

**PROPOSED AMENDMENTS TO THE RAILWAY SAFETY ADMINISTRATIVE MONETARY
PENALTIES REGULATIONS**

BACKGROUND

The *Railway Safety Administrative Monetary Penalties Regulations* were published in the *Canada Gazette*, Part II on October 22, 2014 as part of a series of new Rail Safety regulations. These regulations, which will come into force April 1, 2015, will introduce an administrative monetary penalties (AMPs) scheme to Transport Canada's Rail Safety Program.

These Regulations contain designated provisions for the *Railway Safety Act* (RSA) and its subordinate rules and Regulations. However, these regulations do not contain designated provisions for new Regulations that were being developed concurrently as part of Rail Safety's accelerated regulatory agenda.

New proposed amendments would introduce new schedules of designated provisions for the *Grade Crossing Regulations* (GCR), the *Railway Safety Management System Regulations (SMS), 2015* and an amendment to the existing schedule of designated provisions for the *Railway Safety Act* with respect to the Railway Operating Certificate (ROC).

OBJECTIVE

The objective of the proposed amendments is to provide the Minister of Transport with the necessary enforcement tool of administering monetary penalties for the new Regulations that were recently introduced as part of the Rail Safety Program.

AUTHORITY

Under section 40.1 of the *Railway Safety Act*, the Governor in Council may make regulations that designate any provision of the Act or the regulations, or any rule, standard, order or emergency directive subject to an AMP if contravened. The prescribed maximum amount payable for each violation may not exceed \$50,000, in the case of an individual, and \$250,000, in the case of a corporation.

OVERVIEW

AMPs form part of Transport Canada's overall multi-modal compliance and enforcement regime. AMPs are designed to encourage compliance and deter contraventions by having a monetary cost in the event of a non-compliance. Ultimately, AMPs provide the Minister with a more efficient compliance and enforcement approach and are a much less costly means to enforcing legislative requirements than prosecution. Under the Act, any alleged violation and/or the amount of an AMP is reviewable by the Transportation Appeal Tribunal of Canada (TATC).

Proposed amendments do not add any new regulatory requirements but would establish two new schedules of designated provisions for the *Grade Crossing Regulations* and the *Railway Safety Management System Regulations, 2015* and an amendment to the existing schedule of designated provisions for the Railway Safety Act with respect to Railway Operating Certificates that would be included in the existing *Railway Safety Administrative Monetary Penalties Regulations*. This means that the stakeholders would be subject to monetary fines for the above-noted regulations in the event of regulatory non-compliance if the issue warranted a monetary penalty.

The schedules would prescribe the maximum payable amount for an individual and a company for each designated provision of these Regulations. The three maximum payable amounts would reflect low-risk violations of an administrative nature, medium risk violations and major safety violations that pose the highest risk to safety.

The penalties for a violation are as follows:

Column 1	Column 2	Column 3
	Maximum Penalty /Amount Payable (\$)	Maximum Penalty /Amount Payable (\$)
Level of Risk	Individual	Corporation
Category A If violation is low-level risk	5,000	25,000
Category B If violation is medium-level risk	25,000	125,000
Category C If violation is high-level risk	50,000	250,000

All government departments, including Transport Canada, have adopted what is termed a progressive or escalating approach to the compliance or enforcement activities under their authority. Where AMPs are proposed, they are invariably suggested as a compliment or supplement to other compliance and enforcement tools. They can replace prosecutions, which would be a significant cost saving for both government and regulated stakeholders, depending on the gravity of the circumstances, the character of the offender or other considerations particular to the individual event. Therefore, determining the amount of an AMP up to the maximum payable amount for violation of a designated provision would require evaluation of aggravating and/or mitigating circumstances.

Proposed regulations would not impose any additional administrative or compliance burden on stakeholders unless a monetary penalty was to be administered on a company following a contravention. Proposed regulations represent expanding the scope of Rail Safety’s current compliance and enforcement regime to include the above-noted regulations recently introduced.

PROPOSED REGULATIONS

Application

The proposed amendments to the *Railway Safety Administrative Monetary Penalties Regulations* would apply to all railway companies, local railway companies, road authorities and persons that fall under the federal *Railway Safety Act*.

Schedules of the provisions for the *Grade Crossing Regulations*, the *Railway Safety Management System Regulations, 2015* and the amendment to the *Railway Safety Act* in respect to the *Railway Operating Certificate Regulations* are as follows:

DESIGNATED PROVISIONS OF THE GRADE CROSSING REGULATIONS

	Column 1	Column 2	Column 3	
		Maximum Amount Payable (\$)	Maximum Amount Payable (\$)	
Item	Designated Provision	Individual	Corporation	Link
1	Section 4	5,000	25,000	
2	Section 5	25,000	125,000	
3	Section 6	50,000	250,000	
4	Section 8	5,000	25,000	
5	Section 9	50,000	250,000	
6	Section 10	5,000	25,000	
7	Section 11			Specified sections (4, 6, 8, 9)
8	Section 12	5,000	25,000	
9	Section 13	25,000	125,000	
10	Section 14	50,000	250,000	
11	Section 15	25,000	125,000	
12	Section 17	5,000	25,000	
13	Section 18			Specified sections (12 to 15)
14	Subsection 20(1)	50,000	250,000	
15	Subsection 20(2)	50,000	250,000	

16	Subsection 20(3)	50,000	250,000	
17	Subsection 21(1)	50,000	250,000	
18	Subsection 21(2)	25,000	125,000	
19	Subsection 21(3)	50,000	250,000	
20	Subsection 21(4)			Specified sections (21(1 to 3))
21	Section 23	50,000	250,000	
22	Section 24	50,000	250,000	
23	Section 25	50,000	250,000	
24	Section 26	50,000	250,000	
25	Section 27	50,000	250,000	
26	Section 29	50,000	250,000	
27	Section 31	25,000	125,000	
28	Section 32	50,000	250,000	
29	Section 33	50,000	250,000	
30	Section 34	25,000	125,000	
31	Section 35	50,000	250,000	
32	Section 36	50,000	250,000	
33	Section 38	25,000	125,000	
34	Section 39	25,000	125,000	
35	Subsection 40(1)	50,000	250,000	
36	Subsection 40(2)	50,000	250,000	
37	Section 41	50,000	250,000	
38	Subsection 42(1)	50,000	250,000	
39	Subsection 42(2)	25,000	125,000	
40	Subsection 43(1)	50,000	250,000	
41	Subsection 43(2)	25,000	125,000	
42	Subsection 44(1)	50,000	250,000	
43	Subsection 45 (1)	50,000	250,000	
44	Subsection 45(2)	50,000	250,000	
45	Section 46	50,000	250,000	
46	Section 48	25,000	125,000	
47	Section 49	50,000	250,000	
48	Subsection 50(1)	50,000	250,000	
49	Subsection 50(2)	25,000	125,000	
50	Subsection 51(1)	50,000	250,000	
51	Subsection 51(2)	25,000	125,000	
52	Section 53	50,000	250,000	
53	Section 54	50,000	250,000	
54	Subsection 55(1)	50,000	250,000	
55	Subsection 55(2)	50,000	250,000	

56	Section 56	50,000	250,000	
57	Section 57	50,000	250,000	
58	Section 58	50,000	250,000	
59	Section 59			Specified sections (60 to 71)
60	Section 60	25,000	125,000	
61	Section 61	50,000	250,000	
62	Section 62	25,000	125,000	
63	Section 63	25,000	125,000	
64	Subsection 64(1)	50,000	250,000	
65	Subsection 64(2)	50,000	250,000	
66	Section 65	50,000	250,000	
67	Subsection 66(1)	50,000	250,000	
68	Subsection 66(2)	25,000	125,000	
69	Subsection 67(1)	50,000	250,000	
70	Subsection 67(2)	25,000	125,000	
71	Subsection 68(1)	50,000	250,000	
72	Subsection 68(2)	50,000	250,000	
73	Section 69	50,000	250,000	
74	Section 70	50,000	250,000	
75	Section 71	50,000	250,000	
76	Section 72	50,000	250,000	
77	Section 73	50,000	250,000	
78	Subsection 75(1)			Specified sections (82 to 85)
79	Section 76	25,000	125,000	
80	Section 77	50,000	250,000	
81	Section 78	50,000	250,000	
82	Section 79	50,000	250,000	
83	Subsection 80(1)	50,000	250,000	
84	Subsection 80(2)	25,000	125,000	
85	Subsection 81(1)	50,000	250,000	
86	Subsection 81(2)	50,000	250,000	
87	Subsection 82(1)	50,000	250,000	
88	Subsection 82(2)	50,000	250,000	
89	Section 83	50,000	250,000	
90	Section 84	50,000	250,000	
91	Section 85	50,000	250,000	
92	Section 86	50,000	250,000	
93	Subsection 87(1)	50,000	250,000	
94	Subsection 87(2)	50,000	250,000	
95	Subsection 87(3)	50,000	250,000	

96	Subsection 88(1)	50,000	250,000
97	Subsection 88(2)	50,000	250,000
98	Section 89	50,000	250,000
99	Section 90	50,000	250,000
100	Section 91	50,000	250,000
101	Section 92	25,000	125,000
102	Subsection 93(1)	5,000	25,000
103	Subsection 93(2)	50,000	250,000
104	Subsection 93(3)	25,000	125,000
105	Subsection 94(1)	50,000	250,000
106	Subsection 94(2)	50,000	250,000
107	Subsection 94(3)	25,000	125,000
108	Section 95	50,000	250,000
109	Subsection 96(1)	50,000	250,000
110	Subsection 96(2)	50,000	250,000
111	Subsection 96(3)	25,000	125,000
112	Subsection 97(1)	25,000	125,000
113	Subsection 97(2)	50,000	250,000
114	Section 98	25,000	125,000
115	Section 99	50,000	250,000
116	Subsection 100(1)	50,000	250,000
117	Subsection 100(2)	50,000	250,000
118	Section 101	50,000	250,000
119	Subsection 102(1)	50,000	250,000
120	Subsection 102(2)	50,000	250,000
121	Subsection 103(a)	50,000	250,000
122	Subsection 103(b)	50,000	250,000
123	Subsection 103(c)	50,000	250,000
124	Subsection 103(d)	25,000	125,000
125	Section 105	50,000	250,000
126	Section 106	50,000	250,000
127	Section 107	50,000	250,000
128	Section 108	5,000	25,000
129	Subsection 109(1)	5,000	25,000
130	Subsection 109(2)	5,000	25,000
131	Subsection 109(3)	5,000	25,000
132	Subsection 110(1)	25,000	125,000
133	Subsection 110(2)	5,000	25,000

Repeal the 2001 *Railway Safety Management System Regulations* and replace with the following new Part.

**DESIGNATED PROVISIONS OF THE RAILWAY SAFETY MANAGEMENT SYSTEM
REGULATIONS, 2015**

Column 1	Column 2 Maximum Amount Payable (\$)	Column 3 Maximum Amount Payable (\$)	Column 4	
Item	Designated Provision	Individual	Corporation	Link
1	Section 5	50,000	250,000	
2	Section 6	25,000	125,000	
3	Subsection 8(1)	25,000	125,000	
4	Subsection 8(2)	5,000	25,000	
5	Subsection 8(3)	25,000	125,000	
6	Subsection 9(1)	25,000	125,000	
7	Subsection 9(2)	5,000	25,000	
8	Subsection 9(3)	25,000	125,000	
9	Subsection 10(1)&(2)	25,000	125,000	
10	Subsection 10(3)	5,000	25,000	
11	Subsection 11(a)	25,000	125,000	Section 7
12	Subsection 11(b)	25,000	125,000	Section 7
13	Paragraph 12(1)(a)	25,000	125,000	Section 7
14	Paragraph 12(1)(b)	25,000	125,000	Section 7
15	Subsection 12(2)	25,000	125,000	
16	Section 13	25,000	125,000	
17	Section 14	25,000	125,000	Section 7
18	Section 15	50,000	250,000	
19	Subsection 16(1)	25,000	125,000	
20	Subsection 16(2)	25,000	125,000	
21	Subsection 17 (a)	25,000	125,000	Section 7
22	Subsection 17 (b)	5,000	25,000	Section 7
23	Subsection 17 (c)	25,000	125,000	Section 7
24	Subsection 18(1)	50,000	250,000	
25	Subsection 18(2)	25,000	125,000	
26	Section 19	25,000	125,000	
27	Subsection 20(a)	25,000	125,000	Section 7
28	Subsection 20(b)	25,000	125,000	Section 7
29	Subsection 20(c)	5,000	25,000	Section 7
30	Section 21	25,000	125,000	

31	Section 22	5,000	25,000	
32	Section 23	25,000	125,000	
33	Subsection 24(1)	25,000	125,000	Section 7
34	Subsection 24(2)	25,000	125,000	
35	Subsection 24(3)	25,000	125,000	
36	Subsection 24(4)	25,000	125,000	
37	Subsection 25(1)	25,000	125,000	
38	Subsection 25(2)	25,000	125,000	
39	Subsection 25(3)	25,000	125,000	
40	Section 26	25,000	125,000	
41	Subsection 27(a)	25,000	125,000	Section 7
42	Subsection 27(b)	25,000	125,000	Section 7
43	Subsection 27(c)	25,000	125,000	Section 7
44	Subsection 27(d)	25,000	125,000	Section 7
45	Subsection 28(1)	25,000	125,000	
46	Subsection 28(2)	25,000	125,000	Section 7
47	Subsection 28(3)	25,000	125,000	
48	Subsection 29(1)&(2)	25,000	125,000	
49	Subsection 29(3)	25,000	125,000	
50	Subsection 29(4)	5,000	25,000	
51	Subsection 30(1)	25,000	125,000	
52	Subsection 30(2)	25,000	125,000	
53	Subsection 31(1)	25,000	125,000	
54	Subsection 32(1)	25,000	125,000	
55	Section 33	25,000	125,000	
56	Section 34	5,000	25,000	
57	Section 35	5,000	25,000	
58	Section 36	5,000	25,000	
59	Section 37	5,000	25,000	
60	Section 38	25,000	125,000	
61	Section 40	50,000	250,000	
62	Section 41	25,000	125,000	
63	Subsection 43(1)	25,000	125,000	
64	Subsection 43(2)	5,000	25,000	
65	Subsection 43(3)	25,000	125,000	
66	Subsection 44(1)	25,000	125,000	
67	Subsection 44(2)	5,000	25,000	
68	Subsection 44(3)	25,000	125,000	
69	Subsection 45(1)&(2)	25,000	125,000	
70	Subsection 45(3)	5,000	25,000	

71	Subsection 46(a)	25,000	125,000	Section 42
72	Subsection 46(b)	25,000	125,000	Section 42
73	Section 47	25,000	125,000	
74	Section 48	25,000	125,000	Section 42
75	Section 49	50,000	250,000	
76	Section 50	25,000	125,000	
77	Subsection 51(a)	25,000	125,000	Section 42
78	Subsection 51(b)	25,000	125,000	Section 42
79	Subsection 52(1)	50,000	250,000	
80	Subsection 52(2)	25,000	125,000	
81	Subsection 53(a)	25,000	125,000	Section 42
82	Subsection 53(b)	25,000	125,000	Section 42
83	Section 54	25,000	125,000	
84	Section 55	5,000	25,000	
85	Section 56	25,000	125,000	
86	Subsection 57(1)&(2)	25,000	125,000	
87	Subsection 57(3)	25,000	125,000	
88	Subsection 57(4)	5,000	25,000	
89	Subsection 58(1)	25,000	125,000	
90	Subsection 58(2)	25,000	125,000	
91	Subsection 59(1)	25,000	125,000	
92	Subsection 60(1)	25,000	125,000	
93	Section 61	5,000	25,000	
94	Section 62	5,000	25,000	
95	Section 63	5,000	25,000	
96	Section 64	5,000	25,000	
97	Section 65	5,000	25,000	
98	Section 66	25,000	125,000	
99	Section 68	\$50,000	\$250,000	
100	Section 69	25,000	125,000	
101	Subsection 71(1)	25,000	125,000	
102	Subsection 71(2)	5,000	25,000	
103	Subsection 71(3)	25,000	125,000	
104	Subsection 72(1)&(2)	25,000	125,000	
105	Subsection 72(3)	5,000	25,000	
106	Subsection 73(a)	25,000	125,000	Section 70
107	Subsection 73(b)	25,000	125,000	Section 70
108	Section 74	25,000	125,000	
109	Section 75	25,000	125,000	Section 70
110	Section 76	50,000	250,000	

111	Section 77	25,000	125,000	
112	Subsection 78(a)	25,000	125,000	Section 70
113	Subsection 78(b)	25,000	125,000	Section 70
114	Subsection 79(1)	50,000	250,000	
115	Subsection 79(2)	25,000	125,000	
116	Subsection 80(a)	25,000	125,000	Section 70
117	Subsection 80(b)	25,000	125,000	Section 70
118	Section 81	5,000	25,000	
119	Section 82	5,000	25,000	
120	Section 83	5,000	25,000	
121	Section 84	5,000	25,000	
122	Section 85	5,000	25,000	
123	Section 86	25,000	125,000	

NEW DESIGNATED PROVISION OF THE ACT

Item	Column 1 Designated Provision	Column 2 Maximum Amount Payable (\$) Individual	Column 3 Maximum Amount Payable (\$) Corporation
	Section 17.1	50,000	250,000

Coming into force

The amendments to the *Railway Safety Administrative Monetary Penalties Regulations* will come into force upon registration.