

# Environment Canada



*Manual*

2001

Regulatory Development  
and Approval Process

Canada 

# Table of Contents

|   |           |
|---|-----------|
| <b>INTRODUCTION.....</b>  | <b>1</b>  |
| <b>PHASE I: PROBLEM IDENTIFICATION &amp; ASSESSMENT.....</b>  | <b>6</b>  |
| <b>PHASE II OPTIONS EVALUATION.....</b>   | <b>8</b>  |
| <b>PHASE III: REGULATORY DEVELOPMENT/ AMENDMENT &amp; APPROVAL PROCESS.....</b>   | <b>11</b> |
| Step 1 (a): Draft the Regulation.....   | 14        |
| Step 1 (b): Draft the Regulatory Impact Analysis Statement (RIAS).....  | 16        |
| Step 1 (c): Draft the Communications Plan.....  | 18        |
| Step 1 (d): Conduct Enforceability Assurance.....   | 19        |
| Step 1 (e): Develop Compliance Promotion Plans & Compliance and Enforcement Strategies.....   | 20        |
| Step 2: Review of Regulations and Blue Stamping by Regulations Section, Justice (RS(J)).....  | 22        |
| Step 3: Departmental Senior Management Approves Draft Regulatory Package.....   | 24        |
| Step 4: Submit Approved Regulatory Package to Special Committee of Council (SCC)/Obtain Approval to Pre-publish (GIC and TB Regulations) .....                | 27        |
| Step 5: Publish draft regulations in <i>Gazette, Part 1</i> – 30/60 day Comment Period.....   | 28        |
| Step 6: Review Stakeholder Comments and Revise/Finalize Proposed Regulations as Necessary for Gazette Part II Publication.....                                | 29        |
| Step 7 (a): Finalize RIAS for <i>Gazette Part II</i> .....  | 30        |
| Step 7 (b): Finalize Comm. Plan for <i>Gazette Part II</i> .....  | 31        |
| Step 8: Review of Final Regulatory Package by Departmental Common Services and Submission to Regulations Section Justice for Final Approval and Stamping..... | 32        |
| Step 9: Departmental Senior Management approves final regulatory package.....   | 33        |
| Step 10: Submit approved package to Special Committee of Council (SCC).....   | 33        |
| Step 11: Publish in Canada Gazette, Part II.....  | 34        |
| <b>PHASE IV POST-IMPLEMENTATION EVALUATION/ LIFECYCLE ANALYSIS.....</b>   | <b>35</b> |
| <b>FIGURE #1: PROCESS MAP .....</b>   | <b>36</b> |

## **ANNEXES**

- Annex A: *The Federal Regulatory Policy* (1999)
- Annex B: Environment Canada Regulatory Planning & Development Objectives
- Annex C: Glossary of Terms and List of Acronyms
- Annex D: The Key Players in the Regulation-Making Process
- Annex E: The Business Impact Test (BIT) or Equivalent Analysis
- Annex F: Sample Regulatory Impact Analysis Statements (RIAS): (EPS & ECS)
- Annex G: Sample Communications Plan: (EPS & ECS)
- Annex H: Sample letter to Departmental Head Counsel
- Annex I: Sample memo to Assistant Clerk of the Privy Council (EPS & ECS)
- Annex J: Sample Memo to Minister (EPS & ECS)
- Annex K: Sample Memo: Minister to Minister
- Annex L: Sample Letter to PCO
- Annex M: Sample Briefing Note
- Annex N: Sample Letter of Recommendation (EPS)
- Annex O: Request for Insertion in the *Canada Gazette*
- Annex P: Departmental Regulatory Affairs Coordinating Committee (DRACC) Terms of Reference
- Annex Q: Criteria for an Enforceable Regulation
- Annex R: List of References



## Introduction

Regulations are a form of law, often referred to as delegated or subordinate legislation. They have the same binding legal effect as statutes and usually state rules that apply generally rather than to specific persons or things. Unlike statutes, however, regulations are not made by Parliament. Rather, Parliament delegates regulation-making authority to persons or bodies, such as the Governor in Council (GIC), a minister or an administrative agency. Authority to make regulations is expressly delegated by an Act, which is known as an enabling Act. An Act may set out the framework of a regulatory scheme and delegate the authority to develop the details and express them in regulations. Or, an Act may do little more than delegate authority, leaving the substance of the scheme to be dealt with in regulations.

Environment Canada administers over ten major pieces of legislation and close to twenty more in cooperation with other departments and agencies. The majority of these acts have associated regulations.

## Purpose of this Document

The purpose of this Manual is to provide advice, guidance and an outline of roles and responsibilities regarding the overall regulatory process of Environment Canada. This Manual is intended to be a "**Process 101**" guide for Departmental officials from:

- Environmental Protection Service (EPS),
- Environmental Conservation Service (ECS), and
- Meteorological Service of Canada (MCS).

This Manual is also designed to describe the roles and responsibilities of the **Departmental Common Services**, which include:

- Legal Services (LSU),
- Regulatory and Economic Analysis Branch (REAB),
- Enforcement Branch (EB),
- EPS Strategic Priorities Directorate (SPD), and
- Communications Branch (EPS, ECS).

Those responsible for developing other statutory instruments, management alternatives and policies (i.e. economic instruments, guidelines, standards, voluntary initiatives and cost recovery initiatives) may also benefit from the content of this Manual.

This Manual also aims to assist departmental officials in understanding the current and evolving departmental regulatory objectives, including:<sup>1</sup>

- compliance with the *Federal Regulatory Policy* (1999) and its associated Regulatory Process Management Standards;
- documentation of the departmental regulatory process and the timeline for regulatory development;
- a systematic approach to disseminating regulatory information to various actors in the departmental management initiative development process;
- a formal system for setting regulatory priorities;
- a systematic approach to consultation (who is being consulted, by whom, about what issues and when consultation is to take place, where can effective savings be made time, effort, etc.);
- measurement of results against stated goals and objectives;
- consistent methodologies and mechanisms to generate compliance statistics for Departmental analysis and for performance reporting on promulgated regulations, and
- a formal Environment Canada process for receiving and resolving complaints.

**It is not the intent of this Manual to detail every process currently in use within Environment Canada (e.g., TPPD's Risk Assessment/Management Process, CWS Regulatory Process), many of which are adequately documented elsewhere. Where relevant documents do exist, they will be referenced in this Manual.**

## List of Resources

The final **Annex** of this Manual lists reference material for the regulatory development and approval process. The reader should have these documents available in order to provide more detailed guidance through the various stages in the regulatory process. Many of these documents can be obtained from the following sources:

- EPS, Strategic Priorities Directorate (SPD),
- Regulatory and Economic Analysis Branch (REAB),
- CWS Regulatory Affairs, or
- Regulatory Affairs and Orders in Council Secretariat (RAOIC) of Privy Council Office (website address: [www.pco-bcp.gc.ca](http://www.pco-bcp.gc.ca)).

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<sup>1</sup> Note that as this manual evolves, it will cover these objectives more fully.

# Principles of Regulatory Development

Two key Federal policies, the *Federal Government Regulatory Policy (1999)*, and its *Regulatory Process Management Standards (RPMS)* require standardized regulatory procedures within departments. The *Regulatory Policy* sets out the policy requirements that federal regulatory authorities must meet to ensure that use of the government's regulatory powers results in the greatest net benefit to Canadian society. The *RPMS* are quality assurance standards for the regulatory process. They are designed to provide a framework against which departments can determine their compliance with the Regulatory Policy and ensure that appropriate information is provided to the Minister and the public. Regulatory authorities are responsible for having management systems in place that meet these standards. The reader is referred to **Annex A** for a copy of the *Regulatory Policy (1999)*.

In addition to the above, Environment Canada has its own internal regulatory planning and development objectives. These can be found in **Annex B**.

## Departmental Priority Setting

Due to the diversity and complexity of Environment Canada's regulatory agenda, and the impact of an increase in demands on departmental Common Services, Environment Canada (EC) has recognized the need for joint oversight, co-ordination and improved process management of departmental regulatory priorities.<sup>2</sup> The Departmental Regulatory Affairs Coordinating Committee (DRACC) was formed to deal with these issues and provide guidance to departmental staff. More specifically, DRACC is responsible for creating and maintaining a common departmental regulatory priority setting mechanism. DRACC coordinates proposed regulatory plans and priorities developed in each Service to ensure that all necessary tasks are identified and that resources are committed.

Within EPS, once a regulatory initiative is approved by the EPS Executive Committee, the lead program area is responsible for advising the EPS Strategic Priorities Directorate (SPD) Regulatory Advisor of the regulatory initiative. The SPD Regulatory Advisor is then responsible to inform DRACC of the regulatory priorities. The mandate and terms of reference for the DRACC can be found in **Annex P**.

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<sup>2</sup> This information supplements current processes operating within Environment Canada, including submission of the Department's Report on Plans and Priorities to Parliament each spring. This document contains a list of the major planned regulatory initiatives within the Department.

# The Regulatory Development Cycle

The application of the Federal Regulatory Process within Environment Canada involves four phases:



**Phase I. Problem Identification & Assessment**

**Phase II. Options Evaluation**

**Phase III. Regulatory Development, Approval & Implementation**

**Phase IV. Post-implementation Evaluation/Lifecycle Analysis**

This Manual is designed to assist the reader in navigating through each of these phases.

## Organization of this Manual

The following sections provide an overview and detailed description of the key steps involved in each of the **four phases** of the federal regulatory development and approval process. **Key questions** derived from the *Regulatory Process Management Standards Compliance Guide* are listed at the beginning of each Phase.<sup>3</sup> They highlight for the reader key issues and considerations that should be examined as they proceed through each phase in the process.

**Figure 1**, found at the end of this document, provides a detailed graphical representation of the Federal Regulatory Process as it is applied within Environment Canada. The information in this graphic includes:

- An overview of the key tasks and milestones in the process,
- The key players associated with each step, and
- Key issues and considerations for each step.

The sections in this Manual and the graphic have been designed to complement each other, with the diagram providing a quick reference tool for the reader. Cross-references from the graphic to each section are included to facilitate the use of both these tools.

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<sup>3</sup> A more detailed list of questions can be found in the *Federal Regulatory Process Management Standards Compliance Guide: A Self-Assessment Guide for Departmental Managers*. Treasury Board Secretariat, 1996

The **Annexes** to this document provide background information and reference material. They can be found as follows:

- Annex A:** The *Federal Regulatory Policy* (1999)
- Annex B:** Environment Canada Regulatory Planning & Development Objectives
- Annex C:** Glossary of Terms and List of Acronyms
- Annex D:** The Key Players in the Regulation-Making Process
- Annex E:** The Business Impact Test (BIT) or Equivalent Analysis
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- Annex J:** Sample Memo to Minister (EPS & ECS)
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## Phase I: Problem Identification & Assessment<sup>4</sup>

### Key issues and considerations to examine in Phase I

- What mechanism is used to ensure detection of actual or potential problems?
- How are these problems analyzed?
- Is the targeted community defined?
- Have preliminary consultations regarding the problems been conducted?
- For CEPA regulations, have you consulted with the National Advisory Committee (NAC)?
- Are the Common Services involved early in the process? (particularly REAB and Enforcement Branch)
- Is the documentation clear and concise so that all affected parties can understand it easily?
- If it is determined that government intervention is justified and alternative solutions should be explored, are these decisions documented?

The Regulatory Development Process is launched at the ***Problem Identification and Assessment Phase***.<sup>5</sup> Environment Canada is alerted to potential problems or issues of concern by many means. They include monitoring of human health and the environment, biological fieldwork, substance assessments, research by government departments, industry and the academic community as well as industry reporting requirements.

In the environmental area, international agreements also play an important role in problem identification and options analysis for appropriate solutions or instrument choice. For example, the *Ozone Depleting Substances Regulations* (ODS) evolved from the recommendations from the Vienna Conference and the Montreal Protocol. In the *Overabundant Species Regulation*, a Canada-U.S. scientific conference brought attention to the problem of overabundant populations of Arctic Geese.

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<sup>4</sup> For the purposes of this Manual, Problem Identification (Phase I) and Options Evaluation (Phase II) have been placed into distinct chapters. Although the Department had not yet decided whether a regulation is the best option at this point, the reality of the regulatory process is that these activities, which include ongoing stakeholder consultations, and determining the key elements of a regulation occur in a very fluid, continuous way, often going back and forth a number of times until an initiative is ready for the Development and Approval Phase (Phase III).

<sup>5</sup> For more information, refer to *Departmental Priority Setting* in the Introduction.

The *Federal Regulatory Policy* states that stakeholders should be involved very early on in the regulatory development process. Therefore, defining the targeted community is an important step in this phase. The Lead Program Areas (HQ or Regions) responsible for a particular issue ensures that the public is aware and participates in the consultation process. Pre-consultation is an important element in this phase. It improves the general understanding of the issue, its implications for all Canadians and elaborates the concerns of the regulated sector, associations, non-governmental organizations, the general public, and other stakeholders.

When the Department identifies an issue which requires an environmental management response, that Department proceeds to Phase II (the Options Assessment Phase) and, if necessary, to Phase III (Regulation Development and Approval Phase) of the process (*see also footnote #2*).



## Phase II Options Evaluation <sup>6</sup>

### Key issues and considerations to examine in Phase II

- ☑ Are non-regulatory alternatives identified? (e.g., codes of conduct, standards, economic measures) If so, how?
- ☑ If a regulatory solution is chosen, are regulatory options considered (e.g., performance-based solutions)?
- ☑ Are the Common Services involved? If so, to what extent?
- ☑ Is a cost-benefit analysis of the options performed?
- ☑ If the costs outweigh the benefits, are full explanations and justifications given?
- ☑ If regulation is chosen as a course of action, are the reasons fully documented and explained?
- ☑ Are consultations on the options (both regulatory and non-regulatory) conducted?
- ☑ Are the consultation documents clear and understandable? Is sufficient information given to enable the targeted communities and other interested parties to make informed decisions?
- ☑ What types of media are used to communicate with potential targeted communities and other interested parties?
- ☑ Are procedures in place for developing and maintaining appropriate relationships with potential targeted communities and other interested parties?
- ☑ Are the results from consultations documented and utilized?
- ☑ Are advisory documents readily available? (e.g. *Assessing Regulatory Alternatives* (Treasury Board), *Benefit-Cost Analysis Guide for Regulatory Programs* (Treasury Board))

## Overview

If, in Phase I, the Lead Program Area assesses that a problem does exist, the next stage is then explored: establishing what options are viable to deal with the particular problem. This phase is generally led by the Program Area responsible for the issue, in cooperation with Departmental Common Services (Legal Services, Regulatory and Economic Analysis Branch, Enforcement Branch and Communications).

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<sup>6</sup> For the purposes of this Manual, Problem Identification (Phase I) and Options Evaluation (Phase II) have been placed into discrete chapters. However the reality of the regulatory process is that these activities, which include ongoing stakeholder consultations, and determining the key elements of a regulation occur in a very fluid, continuous way, often going back and forth a number of times until an initiative is ready for the Development and Approval Phase (Phase III).

A wide range of alternative tools and options should be considered for each issue, including economic instruments, pollution prevention plans, environmental emergencies plans, technology transfer, standards, codes and guidelines, stakeholder education, voluntary actions, permits and regulations. In all cases, the overall objective is to ensure that the selected options or tools are:

- cost-effective in achieving environmental goals,
- harmonized to be consistent with other government regulations, policy or agreements, and
- innovative in terms of the environmental management response.

Environment Canada must ensure that all feasible alternatives are evaluated from environmental efficacy, technical and socio-economic perspectives. This evaluation requires that officials develop economic profiles of the potential affected community to provide a perspective on who may be impacted by potential action. It is therefore important to ensure that the Common Service undertaking the Economic Impact Analysis (i.e., Regulatory and Economic Analysis Branch (REAB) for EPS regulations and the responsible program official and regulatory analyst for ECS regulations) is involved in evaluating alternative tools and options.

The evaluation of alternatives may lead to a recommendation that the best course of action is regulation rather than, for example, voluntary action. When the decision to regulate is made, the next steps must be followed in the process.

## Key Elements of the Options Analysis

The objective of this Phase is to develop the most appropriate tools to ensure the protection of the environment (e.g. pollution prevention, wildlife conservation) and of human health. Although ultimately bound by the limits of the enabling legislation, analysis of any proposed regulation will define the types of controls that will be used to ensure adequate implementation and enforceability. They will also provide some information that will trigger or justify the addition or removal of some potential regulatees from the purview of the proposed regulation.

## Enforceability Issues<sup>7</sup>

When the federal government regulates, it has an obligation to mount an effective program to secure compliance. The *Federal Regulatory Policy* calls for departments and agencies that have justified the need for regulation to show that compliance promotion and enforcement policies have been articulated and resources are approved and adequate to respond effectively.

At this early stage, program staff should involve the Enforcement Branch. Its input to the process is key to assessing the enforcement-related costs associated with any specific option.

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<sup>7</sup> See **Annex Q** for criteria for an enforceable regulation.

Research and information generated during this phase will contribute to the Enforcement Assurance Process and the development of the Compliance Promotion and Enforcement Strategy (see Phase III, step 1 (e)).

## Stakeholder Consultations

The objective of the consultative process is to meet with the targeted communities and other interested parties to inform them of the requirements related to the proposed new or amended regulation, and obtain feedback on how it will affect them. The consultations involve meetings with affected non-governmental organizations, government organizations, representatives of industrial sectors, and the general public. Documentation may be distributed in advance (e.g. discussion papers and background on the initiative). Other techniques can also be used for consultations such as mailing lists, publications, networks, email submissions, and the Internet. The feedback from consultation at early stages enables program managers to get a clearer picture of the targeted community and issues of concern.

The Lead Program Area organizes these consultations. Officials inform the targeted community about key elements of the proposed new or amended regulations, such as the general requirements and proposed impacts. In certain cases, particularly if there is strong public interest in a proposal, the Lead Program Area may convene public meetings to give stakeholders an opportunity to provide input and exchange views.

The ECS and EPS consultation processes vary. For CEPA regulations, the primary consultation mechanism is the National Advisory Committee (NAC) (see **Annex D**). ECS uses a formalized process to consult extensively each year on regulatory amendments (this process includes distribution of yearly Status, Regulations, and Summary Reports). The reader is referred to the CWS Regulatory Process Manual for further information.

Consultation is an ongoing process that should begin early and continues through to the end of the prepublication period. More information on departmental policies and procedures for consultation can be found on the departmental website (The GreenLane: <http://www.ec.gc.ca>).



## Phase III: Regulatory Development/ Amendment & Approval Process

*(Drafting of regulations and processing of regulations through to Gazette Part II)*

### **Key Issues and considerations to examine in Phase III**

- Are decisions clearly justified and documented throughout the regulatory process? At what level are these documents reviewed and verified?
- Have the key elements of the regulatory initiative, its goals and objectives been clearly defined?
- Is the RIAS prepared early in the regulatory development process?
- Have the compliance promotion aspects of the regulatory proposal been taken into consideration? If so, is the Enforcement Branch involved in this analysis?
- Are the implementation aspects of the regulation being taken into consideration during its development?
- Are there ongoing communications with regulators in provincial governments and other jurisdictions?
- Are Canadian and international standards examined and referenced in regulations if appropriate?
- If applicable, are other government departments kept informed during the regulatory development process?

## Overview

The Regulatory Development and Approval Phase (Phase III) applies only when officials from the Lead Program Area and the appropriate ADM level management forum agree to a policy decision to develop and implement a regulation as the selected management option. When the regulatory development phase begins, the Lead Program Area has conducted stakeholder consultations and finalized the key elements of the proposed regulation (see **Phase II**).

The introduction or amendment of a regulation must conform to the principles of the *Federal Regulatory Policy* and follow the procedures established by the Department of Justice and Environment Canada's Regulatory Development and Implementation Process laid out in this Manual.

Lead Program Areas (either at Headquarters or in the Regions), to which a particular issue has been assigned, are responsible for managing the regulatory development process and engaging the

appropriate resources from Common Services (e.g., Legal, REAB, Enforcement Branch, and Communications). As well, they are responsible for consulting and informing other departments such as Fisheries and Oceans, Health Canada, Transport Canada and the Canada Customs and Revenue Agency.

The following information will help the reader understand and follow the process from the drafting of a regulation/amendment to its preparation for publication in Part I and II of the *Canada Gazette* through its implementation. The reader is also encouraged to refer to the **Process Map** found as **Figure 1** under **Tab 5** of this Manual.

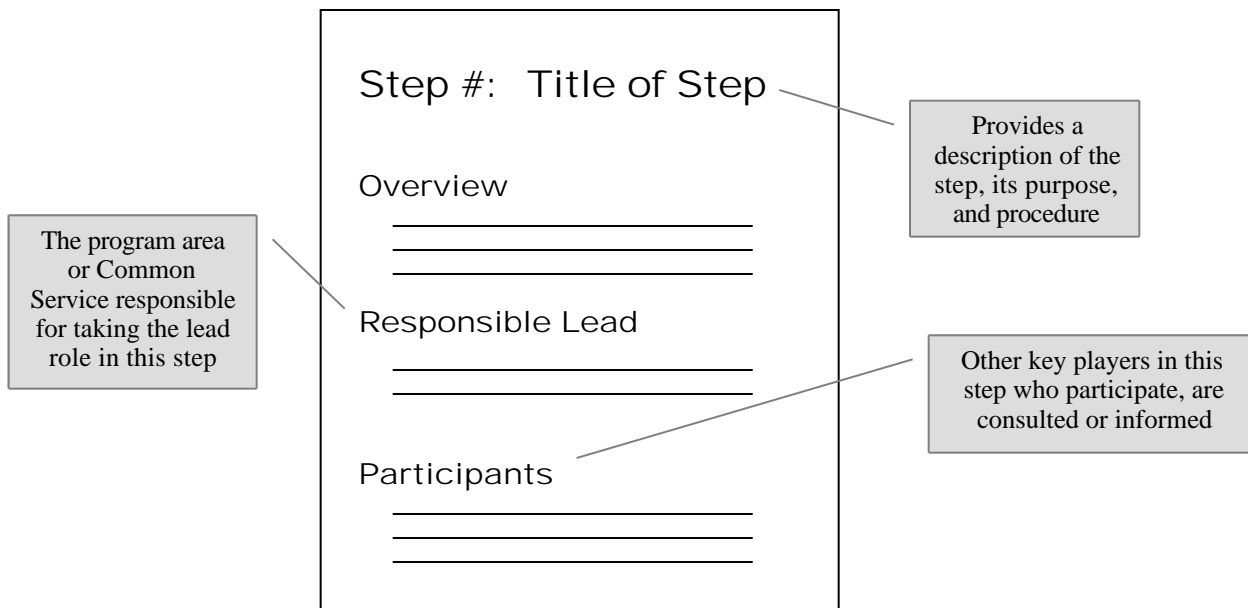
**Phase III, the development and approval of regulations, involves the following 11 steps:**<sup>8</sup>

|                    |  |
|--------------------|--|
| <b>Step 1:</b>     | Develop Material for Regulatory Package  |
| <b>(a):</b>        | Draft the Regulations  |
| <b>(b):</b>        | Draft the Regulatory Impact Analysis Statement (RIAS)  |
| <b>(c):</b>        | Draft Communications Plan  |
| <b>(d):</b>        | Conduct Enforceability Assurance   |
| <b>(e):</b>        | Develop Compliance Promotion Plan and Compliance & Enforcement Strategy  |
| <b>Step 2:</b>     | Review and Revise Draft Regulation/Blue Stamping by Regulations Section (Justice)  |
| <b>Step 3:</b>     | Departmental Senior Management approves draft regulatory package/Includes Ministerial Approval   |
| <b>Step 4:</b>     | Submit approved package to Special Committee of Council/Obtain Approval to Pre-publish   |
| <b>Step 5:</b>     | Publish draft regulations in <i>Canada Gazette, Part I</i> / 30-60 day Comment Period (or as established under enabling legislation or departmental policy)        |
| <b>Step 6:</b>     | Review Stakeholder Comments & Revise/finalize proposed Regulation (as necessary)   |
| <b>Step 7 (a):</b> | Finalize RIAS for <i>Canada Gazette, Part II</i> (as necessary)  |
| <b>(b):</b>        | Finalize Communication Plan for <i>Canada Gazette, Part II</i> (as necessary)  |
| <b>Step 8:</b>     | Review of final regulatory package by Departmental Legal Services (as necessary) and submit final regulatory package to Regulations Section (Justice) for stamping |
| <b>Step 9:</b>     | Departmental Senior Management approves final regulatory package/Includes Ministerial Approval   |
| <b>Step 10:</b>    | Submit approved package to SCC   |
| <b>Step 11:</b>    | Publish in <i>Canada Gazette, Part II</i>  |

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<sup>8</sup> Where step numbers are followed by letters, those steps should be accomplished in parallel.

The following sections provide more detailed information on each of the eleven steps. Information regarding each step is organized in a template for easy reference as follows:



Where a Common Service is one of the key players in a step, it is distinguished as follows:

*Common Service:* Legal Services

*Common Service:* REAB (Regulatory and Economic Analysis Branch)

*Common Service:* Enforcement Branch

*Common Service:* Communications Branch

Where necessary, key players are also distinguished depending on whether they are involved in EPS or ECS regulations.

The reader is encouraged to refer to the **Process Map** in **Figure 1** as an easy cross-reference to each step. This diagram has been designed to communicate two important factors regarding this process:

1. Work on several of the steps in Phase III actually occur in parallel; and
2. Work on implementation-related activities begins early in the regulatory development process, runs in parallel, and continues on after final publication of the regulation.



The following steps for developing material for the regulatory package, 1 (a) – (e), can be done in parallel

A green decorative graphic consisting of a solid green triangle pointing to the right, with a thin green line extending from its base and curving downwards and to the left.

## Step 1 (a): Draft the Regulation

### Overview

Once the key elements of the proposed regulation are determined and initial consultations with stakeholders are completed, drafting begins. In EPS, the first step for the Lead Program Area is to develop drafting instructions. The purpose of this plain language document is to assist Department of Justice lawyers (drafters) in drafting the legal text of a regulation. The drafters are also guided by the analysis done in the problem definition and options evaluation stage, the information gathered during consultations and the regulatory structures decided upon by the Lead Program Area. Departmental Legal Services work with the Lead Program Area through an iterative process in drafting the regulations. Once an agreed upon draft of the regulation is developed, the draft regulation is then examined by Regulations Section Justice RS(J) (see **Step 2**). The drafting process is done in parallel with the drafting of the Regulatory Impact Statement Analysis (RIAS).

In ECS, the Lead Program Area typically drafts the legal text for a regulatory amendment in consultation with departmental legal services.

### Responsible Lead

**EPS: Lead Program Area (HQ or Region)** develops the drafting instructions. They keep in close contact with enforcement officials and consult REAB, Departmental Legal Services and OGDs, such as Fisheries and Oceans and Health Canada in the case of shared regulations. After revising and finalizing the drafting instructions, the program manager submits the document (in English and French) to **Common Service: Departmental Legal Services**, which reviews the drafting instructions and begins drafting the legal text. Legal Services will also ensure that the regulation is consistent with policy intentions and verify that the regulation complies with the authority granted in the enabling Act before submitting it to the Department of Justice for final approval.

**ECS: CWS-Region:** the regulatory analyst or program manager drafts the regulatory text (or drafting instructions), in consultation with scientific staff, wildlife enforcement, Region(s) and Departmental Legal Services. In complicated cases, the analyst prepares drafting instructions and submits them to the Regulations Section, Justice for drafting.

## Participants

**Common Service: Enforcement Branch** works with the Responsible Leads to ensure that the regulations are enforceable and that enforcement officers can apply them.

**Common Service: REAB (or the Regulatory Analyst in CWS)** is consulted by the Responsible Lead throughout the drafting process to ensure that the Regulatory Impact Analysis Statement (RIAS) is consistent with the regulation, and that the appropriate impact analysis is undertaken.

**OGDs and Other Interested Parties** are consulted and provide comments as necessary.

## Step 1 (b): Draft the Regulatory Impact Analysis Statement (RIAS)

*Note: the RIAS serves as the focal point for the development of the regulation itself. Liaison with REAB (for EPS regulations) or the Regulatory Analyst (for ECS regulations) and preliminary work on the RIAS often begins in the Problem Identification and Options Evaluation Phases (Phases I & II) of the process.*

### Overview

The Federal Government Regulatory Policy requires that a RIAS must be prepared for any regulatory proposal.<sup>9</sup> It serves as:

- a briefing document for Ministers of Special Committee of Council (SCC), providing them with the information to reach the proper decision on a regulation;
- a summary of the intent of the regulation and associated impacts; and
- an explanatory note for the government and general public.

The RIAS provides a clear language description of the regulatory objective sought by the federal government. It illustrates to stakeholders (i.e., regulated sector, small business, government, labour, consumers, NGOs, aboriginal organizations, environmental organizations, and other interest groups) the costs and benefits of the regulatory proposal and outlines the compliance promotion mechanism(s). The RIAS is intended to support the proposed new or amended regulation. It is published in the *Canada Gazette, Parts I and II*, along with the regulation.

A standard RIAS has six main sections:<sup>10</sup>

- 1) Description:** Outlines the regulation, defines the problem being addressed by the regulation and shows why the regulatory action is necessary. It also outlines the life cycle of the regulatory initiative, defines the problem being addressed by the regulation, and demonstrates why the regulatory action is necessary.
- 2) Alternatives:** Examines the options explored, other than regulation and regulatory alternatives or “smarter” regulation. It also justifies why the proposed regulation is the best solution to the problem.
- 3) Benefits & costs:** Quantifies the socio-economic and environmental impacts of the regulatory proposal using standardized methodologies and widely accepted evaluative

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<sup>9</sup> An example of a RIAS can be found in **Annex F** of this document.

<sup>10</sup> The reader is referred to the *RIAS Writer’s Guide*, Treasury Board Secretariat, prepared by Consulting and Audit Canada, August 1992. Copies can be obtained from REAB or the PCO website (<http://www.pco-bcp.gc.ca>).

approaches. (The economic analysis associated with EPS regulatory proposals is undertaken by REAB).

- 4) **Consultations:** Describes who was consulted and their concerns or opinions. It also indicates the results of the consultations (including the government response).
- 5) **Compliance Promotion and Enforcement:** Outlines the compliance promotion tools that will be used to monitor and enforce the regulation, as well as the penalties for non-compliance. *(Note that this section of the RIAS cannot be completed until steps 1 (e) is done).*
- 6) **Contact person:** Identifies a contact person with address and phone number in the Lead Program Area that developed the new or amended regulation, (and for EPS regulations, the REAB lead) who will answer any questions regarding the regulation.

Because the RIAS is the key document that most reviewers of a regulatory initiative will see, early consideration of how this document should be framed is necessary. To ensure clarity of process and effectiveness of the initiative, the RIAS development process is undertaken in consultation with Environment Canada stakeholders, Health Canada, Department of Fisheries and Oceans, or other departments in the case of joint regulations.

## Responsible Lead

**EPS: Common Service: REAB** is responsible for developing all the elements of the RIAS for EPS regulations, in cooperation with the Lead Program Area. An (REAB) economist is responsible for developing and drafting the RIAS.

**ECS: CWS (HQ or Region)** is responsible for preliminary drafting of the RIAS for CWS regulations, in collaboration with the **regulatory analyst** at HQ assigned to the file. The draft RIAS is provided to the CWS regulatory analyst assigned responsibility for the regulation. The analyst is responsible for finalizing the RIAS, and for obtaining additional information as required from the Lead Program Area.

## Participants (for EPS regulations)

**Lead Program Area (HQ or Region)** provides **REAB** with input as required.

**Common Service: Enforcement Branch (HQ)** provides to the economist, information on the associated impacts of enforcement related activities such as person-years involved to enforce the regulation, inspection tools, sampling and analysis costs, investigation and post-investigation costs, etc. HQ also consults with **Regional Enforcement Branches** as necessary.

**OGDs (Health Canada, Department of Fisheries and Oceans, etc)** are kept informed and are often consulted on the results of the economic impact analysis and basic content of the RIAS.

**Stakeholders** are kept informed and often consulted on the results of the economic analysis & basic content of the RIAS.



## Step 1 (c): Draft the Communications Plan

### Overview

A Communications Plan is required for each proposed regulation or amendment to an existing regulation. The plan can be developed in parallel with both the regulation and the RIAS although a well-developed regulation and RIAS can expedite this process. The plan details the communication activities that the Minister will follow when presenting the regulation to the public. The Communication Plan is an internal document and is not published in the *Canada Gazette, Part I or II*.

Within EPS, once the RIAS and the draft regulations are ready, information for the proposed communication plan is approved by the Lead Program Area, and then submitted to EPS Communications Directorate. The Directorate then drafts the Plan. The targeted audience is often determined during the Problem Identification and Options Evaluation Phases (Phases I & II) of the process.

In ECS, the Lead Program Area in either HQ or the Regions develops a preliminary draft of the Communications Plan. The draft is then provided to the **regulatory analyst** responsible for the regulation. The regulatory analyst finalizes the Communications Plan in consultation with **ECS Communications Branch**.

An example of Communications Plans for both EPS and ECS can be found in **Annex G**.

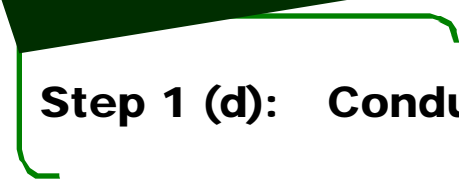
### Responsible Lead

**EPS: Common Service: EPS Communication Branch** drafts the Communication Plan based on the information found in the drafting instructions and RIAS and provided by the **Lead Program Areas (HQ or Regions)**.

**ECS: CWS—HQ or Regions** drafts the preliminary Communications Plan, which is finalized by the regulatory analyst in cooperation with ECS Communications. Lead Program Area officials will provide additional information if needed. Once completed, a copy of the Communications Plan is provided to ECS Communications.

### Participants

**Lead Program Area (HQ or Region)** provides input as required.



## Step 1 (d): Conduct Enforceability Assurance

### Overview

This step ensures that all aspects of the proposed regulations are enforceable.<sup>11</sup> This step may be repeated as changes are made throughout the regulatory development process.

Once the draft of the regulation is available (just prior to the blue stamping), the Lead Program Area distributes the draft to the Enforcement Branch for review and comment. The Enforcement Branch then circulates the draft to the Regional Enforcement Officers for review. A period of at least 3 weeks should be allowed to review and comment on the draft regulations.

### Responsible Lead

**Lead Program Area (HQ)** distributes the draft regulation to the Enforcement Branch, reviews modifications proposed by Enforcement officials and adjusts revised drafting instructions if required.

**Common Service: Enforcement Branch** is responsible to ensure that each **Region** has reviewed the drafting instructions and has provided comments as to their enforceability to the Enforcement Branch (HQ).

### Participants

**EPS: Common Service: REAB** may modify the RIAS based on the comments from the Enforcement Branch (e.g., costs).

**Common Service: Departmental Legal Services** are consulted as necessary.

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<sup>11</sup> A list of criteria to determine the enforceability of a regulation can be found in **Annex Q** of this document.

## Step 1 (e): Develop Compliance Promotion Plans & Compliance and Enforcement Strategies

*Note: Although this step begins in Phase III of the regulatory process, the development of the strategies and plans runs in parallel to the regulatory development process. The development of the compliance promotion plan and the compliance and enforcement strategy is a key element to the developing regulations and are necessary to successfully approve and implement a regulatory initiative.*

### Overview

The *Federal Regulatory Policy* requires that regulatory compliance and enforcement policies be clearly articulated. Environment Canada's Compliance Promotion Plan and the Compliance and Enforcement Strategy provide guidance:

- to enforcement officials for the delivery of compliance verification and enforcement activities; and
- to program managers for the delivery of compliance promotion activities.

Each regulation introduced by the Department has unique requirements. At an operational level, strategies and plans are needed for the effective delivery of training programs, compliance promotion activities and enforcement measures in relation to particular regulations.

A **Compliance and Enforcement Strategy** is comprised of the following elements:

1. Compliance Promotion requirements
2. Training requirements
3. Inspection requirements and resource needs

These regulation-specific elements describe the type and timing of compliance promotion and enforcement actions to be taken by program staff and enforcement officials, the respective roles and responsibilities of all involved and their regulation-specific training requirements. Regulation-specific training and compliance promotion plans, as well as regional inspection plans, are consolidated into the annual National Inspection Plan.

The Enforcement Branch (regions and HQ) develops the Strategy in consultation with representatives from the Lead Program Area. The Compliance and Enforcement Strategy should be developed before the regulation is submitted for pre-publication in *Canada Gazette, Part I*.

The Compliance and Enforcement Strategy articulates the basic requirements for the **Compliance Promotion Plan** and the Enforcement Branch **Training Plan**.

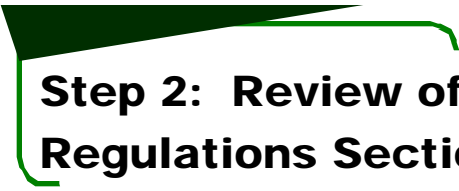
## Compliance Promotion Plan

The Compliance Promotion Plan describes how Environment Canada will perform compliance promotion activities. Each year, information from the Lead Program Area is collected by the Enforcement Branch, and plans are developed or amended. Although the Lead Programs Area usually takes the responsibility, Enforcement Branch has offered to collect the information and publish a consolidated compliance plan. The Program Areas (HQ/Regions) implement the plans.

## Training Plan

The Training Plan outlines what training enforcement officers require to conduct inspections and investigations in the context of a specific regulation. These plans are also useful for program staff who did not participate in the development of the entire regulation but must implement it and run compliance promotion activities. The Enforcement Branch develops the Training Plan, in consultation with the Lead Program Area and Departmental Legal Services.





## Step 2: Review of Regulations and Blue Stamping by Regulations Section, Justice (RS(J))

### Overview

Once officials from the Lead Program Area and Common Services agree with the content of the draft regulation and its associated pieces (e.g. the RIAS and the Communications Plan), the Regulations Section of the Department of Justice (RS(J)) conducts a legal examination to ensure that the regulation conforms with the requirements of the *Statutory Instruments Act*.<sup>12</sup> Two drafting lawyers, that work in their own language (English and French), are assigned to do the following:

- Ensure that the regulation falls within the powers of its enabling Act;
- Point out any legal problem in connection with the proposed regulations;
- Ensure that the French and English versions of the proposed regulation are equivalent; and
- Rewrite provisions and restructure the draft regulation as necessary.

If questions or issues are raised during the examination, the lawyer responsible for the file at Departmental Legal Services is the main contact for RS(J) drafters. The RS(J) drafters may meet with Departmental Legal Counsel and the Lead Program Area official to explore the policy objectives of the regulations.

If the RS(J) drafters propose to rewrite many of the regulation's provisions, the Department has the opportunity to look and comment on the changes before the regulations are approved by Senior Management and the Minister, ensuring that the proposed regulation is still enforceable and that the intent of the regulation is still respected. The Responsible Lead (see below) distributes the draft in both official languages to the appropriate Common Services for review.

At the end of the examination process, RS(J) issues two copies of the proposed regulation to the Lead Program Official. The RS(J) stamp appears on each page of these so-called Blue-Stamped copies. This means that the proposed regulation (or amendment to an existing regulation) has been accepted in both official languages and conforms with the *Statutory Instruments Act*.

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<sup>12</sup> The regulation is reviewed and approved by Departmental Senior Management prior to being sent to RS(J). The reader is referred to internal policies and procedures in their Service area for further information.

## Responsible Lead

**EPS: Lead Program Area (HQ).** The project manager writes a letter requesting Senior General Counsel in the Department to submit the regulation to RS(J) for review and blue stamping.<sup>13</sup>

**ECS: CWS Regulatory Analyst.** Once the draft regulation or drafting instructions are complete, the regulation (or instructions), draft RIAS and Communications Plan are approved by the DG-CWS and sent to the RS(J) for legal examination, drafting and blue-stamping.

**Common Service: Departmental Legal Services.** Senior General Counsel for Environment Canada submits the EPS draft regulation package to RS(J) for review.

## Participants

**Common Service: Enforcement Branch.** If major changes are made by RS(J), the Lead Program Area will inform HQ Enforcement so that they can review the proposed amendments to ensure that the draft regulation remains enforceable. Enforcement Branch (HQ) will also inform the **Regional Enforcement Branches** about the changes made by RS(J).

**EPS: Common Service: REAB** adjusts the RIAS prepared for EPS initiatives accordingly if changes are made to the regulations by RS(J).

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<sup>13</sup> An example of a letter to Head Counsel can be found in **Annex H**.



## Step 3: Departmental Senior Management Approves Draft Regulatory Package<sup>14</sup>

### Overview

Departmental Senior Management must review and approve proposed regulations before they are submitted for approval by Special Committee of Council for prepublication in *Gazette Part I*.<sup>15</sup> By approving the documentation, the Minister formally recommends that the Governor in Council pre-publish the regulations.

### Responsible Lead

**EPS: Lead Program Area (HQ)** ensures that all documentation (see below) is ready by the time the proposed regulation is returned to Environment Canada by Regulations Section Justice (RS(J)). The Responsible Lead also prepares the package, the covering letter for PCO, the memorandum for the Minister and the transmittal slip for approvals by:

- DG, Economic and Regulatory Affairs Directorate, (P&C);
- DG, National Programs Directorate;
- DG, Lead Program Directorate;
- DG, Communications.

For CEPA initiatives, the Lead Program Area then forwards the package to the EPS Strategic Priorities Directorate, Regulatory Affairs Advisor. Once the Advisor receives the package from the lead program area, they obtain Ministerial approval. In the case of shared regulations, copies of the regulatory package are forwarded to that department for the Minister's signature. Once that process is completed, the package is sent to the SCC.

**ECS: CWS Regulatory Analyst** is responsible for tracking the progression of the amendment package through the Department. Once the blue-stamped regulation has been received from RS(J), the regulatory analyst prepares the package (Memorandum to Minister, RIAS, Communications Plan and regulation) for submission to departmental officials and the Minister for review and approval. Once the package has received approval of the DG-CWS, it is

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<sup>14</sup> This includes Ministerial review and approval.

<sup>15</sup> Internal approval processes (program official through to DG level) vary among Services Areas within the Department. The reader is referred to the relevant internal policies and procedures for more detailed information.

submitted to the DG, National Programs Directorate, EPS for final enforcement review and sign-off. Also, following approval by the DG-CWS, a copy of the Communications Plan should be sent to the ECS Communications. Following these steps, the package is sent to the ADM-ECS, the DM and then the Minister's Office. Once the regulatory package has been approved and the cover sheet of the RIAS signed by the Minister, the Regulatory Analyst is responsible for preparing the submission for transmission to Privy Council Office (PCO).

## Participants

**Common Service: Enforcement Branch, Departmental Legal Services, REAB and Communications** review and sign off on the regulatory package.

## The Regulatory Package

Environment Canada typically develops one of three types of regulations:

1. **Governor-in-Council Regulations**
2. **Ministerial Regulations**
3. **Regulations requiring the recommendation of Treasury Board** are Governor-in-Council or Ministerial regulations that have direct financial implications.

### 1. Governor-in-Council Regulations

The package for the Departmental approval process should be prepared before receiving the final proposed regulations revised by RS(J) (Blue-stamped copies).<sup>16</sup> The documents that will be required in the package for the publication in the *Canada Gazette, Part I*, are:

- Blue-Stamped Regulation (two Blue-stamped and two copies);
- RIAS in both official languages (original copy signed by the sponsoring Minister(s) and four copies in each language, together with an electronic version on diskette);
- Letter to Assistant Clerk of the Privy Council (Orders in Council Secretariat) for the review of the SCC and the publication in the *Canada Gazette* (see an example **Annex I**);
- Notice of Prepublication (four copies in each official language);
- Form *Request for Insertion in the Canada Gazette* (see example **Annex O**);
- Communications Plan (three copies in each language)(see example **Annex G**);
- Briefing Note on the proposed regulations (necessary for EPS regs – internal use only) (see example **Annex M**);
- Memo to Minister of the Environment – internal use only (see example **Annex J**);

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<sup>16</sup> *Note: When dealing with a tight timeframe for approval, it is recommended that a draft package with accompanying memo be sent to departmental senior management, communicating the following: "This is the package that will be sent when the stamped and approved copies are available. It is suggested that this package be reviewed now as only a very short time period (a few days at most) will be available to approve it. Should changes to this draft package be made, they will be flagged appropriately in the final approval package."*

- For CEPA Regulations, a Letter to Minister of Health from the Minister of the Environment if signature of Minister is required (See example **Annex K**). In the case of Fisheries Act regulations, the Minister of Fisheries and Oceans signs and makes the recommendation to the Governor in Council; and
- Original artwork, where publication of the regulation includes graphic material (i.e. forms, maps, or diagrams).

## 2. Ministerial Regulations

Under the *Canadian Environmental Protection Act '99*, the Minister has the authority to develop regulations. For Ministerial approval of regulations, the same documents listed above are required. However, it is important to note that Ministerial regulations do not go to Special Committee of Council but are instead forwarded to the Orders in Council Division (Registration and Publication) of PCO to arrange for pre-publication in the *Canada Gazette, Part I* (and following comment and final approval, in the *Canada Gazette, Part II*).

## 3. TB Regulations

Treasury Board approval is required for GIC regulations that have direct financial implications (e.g., regulations that impose new user fees, or raise or lower existing fees). These regulations must be submitted to Treasury Board, along with a Treasury Board Submission, following approval by the Minister and prior to proceeding to the SCC for prepublication approval. Once prepublication is completed, it is not necessary to obtain the recommendation of Treasury Board a second time, unless substantive changes have been made to the regulation following prepublication.

Ministerial regulations with financial implications require approval by TB before proceeding to prepublication.

Treasury Board Submissions are typically drafted by both the Lead Program Area and an official from the Finance Section of Treasury Board. Other document requirements (RIAS, Communications Plan, etc.) are the same as those outlined above.

For more detailed information, a guide on the preparation of Treasury Board Submissions can be found in the publications section of the Treasury Board Website at <http://www.tbs-sct.gc.ca>.

## Step 4: Submit Approved Regulatory Package to Special Committee of Council (SCC)/Obtain Approval to Pre-publish (GIC and TB Regulations)

### Overview

Approval by the Special Committee of Council (SCC) is required for pre-publication of Governor in Council and Treasury Board regulations in the *Canada Gazette*, Part I.<sup>17</sup>

Once the Minister approves the regulatory package (see **Step 3**), the DG of the Strategic Priorities Directorate (SPD) for EPS regulations, or the CWS Regulatory Analyst for ECS regulations, forwards the material to the Assistant Clerk of the Privy Council (Orders in Council) with a request to table documents before the SCC. As secretariat to the SCC, PCO reviews submissions to ensure consistency with the *Federal Regulatory Policy* and with broader government initiatives. Regulatory Affairs and Orders in Council Secretariat (RAOIC) ensures that any questions relating to supporting documents are fully answered before the initiative is placed on the SCC agenda. PCO analysts prepare briefing material for SCC Ministers, summarizing the rationale, impact, and issues related to proposals. In some instances, PCO may request the Department to prepare and submit additional briefing material. (For EPS regulations, Regulatory Affairs, within the Strategic Priorities Directorate liaises with the Lead Program Area and provides the Regulatory Affairs and Orders in Council Secretariat with the appropriate documentation (e.g. regulatory package) as required.


The SCC meets on a weekly basis (usually, on Wednesdays) when Parliament is in session. The deadline for receipt of submissions for items to be included on the SCC agenda is Friday, at 4 p.m., eight working days before the meeting. Submissions received after the deadline are scheduled for the following meeting. Requests to have submissions considered on an urgent basis, once the deadline has passed, must be in the form of a letter from the ADM (ECS/EPS) to the Assistant Clerk, providing the rationale for the urgency of the late submission. More information regarding the SCC agenda and timelines for submissions can be obtained by contacting PCO Orders in Council Secretariat.

An official from the Lead Program Area must be available, in person, during the SCC meeting to answer any questions that Ministers may raise. If a question arises and there is no official from the Department in attendance, the submission is deferred for consideration at a subsequent meeting of the SCC. Once approved by the SCC, the Notice of prepublication, RIAS and the proposed regulation is forwarded by PCO directly to the *Canada Gazette*.<sup>18</sup>

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<sup>17</sup> Note that Ministerial Regulations are not approved by SCC (they go directly to Orders in Council Division of Privy Council Office (PCO) for pre-publication).

<sup>18</sup> An example of a Request for Insertion in the *Canada Gazette* is found in **Annex O**.



## Step 5: Publish draft regulations in *Gazette, Part 1* – 30/60 day Comment Period

### Overview

The *Federal Regulatory Policy* requires that “...Canadians are consulted, and that they have an opportunity to participate in developing or modifying regulations and regulatory programs.” As a result, it is a legislative requirement under a number of Acts administered by Environment Canada that proposed regulations be pre-published in *Canada Gazette, Part I*. This allows stakeholders to comment on the upcoming new regulations or amendments to existing regulations.

Depending on the regulations being developed/amended, the prepublication period can vary. CEPA '99 requires a 60-day public comment period after the pre-publication in Part I of the *Canada Gazette*. For ECS, some proposed wildlife regulations do not go through the prepublication step. For other regulations, a 30-day public comment period applies. The reader is advised to confirm prepublication requirements prior to proceeding with this step. Environment Canada's policy is to provide every opportunity for public participation in the development of regulations.

The proposed regulation and corresponding RIAS are pre-published in *Canada Gazette, Part I* on a Saturday, generally nine days after SCC approval.

### Responsible Lead

**EPS: Lead Program Area or ECS: CWS Regions/Regulatory Analyst** receive comments submitted by stakeholders. The CWS analyst notifies the website coordinator for CWS that the appropriate links to the *Canada Gazette* website should be added to the CWS website to enable Internet access to the proposal by users.

### Participants

**Proposed Regulated Community/Stakeholders** provide comments on the draft regulations and the RIAS.

## Step 6: Review Stakeholder Comments and Revise/Finalize Proposed Regulations as Necessary for Gazette Part II Publication

### Overview

At this step Lead Program Area officials review the stakeholders' comments after pre-publication. The Lead Program Area, with the assistance of Departmental Legal Services, may revise the regulation depending on the nature of the comments received. Reaction following prepublication can vary from support for the initiative to a formal notice of objection (as in the case of CEPA '99). Lead Program Area officials carefully consider the comments received, weighing the merits of the feedback. If warranted, the Lead Program Area changes the proposed regulation.<sup>19</sup> The decision to proceed with final publication (Part II of *Canada Gazette*) or to pre-publish again will depend on the extent of the changes made to the proposed regulation. If substantive changes are made, a second round of pre-publication ensures that the potential regulated community are aware that the original proposal was altered significantly. If the changes are significant, the Lead Program Area (HQ and Region) consults with the Common Services (REAB, Enforcement Branch, Legal Services) to seek agreement with the proposed changes.

If there are no comments following pre-publication that require changes to the regulation, final approval to proceed to *Canada Gazette, Part II* publication is sought from the Minister (and also the Minister of Health if it is a joint regulation). In the case of CEPA Notices of Objection, the Lead Program Area, in conjunction with Departmental Legal Services, must deal with the Notices before proceeding to *Canada Gazette, Part II*.

### Responsible Lead

**EPS: Lead Program Area**, in conjunction with **Common Service: Departmental Legal Services**, determines if revisions are necessary based on the extent and nature of the comments.

**ECS: CWS Regulatory Analyst**, in consultation with the lead program area, determines if revisions are necessary based on the nature of the comments received.

### Participants

**Common Service: Enforcement Branch** may be involved if comments or changes have put the enforceability of the regulation in question.

**Common Service: REAB** adjusts the regulatory impact analysis as required.

**OGDs and other interested parties** may be involved.

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<sup>19</sup> The RIAS and Communications Plan are also adjusted.



Steps, 7 (a) & (b) can be done in parallel

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## Step 7 (a): Finalize RIAS for *Gazette Part II*

### Overview

At this step, officials adjust the RIAS to reflect comments and any changes made to the proposed regulation.<sup>20</sup> The Responsible Lead (see below) works with the program manager to ensure the text of the RIAS reflects any changes made after pre-publication.

### Responsible Lead

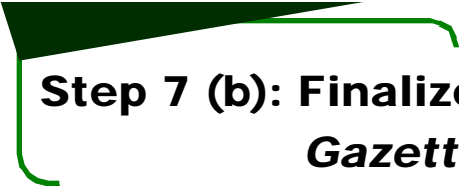
**EPS: Common Service: REAB** or **ECS: CWS Regulatory Analyst** revises and adjusts the regulatory impact analysis as required, the cover page, and consults with the **Lead Program Area** as necessary.

### Participants

**Common Service: Enforcement Branch** reviews the enforcement-related information in the RIAS as necessary.

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<sup>20</sup> The required adjustments include the cover page of the RIAS, on which the date of prepublication must be added.



## Step 7 (b): Finalize Communications Plan for *Canada Gazette, Part II*

### Overview

At this step, officials finalize the communications plan for submission to the Minister and Special Committee of Council prior to final publication in the *Canada Gazette, Part II*. The Communications Services (EPS/ECS as appropriate) works with the Lead Program Area to review (and revise if necessary) the communication plan. This step ensures the plan reflects changes to regulation.

### Responsible Lead

**Common Service: Environment Canada Communications Services (EPS/ECS as appropriate)** works with the **Lead Program Area** to revise the communications plan if required. The **CWS Regulatory Analyst** revises the Communication Plan in consultation with ECS Communications.

### Participants

**Program Area and Enforcement Branch (Regions)** are consulted as required to ensure consistency of the messages in the Communications Plan and their pertinence to the regional context.

## Step 8: Review of Final Regulatory Package by Departmental Common Services and Submission to Regulations Section Justice for Final Approval and Stamping

### Overview

This step finalizes the proposed regulation for submission to Special Committee of Council for approval for final publication in *Canada Gazette, Part II* (if adjustments were required to the regulation following pre-publication). The project manager from the Lead Program Area writes a letter to the Senior General Council at Environment Canada requesting that the regulatory package be submitted to Regulations Section Justice RS(J) for review and stamping.<sup>21</sup>

Departmental Legal Services is the formal channel for submission of an EPS regulatory package to RS(J) for review and stamping. Although it has also been part of the development process, Enforcement Branch also performs a final review and approves the package, prior to its being sent to RS(J).

If the proposed regulation does not require adjustment following prepublication, CWS proceeds directly to **Step 9**, Departmental Senior Management Approval Process. If a new blue-stamped copy is required, CWS works with the RS(J) lawyers who were assigned legal examination to obtain new stamped regulations.

### Responsible Lead

**Common Service: Departmental Legal Services** reviews the final regulatory package if there were any changes required to the regulation following prepublication and submits it to RS(J) for stamping if required. The Lead Program Area provides information to Legal Services as required. The Head of Departmental Legal Services approves the final regulatory package.

**Common Service: Enforcement Branch** reviews the proposed regulations from an enforcement perspective and liaises with **Regions** as necessary.

**EPS: SPD Regulatory Advisor** receives the final regulatory package from the lead program area and obtains Ministerial approval. In the case of shared regulations, copies of the regulatory package are forwarded to that department for the Minister's signature. Once that process is completed, the package is sent to the SCC by SPD.

**ECS: CWS regulatory analyst / program area (HQ)** work with RS(J) drafters if changes to regulation are required.

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<sup>21</sup> An example of this letter can be found in **Annex H**.

## Step 9: Departmental Senior Management approves final regulatory package<sup>22</sup>

The procedure for the internal departmental approval for submission to Special Committee of Council and final publication in the *Canada Gazette, Part II* is the same as the procedure for pre-publication approval laid out in **Step 3**.

## Step 10: Submit approved package to Special Committee of Council (SCC)<sup>23</sup>

At this stage, SCC Ministers consider the results of pre-publication and take the decision whether to grant final approval to the proposed regulation. If approved, the Governor General "makes" the regulation by signing it and the regulation is registered with the Registrar of Statutory Instruments. Orders in Council approved by the Special Committee of Council on Wednesday are sent for final Governor-in-Council (GIC) approval the following day.<sup>24</sup> The Regulatory Affairs and Orders in Council Secretariat of PCO will provide oral confirmation of GIC approval once it is obtained.

Orders approved by the Governor General become available to the public three working days after approval (normally, on Tuesdays).

The **procedure** for the submission of the approved package to SCC for approval and final publication in the *Canada Gazette, Part II* is the same as the procedure for the approval to pre-publish in *Canada Gazette, Part I* laid out in **Step 4**.

Note, however, that the **documents** required for this step are **not** the same as in **Step 4**. In **Step 11**, a notice of pre-publication is not required, but the Order in Council is submitted as part of the package, along with the recommendation to the GIC. The reader is referred to PCO Regulatory Affairs and Orders in Council Secretariat (RAOIC) and the Environment Canada, Regulatory Affairs and Economics Branch (REAB) for further information.

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<sup>22</sup> This step includes Ministerial signoff.

<sup>23</sup> A checklist reminder of material required for SCC approval can be found on the PCO website (<http://www.pco-bcp.gc.ca>)

<sup>24</sup> Details regarding the SCC agenda and timing requirements can be obtained from the Orders in Council Secretariat, PCO.



## Step 11: Publish in *Canada Gazette, Part II*

Regulations normally come into force as soon as they are registered, which must occur within seven days of final approval, but can only be enforced once published in the *Canada Gazette, Part II*. Publication must occur within twenty-three days of registration. If not approved, the sponsoring department must decide whether to modify the initiative and go back to the beginning of the approval process, or abandon it entirely.

*Canada Gazette, Part II* is published every second Wednesday.

The following materials must be submitted, along with the Request for Insertion in the *Canada Gazette*,<sup>25</sup> for final publication:

- An original blue stamped copy of the regulation in both official languages plus five photocopies;
- An original copy of the RIAS signed by the sponsoring Minister(s);
- Two blue stamped copies of the Order in Council, plus one unstamped copy;
- An original RIAS in both official languages signed by the Minister plus five photocopies and one copy on diskette;
- Three copies in both official languages of any supplementary notes;
- Three copies in both official languages of the communication plan; and
- Original artwork, where publication of the regulation includes graphic material (i.e. forms, maps or diagrams).

Confirmation of the required number of copies, etc. can be obtained from Regulatory Affairs and Orders in Council Secretariat, PCO.

### *Parliamentary Scrutiny:*

#### *Standing Joint Committee for the Scrutiny of Regulations*

The Standing Joint Committee for the Scrutiny of Regulations is a Parliamentary Committee that reviews all regulations. The Committee checks the instrument against the criteria in the enabling legislation approved by the House of Commons and Senate. They may recommend changes to regulations, report to Parliament on problems, and propose that regulations be repealed if necessary.

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<sup>25</sup> An example of this form is found in **Annex O**.



## Phase IV Post- Implementation Evaluation/ Lifecycle Analysis

The *Federal Regulatory Policy* requires that departments regularly review their regulatory programs, and modify the programs as necessary.

### **Key Issues and considerations to examine in Phase IV**

- Is the regulatory program designed to have periodic reviews and improvements?
- Is a complaints management system used for a regulatory program? If so, does it meet the principles of accessibility, availability in both official languages, simplicity, timeliness, fairness, and confidentiality?
- Is information regarding enforcement and compliance promotion with the regulatory program regularly fed back to the Lead Program Areas?
- Are the results from this system used when making adjustments to regulatory programs?
- Is staff suitably trained in regulatory development skills? Is the training provided when appropriate?

Environment Canada is committed to continuously improving its regulatory development and approval process. As part of the preparation of this Manual and a Regulatory Process Management Standard compliance review (February, 2000), the Department's regulatory processes were examined. This examination revealed that the Department is among the leading federal agencies in certain aspects of regulatory development.

However, there are areas where improvements must be made, in particular, the post-implementation evaluation of regulations. The department, through DRACC, continues to work on a system to evaluate the development and implementation of regulations.

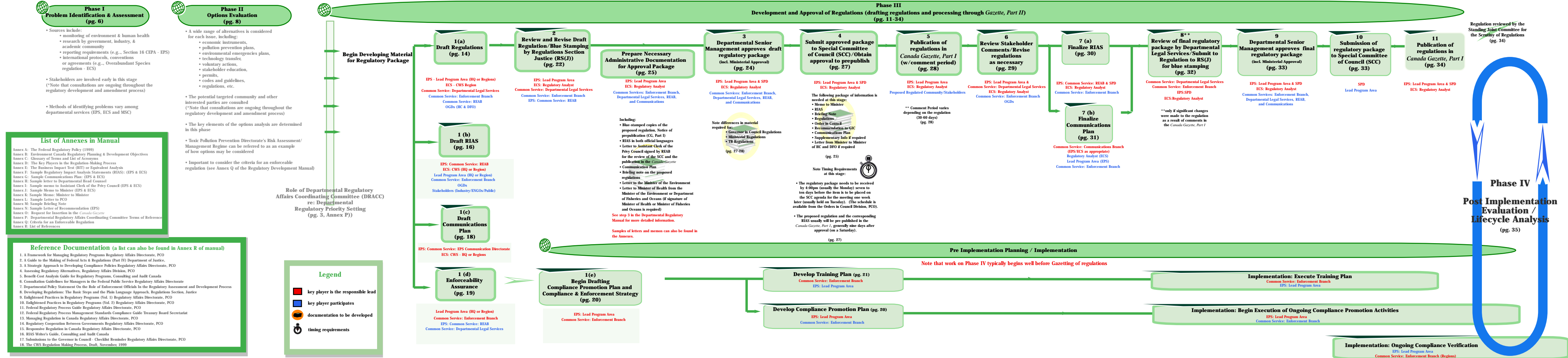
## Figure #1: Process Map

Note:

For **paper version**: process map is inserted here.

For the **electronic version**: click the above title.

# Environment Canada - Regulatory Development and Amendment Process v. 01.03.2001



- List of Annexes in Manual**
- Annex A: The Federal Regulatory Policy (1999)
  - Annex B: Environment Canada Regulatory Planning & Development Objectives
  - Annex C: Glossary of Terms and List of Acronyms
  - Annex D: The Key Players in the Regulation-Making Process
  - Annex E: The Business Impact Test (BIT) or Equivalent Analysis
  - Annex F: Sample Regulatory Impact Analysis Statements (RIAS): (EPS & ECS)
  - Annex G: Sample Communications Plan: (EPS & ECS)
  - Annex H: Sample Letter to Departmental Head Counsel
  - Annex I: Sample memo to Assistant Clerk of the Privy Council (EPS & ECS)
  - Annex J: Sample Memo to Minister (EPS & ECS)
  - Annex K: Sample Memo: Minister to Minister
  - Annex L: Sample Letter to PCO
  - Annex M: Sample Briefing Note
  - Annex N: Sample Letter of Recommendation (EPS)
  - Annex O: Request for Insertion in the Canada Gazette
  - Annex P: Departmental Regulatory Affairs Coordinating Committee Terms of Reference
  - Annex Q: Criteria for an Enforceable Regulation
  - Annex R: List of References

- Reference Documentation (a list can also be found in Annex R of manual)**
1. A Framework for Managing Regulatory Programs Regulatory Affairs Directorate, PCO
  2. A Guide to the Making of Federal Acts & Regulations (Part IV) Department of Justice,
  3. A Strategic Approach to Developing Compliance Policies Regulatory Affairs Directorate, PCO
  4. Assessing Regulatory Alternatives, Regulatory Affairs Division, PCO
  5. Benefit Cost Analysis Guide for Regulatory Programs, Consulting and Audit Canada
  6. Consultation Guidelines for Managers in the Federal Public Service Regulatory Affairs Directorate
  7. Departmental Policy Statement On the Role of Enforcement Officials In the Regulatory Assessment and Development Process
  8. Developing Regulations: The Basic Steps and the Plain Language Approach, Regulations Section, Justice
  9. Enlightened Practices in Regulatory Programs (Vol. 1) Regulatory Affairs Directorate, PCO
  10. Enlightened Practices in Regulatory Programs (Vol. 2) Regulatory Affairs Directorate, PCO
  11. Federal Regulatory Process Guide Regulatory Affairs Directorate, PCO
  12. Federal Regulatory Process Management Standards Compliance Guide Treasury Board Secretariat
  13. Managing Regulation in Canada Regulatory Affairs Directorate, PCO
  14. Regulatory Cooperation Between Governments Regulatory Affairs Directorate, PCO
  15. Responsive Regulation in Canada Regulatory Affairs Directorate, PCO
  16. RIAS Writer's Guide, Consulting and Audit Canada
  17. Submissions to the Governor in Council - Checklist Remainder Regulatory Affairs Directorate, PCO
  18. The CWS Regulation Making Process, Draft, November, 1999

**Legend**

- Red box: key player is the responsible lead
- Blue box: key player participates
- Orange circle: documentation to be developed
- Clock icon: timing requirements



## ANNEX A - Regulatory Policy (1999)

### Government of Canada Regulatory Policy

November 1999  
Privy Council Office  
Government of Canada

#### **Effective date**

The present document contains the Government of Canada Regulatory Policy as approved by Cabinet in November 1999. It replaces the 1995 version of this policy.

#### **Policy objective**

To ensure that use of the government's regulatory powers results in the greatest net benefit to Canadian society.

#### **Policy statements**

Canadians view health, safety, the quality of the environment, and economic and social well-being as important concerns. The government's regulatory activity in these areas is part of its responsibility to serve the public interest.

Ensuring that the public's money is spent wisely is also in the public interest. The government will weigh the benefits of alternatives to regulation, and of alternative regulations, against their cost, and focus resources where they can do the most good.

To these ends, the federal government is committed to working in partnership with industry, labour, interest groups, professional organizations, other governments and interested individuals.

#### **Application**

This policy applies to federal regulatory authorities<sup>1</sup>.

#### **Policy requirements**

When regulating, regulatory authorities must ensure that:

1. Canadians are consulted, and that they have an opportunity to participate in developing or modifying regulations and regulatory programs;
2. they can demonstrate that a problem or risk exists, federal government intervention is justified and regulation is the best alternative;
3. the benefits outweigh the costs to Canadians, their governments and businesses. In particular, when managing risks on behalf of Canadians, regulatory authorities must ensure that the limited resources available to government are used where they do the most good;

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<sup>1</sup> When exceptional circumstances affect a regulatory authority's ability to fulfil a policy requirement, the regulatory authority must justify and document the exception.

4.     averse impacts on the capacity of the economy to generate wealth and employment are minimized and no unnecessary regulatory burden is imposed. In particular, regulatory authorities must ensure that:
  - information and administrative requirements are limited to what is absolutely necessary and that they impose the least possible cost;
  - the special circumstances of small businesses are addressed; and
  - parties proposing equivalent means to conform with regulatory requirements are given positive consideration.
5.     international and intergovernmental agreements are respected (see Appendix A) and full advantage is taken of opportunities for coordination with other governments and agencies;
6.     systems are in place to manage regulatory resources effectively. In particular, regulatory authorities must ensure that:
  - the Regulatory Process Management Standards are followed (see Appendix B);
  - compliance and enforcement policies are articulated, as appropriate; and
  - resources have been approved and are adequate to discharge enforcement responsibilities effectively and to ensure compliance where the regulation binds the government.
7.     other directives from Cabinet concerning policy and law making are followed such as the Cabinet Directive on Law-making and the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals and the Cost Recovery and Charging Policy.

## **Responsibilities**

### Regulatory Authorities

Regulatory authorities are responsible for developing, maintaining and enforcing regulatory programs that follow the Regulatory Policy and for having regulatory management systems in place that meet the Regulatory Process Management Standards. Regulatory authorities are responsible for reviewing their performance and reporting to their senior management on how they have met the Management Standards. Copies of the review reports are to be provided to the Treasury Board Secretariat (Comptrollership Branch).

Regulatory authorities are responsible for including information on planned regulatory initiatives in their annual Report to Parliament on Plans and Priorities and for reporting on results of the regulatory plans in the annual Departmental Performance Reports to Parliament.

### Privy Council Office

The Privy Council Office is responsible for assessing the effectiveness of this Policy, its implementation and its elaboration. To do this, the Privy Council reviews existing sources of information such as regulatory information in annual departmental reports to Parliament on Plans and Priorities and Performance Reports, regulatory submissions to the Governor in Council, Regulatory Impact Analysis Statements and departmental reports on their review of the Regulatory Process Management Standards. The Privy Council Office provides advice to regulatory authorities on the Policy requirements, develops guides and supports capacity building to help regulatory authorities comply with the Policy.

Treasury Board Secretariat

The Treasury Board Secretariat is responsible for providing guidance to regulatory authorities on how to include regulatory information in their annual departmental Reports on Plans and Priorities and in the annual Departmental Performance Reports, which are both tabled in Parliament.

Department of Justice

The Department of Justice is responsible for offering legal advice to regulatory authorities. For example, the Department provides regulatory authorities with the legal tools and legal opinions on alternative regulatory solutions, harmonization of regulatory requirements, compliance and enforcement techniques, and use of performance and international standards.

Canadians

This policy is also dependent on the input of Canadians — industry, labour, interest groups, professional organizations, other governments and individuals — into the design and review of regulations and regulatory programs. Through an open and transparent regulatory process, Canadians have an opportunity to make a contribution and help the government develop regulatory programs that will benefit Canadian society as a whole.

**Enquiries and Further Information**

Regulatory Affairs and Orders in Council Secretariat  
Privy Council Office  
Telephone: (613) 943-5076  
Facsimile: (613) 943-5071  
PCO web-site: <http://www.pco-bcp.gc.ca>

## APPENDIX A – Regulatory Policy

### International and Intergovernmental Agreements: Obligations for Regulators

#### General

When developing or changing regulations, federal regulatory authorities must ensure that regulatory officials are aware of and adhere to obligations set out in international and intergovernmental agreements and accords.

#### Specific Requirements

When developing or changing technical regulations, federal regulatory authorities must:

1. ensure that regulatory officials are aware of and take account of obligations agreed to by the Government of Canada, such as the provisions of the World Trade Organization (WTO) Agreement, the North American Trade Agreement (NAFTA), and other multilateral, regional and bilateral Agreements such as the Safety of Life At Sea Convention of the International Maritime Organization;
2. ensure that regulatory officials are aware of and take account of their general obligations as laid out in the WTO Technical Barriers to Trade Agreement (TBT) and the Sanitary and Phytosanitary Agreement (SPS); and the NAFTA Articles on Technical Barriers to Trade (Chapter 9) and sanitary and phytosanitary measures (Section B of Chapter Seven); and other multilateral, regional and bilateral Agreements referring to regulations and standards; and
3. adhere to those procedural and substantive obligations agreed to by the Government of Canada through intergovernmental agreements such as the Canadian Agreement on Internal Trade (AIT) Article 405 provisions relating to specific sectors of the economy.

In particular, for technical regulations that affect trade, federal regulatory authorities must:

4. with regard to notification
  - prepublish proposals for new or changed technical regulations in *Canada Gazette*, Part I for a period of at least 75 days, except in urgent circumstances, and take into account comments received;
5. with regard to performance-oriented requirements
  - specify, where possible, technical regulatory requirements in terms of performance rather than design or descriptive characteristics;
  - give positive consideration to accepting as equivalent other forms of technical regulatory requirements, if satisfied that they adequately fulfil the objectives of the existing regulations;
  - for TBT, ensure technical regulations treat products from one jurisdiction no less favourably than like products from another;
  - for SPS, ensure measures do not arbitrarily or unjustifiably discriminate where identical or similar conditions prevail;
  - ensure technical regulations are no more restrictive of entry into markets than is necessary;

6. with regard to international standards
  - use available international standards, guidelines and recommendations where those standards achieve the regulatory objective;
7. with regard to enforcement
  - treat regulatees and products from one jurisdiction no less favourably than those from other jurisdictions when assessing conformity to technical regulatory requirements, providing they are in comparable situations;
8. with regard to complaint resolution
  - have in place a process to review complaints concerning conformity assessment procedures and must take corrective action when justified.

## **Responsibilities**

The Department of Foreign Affairs and International Trade (DFAIT) is responsible for coordinating the implementation of WTO, NAFTA and other international trade agreements by federal departments and agencies and by provincial and regional bodies.

The Canada Food Inspection Agency has the main responsibility for coordinating the implementation of the WTO and NAFTA SPS measures (Section B of Chapter Seven) Agreements by federal departments and agencies, and by provincial and regional bodies.

Industry Canada (IC) is responsible for representing the federal government in the ongoing intergovernmental process under the Agreement on Internal Trade and for coordinating implementation of the Agreement by federal departments and agencies.

The Department of Justice, including the Trade Law Division at DFAIT, is responsible for advising regulatory authorities on their legal obligations under the above agreements and on how to draft technical regulations so as to comply with them.

The Privy Council Office reviews regulatory proposals for adherence to the Regulatory Policy. The appropriate departments or agencies are notified if there are concerns regarding possible violations of international or intergovernmental obligations.

## **Enquiries**

Enquiries about NAFTA or WTO should be directed to:  
Director, Technical Barriers and Regulations Division (EAS)  
Department of Foreign Affairs and International Trade

Enquiries about the Agreement on Internal Trade should be directed to:  
Director General, Internal Trade Consultations and Federal/Provincial Relations Industry Canada

## APPENDIX B – Regulatory Policy

### Regulatory Process Management Standards

#### Application

These standards apply to federal regulatory authorities.

#### Requirements

##### General responsibility

Federal regulatory authorities must meet the Regulatory Process Management Standards set out below. It is the responsibility of regulatory authorities to develop and maintain a system to manage the regulatory process that meets the standards, and to document clearly how they are met for each proposal to create or amend regulations.

##### Reporting

The following departments are responsible for submitting a report to their senior management by December 31, 1999 on how they have met the management standards: Canadian Food Inspection Agency, Environment Canada, Health Canada, Industry Canada, Transport Canada, Revenue Canada, Fisheries and Oceans Canada. They are to send a copy of the review report to the Treasury Board Secretariat (Comptrollership Branch). A self-assessment guide was published in November 1996 to assist departments in reviewing their compliance with the Standards. It is entitled *Regulatory Process Management Standards: Compliance Guide*.

Assessment of future requirements of related to the Regulatory Process Management Standards will be decided in the context of ongoing assessment of the Regulatory Policy.

### Regulatory Process Management Standards

#### Policy Development and Analysis

*General.* Regulatory authorities proposing new regulatory requirements or regulatory changes must have evidence that a problem has arisen, that government intervention is required and that new regulatory requirements are necessary. When health, safety and environmental risks are involved, regulatory authorities must consider whether the relative and absolute risks posed are such that intervention is required at this time.

*The problem.* The problem must be described and documented in clear, concise terms. The problem must be analyzed. Interested parties must be consulted on alternative ways to solve the problem.

*Alternative solutions.* It must be demonstrated that new regulatory requirements will help solve the problem. Alternative regulatory solutions must also be analyzed to ensure the most effective and efficient is chosen.

*Benefit-cost analysis.* It must be demonstrated that the benefits of regulatory requirements are greater than their costs. When regulations address health, social, economic or environmental risks, it must also be demonstrated that regulatory effort is being expended where it will do the most good. For all regulatory proposals, a benefit-cost analysis must be carried out to assess potential effects, such as impacts on the environment, workers, consumers and other sectors of society. The Business Impact Test, or equivalent analysis, must be undertaken to assess the effect that major regulatory proposals will have on Canadian businesses.

*Regulatory burden.* It must be demonstrated that adverse impacts on Canada's sustainable development - this concerns the long run capacity of both the economy and the environment to generate well-being, wealth and employment for Canadians - are minimized and that no unnecessary regulatory burden has been imposed. Information and administrative requirements should be limited to what is absolutely necessary and impose the least possible cost on regulatees. The impact of additional regulatory burden on small businesses in particular must be considered, and the least burdensome but effective alternative for their circumstances should be chosen.

*Flexibility.* Positive consideration must be given to parties proposing equivalent means to conform with regulatory requirements. If proposals are not accepted, the rationale for doing so must be documented.

*Intergovernmental coordination.* Regulatory authorities must determine what, if any, related regulatory requirements already exist and which other departments, agencies or governments are involved. New regulatory requirements must be coordinated with existing ones to avoid duplication and to take advantage of possible efficiencies. When standards are being considered, reference should be made, if appropriate, to existing standards developed within the National Standards System or internationally. Pertinent international and federal-provincial agreements must be respected.

*Implementation.* The regulatory program design must include program objectives, program delivery specifications and delivery control procedures. It will also include a simple and effective complaint resolution system embodying the principles set out in *Guide XI, Effective Complaint Management* published by the Treasury Board Secretariat.

## **Consultation**

Regulatory authorities proposing new regulatory requirements, or changes to existing regulatory requirements, must carry out timely and thorough consultations with interested parties. The consultation effort should be proportional to the magnitude of the impact of the proposed regulatory change. Notice of proposed regulations and amendments must be given so that there is time to make changes and to take comments from consultees into account.

Regulatory authorities must clearly set out the processes they use to allow interested parties to express their opinions and provide input. In particular, authorities must be able to identify and contact interested stakeholders, including, where appropriate, representatives from public interest, labour and consumer groups. If stakeholder groups indicate a preference for a particular consultation mechanism, they should be accommodated, time and resources permitting. Consultation efforts should be coordinated between authorities to reduce duplication and burden on stakeholders.

Regulatory authorities should consider using an iterative system to obtain feedback on the problem, on alternative solutions and, later, on the preferred solution.

Consultations should begin as early as possible in order to get stakeholder input on the definition of the problem, as well as on proposed solutions.

## **Communications**

Regulatory authorities creating new regulatory requirements must tell stakeholders about the proposal in simple, clear, complete and concise language that the general public can easily understand.

New regulations must be written in plain language that regulatees can easily understand.

New regulations and changes to existing regulations, as well as material incorporated by reference, must be well publicized and easily accessible to stakeholders.

When a Regulatory Impact Analysis Statement is required, the document must

- describe the problem and explain why regulation is required;
- provide a clear and concise description of the regulatory proposal;
- outline the alternatives considered and the reasons for choosing to regulate;
- describe the major anticipated impacts;
- summarize the consultations undertaken; and
- explain the procedures and resources that will be used for compliance and enforcement

### **Training**

Regulatory authorities must ensure their personnel are competent to carry out the requirements of the Regulatory Process Management Standards.

### **Documentation**

Regulatory authorities must document their regulatory policy and processes, including the responsibilities, authorities and interrelationships of personnel who manage, carry out and review regulatory programs.

The process followed to develop each new or changed regulation must be documented. The documentation should include, but not be limited to, a description of the problem, alternative solutions, the risks involved, the reasons for regulating, the consultation process used and the benefit-cost analysis.



## ANNEX B – Environment Canada Regulatory Planning and Development Objectives

The goal of the Department is to pursue its regulatory planning and development objectives in such a way as to:

- work effectively with other stakeholders and jurisdictions to:
  - prevent pollution,
  - create a healthy environment,
  - conserve wildlife,
  - promote effective communication and assessment of environmental issues; and
  - limit and remedy any environmental impacts;
- promote sustainable development in Canada by:
  - developing measures to ensure the integration of environmental and economic considerations in public policy decision-making, thereby
  - safeguarding environmental integrity for present and future generations;
- promote the principles of openness and inclusion in the decision making processes of Environment Canada;
- ensure the enforceability and cost-effectiveness of proposed regulations or other instruments used to promote compliance of Canadians with:
  - environmental legislation, and
  - national harmonized environmental standards and agreements, and
  - international agreements ;
- ensure consistency with the government of Canada's:
  - Regulatory Policy, and
  - Regulatory Process Management Standards;
- ensure that the Regulatory and other instrument development processes are conducted in an economic and efficient manner;
- ensure that all impacts of management options are addressed, in order to facilitate the regulatory or instrument development;
- ensure that the EC promotes respect for all legal and constitutional requirements in the formulation of its regulations and environmental management initiatives;
- strive to enact regulations that are based on appropriate levels of input from stakeholders representing all concerned interests;

- ensure that the chosen approaches are:
  - user-friendly,
  - accessible,
  - understandable, and
  - provide respect for the diverse interests represented ;
- ensure that regulatory powers are used to the greatest net benefit of Canadian society;
- ensure the setting of performance indicators and evaluation methodologies to track impacts on the public interest as well as on specific sectors;
- carry out continuous life-cycle assessment, updating and improvement of the regulatory, other instrument and initiatives processes used within EC.

## ANNEX C – Glossary of Terms and List of Acronyms

**Canada Gazette:** Since 1841, the *Canada Gazette* is the official news bulletin of the Government of Canada. The *Canada Gazette* is published under authority of the *Statutory Instruments Act*.

**Canada Gazette, Part I:** Published every Saturday, it contains all formal public notices, official appointments, miscellaneous notices and proposed regulations from the government and private sectors that are required to be published by a federal statute or a regulation.

**Canada Gazette, Part II:** Published every second Wednesday, it contains regulations as defined in the *Statutory Instruments Act*, and certain other classes of statutory instruments.  
*Canada Gazette*

**Compliance Promotion:** The promotion of compliance is undertaken through information and education of the regulate community by providing copies of the environmental and wildlife legislation; environmental and wildlife quality guidelines and objectives; copies of the Enforcement and Compliance Policies; bulletins on enforcement and compliance procedures; list of court actions arising from enforcement under the environmental and wildlife legislation; list of orders issued by the Minister under the environmental legislation; information on precedent setting cases under the environmental and wildlife legislation; and fact sheets, handbooks, pamphlets and reports on subjects relevant to the environmental and wildlife legislation.

**Enforcement Officers:** Persons who undertake inspections and investigations to assess compliance and/or establish enforcement measures. They apply environmental legislation administered in whole, or in part, by Environment Canada.

**National Inspection Plan:** a workplan for setting out priorities for enforcement officers under CEPA. It also covers all pollution prevention laws and wildlife regulations administered by EC.

**Regulation:** includes a rule, order, or regulation governing proceedings before a judicial or quasi-judicial body established by an Act of Parliament, and any instrument described as a regulation in any other Act of Parliament.

**Regulatory Affairs and Orders in Council Secretariat (RAOIC) of (PCO):** is responsible for monitoring, coordinating and advising on regulatory and Orders in Council issues and policies, and their consistency with economic, social and federal-provincial policies. The RAOIC secretariat is divided into the Regulatory Affairs Division and the Orders in Council Division. The secretariat provides support to the Special Committee of Council (SCC) with respect to regulatory and Orders in Council matters.

**Special Committee of Council (SCC):** is a committee of Cabinet that considers and approves submissions to the Governor in Council, essentially Orders in Council and regulations made pursuant to statutory authority. The Chair is usually the President of the Privy Council.

**Training Plan:** This regulation-specific plan assists enforcement officers and program officials to implement and enforce a regulation.

**Wildlife Officers:** Persons who are designated by the Minister under the respective wildlife legislation (MBCA, CWA, WAPPRIITA) as officers for the purposes of performing and coordinating the enforcement activities such as inspections or investigations.

List of Acronyms:

BIT – Business Impact Test

CWS – Canadian Wildlife Service

DRACC – Departmental Regulatory Affairs Coordinating Committee

EC – Environment Canada

ECS – Environmental Conservation Service

EPS – Environment Protection Service

GIC – Governor in Council

HQ – Headquarters

NAC – National Advisory Committee

NGOs – Non-governmental Organizations

NIP – National Inspection Plan

OGDs – Other Government Departments

OIC – Orders in Council

PCO – Privy Council Office

RAOIC - Regulatory Affairs and Orders in Council Secretariat

REAB – Regulatory and Economic Analysis Branch

RIAS – Regulatory Impact Analysis Statement

RS(J) – Regulations Section Justice

SCC – Special Committee of Council

SPD – Strategic Priorities Directorate

TB – Treasury Board

## ANNEX D - Key Players in the Regulation-Making Process

### 1. Ministers

*N.B. In this document, "Minister" refers to the Minister of the Environment; "Ministers" refer to the Minister of the Environment and to the Minister of Health. Minister(s) refers to the decision or action of the Minister of the Environment either separately or in consultation with Cabinet colleagues..*

#### *Minister of the Environment*

The Minister of the Environment administers the *Acts, Statutes and Regulations of EC* and has overall accountability and responsibility for the Department's issues within Cabinet, before Parliament, and with the Canadian public. The Minister's extensive powers are defined in primary legislation. The Minister of the Environment conducts their accountability and responsibility through primary legislation such as CEPA '99, *The Canadian Wildlife Act, Alternative Fuels Act, Canadian Environmental Assessment Act*, etc.

#### *Minister of Health*

The Minister of Health plays a key role in the pursuit of common environmental goals, focusing on human health aspects. The powers of the Minister of Health in that area are comparable to those of the Minister of the Environment. The Minister of Health jointly approves and is consulted by EC for the major initiatives relating to the management and control of toxics and other hazardous chemicals under CEPA.

#### *Minister of Fisheries and Oceans*

The Minister of Fisheries and Oceans has primary legal responsibility for the *Fisheries Act*, and has sole responsibility for the administration and enforcement of provisions dealing with the physical alterations of fish habitat. The Minister of the Environment on behalf of the Minister of Fisheries and Oceans administers its pollution control provisions "deposit of deleterious substances", (Sections 36 to 42) in accordance with a 1978 Prime Ministerial instruction and Cabinet directive, and is responsible for jointly developing and enforcing the requisite environmentally-focused management options. The Minister of Fisheries and Oceans is jointly responsible for the approval and submission of these proposed regulatory and other management measures prior to their implementation.

### 2. Senior Departmental Line Management

The Deputy Minister, Senior Assistant Deputy Minister (SADM), Assistant Deputy Minister - Environmental Protection Service (EPS), Environmental Conservation Services (ECS) and the Directors General and Directors within various Directorates in

EC have regulatory creation responsibility, provide leadership and provide guidance in the development and implementation of broader strategies for Environmental Protection. They represent the Department before Ministers and Parliamentary Committees and with their peers in other government departments. They also review and approve all major enabling legislation and supporting documentation requiring the Minister's signature, or that are intended for dissemination to institutions or individuals outside of Environment Canada. They also represent and administer any developed regulations or other management instruments to stakeholders and the general public.

### 3. Environmental Protection Service (EPS) Directorates

#### 3.1 Toxics Pollution Prevention Directorate

**Commercial Chemicals Evaluation Branch** identifies, assesses and controls toxic substances in commerce in Canada, toxic substances of global concern, promotes compliance with control requirements, and provides advice on environmental impacts of substances and toxics.

**National Office of Pollution Prevention (NOPP)** identifies the threats to the environment from human activities that arise from industrial sources (e.g. mining, pulp and paper, and chemical industries). It also promotes the concept of avoiding the creation of pollutants and wastes and integrates departmental pollution prevention activities. One example where this approach to pollution prevention has been applied is the Accelerated Reduction/Elimination of Toxics (ARET) program. NOPP is the focal point for sectoral approaches to the control of releases of toxics. In consultation with stakeholders, NOPP will develop the required control options or prevention programs.

#### 3.2 Air Pollution Prevention Directorate

**Oil, Gas and Energy, and Transportation Systems Branches** identify threats to the environment from human activities that arise from transportation and energy sources (e.g. petroleum refineries and power plants). They engage stakeholders in the development and implementation of control measures (ie. Benzene in Gasoline, MMT, etc.).

**Pollution Data Branch** provides support by maintaining emission inventories (e.g. common air contaminants, national pollution release inventory and greenhouse gases), as well as other inventories of selected substances.

#### 3.3 National Programs Directorate (NPD)

**Enforcement Branch** develops control measures for enforcement initiatives, reviews other proposed management initiatives to ensure their enforceability, and makes proposals to modify compliance promotion and enforcement provisions of these initiatives, if required. It also develops comprehensive inspection and enforcement strategies, and coordinates training of inspectors and investigators. There is also a unit

under development which provides a compliance feedback loop for the analysis and modification of the regulatory process.

#### 4. Environmental Conservation Services (ECS) Branches

4.1 Ecosystems and Environmental Resources reviews Environment Canada and other federal partners proposed legislation, regulations and other management initiatives for their costs/benefits for the protection of ecosystems and Canadian's environmental heritage.

4.2 Ecosystem Science provides and contributes research, science based decisions and advice to Environment Canada staff who are engaged in the production of regulations or other management initiatives and contribute to proposed legislation, regulations and other management initiatives, across the department.

4.3 Canadian Wildlife Service (CWS) CWS is responsible for responsible for the Department's wildlife management and wildlife trade legislation: the *Canada Wildlife Act*, the *Migratory Birds Convention Act, 1994*, and the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* (WAPPRIITA). Under these Acts there are four basic sets of regulations that require periodic amendments: the *Wildlife Area Regulations*; the *Migratory Birds Regulations* and the *Migratory Bird Sanctuary Regulations*, and the *Wild Animal and Plant Trade Regulations*. CWS also provides and contributes research and advice to other Environment Canada staff, and contributes to proposed legislation, regulations and other management initiatives across the department.

#### 5. Meteorological Service of Canada

**Atmospheric Monitoring and Water Survey** provides national leadership for Atmospheric Environment Service activities in atmospheric and water monitoring, archiving and data management. Through national standards and strategic planning, it works with the regions to supply the fundamental observations for weather and environmental prediction.

**Atmospheric Environment Prediction** provides leadership for all prediction activities of the Atmospheric Environment Program and is responsible for numerical weather prediction, national informatics and telecommunications.

**Atmospheric and Climate Science** works with Canadian universities and international scientific organizations researching the mechanisms that control atmospheric evolution.

**Services, Clients and Partners** focuses on the needs of clients and partners and acts as a conduit for communications between clients, partners and the Atmospheric Environmental Service. It also provides direct services to major clients through the Canadian Ice Service and the Interagency Service Branch.

**Policy and Corporate Affairs** provides an ongoing assessment of the health of the Weather and Environmental Predictions program. It handles International Affairs and Relations, planning and policy functions, strategic capital planning and the overall stewardship of national standards and performance assessment reporting.

## 6. Policy and Communications Services

6.1 Regulatory and Economic Assessment Branch (REAB) of the Policy and Communications Directorate plays a key supportive role to Environment Canada Services by:

- providing advice and overall management of the regulatory process within EC;
- providing a quality assurance and a standards assessment role for regulations developed within EC Services and Directorates; documenting and supporting the evolving environmental regulatory and non-regulatory initiatives within EC;
- monitoring and taking part in internal consultations on regulatory and other management initiatives with EC Services and Directorates;
- participating in the strategic planning process for the development of any regulations, management initiatives or complementary approaches;
- providing advice with respect to EC consultations, and generally monitoring the consultation programs with respect to specific initiatives;
- providing socio-economic and economic input to the development of regulations and other management initiatives;
- undertaking the economic and socio-economic analyses and prepare Regulatory Impact Analysis Statements (RIAS); associated with the development of regulations and their reporting to parliament;
- developing and applying other complementary socio-economic and economic assessment tools.

6.2 Communications Branch is the public affairs sections of Environment Canada. It develops communications plans and strategies, prepares information materials for the public, and handles media relations and special events.

## 7. Regional Offices

The Regions play a major part in harmonizing environmental legislation by liaisons with respective provincial and territorial governments. They have primary responsibility for monitoring, compliance, and enforcement of environmental controls and regulations. They also provide advice or lead in these areas with respect to both the development of new regulations and controls, and in the review of existing ones.



The region may also have the responsibility of developing regulations, especially where the full effect and application of a regulation falls fully within the regions area of influence or management contract.

## 8. National Advisory Committee (NAC)

Under CEPA '99, Section 6 provides for the CEPA National Advisory Committee to be the main intergovernmental forum for the purpose of enabling national action and avoiding duplication in regulatory activity among governments. The NAC replaces the former Federal-Provincial Advisory Committee (FPAC) established under CEPA 1988, and possesses a broad mandate that goes beyond toxic substances.

The role of the NAC can be broadly defined as a platform for ensuring a full and open sharing of information between the federal, provincial, territorial, and Aboriginal governments on all matters related to the protection of the environment and the management of toxic substances.

## 9. Other Government Offices - Examination and Support of Instruments in Regulatory Proposals

**9.1 Departmental Legal Services (DOJ)** is the first legal point of contact when developing a regulation. Specific counsels at EC review the proposed regulations submitted by Services and Directorates to ensure that they adequately reflects the scientific authority's intent in legal terms, and to ensure that the legal language is correct in both official languages. They also work in concert with the Enforcement Branch, National Programs Directorate to ensure that the regulation is enforceable and effective.

**9.2 Department of Justice (DOJ) Regulations Section:** Once EC departmental officials are satisfied with a draft regulation, the Department of Justice (DOJ) Regulations Section conducts a legal examination to ensure that it conforms with the requirements of the *Statutory Instruments Act*. This office provides what has come to be known as a "blue-stamped copy" which means that the regulatory text has been accepted in both official languages.

**9.3 Special Committee of Council (SCC)**, which is a Cabinet committee, considers all proposed regulations and is responsible for approving proposals for GIC approval and subsequent publication in the *Canada Gazette*. The SCC also considers non-regulatory initiatives, such as codes of practice and guidelines. Once approved, notice of the formulation of such instruments or the instruments themselves are published in Part I of the *Canada Gazette*. (N.B. They are not subsequently published in Part II)

**9.4 The Regulatory Affairs Division, Privy Council Office (PCO).** This division of the Privy Council Office (PCO) reviews all regulatory and certain other instruments, when submitted for consideration by the Special Committee of Council (SCC). As Secretariat to the SCC, PCO reviews submissions to ensure consistency with the Federal Regulatory Policy and with broader government initiatives. PCO officials are also responsible for preparing briefing material for SCC Ministers, summarizing the rationale, impact and issues related to proposals. In some instances, PCO may request the department to prepare and submit additional briefing material. The Regulatory Affairs Division is also responsible for developing, reviewing and revising policies and guidelines related to the Federal Regulatory Policy.

## 10. Standing Joint Committee for the Scrutiny of Regulations

The Standing Joint Committee for the Scrutiny of Regulations is a Parliamentary Committee that reviews all regulations. The Committee checks the instrument against the criteria in the enabling legislation approved by the House of Commons and Senate. They may recommend changes to regulations, report to Parliament on problems, and propose that regulations be repealed.

## 11. Other Government Departments and Other Stakeholders

Although Environment Canada has an important role to play, it does not work in isolation. Responsibility for Environmental Protection is shared with others. Environment Canada works in partnership with other federal government departments, with the provinces and the territories, and with other stakeholders in the public and private sectors (e.g. representatives of industrial sectors and associations, producers, importers/exporters, distributors and sellers, users of substances or products containing substances, environmental groups, the general public, etc.), in formulating management initiatives and generating solutions to environmental problems. Communication with media is also important as we frame and relay the messages to our stakeholders and the general public. The lead for specific management initiatives may rest within other departments and agencies even when we are engaged directly within the formulation of legislation or regulation. Compliance and Enforcement resources may be shared across a number of government agencies as well.

## Annex E - BUSINESS IMPACT TEST or EQUIVALENT ANALYSIS (BIT)

### **Business Impact Test**

The Business Impact Test (BIT) was developed as a means of helping government understand and assess how regulations will affect the private sector. The challenge in creating the BIT was to devise a set of questions detailed enough to identify causes and sources of difficulties with regulations, while not in itself posing an unwanted burden on business.

The BIT is comprised of a software-based survey and separate costing methodology designed to accurately highlight regulatory costs. Designed to complement, rather than replace current consultative mechanisms, the methodology of the BIT provides a consistent, structured framework for taking into account the concerns of business in an efficient manner.

Specifically, the BIT:

- is an interactive, software-based tool for consultation designed to help governments understand and assess how regulations will affect the private sector by obtaining the observations of business;
- identifies direct costs of regulations for firms, as well as how regulations affect the manner in which firms operate, organize and innovate;
- assists in formulating a deeper understanding of how proposed regulatory actions will affect business; and
- allows business to provide early input in the process of developing regulations, or alternative methods of achieving public interest objectives.

The BIT is not intended to replace benefit/cost analysis. It is a tool to simplify one element of the analysis – the impact of regulations on the competitiveness of firms.

Although the BIT was designed for use with regulatory proposals, its flexible nature enables it to be used throughout the policy development cycle. For example, it may be used in the early stage of policy development when various options are being considered, or with detailed drafts of regulations and rules as a final check for unanticipated impacts. The BIT also may be utilized during reviews of existing or proposed legislation to locate opportunities for increasing regulatory efficiency from the perspective of the business community.

## Equivalent Analysis

An equivalent analysis may be used in place of the BIT in assessing the effect of regulatory proposals on industry. At a minimum, an equivalent analysis should provide detailed, industry-specific information and analysis of the following:

- the activities, functions, relationships and markets that are affected by the regulatory proposal;
- how regulatory costs will be absorbed (e.g. by industry, or passed on to consumers or suppliers);
- the positive and negative impacts of industry operations and the long-term strategic directions of individual industries in the affected sectors;
- the specific regulatory and administrative requirements that cause these effects to occur;
- the costs and benefits, in terms of dollars, personnel and markets;
- whether or not industry currently complies with the regulatory measure, and if not, their ability to so comply; and
- potential improvements to the regulatory proposal or alternative approaches that exist to reduce costs, while maintaining the objectives of the proposal.

For more information on the BIT & Equivalent Analysis, please contact:

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Or visit the Industry Canada website:

<http://www.ic.gc.ca>

## Annex F

### Regulatory Impact Analysis Statement

#### Résumé de l'étude d'impact de la réglementation

**Department or Agency**

Environment Canada

**Ministère ou organisme**

Environnement Canada

**Title of Proposal**

*Tributyltetradecylphosphonium Chloride Regulations*

**Titre du projet**

*Règlement sur le chlorure de tributyltétradécylphosphonium*

**Statutory Authority**

*Canadian Environmental Protection Act, Section 34*

**Fondement législatif**

*Article 34 de la Loi canadienne sur la protection de l'environnement*

**Submitted for Consideration for:**

Final approval following  
prepublication on 15/05/1999

**Soumise en vue de:**

Approbation finale à la suite d'une  
publication préalable le 15/05/1999

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Minister of the Environment/  
Ministre de l'Environnement

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Minister of Health/  
Ministre de la Santé

## Annex F – Sample RIAS - EPS

### Regulatory Impact Analysis Statement (RIAS) (An example of RIAS for the publication in the Canada Gazette, Part I)

#### **Regulatory Impact Analysis Statement** **Regulations Amending the Prohibition of Certain Toxic Substances Regulations** (This Statement is not part of the Regulations)

##### **Description**

Under the *New Substances Notification Regulations* of the *Canadian Environmental Protection Act* (CEPA) (section 26(1)), any person must submit toxicological and other prescribed information to the Department of the Environment before manufacturing or importing a new substance into Canada. To ensure that the risks to human health and the environment resulting from the introduction of new and potentially dangerous substances are mitigated, the Departments of Environment and Health conduct an assessment to determine if a new substance is toxic. When the assessment leads to the conclusion that the substance is toxic, the Departments of Environment and Health establish conditions or prohibitions concerning the substance, which must be published in the *Canada Gazette* in the *Conditions and Prohibitions for the Manufacture and Import of Substances New to Canada that are Suspected of Being Toxic* under subsection 29 (1) of the CEPA.

In November 1995, an applicant submitted a New Substance Notification to the Department of the Environment on the intent to import *(4-Chlorophenyl)cyclopropyl-methanone, O-[(4-nitrophenyl)methyl]oxime* into Canada. This substance was intended to be used as an intermediate chemical in the manufacture of a pesticide. The pesticide was to be manufactured in Canada for export purposes only. The assessment led to the conclusion that *(4-Chlorophenyl)cyclopropylmethanone, O-[(4-nitrophenyl) methyl]oxime* is toxic under subsection 11 a) of CEPA. As a result, the Departments of Environment and Health have prohibited the manufacture and import of the substance in Canada under subsection 29(1) of CEPA. This prohibition was published in the *Canada Gazette* on December 20, 1995, under the *Conditions and Prohibitions for the Manufacture and Import of Substances New to Canada that are Suspected of Being Toxic*. This prohibition is effective for a two-year period, at which time regulations must be developed to maintain the prohibition in place.

The assessment summary of *(4-Chlorophenyl)cyclopropylmethanone, O-[(4-nitrophenyl)methyl]oxime* has been published in the *Canada Gazette*, Part I, on October 4, 1997. Because of the current two-year prohibition, this substance is not manufactured nor imported in Canada. With the *Regulations Amending the Prohibition of Certain Toxic Substances Regulations*, pursuant to subsection 34(1) of CEPA, the Departments of Environment and Health will extend and modify the two-year prohibition. The Regulations prohibit the manufacturing, use, processing, offer for sale, sale and importation into Canada of *(4-Chlorophenyl)cyclopropylmethanone, O-[(4-nitrophenyl) methyl]oxime*.

The substance currently appears on the *List of Toxic Substances* (Schedule I) of CEPA. It will be added to Schedule of the Regulations and added to the *List of Prohibited Substances*, Schedule II, Part I of CEPA.

The Regulations come into force on the date of their registration by the Clerk of the Privy Council.

### **Alternatives**

The Department of the Environment considered different risk management options such as manufacture without releases or defining a level of release that would not pose a risk to the environment. The option of prohibiting the manufacture and import of the substance pending submission of additional information was also considered, however it was felt that we could not identify any information items that would mitigate the concern. The prohibition was then issued.

The insertion of this substance in the Schedule of the Regulations are being proposed consistent with the principle of pollution prevention.

### **Benefits and Costs**

Because the substance was not present in Canadian commerce, there will be no economic impacts. The environment will be protected from possible risks of exposure to this toxic substance since it will be prohibited in Canada.

### **Consultations**

Discussions were held with the applicant during the assessment in order to obtain additional information on the submitted substance and the process involved. As soon as the assessment was done, the applicant was advised by the Department of the Environment about the CEPA toxic conclusion. At that time, the applicant also had the opportunity to provide comments on the Department of the Environment's assessment conclusions on persistence, bioaccumulation and aquatic toxicity.

The *Regulations Amending the Prohibition of Certain Toxic Substances Regulations* and the assessment summary were pre-published in *Canada Gazette* Part I on October 4, 1997, for a 60-day comment period and no comments were received.

### **Compliance and Enforcement**

The *Regulations Amending the Prohibition of Certain Toxic Substances Regulations* are to be proclaimed under the *Canadian Environmental Protection Act* and are subject to its Enforcement and Compliance Policy. The Department of Environment policy, among other things, outlines measures to promote compliance, including education and information promotion of technology development, and consultations on regulations development.

Enforcement will be carried out through inspection and monitoring to verify compliance, and through investigations of violations.

Responses to violations will be consistent with the criteria outlined in the Enforcement and Compliance Policy, i.e., the nature of the violation, effectiveness in achieving the desired result, and consistency in enforcement. Minor violations such as those for which the degree of harm or potential harm to the environment or human health is minimal could be dealt with by warnings. More serious offenses such as those having serious impact on human health or the environment could lead to prosecution.

### **Contact Persons**

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## Annex F – Sample RIAS – ECS

***(An example of RIAS for a Canadian Wildlife Service Regulation for publication in the Canada Gazette, Part I)***

### Regulatory Impact Analysis Statement (RIAS) (This statement is not part of the Regulation.)

#### Description

In recent years, populations of greater and mid-continent lesser snow geese have risen dramatically. The rapid population growth is attributed to increased food availability during winter months from agricultural operations, and a declining rate of mortality. As a result, these birds are no longer controlled by the carrying capacity of winter habitat as they were previously. Analysis of the effects on staging and arctic breeding habitats shows that key habitats for migratory birds and other wildlife are being adversely affected by overuse. Left unchecked, overabundant snow goose populations may become seriously injurious to migratory birds themselves, and will compromise the biological diversity of the arctic ecosystem.

The goal of this regulation is to help to protect and restore the biological diversity of arctic wetland ecosystems and the ecosystems of important migration and wintering areas by reducing the population size of overabundant snow goose populations. To curtail the rapid population growth and reduce population size to a level consistent with the carrying capacity of breeding habitats over a period of about five years, the mortality rate must be increased by two to three times the current level. To this end, in 1999 an amendment to the Migratory Birds Regulations created a special period, outside the hunting season, during which hunters were permitted to take overabundant species for conservation reasons, and, in some cases and subject to specific controls, to use special methods and equipment, such as electronic calls and bait. The 1999 regulations applied in selected areas of the Provinces of Quebec and Manitoba. The conservation measures dates and locations were determined in consultation with the provincial governments, other organizations and local communities.

For 2000, additional amendments are being made on the basis of further consultations, and in response to information obtained from implementation of the 1999 regulations. The main purpose of the amendments is to increase the clarity of the regulation text, improve the cost-efficiency of the regulation and expand the geographic area of Manitoba where conservation measures may be undertaken.

In Quebec, the conservation measures are allowed only on "farmland" in spring. For increased precision, a legal definition of farmland is now being added. Similarly, the provisions that allow for use of bait or bait crops for hunting are being amended to provide the criteria by which the Regional Director would evaluate requests and make decisions regarding the issuance of consent. These amendments further increase the clarity of the regulation.

As in 1999, hunters participating in the special measures for 2000 are required to hold a Migratory Game Bird Hunting Permit (MGBHP). In 1999 all participating hunters were registered, and it will now be possible to use the lists from the pilot year to evaluate hunter participation and success rates in the following years, augmenting the survey base through the existing registry of MGBHP holders. Consequently, registration will no longer be necessary.

Moreover, the regulations are being amended to remove the reference to other species that are not easily distinguishable from overabundant species. A judicial review of the special measures to increase the take of overabundant snow goose populations was carried out in April 1999 before the Federal Court of Canada. The Federal Court Judge ruled that the regulations were ultra vires respecting Ross' geese, in that they had not been deemed to be overabundant, and that the resemblance to an overabundant species is not sufficient reason to include a non-overabundant species in conservation measures. The Government of Canada did not contest the ruling.



To simplify the addition or deletion of participating provinces and territories in the future, the proposed amendment also modifies the regulations to remove specific references to the Provinces of Quebec and Manitoba in certain parts of the text, instead reserving and referencing tables I.2 that appear in Schedule I to the Regulations for the special measures for overabundant species.

Finally, in Manitoba the area for special conservation measures is being expanded throughout the southern zones of the province. The 1999 pilot conservation measures were allowed only in the northern zone.

#### Alternatives

In evaluating the alternatives to the problem of the overabundance of snow geese, Environment Canada's Canadian Wildlife Service (CWS) has been guided by the principle that snow geese are a highly regarded natural resource, valued as game animals and for food, as well as for their aesthetic importance.

The international body of federal agencies responsible for coordinating wildlife management among federal agencies, the Canada / Mexico / United States Trilateral Committee for Wildlife and Ecosystem Conservation and Management, agreed in March 1998 that the scientific rationale was sound for considering mid-continent lesser snow goose and the greater snow goose as overabundant populations<sup>1</sup>. They concluded that it would be appropriate for each country to take special measures as they saw fit to increase the harvest of those groups of birds. This consultation helps ensure that these actions conform to Canada's treaty obligations with the United States in the Migratory Birds Convention. In 1999, the United States also implemented a regulation authorizing the increased harvest of snow geese in that country.

Alternatives to increasing harvest levels in Canada, such as allowing hunting in wildlife refuges on the wintering grounds in the United States, are also being undertaken. While helpful, these measures cannot alone meet the goal of reducing the population size adequately. Without such a reduction, staging and arctic breeding habitats will continue to be degraded, the damage will become more widespread, and habitats will cease to support healthy populations of the overabundant species and the other species that share the habitat. Plant communities will not recover unless grazing pressure is reduced; even with such reduction, recovery would take at least many decades because of the slow growth of arctic plant communities. Some of the habitat changes are expected to be essentially permanent. The overall effect would be a reduction of biological diversity. Scientists and managers agree that intervention is required. For these reasons, the status quo was rejected.

Modeling has demonstrated that reducing the survival rate of adults would be the most effective means of controlling population growth and subsequent size. Actions aimed at reducing production of young birds are impractical on the broad scale required. Two alternatives are available to reduce adult survival. The first, a government cull by officials, was rejected not only because of the enormous expense that would be incurred on an ongoing basis, but because of the waste of birds that would result.

The second alternative to reduce adult survival rates, and the one chosen, is to increase subsistence and other harvest. This method is cost-effective and efficient, as it draws upon subsistence and other hunters, and ensures that birds are used and not wasted. This method will help reduce overall population size, while ensuring that the intrinsic value of the snow goose population as a valuable resource is maintained.

#### Benefits and Costs

This amendment makes an important contribution to the preservation of migratory birds and to the conservation of biological diversity in the arctic ecosystem and the ecosystems of staging and wintering areas by protecting and restoring habitat for migratory birds and other wildlife. The amendment will help

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<sup>1</sup> An overabundant population is one for which the rate of population growth has resulted in, or will result in, a population whose abundance directly threatens the conservation of migratory birds (themselves or others), or their habitat.

Canada to meet its international obligations under the 1916 Migratory Birds Convention and the amending Parksville Protocol. Both of these agreements commit Canada and the United States to the long-term conservation of shared species of migratory birds for their nutritional, social, cultural, spiritual, ecological, economic and aesthetic values, and to the protection of the lands and waters on which they depend. This amendment also addresses the Convention on Biological Diversity, to which Canada is a party. The Convention on Biological Diversity calls on parties to address the "threat posed by degradation of ecosystems and loss of species and genetic diversity".

The economic benefits of this amendment are considerable. According to estimates based on the 1991 CWS document *The Importance of Wildlife to Canadians*, migratory birds contributed over \$1.2 billion in annual direct benefits to the Canadian economy from individuals participating in waterfowl hunting activities. Not only will this amendment generate additional benefits, it will help to reduce economic losses from crop damage, and ensure that these benefits, such as the annual contribution of nearly \$18 million resulting from bird-watching tourism in Quebec alone, are sustained into the future. Moreover, the selected alternative is the most cost-effective of the alternatives considered.

The amendment will also help to secure the future use of migratory birds as part of the traditional lifestyle of Aboriginal peoples.

#### Environmental Impact Assessment

Assessments of the environmental effects of the rapidly growing population of mid-continent lesser snow geese and greater snow geese were completed by working groups of Canadian and American scientists. The consensus among members of the working groups, all with high standing in the scientific community and extensive experience working on arctic habitats, lends weight to their findings. Their analyses are contained in the comprehensive reports entitled "Arctic Ecosystems in Peril - Report of the Arctic Goose Habitat Working Group" and "The Greater Snow Goose - Report of the Arctic Goose Habitat Working Group".

The working groups concluded that the primary causes of the population growth are human induced. Improved nutrition from agricultural practices and safety in refuges has resulted in increased survival and reproductive rates of snow geese. These populations have become so large that they are affecting the vegetation communities (on which they and other species rely for food) at staging areas and on the breeding grounds. Grazing and grubbing by geese not only permanently remove vegetation, but also change soil salinity and moisture levels. The result is the alteration or elimination of the plant communities, which, in all likelihood, will not be restored. Although the arctic is vast, the areas that support breeding geese and other companion species are limited in extent. Some areas are likely to become permanently inhospitable to these species and to other species whose populations are not abundant enough to sustain them over the long term. Increasing crop damage is also an important result of the growing populations.

Evaluation plans have been developed which will track progress toward the goals of reduced population growth and ultimately, improved habitat conditions. Across the arctic in 1999, more than 21,000 snow geese and Ross' geese were marked with bands. The data obtained through observation networks and band recoveries will enhance the ability of wildlife managers to make sound management decisions. Investigations of the condition of staging and breeding habitats were continued along the coast of West Hudson Bay, where severe effects on habitat are well documented. Assessments were also carried out at other major colonies.

More than 13,700 hunters registered for the 1999 spring conservation season in Quebec, and an estimated total of 44,171 greater snow geese ( $\pm 5871$ ) were killed. The spring population estimate was about 800,000. There were reports of low success in the early days of the season, while the geese continued to move around extensively looking for food. Because of the mild fall in 1998, many farmers were able to plough their fields, reducing the amount of waste grains available in spring. Because the geese were not making much use of farmland, they could not be taken under the regulations. Once the hay fields began to germinate, however, the geese began grazing on these crops and hunters were more successful. The 1999 special seasons in the United States did not include opportunities to hunt greater snow geese.

In northern Manitoba, 63 hunters registered for the special conservation season for lesser snow geese. Initial reports indicate that the hunters were successful, with several hundred lesser snow geese being taken. In the United States, more than 320,000 were estimated killed in the spring season, and special provisions in the regular hunting season led to an extra 97,000 being taken. The spring population estimate was about 4,000,000 to 6,000,000. The results of the 1999 fall seasons will be available in late spring 2000.

While the analysis indicates that progress is being made to control the growth of greater and lesser snow goose populations through use of the special measures, the Canadian Wildlife Service and the United States Fish and Wildlife Service (USFWS) agree that continued special conservation measures will be necessary in the short term to help achieve desired population goals.

#### Consultation

Since January 1995, CWS has been working closely with the provinces and territories, the USFWS, Flyway Councils, Ducks Unlimited and other groups to understand the issue and to determine the optimal response for wildlife management agencies. Beginning with these partners in the Arctic Goose Joint Venture of the North American Waterfowl Management Plan, a North American conference was held in January 1995 where the scientific community spoke with one voice on the seriousness of the effect of overabundant populations on arctic wetland ecosystems.

The CWS co-convened an international workshop in October 1995 to hear the diversity of opinions and assembled scientific teams to develop an analysis of the issue. They produced the reports "Arctic Ecosystems in Peril - Report of the Arctic Goose Habitat Working Group", and "The Greater Snow Goose - Report of the Arctic Goose Habitat Working Group". The involvement of Canadian non-government organizations was encouraged in a stakeholders' committee assembled by the Wildlife Management Institute for the International Association of Fish and Wildlife Agencies. With one exception (the U.S. Humane Society), the committee was unanimous on the need for intervention.

A federal / provincial / territorial committee (Canadian National Snow Goose Committee) agreed that intervention is required, and considered the recommendations for management actions. The prairie provinces, Northwest Territories, Nunavut and Quebec are the key jurisdictions. In the prairies, input was solicited from each of three prairie Wildlife Federations through their annual conventions and through the Prairie Habitat Joint Venture Board, the Manitoba Habitat Heritage Corporation Board, and the Alberta North American Waterfowl Management Plan Board in the winter of 1998. Also in the prairie provinces, CWS conducted a number of surveys of public opinion about management of snow geese. The results showed that all audiences had a high level of awareness of the issue. In addition, a large proportion of landowners and farmers favoured the government taking action. There was strong support for extending the hunting season dates and increasing subsistence harvest.

CWS consulted with the provinces, the territories, and with northern Wildlife Management Boards. In addition, specific communities such as Arviat and Cape Dorset, where there is opportunity to expand community snow goose hunts, were directly consulted and have already been involved in actions to increase their harvest. The Inuvialuit Wildlife Management Board sat on the International Stakeholders Committee.

In Quebec, the Technical Committee for the Integrated Management of Greater Snow Geese was established in December 1996. The members consist of representatives of many stakeholders with divergent interests, including farmers and agricultural organizations, hunters, bird-watchers, and other conservation groups and agricultural and wildlife representatives of both governments. Now working together for more than 3 years, the Committee has developed an action plan for management of greater snow geese, and considered the recommendations made by the Arctic Goose Habitat Working Group. Measures to control the population growth, including extensions of the hunting season, use of electronic calls and bait under permit, were unanimously accepted with the proviso that certain rural communities would be avoided, where bird-watching tourism is very important.

CWS also has drawn upon the formalized process used each year to consult on annual hunting regulations. First consideration of the need for intervention was presented in the November 1995 Report

on the Status of Migratory Game Birds in Canada. The issue was further developed and consulted on in subsequent November Reports on the Status of Migratory Game Birds in Canada (1996, 1997, 1998 and 1999 issues). Specific alternatives were fully described in the December 1997, 1998, and 1999 Reports on Migratory Game Birds in Canada; Proposals for Hunting Regulations. Information was also provided in the July 1998 and July 1999 reports Migratory Game Bird Hunting Regulations in Canada. These documents are distributed to approximately 700 government, Aboriginal and non-government organizations, including hunting and other conservation groups such as the World Wildlife Fund, Canadian Nature Federation, and Nature Conservancy of Canada.

To increase coordination of the management of shared populations of overabundant geese, CWS and the USFWS agreed that it would be effective to coordinate our parallel national consultation processes. As part of the national process, CWS distributed the U.S. Notice of Intent in June 1999 to the same 700 organizations, inviting Canadian input to the regulatory process in the United States. At the same time, the process for developing further steps in Canadian management actions and specific proposals for amending the regulations for 2000 were described.

This amendment was prepublished in Part I of the *Canada Gazette* on December 18, 1999 for a final 30-day period of public comment. In order to provide stakeholders with every opportunity to participate in consultations, the proposal was also outlined in the December 1999 CWS, "Report on Migratory Game Birds in Canada; Proposals for Hunting Regulations", with an invitation to comment. Virtually no comments were received.

At the request of the Government of Manitoba during the final stage of consultations, the latest proposed date in the period of conservation measures has been removed, as it would overlap with the regular hunting season, when electronic calls cannot be used. The harvest of snow geese without electronic calls will still be permitted during the regular hunting season for that date.

During the consultations conducted by the CWS over the summer of 1999 concerning the proposed amendments for 2000, many stakeholders reiterated their support for the regulation. This includes non-government conservation organizations, the Provinces of Ontario, Manitoba and Quebec, northern wildlife co-management boards, tourist industry representatives, individual hunters, and Aboriginal organizations directly affected by this regulation. In conveying their support, some stakeholders emphasized the importance of evaluating the regulation on an ongoing basis. The CWS will continue its monitoring of the goose population and plant communities in affected areas, and will be conducting harvest surveys of hunters who participate in the new spring / fall conservation seasons.

A coalition comprised primarily of animal protection groups remains opposed to these regulations. The group disputes the evidence of the extent of habitat damage caused by overabundant goose populations, and maintains that natural reduction of population size by starvation, disease and predation is preferable to increased harvest by hunters. The adequacy of consultations, especially with Aboriginal groups, is also questioned. Finally, the group asserts that the amendment is in violation of the 1916 Migratory Birds Convention and the Migratory Birds Convention Act, 1994<sup>2</sup>.

Article VII of the 1916 Migratory Birds Convention supports special conservation measures under extraordinary conditions wherein migratory game birds pose a serious threat to agricultural or other interests in a particular community. This authority is not limited to any time of the year or number of days in any year in either the 1916 Migratory Birds Convention or the Migratory Birds Convention Act, 1994. Overabundant goose populations may become seriously injurious to migratory birds themselves, thereby threatening the main objective of the 1916 Convention, which is to ensure the preservation of migratory birds. In April 1999, in a judicial review of the regulations by the Federal Court of Canada, Judge Frederick Gibson agreed with the federal government that Article VII of the 1916 Convention provided for the regulations to deal with the extraordinary circumstances now observed for overabundant snow geese. He ruled, however, that the regulations were ultra vires respecting Ross' geese, a species closely resembling the Snow Goose, as a case had not been made for the take of Ross' geese under Article VII of the Convention. Judge Gibson found no conflict on any of the other points at issue.

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<sup>2</sup> In Canada, the Migratory Birds Convention, 1916 is implemented through the Migratory Birds Convention Act, 1994.

Environment Canada welcomed Judge Gibson's ruling and acted immediately to address the Court's decision, by preparing and distributing educational materials to all persons registered to hunt in the affected part of Manitoba. The materials indicated that Ross' geese were not to be taken through the conservation measures and clearly described the differences between Ross' and snow geese. The decision of the Federal Court is currently under appeal by the Applicants.

**Compliance and Enforcement**

Enforcement activities oriented to hunting will be needed at those places and during those times of the year when hunting migratory game birds is not otherwise allowed. As enforcement officers generally work throughout the year, and as only one species is hunted in these special regulations, it is not expected that these measures will require additional staff to achieve the level of enforcement now available for the usual fall hunting season; however, these measures may cause some redirection of effort. Enforcement officers of Environment Canada and provincial and territorial conservation officers enforce the Migratory Birds Regulations by such activities as inspecting hunting areas, hunters for permits, hunting equipment and the number and identity of migratory birds taken and possessed.

Under the Migratory Birds Convention Act, 1994, and considering case law, the average penalty for a summary conviction of an individual for a violation under the Act is estimated to be approximately \$300. Minor offences will be dealt with under a ticketing system. There are provisions for increasing fines for a continuing or subsequent offence. However, an individual may receive a \$50,000-maximum fine and/or up to six months in jail for summary (minor) conviction offences, and a \$100,000- maximum fine and/or up to 5 years in jail for indictable (serious) offences. Corporations face maximum fines of \$100,000 and \$250,000 for summary convictions and indictable offences, respectively.

**Contacts:**

|                            |                            |
|----------------------------|----------------------------|
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## Annex G – Sample Communications Plan (EPS)

NOT FOR PUBLICATION

### **Communications Plan Substance New to Canada Tributyltetradecylphosphonium chloride (TTPC)**

#### **Issue**

A proposed regulation to prohibit TTPC (Tributyltetradecylphosphonium chloride) from being used, processed, sold or offered for sale in Canada and imported into Canada. The regulations will permit the manufacture of TTPC under certain conditions for export only.

#### **Background**

TTPC is a chemical substance which can be used as a corrosion inhibitor in industrial cooling towers. It can also be used as a pesticide, and as a phase transfer catalyst to promote a chemical reaction between two or more chemicals that would normally not mix with each other.

In January 1997, a company submitted a notification under the New Substance Notification Regulations to Environment Canada to manufacture TTPC in Canada for use as a corrosion inhibitor in industrial cooling systems. This use, even under the most favorable conditions, is suspected to cause harmful effects on the environment. Upon assessment, TTPC was determined to be toxic under Section 11 a) of CEPA. The request to manufacture TTPC in Canada was denied, and the manufacture and import into Canada of the substance was prohibited under section 29 (1) (b) of CEPA for a period of two years effective May 16, 1997.

In July 1997, a second applicant submitted a notification for the same substance to manufacture TTPC for export purpose only. TTPC would be used in other countries as a pesticide and a phase transfer catalyst. The manufacturing process described in the notification is a fully contained process and no environmental concentration are anticipated as a result of this activity. Therefore, the manufacture of the substance in an export-only scenario does not result in an immediate or long-term effect on the environment.

The regulations will prohibit TTPC from being used, processed, sold or offered for sale in Canada or imported into Canada. The manufacture of TTPC for export will be allowed under certain conditions. In addition, an order will add TTPC to the *List of Toxic Substances* (CEPA Schedule I) and the *List of Toxic Substances Requiring Export Notification* (Schedule II, Part II).

The regulations will replace the current prohibition, which expires on May 17, 1999.

#### **Communications Strategy**

TTPC is not currently used in Canada, and it is unlikely that many people are aware of the substance or the dangers associated with it. Communications initiatives will target producers, importers, distributors, users and the chemical industry as a primary audience, and the general public as a secondary audience.

#### **Messages**

- Protecting Canadians from the effects of toxic substances is a priority for the Minister of the Environment and the Government of Canada.
- This regulation will prohibit the manufacture of TTPC for use in Canada, and impose strict conditions on the manufacture of the substance for export, including notifying importing countries, since pollution incidents abroad can also harm Canadians in the short or long term.

- The federal government acts quickly and decisively to protect the environment and health of Canadians when it becomes aware of uses or releases of toxic substances which could be dangerous to Canadians.

**Target audiences & communications tactics**

1. Chemical manufacturers and distributors

There is currently only one company in Canada which has the legal authority to manufacture TTPC. A request from a second firm to manufacture the substance has been denied. DOE has been in contact with both firms, and they have both provided information on the substance.

All manufacturers of chemical substances in Canada will be invited to comment on the proposed regulation during the 60 day public comment period.

2. The chemical industry

The Canadian Chemical Producers Association will be specifically invited to comment on the proposed regulation during the 60 day public comment period.

3. Media/General public

A media advisory will be prepared indicating that the government:

- has taken action to protect the health and environment of Canadians by banning the use, import, or sale of TTPC
- will ensure that any country importing TTPC is notified that TTPC is a severely restricted chemical in Canada

The media advisory will be issued when the proposed regulation is pre-published in the *Canada Gazette, Part I*.

Questions and answers and responsive press lines will be prepared for spokespeople.

The media advisory will be targeted at trade publications serving the chemical industry. It will also be available on the Green Lane, Environment Canada's Internet site. Information about the regulation will also be available on the Commercial Chemicals Website.

**Public participation**

Discussions on the regulation have been held with the sole manufacturer of TTPC in Canada, and interested parties have been consulted on the draft regulation. The draft regulations were sent to interested parties in April and May 1998 for review and comment. Comments were incorporated.

End users, members of the chemical manufacturing community and members of the public will be invited to comment on the proposed regulation during the 60 day public comment period following pre-publication of the regulation in the *Canada Gazette, Part I*.

Prepared by:

EPS Communications  
Environment Canada  
(819) 953-XXXX

March 4, 1999

For approval by:

# Annex G – Sample Communications Plan (ECS Regulation)

NOT FOR PUBLICATION

## 1. **Title of Regulatory Initiative**

*Migratory Birds Regulations, amendment* (overabundant populations of migratory birds).

## 2. **Communications Significance**

This amendment to the *Migratory Birds Regulations* modifies the special conservation measures regulations for overabundant species for 2000. In 1999, the time periods were extended during which the harvesting of greater snow geese and mid-continent lesser snow geese by hunters might take place in the Provinces of Quebec and Manitoba. The special conservation measures are necessary to ensure the preservation of migratory birds, and to address the damage to fragile arctic breeding habitats and natural staging and wintering areas caused by feeding of overabundant populations of geese. Overwhelming scientific evidence demonstrates that intervention is required to ensure the protection of migratory birds, and the preservation of the biological diversity of the arctic ecosystem.

As in 1999, hunters also will be allowed to use special hunting methods and equipment, including electronic calls, bait and use of bait crops under permit.

Several amendments to the 1999 overabundant species regulations are proposed to clarify the regulation text, improve the cost-efficiency of the regulation and expand the geographic area of Manitoba where conservation measures may be undertaken.

The requirement for hunters to register for the special conservation measures will be repealed. However, hunters are still obligated to have a Migratory Game Bird Hunting Permit, which, in conjunction with lists of hunters from the pilot year, will assist the Canadian Wildlife Service in obtaining harvest information about the seasons.

The provisions that allow for use of bait or bait crops for hunting are being amended to provide the criteria by which the Regional Director would evaluate requests and make decisions regarding the issuance of consent. These amendments further increase the clarity of the regulation.

In addition, the regulations are being amended to remove the reference to other species that are not easily distinguishable from overabundant species. A judicial review of the special measures to increase the take of overabundant snow goose populations was carried out in April 1999 by the Federal Court of Canada. The Federal Court Judge ruled that the regulations were *ultra vires* respecting Ross' geese, and that the resemblance of a non-overabundant species to the snow goose was not sufficient reason to take the former in conservation measures.

The communications significance of this amendment is considered high for the migratory game bird hunting community, conservation organizations and for the Provinces of Quebec and Manitoba.

## 3. **Proposed Strategy**

Since 1995, significant consultations with stakeholders have been undertaken for this amendment. In addition, this amendment was pre-published in Part I of the *Canada Gazette* on December 18, 1999 for a final 30-day period of public comment. In order to provide stakeholders with every opportunity to participate in consultations, the proposal was also outlined in the CWS December 1999, "Report on Migratory Game birds in Canada; Proposal for Hunting Regulations", with an invitation to comment. Virtually no comments were received. The Province of Manitoba requested the removal of the latest date



in the period for conservation measures, as it would overlap with the regular hunting season, when electronic calls cannot be used. The harvest of snow geese without electronic calls will still be permitted during the regular hunting season for that time period.

Approximately 700 organizations, including federal and provincial governments, Aboriginal organizations, and non-government groups (including hunting associations and other conservation organizations), have been involved in consultations to date.

News releases for local papers and radio stations will be prepared and distributed by the Quebec and Prairie and Northern regional offices of Environment Canada following final approval of this regulation to notify hunters and the public in these areas of the new conservation seasons. Information on the expanded harvest will also be included in the summary of the migratory game bird hunting regulations that hunters receive when they purchase their annual hunting permits in September 2000.

#### **4. Target Publics and Expected Reaction**

Hunting and conservation groups are reacting favourably to the government's response to the problem of overabundant species, as they have throughout the consultation process. Stakeholders who have indicated their support for this amendment include Aboriginal organizations directly affected by the amendment, Ducks Unlimited Canada, the Canadian Wildlife Federation and its provincial affiliates, the Canadian Nature Federation and its provincial affiliates, the Quebec multistakeholder Technical Committee, tourist industry representatives, and individual hunters.

There has been positive media coverage of the government's approach proposed to address overabundant species. The governments of Alberta, Manitoba, Ontario, Quebec and the Northwest Territories have also indicated strong support for the regulatory amendment.

This amendment is consistent with actions in the U.S., where a regulation authorizing the increased harvest of snow geese was implemented in 1999. The federal wildlife agencies of Canada, the U.S. and Mexico have discussed the issue and have agreed on the general regulatory approach.

Opposition to the amendment is being expressed by a coalition comprised primarily of animal protection groups (such as the Animal Alliance of Canada, Animal Protection Institute, Canadian Environmental Defence Fund, and Zoocheck Canada). The coalition disputes the evidence of the extent of habitat damage caused by overabundant goose populations, and maintains that natural reduction of population size by starvation, disease and predation is preferable to increased harvest by hunters. The coalition also argues that consultation for this amendment has been inadequate, particularly with regard to Aboriginal organizations.

The overwhelming scientific evidence demonstrates that intervention is necessary in order to ensure the preservation of migratory birds, and to safeguard the biological diversity of the arctic ecosystem. To this end, since 1995 there has been significant consultations with stakeholders, including direct consultations with Aboriginal groups in the most affected areas in northern Canada, either at the community level or through cooperative wildlife management boards.

Finally, the coalition questions the legal ability of the federal government to make these regulations, and mounted a legal challenge in early 1999. The issue also was raised by John Herron, the Environment critic for the Progressive Conservative Party. However, the Department of Justice advises that these regulations are valid and do not violate either the 1916 Convention, or the 1994 *Migratory Birds Convention Act*. In the April 1999 judicial review of the regulations by the Federal Court of Canada launched by the coalition group, the Judge confirmed that Article VII of the 1916 Convention provided for the regulations to deal with the extraordinary circumstances now observed for overabundant snow geese. He also ruled that the regulations were *ultra vires* respecting Ross' geese. The Judge found no conflict on any of the other points at issue. The decision of the Federal Court is currently under appeal by the same coalition group.

## 5. Messages

The federal government is responsible under *the Migratory Birds Convention Act, 1994* and amending *Parksville Protocol* to ensure that populations of migratory birds are maintained, protected and conserved.

This action demonstrates the federal government's commitment to the conservation of wildlife and global biodiversity by ensuring the preservation of migratory birds and fragile arctic wetland ecosystems.

The federal government is responding to the serious threat to migratory birds, key arctic habitats and other wildlife posed by overabundant geese populations. The government's response to this issue will help protect and restore critical habitat on which geese and other wildlife depend.

Evaluation plans have been developed which will track progress toward the goals of reduced population growth and ultimately, improved habitat conditions. This information will enable CWS and other agencies to assess when the goals have been met, and special conservation measures are no longer necessary.

Hunters are a strong, vocal voice for conservation, and their contribution to migratory bird conservation is considerable. By hunting overabundant species, they help to play an important role in the conservation and management of wildlife.

This action will help to assure the future of an important food and cultural resource for Aboriginal peoples.

## Annex H - Sample Letter to Head Counsel

Environment  
Canada

Environnement  
Canada

### Memorandum - Note de service

**To/À**

Head Counsel, Legal Services

**PREPARED BY/  
PRÉPARÉ PAR:**

**SECURITY/  
SÉCURITÉ:**

**FROM/  
DE**

**FILE/  
DOSSIER:**

**DATE:**

**Subject/  
Objet:**

**TRIBUTYLTETRADECYLPHOSPHONIUM CHLORIDE (TTPC) REGULATIONS**

The substance Tributyltetradecylphosphonium Chloride (TTPC) has been assessed pursuant to section 28 of CEPA on *Substances New to Canada*. According to this assessment, there is reason to suspect that this substance is toxic under paragraph 11(a) of CEPA.

A prohibition of TTPC manufacture and import into Canada was published in the *Canada Gazette, Part I*, on July 5, 1997, pursuant to subsection 29(5) (see attached). As indicated in the notice, the prohibition was imposed on May 16, 1997. Therefore, pursuant to subsection 29(4) of the Act, Environment Canada has until May 17, 1999 to propose regulations under section 34 of CEPA.

Please note that the decision of imposing regulations on the substance to allow the manufacture for export only has already been approved by the Minister of the Environment.

TTPC will be added to the List of Toxic Substances in Schedule I of the Act and, in order to implement the condition of notification prescribed in the regulations, TTPC will be added to the List of Toxic Substances Requiring Export Notification in Schedule II, Part II, of the Act.

You will find attached the draft regulations and the orders in both languages. Also, the RIAS and photocopies of the front page of a document referred to in the regulations, are attached for your information. Considering the deadline for the publication of the proposed regulations in the *Canada Gazette, Part I*, would you please forward the draft regulations as soon as possible to the Department of Justice for their review.

If you have any questions, you can contact J. Smith at 953-XXXX.

Thank you for your cooperation.

## Annex I - Sample Memo to Assistant Clerk PCO requesting SCC review and approval for Pre- Publication (EPS)

Ottawa, Ontario  
K1A 0H3

PCO(J) File: JUS-97-535-01

Assistant Clerk of the Privy Council  
(Orders in Council)  
Privy Council Office  
Room 418, Blackburn Building  
85 Sparks Street  
Ottawa, Ontario  
K1P 5A7

Dear:

Re: Regulations Amending the Prohibition of Certain Toxic Substances Regulations and Order adding a Toxic Substance to Schedule I and II to the CEPA

I am writing to request your assistance for the publication of the above-noted instruments in the *Canada Gazette, Part II*. Please find enclosed, in both official languages, the Regulatory Impact Analysis Statement (RIAS) respecting the amended regulations and Recommendations to the Governor in Council signed by the Minister of the Environment and the Minister of Health. The required copies of the new regulations and other documents of this package are included for your convenience. The regulatory text has been examined by Privy Council Legal Services in accordance with the Statutory Instruments Act.

The *Regulations Amending the Prohibition of Certain Toxic Substances Regulations* include the substance (4-Chlorophenyl)cyclopropylmethanone, O-[(4-nitrophenyl)methyl]oxime as the first regulated New Substance. Thus, this proposed initiative will prevent the entry of this toxic substance into the Canadian environment.

Would you kindly arrange for the review of these documents by the SCC and for their subsequent publication in the *Canada Gazette, Part II*, once SCC approval has been received. A completed Request for Insertion form to cover publication is attached.

Please be aware that the documents should be published in the following order:

- the Order adding a toxic substance to Schedules I and II to the Canadian Environmental Protection Act (CEPA);
- the Regulations Amending the Prohibition of Certain Toxic Substances Regulations;
- the Regulatory Impact Analysis Statement in support of the Regulations.

Thank you for your attention to this matter.

Sincerely,  
Program Area Director General

## Annex I - Sample Memo to Assistant Clerk PCO requesting SCC review and approval for Pre- Publication (ECS)

Ottawa, Ontario  
K1A 0H3

DELIVERED BY HAND

Assistant Clerk of the Privy Council  
(Orders in Council)  
Privy Council Office  
Langevin Block, Room 105  
Ottawa, Ontario  
K1A 0A3

**Re: Amendment to the *Migratory Birds Regulations* - Overabundant Populations of Migratory Birds**

I am writing to request your assistance in having this amendment reviewed by the Special Committee of Council at its meeting on March 1, 2000, for final approval and publication in the *Canada Gazette*, Part II.

Please find enclosed, in both official languages, the original Regulatory Impact Analysis Statement as well as the Recommendation to the Governor in Council, signed by the Minister of the Environment. The necessary copies of this and other components of the amendment package are included. The amended regulatory text has been examined by the Department of Justice in accordance with the *Statutory Instruments Act*.

In 1999, an amendment to the *Migratory Birds Regulations* created special periods, outside of the hunting season, during which hunters are permitted to take overabundant species for conservation reasons, and in some cases and subject to specific controls, to use special methods and equipment, such as electronic calls and bait. The 1999 regulations applied in selected areas of the Provinces of Quebec and Manitoba. For 2000, additional amendments are being proposed on the basis of further consultations, and in response to information obtained from implementation of the 1999 regulations. These amendments would clarify the regulatory text, improve the cost-efficiency of the regulations, and expand the geographic area of Manitoba where conservation seasons may be held. The regulations are also being amended to remove a reference to other species that are not easily distinguishable from overabundant species.

The amendment was republished on December 18, 1999, in the *Canada Gazette, Part I* for a public review period of 30 days. The results of the consultations are summarized in the Regulatory Impact Analysis Statement.

The regulation proposes that the 2000 spring conservation period begin on April 10<sup>th</sup>. To allow sufficient time to complete the necessary administrative requirements following final approval of the amendment, we would appreciate it if this item could be considered by the Special Committee of Council at its March 1<sup>st</sup> meeting.

Should further information be required on the submission, please contact Mr. Robert McLean, Director, Wildlife Conservation Branch (telephone 997-1303).

Your assistance in this matter would be greatly appreciated.

Yours sincerely,

Assistant Deputy Minister  
Environmental Conservation Service

## Annex J - Sample Memo to Minister (EPS)

Environment Canada      Environnement Canada

MEMORANDUM TO MINISTER  
NOTE DE SERVICE AU MINISTRE

Subject / Objet

**TRIBUTYLTETRADECYLPHOSPHONIUM CHLORIDE REGULATIONS**

Purpose for Memorandum / Raison d'être

Approval/Signature

Prepared By / Préparé par  
**J. Smith**

Security Classification / Classification de sécurité

**UNCLASSIFIED**

File Number / No de dossier

**XXXXX**

Date

Attached, for your consideration and approval, are the documents required for the publication of the *Tributyltetradecylphosphonium Chloride (TTPC) Regulations* in Part II of the *Canada Gazette*. Included in the package are :

- the proposed Order and TTPC Regulations;
- the Regulatory Impact Analysis Statement (RIAS) (signature required);
- the recommendations to the Governor in Council (signature required);
- the communication plan;
- the covering letter to the Minister of Health (signature required); and
- a Briefing Note describing the action being taken with respect to TTPC.

The Minister of Health must also approve the *Tributyltetradecylphosphonium Chloride Regulations*.

In January 1997, an application was made to Environment Canada under the *New Substances Notification (NSN) Regulations* of CEPA (subsection 26(1)). The applicant proposed to manufacture the substance in Canada for use as a corrosion inhibitor in industrial cooling systems.

The assessment under the NSN Regulations led to the conclusion that this new substance was toxic based on the company's proposed use for TTPC, which had the potential to cause adverse environmental impacts. Therefore, your predecessor (Hon. Sergio Marchi) prohibited this company from manufacturing or importing the substance into Canada, pursuant to paragraph 29(1)(b) of CEPA. The prohibition was imposed on May 16, 1997, and, pursuant to subsection 29(4) of CEPA, Environment Canada had until May 17, 1999, to propose regulations under section 34, or the prohibition would lapse.

To prevent any further commercial activity in Canada, your predecessor (Hon. Sergio Marchi) also decided that the substance would be added to the List of Toxic Substances and that a regulation under section 34 of CEPA would prohibit all commercial activities related to the substance in Canada.

However, in July 1997, another company made an application for TTPC under the transitional provisions of the *New Substances Notification Regulations* of CEPA (subsection 26(2)). This company proposed to manufacture the substance in Canada for export to Europe for uses which differ from the one proposed in the first application.

The assessment for this second notification led to the conclusion that the intended uses for the importing country would likely result in significantly lower releases to the environment than the use proposed for Canada. Moreover, the information related to the manufacturing process demonstrates that it is essentially a contained process (no

releases). Therefore, the manufacture of the substance in an export-only scenario does not result in an immediate or long-term effect on the Canadian environment.

In August, 1997, a memorandum and a briefing note were forwarded to your predecessor (Hon. Christine Stewart) in order to obtain her agreement to develop regulations which allow the manufacture of TTPC for export only and also, allowing Cytec Canada Inc. to re-start the manufacture of TTPC under certain conditions specified in the regulations.

Regulations were then proposed in order to prevent the entry of this new substance into the Canadian environment, and allow its manufacture for export to Europe, where these proposed uses meet the regulatory requirements. The proposed Regulations and the assessment summary of TTPC were published in the *Canada Gazette*, Part I, on May 15, 1999. In this publication, the departments of the Environment and Health had also proposed to add TTPC to the List of Toxic Substances in Schedule I of CEPA and to the List of Toxic Substances Requiring Export Notification in Schedule II, Part II of CEPA. This addition to Schedule II, Part II, will require the manufacturer to submit an export notice in a manner consistent with the existing *Toxic Substances Export Notification Regulations*, and will ensure that any countries importing this chemical are notified in advance of Canada's export of the substance.

Following the publication in Part I of the *Canada Gazette*, no substantive comments were received during the 60-day public review period and no changes were made to the Regulations. Responses or explanations regarding the comments received are included in the Regulatory Impact Analysis Statement (RIAS).

In order to proceed with publication in Part II of the *Canada Gazette*, please sign the title page of the Regulatory Impact Analysis Statement (RIAS), the recommendations to the Governor in Council and the covering letter to the Minister of Health.

The signed, undated documents should be returned to: EPS Strategic Priorities Directorate (SPD), Regulatory Affairs.

## Annex J - Sample Memo to Minister (ECS)

Environnement  
Canada

Environnement  
Canada

**MEMORANDUM TO  
MINISTER  
NOTE DE SERVICE**

|   |
|---|
| Purpose for Memorandum - Raison d'être          |
| Signature                                       |
| Prepared by - Préparé par<br>S.Masswohl/BPB/CWS |

|   |
|---|
| Security Classification - Classification de sécurité<br><b>Unclassified / Sans classification</b> |
|---|

|  |
|--|
| Subject - Objet<br><b>AMENDMENT TO THE MIGRATORY BIRDS REGULATIONS</b> |
|--|

|                             |
|-----------------------------|
| File Number - N° de dossier |
| Date                        |

**Purpose**  
TO OBTAIN APPROVAL OF PROPOSAL TO AMEND THE MIGRATORY BIRDS REGULATIONS WITH RESPECT TO CONSERVATION MEASURES FOR OVERABUNDANT SPECIES

**Current Status**

Attached for your signature is documentation amending the Migratory Birds Regulations respecting conservation measures for overabundant species. You approved this proposed amendment in December for prepublication in Part I of the *Canada Gazette*. The final public consultations that followed have now concluded.

In response to the human induced problem of dramatically rising populations of greater and mid-continent lesser snow geese, an early 1999 amendment to the Migratory Birds Regulations created special periods, outside of the hunting season, during which hunters are permitted to take overabundant species for conservation reasons, and, in some cases and subject to specific controls, to use special methods and equipment, such as electronic calls and bait. The 1999 regulations applied in selected areas of the Provinces of Quebec and Manitoba. For 2000, additional amendments are being proposed on the basis of further consultations, and in response to information obtained from implementation of the 1999 regulations. These amendments will clarify the regulatory text, improve the cost-efficiency of the regulation, and expand the geographic area of Manitoba where conservation measures may be taken. The regulations are also being amended to remove a reference to other species that are not easily distinguishable from overabundant species.

This regulatory amendment was prepublished in Part I of the *Canada Gazette* on December 18, 1999 for a final, 30-day period of public review. At the same time, in order to provide stakeholders with every opportunity to participate in consultations, the proposal was also outlined in the December 1999 CWS, "Report on Migratory Game birds in Canada; Proposal for Hunting Regulations", with an invitation to comment. Virtually no comments were received.

In the summer of 1999, the proposed amendments for 2000 were the subject of extensive



consultations with stakeholders. They are supported by hunting and conservation groups, Aboriginal organizations in the most affected areas of northern Canada, tourist and agricultural industry representatives, as well as the provinces, territories and northern Wildlife Management Boards. The amendments are also consistent with actions in the United States to increase the harvest of snow geese in that country.

During the final stage of consultations, the Province of Manitoba requested the removal of the latest proposed date for conservation measures, as it would overlap with the regular hunting season, when electronic calls cannot be used. The harvest of snow geese without electronic calls will still be permitted during the regular hunting season for that date.

Opposition to the overabundant species regulations continues to be expressed by a coalition comprised primarily of animal protection groups (such as the Animal Alliance of Canada, Animal Protection Institute, Canadian Environmental Defence Fund, and Zoocheck Canada). The group disputes the evidence of the extent of habitat damage caused by overabundant snow goose populations, and maintains that natural reduction of population size by starvation, disease and predation is preferable to increased harvest by hunters. The adequacy of consultation with Aboriginal organizations is also being questioned by the coalition group. The group initiated the judicial review of the overabundant species regulations by the Federal Court in April 1999, and will appeal the Judge's decision. To date, the appellants are still preparing documents for Court. Upon filing of the documents, generally it will take six to twelve months before the case is heard.

#### **Departmental Position**

The Canadian Wildlife Service supports the amendments for 2000. While analysis indicates that progress is being made to control the growth of greater and lesser snow goose populations through the use of special conservation periods, their continued use will be necessary over a period of about five years to achieve desired population goals.

Your early approval of the attached regulatory package is requested in order that the amendment may be considered by the Special Committee of Council at its March 1, 2000 meeting. This will ensure that there is lead time for regional offices to complete administrative requirements, such as communications, before the commencement of the proposed spring 2000 conservation period on April 10, 2000.

#### **Next Steps**

If you approve of this initiative, please sign the Regulatory Impact Analysis Statement and the English and French versions of the Recommendations to the Governor in Council, and return the documents by February 17, 2000, to the Director General, Canadian Wildlife Service, who will ensure that the package is transmitted to the Privy Council Office for the Special Committee of Council to review.

---

Deputy Minister - Sous-ministre

## Annex K - Sample Letter: Minister to Minister

The Honorable:  
Minister of Health

Dear Colleague:

I am writing to request your approval of the attached *Tributyltetradecylphosphonium Chloride (TTPC) Regulations*.

Please note that historic background related to this issue is given in the “background” section in the briefing note attached.

In August 1997, a memorandum and a briefing note were forwarded to my predecessor (Hon. Christine Stewart) in order to obtain her agreement to develop regulations which allow the manufacture of TTPC for export only.

Regulations were then proposed in order to prevent the entry of this new substance into the Canadian environment, and allow its manufacture for export to Europe, where proposed uses meet the regulatory requirements of the importing country. The proposed Regulations and the assessment summary of TTPC were published in the *Canada Gazette*, Part I, on May 15, 1999. In this publication, the departments of the Environment and Health had also proposed to add TTPC to the List of Toxic Substances in Schedule I of CEPA and to the List of Toxic Substances Requiring Export Notification in Schedule II, Part II of CEPA. This addition to Schedule II, Part II, will require the manufacturer to submit an export notice in a manner consistent with the existing *Toxic Substances Export Notification Regulations*, and will ensure that any countries importing this chemical are notified in advance of Canada’s export in regard of the substance.

Following the publication in Part I of the *Canada Gazette*, no substantive comments were received during the 60-day public review period and no changes were made to the Regulations. Please note that responses and explanations regarding the comments received are included in the Regulatory Impact Analysis Statement (RIAS).

I would ask that you ensure that your department’s officials give this approval the highest level of priority given that the Regulations should be published in Part II of the *Canada Gazette* before the entry in force of the new CEPA.

To approve the regulations, please, sign the undated documents and return to:

Yours sincerely,

Hon.:  
Minister of the Environment

## Annex L - Sample Letter to PCO requesting publication in Gazette Part II

Ottawa, Ontario  
K1A 0H3

PCO(J) File: JUS-XXXXXX

Assistant Clerk of the Privy Council  
(Orders in Council)  
Privy Council Office  
Room 418, Blackburn Building  
85 Sparks Street  
Ottawa, Ontario  
K1P 5A7

Re: Tributyltetradecylphosphonium Chloride Regulations and Order adding the Toxic Substance to Schedule I and Schedule II, Part II, of CEPA

I am writing to request your assistance for the publication of the above-noted instruments for publication in Part II of the *Canada Gazette*. Please find enclosed, in both official languages, the Regulatory Impact Analysis Statement (RIAS) respecting the regulations, signed by the Minister of the Environment and the Minister of Health. The required copies of the new regulations and other documents of this package are included for your convenience. The regulatory text has been examined by the Regulations Section of the Department of Justice in accordance with the Statutory Instruments Act.

The substance Tributyltetradecylphosphonium Chloride (TTPC) has been assessed pursuant to section 28 of CEPA on *Substances New to Canada*. According to the assessment, there is reason to suspect that this substance is toxic under paragraph 11(a) of CEPA.

These regulations were published in the *Canada Gazette*, Part I, on May 15, 1999, and following the 60-day public review period, no changes were made to the regulations.

Would you kindly arrange for the review of these documents by the SCC and for their subsequent publication in the *Canada Gazette, Part II*, once SCC approval has been received. A completed Request for Insertion form to cover publication is attached.

Please be aware that the documents should be published in the following order:

- The Regulatory Impact Analysis Statement (RIAS) in support of the Regulations;
- The Order adding the toxic substance to Schedule I and Schedule II, Part II, to the Canadian Environmental Protection Act (CEPA);
- The *Tributyltetradecylphosphonium Chloride Regulations*.

Thank you for your attention to this matter.

Sincerely,

## Annex M - Sample Briefing Note

### Briefing Note

#### ISSUE

Action undertaken in regard of a Substance New to Canada : Tributyltetradecylphosphonium chloride (TTPC).

#### CURRENT STATUS

- The substance is highly inherently toxic to aquatic organisms and is predicted to be persistent. It is not bioaccumulative according to the Toxic Substances Management Policy criteria. Based on predicted environmental concentrations, the substance may pose an environmental risk;
- Following the assessments made under the New Substances Notification Program, it was found that there is reason to conclude the substance is toxic under paragraph 11(a) of CEPA. It may enter the environment in quantity or concentration having or that may have an immediate or long-term effect on the environment;
- Control action were undertaken : FMC Canada was prohibited from importing and manufacturing TTPC pursuant to paragraph 29(1)(b) of CEPA as the proposed use as a corrosion inhibitor in industrial cooling systems had the potential to cause adverse environmental impacts. Cytec Canada Inc., who proposed to manufacture TTPC for export only was allowed to manufacture by the Minister Stewart as the manufacture was not resulting in an immediate or long-term effect on Canadian environment;
- Department of Environment and Health proposed to add the substance to the *List of Toxic Substances* in Schedule I of CEPA, and to the *List of Toxic Substances Requiring Export Notification*, in Schedule II, Part II of CEPA;
- Department of Environment and Health have proposed the *Tributyltetradecylphosphonium Chloride (TTPC) Regulations* in order to prohibit the use, process, sale, offer for sale, or import of the substance and impose certain conditions for its manufacture. The regulations do not apply in any aspect of the substance regulated by or under the *Pest Control Products Act*;
- The addition to the Schedules of CEPA to the proposed regulations were published in the *Canada Gazette*, Part I, on May 15, 1999;
- Following the 60-day public review period, no changes were made to the regulations.

#### NEXT STEPS

- The *Tributyltetradecylphosphonium Chloride (TTPC) Regulations* will be published in the *Canada Gazette*, Part II.

#### BACKGROUND

- On January 27, 1997, FMC Canada notified TTPC under subsection 26(1) of CEPA. The intended use of the substance was a corrosion inhibitor in recirculating cooling tower fluids. The intended use, even under the most favorable conditions would have resulted in significant releases to water. The substance causes harmful effects to aquatic organisms. Consequently, the assessment concluded that the use of the substance will result in a suspicion of toxicity to the environment;
- On May 16, 1997, the former Minister of Environment (Sergio Marchi) prohibited FMC Canada from importing or manufacturing TTPC pursuant to paragraph 29(1)(b) of CEPA. In order to prevent any further commercial activity, the Department had two years to add the substance to the List of Toxic Substances and develop regulations under section 34 to prohibit its manufacture, use, process, offer for sale, sale and import in order to extend and broaden the prohibition to all companies;

- Although Cytec Canada Inc. was legally entitled to produce TTPC, they had voluntarily ceased the manufacture of the substance on May 16, 1997, when the Prohibition was imposed on FMC Canada;
- On July 11, 1997, Cytec Canada Inc., submitted a transitional notification (Schedule V), fulfilling their notification obligations under 26(2) of CEPA. They were proposing to manufacture the substance for export only :
  - In this notification, Cytec Canada Inc., reported that the substance will be exported to Europe where it is used as a pesticide and as a phase transfer catalyst (a method that promotes chemical reaction between two or more chemicals that would not normally mix with one another). These proposed new uses would likely result in significantly lower releases to the environment than the initial proposed use, considering that the TTPC concentration required is much lower;
  - The substance was registered as a pesticide in the European Union. According to Cytec Canada Inc., TTPC was not registered in Canada because the expense was not justified for such a small market. Although Cytec do not intent to register TTPC in Canada, the Pest Management Regulatory Agency was informed about the concerns regarding the substance;
  - Cytec's manufacturing and drumming processes are completely contained, releasing no effluent and producing no runoff. All wastes generated are sent for incineration to a licensed waste disposal company. As a precaution, ground water and runoff are routinely monitored;
- The assessment for this second notification led to the conclusion that the intended uses for the importing country would likely result in significantly lower releases to the environment than the use proposed for Canada. Moreover, the information related to the manufacturing process demonstrates that it is essentially a contained process (no releases). Therefore, the manufacture of the substance in an export-only scenario does not result in an immediate or long-term effect on the Canadian environment, therefore, the previous decision of developing a "total ban" regulations was revised in order to allow the manufacture for export only, under certain conditions;
- A meeting was held in July 1997 between Environment Canada and Cytec Canada Inc., to discuss the safety of manufacturing TTPC and the export process. At that meeting, Cytec asked about the possibility of Environment Canada approving a short term production run to provide their European clients until the regulations are finalized;
- On August 27, 1997, a memorandum and a briefing note were forwarded to Minister Stewart in order to obtain her agreement to develop regulations which allow the manufacture of TTPC for export only and also, allowing Cytec Canada Inc. to re-start the manufacture of TTPC under certain conditions that will be specified in regulations;
- In September 1997, Cytec Canada Inc. had re-started the manufacture of TTPC for export only.

Prepared by:

Approved by:

Date:

## Annex N – EPS: Sample Letter of Recommendation

To Her Excellency the Governor General in Council:

The undersigned have the honour to recommend that Your Excellency in Council may be pleased, pursuant to subsection 90(1) of the Canadian Environmental Protection Act, 1999, to make the annexed Order Adding Toxic Substances to Schedule 1 to the Canadian Environmental Protection Act, 1999.

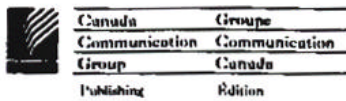
Respectfully submitted,

Minister of the Environment

Minister of Health

# Annex O - Request for Insertion in the *Canada Gazette*

\* Note: this is a reproduction of standard form that is available from the Canada Communications Group



**REQUEST FOR INSERTION IN THE CANADA GAZETTE**

• Use this form for all submissions to the Canada Gazette Centre.

To: Canada Gazette Centre  
Canada Communication Group  
45 Sacré-Coeur Boulevard  
Hull, Québec  
K1A 0S9

Au: Centre Gazette du Canada  
Groupe Communication Canada  
45, boulevard Sacré-Coeur  
Hull (Québec)  
K1A 0S9

A 14928

**DEMANDE D'INSERTION DANS LA GAZETTE DU CANADA**

• Veuillez utiliser ce formulaire pour toute demande au Centre Gazette du Canada.

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| Originating Department - Ministère demandeur<br><i>Environnement Canada</i>  |   | Customer Number - Numéro du client  |  |
| Contact Name - Nom de la personne à joindre<br><i>Commercial Chemicals Evaluation Branch (CCFB)</i>  |   | Address - Adresse<br><i>Place Vincent Lassery, 14<sup>th</sup> Floor<br/>Ottawa, Ont.<br/>K1A 0H3</i>                                       |  |
| Title of Material Submitted - Titre du document présenté<br><i>Tributyl Tetradecyl Phosphonium Chloride Res (TRPG)</i>   |   | Published under the authority of (section of Act, Regulation, etc.)<br><i>Section 34</i>  |  |
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## Annex P - Departmental Regulatory Affairs Coordinating Committee (DRACC)

### **Mandate & Terms of Reference**

The mandate of the Departmental Regulatory Affairs Coordinating Committee is:

- to co-ordinate the development of regulatory plans and priorities<sup>3</sup>
- to establish consistent policy and procedures for the drafting, review, and approval of regulatory proposals
- to provide functional guidance to program staff
- to monitor, provide progress reports, and recommend adjustments to approved plans and priorities
- to look at ways and means of expediting the development, review, and approval process
- to lead projects designed to improve the efficiency of the regulatory affairs function and to add to the tool set needed to do the job better

The Committee, comprised of Directors General responsible for regulatory issues, is drawn from each of Environment Canada's Lines of Services, and from each of the common support functions (i.e., legal services, economic analysis, enforcement, and communications). The Committee is also supported by a working group (of staff responsible for departmental regulatory affairs).

The Regulatory and Economic Affairs Branch (REAB) provides the chair and administrative support for the committee.

The Committee will meet at least three times a year and at the call of the chair.

When proposals are considered that would affect departmental working relationships or commitments to partners such as Health Canada and Fisheries and Oceans, representatives of these departments may be invited to participate in the deliberations of the Committee.

The Committee will report to the MAP Table through its chair. Committee members will be expected to advise their respective ADMs in a timely manner about any matter before the Committee for consideration, and to raise their Service's concerns when these deliberations occur. This working level Committee will develop and recommend functional management policies and procedures to EMB. It will also provide a forum for sorting out any operational problems within the regulatory function. The Committee will monitor, and report our progress in delivering on our regulatory commitments. Any matter that can not be resolved at this level will be referred to MAP for decision.

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<sup>3</sup> The DRACC is currently developing a system and criteria for establishing departmental regulatory priorities. When this information becomes available, it will be added to this Annex.



The Committee will develop terms of reference, work requirements and a cost-sharing arrangement for each project. It will review any progress reports submitted, and approve any of the deliverables.

The need for the Committee and its terms of reference will be reviewed after three years.

## Annex Q - Criteria for an Enforceable Regulation

- Is this regulation clear and concise in its intent? (who is covered, who is not covered, what is regulated, where, etc)
- Is this regulation technically sound? (for example, specific technical requirements like sampling or analytical methods must be consistent with the sources and the substances covered and intent of the regulation; the information required from the regulatees must be obtainable and verifiable.
- Are the requirements and intent of the regulation viewed and understood?
- Is the regulation precise in the requirement placed on the regulatee?
- Is the appropriate enforceable section and the consequences on non-compliance described in the law? (Note: There is a risk associated with the repetition of an existing rule. It makes the text longer and risks to obscure it. The superfluous mention could cast doubt about the validity of other regulations that do not include the same reference to the law)
- Do definitions of terms/requirements eliminate all ambiguities so not to lead to false interpretation? (Note: definitions must not contradict the definition of the same expression that may be part of other regulations adopted under the same law)
- Are clear methods to determine compliance specified and updated as needed?
- Is the regulation reviewed and updated as required?

## Annex R - List of References

*A Decision-Making Process for CEPA and FA Legislation* (Project 1.5), presented at EPS-Executive Committee, April 13, 1999, Slide7.

*A Framework for Managing Regulatory Programs* Regulatory Affairs Directorate, PCO (available on website: [www.pco-bcp.gc.ca](http://www.pco-bcp.gc.ca)).

*A Guide to the Making of Federal Acts & Regulations* (Part IV) Department of Justice, November 1995.

*A Strategic Approach to Developing Compliance Policies* Regulatory Affairs Directorate, PCO (available on website: [www.pco-bcp.gc.ca](http://www.pco-bcp.gc.ca)).

*Assessing Regulatory Alternatives*, Regulatory Affairs Division, PCO.

*Benefit-Cost Analysis Guide for Regulatory Programs*, Consulting and Audit Canada.

*Consultation Guidelines for Managers in the Federal Public Service* Regulatory Affairs Directorate, PCO (available on website: [www.pco-bcp.gc.ca](http://www.pco-bcp.gc.ca)).

*Departmental Policy Statement On the Role of Enforcement Officials In the Regulatory Assessment and Development Process* (Draft), Project 4 Team, May 1999.

*Developing Regulations: The Basic Steps and the Plain Language Approach*, Regulations Section, Justice.

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*Federal Regulatory Process Guide* Regulatory Affairs Directorate, PCO (available on website: [www.pco-bcp.gc.ca](http://www.pco-bcp.gc.ca)).

*Federal Regulatory Process Management Standards Compliance Guide: A Self-Assessment Guide for Departmental Managers*. Treasury Board Secretariat, 1996.

*Implementing the Policy - Departmental Policy Statement On the Role of Enforcement Officials In the Regulatory Assessment and Development Process* (Draft), Project 4 Team, May 1999.

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*Managing Regulation in Canada* Regulatory Affairs Directorate, PCO (available on website: [www.pco-bcp.gc.ca](http://www.pco-bcp.gc.ca)).

*Regulatory Cooperation Between Governments* Regulatory Affairs Directorate, PCO (available on website: [www.pco-bcp.gc.ca](http://www.pco-bcp.gc.ca)).

*Regulation Development and Amendment Process: Canadian Wildlife Service* (Draft) prepared by Terry Mueller, Canadian Wildlife Service, Environment Canada, February 2000.

*Responsive Regulation in Canada* Regulatory Affairs Directorate, PCO (available on website: [www.pco-bcp.gc.ca](http://www.pco-bcp.gc.ca)).

*RIAS Writer's Guide*, Consulting and Audit Canada.

*Submissions to the Governor in Council - Checklist Reminder* Regulatory Affairs Directorate, PCO (available on website: [www.pco-bcp.gc.ca](http://www.pco-bcp.gc.ca)).