

Equivalency Agreements under the *Canadian Environmental Protection Act, 1999*

What are equivalency agreements?

Under section 10 of the *Canadian Environmental Protection Act, 1999* (CEPA 1999), when an instrument already exists in another jurisdiction (provincial/territorial) that achieves the same environmental outcome as a CEPA 1999 regulation, the provincial or territorial instruments apply instead of the CEPA 1999 regulation. For this to occur, the Province/Territory enters into an equivalency agreement (EA) with the Government of Canada.

The purpose of EAs is to avoid duplication among the various orders of government and to enable the best-positioned jurisdiction to provide the highest environmental quality for Canadians. These agreements are important instruments for enabling the federal and provincial/territorial governments to work together effectively and efficiently to achieve broad environmental protection goals.

When can EAs be entered into?

According to CEPA 1999, regulations made under the following provisions are eligible for inclusion in an EA:

- respecting toxic substances (s. 93(1));
- respecting emergencies (s. 200(1));
- respecting government operations on federal and Aboriginal lands (ss. 209(1)(2)); and
- respecting international air and water pollution (ss. 167 and 177), unless the regulations are with respect to a federal source

For any of the eligible regulations to be dealt with in an EA, certain requirements must be met.

First, the environmental legislation of the other jurisdiction must contain provisions similar to sections 17 to 20 of CEPA 1999. Specifically, citizens must be provided with the right to apply for investigations of offences and to be kept informed of progress on those investigations. Equivalent provisions may be found in environmental legislation other than that covered in the EA, as long as the other legislation expressly extends the use of its provisions to the legislation at issue.

Second, the other jurisdiction's laws must be in force and equivalent to the CEPA 1999 regulation. "Equivalent" does not require that the two be identical, but rather that they serve the same purpose and have the same effect. For example, the methods used to determine emission limits or allowances for regulated emitters should result in analogous reductions and treat like emitters comparably. From a policy perspective, an equivalency determination should also consider whether measurement methods will provide scientifically comparable and valid results, whether enforcement is consistent with Environment Canada's CEPA Enforcement and Compliance Policy; and whether there are provisions for comparable penalties.

Essentially, a decision to enter into an EA is justifiable where the level of protection of the environment is equivalent.

When does an EA come into force?

EAs come into force on the date specified in the agreement and automatically terminate five years later. They may also be terminated earlier by either party, with three months' notice.

How is the public informed?

Before being entered into, every EA must be made available to the public for a 60-day comment period, during which any person may file comments or a notice of objection. The Minister must publicly report on how these submissions were dealt with at the end of the 60 days. Finally, after an agreement has been entered into, the Minister must either publish it or give notice of its availability in the *Canada Gazette*.

What happens if an EA is not complied with?

In the event of non-compliance with an equivalency agreement, the federal government can make use of the allowance for terminating an EA with three months' notice.

How are EAs being used?

Although Alberta is the only province that has entered into an EA so far, the federal government would like to use this tool wherever possible. The Government of Canada wants to work with the Provinces and Territories to determine early on where EAs can apply and to encourage their use in an efficient and transparent manner.

Further information

Internet:

www.ec.gc.ca/ceparegistry.

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