



Ottawa, June 22, 2010

MEMORANDUM D22-1-1

In Brief

ADMINISTRATIVE MONETARY PENALTY SYSTEM

This is to inform you that further corrections have been made to Appendix B of Memorandum D22-1-1, *Administrative Monetary Penalty System*, dated April 21, 2010. Please note that certain addresses and telephone numbers have been updated to the Atlantic and Quebec regions, and four additional Southern Ontario region Client Services offices have been added in addition to an updated Client Services' telephone number for the Windsor office.



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This memorandum describes the Canada Border Services Agency's (CBSA) Administrative Monetary Penalty System (AMPS).

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LEGISLATION

AMPS sets out monetary penalties for contraventions of, or failure to comply with, the *Customs Act*, *Customs Tariff*, and any regulations under these Acts including contraventions of the terms and conditions of licensing agreements and undertakings. For more information about the *Customs Act*, *Customs Tariff*, and any regulations under these Acts visit the Department of Justice Canada Web site: www.justice.gc.ca.

REGULATIONS

The *Designated Provisions (Customs) Regulations* lists those sections of the *Customs Act*, *Customs Tariff* and the regulations under these Acts that impose obligations on the trading community to comply with CBSA requirements. Failure to comply with those obligations may be subject to an AMPS penalty. For more information about the Designated Provisions, visit the Department of Justice Canada Web site: www.justice.gc.ca.

GUIDELINES AND GENERAL INFORMATION

Introduction

1. AMPS is a sanctions regime that authorizes the CBSA to issue civil monetary penalties for the violation of CBSA's trade and border legislation in the commercial stream. The purpose of AMPS is to provide the Agency with a means to deter non-compliance by its clients, and thereby to encourage compliance. AMPS creates a level playing field for all Canadian businesses by ensuring that there is a cost for non-compliance. To this end, AMPS is designed to be a remedial rather than a punitive program. The AMPS penalties largely replace the use of seizure and ascertained forfeitures as enforcement tools. Providing comprehensive penalty coverage for contraventions of CBSA requirements and obligations will result in a significant overall reduction of the competitive advantage that non-complying clients have over those who have invested in compliance.

2. CBSA AMPS penalties have been issued since October 7, 2002, in the commercial stream because of non-compliance found either at the border or through post-release verification of company records. When an officer discovers that a client has not complied with their obligations under the law, an AMPS penalty may be applied. The officer identifies the section of the legislation that has been contravened and selects the appropriate contravention from the Master Penalty Document (MPD). The Integrated Customs System (ICS) calculates the penalty amount, based on the penalty associated to each contravention, and the retention period.

3. The details of the contravention and the amount of the penalty assessment are issued to clients on a Form E650, *Notice of Penalty Assessment*, or NPA. An example of this form is in Appendix A.

AMPS Review Highlights

4. In 2009, CBSA completed a review of the AMPS program. The objective of the AMPS Review was to identify modifications required to ensure the CBSA has a clear, appropriate, forward-looking, and risk-based AMPS regime that encourages voluntary compliance, without being unnecessarily burdensome on the Agency or its clients. The objectives of the review have been met in that the necessary modifications have been identified, documented, consulted upon, and received CBSA senior management approval.

5. A high-level action plan including time frames that vary from a few months for items such as initial and key modifications to the ICS to the final collapsing of all contraventions in fiscal year 2011-2012 has been initiated. As a result, several changes to the program are effective on April 14, 2010. They include:

- (a) changing the penalty amounts and structures, including eliminating most of the percentage of the value for duty penalties, and replacing them with graduated or flat penalty amounts;
- (b) resetting ICS to calculate all penalty amounts at Level 1 for the first infraction, regardless of the number of previous contraventions remaining in the contravention retention period against a client;
- (c) resetting penalty amounts according to risk criteria, and developing future contraventions and their penalty amounts according to this risk criteria;
- (d) introducing a 30-day non-escalation period of penalty levels from the first to the second level for low and medium risk contraventions;
- (e) updating contravention legislative references and penalty basis in the MPD;
- (f) deleting contraventions C022, C236, C239, C245, C285, C289, C293, C344, C347, C361, C362 and C367 and creating new penalties C371 and C372 but otherwise maintaining contravention numbers as they are today;
- (g) removing contravention guidelines from the AMPS automated system and maintaining them solely on the CBSA's Web site in the MPD to facilitate current and future revisions;
- (h) posting information on the AMPS correction process on the CBSA Web site;
- (i) improving access to the AMPS correction process by adding the issuing office's fax number on the Notice of Penalty Assessment to allow clients to fax in their correction requests. Until a system change is complete officers will add this information manually;
- (j) reinstating regional review committees (RRC) to ensure penalties are issued correctly and consistently; and
- (k) further amendments to the penalty system in 2010-2011 and in 2011-2012, including the eventual collapse of contraventions into like groupings.

Improving Compliance

6. Clients can avoid AMPS penalties by ensuring that they are fully compliant with all CBSA requirements. The most important objectives of the AMPS are to correct non-compliance and to establish a level playing field for all clients.

Application of the AMPS

7. AMPS contraventions may be applied to all commercial clients including importers, exporters, brokers, warehouse and duty free shop operators, carriers, freight forwarders or representatives thereof.

8. The AMPS penalties are applied against the person, in response to their non-compliance as opposed to seizures, which are applied against goods, thereby enabling the use of the collections provisions of the *Customs Act* when payment of penalties becomes an issue.

9. A client identifier, such as the Canada Revenue Agency (CRA) issued Business Number (BN) at the company's RM import/export account level, the 4-digit, CBSA-issued carrier code or sub-office work location code that identifies a warehouse operator, is used in the process of issuing AMPS penalties.

10. CBSA post-release verification activities may identify multiple occurrences of an identical contravention. To ensure that clients have the opportunity to become compliant before penalties move to the next level, all occurrences of an identical contravention identified during the same CBSA post-release verification process will be assessed at the same penalty level.

National Review Framework

11. The CBSA is committed to ensuring that the AMPS program is delivered consistently and appropriately across the country. To this end regional review committees (RRC) review AMPS penalties prior to issuance (for trade penalties) and after issuance (for border-related penalties) in the interest of quality assurance and national consistency.

12. A superintendent will approve all border-related penalties prior to being issued. All regions will have committees to review penalties issued by Senior Officers Trade Compliance (SOTCs) and committees to review border-related penalties. These committees will meet quarterly to review some of the penalties that were issued in light of quality and consistency and to determine if there is a need for training.

Master Penalty Document (MPD)

13. The MPD lists contraventions resulting from failure to comply with requirements identified in the *Customs Act*, *Customs Tariff* and related regulations. Each contravention describes the failure to comply, the associated penalty amounts, legislative, regulatory, and administrative references, and guidelines for application of the contravention.

14. The guidelines for each contravention are prepared in consultation with program areas and external stakeholders. The guidelines for application of the contravention are not all-inclusive but are examples to provide guidance in applying the penalties. While the guidelines may be subject

to change, it is recommended that clients refer to the appropriate legislation, regulation, or relevant material that describes the import/export process requirements to ensure compliance.

15. The complete AMPS Master Penalty Document, Index, and its Short Version are available on the AMPS pages on the CBSA's Web site: www.cbsa.gc.ca.

Penalty Structure and Risk

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

17. A penalty matrix called the AMPS risk grid outlines the severity of the impact from very low to very high plotted against four criteria, namely: national security, health and safety, economic, and international commitments. Each coordinate on the grid is assigned a definition of its impact. The penalty grid is based on risk management criteria defined by Treasury Board and the CBSA to measure the harm associated with non-compliance. A risk rating is assigned to each coordinate and a rationale for the rating is provided.

18. The risk criteria ensure that penalty amounts are in line with the potential harm of non-compliance; e.g., clerical errors vs. fraud. The risk criteria and penalty amounts have been structured to ensure that AMPS penalties are sufficient to correct non-compliant behaviour. New and modified contraventions will also be assessed against the revised criteria.

19. AMPS penalties are progressive; i.e., the first, second, third, and subsequent occurrences of the same contravention by the same client receive progressively higher penalty amounts.

20. For groups that are considered high and very high risks, the penalty amounts have been increased at the second and third levels at a higher rate to reflect the higher severity of these contraventions. For these groups, the formula is double the Level 1 amount for the Level 2 amount and double the Level 2 amount for the Level 3 and subsequent amounts. This translates into a range of penalties from \$0 at the warning level up to \$8,000 for repeat offenders of the most serious contraventions.

21. For various reasons, including program application and the corrective nature of several programs, a minority of contraventions and their associated penalties do not readily fit within the parameters of the risk matrix. The majority of these contraventions are better suited to a flat rate penalty, rather than an escalating penalty level. For example, a flat rate of \$3,000 for air carriers that failed to transmit advance passenger information (API).

30-day Non-Escalation

22. To provide clients with an opportunity to correct non-compliance for low and medium risk contraventions, CBSA introduced a 30-day delay to the penalty escalation from Level 1 to Level 2 in the automated system. From the issue date to the time the penalty increases to the second level, the client has time to take remedial action to prevent having to pay an increased penalty amount.

Maximum Penalty Amount

23. Under AMPS, the maximum penalty amount for a single contravention is CAN\$25,000. However, the total penalty amount assessed on an NPA may exceed CAN\$25,000 if there is more than one contravention identified on the NPA.

24. CBSA will not apply more than one AMPS contravention to any single instance of non-compliance. For example, if the circumstances of a single instance of non-compliance involve providing information to an officer that is not true, accurate and complete (contravention C005) as well as failing to report imported goods (contravention C021), only one penalty will be applied. The officer in the process of determining the appropriate penalty will consider the circumstances of the non-compliance.

AMPS Client Contravention History

25. The AMPS client contravention history contains information on all contraventions issued, closed, and cancelled.

26. Each time clients are issued a penalty, it is added to their client contravention history. Clients who demonstrate a poor compliance record can expect to receive increased attention from CBSA. This may range from a Senior Officer Trade Compliance arranging to meet with them to assist in identifying corrective actions, to increased examinations at the border or post-release verifications of the company's records.

27. Clients can request copies of their own AMPS client contravention history maintained by CBSA. Each client is entitled to two requests for copies per calendar year.

28. A client's AMPS contravention history is available only to the client whose information is contained therein.

29. Requests must be received on company letterhead and sent to the regional CBSA Trade Compliance Division located nearest the client (see Appendix B) and shall provide the following information:

- (a) Printed name and title of officer of the company (authorized officer);
- (b) Signature of the above referenced officer of the company;

- (c) The client identification number that applies, either
- (i) Business Number (RM import / export account level);
 - (ii) carrier code (carrier/transporter); or
 - (iii) sub-office work location (warehouse operators).

Retention Period

30. The retention period for each individual contravention is either 12 or 36 months for penalty calculation purposes only. However, the overall client contravention history remains on the AMPS system for six years plus the current year.

31. Contravention retention periods are for penalty calculation purposes only and used to determine when penalties escalate from one level to the next. They are calculated either one year or three years from the date of the last contravention against the client. Once the retention period has expired, and the same contravention occurs again, the system will begin a new retention period and calculates penalty amounts from the first level. Most contraventions resulting from post release verifications have retention periods of three years; border related contraventions have a retention period of one year.

Notification to Service Providers

32. When an NPA is issued against a single transaction or release, the service provider will receive a copy of the NPA if his/her account security number is used in the documentation.

33. When an NPA is issued during a post-release verification, a disclosure authorization letter from the client is required since the client may be using the services of more than one service provider. For an upcoming verification, CBSA sends a post-release verification notice to the client together with a blank disclosure authorization letter (Authorization to Share Information Form with instructions as to the specific information to be disclosed to a service provider). If any NPAs are assessed because of the post-release verification, the service provider will be informed only if a completed form is on file. AMPS vs. Application of Other Enforcement Measures.

34. As the AMPS penalties are issued against a person, rather than the goods, duties do not form part of the penalty amount and are accounted for and paid separately.

35. The policy regarding the use of AMPS does not place any restriction on the application of any other enforcement tools that may be available to CBSA. When an AMPS penalty is issued, seizure action may also be initiated in specific circumstances. These may include instances where goods are prohibited or controlled, i.e., alcohol, prohibited

weapons, firearms, drugs, child pornography, conveyances modified and used for smuggling, and controlled goods whose export would pose a security risk.

36. The issuance of an AMPS penalty, or the use of seizure and ascertained forfeiture, does not preclude the CBSA's option to prosecute. Criminal prosecution will continue to be undertaken where warranted, due to the seriousness of the offence or the potential harm to society.

Payment

37. A penalty assessed under AMPS becomes payable on the day the NPA is served on the person. An NPA may either be served to the person by hand or sent by registered mail.

38. Payment may be made in person or by mail at the issuing office listed on the last page of the NPA or at any CBSA office. A copy of the NPA must accompany the payment. Interest is payable on penalties at the prescribed rate, beginning the date following the date of the NPA. However, if the penalty is paid within 30 days after the date of the NPA, no interest will apply. For more information about interest, refer to Memorandum D17-1-19, *Interest Rate for Customs Purposes Regulations*.

Failure to Pay Penalty Assessment

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

40. CRA Taxpayer Services and Debt Management Branch is responsible for recovering debts that are in default.

Review of a Penalty Assessment

41. When a person does not agree with the findings outlined in an NPA, there are two types of review available. They are:

(a) requests for correction of an NPA within 30 days, pursuant to section 127.1 of the *Customs Act*; and

(b) requests for redress (Ministerial decision) within 90 days, pursuant to section 129 of the *Customs Act*.

42. If a client requests a correction or redress, the payment of the NPA may be deferred until a decision is rendered. However, if it is determined that there was a contravention and that the penalty was correctly issued, and the penalty is not paid within 30 days, interest, at the prescribed rate, will be calculated on arrears from the day after the date the NPA was served, until the date the amount owing is paid in full.

Correction Process

43. Following the assessment of a penalty, a designated officer may, on behalf of the Minister, cancel or reduce the penalty within 30 days of its issuance if any errors in the

assessment were made. Correction requests should be submitted to the issuing office. To improve access to the correction process, issuing offices will add their fax number on the NPA.

44. The information required in a correction request is:
- (a) the client identification number:
 - (i) Business Number (RM import/export account level);
 - (ii) carrier code (carrier/transporter);
 - (iii) sub-office work location (warehouse operators);
 - (b) the name and address of the client;
 - (c) the penalty assessment number (a unique sequential identifier assigned by the AMPS automated system to each NPA);
 - (d) the proof of payment of the NPA, when applicable;
 - (e) an explanatory note, clearly identifying why the client believes that there is an error in the penalty assessment.

45. If a request for a correction is denied, the client still has the option of requesting a Minister's decision as described below in the redress process.

Redress Process

46. If a client disputes the assessment of a penalty, a request for a Ministerial decision can be made. The CBSA's Recourse Directorate reviews these requests. The NPA contains information on the redress process. It is recommended that clients provide as much information as possible relating to their objection to the penalty.

47. 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. The requests should be sent to the issuing office that assessed the penalty as shown on the NPA. The Ministerial decision will be communicated to the client in writing. If the penalty was justified by the facts and the law, the decision will confirm that the penalty assessment will be maintained and any money and/or interest owing on the account of the penalty are payable. If, on the other hand, the penalty was not justified by the facts or the law, the penalty assessment will be cancelled and any money paid on the account of the penalty will be refunded and any interest.

48. Further information on the correction and redress processes can be found on the CBSA's Web site: www.cbsa.gc.ca.

Penalty Reduction Agreement (PRA)

49. The PRA is a formal agreement between CBSA and a client, which, under certain conditions, may allow for full or partial reduction from the payment of a penalty if the corresponding penalty amounts are invested in the correction of the client's commercial information systems errors.

50. The purpose of a Penalty Reduction Agreement (PRA) is to assist the client in becoming compliant by providing an incentive to invest in the correction of underlying systemic problems that may be causing errors in the client's commercial information system or related processes, which have resulted in the application of penalties.

51. 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 partial to the full penalty assessment.

Additional Information

52. For information by telephone, call the Border Information Service at **1-800-461-9999** within Canada. From outside Canada, call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00-16:00 local time/except holidays). TTY is also available with Canada: **1-866-335-3237**.