



Memorandum D4-3-7

Ottawa, September 18, 2015

Duty Free Shop – Contraventions and Penalties

In Brief

1. This memorandum is revised as a result of a review of the Master Penalty Document and as a result of the strategic review of the Duty Free Shop (DFS) program and minor regulatory changes being made to help reduce the administrative burden on the Canada Border Services Agency (CBSA) and DFS licensees.
2. In accordance with the above, contraventions C066, C160, C163 and C164 have been added as they relate to the DFS program, contraventions C051, C056 have been deleted as they no longer apply to the DFS program, and contraventions C155 and C302 have been deleted as they have been removed from the Master Penalty document and no longer apply.

This memorandum outlines the contraventions and possible enforcement actions that may result from a Duty Free Shop (DFS) licensee's failure to comply with the legislative provisions governing the operation of a DFS.

Legislation

[Duty Free Shop Regulations](#)

Guidelines and General Information

1. Failure of the DFS licensee to adhere to the provisions of the [Customs Act](#) or the [Duty Free Shop Regulations](#) may result in the imposition of a monetary penalty under the Administrative Monetary Penalty System (AMPS) and/or the suspension or cancellation of the licence. This memorandum only provides information and guidelines on the application of AMPS penalties and licence suspension or cancellation. **Note that other penalties not listed in this memorandum could also be applied.** For more information, refer to [Memorandum D22-1-1, Administrative Monetary Penalty System](#), and [Memorandum D4-3-2, Duty-Free Shop – Licensing](#).
2. AMPS is a civil penalty regime that secures compliance with customs legislation through the application of monetary penalties. AMPS penalties apply to contraventions of the [Customs Act](#), the [Customs Tariff](#), the [Special Import Measures Act](#) and the Regulations, as well as contraventions of the terms and conditions of licensing agreements and undertakings.

Contraventions

3. The AMPS [Master Penalty Document](#) lists a number of contraventions that relate to the DFS program. It should be kept in mind that licensees may also be required to comply with Canada Border Services Agency (CBSA) requirements other than those discussed here, depending on the nature of their business. The following are examples of AMPS contraventions that may apply to the DFS program's licensees. These examples **do not** supersede any description or prescription of the penalties as enumerated in the AMPS Master Penalty Document.
4. Contravention **C005** may apply to a person who provided to an officer, untrue, inaccurate or incomplete information required in any permit, certificate, licence, document or declaration in respect of imported or exported goods. For a person who intentionally provided untrue or false information in documentation, see contravention C348.

5. Contravention **C046** may apply when the operator of a DFS fails to allow an officer free access to the DFS or other premises that form part of the shop, including an off-site storage facility. This contravention may occur after a request by the officer to enter the premises has been refused or prevented by the person in charge of the facility.
6. Contravention **C047** may apply when the licensee of a DFS fails to open any package or container of goods in the shop or remove any covering from them to allow free access to the goods. This contravention may occur after a detailed request has been made by the officer to make the goods available for examination.
7. Contravention **C052** may apply when the licensee of a DFS fails to ensure that goods received are held in an area designated by the CBSA until they have been accounted for through the use of e-mail or other approved reporting method. This contravention may occur if no designated holding area is found to exist in the shop and/or off-site storage facility, if goods do not remain in the designated holding area until a release from the holding area has been given, or if goods do not remain in the warehouse until the documentation is stamped by the CBSA and the goods are approved for entry into the DFS inventory.
8. Contravention **C053** may apply when the licensee of a DFS fails to ensure that the shop was locked and sealed when requested by a border services officer or other officer as prescribed in the [Duty Free Shop Regulations](#). This contravention may occur when a licensee is required to lock and seal the shop for the purposes of a complete inventory to be undertaken by the CBSA. It may also occur when the licensee has failed to renew his or her licence or when the licence has been suspended or cancelled, in which case authorization to lock and seal the shop has been given by the CBSA's Commercial Registration Unit (CRU).
9. Contravention **C054** may apply when the licensee of a DFS fails to ensure that the shop is kept suitable for the safekeeping of the goods stored in the shop and/or off-site storage facility. This contravention may occur when the licensee fails to meet any specified measure intended to ensure the physical security of the goods.
10. Contravention **C055** may apply when the licensee of a DFS fails to acknowledge receipt of goods as prescribed by the [Duty Free Shop Regulations](#). This contravention may occur when the licensee fails to endorse a bill of lading, waybill or similar document presented by the carrier.
11. Contravention **C057** may apply when the licensee of a DFS fails to present required documents to the local CBSA office before any goods are taken into the DFS.
12. Contravention **C061** may apply when the licensee of a DFS fails to provide a summary of monthly sales on the prescribed [Form B117, Duty Free Shop Summary of Monthly Sales](#), no later than 15 days after the last day of the month in which the sales described on the form were made.
13. Contravention **C064** may apply when the licensee of a DFS sells, gives or in any manner conveys tobacco and/or alcohol products to a person deemed to be a minor under the laws of the province in which the DFS is located.
14. Contravention **C066** may apply when a person removed goods from a bonded warehouse or DFS prior to release by a CBSA officer.
15. Contravention **C160** may apply when a person who is required by subsection 40(3) of the [Customs Act](#) to keep records in respect of commercial goods failed to keep records for a period of six years, or as specified in the [Imported Goods Records Regulations](#). This is applied when an audit, verification or examination determines that there are no records in existence.
16. Contravention **C163** may apply when a person who is required by subsection 40(3) of the [Customs Act](#) to keep records in respect of commercial goods failed to make the records available to the CBSA officer when requested.
17. Contravention **C164** may apply when a person who is required by subsection 40(3) of the [Customs Act](#) to keep records in respect of commercial goods failed to truthfully answer any questions asked by the officer concerning the records.
18. Contravention **C348** may apply to a person who intentionally provided false information in any permit, certificate, licence, document or declaration required to be provided for imported or exported goods under the [Customs Act](#), the [Customs Tariff](#) or the [Special Import Measures Act](#) or under any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods.

Penalties

19. Penalties will be issued for the contraventions listed above in the amounts specified in the AMPS [Master Penalty Document](#).

20. Suspension of the DFS licence may also be applied simultaneously with monetary penalties applicable for contraventions C046 and C047. However, the suspension of a licence will only be applied by the CRU acting on the instructions of the Minister of Public Safety.

21. Suspension or cancellation of the DFS licence may be applied by the Minister of Public Safety in any instance where the licensee fails to comply with any Act of Parliament or regulation relating to the importation or exportation of goods or that relates to customs and excise, irrespective of any AMPS contravention that may or may not be applied.

Effect of Contravention History on the Renewal of an Existing Licence

22. The Regulations state that the Minister of Public Safety may renew an existing licence where no grounds exist to suspend or cancel the licence. The [Duty Free Shop Regulations](#) further explain that grounds to suspend or cancel the licence include a failure to comply with any Act of Parliament or regulation relating to the importation or exportation of goods, or that relates to customs and excise. As a result, the licensee's AMPS contravention history will be taken into account at time of renewal.

23. The CRU could recommend to the Minister of Public Safety the non-renewal of a licence based on a history of non-compliance. It will take into account the types of contravention, the frequency of non-compliance and the severity of particular contraventions during the most recent licensing period. For example, should a licensee demonstrate a general disdain for CBSA requirements, which is reflected in numerous types of contraventions indicating a deliberate pattern of non-compliance, the licence may not be renewed. Similarly, should a licensee consistently commit the same infraction without applying the required corrective measures, indicating a deliberate defiance of specific CBSA requirements, the licence may not be renewed. As well, should certain serious contraventions occur that clearly demonstrate deliberate dishonesty in dealing with the CBSA, the licence may not be renewed.

Effect of Contravention History on the Award of a New Licence

24. The CRU could recommend to the Minister of Public Safety not to award a new licence based on a history of non-compliance. It will take into account the types of contraventions, the frequency of non-compliance and the severity of particular contraventions that may exist in an applicant's AMPS compliance history as they may relate to another duty-free shop licence held by the applicant or to any other commercial dealings that the applicant may have with the CBSA.

Additional Information

25. For more information, within Canada call the Border Information Service at **1-800-461-9999**. 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 within Canada: **1-866-335-3237**.

References	
Issuing Office	Trade and Anti-dumping Programs Directorate
Headquarters File	
Legislative References	<i>Customs Act</i> <i>Customs Tariff</i> <i>Special Import Measures Act</i> <i>Duty Free Shop Regulations</i> <i>Imported Goods Records Regulations</i>
Other References	D22-1-1, D4-3-2 Form B117 Master Penalty Document
Superseded Memorandum D	D4-3-7 dated December 16, 2008