

CANADA AMPS UP ENFORCEMENT OF THE *MOTOR VEHICLE SAFETY ACT* AND REGULATIONS – TRANSPORT CANADA’S LONG-AWAITED ADMINISTRATIVE MONETARY PENALTIES (AMPS) REGIME WILL COME INTO FULL FORCE ON OCTOBER 3, 2023

Posted on July 6, 2023

Categories: [Insights](#), [Publications](#)

On July 1, 2023, Canada celebrated both its birthday and the coming into force of amendments to the *Motor Vehicle Safety Act* (the “**MVSA**” or the “**Act**”) that provide Transport Canada with new enforcement powers, including the ability to impose administrative monetary penalties (“**AMPs**”) for violations of certain provisions of the Act and the *Motor Vehicle Safety Regulations* (“**MVSR**”).^[1] The amendments were added to the Act back in 2018.^[2] On July 5, 2023, the new *Administrative Monetary Penalties (Motor Vehicle Safety) Regulations* (“**AMPs Regs**”) were published in their final form.^[3] The AMPs Regs complete the AMPs scheme set out in the Act by designating which provisions of the MVSA, the MVSR and orders for which an AMP could be issued. The AMPs Regs will come into force on Tuesday, October 3, 2023, following a 90-day transition period to provide stakeholders with sufficient time to familiarize themselves with the regulations and associated policies and operating procedures.^[4]

Under What Circumstances Can an Individual or Company Be Ordered to Pay an Administrative Monetary Penalty?

AMPs are fines designed to disincentivize companies from contravening certain pieces of legislation. While the purpose of AMPs is not to punish, the AMPs Regs do provide Transport Canada with a more severe tool than a written warning to correct and enforce companies’ compliance with the MVSA, the MVSR and orders. AMPs also provide an enforcement tool that is more flexible, less costly, and less severe than a criminal prosecution.

Transport Canada Enforcement Officers have the ability to issue Notices of Violation imposing AMPs for violations of any of the provisions of the MVSA, the MVSR or orders, designated in the AMPs Regs. Examples include failing to give notice of any defect in the design, manufacture or function of a vehicle or equipment under subsection 10(1) of the MVSA, and importing a vehicle or equipment without evidence of conformity,

prescribed information or required records under subsection 5(1) of the MVSR. A list of all of the prescribed provisions of the MVSA, the MVSR and orders is set out at the end of this bulletin.

Regardless of the type of violation, its severity, or when Transport Canada learns of the non-compliance, Transport Canada is time barred from imposing AMPs more than two years after a violation takes place (although other enforcement mechanisms, such as criminal prosecution, may remain available).

How Much is Payable as an Administrative Monetary Penalty?

If Transport Canada assesses a violation of a provision under the AMPs Regs, the penalty imposed will vary depending on (a) whether the offender is an individual or a company, and (b) the following factors Enforcement Officers will consider when assessing the severity of a violation:

- the level of harm or risk posed by the non-compliance;
- the degree of deliberateness or negligence of the offender (i.e. was the non-compliance deliberate or accidental?);
- the offender's compliance history;
- any economic benefit from the non-compliance (did the offender benefit financially or derive a competitive advantage?);
- harm mitigation efforts by the offender once the non-compliance was detected;
- the level of the offender's cooperation with Transport Canada in relation to the non-compliance; and
- how the non-compliance was detected (was it self-reported, discovered jointly with Transport Canada or discovered by Transport Canada alone).^[5]

Taking all of the above factors into account, the maximum penalty amount per violation ranges from \$400 to \$4,000 for individuals and \$20,000 to \$200,000 for companies. Enforcement Officers have discretion to assess the appropriate penalty amount and there is no minimum or base penalty amount. However, the total amount of penalties levied in connection with a single matter could be substantially greater than the maximum per violation penalty limits because: 1) certain violations can be continuing violations for which daily penalties are imposed so long as the non-compliance continues (e.g., a separate AMP could be imposed for each day a notice of defect is delivered late to the Minister of Transport); and 2) some violations may be calculated on a per vehicle basis (e.g., a separate AMP for each non-compliant vehicle imported into Canada).^[6]

In addition to the financial cost of an AMP, there may be a public relations cost to pay as well. Under the Act, the Minister may make public the nature of a violation, the name of the offender and the amount of the penalty. This information will typically be removed for the public record of notices of violation after five years.

Can a Penalty be Disputed?

The MVSA AMPs regime provides for review and then appeal of Notices of Violations before the Transportation Appeals Tribunal of Canada. Due diligence is an available defence. While the Tribunal has previously handled reviews and appeals of other administrative action taken by the Minister of Transport (e.g., in the Rail and Marine context), MVSA-related violations is a brand new area of jurisdiction for the Tribunal.

If you have questions about the new MVSA AMPs regime, or need assistance responding to Notices of Violation, including reviews and appeals, please reach out to Timothy Cullen.

List of Prescribed Provisions

The AMPs Regs identify 13 types of orders under the MVSA, 23 provisions of the MVSA and 3 provisions of the MVSR for which AMPs can be issued.

Designated Orders Under the MVSA

| Order Made under MVSA | Maximum AMP per violation for Individuals | Maximum AMP per violation for Companies |
|--|---|---|
| Subsection 8.1(1) – relating to orders for companies to conduct tests, analyses or studies | \$4,000 | \$200,000 |
| Subsection 10(2.1) – relating to orders for companies to provide a subsequent notice of defect | \$4,000 | \$200,000 |
| Subsection 10(4) – relating to orders for companies to give notice of a defect | \$4,000 | \$200,000 |
| Subsection 10.1(4) – relating to orders for companies to provide a subsequent notice of non-compliance | \$4,000 | \$200,000 |
| Subsection 10.1(7) – relating to orders for companies to give notice of a non-compliance | \$4,000 | \$200,000 |
| Subsection 10.4(4) – relating to orders for companies to give information to verify defect/non-compliance correction date | \$4,000 | \$200,000 |

| | | |
|--|---------|-----------|
| Section 10.5 – relating to orders for companies to correct a defect or non-compliance | \$4,000 | \$200,000 |
| Subsection 10.6(1) – relating to orders for companies to pay costs of correcting a defect or non-compliance | \$4,000 | \$200,000 |
| Subsection 10.61(1) – relating to orders prohibiting companies from selling vehicles or equipment without correcting a defect or non-compliance | \$4,000 | \$200,000 |
| Subsection 13(1) – relating to the Minister’s interim order power regarding enactments of foreign governments | \$4,000 | \$200,000 |
| Section 13.1 – relating to the Minister’s ordering power to suspend, modify or adapt regulations | \$4,000 | \$200,000 |
| Paragraph 15(4)(e) – relating to inspectors’ power to give orders relating to the movement of vehicles or equipment | \$4,000 | \$200,000 |
| Section 15.1 – relating to inspectors’ power to give orders relating to the provision of documents, information or electronic data | \$4,000 | \$200,000 |

Designated Provisions of the MVSA

| MVSA Provision | Maximum AMP per violation for Individuals | Maximum AMP per violation for Companies |
|--|---|---|
| Subsection 3(2.1) – relating to the use of the national safety mark (“NSM”) | \$400 | \$20,000 |
| Subsection 3(3) – relating to the use of the NSM | \$4,000 | \$200,000 |
| Subsection 3(4) – relating to the use of the NSM | \$4,000 | \$200,000 |

| | | |
|--|---------|-----------|
| Section 4 – relating to interprovincial shipments | \$4,000 | \$200,000 |
| Subsection 5(1) – relating to compliance with vehicle and equipment requirements by companies | \$4,000 | \$200,000 |
| Section 6 – relating to compliance with vehicle and equipment requirements by individual importers | \$4,000 | \$200,000 |
| Subsection 7(1.01) – relating to vehicle and equipment export or destruction | \$2,000 | \$100,000 |
| Subsection 7(1.2) – relating to individual importers removing vehicles within prescribed timelines | \$2,000 | \$100,000 |
| Subsection 7(1.3) – relating to rental companies removing vehicles within prescribed timelines | \$2,000 | \$100,000 |
| Subsection 7(5) – relating to binding declarations for compliance exceptions | \$4,000 | \$200,000 |
| Section 8 – relating to companies providing analytical aids to the Minister | \$4,000 | \$200,000 |
| Subsection 10(1) – relating to companies giving notices of defect to the Minister, dealers and current owners | \$4,000 | \$200,000 |
| Paragraph 10(3)(a) – relating to companies giving notices of defect to unknown owners | \$4,000 | \$200,000 |
| Subsection 10.1(1) – relating to companies giving notices of non-compliance to the Minister, dealers and current owners | \$4,000 | \$200,000 |
| Paragraph 10.1(5)(a) – relating to companies giving notices of non-compliance to unknown owners | \$4,000 | \$200,000 |

| | | |
|--|---------|-----------|
| Section 10.2 – relating to submitting follow-up reports for notices to the Minister | \$4,000 | \$200,000 |
| Section 10.3 – relating to companies making information available to the Minister | \$4,000 | \$200,000 |
| Subsection 10.4(1) – relating to companies specify the defect/non-compliance correction date | \$4,000 | \$200,000 |
| Subsection 10.4(2) – relating to companies specify the defect/non-compliance correction date | \$4,000 | \$200,000 |
| Subsection 10.4(3) – relating to companies advising the Minister of defect/non-compliance correction date | \$4,000 | \$200,000 |
| Subsection 15(5) – relating to providing assistance to an inspector | \$4,000 | \$200,000 |
| Subsection 15(7) – relating to interference with seized property | \$4,000 | \$200,000 |
| Section 16 – relating to making false or misleading statements to an inspector | \$4,000 | \$200,000 |

Designated Provisions of the MVSR

| MVSR Provision | Maximum AMP per violation for Individuals | Maximum AMP per violation for Companies |
|---|--|--|
| Subsection 6.4(4) – relating to intermediate manufacturers and compliance labels | \$4,000 | \$200,000 |
| Subsection 6.6(2) – relating to final stage manufacturers and compliance labels | \$4,000 | \$200,000 |
| Paragraph 9(1)(a.1) – relating to altered vehicles and respecting GAWR and GVWR | \$4,000 | \$200,000 |

[1] [Order Fixing July 1, 2023 as the Day on which Section 15 of the Strengthening Motor Vehicle Safety for Canadians Act Comes into Force, PC 2023-0658, SI/2023-0021, \(2023\) C Gaz II, 2312.](#)

[2] See the McMillan Insights [Bulletin](#) regarding Bill S-2

[3] [Administrative Monetary Penalties \(Motor Vehicle Safety\) Regulations: SOR/2023-154](#).

[4] [“Regulatory Impact Analysis Statement – Canada Gazette, Part II”](#) (July 5, 2023), online: *Government of Canada*.

[5] *Ibid.*

[6] *Ibid.*

by [Timothy Cullen](#) and Adelaide Egan, Articling Student

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2023