



Government
of Canada

Gouvernement
du Canada

DISCUSSION PAPER ON INFORMATION REQUIREMENTS AND TIME MANAGEMENT REGULATORY PROPOSAL

A PROPOSED IMPACT ASSESSMENT SYSTEM

May 2019



1 CONTEXT

The Government of Canada is proposing new rules that protect the environment, recognize and respect Indigenous rights, and strengthen our economy through the proposed Impact Assessment Act.

The new impact assessment process will be led by the Impact Assessment Agency of Canada (the Agency) and will serve as a planning tool that takes into consideration the whole range of environmental, health, social and economic effects of projects. This new regime will shift away from decisions based solely on the significance of effects and focus instead on whether the adverse effects in areas of federal jurisdiction are in the public interest, as defined in the Impact Assessment Act.

In addition to the broader review of project effects, there will be an emphasis on early planning and engagement with Indigenous peoples, the public and stakeholders to identify and discuss potential effects and benefits early, leading to tailored impact assessment guidelines, clarity on Indigenous and public engagement plans, and strengthened cooperation with provincial governments essential to achieving one project, one assessment. As a result, good projects can move forward in a responsible, timely and transparent way that protects the environment, creates jobs and builds a strong economy.

1.1 WE WANT YOUR VIEWS

The Government of Canada is continuing public consultations on the Information Requirements and Time Management Regulations (proposed regulations) that are being developed pursuant to the proposed Impact Assessment Act. The proposed regulations would set out:

- Criteria under which legislated time limits could be suspended;
- Information required from the proponent in the Project Description, which would be provided at the outset of early planning and updated during the planning phase (see part 5.1 and Annex 1);
- Requirements to support accessibility of information provided by proponents (see parts 5.2);
- Products the Impact Assessment Agency of

Canada (the Agency) would deliver at the end of early planning (see part 5.3);

- A requirement for the Agency to make participant funding programs available for all designated projects (see part 6); and
- The time limit for the Minister to respond to a request that a regional or strategic assessment be conducted (see part 7).

In February 2018, the Government came forward with a *Consultation Paper on Information Requirements and Time Management Regulations*. Annex 2 provides a high level summary of the comments received. The Government has modified the approach, in consideration of the comments received, and is now presenting the results.

The purpose of this paper is to seek views on the proposed Information Requirements and Time Management Regulations.

This paper also provides context on how information and timelines would be managed in the context of implementing the proposed new impact assessment system.

The Information Requirements and Time Management Regulations cannot be finalized until the proposed Impact Assessment Act, which provides the authority to make the regulation, has been passed by parliament and has received Royal Assent. The proposed regulation is being presented now in order to inform the ongoing review of Bill C-69 (which includes the proposed Impact Assessment Act) by parliament.

The proposed Impact Assessment Act will come into force on a date identified by order of the Governor in Council. In order to be ready for coming into force, the final regulations will be published in *Canada Gazette, Part II*, following Royal Assent. As such, it is important that stakeholders provide input on this consultation paper. A summary of the comments received, as well as a detailed outline of any changes to the regulatory

proposal, will be provided in the Regulatory Impact Analysis Statement that will accompany publication of the regulations, in order to provide industry and

stakeholders with as much information as possible on the proposed regulatory requirements.

2 INFORMATION AND TIME MANAGEMENT IN THE PROPOSED NEW IMPACT ASSESSMENT SYSTEM

Impact assessments for designated projects under this new regime would be led by the Impact Assessment Agency of Canada (the Agency). Making a single agency responsible for leading all impact assessments under the proposed Impact Assessment Act would build trust and provide more clarity and consistency for all stakeholders. It would also give Indigenous groups a clear point of contact for engagement with the Crown.

Where projects link to lifecycle regulators such as the Canadian Energy Regulator, the Canadian Nuclear Safety Commission and the Offshore Petroleum Boards, the Agency would work collaboratively with the lifecycle regulator to draw upon their expert knowledge and ensure that safety, licensing requirements, international obligations, and other key regulatory factors are considered as part of a single, integrated assessment. This would meet both the requirements under the Impact Assessment Act and the respective regulator's Act, and further ensure that the principle of one project, one assessment is respected.

The proposed Impact Assessment Act stipulates that for designated projects that are also subject to lifecycle regulation by the Canadian Energy Regulator, the Canadian Nuclear Safety Commission, or the Offshore Petroleum Boards, the assessment must be conducted by a review panel whose members must include representatives from the appropriate regulator.

The federal Cabinet would be responsible for making the impact assessment decision under the Impact Assessment Act. If there is a positive Impact Assessment decision, a decision would also be taken under the proposed Canadian Energy Regulator Act or *Canada Oil and Gas Operations Act* about whether to approve the project, following a recommendation of the integrated review panel. The Canadian Nuclear

Safety Commission would make the licensing decision under the *Nuclear Safety and Control Act*. The decision process for offshore petroleum projects would continue to follow that outlined in the Accord Acts. Subsequent regulation of designated projects would be the responsibility of the regulator under their respective Acts.

Non-designated projects subject to the *Canadian Energy Regulator Act* or *Canada Oil and Gas Operations Act* would continue to be assessed by the Canadian Energy Regulator only. Non-designated projects subject to the *Nuclear Safety and Control Act* would be assessed by the Canadian Nuclear Safety Commission only. Non-designated offshore petroleum projects would continue to be assessed in accordance with the Accord Acts.

The Government is committed to timely, evidence-based decisions reflecting the best available science and Indigenous knowledge. The engagement of Indigenous groups, provinces, stakeholders, and the public in the early planning phase along with the right information provided by the proponent would support a more timely impact assessment process.

The new impact assessment process is designed to enhance predictability and avoid delays – for example, caused by incomplete documentation and late requests for more information – by clearly setting out information needs during early planning. The Government is establishing shorter timelines, enshrined in the legislation and managed in the context of clear criteria for suspending timelines, to help keep the new process on track and predictable.

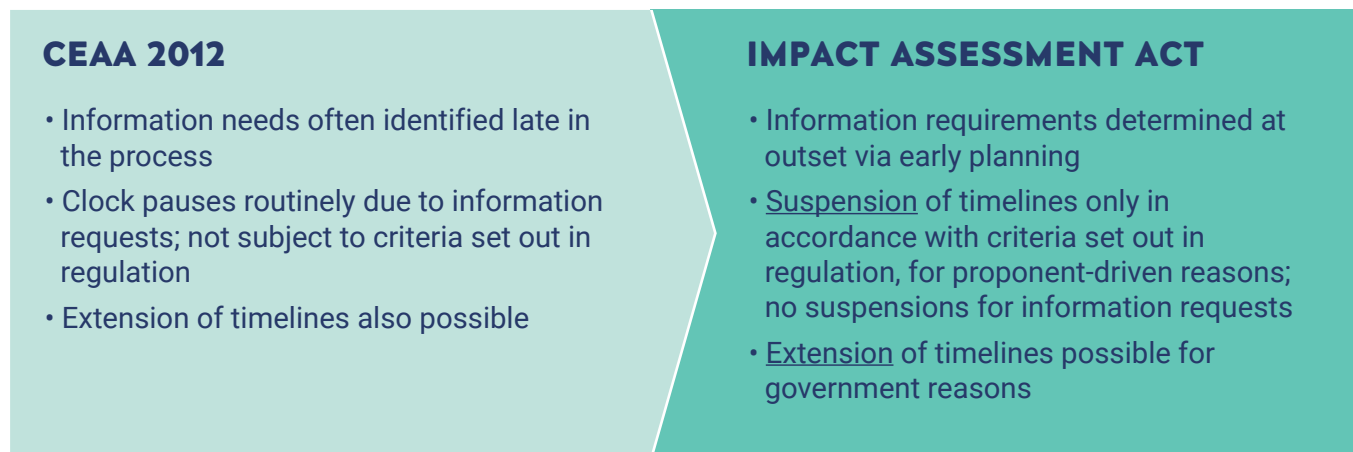
The proposed Impact Assessment Act maintains the ability in CEAA 2012 to suspend time limits, with new restrictions that add rigour and transparency in the management of timelines. Under the new

impact assessment system, time limits may only be suspended by the Minister in accordance with criteria set out in regulations. The proposed criteria (see part 4.1) enable the suspension of timelines to address time needed for proponent-driven reasons. Authorities to extend timelines are designed to address matters within the Government's mandate. The Minister may

extend timelines once for a period of 90 days, with further extensions requiring Governor in Council approval.

Figure A, below, highlights the new approach to managing information and timelines in the proposed new system as compared to the *Canadian Environmental Assessment Act 2012* (CEAA 2012).

FIGURE A: INFORMATION AND TIME MANAGEMENT - CURRENT VS. PROPOSED NEW SYSTEM



While this represents the typical process to manage information and timelines for most categories of major projects, there may be variances, within the requirements set by the legislation and regulations, that reflect the nature of the specific project being assessed (e.g., integration of licensing processes of lifecycle regulators, regional environmental assessments, stakeholder involvement). For example, it is anticipated that Tailored Impact Statement Guidelines for projects regulated by the Canadian Energy Regulator will incorporate applicable components of what currently constitutes the National Energy Board filing manual, and licence applications for projects regulated by the Canadian Nuclear Safety Commission would require all licensing requirements as set out in the *Nuclear Safety and Control Act* and associated regulations. This would be supplemented with any additional information requirements related to factors required under the proposed Impact Assessment Act and as scoped during the Planning Phase.

3 CONTEXT: PHASES & TIMELINES IN THE PROPOSED NEW IMPACT ASSESSMENT SYSTEM

3.1 EARLY PLANNING PHASE

Time Limit: max. 180 days

The new planning phase would provide a time-bound process in which to determine whether or not an impact assessment of a designated project is required, and if so, to support early engagement and assessment planning. The 180-day timeline for the planning phase commences once the proponent provides the Agency with an initial Project Description, containing the information required in the proposed regulations (see Annex 1), and it is posted on the Agency's online public Registry. At this time, the proponent may also provide any additional relevant information.

Authorities to suspend timelines, in accordance with criteria set out in the proposed regulations, would be available for proponent-driven reasons. It is expected that time invested at the beginning of an assessment would result in project designs that better respond to key issues raised by affected parties and result in faster overall assessments.

Many proponents are already doing early planning and stakeholder engagement. The new process allows the Agency to recognize work that has been done and provide greater guidance and support earlier in the process. This would enhance and streamline the review by:

- Clarifying who needs to be consulted and how.
- Identifying potential issues early enough to find ways to address them.
- Setting out the information and studies required for the assessment, helping avoid information requests and delays later on.
- Scoping the issues to be examined during the impact assessment phase.

Federal expert departments would be deeply engaged in this phase to identify their information requirements and potential issues, helping to ensure all relevant information needs are identified for the

assessment. This will depend on information provided by proponents during the planning phase.

3.1.1 Summary of Issues

Following engagement on the initial Project Description, the Agency would prepare a summary of the issues that it considers relevant to the assessment, informed by the issues raised by Indigenous peoples, stakeholders, other jurisdictions and the public during early engagement on the project and the expertise of federal departments. For integrated assessments with lifecycle regulators, the summary of issues would be prepared collaboratively with the relevant lifecycle regulator.

While not required by the legislation, proponents would be welcome to provide additional information at any point in the early planning process, at their discretion, to address issues raised during engagement.

3.1.2 Proponent Response to Issues and updated Project Description

The proponent would provide a response to the Agency's Summary of Issues, indicating how the issues might be addressed, and would also provide an updated Project Description, including updated information for each of the items required in the initial Project Description, and indicating where changes were made in response to issues raised (see Annex 1). This would inform the Agency's decision about whether an impact assessment is required, and further support assessment planning, including helping the Agency to determine the appropriate scope of the factors to be assessed. The proponent would indicate to the Agency the time needed to respond to the issues and to update the Project Description, and may request that the time limit be suspended in order to do so (see 4.1, below).

Updated information provided in the proponent's response would be taken into account in the development of the Tailored Impact Statement Guidelines, and inform the plans the Agency develops in

collaboration with Indigenous peoples, stakeholders, and other jurisdictions to direct the assessment (see 5.4, below).

3.1.3 Determination on whether an Impact Assessment is Required

The Agency would make its determination on whether an impact assessment is required, taking into account the following factors as set out in section 16 of the proposed Impact Assessment Act:

- the description of the project and any notice about how the proponent intends to address issues raised by the Agency;
- the possibility that the carrying out of the designated project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects;
- any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- any comments received within the time period specified by the Agency from the public and from any jurisdiction or Indigenous group that is consulted;
- any relevant regional or strategic assessment;
- any study that is conducted or plan that is prepared by a jurisdiction – in respect of a region that is related to the designated project – and that has been provided to the Agency; and,
- any other factor that the Agency considers relevant.

During this period, the Agency, with input from federal expert departments, would review the information provided by proponents. The Agency would invite public comments and input from stakeholders and must offer to consult with other jurisdictions. For designated projects that are subject to lifecycle regulation, the relevant lifecycle regulator would also be consulted on whether an impact assessment should be required. The Agency would also offer to consult with potentially affected Indigenous groups, and would initiate discussions to identify how they would like to be engaged in the impact assessment process.

The decision of the Agency on whether an impact assessment is required and its reasons would be

made public, as required by subsection 16(3) of the proposed Impact Assessment Act.

3.1.4 Guidelines and Plans

The Agency would dedicate most of the time during the planning phase to impact assessment planning and the development of the following documents to guide the assessment: Tailored Impact Statement Guidelines; Cooperation Plan; Indigenous Engagement and Partnership Plan; Public Participation Plan; and Permitting Plan. These would be developed collaboratively for each project, with input from federal expert departments, provincial governments, potentially impacted Indigenous groups and public comments received, with the objective of providing transparency and certainty by making all requirements clear from the start. A description of each of these products is outlined in part 5.4.

The Tailored Impact Statement Guidelines would set out the information that a proponent would need to provide to support the assessment. The proposed Impact Assessment Act requires the Agency to take into account the factors set out in subsection 22(1) of the Act when determining what information and studies are needed for the assessment. The Agency is empowered to scope the information requirements for each of the factors as appropriate to the project. If the Agency determines in the planning phase that certain issues have been addressed or are not applicable to the project, the Agency may scope the information and studies that are required in relation to the factors. This results in tailored guidelines that would scope the information required in the Impact Statement, which would be considered in the impact assessment, and inform the impact assessment report and the public interest decision by the Minister or Governor in Council.

This would apply to assessments led by the Agency, by a review panel, and integrated panel reviews with lifecycle regulators. For integrated assessments with lifecycle regulators, the guidelines would incorporate the information requirements needed to inform decisions under the legislation of the relevant lifecycle regulator.

The proposed Impact Assessment Act will enhance opportunities for cooperation and harmonization with provinces, territories and Indigenous governments to achieve “one project, one assessment”. It will enable

coordinated assessments, including the ability to adjust timelines to facilitate cooperation with another jurisdiction. A project-specific cooperation plan would be developed between the Agency and other jurisdictions during early planning, which may include harmonized timelines, when possible, joint consultation activities and other actions aimed at reducing duplication of effort for proponents, governments, Indigenous groups, and the public.

3.1.5 Possible Substitution

Before the end of early planning, the Minister of Environment and Climate Change, if requested, may approve the substitution of the process of another jurisdiction for the impact assessment. Substitution would be carried out in accordance with a project-specific substitution agreement, which would include terms and conditions for the substituted process.

3.1.6 Possible Referral to Review Panel

The Minister would make a determination on whether to refer the assessment to a Review Panel by no later than 45 days after the end of early planning. The Minister would establish Terms of Reference for the review panel, taking into account the outcomes of early planning, including the Tailored Impact Statement Guidelines and early planning products, and would appoint review panel members. This would happen any time following the decision to refer the assessment to a review panel, and no later than 45 days after the Impact Statement is accepted by the Agency.

3.1.7 Possible Minister's Notice

The Minister of Environment and Climate Change, in consultation with other federal permitting agencies, would also be able to let proponents know early on if a project is likely to have unacceptable environmental impacts. In such cases, under section 17 of the proposed Impact Assessment Act, the Minister would provide a written notice detailing those potential impacts to proponents before the end of the planning phase. The notice would also be posted on the online public Registry. Proponents would thus have an opportunity, early in the process, to determine how they would like to address the issue in the context of the impact assessment. The provision of a notice

under section 17 would not suspend or terminate the impact assessment.

3.2 IMPACT STATEMENT PHASE

Time determined by proponent (up to 3 years unless extension requested)

The proponent prepares the Impact Statement in accordance with the Tailored Impact Statement Guidelines provided by the Agency at the end of early planning, which set out the required information and studies.

The proponent takes the time it needs to prepare the documentation required for the impact assessment. If more than 3 years elapses from the end of the early planning phase, the proponent may make a request to the Agency for additional time to prepare its Impact Statement report. This ensures the assessment is based on up-to-date information, but also provides flexibility to address project-specific situations where proponents may need additional time.

Once the proponent provides the Impact Statement to the Agency, it would be posted on the online public Registry. The Agency would conduct a review of the Impact Statement before the commencement of timelines for the impact assessment phase. This would be done with input from federal expert departments, life cycle regulators, review panels, other jurisdictions and Indigenous peoples, as appropriate. Service standards would be put in place to review the Impact Statement and make any information requests or requests for clarification. This review would ensure the Impact Statement includes the necessary information to go forward with the assessment, in conformity with the requirements set out in the Tailored Impact Statement Guidelines.

All documentation related to the review of the Impact Statement would also be posted on the online public registry. The Agency would continue engagement with the public and Indigenous peoples to prepare for the Impact Assessment phase.

Compared to CEAA 2012, this approach would provide greater transparency and would ensure all information requirements are met before proceeding to the Impact Assessment Phase. This will eliminate the need

for timeline suspensions for information requests. Information required in the impact statement would also be more tailored as compared to CEAA 2012, following the scoping of issues during the planning phase. If the Agency determines that certain issues have been addressed or are not applicable to the project, it may scope the information and studies that are required in relation to the factors set out in section 22 of the IAA. This would result in more tailored guidelines as relevant to each project.

3.3 IMPACT ASSESSMENT PHASE

Time Limit: max. 300 or 600 days

At the outset of the Impact Assessment Phase, the Agency or Review Panel would seek views on the information provided by proponents and views on the project and its potential effects, including providing the public with an opportunity to comment.

Impact assessments conducted by the Agency and by review panels would consider a range of factors, as required under s. 22 of the proposed Impact Assessment Act. These factors include positive and negative environmental, health, social and economic effects of proposed projects, measures to mitigate potential adverse effects, potential impacts on Indigenous peoples and their rights, and potential impacts on Canada's ability to meet its environmental obligations and climate change commitments. The factors would be reflected in the impact assessment report produced by the Agency or the review panel, which would be submitted to the Minister and posted on the online public Registry at the end of the assessment phase.

Timelines for Agency & Review Panel Assessments:

The timeline for the impact assessment phase would be reduced to a maximum of 300 days for assessments led by the Agency (down from 365 days under CEAA 2012), and a maximum of 600 days for assessments led by a review panel (down from 720 days under CEAA 2012). The proposed legislation provides flexibility for the Minister to set shorter or longer timelines, depending on the scope and scale of the project. The impact assessment phase timeline

for an Agency-led assessment or a Panel assessment will be set at the end of the planning phase, to reflect the scope and scale of the project.

The proposed Impact Assessment Act will enable coordinated assessments with other jurisdictions, including the ability to adjust timelines to facilitate cooperation with another jurisdiction.

Authority to suspend timelines would be available for proponent-driven reasons, in accordance with criteria set out in regulation (see part 4.1). Authority to extend timelines would be used for government activities, such as ensuring continued alignment of timelines with other jurisdictions. Public notice of the suspension or extension, and reasons, would be posted on the online public Registry.

Timelines for Integrated Assessments with Lifecycle Regulators:

Where projects are regulated by lifecycle regulators such as the Canadian Energy Regulator, the Canadian Nuclear Safety Commission or Offshore Boards, the Impact Assessment Agency of Canada would work collaboratively with the lifecycle regulator to draw upon their expert capacity and ensure key regulatory factors are considered as part of a single, integrated assessment. This includes their participation as members of Review Panels. For integrated assessments with lifecycle regulators, the timeline would be 300 days, with the ability for the Minister to set it to a maximum of 600 days if needed for more complex projects. The impact assessment phase timeline for an integrated panel review with a lifecycle regulator would be established by the Minister at the end of the Planning Phase and included in the Panel's Terms of Reference.

Consultation on proposed conditions

For assessments by a Review Panel, the Agency would begin the preparation of draft conditions under the Impact Assessment Act and conduct consultations on the proposed conditions, prior to the start of the decision-making phase.

3.4 DECISION-MAKING

Time Limit: max. 30 or 90 days

The new process would provide more comprehensive decision statements. As required by section 63 of the proposed Impact Assessment Act, the decision about whether a project is in the public interest would be based on the impact assessment report, and would consider the project's contribution to sustainability, which includes a number of factors including economic benefits, potential effects within areas of federal jurisdiction, the implementation of mitigation measures, potential impacts on Indigenous peoples and rights, and whether effects of the project would hinder or contribute to Canada's environmental obligations and commitments in respect of climate change. In broadening the factors that must be considered in an impact assessment, the new law would require the identification of potential positive and negative environmental, economic, social, and health effects in federal jurisdiction in the impact assessment report.

As under CEAA 2012, final decision-making would remain with the Minister or Cabinet. To ensure that the process remains transparent and accountable, clear Decision Statements would be issued for each decision, with written rationales for the decision posted to the Agency's online public Registry.

The proposed Impact Assessment Act would introduce time limits for decisions following the impact assessment, which would be 30 days for a decision by the Minister of Environment and Climate Change, or 90 days if the decision is referred to the Governor in Council. For integrated assessments with lifecycle regulators, decisions would be referred to the Governor-in-Council.

For integrated assessments with lifecycle regulators, if there is a positive Impact Assessment decision by the Governor in Council, the regulatory decision would also be made under the respective regulatory Act:

- **For projects regulated by the Canadian Energy Regulator:** The Governor in Council may direct that a certificate be issued under the proposed Canadian Regulator Act, following a recommendation of the integrated review panel, and subject to the conditions set out in the review panel's Impact Assessment report. The Impact Assessment decision statement would be considered part of

the Canadian Energy Regulator certificate, order, permit, licence or authorization.

- **For projects regulated by Offshore Petroleum Boards:** The regulatory process for offshore oil and gas projects in Atlantic Canada would be in accordance with the joint federal-provincial management of the Canada-Nova Scotia and Canada-Newfoundland and Labrador offshore areas. This includes the continued roles and responsibilities of the respective Offshore Petroleum Boards and federal and provincial Ministers of Natural Resources under the Accord Acts. In addition, the Offshore Petroleum Boards would have the discretion to determine whether or not to include any of the Impact Assessment conditions developed through the federal process in their authorization.
- **For projects regulated by the Canadian Nuclear Safety Commission,** the Minister could designate conditions in the Impact Assessment decision statement that would then be considered part of the licence issued by the Canadian Nuclear Safety Commission under the *Nuclear Safety and Control Act*.

Under the proposed Impact Assessment Act, there would be no authority to suspend timelines in the decision-making phase, which would provide greater certainty in the timeline for decisions following an impact assessment. As under CEAA 2012, the Minister may extend the decision-making timelines once for a period of up to 90 days. Any further extensions would require approval of the Governor in Council. This flexibility could be needed, for example, to coordinate the timing of the release of decision with another jurisdiction.

3.5 FOLLOW-UP, COMPLIANCE & ENFORCEMENT

The new proposed impact assessment system would also provide strengthened follow-up, and enforcement.

The required information and time periods associated with follow-up and compliance would be set out in the conditions included in the decision statement for the project. Records related to the design and implementation of follow-up and compliance programs would be posted on the Agency's online public Registry. The proposed formatting requirements related to information provided by proponents would also apply to these records.

The proposed Impact Assessment Act would provide new authority to amend conditions in a decision statement, including for projects regulated by the Canadian Energy Regulator and Offshore Petroleum Boards, to ensure they remain current with the design of a designated project or to provide for adaptive management. Draft amendments to the decision statement proposed by the Minister would be posted on the online public Registry and the public and Indigenous groups would be provided with an opportunity to comment on the proposed changes.

The Minister would be required to consider these comments in the decision to amend, and reasons for the decision would be required and would be posted on the Registry.

For projects regulated under the *Nuclear Safety and Control Act*, the Minister may not add, amend or remove conditions that are designated within Canadian Nuclear Safety Commission license conditions.

Information collected and the results follow-up programs would also be made publicly available on the Registry. The proposed formatting and accessibility requirements related to information provided by proponents would also apply to these records.

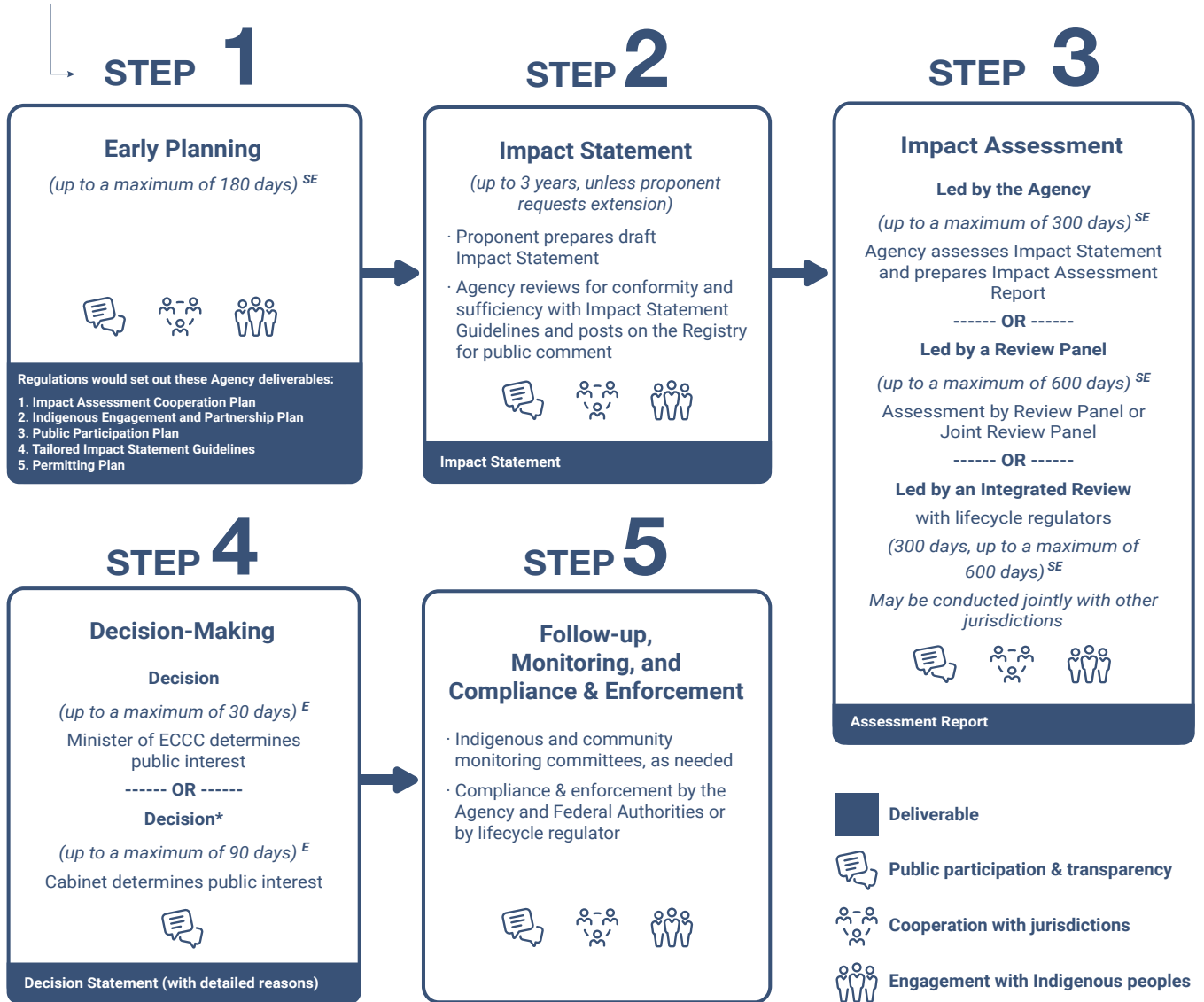
The public and Indigenous groups could also have an expanded role in monitoring impacts. Where circumstances warrant, the Agency would establish Environmental Monitoring Committees that would help provide additional confidence in the science and evidence used in follow-up programs.

To increase transparency, the Agency would also make available to the public information on

compliance verification and enforcement actions. Where there is a lifecycle regulator for a project, conditions established by decision statements would continue to be set out in certificates, licences or permits of the lifecycle regulator. The lifecycle regulator would continue to be responsible for monitoring project compliance with conditions throughout the project lifecycle.

FIGURE B – PROPOSED PROCESS AT A GLANCE

Proponent of a designated project submits a project description in accordance with requirements set out in the regulations (Annex I)



S: Timelines may be suspended for proponent activities, in accordance with criteria set out in the Regulations (Annex II)

E: Timelines may be extended once by the Minister for up to 90 days, and subsequently by the Governor in Council, for government activities, such as coordination with another jurisdiction

* For integrated reviews with lifecycle regulators, if there is a positive Impact Assessment decision, a decision would also be under the respective regulator's Act.

4 TIME MANAGEMENT

TIME MANAGEMENT TOOLS UNDER THE IMPACT ASSESSMENT ACT

Suspension of time limits: may only be used for proponent-driven reasons, in accordance with criteria set out in regulations.

Extension of time limits: available to address matters within Government mandate, and may only be used by the Minister once for a period of 90 days, with further extensions requiring Governor in Council approval.

Public notice: Notice of any suspension or extension of the time limits, with reasons, must be posted on the online public Registry.

4.1 REGULATORY PROPOSAL: SUSPENSION OF TIMELINES

The proposed Impact Assessment Act provides that timelines may only be suspended in accordance with criteria set out in regulations. This suspension acts to exclude the time taken to complete certain proponent-driven activities from the legislated timeline.

Authorities to suspend timelines would be used to address time needed for proponent-driven reasons. In particular, the regulations would enable the suspension of timelines on the request of the proponent. This could be used, for example, during the planning phase in order for proponents to take the time they need to respond to the Summary of Issues. It could also be used in any circumstance where proponents may want additional time during the process. Proponents

would indicate to the Agency the reason for the request and the time they expect will be needed.

The Minister could also suspend timelines if a change in the project design could change the potential effects of the project, or if the proponent has not paid costs recoverable under the IAA.

The three proposed criteria for the suspension of timelines are:

1. If the proponent requests that the timeline be suspended, for any activity, until such time as the activity is completed;
2. For the proponent to provide information related to a design change, or change in construction or operation plans by the proponent that could change the potential impacts of the project;
3. In the event of non-payment by the proponent of recoverable costs, until such time as the payment is received.

Authorities to suspend timelines apply to:

- Planning phase: 180-day limit;
- Minister's referral of assessment to review panel: 45-day limit;
- Impact assessment phase: 300-day limit for Agency-led assessment/600-day limit for panel-led assessment.

There is no authority to suspend timelines for the decision-making phase.

The approach to time management under the proposed regulations would be more prescriptive than the current approach under the *Canadian Environmental Assessment Act 2012*, where timelines are paused routinely for a proponent to respond to information requests.

The first *Consultation Paper on Information Requirements and Time Management Regulations*, published in February 2018, contemplated a fourth criterion to enable the suspension of timelines to address newly identified information needs. This criterion is no longer proposed, as under the proposed impact assessment system, information needs would

be identified in early planning, informed by public engagement and Indigenous engagement and consultation. This is expected to reduce new information needs and unexpected issues being raised later on in the assessment process, allowing the legislated timeline to proceed without suspensions.

The Agency, relevant lifecycle regulators, federal departments, Indigenous peoples and the public would review the impact statement and ensure the necessary information is included before proceeding to the impact assessment phase.

The proposed Impact Assessment Act would also require the Minister to publicly post reasons for suspending timelines, providing greater accountability and transparency.

4.2 EXTENSION OF TIMELINES

Authorities to extend timelines are designed to address matters within the Government's mandate, for example, to ensure continued alignment with other jurisdictions.

The Minister may extend timelines once for a period of 90 days, with further extensions requiring Governor in Council approval. These authorities may be used once by the Minister to extend the timelines for:

- Planning phase: 180-day limit;
- Impact assessment phase: 300-day limit for Agency-led assessment/600-day limit for panel-led assessment;
- Decision-making phase: 30 day limit for decision by the Minister/90 day limit for decision by the Governor in Council.

The proposed Impact Assessment Act would also require the Minister to post the reasons of the Minister or the Governor in Council for any extension of the timelines, providing greater accountability and transparency.

4.3 TIMELINE TRANSPARENCY

Transparency is a key theme of the proposed Impact Assessment Act. In order to ensure transparency on timelines, they would be tracked and all associated posting and reporting requirements would be made public through the new, online Impact Assessment Registry.

The Government is committed to deliver a modern, user-focused, public registry as a one-stop shop to provide Canadians with greater insight and engagement in impact assessments in support of transparency and public engagement.

The new Impact Assessment Registry would provide public, online access to more information on projects from the early planning phase through to follow-up, compliance and enforcement. This would offer proponents, Indigenous groups, stakeholders and the public the opportunity to access comprehensive information in a timely manner and easily track a project's progress and status throughout the assessment process. In addition, any suspension or extension of the timeline, including reasons, would be posted on the Registry.

The Agency would review the implementation of the legislation, including timeline management, on an ongoing basis, a summary of which would be included in the annual report to Parliament that the legislation requires be tabled in Parliament. This review would inform ongoing policy to improve the management of timelines as appropriate.

The Agency's review and feedback from stakeholders would also inform any future amendments to the Information Requirements and Time Management Regulations. The review of these regulations would be included in the forward regulatory plan at 5-year intervals.

5 INFORMATION REQUIREMENTS

5.1 REGULATORY PROPOSAL: PROJECT DESCRIPTION

The Project Description would be an evergreen document that would evolve in response to the issues raised during early planning and the impact assessment. The information provided during the planning phase does not represent final information about the project, its design, or its potential impacts.

The proposed regulations would set out the components of the Project Description that the proponent would be required to provide at the outset of the planning phase and to update later in the planning phase along with the response to the Summary of Issues (Annex 1). This information must include sufficient detail to support the objectives of early planning:

- To determine whether or not an impact assessment is required, and if so, to support impact assessment planning;
- To enable early discussions between the proponent, Indigenous groups, stakeholders, and governments, including opportunities to improve project design and provide greater clarity for project proponents;
- To enhance opportunities for cooperation and harmonization with provinces, territories and Indigenous governments to achieve “one project, one assessment”;
- To support early identification of potential impacts on Indigenous peoples and rights;
- To identify the possible adverse effects within areas of federal jurisdiction that may be caused by the project;
- This includes scoping of the issues of be considered in the impact assessment phase, in order to avoid unexpected issues arising and delays later on; and
- To inform the development of Tailored Impact Statement Guidelines.

Once accepted by the Agency, if in conformity with the regulatory requirements, the initial Project Description would be posted on the Agency’s online public Registry, to commence the planning phase.

After it is posted on the Registry, the Agency would carry out engagement and consultation on the Project Description, including a formal comment period inviting input on the proposed project.

The first Consultation Paper on *Information Requirements and Time Management Regulations*, published in February 2018, proposed that proponents would be required to provide high-level ‘tombstone’ information at the outset of the planning phase, and much more detailed information later in the planning phase along with the response to the Summary of Issues. In response to the feedback we received, this proposal was revised to require a single set of information requirements (Annex 1). This information would be provided in the initial Project Description at the outset, and then updated in the Project Description provided with the response to the Summary of Issues, including an indication of any changes made in response to issues raised during engagement.

This approach would deliver more detailed information about the project upfront, which we heard from stakeholders was important to support more substantive and meaningful consultation and engagement during the planning phase. Some stakeholders also indicated that two separate sets of information requirements created an unnecessary additional administrative burden. This burden would be reduced, as the Project Description provided at the outset would need only be updated as appropriate to each project. The revised approach also removes some of the detailed information requirements that were previously proposed, such as a description of alternatives and best available technologies, which some stakeholders indicated would be more appropriately addressed in the Tailored Impact Statement Guidelines and the assessment phase. The requirement for proponents to indicate how their project hinders or contributes to Canada’s environmental obligations and climate change commitments was also removed, in response to concerns that this determination is best made by the Government, based on information about the project provided by proponents.

Proponents would have additional opportunities to revise their Project Description as appropriate throughout the process. For example, proponents may

choose to update the Project Description following the planning phase, before submitting the impact statement, and also following the impact assessment. Section 65(1)(d) of the proposed Impact Assessment Act requires the Minister's decision statement to include a description of the project (i.e. the final Project Description on which the decision would be based).

Guidance is being developed to inform the level of detail required from proponents on the proposed components of the Project Description and to provide examples. Strategic assessments undertaken by the Government will also provide guidance on how information on specific issues will be considered in assessments. For example, the Strategic Assessment on Climate Change that is currently underway will provide direction on how greenhouse gas emissions will be considered in the impact assessment process. This will include direction, which will be incorporated into the Project Description Guidance, respecting how estimates of greenhouse gas emissions should be calculated.

5.2 REGULATORY PROPOSAL: FORMAT REQUIREMENTS & ACCESSIBILITY OF INFORMATION

It is proposed that the regulations include requirements that information provided by proponents be provided in a machine-readable, accessible format. These requirements would be subject to applicable restrictions associated with privacy, confidentiality and security.

This would support the Government's commitment to Open Science and Data and would facilitate the sharing of information with the public through the Agency's online public registry and the Government's new Open Science and Data Platform. Open Data is a practice that makes machine-readable data freely available, easy to access, and most importantly, simple to reuse. This supports transparency, accountability, citizen engagement, and efficiency through reuse.

In order to support accessibility of information, the proposed regulations would also require proponents to provide a plain language summary of information,

presented in a manner that can be easily read and understood by the public.

These requirements would apply to documents provided by proponents throughout the impact assessment process, including documents provided during early planning, information and studies required by the Tailored Impact Statement Guidelines, and as part of monitoring and follow-up reporting.

5.3 REGULATORY PROPOSAL: AGENCY DELIVERABLES

The proposed regulations would also set out the products the Agency would be required to deliver to proponents, and to post on the Agency's online public Registry, at the end of the planning phase:

- Tailored Impact Statement Guidelines;
- Cooperation Plan;
- Indigenous Engagement and Partnership Plan;
- Public Participation Plan; and
- Permitting Plan.

Following the first Consultation Paper on Information Requirements and Time Management Regulations, published in February 2018, stakeholders indicated that the collaborative development of the guidelines and plans provided by the Agency was the most important outcome of the planning phase. These guidelines and plans would direct the impact assessment and provide added certainty and transparency. For integrated assessments with lifecycle regulators and coordinated assessments with other jurisdictions, the guidelines would incorporate the relevant information requirements related to the legislation of the relevant lifecycle regulator (such as the relevant components of the Canadian Energy Regulator Filing Manual) or the legislation of the other jurisdiction. The guidelines and plans would be developed collaboratively for each project, with the objective of making all requirements clear from the start for proponents, Indigenous peoples, stakeholders, federal departments and other jurisdictions.

PROPOSED DELIVERABLES AT A GLANCE

Tailored Impact Statement Guidelines

Impact assessments will address what is most relevant concerning a project. Guidelines for producing the impact statement, tailored for each project and consistent with the scope and complexity of the project, would provide a clear indication of the specific issues to be covered, including the potential positive and negative economic, social, health, and environmental effects, and identifying what studies may be required.

The information requirements related to the relevant factors to be considered for the assessment would also be tailored to each project. The Tailored Impact Statement Guidelines would identify the information requirements for each of the factors in section 22 of the proposed Impact Assessment Act, as relevant and scoped to the project. In addition to setting out the information that is required to be provided by the proponent, these guidelines would also identify the information and analysis the Agency or review panel would need to consider. The Agency or the review panel would work to obtain necessary information from other sources, such as expert departments, and existing regional or strategic assessments.

The Tailored Impact Statement Guidelines would be made public to ensure the process is clear and transparent for all stakeholders. Guidelines will be developed with input from other jurisdictions, federal departments, Indigenous groups and the public.

Cooperation Plan

A cooperation plan would be developed between the Agency and other jurisdictions in relation to the assessment process. It may include harmonized timelines, when possible, with other jurisdictions, joint consultation activities and other actions aimed at reducing duplication of effort for proponents, Indigenous groups, and the public.

Indigenous Engagement and Partnership Plan

Proponents cannot be expected to be solely responsible for Indigenous engagement. Before an assessment begins, the Agency would develop an

engagement and partnership plan in collaboration with Indigenous peoples. The plan would set out how each of these groups would be engaged and how the parties would work together throughout the assessment process and, where relevant, seek to align timelines to enhance effectiveness and reduce duplication. That may include, where relevant, written agreements on how Indigenous knowledge provided in confidence will be shared and protected. The plan would provide clarity on the role of Government, proponents and others.

Public Participation Plan

The Public Participation Plan would set out how the public would be engaged during the assessment, ensuring that the process is open and transparent. Developed through consultations during early planning, the Public Participation Plan would provide the public with an opportunity to meaningfully participate, and would outline various ways to provide input and different levels of engagement, including for those directly affected by the project.

Permitting Plan

A Permitting Plan would clarify upfront what permits, licences or authorizations may be required from other regulators or jurisdictions. The Agency would, in collaboration with federal departments, work with proponents to identify timelines, information, and other requirements needed to better position proponents for the permitting process to avoid delays following a positive impact assessment decision. The proponent would drive implementation of the Permitting Plan and would continue to be responsible for meeting all requirements for relevant permits and authorizations. Identifying information needs for permits upfront is intended to avoid delays during the permitting phase and to permit construction of approved projects to start sooner.

5.4 IMPACT STATEMENT TRANSPARENCY

The IAA provides the Agency with powers to set out the information and studies required from proponents in their Impact Statement Report, via the Tailored Impact Statement Guidelines. As noted in part 3.2, above, the Agency would ensure the Impact Statement is in conformity with the requirements set out in the Tailored Impact Statement Guidelines before moving forward with the impact assessment.

As one of a number of measures related to science and transparency, it is proposed that proponents provide information to the Agency on the individuals who prepared the Impact Statement Report. This requirement would provide the public with information about the Report's lead authors, and would also provide the authors with an opportunity to highlight their expertise.

Proponents would be required to provide information on the name(s), education, experience or knowledge, company affiliation and contact coordinates of the individual(s) preparing the Impact Statement Report.

This information would be required for all sections of the Impact Statement Report related to potential environmental, economic, social, and health effects. For example, the lead author responsible for employment impacts would list his or her information as the lead author for that section of the Impact Statement Report. Providing this information would be a mandatory requirement included in the Tailored Impact Statement Guidelines for each project.

6 REGULATORY PROPOSAL: PARTICIPANT FUNDING PROGRAMS

Under section 75 of the proposed Impact Assessment Act, the Agency must establish a participant funding program in relation to certain projects to be prescribed by regulations. This would facilitate the participation of individuals, non-profit organizations, and Indigenous groups who are interested in participating in the impact assessment process, including the planning phase, impact assessment phase, and the design or implementation of follow-up programs.

The intent is to provide participant funding for all designated projects. The proposed regulations would provide that a participant funding program would be established for any project that is on the Project List or that has been designated in an order made by the Minister under subsection 9(1)) of the proposed Impact Assessment Act.

7 REGULATORY PROPOSAL: TIME LIMIT TO RESPOND TO A REQUEST FOR A REGIONAL OR STRATEGIC ASSESSMENT

The proposed Impact Assessment Act enables the Minister to establish a committee or authorize the Agency to conduct regional or strategic assessments, that would provide a better understanding of the “bigger picture” outside of the context of individual project assessments, inform project assessments and decision-making and allow jurisdictions to better manage the cumulative effects of development. Subsection 97(1) of the proposed Impact Assessment Act also requires the Minister to respond, with reasons, and within the prescribed time limit, to any request that a regional or strategic assessment be conducted.

It is proposed that the time limit for the Minister to respond would be 90 days. This would support a timely response to requests while allowing the Minister to consider government priorities and the interests of other implicated jurisdictions.

8 NEXT STEPS – SEEKING YOUR VIEWS

We are interested in your views on the proposed Information Requirements and Time Management Regulations. Please provide comments to www.impactassessmentregulations.ca by May 31, 2019. The Government will consider all comments received as it continues engagement towards developing the regulations. The overall objective of the proposed regulations is to support the Government’s commitment to timely, evidence-based decision making.

The proposed Impact Assessment Act will come into force on a date identified by order of the Governor in Council. In order to be ready for coming into force, the final regulations will be published in *Canada Gazette*, Part II, following Royal Assent. As such, it is important that stakeholders provide input on this consultation paper. A summary of the comments received, as well as a detailed outline of any changes to the regulatory proposal, will be provided in the Regulatory Impact Analysis Statement that will accompany publication of the regulations, in order to provide industry and stakeholders with as much information as possible on the proposed regulatory requirements.

ANNEX 1 – COMPONENTS OF THE PROJECT DESCRIPTION

For the purposes of subsection 10(1) of the proposed Impact Assessment Act, the initial description of the project would contain the information set out below.

For the purposes of subsection 15(2) of the proposed Impact Assessment Act, the detailed description of the project would contain the information set out below, and would indicate where any changes were made, as compared to the initial description of the project, to respond to issues raised.

General Information

- 1 The project's name, type or sector and proposed location.
- 2 The proponent's name and contact information and the name and contact information of their primary representative for the purpose of the description of the project.
- 3 A summary of any engagement undertaken to date with jurisdictions, federal departments, and other parties and a description of any plans for future engagement. This includes a summary of the results of engagement and identification of key issues that were raised.
- 4 Identification of Indigenous peoples potentially impacted by the project, a summary of any engagement undertaken to date with Indigenous peoples and a description of any plans for future engagement. This includes a summary of the results of engagement and identification of key issues that were raised.
- 5 A summary of any study or plan relevant to the project that is being or has been conducted of the region where the project is to be carried out, including a Regional Assessment carried out under the Impact Assessment Act, or by any jurisdiction including by or on behalf of an Indigenous governing body.
- 6 A summary of any Strategic Assessment carried out under the Impact Assessment Act that is relevant to the project.

Project Information

- 7 A summary of the purpose of the project, including any potential benefits of the project.
- 8 The provisions in the schedule to the Regulations Designating Physical Activities describing the project in whole or in part.
- 9 A list of all activities, infrastructure, permanent or temporary structures and physical works that are anticipated to be included in and associated with the construction, operation, decommissioning and abandonment of the project including their purpose, size and capacity.
- 10 The anticipated maximum production or operational capacity of the project and a description of the processes to be used.
- 11 Identification of the anticipated phases of and the schedule for the project's construction, operation, decommissioning, reclamation, and abandonment, including any anticipated expansions of the project.

Location Information and Context

- 12 A description of the project's location, including, where and as relevant
 - a) its proposed geographic coordinates, including, for linear development projects subject to the *Canadian Energy Regulator Act*, the proposed locations of major ancillary facilities integral to the project, and a description of the spatial boundaries of the proposed study corridor;
 - b) site maps produced at an appropriate scale in order to determine the project's proposed overall location and the spatial relationship of the project components;
 - c) the legal description of land to be used for the project, including, if the land has already been acquired, the title, deed or document and any authorization relating to a water lot;
 - d) the project's proximity to any permanent, seasonal or temporary residences and proximity to the nearest impacted communities;
 - e) the project's proximity to traditional territories, *Indian Act* reserve lands, lands subject to a

- Treaty, lands subject to a land claim agreement, any Metis settlements; and
- f) the project's proximity to any federal lands.

- 13** A description of the physical and biological setting where the project is located.
- 14** A description of the health, social and economic setting in the region where the project is located.

Federal, Provincial, Territorial, Indigenous or Municipal Involvement

- 15** A description of any financial support that federal authorities are, or may be, providing to the project.
- 16** A description of any federal land that may be used for the purpose of carrying out the project.
- 17** A list of the permits, licenses or other authorizations that may be required by federal authorities and other jurisdictions that have a power, duty or function in relation to an assessment of the environmental effects of the project.

Potential Effects of the Project

- 18** A description of any potential changes to the following components of the environment that are within legislative authority of Parliament that may be caused, as a result of carrying out the project, to
- a) fish and fish habitat as defined in subsection 2(1) of the *Fisheries Act*;
 - b) aquatic species, as defined in subsection 2(1) of the *Species at Risk Act*;
 - c) migratory birds, as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*; and
 - d) any other component of the environment that is set out in Schedule 3 of the Impact Assessment Act.
- 19** A description of any potential changes to the environment that may occur, as a result of carrying out the project: on federal lands; in a province other than the province in which the project is proposed to be carried out; or outside of Canada.
- 20** With respect to Indigenous peoples, a description of any potential impact that may occur in Canada resulting from any change to the environment on physical and cultural heritage, the current use of

lands and resources for traditional purposes, or any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

- 21** A description of any potential change that may occur in Canada, as a result of carrying out the project, to the health, social or economic conditions of Indigenous peoples.
- 22** An estimate of the greenhouse gas emissions associated with the project.
- 23** A description of any waste and emissions (air, water and land) that are likely to be generated during any phase of the project and of a plan to manage the waste and emissions (air, water and land).

Summary

- 24** A plain-language summary of the information required under sections 1 to 23 in English and French.

ANNEX 2 – WHAT WE HEARD WHEN WE CONSULTED ON THE INFORMATION REQUIREMENTS AND TIME MANAGEMENT REGULATIONS

During the first half of 2018, the Government consulted on the proposed Information Requirements and Time Management Regulations. In response, we heard the following from Canadians:

Proposed criteria for suspending legislated timelines

- Stakeholders generally expressed support for the approach to suspend timelines only in accordance with criteria set out in regulation.
- There were no concerns raised with suspending timelines on the request of the proponent, if there was a design change that could change the potential impacts of the project, or if the proponent had not paid fees.
- However, across stakeholder groups, there were questions and concerns about the lack of clarity around the proposed criterion to suspend the timelines “if critical information is missing”.
- Some stakeholders emphasized that timelines should only be suspended in exceptional, clearly defined circumstances, and that suspending timelines for information requests created uncertainty and delays.

Proposed Components of the Initial Project Description and Detailed Project Description

- There was generally support for the proposed information requirements. However, some stakeholders raised concerns that the two-step process, requiring two separate sets of information requirements for the Initial and Detailed Project Descriptions created an unnecessary burden.
- We heard that more information was needed from proponents in the initial description of the project, and that ‘tombstone’ information would not be adequate to support meaningful early engagement.
- We heard that information required during the planning phase should align with what can be reasonably expected from proponents at this early stage, and should not duplicate the impact assessment phase. For example, some stakeholders suggested that information requirements related to potential alternatives to the project, alternative

means of carrying out the project, and best available technologies would be better addressed via the Tailored Impact Statement Guidelines.

- We also heard that information provided by proponents should be sufficiently detailed in order to inform assessment planning, and to reduce the risk of unanticipated issues being raised at a later stage.
- Some stakeholders suggested more information was needed earlier on potential social, health and economic impacts, including potential benefits of the project. Some stakeholders also suggested that information was needed earlier on potential alternatives.
- We also heard concerns with the proposed requirement for proponents to describe how their project hinders or contributes to Canada’s environmental obligations and climate change commitments, since this determination is best made by Government, based on information provided by proponents about the project.

Proposed products the Agency would provide at the end of early planning

- There was strong support across stakeholder groups for prescribing in regulations the documents that the Agency would be required to deliver at the end of early planning.
- Indigenous governments, provinces, proponents and other stakeholders also expressed the desire to participate in developing the documents with the Agency.
- We heard that requirements and expectations need to be clear from the outset – including an understanding of the information that is required to complete the assessment, what studies are needed, who needs to be consulted, and what permits might eventually be needed.
- Indigenous leaders and industry representatives have called for federal leadership with respect to Indigenous consultation activities.