



Memorandum D22-1-1: Implementing the Administrative Monetary Penalty System (AMPS)

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Plain language summary

Target audience: Trade chain partners

Key content: Background on administrative monetary penalties for non-compliance with customs legislation and regulations; How penalties are structured and applied; Maximum penalties in the event of non-compliance; How to appeal a penalty

Key words: CARM, penalty, contravention, customs, compliance, non-compliance, Master Penalty Document, records, refunds, payment, duties, advance commercial information, corrections

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Updates made to this D-memo

This memorandum has been updated:

- to reflect the changes in how the Administrative Monetary Penalty System (AMPS) is implemented within (the context of – tbd) the CBSA Assessment and Revenue Management (CARM) system

- to reflect an update to redress and payment processing resulting from amendments to the regulations
- to remove outdated details regarding the review of the AMPS regime that was completed in 2009

Definitions

Designated provisions

The Designated Provisions (Customs) Regulations define the short-form descriptions of non-compliance that will be used in issuing notices of penalty assessments (NPAs) for the purpose of subsection 109.1(1) of the Customs Act.

Legislation

Trade Chain Partners (TCPs) are required to comply with the program legislation as defined by the CBSA Act:

Program legislation means any other Act of Parliament or any instrument made under it, or any part of such an Act or instrument,

- (a) that the Governor in Council or Parliament authorizes the Minister, the Agency, the President or an employee of the Agency to administer and enforce, including the Excise Act, the Special Import Measures Act, the Customs Act, the Customs Tariff, the Immigration and Refugee Protection Act, the Excise Act, 2001 and the Select Luxury Items Tax Act;
- (b) that the Governor in Council or Parliament authorizes the Minister, the Agency, the President or an employee of the Agency to enforce, including the Agriculture and Agri-Food Administrative Monetary Penalties Act, the Feeds Act, the Fertilizers Act, the Health of Animals Act, the Plant Protection Act, the Safe Food for Canadians Act and the Seeds Act;
- (c) under which the Minister or another minister authorizes the Agency, the President or an employee of the Agency to administer a program or carry out an activity; or
- (d) under which duties or taxes collected and paid pursuant to the Customs Act are imposed.

Master Penalty Document

The Master Penalty Document (MPD) lists contraventions resulting from failure to comply with requirements identified in the Customs Act, Customs Tariff and related regulations. Each contravention correlates to a provision identified in the Designated Provisions (Customs) Regulations.

The guidelines provided in the MPD are non-exhaustive and may be subject to change. It is therefore recommended that TCPs refer to the appropriate legislation or regulations to ensure compliance.

Guidelines

This memorandum describes the AMPS as it applies to TCPs, and sets out the guidelines regarding AMPS penalties that may apply in cases of non-compliance with the relevant legislation and regulation administered by the CBSA.

In addition to providing information on the AMPS itself, this memorandum outlines the use of the collections provisions of the *Customs Act*, the review and redress provisions, as well as provide other information that may be useful to TCPs.

The AMPS is a sanctions regime that allows the CBSA to issue administrative monetary penalties in cases where there is a failure to comply with the CBSA's designated trade and border legislation and regulations in the commercial stream. The purpose of the AMPS is to provide the CBSA with a means to deter non-compliance by TCPs, and thereby encourage voluntary compliance.

The AMPS creates a level playing field for all Canadian businesses by using corrective measures for non-compliance. To this end, AMPS is designed to improve compliance rather than being a punitive regime.

The AMPS penalties are largely used to reduce the use of enforcement tools, such as seizures and ascertained forfeitures. Providing comprehensive penalty coverage for contraventions of the CBSA's requirements and obligations will result in a significant overall reduction of the competitive advantage that non-compliant TCPs have over those who have invested in compliance.

The policy regarding the use of the AMPS does not preclude using additional enforcement measures that may be available to the CBSA. When an AMPS contravention is issued, a seizure or ascertained forfeiture may also be initiated in specific circumstances, such as, but not limited to, cases where: goods are prohibited or controlled (e.g., alcohol, tobacco products, prohibited weapons, firearms, drugs, child pornography, conveyances modified and used for smuggling); controlled goods for which the exportation would pose a security risk to Canada.

The issuance of an AMPS penalty, or the use of seizure or ascertained forfeiture measures, does not preclude the CBSA from prosecuting non-compliant TCPs at the criminal level. Criminal prosecution will continue to be undertaken where warranted, based on the seriousness or repetitiveness of the contravention, or the potential harm to Canada.

The officer will identify the section of the legislation that has been contravened and will select the appropriate contravention from the [Master Penalty Document](#) (MPD). Once the penalty assessment is completed, the officer will issue it on [form E650, Notice of Penalty Assessment](#).

Penalty structure

The AMPS penalty structure is graduated in most cases, providing for higher monetary penalties for repeat instances of the same contravention. For a small number of contraventions, the recommended penalty amount is a flat rate.

In order to keep the AMPS from becoming punitive, each contravention penalty amount is reviewed and assessed by the relevant penalty CBSA expert to ensure the monetary cost reflects the impact of the harm, thus correcting the non-compliance behaviour.

In the case of gross negligence, severe non-compliance or repeated contraventions, the CBSA may determine that the conventional AMPS penalty scaling is unreasonable and may use more drastic measures to ensure compliance with the relevant legislation and regulations administered by the CBSA.

30-day non-escalation period

To provide TCPs with an opportunity to correct their non-compliance, the CBSA introduced a 30-day period before penalties escalate from the first to the second level. This non-escalation period applies to certain contraventions deemed to be of low and medium risk.

The penalty amount sections in the MPD identify which contravention codes are subject to the 30-day non-escalation period.

Maximum penalty amount

Under AMPS, the maximum penalty amount for a single instance of non-compliance is CAD \$25,000. However, the total penalty amount assessed on an NPA, which includes multiple instances may exceed CAD \$25,000.

The CBSA will not apply more than one AMPS contravention to any single instance of non-compliance. For example, if the circumstances relating to a single instance of non-compliance involves providing information to an officer that is not true, accurate and complete (contravention C005) as well as failing to report imported goods (contravention C366), only one contravention will be applied. The officer, when determining the appropriate contravention to apply, will consider the individual circumstances surrounding the non-compliance.

TCP's contravention history

The AMPS contravention history contains information on all NPAs issued, closed, and cancelled against a TCP.

Each TCP's AMPS contravention history is linked to the Business Number with an RM extension (BN15). Each BN15's history has no effect on any other BN15 account sharing the same BN9.

TCPs view their AMPS contravention history maintained by the CBSA via the CARM Client Portal (CCP).

In cases where the TCP has not completed their registration in the CCP, the TCP's AMPS contravention history can be provided via registered mail. Only two such requests may be submitted per calendar year and the information will be made available only to the TCP whose information is contained therein.

A request for an AMPS contravention history must be provided on company letterhead and sent to the Regional CBSA [Trade Operations](#) Division located nearest the TCP. Such requests shall also provide the following information:

- Printed name and title of officer of the company (authorized officer)
- Signature of the above referenced officer of the company
- The TCP identification number that applies

Retention period

The retention period for each contravention is either 12 or 36 months.

Retention periods are for penalty level calculation purposes only and, are used to determine when penalties escalate from one level to the next. They are calculated either for one year or three years from the date of the last NPA issued against the TCP.

Most contraventions resulting from post-release verifications have retention periods of three years; border related contraventions have a retention period of one year.

Once the retention period has expired, and the same contravention occurs again, the system will begin a new retention period and will calculate penalty amounts from the first level.

Issuance of the AMPS penalties

AMPS penalties are issued to all types of commercial TCPs, in response to the failure to comply with relevant legislative or regulatory obligations, as opposed to seizures or ascertained forfeiture, which are applied against goods.

A TCP identifier is used in the process of issuing AMPS penalties. This identifier may have been issued either by the CRA or the CBSA. A system generated identifier may be issued by the CBSA if the TCP does not have a pre-existing CRA or CBSA issued identifier when non-compliance is identified.

The CBSA officer will identify the provision of the legislation or regulations that have been contravened and will select the appropriate contravention from the MPD.

Once the CBSA officer has selected a contravention, the penalty assessment will prepopulate data, such as the associated penalty level and amounts and applicable legislative and other references, in order to facilitate the issuance process.

Once the CBSA officer has completed the penalty assessment and has included all required information in their notice of penalty assessment (NPA), it will be submitted to their respective issuing authority holder, who will finalise the issuance of the NPA against the relevant TCP.

The selected contravention and the amount of the penalty assessment will be issued to TCPs on form E650, Notice of Penalty Assessment via the CCP. If it is not possible to do so via the CCP, the NPA will be sent to the TCPs via registered mail, by hand, or by any other means approved by the CBSA

Receiving a notice of penalty assessment

The NPA includes mandatory information on the penalty, such as: the contravention code, the legal name of the TCP, the TCP's business identifier (e.g., business number, carrier code, etc.), "reasons why the officer imposed a penalty," "date of the infraction," and "the document of interest, or if such document missing, the reason why it is missing (e.g., CCN for ghost containers).

Payment

As the AMPS penalties are issued against a TCP, rather than the goods, duties and taxes that are owed to the CBSA do not form part of the penalty amount and have to be accounted for and paid separately.

A NPA becomes payable on the day the NPA is served to the TCP

Payment must be remitted in Canadian currency and may be made electronically via the CCP by pre-authorized debit, debit Visa/Mastercard or credit card. Other forms of payment are online banking via the TCP's financial institution website, or Electronic Data Interchange (EDI820).

Payment may also be made by cheque to the Receiver General for Canada and mailed to the address found in the CBSA's [Memorandum D-17-5-1, Payment of duties and taxes on imported commercial goods](#).

A payment may also be made in person at a CBSA office, if it is open to the public. A copy of the NPA must accompany the payment.

AMPS penalties are now tied to the billing cycle. Most TCPs will be on the "18th of month one to 17th of month two, all due 10 business days after the 17th" billing cycle, meaning that payment is due at the end of the second month, but this date may vary by a day or two depending on holidays and weekends. Prescribed interest will begin the day following the billing cycle due date if the penalty is not paid on time, for more information, please visit [Commercial payments and accounts](#).

When an NPA is issued in CARM, the amount owing to the CBSA will automatically post against the TCP's account in CARM in real time or through the nightly program run.

Failure to pay the notice of penalty assessment

Any amount assessed as a penalty in an NPA constitutes a debt due to His Majesty by the TCP to whom the NPA was issued.

Any unpaid amount may result in the suspension of the TCP's ability to conduct business with the CBSA.

The Canada Revenue Agency and Department of Finance and CBSA's Corporate Management Branch are responsible for recovering debts that are in default.

Review of a notice of penalty assessment

When a TCP does not agree with the findings outlined in an NPA, they may submit a request for Minister's decision within 90 days from the day the notice was served, pursuant to subsection 129(1) of the *Customs Act*.

An exception exists where the only means of appeal for an NPA issued for contraventions of the various legislations as listed in section 126.1 of the *Customs Act* is to request an appeal at the Federal Court within 30 days, pursuant to section 18.1 of the [Federal Courts Act](#).

This includes contraventions C214, C215, C216, C217, C218, and C221. For more information on these contravention codes, refer to the [Master Penalty Document](#).

Although payment is not required before a penalty is appealed at the Federal Court or before a request for a Minister's decision is made, the amount of the penalty is payable on the day the NPA is served.

Redress process

A TCP may dispute the assessment of a penalty by sending a request for a Minister's decision via the CCP. If the TCP does not have a functional CCP profile, the request may be made in writing directly to:

CBSA's Recourse Directorate,
333 North River Rd., 11th Floor, Tower A, Ottawa ON K1A 0L8
or submitted via [online form](#)

Once the request is received, the TCP will be provided with a Notice of Reasons for Assessment (NRA) which summarize the case based on the circumstances as reported and to give the appellant the opportunity to provide further information. It also summarizes the reason the client is appealing.

Requests for a Ministerial decision must be submitted within 90 days from the day the NPA was served. In exceptional circumstances, this may be extended to one year after the expiration of the original 90 days afforded to the TCP to request a Minister's decision, in accordance with Section 129.1(5) of the Act.

In the CCP, the appeal form will automatically ask the TCP to fill in the required information related to an application for extension of time if the system detects the request is being made beyond the initial 90 days. If the TCP does not have a CCP profile, the application for extension may be made at the same time and in the same manner indicated above.

The application must demonstrate that all the following conditions are met:

- (a) It has been submitted within one year and 90 days after the NPA was served; and
- (b) the TCP can demonstrate
 - i. They were unable to act or instruct another person to act within the 90 days after the NPA was served; or that the TCP had a **bona fide** intention to request a decision
 - ii. it would be just and equitable to grant the application; and
 - iii. the application was made as soon as circumstances permitted.

The Ministerial decision will be communicated to the TCP in writing via the CCP or in a letter sent to the TCP's address when the TCP does not have a CCP profile. The Minister's delegate will make a decision based on a review of facts and law. If the

decision is that the penalty was not justified, the penalty assessment will be cancelled and any money paid on the account will be refunded.

Further information on the redress processes can be found on the [Appeals/Reviews](#) page of the CBSA website

Correction process

Following the issuance of a NPA, the Minister, or any officer designated by the President for the purpose of section 127.1 of the Customs Act, may cancel or reduce the penalty within 90 days of its issuance if any errors in the assessment were made.

While the discretionary powers rest with the designated officer, corrections can be initiated by the TCP by requesting the issuing office to review a specific error or it can be submitted via the CCP.

Refunds

If a penalty has been paid and it has later been cancelled or amended as a result of a review by the CBSA, the Accounts Receivable Ledger (ARL) will automatically apply all applicable refunds (credits) to the TCP's account. If the TCP owes the CBSA for other transactions listed on the TCP's daily notice (DN), the credit will be applied to reduce the balance of amount owing. Refunds will occur for accounts that have remained in a credit position for 2 months, exceed the CBSA's threshold of \$1,000, or in cases where a refund is specifically requested by the TCP. A cheque will be issued to the TCP by Public Services and Procurement Canada (PWGSC).

Penalty reinvestment agreements

A penalty reinvestment agreement (PRA) is a formal agreement between the CBSA and a TCP, which, under certain conditions, may allow for the full or partial reduction off the payment of a penalty if the corresponding penalty amounts are invested in the correction of the TCP's commercial information systems.

The purpose of a PRA is to assist the TCP in becoming compliant by providing an incentive to invest in the correction of underlying systemic problems that may be causing errors in the TCP's commercial information system or related processes, and which have resulted in the issuance of penalties.

The PRA defines the nature of the identified problem, what will be done to correct the matter, the time frame required to make the corrections, as well as post-correction validation criteria. The level of reduction provided may range from a partial

to a full penalty assessment. These agreements will be administered by the CBSA's Recourse Directorate.

For more information on the PRA, refer to [Memorandum D22-1-2, Penalty Reinvestment Agreement \(PRA\) Policy](#).

References

Consult these resources for further information:

Applicable legislation

- [Customs Act](#) and related regulations
- [Customs Tariff](#) and related regulations
- [Designated Provisions \(Customs\) Regulations](#)
- [CBSA Act](#)
- [Excise Act](#)
- [Special Import Measures Act](#)
- [Immigration and Refugee Protection Act](#)
- [Select Luxury Items Tax Act](#)
- [Agriculture and Agri-Food Administrative Monetary Penalties Act](#)
- [Feeds Act](#)
- [Fertilizers Act](#)
- [Health of Animals Act](#)
- [Plant Protection Act](#)
- [Safe Food for Canadians Act](#)
- [Seeds Act](#)
- [Federal Courts Act](#)

Issuing office

Program Compliance Division
Commercial Program Directorate
Commercial and Trade Branch

Contact us

[Contact border information services](#)

Related links

- [Memorandum D22-1-2, Penalty Reinvestment Agreement \(PRA\) Policy](#)
- [Memorandum D-17-5-1, Payment of duties and taxes on imported commercial goods](#)
- [Master Penalty Document](#)
- [form E650, Notice of Penalty Assessment](#)