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Guidelines on Enforcement and Compliance Policy

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Transport Canada

November 1995
(revised October 2000)
TP 12957 E

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INTRODUCTION

Citizens expect laws and regulations by government to protect them or to define their activities within socially acceptable limits. In the case of the automotive industry, the federal government creates laws and regulations to set standards for the safety and environmental performance of new vehicles manufactured in or imported into Canada, and for used vehicles imported from the United States. To be effective, these regulations must be enforced fairly, firmly and consistently across the nation.

Those who enforce the law and regulations, and those who must comply, need to understand

how they will be applied. These Guidelines on Enforcement and Compliance Policy for the Motor Vehicle Safety Act (MVSA) are intended to inform everyone who shares responsibility for the safety of motor vehicles--governments, industry and individuals--about what is expected of them. They also make clear what may be expected from Transport Canada officials who enforce the MVSA and its regulations.


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THE MOTOR VEHICLE SAFETY ACT

The full title of the legislation is "an Act to regulate the manufacture and importation of motor vehicles and motor vehicle equipment to reduce the risk of death, injury and damage to property and the environment".

The Act empowers Transport Canada to issue Canada Motor Vehicle Safety Standards (CMVSS) which regulate the safety and emission performance of new vehicles. Other regulations address proof of compliance and retention of records, and the requirement for companies to issue Notices of Defect according to procedures established by the department. The Act applies to manufacturers engaged in interprovincial trade and importers of vehicles or components into Canada.


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Key Elements

The Act applies only to certain defined classes of vehicles and vehicle components including:

- Passenger cars
- Multipurpose passenger vehicles, e.g. vans
- Trucks
- Buses
- Trailers
- Motorcycles and restricted use motorcycles
- Trailer converter dollies
- Chassis-cabs
- Snowmobiles and ATVs

It applies to specified items of motor vehicle equipment such as tires and child restraint systems.

The National Safety Mark (NSM) is a Crown trademark. New motor vehicles, tires and child restraints manufactured in Canada and shipped inter-provincially must bear the NSM and must comply with applicable safety standards and regulations. The Minister of Transport authorizes its use and a company must apply for permission to use it.

Certification of compliance to applicable standards and regulations is the responsibility of the manufacturer or importer ("self-certification"). Affixing a Statement of Compliance label (SOC) to the vehicle affirms that vehicles bearing the NSM, or imported into Canada, comply with the appropriate standards.

When companies become aware of safety-related defects in their products, they must provide Notices of Defect to Transport Canada and to the owners of the product.

Used vehicles imported into Canada under the terms of the Free Trade Agreement must comply with applicable safety standards and regulations.

Copies of the Act and Regulations can be obtained from:

Canada Communications Group
Publishing Centre
Hull, QC
K1A 0S9
Tel: (819) 956-4800
Fax: (819) 994-1498

[Electronic order form](#)


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AUTHORITIES RESPONSIBLE FOR THE ADMINISTRATION OF THE MOTOR VEHICLE SAFETY ACT

Minister of Transport

The Minister of Transport has responsibility for the administration of the MVSA. The Minister must act in accordance with the legislation and is accountable to Parliament for his or her actions.

Transport Canada Road Safety And Motor Vehicle Regulation Directorate

The Road Safety and Motor Vehicle Regulation Directorate is the organization within Transport Canada assigned the tasks of administering the MVSA. The Directorate conducts research, develops, incorporates into regulations, promulgates, and enforces standards, and also carries out safety programs.

Enforcement Officials : Inspectors & Defect Investigators

Enforcement officials are individuals designated as inspectors under the MVSA to ensure that companies certifying vehicles and equipment to be in compliance are doing so correctly and that companies are following Notice of Defect provisions.

Inspectors

Inspectors will have the most frequent and regular contact with companies affected by the legislation. They are required to identify themselves by a badge and identity card, which must be produced on request. Their role is to:

- carry out inspections to verify compliance with regulations;
- explain the requirements of the regulations in order to assist companies in meeting their obligations under the MVSA;
- review options for corrective action in the event of non-compliance;
- take action to prevent non-complying vehicles or equipment with serious safety deficiencies from entering the market ("detention");
- conduct investigations to obtain evidence of violations;

- preparation of briefs for crown prosecutors and appearing as witnesses in court proceedings.

The specific powers of inspectors include entry, search, seizure and detention of items related to the enforcement of the MVSA, and the authority to require the production of documents and electronically stored data.

Defect Investigators

Some inspectors specialize in the investigation of public complaints concerning safety-related defects. Their role is to:

- investigate allegations from the public of safety-related defects associated with the design, construction or functioning of motor vehicles or equipment.
- inform companies of complaints and the results of investigations;
- ensure that companies issue Notices of Defect when a safety-related defect is established and that companies follow the procedures established by regulation in issuing Notices; and
- prepare briefs for crown prosecutors and appear as witnesses in court proceedings.

Attorney General And Officials Of The Department Of The Attorney General

The Attorney General has responsibility for all litigation relating to the MVSA. Transport Canada enforcement officials recommend prosecutions and present information to the Department of the Attorney General which decides whether to proceed with a prosecution.

Courts

The courts make the final decisions regarding prosecutions for non-compliance or failing to issue Notice of Defect, including what penalty to impose or what remedy to order.


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COMPLIANCE AND ENFORCEMENT

Compliance means a state of conformity with the law. While certification of compliance is a company responsibility, Transport Canada will monitor and ensure compliance with the MVSA through two types of activity: promotion and enforcement.

Measures to promote compliance will include:

- communication and publication of information;
- consultation with parties affected by the Act; and
- technical advice to companies.

To promote the understanding of the regulations respecting the importation of vehicles from the U.S., various publications are distributed to the public and information agents are available to handle inquiries (1-800-333-0371).

Enforcement activities include:

- inspection and monitoring to verify compliance;

- investigation of public complaints alleging safety-related defects;
- conducting vehicle, equipment and component compliance tests and investigation of compliance test failures and other cases of non-compliance;
- measures to compel compliance without resorting to formal court action, such as denial of importation, detention of non-complying vehicles or equipment and recommending provincial action to remove vehicle registration privileges; and
- measures to compel compliance through prosecution.


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GUIDING PRINCIPLES

The general principles governing the enforcement of the regulations are:

- saving lives, reducing injuries and property damage, and improving the environment is the “prime directive”;
- directing enforcement practices mainly towards ensuring correction of non-compliance or defect situations and not on punitive action;
- enforcing all regulations. Different levels of enforcement may be applied depending on the safety risks;
- applying the enforcement program equitably to manufacturers and importers;
- using administrative sanctions as enforcement tools, consistent with government guidelines. These may include: detention of non-complying vehicles or equipment by Transport Canada or customs officers from Revenue Canada, the revocation of NSM authorizations and, with the cooperation of the provinces, removal of vehicle registration plates. Search and seizure will be used only to obtain evidence to support prosecutions;
- providing a visible and responsive service to the public;
- using public education and the provision of information to small business on how to build or import compliant vehicles as an important supplement to the enforcement program and will be used to the maximum extent possible; and
- maintaining audit reports, test results and completed investigation records on files which are open to public scrutiny in accordance with the government's access to information regulations.


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CERTIFICATION TESTING

Under the Motor Vehicle Safety Act and regulations made thereunder, the responsibility for certifying compliance of vehicles and equipment rests with the company manufacturing in Canada, or importing into Canada, such vehicles or equipment. The company is prohibited by law to apply a national safety mark to any vehicle or equipment, sell any vehicle or equipment to which a national safety mark has been applied, or import into Canada any vehicle or equipment of a prescribed class unless, amongst other things, records are maintained and furnished in the prescribed form and manner in relation to the testing done by the company on the vehicle or equipment, for the purpose of enabling an inspector to determine whether the vehicle or equipment conforms to all prescribed standards applicable to it. Any testing done by the manufacturer is called certification testing.

Canada Motor Vehicle Safety Standards (CMVSS) prescribe the minimum performance levels that vehicles and equipment must meet. To support compliance certification, each CMVSS will either include directly within the standard, or indirectly by reference to another document, the performance requirements against which the vehicles and equipment manufactured or

imported are to be measured and compliance determined in an objective manner. These other documents may include an Approved Motor Vehicle Safety Test Method, a Technical Standards Document, and/or another third party published test methodology, and are essential to remove ambiguities about the specified tests and testing methodologies to be used in certification testing.

Engineering analyses, computer simulations and other methodologies are useful tools used in the development of vehicles and equipment. However, they are not substitutes for the specified tests and testing methodologies. Unlike the compliance tests conducted by Transport Canada, companies should ensure that their certification testing are conducted at levels slightly higher than the standard to allow for equipment limitations and manufacturing tolerances.

Section 10 of the Motor Vehicle Safety Regulations requires that a company maintains records that show that the vehicles and equipment it manufactures or imports conform to all prescribed standards applicable to it and retains those records for at least five years after the date of manufacture or importation. These records must be presented upon demand by an inspector. Results of certification testing conducted as per the specified tests and testing methodologies speak by themselves and will allow a Transport Canada inspector to determine that the vehicles and equipment that the company manufactures or imports conform to all prescribed standards applicable to it. For this reason, Transport Canada considers that results obtained in certification testing conducted as per specified tests and testing methodologies as the only unequivocal manner by which to substantiate the compliance of vehicles and equipment with the prescribed standards. Conversely, certification testing conducted using tests and testing methodologies other than the one prescribed, is not regarded as being adequate to enable a Transport Canada inspector to determine the compliance of a vehicle or equipment.

In any audit, companies must be able to demonstrate the compliance of all vehicles or equipment they manufacture or import. However, this does not necessarily require the testing of every vehicle. As an example, the demonstration of compliance for various models of vehicles built on a common platform and sharing identical critical features can be achieved by testing selective representative sample(s) of one of the models. The results of the test(s) can then be extended to cover the other models provided the company can demonstrate a clear, logical and unambiguous link between the test vehicle(s) and the other models built on the same platform. The same approach can also be used for vehicles of different model years where the company can establish the same link. In all cases, the onus of proving the applicability of the test results to the other models for which compliance is being demonstrated rests with the company that manufactured or imported the product.


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ENFORCEMENT PROGRAM

Monitoring and enforcement of industry's self-certification with the Motor Vehicle Safety Act, regulations and non-regulatory industry commitments takes three main forms which provide the de facto basis upon which compliance is assured:

- compliance testing of regulated vehicles, equipment and components;
- auditing of companies, which includes reviewing test documents, quality-control procedures, production capabilities and line operations, as well as examination of products; and
- investigations into public complaints alleging safety-related defects and reviewing Notice of Defect procedures and specific corrective actions.

Importation of used vehicles under the provisions of the Free Trade Agreement is controlled by the MVSA. Specific regulations have been established to permit the entry of certain used vehicles in a non-complying state, provided that they are brought into compliance and properly certified prior to being presented to a provincial or territorial licensing agency for registration.


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Compliance Testing

Vehicles and equipment are selected for compliance testing from products offered at the retail level, to ensure that samples are representative of products offered for sale to the public. Samples are selected based on a number of factors, such as market penetration, new technology or new product-line, public-complaint history, and past performance on tests.

Compliance tests are performed at levels slightly below the stated standard requirement, to allow for the precision of the test equipment. For example, vehicle barrier compliance tests are performed at an impact speed of 47.5 km/hr, not the 48 km/hr required by the standard.

NB: Companies should ensure that their certification tests are conducted at levels slightly higher than the standard to allow for equipment limitations.

Test failures in themselves do not necessarily mean a non-compliance situation exists. There is always the possibility of errors in the test program or in the preparation of the vehicle, equipment or component. Each test failure is investigated and discussed with company representatives to establish the cause of failure prior to determination that a non-compliance situation exists.

Generally, test results outside a normal statistical variation will be considered sufficient evidence of failure. Marginal failures will normally result in a retest of the product under the same conditions, with a second failure representing a greater level of confidence in the test results. Again, both tests will be investigated to establish cause of failure. It is common practice to have company representatives present during confirmation testing.

If, at the completion of the investigation into a test failure, there is a difference of opinion between the company and Transport Canada officials concerning non-compliance, the department may recommend that the situation be resolved in the courts. The Attorney General will be requested to prosecute the company for producing, importing or selling a product not in compliance with CMVSS.


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Compliance Audits

Audits are conducted both on major companies (those building large volumes of vehicles using assembly-line processes) and on smaller companies (those building fewer vehicles, many on a "one of" basis).

In the case of major companies, audits generally concentrate on reviewing certification records, quality-control procedures and running-change documents. Although each sample product purchased is inspected for compliance with visually inspectable standards, the main method of assessing compliance is representative testing as described above.

In the case of smaller companies, the primary method of assessing compliance is the review of company records of testing performed to establish compliance. Greater emphasis is placed on inspecting the company products, given that variations between models may exist. Unlike in the U.S., proof of compliance in Canada must be established by testing to the standards. Engineering analysis and judgments, no matter how well documented, are insufficient to

confirm compliance according to the MVSA, unless these are backed up by test records. Commercial importers must have access to manufacturing records and be able to produce them upon request.

Transport Canada inspectors will normally contact companies and make arrangements to visit at a mutually convenient time, although spot-checks may be made. Companies should be prepared with the necessary information and products for inspection.

Another audit method is to inspect at trade shows where many products are on display at one time. This may generate a visit to the company.

The MVSA requires that "records are maintained and furnished in the prescribed form and manner" and that "in the case of equipment, the company maintain a registration system". Regulations require that records be maintained for a period of five years. Failure to maintain such records constitutes an offense.

Transport Canada inspectors will offer assistance to companies in interpreting the regulations and advise how to correct certain non-compliance situations. Inspectors do not approve products or certify that a product is in compliance. This responsibility rests with the company.

It is recognized that certification testing is expensive and product development can often require several tests. Transport Canada is prepared to accept representative certification testing on behalf of a group of companies, either as a consortium or under the auspices of an industry association. A representative product can be tested and the test records used by all parties, provided that evidence is available that a company's product is identical in critical features to the test representative. This type of program has proven cost-effective for some limousine and truck manufacturers.

Similarly, Transport Canada is prepared to accept certification testing performed by first-stage manufacturers or equipment suppliers of products such as lamps, axles, brakes, engine emission systems, etc., provided that the second-stage manufacturer does not modify the vehicle or equipment to negate the original certification. An example of this would be a second-stage manufacturer who finishes the vehicle in a manner whereby it exceeds the gross vehicle weight established by the chassis manufacturer. Again, evidence must be supplied that the finished product is within the parameters established by the Original Equipment Manufacturer (OEM). OEM records need not be held by the second-stage manufacturer.


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Defect Investigations

The MVSA requires companies "on becoming aware of a defect in the design, construction or functioning of the vehicle or equipment that affects or is likely to affect the safety of any person, cause notice of the defect to be given in the prescribed manner".

A safety-related defect is not defined in the MVSA or regulations, but certain criteria have evolved over the years, including several court rulings in Canada and the U.S., that help to describe it:

- "defect" is considered in the sense in which the term is commonly understood and as dictionaries define it, i.e. does the vehicle, equipment or component do what it was intended to do or is there a fault or failure that is safety-related?
- the percentage of failures to the total number of vehicles is not the overriding determinant. Once the threshold of the purely fortuitous or freakish is crossed, then the number need be only significant enough to raise the real possibility of a failure occurring. At this stage a threat is created of which the public is required to be notified under the

legislation;

- a dangerously defective article would be one which reasonable persons would not put on the market if they had knowledge of its harmful character;
- a product must meet the reasonable expectations of the ordinary consumer as to safety;
- it is not necessary that a collision or death has occurred or will occur as a result of the defect. An adequate margin of safety must be provided to protect against vehicle failures which result in an unreasonable risk of personal injury or property damage;
- the vehicle must be of a class for which safety standards are prescribed;
- the problem could affect the safety of the vehicle occupants, other road users or pedestrians; and
- the problem does not appear to develop gradually in such a manner that an average driver could be expected to take corrective action, i.e. the problem is not detectable in the course of normal maintenance procedures.

Transport Canada monitors company compliance with this MVSA provision by investigating complaints alleging a safety-related defect. Complaints come from the general public, police agencies, Transport Canada collision investigators, coroners, consumer agencies, provincial and municipal transportation departments, trade associations, unions, lawyers, other federal government departments and, in some instances, from other countries.

Following initial screening of complaints, all reports will be investigated. Copies of the complaint are forwarded to the company to ensure that it is aware of the event and investigation results are sent to each complainant.

While the responsibility for determination of a safety-related defect rests with the company, Transport Canada investigators will independently gather evidence to assist in the determination of a safety-related defect in a group of vehicles. If it is believed that the situation is such that a safety-related defect may exist, Transport Canada will develop evidence to confirm its position through vehicle or component inspection, testing and other proven investigative techniques. Further description of these activities is contained in the Defect Investigation Procedures Manual, TP 6891, obtainable from the department.

If a company and the department cannot come to an agreement about the existence of a safety-related defect, Transport Canada will prepare a case-file alleging non-compliance with the Notice of Defect provision of the MVSA, and submit it to the Attorney General for prosecution in the courts.

Where a company initiates or agrees to take action under the Notice of Defect and Recall provisions, the department will notify provincial authorities, gather and maintain all information necessary to inform the public and publish a recall register giving details about recalls. The department may analyze the proposed corrective action by auditing the success of the recall in terms of number of vehicles corrected, technical adequacy of the repair, methods used to contact owners, and the systems employed by the company to provide reliable data as required by the MVSA


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Vehicle Importation

The Free Trade Agreement applies only to vehicles imported from the U.S. Vehicles designed for sale in Europe are not generally constructed to North American standards and are not normally capable of being modified to meet Canadian requirements. Only manufacturers can certify compliance and most are reluctant to attempt modifications.

The MVSA permits certain non-complying American-specification vehicles to enter Canada provided that they are modified to comply prior to being presented for registration with a province or territory.

The following enforcement criteria will be used for the importation of American- specification vehicles from the U.S.:

- a Statement of Compliance label (SOC) affixed to a vehicle or a letter of certification from the original manufacturer, or an authorized distributor, is evidence of the manufacturer's certification;
- recertification of European-specification vehicles by a U.S. modifier ("Gray Market") is not acceptable;
- the SOC will be accepted at face value unless there is reason to doubt its validity;
- vehicles not satisfying importation requirements will not be allowed entry into Canada;
- vehicles imported fraudulently may be detained or seized;
- a forty-five day period will be provided for the modification and certification process. An extension may be granted when modifications are complex. After this time period the vehicle must be exported if the process is not completed;
- modifications are permitted to certain labels, bumpers and daytime running lights. No alterations will be allowed to American-specification vehicle occupant-restraint systems that do not meet CMVSS. Importation of these vehicles will not be allowed. Details are provided in Transport Canada publications CL 9203 and 8511, which are available on request; and
- importers are permitted to choose any agent to make the modifications, including "do-it-yourself", but all vehicles must be presented to an authorized Transport Canada Inspection Station for confirmation that modifications have been correctly carried out. A certificate will be issued by the Registrar of Imported Vehicles certifying compliance and this will be accepted as proof of compliance by provincial and territorial licensing agencies. Without this certificate, these agencies will not license the vehicle.

Transport Canada has established a pre-clearance system for new, Canadian-specification vehicles, whereby the importer of vehicles for which the manufacturer has established proof of compliance will be entered on a list and issued a letter permitting direct clearance through Customs. Importers of new vehicles without this pre-clearance will either have the vehicles denied entry or will have the option of entering them into the Inspection and Certification program operated by the Registrar of Imported Vehicles.


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RESPONSES TO VIOLATIONS

Enforcement officials will examine every suspected violation of the MVSA of which they are aware. If they are able to establish that a violation took place and there is sufficient evidence to proceed, they will take action consistent with the criteria outlined below and choose an appropriate response. Responses available to deal with violations of the MVSA are warnings, administrative actions and prosecution.

In determining the most appropriate action officials will examine each case on its merits, consistent with the Guiding Principles described earlier. There are some general criteria applied in the determination of what response to implement. These include:

- nature of the violation:
 - an assessment of the seriousness of the problem - risk to the public,
 - the compliance history of the company, e.g. is it a repeated occurrence or are there attempts to conceal information?
 - has the company attempted to correct the problem?
- effectiveness in achieving the desired result - correction of the problem;
- willingness to cooperate with department officials in the resolution of the problem; and
- consistency of enforcement - officials will look at how similar problems were handled.

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Warnings

Inspectors may use warnings when:

- they believe that a violation of the MVSA has occurred or is continuing;
- the risk to the public from the violation is negligible, e.g. incorrect label placement, and a running change is made; or
- the company takes immediate steps to correct the problem by issuing a Notice of Defect and recalling the affected vehicles.

Warnings will normally be given in writing and will contain the section of the Act or Regulations involved; a description of the alleged offense; a time limit, if appropriate, within which the company must comply with the warning, and the statement that, if the warning is not heeded, enforcement officials will take further action.

Defect Investigation officials may also issue public warnings of potentially high-risk situations uncovered during investigations into alleged safety-related defects. In these cases, the company will be notified of the action prior to the warning, or issuance of a press release requesting public cooperation in aiding the investigation.


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Administrative Actions

Enforcement officials may resort to certain administrative actions when:

- they believe that a more serious violation of the MVSA is continuing or has occurred,
- operation of the vehicles in question on the highway could present an unreasonable risk to the public, or
- there is no apparent corrective action planned on the part of the company involved.

Administrative actions may include:

- detention of offending vehicles - inspectors may affix a restraining notice to non-complying vehicles or equipment prohibiting their sale or transfer until they have been brought into compliance;
- import restrictions - with the cooperation of customs officers from Revenue Canada, vehicles produced by an offending company may be detained at the border and refused entry into Canada; and
- cancellation of vehicle registration - with the cooperation of Provincial Departments of Transport, owners of non-complying vehicles may have their vehicle registration permits revoked until the company corrects the problem.


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Prosecution

Enforcement officials will recommend prosecution of a company to the Attorney General when:

- they believe that a serious violation of the MVSA has occurred;
- the facts of a problem are in dispute with a company;
- no corrective action is planned, company investigations have ceased, or a company did not pursue corrective action in a timely manner;
- departmental officials have been obstructed in the pursuance of their duties; or
- the alleged violator knowingly provided false or misleading information, or failed to provide required information.

A prosecution under the MVSA may be instituted, tried and determined by a court in any province or territory in which the accused carries on business, regardless of where the subject matter of the prosecution arose.


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PENALTIES AND COURT ORDERS UPON CONVICTION

Penalties prescribed by the MVSA are:

	On summary conviction	Indictable offense
Corporations	<ul style="list-style-type: none"> • a fine not to exceed \$100,000 	<ul style="list-style-type: none"> • a fine not to exceed \$1,000,000
Individuals	<ul style="list-style-type: none"> • a fine not to exceed \$2,000, or • imprisonment for a term not exceeding six months, or • both 	<ul style="list-style-type: none"> • a fine not to exceed \$10,000, or • imprisonment for a term not exceeding two years, or • both

In addition, enforcement officials may request the court to order the issuance of Notice of Defect for all affected vehicles.


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CONFIDENTIALITY AND PUBLIC DISCLOSURE OF INFORMATION

The department must respect a number of statutory requirements in deciding how much information about compliance matters under the MVSA should be disclosed to the public. Both public and private interests must be balanced; industry confidential business information must be considered as well as the public's right to know if situations exist that could compromise safety. Each situation must be judged on its individual merits.

In general:

- all consultant and departmental test reports are available to the public, except those which constitute part of an ongoing investigation. These can be released at the completion of the investigation;
- copies of all public complaints are made available, but with personal identification deleted;
- company information marked "business confidential" will not normally be released except with the permission of the company; and

- names and addresses of companies holding National Safety Marks, or authorized importation pre-clearance, can be released, but details of a company's type of business or manufacturing levels will be withheld unless the company authorizes release of the information.


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FOR MORE INFORMATION

Anyone who has questions about the Enforcement and Compliance Policy or who wishes further information about enforcement procedures should contact:

Director, Motor Vehicle Safety Enforcement
Road Safety Directorate
Transport Canada
330 Sparks Street,
Ottawa, Ontario
K1A 0N5

Date Modified: 2009-03-13