

NAAACCC Update September 2005, Update #40

If you or your club memberships are planning on building a street rod or are going to use a 'new' automotive engine this information may apply to you. The NAAACCC is seeking an exemption for collector related engines which have a 'verified' use in a collector vehicle (ie, street rod—hot rod---muscle car, etc.)

Manufactures, see section 157 below

.....please see the colored sections below.....

Part 7: Controlling Pollution and Managing Wastes - Division 5: Vehicle, Engine and Equipment Emissions

Definitions

149. The definitions in this section apply in this Division and in Part 10 as it relates to the enforcement of this Division.

"company" « *entreprise* »

"company" means a person who

(a) is engaged in the business of manufacturing vehicles, engines or equipment in Canada;

(b) is engaged in the business of selling to other persons, for the purpose of resale by those persons, vehicles, engines or equipment obtained directly from a person described in paragraph (a) or the agent of such a person; or

(c) imports any vehicle, engine or equipment into Canada for the purpose of sale.

"engine" « *moteur* »

"engine" means any prescribed internal combustion engine, but does not include an engine designed to propel

*(a) an aircraft as defined in subsection 3(1) of the *Aeronautics Act*;*

*(b) rolling stock as defined in section 6 of the *Canada Transportation Act*; or*

*(c) a steamer, steamship or tug as defined in section 2 of the *Canada Shipping Act*.*

"equipment" « *équipement* »

"equipment" means any prescribed equipment that is designed for use in or on a vehicle or engine.

"manufacture" « *fabrication* » ou « *construction* »

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“manufacture” includes any process of assembling or altering any vehicle, engine or equipment before its sale to the first retail purchaser.

"national emissions mark" « *marque nationale* »

"national emissions mark" means a mark established by regulation for use in respect of emissions from vehicles, engines or equipment.

"standard" « *norme* »

"standard" means a standard that governs the design, construction, functioning or marking of vehicles, engines or equipment for the purpose of controlling or monitoring their emissions.

"vehicle" « *véhicule* »

"vehicle" means any prescribed self-propelled vehicle, but does not include

(a) an aircraft as defined in subsection 3(1) of the *Aeronautics Act*;

(b) rolling stock as defined in section 6 of the *Canada Transportation Act*; or

(c) a steamer, steamship or tug as defined in section 2 of the *Canada Shipping Act*.

National Emissions Marks

Nature of marks

150. (1) The national emissions marks are national trade-marks.

Property rights

(2) The exclusive property in and, except as otherwise provided in this Division, the right to use a national emissions mark are hereby vested in Her Majesty in right of Canada.

Prohibition

(3) No person shall use a national emissions mark except in accordance with this Division and the regulations.

Confusing marks

(4) No person shall use any other mark in such a manner that it is likely to be mistaken for a national emissions mark.

Use of marks

151. A company authorized by the Minister may, subject to this Division and the regulations, apply a national emissions mark to vehicles, engines or equipment.

Transportation within Canada

152. No company shall transport within Canada a prescribed vehicle, engine or equipment that does not have a

national emissions mark applied to it.

Vehicle, Engine and Equipment Standards

Compliance by companies

153. (1) No company shall apply a national emissions mark to any vehicle, engine or equipment, sell any vehicle, engine or equipment to which a national emissions mark has been applied or import any vehicle, engine or equipment unless

(a) the vehicle, engine or equipment conforms to the standards prescribed for vehicles, engines or equipment of its class at the time its main assembly or manufacture was completed;

(b) evidence of such conformity has been obtained and produced in the prescribed form and manner or, if the regulations so provide, in a form and manner satisfactory to the Minister;

(c) prescribed information relating to standards for emissions from the vehicle, engine or equipment has been submitted to the Minister in the prescribed manner;

(d) information is marked on the vehicle, engine or equipment in accordance with the regulations;

(e) if required by the regulations, prescribed documentation or accessories accompany the vehicle, engine or equipment;

(f) prescribed information relating to the operation or use of the vehicle, engine or equipment is disseminated in the prescribed form and manner;

(g) records are maintained and furnished in the prescribed form and manner in relation to the design, manufacture, testing and field performance of the vehicle, engine or equipment, for the purpose of

(i) enabling an enforcement officer to determine whether the vehicle, engine or equipment conforms to all prescribed standards applicable to it, and

(ii) facilitating the identification and analysis of defects referred to in subsection 157(1); and

(h) in the case of engines and equipment, the company maintains a registration system in the prescribed form and manner.

Exception

(2) Except as otherwise provided by the regulations, subsection (1) does not apply with respect to the application of a national emissions mark or an importation referred to in that subsection if the requirements under that subsection are met before the vehicle, engine or equipment leaves the possession or control of the company and, in the case of a vehicle, before the vehicle is presented for registration under the laws of a province or an aboriginal government.

Certification by foreign agency

(3) Any vehicle, engine or equipment is deemed to conform to a prescribed standard if

(a) the regulations provide that an enactment of a foreign government corresponds to that standard; and

(b) a prescribed agency of that government has certified that the vehicle, engine or equipment conforms to the enactment as applied by the agency, unless the Minister determines otherwise.

Compliance on importation

154. No person shall import any vehicle, engine or equipment of a prescribed class unless the requirements of paragraphs 153(1)(a), (b), (d) and (e) are met in respect of the vehicle, engine or equipment.

Exceptions for certain importations

155. (1) Sections 153 and 154 do not apply in respect of the importation of any vehicle, engine or equipment if

(a) the person importing the vehicle, engine or equipment makes a declaration in the prescribed form and manner that the vehicle, engine or equipment will be used in Canada solely for purposes of exhibition, demonstration, evaluation or testing and will remain in Canada for not longer than one year or any other period that the Minister specifies;

(b) the vehicle, engine or equipment is in transit through Canada, from a place outside Canada, to another place outside Canada and is accompanied by written evidence establishing that the vehicle, engine or equipment will not be sold or used in Canada; or

(c) the vehicle, engine or equipment is being imported exclusively for use by a visitor to Canada or by a person passing through Canada to another country.

Vehicles sold in United States

(2) Except as otherwise provided by the regulations, sections 153 and 154 do not apply in respect of the importation of a vehicle that has been sold at the retail level in the United States if the person importing it makes a declaration in the prescribed form and manner that, before the vehicle is presented for registration under the laws of a province or an aboriginal government,

(a) those requirements will be met; and

(b) the vehicle will be certified, in accordance with the regulations, as conforming.

Change in standard since manufacture

(3) Sections 153 and 154 do not apply in respect of the importation of any vehicle, engine or equipment that does not conform to a standard prescribed for its class at the time of its main assembly or manufacture if, at the time of its importation, that standard is no longer in effect and

(a) the vehicle, engine or equipment conforms to the corresponding standard prescribed for its class at that time; or

(b) there is no corresponding standard at that time.

Imported vehicle or engine

(4) A vehicle or engine that is imported and for which there is no prescribed standard must conform to the standard prescribed for the class of equivalent vehicles or engines before presentation for registration under the laws of a province or an aboriginal government.

Declarations binding

(5) No person who makes a declaration referred to in paragraph (1)(a) or subsection (2), or provides evidence referred to in paragraph (1)(b), in respect of any vehicle, engine or equipment shall use or dispose of the vehicle, engine or equipment in a manner contrary to the terms of that declaration or evidence.

Record keeping

(6) Every person who makes a declaration referred to in paragraph (1)(a) or subsection (2), or provides evidence referred to in paragraph (1)(b), in respect of any vehicle, engine or equipment shall keep a record of the use or disposition of the vehicle, engine or equipment in accordance with the regulations.

Vehicle or Engine Exemptions

Exemption from standards

156. (1) On application by a company in the prescribed form, supported by prescribed technical and financial information, the Governor in Council may, by order, grant an exemption for a specified period, subject to any conditions specified in the order, for any model of vehicle or engine manufactured or imported by the company from conformity with any prescribed standard applicable to that model if conformity with that standard would, in the opinion of the Governor in Council,

(a) create substantial financial hardship for the company;

(b) impede the development of new features for safety, emission monitoring or emission control that are equivalent to or superior to those that conform to prescribed standards; or

(c) impede the development of new kinds of vehicles, engines or vehicle or engine systems or components.

Period and extent of exemption

(2) An exemption for a model may be granted for a period not exceeding

(a) three years, if paragraph (1)(a) applies; or

(b) two years, in respect of a stated number of units of that model not exceeding 1,000 units, if paragraph (1)(b) or (c) applies.

Conditions for granting exemption

(3) An exemption may not be granted for a model if the exemption would substantially diminish the control of emissions from it or if the company applying for the exemption has not provided evidence that satisfies the Governor in Council that it has attempted in good faith to bring the model into conformity with all applicable prescribed standards.

Further conditions

(4) An exemption for substantial financial hardship may not be granted under paragraph (1)(a) if

(a) the world production of vehicles or engines manufactured by the company, or by the manufacturer of the model that is the subject of the application, exceeded 10,000 vehicles or engines in the 12-month period beginning two years before the beginning of the exemption period; or

(b) the total number of vehicles or engines manufactured for, or imported into, the Canadian market by the company exceeded 1,000 vehicles or engines in that 12-month period.

Renewal of exemption

(5) On the expiry of the exemption period, a new exemption may be granted in accordance with this section.

Notice of Defects

Obligation to give notice

157. (1) A company that manufactures, sells or imports any vehicle, engine or equipment of a class for which standards are prescribed shall, on becoming aware of a defect in the design, construction or functioning of the vehicle, engine or equipment that affects or is likely to affect its compliance with a prescribed standard, cause notice of the defect to be given in the prescribed manner to

(a) the Minister;

(b) each person who has obtained such a vehicle, engine or equipment from the company; and

(c) each current owner of such a vehicle, engine or equipment.

Determining owners

(2) Current owners are to be determined for the purpose of subsection (1)

(a) from a warranty issued by the company with respect to the functioning of the vehicle, engine or equipment that has, to its knowledge, been given, sold or transferred to the current owner;

(b) in the case of a vehicle, from registration records of a government; or

(c) in the case of an engine or equipment, from a registration system referred to in paragraph 153(1)(h).

If notice previously given

(3) A company is not required to cause notice to be given of a defect of which notice has already been given under this section or under section 10 of the *Motor Vehicle Safety Act*.

Publication of notice

(4) If the Minister is satisfied that the name of the current owner of the vehicle, engine or equipment cannot reasonably be determined by a company in accordance with subsection (2), the Minister may

(a) order the company to give notice of the defect by publication in the prescribed form for a period of five consecutive days in two major daily newspapers in each of the following six regions, namely, the Atlantic provinces, Quebec, Ontario, the Prairie provinces, British Columbia and the Territories, or by dissemination in an alternative medium for any period that the Minister determines; or

(b) order that the current owner need not be notified.

Contents of notice

(5) A notice required to be given under subsections (1) and (4) shall contain, in the form and to the extent prescribed, a description of the defect, an evaluation of the pollution risk arising from it and directions for correcting it.

Particulars to responsible authorities

(6) On receiving a notice under subsection (1), the Minister shall forward full particulars of the notice to the person responsible for vehicle or engine administration in each government.

Follow-up reports

(7) Every company that causes notice to be given under subsection (1) shall submit an initial report and subsequent regular reports respecting the defect and its correction in accordance with the regulations.

Frequency of reports

(8) Unless the Minister directs otherwise, the reports referred to in subsection (7) shall be submitted for a period of two years after the day on which notice was given under subsection (1).

Research and Testing

Powers of Minister

158. The Minister may

(a) conduct any research, studies and evaluations that the Minister considers necessary for the administration and enforcement of this Division;

(b) undertake research and development programs for the study of the effect of vehicles, engines or equipment or emissions on air pollution, energy conservation and the environment and for the promotion of measures to control that effect;

(c) establish and operate facilities for the testing of vehicles, engines or equipment and components, and acquire test equipment for that purpose;

(d) make the facilities referred to in paragraph (c) and all related material, parts and services available to any person; and

(e) publish or otherwise disseminate information relating to the activities of the Minister under this section.

Emission control tests

159. (1) At the request of the Minister and subject to payment by the Minister of the cost of transportation and of rental at a prescribed rate based on capital value, a company shall make available for testing any vehicle, engine, equipment or component that

(a) was used in tests conducted by or for the company in order to establish information submitted to the Minister under paragraph 153(1)(c); or

(b) for the purpose of that testing, is equivalent to a vehicle, an engine, equipment or a component referred to in paragraph (a).

Testing by Minister

(2) The Minister may examine and dismantle any vehicle, engine, equipment or component made available under subsection (1) and conduct all necessary tests to verify the accuracy of tests referred to in paragraph (1)(a).

Detention of vehicles or engines

(3) The Minister may not detain any vehicle, engine, equipment or component for more than 30 days after completion of the tests conducted under subsection (2) unless, before that time, proceedings have been instituted in respect of an offence related to the vehicle, engine, equipment or component, in which case it may be detained until the proceedings are concluded.

Regulations

Regulations

160. (1) The Governor in Council may, on the recommendation of the Minister, make regulations for carrying out the purposes and provisions of this Division, including regulations

- (a) respecting emissions and prescribing standards in relation to emissions;
- (b) establishing the national emissions marks;
- (c) respecting the conditions that must be met for a national emissions mark to be used in relation to vehicles, engines or equipment or a class of vehicles, engines or equipment;
- (d) respecting the manner of applying national emissions marks;
- (e) prescribing the period for which records referred to in paragraph 153(1)(g) or a registration system referred to in paragraph 153(1)(h) shall be retained;
- (f) respecting exemptions from sections 153 and 154;
- (g) respecting the information to be submitted under section 153; and
- (h) prescribing or providing for anything that by this Division is to be prescribed or provided for by the regulations.

Progressive application

(2) Regulations prescribing a standard may be made applicable in respect of a specified proportion of vehicles, engines or equipment of a class before they are made applicable in respect of all vehicles, engines or equipment of that class.

Definition of "technical standards document"

161. (1) In this section, "technical standards document" means a document, published in the prescribed manner by authority of the Minister, that reproduces in the official languages of Canada an enactment of a foreign government with any adaptations of form and reference that will facilitate the incorporation of the enactment under this section.

Incorporation of document

(2) For greater certainty, regulations made under this Division may incorporate by reference a technical standards document as it reads on a prescribed day or as it is amended from time to time following the incorporation by reference, and may extend, qualify or exclude the application of any provision of the document so incorporated.

Publication

(3) No person is required to comply with a provision of a technical standards document incorporated by the regulations until six months after the publication of the provision in the prescribed manner, if the person continues to comply with the provision for which that provision is substituted.

Document not a regulation

(4) A technical standards document is not a regulation for the purposes of the *Statutory Instruments Act*.

Emission credits

162. (1) Regulations that prescribe standards in relation to emissions may provide for a system of credits based on the following principles:

(a) a company may establish that vehicles, engines or equipment conform to those standards by applying credits against emissions of the vehicles, engines or equipment in the prescribed manner and within prescribed limits;

(b) credits may be obtained by a company in the prescribed manner

(i) by reference to emissions of the vehicles, engines or equipment that more than meet the requirements of those standards, or

(ii) by the payment of an amount to the Receiver General determined at a prescribed rate in relation to emissions of the vehicle, engine or equipment; and

(c) credits obtained by reference to emissions may be transferred to or from a company in the prescribed manner.

Deemed conformity to standard

(2) Regulations referred to in subsection (1) may provide that any vehicle, engine or equipment is deemed to conform to a standard if the application of those regulations to all vehicles, engines or equipment of its class sold in Canada and the United States would result in that vehicle, engine or equipment so conforming.

Emission report

(3) Every company shall submit to the Minister, in the prescribed form and manner and at the prescribed time, a report setting out, with respect to a prescribed period, an account of any emission credits obtained or applied by the company and a description of each of the following vehicles, engines or pieces of equipment for which credits were obtained or applied:

(a) vehicles, engines and equipment to which the company applied a national emissions mark during that period, other than those that were exported;

(b) vehicles, engines and equipment bearing a national emissions mark that were sold by the company in Canada during that period; and

(c) vehicles, engines and equipment that were imported by the company during that period for the purpose of sale in Canada.

Contents of report

(4) If credits applied under this section were obtained on the basis of emissions from vehicles, engines or equipment not referred to in paragraph (3)(a), (b) or (c), the report submitted in respect of the application of those credits shall include a description of those vehicles, engines or equipment.

Interim order

163. (1) If an enactment of a foreign government corresponds to the regulations made under this Division and that enactment is amended by that government or its operation is affected by a decision of a foreign court, the Minister may issue an interim order suspending or modifying the operation of the regulations to the extent that they are inconsistent with the enactment as amended or given effect.

Effective date of order

(2) An interim order has effect from the time it is made.

Approval of Governor in Council

(3) An interim order ceases to have effect 14 days after it is made unless it is approved by the Governor in Council within that period.

Contravention of regulation modified by an unpublished order

(4) No person shall be convicted of an offence consisting of a contravention of a regulation to the extent that it is modified or suspended by an interim order that, at the time of the alleged contravention, had not been published in the *Canada Gazette* unless it is proved that, at the time of the alleged contravention, the person had been notified of the interim order.

Cessation of effect

(5) Subject to subsection (3), an interim order ceases to have effect on the earliest of

(a) the day it is repealed,

(b) the day the regulation is amended or repealed to give effect to the order, and

(c) one year after the order is made.

Evidence

Evidence

164. In a prosecution under this Act, evidence that any vehicle, engine or equipment bore a name or mark purporting to be the name or mark of a company engaged in the business of manufacturing, importing or selling vehicles, engines or equipment is, in the absence of evidence to the contrary, proof that the vehicle, engine or equipment was manufactured, imported or sold, as the case may be, by the company.

Evidence

165. In a prosecution under this Act, evidence that any vehicle, engine or equipment bearing a national emissions mark was manufactured by a company is, in the absence of evidence to the contrary, proof that the national emissions mark was applied by the company.

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