
Guide to Notices of Violation and Administrative Monetary Penalties under the *Canada Consumer Product Safety Act*

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Health Canada is the federal department responsible for helping the people of Canada maintain and improve their health. We assess the safety of drugs and many consumer products, help improve the safety of food, and provide information to Canadians to help them make healthy decisions. We provide health services to First Nations people and to Inuit communities. We work with the provinces to ensure our health care system serves the needs of Canadians.

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Guide sur les procès-verbaux et les sanctions administratives pécuniaires en vertu de la *Loi canadienne sur la sécurité des produits de consommation*

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Introduction

This document is an unofficial summary of the requirements of the *Administrative Monetary Penalties (Consumer Products) Regulations* and related provisions under the authority of the *Canada Consumer Product Safety Act* (CCPSA) as administered by Health Canada's Consumer Product Safety Program. It is not intended to substitute for, supersede or limit the requirements under the applicable legislation. In case of any discrepancy between this summary and the legislation, the legislation will prevail. For further information, contact one of the Health Canada Consumer Product Safety Offices listed at the end of this document.

This document may be updated from time to time. For the most recent version, consult [Reports and Publications](#).

Definitions

For the purposes of this guidance document,

“Act” means the *Canada Consumer Product Safety Act*;

“contravention” means non-compliance with an order made under section 31 or 32, or reviewed under section 35 of the Act;

“offence” means a contravention of an order made under the Act, including an order made under section 31 or 32 of the Act or reviewed under section 35 of the Act;

“person” means an individual or an organization as defined in section 2 of the *Criminal Code*;

“security” means anything the Minister of Health may require as per paragraph 54(1)(a) of the Act as a guarantee that the person will comply with the compliance agreement;

“violation” means a contravention of an order, made under section 31 or 32 of the Act or reviewed under section 35 of the Act.

At a glance

Health Canada uses a number of compliance and enforcement tools in administering the *Canada Consumer Product Safety Act (CCPSA)*. One such tool available to the Minister is the ability to order a company to recall a dangerous product or to take certain measures such as stopping the manufacturing, importing, advertising or sale of a product in order to correct a non-compliance with the Act or regulations. The following guidance summarizes these types of orders issued under sections 31 and 32 of the Act and explains their relationship with Administrative Monetary Penalties (AMPs).

Failure to comply with a section 31 or 32 order is a contravention and may result in Health Canada issuing a Notice of Violation (NoV). Alternatively, the contravention may lead to criminal prosecution.

A NoV is a written notice that communicates the details of the contravention, the financial penalty (AMP) for failing to comply with the order as well as the process and deadline for payment. AMPs are calculated in accordance with the *Administrative Monetary Penalties (Consumer Products) Regulations (AMPR)*, and can range from \$1,000 to \$25,000. Each day that a person fails to comply with an order is a separate violation, and may result in the issuance of a new NoV.

NoVs can only be issued by Health Canada in response to non-compliance with a written order issued under sections 31 or 32 of the CCPSA. Health Canada cannot issue a NoV in response to non-compliance with any other section of the Act or its regulations.

Persons receiving a NoV may choose to:

1. Pay the penalty as identified in the NoV.
2. If the penalty is \$5,000 or more, request to enter into a compliance agreement. A compliance agreement could reduce the amount of the penalty.
3. Request a review of errors in the NoV. The review will result in the NoV being confirmed, amended or cancelled.

What are orders?

When Health Canada initiates compliance and enforcement activities under the *Canada Consumer Product Safety Act (CCPSA)*, inspectors immediately begin a dialogue with the responsible person to quickly identify and implement voluntary measures to address the risk to Canadians. Orders are an option available to the Minister to complement that approach should those voluntary or other actions be inappropriate or fail.

Under the CCPSA, the Minister of Health can order you to carry out actions to address the risks that may be associated with your consumer product.

The Minister can order you to:

1. **Recall the consumer product** (section 31), if the Minister believes that a product is a danger to human health or safety.
2. **Take measures** (section 32), such as stopping the sale, importation or manufacturing of

a product. Measures can be ordered under certain circumstances, for example:

- a. when you have failed to provide information ordered by the Minister to verify the compliance of the product with the Act or regulations (section 12)
- b. when the Minister believes there has been a contravention of the Act or regulations in respect of a product
- c. if the product is the subject of a recall for health or safety reasons (either voluntarily or following an order under section 31)

Some factors that may be considered when issuing an order under section 31 or 32 include:

- compliance history
- severity of risk of the danger
- willingness of the responsible person to voluntarily comply

Orders are issued in writing and include: the reasons for the order, the actions that are required and the timelines within which they are to be carried out.

If you do not carry out the order in the time and manner specified, the Minister has the authority to carry it out on your behalf and at your expense.

Under section 35 of the Act, you may request a review of the order. Guidance on when and how to request a review is available online under the [Frequently Asked Questions for the *Canada Consumer Product Safety Act*](#). Subject to the review process, compliance with an order is mandatory.

In determining how to address a contravention of an order made under section 31 or 32, the Minister, or his or her delegated authority, has two choices. They may proceed by treating the contravention as a “violation.” In these cases, a notice of violation (NoV) will be prepared. The NoV will set out the administrative monetary penalty, along with other information. On the other hand, they may proceed by treating a contravention as an “offence,” in which case Health Canada may investigate and recommend a criminal prosecution.

What are administrative monetary penalties?

An administrative monetary penalty (AMP) system has been established under the CCPSA to support compliance and enforcement of the Act and regulations. An AMP system is a compliance and enforcement tool that assigns a monetary penalty for contravening certain provisions of the Act. The *Administrative Monetary Penalties (Consumer Products) Regulations* (AMPR) enable this AMP system to be implemented.

Sections 49 to 66 of the CCPSA establish a system of administrative monetary penalties (AMPs) to promote compliance with orders made under sections 31, 32 or reviewed under section 35 of the CCPSA. These penalties range, depending on the criteria within the AMPR (history of violations, nature of the contravention and whether the business is not-for-profit) between \$1,000 and \$25,000.

Should these penalties fail to promote compliance with the order, the Minister can carry out the order at the person’s expense (section 33 of the CCPSA). In addition, under section 71, the

Minister may publish information about any contravention of the CCPSA or the regulations, or any violation referred to in section 49, for the purposes of promoting compliance.

What is a notice of violation?

A notice of violation (NoV) is a document issued to a person that has not complied with an order made by the Minister under section 31 or 32 of the Act (or reviewed under section 35). A NoV can be issued for each day on which non-compliance with an order continues, because each day is a separate violation. The Minister can only issue a NoV within six months of becoming aware of the alleged non-compliance with the order.

The NoV identifies the following:

- the name of the person who is alleged to have committed the violation
- details of the alleged violation
- the amount of the penalty
- details on when and how to remit payment
- details on the option of paying a lesser amount of the penalty, and when and how to remit it
- a summary of the person's rights and obligations, including those related to having the violation and/or penalty reviewed
- the name of the issuing authority

Penalty calculation

All violations are classified as minor, serious or very serious, as noted in section 2 of the *Administrative Monetary Penalties (Consumer Products) Regulations* (AMPR). The table in section 4 of the AMPR sets out the different monetary penalties:

| Penalties | | | |
|------------------|--|---|---|
| Item | Column 1 Total Gravity Factor (Classification of Violation) | Column 2 Penalty for Violation Committed by a Non- profit Organization or by any Other Person for Non-commercial Purposes | Column 3 Penalty for Violation Committed in any Other Case |
| 1. | 2 (minor) | \$1,000 | \$10,000 |
| 2. | 3 (serious) | \$2,000 | \$15,000 |
| 3. | 4 (serious) | \$3,500 | \$20,000 |
| 4. | 5 (very serious) | \$5,000 | \$25,000 |

The amount of the monetary penalty is lower if the violation is committed by a non-profit organization or by an individual acting for non-commercial purposes. The amount also varies depending on the total gravity factor, which is established in consideration of the following:

1. the person's past history of violations; and
2. the *Canada Consumer Product Safety Act* provision under which the order was issued.

Gravity values are assigned to these two factors under section 3 of the AMPR, the sum of which is the total gravity factor as set out in Column 1 of the section 4 table. Refer to Appendix III of this document for more details on the gravity factors and penalty calculation.

What are your options upon receipt of a notice of violation?

1. **Payment within 15 days:** You may pay one half (1/2) of the amount of the penalty listed in the notice of violation (NoV), in lieu of the full amount, if you pay no later than 15 days after the day you received the NoV. This option is not available if another option is chosen.
2. **Payment after 15 days but before 30 days:** You may choose to pay the full amount of the penalty listed in the NoV no later than 30 days after the day you received the NoV.
3. **Compliance agreement:** If the monetary penalty is greater than \$5,000, you may submit a written request to enter into a compliance agreement no later than 15 days after the day you received the NoV. The request should include a detailed proposal as to how you intend to comply with the original order and/or prevent future non-compliance. Refer to Appendix I for more details on this option. The request may or may not be granted. Additionally, this option is not available if another option is chosen.
4. **Request for review by the Minister:** You may submit a written request for a review of the NoV no later than 30 days after receiving the NoV. Refer to Appendix II for further details.

The date on which all option response deadlines are calculated is based on the date on which you received the NoV. This date will either be written on the NoV if it was hand-delivered by Health Canada officials, or will be contained in a receipt provided by the mail/courier service that is used for delivery of the NoV.

For example, if the NoV was received by a person on June 4, 2014, then June 5 is counted as Day 1. Fifteen (15) days after the date the NoV was received would be June 19, 2014. Thirty (30) days after the date the NoV was received would be July 4, 2014.

Where a due date falls on a weekend or a statutory holiday the response or payment is due on the next business day.

Note: As these time periods are fixed in the AMPR, no extensions will be granted.

Note: NoVs may be issued for each day that a violation continues, as each day of non-compliance with an order constitutes a separate violation. Penalty amounts may continue to accumulate daily until there is compliance with the underlying order.

Responding to the notice of violation

It is recommended that you submit your response either in person or via registered mail (or a mail/courier service that provides a receipt indicating both the date of posting and delivery). When making payment of your penalty, please make your certified cheque or bank draft payable to the Receiver General for Canada. The address for sending your response and payment will be indicated in the notice of violation.

You will be deemed to have committed the violation:

- if you pay the penalty or its lesser amount
- if you enter into a compliance agreement
- if after a review by the Minister, it is determined that you committed the violation
- if you do not pay the penalty (or the lesser amount) and do not exercise your right to request a review or a compliance agreement within the prescribed deadlines

If you are deemed to have committed the violation, it remains part of your violation history for a period of five years.

Forfeiture

When you are deemed to have committed a violation, anything seized in relation to this violation may be subject to forfeiture to Her Majesty in right of Canada and to disposal at your expense in accordance with section 64 of the *Canada Consumer Product Safety Act*.

Appendix I – Requesting a compliance agreement

The purpose of a compliance agreement is to ensure the person's compliance with the order to which the violation relates.

When requesting a compliance agreement

In order to request a compliance agreement, two criteria must be met:

1. The amount of the penalty must be \$5,000 or greater.
2. The request must be in writing and submitted no later than 15 days after receiving the NoV.

After receiving your request, Health Canada will contact you to discuss the possible terms of a compliance agreement. If an agreement is reached, both parties will sign the proposal making it a valid compliance agreement. By doing so, you are deemed to have committed the violation.

Note: Notice of Violations (NoVs) may continue to be sent to the person during compliance agreement deliberations until the conditions specified in the contravened order are met.

Why might you consider a compliance agreement?

If, to achieve compliance or to prevent future violations, you are required to spend money (for example, fixing equipment or building proper facilities), the amount of the administrative

monetary penalty could be reduced by the Minister of Health.

What should you include in your written request for a compliance agreement?

Under the *Canada Consumer Product Safety Act* (CCPSA), the Minister may determine any terms and conditions of the compliance agreement that are satisfactory to him/her. These can include, for example, requiring the provision of a security. Your proposal for a compliance agreement must be applicable to the violation specified in the NoV and should include the following:

1. A clear statement that the person named in the NoV is requesting a compliance agreement.
2. Details about the actions or measures you will take to satisfy the underlying order and deadlines for completion.
3. An itemized estimate of probable costs to achieve compliance with the order (to be included on a separate page).

Please note that if the Minister requires a security from you as a guarantee of your intended compliance with the agreement, this will be established prior to the signing of the compliance agreement.

What are the possible outcomes?

1. **Compliance agreement completion:** The agreement is completed to the satisfaction of the Minister. This results in the issuance of a 'Notice of Compliance Agreement Completion' and return of any security provided.
2. **Compliance agreement refusal:** The Minister refuses to enter into a compliance agreement. This situation results in the issuance of a 'Notice of Compliance Agreement Refusal' and requires payment of the initial penalty amount no later than 15 days after receiving the notice.
3. **Breach of compliance agreement:** The person does not fulfil the terms of the compliance agreement. This situation results in the issuance of a 'Notice of Default' and either forfeiture of the security or owing double the initial penalty no later than 15 days after receiving the notice. You may also be subject to further enforcement action, such as the issuing of additional NoVs or forfeiture of seized goods.

Appendix II – Requesting a review of the notice of violation by the Minister

The person named in the notice of violation (NoV) may submit a written request for a review of the acts or the failure to act which amounted to the violation or a review of the amount of the penalty, if they feel it was not calculated in accordance with the Regulations.

Where the NoV has been issued to a company or non-profit organization, an official who is authorized to act for that company or organization may request a review on its behalf.

How can you request a review?

In order to have your request for a review considered, two criteria must be met:

1. The request must be in writing and submitted no later than 30 days after receiving the NoV.
2. Any evidence or submissions that you wish to have considered by the Minister must be provided in writing and accompany your request for a review. The evidence provided should demonstrate either that you did not commit the violation or that the penalty was not correctly established in accordance with the *Administrative Monetary Penalties (Consumer Products) Regulations* (AMPR).

After receiving your request, Health Canada will consider all of the evidence provided and will issue a Notice of Decision explaining the result.

Note: NoVs may continue to be issued during a period of review until the conditions specified in the order are met or the review process results in the cancellation of the NoV.

What are the possible outcomes?

1. **NoV confirmed:** The review results in the confirmation of the violation or the penalty amount. A Notice of Decision will be issued reiterating the original penalty amount, which must be paid no later than 30 days after receiving the notice.
2. **NoV amended:** If it is determined that you committed the violation but the amount of the penalty was not established in accordance with the AMPR, the amount of the penalty will be corrected in the Notice of Decision. The decision will set out the new penalty amount, which must be paid no later than 30 days after receiving the notice.
3. **NoV cancelled:** If it is determined that you did not commit the violation, a Notice of Decision will be issued stating that no penalty is owed and that the proceedings are ended.

Appendix III – Gravity factors and penalty calculation

The following tables are taken directly from section 3 of the *Administrative Monetary Penalties (Consumer Products) Regulations* (AMPR).

**Table 1
History**

| Item | Column 1 Description | Column 2 Gravity Factor |
|------|---|----------------------------|
| 1. | No previous violation in respect of which a notice of violation was issued was committed by the person within the five years before the day on which the violation is committed | 0 |
| 2. | One violation in respect of which a notice of violation was issued was committed by the person within the five years before the day on which the violation is committed | 1 |
| 3. | More than one violation in respect of which a notice of violation was issued was committed by the person within the five years before the day on which the violation is committed | 2 |

Table 2
Type of Violation

| Item | Column 1 Provision of the Act | Column 2 Short-form Description* | Column 3 Gravity Factor |
|------|----------------------------------|---|----------------------------|
| 1. | Paragraph 32(1)(a) | Failure to comply with an order by the Minister to take measures — person did not comply with an order made under section 12 of the Act | 2 |
| 2. | Paragraph 32(1)(c) | Failure to comply with an order by the Minister to take measures — Minister believes on reasonable grounds that a product is the subject of a voluntary measure or recall | 2 |
| 3. | Paragraph 32(1)(d) | Failure to comply with an order by the Minister to take measures — Minister believes on reasonable grounds that there is a contravention of the Act or regulations | 2 |
| 4. | Subsection 31(1) | Failure to comply with an order by the Minister to recall a product | 3 |
| 5. | Paragraph 32(1)(b) | Failure to comply with an order by the Minister to take measures — Minister has already made an order under section 31 of the Act | 3 |

* The short-form descriptions are established by the Minister under paragraph 51(b) of the Act and are provided here for convenience only. They do not form part of these Regulations and may be amended by the Minister without the need to amend these Regulations.

Each violation is assessed according to the person's past history of violations, and the *Canada Consumer Product Safety Act* (CCPSA) provision under which the order was issued. The gravity factors that correspond to these two characteristics are added together to form the total gravity factor which, under section 4 of the AMPR, indicates the amount of the penalty.