



Ottawa, April 1, 2011

MEMORANDUM D22-1-2

In Brief

PENALTY REINVESTMENT AGREEMENT (PRA) POLICY

A partial update to Memorandum D22-1-2 dated November 25, 2010 is necessary as paragraph 15 erroneously referred to the time provisions in paragraph 12 instead of paragraph 11. Also, a modification was made to the address found in paragraph 42. Only pages containing paragraphs 15 and 42 are revised.





Ottawa, November 25, 2010

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PENALTY REINVESTMENT AGREEMENT (PRA) POLICY

This memorandum outlines and explains the policy followed by the Canada Border Services Agency (CBSA) for reviewing a Penalty Reinvestment Agreement (PRA). It provides information on how a client may apply for a PRA and specifies the conditions and circumstances under which a PRA can be granted.

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LEGISLATION

Sections 129 to 133 of the *Customs Act*, and section 18.1 of the *Federal Courts Act* are applicable to the following policy. For more information about the *Customs Act*, the *Federal Courts Act*, and any regulations under these Acts visit the Department of Justice Canada Web site: www.justice.gc.ca.

GUIDELINES AND GENERAL INFORMATION

INTRODUCTION

1. It is the policy of the Canada Border Services Agency (CBSA) to allow a claimant to reinvest all or a portion of a penalty applied under the Administrative Monetary Penalty System (AMPS), by means of a Penalty Reinvestment Agreement (PRA), when a client has

- (a) demonstrated that a penalty was issued as a result of a systematic problem affecting their commercial information system (CIS) or related processes;
- (b) invested in corrective measures to remedy the problem in a timely manner; and
- (c) demonstrated that the corrective measures are effective in achieving compliance.

2. A PRA provides for a penalty reinvestment of one dollar for each dollar of eligible costs incurred by the client to correct a systematic problem that resulted in the issuance of administrative monetary penalties.

3. A PRA is granted through the ministerial review process, which a client may initiate by making a request for a decision of the Minister under section 129 of the *Customs Act*. For the purpose of this policy, the completed PRA application form submitted by the client will be considered by the CBSA as a request for a Minister's decision under section 129 of the *Customs Act*.

4. The purpose of this policy is to assist a client in becoming compliant with the *Customs Act*, *Customs Tariff* and related regulations by providing an incentive to invest in the correction of an underlying systematic problem that resulted in the application of administrative monetary penalties. This policy is consistent with the overall objective and intent of the AMPS administered and enforced by the CBSA.

5. For the purpose of this memorandum, "client" is defined as a commercial importer, exporter, broker, carrier or warehouse operator.

6. This policy applies primarily to clients who have been issued administrative monetary penalties assessed under section 109 of the *Customs Act*. Clients who have been

served a Notice of Ascertained Forfeiture instead of an NPA in respect of commercial contraventions, on which an amount of money is demanded under section 124 of the *Customs Act*, may also be eligible for a PRA.

7. Clients are not eligible for a PRA if they:
- (a) have been issued penalties as a result of contraventions involving prohibited or inadmissible goods (refer to “Definitions” for the definitions of “prohibited goods” and “inadmissible goods”);
 - (b) have been issued penalties assessed under an Act of Parliament other than the *Customs Act* (e.g., *Agriculture and Agri-Food Administrative Monetary Penalties Act*);
 - (c) have any outstanding debts payable to the CBSA other than the penalty that is the subject of the PRA;
8. Clients who have been issued penalties in respect of contraventions involving the export of strategic goods may not be eligible for a PRA (refer to “Definitions” for the definition of “strategic goods”). Applications involving penalties for contraventions involving strategic goods will be reviewed by the CBSA on a case-by-case basis.

DEFINITIONS

9. For the purpose of this memorandum, the following definitions apply:

Administrative Monetary Penalty System (AMPS) – a system of administrative monetary penalties for failure to comply with legislative, regulatory or program requirements. (*Régime de sanctions administratives pécuniaires – RSAP*)

Client – a commercial importer, exporter, broker, carrier or warehouse operator. (*Client*)

Commercial information system (CIS) – a manual or technology-based system used by a client to process information relating to the movement, storage, accounting, warehousing, sale, diversion, import, or export of goods or the movement of persons entering, transiting or exiting Canada. (*Système de renseignements commerciaux – SRC*)

Contravention – a failure to comply with any legislation, regulations and conditions of any licensing or undertaking administered by the Canada Border Services Agency (CBSA). (*Infraction*)

Corrective measures – refers to actions taken by a client to eliminate the causes of a systematic problem affecting their commercial information system. (*Mesures correctives*)

Eligible cost – refers to a cost of implementing corrective measures in a commercial information system that has been deemed eligible by the CBSA pursuant to the

Penalty Reinvestment Agreement policy. (For a list of all eligible and ineligible costs, refer to Appendix E.) (*Frais admissibles*)

Inadmissible goods – goods which are not eligible for entry into Canada because their entry is prohibited, controlled or regulated by an Act or Regulations of Parliament the importation of which is controlled or regulated under an Act or Regulations of Parliament. (*Marchandises inadmissibles*)

Notice of Penalty Assessment (NPA) – a prescribed form (Form E650) given to the client containing detailed information on the contravention and penalty assessment. (*Avis de cotisation de pénalité – ACP*)

Penalty – the amount of money owing as a result of a penalty assessment as indicated on the client’s Form E650, *Notice of Penalty Assessment* or an ascertained forfeiture where the ascertained forfeiture was issued in lieu of, or in addition to an AMP. (*Pénalité*)

Penalty assessment number – a unique sequential numeric identifier that is assigned to all administrative monetary penalties issued under the *Customs Act*. (*Numéro d’imposition de pénalité*)

Penalty Reinvestment Agreement (PRA) – a penalty reinvestment of one dollar for each dollar of eligible costs incurred by the client to correct a systematic problem causing the issuance of administrative monetary penalties. (*Entente de Réinvestissement des pénalités – ERP*)

Prescribed rate of interest – a rate of interest equivalent to the Treasury Bill rate as set by the Bank of Canada. (For more information about this rate, refer to Memorandum D17-1-19, *Interest Rate for Customs Purposes Regulations*.) (*Taux d’intérêt réglementaire*)

Prohibited goods – goods, which are prohibited as imported goods into Canada under tariff items 9897.00.00, 9898.00.00, and 9899.00.00 of the *Customs Tariff* (For more information on prohibited goods, see Memoranda series D9.) (*Marchandises prohibées*)

Strategic goods – goods subject to export controls and including arms, ammunitions, implements of war, weapons-related materials, or any goods whose unauthorized export might be contrary to Canadian security, political and international interests. (For more details, refer to Memorandum D20-1-1, *Export Reporting*.) (*Marchandises stratégiques*)

Systematic problem – a problem that is inherent to a system or a set of interrelated processes that causes numerous or repetitive contraventions, resulting in the assessment of at least one penalty. **Note:** Problems arising as a result of inadequate training of staff, insufficient knowledge of regulatory requirements, or deficiencies

affecting a client's operational work practices not specifically related to the functioning of the client's commercial information system do not constitute systematic problems for the purposes of this policy. (*Problème systématique*)

Third party attestation – an assessment made by a person or body, which is recognized as being independent of and at arm's length from the client and the CBSA, that conveys assurance that specified requirements relating to the client's application for a Penalty Re-investment Agreement have been demonstrated. (*Attestation d'un tiers*)

APPLICATION

Eligibility criteria for applying

10. A client may apply for a PRA if they:
 - (a) are the client against whom the penalties were issued, as identified on each Notice of Penalty Assessment (NPA) at issue;
 - (b) have been issued one or more penalties involving numerous and/or repetitive contraventions or instances of non-compliance, caused by a systematic problem in their CIS;
 - (c) have not been issued a Minister's decision under section 131 of the *Customs Act* in respect of the NPA(s) at issue;
 - (d) have identified the cause of the systematic problem in their CIS; and
 - (e) are prepared to invest in corrective measures to remedy the systematic problem and demonstrate that the corrective measures are effective in achieving compliance.
11. A client who has not already requested a ministerial review under section 129 of the Act must apply for a PRA within 90 days of receipt of the NPA at issue.
12. Applications submitted by clients who do not satisfy the above eligibility criteria for applying will not be accepted. The CBSA may advise clients of the reason(s) in writing for not accepting their application.
13. It is the responsibility of the client to provide to the CBSA all of the information requested on the PRA application form and to ensure that the information is presented in a clear and understandable manner. Failure to provide the required information in the appropriate manner may result in the denial of the application.

How to apply

14. To apply for a PRA, the client must complete Form BSF266, *Penalty Reduction Agreement Application Form*. (A sample of the form is provided in Appendix A.) The form contains instructions on how to complete the

application and specifies the information required by the CBSA to initiate the review of the client's application. The client must submit the application form to the mailing address listed in this memorandum.

15. A client who wishes to apply for a PRA but is unable to complete the application form within the time period stated in paragraph 11 may submit a request for a PRA by letter to the mailing address listed in this memorandum. The client must include in their letter:

- (a) the reason for requesting a PRA; and
- (b) the penalty assessment number(s) of the NPA(s) at issue.

16. Clients who have submitted a letter request will be mailed a copy of the application form, which must be subsequently completed and returned to the CBSA within 30 days.

17. At any time during the review of the application, the CBSA may request additional information from the client to support the application.

Additional time to submit documentation

18. Clients who require additional time to submit the application form or other required documentation must advise the CBSA as soon as possible. The CBSA will allow clients additional time to complete their application or submit documentation requested by the CBSA only in exceptional circumstances.

Notification of receipt

19. Upon receipt, the application and any supporting documentation will be reviewed by the CBSA for completeness. Should additional documentation be required once an application has been received, a request will be made to the applicant in writing, with a specified timeframe for submitting the required information. If the additional information requested by the CBSA is not received within the specified timeframe, the application may be rejected.

20. The CBSA will acknowledge to the client, in writing, receipt of a PRA application. In certain cases, the acknowledgement letter sent to the client may be used by the CBSA to request additional information.

Subsequent penalties

21. Clients who have submitted a PRA application may request that penalties issued after an application has been submitted be added to their application if:

- (a) the systematic problem in their CIS that resulted in the issuance of the subsequent penalties is the same as that described in the submitted application; and
- (b) the CBSA has not completed its review of the PRA application in question.

22. Clients who wish to request that subsequent penalties be added to a previously submitted PRA application must, within 90 days of the date of service of the subsequent NPA(s), advise the CBSA, by letter, that they wish to include additional penalties to the list of penalties covered in a previously submitted PRA application. In the letter, the client must also:

- (a) specify the penalty assessment number(s) of the NPA(s); and
- (b) describe how the subsequent penalties were caused by the same systematic problem described in the previously submitted PRA application.

Numerous systematic problems

23. Clients who believe that multiple systematic problems are causing instances of non-compliance resulting in the issuance of one or more penalties involving numerous and/or repetitive contraventions may apply for a PRA, provided that each of the systematic problems identified in the client's application contributed in part to the non-compliance.

24. The cost of remedying a systematic problem identified in the client's application that, according to the CBSA, is found not to have contributed to the non-compliance during the review of the application will not be considered by the CBSA as an eligible cost resulting in a penalty reinvestment under this policy.

No dispute – Expedited process

25. Clients who do not wish to dispute the assessment of the penalties issued against them are encouraged to submit a letter with their PRA application form stating that they accept the validity of the penalties. A formal statement by the client acknowledging that the penalties identified in a PRA application were correctly issued as a result of non-compliance will serve to expedite the application process.

Payment of penalties and interest

26. While the payment of the penalty may be deferred until a decision is made, a penalty that is not paid within 30 days of issuance, and determined to be issued correctly and not relieved in full by a successful PRA, will accrue interest at the prescribed rate from the day after the date on which the NPA was served until the date the amount owing in accordance with the decision under s.133 is paid in full.

27. In the event that a PRA is granted in an amount less than the penalty assessed and the penalty at issue was not paid within the 30 days of issuance, interest at the prescribed rate will be applied to the amount to which the penalty has been reduced and will accrue from the day after the date the NPA was served until the date the amount owing is paid in full.

Penalties under dispute

28. Clients who have requested a decision of the Minister under section 129 of the *Customs Act* following the issuance of an administrative monetary penalty may apply for a PRA, provided that the decision pursuant to section 131 of the *Customs Act* in respect of the NPA at issue has not been made.

REVIEW AND DECISION

Review of application

29. The CBSA will first review each of the penalties identified in the application, in accordance with sections 130 and 131 of the *Customs Act*, to determine whether the penalties were assessed correctly. The CBSA will cancel or adjust the amount of any penalty determined to be incorrectly issued.

30. During the PRA review, the CBSA will consider the applicant's history of compliance and the time delay in taking corrective action after identifying a systematic problem in their CIS.

31. The CBSA will notify the applicant of the outcome of the review, advising them of the total amount of penalties that may be eligible for a penalty reinvestment and the date by which the proposed corrective measures described in the application must be implemented.

Third party attestation

32. In certain cases, applicants will be asked to obtain a third party attestation as a way of conveying assurance to the CBSA of the eligibility of costs incurred by the applicant to remedy the systematic problem.

33. Applicants will be informed of what constitutes a qualified third party for the purposes of this policy during the course of the review of their application.

Substantiating costs

34. After having implemented the corrective measures, applicants must substantiate all eligible costs incurred to remedy the systematic problem in their CIS with supporting documentation (e.g., receipts, invoices, proof of payment). Costs incurred by applicants will only be offset against penalty amounts if the applicant can demonstrate that the costs for remedying the systematic problem in their CIS are eligible under this policy. (For a list of the eligible and ineligible costs, refer to Appendix B.)

35. The costs of corrective measures funded through government assistance are not eligible under this policy.

36. A principal and/or others in the applicant's firm may be required to sign an affidavit to substantiate costs and/or attest to the nature of the work done and their belief that work is eligible under the CBSA policy.

Verification and decision

37. Once the applicant has substantiated all eligible costs, the CBSA will ensure that the client's corrective measures have been implemented and are effective. The CBSA may verify compliance approximately 6 months following the date the corrective measures have been implemented and determine whether full compliance has been achieved. Applicants are expected to monitor their compliance and verify the effectiveness of the corrective measures throughout the review process.

38. If, following the verification, it is determined that the corrective measures are effective in achieving full compliance, the PRA will be granted and the CBSA will proceed to allow the claimant to reinvest the amount of the penalties by the same amount as the total eligible costs incurred by the applicant to achieve compliance. However, if it is determined that the corrective measures are not effective in achieving compliance, the PRA will not be granted and the CBSA will request that all outstanding penalty amounts be paid with applicable interest.

39. The CBSA will notify the applicant of the decision to grant or deny a PRA and, if applicable, the amount of the penalty reinvestment in writing. The decision by the CBSA to grant or deny a penalty reinvestment consists of a decision made under section 133 of the *Customs Act*.

40. Any decision made or written communication provided by the CBSA pursuant to this policy does not constitute "reason to believe" for purposes pertaining to the accounting and payment of duties of imported goods. (For more information on what constitutes "reason to believe", refer to Memorandum D11-6-6, *Self-Adjustments to Declarations of Origin, Tariff Classification, Value for Duty, and Diversion of Goods*.)

ADDITIONAL INFORMATION

Contact-person

41. Any questions regarding this memorandum should be directed to:

Manager
 Recourse Policy Section
 Policy and Planning Division
 Recourse Directorate
 Canada Border Services Agency
 Ottawa, Ontario
 K1A 0L8
 Telephone: 613-960-5108
 Facsimile: 613-960-5112

Mailing address

42. Clients wishing to apply for a Penalty Reinvestment Agreement may submit their completed application form and all documentation relating to their application, including letters, receipts and reports, to the following address:

Canada Border Services Agency
 1686 Woodward Drive
 Recourse Directorate
 Ottawa, Ontario
 K1A 0L8

Note: Clients are permitted to submit their applications and other documentation to the Canada Border Services Agency office that issued the Notice(s) of Penalty Assessment at issue. However, to expedite the processing of your application, clients are encouraged to submit their application and all relevant documentation to the above address.

Part 4 – Required Corrective Measures

The following information must be included:

- Each of the measures used to correct the systematic problem(s) in your CIS;
- A proposed date for the completion of the corrective measure(s); and
- The method by which the corrective measure(s) can be verified and proven to be effective.

Description of corrective measure(s)	Proposed date(s) of completion (must be within six (6) months following the date of application)	How corrective measure(s) is/are to be tested

Part 5 – Breakdown/Estimate of Costs for Implementing the Corrective Measure(s)

1. Provide details of the projected investment(s) required to correct the systematic problem(s) in your CIS.
2. Substantiate all cost estimates with supporting documentation (costs cannot be funded through government assistance).
3. Indicate the type of eligible cost (from the list below) for each expense.

Note: During the review of your application, the CBSA may request, at any time, that you obtain a third party attestation to demonstrate that the costs for implementing the corrective measures were expended to eliminate the non-compliance that resulted in the issuance of penalties. The focus of the third party attestation may be on any aspect of the PRA application, including the effectiveness of the corrective measures and the eligibility of investments and their associated costs.

Details of projected investment(s)	Identify the type of eligible cost from the list below	Estimated costs
Total		

Eligible costs:

1. Costs associated with the purchase or implementation of a new system or upgrades to the existing CIS that will correct the identified problem.
2. Costs of purchasing supplies, hardware or equipment used to repair or modify an automated system.
3. Costs of purchasing software required for an automated system.
4. Costs of technical assistance used to implement and test and/or verify the effectiveness of the system upgrades, including the cost of obtaining a third party attestation.
5. Costs of training employees to perform activities specifically related to the implementation of the corrective measures.

Ineligible costs:

1. Ongoing costs for training employees.
2. Overhead or administrative costs.
3. Renovation costs.
4. Salaries for hiring employees to perform day-to-day operations.

Part 6 – Certification

I certify that all information given on this application, and in support of this application, was provided voluntarily and is true and complete.

Name (print)

Title

Signature of applicant

Date

Privacy Statement

The information you provide on this form, including supporting documentation, is collected under the *Customs Act* and is protected under the *Privacy Act*. The information will be used to make a determination of your application. The information will be retained in Personal Information Bank CBSA PPU 005 and is registered with Treasury Board Secretariat number 000011. For instructions on obtaining information consult InfoSource (or the InfoSource publication) which is available at public libraries, Government public reading rooms, and on the Internet at <http://infosource.gc.ca>

APPENDIX B**LIST OF ELIGIBLE AND INELIGIBLE COSTS****Eligible costs:**

1. Costs associated with the purchase or implementation of a new system or upgrades to the existing commercial information system that will correct the identified systematic problem
2. Costs of purchasing supplies, hardware or equipment used to repair or modify an automated system
3. Costs of purchasing software required for an automated system
4. Costs of technical assistance used to implement and test and/or verify the effectiveness of the system upgrades, including the cost of obtaining a third party attestation
5. Costs of training employees to perform activities specifically related to the implementation of the corrective measures

Ineligible costs:

1. Ongoing costs for training employees
2. Overhead or administrative costs
3. Renovation costs
4. Salaries for hiring employees to perform day-to-day operations

REFERENCES

<p>ISSUING OFFICE –</p> <p>Trade and Border Policy Recourse Policy and Planning Recourse Directorate</p>	<p>HEADQUARTERS FILE –</p>
<p>LEGISLATIVE REFERENCES –</p> <p><i>Customs Act</i>, Sections 129 to 133 <i>Federal Courts Act</i>, Section 18.1</p>	<p>OTHER REFERENCES –</p> <p>D11-6-6</p>
<p>SUPERSEDED MEMORANDA “D” –</p> <p>N/A</p>	

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