Government of Canada / Gouvernement du Canada

IMPLEMENTING SECTION 75 OF CEPA
DRAFT FOR PUBLIC COMMENTS

Environment Canada

April 2016

Canada

Introduction

The *Canadian Environmental Protection Act, 1999* (CEPA), which is aimed at preventing pollution and protecting the environment and human health, is jointly administered by Environment Canada and Health Canada, and includes specific requirements for the assessment and management of substances. The Act contains mandatory and enabling provisions that require, or permit, the assessment of the risks to human health and the environment that may result from exposure to substances.

Section 75 of CEPA instructs the Minister of the Environment to cooperate and develop procedures with non-federal governments in Canada and with the governments of member states of the Organisation for Economic Co-operation and Development (OECD) for the exchange of information on substances that are prohibited or substantially restricted by their legislation(s) for environmental or health reasons. In addition, decisions made by these other jurisdictions to prohibit or substantially restrict substances for environmental or health reasons are to be reviewed by the Minister of the Environment and the Minster of Health to determine whether the substances are harmful to Canadians and their environment.

The objective of the present document is to describe the implementation of procedures for the exchange of information with non-federal governments in Canada and with OECD jurisdictions within the requirements set out under subsection 75(2) of CEPA. Furthermore, the document describes steps to identify when a review is required under subsection 75(3).

Complementing this process, the Government of Canada also regularly exchanges information on chemical assessments and the management of substances through its continued collaboration on chemicals through the OECD and other international chemicals management fora as well as through bilateral technical cooperation with key partners such as the United States, Australia and the European Union (EU).

While the Government will continue to address mandatory priorities identified through section 73 (Categorization), sections 81 and 106 (New Substances Notifications) and section 75, the Government of Canada has recently taken steps to enhance the way new information from the other sources is acquired, evaluated and incorporated into forward work planning. These enhancements are outlined in the Approach for identification of chemicals and polymers as risk assessment priorities under Part 5 of the *Canadian Environmental Protection Act, 1999*.

Legislative basis

Subsections 75 (1), 75(2) and 75(3) of CEPA state the following:

Jurisdiction

(1) In this section, « jurisdiction » means

a. a government in Canada; or

b. the government of a foreign state or of a subdivision of a foreign state that is a member of the Organization for Economic Co-operation and Development.

Procedures for exchange of information with other jurisdictions

(2) The Minister shall, to the extent possible, cooperate and develop procedures with jurisdictions, other than the Government of Canada, to exchange information respecting substances that are specifically prohibited or substantially restricted by or under the legislation of those jurisdictions for environmental or health reasons.

Review of decisions of other jurisdictions

(3) Where the Minister is notified in accordance with procedures developed under subsection (2) of a decision to specifically prohibit or substantially restrict any substance by or under the legislation of another jurisdiction for environmental or health reasons, the Ministers shall review the decision in order to determine whether the substance is toxic or capable of becoming toxic, unless the decision relates to a substance the only use of which in Canada is regulated under another Act of Parliament that provides for environmental and health protection.

Definitions

CEPA does not explicitly define the terms "specifically prohibited" or "substantially restricted". However, for the application of section 75 of CEPA, the following definitions will be used and have been adapted from the definitions in the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (hereinafter, the Rotterdam Convention):

A "specifically prohibited substance" is a substance all uses of which have been prohibited by final regulatory action, in order to protect human health or the environment. It includes a substance that has been refused approval for first-time use or has been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process and where there is clear evidence that such action has been taken in order to protect human health or the environment;

"A "substantially restricted substance" is a substance virtually all use of which has been prohibited by final regulatory action in order to protect human health or the environment, but for which certain specific uses remain allowed. It includes a substance that has, for virtually all use, been refused for approval or been withdrawn by industry either from the domestic market or from further consideration in the domestic approval process, and where there is clear evidence that such action has been taken in order to protect human health or the environment."

Information Exchange Procedures under subsection 75(2)

Non-federal Jurisdictions in Canada

Environment Canada and Health Canada are currently using the CEPA National Advisory Committee (NAC) to exchange information on decisions on substances of mutual interest between the federal and provincial/territorial/aboriginal governments in Canada.

Section 6 of CEPA provides that the NAC be the main intergovernmental forum for the purpose of enabling national action and avoiding duplication in regulatory activity in matters affecting the environment among governments within Canada.

OECD Jurisdictions that are Parties to the Rotterdam Convention

The Prior Informed Consent (PIC) procedure of the Rotterdam Convention is a formal means of obtaining and sharing the decisions of importing Parties regarding hazardous chemicals. The objective is to promote a shared responsibility between exporting and importing Parties in protecting human health and the environment on an international basis.

The procedures outlined under the Rotterdam Convention and its definitions are being used to exchange information among OECD member states. Canada has been a Party to the convention since its entry into force on February 24, 2004. Of the 34 OECD member states, 31 are Parties of the Rotterdam Convention. Member states that are not Party to the Rotterdam Convention are Iceland, Turkey and the USA (procedures with these states are described in the following sections). Article 5 of the Rotterdam Convention obligates Parties to notify the Rotterdam Convention Secretariat when they prohibit or severely restrict a pesticide or industrial chemical for environmental or health reasons. These notifications, called Notifications of Final Regulatory Action (NFRA), are made public by the Secretariat in a twice-yearly publication called the "PIC Circular".

Whenever a substance is banned or severely restricted in Canada, an NFRA is submitted to the Secretariat outlining the properties, identification and uses of the substance and information about the regulatory action.

The United States

Implementation of CEPA section 75 with respect to the United States consists in regular review, by Canadian government officials, of the Federal Register for amendments to the List of Substances of Concern under section 5(b)(4) and for amendments to the *Toxic Substances Control Act* (TSCA) chemical substances Inventory for addition or an 'F' or 'R' flag on a substance.

The following TSCA actions from the United-States Environmental Protection Agency (EPA) are being included in the procedure for the exchange if information with the United-States:

- Section 5(b)(4) of the TSCA authorizes the EPA to compile and keep current a list of chemical substances with respect to which it finds that the manufacture, processing, distribution in commerce, use, or disposal, or any combination of such activities, presents or may present an unreasonable risk of injury to health or the environment.

  The list of chemicals is to be compiled and kept current through rulemaking proceedings with opportunity for notice and comments, including the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. These procedures apply to rules listing chemicals, as well as to the substantive amendment or repeal of such rules.

- If EPA determines that a new chemical will present unreasonable risk before a TSCA section 6 rule can be promulgated, EPA may (1) limit the amount or impose other restrictions on the substance via an immediately effective proposed rule, or (2) completely prohibit the substance by issuing a proposed order or applying to a US District Court for an injunction.

  Section 5(f) actions are being communicated using the 'F' flag on the TSCA chemical substances inventory.

- Section 6 of the Toxic Substances Control Act gives EPA the authority to protect against unreasonable risk of injury to health or the environment from chemical substances.

  Section 6 actions are being communicated using the 'R' flag on the TSCA chemical substances inventory.

- Section 7 authorizes EPA to commence a judicial action for seizure of a chemical substance, mixture, or article containing such a chemical substance or mixture which EPA has determined is imminently hazardous, and/or for other relief against any person who manufactures, imports, processes, distributes in commerce, uses, or disposes of an imminently hazardous chemical substance or mixture.

  Concurrently with filing a civil action under section 7, the EPA would initiate proceeding for promulgation of a rule under TSCA §6(a). If EPA determines that a chemical is likely to present an unreasonable risk of serious or widespread injury to health or the environment before normal rulemaking procedures can be completed, EPA may declare a proposed rule under TSCA §6 immediately effective upon publication and until the effective date of the final action.

  Section 7 decisions are being communicated using the 'R' flag on the TSCA chemical substances inventory.

Iceland and Turkey

Environment Canada will continue to monitor, through the *Approach for identification of chemicals and polymers as risk assessment priorities*, whether future legislative action from either of these countries warrants the development and implementation of a formal procedure under section 75.

Annex 1 presents the notification from the procedures under subsection 75(2) as described in this section.

Decision to perform a review under subsection 75(3)

Reviews under subsection 75(3) will not be undertaken for all decisions notified under the procedures. Before such a review is performed, the criteria below will need to be met.

A decision notified under the procedure will trigger a review under CEPA 1999 section 75(3) when:

1. The decision is on a substance 'severely restricted' or 'specifically prohibited';
2. The decision originates from an OECD member state;

3. The substance has non-pesticidal uses in Canada[1];
4. The decision is based on a risk or hazard evaluation; and
5. The notification contains information that was **not** previously considered as part of an assessment by relevant Canadian authorities.

Form of a Review under subsection 75(3)

Where a review is warranted, the form of the review will be in the form of a CEPA Risk Assessment. Following this review, if there is a concern that the substance or group of substances may be toxic or capable of becoming toxic, the typical CEPA risk management process will be followed.

Timing of a review under subsection 75(3)

While there is no timeline for the review, a review would be undertaken relative to other priorities that have been identified for action under CEPA.

Transparency and Public participation

Where a review is performed under section 75 of CEPA, the draft risk assessment and its conclusions will be released for public comments under subsection 77(1) by the Government of Canada.

The status of the monitoring of decisions notified under section 75, through the NAC, PIC circular and the US EPA publications will be communicated by the Minister of the Environment annually through the CEPA annual report and the Chemicals Substances Management website, in conjunction with the results of the Approach for identification of chemicals and polymers as risk assessment priorities.

[1] Subsection 17(2) of the Pest Control Products Act requires that when a member country of the OECD prohibits all uses of an active ingredient for health or environmental reasons, the Pest Management Regulatory Agency will initiate a special review related to registered pest control products containing the active ingredient.

Annex 1

Notifications under the procedure established by the Minister of the Environment under subsection 75(2)

Notifications of Final Regulatory Actions reported in PIC circulars I-XLI. Industrial Chemicals nominated by OECD member states

CAS number	Chemical name
732-26-3	2,4,6-tri-tert-butylphenol
91-59-8	2-naphthylamine
92-93-3	4-nitrobiphenyl
20859-73-8	Aluminium phosphide
1303-28-2	Arsenic pentoxide
319-85-7	b-Hexachlorocyclohexane
92-67-1	Biphenyl-4-ylamine
111-44-4	Bis(2-chloroethyl)ether
99688-47-8	Bromobenzylbromotoluene
12001-29-5	Chrysotile (white asbestos)

319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, alpha-isomer
1163-19-5	Decabromodiphenyl ether (decaBDE)
76253-60-6	Dichloro[(dichlorophenyl)methyl]methylbenzene
81161-70-8	Dichlorobenzyltoluene
144-49-0	Fluoroacetic acid
307-35-7	heptadecafluorooctanesulphonyl fluoride
36355-01-8	Hexabromobiphenyl
74-83-9	Methyl bromide
298-00-0	Methyl parathion
70776-03-3	Naphthalene polychlorinated
84852-15-3	Nonylphenols and nonylphenol ethoxylates
140-66-9	Octylphenols and Octylphenol ethoxylates
3846-71-7	Phenol, 2-(2H-benzotriazol-2-yl)-4,6-bis(1,1-dimethylethyl)-
13171-21-6	Phosphamidon

152-16-9	Schradan
85535-84-8	Short Chain Chlorinated Paraffins (SCCP)
	Styrene rubber antioxidant
107-49-3	TEPP
563-68-8	Thallium acetate
10102-45-1	Thallium nitrate
7446-18-6	Thallium sulphate
56-35-9	Tributyltin oxide
545-55-1	Tris-(1-aziridinyl)phosphine oxide

Notifications under the subsection 75(2) procedure for The United States

Section 5(b)(4) of the TSCA

Nil

Section 5(f) of the TSCA

CAS RN	CA Index Name
80584-91-4	Hexanoic acid, 6,6',6"-(1,3,5-triazine-2,4,6-triyltriimino)tris-
80584-92-5	Hexanoic acid, 6,6',6"-(1,3,5-triazine-2,4,6-triyltriimino)tris-, compd. with 2,2',2"-nitrilotris[ethanol] (1:3)

85204-21-3	2-Butenoic acid, 4-[(2-ethylhexyl)amino]-4-oxo-, (2Z)-, compd. with 2,2',2''-nitrilotris[ethanol] (1:1)

Section 6 of the TSCA

CAS RN	CA Index Name
1332-21-4	Asbestos
1333-82-0	Chromium oxide (CrO3)
1336-36-3	1,1'-Biphenyl, chloro derivs.
7738-94-5	Chromic acid (H2CrO4)
7775-11-3	Chromic acid (H2CrO4), sodium salt (1:2)
7778-50-9	Chromic acid (H2Cr2O7), potassium salt (1:2)
7789-00-6	Chromic acid (H2CrO4), potassium salt (1:2)
10588-01-9	Chromic acid (H2Cr2O7), sodium salt (1:2)
11103-86-9	Potassium zinc chromate hydroxide (KZn2(CrO4)2(OH))
13530-65-9	Chromic acid (H2CrO4), zinc salt (1:1)
13530-68-2	Chromic acid (H2Cr2O7)
14018-95-2	Chromic acid (H2Cr2O7), zinc salt (1:1)
85204-21-3	2-Butenoic acid, 4-[(2-ethylhexyl)amino]-4-oxo-, (2Z)-, compd. with 2,2',2''-nitrilotris[ethanol] (1:1)

Section 7 of the TSCA

Nil