

SECTION 3

Application of the Act

3.(1) This Act is binding on Her Majesty in right of Canada or a province.

(2) This Act applies in relation to all matters within the legislative authority of Parliament, including dangerous goods outside Canada that are carried on a ship or aircraft registered in Canada.

(3) This Act does not apply to the extent that its application is excluded by a regulation made under paragraph 27(1)(e) or a permit issued under section 31.

(4) This Act does not apply in relation to

(a) any activity or thing under the sole direction or control of the Minister of National Defence or in circumstances in which it is prescribed to be under that Minister's sole direction or control;

(b) commodities transported by a pipeline governed by the National Energy Board Act or the Oil and Gas Production and Conservation Act or by the law of a province; or

(c) dangerous goods confined only by the permanent structure of a ship.

BEHIND THE WORDS

3.(1) Binding on Her Majesty in right of Canada or a province.

This means that federal and provincial government ministries, departments, agencies and other entities must comply with the Act (except as occurs under 3(3) and 3(4)(a)).

3.(2) General Application

The approach used in the *TDG Act* of 1980 in its application section led to actual or potential difficulties with interpretations in court involving reporting, training and constitutional matters. Subsection 3(2) of the *TDGA*, 1992 makes it clear that the Act applies with respect to matters within the legislative authority of Parliament. With this wording there can be no conflicts at the level of the Constitution Act. However, what may develop will be an interpretation of what the federal government authority covers. Questions under this heading would be dealt with on a case-by-case basis should matters be presented to a court for resolution. See also the discussion on section 4.

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3.(3) Exceptions - Regulations and permits.

Given that subsection 3(2) establishes the Act as being applicable to a wide range of events, including transporting a small can of compressed gas (soft drink) from a store to a house, there must be a provision to exempt from the Act certain activities which really do not need to be regulated. The current regulations establish exemptions for items such as the transportation of limited quantities, consumer commodities, and dangerous goods within a plant's boundary.

3.(4) Other exceptions

This subsection excludes those activities that are sufficiently governed otherwise.

(a) In practice National Defence provides a level of safety at least equivalent to that provided by this Act during normal events.

Paragraph (a) is expanded in the regulations to set out the circumstances in which an activity or thing is considered to be under the sole direction or control of the Minister of National Defence.

(b) The activities excepted are regulated elsewhere.

(c) With respect to paragraph 3(4)(c), the Act excludes dangerous goods confined only by the permanent structure of a ship as these dangerous goods are fully regulated by the *Canada Shipping Act*.

RELATED SECTIONS

Section 4 - Comments relating to legislative authority of Parliament

COURT DECISIONS OF INTEREST

SECTION 4

Federal-Provincial Administrative Agreements

4.(1) The Minister may

(a) with the approval of the Governor in Council, enter into an agreement with one or more provincial governments with respect to the administration of this Act; and

(b) subject to such terms and conditions as the Governor in Council may specify in the approval, agree to amendments to the agreement.

(2) The Minister shall make the agreement public.

BEHIND THE WORDS

Some provincial officials have observed that it is possible to enter into agreements without so stating in legislation. However, they feel this section ensures these agreements would be more durable and binding. Both provincial and federal officials favour continuing the federal/provincial partnership which now exists.

Associated with the administration of the dangerous goods program by the federal government and the provinces is the question of how the federal and provincial Acts and regulations interact. For the most part the *TDG Act, 1992* is enabling legislation with the bulk of requirements and prohibitions contained in the regulations. The federal TDG regulations are developed in consultation with the provinces, are adopted not only by the federal Act but by provincial Acts as well, and are viewed as joint regulations.

It is possible that there can be offences under the federal Act only, under a provincial Act only and actions which may appear to an inspector to be offences under the federal Act and a provincial Act at the same time. In this latter case the question arises as to which Act to reference when laying an information. This question pushes to the heart of the area of application of the federal *TDG Act, 1992*. The present federal view is that as the Act may be an exercise of the criminal law constitutional head of power, an inspector appointed under the *TDG Act, 1992* need only reference the *TDG Act, 1992*.

COURT DECISIONS OF INTEREST

SECTION 5

General Prohibition

5. No person shall handle, offer for transport, transport or import any dangerous goods unless

- (a) the person complies with all applicable prescribed safety requirements;
- (b) the goods are accompanied by all applicable prescribed documents; and
- (c) the means of containment and transport comply with all applicable prescribed safety standards and display all applicable prescribed safety marks.

BEHIND THE WORDS

At first glance it might appear that since the phrase "prescribed documents" appears in (b), they are not considered to be a safety requirement. Otherwise wouldn't they already be included in (a)? The reason both paragraphs (a) and (b) are needed, and why "prescribed documents" are still a safety requirement, is due to imported goods. Paragraph (a) requires that "persons" comply with certain requirements. If all involved persons were in Canada, paragraph (b) may not be needed. But, as nearly 70% of the chemicals used in Canada are imported (Canada also exports a considerable quantity), and the consignors of these are not subject to Canadian law, paragraph (b) is required to ensure the consignor's duties have been satisfied when the goods arrive in Canada.

Section 5 is the first section of the Act which leads to an offence. Section 5 requires that certain things be done or not done. Similar sections are sections 6, 7, 8, 9, 13, 14, 18 and 23. Each of these by itself does not establish an offence, however, when read in conjunction with section 33 offences are defined.

In addition, non-compliance with any regulations made pursuant to paragraphs 27(1)(h), (i), (l), (n) or (r) is not to occur. Again, as a result of section 33, any such non-compliance is an offence.

Non-compliance with a direction issued under 9(2), 17(3) or (4), 19(2) or 32(1) is not permitted pursuant to subsection 13(2), and is an offence under section 33.

Section 34 allows for the creation of a court order, makes it an offence not to comply with the order, and establishes the punishment. Note that section 33 did not cover court orders.

The phrase "the goods are accompanied by all applicable prescribed documents" contains within it the meaning that these documents must be properly completed and correctly describe the situation which they purport to describe. (e.g. the classification used is correct) Indeed section 42 accepts such documents as prima facie proof of the information they show or indicate.

Finally, this is the first section to use the words offer for transport and transport with respect to a prohibition. As observed earlier, (see definition of import) the program is based upon the consignor (shipper) first conducting his/her activities. There can be cases where one person could be both the consignor (shipper) and the carrier. In this instance, and as will be made clear in the regulations, the same person can offer for transport and transport, and in consequence is responsible for both consignor as well as carrier duties. There does not have to be a second person before consignor activities (offer for transport) have a meaning.

RELATED SECTIONS

- | | | |
|------------|---|----------------------|
| Section 2 | - | Definition of import |
| Section 33 | - | Establishes offences |

COURT DECISIONS OF INTEREST

SECTION 6

Misleading Safety Marks

6. No person shall display a prescribed safety mark on a means of containment or transport, or at a facility, if the mark is misleading as to the presence of danger, the nature of any danger or compliance with any prescribed safety standard.

BEHIND THE WORDS

The intent of this section is to ensure that:

- a) when a safety mark is used to show the nature of danger there is a danger present and it is correctly identified; and,
- b) if there is a safety mark on a means of containment indicating compliance with a safety standard then that means of containment must satisfy the standard indicated by that safety mark. Note that if a safety mark appears on a means of containment it must be treated as a standardized means of containment. Please refer back to the comments on the definition of a standardized means of containment.

The word “misleading” was chosen to allow cases such as the delivery of empty fibreboard boxes in a knocked-down state which have pre-printed labels on them. In this instance the labels would not be misleading. Similarly, a placard may be placed on a tank truck prior to loading without being misleading. As with some other sections of the Act, given the large number of dangerous goods movements annually, it may be that the judgement of whether or not the presence of a safety mark is misleading must be decided on a case-by-case basis. Consideration should be given to the apparent intention of the individual with respect to any wish to deceive the public as to the nature of the goods or means of containment.

The most common application of this section, with respect to placards, will be to prohibit the placement of placards on means of containment or transport thereby indicating a danger when no danger is present.

With respect to a standardized means of containment (and hence a means of containment used or intended for use in transporting dangerous goods), sections 5, 6 and 8 can be summarized by noting that the standardized means of containment must be marked to show the standard it purports to meet; it must in fact be in compliance with this standard; and it must be used when the dangerous goods require such containment.

RELATED SECTIONS

- Section 2 - Standardized means of containment
- Section 5 - Correct means of containment to be used
- Section 8 - Standardized means of containment must be marked

COURT DECISIONS OF INTEREST

SECTION 7

Emergency Response Assistance Plans

7.(1) Before offering for transport or importing any quantity or concentration of dangerous goods prescribed for the purposes of this section, a person shall have an emergency response assistance plan that is approved under this section and outlines what is to be done if there is an accident in transporting the dangerous goods.

(2) The Minister or the designated person may approve the plan, either indefinitely or for a specified period, where the Minister or person believes on reasonable grounds that it is capable of being implemented and will be effective in responding to any accident in transporting the dangerous goods.

(3) The Minister or the designated person may approve the plan pending an investigation of the matters to be considered under subsection (2) if the Minister or the designated person has no reason to suspect that the plan is incapable of being implemented or will be ineffective.

(4) The Minister or a designated person may revoke the approval where

(a) the Minister or the designated person has requested changes to the plan that he or she believes on reasonable grounds are needed to make it effective and the changes have been refused or have not been made; or

(b) the Minister or the designated person believes on reasonable grounds that the plan is no longer capable of being implemented.

BEHIND THE WORDS

Some dangerous goods involved in an accident may continue to hold the potential for harm after the initial accident has occurred. For example, a tank car containing a compressed or flammable gas may be in a state or circumstance that there is concern about the tank itself rupturing. For some special dangerous goods, as described in Schedule XII of the regulations, emergency response assistance plans must be in place before these products are shipped. Section 7 of the *TDG Act, 1992* was established to ensure the provision of specialized expert advice to supplement normal emergency response activities.

In most cases this burden falls upon the consignor, who is often the manufacturer, as he/she is the expert with respect to the characteristics of the product and has selected the means of containment. Assume for the remainder of this paragraph that the consignor is in Canada. As observed in the comments

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section 5, the same person could offer and transport, being both consignor and carrier. The person who prepares the shipment for transport (offers) is responsible for the emergency response assistance plan.

If the consignor is not in Canada, the importer is responsible for the plan.

In practice, when someone wishes to ship (or import) a Schedule XII substance he/she will submit a summary of an emergency response assistance plan (ERAP) and normally will receive temporary approval without delay. Once the plan has been examined carefully by those designated for this purpose (section 12) and confirmed to be acceptable, the approval will continue. If the plan is found to be unacceptable, interim approval of the plan would be cancelled. The result would be that the person offering or importing would not be complying with Subsection 7(1) if he/she continued to ship or import. Section 33 establishes this as an offence.

If a person, following a cancellation of approval (or denial of approval), wished to submit a new plan without much change, expecting another "automatic" approval, subsection 7(3) would apply in that the Minister would have reason to suspect the new plan is incapable of being implemented or being effective and "automatic" approval need not be granted.

The right to appeal against a revocation decision or a denial of approval will be provided under paragraph 27(1)(s).

The following discussion of emergency response planning and emergency response activities should be useful.

Most transportation accidents do not involve dangerous goods. Of those that do almost all are caused by reasons other than the dangerous goods.

When an accidental release occurs there is often a great deal of similarity between the effect in a transportation setting and the effect within a fixed facility such as a manufacturing site or a warehouse. One important difference is that for a transportation accident involving dangerous goods, some of the required specialized knowledge and equipment may initially be at a site remote from the accident.

Section 7 of the *TDG Act, 1992* was established to ensure the provision of specialized expert advice to supplement normal emergency response activities. Essentially the goal of this section is to ensure that the person held responsible under the *TDG Act, 1992* to develop such a plan is capable of ensuring that the appropriate experts, equipment, etc., are available to assist in the response to an imminent accidental release, stop an actual release or mitigate the impact of the released dangerous goods.

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An ERAP is directed toward ensuring the provision of this expert industry advice and assistance. It is not a complete plan which obviates the need for normal emergency planning. Indeed, with respect to response to imminent or actual accidental releases, it is made clear in section 19 that the *TDG Act, 1992* does not apply to response actions undertaken by provincial employees including fire and police services (unless by the nature of the event they also fall into one of the regulated categories).

Essentially, section 7 ensures that with respect to certain dangerous goods as set out in the regulations someone in Canada is responsible for ensuring that an appropriate response plan to prevent or mitigate an accidental release is in place.

The activation of an ERAP was discussed during consultation with industry. It became apparent that there was concern that should industry develop a response capability they may be summoned to any accident to which they could effectively respond ranging from a mishap in a high school chemistry lab to a transportation accident involving a company with no response capabilities. Thus direct activation of a plan was not included in section 7.

In many circumstances the activation of an emergency response assistance plan would be undertaken by industry itself to protect its own interests (e.g., the product, the means of containment, goodwill, liability) or in response to a request from fire or police emergency services. On the other hand, if a situation occurs wherein an emergency response assistance plan should be activated and it is not, paragraph 7(4)(d) would allow the Minister or designated person to revoke approval of the plan.

In some circumstances, section 19 can be used to require the activation of an emergency response assistance plan. However, it cannot be used to require the activation of response activities through a self-help network such as those that Canadian industry have established. These networks of response teams that act for each other provide a response potential better than what could be legislated. Please refer to section 19 for a discussion on how these networks are encouraged by the Act.

A description of each of the four subsections of section 7 follows:

Subsection 7(1): This subsection requires that prior to offering for transport or importing certain dangerous goods, an approved emergency response plan must be in place. You are advised to review the definition of import which includes transiting Canadian territory. It is also important to note that if a plan is revoked for any reason the person wishing to offer for transport or import cannot legally do so.

Subsection 7(2): The procedure to be followed will be that upon receipt of what appears to be a reasonable initial application, interim approval, subject to review, will be granted. At a later time, once the review and any required modifications have taken place, the plan will be given an indefinite approval. Nevertheless, even with an indefinite approval, this can be revoked for cause as made clear in subsection 7(4).

The TDG Directorate has available for reference by anyone required to establish an emergency response assistance plan, a guidebook on the critical elements of such a plan and how these are assessed by the Directorate. It is also noted that compliance with CAN/CSA Z731-M91 "Emergency Planning for Industry" is not necessary but would certainly be sufficient to satisfy Transport Canada requirements.

It is anticipated that the persons designated to approve these plans will be those occupying the positions of Director General; Director, Response and Compliance; and, Chief, Response Operations.

It is important that the officer conducting the investigation of a plan resulting in a recommendation for approval remain familiar with the plan in the event the plan is activated with respect to a particular accident. It is expected that in most cases in which a plan is industry activated, notification will be given to the TDG Directorate with the request to confirm that the plan is appropriate for the situation. An affirmative response will be viewed (and is intended to be viewed) as a direction issued under subparagraph 19(3)(b) and, in consequence, section 20 relating to liability protection for the response team will take effect. Please refer to the comments on sections 19 and 20.

Subsection 7(3): This subsection allows the rapid temporary approval of an emergency response assistance plan, and also provides for a refusal. Thus, a company that submitted plan No. 1, which was later reviewed and found to be inadequate, could not resubmit this as plan No. 2 and expect immediate temporary approval. In such a case the Minister or the designated person could refuse if he/she suspected that the "new" plan is incapable of being implemented or will be ineffective.

Subsection 7(4): Paragraph (a) is clear. In practice, unless the difficulties with the plan are severe, an initial draft report showing deficiencies will be produced prior to a formal report requesting changes. Even with a formal report there could be a time interval specified to allow for the requested changes to be made.

Paragraph (b) refers to a situation such as the lapsing into disrepair of response equipment. In practice, revocations would be expected to occur under paragraph (a).

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RELATED SECTIONS

- Section 5 - Comments on consignor also being the carrier
- Section 12 - Description of those to approve ERAP
- Section 19 - Restriction on activities and persons subject to an ERAP
- Section 20 - Liability protection for emergency response teams
- Section 33 - Establishes offences
- Section 34 - Court orders
- Paragraph 27(1)(s) - Appeals

COURT DECISIONS OF INTEREST

SECTION 8

Marking of Standardized Means of Containment

8. No person shall sell, offer for sale, deliver, distribute, import or use a standardized means of containment unless it displays all applicable prescribed safety marks.

BEHIND THE WORDS

This section ensures that a means of containment that is "passed off" as a standardized means of containment shall be marked with the relevant safety mark(s) before it is sold, offered for sale, delivered, distributed, imported or used. The words "passed off" are taken from the Criminal Code and can be viewed as doing anything to cause a potential customer, user, etc., to believe that the means of containment is a standardized means of containment. For example, a means of containment marked with a safety mark indicating compliance with a standard must be viewed as a standardized means of containment.

Section 6 would ensure that once such a mark is put on a means of containment the means of containment must satisfy the standard so indicated. Section 5 ensures that only the "correct" means of containment are used to transport dangerous goods.

RELATED SECTIONS

Section 5	-	Proper means of containment must be used
Section 6	-	Means of containment must satisfy claims made
Section 33	-	Establishes offences

COURT DECISIONS OF INTEREST

See trademark provisions of the Criminal Code, Sections 406 to 414. Also Trademarks Act R.S.C. 1985 T-13.

SECTION 9

Notices of Recall or Defective Construction

9.(1) A manufacturer or importer of standardized means of containment shall keep records of the persons to whom the manufacturer or importer supplies the means of containment.

(2) Where the Minister or a person designated for the purposes of this section believes on reasonable grounds that any standardized means of containment are unsafe for handling or transporting dangerous goods, the Minister or the designated person may direct the manufacturer or importer who supplied them to issue notices of defective construction or recall to the persons to whom they were supplied.

BEHIND THE WORDS

Suppliers and importers are required to keep records of their direct customers in accordance with regulations (27(1)(l)). When a standardized means of containment is believed, on reasonable grounds, to be unsafe for the transportation of dangerous goods, a notice (defective construction or recall) may be required to be sent to these customers. Such grounds may be the results of inspections or tests on other similar means of containment, i.e. built at the same time, by the same manufacturer, by the same method, with similar materials or to the same design, etc.

Subsection 9(1): The records of the transaction will relate only to the first exchange of ownership. That is, a manufacturer will be required to keep records of the customers (distributors, users...) to whom he/she provides a product directly. There is no requirement for further record keeping through the chain of distribution.

Note that a standardized means of containment can range from a fiberboard box to a railway tank car.

Subsection 9(2): Should a notice of defective construction be issued, a safety mark indicating compliance with a safety standard on such means of containment could be required to be removed pursuant to section 17 (non-compliance with section 6).

Larger containers such as railway tank cars may be the subject of a notice of defective construction or notice of a recall. In this context a recall may be a statement by the manufacturer or importer that he/she will accept the means of containment for repair. Specifics of the recall would be established on a case by case basis and would have to be very carefully considered.

As with any offence, failure to comply could result in the application of section 33 or section 34.

There may be instances when the application of section 9 would not be successful in protecting public safety. For example, the means of containment have passed through several owners or the manufacturer or importer is no longer in existence. In such circumstances section 32 may be more appropriate by providing a direction to the current owner, operator or person who has possession, charge, management or control of the suspect means of containment.

RELATED SECTIONS

Section 6	-	Means of containment must satisfy claims made
Subsection 13(2)	-	Together with section 33 establishes offences
Paragraph 27(1)(l)	-	Regulations on records
Section 32	-	Protective directions
Section 33	-	Establishes offences
Section 34	-	Court orders

COURT DECISIONS OF INTEREST

SECTION 10

Designation of Inspectors

10.(1) The Minister may designate persons or classes of persons whom the Minister considers qualified to act as inspectors for the purposes of this Act or any of its provisions and the Minister may revoke the designations.

(2) The Minister shall furnish every inspector with a certificate of designation as an inspector showing the purposes, classes of dangerous goods, means of containment or transport and places for which the inspector is designated.

(3) On entering any place or inspecting anything, an inspector shall show the certificate to the person in charge of the place or thing if the person requests proof of the inspector's designation.

BEHIND THE WORDS

Subsection 10(1) allows for the designation of specific persons or for the designation of classes of persons to be inspectors. In practice, a class of person has not been designated by the Minister or his/her designate.

Subsection 10(2) allows for the restriction of inspector authorities to specific portions of the Act, classes of dangerous goods, etc. The usual restrictions are by mode or with respect to section 19 (as a result of liability concerns).

Subsection 10(3) requires that an inspector show his/her certificate to the person in charge of the place if requested. In practice, an inspector should voluntarily present his/her card.

RELATED SECTIONS

Section 2	-	"Inspector"
Section 19	-	Intervention authorities relating to actual or imminent accidental releases

COURT DECISIONS OF INTEREST

SECTION 11

Certificate of (Intrusive) Inspection

11.(1) Where an inspector opens anything for inspection, or takes a sample of anything that is sealed or closed up, the inspector shall provide the person who has the charge, management or control of the thing with a certificate in prescribed form as proof that it was opened for that purpose.

(2) The person to whom, or for whose benefit, the certificate is provided is not liable, either civilly or criminally, in respect of any act or omission of the inspector in the course of the inspection or taking of the sample, but is not otherwise exempt from compliance with this Act and the regulations.

BEHIND THE WORDS

The conditions which must be met before subsection 11(1) is effective are:

- the inspector must be the person who opens or takes the sample; and
- the thing opened must have been "sealed" or "closed up".

With respect to the first condition, if someone other than the inspector conducts the physical activity, some judgement on the part of the inspector can be exercised with respect to a certificate. If a certificate is requested, or if it appears such a certificate might be of benefit to the person who opened the thing or initially took the sample, it is to be provided. If the thing is not opened "voluntarily" and the inspector himself/herself conducts the opening or taking of a sample, a certificate must be provided.

With respect to the second condition, the words are "closed up", not simply "closed". This provides an inspector with some latitude. For example, opening a door into an office, or into the van of a truck, would not require a certificate. Neither would opening the unsealed doors of a container or looking under a tarpaulin.

The purpose of this section is to provide proof that the person having charge, management or control (e.g., the carrier) did not open the item in question in case that person is accused of causing any contamination or of removing any missing product.

There is no requirement in the Act for a federal inspector to re-seal or re-close anything that he/she has opened, however, when appropriate an inspector must do this and keep a record of his/her action. Failure to do so would leave the federal government in the position of being accused of allowing contamination or loss of some or all of the transported goods.

RELATED SECTIONS

Paragraph 15(b) - Opening and inspecting

COURT DECISIONS OF INTEREST

SECTION 12**Designation of Persons to Approve Plans and Permits and to Issue Directions**

12.(1) The Minister may designate persons to approve emergency response assistance plans under section 7 or to issue directions under subsection 9(2) or 32(1) or permits under subsection 31(1) and the Minister may revoke the designations.

(2) The Minister may designate persons or classes of persons to issue permits under subsection 31(2) and the Minister may revoke the designations.

BEHIND THE WORDS

Reference	Purpose	Intended to include:
Section 7	Provides for the Minister to designate individual persons to approve emergency response assistance plans.	- Director General; - Director, Compliance and Enforcement; - Chief, Response Operations
Subsection 9(2)	To issue directions requiring Notices of Recall or Defective Construction.	- Director General; - Director, Regulatory Affairs or Compliance and Enforcement; - Chief, Scientific Services
Subsection 32(1)	To issue Protective Directions	- Assistant Deputy Minister; - Director General; - Director, Regulatory Affairs
Subsection 31(1)	To issue Equivalency Permits.	- Director General; - Director, Regulatory Affairs or Compliance and Enforcement; - Chief, Regulations and Permits or Scientific Services
Subsection 31(2)	To issue Emergency Permits	- Director General; - Director, Regulatory Affairs or Compliance and Enforcement; - Chief, Response Operations

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COURT DECISIONS OF INTEREST

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SECTION 13

Inspector Authorities, Directions

13.(1) When an inspector is exercising powers or carrying out duties and functions under this Act, no person shall

- (a) fail to comply with any reasonable request of the inspector;
- (b) knowingly make any false or misleading statement either orally or in writing to the inspector;
- (c) except with the authority of the inspector, remove, alter or interfere in any way with anything detained or removed by or under the direction of the inspector; or
- (d) otherwise obstruct or hinder the inspector.

(2) No person shall contravene or fail to comply with a direction issued under subsection 9(2), 17(3) or (4), 19(2) or 32(1).

(3) For greater certainty, a direction referred to in subsection (2) is not a statutory instrument for the purposes of the *Statutory Instruments Act*, but no person shall be convicted of an offence under that subsection unless the person was notified of the direction and, if any applicable regulations have been made under paragraph 27(1)(t), the notification was in accordance with the regulations.

BEHIND THE WORDS

This section essentially establishes the authorities of an inspector during an inspection by setting out how he or she must be responded to.

Note that no person shall fail to comply with any reasonable request of the inspector. However, this does not have the same force of compulsion as sections 9, 17, 19 and 32. Paragraph 13(1)(a) allows for a refusal should the request be unreasonable. The determination of reasonable is, in the first instance, made by the inspector. If not reasonable by his/her standards it would not be requested. If the request is refused and a direction under 9, 17, 19 or 32 is not appropriate, the only recourse for the inspector is to accept the refusal, while considering if a prosecution should be pursued relating to the interpretation of reasonable.

Subsection 13(3) provides that the directions referenced in 13(2) must be complied with immediately, regardless of notice periods or other procedures contained in the *Statutory Instruments Act*. Naturally, the person to be bound by the direction must have knowledge of the direction.

RELATED SECTIONS

- | | | |
|------------|---|---|
| Section 9 | - | Notices of defective construction or recalls |
| Section 17 | - | Directions in case of non-compliance |
| Section 19 | - | Intervention relating to actual or imminent accidental releases |
| Section 32 | - | Protective directions |

COURT DECISIONS OF INTEREST

SECTION 14

Financial Responsibility

14.(1) No person shall handle, offer for transport, transport or import dangerous goods, or manufacture or import standardized means of containment, unless the person is financially responsible in accordance with the regulations.

(2) A person who handles, offers for transport, transports or imports dangerous goods, or manufactures or imports standardized means of containment, shall provide the prescribed proof of financial responsibility to an inspector who requests the proof.

(3) This section does not apply to Her Majesty in right of Canada or a province or to the entities named in Schedules II and III to the *Financial Administration Act*.

BEHIND THE WORDS

The Regulations may establish activities and classes of dangerous goods for which a person must be able to prove financial responsibility before handling, offering for transport, transporting or importing dangerous goods or manufacturing or importing standardized means of containment. For example, with respect to trucks, the regulations are expected to require proof of insurance to the levels now set uniformly by the provinces across Canada, i.e., one million dollars for dangerous goods and two million dollars for dangerous goods as listed in Schedule XII of the Regulations. This will be proposed through the normal regulation making procedures. Currently, the only other category being actively considered is for those persons responsible for an ERAP. Consideration may be given at a future date to requiring financial responsibility for manufacturers or importers of standardized means of containment.

Enforcement of this section is expected to be conducted in the same way as the verification of a person's automobile insurance. That is, during the course of an inspection, an inspector will request to see proof of financial responsibility which would be provided in the form of an insurance card, proof of a bond or some other document deemed acceptable as a result of regulation. It is emphasized that proof will only be required when specifically requested by an inspector pursuant to regulations.

This section will not apply to federal and provincial government departments, nor to certain crown corporations.

Regulations could allow for conditions under which persons may satisfy the Minister that they self-insure to a satisfactory level.

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There is no requirement for the form in which the financial responsibility must be to satisfy the conditions of the section. On a case-by-case basis it may be acceptable to have insurance, a bond, other financial instruments, etc.

RELATED SECTIONS

- | | | |
|------------|---|---|
| Section 9 | - | Funds may be required to provide the notices, or to deal with the recalls |
| Section 22 | - | Funds may be required to compensate the government for its expenses |
| Section 33 | - | Establishes offences |
| Section 34 | - | Funds may be required to satisfy a court order |

COURT DECISIONS OF INTEREST

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SECTION 15

Monitoring Compliance

15. For the purpose of ensuring compliance with this Act, an inspector may

(a) subject to section 16, at any reasonable time, stop any means of transport and enter and inspect any place or means of transport if the inspector is designated to inspect it and believes on reasonable grounds that on it or in it there are

(i) dangerous goods being handled, offered for transport or transported,

(ii) standardized means of containment,

(iii) books, shipping records, emergency response assistance plans or other documents that contain any information relevant to the administration or enforcement of this Act, or

(iv) computer systems that may be used to examine any information that is contained in or available to the computer systems and is relevant to the administration or enforcement of this Act;

(b) open and inspect, or request the opening and inspection of, any means of containment for which the inspector is designated if the inspector believes on reasonable grounds that it is being used to handle or transport dangerous goods or to contain dangerous goods offered for transport;

(c) for the purpose of analysis, take a reasonable quantity of anything the inspector believes on reasonable grounds to be dangerous goods; and

(d) examine and make copies of any information contained in any books, shipping records, emergency response plans or other documents, or in any computer systems, that the inspector believes on reasonable grounds contain any information relevant to the administration or enforcement of this Act.

BEHIND THE WORDS

This section essentially sets out the activities which an inspector may engage in when conducting inspections.

Should it come to an issue of seizing items for evidence outside the scope of this section, the inspection would be more properly classified as an investigation and an inspector's actions would be guided by and authorized under the search and seizure provisions of the Criminal Code.

"Please refer to the disclaimer on page 0.1"

With respect to subparagraph 15(a)(iv), the intention is to treat a computer terminal normally linked to a host computer at a remote site as though the terminal and host computer were at the site of the inspection. The words "or available to" are meant to refer to any information which can be accessed by the terminal without requiring other than automated action at the host system.

With respect to paragraph 15(c), it may be that a reasonable quantity is all the dangerous goods.

With respect to paragraph 15(d), this paragraph should be read in conjunction with paragraph 13(1)(a) to ensure that if assistance is required in acting under paragraph 15(d) it can be obtained.

RELATED SECTIONS

Section 2	-	"Shipping record"
Paragraph 13(1)(a)	-	Assistance in operating the computer to be provided

COURT DECISIONS OF INTEREST

SECTION 16

Search Warrant

16.(1) An inspector may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant.

(2) Where on ex parte application a justice, as defined in section 2 of the Criminal Code, is satisfied by information on oath that

(a) the conditions for entry described in section 15 exist in relation to a dwelling-place,

(b) entry is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) entry has been refused or there are reasonable grounds for believing that entry will be refused,

the justice may at any time sign and issue a warrant authorizing the inspector named in the warrant to enter the dwelling-place subject to any conditions that may be specified in the warrant.

(3) The inspector who executes the warrant shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

BEHIND THE WORDS

With respect to subsection 16(3), although the wording permits the inspector to use force it is expected this would be exercised through the peace officer and only secondarily, if at all, through the inspector. It is difficult to think of an inspection, other than of abandoned goods, where force would be used. An investigation may require the use of force. Normally, this event should be limited to such things as breaking a window to gain entry or forcing a lock.

COURT DECISIONS OF INTEREST