



Ottawa, April 17, 2014

Memorandum D19-5-1

Importation of Consumer Products, Cosmetics and Radiation Emitting Devices

In Brief

1. This memorandum has been updated to reflect the Canada Border Services Agency's (CBSA) current role in administering the following legislation: the *Canada Consumer Product Safety Act* and regulations made thereunder, provisions respecting cosmetics in the *Food and Drugs Act*, the *Cosmetic Regulations* and the *Radiation Emitting Devices Act* and regulations made thereunder.
2. A legislative reference section has been added to identify relevant sections of the *Customs Act*, the *Canada Border Services Agency Act*, and the legislation referred to in paragraph 1.
3. Paragraphs 15 to 16 have been updated to include the *Radiation Emitting Devices Act* and Regulations and provisions respecting cosmetics in the *Food and Drugs Act* and the *Cosmetic Regulations*.
4. The Contact Information section has been updated.

The Canada Border Services Agency (CBSA) assists Health Canada with the administration of the *Canada Consumer Product Safety Act* and regulations made thereunder, provisions respecting cosmetics in the *Food and Drugs Act*, the *Cosmetic Regulations* made under the *Food and Drugs Act*, and the *Radiation Emitting Devices Act* and regulations made thereunder. This memorandum outlines the procedures and regulatory requirements concerning the importation into Canada of consumer products, cosmetics and radiation emitting devices (hereinafter sometimes collectively referred to as "goods").

Legislation

Customs Act

Detention of controlled goods

101. Goods that have been imported or are about to be exported may be detained by an officer until he 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, and any regulations made thereunder.

Canada Border Services Agency Act

Mandate of Agency

5. (1) The Agency is responsible for providing integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, that meet all requirements under the program legislation, by

- (a) supporting the administration or enforcement, or both, as the case may be, of the program legislation;
- (b) implementing agreements between the Government of Canada or the Agency and a foreign state or a public body performing a function of government in a foreign state to carry out an activity, provide a service or administer a tax or program;

- (c) implementing agreements between the Government of Canada or the Agency and the government of a province or other public body performing a function of the Government in Canada to carry out an activity, provide a service or administer a tax or program;
- (d) implementing agreements or arrangements between the Agency and departments or agencies of the Government of Canada to carry out an activity, provide a service or administer a program; and
- (e) providing cooperation and support, including advice and information, to other departments and agencies of the Government of Canada to assist them in developing, evaluating and implementing policies and decisions in relation to program legislation for which they have responsibility.

Support

5. (2) The Agency may provide support, through the provision of services, to departments and agencies for which the Minister is responsible, in accordance with agreements or arrangements entered into with those departments and agencies.

Canada Consumer Product Safety Act

Definition

2. “consumer product” means a product, including its components, parts or accessories, that may reasonably be expected to be obtained by an individual to be used for non-commercial purposes, including for domestic, recreational and sports purposes, and includes its packaging.

“Minister” means the Minister of Health.

“danger to human health or safety” means any unreasonable hazard — existing or potential — that is posed by a consumer product during or as a result of its normal or foreseeable use and that may reasonably be expected to cause the death of an individual exposed to it or have an adverse effect on that individual’s health — including an injury — whether or not the death or adverse effect occurs immediately after the exposure to the hazard, and includes any exposure to a consumer product that may reasonably be expected to have a chronic adverse effect on human health.

Consumer products in Schedule 2

5. No person shall manufacture, import, advertise or sell a consumer product listed in Schedule 2.

Products that do not meet regulatory requirements

6. No person shall manufacture, import, advertise or sell a consumer product that does not meet the requirements set out in the regulations.

Manufacturer and importer

7. No manufacturer or importer shall manufacture, import, advertise or sell a consumer product that

- (a) is a danger to human health or safety;
- (b) is the subject of a recall order made under section 31 or such an order that is reviewed under section 35 or is the subject of a voluntary recall in Canada because the product is a danger to human health or safety; or
- (c) is the subject of a measure that the manufacturer or importer has not carried out but is required to carry out under an order made under section 32 or such an order that is reviewed under section 35.

Misleading claims – package or label

9. No person shall package or label a consumer product

- (a) In a manner - including one that is false, misleading or deceptive - that may reasonably be expected to create and erroneous impression regarding the fact that it is not a danger to human health or safety; or
- (b) In a manner that is false, misleading or deceptive regarding its certification related to its safety or its compliance with a safety standard or the regulations.

Requirement

13. (1) Any person who manufactures, imports, advertises, sells or tests a consumer product for commercial purposes shall prepare and maintain

(b) the prescribed documents.

Importation

13. (5) A person who imports a consumer product for commercial purposes shall, no later than at the time of the product's importation, provide the Minister with those documents referred to in paragraph (1)(b) that are specified in the regulations.

Authority to enter place

21. (1) Subject to the subsection 22(1), an inspector may, for the purpose of verifying compliance or preventing non-compliance with this Act or the regulations, at any reasonable time enter a place, including a conveyance, in which they have reasonable grounds to believe that a consumer product is manufactured, imported, packaged, stored, advertised, sold, labeled, tested or transported, or a document relating to the administration of this Act or the regulations is located.

Powers

21. (2) The inspector may, for the purpose referred to in subsection (1),

(a) examine or test anything — and take samples free of charge of an article to which this Act or the regulations apply — that is found in the place;

(b) open a receptacle or package that is found in the place;

(c) examine a document that is found in the place, make a copy of it or take an extract from it;

(d) seize and detain for any time that may be necessary

(i) an article to which this Act or the regulations apply that is found in the place, or

(ii) the conveyance...

Recall

31. (1) If the Minister believes on reasonable grounds that a consumer product is a danger to human health or safety, he or she may order a person who manufactures, imports or sells the product for commercial purposes to recall it.

Taking measures

32. (1) The Minister may order a person who manufactures, imports, advertises or sells a consumer product to take any measure referred to in subsection (2)

Measures

32. (2) The measures include

(a) stopping the manufacturing, importation, packaging, storing, advertising, selling, labelling, testing or transportation of the consumer product or causing any of those activities to be stopped; and

(b) any measure that the Minister considers necessary to remedy a non-compliance with this Act or the regulations, including any measure that relates to the product that the Minister considers necessary in order for the product to meet the requirements of the regulations or to address or prevent a danger to human health or safety that the product poses.

Food and Drugs Act

Definition

2. “cosmetic” includes any substance or mixture of substances manufactured, sold or represented for use in cleansing, improving or altering the complexion, skin, hair or teeth, and includes deodorants and perfumes;

“Minister” mean the Minister of Health.

Prohibited sales of cosmetics

16. No person shall sell any cosmetic that

- (a) has in or on it any substance that may cause injury to the health of the user when the cosmetic is used,
 - (i) according to the directions on the label or accompanying the cosmetic, or
 - (ii) for such purposes and by such methods of use as are customary or usual therefor;
- (b) consists in whole or in part of any filthy or decomposed substance or of any foreign matter; or
- (c) was manufactured, prepared, preserved, packaged or stored under unsanitary conditions.

Powers of inspectors

23. (1) Subject to subsection (1.1), an inspector may at any reasonable time enter any place where the inspector believes on reasonable grounds any article to which this Act or the regulations apply is manufactured, prepared, preserved, packaged or stored, and may

- (a) examine any such article and take samples thereof, and examine anything that the inspector believes on reasonable grounds is used or capable of being used for that manufacture, preparation, preservation, packaging or storing;
- (b) open and examine any receptacle or package that the inspector believes on reasonable grounds contains any article to which this Act or the regulations apply;
- (c) examine and make copies of, or extracts from, any books, documents or other records found in any place referred to in this subsection that the inspector believes on reasonable grounds contain any information relevant to the enforcement of this Act with respect to any article to which this Act or the regulations apply; and
- (d) seize and detain for such time as may be necessary any article by means of or in relation to which the inspector believes on reasonable grounds any provision of this Act or the regulations has been contravened.

Cosmetic Regulations

Importation into Canada

5. Subject to section 9, no person shall import into Canada for sale a cosmetic the sale of which in Canada would constitute a violation of the Act or these Regulations.

6. An inspector may examine and take samples of any cosmetic sought to be imported into Canada.

7. Where an inspector examines or takes a sample of a cosmetic pursuant to section 6, he may submit the cosmetic or sample to an analyst for analysis or examination.

8. Where an inspector, on examination of a cosmetic or sample thereof or on receipt of a report of an analyst of the result of an analysis or examination of the cosmetic or sample, is of the opinion that the sale of the cosmetic in Canada would constitute a violation of the Act or these Regulations, the inspector shall so notify in writing the collector of customs concerned and the importer.

9. (1) Where a person seeks to import a cosmetic into Canada for sale and the sale would constitute a violation of the Act or these Regulations, that person may, if the sale of the cosmetic would be lawful in Canada after relabeling or modification of the cosmetic, import the cosmetic into Canada on condition that

- (a) he gives to an inspector notice of the proposed importation; and

(b) the cosmetic will be relabeled or modified under the supervision of an inspector in such a manner as to enable the sale of the cosmetic to be lawful in Canada.

9. (2) No person shall sell a cosmetic that has been imported into Canada under subsection (1) unless the cosmetic is relabeled or modified in accordance with the Act and these Regulations within three months after its importation.

Notification

30. (1) Every manufacturer and importer shall provide the Minister with the following documents, at the latest 10 days after the manufacturer or importer first sells a cosmetic:

(a) a notification on a form obtained from the Minister and signed by the manufacturer or importer, as the case may be, or a person authorized on their behalf, advising whether they intend to continue sales of the cosmetic in Canada and including the information specified in subsection (2); and

(b) if the labels and inserts used in conjunction with the cosmetic require the information set out in any of sections 22 to 24, a copy or facsimile of the labels and inserts

(2) The following is the information required for the purpose of paragraph (1)(a):

(a) the name and address of the manufacturer that appears on the label of the cosmetic in accordance with section 20;

(b) the name under which the cosmetic is sold;

(c) the function of the cosmetic;

(d) a list of the cosmetic's ingredients and, for each ingredient, either its exact concentration or the concentration range that includes the concentration of that ingredient, the latter of which may only be indicated by setting out either the applicable concentration range set out in column 1 of the table to this section or the number in column 2 that corresponds to the applicable concentration range set out in column 1;

(e) the form of the cosmetic;

(f) the name and address in Canada of the manufacturer, importer or distributor;

(g) if the cosmetic was not manufactured or formulated by the person whose name appears on the label, the name and address of the person who manufactured or formulated it; and

(h) the name and title of the person who signed the notification referred to in paragraph (1)(a).

Radiation Emitting Devices Act

Definitions

2. "radiation emitting device" means

(a) any device that is capable of producing and emitting radiation, and

(b) any component of or accessory to a device described in paragraph (a);

"Minister" means the Minister of Health.

Devices and vehicles to which Act not to apply

3. This Act does not apply to

(a) a radiation emitting device that is designed primarily for the production of nuclear energy within the meaning of the *Nuclear Safety and Control Act*; or

(b) a motor vehicle within the meaning of the *Motor Vehicle Safety Act*.

Sale, lease, importation

4. Except as authorized by regulations made under paragraph 13(1)(c), no person shall sell, lease or import into Canada a radiation emitting device if the device

(a) does not comply with the standards, if any, prescribed under paragraph 13(1)(b) and applicable thereto; or
 (b) creates a risk to any person of genetic or personal injury, impairment of health or death from radiation by reason of the fact that it

- (i) does not perform according to the performance characteristics claimed for it,
- (ii) does not accomplish its claimed purpose, or
- (iii) emits radiation that is not necessary in order for it to accomplish its claimed purpose.

5. (3) No person shall fail to comply with the regulations respecting the labeling, packaging or advertising of radiation emitting devices

Powers of Inspectors

8. (1) An inspector may at any reasonable time enter, subject to subsection (2), the premises of any manufacturer, distributor or importer of a radiation emitting device in which he believes on reasonable grounds there is a radiation emitting device, or any place in which he believes on reasonable grounds there is a radiation emitting device that is owned by a manufacturer, distributor or importer, and may

- (a) examine any radiation emitting device found therein and take it away for further examination;
- (b) open and examine any package that the inspector believes on reasonable grounds contains a radiation emitting device and take it away for further examination; and
- (c) examine any books, reports, test data, records, shipping bills and bills of lading or other documents or papers found in any premises or place referred to in this subsection that the inspector believes on reasonable grounds contain any information relevant to the enforcement of this Act and make copies thereof or extracts therefrom...

Detention

8. (5) A radiation emitting device taken away pursuant to paragraph (1)(a) or (b) shall not be detained after the expiration of ninety days from the day it was taken away unless, before that time, proceedings have been instituted in respect of a contravention of this Act, in which case the device may be detained until the proceedings are finally concluded.

Seizure

10. (1) Where an inspector believes on reasonable grounds that this Act has been contravened, the inspector may seize any radiation emitting device in relation to which he believes on reasonable grounds the contravention was committed.

Guidelines and General Information

Role of the Canada Border Services Agency

1. The CBSA assists Health Canada in administering the following legislation at the border: the *Canada Consumer Product Safety Act* and regulations made thereunder, provisions respecting cosmetics in the *Food and Drugs Act*, the *Cosmetic Regulations* made under the *Food and Drugs Act*, and the *Radiation Emitting Devices Act* and regulations made thereunder (hereinafter collectively referred to as the “Health Canada legislation”).
2. The CBSA may detain consumer products, cosmetics or radiation emitting devices under the authority of the *Customs Act* and refer them to Health Canada so they can determine if the goods meet import requirements under Health Canada legislation. Referrals may be as a result of specific information, a target or when border services officers suspect possible contraventions of the Health Canada legislation.
3. The CBSA’s enforcement role beyond the initial detention is limited to *Customs Act* contraventions. In such cases, the CBSA may seize the goods under the *Customs Act*.

Role of Health Canada

4. Health Canada is responsible for the administration and enforcement of Health Canada legislation.
5. Health Canada will identify to the CBSA specific consumer products, cosmetics or radiation emitting devices that pose a potential risk to Canadians and request the detention of these types of products at time of importation.
6. Health Canada will review the information provided by the CBSA and will determine if the goods meet import requirements under Health Canada Legislation
7. Health Canada inspectors are authorised to examine, sample, test, seize imported consumer products, cosmetics and radiation emitting devices in accordance with the relevant provisions of Health Canada legislation.

Consumer Products

8. Under the [Canada Consumer Product Safety Act](#), the importation into Canada, sale or advertisement of consumer products is regulated by Health Canada.
9. This legislation applies to commercial and non-commercial importations of new or used consumer products (including their components, parts or accessories and packaging), and allows Health Canada inspectors to examine, test, seize, detain or take samples of consumer products imported into Canada. An up to date copy of the [Canada Consumer Product Safety Act](#) and the Regulations made under it can be found on the [Department of Justice Web site](#).
10. For the purposes of this memorandum, consumer products may be grouped into two categories: prohibited and regulated products.

Prohibited Consumer Products

11. Schedule 2 of the [Canada Consumer Product Safety Act](#) (see Appendix A of this memorandum) lists certain products which are prohibited from importation, sale, manufacture or advertisement in Canada. Importers should contact one of the regional Health Canada Consumer Product Safety Offices shown in Appendix B of this memorandum to verify whether specific products are prohibited.
12. When border services officers suspect an imported good is a prohibited product listed under the [Canada Consumer Product Safety Act](#) or is subject to a target, the goods will be detained and referred to the appropriate Health Canada Border Centre.

Regulated Consumer Products

13. The [Canada Consumer Product Safety Act](#) stipulates that no person shall import, sell, or advertise a consumer product that does not meet the requirements set out in the regulations or that is a danger to human health or safety. These products must meet the prescribed requirements and conditions set out in the [Canada Consumer Product Safety Act](#) and regulations made thereunder to be legally imported into Canada.
14. Border services officers will detain regulated consumer products and refer them to a Health Canada Border Centre to verify import requirements as a result of a target or when it is suspected that a regulated product may pose a danger to human health or safety.

Cosmetics

15. Border services officers will detain cosmetics and refer them to a Health Canada Border Centre to determine import requirements as a result of a target or when it is suspected that a cosmetic may cause injury.

Radiation Emitting Devices

16. A border services officer will detain radiation emitting devices and refer them to a Health Canada Border Centre to determine import requirements as a result of a target or when it is suspected that a radiation emitting device may pose a danger to human health or safety.

Detention

17. Imported goods suspected to be in contravention of the Health Canada legislation may be detained and the nearest Health Canada Border Centre contacted in order to obtain a response regarding import requirements.
18. In some cases, determination of admissibility into Canada of goods cannot be made until prescribed tests or analysis has been completed by Health Canada.
19. Upon receipt of a referral from the CBSA, Health Canada commits to respond within two business days. Health Canada's response may include requesting additional information or begin discussion with CBSA regarding options to resolve the issue.
20. In cases where Health Canada does not respond to a referral from the CBSA within two business days, the CBSA may release the goods in the normal manner. If the CBSA releases good pursuant to this clause, the CBSA will provide the appropriate Health Canada Regional Border Centre with the following customs information: importer name and address, product description, quantity and date of release. Health Canada will initiate follow-up action with the importer directly.

Health Canada Admissibility Recommendation

21. Health Canada is authorised to provide recommendation to the admissibility of an imported consumer product, cosmetic and radiation emitting devices found to be in contravention of the *Canada Consumer Product Safety Act*, *Food and Drugs Act*, *Cosmetic Regulations* and *Radiation Emitting Devices Act*.
22. Once the admissibility determination of the product has been completed, Health Canada will advise the CBSA of the appropriate course of action with respect to the goods. In the event of a Health Canada notice of seizure, Health Canada will be responsible for costs associated with this action and CBSA regional offices should contact the appropriate Health Canada Regional Office to make arrangements for payment of any costs.
23. Importers should contact the Health Canada Consumer Product Safety Offices (found in Appendix B) to obtain additional information about Health Canada's decision with respect to their goods.

Additional Information

24. The CBSA's Border Information Service (BIS) line responds to public inquiries related to import requirements of other government departments, including Health Canada. You can access BIS free of charge throughout Canada by calling **1-800-461-9999**. If you are calling from outside Canada, you can access BIS by calling 204-983-3500 or 506-636-5064 (long distance charges will apply). To speak directly to an agent, please call during regular business hours from Monday to Friday (except holidays), 8:00 a.m. to 4:00 p.m. local time.
25. Information regarding the CBSA's administration of Health Canada legislation and related regulations may be obtained by contacting the Other Government Department Programs Unit as shown below:

Commercial Border Programs
 Programs Branch
 150 Isabella Street, 5th Floor
 Ottawa ON K1A 0L8
 Telephone: 613-946-0240
 Fax: 613-946-1520

26. Any questions from the public concerning the *Canada Consumer Product Safety Act* or its Regulations, and the *Food and Drugs Act* or the *Cosmetic Regulations* should be directed to the nearest Health Canada Consumer Product Safety Office. Contact information is shown in Appendix B to this memorandum.
27. Any questions from the public concerning the *Radiation Emitting Devices Act* or its Regulations should be directed to the Health Canada Consumer and Clinical Radiation Protection Bureau at:

775 Brookfield Road
 Ottawa ON K1A 1C1
 Email: ccrpb-ccrpcc@hc-sc.gc.ca

Appendix A

Prohibited Consumer Products

Under the *Canada Consumer Product Safety Act*, Schedule 2, (Section 5 and paragraph 37(1)(c)) the following consumer products are prohibited:

1. Jequirity beans (*abrus precatorius*) or any substance or article that is made from or that includes jequirity beans in whole or in part.
2. Spectacle frames that, in whole or in part, are made of or contain cellulose nitrate.
3. Baby walkers that are mounted on wheels or on any other device permitting movement of the walker and that have an enclosed area supporting the baby in a sitting or standing position so that their feet touch the floor, thereby enabling the horizontal movement of the walker.
4. Products for babies, including teethingers, pacifiers and baby bottle nipples that are put in the mouth when used and that contain a filling that has in it a viable micro-organism.
5. Structural devices that position feeding bottles to allow babies to feed themselves from the bottle while unattended.
6. Disposable metal containers that contain a pressurizing fluid composed in whole or in part of vinyl chloride and that are designed to release pressurized contents by the use of a manually operated valve that forms an integral part of the container.
7. Liquids that contain polychlorinated biphenyls for use in microscopy, including immersion oils but not including refractive index oils.
8. Kites any part of which is made of uninsulated metal that is separated from adjacent conductive areas by a non-conductive area of less than 50 mm and that either
 - (a) has a maximum linear dimension in excess of 150 mm, or
 - (b) is plated or otherwise coated with a conductive film whose maximum linear dimension exceeds 150 mm.
9. Kite strings made of a material that conducts electricity.
10. Products made in whole or in part of textile fibres, intended for use as wearing apparel, that are treated with or contain tris (2,3 dibromopropyl) phosphate as a single substance or as part of a chemical compound.
11. Any substance that is used to induce sneezing, whether or not called “sneezing powder”, and that contains
 - (a) 3,3'-dimethoxybenzidine (4,4'-diamino-3,3'-dimethoxybiphenyl) or any of its salts;
 - (b) a plant product derived from the genera *Helleborus* (hellebore), *Veratrum album* (white hellebore) or *Quillaia* (Panama Wood);
 - (c) protoveratrine or veratrine; or
 - (d) any isomer of nitrobenzaldehyde.
12. Cutting oils and cutting fluids, that are for use in lubricating and cooling the cutting area in machining operations, and that contain more than 50 µg/g of any nitrite, when monoetha-nolamine, diethanolamine or triethanolamine is also present.
13. Urea formaldehyde-based thermal insulation, foamed in place, used to insulate buildings.
14. Lawn darts with elongated tips.
15. Polycarbonate baby bottles that contain 4,4'-isopropylidenediphenol (bisphenol A).

Appendix B

Health Canada Consumer Product Safety Contact Information

Atlantic Region

Provinces of New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island

Telephone (Toll-Free): 1-866-662-0666

Email: Atlantic.Prodsafe@hc-sc.gc.ca

Quebec Region

Province of Quebec

Telephone (Toll-Free): 1-866-662-0666

Email: Quebec.Prod@hc-sc.gc.ca

Ontario Region

Province of Ontario

Telephone (Toll-Free): 1-866-662-0666

Email: Tor.Prodsafe@hc-sc.gc.ca

Prairie Region

Provinces of Manitoba and Saskatchewan

Telephone (Toll-Free): 1-866-662-0666

Email: MBSK.Prodsafe@hc-sc.gc.ca

Province of Alberta, Northwest Territories, Nunavut and Yukon

Telephone (Toll-Free): 1-866-662-0666

Email: Alberta.Prodsafe@hc-sc.gc.ca

British Columbia Region

Province of British Columbia

Telephone (Toll-Free): 1-866-662-0666

Email: Bby.ProdSafe@hc-sc.gc.ca

Enquiries from the United States of America

Telephone (Toll-Free): 1-866-662-0666

Enquiries from international locations other than the United States

Africa – Email: Alberta.Prodsafe@hc-sc.gc.ca

Asia – Email: Bby.ProdSafe@hc-sc.gc.ca

Australia – Email: Alberta.Prodsafe@hc-sc.gc.ca

Central and South America – Email: MBSK.Prodsafe@hc-sc.gc.ca

Europe – Email: Atlantic.Prodsafe@hc-sc.gc.ca

References	
Issuing Office	Other Government Department Programs Unit Commercial Border Programs Division Programs Branch
Headquarters File	68470-1
Legislative References	<i>Food and Drugs Act</i> <i>Radiation Emitting Devices Act</i> <i>Canada Border Services Agency Act</i> (Section 5) <i>Customs Act</i> (Section 101) <i>Canada Consumer Product Safety Act</i> <i>Cosmetic Regulations</i>
Other References	
Superseded Memorandum D	D19-5-1 dated February 20, 2009