



Administrative penalties

OPERATIONAL POLICY | KAUPAPAHERE

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Introduction | Whakatakinga

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

Related documents | Kōrero pāngia

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

Document name	Document type
Issue an administrative penalty (Trade Revenue and Compliance officer) - 0004	Process
Detect an error or omission in an entry and consider for an administrative penalty (detecting officer) - Procedure - 0897	Procedure
Administrative penalties - 0001	Guideline

Overview | Tirohanga whānui

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. Other government departments also rely on the information provided on entries to implement or monitor government policy (eg, 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 (eg, United Nations sanctions on exporting to specific countries, Free Trade Agreements, and agreements with Approved Economic Operators).
6. Administrative penalties can be applied to people making an entry to Customs where the Chief Executive or delegate is satisfied the entry contains an error or omission and as a result:
 - an amount of duty payable under the CEA 2018 has not been paid or declared for payment or would not have been paid or declared for payment, or
 - the entry is otherwise materially incorrect.
 - Refer to [section 284](#) of the CEA 2018 for specific definition of how 'materially incorrect' is applied to [Subpart 3 – Administrative penalties](#).

Principles that are taken into account

7. The administrative penalties system will follow these principles:
 - A fair, professional and consistent approach.
 - The principles of natural justice.
 - Consistent and sustainable decision-making.

Information provided on an entry

8. Collection of the correct amount of revenue at the border operates largely on a self-assessment basis:
 - Importers and licensees (at times acting through agents) make an assessment of their duty liability and declare this to Customs.
 - Exporters, importers, licensees and brokers self-assess:
 - the applicable Tariff or Excise classification
 - 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.
9. Entries that are materially wrong in any of the above areas cause incorrect revenue payments and/or incorrect excise, export and import data to be recorded. This impacts on the revenue position of the government, the effectiveness of industry assistance policies at the border, and the integrity of the excise, export and import data on which trade and industry assistance policies and risk management strategies are based.
10. Customs Rules in relation to entries for imported, excisable and exported goods assist declarants to meet their obligations in making accurate entries.

Errors resulting in unpaid or undeclared duty or excess drawback

11. 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.

12. Customs considers the full situation when determining the level of penalty:

Situation	Then the error or omission is considered to be...	And the penalty is...
<p>The declarant has not taken reasonable care in meeting their Customs' obligations, including completing forms correctly.</p> <p>Explanation: A person must take the same care that a reasonable person in the same circumstances would take.</p> <p>To determine if reasonable care was/was not taken consider the:</p> <ul style="list-style-type: none"> ➤ 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. <p>A reasonable person would be expected to seek professional advice if they were uncertain about what was required of them.</p> <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>	<p>due to a lack of reasonable care</p>	<p>20% of unpaid or undeclared duty, or the excess drawback paid or claimed, to a maximum of \$20,000.</p>
<p>The declarant demonstrated a high degree of carelessness and disregard for the consequences.</p> <p>Explanation: This is conduct that creates a high risk of a duty shortfall occurring, which could have been foreseen by a</p>	<p>grossly careless</p>	<p>40% of unpaid or undeclared duty, or the excess drawback paid or claimed, to a maximum of \$35,000.</p>

Situation	Then the error or omission is considered to be...	And the penalty is...
<p>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>		
<p>The declarant made an entry knowing the information provided is wrong or deliberately omitted.</p>	<p>made knowingly</p>	<p>100% of unpaid or undeclared duty, or the excess drawback paid or claimed, to a maximum of \$50,000.</p>

13. A minimum penalty of \$200 applies. If the total penalty payable is under \$200, then the amount payable is to be set at the minimum of \$200 and issued.

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 CEA 2018 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 a “representative” administrative penalty for some of the errors or omissions, but not for others. For example, a declarant has made the same minor material error on 5 entries, and when the nature and seriousness of the error is considered only one representative administrative \$200 penalty is issued.
18. In cases where several entries have the same errors resulting in additional revenue, one penalty based on the total additional revenue can be issued.

Calculating and approving Administrative penalties

19. The calculation of the amount of the administrative penalty under [section 287\(1\)](#) of the CEA 2018 is delegated to SupCO / CTS level. Refer to [Operational Delegations - Customs Legislation and Regulations](#).
20. Any recommended administrative penalty of less than \$5000 can be progressed by the Administrative Penalties team (ie, no further approvals required).
21. Any recommended administrative penalty of \$5000 or more must be approved by Manager Trade, Compliance and Assurance.
 - An SCO is allocated to complete the Proposed Penalty Assessment report and provide a recommendation on the appropriate action to take, and any applicable penalty amount.
 - The CCO reviews the recommendation and either approves or does not approve the recommendation. Then, they forward to the Manager Trade Compliance and Assurance who makes the decision, which is then actioned by the Administrative Penalties team.
22. **Note:** This process does not remove the opportunity for a review to be sought should a penalty be issued.

When an administrative penalty must be paid

23. An administrative penalty must be paid to Customs within 20 working days of the penalty being issued (refer to [section 286](#) of the CEA 2018).

Protection from prosecution and seizure

24. A person who pays an administrative penalty is not liable for prosecution in relation to the error or omission (refer to [section 293](#) of the CEA 2018). The goods cannot be seized, unless the goods have been forfeited in accordance with [section 176](#) of the CEA 2018.

Liability of principal and agent

25. 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](#) of the CEA 2018, the actions of an agent are treated as if they were the actions of the agent's principal (eg, the importer, exporter or excise producer).

When an administrative penalty does not apply

26. [Section 288](#) of the CEA 2018 provides for certain cases in which a person is **not liable** for a penalty under [section 285](#) of the CEA 2018.
27. In addition, Customs may (in exercising discretion) 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, for example:
 - goods miscounted by one item
 - a concession has been incorrectly applied, but another concession is applicable.
28. An error or omission on an electronic entry, which causes the entry to be rejected from the system (ie, a lodgement number is not generated for that message), is not subject to an administrative penalty.

Late payments of penalties

29. As per [section 289](#) of the CEA 2018, 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.

Remission and refund

30. 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).

Administrative Review and right of appeal

31. 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 (refer to [section 291](#) of the CEA 2018). 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 review or appeal to the Customs Appeal Authority (refer to [section 292](#) of the CEA 2018).
32. 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, or appeal to the Customs Appeal Authority. If the application is for an administrative review, then the person may seek an extension of time to make the application for review (see the Schedule of the Rules).
33. An administrative penalty or penalty for late payment of an administrative penalty must be paid, despite applying for a review or lodging an appeal (refer to [section 294](#) of the CEA 2018). If a review or appeal is successful, Customs must refund any penalty paid in whole or in part (as the case requires).

Administrative review

34. The administrative review process is outlined under Schedule 7 of the CEA 2018 and the Customs (Applications for Administrative Reviews) Rules 2024 (the Rules). An application for review must be made in the way prescribed by the Rules, which is by submitting Form C13 and any relevant documents.
35. A review of the decision is undertaken by an officer with the appropriate delegation and who was not responsible for issuing the penalty (they should be of the same or higher rank as the issuing officer).

Customs Appeal Authority

36. Customs Legal team keep records of appeals taken to a Customs Appeal Authority. Customs Legal advise the relevant Customs officers as soon as they receive notification of a CAA appeal being lodged.

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 2024
- Customs (Excisable Goods) Amendment Rules 1997
- Customs (Export Entry) Amendment Rules 2004
- WCO messaging rules