



Memorandum D10-15-26

Ottawa, September 22, 2017

“Goods to be employed in a Noxious Atmosphere”

In Brief

This memorandum outlines the CBSA’s interpretation of the expression “to be employed in a noxious atmosphere” throughout the Customs Tariff, and supersedes Departmental Memorandum *D10-15-23*, *Interpretation of “Noxious Atmosphere” for Gloves under Tariff items 3926.20.10 and 4015.19.10* dated July 7, 2014.

This memorandum outlines the CBSA’s interpretation of the expression “to be employed in a noxious atmosphere” throughout the Customs Tariff.

Legislation

Departmental Consolidation of the Customs Tariff

Tariff items:

- 3926.20.10 - - - Protective suits and their accessories (including gloves), to be employed in a noxious atmosphere;
- 3926.90.10 - - - Respirators, consisting of several layers of nonwovens of man-made fibres, whether or not treated with activated carbon, with or without an exhalation valve, to be employed in a noxious atmosphere;
- 4015.19.10 - - - Protective gloves to be employed with protective suits in a noxious atmosphere;
- 4015.90.10 - - - Protective suits and parts thereof, to be employed in a noxious atmosphere;
- 6113.00.10 - - - Protective suits, to be employed in a noxious atmosphere;
- 6117.90.10 - - - Of protective suits, to be employed in a noxious atmosphere;
- 6210.10.10 - - - Protective suits, to be employed in a noxious atmosphere;
- 6210.40.10 - - - Protective suits, to be employed in a noxious atmosphere;
- 6210.50.10 - - - Protective suits, to be employed in a noxious atmosphere;
- 6217.90.10 - - - Of protective suits to be employed in a noxious atmosphere;
- 6307.90.10 - - - Respirators, to be employed in a noxious atmosphere

Guidelines and General Information

1. The term “noxious atmosphere” has the same scope in every tariff item in which it occurs.
2. The Canadian International Trade Tribunal (CITT), in its decision in *AMD Ritmed v. the President of the Canada Border Services Agency* ([AP-2014-013-/015](#)) established that a hospital environment is a “noxious atmosphere” as many serious and even life-threatening types of infection are present in a hospital setting.
3. The decision also confirmed that isolation gowns are a protective suit as it protects parts of the body from exposure to infections.

What is a Noxious Atmosphere?

4. Noxious atmospheres are:

- Life-threatening environments (e.g., radioactive atmospheres) that require specific protective apparel (e.g., bio-safety containment level 4 atmospheres); and
- Environments contaminated with microorganisms that are considered harmful to human health (e.g., hospitals, doctor's offices, dental offices, environments to which emergency response teams or first responders are deployed, residential care homes, long term care institutional facilities, medical and veterinary clinics).

5. The noxious substance or contaminant may be in the air, in a gas, in a liquid/fluid, on/in a surface/object, or in an infected host organism (e.g., human, plant or animal).

Goods to be employed in a noxious atmosphere

6. Goods typically worn by health care workers (HCW) as personal protective equipment (PPE) will qualify for classification under one of the applicable tariff provisions if they meet the terms of the heading, subheading and tariff item and are not more specifically classified elsewhere.

7. For example, subheading 4015.11 specifically provides for surgical gloves of vulcanized rubber other than hard rubber; therefore surgical gloves of vulcanized rubber other than hard rubber cannot be classified under subheading 4015.19, which includes tariff item 4015.19.10 ("Protective gloves to be employed with protective suits in a noxious atmosphere").

8. The use of PPE goods is recognized internationally as critical control measures to help mitigate against the transmission of infection, disease and other life-threatening hazards.

PPE standards and/or technical specifications

9. The World Health Organization (WHO), the Canadian Centre of Occupational Health and Safety (CCOHS) and the United States Center for Disease Control (CDC) and other internationally recognized health and safety organizations have guidelines and recommendations with respect to the use of PPE in managing the risks posed by hazards found in noxious atmospheres, including infection prevention and control.

10. For tariff classification purposes, and consistent with CCOHS guidelines, in order for a particular PPE good to qualify as "to be employed in a noxious atmosphere", it must be certified by an internationally recognized standards body as suitable for such use.

11. A list of goods that may qualify under "to be employed in a noxious atmosphere" tariff items, and their respective safety standard designations, are provided in [Appendix A Table of Personal Protective Equipment \(PPE\) Goods and Standards and/or Technical Specification Requirements to qualify "to be employed in a noxious atmosphere"](#).

12. A list of recognized certifying bodies is provided in [Appendix B Table of Recognized Certifying Bodies for Personal Protective Equipment \(PPE\)](#).

Additional Information

13. For certainty regarding the tariff classification of a product, importers may request an advance ruling on tariff classification. Details on how to make a request for a tariff classification advance ruling are found in CBSA [Memorandum D11-11-3, Advance Rulings for Tariff Classification](#), which is found on the CBSA website.

14. For more information on CBSA programs, please call the Border Information Service from within Canada at **1-800-461-9999**. From outside Canada, please call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time / except holidays). TTY is also available within Canada: **1-866-335-3237**.

Appendix A

TABLE OF PERSONAL PROTECTIVE EQUIPMENT (PPE) GOODS AND STANDARDS AND/OR TECHNICAL SPECIFICATION REQUIREMENTS TO QUALIFY “TO BE EMPLOYED IN A NOXIOUS ATMOSPHERE”

The following is a table of standards that apply to various types of personal protective equipment (PPE) for which there are related “to be employed in a noxious atmosphere” tariff items.

The standards listed below are not exhaustive; other standards or technical specifications may qualify if it can be demonstrated that the alternative standard is recognized as equivalent to a standard listed in the table.

PPE Good	Standard/technical specification
Gloves, except surgical gloves - disposable, single use	EU standard directive 93/42/EEC Class I, EN 455; EU standard directive 89/686 EEC Category III, EN 374; ANSI/ISEA 105; ASTM D3577-09; ASTM D3578-05; ASTM D5250-06; ASTM D6319-10; ASTM D6977-04; ASTM D77866-14a
Gowns – Surgical or Isolation, disposable, single use	EN 13795; ISO 16603 class 3 exposure pressure, or equivalent; ISO 16604 class 2 exposure pressure, or equivalent ANSI/AAMI PB70
Coveralls – disposable, single use	EN 14126 ISO 16603 class 3 exposure pressure, or equivalent; ISO 16604 class 2 exposure pressure, or equivalent; NFPA 1999 ASTM F1671

Aprons – disposable, single use, waterproof	ANSI/AAMI PB70
Particulate respirator (including single use, disposable masks that cover the mouth and nose)	NIOSH N95; NIOSH N100 EN 149 FFP2 or equivalent; Fluid resistance: minimum 80 mmHG pressure based on ASTM F1862, ISO 22609, or equivalent;
Disposable lab coats	ASTM F2101; AATCC Method 42 – Water Resistance: Impact Penetration Test.

Appendix B

TABLE OF RECOGNIZED CERTIFYING BODIES
FOR PERSONAL PROTECTIVE EQUIPMENT (PPE)

Certifying Body/Association	Acronym
American Association of Textile Chemists and Colourists	AATCC
American Society for Testing Materials	ASTM
American National Standards Institute	ANSI
Association for the Advancement of Medical Instruments	AAMI
Canadian General Standards Board	CGSB
Canadian Centre of Occupational Health and Safety	CCOHS
Canadian Standards Association	CSA
Center for Disease Control	CDC
Conformité Européen (<i>English « European Conformity »</i>)	CE
European Economic Community	EEC
International Standards Organization	ISO
National Institute of Occupation Safety and Health	NIOSH
National Fire Protection Association	NFPA

References	
Issuing Office	Trade and Anti-dumping Programs Directorate
Headquarters File	HS 3926, HS 4015, HS 6113, HS 6117, HS 6210, HS 6217, HS 6307
Legislative References	<u>Departmental Consolidation of the Customs Tariff</u>
Other References	<u>AP-2014-013-/015</u> <u>D11-3-3</u>
Superseded Memorandum D	<i>D10-15-23, Interpretation of “Noxious Atmosphere” for Gloves under Tariff items 3926.20.10 and 4015.19.10 dated July 7, 2014</i>