

# Canada Gazette, Part 2, Volume 153, Number 8: Regulations Amending the Concentration of Phosphorus in Certain Cleaning Products Regulations

Canada Gazette, Part II, Volume 153, Number 8

Registration  
SOR/2019-90 April 8, 2019

CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999

P.C. 2019-267 April 5, 2019

Whereas, pursuant to subsection 332(1) of the *Canadian Environmental Protection Act, 1999*, the Minister of the Environment published in the *Canada Gazette*, Part I, on March 31, 2018, a copy of the proposed *Regulations Amending the Concentration of Phosphorus in Certain Cleaning Products Regulations*, substantially in the annexed form, and persons were given an opportunity to file comments with respect to the proposed Regulations or to file a notice of objection requesting that a board of review be established and stating the reasons for the objection;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of the Environment, pursuant to section 118 of the *Canadian Environmental Protection Act, 1999* [footnote b](#), makes the annexed *Regulations Amending the Concentration of Phosphorus in Certain Cleaning Products Regulations*.

## Regulations Amending the Concentration of Phosphorus in Certain Cleaning Products Regulations

### Amendments

**1 The *Concentration of Phosphorus in Certain Cleaning Products Regulations* are amended by adding the following before the heading before section 2:**

#### Non-application of Section 117 of the Canadian Environmental Protection Act, 1999

**1** Section 117 of the *Canadian Environmental Protection Act, 1999* does not apply to a cleaning product that is in transit through Canada, from a place outside Canada to another place outside Canada.

**2 Section 7 of the Regulations and the heading before it are replaced by the following:**

#### Concentration of Phosphorus

**7** Any analysis performed to determine the concentration of phosphorus for the purposes of these Regulations must be performed by a laboratory that meets the following conditions at the time of the analysis:

- **(a)** it is accredited
  - **(i)** under the International Organization for Standardization standard ISO/IEC 17025, entitled *General requirements for the competence of testing and calibration laboratories*, by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement, or
  - **(ii)** under the *Environment Quality Act*, CQLR, c. Q-2; and
- **(b)** the scope of its accreditation includes the analysis performed to determine the concentration of phosphorus.

### Coming into Force

**3 These Regulations come into force on the day on which they are registered.**

## REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations.)

### Issues

Canada is bound by the World Trade Organization (WTO) Trade Facilitation Agreement (TFA), which modernizes and simplifies customs and border procedures for all WTO members. Legislative amendments were made to the *Canadian Environmental Protection Act, 1999* (CEPA) under Bill C-13 in December 2016 to enable Canada to ratify the TFA. Regulatory amendments are required to the *Concentration of Phosphorus in Certain Cleaning Products Regulations* (the Regulations) to ensure consistency with Canada's international obligations under the TFA. In addition, two minor issues regarding clarification and standardization have been identified in the Regulations.

### Background

The TFA came into force on February 22, 2017. The TFA is the first multilateral treaty to emerge from the WTO since its creation, reinforcing the important role of the WTO as a negotiating forum for global trade rules.

The TFA limits the ability of a WTO member to apply technical regulations to goods moving through its territory from a point outside its territory to another foreign point (i.e. goods in transit). The Regulations would likely constitute a "technical regulation" as defined under the WTO's Technical Barriers to Trade Agreement because they are mandatory, they apply to an identifiable product, and they clearly outline the product's characteristics. Section 117 of CEPA prohibits the import, and thus the transit, of cleaning products or water conditioners that contain prescribed nutrients, including phosphorus, in excess of prescribed values. The Regulations do not provide an exemption for goods in transit.

The Regulations, which first came into effect in 1989, set record-keeping requirements and limits for the concentration of phosphorus in laundry detergents, household dish-washing compounds and certain household cleaners that can be manufactured in Canada or imported into the country. The Regulations were introduced as a response to growing concerns regarding the over-fertilization of freshwater ecosystems and growth of harmful algae blooms in Canada's lakes and rivers. The main environmental concern with phosphorus is its role as a nutrient (fertilizer) in aquatic environments. Depending on factors within the water surface (such as temperature, light penetration and present phosphorus load), phosphorus can lead to changes in natural flora and fauna and in eutrophication in lakes, rivers, and coastal waters. Laundry detergents, household dish-washing compounds and household cleaners, such as all-purpose cleaners, kitchen and bathroom cleaners, drain cleaners or openers, etc., contribute to this issue as they enter wastewater systems that drain into Canada's lakes and rivers.

The Regulations were amended in 2009 to broaden the scope to include household cleaning products and dish-washing compounds. Since household metal cleaners and de-greasing compounds are required for specific applications and do not pose a significant risk to the aquatic environment, concentration limits for phosphorus were not applied to products used exclusively for these purposes. However, the Regulations can be misinterpreted to mean that the concentration limits do not apply to any product that can clean metal or de-grease.

With respect to laboratory accreditation, the Standing Joint Committee for the Scrutiny of Regulations (SJCSR) raised concerns regarding the laboratory accreditation provisions in other regulations of the Department of the Environment (the Department). As a result, standard wording has been developed for use across all regulations of the Department with respect to laboratory accreditation provisions.

### Objectives

The objective of the *Regulations Amending the Concentration of Phosphorus in Certain Cleaning Products Regulations* (the amendments) is to ensure consistency with Canada's international obligations under the TFA. The amendments also aim to provide consistency and standardization of the laboratory accreditation provisions with other regulations of CEPA.

### Description

The amendments exempt cleaning products in transit through Canada from the Regulations and revise the provisions related to laboratory accreditation to be consistent with other regulations of the Department.

#### "One-for-One" Rule

The "One-for-One" Rule does not apply to the amendments, as they are not expected to impact any stakeholders.

#### Small business lens

The small business lens does not apply to the amendments, as they are not expected to impact any stakeholders.

### Consultation

On January 10, 2017, the Department published a consultation document on the proposed amendments for a 30-day public comment period. Comments were received from two stakeholders: one industry association and one Canadian business. The publication of the proposed amendments in the *Canada Gazette*, Part I (CGI), on March 31, 2018, initiated a 75-day comment period where interested parties were invited to submit their comments. One comment was received by an industry association that is generally supportive of aligning the amendments with the TFA and revising the section related to laboratory accreditation as long as this amendment does not change the compliance obligation on companies, but has expressed concern regarding a proposed revision to clarify that the exemption for household metal cleaners and de-greasing compounds is limited to products marketed exclusively for those purposes.

A summary of comments and responses to the comments prior to and following the publication of the proposed amendments in the *Canada Gazette*, Part I, is presented below.

#### **Household cleaners (section 6 of the Regulations)**

Comment: Prior to the CGI publication, the industry association requested further information regarding the circumstances prompting revisions to clarify the exemption for household metal cleaners and de-greasing compounds. This association provided an additional comment in response to the CGI publication stating that revising the language to clarify that the exemption is limited to products marketed “exclusively” as metal cleaners and de-greasing compounds is highly problematic because it could inadvertently cause some products to be instantly non-compliant. The association requested clarification on why the proposed changes would be necessary and recommended, if the amendment is considered necessary, that an adequate transition time be provided with a minimum of two years for manufacturing with no restriction on sell-through inventory.

Response: Further discussions with the industry association have led the Department to conclude that additional analysis should be undertaken regarding the potential issue. Given that the primary objective of the amendments is to implement the goods in transit exemption and align with the TFA, the Department has removed the proposed amendment to the household metal cleaners and de-greasing compounds exemption, but is committed to moving forward with providing clarification on this exemption.

Comment: Prior to the CGI publication, the industry association suggested defining the term “household cleaner” and limiting the application of the Regulations to household cleaners that are designed to go “down the drain.”

Response: The Department has provided compliance fact sheets to clarify products that would be considered “household cleaners” in Canada. Section 117 of CEPA is restricted to prohibiting the manufacture for use or sale in Canada or import of a cleaning product that contains a prescribed nutrient in a concentration greater than the permissible concentration prescribed for that product. Consequently, the proposed amendments cannot address issues related to product-handling or intended disposal under the current wording of CEPA.

#### **Exemption for cleaning products in transit**

Comment: Prior to the CGI publication, a Canadian business expressed concern that the proposed amendments would allow Canadian businesses to manufacture and export products with elevated levels of phosphorus outside of Canada to countries with less stringent environmental laws. The industry association expressed concern that the proposed amendments would allow products in transit with elevated phosphorus concentrations to enter the Canadian market.

Response: The Department explained that the proposed amendments would not change the concentration limits for products manufactured in Canada for domestic or international use, or the concentration limits for products imported into Canada for use in Canada. Existing measures under the *Customs Act* limit the risk that goods in transit could be diverted into the Canadian market. Following publication in the CGI, the industry association stated that it agrees with the proposed exemption for cleaning products in transit through Canada. No further comments were received from the Canadian business.

#### **Accreditation of laboratories (section 7 of the Regulations)**

Comment: Prior to and following the publication of the proposed amendments in the CGI, the industry association was supportive of this proposed amendment on the condition that the current compliance and testing obligations for manufacturers or importers remain the same.

Response: The proposed revisions to the laboratory accreditation provisions would not place any new requirements on regulatees. The SJCSR and the Standards Council of Canada (SCC) raised concerns that the definition of what constitutes a “Canadian accrediting body” is unclear in the laboratory accreditation provisions of the *PCB Regulations*. As the Regulations also contain laboratory accreditation requirements, the Department has revised the wording of section 7 in order to specify that the Regulations refer to an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement or that is accredited under the *Environment Quality Act*, CQLR, c.Q-2. This revision is now being applied to all of the Department’s regulations in order to address the concerns of the SJCSR and the SCC in a consistent manner.

#### **Rationale**

The TFA, ratified by Canada in 2016, limits WTO members’ ability to apply technical regulations to goods, such as cleaning products, moving through their territory from a point outside their territory to another foreign point. The TFA is intended to benefit Canada and other signatories by lowering trade costs and increasing exports. The amendments exempt cleaning products in transit through Canada from the prohibition on import in section 117 of CEPA. This would ensure Canada’s consistency with its international obligations under the TFA. As the United States, Australia, and members of the European Union have all ratified the TFA, it is expected that these trade partners have implemented or are in the process of implementing similar exemptions for goods in transit.

The amendments also modify the laboratory accreditation provisions to use standard wording developed for all regulations of the Department. The amendments do not introduce any new testing or analysis requirements. They continue to require that a laboratory hold the appropriate certificate of accreditation to perform the determination of the concentration of phosphorus. Therefore, the amendments are not expected to have any impact on stakeholders.

Activities within the scope of compliance promotion and enforcement (such as periodic testing of products and changes to promotional material) are not expected to incur any additional costs to government. Therefore, the amendments are not expected to result in any associated costs to government or industry.

Under the amendments, the transportation of cleaning products exceeding Canada’s phosphorus limits might occur; however, the Department does not expect this to pose significant environmental risk. Canada is not likely to be a major transportation route for non-compliant cleaning products in transit to other countries, given its size and location. This means that the risk of an accidental spill of such cleaning products occurring and reaching a water course is low.

In the event that a spill does occur, phosphorus is a nutrient and is therefore not expected to have an immediate harmful impact. Only very high concentrations cause direct harmful effects. Cleaning products covered by the Regulations account for a small proportion of the total phosphorus load to the environment. Since an increase of shipments of cleaning products containing elevated levels of phosphorus is not expected, and the risk of a spill is low, the impacts of the amendments are expected to be low. Therefore, the negative environmental risks of the amendments are also expected to be low.

Matthew Watkinson  
Director  
Regulatory Analysis and Valuation Division  
Department of the Environment  
200 Sacré-Cœur Boulevard  
Gatineau, Quebec  
K1A 0H3  
Email: [ec.dary-ravd.ec@canada.ca](mailto:ec.dary-ravd.ec@canada.ca)

Tracey Spack  
Director  
Products Division  
Department of the Environment  
351 Saint-Joseph Boulevard  
Gatineau, Quebec  
K1A 0H3  
Email: [ec.produits-products.ec@canada.ca](mailto:ec.produits-products.ec@canada.ca)