



# Memorandum D10-15-26

Ottawa, September 27, 2019

## “Goods to be employed in a Noxious Atmosphere”

### In Brief

The CBSA will be updating the content of Memorandum D10-15-26 in response to a decision by the Canadian International Trade Tribunal on conditional relief provisions for goods “to be employed in a noxious atmosphere”.

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. The CBSA also recognizes single use coveralls, single use aprons and disposable lab coats as protective suits.

## **What is a Noxious Atmosphere?**

4. Noxious atmospheres are:

- Medical or health care environments (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) which can be contaminated with microorganisms that are considered harmful to human health; or
- Life-threatening environments (e.g., radioactive atmospheres, bio-safety containment level 4 laboratories) that legally require specific protective apparel to be worn.

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 as personal protective equipment (PPE) will qualify for classification under one of the applicable tariff provisions only 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. A list of safety standard designations are provided in [Appendix A](#) - Table of Personal Protective Equipment (PPE) Goods and Standards and/or Technical Specification Requirements.

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

12. A Health Canada licence for a Class II medical device will be considered equivalent to certification by an internationally recognized standards body.

## **Conditional Relief**

13. Tariff items providing for goods "to be employed in a noxious atmosphere" are considered to be conditional relief provisions; meaning that duties are relieved only if the condition(s) of relief are met.

14. Therefore, in addition to meeting PPE standards/specifications, (see paragraph 10 above), goods must also satisfy the specified use (i.e., to be employed in a noxious atmosphere).

15. For example, plastic medical examination gloves of tariff item 3926.20.10 imported by, or imported and intended to be used in a life-threatening, medical or health care environment would qualify as meeting the conditional relief.

16. In order to meet the conditional relief requirement "to be employed in a noxious atmosphere", the CBSA does not require proof of sale of the goods, however, the importer must substantiate that the goods are intended to be employed in a noxious atmosphere.

17. Importers are required to provide evidence (PPE standards and/or technical specifications) that a product is intended to be employed in a noxious atmosphere and must be made available to the CBSA, upon request from officer during a post-release verification, or submitted when filing a form [B2, Canada Customs-Adjustment Request](#).

18. Please refer to [Memorandum D11-8-5 - Conditional Relief Tariff Items](#) for details on importing goods subject to conditional relief.

#### **Additional Information**

19. 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.

20. 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 Goods	Standard/technical specification
Gloves, except surgical gloves - disposable, single use	EU Regulation 2017/745 (former EU Council Directive 93/42/EEC), EN 455; EU Regulation 2016/425 (former EU Council Directive 89/686 EEC), EN 374; ANSI/ISEA 105; ASTM D3578; ASTM D5151; ASTM D5250; ASTM D6319; ASTM D6977; ASTM D6978; ASTM D7866; ASTM F1671; Health Canada Class II Medical Device Licence
Surgical or Isolation gowns - disposable, single use	EN 13795; ISO 16603 class 3 exposure pressure, or equivalent; ISO 16604 class 2 exposure pressure, or equivalent; ANSI/AAMI PB70; ASTM F1671
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
Lab coats – disposable, single use	ASTM F1671; AATCC Method 42 – Water Resistance: Impact Penetration Test

## Appendix B

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

<b>Certifying Body/Association</b>	<b>Acronym</b>
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

<b>References</b>	
<b>Issuing Office</b>	Trade and Anti-dumping Programs Directorate
<b>Headquarters File</b>	HS 3926, HS 4015, HS 6113, HS 6117, HS 6210, HS 6217, HS 6307
<b>Legislative References</b>	<a href="#"><i>Departmental Consolidation of the Customs Tariff</i></a>
<b>Other References</b>	<a href="#">AP-2014-013-/015</a> <a href="#">D11-3-3, D11-8-5</a> <a href="#">Form B2</a>
<b>Superseded Memorandum D</b>	D10-15-26 dated September 17, 2019