

Administrative penalties

Operational policy

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About this policy

Introduction

1. This policy outlines the guidelines and criteria for applying an administrative penalty in relation to errors in entries for imported, excisable and exported goods.

Related documents

2. Use this operational policy in conjunction with the following documents:

Document name	Document type
Administrative penalties	Process and procedures

Note: For relevant Legislation links see the reference section at the end of this document.

Overview

3. The purpose of Customs' administrative penalties system is to encourage people to take reasonable care when making entries, and to voluntarily disclose to Customs any errors or omissions. The system supports Customs' voluntary compliance model which relies on people making accurate entries and correcting any errors or omissions.
4. Accurate entries are essential to quickly clear compliant goods, identify and assess risk goods, and collect the right amount of revenue. A number of government departments also rely on the information provided on entries to implement or monitor government policy, e.g. the reporting of official trade statistics or preventing the export of cultural goods.
5. Accurate export entries also provide assurance to international trading partners on the goods they are receiving, and that New Zealand's exports are meeting international obligations (e.g. United Nations sanctions on exporting to specific countries).
6. Administrative penalties can be applied to people making an entry to Customs, and where the information on the entry contains an error or omission and has not been voluntarily disclosed to Customs. Customs has discretion to impose an administrative penalty or to use another sanction such as a customer compliance letter in the grace period for excise and export entries.
7. A person making an entry is known as a declarant. They may be an employee of the importer, exporter or excise producer; or an agent such as a customs broker.

Principles that are taken into account

8. Customs' policy is that the administration of the system will have full regard to the following principles:
- a fair, professional and consistent approach
 - the principles of natural justice
 - consistent and sustainable decision-making.

Information provided on an entry

9. The types of information that a declarant self-assesses and provides on an entry, which must be accurate include:
- the applicable tariff or excise classification
 - the excise or tariff rate for the goods being imported or removed
 - the eligibility for any relevant duty exemptions (concessions)
 - the value and statistical quantity of the goods
 - the countries of origin and export
 - eligibility for any preferential tariff rate
 - the exchange rate applicable at the time of entry.
10. Customs Rules in relation to entries for imported, excisable and exported goods assist declarants to meet their obligations in making accurate entries.

When an administrative penalty may apply

11. Customs may issue an administrative penalty to a person if Customs is satisfied the entry made by the person contains an error or omission, and either:
- there is an amount of duty outstanding, or
 - the entry is "materially incorrect".

Errors resulting in unpaid/ undeclared duty or excess drawback

12. If the error or omission on an entry resulted in unpaid or undeclared duty, or excess drawback being paid or claimed, the amount of administrative penalty is determined according to level of culpability.
13. Customs considers the following when determining the level of penalty:

If the declarant has...	the error or omission is considered...
made an entry knowing the information provided is wrong or deliberately omitted	to be made knowingly

If the declarant has...	the error or omission is considered...
<p>demonstrated a high degree of carelessness and disregard for the consequences.</p> <p>Note: It is conduct that creates a high risk of a duty shortfall occurring, which could have been foreseen by a reasonable person in the same circumstances. It doesn't matter if the person was aware of being grossly careless or intended to be so. Gross carelessness means doing or not doing something in a way that, in all the circumstances, suggests or implies complete or a high level of disregard for the consequences.</p>	grossly careless
<p>not taken reasonable care in meeting their Customs' obligations, including completing forms correctly. A person must take the same care that a reasonable person in the same circumstances would take.</p> <ul style="list-style-type: none"> • To determine if reasonable care was/was not taken consider the: <ul style="list-style-type: none"> ○ amount and seriousness of the shortfall ○ processes in place to check entries ○ procedures in place to detect arithmetical errors ○ size and nature of the error ○ circumstances in which the error was made. • A reasonable person would be expected to seek professional advice if they were uncertain about what was required of them. <p>Note: The standard does not require perfection. For a broker, reasonable care means having adequate record keeping systems and procedures to ensure that entries are made correctly on behalf of the importers, exporters and licensees and the assessments made of their duty liability and declared to Customs are properly recorded and can be relied upon as correct. An arithmetical error doesn't necessarily indicate a lack of reasonable care.</p>	due to lack of reasonable care

The amount of penalty is applied to a maximum according to the level of culpability, as shown in the table below. A minimum penalty of \$200 applies.

If the error or omission was...	then the administrative penalty is...
made knowingly (deliberate)	100% of unpaid or undeclared duty, or excess drawback, to a maximum of \$50,000.

If the error or omission was...	then the administrative penalty is...
grossly careless	40% of unpaid or undeclared duty, or excess drawback, to a maximum of \$35,000.
due to lack of reasonable care	20% of unpaid or undeclared duty, or excess drawback, to a maximum of \$20,000.

Materially incorrect errors

14. If the error or omission did not result in unpaid or undeclared duty, or excess drawback being paid or claimed, but is “materially incorrect” then the penalty will be \$200. [Section 284](#) sets out the definitions for what is considered a materially incorrect error or omission in relation to an import entry, an export entry, and an excise entry.
15. The matters included in the definition of “materially incorrect” are considered by Customs as material to providing accurate entries.

Multiple errors

16. Sometimes an entry may have multiple errors or omissions, or Customs discovers during an audit multiple entries with errors or omissions. In many instances, applying multiple administrative penalties on a person for multiple errors or omissions will not achieve the purpose of administrative penalties.
17. Customs may decide to apply administrative penalties for some of the errors or omissions, but not for others.

Administrative penalties of \$5,000 or more

18. Customs’ policy is that any recommended administrative penalty of \$5,000 or more must be submitted for an internal review before proceeding to issue a penalty.
19. The Manager, Trade Assurance will oversee an in-depth analysis of the basis for the penalty, and liaise with the Chief Legal Counsel, Operations. This process includes contacting the person (declarant) to advise that we are considering applying an administrative penalty and asking them to disclose any mitigating factors. Rights of appeal still apply should a penalty be issued.

When an administrative penalty must be paid

20. An administrative penalty must be paid to Customs within 20 working days of the penalty being issued.

Protection from prosecution and seizure

21. A person who pays an administrative penalty is not liable for prosecution in relation to the error or omission. The goods cannot be seized, unless the goods have been forfeited in accordance with [section 176](#).

Liability of principal and agent

22. An importer, exporter or excise producer who engages an agent (such as a customs broker or an accountant) to make entries on their behalf may also be liable for penalties under the legislation. Under [section 395](#) the actions of an agent are treated as if they were the actions of the agent's principal (e.g. the importer, exporter or excise producer).

When an administrative penalty does not apply

23. An administrative penalty cannot be applied in a range of situations, as set out in [section 288](#). These are:
- the person voluntarily discloses the error or omission to Customs before any compliance actions are notified.
 - Customs is satisfied that the view that the person formed in relation to the relevant facts that gave rise in the error or omission, was reasonable in the circumstances (this exemption can only be applied by officers holding the appropriate delegation – available on the Longroom).
 - Customs is satisfied that the person acted in good faith on information provided by the importer, exporter or supplier of the goods, and reliance on the accuracy or completeness of that information was reasonable in the circumstances (this exemption can only be applied by officers holding the appropriate delegation). Importers, exporters and excise producers have a responsibility to ensure that they are providing accurate information to an agent making entries on their behalf.
 - a charging document for an offence against the Act has been filed in relation to the error or omission.
 - the date on which the error or omission was first identified is more than four years after the date of lodgement of the entry.
 - the person can show that they prepared the entry in reliance on a Customs Ruling in relation to the matter found to be in error ([section 345](#)). This exemption applies only in relation to the matter on which the Ruling was given and only during the life of the Ruling in terms of [section 343](#) of the Act.
24. In addition, Customs may choose to not apply an administrative penalty where:
- the case is more appropriately prosecuted
 - there are exceptional circumstances which mean that it would not be appropriate to apply a penalty
 - the error or omission results in the entry being materially incorrect but are only trivial or minor errors or omissions with no aggravating factors, e.g. goods miscounted by one item.
25. An error or omission on an electronic entry, which causes the entry to be rejected from the system (i.e. a lodgement number is not generated for that message), is not subject to an administrative penalty.

Late payments of penalties

26. If an administrative penalty is not paid by the due date, a penalty of 1% of the outstanding penalty will be charged on the first day after the due date. A further penalty of 4% of any original penalty still outstanding will be charged on the seventh day after the due date. Customs may remit or refund the whole or part of a penalty that is payable for late payment of an administrative penalty. (Refer to Operational policy remissions and refunds of compensatory interest and late payment penalties.)

Rights of appeal

27. If a person disagrees with Customs' decision to issue them an administrative penalty or with the penalty amount, they can apply for a review of the decision or appeal to the Customs Appeal Authority. A decision to refuse to remit or refund a penalty that is payable for late payment of an administrative penalty, is also subject to a right of appeal.
28. The person has 20 working days after the date on which the penalty notice is given, to request the chief executive to review the decision to issue the notice, appeal to the Customs Appeal Authority or seek an extension of time to request a review or to appeal.
29. An administrative penalty or penalty for late payment of an administrative penalty must be paid, despite applying for a review or lodging an appeal. If a review or appeal is successful, Customs must refund any penalty due.
30. A review of the decision is undertaken by a Customs officer who was not responsible for issuing the penalty that is to be reviewed.

Documentation

31. Customs staff must document the outcome of any decision to impose or not impose an administrative penalty in CusMod and the administrative penalties database. The goal is to provide a record of compliance or non-compliance of a declarant, as well as to inform consistent decision-making by Customs.
32. Declarants have an obligation to maintain ongoing competency as a user of the Joint Border Management System. A record of compliance or non-compliance, and any administrative penalties issued, will assist Customs in assessing competency.

Delegated authority

33. Customs officers administering the administrative penalty system must hold the appropriate delegations for exercising the chief executive's powers.

Special cases

Miscellaneous parts

34. If miscellaneous parts (bolts, nuts etc) are included with a shipment of a machine, and the parts are included as part of the set-up process and are mentioned on the invoice, but no specific quantity or value is provided, the importer/broker should estimate their value and quantity based on available information.
35. This approach ensures consistency and stops the penalty notice being issued resulting in additional work for Customs and the broker/importer.
36. [Section 288\(c\)](#) is to be applied in cases where the declarant has estimated the value and/or statistical quantity of minimal quantities of non-specified enclosures (such as nuts and bolts) with large shipments.

Apportioned freight charges

37. Where shipments are split over several lines of an entry, the freight and insurance charges for each detail line can be difficult to accurately determine. Accepted practice has been to apportion the cost between the detail lines. Some EDI (electronic data interchange) software apportions these values based on a line's VFD (value for duty). A similar situation would exist if the freight were apportioned on the weight of the shipment. In some instances, this will result in freight values for a detail line that are incorrect.
38. Provided the freight and insurance values have been fairly apportioned or otherwise dealt with in line with the guidelines for goods purchased on CIF (cost, insurance, freight) or similar basis in OPS PRO 71 (Entry of imported goods), an administrative penalty should not be applied.
39. This policy should not apply to shipments where the insurance and freight values were allocated in a random manner between the detail lines.
40. [Section 288\(b\)](#) of the Act is to be applied when the freight and insurance content has been apportioned to each detail line of an entry based on the VFD or quantity of each line.

REFERENCES

Customs and Excise Act 2018

- [Section 75](#): Entry of imported goods
- [Section 81](#): Entry of Part A goods
- [Section 89](#): Entry of goods for export
- [Section 284](#): Definitions for subpart
- [Section 285](#): Imposition of penalty
- [Section 286](#): When penalty must be paid
- [Section 287](#): Calculation of amount of penalty
- [Section 288](#): No penalty in certain cases

- [Section 289](#): Late payment of penalty: further penalties payable
- [Section 290](#): Further penalty may be remitted or refunded
- [Section 291](#): Administrative review of, or appeal against, decision to issue penalty notice
- [Section 292](#): Administrative review of, or appeal against, decision to refuse to remit or refund additional penalty
- [Section 293](#): General rules about penalties
- [Section 294](#): Obligation to pay penalty not suspended by review or appeal
- [Section 343](#): Cessation of Customs ruling, etc
- [Section 345](#): No liability where Customs ruling relied on
- [Section 395](#): Liability of principal and agent.

Customs and Excise Regulations 1996

- [Regulation 26](#): Certain goods deemed to be entered
- [Regulation 29](#): Goods for export exempt from entry

Customs Rules

- Customs (Import Entry) Rules 1997
- Customs (Excisable Goods) Amendment Rules 1997
- Customs (Export Entry) Amendment Rules 2004.