

CUSTOMS ENFORCEMENT MANUAL

Part 3

SELECTION

Chapter 3

REPORTING, QUESTIONING, AND REFERRAL POLICY AND PROCEDURES

25/06/07

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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 an 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 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.

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.

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.

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

