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## Export of Substances on the Export Control List Regulations

### *Statutory authority*

*Canadian Environmental Protection Act, 1999*

### *Sponsoring departments*

Department of the Environment and Department of Health

### **REGULATORY IMPACT ANALYSIS STATEMENT**

*(This statement is not part of the Regulations.)*

### ***Issue and objectives***

The proposed *Export of Substances on the Export Control List Regulations* (the proposed Regulations) would serve as Canada's system of export controls for substances that are listed to the Export Control List (ECL) in Schedule 3 of the *Canadian Environmental Protection Act, 1999* (CEPA 1999). The ECL is a list of substances to which export controls apply in Canada. The proposed Regulations, which pertain to the ECL, relate to Canada's international obligations under the Stockholm Convention ([see footnote 1](#)) and Rotterdam Convention ([see footnote 2](#)) that control the global trade in chemical substances. The proposed Regulations also set out the content and form of the notice of proposed export required for the export of substances listed to the ECL under CEPA 1999.

There are currently two sets of regulations (the *Export Control List Notification Regulations* [ECLN Regulations] and the *Export of Substances Under the Rotterdam Convention Regulations* [ESURC Regulations]) with which Canadian exporters of substances on the ECL must comply. These two regulations contain similar requirements for information to be provided by exporters. The new regulatory regime would reduce the regulatory burden and duplication by merging the two regulations and would include additional provisions to enable Canada to comply more efficiently with its export obligations under the Stockholm Convention for substances listed to that Convention now and in the future. These proposed Regulations would control the export of substances listed to the ECL.

### Background

#### *Export Control List*

The ECL is a list of substances to which export controls apply in Canada. The ECL is subject, from time to time, to amendments that are published in the *Canada Gazette*. This List consists of three parts:

- Part 1 includes substances whose use is prohibited in Canada. These substances may only be exported under very limited circumstances (such as for destruction).
- Part 2 includes substances for which notification or consent of the country of destination is required before the substance is exported from Canada, pursuant to an international agreement (e.g. the Rotterdam Convention). Examples of these substances include DDT and lindane.

- Part 3 includes substances whose use is restricted in Canada. Examples of these substances include ozone-depleting substances.

Two regulations currently apply to exports of substances listed on the ECL. The proposed Regulations are intended to repeal and replace these existing regulations:

- The *Export Control List Notification Regulations* (ECLN Regulations) describe the manner in which to notify of exports of all substances listed in the ECL.
- The *Export of Substances Under the Rotterdam Convention Regulations* (ESURC Regulations) apply to exports of substances on the ECL destined for another Party to the Rotterdam Convention. These Regulations ensure that exporters supply information (through permit applications) so that Canada can meet its obligations under the Rotterdam Convention.

### *International context*

Canada is a party to both the Rotterdam Convention and the Stockholm Convention. These conventions are mutually supportive and promote shared responsibility and cooperative efforts amongst Parties in addressing exports of chemicals and/or pesticides.

- The Rotterdam Convention covers substances that have been banned or severely restricted by Parties for health or environmental reasons. This Convention facilitates information exchange between Parties and has provisions to ensure that exports of certain substances are only sent to Parties who have consented to imports of the substance in question. Parties are also obligated to send information and notification to the designated national authority of the importing Party when exporting a substance subject to a domestic ban or severe restriction on use.
- While the Rotterdam Convention has taken the information-sharing approach, the Stockholm Convention restricts exports to Parties as well as non-Parties, allowing exports of the persistent organic pollutants under very select circumstances.

### ***Description and rationale***

The proposed Regulations would merge the ECLN Regulations and the ESURC Regulations and new provisions would be added to assist Canada in meeting its obligations for export under the Stockholm Convention. The requirements of the ECLN and ESURC Regulations would generally be maintained. Some changes would be introduced to avoid duplication and to clarify the labelling and export requirements of the Rotterdam Convention.

The main changes would pertain to the following:

#### Stockholm Convention obligations

Substances listed on Annex A or Annex B of the Stockholm Convention are subject to restrictions on export. When a party exports a substance listed on one of these Annexes, even to a non-party, it must ensure that the terms of export are permissible under the Stockholm Convention. These substances would be required to meet at least one of the following conditions:

- present in a product manufactured before the coming into force of obligations for that substance under the Stockholm Convention and Canada has notified the Secretariat of the Stockholm Convention of this product's existence in Canada;
- exported for environmentally sound disposal;
- exported for an acceptable purpose or specific exemption identified by the Stockholm Convention for that substance and to a party that has claimed that purpose or exemption;
- exported to a non-party that has provided an annual certification acceptable under the terms of the Stockholm Convention;
- exported for laboratory use; or
- incidentally present in trace amounts in a product.

### Prior notice and export to Rotterdam Parties

The proposed Regulations would allow exporters who submit a notice of proposed export at the same time as an export permit application to combine the submission. This would streamline the process by removing the duplication of effort currently observed with the ECLN and ESURC Regulations.

### No annual report

The proposed Regulations would remove the obligation to provide an annual summary report of all exports reported in the preceding calendar year. This information is available to Environment Canada through the prior notice of export.

### Labelling requirements

Labelling requirements would be slightly expanded to better align with the requirements of the Rotterdam Convention. For those exports that fall within the scope of that Convention, exporters would be required to provide safety information in a language used by the importing country if it is available.

### Online publications and databases pertaining to the Rotterdam and Stockholm Conventions

The proposed Regulations would be complemented by information made available online by the respective Secretariats established under the Rotterdam and Stockholm Conventions.

### Administrative changes

Finally, several administrative issues have been raised by the Standing Joint Committee for the Scrutiny of Regulations (SJCSR) following the implementation of the ESURC Regulations. Environment Canada proposes to address these issues by making several changes that pertain to legal and administrative matters, and the need to align the English and French versions of the regulatory text.

The ESURC Regulations and the ECLN Regulations would be repealed when the proposed Regulations come into force. The proposed Regulations are to be made pursuant to Part 5, subsection 102(1) of CEPA 1999.

## ***Benefits and costs***

The proposed Regulations are not expected to result in incremental costs to industry, Government, or Canadians. They are expected to create a consistent, effective, and efficient approach to export controls by removing regulatory duplication and streamlining the process. It is estimated that the proposed Regulations would reduce the administrative burden upon firms. Instead of complying with two separate regulations governing the export of substances listed on Schedule 3 of CEPA 1999, businesses will now be required to fulfill the requirements under a single regulation.

New provisions would impart obligations on exporters of persistent organic pollutants listed in the Stockholm Convention to ensure compliance with the Stockholm Convention through domestic regulations. The effects on exporters are not expected to be significant given existing compliance with Stockholm conditions. While some of the substances recently added to the Stockholm Convention are still in commerce in Canada, Environment Canada consults with industry prior to the addition of substances to the Stockholm Convention and it is expected that exports of Stockholm substances would be compliant with these proposed provisions. Further, the proposed Regulations would provide regulatory certainty to industry regarding the conditions under which export of persistent organic pollutants would be prohibited or allowed. This would apply to substances currently listed on the Stockholm Convention and those added in the future. There would be additional cost-savings related to the elimination of the annual reporting requirements under the ECLN Regulations. The proposed Regulations would also

facilitate exports by allowing Canadian firms to obtain permits in the absence of a response by the importing party regarding consent.

### *Government*

The proposed Regulations are expected to enhance the application of Canada's export controls and improve the efficiency of the regulatory structure. As the permitting and notification processes have been simplified for both industry and the Government, it is anticipated that costs for enforcement, compliance promotion and administration of the proposed Regulations would either remain the same or slightly decrease for the Government.

The additional provisions relating to the Stockholm Convention are not expected to add to the Government's administrative burden. The proposed Regulations would ensure the continued compliance of Canadian exports as new substances still being used in Canada are added to the Stockholm Convention.

### *Canadians*

The proposed Regulations would benefit Canadians by supporting Canada's international export commitments under the Rotterdam Convention and Stockholm Convention. Canada's participation in these international conventions provides benefits to Canadians by ensuring that chemicals in international trade are used in an environmentally sound manner which reduces damage to the global and domestic environment and ecosystems. While these benefits are difficult to quantify, they are expected to have significant value.

### **Consultation**

In 2006 an online 30-day consultation was conducted to solicit comments from stakeholders. A draft regulatory text was posted. That draft regulatory text was a consolidation of the ECLN Regulations and the ESURC Regulations. The proposed provisions relating to the Stockholm Convention were not part of the 2006 consultation. Stakeholders will have the opportunity to comment on these proposed provisions through the *Canada Gazette*, Part I consultation. In 2010, a consultation pursuant to a notice of intent to develop export controls for some substances added to that Convention ([see footnote 3](#)) took place and so stakeholders were made aware of these proposed controls. A consultation document proposing the addition of substances to the Export Control List, some of which are listed in the Stockholm Convention, was also posted for comment in 2010.

Comments were received in 2006 and were considered in the drafting of these proposed Regulations. Comments from stakeholders included some suggested modifications to the regulatory text. For example, Environment Canada incorporated the suggestion that the proposed Regulations allow notification of export at the end of a calendar year for exports that are projected for the start of the next calendar year. Further changes were made to incorporate feedback regarding the streamlining of information requirements under the proposed Regulations. Another suggestion that was incorporated was an increase from 7 days to 30 days for the prior notification of export.

Every regulation made under CEPA 1999 must be published in the *Canada Gazette* and is subject to a public review period, during which any person may provide comments or file a notice of objection requesting that a board of review be established. The review period will last 75 days for these proposed Regulations.

### **Implementation, enforcement and service standards**

Since the proposed Regulations are made under CEPA 1999, enforcement officers will, when verifying compliance with the Regulations, apply the Compliance and Enforcement Policy for CEPA 1999. The policy also sets out the range of possible responses to alleged violations: warnings, directions, environmental protection compliance orders, ticketing, ministerial orders, injunctions, prosecution, and environmental protection alternative measures (which are an alternative to a court trial after the laying of charges for a CEPA 1999 violation). In addition,

the policy explains when Environment Canada will resort to civil suits by the Crown for costs recovery.

When, following an inspection or an investigation, an enforcement officer discovers an alleged violation, the officer will choose the appropriate enforcement action based on the following factors:

- Nature of the alleged violation: This includes consideration of the damage, the intent of the alleged violator, whether it is a repeat violation, and whether an attempt has been made to conceal information or otherwise subvert the objectives and requirements of the Act.
- Effectiveness in achieving the desired result with the alleged violator: The desired result is compliance within the shortest possible time and with no further repetition of the violation. Factors to be considered include the violator's history of compliance with the Act, willingness to cooperate with enforcement officers, and evidence of corrective action already taken.
- Consistency: Enforcement officers will consider how similar situations have been handled in determining the measures to be taken to enforce the Act.

An exporter should expect approval and issuance of an export permit under these Regulations within one to two weeks of the receipt of the completed permit application.

### **Contacts**

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### **PROPOSED REGULATORY TEXT**

Notice is hereby given, pursuant to subsection 332(1) ([see footnote a](#)) of the *Canadian Environmental Protection Act, 1999* ([see footnote b](#)), that the Governor in Council, pursuant to subsection 102(1) of that Act, proposes to make the annexed *Export of Substances on the Export Control List Regulations*.

Any person may, within 75 days after the date of publication of this notice, file with the Minister of the Environment comments with respect to the proposed Regulations or, within 60 days after the date of publication of this notice, file with that Minister a notice of objection requesting that a board of review be established under section 333 of that Act and stating the reasons for the objection. All comments and notices must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be sent by mail to the Director, Chemical Production Division, Environmental Stewardship Branch, Environment Canada, Gatineau, Quebec K1A 0H3,

by fax to 819-994-5030 or by email to SEC-ECS@ec.gc.ca.

A person who provides information to the Minister of the Environment may submit with the information a request for confidentiality under section 313 of that Act.

Ottawa, July 29, 2011

JURICA ČAPKUN  
*Assistant Clerk of the Privy Council*

## **EXPORT OF SUBSTANCES ON THE EXPORT CONTROL LIST REGULATIONS**

### INTERPRETATION

#### Definitions

**1.** The following definitions apply in these Regulations.

“Act”  
« *Loi* »

“Act” means the *Canadian Environmental Protection Act, 1999*.

“CAS registry number”  
« *numéro d’enregistrement CAS* »

“CAS registry number” means the identification number assigned to a chemical substance by the Chemical Abstracts Service Division of the American Chemical Society.

“designated national authority”  
« *autorité nationale désignée* »

“designated national authority” means an authority designated by a Rotterdam Party under Article 4 of the Rotterdam Convention to act on its behalf in the performance of the administrative functions required by the Rotterdam Convention.

“Export Control List”  
« *Liste des substances d’exportation contrôlée* »

“Export Control List” means the Export Control List in Schedule 3 to the Act.

“pesticide”  
« *produit antiparasitaire* »

“pesticide” means a pest control product as defined in subsection 2(1) of the *Pest Control Products Act*.

“PIC Circular”  
« *Circulaire PIC* »

“PIC Circular” means the circular that is published by the Rotterdam Secretariat and that contains a compilation of import responses from Rotterdam Parties, provided in accordance with Article 10 of the Rotterdam Convention, and a list of the substances subject to the prior informed consent procedure.

“Rotterdam Convention”  
« *Convention de Rotterdam* »

“Rotterdam Convention” means the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, as amended from time to time.

“Rotterdam Party”  
« *Partie à la Convention de Rotterdam* »

“Rotterdam Party” means a State or regional economic integration organization for which the Rotterdam Convention is in force.

“Rotterdam Secretariat”  
« *Secrétariat de Rotterdam* »

“Rotterdam Secretariat” means the Secretariat for the Rotterdam Convention established under Article 19 of that Convention.

“Stockholm Convention”  
« *Convention de Stockholm* »

“Stockholm Convention” means the Stockholm Convention on Persistent Organic Pollutants, as amended from time to time.

“Stockholm Party”  
« *Partie à la Convention de Stockholm* »

“Stockholm Party” means a State or regional economic integration organization for which the Stockholm Convention is in force.

“substance subject to the prior informed consent procedure”  
« *substance soumise à la procédure de consentement préalable* »

“substance subject to the prior informed consent procedure” means a substance specified in Annex III of the Rotterdam Convention that is destined for use in the category specified in that Annex.

## PURPOSE

### Purpose

**2.** The purpose of these Regulations is to establish regulatory conditions applicable to the export of substances specified in the Export Control List and to implement the Stockholm Convention and Rotterdam Convention in relation to the export of those substances.

## BACKGROUND

### Notice

**3.** (1) These Regulations set out the content of the notice of proposed export that is required under subsection 101(1) of the Act for substances specified in Schedule 3 to the Act, and the period within which and manner in which the notice must be provided.

### Conditions of export

(2) These Regulations also set out

(a) for the purposes of subsection 101(3) of the Act, the conditions under which it is authorized to export a substance that is specified in Part 2 or 3 of Schedule 3 to the Act and that is also targeted by the Stockholm Convention; and

(b) for the purposes of subsections 101(2) and (3) of the Act, the conditions under which it is authorized to export a substance that is specified in Schedule 3 to the Act to a Rotterdam Party, including permit, liability insurance and labelling requirements.

#### APPLICATION

##### Application

**4.** These Regulations apply to the export of substances specified in the Export Control List.

#### NOTICE OF PROPOSED EXPORT

##### Thirty days

**5.** (1) The notice of proposed export required under subsection 101(1) of the Act must be provided to the Minister by the person proposing the export of a substance at least 30 days before the export.

##### Effective date

(2) The notice is considered to be provided to the Minister

(a) on the day on which it is delivered, if it is delivered personally;

(b) on the day on which it is postmarked, if it is sent by mail; or

(c) on the date that is indicated by the sending apparatus, if it is sent by electronic mail or by facsimile.

##### Content of notice

(3) The notice of proposed export must

(a) provide the information set out in Schedule 1; and

(b) be accompanied by a certification, dated and signed by the person proposing the export, or by their duly authorized representative, stating that the information provided in the notice is accurate and complete.

##### Electronic or paper submission

(4) The notice of proposed export and the certification may be submitted either in writing or in an electronic format that is compatible with the one that is used by the Minister and the documents must bear the signature of the person proposing the export or their duly authorized representative.

##### Notification of changes

(5) The exporter must notify the Minister in writing of any change to the information provided in a notice of proposed export within 30 days after learning of it.

#### CONDITIONS RELATIVE TO THE STOCKHOLM CONVENTION

##### Persistent organic pollutant

**6.** (1) In this section, "persistent organic pollutant" means a substance listed in Annex A or B of the Stockholm Convention.



POP specified in Part 2 or 3 of Schedule 3 to the Act

(2) A person that has provided the Minister with a notice of proposed export under subsection 101(1) of the Act may export a persistent organic pollutant that is specified in Part 2 or 3 of the Export Control List under the following conditions, unless the export of that persistent organic pollutant is prohibited by any other regulation made under the Act:

(a) if a specific exemption or acceptable purpose is listed in Annex A or B of the Stockholm Convention for that persistent organic pollutant and the export is to a Stockholm Party,

(i) that Party has registered a specific exemption or acceptable purpose in the Register established under Article 4 of the Stockholm Convention and the export complies with the terms of that specific exemption or acceptable purpose,

(ii) in the case of a persistent organic pollutant added to the Stockholm Convention by an amendment that is not in force for that Party, an annual certification for the year in question regarding that Party that is in accordance with paragraph 2 (b) (iii) of Article 3 of the Stockholm Convention has been transmitted by Canada to the Secretariat established under that Convention, and the export complies with the terms of the specific exemption or acceptable purpose listed in those Annexes;

(b) if a specific exemption or acceptable purpose is listed in Annex A or B of the Stockholm Convention for that persistent organic pollutant and the export is to a State or regional economic integration organization that is not a party to the Stockholm Convention, an annual certification for the year in question regarding that State or organization that is in accordance with paragraph 2 (b) (iii) of Article 3 of the Stockholm Convention has been transmitted by Canada to the Secretariat established under that Convention, and the export complies with the terms of the specific exemption or acceptable purpose listed in those Annexes;

(c) the persistent organic pollutant is exported for the purposes of environmentally sound disposal in accordance with paragraph 1 (d) of Article 6 of the Stockholm Convention;

(d) if the persistent organic pollutant is exported for use in a laboratory for analysis, in scientific research, or as a laboratory analytical standard, the total quantity exported by the person does not exceed 10 kg per calendar year;

(e) the persistent organic pollutant is incidentally present in trace amounts in the product that is being exported; or

(f) the persistent organic pollutant is contained in a product

(i) that was manufactured on or before the coming into force, under the terms of Article 22 or 26 of the Stockholm Convention, for Canada of a provision of that Convention prohibiting, under Annex A, or restricting, under Annex B, the production or use of that persistent organic pollutant, and

(ii) in respect of which a notification has been provided by Canada in accordance with note (ii) to Annex A or B of the Stockholm Convention and the notification has been made publicly available in accordance with that note by the Secretariat established under the terms of that Convention.

Amendments to the Stockholm Convention

(3) Subsection (2) does not apply to a persistent organic pollutant added to the Stockholm Convention by an amendment that is not in force for Canada.

## Non-application

(4) Subsection (2) does not apply to a persistent organic pollutant that is, or is contained in, a hazardous waste regulated by the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*.

## CONDITIONS RELATIVE TO THE ROTTERDAM CONVENTION

## GENERAL PROVISIONS

## Application

**7.** (1) Sections 8 to 22 set out the additional conditions applicable to the export of a substance specified in the Export Control List if that export is to a Rotterdam Party.

## Non-application

(2) Sections 8 to 22 do not apply to a substance that

- (a) is contained in a manufactured item that during manufacture is formed into a specific physical shape or design and has for its final use a function or functions wholly or partly dependent on its shape or design;
- (b) is, or is contained in, a hazardous waste regulated by the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*;
- (c) is, or is contained in, a controlled substance as defined in subsection 2(1) of the *Controlled Drugs and Substances Act*;
- (d) is, or is contained in, a nuclear substance as defined in section 2 of the *Nuclear Safety and Control Act*;
- (e) is, or is contained in, a chemical weapon as defined by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, signed at Paris, France, on January 13, 1993, as amended from time to time;
- (f) is, or is contained in, a food or drug as defined in section 2 of the *Food and Drugs Act* or a food additive as defined in Part B of the *Food and Drug Regulations*;
- (g) is contained in a product at a concentration of less than 0.1% by weight;
- (h) is exported by or to an individual for that individual's personal use, if the total quantity exported by the exporter does not exceed 10 kg per calendar year; or
- (i) is exported for use in a laboratory for analysis, in scientific research, or as a laboratory analytical standard, if the total quantity exported does not exceed 10 kg per exporter per calendar year.

## EXPORTS NOT REQUIRING A PERMIT

## Substances not subject to prior informed consent procedure

**8.** A person that has provided the Minister with a notice of proposed export under subsection 101(1) of the Act may export a substance — other than a substance specified in Part 1 or 3 of the Export Control List — that is specified in Annex III of the Rotterdam Convention, but that is destined for use in a category other than the category specified for that substance in that Annex, if

- (a) that person is a resident of Canada or, in the case of a corporation, has a place of

business in Canada; and

(b) that person meets the requirements of sections 20 to 22.

Direction issued by Minister

**9.** If a person is required to export a substance specified in Part 1 of the Export Control List in compliance with a direction issued by the Minister under subparagraph 99(b)(iii) of the Act, that person must meet the requirements of sections 20 to 22 in addition to providing the notice of proposed export required under subsection 101(1) of the Act.

## EXPORTS REQUIRING A PERMIT

### *Conditions of Export*

Substances subject to prior informed consent procedure and other substances

**10.** (1) Subject to section 9, any person proposing to export any of the following substances must hold an export permit:

(a) a substance that is specified in Part 2 of the Export Control List and Annex III of the Rotterdam Convention and that is destined for use in the category specified for that substance in that Annex; or

(b) a substance that is specified in Part 1 or 3 of the Export Control List whether or not it is specified in Annex III of the Rotterdam Convention.

Additional conditions

(2) Any person referred to in subsection (1) that has provided the Minister with a notice of proposed export under subsection 101(1) of the Act must

(a) be a resident of Canada or, in the case of a corporation, have a place of business in Canada;

(b) meet the requirements of sections 20 to 22; and

(c) include a copy of the export permit with each shipment of the substance.

### *Permit Application*

Permit application

**11.** (1) The application for an export permit must be submitted to the Minister before the export takes place.

Content of application

(2) The application must include the information listed in Schedule 2 and be accompanied by

(a) a written undertaking dated and signed by the exporter, or by their duly authorized representative, stating that the exporter assumes responsibility for the removal of the substance from the country of destination and any related costs, including the transportation, care, control and storage of the substance, in the event that the exporter exports the substance in contravention of any conditions set out in the export permit or if the export takes place after the export permit has expired or been cancelled;

(b) in the case referred to in subparagraph 12(1)(c)(iii), documentation confirming

that the substance has been used in or imported into the country of destination in the last 10 years; and

(c) in the case referred to in subparagraph 12(1)(c)(iv), the written consent of the designated national authority of the country of destination to the import of the substance.

#### Certification

(3) The application must be accompanied by a certification dated and signed by the exporter, or by their duly authorized representative, stating that the information provided in the application is accurate and complete.

#### Electronic or paper submission

(4) The application, the documents referred to in paragraphs (2)(a) to (c) and the certification may be submitted either in writing or in an electronic format that is compatible with the one that is used by the Minister.

#### Signature

(5) The application, the written undertaking referred to in paragraph (2)(a) and the certification must bear the signature of the exporter or their duly authorized representative.

#### Combined notice and permit application

(6) If the notice of proposed export and the application for an export permit in relation to a particular substance are provided to the Minister at the same time, the exporter does not need to provide the information referred to in items 1, 2 and 4 to 8 of Schedule 2 if that information is provided in the notice.

### *Issuance of Export Permits*

#### Substances subject to prior informed consent procedure

**12.** (1) Subject to section 16, in the case of an export of a substance subject to the prior informed consent procedure that is specified in Part 1 of the Export Control List and destined for destruction or that is specified in Part 2 of that List, the Minister must issue an export permit if

(a) the permit application is received before the Rotterdam Secretariat has first informed the Rotterdam Parties through the PIC Circular of the country of destination's response with respect to the import of the substance or of its failure to transmit that response;

(b) the permit application is received after the Rotterdam Secretariat has first informed the Rotterdam Parties through the PIC Circular that the country of destination has given consent to the import of the substance; or

(c) the permit application is received after the Rotterdam Secretariat has first informed the Rotterdam Parties through the PIC Circular that the country of destination has failed to transmit a response with respect to the import of the substance and

(i) the permit application is received before the end of the six-month period that begins on the date of publication of that PIC Circular,

(ii) the permit application is received after the end of the 18-month period that begins on the date of publication of that PIC Circular,

(iii) no regulatory action has been taken by the country of destination to prohibit the use of the substance and the substance has been used in or imported into the country of destination in the last 10 years, or

(iv) the designated national authority of the country of destination has given written consent to the import of the substance.

#### Conditions of import

(2) An export permit issued under subsection (1) must specify the conditions of import imposed by the country of destination as set out in the PIC Circular or as may be specified in the designated national authority's written consent, if applicable.

#### Other substances — Part 1 of Export Control List

**13.** Subject to section 16, in the case of an export for destruction of a substance — other than a substance subject to the prior informed consent procedure — specified in Part 1 of the Export Control List, the Minister must issue an export permit on receipt of the permit application.

#### Other substances — Part 3 of Export Control List

**14.** Subject to section 16, the Minister must issue an export permit for the export of a substance specified in Part 3 of the Export Control List on receipt of the permit application.

#### Expiry of permit

**15.** An export permit expires at the end of the calendar year for which it is issued.

#### *Refusal to Issue Permit*

#### Reasonable grounds

**16.** The Minister must refuse to issue an export permit if the Minister believes on reasonable grounds that

(a) the exporter is not able to export the substance in compliance with the Act, these Regulations or the conditions imposed by the country of destination;

(b) the export would contravene the Act, any regulations made under the Act or any other measure taken under the Act; or

(c) the exporter provided false or misleading information in the notice of proposed export, in the permit application or in any document provided under paragraph 11(2) (b) or (c).

#### *Cancellation, Amendment or Suspension of Permit*

#### Consent for import not provided

**17.** (1) If the Rotterdam Secretariat advises the Rotterdam Parties through the PIC Circular that a country of destination does not consent to the import of a substance for which an export permit has been issued, the Minister must cancel the permit and the cancellation takes effect on the day that is six months after the date of publication of that PIC Circular.

#### Revocation of consent

(2) If a designated national authority advises the Minister that it revokes its written consent to the import of a substance for which an export permit has been issued, the Minister must

cancel the permit and the cancellation takes effect on the day that is 30 days after the day on which the Minister is advised of the revocation.

#### Failure to transmit response

(3) If the Rotterdam Secretariat advises the Rotterdam Parties for the first time through the PIC Circular that a country of destination has failed to transmit a response with respect to the import of a substance for which an export permit has been issued under paragraph 12(1)(a) or subparagraph 12(1)(c)(i), the Minister must cancel the permit and the cancellation takes effect on the day that is six months after the date of publication of that PIC Circular.

#### Modification of conditions of import — PIC Circular

(4) If the Rotterdam Secretariat advises the Rotterdam Parties through the PIC Circular that a country of destination has modified the conditions of import of a substance for which an export permit has been issued, the Minister must amend the permit in accordance with the new conditions and the amendment takes effect on the day that is six months after the date of publication of that PIC Circular.

#### Modification of conditions of import — designated national authority

(5) If a designated national authority advises the Minister that it has modified the conditions of import of a substance for which an export permit has been issued, the Minister must amend the permit in accordance with the new conditions and the amendment takes effect 30 days after the day on which the Minister is advised of the modifications.

#### Obligations of Minister

(6) The Minister may cancel or amend an export permit under this section only if a notice giving reasons for the amendment or cancellation has been sent to the exporter by mail, electronic mail or facsimile.

#### Reasonable grounds

**18.** (1) The Minister must cancel an export permit if the Minister believes on reasonable grounds that

- (a) the exporter is not able to export the substance in compliance with the Act, these Regulations or the conditions set out in the export permit;
- (b) the export contravenes the Act, any regulations made under the Act or any other measure taken under the Act;
- (c) the exporter failed to comply with a condition set out in the export permit;
- (d) the exporter failed to comply with the undertaking provided under paragraph 11(2)(a); or
- (e) the exporter provided false or misleading information in the notice of proposed export or in any document provided under paragraph 11(2)(b) or (c).

#### Notice of proposed cancellation

(2) The Minister must, before cancelling an export permit under this section, notify the exporter of the proposed cancellation by mail, electronic mail or facsimile.

#### Content of notice

(3) The notice of proposed cancellation must

- (a) indicate the reasons for the proposed cancellation;
- (b) inform the exporter of the interim suspension of the permit; and
- (c) inform the exporter that it may make written representations concerning the proposed cancellation.

#### Interim suspension of permit

(4) The export permit is suspended for the period beginning on the day on which the notice of the proposed cancellation is received and ending on the day on which the Minister makes a decision respecting the proposed cancellation.

#### Written representations

(5) The exporter may, within 15 days after the day on which the notice is received, make written representations concerning the proposed cancellation.

#### Date of receipt

- (6) The notice of proposed cancellation is considered to have been received by the exporter
- (a) on the day on which it is delivered, if it is delivered personally;
  - (b) on the 10th day after the day on which it is postmarked, if it is sent by mail; or
  - (c) on the date that is indicated by the sending apparatus, if it is sent by electronic mail or by facsimile.

### *Retention of Records*

#### Period of retention

**19.** An exporter must keep at the exporter's principal place of business in Canada, for a period of five years after the end of the calendar year for which the export permit is issued,

- (a) the export permit;
- (b) a copy of the application for the export permit and the documents required under subsections 11(2) and (3) if the originals were submitted to the Minister or, if copies were submitted to the Minister, the original of the application and documents;
- (c) for each export of a substance, proof of liability insurance coverage as required under section 20;
- (d) for each export of a substance, a copy of the label referred to in section 21 and the safety data sheet referred to in section 22; and
- (e) any shipping documents or any other documents that substantiate the date of the export and the exact quantity of the substance that was exported.

### LIABILITY INSURANCE

#### Amount

**20.** The exporter must have liability insurance in an amount of not less than \$5,000,000 for each export in respect of

- (a) any damages arising from the export for which the exporter could become liable;

and

(b) any costs that could be imposed on the exporter under the applicable laws for cleaning up the environment as a result of the substance being released into the environment during export.

## LABELLING

Information to appear on label

**21.** (1) An exporter must affix to any container in which a substance is exported a label that includes the following information in either or both official languages and, as far as practicable, at least one of the official languages of the country of destination:

(a) the name of the substance as it appears on the Export Control List and the commodity code of the substance as it is identified in the Harmonized Commodity Description and Coding System;

(b) a description of the hazards to the environment or human health that can arise from the nature of the substance or, if applicable, the product that contains it; and

(c) the precautionary measures to be followed when handling, using or being exposed to the substance or, if applicable, the product that contains it, and the first aid measures to be administered in case of exposure.

Bulk shipment

(2) In the case of a bulk shipment, the exporter must either affix a label in accordance with subsection (1) or include with each shipment a label or a document that contains the information required to be included on the label.

Definition of “bulk shipment”

(3) For the purposes of subsection (2), “bulk shipment” means the shipment of a substance without any packaging or containment other than containment in

(a) a vessel having a water capacity of more than 454 L;

(b) a freight container or a portable tank;

(c) a road vehicle or a railway vehicle; or

(d) the hold of a ship.

## MATERIAL SAFETY DATA SHEET

Information required

**22.** The exporter must include with each export of the substance, in either or both official languages and, as far as practicable, at least one of the official languages of the country of destination, a material safety data sheet as defined in subsection 11(1) of the *Hazardous Products Act* in respect of the substance or, if applicable, the product that contains it.

## REPEALS

**23.** The *Export Control List Notification Regulations* ([see footnote 4](#)) are repealed.

**24.** The *Export of Substances Under the Rotterdam Convention Regulations* ([see footnote 5](#)) are repealed.



**COMING INTO FORCE**

Registration

**25. These Regulations come into force on the day on which they are registered.**SCHEDULE 1  
(Subsection 5(3))

## INFORMATION TO BE PROVIDED IN NOTICE OF PROPOSED EXPORT

1. The name, civic and postal addresses, telephone number and, if any, fax number and email address, in Canada, of the person proposing to export a substance.
2. The name, title, civic and postal addresses, telephone number and, if any, fax number and email address of the duly authorized representative, if applicable.
3. For each substance exported, by country of destination,
  - (a) the name of the substance as it appears on the Export Control List;
  - (b) the country of destination;
  - (c) the expected date or dates of export;
  - (d) the estimated quantity of the substance to be exported;
  - (e) an indication
    - (i) that the export is for the purpose of destroying the substance, or
    - (ii) that the substance is intended for either industrial, pesticidal or another use;
  - (f) an indication of whether the substance is exported under the *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*, if applicable; and
  - (g) in the case of a substance listed in Annex A or B of the Stockholm Convention,
    - (i) an indication, if applicable, of the specific exemption or acceptable purpose applicable to the substance that is being exported,
    - (ii) an indication, if applicable, of whether the substance is exported for the purposes of environmentally sound disposal in accordance with paragraph 1 (d) of Article 6 of the Stockholm Convention,
    - (iii) an indication, if applicable, of whether the substance is exported for use in a laboratory for analysis, in scientific research, or as a laboratory analytical standard,
    - (iv) an indication, if applicable, of whether the substance is incidentally present in trace amounts in the product that is being exported, and
    - (v) an indication, if applicable, of whether the product containing the substance was manufactured on or before the coming into force for Canada of a provision of the Stockholm Convention prohibiting, under Annex A, or restricting, under Annex B, the production or use of that substance, as well as the date of manufacture of the product, if known.

## SCHEDULE 2

(Subsection 11(2))

INFORMATION TO BE PROVIDED IN APPLICATION FOR EXPORT PERMIT

- 1.** The name, civic and postal addresses, telephone number and, if any, fax number and email address, in Canada, of the exporter.
- 2.** The name, title, civic and postal addresses, telephone number and, if any, fax number and email address of the duly authorized representative, if applicable.
- 3.** The name, civic and postal addresses, telephone number and, if any, fax number and email address of the importer.
- 4.** The name of the substance as it appears on the Export Control List.
- 5.** The expected date or dates of export.
- 6.** The estimated quantity of the substance to be exported.
- 7.** The country of destination.
- 8.** An indication
  - (a) that the export is for the purpose of destroying the substance; or
  - (b) that the substance is intended for either industrial, pesticidal or another use.
- 9.** The common name and trade name of the substance, if applicable.
- 10.** The CAS registry number of the substance, if applicable.
- 11.** The commodity code for the substance set out in the Harmonized Commodity Description and Coding System prepared by the World Customs Organization, as amended from time to time, if applicable.
- 12.** If the substance is contained in a product,
  - (a) the name of the product; and
  - (b) the concentration of the substance in the product.
- 13.** The following information respecting the export:
  - (a) the customs office through which it is expected to be exported from Canada, if known;
  - (b) the countries through which the substance will transit, if known; and
  - (c) the proposed number of exports for the calendar year, if applicable.
- 14.** The material safety data sheet for the substance or, if applicable, for the product that contains the substance.

[32-1-o]

[Footnote 1](#)

The full title of the Convention is the *Stockholm Convention on Persistent Organic Pollutants*.

[Footnote 2](#)

The full title of the Convention is the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*.

[Footnote 3](#)

*Notice of intent to recommend that export controls for perfluorooctane sulfonate, its salts and certain other compounds that contain the  $C_8F_{17}SO_2$ ,  $C_8F_{17}SO_3$  or  $C_8F_{17}SO_2N$  groups and lindane be developed under the Canadian Environmental Protection Act, 1999, Canada Gazette, Part I, Vol. 144, No. 37, September 11, 2010, <http://gazette.gc.ca/rp-pr/p1/2010/2010-09-11/html/notice-avis-eng.html>.*

[Footnote 4](#)

SOR/2000-108

[Footnote 5](#)

SOR/2002-317

[Footnote a](#)

S.C. 2004, c. 15, s. 31

[Footnote b](#)

S.C. 1999, c. 33

**NOTICE:**

The format of the electronic version of this issue of the *Canada Gazette* was modified in order to be compatible with extensible hypertext markup language (XHTML 1.0 Strict).

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