



Memorandum D22-2-1

Ottawa, February 10, 2021

Personal Administrative Monetary Penalties for Cannabis-Related Contraventions of the Customs Act

In Brief

This memorandum describes the Canada Border Services Agency's (CBSA) Personal Administrative Monetary Penalty (AMP) Regime for contraventions of the [Customs Act](#) involving cannabis offences at the border, in respect of a traveller's personal goods and conveyances.

Legislation

Under the authority of section 109.1 of the [Customs Act](#), the Personal AMP Regime sets out monetary penalties for cannabis-related contraventions of the [Customs Act](#). Specifically, AMPs are issued for the following two contraventions:

- Section 7.1 providing information to an officer that is not true, accurate and complete
- Section 12(1) failing to report imported goods at prescribed time and in prescribed manner at nearest open customs office that is designated for that purpose that is open for business

The Presidential Directive in [Appendix A](#) directs the penalty amounts to be issued under section 109.1 of the [Customs Act](#), in respect of a traveller's personal goods and conveyances, for the contraventions described above.

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 persons to comply with CBSA requirements. Failure to comply with those obligations may be subject to a penalty assessment.

Guidelines and General Information

Acronyms and Definitions

1. For purposes of this document, the following definitions apply:



AMP:

Administrative Monetary Penalty. A financial penalty that may be assessed by an officer in response to a contravention of designated legislative provisions. An AMP encourages compliance with particular Customs-related legislation through the application of monetary penalties, the amount of which may be based on factors such as the type, frequency and seriousness of the contravention.

“Cannabis”

has the same meaning as in subsection 2(1) of the [Cannabis Act](#).

“Cannabis Plant”

has the same meaning as in subsection 2(1) of the [Cannabis Act](#).

“Conveyance” has the same meaning as in subsection 2(1) of the [Customs Act](#).

“Goods” has the same meaning as in subsection 2(1) of the [Customs Act](#).

NPA:

Notice of Penalty Assessment. A notice issued to a non-compliant person that sets out a monetary penalty for contraventions of the [Customs Act](#), [Customs Tariff](#) or the [Special Import Measures Act](#) or of any regulation made under any of those Acts. It details the assessment of an AMP and will have a unique sequential identifier number.

“Officer” has the same meaning as in subsection 2(1) of the [Customs Act](#).

“Person”, for the purposes of this d-memo, refers to an individual.

“Personal goods” or “casual goods” are goods that are intended for the sole use by a traveller or other persons of their immediate family and are not intended for resale, distribution or commercial use of any kind.

“Report” for the purposes of enforcing the [Customs Act](#), means the reporting of imported or exported goods under sections 12 or 95 and includes making the goods available for inspection.

2. The Personal AMP Regime supports the CBSA’s authority to issue civil monetary penalties for the violation of Customs’ legislation in relation to cannabis interdictions at the border. The purpose of AMPs is to provide the Agency with an alternative means to encourage future compliance through an administrative mechanism, instead of initiating seizure action and/or criminal prosecution for border offences involving cannabis. AMPs are designed to be a remedial measure rather than punitive.

3. When an officer discovers that a person has not complied with their obligations under border legislation, an AMP may be assessed. If an AMP is assessed, the officer will serve the person with a written Notice of Penalty Assessment (NPA) that sets out the contravention and amount of penalty.

Improving Compliance

5. Travellers can avoid AMPs by ensuring that they are fully compliant with all CBSA program legislation requirements.



Assessment of an AMP

6. Where a person has contravened the [Customs Act](#), in relation to the prohibited cross-border movement of cannabis or products containing cannabis, an AMP may be issued to that person. For example, an officer discovers undeclared or inaccurately reported cannabis or products containing cannabis in a traveller's personal goods or conveyance.

7. AMPs are sanctions in the form of a monetary penalty imposed through a regulatory scheme to encourage compliance with legislation and do not result in a criminal record or imprisonment. They serve as an additional type of enforcement action to address non-compliance situated between a simple warning and a seizure action or criminal prosecution.

8. The CBSA is directed by the Minister to assess AMPs in accordance with factors commonly used by other federal organizations that administer enforcement schemes that incorporate AMPs, including Health Canada's administrative monetary penalties under the [Cannabis Act](#). These factors, as set out under subsection 112(3) of the [Cannabis Act](#), include the following:

- the person's history of compliance or non-compliance;
- the nature and scope of the violation (e.g. weight of cannabis, intent, actual or potential harm);
- whether the person made reasonable efforts to mitigate the effects of the violation; and
- whether the person derived any competitive or economic benefit from the violation.

9. The above factors are common elements used in AMP regimes. While the amount of an AMP may vary according to the factors above, this provides guidance to officers, while allowing for flexibility to determine the most appropriate AMP amount required to encourage future compliance with the legislation.

Penalty Structure

10. The penalty structure provides the CBSA with the ability to encourage future compliance, without compromising any of the underlying key principles of the regime, which includes proportionality and fairness.

11. The penalty amounts vary depending on the severity of the offence. In consideration of the factors described in paragraph 8, penalty levels are classified as a Level 1 (minor), Level 2 (serious) or Level 3 (very serious) contravention. Each level has a fixed penalty amount.

Maximum Penalty Amount

12. While the maximum penalty amount under section 109.1 of the [Customs Act](#) is CAN\$25,000.00, under the Personal AMP Regime, the maximum penalty amount for a single contravention is CAN\$2,000.

13. The CBSA will not apply more than one AMP 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 as well as failing to report imported goods, only one penalty will be applied. The officer in the process of determining the appropriate penalty will consider the circumstances of the non-compliance.



Trusted Traveller Membership

14. Trusted Traveller membership may be subject to cancellation for an NPA.

AMP vs. Application of Other Enforcement Measures

15. The policy regarding the use of AMPs does not place any restriction on the application of other enforcement tools available to the CBSA. When an AMP is issued, seizure action may also be initiated in specific circumstances.

16. The issuance of an AMP, or the use of seizure, 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.

Retention period

17. Each individual NPA issued remains in a person's contravention history on the Integrated Customs Enforcement System (ICES) for six years plus the current year.

Payment

18. An AMP becomes payable on the day the NPA is served on the person. An NPA may either be hand delivered or sent by registered or certified mail.

19. Payment may be made by mail to the issuing office listed in the NPA or to any CBSA office, or in person at locations where a CBSA office is open to the public. A copy of the NPA must accompany the payment.

20. Under section 109.4 of the [Customs Act](#), a person must pay the full amount of the penalty set out in the NPA. If payment is not received within 30 days from the date of the NPA, the amount will be subject to interest at the prescribed rate beginning on the date following the date of the NPA. For more information about interest, refer to [Interest Rate for Customs Purposes Regulations](#).

Failure to Pay Penalty Assessment

21. Any amount assessed as a penalty in an NPA constitutes a debt owed or due to Her Majesty in right of Canada by the person to whom the NPA was issued.

22. The Canada Revenue Agency's Taxpayer Services and Debt Management Branch is responsible for recovering debts that are in default.

Review of a Penalty Assessment

23. If there are inaccuracies in the NPA such as clerical or typographical errors, the traveller may contact the issuing CBSA office within 90 days from the date of the NPA.

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



(a) requests for correction of an NPA within 90 days after the assessment, pursuant to subsection 127.1(1) of the [Customs Act](#); and

(b) requests for redress within 90 days after the service of notice, pursuant to paragraph 129(1)(d) of the [Customs Act](#).

25. If a person 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 after the date of the Minister's decision, 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.

Corrective Measures

26. Following the assessment of a penalty, a designated officer may, under section 127.1 of the [Customs Act](#), on behalf of the Minister, cancel or reduce the penalty within 90 days of its issuance if any errors in the assessment were made. Correction requests should be submitted to the issuing office and include the following information:

(a) the name and address of the person named in the NPA;

(b) the penalty assessment number (a unique sequential identifier assigned by the AMP automated system to each NPA);

(c) the proof of payment of the NPA, when applicable; and

(d) an explanatory note, clearly identifying why the person believes that there is an error in the penalty assessment.

27. If a request for a correction is denied, the person has the option of requesting a Minister's decision within 90 days from the day the AMP was issued, as described below in the redress process.

Request for Minister's Decision

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

29. Requests for a Minister's decision must be submitted within 90 days from the day the NPA was served. In exceptional circumstances, section 129.1 of the [Customs Act](#) allows up to an additional year to request a review. The requests for review may be submitted [online](#) or made in writing and sent to CBSA's Recourse Directorate, Place Vanier, Tower A, 333 North River Rd., 11th floor, Ottawa ON K1A0L8. The Minister's decision will be communicated to the person in writing. The Recourse Directorate is responsible for providing clients with a fair and impartial review of decisions and actions taken in support of border services legislation. Further information on the review process may be found on [Recourse's webpage](#). If the penalty was justified by finding or fact within 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 pursuant to the law, the penalty assessment



will be cancelled and any money paid on the account of the penalty will be refunded and any interest. Please refer to Ensuring an Impartial Resolution Process on the CBSA website <https://www.cbsa-asfc.gc.ca/recourse-recours/impartial-eng.html>.

30. Further information on the correction and redress processes can be found on the CBSA's Web Site <http://www.cbsa-asfc.gc.ca>.

Additional Information

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

References	
Issuing Office	Customs Enforcement, Commercial and Trade Policy Division
Legislative References	<i>Cannabis Act</i> <i>Customs Act</i> <i>Designated Provisions (Customs) Regulations</i> <i>Interest Rate for Customs Purposes Regulations</i>



Appendix A

CBSA Presidential Directive: Implementing a set of clear, proportional and enforceable penalties that seek to limit criminal prosecution for less serious offences involving the prohibited cross-border movement of cannabis in respect of travellers' personal goods and conveyances

Ottawa,

February 10, 2021

I, John Ossowski, President, Canada Border Services Agency, pursuant to subsection 8(1) of the Canada Border Services Agency (CBSA) Act and having been delegated under subsection 2(4) of the *Customs Act* the power of the Minister to direct the amounts of penalties to be assessed for a failure to comply with:

- a) any of the provisions designated by the Governor in Council in the Designated Provisions (Customs) Regulations for the purposes of subsection 109.1(1) of the *Customs Act*,

hereby direct that the amounts of the penalties for a failure to comply described in Columns 1 and 2 of the attached Schedule are the amounts set out in Column 3 of the attached Schedule for that failure.

The penalty amounts for contraventions set out in the attached Schedule become effective on the date of signing this Directive and apply to a person's failure to comply in regard to these contraventions from the date of final changes to the Integrated Customs Enforcement System.

Original signed by John Ossowski President

Date of signing: February 1, 2021



Schedule 1

Penalty Amounts Directed Under Section 109.1 of the Customs Act in respect of Personal Goods and Conveyances

Annexe 1

Montants de pénalité exigés en vertu de l'article 109.1 de la Loi sur les douanes en ce qui concerne les effets personnels et les moyens de transport

Column / Colonne 1	Column / Colonne 2	Column / Colonne 3
Contravention Number / Numéro de l'infraction	Description of Contravention / Description de l'infraction	Penalty Level / Niveau de la pénalité
T001 Inaccurate information / Informations inexactes	In respect of cannabis, a person provided information to an officer that is not true, accurate and complete.	Level 1 (minor) – \$200 per occurrence Level 2 (serious) – \$440 per occurrence Level 3 (very serious) – \$2,000 per occurrence
	En ce qui concerne le cannabis, une personne a fourni à un agent des renseignements qui ne sont pas véridiques, exacts et complets.	Niveau 1 (mineur) – 200 \$ par événement Niveau 2 (sérieux) – 440 \$ par événement Niveau 3 (très sérieux) – 2000 \$ par événement
T002 Non-report / Non-rapport	In respect of cannabis, a person failed to report imported goods at prescribed time and in prescribed manner at the nearest open customs office that is designated for that purpose.	Level 1 (minor) – \$200 per occurrence Level 2 (serious) – \$440 per occurrence Level 3 (very serious) – \$2,000 per occurrence
	En ce qui concerne le cannabis, une personne a omis de déclarer des marchandises importées selon les modalités et dans le délai réglementaires au bureau de douane le plus proche doté des attributions prévues à cet effet, qui est ouvert.	Niveau 1 (mineur) – 200 \$ par événement Niveau 2 (sérieux) – 440 \$ par événement Niveau 3 (très sérieux) – 2000 \$ par événement



Canada Border
Services Agency

Agence des services
frontaliers du Canada