Consultation Document

Draft Order Amending Schedule 3 to CEPA 1999
the Export Control List

Environment Canada

July 2013
Introduction

Environment Canada is undertaking consultations on a Draft Order Amending Schedule 3 to the Canadian Environmental Protection Act, 1999 (CEPA 1999). These changes are required to reflect decisions taken at the Sixth Conference of the Parties to the Rotterdam Convention in May 2013.

Schedule 3, or the Export Control List, defines the substances subject to export control under the Export of Substances on the Export Control List Regulations (ESECLR, SOR/2013-88). It includes substances for which the use is prohibited or restricted in Canada or are subject to an international agreement that requires notification or requires the consent of the country of destination before the substance is exported from Canada. The proposed amendments to the Export Control List are summarized in this document, and where applicable, proposed wording for the draft Order is included.

Purpose

The purpose of this consultation is to solicit feedback from stakeholders and interested individuals regarding a proposed amendment to the Export Control List. Please submit comments by August 31, 2013 to SEC-ECS@ec.gc.ca.

Background

The Export Control List contains substances grouped in three parts:

- The Ministers (of Environment and Health) may add to Part 1 substances which are prohibited for use in Canada. Exports of substances listed in Part 1 of the Export Control List are only permissible if the export is for the purpose of destruction or for complying with a direction of the Minister. All exports of Part 1 substances are subject to prior notification of export under the ESECLR, and certain exports of substances in Part 1 may require an export permit.

- The Ministers may add to Part 2 substances which are subject to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention). Export of Part 2 substances is permissible in cases where the Importing country is Party to the Rotterdam Convention and has indicated its consent for import of that substance, or in cases where the Importing country is not Party to the Rotterdam Convention. All exports of Part 2 substances are subject to prior notification of export under the ESECLR and certain exports of substances in Part 2 may require an export permit. Exports of Part 2 substances that are also listed in Annex A or Annex B of the Stockholm Convention are prohibited unless they meet further conditions (export for environmentally sound disposal, or to a Party registered to use the substance, etc.) as required by Section 6 of the ESECLR.
The Ministers may add to Part 3 substances which are subject to a domestic control which restricts their use in Canada. Export of Part 3 substances is permissible and would be subject to prior notification of export under the ESECLR and certain exports may require an export permit. Exports of Part 3 substances that are also listed in Annex A or Annex B of the Stockholm Convention are prohibited unless they meet further conditions (export for environmentally sound disposal, or to a Party registered to use the substance, etc.) as required by Section 6 of the ESECLR.

Canada is Party to the Rotterdam Convention which imparts obligations for exports of substances listed to Annex III of the Convention as well as obligations for chemicals and pesticides subject to domestic controls that prohibit or restrict their use. The substances listed in Annex III of the Rotterdam Convention are subject to the Prior Informed Consent Procedure and can be found primarily in Part 2 of the Export Control List, but may be listed to Part 1 instead if their use is prohibited in Canada.

For exports of substances listed on Annex III of the Rotterdam Convention, Canada is obligated to respect import decisions of other Parties (i.e. consent, no consent or consent under conditions).

For exports of substances which are not listed on Annex III, Canada is obligated to provide prior notice of export to importing Parties when the substances are subject to a domestic prohibition or restriction (these are listed in Part 1 or Part 3 of the Export Control List).

The ESECLR impart obligations on exporters which allow Canada to remain in compliance with the provisions of the Rotterdam Convention. These regulations refer to the Export Control List to identify the substances controlled.

Canada is also Party to the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention) which imparts obligations to control export of substances listed to Annex A or Annex B of that Convention (Persistent Organic Pollutants, or “POPs”). The ESECLR prohibits exports that would contravene Canada’s obligations under the Stockholm Convention. These substances can be listed in Part 1, 2 or 3 of the Export Control List. Exports of POPs listed in Part 2 or Part 3 of the Export Control List must satisfy the conditions relative to the Stockholm Convention in Section 6 of the ESECLR when they contain a substance listed on the Export Control List that is also listed in Annex A or Annex B of the Stockholm Convention.

The federal legislative authority for the regulation of pesticides in Canada is the Pest Control Products Act (PCPA). A pesticide cannot be registered under the PCPA unless the risks to people and the environment are acceptable, and the product has value. Where risks to health or environment are not acceptable, the government can restrict the use or discontinue the registration.
The proposed key changes to the Export Control List (ECL) include:

- Deleting one substance from Part 3 and adding it to Part 1 of the ECL. The substance is subject to a domestic prohibition on its use and it has been added to Annex III to the Rotterdam Convention;
- Deleting one group of substances from Part 3 and adding it to Part 2 of the ECL. The group has been added to Annex III to the Rotterdam Convention;


**Proposed amendments**

**1) Delete a substance from Part 3 and add it to Part 1 of the Export Control List**

A pesticide which is not approved for use in Canada and listed to the Rotterdam Convention will be added to Part 1 and removed from Part 3 of the ECL. All substances on the ECL require prior notification of export to the Minister of the Environment pursuant to the ESECLR. The addition of this substance to Part 1 will prohibit exports except for the purposes of destruction or when exported pursuant to a Ministerial order.

The following substance will be added to Part 1 of the ECL as item 17:

- Azinphos-methyl (CAS 86-50-0)

The current listing for Azinphos-methyl (Part 3, item 17) will be removed upon the addition to Part 1.

Exporters of this substance will still be obligated to provide prior notification to the Minister of the Environment ahead of export pursuant to the ESECLR. In addition, when exporting to a Party to the Rotterdam Convention, an export permit will still be required and will only be granted if the export is in compliance with the Rotterdam Convention and the export can only be for the purpose of destruction.

Health Canada’s Pest Management Regulatory Agency (PMRA) re-evaluated azinphos-methyl under the Pest Control Products Act in 2004 and concluded it was presenting unacceptable risk to agricultural workers. Consequently, all remaining uses of azinphos-methyl were phased out as of January 1st, 2013. The substance is being moved to Part 1 of the ECL which lists substances whose use is prohibited in Canada.

**2) Delete a group of substances from Part 3 and add them to Part 2 of the Export Control List**
Part 2 of the ECL lists those substances subject to the prior informed consent procedure of the Rotterdam Convention and imparts obligations, through domestic regulations, on exporters for the purposes of meeting Canada’s obligations under this international convention. During the last Conference of the Parties, parties agreed to list a group of substances to Annex III to the Rotterdam Convention. Consequently, this group of substances will be added to Part 2 and removed from Part 3 of the ECL.

The following group of substances will be added to Part 2 of the ECL:

- Perfluorooctane sulfonic acid, perfluorooctane sulfonates, perfluorooctane sulfonamides and perfluorooctane sulfonylesters including:
  - Perfluorooctane sulfonic acid (CAS 1763-23-1)
  - Potassium perfluorooctane sulfonate (CAS 2795-39-3)
  - Lithium perfluorooctane sulfonate (CAS 29457-72-5)
  - Ammonium perfluorooctane sulfonate (CAS 29081-56-9)
  - Diethanolammonium perfluorooctane sulfonate (CAS 70225-14-8)
  - Tetraethylammonium perfluorooctane sulfonate (CAS 56773-42-3)
  - Didecyl(dimethylammonium) perfluorooctane sulfonate (CAS 251099-16-8)
  - N-Ethylperfluorooctane sulfonamide (CAS 4151-50-2)
  - N-Methylperfluorooctane sulfonamide (CAS 31506-32-8)
  - N-Ethyl-N-(2-hydroxyethyl) perfluorooctane sulfonamide (CAS 1691-99-2)
  - N-(2-Hydroxyethyl)-N-methylperfluorooctane sulfonamide (CAS 24448-09-7)
  - Perfluorooctane sulfonyl fluoride (CAS 307-35-7)

This listing combines two groups of substances presently listed in Part 3 of the ECL which will be removed:

15. Perfluorooctane sulfonate and its salts
16. Compounds that contain one of the following groups: C₈F₁₇SO₂, C₈F₁₇SO₃ or C₈F₁₇SO₂N

The text proposed above for listing to Part 2 of the ECL is sufficiently broad that the listing of “Perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride (PFOS-F)” in Annex B of the Stockholm Convention will be captured. Exports of these substances, if any, will continue to meet Canada’s obligations under the Stockholm Convention through conditions established by the ESECLR.

Exporters of these substances will still be obligated to provide prior notification to the Minister of the Environment ahead of export pursuant to the ESECLR. In addition, when exporting to a Party to the Rotterdam Convention, an export permit may still be required pursuant to the ESECLR. After moving to Part 2 of the ECL, a permit will only be granted if the export is in compliance with the Rotterdam Convention.

Additional information
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Websites:
The Rotterdam Convention website: www.pic.int.
The Stockholm Convention website: www.pops.int


The current Export Control List can be found at: http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=A6DC8309-1