



Memorandum D11-6-9: Applications to the President for an Extension of Time to File a Request under Section 60 of the *Customs Act*

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Applications to the President for an Extension of Time to File a Request under Section 60 of the Customs Act

This memorandum outlines the process for clients seeking an extension of time under section 60.1 of the Customs Act (the Act) to file a request under section 60 of the Act, and details the criteria used by the President of the Canada Border Services Agency (CBSA) in responding to such applications.

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Updates made to this D-memo

This memorandum has been revised to reflect changes as a result of the implementation of the CBSA Assessment and Revenue Management (CARM).

Guidelines and General Information

- An extension of time application (application) becomes an option when the 90-day period for filing a request under section 60 of the Act has expired.
- Clients have one year after the time period's expiry to file an extension application, totaling one year and ninety days, subject to meeting specific conditions outlined in paragraphs 21 to 23.
- The Act extension provisions allow clients to file a request beyond the prescribed time when exceptional circumstances, typically beyond their control, hinder filing within the initial 90-day period.
- Clients are expected to exert every possible effort to prevent, or at the very least, reduce delays in submitting a request under section 60 of the Act. Approval for an extension of time by the CBSA is typically granted only when there is clear evidence that the client has diligently endeavored to file the request within the specified statutory timeframe.
- The client is responsible to provide all necessary information for an informed decision to be rendered under section 60.1 of the Act. Failure to provide the requested information within the requested time frame may result in application refusal.
- In commercial transactions, a client is responsible for their actions and those of a representative. The extension provision does not rectify a representative's error; the client's recourse lies with the representative.
- All applications undergo a case-by-case review, considering the roles and responsibilities of the client and their representative.

How To Apply For An Extension Of Time

Applying for an Extension of Time via CARM Client Portal(CCP)

- A client registered on the CCP can apply for an extension of time through the CCP by completing the appeal form.
- In addition to completing the appeal submission form on the CCP, clients may include a letter of explanation supporting the extension application. This letter should provide details on how the request meets the conditions set out in subsection 60.1(6) of the Act.
- All supporting evidence or documents must be included in the online appeal form, or your extension request letter or attached as supporting documents to your appeal submission on the CCP.
- For additional guidance on using the CCP, consult the appropriate CARM User Guide.
- If you require assistance using the CCP, contact the [CARM Client Support Helpdesk \(CCSH\)](#).

Applying for an Extension of Time by electronic communication outside of CARM

- Clients must first submit an application to communicate with the CBSA via electronic communication (e-mail) at the following website: [CBSA Appeal Form](#).

- Once accepted to communicate electronically, clients must submit their application for an extension of time, along with a copy of the disputed CBSA decision, a letter containing the required information and any supporting documentation to the email address noted in the e-communication agreement. (Consult Memorandum D11-6-7, Request Under Section 60 of the Customs Act for a Re-determination, a Further Re-determination or a Review by the President of the Canada Border Services Agency).
- All supporting submissions and documentation must be included in the e-mail.
- The explanation supporting the extension application should detail how the request meets the conditions set out in subsection 60.1(6) of the Act.

Applying for an Extension of Time by mail

- The client may mail a paper application by submitting a copy of the disputed CBSA decision and a comprehensive letter containing prescribed information (Consult Memorandum D11-6-7, Request Under Section 60 of the Customs Act for a Re-determination, a Further Re-determination or a Review by the President of the Canada Border Services Agency).
- All supporting submissions and documentation must accompany the letter, indicating "see attached submissions" in the explanation field.
- The explanation supporting the extension application should detail how the request meets the conditions set out in subsection 60.1(6) of the Act.
- Clients must submit their application for an extension of time, along with any supporting documentation, to the following address by regular or registered mail or by courier:

Recourse Directorate
Canada Border Services Agency
333 North River Rd, 11th floor Tower A
Ottawa ON
K1A 0L8

Conditions for Granting an Extension of Time Application

- To consider an extension, a request under section 60 of the Act must also be made that meets the conditions outlined in section 60 of the Act, including paying amounts owing or posting security. (Consult Memorandum D11-6-7, Request Under Section 60 of the Customs Act for a Re-determination, a Further Re-Determination or a Review by the President of the Canada Border Services Agency).
- The extension application must be submitted within one year after the 90-day time period specified in section 60 of the Act has expired.
- The client must prove that the conditions specified in subsection 60.1(6) of the Act have been fulfilled. These conditions are mandatory, and failure to meet any of them will result in the application being denied:
 - In that first 90-day time period:
 - The client was unable to act (unable to file a request for re-determination or a further re-determination) or was unable to give a mandate (unable to instruct another to act in the client's name); or
 - The client had a bona fide intention to file the request,
 - It would be just and equitable to grant the application given the reasons set out in the application and the circumstances of the case; and
 - The application was made as soon as circumstances permitted (as soon as possible).

Assessing The Conditions

Unable to Act or Give a Mandate to act in the person's name

- In general, the CBSA considers that a client was unable to act when exceptional circumstances, beyond the control of the client, interfered with the ability of the client to file a request under section 60 of the Act, or to give a mandate to someone else to act in the client's name to file a request within the legislated time limit. In such a circumstance, the client must demonstrate that they took reasonable care to comply with the legislation.

- A rationale should be provided describing the matter in which the circumstances prevented the filing the request within the time period. This should include all actions taken by the client to submit the request within the time period:
 - The direct relationship of the circumstance to the parties involved and the extent to which the circumstance prevented or delayed filing the request; for instance, a serious illness may have more impact on a sole proprietor than on a large corporation.

 - Whether the client could have anticipated the circumstance and to what extent the delay was within the control of the client.

 - A summary of the dates, description and duration of events should be submitted which will support the circumstances that interfered with the client in filing the request within the legislated time limit. The circumstances should correspond with the time periods outlined in the summary.

 - The application should include supporting documentation such as police, fire, insurance, accident, medical or hospital reports, and possibly newspaper

clippings to determine whether dates and descriptions of events correspond to the explanation of the circumstances mentioned by the client. Some submissions may need to be supported by affidavit.

- In the case of a commercial client, the exceptional circumstances are determined by assessing the inability of the responsible person or persons to file the request within the 90-day time period as specified in section 60 of the Act. This would include, but is not limited to, individuals occupying positions such as controllers, import-export specialists, finance officers or managers, and traffic managers.

Bona Fide Intention

- In the event a client is unable to establish an inability to act or give a mandate, a client must demonstrate that they had a bona fide intention to file a request. The CBSA will expect a client to show some genuine physical action had been taken with the intention to file the request beyond a simple mental intention:
 - A client should provide copies of correspondence between the client and the CBSA or between the client and a representative within the time period that demonstrates a clear intention to file the request.
 - A rationale must be submitted that describes the special or exceptional circumstance(s), generally beyond the control of the client or its representative, that precluded the filing of the request within the prescribed time period. The actions of the client should confirm or be consistent with their explanations. In some cases, the submissions by the client may require substantiation by affidavit.
 - A "letter of intent" to file a request within the legislated time period may not be sufficient to provide support of a bona fide intention without documented proof of action taken to file a request within the prescribed time limit.
 - A client who is unable to provide all the information necessary to support a request under section 60 of the Act should not seek to use the provisions of section 60.1 of the Act to file a request for an extension of time to file a notice late. The CBSA expects clients to file requests within the time period and ask for a reasonable

amount of time in which to file the supporting documentation when it is unavailable within the prescribed time period.

Just and Equitable

- The expression "just and equitable" is a concept used to give consideration to the principles of natural justice and fairness. The concept allows a common-sense evaluation of a situation based on objective evidence. From a practical standpoint, the CBSA generally reviews the "just and equitable" condition after the other conditions. This approach permits the CBSA to help a client to resolve problems that arise through no fault of the client and that cause the client to be unable to comply with a statutory requirement.
- In evaluating an application, the Appeals Officer may weigh such factors as the length of the delay against the consequences to the client if the application was not granted, the unfairness faced by other importers if the application was granted, and the reasons for the delay. Applications are granted only in situations where the extension of time does not prejudice other importers and it would be unfair to penalize the importer.

As Soon as Circumstances Permitted

- Clients must establish that they filed their application as soon as they could after dealing with the effects of the exceptional event that prevented them from filing the request within the legislated 90-day time period. A detailed explanation of the exceptional circumstances and events leading to the submission of the application must be provided. It should include specific references to the dates of various events or action.
- The amount of time, within which the CBSA would expect the submission of the application, will differ with the circumstances for each situation.
- If the application is rejected, a revised application can be submitted within one year from the end of the appeal period under section 60 of the Act.

- These conditions are further explained in Appendices B through E.

Overview Of The Review And Decision-Making Process

- The appeals officer notifies the client of the decision.
- Compliance with conditions set out in paragraphs 22 to 33 is considered during the review.
- The officer reviews the application impartially, making a fair decision consistent with legislative intent.
- If the application is granted, the request under section 60 of the Act is deemed valid as of the date of the application's decision, and processed accordingly.

If The CBSA Refuses the Application For Extension

- If the CBSA refuses an application for extension filed under section 60.1 of the Act, the client, within 90 days, has the option to submit an application to the [Canadian International Trade Tribunal](#) (CITT) pursuant to paragraph 60.2(1)(a) of the Act.
- To initiate this process, the client must submit the application, accompanied by a copy of the fully supported application previously filed under section 60.1 of the Act, and provide a copy of the CBSA decision.
- This submission should be sent to both the CBSA and the Registrar of the Tribunal within 90 days from the date the CBSA refused the initial application. The addresses for submission are as follows:

The Registrar
Canadian International Trade Tribunal
17th Floor, 333 Laurier Avenue West

Ottawa, ON
K1A 0G7

Recourse Directorate
Canada Border Services Agency
333 North River Rd, 11th floor Tower A
Ottawa, ON
K1A 0L8

If The CBSA Does Not Respond Within 90 Days

- Should the CBSA fail to render a decision within 90 days of the client's application under section 60.1 of the Act, the client has the option to initiate a subsequent application with the CITT under paragraph 60.2(1)(b) of the Act.
- This involves submitting the additional application, along with a copy of the fully supported application previously filed under section 60.1 of the Act, to both the CBSA and the Secretary of the CITT (addresses provided above).
- In instances where the CBSA does not provide a decision within the prescribed 90-day period, there is no time constraint for the client to bring an application to the CITT. As such, a client may defer the submission of an application to the CITT if they are content that the CBSA is actively reviewing their application (e.g., ongoing interaction between the client and the CBSA). For further information on applications, please consult the CITT website.

Appendix A - Prescription Instrument

Prescription of Form and Manner, and Information to File an Application for an Extension of Time Under Section 60.1 of the Customs Act

Authority

Pursuant to the Authorization signed by the President of the Canada Border Services Agency on April 1st, 2010, under subsection 2(4) of the [Customs Act](#) (the Act) and subsections 12(1) and (2) of the [Canada Border Services Agency Act](#), as amended, and for the purpose of section 8 and subsection 60.1(3) of the Act, I hereby authorize the following forms and manners of filing the forms and specify the following information to be provided on or with the forms for submitting an application under section 60.1 of the Act.

Prescribed Form And Manner

- Using the Canada Border Services Agency Assessment and Revenue Management Client Portal (CCP) appeal form or a letter must be submitted to apply for an extension of time under section 60.1 of the Act in the case of:
 - A request for review of an advance ruling;
 - A request for re-determination or further re-determination of origin by an exporter or producer;
 - A request for re-determination or further re-determination of marking; or,
 - A request for re-determination or further re-determination of tariff classification, value for duty or origin pertaining to goods imported into Canada; or
 - A request for re-determination or further re-determination of tariff classification of goods determined to be classified under tariff items 9897.00.00, 9898.00.00 or 9899.00.00 of the Schedule to the [Customs Tariff](#).

- Subject to exceptions under the [Proof of Origin of Imported Goods Regulations](#), all information must be submitted in English or French.
- Supporting submission and documentation must be attached to the CCP appeal submission form or letter.
- Applications may be delivered in person or sent by regular, registered mail, courier, facsimile or submitted by approved form of electronic filing. The burden of proof that an application was made under section 60.1 of the Act lies on the person claiming to have made it.

Prescribed Information

The coding and content of applications filed on Commercial Accounting Declarations must be in accordance with instructions set out in [Memorandum D17-2-1, Adjusting Commercial Accounting Declarations](#).

The expression "section 60.1 of the Customs Act" must be clearly identified in the letter as its object.

- Each application for an extension of time must include the following information:
 - A copy of the notice containing the contested decision issued under sections 43.1, 57.01, 58 or 59 of the Act, and where applicable a copy of:
 - Forms K-26 (entitled "Notice of Detention"), K27 or any other detention forms;
 - The rejection notice in respect of the submitted request for re-determination, further re-determination or review of an advance ruling made under section 60 of the Act.
 - If not otherwise provided on the prescribed forms:
 - The name, address and contact information of the importer, exporter or producer, including the name, title and telephone number of the contact person;

- The description of the goods and for goods of tariff item 9899.00.00, include their title, if any.
- A submission to support the application for an extension of time which must:
 - Set out the reasons for which the request for re-determination, further re-determination or review of an advance ruling had not been filed within the time provided for under section 60 of the Act;
 - Demonstrate how each of the conditions in paragraph 60.1(6)(b) of the Act have been met; and provide evidence in support of the facts.

Dated at Ottawa, Province of Ontario, this 13th day of June, 2013.

Originally signed by Georges Rioux
Vice-President
Corporate Affairs Branch
Canada Border Services Agency

Appendix B - Examples for Unable to Act or Give a Mandate to Act in the Person's Name

The following are examples the CBSA regards as representing situations which potentially meet the conditions set out in subparagraph 60.1(6)(b)(i) of the Act. The examples are provided for guidance only. They are not exhaustive and are intended neither to limit the circumstances eligible for consideration, nor to suggest conclusively the circumstances in which the CBSA will grant an application.

- Natural disasters (fires, floods, ice storms) when the event destroyed books and records, or made them inaccessible, or for other obvious reasons filing a request was delayed or prevented.
- Local, regional, or national emergencies in the community where the client or representative resides or carries on business.
- Civil disturbances or disruptions in services such as prolonged postal strikes, strikes within the government, lockouts, and demonstrations, where no alternative services or arrangement is reasonable or possible.
- Evidence showing that the client acted on erroneous written information given by employees of the CBSA which caused the client to miss the time limit for filing a request.
- Death or serious illness pertaining to key persons involved in filing the request.

Appendix C - Examples for Bona Fide Intention

The following are examples the CBSA regards as representing situations which potentially meet the conditions set out in subparagraph 60.1(6)(b)(i) of the Act. The examples are provided for guidance only. They are not exhaustive and are intended neither to limit the circumstances eligible for consideration, nor to suggest conclusively the circumstances in which the CBSA will grant an application.

- A client suffers from financial hardship and can substantiate that he was unable to pay or post security for duties owing on section 59 notices within the legislated 90 day time period, which is a requirement for filing a subsection 60(1) of the Act request. The client may have arranged a payment schedule within the 90-day period, and has letters to and/or from the CBSA about this situation and the client's intention to file a request within the time limit. This correspondence could support a bona fide intention to file the request.
- A client provides documentation dated within the filing period, instructing his representative to file a request on his behalf. The representative fails to do so. While this may constitute a bona fide intention on the part of the client, it would not meet the considerations under the heading Just and Equitable in Appendix D.
- A non-commercial importer does not import on a regular basis and miscalculates the statutory time limit for filing a request by submitting the notice within 3 months rather than 90 days. (For example, the section 59 notice was given on June 20 and the client assumed/miscalculated the filing deadline as September 20, when it was really September 18.) See the considerations under the heading Just and Equitable in Appendix D.

Appendix D - Examples for Just and Equitable

The following are examples the CBSA regards as representing situations which potentially meet the conditions set out in subparagraph 60.1(6)(b)(ii) of the Act. The examples are provided for guidance only. They are not exhaustive and are intended neither to limit the circumstances eligible for consideration, nor to suggest conclusively the circumstances in which the CBSA will grant an application.

- A client files the application within a few weeks after recovering files from his computer that were damaged by an event recognized as meeting the previous conditions.
- A small business without representation, where the owner is the only person in charge of trade issues, who is able to provide credible proof of hospitalization or a serious illness during the 90 days time limit.
- A non-commercial, infrequent importer miscalculated the statutory time limit for filing a request by submitting the notice at 3 months rather than at 90 days. If circumstances established a bona fide intention, it may be just and equitable to grant the application as a genuine misunderstanding by an individual unfamiliar with the legislation.
- A non-commercial, infrequent importer files a request within the filing period to CBSA, but not in the prescribed form or manner.

Appendix E - Examples for As Soon as Circumstances Permitted

The following are examples the CBSA regards as representing situations which potentially meet the conditions set out in subparagraph 60.1(6)(b)(iii) of the Act. The examples are provided for guidance only. They are not exhaustive and are intended neither to limit the circumstances eligible for consideration, nor to suggest conclusively the circumstances in which the CBSA will grant an application.

- A client demonstrates that he was unable to file a request within 90 days because of financial hardship, but filed an application as soon as he was able to make payment(s) or to post security.
- A client is unable to act because of incapacitation of a key employee and must hire and/or train a new employee to replace the employee normally responsible for commercial transactions. In appropriate circumstances, the client would be able to retain an agent. The client would be expected to explain the length of time between the hiring (or retaining of an agent) and the filing of the application. It may be reasonable to allow a few weeks for filing the application.

References

Consult these resources for further information.

Applicable legislation

- [Customs Act](#)
- [Canada Border Services Agency Act](#)
- [Customs Tariff](#)
- [Proof of Origin of Imported Goods Regulations](#)

Related D memoranda

- [Memorandum D11-6-7: Request under Section 60 of the Customs Act for a Re-Determination, a further Re-determination or a Review by the President of the Canada Border Services Agency](#)
- [Memorandum D17-2-1: Adjusting Commercial Accounting Declarations](#)

Superseded D memoranda

D11-6-9 dated April 1, 2017

Issuing office

Recourse Directorate
Canada Border Services Agency
Ottawa, ON
K1A 0L8

Contact us

[CBSA Border Information Service](#)

Related links

- [CBSA Appeal Form](#)

- [CARM Client Portal](#)
- [CARM Client Support Helpdesk](#)