

Administrative review

Operational Policy

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About this policy

Introduction

1. This policy outlines the scope, intent and purpose of administrative reviews.

Related documents

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

Document name	Document type
Conduct administrative review	Process and procedures

Overview

3. The primary aims of administrative reviews are to reduce barriers to duty payers seeking appeal and to facilitate the resolution of small value disputes. They also enable compensatory interest to be paid on refunds where a review is partly or wholly successful.
4. Administrative reviews enable New Zealand to comply with its international obligations under the World Customs Organization's Revised Kyoto Convention. That Convention requires people to be able to make an initial appeal to Customs.

Purpose of administrative reviews

5. Administrative reviews allow the legal basis or accuracy of Customs' decisions on the amount of duty owing, or the application, or amount of certain penalties and compensatory interest to be challenged. These decisions arise when Customs does not accept an original assessment. They can result in amendments to assessments made after an audit or investigation; or they may occur where Customs or the customer identifies an error (section 347 and Schedule 7).
6. Administrative reviews are less formal than the Customs Appeal Authority process, providing a review process for:
 - small value disputes that would not be cost-effective to take to the Authority
 - larger value disputes where the nature of the dispute is not complex.

Decisions

7. Review decisions need to be clear, transparent, independent, timely and fair.
8. Customs will advise applicants, in writing, of decisions on administrative reviews and the rationale for the decision. Where a decision is in the applicant's favour, Customs will refund or remit the excess duty, penalty or compensatory interest.

Scope of administrative reviews

9. People can seek administrative reviews on the following decisions:

Type of decision	Section
Amendments and (re)assessments of duty owing	
Assessments of duty on goods not entered	113
Assessments of duty on alcohol and ethyl alcohol that would have been exempt from paying excise or excise-equivalent duty under a Chief Executive's approval, had the approval conditions not been negligently or intentionally breached	114
Assessment of excise duty on beer or wine wrongly entered as exempt from duty on the grounds of personal use	115
Assessment of excise-equivalent duty on goods imported for further manufacture but otherwise dealt with	116
An assessment, or reassessment, made by Customs (including a provisional value or a final Customs value).	117
Assessments of duty where goods wrongly removed or landed	
Decision that duty is payable on goods missing or wrongfully removed from a Customs-controlled Area	138
Demands for duty owing on cargo, stores or other goods unlawfully landed in or from a craft in New Zealand.	139
Certain decisions on late payment penalties and compensatory interest	
Statements of liability for compensatory interest and late payment penalties ¹	164
Not refunding or remitting compensatory interest or a late payment penalty.	173
Review of administrative penalties	
Issuing of, or amount of, an administrative penalty	291
Refusal to remit or refund a further penalty for late payment of an administrative penalty.	292

10. Administrative reviews cannot be sought for any other decision or action not listed in the above table.

11. An importer also cannot ask for an administrative review when Customs:

- declined the importer when they applied to use a provisional value
- suspended their ability to use provisional values.

¹ i.e. the amount of interest or penalty due at a given date. Note: a review of an updated or amended statement can only consider matters relating to the update or the amendment, rather than the original assessment.

12. Applicants have the right to withdraw their application for an administrative review at any stage in the process.
13. The fact that a decision has been made or an action taken by an automated electronic decision rather than a human, does not affect a person's right to apply for administrative review ([section 299](#)).

Form of administrative reviews

14. To reduce costs, complexity and delay, administrative reviews will be determined "on the papers" unless the Chief Executive considers it not appropriate and agrees to an oral hearing (Schedule 7, clause 3).
15. Determining the review on the papers means that the reviewer will rely on the *Administrative review application form*, any documents provided by the applicant in support of the application, and Customs' records.
16. Customs can seek external expert advice or verification of information to assist in understanding and evaluating the information, or where the documents do not fully address all matters.
17. Customs will assess whether the decision was taken lawfully and/or whether Customs had accurately assessed the amount of duty, penalty or compensation in dispute. Issues over discretion and the decision-making process may arise over Customs' decisions to impose administrative penalties or decline to remit or refund further administrative penalties.

Responsibility for undertaking reviews

18. Authority to undertake and determine administrative reviews lies with the Chief Executive or their delegate. Administrative reviews must be both independent of, and perceived to be independent of, the original decision-maker.
19. If delegated, the officer making the determination will be a Supervising Customs officer, unless the section of the Act that was the subject of the original decision is delegated to a higher rank, or the relevant policy requires a higher rank.

Timeframes

20. Anyone applying for an administrative review must, within 20 working days of the date on which Customs gave notice of the decision under dispute, either:
 - make an application using *Administrative review application form* (Schedule 7, clause 1) or;
 - Seek an extension of the time in which an application can be made. The preferred method to seek an extension is also using the *Administrative review application form*. You may however seek an extension of time by putting your request in writing, identifying the decision to be reviewed, the length of extension sought, and why that amount of extra time is needed. Schedule 7, clause 2.

21. Customs must determine the review within 20 working days after the application is received unless the time is formally extended.

Obligation to pay duty not suspended

22. Administrative reviews do not suspend a duty-payers' obligation to pay duty, compensatory interest, late payment penalties, administrative penalties or further penalties for the late payment of administrative penalties (sections 127, 174 and 294).

Goods may be released

23. Customs may release goods that are subject to an administrative review, if we receive security. The goods then cease to be subject to the control of Customs (section 126).

Refunds of duty or security resulting from an administrative review

24. Where an administrative review finds in favour of an applicant and wholly or partly refunds any monies, interest is to be paid on the refund at a rate set out in regulation 59A of the Customs and Excise Regulations 1996 (section 128).
25. An applicant should also be refunded any securities taken, if a review application is successful.

Refunds of interest and penalties

26. Compensatory interest and late payment penalties relating to duty are to be refunded or remitted where an administrative review finds that the duty was not payable.
27. Where an administrative review of an administrative penalty or further (administrative) penalty is successful, Customs will refund the penalty or further penalty² (section 290). Interest calculated under section 128³ is to be paid on refunded administrative penalties but not on further administrative penalties (section 290).

Appeals to the Customs Appeal Authority

28. Applicants cannot simultaneously seek an administrative review and appeal to the Customs Appeal Authority on the same matter. However, they may choose to:
 - take a matter directly to the Customs Appeal Authority without first seeking an administrative review, or
 - appeal the Chief Executive's determination of an administrative review to the Customs Appeal Authority. Such appeals must be made within 20 working days of the date of notice of the determination unless the Authority grants an extension of time to appeal (Schedule 7, clause 6 and Schedule 8, clause 15).

² In whole or in part.

³ This interest is distinct from that provided for under the compensatory interest and late payment penalty regime.

REFERENCES

Customs and Excise Act 2018

- Section 347 Process for administrative reviews
- Schedule 7 Administrative reviews

Customs and Excise Regulations 1996

- Regulation 59A Interest on duty refunded on appeal

Customs Rules

- Customs (Applications for Administrative Reviews) Rules 2018