

Excise Duty Memoranda Series

9.1.1 General Requirements for Books and Records

Revised November 2003*

Overview	This memorandum explains the requirements for persons licensed or registered under the <i>Excise Act, 2001</i> (the “Act”), and for certain other persons, to retain and make available records, books of account, documents and other information.
Disclaimer	The information in this memorandum does not replace the law found in the Act and its Regulations. It is provided for your reference. As it may not completely address your situation, you may wish to refer to the Act or its Regulations, or contact any Canada Customs and Revenue Agency (CCRA) tax services office for additional information.
[Proposed amendments]	This memorandum reflects proposed amendments to the Act announced by the Minister of Finance on June 24, 2003. [Where information reflects proposed amendments, the information is enclosed in square brackets.] Any commentary in this memorandum should not be taken as a statement by the CCRA that such amendments will in fact be enacted in their current form.

* Revised paragraphs are indicated by a side bar in the right margin.

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La version française de ce document est intitulée *Exigences générales en matière de livres et registres*.



Canada Customs
and Revenue Agency

Agence des douanes
et du revenu du Canada

9.1.1 General Requirements for Books and Records

General

- Meaning of “record”
s 2
1. “Record” means any material on which data are recorded or marked and which is capable of being read or understood by a person or a computer system or other device.
- Meaning of “data”
s 2
2. “Data” means representations, in any form, of information or concepts.
- Meaning of “administration or enforcement of this Act”
s 4
3. Any reference to the “administration or enforcement of this Act” includes the collection of any amount payable under the Act.
- Books and records
4. For ease of reference, Chapter 9 of the Excise Duty Memoranda Series uses the generally accepted expression “book and records” to refer to records required to be maintained by persons in accordance with the provisions of the Act.

Who is required to maintain records?

- General requirement
ss 206(1)
5. All books and records that are necessary to determine whether a person is in compliance with the Act must be maintained by:
- (a) every licensee or registrant;
 - (b) every person who is required under the Act to file a return;
 - (c) every person who makes an application for a refund under the Act; and
 - (d) every person who transports non-duty-paid packaged alcohol or a tobacco product that is not stamped with a tobacco stamp.
- Filing returns
s 160 and 161
6. [Persons required to file an excise duty return under the Act include all licensees and any person who is not licensed under the Act but is required to pay excise duty under the Act.]
- Meaning of “person”
s 2
7. A “person” means an individual, a partnership, a corporation, a trust, the estate of a deceased individual, a government, or a body that is a society, union, club, an association, a commission or any other organization.
- Tobacco growers and provincial tobacco marketing boards
ss 206(2)
8. Every tobacco grower and provincial tobacco marketing board is required to maintain books and records to enable the determination of the amount of raw leaf tobacco they grow, receive, or dispose of.

Records to be maintained

- Appropriate form
9. The CCRA does not specify the books and records to be kept by a person. However, books and records must be maintained in an appropriate form and contain sufficient information to allow for the verification of a person’s compliance with the Act, including the person’s liabilities and obligations for excise duty, or the amount of any refund or rebate the person has claimed.

- Source documents 10. Books and records must be supported by source documents to verify the information they contain. Source documents may include purchase invoices, cancelled cheques, cash register receipts, credit card receipts, deposit slips, delivery slips, shipping records, bills of lading, production tickets, packaging records, work orders, inventory counts, machine logs, and sales invoices.
- Form of record may be specified ss 206(3) 11. The CCRA may specify in writing the form a record is to take and any information that must be recorded. This may occur when CCRA officials consider that the records being maintained are inadequate in the circumstances.

Inadequate records

- Inadequate records ss 206(6) 12. If CCRA officials consider that a person has failed to maintain adequate books and records for purposes of the Act, they may, in writing, require the person to keep any records specified.
- Written agreement and follow-up visit 13. The person will normally be requested to enter into a written agreement with the CCRA to maintain adequate books and records, and a CCRA auditor will conduct a follow-up visit within a time period specified in the agreement to ensure that compliance has been achieved.
- Requirement letter 14. If compliance with the written agreement has not been achieved within the specified time period, the CCRA may serve the person a formal requirement letter, which describes the information that must be recorded in the books and records, and outlines the legal consequences of the person's failure to comply with the requirement letter. Failure to comply may result in prosecution by the CCRA.

Record entries

- Transactions 15. Every entry that is required to be recorded in a person's daily records must be made on the day upon which an operation or transaction has occurred. All entries must be clear and legible, indicate the date of the transaction, and provide sufficient detail to accurately identify the transaction that is being recorded.
- Entries relating to volumes 16. Unless otherwise noted, all entries relating to volumes made in the books of account, excise duty returns, inventories or any other statements should be stated as follows:
- in the case of fluids, in millilitres (ml), litres (L), or litres of absolute ethyl alcohol (L.a.a); and
 - in the case of grains or any other article, in grams (g) or kilograms (kg).

Location and language of records

- Records in Canada ss 206(4) 17. Books and records must be kept in Canada in English or French, unless otherwise authorized by the CCRA.

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- Records outside Canada
18. Books and records kept outside Canada and accessed electronically from Canada are not considered to be books and records maintained in Canada. Access to electronic records must be through direct and physical contact with the medium upon which they are stored.
- Request to maintain records outside Canada ss 206(4)
19. A person may maintain books and records outside Canada if the CCRA provides written permission to do so. To obtain such permission, a person or their authorized representative must make a written request to the Manager of their designated Regional Excise Duty Office, providing the following information:
- a clear identification of the books, records, or other documents requested to be maintained outside of Canada;
 - the complete address of the location where the records are requested to be maintained;
 - a signed undertaking by the person making the request that they will be responsible for ensuring that any books and records maintained outside Canada will be made available within 30 days for review or audit by CCRA officials upon request;
 - details of any circumstances that would justify maintaining the books and records at a location outside Canada; and
 - any other information considered pertinent to the request.

Methods to retain records

- Formats
20. Books and records may be maintained in a number of formats, including:
- traditional books of account, with supporting source documents, produced and retained in a paper format; and
 - records retained in an electronic format that are accessible, that can be related to supporting source documents, and that can be produced as readable copies.
21. Persons required to maintain books and records are responsible for retaining them in a manner that will ensure the trustworthiness and readability of the information recorded.
- Traditional books and records
22. All records and books of account (including source documents) that originate in a paper format must be retained in that format, except where an acceptable imaging or microfilming program is in place. Paper format includes paper source documents that may be entered into an electronic record-keeping system.
- Electronic records
23. Records are considered to be kept in an electronic format when information is entered directly into any device for electronic processing, manipulation, and/or storage on electronic or optical media.
- ss 206(5)
24. Every person who maintains books and records electronically is required to ensure that all equipment and software necessary to render the records intelligible are available during the required retention period.

25. Additional information pertaining to electronic records will be available in Excise Duty Memorandum 9.2.1, *Computerized Records*.

Retention period

General requirement
ss 206(7)

26. Every person who is required to keep books and records must retain them until the expiry of six years after the end of the year to which they relate.

Minimum period

27. The minimum retention period for books and records is determined by the last tax year a record may be required for purposes of the Act, and not the year the transaction occurred and the record was created. That is, if a transaction or event may affect a person's liability for excise duty for more than one period, the books and records should be retained for a period of six years from the latest period that may be affected, and not from the period in which the transaction or event first occurred.

Objection or appeal
ss 207(1)

28. Every record that relates to a Notice of Objection, appeal or reference must be retained until the Objection, appeal or reference, and any appeal thereof, is fully disposed of.

Additional retention
period
ss 207(2)

29. For any purpose related to the administration and enforcement of this Act, the CCRA may, by a demand served personally or by registered or certified mail, require any person who is required to keep books and records to retain them for such an additional period of time as specified in the demand, and that person must retain those books and records for the additional period specified.

Permission for
earlier disposal
ss 207(3)

30. A person who is required to maintain books and records may dispose of them before the end of the normal retention period if the CCRA provides written permission to do so. To obtain such a permission, a person or their authorized representative must make a written request to the Manager of their designated Regional Excise Duty Office, providing the following information:

- a clear identification of the books, records, or other documents to be destroyed;
- the format of the records to be destroyed;
- the years to which the records relate;
- details of any special circumstances which would justify destroying the records earlier than the normal retention period; and
- any other information considered pertinent to the request.

Permission granted

31. If the CCRA grants permission for a person to destroy books and records earlier than the normal retention period, that permission applies only to the specified information required to be kept under the Act, and does not imply permission to destroy books and records required to be kept under any other legislation.

Imaging

32. If the CCRA grants permission, paper source documents may be disposed of and their images retained as permanent records on microfilm and/or electronic image.

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- Meaning of “electronic image”
33. An “electronic image” means the representation of a source record that can be used to generate an intelligible reproduction of that record, or the reproduction itself, where:
- the reproduction is made with the intention of standing in place of the source record;
 - the interpretation of the reproduction, for the purpose for which it is being used, provides the same information as the source record; and
 - the limitations of the reproduction (e.g., resolution, tonal or hues) are well defined and do not obscure significant details.
- National standard of Canada
34. Imaging and microfilm (including microfiche) reproductions of books of original entry and source documents must be produced, controlled and maintained in accordance with the national standard of Canada. This standard is outlined in a publication entitled *Microfilm and Electronic Images as Documentary Evidence (CAN/CGSB-72.11-93)*, available from the Canadian General Standards Board (1-800-665-2472).
- Microfilm retention
35. Persons required to maintain books and records under the Act who wish to retain them on microfilm must first obtain written approval from their designated Regional Excise Duty Office to ensure that the microfilm program is in compliance with the national standard of Canada.
- Acceptable imaging program
36. An acceptable imaging program requires that:
- (a) a person in authority in the organization has confirmed in writing that the program will be part of the usual and ordinary activity of the organization's business;
 - (b) systems and procedures are established and documented;
 - (c) a log book is kept, showing
 - the imaging date,
 - the signatures of the persons authorizing and performing the imaging,
 - a description of the records imaged, and
 - whether source documents are destroyed or disposed of after imaging, and the date they were destroyed or disposed of, including the signature of the person who destroyed or disposed of them;
 - (d) the imaging software maintains an index to permit the immediate location of any record, and the software inscribes the imaging date and the name of the person who did the imaging;
 - (e) the images are of commercial quality, and are legible and readable when displayed on a computer screen or reproduced on paper;
 - (f) a system of inspection and quality control is established to ensure that (c), (d) and (e), above, are maintained; and
 - (g) after reasonable notification, equipment in good working order is available to view, or where feasible, to reproduce a hard copy of the image.

Access to records

Inspections
ss 260 (1)

37. An officer may, at all reasonable times and for any purpose related to the administration or enforcement of this Act, inspect and audit or examine the records, processes, property or premises of a person to determine whether that person is in compliance with the Act.

Powers of officers
ss 260(2)

38. For the purposes of an inspection, audit or examination, the officer may:

- (a) enter any place where the officer believes the person keeps records or carries on any activity to which the Act applies;
- (b) stop a conveyance or direct that it be moved to a place for inspection or examination;
- (c) require any individual to be present during the inspection, audit or examination and require that individual to answer all proper questions and to provide the officer all reasonable assistance;
- (d) open or cause to be opened any receptacle that might reasonably be considered to contain anything to which the Act applies;
- (e) take samples of anything free of charge; and
- (f) seize anything by means of or in relation to which the officer reasonably believes the Act has been contravened.

Consent to enter
ss 260(3)

39. Where any place is a dwelling-house, an authorized person may not enter that place without the consent of the occupant, except under the authority of a warrant issued pursuant to a court order.

Meaning of “dwelling-house”
s 260(6)

40. A “dwelling-house” means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes:

- (a) a building within the area of land attached to a dwelling-house that is connected to the dwelling-house by a doorway or by a covered and enclosed passageway; and
- (b) a unit that is designed to be mobile and to be used as a permanent or temporary residence, and that is being used as such a residence.

Provision of records

CCRA demand
ss 208(1) and (2)

41. For any purpose related to the administration and enforcement of this Act, the CCRA may, by notice served personally or by registered or certified mail, require a person to provide any information, including a return or any record, within any reasonable time as stipulated in the demand. If the information or record relates to one or more unnamed persons (i.e., third parties), the CCRA will first be required to obtain judicial authorization.

Judicial authorization
ss 208(3)

42. A judge may authorize the CCRA to impose on a third party a requirement relating to a person or group of unnamed persons if the person or group is ascertainable and the requirement is made to verify their compliance with the Act.

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Compliance order ss 209(1)	43. On summary application by the CCRA, a judge may order a person to provide any access, assistance, information or records sought by the CCRA officials. Before such an order is issued, the judge must be satisfied that the person was required to provide the access, assistance, information or records requested but did not do so, and that none of the information or records required by the CCRA are protected by solicitor-client privilege.
Scope of solicitor-client privilege ss 209(6)	44. The accounting records of a legal counsel, including any invoice, voucher or cheque that relates to those records, are deemed not to be protected from disclosure by solicitor-client privilege and may be obtained by the CCRA pursuant to a court order.
Appeal of an order ss 209(5)	45. A person may appeal a court order to provide any access, assistance, information or records sought by the CCRA, but the appeal will not suspend execution of the order unless so specified by a judge of the court to which the appeal is made.
Contempt of court 209(4)	46. A person who fails or refuses to comply with a court order to provide information or records required by the CCRA may be found in contempt of court by a judge and may be subject to the processes and punishments of the court to which the judge has been appointed.
Search warrant ss 258(1)	47. On application by the CCRA, and supported by information on oath, a judge may issue a warrant authorizing an officer to search a building, receptacle or place for a thing and to seize it, if the judge is satisfied that there are reasonable grounds to believe that anything will be found that will afford evidence in respect of a contravention under the Act.
Form of warrant and seizure of things not specified ss 258(2) and (5)	48. The search warrant must refer to the contravention for which it is issued, identify the building, receptacle or place to be searched, and be reasonably specific as to the thing(s) to be searched for and seized. However, upon execution of the warrant, seizure is not limited to the things specified in the warrant, but may extend to anything else the officer believes, on reasonable grounds, that relates to, or will afford evidence in respect of, a contravention of the Act.
Warrant to search computer systems ss 258(7)	49. An officer authorized by a warrant to search a computer system for data may: (a) use or cause to be used any computer system at the building or place to search any data contained in or available to the computer system; (b) use or cause to be used any equipment at the building or place to make a copy of the data and to render it in any form; and (c) seize a copy or rendering made under (b) that may afford evidence in respect of a contravention of the Act.
Duty of person in possession or control ss 258(8)	50. Any person who is in possession or control of any building or place where a search warrant is carried out shall, on presentation of the warrant, provide the officer carrying out the search all assistance that is necessary to execute the search.
Warrant unnecessary s 259	51. An officer may exercise any of the powers referred to above without a warrant if the conditions for obtaining one exist but, due to exigent circumstances, it is not practical to obtain one.

Copies of records ss 262(1) 52. A person who seizes, inspects, audits, examines or is provided a record under the Act may make, or cause to be made, one or more copies of the record.

Probative force of copy ss 301(15) 53. Any such copy made that is purported to be certified by the Minister to be a copy of an original record is evidence of the nature and content of the original record and has the same probative force the original record would have if it were proven in the ordinary way.

Foreign-based information or records

Meaning of "foreign-based information or record" ss 210(1) 54. "Foreign-based information or record" means any information or record that is available or located outside Canada that may be relevant to the administration and enforcement of this Act.

Requirement to provide foreign-based information ss 210(2) 55. The CCRA may, by notice served personally or by registered or certified mail, require a person resident in Canada or a non-resident person who carries on business in Canada to provide any foreign-based information or record.

Notice ss 210(3) 56. The notice must indicate:
(a) the period for the provision of the information or record requested (a minimum of 90 days);
(b) a description of the information or record sought; and
(c) the consequences of failing to comply with the request.

Failure to comply ss 210(8) 57. If a person fails to comply substantially with a notice to provide foreign-based information, a court, in a civil proceeding relating to the administration or enforcement of this Act, shall, on a motion of the CCRA, prohibit the introduction by that person of any foreign-based information or record described in that notice.

Offences and penalties

Enforcement Part 6 58. Information on offences and penalties relating to the requirement to maintain, retain or provide access to books and records will be provided in Excise Duty Memorandum 9.9.1, *Books and Records-Related Penalties*.

All of the memoranda in the Excise Duty Memoranda Series will be available on the CCRA Web site at <http://www.ccra-adrc.gc.ca/tax/technical/act2001-e.html>