



Customs Amendment (Infringement Notices) Regulation 2013

Select Legislative Instrument No. 271, 2013

I, Quentin Bryce AC CVO, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Customs Act 1901*.

Dated 12 December 2013

Quentin Bryce
Governor-General

By Her Excellency's Command

Scott Morrison
Minister for Immigration and Border Protection

OPC60234 - A

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1 Name of regulation

This regulation is the *Customs Amendment (Infringement Notices) Regulation 2013*.

2 Commencement

This regulation commences on 1 February 2014.

3 Authority

This regulation is made under the *Customs Act 1901*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Customs Regulations 1926

1 After regulation 179AB

Insert:

179ABA Infringement notices

Schedule 1ABA is made for subsection 243X(1) of the Act.

2 After Schedule 1AB

Insert:

Schedule 1ABA—Infringement notices

Note: See regulation 179ABA.

Part 1—Preliminary

1 Simplified outline of this Schedule

This Schedule creates a framework for the use of infringement notices where an infringement officer reasonably believes that a provision of the Act has been contravened.

A person can be given an infringement notice in relation to a contravention of a provision of the Act that is subject to an infringement notice under this Schedule.

A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for a contravention of a provision subject to an infringement notice under this Schedule. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

2 Definitions

In this Schedule:

payment period means:

- (a) for an infringement notice given to a person under this Schedule in a section 234AA place in relation to an alleged contravention of paragraph 233(1)(b) or (c) or subsection 234A(1) or 234AB(3) of the Act—the period that ends when the person leaves the place for the first time after the notice is given; or
- (b) for an infringement notice given to a person under this Schedule in relation to an alleged contravention of subsection 243T(1) of the Act—the period that ends 28 days after the day the notice is given to the person, unless subclause 7(8) applies; or
- (c) for any other infringement notice given to a person under this Schedule—the period that ends 28 days after the day the notice is given to the person.

Note: See subsection 4(1) of the Act for the definition of **section 234AA place**.

3 Meaning of *infringement officer*

- (1) A person is an ***infringement officer*** for the purposes of this Schedule if:
 - (a) the person is an officer of Customs; and
 - (b) the CEO authorises the person to exercise the powers or perform the functions of an infringement officer under this Schedule.
- (2) A person who is an ***infringement officer*** for the purpose of exercising powers mentioned in subclause (1) is also an ***infringement officer*** for the purposes of:
 - (a) exercising other powers under this Schedule; or
 - (b) performing functions or duties under this Schedule; that are incidental to the powers mentioned in subclause (1).

4 Provisions subject to infringement notices

A provision of the Act that is mentioned in the following table is ***subject to an infringement notice*** under this Schedule.

Provisions subject to infringement notice

Item	Provision
1	Subsection 33(2)
2	Subsection 33(3)
3	Subsection 33(6)
4	Subsection 36(2)
5	Subsection 36(6)
6	Subsection 36(7)
7	Subsection 50(4)
8	Subsection 60(1)
9	Subsection 60(2)
10	Subsection 60(3)
11	Subsection 61(1)
12	Subsection 64(13)
13	Subsection 64AA(10)
14	Subsection 64AAB(7)
15	Subsection 64AAC(6)
16	Subsection 64AB(10)
17	Subsection 64ABAA(9)
18	Subsection 64ACD(2)
19	Subsection 64AE(1)
20	Subsection 64A(1)
21	Subsection 64A(2)
22	Subsection 64A(3)
23	Subsection 71AAAQ(1)
24	Subsection 71G(1)
25	Subsection 73(1)
26	Subsection 73(2)
27	Subsection 74(6)
28	Subsection 77R(1)
29	Subsection 77Y(4)
30	Subsection 82C(1)
31	Subsection 99(3)
32	Subsection 100(7)
33	Subsection 102A(4)

Provisions subject to infringement notice	
Item	Provision
34	Subsection 102CK(1)
35	Subsection 102DE(1)
36	Subsection 106B(3)
37	Subsection 106C(3)
38	Subsection 106D(3)
39	Subsection 112(2B)
40	Subsection 112D(2)
41	Subsection 113(1)
42	Subsection 114B(7)
43	Subsection 114E(1)
44	Subsection 114F(2)
45	Subsection 115(1)
46	Subsection 116(2)
47	Subsection 117AA(1)
48	Subsection 117AA(2)
49	Subsection 117AA(3)
50	Subsection 117AA(4)
51	Subsection 117A(1)
52	Subsection 118(1)
53	Subsection 119(3)
54	Subsection 123(2)
55	Subsection 127(1)
56	Subsection 129(3)
57	Subsection 130B(3)
58	Subsection 175(7)
59	Subsection 181(5)
60	Subsection 183CGC(1)
61	Subsection 197(6)
62	Subsection 214AI(4)
63	Paragraph 233(1)(b)
64	Paragraph 233(1)(c)
65	Paragraph 233(1)(d)
66	Subsection 234A(1)

Provisions subject to infringement notice	
Item	Provision
67	Subsection 234AB(3)
68	Subsection 240(1)
69	Subsection 240(1AA)
70	Subsection 240(1A)
71	Subsection 240(1B)
72	Subsection 240(5)
73	Subsection 240(6A)
74	Subsection 240(6B)
75	Subsection 240AB(3)
76	Subsection 240AB(3A)
77	Subsection 240AB(7)
78	Section 243SA
79	Section 243SB
80	Subsection 243T(1)
81	Subsection 243U(1)
82	Subsection 243V(1)

Part 2—Infringement notices

5 When an infringement notice may be given

- (1) If an infringement officer has reasonable grounds to believe that a person has contravened a provision subject to an infringement notice under this Schedule, the infringement officer may give the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be issued within the earlier of:
 - (a) 4 years after the day the contravention is alleged to have taken place; and
 - (b) 12 months after the day the alleged contravention is detected.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subclause (4) applies.

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- (4) An infringement officer may give a person a single infringement notice relating to multiple contraventions of a single provision if:
- (a) the provision requires the person to do a thing within a particular period or before a particular time; and
 - (b) the person fails or refuses to do that thing within that period or before that time; and
 - (c) the failure or refusal occurs on more than 1 day; and
 - (d) each contravention is constituted by the failure or refusal on one of those days.

Note: For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*.

6 Matters to be included in an infringement notice—general

- (1) An infringement notice must:
- (a) be identified by a unique number; and
 - (b) state the day the notice is issued; and
 - (c) state the name of the person to whom the notice is given; and
 - (d) state the name of the person who gave the notice, and that the person is an infringement officer for the purposes of issuing the infringement notice; and
 - (e) give brief details of the alleged contravention, including:
 - (i) the provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose if the provision were contravened; and
 - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
 - (f) state the amount that is payable under the notice; and
 - (g) give an explanation of:
 - (i) how payment of the amount is to be made; and
 - (ii) how Customs can be contacted.

Note: In relation to paragraph (1)(f), see subsection 243X(2) of the Act for the maximum amount payable under an infringement notice.

- (2) The notice must state that:
- (a) if the person pays the amount within the payment period, then (unless the notice is withdrawn), the person will not be liable to be prosecuted in a court for the alleged contravention; and
 - (b) the person may apply to the CEO to have the period extended.

- (3) The notice must state that payment of the amount is not an admission of guilt or liability.
- (4) The notice must state that the person may choose not to pay the amount and, if the person does so, the person may be prosecuted in a court for the alleged contravention.
- (5) The notice must state:
 - (a) how the notice can be withdrawn; and
 - (b) that if the notice is withdrawn, the person may be prosecuted in a court for the alleged contravention; and
 - (c) that the person may make written representations to the CEO seeking the withdrawal of the notice.
- (6) The notice may include any other matters the infringement officer considers necessary.

**7 Matters to be included in an infringement notice—
subsection 243T(1) infringement notice**

- (1) This clause applies to an infringement notice given to a person in relation to an alleged contravention of subsection 243T(1) of the Act.
- (2) The notice must state that the obligation of the person to pay the duty or repay the refund or drawback mentioned in paragraph 243T(1)(b) of the Act (the *obligation*) continues despite the person being given the notice.
- (3) The notice must include the matter mentioned in subclause 6(1).
- (4) The notice must state that:
 - (a) if the person:
 - (i) pays the amount within the payment period; and
 - (ii) discharges the obligation;then (unless the notice is withdrawn), the person will not be liable to be prosecuted in a court for the alleged contravention; and
 - (b) the person may apply to the CEO to have the period extended.
- (5) The notice must state that payment of the amount and discharge of the obligation are not an admission of guilt or liability.

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- (6) The notice must include the matters mentioned in subclauses 6(4) and (5).
 - (7) The notice may include any other matters the infringement officer considers necessary.
 - (8) If the person applies under subsection 273GA(2) of the Act for review of the amount of duty, refund or drawback, the period that:
 - (a) begins on the making of the application; and
 - (b) ends on the day a final determination of the amount is made; must not be included in the payment period.

8 Extension of a payment period

Application for extension of payment period

- (1) A person to whom an infringement notice has been given may apply to the CEO, in writing, for an extension of the payment period.
- (2) If the application is made before the end of that period, the CEO may, in writing, extend that payment period. The CEO may do so before or after the end of that period.

CEO may extend period without application

- (3) The CEO may extend the payment period without an application if the CEO considers it appropriate to do so.

Effect of decision to extend period

- (4) If the CEO extends the payment period, a reference in this Schedule, or in a notice or other instrument under this Schedule, to the payment period is taken to be a reference to that period so extended.

Effect of decision not to extend period

- (5) If the CEO does not extend the payment period in relation to an alleged contravention of a provision subject to an infringement notice, a reference in this Schedule, or in a notice or other instrument under this Schedule, to the payment period is taken to be a reference:

- (a) in relation to an alleged contravention of paragraph 233(1)(b) or (c) or subsection 234A(1) or 234AB(3) of the Act—to the end of the payment period; or
- (b) in any other case—to the period that ends on the later of the following days:
 - (i) the day that is the last day of the payment period;
 - (ii) the day that is 7 days after the day the person was given notice of the CEO's decision not to extend.

CEO may extend period more than once

- (6) The CEO may extend the payment period more than once under subclause (2) or (3).

9 Withdrawal of an infringement notice

Representations seeking withdrawal of notice

- (1) A person to whom an infringement notice has been given may make written representations to the CEO seeking the withdrawal of the notice.
- (2) The representations must be made:
 - (a) if the notice relates to an alleged contravention of paragraph 233(1)(b) or (c) or subsection 234A(1) or 234AB(3) of the Act—within 28 days after the end of the payment period; or
 - (b) otherwise—before the end of the payment period.

Withdrawal of notice

- (3) The CEO may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (4) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the CEO:
 - (a) must take into account any written representations seeking the withdrawal that were given by the person to the CEO; and
 - (b) may take into account any matter the CEO considers relevant.

Notice of withdrawal

- (5) Notice of the withdrawal of the infringement notice must be given to the person.
- (6) The withdrawal notice must state:
 - (a) the person's name and address; and
 - (b) the day the infringement notice was issued; and
 - (c) the identifying number of the infringement notice; and
 - (d) that the infringement notice is withdrawn; and
 - (e) that the person may be prosecuted in a court for the alleged contravention.

Refund of amount if infringement notice withdrawn

- (7) If:
 - (a) the CEO withdraws the infringement notice; and
 - (b) the person has already paid the amount stated in the notice;the Commonwealth must refund to the person an amount equal to the amount paid.

10 Effect of payment of an amount

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount specified in the notice before the end of the payment period:
 - (a) any liability of the person for the alleged contravention is discharged; and
 - (b) the person may not be prosecuted in a court for the alleged contravention; and
 - (c) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
 - (f) the person is not regarded as having been convicted of the alleged offence.
- (2) Subclause (1) does not apply if an infringement notice has been withdrawn.

11 Prohibited imports

For paragraph 243Y(1)(a) of the Act, goods the importation of which is prohibited under the *Customs (Prohibited Imports) Regulations 1956* are prescribed.

Note: Goods that are prescribed under this clause and the importation of which allegedly contravenes paragraph 233(1)(b) of the Act are forfeited to the Crown: see section 243Y of the Act.

12 Effect of this Schedule

This Schedule does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Schedule; or
- (b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Schedule if:
 - (i) the person does not comply with an infringement notice given to the person for the contravention; or
 - (ii) an infringement notice is not given to the person for the contravention; or
 - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Schedule; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Schedule.