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## Introduction

1. In this chapter, we will discuss the following topics: the legislative authorities, the importance of communicating the referral information on the appropriate Canada Border Services Agency (CBSA) referral forms, the types of referrals, the indicators and their use, the examination of delayed baggage and finally the search of a person.
2. Also, this chapter has been revised to include reference links to the existing directives and manuals on the above-noted topics.

## Legislative Authorities

3. The *Customs Act* clearly outlines the responsibilities of persons entering Canada in reporting themselves and the goods they are importing. The legislative authorities are as follows:
  - Section 11 of the Act states that persons must present themselves to a customs office upon entry into Canada.
  - Section 12.(3)(a) indicates that it is the person's responsibility to report goods in his or her possession or carried aboard the same conveyance as baggage.
  - Section 13 of the Act outlines the obligations of persons reporting goods to a customs office to answer truthfully all questions relating to the importation of those goods and to present the goods for examination.
  - Sections 163.4 and 163.5 of the Act provides the authority for designated officers to enforce *Criminal Code* offences encountered during the normal duties of an officer. In some instances this will occur during secondary examination.
4. The *Immigration and Refugee Protection Act (IRPA)*, section 18.(1) state that every person seeking to enter Canada must appear for an examination to determine whether that person has a right to enter Canada or is, or may become, authorized to enter and remain in Canada.

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5. Section 99 of the *Customs Act* is the legislative authority for officers to examine goods that have been imported or reported for export. Under subsection 99.(1) of the Act, the officer can perform the following functions:

- Paragraph 99.(1)(a) - examine any goods that have been imported (including conveyances) and open or cause to be opened any package or container of imported goods and take samples of imported goods in reasonable amounts;
- Paragraph 99.(1)(b) - examine any mail that has been imported and, subject to this section, open or cause to be opened any such mail that the officer suspects on reasonable grounds contains any goods referred to in the *Customs Tariff*, or any goods whose importation is prohibited, controlled, or regulated under any other Act of Parliament, and take samples in reasonable amounts;
- Paragraph 99.(1)(c) - examine any goods that have been reported for export (including conveyances) and open or cause to be opened any package or container of such goods and take samples of such goods in reasonable amounts;
- Paragraph 99.(1)(d) - examine the goods and take samples in reasonable amounts where an officer suspects on reasonable grounds that an error has been made in the tariff classification, value for duty or quantity of any goods accounted for under section 32, or where a refund or drawback is requested in respect of any goods under the *Customs Act* or pursuant to the *Customs Tariff*;
- Paragraph 99.(1)(d.1) - examine the goods and take samples in reasonable amounts where the officer suspects on reasonable grounds that an error has been made with respect to the origin claimed or determined for any goods accounted for under section 32;
- Paragraph 99.(1)(e) - examine the goods and open or cause to be opened any package or container where the officer suspects on reasonable grounds that the *Customs Act* or the regulations or any other Act of Parliament administered or enforced by the officer or any regulations thereunder have been or might be contravened; and
- Paragraph 99.(1)(f) - stop, board and search the conveyance, examine any goods thereon and open or cause to be opened any package or container thereof and direct that the conveyance be moved to a customs office or other suitable place for any such search, examination or opening where the officer suspects on reasonable grounds that this Act or the regulations or any other Act of Parliament administered or enforced by the officer or any regulations thereunder have been or might be contravened.

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6. Subsection 99.(1) authorizes the officer to examine imported goods prior to their release as well as goods that have been reported for export. It also provides the authority under paragraphs (d) and (d.1) for the examination of goods which have already been accounted for but are subject to a refund or drawback claim or for which an error has been made regarding the tariff classification, value for duty, quantity, or origin of the goods.

7. The examination of postal shipments is authorized under paragraphs 99.(1)(b), (c), (e), and (f) of the *Customs Act*. Subject to subsection 99.(2) of the Act, an officer must obtain the consent of the addressee to open any mail item weighing 30 grams or less unless the mail bears a label in accordance with Article 116 of the *Letter Post Regulations* of the Universal Postal Convention completed by the sender. This label has a statement authorizing CBSA to open the mail item. For further information on the processing and examination of postal importations, refer to Part 5, Accounting for Casual Importations, Chapter 9, Postal Importations of this manual.

8. Section 16 and 17 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* is the legislative authority for officers to examine conveyances, baggage and mail over 30 grams, for unreported currency or monetary instruments totalling CAN\$10,000 or greater. For further information on the cross-border currency and monetary instruments reporting, refer to Part 2, Chapter 2 of the *Customs Enforcement Manual*.

9. For detailed information on reporting, questioning and referral, refer to Part 3, Chapter 3 of the *Customs Enforcement Manual*.

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### Communicating Referral Information

10. When an individual is referred from the Primary Inspection Line (PIL), it is mandatory that the reason for referral be communicated to the secondary inspection area and/or to the point officer (in the case of air operations). In the air mode, the primary officer will "code" the E311, *CBSA Declaration Card*, in the upper right hand corner, to indicate whether the individual is free to go or is being referred to the secondary inspection area for an examination of their goods, or to the cashier for payment of duties and taxes. Various coding systems have been developed locally, and the officer should ensure that he/she is familiar with the local coding. The "PAX" box at the top right of the redesigned E311 declaration card should also be completed to indicate to the point officer the number of passengers covered by the card. At TEPS locations, the officer preparing the Form B15-1, *Casual Goods Accounting Document*, will indicate in the appropriate field of the Importer Information screen whether an additional secondary examination is required after payment of duties and taxes so the cashier will know if the individual is free to go, or must be referred to the secondary inspection area.

11. In the highway mode, the Form E67, *Secondary Referral Slip*, is used for referral purposes. This form is completed by the officer at the PIL to indicate the individual(s) residency status, the number of individuals in the vehicle, the length of absence for residents, or length of stay for non-residents, and the dollar value of each declaration made, the type of referral, and the initials and/or badge number/lane of the officer at the PIL.

12. In the case of immigration referrals, the officer at the PIL should indicate the reason for referral. The Form E67 contains the following coding:

T (TIME)	E (EMPLOYMENT)	L (LOOKOUT)	O (OTHER)
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13. Where the officer at the PIL determines that a secondary referral for the purpose of further querying an individual for [REDACTED] is required, the Form E67 should be coded for "O (Other)" [REDACTED] to alert the officer in secondary of this specific reason for the referral. In air operations, where the E311 declaration card has been coded for immigration, the [REDACTED] will also be used, as for example in the coding [REDACTED] to alert the officer to the reason for the referral.

14. In the event that the point of finality has not been reached at the PIL, this information must be communicated to the officer at secondary as per local procedures, either orally, by telephone, or via coding on the E311 declaration card/Form E67.

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15. In the marine traveller mode (Cruise Ships), the following applies:

- On a final disembarkation when a cruise ship passenger is making their final departure from the vessel, the passenger arrives at the PIL with a completed E311 declaration card to indicate their residency, their length of absence from Canada and the dollar value of goods they have to declare.
- Officers at the PIL will use this card to refer the individual to the secondary inspection area for further examination of goods, payment of duties and taxes or for documenting food, plant and animal goods.

16. In the ferry traveller mode, the E311 declaration card is used for all foot pedestrians arriving in Canada for referral from the PIL to the secondary inspection area. For all vehicular traffic on board a ferry, Form E67 is used, and for all commercial trucks on board a ferry, Form Y28, *Report to Warehouse* is used for referral purposes.

### Types of Referrals

17. There are three basic types of referrals in the traveller stream: mandatory, random and selective.

18. A **mandatory** referral is a decision that an officer, or an automated system (airport kiosk) makes for further documentation or examination by CBSA or on behalf of other government departments/agencies. Examples of mandatory referrals are provided below:

- Referral to the secondary inspection area for immigration documentation (e.g., visitor record, work permit, etc.);
- Referral to the general office and cashier for payment of duties and taxes on Forms B15/B15-1;
- Referral to the general office for completion of Form B4, *Personal Effects Accounting Document*, for goods imported by a settler, former resident, or seasonal resident, or as a bequest;
- Referral due to the point of finality not being reached (e.g., a language or communication problem or open declaration where the individual should be given an opportunity to total his/her receipts, etc.);
- Referral on behalf of another government department/agency (e.g., Canadian Food Inspection Agency, Transport Canada);
- There is a lookout on the licence plate or name (either paper-based or automated in the Primary Automated Lookout System (PALS), the Integrated Primary Inspection Line (IPIL) or the Traveller Entry Processing System (TEPS));
- Referral because an individual answered in the affirmative to a question while using a NEXUS or CANPASS airport kiosk.

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19. A **random** referral, as the name implies, is conducted on a random basis to ensure individuals are complying with all CBSA administered laws and regulations, as well as to gather statistics on levels of compliance. At locations equipped with NEXUS, PALS-Highway, and IPIL, random referrals will be computer-generated. At other locations, random referrals will be based on a percentage of individuals processed.

20. A **selective** referral is a referral made by an officer (or an alternative PIL method such as an automated system (airport kiosk)) once a point of finality has been reached, and the officer believes that an examination is warranted. During this referral, the officer will use indicators to identify high-risk individuals and goods and to ensure the quality of selective referrals. Selective referrals **shall not** be made on the basis of the personal characteristics of the individual such as race, colour, or ethnic origin, nor should a referral for secondary examination be used as a punitive measure to deal with impolite individuals. For the NEXUS program, a selective referral will occur in the event of exact matches or close-name matches resulting from an automated enforcement query.

#### Indicators and their use

21. An "**indicator**" is a sign that indicates, or points to a possibility of, non-compliance with legislative requirements. Indicators, which are fairly constant, have been developed over time based on experiences of officers. An indicator may consist of a piece of information; for example, a videotape sent by mail that originates from a known supplier of obscenity, could contain obscene material prohibited under tariff item 9899.00.00. An indicator may also be an anomaly or inconsistency in information or physical appearance that would create suspicion in the mind of an officer that contraband is present. In locations that have implemented Officer Powers, the officer may have reason to believe that a *Criminal Code* offence is being, or has been, committed. An example of an anomaly or inconsistency in information would be an individual who declares an absence of several days, but has little or no luggage. An inconsistency in physical appearance could be a vehicle whose interior dimensions are much smaller than the exterior, suggesting the vehicle may have been altered to contain a compartment for smuggling.

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22. Indicators **rarely** occur in isolation, and it is usually a combination of indicators that allows the officer to identify a high-risk individual or shipment. Indicators may be detected during the primary officer's observation and questioning of the individual, or by another officer. At airport locations, flexible response team members perform "roving" activities and observe passengers as they are waiting at the baggage carousels or waiting to pay duties and taxes. The point officer who collects the E311 declaration cards and controls the movement of individuals as they exit the CBSA area may also make a selective referral to the secondary area based on observed indicators (e.g., nothing to declare on E311 declaration card but individual is carrying excessive luggage). Once a selective examination has begun, there are often further indicators suggesting that an examination should be intensified (e.g., growing agitation/nervousness on part of the individual).

23. There are several categories of indicators. An indicator may be **verbal** in nature such as when an individual appears to have rehearsed his/her answers or makes changes in his/her declaration as the examination progresses. The body language or appearance of the individual may point to **non-verbal** indicators. These could include, for example, excessive nervousness, visible perspiring, and trembling. There is a series of indicators associated with drug swallows including bloodshot or glazed eyes, dilated pupils, and loss of coordination.

24. There are also **documentary** indicators such as the passport and the airline ticket. For example, a passport may show a trip of short duration to a source country for drugs. [REDACTED]

25. There may be **physical** indicators present. For example, unusual bulges may indicate goods concealed on the body, or loose-fitting or bulky clothes may be worn for purposes of concealment. There may be physical indicators with respect to the goods/luggage [REDACTED]

[REDACTED] There are also various **situational** indicators, which may point to non-compliance. For example, an individual may be a frequent traveller to a drug source country or may lack signs of participation in normal activities for the type of trip (e.g., lack of tan from a southern vacation trip). There may also be items in a traveller's possession that could be indicators; [REDACTED]

26. Other indicators may relate specifically to certain types of contraband. For example, the existence of an empty gun rack and bumper stickers/decals supporting the National Rifle Association or advocating "no gun control" would prompt the primary officer to question the individual closely regarding firearms and possibly to make a referral to secondary.

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### Use of the Primary Automated Lookout System (PALS)

27. User guides containing instructions on the functions and screens in the PALS-Highway system are available at offices equipped with this system.

28. PALS in the highway mode is activated by contact with a vehicles licence plate number that is read by the system optical licence plate reader. This information can also be keyed in by the officer at primary (e.g., when the licence plate number cannot be read because the plate is dirty). PALS-Highway can also perform queries based on the individual's identification information (name and date of birth).

29. Where lookout information is on file in PALS, the system will respond with the message "PLATE HIT". The system will refer a vehicle for secondary inspection in the following cases:

- There is a lookout on the licence plate.
- There is a lookout based on a name search.
- A random selection has occurred.
- Mandatory inspection is required.
- Immigration processing is required.

30. The officer can also make a selective (non-system) referral even if there is no plate, name, or random hit, based on the indicators of non-compliance that are present.

31. At NEXUS land passage locations, the NEXUS passenger hit screen is used to alert the officer at primary if the individual using the NEXUS lane is not a valid registered NEXUS user, is under suspension, or is currently the subject of a lookout.

### Use of the Integrated Primary Inspection Line (IPIL)

32. All individuals entering Canada, at a site equipped with the IPIL system, should be queried in IPIL. The officers **must** query each individual by capturing the information from a machine-readable travel document or by manually keying the individual information. All queries **must** contain surname, given name and date of birth. Keying additional fields is optional but will provide a more accurate query response.

33. IPIL queries are to be made only at the primary inspection line or other areas designated to perform IPIL queries, and only for the purpose of processing individuals who are physically present.

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34. Once information is scanned or manually input in IPIL, the system provides the officers with an immediate system response and identifies whether the individual has a lookout or previous enforcement. This information assists the officer in making a release or refer decision for secondary. In response to the name query, the IPIL screen displays a maximum of 3 customs related responses and a maximum of 5 immigration related responses.

35. The PIL officer is encouraged to verify the individual information captured on the IPIL screen with the information on the travel document.

36. When a query is performed in IPIL and there is an exact match in ICES or FOSS based on surname, given name, and date of birth, IPIL will provide a red border around the respective box (ICES, FOSS or both), to signify an exact match.

37. The box found at the bottom of the IPIL screen incorporates two tabs - one labelled Hot Messages and the other Referral Decision. The Hot Message box contains intelligence information input by a Superintendent, Targeter, Regional Intelligence Officer or other authorized individuals. Hot Messages are used to communicate time sensitive intelligence information to PIL Officers relating to high-risk individuals; they are not used for generic intelligence information. The IPIL Hot Message function should never be used in lieu of inputting lookout information into ICES. The Hot Message box is the default tab and will display unless there is an exact match in one of the response boxes above (ICES or FOSS). If the query response is not an exact match, the Hot Message tab and its contents will be displayed. The appearance of the Hot Message tab would require the PIL officer to select F12 or select the Referral Decision tab if the officer wants to create a referral to secondary or cash.

38. The officers also have the discretion to refer the individual for secondary examination, even if there is no match in IPIL, based on indicators of non-compliance that are present.

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### Examination of Delayed Baggage

39. Information on the processing of delayed baggage is found in Memorandum D2-6-4, Travellers' Baggage Procedures. As noted in paragraph 2 of the above-noted memorandum, Form A23, Delayed Baggage Report is to be completed by the carrier agent and the traveller. This form contains information regarding the residential status of the traveller, length of absence or stay, and the type of goods (e.g., alcohol/tobacco) and dollar value of the goods contained in the delayed baggage.

40. Form A23 contains an authorization statement allowing the carrier to open the baggage on the travellers' behalf for examination by CBSA.

41. As noted in paragraph 8 of Memorandum D2-6-4, the carrier is responsible for delivering all delayed baggage to the CBSA office where the traveller cleared CBSA. When the delayed baggage arrives, the carrier representative will match the baggage with the carrier's missing baggage report and present the baggage to the CBSA along with both copies of Form A23. Where the form is missing or was not completed, the carrier representative is still responsible for presenting the baggage to the CBSA for examination.

42. For further information on personal baggage, goods and conveyance examination, refer to Part 4, Chapter 3 of the Customs Enforcement Manual.

### Search of Person

43. Under section 98.(1) of the *Customs Act*, an officer may search:

- (a) any person who has arrived in Canada, within a reasonable time after his arrival in Canada,
  - (b) any person who is about to leave Canada, at any time prior to his departure, or
  - (c) any person who has had access to an area designated for use by persons about to leave Canada and who leaves the area but does not leave Canada, within a reasonable time after he leaves the area,
- if the officer suspects on reasonable grounds that the person has secreted on or about this person anything in respect of which this Act has been or might be contravened, anything that would afford evidence with respect to a contravention of this Act or any goods the importation or exportation of which is prohibited, controlled or regulated under this or any other Act of Parliament.

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44. Under section 15 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, an officer may search:

- (a) any person who has arrived in Canada, within a reasonable time after their arrival in Canada,
- (b) any person who is about to leave Canada, at any time before their departure, or
- (c) any person who has had access to an area designated for use by persons about to leave Canada and who leaves the area but does not leave Canada, within a reasonable time after they leave the area, if the officer suspects on reasonable grounds that the person has secreted on or about their person 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 that have not been reported in accordance with that subsection.

45. Under section 139.(1) of the *Immigration and Refugee Protection Act (IRPA)*, an officer may search any person seeking to come into Canada and may search their luggage and personal effects and the means of transportation that conveyed the person to Canada if the officer believes on reasonable grounds that the person

- (a) has not revealed their identity or has hidden on or about their person documents that are relevant to their admissibility; or
- (b) has committed, or possesses documents that may be used in the commission of, an offence referred to in section 117, 118 or 122.

46. A secondary caution should be administered when the person is brought before the senior officer.

47. Personal searches should be preceded by a frisk or pat down for weapons. They will be conducted in the presence of an assisting officer and must always be conducted by officers of the same sex as the person being searched.

48. In addition, the *Customs Enforcement Manual* provides detailed information on arrest, detention, and personal search. The chapters are:

- Part 6, Chapter 1, Arrest and Detention;
- Part 6, Chapter 3, Arrest and Detention of Young Persons; and
- Part 6, Chapter 6, Personal Search.

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