



# CNSC Processes and Practices

## **Compliance and Enforcement: Administrative Monetary Penalties**

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**Compliance and Enforcement: Administrative Monetary Penalties**  
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## Preface

This regulatory document is part of the CNSC's Processes and Practices series of regulatory documents, which also covers the CNSC's licensing processes and regulatory approaches. The full list of regulatory document series is included at the end of this document and can also be found on the [CNSC's website](#).

Under the *Nuclear Safety and Control Act* (NSCA) and its associated regulations, the CNSC applies various compliance and enforcement measures, commensurate with risk, to protect the health, safety and security of Canadians and the environment.

The CNSC seeks to achieve a balance between activities that encourage compliance and measures that compel it. The CNSC conducts verification activities to confirm that regulated persons are complying with regulatory requirements. It identifies where requirements are not being met and ensures that persons implement corrective measures to restore compliance. The CNSC will take whatever action it deems appropriate to encourage and/or compel compliance with regulatory requirements.

In 2012, the *Jobs, Growth and Long-term Prosperity Act* made several amendments to the NSCA. These included the authorization for the CNSC to establish an administrative monetary penalties (AMPs) system through regulations, providing a new enforcement option to promote compliance. Persons who do not comply with the NSCA, regulations made under the NSCA, and licences may incur monetary penalties in addition to other enforcement measures.

The *Administrative Monetary Penalties Regulations* came into force on July 3, 2013. The regulations set out the schedule of violations that are subject to AMPs under the NSCA, the method by which the penalty amounts are determined and how notices of violation must be served.

REGDOC-3.5.2, *Administrative Monetary Penalties*, provides information about the CNSC's AMPs program. It describes how and where AMPs fit into the CNSC's approach to compliance, and provides an overview of how they are administered. REGDOC-3.5.2, version 2 replaces version 1 which was published in March 2014. Version 2 provides updated information on the CNSC's AMPs program. A form has also been developed by the Commission Secretariat to assist those wishing to request a review of an AMP they have received. The *Request for Review* form is now available on the [CNSC's website](#).

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## Administrative Monetary Penalties

### 1. Introduction

Under the *Nuclear Safety and Control Act* (NSCA) and its associated regulations, the CNSC applies various compliance and enforcement measures to protect the health and safety of Canadians and the environment and to maintain national security and measures required to implement international obligations to which Canada has agreed.

The CNSC's approach to compliance has three principal components:

- communication/awareness activities, such as industry-specific information sessions and continued communication and discussion with regulated persons
- compliance verification activities, such as onsite inspections and offsite evaluation of documents
- enforcement activities, such as meetings with regulated persons, written notices, orders, administrative monetary penalties, licensing actions and prosecution

Through its compliance verification activities, the CNSC identifies persons who are not following regulatory requirements and ensures they implement corrective measures. The CNSC takes whatever action it deems appropriate to encourage and/or compel compliance with regulatory requirements.

In 2012, the *Jobs, Growth and Long-term Prosperity Act* made a number of amendments to the NSCA. These included the authorization for the CNSC to establish an administrative monetary penalties (AMPs) program through regulations, giving it a new enforcement measure to promote compliance. Persons who do not comply with the NSCA, regulations made under the NSCA, or licences, may now incur administrative monetary penalties in addition to other enforcement measures available to the CNSC.

#### 1.1 Purpose

This document provides information about the CNSC's AMPs program.

#### 1.2 Scope

This document is intended for information only. It describes where AMPs fit into the CNSC's approach to enforcement, and provides an overview of how AMPs are administered.

#### 1.3 Relevant legislation

Subsections 65.01 through 65.21 of the *Nuclear Safety and Control Act* establish:

- the Commission's powers with respect to the AMPs program
- rules about violations
- a review process
- recovery of penalties

The *Administrative Monetary Penalties Regulations* (AMPR) provide:

- a schedule of violations that are subject to an AMP
- the factors used for determining a penalty amount
- the penalty ranges of violations
- details on the service of the notice of violation

## 2. Canadian Nuclear Safety Commission's Approach to Compliance and Enforcement

The CNSC's licensing process includes a thorough assessment of an application submission. The CNSC will only issue a licence when the applicant:

- is deemed qualified to carry on the activity that the licence will authorize
- has demonstrated that they will protect the health and safety of persons and the environment
- has demonstrated that they will maintain national security
- has confirmed that they will adhere to international obligations to which Canada has agreed

After a license is issued, CNSC verifies the licensee's compliance performance against CNSC requirements. Verification activities include site inspections, and the review of operational activities and licensee documentation. The results of previous inspections, previous assessments, reported incidents and events, and annual compliance report submissions are also reviewed. In addition, the CNSC conducts communication/awareness activities, such as industry-specific information sessions and continued discussions with licensees to promote compliance.

The CNSC responds to non-compliance by taking the appropriate action(s) necessary to restore full compliance. The enforcement option(s) selected by the CNSC will depend on the severity of the non-compliance and the associated risk. The CNSC uses a risk-informed regulatory approach to managing and controlling regulated facilities and activities; appropriate levels of regulatory monitoring and control are identified for specific classes of licensed facilities and types of licensed activities.

### 2.1 Enforcement options

The CNSC has added AMPs to its existing enforcement options, which include:

- discussions/meetings/letters
- written notice or warning
- more frequent inspections
- an order by an inspector or designated officer
- a request from the Commission or a person authorized by the Commission under subsection 12(2) of the *General Nuclear Safety and Control Regulations*
- licensing action (limiting operations, suspension, revocation)
- decertification
- prosecution

Enforcement options may not necessarily be chosen in the order presented. An option can be used independently or in combination with others, resulting in a wide range of enforcement options.

The CNSC considers the following factors when deciding which enforcement option(s) to use:

- regulatory significance of the non-compliance
- level of associated risk of the non-compliance
- compliance history of the person
- urgency of required action from the person
- corrective/deterrent effect of the regulatory action

Regulatory judgment is applied and multiple factors are taken into account to determine the most appropriate enforcement strategy for a given situation.

### **3. Administrative Monetary Penalties**

AMPs are monetary penalties imposed by the CNSC in response to a violation of a regulatory requirement. The specific provisions against which an AMP may be applied are listed in the AMPR's schedule of violations. An AMP can only be issued for a non-compliance listed in the schedule of violations.

AMPs can be issued to all persons subject to the NSCA. Most violations listed in the schedule apply to licensees.

As per subsection 65.02 (2) of the NSCA, the purpose of a penalty is to promote compliance and not to punish. An AMP is one of several enforcement tools the CNSC may use. Although any violation listed in the AMPR can be subject to an AMP, in the context of the CNSC's approach to graduated enforcement, other options may be preferred for effecting compliance. Not all non-compliances will result in an AMP, nor will an AMP necessarily be the first enforcement option used in every situation. Each recommendation for an AMP undergoes a thorough internal review.

#### **3.1 How the penalty amount is determined**

Once an AMP is chosen as the appropriate enforcement option, an established procedure is followed to determine the penalty amount. For each case, CNSC staff will first identify the category associated with the violation and the penalty range.

The AMPR classifies violations into three categories (A, B, and C). Within each category:

- there are two minimum and maximum ranges for penalty amount – one for individuals and one for persons other than individuals (i.e. corporations)
- penalty amount ranges are higher for persons other than individuals

Once the category and its related penalty range are identified, the penalty amount is calculated by considering each of the factors set out in section 5 of the AMPR. Based on the relevant facts of the violation, each factor is assessed using a six-point scale and a score is applied. The more severe the violation is the higher the score and the penalty amount will be. Table 1 lists the factors and the six-point scale the CNSC has assigned to each. For example, a score of +5 has the most negative impact and increases the penalty amount. A score of -2 has the most positive impact and decreases the penalty amount.

**Table 1: Factors and assigned scales**

|          | <b>Factor</b>                                 | <b>Description</b>  | <b>Scale</b> |
|----------|---|---|--------------|
| <b>1</b> | <b>Compliance history</b>                     | <ul style="list-style-type: none"> <li>compliance history of the person who has committed the violation</li> </ul>                          | 0 to +5      |
| <b>2</b> | <b>Intention or negligence</b>                | <ul style="list-style-type: none"> <li>degree of intent or negligence on the part of the person</li> </ul>                                  | 0 to +5      |
| <b>3</b> | <b>Actual or potential harm</b>               | <ul style="list-style-type: none"> <li>harm that resulted or could have resulted from the violation</li> </ul>                              | 0 to +5      |
| <b>4</b> | <b>Competitive or economic benefit</b>        | <ul style="list-style-type: none"> <li>whether the person derived any competitive or economic benefit from the violation</li> </ul>         | 0 to +5      |
| <b>5</b> | <b>Efforts to mitigate or reverse effects</b> | <ul style="list-style-type: none"> <li>whether the person made reasonable efforts to mitigate or reverse the violation's effects</li> </ul> | -2 to +3     |
| <b>6</b> | <b>Assistance to Commission</b>               | <ul style="list-style-type: none"> <li>whether the person provided all reasonable assistance to the commission</li> </ul>                   | -2 to +3     |
| <b>7</b> | <b>Attention of Commission</b>                | <ul style="list-style-type: none"> <li>whether the person brought the violation to the attention of the commission</li> </ul>               | -2 to +3     |

The total of the assessed scores is then used to take a percentage of the applicable penalty range, which is then added to the minimum penalty amount. Appendix A provides examples of penalty calculations.

If the violation has been committed on more than one day or is continued on more than one day, it is considered to be a separate violation for each day (see subsection 65.07 of the NSCA). The continuing violation provision is applied, when appropriate, for the purpose of effecting compliance. The decision to apply this provision is made on a case-by-case basis.

### **3.2 Notice of violation**

Once a proposed AMP is reviewed and the decision is made by the Commission's designated officer to proceed, a notice of violation is sent to the person.

The notice:

- names the person that is believed to have committed the violation
- provides the relevant facts of the violation and the amount of the penalty
- informs the person of their right to request a review regarding the fact of the violation and the penalty amount
- informs the person of the time period within which they can request a review
- describes the process for requesting a review
- describes the process for paying the penalty
- informs the person that if they do not pay the penalty or request a review within the prescribed period of time, they will be deemed to have committed the violation and must pay the penalty



### 3.3 Right to request a review

As stated in section 65.1 of the NSCA, a person who receives a notice of violation has the right to request a review by the Commission of the penalty or the facts of the violation, or both.

The request must be made, within 30 days of the notice being served. As per the AMPR, the notice is considered served:

- the day a copy is left with the person
- the 10th day after a copy is sent by registered mail or courier
- the day a copy is transmitted by email or fax

If a review is requested within the 30-day time period, then the due date of the payment is held pending the results of the review.

The person should include the following information in their request for review:

- whether they are requesting a review of the facts of the violation, the penalty amount or both
- a description of any new evidence that might have bearing on the decision
- how they wish to participate in the review (in person, by teleconference or in writing)

A *Request for Review of Administrative Monetary Penalty (AMP)* form is available on the [CNSC's website](#) to assist with preparing the request. The completed form may be provided electronically or in hard copy.

If submitted electronically, it should be sent to: [interventions@cnsccsn.gc.ca](mailto:interventions@cnsccsn.gc.ca)

If submitted in hard copy, it should be sent to the CNSC Secretariat at the following address:

Commission Secretary  
Canadian Nuclear Safety Commission  
P.O. Box 1046, Station B  
280 Slater Street, Ottawa, ON K1P 5S9

The Commission Secretariat will contact the requestor to inform them of the date and process to follow for the review.

During the review, the Commission will determine, based on the evidence provided by the requestor and the Designated Officer who issued the notice, whether the facts of the violation are correct, whether the penalty amount was determined in accordance with the regulations, or both. The Commission will notify the requestor and anyone who participated in the proceedings of its decision. Commission decisions are also posted on the CNSC's website.

### 3.4 Recovery of penalties

The money received in payment of an AMP is submitted to the Receiver General for Canada. No money is retained by the CNSC.

### **3.5 Public disclosure**

As per subsection 65.21 of the NSCA, the CNSC may publish:

- the nature of a violation
- the name of the person who committed it
- the amount of the penalty

Information about the AMP is published on the CNSC's website after a notice of violation has been issued. This is consistent with the CNSC's practice of public disclosure of regulatory actions.

## Appendix A: Examples of penalty amount calculations

When preparing the notice of violation, CNSC staff review the relevant facts of the matter and take into consideration the 7 determining factors set out in section 5 of the *Administrative Monetary Penalties Regulations*. See section 3.1 for more information.

The following are examples of how penalty amounts are calculated:

### A.1 Example 1: Category C violation for a person other than an individual

**Step 1** Subtract the minimum penalty amount from the maximum penalty amount of the applicable penalty range:

- penalty range for a Category C violation for a person other than an individual is \$1,000 to \$100,000
- $\$100,000 - \$1,000 = \$99,000$

**Step 2** Assess the score for each factor

| Factor                                 | Assessed score |
|--|----------------|
| Compliance history                     | 2              |
| Intention or negligence                | 1              |
| Actual or potential harm               | 2              |
| Competitive or economic benefit        | 0              |
| Efforts to mitigate or reverse effects | 0              |
| Assistance to the Commission           | 0              |
| Attention of the Commission            | -1             |
| <b>Total</b>                           | <b>4</b>       |

**Step 3** Divide the total of the assessed scores by 29<sup>\*</sup>:

- $4 \div 29 = 0.14$

**Step 4** Multiply the result of step 1 by the result of step 3:

- $\$99,000 \times 0.14 = \$13,860$

**Step 5** Add the minimum penalty amount to the result of step 4:

- $\$13,860 + \$1,000 = \$14,860$

The administrative monetary penalty is \$14,860.

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\* The maximum possible total of the assessed scores is 29.

## A.2 Example 2: Category B violation for an individual

**Step 1** Subtract the minimum penalty amount from the maximum penalty amount of the applicable penalty range:

- penalty range for a Category B violation for an individual is \$300 to \$10,000
- $\$10,000 - \$300 = \$9,700$

**Step 2** Assess the score for each factor

| Factor                                 | Assessed score |
|--|----------------|
| Compliance history                     | 0              |
| Intention or negligence                | 4              |
| Actual or potential harm               | 0              |
| Competitive or economic benefit        | 1              |
| Efforts to mitigate or reverse effects | 0              |
| Assistance to the Commission           | 1              |
| Attention of the Commission            | 0              |
| <b>Total</b>                           | <b>6</b>       |

**Step 3** Divide the total of the assessed scores by 29:

- $6 \div 29 = 0.21$

**Step 4** Multiply the result from step 1 by the result from step 3:

- $\$9,700 \times 0.21 = \$2,037$

**Step 5** Add the minimum penalty amount to the result from step 4:

- $\$2,037 + \$300 = \$2,337$

The administrative monetary penalty is \$2,337.

## Glossary

### **administrative monetary penalty**

An administrative penalty that is imposed without court involvement in response to the violation of a regulatory requirement. There is no criminal record associated with it and it can be applied against any party subject to the NSCA, including non-licensees.

### **compliance**

Conformity by regulated persons with the requirements of the NSCA, the CNSC regulations, licences, decisions, certificates and orders made under the NSCA.

### **regulatory scrutiny**

An enforcement option to focus efforts on specific areas of non-compliance. Regulatory scrutiny may include:

- increased:
  - frequency of meetings with the licensee
  - reporting requirements
  - frequency of inspections
- broadening the scope of inspections
- modifying inspection techniques/strategies (for example, root-cause analysis, augmented inspections)

### **verification**

All activities related to determining and documenting if a licensee's performance meets the requirements of the NSCA, the CNSC regulations, licences, decisions, certificates and orders made under the NSCA.

### **violation**

Failure to comply with:

- a provision of the NSCA or its regulations
- an order or decision made under the NSCA
- term or condition of a licence

## CNSC Regulatory Document Series

Facilities and activities within the nuclear sector in Canada are regulated by the Canadian Nuclear Safety Commission (CNSC). In addition to the *Nuclear Safety and Control Act* and associated regulations, these facilities and activities may also be required to comply with other regulatory instruments such as regulatory documents or standards.

Effective April 2013, the CNSC's catalogue of existing and planned regulatory documents has been organized under three key categories and twenty-five series, as set out below. Regulatory documents produced by the CNSC fall under one of the following series:

### 1.0 Regulated facilities and activities

- |        |     |  |
|--------|-----|--|
| Series | 1.1 | Reactor facilities                       |
|        | 1.2 | Class IB facilities                      |
|        | 1.3 | Uranium mines and mills                  |
|        | 1.4 | Class II facilities                      |
|        | 1.5 | Certification of prescribed equipment    |
|        | 1.6 | Nuclear substances and radiation devices |

### 2.0 Safety and control areas

- |        |      |  |
|--------|------|--|
| Series | 2.1  | Management system                        |
|        | 2.2  | Human performance management             |
|        | 2.3  | Operating performance                    |
|        | 2.4  | Safety analysis                          |
|        | 2.5  | Physical design                          |
|        | 2.6  | Fitness for service                      |
|        | 2.7  | Radiation protection                     |
|        | 2.8  | Conventional health and safety           |
|        | 2.9  | Environmental protection                 |
|        | 2.10 | Emergency management and fire protection |
|        | 2.11 | Waste management                         |
|        | 2.12 | Security                                 |
|        | 2.13 | Safeguards and non-proliferation         |
|        | 2.14 | Packaging and transport                  |

### 3.0 Other regulatory areas

- |        |     |                                  |
|--------|-----|----------------------------------|
| Series | 3.1 | Reporting requirements           |
|        | 3.2 | Public and Aboriginal engagement |
|        | 3.3 | Financial guarantees             |
|        | 3.4 | Commission proceedings           |
|        | 3.5 | CNSC processes and practices     |

**Note:** The regulatory document series may be adjusted periodically by the CNSC. Each regulatory document series listed above may contain multiple regulatory documents. For the latest list of regulatory documents, visit the CNSC's website at [nuclearsafety.gc.ca/eng/acts-and-regulations/regulatory-documents](http://nuclearsafety.gc.ca/eng/acts-and-regulations/regulatory-documents)