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Motor Vehicle Safety Act Review

Discussion Paper

Road Safety and Motor Vehicle Regulation Directorate
Transport Canada

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MOTOR VEHICLE SAFETY ACT REVIEW - DISCUSSION PAPER

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INTRODUCTION

Transport Canada is seeking comments on proposals to amend the *Motor Vehicle Safety Act* (MVSA). All comments will be taken into account before legislation is formally proposed.

This discussion paper was developed, primarily over the past 18 months, from a number of internal meetings and a series of sessions with major automotive industry stakeholders, as well as through regular consultation with other stakeholders. The paper is intended as a basis for wider consultation with road and motor vehicle safety stakeholders in government, the private sector and non-governmental organizations.

The Context for Change

The federal government, in conjunction with its provincial and territorial partners and other stakeholders, has adopted Road Safety Vision 2010, which has the goal of making Canada's roads the safest in the world. Vehicles today are significantly more safe than they were 30 years ago, primarily due to the requirements of the MVSA. However, motor vehicle collisions still result in about 3000 fatalities and 220,000 injuries every year; road safety therefore remains a major socio-economic and health care challenge. It has been estimated that the cost of motor vehicle collisions to the health care system alone exceeds \$10B per year. The overall objective of this review is to develop modern legislation that will lead to an improved level of road safety for Canadians.

The broad influences necessitating the review of the Act are pervasive and significant. They include the seemingly unremitting public demand for road transport and the need for continuing national road safety leadership; the importance of the Canadian vehicle manufacturing sector and its competitive imperatives; the need to address environmental pressures for cleaner and more efficient vehicles while maintaining or enhancing safety; rampant technological advances which are changing manufacturing processes, requiring more complex vehicle systems and demanding rapid regulatory change; and pressures for continued regulatory harmonization in North America while recognizing the trend to globalization of manufacturing markets and regulatory regimes.

Further, since the last revision of the Act in 1993, judicial decisions relating to a variety of enforcement issues have indicated a need to clarify some of the related authorities. Finally, recent events have shown that there is a greater need to consider the security, as well as the safety, of all transportation modes.

These demands require legislation that, inter alia, is of appropriate scope, is flexible, permits timely decisions, and is clear. As will be detailed later, the current Act is deficient in several respects.

The Motor Vehicle Safety Act

The MVSA and its approximately 60 regulations/standards (Canadian Motor Vehicle Safety Standards – CMVSS) and test methods, requires that all vehicles introduced into the Canadian market must meet comprehensive safety requirements. The Act also authorizes the Department to undertake research, development, and promotional programs.

The authorities of the Act derive from the Trade and Commerce powers of the Constitution Act. The regulated sector comprises all manufacturers and importers of new vehicles in Canada; this includes “secondary” manufacturers which produce specialty vehicles (e.g. school buses) from new vehicle chassis normally produced by the major manufacturers. The MVSA regulates certain “equipment” (currently tires and child restraints); however, it does not cover replacement or so-called “aftermarket” components (e.g. brake linings). The MVSA also governs the importation of vehicles into Canada.

Classes of Vehicles to which the Motor Vehicle Safety Regulations Apply

- Bus
- Chassis-cab
- Motorcycle
- Restricted use motorcycle
- Multi-purpose passenger vehicle
- Passenger car
- Snowmobile
- Snowmobile cutter
- Trailer
- Trailer converter dolly
- Truck
- Vehicle imported temporarily for special purposes
- Low-speed vehicle

Manufacturers are required to self-certify that their products comply; and all complying products have the National Safety Mark affixed by the manufacturer. The Act is enforced by departmental inspectors by means of audit, product testing, and defect investigation. Transport Canada determines whether a safety defect is present; however, the onus is on the manufacturer to notify the Minister and vehicle owners on becoming aware that a defect may exist.

The following data attest to the significant impact of the Act:

- Canadian vehicle production/year: 3 million (1 in every 7 jobs)
- Number of manufacturers and importers: 4000
- Number of vehicles imported by individuals/year: 30,000
- Number of vehicles recalled/year: 2 million

The original *Motor Vehicle Safety Act* was passed in 1970, modeled on U.S. motor vehicle safety legislation. The following legislation has amended or directly affected the original Act:

- 1976: *Motor Vehicle Tire Safety Act*: a parallel act regulating new tires (now part of the MVSA);
- 1977: *Motor Vehicle Safety Act* amendments: several clarifications;
- 1982: *Motor Vehicle Fuel Consumption Standards Act*: never proclaimed but serves as a basis for the government/industry voluntary fuel consumption program;
- 1984: *Miscellaneous Statutes Law Amendment Act*: further clarifications;
- 1993: *Motor Vehicle Safety Act* amendments: update and restructuring to:
 - address identically both manufacture and commercial importation;
 - address importation by individuals;
 - incorporate the Motor Vehicle Tire Safety Act and regulate child restraints;
 - address compatibility with the U.S. Clean Air Act for emission control;
 - provide tools to harmonize with U.S. safety and emission regulations; and
- 1999: *Canadian Environmental Protection Act*: Division 5 is a reproduction of the Motor Vehicle Safety Act adapted for emission regulation; the authority to regulate emissions has since been transferred from Transport Canada to Environment Canada.

Motor Vehicle Safety Act	
1 & 2	Title and definitions
3 & 4	National safety marks
5	Compliance by companies
6 & 7	Importation
8	Emissions (repealed)
9	Exemptions
10	Notice of safety defects
11,12,13	Regulations
14,15,16	Inspection
17,18,19	Offences and punishment
20	Research, testing and fees
22,23,24	Repeal and coming into force

The Evolving Regulatory Regime

The original *Motor Vehicle Safety Act* was based on the contemporary equivalent U.S. legislation. The two similar laws reflected an integrated U.S./Canadian vehicle manufacturing industry operating under the Canada-U.S. Auto Pact. The result was a new and unique set of comprehensive and stringent safety standards that significantly affected vehicle design.

At that time, Europe already had a reciprocal recognition agreement, signed in 1958 under the auspices of the United Nations Economic Commission for Europe (ECE). The main purpose of that 1958 Agreement was to harmonize existing basic standards, through a “type” (i.e. government) approval system, rather than to forge new safety initiatives. Nevertheless, the Agreement provided the framework for Europe to establish its own comprehensive and advanced standards. The European Union, meanwhile, provided the political structure to impose stringent

safety standards based on the 1958 Agreement, thereby significantly affecting European vehicle design.

In other parts of the world, Australia and Japan developed their own comprehensive standards until 1997, when the 1958 Agreement was opened to non-European countries. Both these countries subsequently signed onto this Agreement, thereby beginning an era of truly international, rather than regional, vehicle safety standards and regulations.

In 1998, a parallel "Global Agreement" (Agreement Concerning the Establishing of Global Technical Regulations for Wheeled Vehicles) was designed to accommodate the specific needs of North America. This Agreement was to be administered along with the "1958 Agreement" by the UN World Forum on the Harmonization of Vehicle Regulations (WP29). Canada signed the Global Agreement in 1999, and most of the world's advanced economies are now part of WP29. Further, the World Trade Organization's (WTO) rules relating to technical barriers to trade, and regional free trade agreements such as APEC, ASEAN and NAFTA, all encourage developing countries to join, such that the WP29 will be truly global.

In North America, the last decade has seen the entrenchment of a number of very large, multi-national companies operating in North America. Furthermore, many companies are now operating under NAFTA, which encourages a single North American market, rather than the now-defunct Auto Pact, which provided for an integrated manufacturing industry but within separate markets.

Notwithstanding the reality of the global manufacturing sector, there remain several thousand smaller companies which are in the business of altering vehicles produced by the major manufacturers, and which also fall under the ambit of the MVSA. Further, while the majority of vehicles now imported into Canada are new vehicles produced by large offshore manufacturers, a considerable number of individuals import used vehicles from the U.S., or wish to import vehicles from other markets.

A modern *Motor Vehicle Safety Act* therefore needs to reflect realities that range from the global manufacturing reach of multi-national firms, through the large number of domestic smaller companies that complete the manufacture of vehicles, to the importation of particular vehicles by individual Canadians. Moreover, the Department wishes to harmonize vehicle regulations where this satisfies the best interests of the safety of Canadians, recognizing that common regulatory practices also have the advantage of simplifying motor vehicle design and manufacturing requirements. The revised Act must reflect the need to continue to develop harmonized North American standards in the short term, as well as to accommodate the development of global regulations in the longer term.

A RENEWED ACT

The requirement for changes to the current Act is driven by a number of factors. The national goal of having the safest roads in the world is to be achieved within the framework of increasing demands on the transportation system, and will require concerted efforts to enhance the safety of road users and roadway systems, as well as vehicles.

Increasingly sophisticated safety technologies are being introduced into new motor vehicles and to highway infrastructure at a rapid pace. The manufacturing industry is becoming more global in scope and is developing common vehicle platforms for sale world-wide. With the implementation of the Global Agreement, significant progress is anticipated towards developing global technical regulations for motor vehicle safety.

There is thus a broad-ranging need to craft modern legislation with sufficient flexibility to address critical issues in the short term as well as to accommodate the important needs of the future.

The following discussion outlines Transport Canada's proposals on the objectives and scope of a revised act, as well as issues related to motor vehicle regulations, the importation of vehicles and equipment, notice of defect, certification and enforcement.

OBJECTIVES

The current Act has a "long title", but no specific statement of objectives. Newer acts (including the *Motor Vehicle Transport Act*, *Railway Safety Act*, and the *Canada Shipping Act*) tend to have an "objectives" section. Transport Canada proposes to follow this practice, as well as place the motor vehicle regulation function into the wider road safety context as follows:

Current Long Title

“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 objectives of this Act are to:

- (a) reduce the risk of death and injury to road users, and the damage to property resulting from road transportation activities;*

- (b) facilitate a modern, flexible and efficient regulatory regime for the manufacture and importation of motor vehicles and vehicle equipment;*
- (c) encourage the harmonization of motor vehicle safety and security regulations;*
- (d) establish an effective program of audit and enforcement for new vehicles and equipment;*
- (e) support the department's sustainable road transportation goals;*
- (f) facilitate research and development to acquire new safety knowledge and support safety programs; and*
- (g) promote safety and security in the road transportation system through public education and awareness programs.*

SCOPE

The primary focus of the current Act is the regulation of the manufacture and importation of prescribed motor vehicles and equipment. The Act also authorizes the undertaking of research, development and promotional activities. Since the Act was last amended, a number of issues have arisen related to the scope of the legislation. The following section discusses these issues, and proposes changes where warranted.

- **Off-road vehicles:** The current Act was designed to include snowmobiles and recreational all-terrain vehicles, partly because many of the related deaths occurred on highways. Snowmobile operation, in particular, results in approximately 100 deaths each year and half of these occur on roads. Transport Canada proposes, therefore, to continue the present authority to regulate off-road vehicles.
- **Modified vehicles:** The present Act contains provisions governing second-stage manufacturing. Currently, "manufacture" is defined in terms of the process of assembling or altering the vehicle prior to its sale to the first retail purchaser. Disputes (resulting in legal action) have arisen wherein a new vehicle was purchased and then immediately substantially altered to the extent that the final vehicle was of a different class than that of the original, and therefore subject to different safety standards than those to which the original vehicle was certified. In order to clarify the requirements of the Act in this regard, it is proposed to change the definition of "manufacture" to include the process of assembling or altering the vehicle prior to its completion for the

intended final use. It is further proposed to use 90 days of vehicle ownership, or 5000 km of vehicle use, whichever comes first, following the sale to the first retail purchaser, as the point at which the vehicle would no longer be subject to federal regulation. These limits are patterned along the lines of those in the NAFTA (Annex 300-A).

- **Equipment.** The current Act was structured to authorize regulations for equipment, consistent with U.S. legislation and international standards that address parts, accessories and equipment. To effect regulations, the item of equipment must be specifically listed in a schedule in the Act (currently tires and child restraints are the only scheduled items). Legislation therefore is required to add to the list, and this can be a lengthy process. In order to facilitate an efficient response to any emerging safety issues related to equipment, it is proposed to make the list part of the regulations whereby changes to the regulated items could be made more expeditiously. Additions to the list would be subject to the normal regulatory process.
- **Property damage.** The regulations have long included standards addressing theft prevention and protection from property damage (e.g. bumpers). The costs of property damage and loss associated with motor vehicle transportation are significant, and reducing these costs remains a goal of the Department. Consequently, it is proposed that these aspects should continue to be considered when developing regulations.
- **Security.** Recently, it has become clear that motor vehicles may become a target of, or be used as a means for, terrorist acts. In the face of such threats, it is proposed that steps be taken to develop protection for vehicle operators and for the vehicles themselves. The revised Act could authorize regulations that would allow for appropriate countermeasures to be put in place. Such measures might include requiring enclosed drivers' cabs to prevent bus hijackings, theft protection devices to prevent stolen vehicles being used as weapons (e.g. car bombs), and vehicle tracking systems (GPS) so as to be able to locate stolen vehicles (e.g. heavy trucks with dangerous goods).
- **Climate change.** The current Act was restructured in 1993, in part to provide the authority to regulate emissions and to be capable of regulating the existing voluntary fuel consumption program or parts thereof. The *Canadian Environmental Protection Act* (CEPA) has assumed authority for emission control from road vehicles and Environment Canada is responsible for administering exhaust emission regulations.

Climate change is a major Government priority and "sustainable transportation" is a Departmental objective. Further, Transport Canada, in partnership with Natural Resources Canada, is responsible for the existing voluntary fuel consumption program and for the never-proclaimed 1982 Motor Vehicle Fuel Consumption Standards Act. This Act was never proclaimed since industry

agreed, through a Memorandum of Understanding, to follow a voluntary program. For the past two decades, the voluntary fuel consumption program has been subject to a number of deficiencies including the failure of some vehicle manufacturers to submit fuel consumption data to Transport Canada. Furthermore, there has been a failure on the part of certain manufacturers to meet the annual fuel consumption target. The Department proposes to re-institute sufficient authorities in the Act to ensure that corrective action can be taken without having to legislate the whole program or proclaim the Motor Vehicle Fuel Consumption Standards Act.

- **National data** is a vital ingredient of successful safety programs. Transport Canada has a data capability, but relies heavily on information collected by others, and needs ongoing support for its national databases, in-depth collision investigation programs and the identification of safety-related defects. The provinces, territories, and their agencies, notably police forces, hospitals and coroners are major sources. Other sources are industry, and increasingly vehicles themselves, through on-board event data recorders which capture data related to specific collisions.

The national collision databases maintained by the Department are aggregated; the data are therefore not attributable to individuals. Similarly, records of specific collision events do not contain identifying features of the individuals concerned and the data are contained in registered information banks which are subject to the provisions of the Privacy Act. Despite these safeguards, some difficulties have been experienced in obtaining information due to privacy concerns expressed by a number of external agencies.

Transport Canada is considering a range of mechanisms which might facilitate ready access to the data which the Department requires for purposes such as monitoring road safety, conducting research, and for the development and evaluation of national safety initiatives. Specific sources of information include provincial collision data which are used to develop a national traffic safety picture, individual police motor vehicle accident reports used as the basis for further research, and information obtained from event data recorders to develop an objective database of real-world crash parameters. Potential measures that could be implemented to facilitate access to such data include memoranda of understanding with partnering agencies, funding agreements, and regulations prescribing traffic safety data which would have to be supplied to the Minister.

MOTOR VEHICLE REGULATIONS

Issues surrounding the regulation of vehicles and equipment focus primarily on the need to accommodate rapid technological change, and the increasingly global nature of the large manufacturers. The following discussion applies mainly to regulatory issues for the global industries (issues for medium and small companies are mostly identified under the following section on “Enforcement”).

Canada's motor vehicle safety legislation, like that of other countries, is national. The Department has, since its inception, made a considerable effort to maintain harmony in recognition of the highly integrated nature of the Canada/U.S. vehicle manufacturing industry. It has also made a substantial effort to influence United Nations (ECE) standards, developed under the 1958 Agreement, as well as international consensus (ISO) standards.

The 1998 United Nations Global Agreement addresses for the first time the larger picture of harmony between continents and regions. By doing so, it provides a new regulatory infrastructure for international harmony; however, the full effect of the Agreement is likely to be some years away.

Transport Canada proposes to seek regulatory tools to enable short term Canada/U.S. harmony to be achieved more readily, as well as longer-term solutions to foster a smooth transition to global regulations as they become available.

- **Technical Standards Document:** The Technical Standards Document (TSD), introduced in the 1993 Act, was designed to allow Canadian regulations to be easily harmonized with a foreign enactment, and to be quickly updated when the corresponding foreign rule changed. The impetus for the introduction of the TSD was to allow Canadian regulations to be readily aligned with those of the U.S. Once a TSD is in place, it can be amended without pre-publication, but in all other respects, notably availability in both official languages and pre-publication requirements for the introduction of a TSD, the process follows existing regulatory practice.

Some Technical Standards Documents have been successfully created and updated but others have turned out to be more difficult to prepare and modify than expected. The legislated 5 year sunset provision has proven to be burdensome in that the use of a TSD must often be extended through a regulatory amendment even though no change to the TSD has occurred. In addition, any minor changes to a TSD which conflict with specific provisions of the associated Canadian regulation require republication of the entire regulation.

Transport Canada is considering the elimination of the sunset clause for a TSD. Also, the authority to make wider revisions to an existing TSD than merely those of “form and reference”, without making corresponding changes to the regulation, as is currently permitted, will be sought. Furthermore, in those instances where a consequential amendment to the regulations is required as a result of an update to a TSD, Transport Canada proposes that there be no requirement to pre-publish such amendments.

- **Incorporation by reference:** Direct incorporation by reference of international standards, such as those defined by the Society of Automotive Engineers (SAE) and the Canadian Standards Association (CSA), is widely accepted and the Motor Vehicle Safety Regulations provide many examples.

While the practice of allowing the incorporation of industry standards is currently accepted, direct incorporation by reference of foreign government regulations and enactments is not specifically accommodated by the current legislation. For example, ECE regulations are available in both official languages, and direct incorporation would provide an efficient means to achieve the aim of ensuring harmony in a timely fashion. In addition, Canada, a signatory to the 1998 Global Agreement, is working with other members through WP29 to develop global technical regulations (GTR's). Once a GTR has been approved (by the Executive Committee of the Global Agreement), Canada will undertake to amend its regulations to incorporate the regulation.

The department has recognized the need for such regulatory efficiency and there are now examples of legislation, such as the *Transport Dangerous Goods Act* and the *Canada Shipping Act, 2000*, with wider powers of incorporation by reference. Transport Canada proposes to seek similar authority for the MVSA.

Such authority would also allow U.S. motor vehicle regulations, which affect national as well as multi-national manufacturers, to be incorporated without change. This would help communication with the global vehicle manufacturing industry where parts of complex technical regulations, such as elaborate testing procedures, need to be identical so that they can be replicated anywhere in the world, with clarity and consistency.

- **Interim orders:** The 1993 amendment to the Act introduced an interim order intended to allow compliance with new rules of a foreign government, normally the U.S., for a period of time until similar Canadian regulations can be put in place. This provides an efficient mechanism to provide enhanced safety benefits to Canadians through the early adoption of new safety requirements. Although the interim order has been used, its one-year life is impractical in view of the time it takes to revise a regulation. It is proposed, therefore, to seek interim orders that could apply for periods of time longer than a year, so as to provide the benefit intended by this procedure.

- **Exemptions:** The current exemption provisions of the Act were modeled on the U.S. equivalent. The provisions are very specific, very limited, and company specific, and in the past, there have been very few exemptions granted. It is proposed to eliminate the category of financial hardship to a company as a reason for requesting an exemption since this provision has never been utilized, and is not an appropriate reason for deviating from the requirements of a safety standard. The current need to respond efficiently to rapid technological innovation, while maintaining or improving the level of safety, requires that additional flexibility be applied to the exemption process. In this respect, it is proposed to:
 - (a) prescribe the process of granting an exemption, including the means of publication of exemptions, in addition to the current requirements prescribing the form in which an exemption is to be requested;
 - (b) provide for an exemption on an industry-wide basis as well as the current company-specific exemption;
 - (c) provide for an exemption to be approved by the Minister or by a delegate, rather than the current requirement for approval by the Governor in Council; and
 - (d) provide for exemptions to apply to equipment for which standards are prescribed, in addition to vehicles only, as is presently the case.
- **Petition for reconsideration:** The U.S. regulatory process provides for a “petition for reconsideration” after a final rule has been issued. Vehicle manufacturers and importers have suggested that a parallel system should be available in Canada. It should be noted that there is an extensive consultation process with all stakeholders in developing a Canadian regulatory proposal. Official notice of changes to regulations are required through publication in Part I of the Canada Gazette. On substantive issues, prior to publication in the Canada Gazette, consultation is undertaken through regular meetings with industry and other stakeholders. There are opportunities for comment at all stages in the regulatory process prior to a regulation being issued. The Canadian consultation process is less constrained and more comprehensive than that provided by U.S. law and obviates the need for subsequent reconsideration of a regulation. Furthermore, the fact that the decision to adopt a Canadian regulation is subject to due Parliamentary process makes it inappropriate to seek any measure equivalent to a U.S. petition for reconsideration. Therefore no change is being proposed in this regard.
- **Process-based standards:** There are instances where a design or performance standard may restrict the development of appropriate safety devices or devices with safety implications. For example, in the area of Intelligent Transportation Systems (ITS) a wide range of electronic equipment is

being developed so quickly that performance standards development and government regulations cannot keep up. One solution would be to adopt an approach such as ISO 9004 "Quality Management Systems -- Guidelines for Performance Improvements". Such a system would specify the process elements for implementation by a manufacturer to address safety considerations in the design and development of automobiles or vehicle sub-systems. The system provides for the comprehensive and systematic application of scientific knowledge and safety tests throughout the product development cycle. The purpose of process standards would not be to establish detailed performance requirements. Rather, manufacturers would be required to articulate their safety objectives, and to implement a process to demonstrate that all necessary elements of driver-system integration are adequately addressed in their design. This type of regulation is being implemented in other domains, e.g., pharmaceuticals and medical devices. Transport Canada proposes that the Act accommodate possible future process-based regulations, the details of which, like conventional regulations, would be published in Part I and Part II of the Canada Gazette.

VEHICLE AND EQUIPMENT IMPORTATION

The Act is designed to ensure that all vehicles entering the fleet do so at or above the prescribed level of safety and that the same rules apply to individual importers as to manufacturers. In doing so, current regulations prohibit importation by individuals from any market other than the U.S. Furthermore, not all vehicles from the U.S. are currently eligible since some items of safety equipment, such as automatic seat belt systems, cannot be modified to meet Canadian requirements.

It will be some years before global technical regulations are in place such that vehicles sold at retail can move freely between different national markets. Currently, individuals are unable to import non-complying vehicles from other markets, even though such vehicles meet all the safety requirements of another country. The Department proposes to seek flexibility to allow the individual importation of vehicles in certain circumstances even though they were not originally manufactured for the Canadian market.

- **Importation from the U.S.:** Currently, U.S.-specification vehicles being imported into Canada are brought into compliance through a process operated by the Registrar of Imported Vehicles (RIV). Vehicles are inspected and a number of items of equipment, such as child restraint tether anchorages, bumpers, and daytime running lights, may be required to be added or modified. Metric scale labels are also required for such items as speedometers and odometers. Transport Canada does not propose to modify the current provisions of the Act in this regard; however, the applicable regulations may be

changed to permit the private importation of a wider range of U.S.-specification vehicles where it is determined that safety would not be compromised.

- **Importation from countries other than the U.S.:** Individuals cannot currently import vehicles from any country other than the U.S. This arrangement has proven to be unduly restrictive, one example being the inability to import scooters with advanced safety features (e.g. seat belts, roll cage) from Europe. Transport Canada is considering the provision of a mechanism whereby regulations would allow private importation from a country other than the U.S. This would provide flexibility to allow importation where, for example, equivalency of safety certification could be determined, or where a vehicle could be brought into compliance through a process equivalent to that of the Registrar of Imported Vehicles (for vehicles being imported from the U.S.).
- **Importation by foreign residents.** It is possible under Customs procedures for a vehicle to be imported into Canada by a foreign resident, in which case there is no responsible person within reach of Canadian law. Transport Canada proposes that vehicle importation, other than temporary importation, must be conducted by a Canadian resident, or by a Canadian agent of service.
- **Temporary importation:** Transport Canada proposes to broaden the scope of regulations that define the circumstances under which temporary importation would be allowed. The category of exception for “other similar purposes”, which was removed in 1993, may be reinstated. This is required to cover circumstances such as vehicles being brought in for filming. Currently, an individual needs to provide a declaration of their reason for temporarily importing a vehicle; however, there is no screening process in place whereby importation for a frivolous purpose can readily be refused. In order to provide an appropriate level of control, it is proposed to require an application to be made for a permit for temporary importation of a vehicle. Such a permit, when approved, would be subject to specific requirements on the disposition of the vehicle at the completion of a temporary importation period.
- **Importation of equipment:** Section 6 of the Act addresses vehicle importation by any person that is not a “company”. There is no equivalent for “equipment” so that there is no restriction on individuals importing “equipment” that was purchased in another market. No difficulties have arisen from this approach and, consequently, Transport Canada proposes to maintain the status quo and not to address personal importation of “equipment”.
- **Military vehicles:** It is proposed to allow the Canadian armed forces to import vehicles not meeting Canadian safety standards solely for military use, and to ship such vehicles inter-provincially. Resale of such vehicles to the public would not be permitted unless the vehicles were brought into compliance.

NOTICE OF DEFECT

Under the provisions of the current Act, any manufacturer or importer who becomes aware of a safety related defect in their vehicles is required to give notice of such defect to the Minister and to affected owners. This requirement has been successful in achieving the desired end results: the identification and elimination of safety defects. While the U.S. operates under a different regimen, their process is similarly successful, so that compatible programs with respect to safety related defects exist on both sides of the border. Transport Canada proposes, therefore, mainly to seek clarification of certain existing provisions and practices.

- **Safety related defect:** Other than the provision itself (Subsection 10(1)), there is no definition of a “safety related defect” in the current Act. On occasion, possible safety related occurrences have been perceived differently by consumers, manufacturers, and governments. Furthermore, the courts have expressed concerns that a clear definition of a “safety related defect” is lacking in the legislation. Transport Canada proposes, therefore, to include the following definition in the revised Act:

“safety related defect” means a deficiency in the design, construction, or functioning of a vehicle, or of equipment for which standards are prescribed, which, without prior warning, is likely to affect the safety of any person

- **Non-compliance:** Although not explicitly stated in the current Act, non-compliance with a safety standard is considered to be a defect as described in Section 10 and is, therefore, subject to the notice of defect requirement. In order to provide clarification, Transport Canada proposes that non-compliance be included as a specific criterion requiring such notice.
- **Non-safety related defect:** The U.S. government has the power to order a vehicle recall in cases where a non-compliance situation has been identified. They may also classify a specific instance of non-compliance as “inconsequential to safety” in circumstances that are deemed to pose no unreasonable risk, such that there would be no significant safety benefit from a costly recall. In Canada, any instance of non-compliance is a violation of the Act. While Transport Canada may not wish to seek penalties in cases where there is no unreasonable risk to the public, the Solicitor General must formally take the decision not to prosecute. Transport Canada proposes to seek authority for the Minister of Transport or a delegate to order that specific instances of non-compliance with safety standards pose no unreasonable risk to the Canadian public and therefore constitute non-safety related defects. Notice of such non-compliance would have to be given to the Minister who would then determine if the situation constituted a safety related or a non-safety related defect. Note that a declaration of an “inconsequential non-compliance”

in the U.S. would not necessarily be considered to be a non-safety related defect in Canada.

CERTIFICATION

Much of the discussion on regulations and standards relates to harmonization with the U.S. in consideration of the integrated Canada/U.S. manufacturing industry and a single NAFTA market. The benefits which accrue from harmonized regulations apply equally to the adoption of common certification and enforcement practices. There are, in addition, issues that apply to small and medium Canadian companies that operate primarily in a local rather than international context.

Standards and regulations harmonized with the U.S. remain subject to Canadian laws and administration. Canadian and U.S. regulatory regimes are similar in that only these two countries use manufacturers' self-certification in the application of their safety regulations. All other countries use government certification or "type approval". Reciprocal recognition by countries using this latter approach is based on the United Nations 1958 Agreement.

Self-certification places compliance responsibility on vehicle manufacturers but requires means for inspectors to determine that a vehicle complies and that the manufacturers are meeting all of their certification responsibilities. The Act provides for two approaches: firstly, Transport Canada can inspect or test selected samples of vehicles and equipment; secondly, inspectors can examine the manufacturers' certification documentation. The Act provides for regulations requiring companies to maintain certification information that would allow an inspector to establish compliance.

Transport Canada proposes the following measures to provide needed flexibility in certification requirements and to help maintain enforcement practices compatible with those in the U.S.

- **Computer aided design and virtual testing:** Computerized systems are now an integral part of motor vehicle product development, and it is important to industry that certification procedures reflect rapidly advancing applications of technology in the manufacturing process. Transport Canada proposes that the Act should permit by regulation the use of electronic certification systems where these are deemed appropriate.

- **Recognizing U.S. certification:** There are no precedents for reciprocal recognition of self-certification, and unilateral recognition of certification by a foreign country is rare. The existing Subsection 5(4) of the MVSA is an authority to unilaterally recognize certification by a foreign government. This was designed, when Transport Canada regulated vehicle emissions, to accept U.S. EPA certification as evidence of Canadian emission compliance since Canada had the same requirements as those of the U.S.

Transport Canada proposes to extend this concept to self-certification. Where the regulations so provide in relation to a prescribed standard, certification to a specific U.S. standard would be considered acceptable as evidence of certification in Canada, provided such certification documentation is maintained and furnished in the prescribed form and manner in relation to the design, manufacture, testing and field performance of the vehicle or equipment. This would remove uncertainty where certification requirements may be different.

A specific example would be a U.S. phase-in over several vehicle model years, requiring specific levels of compliance based on U.S. sales. In such a case, self-certification by manufacturers of the applicable levels of compliance would allow for the simultaneous introduction of similar models throughout Canada and the U.S. This would obviate the need to develop and monitor separate Canadian phase-in requirements – obligations that could needlessly inhibit the timely introduction of new technologies and safety features.

- **Recognizing third-party certification:** For small and medium companies, there may be an advantage for government and industry to certify through an accredited third party, such as the Canadian Standards Association. This would facilitate testing and certification for companies which do not have sufficient resources to undertake the required process in-house. The use of accredited third parties would also provide more uniform certification methods and reduce the department's auditing burden. Transport Canada proposes that the Act authorize requiring or accepting certification by an accredited third party.
- **National safety mark.** The National Safety Mark is a trade mark that is the exclusive property of Her Majesty in right of Canada, the use of which is authorized and administered by the Minister of Transport. It is used to denote that a vehicle is in compliance with the applicable Canadian Motor Vehicle Safety Standards. The requirements of the current Act are not sufficiently flexible to readily accommodate the combination of the national safety mark with similar marks required by other federal government departments, and do not allow alternative marking systems, which may become important as evolving technologies are adopted by the transportation industry. Transport Canada proposes that in the revised Act, the national safety mark should be defined by regulation, so as to allow changes to the prescribed form of the mark to be made in an efficient manner.

ENFORCEMENT

The 1993 amendments changed provisions for seizure and forfeiture by replacing some sections with a new general reference to the (then) recently amended Criminal Code. The objective of the Act is to have all new vehicles on the road comply with the specified safety standards. On occasion, exercising seizure or forfeiture powers has proven difficult and Transport Canada proposes to seek extended or clarified powers for inspectors:

- **Search:** Transport Canada proposes to broaden the authority for automotive inspectors to enter places where vehicles, components or equipment may be located in order to determine if there is any contravention of the Act. This would include conducting investigations to identify instances of non-compliance, to determine the collision performance of vehicle safety systems, and to identify safety related defects. Currently, entry is limited to locations holding vehicles or equipment owned by companies or importers, or vehicles on the premises of such agencies. It is proposed that authority be provided for inspectors to enter any place which may reasonably be believed to be holding a vehicle, a vehicle component or equipment which may be subject to the provisions of the Act.
- **Seizure:** Where non-compliance is identified, a manufacturer or importer would normally be expected to take immediate steps to make the necessary modifications to bring the vehicles or equipment into compliance. Where no remedial steps are taken, it is proposed to amend the Act to allow inspectors to seize the non-complying vehicles or equipment. These would then be detained either for use as evidence in a prosecution, or to ensure that they do not enter the marketplace in a non-complying condition.
- **Forfeiture:** The current Act does not address forfeiture and, as a result, a court can fine a manufacturer or importer, but the non-complying vehicles are not necessarily brought into compliance or removed from the road. It is proposed to seek provisions in the revised Act to allow the judiciary to order that non-complying vehicles be forfeited in order to prevent their further use.
- **Penalties:** Transport Canada proposes to review the maximum penalties, some of which are very low compared with the value of the vehicles in question. The possibility of specifying minimum penalties will also be investigated. The penalties will be examined in the light of recent federal legislation.
- **Inspectors giving testimony:** Transport Canada proposes to seek a restriction on *Motor Vehicle Safety Act* inspectors testifying in civil suits. Such restrictions are found in other legislation, for example, the *Railway Safety Act*. The expertise of the Department's inspectors causes them to be in demand, and their participation in such litigation causes a drain on scarce resources and offers no demonstrable safety benefits. A similar provision will be sought with

respect to other implicated professional staff in the Road Safety and Motor Vehicle Regulation Directorate.

COMMENTS

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Summary of proposals by section of the current Act

Section	Current Status	Proposal
Section 1	Long title	State the broad objectives for the regulatory authorities and the federal government's role in national road safety programs
Section 2	The definition of manufacture, in relation to a vehicle, includes any process of assembling or altering the vehicle prior to its sale to the first retail purchaser	Change the definition of manufacture to include any process of assembling or altering the vehicle prior to its completion for the intended final use Add definitions for a used vehicle and for a safety related defect
Section 2		Ensure that possible future regulations relating to vehicle security, and process-based regulations (e.g. ISO 9004), could be implemented
Section 3	The use of a national safety mark can only be used under the authority of the Act	Provide for a broader-ranging version of the national safety mark, if the interests of other government departments can be accommodated.
Section 4 and Section 7		Provide for regulations to allow the importation and inter-provincial shipment of military vehicles

Section 5(4)		Specify within a regulation that certification carried out according to the laws and requirements of the U.S. will meet the requirements for Canadian certification
Section 5(4)		Specify within a regulation that certification by a third party will meet the certification requirements of the regulation
Section 7	An individual must declare the intended use of a vehicle being temporarily imported for certain purposes but no conditions apply to the period of such importation	Require a permit and specify conditions for vehicles temporarily imported for special purposes
Section 7(2) and 7(4)	Individuals cannot import a vehicle manufactured in a country other than the U.S.	Allow for regulations setting-out alternative standards for vehicles imported from the U.S. or another country
Sections 5 and 6	Under Customs' procedures, a vehicle may be imported by a foreign resident who may not be subject to Canadian law	Require that a vehicle be imported by a Canadian resident or by a Canadian agent of service
Section 9	<p>Exemptions must be requested in a specified form</p> <p>The criterion of financial hardship has never been used to request an exemption</p> <p>An exemption applies to a single company</p> <p>Exemptions are approved by the Governor-in-Council</p> <p>Exemptions apply to vehicles</p>	<p>Prescribe the process by which exemptions may be granted</p> <p>Eliminate the criterion of financial hardship as it is an inappropriate reason for deviation from a safety standard</p> <p>Provide for exemptions to be applicable industry-wide</p> <p>Provide the Minister with the authority to grant an exemption</p> <p>Provide for exemptions to apply to both vehicles and equipment</p>

<p>Section 10(1)</p>	<p>Non-compliance with a safety standard is considered to be subject to notice of defect</p>	<p>Include definition of safety related defect. Specify that non-compliance with a safety standard is a criterion for notice of defect.</p>
<p>Section 10(1)</p>	<p>Non-safety related defects which do not pose any unreasonable risk to the public are a violation of the Act and the Solicitor General must decide not to prosecute</p>	<p>Ensure that the notice of defect provision includes the concept of unreasonable risk in a manner consistent with U.S. Title 49 Chapter 301 Section 30102</p>
<p>Section 12</p>		<p>Provide for regulations to incorporate by reference technical regulations from other jurisdictions such as U.S. safety standards and future Global Technical Regulations</p>
<p>Section 12</p>	<p>Technical Standards Documents (TSD) must be renewed every five years irrespective of whether any change to the TSD has occurred</p> <p>Only revisions of form and reference may be made to TSDs without changing the regulation</p> <p>Any changes to a TSD which conflict with specific provisions of a Canadian regulation require republication of the entire regulation</p>	<p>Remove the five year sunset provision on Technical Standards Documents</p> <p>Allow a wider range of revisions without making changes to the regulation</p> <p>No requirement to pre-publish consequential regulatory amendments where a TSD has been updated</p>
<p>Section 13</p>	<p>An Interim Order allowing early compliance with new safety provisions of another jurisdiction has a life of one year</p>	<p>Increase the life of an Interim Order to five years to allow reasonable time for a revised Canadian regulation to be developed and implemented</p>

Section 14		Inspectors and other professional staff not to be required to testify in civil litigation
Section 16	Inspectors' authority to search for non-complying vehicles and equipment is limited to the premises of companies and importers owning or storing such items	Broaden the inspectors' powers to conduct investigations in any location where vehicles and equipment subject to the Act may be located
Section 16	Instances of non-compliance may result in financial penalties but the vehicles involved may not necessarily be brought into compliance or removed from the Canadian marketplace	Provide for forfeiture of non-complying vehicles or equipment that are neither exported from Canada nor brought into compliance with the regulations
Section 16	Maximum penalties are often low given the value of the non-complying vehicles involved	Review penalties, including the possible imposition of minimum penalties, in the light of other federal legislation
Section 20		Specify safety-related data and information to be provided to the Minister from provincial governments and other agencies
Section 20	Voluntary motor vehicle fuel consumption program	Authorize the Minister to require manufacturers to submit data related to the motor vehicle fuel consumption program
Schedule 1	Schedule 1 contains a list of equipment which is designed for use in or on a motor vehicle	Prescribe by regulation the list of equipment which is designed for use in or on a motor vehicle