



MOTOR VEHICLE SAFETY OVERSIGHT PROGRAM GUIDELINES ON COMPLIANCE AND ENFORCEMENT

This document is intended to provide guidance only. It does not in any way supersede or modify the *Motor Vehicle Safety Act (MVSA)* or the attendant regulations. In the event of an inconsistency between this document and the MVSA and/or the regulations, the MVSA and the regulations prevail.

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1 OBJECTIVE

Road transportation is an integral part of the daily lives of most Canadians. These Guidelines on Compliance and Enforcement are intended to inform stakeholders (industry, individuals, other governments and Motor Vehicle Safety employees) who share responsibility for the safety of regulated vehicles and equipment about what may be expected from Transport Canada officials who enforce the *Motor Vehicle Safety Act* (MVSA) and its regulations. This document also clarifies some of the responsibilities of these stakeholders and what is expected from them.

2 AUTHORITIES AND JURISDICTIONS

Legislative Authorities

The [Motor Vehicle Safety Act](#) was enacted 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 applies to prescribed classes of vehicles¹, tires and equipment for use in the restraint of children and disabled persons.²

Jurisdictions

Federal, provincial and territorial levels of governments share the responsibility for motor vehicle safety oversight. The federal government is responsible for the safety standards for new and imported vehicles of prescribed classes, tires, and equipment for use in the restraint of children and disabled persons. The provinces and territories are responsible for driver licensing, vehicle registration and operational use.

3 DEFINITION OF OVERSIGHT

Oversight encompasses the activities that support the systematic promotion, monitoring, and enforcement of compliance with legislative and regulatory requirements administered by Transport Canada governing safety and security and that contribute to departmental strategic objectives. The Motor Vehicle Safety Oversight Program is comprised of activities that support the promotion, the verification and the enforcement of compliance with the *Motor Vehicle Safety Act* and its attendant regulations.

4 GUIDING PRINCIPLES

The following principles guide the Motor Vehicle Safety Directorate's approach and underpin the policies, processes and procedures for its oversight activities:

1. *Safety and Security Focus* – The Motor Vehicle Safety Oversight program is focused on protecting Canadians and the travelling public against loss of life or damage to health, property and the environment resulting from the use of vehicles and equipment;

¹ See [Section 4](#) of the Motor Vehicle Safety Regulations. The Canada Motor Vehicle Safety Standards applicable to prescribed classes of vehicles and associated components can be found in Schedule III of these regulations.

² See Schedule I of the [Motor Vehicle Safety Act](#).

2. *Systems and Risk-based Approaches* – The Motor Vehicle Safety Oversight program reviews and analyzes safety risks systematically and proactively to focus on areas that present the greatest concern and to maximize program effectiveness and efficiency. Transport Canada’s enforcement approach is based on risk, using a clear process to identify, assess and take steps to reduce risk. When there are reasons to believe that there could be risks to safety or environmental impacts, enforcement action will be taken even without full certainty;
3. *Graduated Approach (clear, consistent, and fair)*: Enforcement responses should normally escalate in severity to achieve appropriate results by considering the assessed risk (likelihood and impact), and in accordance with applicable legislative and regulatory provisions.
4. *Clarity and Consistency* – The Motor Vehicle Safety Oversight program is managed and delivered impartially and consistently across Canada and is supported by clear, consistent guidance to employees, supervisors and managers, and to the regulated industry and individuals.
5. *Fairness*: Administrative actions or decision-making which materially and adversely affects the rights or legitimate expectations of any person will be conducted in a fair and consistent manner, without pre-conception or bias;
6. *Collaboration and Engagement* – Strong partnerships and effective collaboration between the Motor Vehicle Safety Oversight program and industry, provincial and territorial authorities, other federal government entities, non-governmental organizations and foreign governments (NHTSA) are embedded in everyday business and are key to fostering success;
7. *Continuous Improvement* – The Motor Vehicle Safety Oversight program uses quality management processes, performance measurement and continuous learning to augment the effectiveness, efficiency and consistency of its activities; and
8. *Predictable*: Actions are predictable, are based on well-defined standards and use common procedures and tools.

5 ROLES AND ACCOUNTABILITIES

Minister of Transport

The Minister of Transport has responsibility for the administration and enforcement of the *Motor Vehicle Safety Act* including the power to order a company to give notice of non-compliance or defect in the manner specified in the order.

The Act does not confer discretionary powers to the Minister of Transport nor to other federal government officials to negate the requirements of the law.

Regulated Entities

The *Motor Vehicle Safety Act* applies to; companies that manufacture regulated vehicles or vehicle equipment in Canada; distribute vehicles or equipment obtained from those manufacturers to other persons for the purpose of resale; importers of regulated vehicles or equipment into Canada for the purpose of sale; persons who import regulated vehicles sold at the retail level in the United States; and regulates the temporary importation of non-compliant vehicles and equipment.

Motor Vehicle Safety Directorate

The Motor Vehicle Safety Directorate is responsible for the administration and enforcement of the *Motor Vehicle Safety Act*. The Motor Vehicle Regulations Enforcement Branch conducts post-market surveillance and oversight of the regulated community through programs of compliance inspection, testing, corporate audits, and the investigation of alleged safety-related defects and recall monitoring.

Regulatory Enforcement Inspectors

Inspectors are designated by the Minister and carry a certificate of designation and a badge, which they must produce upon request. They have the most frequent and regular contact with entities regulated by the *Motor Vehicle Safety Act*. Their role is to:

- promote compliance with the *Motor Vehicle Safety Act* by providing information on the regulations and safety standards (such as to clarify the requirements within a specific standard or test procedure). Verify compliance with the regulations by conducting selective (risk-informed) programs of inspections and testing of vehicles, tires and equipment used in the restraint of children and disabled persons;
- conduct audits and reviews of companies' self-certification documents and other relevant records;
- ensure that companies are meeting their statutory and regulatory obligations in the event of a safety-related defect or a non-compliance;
- take action to prevent non-complying vehicles or equipment with safety deficiencies from entering the market;
- use prescribed risk assessment methodologies and a graduated approach to guide enforcement responses related to non-compliances with the Act or Regulations;
- conduct administrative or penal investigations to obtain evidence, assemble requisite documentation and make recommendations as appropriate;
- prepare documentation and reports recommending that the Minister, by order, require a company to give notice of non-compliance in the manner specified in the order; and
- prepare a case report to recommend prosecution to the Public Prosecution Service of Canada (PPSC), if the company fails to give notice of non-compliance, pursuant to Section 10.1; assist the PPSC in the preparation of court proceedings; and, appear as witnesses during those proceedings.

Inspectors do not act as consultants to importers, Canadian or foreign manufacturers concerning the self-certification requirements of the *Motor Vehicle Safety Act*, and do not provide product-specific advice beyond their audit and enforcement function or role.

An inspector may not be compelled to give testimony in any civil suit, with regard to information obtained by them in the discharge of their duties, without the Minister's written permission.

Defect Investigators

Certain inspectors specialize in the documentation of public complaints and in the administrative defect investigation of alleged safety-related defects. Their role is to:

- document public complaints and gather information from various sources concerning potential safety-related defects associated with the design, construction or functioning of regulated vehicles or equipment;
- inform companies about the complaints and the results of their administrative defect investigation;
- ensure that companies issue a Notice of Defect, in accordance with the procedures established by regulations, when a safety-related defect is confirmed;
- proceed with an administrative investigation to determine whether the company was aware of the defect and failed to act within the time required;
- prepare documentation and reports recommending that the Minister, by order, require a company to give notice of a defect in the manner specified in the order; and
- prepare a case report to recommend prosecution to the Public Prosecution Service of Canada (PPSC) if the company fails to notice of defect, pursuant to Section 10, and/or is found to not have acted in the time required; assist the PPSC in preparing for court proceedings; and, appear as witnesses during those proceedings.

Inspectors do not intervene or negotiate with companies on behalf of individual consumers with respect to service, warranties or other disputes.

An inspector may not be compelled to give testimony in any civil suit, with regard to information obtained by them in the discharge of their duties, without the Minister's written permission.

Attorney General and the Public Prosecution Service of Canada

The Attorney General of Canada is responsible for all litigation relating to the *Motor Vehicle Safety Act*. The Public Prosecution Service of Canada (PPSC) fulfills the responsibilities of the Attorney General of Canada in the discharge of his/her criminal law mandate by prosecuting criminal offenses under federal jurisdiction. Transport Canada enforcement officials present information and make recommendations regarding prosecutions to the PPSC, which decides whether to proceed with a prosecution.

The Federal Court

The Federal Court renders the final decision on the outcome of a prosecution for violations of the *Motor Vehicle Safety Act*, including what penalty to impose. The Federal Court would also review the Minister's decision to issue an Order.

6 DEMONSTRATION OF COMPLIANCE (Self-Certification Regime)

National Safety Marks

National Safety Marks (NSM) are used to indicate the compliance of a vehicle or equipment with the Act and attendant regulations and safety standards. National Safety Marks (NSM) are defined in [section 2](#) and [Section 3](#) the *Motor Vehicle Safety Act*. The Minister of Transport authorizes their use and any company that intends to use a NSM must apply to the Minister to obtain this authorization³.

³ See [section 3](#) of the Motor Vehicle Safety Act.

Compliance certification to applicable standards and regulations is the responsibility of the manufacturer of the vehicle or equipment via a "self-certification" regime. Vehicle manufacturers affix a compliance label⁴ to their vehicles to indicate that the vehicles comply with the applicable standards. New vehicles manufactured in Canada and shipped inter-provincially must include a National Safety Mark (NSM) drawing on or beside the compliance label. Imported vehicles may use a prescribed statement on the compliance label instead of a National Safety Mark. Tires manufactured in Canada and shipped inter-provincially do not require a compliance label but must have a National Safety Mark moulded into them. Imported tires must be accompanied by a written declaration from the manufacturer or its duly authorized representative that the tire conforms to the prescribed standards for a tire of that class at the time the tire was manufactured. Restraint systems and booster seats, whether imported or manufactured in Canada for inter-provincial shipment, must have a National Safety Mark and a product information label affixed to them.

Certification Testing

The Canada Motor Vehicle Safety Standards (CMVSS) prescribe the minimum performance levels that vehicles and equipment must meet. Each CMVSS will include, either directly within the standard or indirectly by reference to other documents, the performance requirements against which regulated vehicles and equipment are to be measured and compliance determined. These other documents may include Transport Canada-approved Motor Vehicle Safety Test Methods, Technical Standards Documents or third-party published test methodologies. Such documents are essential in clarifying the specified tests and testing methodologies to be used in certification testing.

Engineering analyses, computer simulations and other methodologies are useful tools in the design and development of vehicles and equipment; however, they are not substitutes for the prescribed tests and testing methodologies. Companies should ensure that their certification testing is conducted at levels slightly higher than the standard to allow for test variables and manufacturing tolerances.

Transport Canada considers the results obtained in certification testing conducted as per specified tests and testing methodologies to be the only unequivocal way to substantiate the compliance of the vehicles and equipment with the prescribed standards. Conversely, certification testing conducted using tests and testing methodologies other than those prescribed is not considered adequate to enable a Transport Canada inspector to determine the compliance of the vehicles or equipment.

While companies must be able to demonstrate the compliance of all vehicles or equipment they manufacture or import, this does not necessarily require that every product be tested. For example, demonstration of compliance for various models of vehicles built on a common platform and sharing identical critical features can be achieved by testing (a) 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 direct 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.

⁴ See [section 6](#) of the Motor Vehicle Safety Regulations.

Records of Certification Testing

Under the *Motor Vehicle Safety Act*, a company is prohibited from applying a national safety mark to any vehicle or equipment, selling any vehicle or equipment to which a national safety mark has been applied, or importing into Canada any vehicle or equipment of a prescribed class unless, amongst other requirements, records are maintained and furnished as provided for in the regulations, in relation to the design, manufacture, testing and field performance of the vehicle or equipment. These records must enable an inspector to determine whether the vehicle or equipment conforms to all prescribed standards applicable to it and facilitate the identification and analysis of safety-related defects.

[Section 10](#) of the Motor Vehicle Safety Regulations, [section 9](#) of the Motor Vehicle Tire Safety Regulations, and [section 106](#) of the Motor Vehicle Restraint Systems and Booster Seats Safety Regulations require that a company maintains records that show that the vehicles and equipment it manufactures or imports conform to all prescribed standards applicable to them, and retains those records for at least five years after the date of manufacture or importation. These records must be presented on request and must enable an inspector to determine compliance.

Vehicle Importation

Vehicles Purchased at the Retail Level in the United States

The *Motor Vehicle Safety Act* requires that all vehicles imported into Canada comply with the *Motor Vehicle Safety Regulations* and associated Canada Motor Vehicle Safety Standards (CMVSS). However, [subsection 7\(2\)](#) of the Act provides an exception whereby vehicles purchased at the retail level in the United States that are not in full compliance with the CMVSS may be imported into Canada provided the vehicles were originally manufactured to comply with all applicable U.S. federal laws and can be modified to comply with the CMVSS. In 1995, Transport Canada contracted with a private company to develop and operate the Registrar of Imported Vehicles (RIV) program. Once modified, vehicles must be inspected by the RIV, which is responsible for inspecting and verifying that all necessary modifications to bring the vehicle into CMVSS compliance have been completed for vehicles being imported into Canada from the United States.

Detailed information on the importation process, questions and answers, and a list of vehicles admissible from the United States is available from the Registrar of Imported Vehicles at www.riv.ca and from [Transport Canada's importation](#) web page.

Vehicles manufactured and designed for sale in other countries are typically not constructed to meet North American standards, nor can they be modified to meet Canadian requirements. A manufacturer must certify a vehicle at the time of main assembly, which makes it impossible for a company to modify a vehicle and re-certify its compliance after the date of manufacture.

Vehicles Manufactured in Foreign Countries to Meet Canada Motor Vehicle Safety Standards: TC/CBSA Pre-Clearance Programs - Appendix F and Appendix G

Transport Canada established the [Appendix F and Appendix G](#) pre-clearance programs to enable Canadian commercial importers and foreign original equipment manufacturers (OEM) that pose a low risk of non-compliance to use a streamlined process for importing new, fully complying Canadian-specification vehicles into Canada, by conveying shipments through the Canadian border with minimal inspection and scrutiny.

Vehicles imported via pre-clearance must have been purchased directly from an OEM, have yet to be sold at retail (never been owned, titled or licensed) and have been certified by the OEM to comply with the applicable Canada Motor Vehicle Safety Standards (CMVSS).

The Appendix F program is available to Canadian commercial importers importing more than 2500 vehicles per year. Importers listed on Appendix F are not restricted to vehicles of a particular class and are able to import any vehicle regulated by the Act. These commercial vehicle importations are documented in accordance with established Canada Border Services Agency (CBSA) and other government departments' commercial importation protocols.

The Appendix G program is available to Canadian commercial importers who import fewer than 2500 vehicles per year. Only those OEMs and vehicle classes that have qualified for pre-clearance may be imported via pre-clearance. Prescribed classes of vehicles from OEMs that are not on Appendix G may be imported via the Case-By-Case importation process.

The pre-clearance programs have the following objectives:

- Allow for the efficient movement of compliant vehicles across the border;
- Ensure vehicles are imported by a commercial entity in accordance with the *Motor Vehicle Safety Act*;
- Provide Transport Canada with accurate and current documentation regarding the compliance of the vehicles being imported and allow for the effective oversight of these vehicles;
- Allow the importation process to operate seamlessly with CBSA's Single Window Initiative (SWI);
- Allow Transport Canada to track, in real time, importation transactions as needed.

Even though CBSA recognizes non-resident importers (NRI), the *Motor Vehicle Safety Act* is domestic legislation that only has force and effect in Canada. Therefore, non-resident importers are not eligible for Transport Canada's pre-clearance programs. Importers of vehicles via the pre-clearance process must have a corporate presence in Canada. It is important to recognize that Appendix G is an administrative process.

"Importer" is not defined in the Act. For the purpose of enforcing the *Motor Vehicle Safety Act* and taking enforcement action, TC considers the importer to be the importer as determined by CBSA.

Case-by-Case Importation

A company who is not in the pre-clearance program, may still import regulated vehicles by demonstrating compliance on a case-by-case basis, as explained on Transport Canada's website under the heading "[Importing Vehicles Case-by-Case.](#)"

7 COMPLIANCE PROMOTION

Transport Canada undertakes various measures to promote compliance with the *Motor Vehicle Safety Act*. These measures include:

- communication and publication of information on the websites of Transport Canada, the Registrar of Imported Vehicles (RIV) and the Canada Border Services Agency (CBSA);

- providing information to companies and individuals on technical issues (such as clarifying the requirements within a specific standard or test procedure) to assist them in meeting their obligations under the *Motor Vehicle Safety Act*.

To promote the understanding of the regulations respecting the importation of vehicles from the United States, the Registrar of Imported Vehicles (RIV) program operates a toll-free telephone system (1-888-848-8240) and a website (www.riv.ca) where prospective importers can obtain information on the importation of vehicles. The Registrar is operated by a private company under contract with Transport Canada.

Transport Canada's information agents handle inquiries on importation from other countries and other general vehicle safety topics through a toll-free telephone system (1-800-333-0371). Information is also available through [Transport Canada's Motor Vehicle Safety](#) web page.

8 OVERSIGHT PROGRAM

Monitoring and enforcement of industry's responsibilities under the *Motor Vehicle Safety Act* and regulations and other industry commitments (such as voluntary agreements or Memoranda of Understanding) takes three main forms, which provide the basis on which compliance is verified:

- Compliance Testing: inspection and testing of regulated vehicles, tires and equipment for use in the restraint of children and disabled persons;
- Compliance Audits: auditing companies, which includes reviewing certification documents, quality-control procedures, production capabilities and line operations, as well as examination of products; and
- Defect Investigations and Recalls: documenting and analyzing public complaints alleging safety-related defects and reviewing companies' Notice of Defect procedures and specific corrective measures (recalls).

An essential goal of the Motor Vehicle Safety Oversight program is to promote compliance. This is done by ensuring that industry and the public can access the information necessary to understand the roles and responsibilities of regulated entities and the requirements imposed on them by the Act and regulations. This information is made available through [Transport Canada's Motor Vehicle Safety](#) web page and through toll-free telephone systems. Information agents can assist callers by providing explanations or by directing them to the appropriate source of information.

Compliance Testing

Vehicles and equipment are selected for compliance inspection and 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, new product line, defect complaint history, and past performance on tests.

Transport Canada's compliance tests are performed at or slightly below the requirements stated in the safety standards to ensure that the tests do not exceed the regulatory requirements, accounting for test variables. For example, vehicle barrier compliance tests would typically be performed between 55.5 to 55.9 km/h, not the 56 km/h required by the standard.

Note: Any testing done by the manufacturer to demonstrate compliance is called certification testing. Companies should ensure that their certification tests are conducted at levels slightly higher than the standard to allow for test variables.

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

Generally, test results outside a normal statistical variation will be considered sufficient evidence of failure. Marginal failures may 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 reviewed to establish the cause of failure. It is common practice to have company representatives present during confirmation testing.

If there is a difference of opinion between a company and Transport Canada officials concerning the existence of a non-compliance at the completion of the examination following a test failure, Transport Canada officials may recommend that the Minister, by order, require a company to give notice of non-compliance in the manner specified in the order. Alternatively or simultaneously, a case file may be prepared and submitted to the Public Prosecution Service of Canada (PPSC) with a recommendation to initiate legal action against the company for certifying, importing or selling a product that is not in compliance with the Canada Motor Vehicle Safety Standards (CMVSS).

Compliance Audits

The *Motor Vehicle Safety Act* requires that records be maintained and furnished as provided for in the regulations in relation to the design, manufacture, testing and field performance of the vehicle or equipment for the purpose of enabling an inspector to determine compliance. Also, in the case of equipment, the company must maintain a registration system as provided for in the regulations by which any person who has purchased equipment manufactured, imported or sold by the company and who wishes to be identified may be identified. Regulations require that those records be maintained for a period of at least five years. Failure to maintain such records constitutes an offense.

Audits are conducted both on major companies that manufacture or import large volumes of vehicles or equipment, on smaller companies that manufacture or import fewer vehicles or equipment, and some companies that manufacture or import on a “one off” basis. Inspectors do not approve products nor certify that a product is compliant. This responsibility rests with the company.

In the case of major companies, audits generally focus on reviewing certification records, quality-control procedures and data, and other related documents. Representative sample vehicles and equipment may be visually inspected on-site to determine their compliance where such determination is possible. Compliance testing can be used to verify conformity where a visual inspection is not suitable. For example, the number and location of the required lamps on a vehicle can be visually inspected, but the light output and orientation (the photometry) of those lamps must be tested in a laboratory.

In the case of smaller companies, the primary method of assessing compliance is by reviewing a company’s compliance testing records. Greater emphasis is placed on inspecting vehicles, as experience has shown that variations between models are more likely in a smaller company.

In Canada, proof of compliance must be established by testing according to the standards. Engineering analysis and judgment, no matter how well documented, are insufficient by themselves to demonstrate compliance with the MVSA, and must be supported by appropriate test records. Manufacturers and commercial importers must be able to produce records relating to the vehicle design, manufacture, testing or field performance upon request.

While Transport Canada inspectors generally contact companies ahead of time and make arrangements to visit at a mutually convenient time, unannounced spot checks may be made. Companies should be prepared to supply the necessary information, make vehicles or equipment available for inspection, and provide all reasonable assistance to enable the inspector to carry out his/her duties.

Inspectors may also attend trade shows where many products are on display at one time and use the information gathered to initiate an audit. This may generate a subsequent visit to 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 conducted 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 sample. This type of program has proven cost-effective for certain limousine, wheelchair-accessible vehicle, truck and air-braked trailer manufacturers.

Similarly, in the case of vehicles manufactured in multiple stages, Transport Canada is prepared to accept certification testing performed by first-stage manufacturers (also known as Original Equipment Manufacturer (OEM)) or component suppliers of products such as lamps, axles, brakes, etc., provided that intermediate- and final-stage manufacturers do not modify the vehicle or component and negate the original certification. For example, an intermediate- or final-stage manufacturer cannot use the certification documents of the first stage manufacturer if it completes a vehicle in a manner whereby it exceeds the gross vehicle weight established by the first-stage manufacturer. Evidence must be supplied that the finished product is within the parameters established by the OEM to apply the original certification. OEM records need not be held by the intermediate- or final-stage manufacturer.

Defect Investigations and Recalls

The *Motor Vehicle Safety Act* requires that a company that manufactures, sells or imports any vehicle or equipment of a prescribed class, 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 as provided for in the regulations.

A safety-related defect is not defined in the MVSA or regulations. However, the criteria below have been developed to describe the concept based on field experience and several court rulings in Canada and the United States. Much of the following wording is extracted from actual court decisions.

- “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 that 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;
- 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 documents and analyzes complaints alleging a safety-related defect and monitors a company's compliance with the Notice of Defect provisions of the *Motor Vehicle Safety Act* in cases where such a defect is identified. Complaints come from the general public, police agencies, Transport Canada collision investigators, inspectors and researchers, coroners, consumer agencies, and provincial and territorial transportation departments. Complaints can be submitted [on-line](#) or through a toll-free number (Defect Complaints and Recalls Hotline 1-800-333-0510).

All complaints are reviewed and screened to determine the need for further defect investigation. The details of each complaint are captured and maintained in an electronic database. With the complainant's permission, a copy of the complaint is forwarded to the company in question to ensure that it is aware of the event. Information on defect investigations is available on the web page of Transport Canada's Defect Investigations and Recalls Division at www.tc.gc.ca/recalls.

Public complaints and subsequent defect investigations are classified into six levels to differentiate the amount of effort involved and the resources dedicated to their documentation, assessment and investigation. The assessment, analysis or investigation of these complaints may lead to the determination that no safety defect exists, to a corrective action by the manufacturer or to legal proceedings against the company. Transport Canada is not a consumer agency or a third party investigation group for civil matters. Only safety-related issues are treated.

The levels of public complaint files and investigations are:

- | | | |
|-------------------------------|---|-----------------------|
| • Information Complaint (IC) | } | Complaints |
| • Complaint Analysis (CA) | | |
| • Issue Assessment (IA) | } | Defect investigations |
| • Preliminary Evaluation (PE) | | |
| • Engineering Analysis (EA) | | |
| • Ministerial Order | | |
| • Prosecution File (PB) | | |

Under [section 10](#) of the *Motor Vehicle Safety Act*, the responsibility for communicating the presence of a safety-related defect rests with the company. However, Transport Canada defect investigators will independently gather evidence to try to determine the presence of a safety-related defect based on public complaints and other reports. If a safety-related defect is believed to exist, Transport Canada will search for evidence to confirm its position through vehicle or component inspection, testing and other proven investigative techniques.

In case of disagreement between a company and Transport Canada officials concerning the existence of a safety-related defect, Transport Canada officials may recommend [that](#) the Minister, by order, require a company to give notice of a defect in the manner specified in the order. Alternatively or simultaneously, a case-file detailing the alleged non-compliance with the Notice of Defect provision of the *Motor Vehicle Safety Act* may be prepared and submitted to the Public Prosecution Service of Canada with a recommendation for legal action.

Further to the receipt of a Notice of Defect (commonly referred to as a recall notice) by a company, Transport Canada will notify provincial and territorial authorities, gather and maintain all information necessary to inform the public, and update the [Motor Vehicle Safety Recalls Database](#) to provide the details of the recall. Transport Canada may analyze the effectiveness of the corrective measures by auditing a number of corrected vehicles, the technical adequacy of the repair, the methods used to contact owners, and the systems employed by the company to provide reliable data as required by the *Motor Vehicle Safety Act*.

9 RESPONSES TO VIOLATIONS

Transport Canada inspectors will examine every suspected violation of the *Motor Vehicle Safety Act* of which they are aware. The selection of the enforcement response will be supported by risk assessment and graduated approach methodologies.

Responses being used to deal with violations of the *Motor Vehicle Safety Act* include administrative actions and prosecution.

Administrative Actions

Warnings

- Warnings will normally be given in writing and will contain the section(s) of the Act or regulations involved; a description of the alleged offense; a time limit, if appropriate, within which the company should address the issue, and a reference to the sections of the Act dealing with offences and punishment.
- In some high-risk situations or in cases where public cooperation is needed, enforcement officials may issue public warnings in the form of safety or consumer advisories and news releases. In these cases, the company will be notified of the action prior to the issuance of the public warning.

Import restrictions - with the cooperation of the Canada Border Services Agency, vehicles or equipment presented for importation may be refused entry into Canada until their compliance can be demonstrated.

Denial or cancellation of vehicle registration – recommendation to provincial and territorial Ministries of Transport, under whose authority non-complying vehicles may have their registration denied or suspended until compliance can be demonstrated.

Suspension or revocation of pre-authorized commercial importation clearance privileges.

Using seizure and detention powers, inspectors may affix a **restraining notice** to non-complying vehicles or equipment **prohibiting their sale or transfer**.

Ministerial Order requiring companies to issue a notice of defect or a notice of non-compliance.

Prosecution

Transport Canada inspectors will recommend prosecution of a company to the Public Prosecution Service of Canada when:

- the regulated entity contravenes the *Motor Vehicle Safety Act*, the regulations or an order. The following are a few examples:
 - if an inspector believes that a violation of the *Motor Vehicle Safety Act* has occurred and:
 - the company has not issued a Notice of Non-Compliance or not done so in a timely manner;
 - the company has a history of repeated non-compliances.
 - if an inspector believes that the company has not issued a Notice of Defect, or not done so in a timely manner;
 - Transport Canada Inspectors have been obstructed in the pursuit of their duties; or
 - the alleged violator knowingly provided false or misleading information, or failed to provide required information to an inspector.

A prosecution under the *Motor Vehicle Safety Act* 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.

Once the non-compliance has been resolved, the vehicle or equipment sale or transfer may proceed.

10 PENALTIES AND COURT ORDERS UPON CONVICTION

Penalties under [section 17](#) of the *Motor Vehicle Safety Act* are:

- a) Corporations;
 - On summary conviction - a fine not to exceed \$200,000;
 - Indictable offense - a fine not to exceed \$2,000,000.
- b) Individuals;
 - On summary conviction - a fine not to exceed \$4,000, or imprisonment for a term not exceeding six months, or both;
 - Indictable offense - a fine not to exceed \$20,000, or imprisonment for a term not exceeding two years, or both.

11 FOR MORE INFORMATION

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

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

DEFINITIONS

1. **COMPLIANCE PROMOTION:** Any activities that facilitate or encourage voluntary compliance with legal requirements. This encompasses such activities as education, awareness, guidance and promotion of best practices.
2. **ENFORCEMENT:** A continuum of activities and functions in support of enforcement actions, responses and measures to compel compliance.
3. **INSPECTION:** Examination or verification by inspectors of a place, activity or thing through a planned sequence of actions aimed at verifying compliance with a regulatory regime. Inspection authorities and powers are found within the various Acts and Regulations administered by Transport Canada.
4. **INSPECTOR:** Under the authority of the MVSA the Minister may designate as an automotive inspector any person who, in the Minister's opinion, is qualified to be so designated to verify compliance with this Act. An inspector has the right of entry and search of any place in which the inspector believes on reasonable grounds there is a regulated vehicle or equipment, any components intended in the manufacture of a regulated vehicle or equipment, records in relation to the design, manufacture, testing and field performance of a regulated vehicle or equipment for the purposes of enabling an inspector to determine compliance performance, and to facilitate the identification and analysis of defects. An inspector may seize and, subject to the Criminal Code, detain any regulated vehicle or equipment by means of which the MVSA has been contravened or will afford evidence in respect of a contravention of the MVSA. An inspector may also require a regulated entity to produce for examination all documents or electronically stored data containing any information relevant to the enforcement of the MVSA and may make copies or take extracts thereof.
5. **INVESTIGATION:**

ADMINISTRATIVE/FACT-FINDING INVESTIGATION: A non-penal investigation resulting from an incident or discovery of non-compliance, or defect. The purpose of such investigation is to uncover facts that led to certain events or cases of non-compliance, identify causes, document a case and address the situation with an appropriate enforcement response (other than prosecution). Such investigations will generally be conducted using statutory inspection-based powers and authorities. They may also make use of penal investigative tools such as cautions or warrants, particularly if prosecution remains a possibility.

PENAL INVESTIGATION: An investigation where the predominant purpose of the inquiry is to establish penal liability (i.e. to gather evidence of a specific offence with a view to supporting penal charges and a prosecution). Tools to conduct penal investigations are typically found in the Criminal Code and include search warrants, production orders and the use of caution statements.
6. **OVERSIGHT:** Oversight encompasses the activities that support the systematic promotion, monitoring, or enforcement of compliance with legislative and regulatory requirements administered by Transport Canada governing safety and security and that contribute to departmental strategic objectives. The Motor Vehicle Safety Oversight Program is comprised of activities that support the promotion, the verification and the enforcement of compliance with the *Motor Vehicle Safety Act* and its attendant regulations.