, may appear intrusive to the individual.
22. Individuals are not obligated, however, under any circumstances, to answer any questions that do not relate to their immigration status, to the goods in their possession, or to the lawful duties of the BSO.
23. Additional and direct questioning techniques must be conducted in accordance with the *Charter of Rights and Freedoms*, the *Canadian Human Rights Act*, the *Privacy Act*, the *Youth Criminal Justice Act*, and CBSA Standards of Conduct.
24. BSOs may ask additional questions to clarify or expand on answers received from an individual during primary processing.
25. Additional questions must relate to the clarification of the individual's declaration or immigration status.
26. If anomalies or indicators of non-compliance are discovered during primary questioning, officers may ask additional questions after they have

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determined that the indicators noted, when grouped together, form suspicion in the officer's mind.

27. Additional questions may relate, for example, to the purpose of their trip if they are a returning Canadian resident; their occupation or employment status; whether they are travelling alone or with other people; or any other question relevant to the clarification of the indicators present.
28. Under no circumstances should a BSO request information (i.e., passwords) from travellers for the purpose of accessing electronic accounts (e.g., eBay) in order to determine the value of goods. Whenever possible, invoices and sales slips indicating the transactional value of the goods should be used. In instances where the importer is unable to supply such information, officers should follow the valuation of goods procedures as outlined in memorandum D-13.

Note: In a situation such as this where an officer may believe there is contravention of the *Customs Act* relating to the value of the goods but there is insufficient evidence for them to take enforcement action, a referral should be forwarded to the local Investigations Division office for further action. A BSO should also advise Intelligence Division via ORS of the referral to Investigations. Intelligence will work up the file in support of possible future enforcement action at ports of entry.

29. Where possible, a primary officer's suspicions should be confirmed or negated at primary.
30. Direct questioning must relate to the clarification of the indicators present.
31. BSOs will begin all direct questioning in a mildly intrusive manner. As the suspicions of the officer are confirmed and the number of indicators increases, the intrusiveness of direct questioning may be intensified.
32. BSOs will not, under any circumstances, threaten an individual with any form of legal sanction for refusal to answer additional or direct questions.
33. If an individual refuses to answer an additional or direct question, the officer must rephrase the question, move on to another question, or make a decision to allow the individual to continue through the customs process, refer them for additional processing, or refer them for examination based on reasonable suspicions.

Note: Persons are under no obligation to answer any questions that do not pertain to either their goods or their admissibility to Canada.

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34. Questions relating directly to any irregularities noticed by an officer can be asked as soon as they are observed. If a person is unable to answer any question that, in all likelihood, they should know the answer to, this, in itself, may be an indicator of non-compliance.
35. When additional or direct questions are asked and an enforcement action is taken, officers must make precise notes of the exact wording of each question, the answer and/or the person's reaction.

Note: If an enforcement action results in prosecution, it will be necessary for the officer to be able to articulate his/her suspicions.

36. Direct questioning techniques may be used during any part of the CBSA process: primary, secondary, or while roving.

#### Minors

37. Persons under the age of eighteen travelling with a parent or guardian will normally not be separated from them for questioning during the CBSA clearance process. An example of this would be the questioning of a minor for verification of the adult's declaration.

#### Referrals

38. After reaching the point of finality, referrals to secondary are chosen for mandatory reasons, on a random basis, as part of a sampling stint, or simply to verify a declaration made.

Note: Refer to the Traveller Processing Manual for details on referral types.

39. Selective referrals will be used to verify declarations.

Note: Selective referrals are made when reasonable suspicions exist about the truth of a person's declaration. These suspicions may arise as the result of the declaration made by the person, or indicators observed during primary questioning. If there is a confirmed lookout, the referral is mandatory subject to the Agency's policy concerning the handling of high-risk persons. Refer to the CBSA *Policy on the Use of Force*.

40. Selective referrals may also be made for other purposes. For example, an officer having doubts about a person's immigration status would make a selective referral to immigration secondary for further examination.

41. When persons are referred from primary, it is imperative that the primary officer conveys the information about the person's declaration and the reason for referral to the secondary officer. A declaration card or referral slip must be completed containing the following information:
- a) the number of persons questioned and their country of residence;
  - b) the dollar value(s) of the goods reported;
  - c) an approved referral code, which indicates the reason(s) for the referral and/or the suspicions of the officer; and
  - d) the initials, badge number, or lane of the primary officer.

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 high-risk persons.

42. Secondary officers will explain the reason for referral to the traveller. For example to:
- a) verify their declaration (i.e., for lookouts, contraband);
  - b) speak to an Immigration officer;
  - c) inspect agricultural, plant, or meat products;
  - d) pay duties and taxes; or
  - e) random referrals.
43. If a person attempts to leave a CBSA area before undergoing an examination, they may be restrained from leaving the area and may also be arrested for obstructing or hindering a peace officer in the performance of their duties.
44. BSOs will not pursue persons outside Customs Controlled Areas (CCA) or off CBSA property should they choose to flee. BSOs will contact the police of jurisdiction as per local policy.

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## Reporting, Questioning, and Referral

### Commercial Stream

45. In the commercial stream, transporters, importers, exporters, or their agents must be given a reasonable opportunity to make a true and complete report or accounting.
46. If the point of finality is not reached before a shipment is examined, and a contravention or an offence under the *Customs Act* is discovered, enforcement action would not normally be taken.
47. At the time of arrival, the person in charge of a conveyance carrying a commercial shipment must report themselves and the goods to the CBSA.
48. With the exception of transporters operating under approved alternative cargo reporting procedures, the point of finality at the time of report is reached upon presentation to the CBSA of fully completed and acceptable customs cargo reporting commercial documentation (e.g. cargo manifest).
49. If there is insufficient documentation or the documentation does not provide adequate information to reach the point of finality, they will be returned to the transporter for correction.
50. Examinations will only be done after the commercial documentation presented provides a clear point of finality.
51. In order to obtain CBSA release of imported commercial goods, an importer or agent must make an interim or final accounting of the goods by presenting all required documents, properly completed, along with applicable permits, certificates, or other supporting documents to the CBSA.
52. With respect to accounting for release, the point of finality is reached when an officer has reviewed and found acceptable the documents presented and has arrived at a point where a decision must be made to either release the shipment or refer it for examination.

### Referrals

53. Once an officer is satisfied an amendment made or explanation given is complete, the point of finality has been reached and the shipment may be referred for examination or released.

Note: There may be situations where goods will be released even though an accounting package does not meet all the requirements and is being rejected. However, all the following conditions must exist before the release may be granted:

- a) the reason for rejection concerns matters not related to enforcement (e.g., coding or calculation errors); and
  - b) the officer has already decided that an examination will not be required.
54. Referrals for secondary examination are chosen for mandatory reasons, on a selective basis, or on a random basis.
55. After reaching the point of finality, for enforcement purposes, selective referrals are made when reasonable suspicions exist about the truth of a person's declaration. The confirmation of an intelligence lookout, bulletin, alert or target is a mandatory referral subject to the Agency's policy concerning the handling of high-risk persons. Refer to the CBSA *Policy on the Use of Force* and the section dealing with high-risk persons.
56. A selective referral may also be based on an officer's suspicion that a person, shipment and/or conveyance should be referred for examination.
57. The decision to carry out a selective examination may be made at primary or at any subsequent stage of processing, so long as the point of finality has been reached and reasonable grounds exist.
58. Selective referrals may also be made for other purposes. For example, an officer having doubts about the medical condition of livestock or has information to that effect, could make a discretionary, mandatory, or selective referral for further examination by a CBSA secondary officer with experience in agriculture.
59. 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.
- Note: The use of contraband detection equipment may assist in confirming or negating suspicion.
60. Since it is possible that such a shipment could be tampered with once it becomes apparent that it has been selected or referred for examination, precautionary measures must be taken to ensure CBSA's control over the goods and to ensure the examining officer's safety.

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## Reporting, Questioning, and Referral

### General

61. BSOs will consult intelligence documents (i.e., intelligence reports, bulletins, alerts, etc.) respecting high-risk commodities and countries of origin, *modus operandi*, concealment methods, trends, importer, transporter, and exporter performance records, and compliance reports to assist them in identifying high-risk persons, shipments, and conveyances for examination.

### ROLES AND RESPONSIBILITIES

#### Border Services Officers (BSO)

62. BSOs are responsible for adhering to all reporting, questioning, and referral policies and procedures.

#### CBSA Port of Entry Managers and Superintendents

63. CBSA port of entry managers and superintendents are responsible for:
- a) ensuring that the policies and procedures relative to reporting, questioning, and referral are adhered to at their port;
  - b) providing direction and support to BSOs; and
  - c) taking appropriate corrective action on policy and procedures breaches.

#### Enforcement Branch

64. The Enforcement Branch is responsible for:
- a) developing, modifying, and approving all enforcement policies related to reporting, questioning, and referral; and
  - b) providing guidance to regional managers and superintendents.

### PROCEDURES

65. Refer to the following publications for detailed procedures:

Traveller Processing Manual  
Departmental Memorandum 3  
Departmental Memorandum 9  
Departmental Memorandum 17  
Departmental Memorandum 19



## REFERENCES

66. *The Customs Act*  
Traveller Processing Manual  
Departmental Memoranda

## **CUSTOMS ENFORCEMENT MANUAL**

### **Part 3**

### **SELECTION**

### **Chapter 4**

## **ROVING POLICY AND PROCEDURES**



## POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct roving in accordance with the provisions set out in the *Customs Act* or any other legislation that it administers.

## DEFINITIONS

2. Refer to Part 11 - Glossary.

## AUTHORITIES

3. All roving procedures must be conducted in accordance with the *Charter of Rights and Freedoms*, the *Canadian Human Rights Act*, the *Privacy Act*, the *Youth Criminal Justice Act*, and the Code of Ethics and Conduct.

### *Customs Act*

4. Section 11 – Requires every person arriving in Canada to report to customs and to answer truthfully any questions asked by an officer in the performance of his or her duties under this Act or any other Act of Parliament.
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.
6. Section 13 – Requires every person reporting goods under section 12, to present goods to the officer and answer truthfully any question asked by the officer with respect to the goods.

## PURPOSE AND SCOPE

7. The purpose of this policy is to provide guidelines for customs officers on roving activities.
8. This policy applies to all customs personnel enforcing the *Customs Act* in all modes of transportation.

## BACKGROUND

9. Since 1984, the use of roving has been one of the fundamental components of the CBSA enforcement program. Originally conceived to help identify drug couriers, it now forms one third of our traveller screening and examination program, which includes primary, secondary, and roving.
10. The CBSA's aim is to improve the quality of referrals as well as the quality of examinations in order to enhance enforcement activities. This is achieved, in part, through the application of roving techniques and skills.
11. The primary goal of roving is to identify individuals who may be involved in the unlawful importation/exportation of goods, particularly those that are prohibited, controlled, or regulated in Canada.

## POLICY GUIDELINES

12. Roving is to be carried out strictly for the purposes of enforcement operations in accordance with these policies and procedures.
13. Officers conducting roving activities should have completed the Customs Inspector Recruitment Training Program (CIRTP) and a Rover Training Course, have at least one-year primary/secondary Customs experience, and good interpersonal/communications skills.
14. All interactions must begin with a greeting and the rovers must identify themselves to the traveller.
15. Roving may be conducted in any area used for the international arrival or departure of people and/or goods. Roving will be limited to areas where customs powers may be exercised.

Note: For example, officers do not have authority to rove pre-primary at a border port of entry if this area is physically outside of the customs area. An example of this would be the pre-primary area at a land border crossing.

16. Normally, only uniformed officers would carry out roving operations. However, special enforcement teams or individual officers engaged in a specific project may conduct plain-clothes roving in accordance with operational requirements approved by local management.

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## Roving

17. Rovers not wearing a uniform must identify themselves and present a CBSA badge and identification when approaching an individual for the purpose of an interview.
18. Rovers must record every passenger they have selected for secondary examination, including the reasons for selection and the outcome of the examination.
19. Additional questions may be used to establish preliminary information such as identification and travel information. Direct questioning may be used if suspicions are raised.

Note: Persons are under no obligation to answer any questions that do not pertain to their goods or their admissibility into Canada.

### Detector Dog Teams

20. Only passive detector dogs will be used in public areas.

### Joint Forces Roving Projects

21. The CBSA will assume the lead role in any joint forces roving project that occurs in a customs area.
22. The superintendent in charge will assure that the project design seeks to minimize the impact on the travelling public.
23. Officers will work in pairs (one customs officer and one officer from the other agency) in order to avoid approaching the same person separately on more than one occasion.
24. Persons who are considered detained in accordance with the *Charter* will be provided the reason for the detention, their advisements regarding right to counsel, and cautioned concerning inculpatory statements.

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

25. Customs processing must be concluded before persons are removed to Immigration detention, or the custody of a police agency.

## ROLES AND RESPONSIBILITIES

### Roving Officers

26. Roving officers are responsible for:

- a) determining, based on risk, where to concentrate roving efforts;
- b) reviewing information on passengers and shipments provided by targeting officers or regional intelligence officers;

Note: Roving officers differ from targeting officers in that targeting officers select passengers or shipments based on advance documentation whereas roving officers review information from targeting officers and select based on real-time observations and risk assessment. Where targeting officers are not available, roving officers may perform some of their duties.

- a) being aware of current intelligence, trends, and lookouts;
- b) possessing knowledge of current travel documentation including travel tickets, commercial documentation, passports, visas, and other identification;
- c) visually screening arriving passengers and conveyances to determine, based on real-time observation and risk assessment, which merit further examination;
- d) using interview and interrogation techniques in accordance with CBSA training and policy;
- e) Note: Refer to Part Three, Chapter Three, Reporting, Questioning, and Referral Policies and Procedures for information pertaining to additional and direct questioning;
- f) providing feedback and making recommendations to managers and superintendents on the relevance of screening indicators and intelligence alerts; and
- g) taking notes on all secondary examinations resulting from a rover referral and completing reports when necessary.

## **Managers and Superintendents**

27. Managers and superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) providing sufficient on-the-job training to all customs officers engaged in roving where formal training has not been conducted;
- c) selecting and scheduling for roving duties only those customs officers that have completed the Rover Training Course or equivalent on-the-job training;
- d) selecting and scheduling for roving duties those customs officers who demonstrate the skills and techniques that will have the greatest impact on the success of the program; and
- e) ensuring completion of required notes and reports.

## **Customs Contraband, Intelligence and Investigations (CCII)**

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

- a) developing and maintaining appropriate policy and procedures as required;
- b) monitoring compliance with these policies and procedures;
- c) receiving feedback and recommendations from the field and addressing concerns;
- d) providing guidance to the field; and
- e) developing and providing training for customs officers and superintendents on roving procedures and the use of additional and direct questioning techniques.

## **PROCEDURES**

### **Rovers and Spotters**

29. Conduct a daily threat assessment of arriving conveyances (flights, vessels, trucks, trains etc) based on conveyance information and documentation and on information provided by targeting officers where applicable.



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**Roving**

30. Concentrate roving efforts based on pre-arrival assessments.
31. Use observational skills combined with knowledge of current intelligence, trends, and lookouts.
32. Conduct a visual threat assessment of passengers, conveyances, and goods, where possible, as they arrive.
33. Decide which individuals to interview based on indicators observed.
34. Select individuals to question or refer for secondary examination based on suspicions raised through observation.
35. Approach selected individuals and, if in plain clothes, identify oneself as an employee of the CBSA and present badge and identification.
36. Greet travellers and use this opportunity to observe the individuals verbal and non-verbal behaviour.
37. Ask to see and review any pertinent identification, declaration, and/or travel documents.
38. Begin questioning in a less-intrusive manner by asking additional questions pertaining to matters such as their travel, identification, declaration, and employment.
39. Compare answers given to the documentation provided.
40. Increase intensity of questioning proportionate to any indicators discovered.
41. Progress to a secondary level of examination with more-intrusive questioning by applying direct questioning techniques when sufficient indicators exist (i.e. verbal and non-verbal, documentation, itinerary) and/or your suspicions have not been denied.

Note: Refer to Part Three, Chapter Three, Reporting, Questioning, and Referral for policies and procedures pertaining to additional and direct questioning.

42. Use interview and interrogation techniques in accordance with CBSA training.
43. Radio for an assisting officer to run enforcement database checks on the individual(s), when applicable.

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## Roving

44. Assisting officer - Communicate any positive enforcement database hits to the roving officer while ensuring the individual(s) involved cannot overhear the communication.
45. Decide if suspicions have been confirmed, negated, or sufficient suspicions still exist and, depending on your decision, refer the individual(s) for secondary examination or thank the individual(s) for their cooperation and proceed.
46. Personally conduct the secondary examination of any individual(s) you have selected, whenever possible.

Note: Exceptions may be made if a rover has referred more than one subject and it is not believed that they are travelling together. If this occurs, refer subsequent examinations to another rover or secondary officer.

47. Observe selected individuals as closely as possible to ensure that they do not attempt to destroy or dispose of any evidence if you continue to rove while the person collects luggage or moves into a line.
48. Immediately arrest individuals who admit to attempting to smuggle contraband, advise them of the reason for the arrest and their right to retain and instruct counsel, and caution them against making any incriminating statements as per The Charter of Rights and Freedoms section 10.
49. Escort arrested individuals to the secondary area and provide them with immediate access to a telephone if they have asked to contact counsel.

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

50. Record all pertinent facts in the CE-1 Customs Notebook, including but not limited to:
  - a) suspicious activities;
  - b) verbal and non-verbal indicators;
  - c) questions posed and their answers; and
  - d) times of detention, arrest, advisements, and cautions.

## Team Roving

## EN Part 3 Chapter 4

## Roving

51. Decide as a team who will be acting as the rover and who will be the spotter(s).
52. As a team, select individuals for questioning or for secondary examination based on suspicions raised through observation.
53. Spotter – Observe all interactions between the rover and the individual(s) for officer safety purposes and to watch for the individual(s) non-verbal reactions.
54. Spotter – Communicate any suspicious activities to the roving officer by a two-way communication device or in person, ensuring the individual(s) involved cannot overhear the communication.
55. Detector Dog Master as Rover – Initiate the reward process and divert the dog's attention if the dog indicates on an individual. Spotter – take over roving duties and assume control of the individual(s) for further questioning at this point.

Note: Refer to the Detector Dog Service Operational Manual for additional information.

## REFERENCES

56. *Customs Act*  
*Canadian Charter of Rights and Freedoms*  
*Canadian Human Rights Act*  
*Privacy Act*  
*Youth Criminal Justice Act*  
CCRA Service Standards and Standards of Conduct  
Detector Dog Service Operational Manual

## **ENFORCEMENT MANUAL**

### **Part 3**

### **SELECTION**

#### **Chapter 5**

#### **ADVANCE PASSENGER INFORMATION/PASSENGER NAME RECORD (API/PNR) and PASSENGER INFORMATION SYSTEM (PAXIS) POLICY AND PROCEDURES**

20/10/08



**Part 3 Chapter 5**

**API/PNR and PAXIS**

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## Part 3 Chapter 5

## API/PNR and PAXIS

### POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to require Advance Passenger Information (API) / Passenger Name Record (PNR) data from carriers on persons seeking entry into Canada. This data is used to identify persons who are or may be involved with, or connected to, terrorism, terrorism-related crimes, or other serious crimes, including organized crime.
2. Commercial carriers and charterers carrying persons or goods into Canada or travel agents and owners and operators of a reservation system are required to provide specific information about all persons on board a commercial conveyance prior to the arrival of that conveyance in Canada.

### DEFINITIONS

3. Refer to "Glossary".

### AUTHORITIES

#### Customs Act

4. Section 107.1(1) prescribes circumstances and conditions, that requires commercial carriers, charterers, travel agents, and owners and operators of a reservation system to provide, or provide access to, specific information about any person on board a conveyance in advance of the arrival of the conveyance in Canada or within a reasonable time after that arrival.
5. Section 107.1(2) stipulates that any person who is required under subsection (1) to provide, or provide access to, prescribed information shall do so despite any restriction under the *Aeronautics Act* on the disclosure of such information.

#### Passenger Information (Customs) Regulations

6. The *Passenger Information (Customs) Regulations* prescribe who is required to provide, or provide access to, specific information. They outline the specific information that is required and indicate the format in which the information is to be provided.

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**API/PNR and PAXIS**

7. Prescribed classes of persons:
  - a) commercial carriers and charterers who undertake to carry persons or goods to Canada and the representatives of those carriers and charterers;
  - b) travel agents; and
  - c) owners and operators of a reservation system.
8. Prescribed Information:
  - a) their surname, first name and any middle names;
  - b) their date of birth;
  - c) their gender;
  - d) their citizenship or nationality;
  - e) the type of travel document that identifies them, the name of the country in which the travel document was issued and the number on the travel document;
  - f) their reservation record locator number, if any, and in the case of a person in charge of the commercial conveyance or any other crew member without a reservation record locator number, notification of their status as a crew member; and
  - g) the information relating to the person in a reservation system.
9. Prescribed Conditions:
  - a) Manifest: If required, commercial carriers, charterers, travel agents, and owners and operators of a reservation system, will provide specific information referred to in paragraph 6(a) to (f) in the form of a manifest to a Minister's representative at the time of departure of the commercial conveyance from the last place the person boarded the conveyance before arriving in Canada.
  - b) Reservation system: If required, commercial carriers, charterers, travel agents, and owners and operators of a reservation system will provide to a Minister's representative the information as prescribed in paragraph 6(g), or provide a Minister's representative access to their reservation system.



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**API/PNR and PAXIS**

- c) Electronic or non-electronic format: If required, commercial carriers, charterers, travel agents, and owners and operators of a reservation system will provide or provide access to specific information referred in paragraph 6:
  - (i) when the member maintains the information in an electronic format, that the member provide, or provide access to, as the case may be, the information in the electronic format; and
  - (ii) when the member does not maintain the information in an electronic format, the member provides copies of the information or provides access to the written information, as the case may be.

Immigration and Refugee Protection Act (IRPA)

- 10. Section 148(1)(d) requires transportation companies to provide prescribed information, including documents and reports.
- 11. Section 149(1)(d) notes that the information prescribed in Section 148(1)(d) may only be used for the purposes of the Act or the Department of Citizenship and Immigration Act or to identify a person for whom a warrant of arrest has been issued in Canada; and that notice regarding the use of the information must be given to the person to whom it relates.
- 12. Section 150.1 provides authority for regulations to provide for any matter relating to the collection, retention, use, disclosure and disposal of information for the purposes of this Act or for the purposes of program legislation as defined in section 2 of the Canada Border Services Agency Act; and for the disclosure of information for the purposes of national security, the defence of Canada or the conduct of international affairs, including the implementation of an agreement entered into under section 5 of the Department of Citizenship and Immigration Act or section 13 of the Canada Border Services Agency Act.

Immigration and Refugee Protection Regulations

- 13. Section 269 requires that commercial transporters provide API and PNR information upon request.

Protection of Passenger Information Regulations (PPIR)

## Part 3 Chapter 5

## API/PNR and PAXIS

14. Specify that CBSA shall not for the purposes of the Act, retain, provide access to or disclose API/PNR other than in accordance with these regulations.

### PURPOSE AND SCOPE

15. The purpose of this document is to provide guidelines for the acquisition, use and retention of API/PNR data, as well as the use of the Passenger Information System (PAXIS). This policy applies to all officers who are authorized to view and use API/PNR data including those officers who are authorized to access the PAXIS.
16. This policy applies to the air mode as specified in *Customs Notice N-472*. For all other modes of transportation, the date on which the Minister will require the API/PNR data be provided in accordance with the regulations will be announced prior to implementation.

### BACKGROUND

17. In November 2001, changes to the *Customs Act* obligated commercial carriers, charterers and/or their agents, travel agents, and owners and operators of a reservation system to provide specific information for all persons being transported to Canada from foreign points of origin. The commercial carriers, charterers and/or their agents must also provide access to the passenger information contained in their reservation systems. Provision of, and access to this data allows the officers to review information on persons entering Canada prior to arrival.
18. The *Passenger Information (Customs) Regulation* made under section 107.1 of the *Customs Act* came into effect October 4, 2002, through the use of the retroactive regulation – making authority in paragraph 167.1(b) of the *Act* and the issuance of Customs Notice N-472. The regulations have since been approved and were published in the *Canada Gazette, Part II* on July 2, 2003.
19. The API/PNR program focuses on the identification of high-risk travellers and the development of risk indicators. This information will also aid in identifying the new, emerging and constantly changing travel patterns of high-risk travellers. It will allow the CBSA to manage risk on a proactive basis.

## Part 3 Chapter 5

## API/PNR and PAXIS

### POLICY GUIDELINES

#### Advance Passenger Information

20. API consists of data identifying a person, including their surname, first name and any middle names, date of birth, gender, citizenship or nationality, travel document type that identifies them, and the number and country of issue of the travel document. This data will be made available to CBSA by the commercial carrier upon departure to Canada from a foreign point of origin.
21. Commercial carriers, charterers or their agents are responsible for the electronic transmission of API data in the current acceptable format.
22. The transmission of API data should occur at the time the commercial conveyance departs the foreign point of origin for Canada.
23. The review of API data assists in identifying persons who pose a known risk.
24. All authorized CBSA officers will have unrestricted access to API data for three years and six months from the date of receipt.
25. API data electronically collected by the CBSA is retained for a period of three years and six months.
26. API data received in the region through other means must be retained for a period of two years for Access to Information and Privacy (ATIP) purposes.

#### Passenger Name Record

27. PNR is data regarding a person's reservation and travel itinerary contained in commercial carriers' reservation systems.
28. The CBSA is not authorized to collect the entire PNR. Certain data such as meal and health information will be purged upon receipt.
29. Commercial carriers, charterers or their agents are responsible for the electronic transmission of PNR data in the current acceptable format.
30. The CBSA will automatically collect the PNR data once the API data is transmitted.

Note: Reservation systems vary between air carriers, therefore available data will differ from each reservation system.

## Part 3 Chapter 5

## API/PNR and PAXIS

Note: Refer to Appendix A for the list of potential PNR data elements.

31. The review of PNR data allows authorized CBSA officers to assess the unknown risk of travellers.

32. Access by authorized CBSA officers to PNR data is restricted.

Note: Please refer to Appendix B for the list of authorized CBSA officers and the access timeframes.

33. PNR data is retained for a period of three years and six months from the date of receipt.
34. PNR data received in the region through other means must be retained for a period of two years for ATIP purposes.
35. All collected PNR data will be available for viewing from the time of receipt up to 72 hours.
36. The period after 72 hours to the end of two years from the receipt of PNR data will involve the post-arrival analysis of data. Access to the PNR data will be limited to authorized intelligence officers and intelligence analysts. During this timeframe, the persons name is not available for viewing unless an authorized user enters a justification. Analysts will only use and access information that does not include the persons name (no-name PNR).
37. For the period from the end of two years to the end of three years and six months, the PNR data will be reviewed and manipulated to identify links, patterns or trends. Access to this data will be restricted intelligence analysts. The accessible information will not contain any personal data that would identify a specific person (de-personalized PNR). All PNR data will only be re-personalized under exceptional circumstances where the President of the CBSA believes on reasonable grounds that there is a real or perceived threat to the security or defence of Canada.

### Passenger Information System (PAXIS)

38. The PAXIS is a secure system used by authorized CBSA officers to review of API/PNR data related to persons scheduled to arrive in Canada. The PAXIS provides access to API/PNR data to support the targeting and analysis function.

## Part 3 Chapter 5

## API/PNR and PAXIS

39. Access to the PAXIS is controlled by user profile, user identification (ID) and password. User profiles restrict access to specific functions and are based on the work description of the user.
40. PAXIS users must complete the PAXIS training prior to receiving access to the system.
41. PAXIS users are responsible for all transactions completed using their user ID and password. All transactions are audited and show the relationship between the user, data, and activity date/time. The owner of the user ID is liable for any misuse or compromise of the system and data contained in its databases.
42. The PAXIS is a CBSA system and is therefore under the guidelines of the *CCRA Electronic Networks Policy* and any breach will be dealt with according to applicable discipline policies.
43. The Integrated Customs System (ICS) Administrative Maintenance Unit will administer user maintenance for the PAXIS upon request from the API/PNR systems section. Any changes due to transfer, promotion, change in duties, or termination of employment must be communicated to [paxissupport@cbsa-asfc.gc.ca](mailto:paxissupport@cbsa-asfc.gc.ca) (CBSA/ASFC-Dist, PAXIS-SIPAX) as soon as possible.

Note: The API/PNR systems section, of the Innovation Science and Technology Branch, monitors the PAXIS Support e-mail.

44. As a commitment to the Privacy Commissioner of Canada to safeguard the privacy rights of individuals, the PAXIS usage is monitored on a regular basis by the API/PNR systems section.
45. Any user who has not accessed the PAXIS over the course of a two-month period will have their privileges suspended by the API/PNR systems section. Access will only be reinstated once written justification from an immediate supervisor is submitted to the API/PNR systems section. It is imperative that individual use of the application is monitored and that the user group is kept to a minimum.

### Protection of Data

46. The PAXIS and the data contained therein, as well as any API/PNR data received manually are classified as "Protected B".
47. The circumstances under which API/PNR data can be disclosed to third parties or outside agencies is restricted.

## Part 3 Chapter 5

## API/PNR and PAXIS

Note: API/PNR data contains personal and sensitive information for which a person would have a high expectation of privacy. This data is therefore protected under the *Privacy Act* and the *Canadian Charter of Rights and Freedoms* (the *Charter*).

48. API/PNR data is considered CBSA information as defined in subsection 107(1) of the *Customs Act*.

Note: Refer to the *Customs Act* and to Memorandum D1-16-1 *Explanation of Section 107 of the Customs Act*. The interim guidelines for the disclosure of CBSA information is provided for by Memorandum D1-16-2 *Interim Administrative Guidelines for the Provision to others, Allowing access to others, and Use of Customs Information*. In addition when considering the disclosure of PNR data the guidelines provided for by Memorandum D1-16-3 *Administrative Guidelines for the Provision to others, Allowing access to others and Use of Passenger Name Record (PNR) Data* must be adhered to.

49. All API and PNR data that is received in the regions through means other than the PAXIS is to be stored in a secure area with controlled access.

## ROLES AND RESPONSIBILITIES

### REGIONAL OPERATIONS

#### CBSA Officers

50. CBSA (targeting) officers assigned to Passenger Targeting Units (PTU's) are responsible for:
- a) complying with this policy and any other CBSA policies relevant to the API/PNR program;
  - b) accessing the PAXIS to develop targets for high-risk travellers entering Canada so that an examination, verification or investigation can be conducted;
  - c) consulting with supervisors and intelligence personnel and seeking advice and guidance in support of day-to-day activities; and
  - d) retrieving API/PNR data related to a seizure or enforcement action.

## Part 3 Chapter 5

## API/PNR and PAXIS

### **CBSA Superintendents**

51. CBSA superintendents and/or chiefs assigned to PTU's or Intelligence sections are responsible for:
- a) ensuring compliance with this policy and any other CBSA policies relevant to the API/PNR program;
  - b) taking appropriate corrective action on any policy or security breaches;
  - c) providing advice and guidance to targeting officers working under their direction with respect to the application of this policy;
  - d) consulting with regional and/or headquarters officials and seeking advice and guidance, as required; and
  - e) providing feedback and making recommendations to the program area responsible for these guidelines on the administration/application of these guidelines.

### **Regional Intelligence Officers**

52. Regional intelligence officers (RIOs) are responsible for:
- a) complying with this policy and any other CBSA policies relevant to the API/PNR program;
  - b) providing support and guidance to regional operations, intelligence and enforcement efforts;
  - c) collecting, evaluating, and disseminating tactical, operational and strategic intelligence data received through the PAXIS to the field; and
  - d) consulting with supervisors and/or headquarters officials and seeking guidance as required.

### **Regional Intelligence Analysts**

53. Regional intelligence analysts (RIAs) are responsible for:
- a) complying with this policy and any other CBSA policies relevant to the API/PNR program;

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## API/PNR and PAXIS

- b) providing support and guidance to regional operations and enforcement efforts;
- c) analyzing tactical, operational and strategic intelligence data received through the PAXIS for short and long-term trend analysis;
- d) preparing intelligence reports on trend analysis; and
- e) consulting with supervisors and/or headquarters officials and seeking advice and guidance as required.

### HEADQUARTERS OPERATIONS

#### **Senior program/project officers**

54. The senior program/project officer for API/PNR is responsible for:

- a) ensuring compliance with this policy and any other CBSA policies relevant to the API/PNR program;
- b) assessing an Administrative Monetary Penalty for non-compliance with the requirement to provide, or provide access, to API/PNR data
- c) providing support and functional guidance to regional operations and headquarters;
- d) consulting with the Innovation Science and Technology Branch and service providers concerning the PAXIS;
- e) consulting with commercial carriers to ensure compliance and functionality with respect to program requirements and the PAXIS;
- f) monitoring and maintaining the PAXIS usage and operations;
- g) providing system changes and updates to end-users of the PAXIS; and
- h) consulting with supervisors and/or headquarters officials and seeking advice and guidance as required.

55. The senior program officer for Intelligence Development and Field Support, Intelligence Directorate, is responsible for:

- a) complying with this policy and any other CBSA policies relevant to the API/PNR program;



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**API/PNR and PAXIS**

- b) providing support and guidance to regional operations, intelligence and enforcement efforts;
- c) collecting, evaluating, and disseminating tactical, operational and strategic intelligence data received through the PAXIS;
- d) consulting with supervisors and/or headquarters officials and seeking advice and guidance as required; and
- e) liaising with the United States Customs and Border Protection (USCBP) concerning data received through the PAXIS.

**Senior intelligence analysts**

56. Senior intelligence analysts (SIAs), Intelligence Directorate, are responsible for:

- a) complying with this policy and any other CBSA policies relevant to the API/PNR program;
- b) providing field support and guidance to regional operations and enforcement efforts;
- c) analyzing tactical, operational and strategic intelligence data received through the PAXIS for short and long-term trend analysis;
- d) preparing intelligence reports on trend analysis; and
- e) consulting with supervisors or headquarters officials and seeking advice and guidance as required.

**Managers**

57. Manager, Contraband Programs, Border Enforcement Division, Enforcement Directorate, is responsible for:

- a) developing, modifying, and approving all policies related to the use of the PAXIS, user access, its databanks, files and records and outside system interfaces;
- b) approving additional system functionality and expansion; and

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**API/PNR and PAXIS**

- c) ensuring the processes and policies of other directorates, divisions and departments are adhered to in the development, implementation and operation of the API/PNR program.
58. The managers of the National Risk Assessment Centre are responsible for:
- a) ensuring compliance with this policy and any other CBSA policies relevant to the API/PNR program;
  - b) providing advice and guidance to officers working under their direction with respect to the application of these guidelines;
  - c) consulting with regional or headquarters officials and providing advice and guidance, as required; and
  - d) providing feedback and making recommendations to the program area responsible for these guidelines on the administration/application of these guidelines.

**Director, Borders Intelligence Division**

59. The Director, Borders Intelligence Division, Intelligence Directorate, is responsible for:
- a) ensuring compliance with this policy and any other CBSA policies relevant to the API/PNR program;
  - b) providing advice and guidance to headquarters intelligence units working under their direction with respect to the application of these guidelines;
  - c) consulting with regional or headquarters officials and providing advice and guidance, as required;
  - d) authorizing the disclosure of PNR data; and
  - e) providing feedback and making recommendations to the responsible program area responsible on the administration/application of these guidelines.

**Security Directorate**

60. The Security Directorate is responsible for:

## Part 3 Chapter 5

## API/PNR and PAXIS

- a) advising the Director General of the Intelligence Directorate on operational and policy matters relating to the security of the PAXIS and its data.

### PROCEDURES

61. For procedures on the use of the PAXIS please refer to the *PAXIS Learners Guide*. For procedures on the disclosure of API/PNR data please refer to *Memorandum D1-16-2 - Interim Administrative Guidelines for the Provision to others, Allowing Access to Others and Use of Customs Information* and *Memorandum D1-16-3 - Administrative Guidelines for the Provision to others, Allowing access to others and Use of Passenger Name Record (PNR) data*, refers to the disclosure of PNR data.

### REFERENCES

62. *Access to Information Act*  
Air Passenger Contraband Targeting Program Guide  
CBSA Comptrollership Manual, Security Volume  
CCRA Electronic Networks Policy Guidelines  
*Customs Act*  
Enforcement Manual  
Government of Canada Technical Security Standards for Information Technology  
*Immigration and Refugee Protection Act*  
*Immigration and Refugee Protection Regulations*  
Logging and Monitoring of Employee Access to Client Data Bulletin No. s/s-97-021  
Memorandum D1-16-1 Explanation of Section 107 of the Customs Act  
Memorandum D1-16-2 Interim Administrative Guidelines for the Provision to others, Allowing access to others, and Use of Customs Information  
Memorandum D1-16-3 Administrative Guidelines for the Provision to others, Allowing access to others and Use of Passenger Name Record (PNR) Data  
PAXIS Learners Guide  
*Library and Archives of Canada Act*  
*Passenger Information (Customs) Regulations*  
*Personal Information and Documentation Protection Act*  
*Protection of Passenger Information Regulations*  
*Privacy Act*

### RESPONSIBLE OFFICE

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**API/PNR and PAXIS**

Office of Primary Interest: **Borders Enforcement Division**



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**ADVANCE PASSENGER INFORMATION/PASSENGER NAME RECORD  
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**Appendix A**

**POTENTIAL PASSENGER NAME RECORD DATA ELEMENTS**

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APPENDIX A

**APPENDIX A: POTENTIAL PASSENGER NAME RECORD (PNR) DATA  
ELEMENTS**

Not all PNR data elements listed below are provided to the CBSA by all air carriers. Currently, air carriers are only mandated to provide the CBSA the data elements that they record for their own purposes.

PNR data elements currently available for targeting:

1. PNR record locator
2. Date of reservation
3. Date(s) of intended travel
4. Name
5. Other names on PNR
6. All forms of payment information
7. Billing address
8. Contact telephone numbers
9. All travel itinerary for specific PNR
10. Frequent flyer information (limited to miles flown and address(es))
11. Travel agency
12. Travel agent
13. Split / divided PNR information
14. Ticketing field information
15. Ticket number
16. Seat number
17. Date of ticket issuance
18. No show history
19. Bag tag numbers
20. Go show information
21. Seat information
22. One-way tickets
23. Any collected APIS information
24. Standby



25. Order at check in

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**Appendix B**

**API/PNR AUTHORIZED USERS AND ACCESS LEVEL**

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Appendix B

**APPENDIX B: API/PNR AUTHORIZED CBSA OFFICIALS AND ACCESS LEVEL**

Authorized Users	API Data Access	PNR Data Access		
		Immediate	Short Term	Long Term
		0- 72 hrs	72 hrs - 2 yrs	2 - 3.5 yrs
Air Passenger Targeter / Supervisor	X	X		
NRAC Program Officer / Supervisor	X	X	R	
Intelligence Officer** / Chief	X	X	R	
Intelligence Analyst	X		D	D
HQ Targeting Program Officer	X	X	R	
IS&T PAXIS Program Support	X	X	R	
Mangers HQ Targeting, Intelligence & NRAC	X	X	R	R*

\*\* User must either be working in or in direct support of:

- An air passenger targeting operation or;
- The Borders Intelligence Division

**X:** Full access to data

**D:** De-personalized PNR data only (no traveller information)

**R:** Re-personalized PNR data with justification

**R\*:** Access to Long Term Re-personalized PNR data requires CBSA Presidential approval.

## **ENFORCEMENT MANUAL**

### **Part 3**

### **SELECTION**

### **Chapter 6**

### **SURVEILLANCE**



## POLICY STATEMENT

1. The Canada Border Services Agency (CBSA) recognizes surveillance as a tool used to obtain information for the purpose of furthering its enforcement mandate.

## DEFINITIONS

2. Authorized means - any type or means of surveillance approved by a Responsible manager for CBSA use or where required, by application and approval from the appropriate Court.
3. CBSA Certified Officer - an officer who has successfully completed CBSA Surveillance Training, whose qualifications, and skills in surveillance have been assessed as satisfactory by a designated CBSA Certification Officer.
4. Counter-surveillance - the discovery and observation of a surveillance operation by the target, his/her associate or other persons. Counter-surveillance prevention measures are actions that are taken by a surveilling officer to prevent, detect, avoid or deflect detection of a surveillance operation by the target or other persons, with goals of preserving the covert nature of the surveillance operation and protecting the health and safety of the officer.
5. Exigent circumstances – conditions requiring immediate action and outside the norm.
6. Joint Forces Operation (JFO) - an operation jointly conducted by CBSA and one or more law enforcement organizations.
7. Operational Plan - a written description of a proposed surveillance activity. The operational plan will include the identification of targets/subjects, background and investigation report, roles of the participating officers, objectives of the surveillance operation, a threat and risk assessment, other agencies involved, geographic scope, a proposed time period, and projected expenses. This information will assist Responsible managers, surveillance coordinators, and officers in assessing the risk, resources required, and duration of the surveillance operation before the surveillance activity commences. See form BSF666 Operational Plan - Surveillance.
8. Responsible manager - Responsible managers are managers of Intelligence, Investigations or Inland Enforcement. For the purposes of this policy, the term responsible manager includes his or her designate.

## EN Part 3 Chapter 6

## Surveillance

9. Surveillance coordinator - the officer in charge of the file and responsible for the planning and execution of the surveillance operation.
10. Surveillance Method
  - a) Foot surveillance - moving surveillance carried out on foot;
  - b) Mobile surveillance - moving surveillance carried out with the use of motor vehicles; or
  - c) Static Surveillance - surveillance carried out from a fixed observation point, whether by officers or by the use of electronic means.
11. Surveillance operation- an enforcement activity involving the covert observation and monitoring of targets movements and activities. It can be based on the use of static, foot or mobile techniques or by any other authorized means.

### PURPOSE AND SCOPE

12. This policy provides CBSA officers and managers with guidelines for the initiation and conduct of surveillance operations. The policy also applies to CBSA officers involved in Joint Forces Operations (JFOs) or other special projects where surveillance is required.
13. For purposes of this policy, surveillance is the **covert** monitoring or observation of persons, vehicles, places or other objects to obtain information about individuals or organizations, where there are reasonable grounds to suspect they are in contravention of the legislation administered by the CBSA.
14. Surveillance-related operational procedures must be consistent with this policy and reviewed regularly by the Enforcement Branch to assure continuing efficiency and compliance. Memoranda of Understanding or other agreements, as described within this policy, may further limit roles and responsibilities.

### POLICY GUIDELINES

15. The nature of surveillance work requires specialized training and equipment to ensure operational effectiveness and that appropriate standards of health and safety are upheld.



## EN Part 3 Chapter 6

## Surveillance

16. Officers engaged in surveillance should withdraw from the activity should they feel there is an unacceptable risk to any persons.
17. Surveillance must be conducted in accordance with the authority and mandate of the CBSA, the *Code of Conduct* of the CBSA, the *Canadian Charter of Rights and Freedoms*, Provincial Traffic Regulations and other applicable legislation and policy.
18. Only CBSA Intelligence Officers, Investigators and Inland Enforcement Officers certified in surveillance and occupying positions where participation in surveillance operations are required, may participate in and conduct surveillance operations.
19. The initiation and conduct of surveillance operations, arranging for surveillance training, and ensuring appropriate reporting is the responsibility of Responsible managers of Intelligence, Investigations or Inland Enforcement.

## Training and Certification

20. Surveillance training will be provided to all Intelligence Officers, Investigators, Inland Enforcement Officers and their Responsible managers whose job duties require participation in surveillance operations.
21. The maintenance of skills and re-certification of officers in surveillance is the responsibility of the Responsible manager, and will be monitored at the regional and national level to ensure adherence to the policy standard.
22. The approval of all training products is the responsibility of Enforcement Branch, and the designation of Trainers and Certifiers for surveillance courses is the responsibility of the Human Resources Branch.
23. Surveillance training programs must be regularly reviewed and be consistent with this policy, guidelines and procedures.
24. The maintenance of skills and re-certification of Trainers and Certifiers in surveillance training and certification matters is the responsibility of the Human Resources Branch.
25. Surveillance training and certification can only be extended to other CBSA program areas with the approval of the Vice-President, Enforcement Branch, CBSA.

## **EN Part 3 Chapter 6**

## **Surveillance**

26. All surveillance course participants must successfully complete an approved, standardized accident avoidance course as a pre-requisite to surveillance training. The Responsible manager is required to ensure that all officers complete this accident avoidance course, as soon as possible.
27. All officers engaged in surveillance activities must have successfully completed the CBSA's Control and Defensive Tactics Training and will wear their issued equipment in accordance with the CBSA Policy on the Wearing of Protective and Defensive Equipment.
28. Prior to undertaking a surveillance operation, the surveillance coordinator will engage only officers who are properly certified in surveillance and have completed the necessary driving course.

## **ROLES AND RESPONSIBILITIES**

### **Enforcement Branch**

29. The Enforcement Branch is responsible for:
  - a) Notifying U.S. authorities where it is necessary to conduct surveillance in the United States;
  - b) Approving all training products;

### **Human Resources Branch**

30. The Human Resources Branch is responsible for:
  - a) Designating Trainers and Certifiers for surveillance training courses;
  - b) Re-certification of Trainers and Certifiers in surveillance training and certification;

### **Responsible managers**

31. Responsible managers are responsible for:
  - a) Ensuring all officers receive the required training;
  - b) Ensuring officers are re-certified when required;
  - c) Ensuring officers maintain their surveillance skills;

- d) Approving surveillance operations and the final report; and,
- e) Terminating or cancelling a surveillance operation.

### **Surveillance Coordinators**

32. Surveillance coordinators are responsible for:
- a) Preparing the surveillance operational plan;
  - b) Coordinating the activities of the surveillance team;
  - c) Conducting surveillance briefing and de-briefing sessions;
  - d) Preparing a daily surveillance report;
  - e) Completing the final surveillance report; and,
  - f) Coordinating information exchange with other agencies.

### **Intelligence Officers, Investigators, and Inland Enforcement Officers**

33. Officers are responsible for:
- a) Executing surveillance according to the policy guidelines;
  - b) Keeping a time and activity log of all movements and relevant observations in their notebooks; and,
  - c) Using and maintaining the equipment for surveillance purposes.

## **PROCEDURES**

### **Surveillance**

34. CBSA Intelligence Officers, Investigators, Inland Enforcement Officers, and their Responsible managers are responsible for conducting surveillance operations according to the CBSA Policy on Surveillance as well as the Surveillance Procedures set out herein.

## EN Part 3 Chapter 6

## Surveillance

35. Responsible managers must ensure that CBSA officers involved in Joint Forces Operations (JFO) are aware that they must adhere to the CBSA Policy on Surveillance and the Surveillance Procedures when engaged in surveillance activities within the JFO. When establishing CBSA participation in JFOs, the JFO partners shall be made aware of the CBSA Policy on Surveillance and Surveillance Procedures.
36. Provincial traffic regulations must be observed at all times. CBSA certified officers engaged in surveillance operations are subject to provincial traffic laws that may involve civil or criminal liability. At no time are officers to be involved in high-speed pursuits. As traffic regulations vary by province, the Responsible managers must ensure that officers conducting surveillance are fully aware of the laws in their jurisdictions as well as any exemptions permitted under provincial regulations.
37. Responsible managers should make attempts to vary the type and colour of vehicles acquired for surveillance activities.

## Planning

38. Responsible managers of Intelligence, Investigations, and Inland Enforcement will ensure that efforts are made to identify and inform each other of surveillance operations related to files held by the other party, where appropriate. Each may call upon the others for assistance in surveillance operations.
39. Surveillance operations require approval by a Responsible manager and will only be approved and conducted upon completion of a CBSA Operational Plan. In exigent circumstances, where a written plan cannot be prepared in an effective and timely way, verbal approval from a Responsible manager must be sought, but written operational plans shall be prepared for such operations as soon as possible thereafter and submitted to the Responsible manager.
40. The surveillance coordinator will prepare an approved operational plan, reporting the details of the proposed surveillance activity, in accordance with the definition set out above.
41. Measures that may be employed to prevent the detection of surveillance or counter surveillance should be considered when planning and conducting all surveillance operations.

## EN Part 3 Chapter 6

## Surveillance

42. Prior to undertaking a surveillance operation, the surveillance coordinator will conduct a briefing with all participating officers. The briefing will include: a review of the operational plan, target sheets, equipment and communication methods to be used, daily objective, shift scheduling and contingency and withdrawal plans.
43. Withdrawal plans should include the establishment of a pre-arranged location for a de-briefing. Contingency plans should cover possible detection scenarios, motor vehicle breakdowns, and accidents.
44. All background checks of targets and known associates, including photos of vehicles and plate numbers must be completed prior to the briefing.
45. Provision of additional equipment such as night vision goggles, cameras, maps, GPS (Global Positioning System), binoculars, and encrypted communication systems is to be coordinated by the surveillance coordinator.
46. The Responsible manager has the authority to define the minimum number of officers required in a surveillance operation on a case-by-case basis, taking into consideration a risk assessment of the operation and achievable operational objectives.

### Execution

47. In cases where a surveillance operation is likely to enter or involve another Region, Responsible managers or the surveillance coordinator will ensure that appropriate contacts are made to advise and if required, seek assistance from local CBSA Enforcement resources in the other region.
48. In situations where it becomes necessary to surveil a target in the United States, the surveillance coordinator will ensure that a Title 18 USC 951 notification is prepared in advance. This notification must be approved by the responsible manager, who will then inform the headquarters program area (e.g. the Field Partnership and Liaison Section or the Criminal Investigations Division), prior to the team entering into the United States. The responsible headquarters program area will in turn advise US authorities upon receipt of a Title 18 from the Responsible manager. The Title 18 notification can be sent directly from the Responsible manager to the U.S. authorities only in exigent circumstances (outside of CBSA office hours). The headquarters area will be advised as soon as possible thereafter. See Appendix A for copy of Title 18.

## EN Part 3 Chapter 6

## Surveillance

49. For mobile surveillance, the driver is responsible for vehicle booking, ensuring the vehicle is in good operational condition, and ensuring that vehicle documentation (insurance, registrations, credit cards) is valid and available. The driver is also responsible for positioning of the vehicle during the surveillance operation. At the end of the surveillance shift, the driver is responsible for re-fuelling the vehicle and reporting any vehicle malfunctions.
50. On the day of the surveillance operation, the surveillance team is deployed under the direction of the surveillance coordinator. The surveillance coordinator will direct a team set-up and coordinate on-ground movement.
51. All surveillance activities must be recorded. Officers on surveillance must record a time and activity log of all movements and relevant observations made during the surveillance operation in their notebooks.

### Termination

52. At the end of the surveillance shift, all team members will submit their surveillance notes to the surveillance coordinator. These notes will be collated and entered into the surveillance target file. Officers will also submit photos and videotape taken during the surveillance operation to the surveillance coordinator.
53. The surveillance coordinator will prepare a daily surveillance report for the Responsible manager. The surveillance coordinator and the Responsible manager will determine further objectives of the surveillance operation, and will review the operational plan for renewal, adjustment, or termination of operations.
54. New information obtained from the surveillance operation must be further developed prior to engaging in additional surveillance activity. This would include indices checks on vehicles, addresses, and persons identified during the surveillance operation.
55. The surveillance coordinator will also coordinate information exchange with other agencies when necessary, ensuring compliance with all relevant laws and policies relating to the sharing of information.
56. Upon the completion of the surveillance operation, a debrief will be held with all team members. The surveillance coordinator will complete a final surveillance report detailing results, including costs incurred and enter this information into the surveillance file.

**EN Part 3 Chapter 6**

**Surveillance**

57. The surveillance operation must be documented in the automated file management system or appropriate record file.

**Counter Surveillance**

58. Counter surveillance is considered an inherent risk in any surveillance operation. As such, precautions must be taken to avoid possible detection of the surveillance activity.
59. When an officer suspects that counter surveillance is being conducted on the CBSA surveillance operation by the target and/or associates, the surveillance co-ordinator must be notified.
60. The surveillance coordinator will direct further activity based on contingency plans previously established.
61. Where the existence of a surveillance operation has been detected or an officer suspects that his/her activity may have been compromised, the surveillance coordinator must be informed immediately. The surveillance coordinator will determine whether one of the previously established contingency plans will come into effect or if termination of the surveillance operation is necessary. The surveillance coordinator will consult with the Responsible manager to assess the impact of discovery on the surveillance operation.
62. When it has been determined the surveillance operation will be terminated, the surveillance coordinator will notify all team members and instruct them as to procedure.
63. The surveillance coordinator will arrange a debriefing with the team and the Responsible manager in order to re-evaluate the surveillance operation and to identify the cause of the detection.





**Part 3**

**SEARCHES AND ENFORCEMENT ACTIONS – PERSONS**

**Chapter 6**

**SURVEILLANCE**

**Appendix A**

**UNITED STATES OPERATIONS NOTIFICATION REPORT (Title 18)**





Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

**PROTECTED**

**PROTÉGÉ**

**IMS FILE #**

**Date of Submission:**

**UNITED STATES OPERATIONS NOTIFICATION REPORT**  
**(IN ACCORDANCE UNDER 18 U.S.C. 951)**

- 1. NAME (S) AND PHONE NUMBERS OF INDIVIDUAL MAKING NOTIFICATION**
- 2. NAME OF DEPARTMENT**
- 3. ADDRESS OF DEPARTMENT**
- 4. PURPOSE OF UNITED STATES OPERATION**
- 5. INTENDED ACTIVITIES OF UNITED STATES OPERATION**
- 6. DATE OF OPERATION IN THE UNITED STATES AND ANTICIPATED DURATION**
- 7. NAME (S) OF OFFICERS PARTICIPATING IN THE UNITED STATES OPERATION**
- 8. NAME (S) OF U.S. AGENCIES PARTICIPATING IN THE OPERATION**
- 9. U.S. PORTS OF ENTRY THAT WILL BE UTILIZED**

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## **CUSTOMS ENFORCEMENT MANUAL**

### **Part 4**

## **EXAMINATION – GOODS AND CONVEYANCES**

### **Chapter 1**

## **DETECTION TECHNOLOGY**

14/09/07



## EN Part 4 Chapter 1

## Detection Technology

### POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to use detection equipment to assist in the examination of imported or exported goods.

### DEFINITIONS

2. Refer to Part 11, Glossary.

### AUTHORITIES

#### *Customs Act*

3. Subsection 13(b) requires persons reporting imported goods to answer truthfully questions respecting the goods, present the goods, unload the conveyance and open and/or unpack any package or container.
4. Subsections 99(1)(a), (b), and (c) authorize 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.
5. Subsections 99(1)(d) and (e) allow officers to examine goods, baggage, or conveyances that have been released but are still in an area under CBSA control if they suspect on reasonable grounds that errors have been made in the declaration, value, or classification of the goods or a contravention has occurred.
6. Subsection 99(1)(f) authorizes officers to stop and board any conveyance, and search the conveyance or any goods it is carrying. The conveyance can be directed to be moved to a CBSA 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.
7. Section 99.1 authorizes officers to stop and question persons and examine their imported goods, if the officers have reasonable grounds to suspect the persons have entered Canada without presenting themselves to the CBSA.
8. Sections 111 and 112 provide 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 CBSA control.

## EN Part 4 Chapter1

## Detection Technology

### *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

9. 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 CBSA office or other suitable place for the search, examination or opening.
10. 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 CBSA office or other suitable place for the search, examination or opening.

## PURPOSE AND SCOPE

11. The purpose of this policy is to provide information to CBSA officers using detection technology equipment and tools in the random examination of goods or to examine goods suspected to contain contraband or dangerous goods.

## ROLES AND RESPONSIBILITIES

### CBSA Officers

12. CBSA officers are responsible for:
  - a) complying with this policy and any other CBSA policies relevant to the enforcement program;
  - b) determining through indicators when the use of detection technology equipment is appropriate;
  - c) being vigilant in protecting the health and safety of themselves, other Border Services Officers and/or the public when operating detection technology equipment;



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## Detection Technology

- d) reporting all detection technology repair and maintenance related issues to the National Detection Technology Help Desk at 1-866-389-1122;
- e) recording and reporting accurate monthly usage statistics to the Regional Detection Technology Coordinator in a timely manner;
- f) taking the prescribed and, in many cases, mandatory training (i.e. x-ray, gamma-ray, ion mobility spectrometry) before operating detection technology equipment and maintaining these skills through regular equipment usage and online refresher courses; and
- g) all drivers of CBSA large vehicles (Mobile VACIS, COMET and Scan Trailer) must successfully complete the CBSA or provincially mandated driver training prior to driving the CBSA large vehicles.

### CBSA Superintendents and Chiefs

13. CBSA superintendents and chiefs are responsible for:

- a) ensuring compliance with this policy and any other CBSA policies relevant to the enforcement program;
- b) approving the request to use the equipment if applicable;
- c) ensuring Border Services Officers receive the necessary and, in many cases, mandatory training (i.e. x-ray, gamma-ray, ion mobility spectrometry) in a timely manner before operating detection technology equipment;
- d) ensuring that all drivers of CBSA large vehicles (Mobile VACIS, COMET and Scan Trailer) have successfully completed the CBSA or provincially mandated driver training prior to driving the CBSA large vehicles;
- e) ensuring Border Services Officers maintain their operator skill levels through regular equipment usage and online refresher training;
- f) ensuring all detection technology repair and maintenance related issues are reported to the National Detection Technology Help Desk at 1-866-389-1122;
- g) ensuring all detection technology requests, other than repair and maintenance, are channelled through the Regional Detection Technology Coordinator;

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## Detection Technology

- h) ensuring accurate monthly usage statistics are recorded and provided to the Regional Detection Technology Coordinator in a timely manner;
- i) taking appropriate corrective action on any policy breaches;
- j) providing advice and guidance to officers working under their direction with respect to the application of this policy;
- k) consulting with regional and/or Headquarters officials and seeking advice and guidance, as required; and
- l) providing feedback and making recommendations to the program area responsible for these guidelines on the administration/application of these guidelines.

### Regional Detection Technology Coordinators

14. Regional Detection Technology Coordinators are responsible for:

- a) ensuring the region is aware of the compliance requirements with this policy and any other CBSA policies relevant to the enforcement program;
- b) coordinating and submitting the Regional Detection Technology annual and adhoc Business Case submissions;
- c) assisting in the coordination of equipment allocation, relocation and removal;
- d) collecting and reporting accurate monthly usage statistics to the Detection Technology Section, Enforcement Branch in a timely manner;
- e) assisting in the coordination of detection technology field tests and evaluations; and
- f) acting as the single-point-of-contact between the Regions and the Detection Technology Section for all detection technology matters with the exception of repair and maintenance requests.

### Regional Detection Technology Instructors

15. Regional Detection Technology Instructors are responsible for:

- a) ensuring the region is aware of the compliance requirements with this policy and any other CBSA policies relevant to the enforcement program;

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## **Detection Technology**

- b) successful completion of the appropriate detection technology train-the-trainer before providing end-user training in the Regions;
- c) coordination and delivery of approved detection technology training to regional end-users before equipment usage;
- d) maintaining instructional and detection technology knowledge and skill levels;
- e) promoting the online detection technology refresher courses; and
- f) reporting all training activities to the Enforcement Branch Training Section.

### **Detection Technology Repair and Maintenance Technicians**

16. Detection Technology Repair and Maintenance Technicians are responsible for:
- a) ensuring compliance with this policy and any other CBSA policies relevant to the enforcement program;
  - b) maintaining and repairing detection technology equipment;
  - c) only responding to requests for repair and maintenance that have been reported to the National Help Desk;
  - d) conducting scheduled preventative maintenance visits;
  - e) identifying equipment problems and recommending solutions; and
  - f) maintaining sufficient on-hand inventory to meet anticipated demands.

### **Enforcement Branch**

17. The Enforcement Branch is responsible for:
- a) monitoring compliance with this policy and the related procedures;
  - b) receiving feedback and recommendations from the field and addressing concerns;
  - c) developing and maintaining appropriate policy as required;

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## Detection Technology

- d) designing, developing and delivering all detection technology equipment training;
- e) maintaining a Preventative Maintenance Program that includes a National Detection Technology Help Desk at 1-866-389-1122 and timely repair and maintenance by qualified Detection Technology Maintenance and Repair Technicians in the Regions;
- f) administering and maintaining the following detection technology programs (in conjunction with the Laboratory and Scientific Services Directorate of the Innovation, Science and Technology Branch):
  - X-Ray and Gamma Ray (Scan Trailer, Vehicle and Cargo Inspection Systems [VACIS]);
  - Ion Mobility Spectrometry (Ionscan, Sabre, Itemizer);
  - Small Detection Tools (Fibrescope, Density Meter);
  - Remote Operated Vehicles (ROV);
  - Chemical, Biological, Radiological/Nuclear, and Explosive (CBRNE);
  - Radiation detection and Safety; and
  - Research and Development (R&D) projects
- g) identifying and evaluating new and emerging detection technologies and equipment.

## POLICY AND GUIDELINES

- 18. This policy applies to all CBSA officers and all modes of transportation.
- 19. The Detection Technology Section (DTS) has information on the various detection technologies supported by CBSA and their associated policies and procedures posted on the Enforcement Branch web site. It can be found at:

[http://infozone/cbsa-asfc/eb-dgel/about-sujet/epd-dpel/bed-delf/dts\\_sdc\\_e.asp](http://infozone/cbsa-asfc/eb-dgel/about-sujet/epd-dpel/bed-delf/dts_sdc_e.asp)

- 20. Online detection technology refresher training, which includes but is not limited to radiation safety, x-ray and gamma ray equipment, ion mobility spectrometers, fibrescopes and density meters, will be accessible via a website currently in progress.

## REFERENCES

- 21. *The Customs Act*