

Physical Activities Regulations: SOR/2019-285

Canada Gazette, Part II, Volume 153, Number 17

Registration

SOR/2019-285 August 8, 2019

IMPACT ASSESSMENT ACT

P.C. 2019-1182 August 7, 2019

Her Excellency the Governor General in Council, on the recommendation of the Minister of the Environment, pursuant to sections 109 and 188 of the *Impact Assessment Act* [footnote](#), makes the annexed *Physical Activities Regulations*.

Physical Activities Regulations

Definitions

1 (1) The following definitions apply in these Regulations.

- **aerodrome** has the same meaning as in subsection 3(1) of the *Aeronautics Act*. (*aérodrome*)
- **area of mining operations** means the area at ground level occupied by any open-pit or underground workings, mill complex or storage area for overburden, waste rock, tailings or ore. (*aire d'exploitation minière*)
- **boundary water** has the meaning assigned by the definition *boundary waters* in subsection 2(1) of the *Canada Water Act*. (*eaux limitrophes*)
- **canal** means a waterway constructed for navigation. (*canal*)
- **Class IA nuclear facility** has the same meaning as in section 1 of the *Class I Nuclear Facilities Regulations*. (*installation nucléaire de catégorie IA*)
- **disposal at sea** means *disposal*, as defined in subsection 122(1) of the *Canadian Environmental Protection Act, 1999*, but does not include any omission that constitutes a disposal in paragraph (g) of the definition of that term. (*immersion*)
- **exploratory well** has the same meaning as in subsection 101(1) of the *Canada Petroleum Resources Act*, but does not include a *delineation well* or *development well* as those terms are defined in that subsection. (*puits d'exploration*)
- **hazardous waste** means anything referred to in any of paragraphs 1(1)(a) to (f) or 2(1)(a) to (f) of the *Export and Import of Hazardous Waste and Hazardous*

Recyclable Material Regulations, but does not include nuclear substances, domestic waste water or anything collected from households in the course of regular municipal waste collection services. (*déchet dangereux*)

- **international electrical transmission line** has the meaning assigned by the definition *international power line* in section 2 of the *Canadian Energy Regulator Act*. (*ligne internationale de transport d'électricité*)
- **marine terminal** means a facility, including its areas, structures and equipment, that is used for berthing ships and that is
 - (a) related to the movement of goods between ships and shore; or
 - (b) used for the receiving, holding, regrouping, embarkation or landing of passengers transported by water. (*terminal maritime*)
- **national marine conservation area** means a *marine conservation area* or a *reserve*, as those terms are defined in subsection 2(1) of the *Canada National Marine Conservation Areas Act*, or the Saguenay-St. Lawrence Marine Park established under section 5 of the *Saguenay-St. Lawrence Marine Park Act*. (*aire marine nationale de conservation*)
- **national park** means a *park* or a *park reserve* as those terms are defined in subsection 2(1) of the *Canada National Parks Act*. (*parc national*)
- **navigable water** has the same meaning as in section 2 of the *Canadian Navigable Waters Act*. (*eaux navigables*)
- **new right of way** means land that is to be developed for an international electrical transmission line, a *pipeline*, as defined in section 2 of the *Canadian Energy Regulator Act*, a railway line or an all-season public highway, and that is not alongside and contiguous to an area of land that was developed for an electrical transmission line, oil and gas pipeline, railway line or all-season public highway. (*nouvelle emprise*)
- **nuclear substance** has the same meaning as in section 2 of the *Nuclear Safety and Control Act*. (*substance nucléaire*)
- **offshore** means, except in respect of an offshore area, anything that is located in
 - (a) an area referred to in paragraph 3(d) or (e) of the *Canada Oil and Gas Operations Act* in respect of which an authorization under that Act is required to conduct an activity that is related to the exploration and drilling for, or the production, conservation, processing or transportation of, oil or gas; or
 - (b) an area in respect of which an authorization under the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act* or the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act* is required to conduct an activity that is related to the exploration and drilling for, or the production, conservation, processing or transportation of, oil or gas. (*au large des côtes*)

- **offshore area** has the same meaning as in section 2 of the *Canadian Energy Regulator Act*. (*zone extracôtière*)
- **oil and gas pipeline** means a pipeline that is used, or is to be used, for the transmission of oil or gas alone or with any other commodity. (*pipeline d'hydrocarbures*)
- **park community** has the same meaning as in subsection 2(1) of the *Canada National Parks Act*. (*collectivité*)
- **uranium mill** has the meaning assigned by the definition *mill* in section 1 of the *Uranium Mines and Mills Regulations*. (*usine de concentration d'uranium*)
- **uranium mine** has the meaning assigned by the definition *mine* in section 1 of the *Uranium Mines and Mills Regulations*. (*mine d'uranium*)
- **water body** means any body of water, including a canal, a reservoir, an ocean and a wetland, up to the high-water mark, but does not include a sewage or waste treatment lagoon or a mine tailings pond. (*plan d'eau*)

Aircraft Group Number

(2) For the purpose of these Regulations, an Aircraft Group Number refers to the Aircraft Group Number set out in Transport Canada's publication, TP 312, 5th edition entitled *Aerodrome Standards and Recommended Practices*.

Physical activities — designated projects

2 (1) The physical activities that are set out in the schedule are designated for the purpose of the definition *designated project* in section 2 of the *Impact Assessment Act*.

Physical activities that may be excluded

(2) For the purpose of the definition *designated project* in section 2 of the *Impact Assessment Act*, the physical activities that may be designated by the Minister under paragraph 112(1)(a.2) of that Act are those referred to in section 34, 44 or 45 of the schedule.

Exception

(3) Subsections (1) and (2) do not apply to a physical activity that is a *project*, as defined in section 66 of the *Canadian Environmental Assessment Act, 2012*, if, before the coming into force of the *Impact Assessment Act*, an *authority*, as defined in that section, has made a determination under section 67 of the *Canadian Environmental Assessment Act, 2012* or has indicated in writing that it has started to make its determination for the purpose of that section of whether or not the carrying out of the project is likely to cause significant adverse environmental effects.

Period for review of regulations

3 For the purpose of subsection 111(1) of the *Impact Assessment Act*, the period is five years after the day on which these Regulations come into force.

Project on federal lands or outside Canada

4 (1) If an authority has, before the coming into force of the *Impact Assessment Act*, indicated in writing that it has started to make its determination, for the purpose of section 67 or 68 of the *Canadian Environmental Assessment Act, 2012*, of whether or not the carrying out of a project is likely to cause significant adverse environmental effects, that determination is made under the *Canadian Environmental Assessment Act, 2012* as if that Act had not been repealed.

Non-application of sections 81 to 91 of the *Impact Assessment Act*

(2) If, before the coming into force of the *Impact Assessment Act*, an authority has made a determination under section 67 or 68 of the *Canadian Environmental Assessment Act, 2012* with respect to a project, sections 81 to 91 of the *Impact Assessment Act* do not apply to that project.

Definition of *authority* and *project*

(3) In this section, *authority* and *project* have the same meaning as in section 66 of the *Canadian Environmental Assessment Act, 2012*.

S.C. 2019, c. 28, s. 1

5 These Regulations come into force on the day on which section 1 of *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, comes into force.

SCHEDULE

(Section 2)

Physical Activities

National Parks and Protected Areas

1 The construction, operation, decommissioning and abandonment in a *wildlife area*, as defined in section 2 of the *Wildlife Area Regulations*, a *migratory bird sanctuary*, as defined in subsection 2(1) of the *Migratory Bird Sanctuary Regulations* or a protected marine area established under subsection 4.1(1) of the *Canada Wildlife Act*, of one of the following:

- **(a)** a new electrical generating facility or electrical transmission line;
- **(b)** a new structure for the diversion of water, including a new dam, dyke or reservoir;
- **(c)** a new oil or gas facility or oil and gas pipeline;

- **(d)** a new mine or mill;
- **(e)** a new industrial facility;
- **(f)** a new canal or lock;
- **(g)** a new marine terminal;
- **(h)** a new railway line;
- **(i)** a new public road or parkway that is intended for the passage of motor vehicles;
- **(j)** a new aerodrome or runway;
- **(k)** a new waste management facility;
- **(l)** a new aquaculture facility.

2 The construction, in a national marine conservation area, of a new physical work if the construction is contrary to the management plan for that area tabled in or laid before each House of Parliament under subsection 9(1) of the *Canada National Marine Conservation Areas Act* or subsection 9(1) of the *Saguenay-St. Lawrence Marine Park Act*.

3 The disposal at sea, in a national marine conservation area, of *waste or other matter* as defined in subsection 122(1) of the *Canadian Environmental Protection Act, 1999* at a new disposal at sea site or a new part of an existing disposal at sea site.

4 The construction, operation, decommissioning and abandonment, in a national marine conservation area, of a new pipeline for carrying a substance other than water.

5 The construction, on land that is managed or administered by the Parks Canada Agency, of a new physical work, if the construction is

- **(a)** contrary to the management plan for that land that is tabled in each House of Parliament under subsection 32(1) of the *Parks Canada Agency Act*, subsection 11(1) of the *Canada National Parks Act*, or subsection 9(1) of the *Rouge National Urban Park Act*, or to a similar plan for the land that is approved by the Minister responsible for the Parks Canada Agency; or
- **(b)** contrary to one of the following guidelines that is published by the Parks Canada Agency and that applies to that land:
 - **(i)** the *Marmot Basin Ski Area Site Guidelines for Development and Use* dated February 2008,
 - **(ii)** the *Mt. Norquay Ski Area Site Guidelines for Development and Use* dated July 2011,
 - **(iii)** the *Lake Louise Ski Area Site Guidelines for Development and Use* dated July 2015,
 - **(iv)** the *Site Guidelines for Development and Use, Sunshine Village Ski Resort* dated December 14, 2018.

6 The construction, operation, decommissioning and abandonment, in a national park, of a new dam or structure for the diversion of water for the purpose of supplying water outside the park, of recreation or of electrical power generation.

7 The construction, operation, decommissioning and abandonment, in a national park, of a structure that is required to implement a new agreement made under paragraph 10(2)(b) of the *Canada National Parks Act*.

8 The expansion, in a national park, of the water supply capacity of a structure that was constructed to implement an agreement made under paragraph 10(2)(b) of the *Canada National Parks Act* by more than 20%.

9 The construction, operation, decommissioning and abandonment, in Yoho National Park of Canada, Kootenay National Park of Canada, Banff National Park of Canada or Jasper National Park of Canada, outside of a commercial ski area referred to in Schedule 5 to the *Canada National Parks Act* and of a park community, of a new commercial development that requires the disposal or occupation of land that was not previously disposed of for the purpose of a commercial development with the same or a similar purpose or occupied by such a commercial development, if that new commercial development has not been subject to strategic environmental assessment and public review as part of the park management plan tabled in each House of Parliament under subsection 11(1) of the *Canada National Parks Act*.

10 The expansion, in Yoho National Park of Canada, Kootenay National Park of Canada, Banff National Park of Canada or Jasper National Park of Canada, outside of a commercial ski area referred to in Schedule 5 to the *Canada National Parks Act* and of a park community, of an existing commercial development that requires the disposal or occupation of land that was not previously disposed of for the purpose of a commercial development with the same or a similar purpose or occupied by such a commercial development, if that existing commercial development has not been subject to strategic environmental assessment and public review as part of a park management plan tabled in each House of Parliament under subsection 11(1) of the *Canada National Parks Act*.

11 The construction, operation, decommissioning and abandonment, in a national park, of either of the following:

- **(a)** a new railway line;
- **(b)** a new public road or parkway that is intended for the passage of motor vehicles.

Defence

12 The low-level flying of military fixed-wing jet aircraft, for more than 150 days in a calendar year, as part of a training program, at an altitude below 330 m above ground level on a route or in an area that was not established before October 7, 1994 by or under the authority of the Minister of National Defence or the Chief of the Defence Staff as a route or area set aside for low-level flying training.

13 The construction and operation of a new military base or military station that is established for more than 12 consecutive months.

14 The expansion of an existing military base or military station, if the expansion would result in an increase in the area of the military base or military station of 50% or more.

15 The decommissioning and abandonment of an existing military base or military station.

16 The construction, operation, decommissioning and abandonment, outside an existing military base, of a new military training area, range or test establishment for training or weapons testing that is established for more than 12 consecutive months.

17 The testing of military weapons for more than five days in a calendar year in an area other than a training area, range or test establishment established before October 7, 1994 by or under the authority of the Minister of National Defence for the testing of weapons.

Mines and Metal Mills

18 The construction, operation, decommissioning and abandonment of one of the following:

- **(a)** a new coal mine with a coal production capacity of 5 000 t/day or more;
- **(b)** a new diamond mine with an ore production capacity of 5 000 t/day or more;
- **(c)** a new metal mine, other than a rare earth element mine, placer mine or uranium mine, with an ore production capacity of 5 000 t/day or more;
- **(d)** a new metal mill, other than a uranium mill, with an ore input capacity of 5 000 t/day or more;
- **(e)** a new rare earth element mine with an ore production capacity of 2 500 t/day or more;
- **(f)** a new stone quarry or sand or gravel pit with a production capacity of 3 500 000 t/year or more.

19 The expansion of an existing mine, mill, quarry or sand or gravel pit in one of the following circumstances:

- **(a)** in the case of an existing coal mine, if the expansion would result in an increase in the area of mining operations of 50% or more and the total coal production capacity would be 5 000 t/day or more after the expansion;
- **(b)** in the case of an existing diamond mine if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore production capacity would be 5 000 t/day or more after the expansion;
- **(c)** in the case of an existing metal mine, other than a rare earth element mine, placer mine or uranium mine, if the expansion would result in an increase in the

area of mining operations of 50% or more and the total ore production capacity would be 5 000 t/day or more after the expansion;

- **(d)** in the case of an existing metal mill, other than a uranium mill, if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore input capacity would be 5 000 t/day or more after the expansion;
- **(e)** in the case of an existing rare earth element mine if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore production capacity would be 2 500 t/day or more after the expansion;
- **(f)** in the case of an existing stone quarry or sand or gravel pit if the expansion would result in an increase in the area of mining operations of 50% or more and the total production capacity would be 3 500 000 t/year or more after the expansion.

20 The construction, operation and decommissioning, outside the licensed boundaries of an existing uranium mine, of a new uranium mine with an ore production capacity of 2 500 t/day or more.

21 The expansion of an existing uranium mine, if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore production capacity would be 2500 t/day or more after the expansion.

22 The construction, operation and decommissioning, outside the licensed boundaries of an existing uranium mill, of a new uranium mill with an ore input capacity of 2 500 t/day or more.

23 The expansion of an existing uranium mill, if the expansion would result in an increase in the area of mining operations of 50% or more and the total ore input capacity would be 2 500 t/day or more after the expansion.

24 The construction, operation, decommissioning and abandonment of a new oil sands mine with a bitumen production capacity of 10 000 m³/day or more.

25 The expansion of an existing oil sands mine, if the expansion would result in an increase in the area of mining operations of 50% or more and the total bitumen production capacity would be 10 000 m³/day or more after the expansion.

Nuclear Facilities, Including Certain Storage and Long-term Management or Disposal Facilities

26 The construction, operation and decommissioning of one of the following:

- **(a)** a new facility for the processing, reprocessing or separation of isotopes of uranium, thorium, or plutonium, with a production capacity of 100 t/year or more;
- **(b)** a new facility for the manufacture of a product derived from uranium, thorium or plutonium, with a production capacity of 100 t/year or more;

- **(c)** a new facility for the processing or use, in a quantity greater than 10^{15} Bq per calendar year, of nuclear substances with a half-life greater than one year, other than uranium, thorium or plutonium.

27 The site preparation for, and the construction, operation and decommissioning of, one or more new nuclear fission or fusion reactors if

- **(a)** that activity is located within the licensed boundaries of an existing Class IA nuclear facility and the new reactors have a combined thermal capacity of more than 900 MWth; or
- **(b)** that activity is not located within the licensed boundaries of an existing Class IA nuclear facility and the new reactors have a combined thermal capacity of more than 200 MWth.

28 The construction and operation of either of the following:

- **(a)** a new facility for the storage of irradiated nuclear fuel or nuclear waste, outside the licensed boundaries of an existing *nuclear facility*, as defined in section 2 of the *Nuclear Safety and Control Act*, other than a facility for the on-site storage of irradiated nuclear fuel or nuclear waste associated with one or more new fission or fusion reactors that have a combined thermal capacity of less than 200 MWth;
- **(b)** a new facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste.

29 The expansion of an existing facility for the long-term management or disposal of irradiated nuclear fuel or nuclear waste, if the expansion would result in an increase in the area of the facility, at ground level, of 50% or more.

Oil, Gas and Other Fossil Fuels

30 The construction, operation, decommissioning and abandonment of a new fossil fuel-fired power generating facility with a production capacity of 200 MW or more.

31 The expansion of an existing fossil fuel-fired power generating facility, if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 200 MW or more.

32 The construction, operation, decommissioning and abandonment of a new *in situ* oil sands extraction facility that has a bitumen production capacity of 2 000 m³/day or more and that is

- **(a)** not within a province in which provincial legislation is in force to limit the amount of greenhouse gas emissions produced by oil sands sites in the province; or
- **(b)** within a province in which provincial legislation is in force to limit the amount of greenhouse gas emissions produced by oil sands sites in the province and that limit has been reached.

33 The expansion of an existing *in situ* oil sands extraction facility, if the expansion would result in an increase in bitumen production capacity of 50% or more and a total bitumen production capacity of 2 000 m³/day or more, if the facility is

- **(a)** not within a province in which provincial legislation is in force to limit the amount of greenhouse gas emissions produced by oil sands sites in the province; or
- **(b)** within a province in which provincial legislation is in force to limit the amount of greenhouse gas emissions produced by oil sands sites in the province and that limit has been reached.

34 The drilling, testing and abandonment, in an area set out in one or more exploration licences issued in accordance with the *Canada Petroleum Resources Act*, the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act* or the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, of offshore exploratory wells in the first *drilling program*, as defined in subsection 1(1) of the *Canada Oil and Gas Drilling and Production Regulations*, SOR/2009-315.

35 The construction, installation and operation of a new offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas.

36 The decommissioning and abandonment of an existing offshore floating or fixed platform, vessel or artificial island used for the production of oil or gas that is proposed to be disposed of or abandoned offshore or converted on site to another role.

37 The construction, operation, decommissioning and abandonment of one of the following:

- **(a)** a new oil refinery, including a heavy oil upgrader, with an input capacity of 10 000 m³/day or more;
- **(b)** a new facility for the production of liquid petroleum products from coal with a production capacity of 2 000 m³/day or more;
- **(c)** a new sour gas processing facility with a sulphur inlet capacity of 2 000 t/day or more;
- **(d)** a new facility for the liquefaction, storage or regasification of liquefied natural gas, with a liquefied natural gas processing capacity of 3 000 t/day or more or a liquefied natural gas storage capacity of 136 000 m³ or more;
- **(e)** a new petroleum storage facility with a storage capacity of 500 000 m³ or more;
- **(f)** a new natural gas liquids storage facility with a storage capacity of 100 000 m³ or more.

38 The expansion of one of the following:

- **(a)** an existing oil refinery, including a heavy oil upgrader, if the expansion would result in an increase in input capacity of 50% or more and a total input capacity of 10 000 m³/day or more;

- **(b)** an existing facility for the production of liquid petroleum products from coal, if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 2 000 m³/day or more;
- **(c)** an existing sour gas processing facility, if the expansion would result in an increase in sulphur inlet capacity of 50% or more and a total sulphur inlet capacity of 2 000 t/day or more;
- **(d)** an existing facility for the liquefaction, storage or regasification of liquefied natural gas, if the expansion would result in an increase in the liquefied natural gas processing or storage capacity of 50% or more and a total liquefied natural gas processing capacity of 3 000 t/day or more or a total liquefied natural gas storage capacity of 136 000 m³ or more, as the case may be;
- **(e)** an existing petroleum storage facility, if the expansion would result in an increase in storage capacity of 50% or more and a total storage capacity of 500 000 m³ or more;
- **(f)** an existing natural gas liquids storage facility, if the expansion would result in an increase in storage capacity of 50% or more and a total storage capacity of 100 000 m³ or more.

Electrical Transmission Lines and Pipelines

39 The construction, operation, decommissioning and abandonment of either of the following:

- **(a)** a new international electrical transmission line with a voltage of 345 kV or more that requires a total of 75 km or more of new right of way;
- **(b)** a new interprovincial power line designated by an order under section 261 of the *Canadian Energy Regulator Act*.

40 The construction, operation, decommissioning and abandonment of a new offshore oil and gas pipeline, other than a *flowline* as defined in subsection 2(1) of the *Canada Oil and Gas Installations Regulations*.

41 The construction, operation, decommissioning and abandonment of a new *pipeline*, as defined in section 2 of the *Canadian Energy Regulator Act*, other than an offshore pipeline, that requires a total of 75 km or more of new right of way.

Renewable Energy

42 The construction, operation, decommissioning and abandonment of one of the following:

- **(a)** a new hydroelectric generating facility with a production capacity of 200 MW or more;

- **(b)** a new in-stream tidal power generating facility with a production capacity of 15 MW or more;
- **(c)** a new tidal power generating facility that is not an in-stream tidal power generating facility.

43 The expansion of one of the following:

- **(a)** an existing hydroelectric generating facility if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 200 MW or more;
- **(b)** an existing in-stream tidal power generating facility, if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 15 MW or more;
- **(c)** an existing tidal power generating facility that is not an in-stream tidal power generating facility, if the expansion would result in an increase in production capacity of 50% or more.

44 The construction, operation, decommissioning and abandonment in an offshore area or in boundary water of a new wind power generating facility that has 10 or more wind turbines.

45 The expansion in an offshore area or in boundary water of an existing wind power generating facility, if the expansion would result in an increase in production capacity of 50% or more and a total number of wind turbines of 10 or more.

Transport

46 The construction, operation, decommissioning and abandonment of one of the following:

- **(a)** a new aerodrome with a runway length of 1 000 m or more;
- **(b)** a new aerodrome that is capable of serving aircraft of Aircraft Group Number IIIA or higher;
- **(c)** a new runway at an existing aerodrome with a length of 1 000 m or more.

47 The operation of an existing runway

- **(a)** that was not capable of serving aircraft of Aircraft Group Number IIIA and becomes capable of serving aircraft of Aircraft Group Number IIIA or higher; or
- **(b)** that was capable of serving aircraft of an Aircraft Group Number IIIA or higher and becomes capable of serving aircraft of any higher Aircraft Group Number.

48 The construction, operation, decommissioning and abandonment of either of the following:

- **(a)** a new international or interprovincial bridge or tunnel;
- **(b)** a new bridge over the St. Lawrence Seaway.

49 The construction, operation, decommissioning and abandonment of either of the following:

- **(a)** a new canal;
- **(b)** a new lock or associated structure that controls water levels in navigable water.

50 The construction, operation, decommissioning and abandonment of a new permanent causeway with a continuous length of 400 m or more through navigable water.

51 The construction, operation, decommissioning and abandonment of a new all-season public highway that requires a total of 75 km or more of new right of way.

52 The construction, operation, decommissioning and abandonment of a new marine terminal designed to handle ships larger than 25 000 DWT.

53 The expansion of an existing marine terminal, if the expansion requires the construction of a new berth designed to handle ships larger than 25 000 DWT and, if the berth is not a permanent structure in the water, the construction of a new permanent structure in the water.

54 The construction, operation, decommissioning and abandonment of either of the following:

- **(a)** a new railway line that is capable of carrying freight or of carrying passengers between cities and requires a total of 50 km or more of new right of way;
- **(b)** a new railway yard with a total area of 50 ha or more.

55 The expansion of an existing railway yard, if the expansion would result in an increase of its total area by 50% or more and a total area of 50 ha or more.

Hazardous Waste

56 The construction, operation, decommissioning and abandonment of a new facility that is not more than 500 m from a natural water body and is used exclusively for the treatment, incineration, disposal or recycling of hazardous waste.

57 The expansion of an existing facility that is not more than 500 m from a natural water body and is used exclusively for the treatment, incineration, disposal or recycling of hazardous waste, if the expansion would result in an increase in hazardous waste input capacity of 50% or more.

Water Projects

58 The construction, operation, decommissioning and abandonment of a new dam or dyke on a natural water body, if the new dam or dyke would result in the creation of a reservoir with a surface area that would exceed the annual mean surface area of the natural water body by 1 500 ha or more.

59 The expansion of an existing dam or dyke on a natural water body, if the expansion would result in an increase in the surface area of the existing reservoir of 50% or more and an increase of 1 500 ha or more in the annual mean surface area of that reservoir.

60 The construction, operation, decommissioning and abandonment of a new structure for the diversion of 10 000 000 m³/year or more of water from a natural water body into another natural water body.

61 The expansion of an existing structure for the diversion of water from a natural water body into another natural water body, if the expansion would result in an increase in diversion capacity of 50% or more and a total diversion capacity of 10 000 000 m³/year or more.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations.)

Executive summary

Issues: The new *Impact Assessment Act* (IAA) replaces the previous *Canadian Environmental Assessment Act, 2012* (CEAA 2012) in order to support public trust, protect the environment, advance reconciliation with Indigenous peoples, so that good projects get built and create jobs and economic opportunities for Canadians.

Under the IAA, federal impact assessments are done on designated projects, which are designated either by regulation (or by the Minister of Environment and Climate Change). The *Physical Activities Regulations* (commonly known as the Project List) is the regulation that designates those projects. It provides clarity and certainty as to which projects are subject to the IAA and is required to properly implement the federal impact assessment process. The Government committed to updating the Project List.

Description: The Project List prescribes the physical activities that constitute a “designated project” which may require an impact assessment under the IAA. It consists of a list of physical activities with, in some cases, associated size thresholds or exemption criteria, for both new projects and expansion of existing projects. Any individual project that matches the description of a physical activity set out in an entry on the Project List would be a designated project and may be subject to the impact assessment provisions of the IAA.

Rationale: The objective of the Project List is to identify those major projects with the greatest potential for adverse effects on areas of federal jurisdiction related to the environment, so that they can enter into the impact assessment process. The Project

List was developed using a criteria-based approach, using the previous list under the CEAA 2012 as a starting point, in consultation with expert government departments. A Discussion Paper on the Proposed Project List was published for public consultation in May 2019. The changes to the Project List are not expected to significantly change the total number of projects that are subject to federal impact assessment annually compared to the number under the CEAA 2012. The Agency's analysis suggests there would likely be a small decrease in the number of projects that may be required to undergo federal impact assessment on an annual basis (up to five fewer projects per year).

Issues

The IAA replaces the CEAA 2012 and establishes an impact assessment process to serve as a project planning tool, which takes into consideration the whole range of environmental, health, social and economic effects of projects. The new regime shifts away from decisions based solely on the significance of adverse environmental effects and will focus instead on whether the adverse effects in areas of federal jurisdiction are in the public interest. The Project List is required for implementation of the IAA, as it prescribes projects that may be subject to the impact assessment provisions of the IAA.

Background

In the 2015 Speech from the Throne, the Government of Canada committed to introducing a new environmental assessment process. The government launched a comprehensive process in June 2016 to review existing laws and seek Canadians' input on how to improve environmental and regulatory processes. The review involved over 14 months of public, stakeholder and Indigenous consultations, expert panel reports and parliamentary studies and two parliamentary committees who heard from industry representatives, provincial and territorial authorities, Indigenous peoples, scientists, academics and the public from coast to coast.

As a result of the review, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts* (Bill C-69) received royal assent on June 21, 2019, with the IAA set to come into force on a date to be determined by the Governor in Council.

The new impact assessment process will be led by the Impact Assessment Agency of Canada (the Agency). Similar to the process under the CEAA 2012, impact assessments under the IAA are conducted for proposed physical activities that are "designated," either through regulation (i.e. the Project List) or by the Minister of the Environment and Climate Change. Under the IAA, the authority to make the regulation that designates physical activities is with the Governor in Council.

The Minister of Environment and Climate Change continues to have the power to designate projects not on the Project List if, in the Minister's opinion, the project may

cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or if public concern related to those effects warrants a designation.

Projects that are not designated on the Project List will continue to be subject to other regulatory regimes, including assessment and oversight by provinces or territories or by a federal lifecycle regulator, where required.

Objective

The objective of the Project List is to capture those major projects with the greatest potential for adverse effects in areas of federal jurisdiction related to the environment, so that they can enter into the impact assessment process. The Project List also provides certainty and clarity to proponents as to which projects are subject to the IAA.

Description

The Project List prescribes the physical activities that constitute a “designated project” which may require an impact assessment under the IAA. It consists of a list of physical activities with, in some cases, associated size thresholds, including thresholds for both new and existing projects. Most entries contain thresholds in order to focus on those projects with the greatest potential for effects. To provide clarity, thresholds use metrics that are known during the planning phase (e.g. measures of size such as production capacity or project area).

Any individual project that matches the description of a project type and exceeds the established threshold set out in the Project List would be a designated project and would be subject to the IAA. As an example, based on the Project List entry included in the regulation, a new hydroelectricity-generating project with a planned production capacity of 300 MW would be a designated project, as it exceeds the 200 MW threshold.

Some project types may also have conditions that would exclude certain projects from being a designated project. For example, an offshore exploratory well proposed in an area with a completed regional assessment, and which meets the conditions for exemption set out by the Minister, would not be a designated project, and would not be subject to the IAA. These projects would not enter into the early planning phase.

Schedule to the Regulations

The Schedule to the Project List contains entries that describe the types of physical activities considered “designated projects” for the purpose of the IAA.

The previous Project List under the CEAA 2012 provided a starting point. The following section details the changes in the new Project List under IAA.

a. New project types added to the Project List

The following new project types were added based on their potential for adverse environmental effects in areas of federal jurisdiction and are now designated projects subject to the IAA.

- New wind power–generating facility with 10 or more wind turbines that is located in an offshore area (as defined under the *Canadian Energy Regulator Act*) or boundary waters (as defined under the *Canada Water Act*); or

expansion of an existing wind power–generating facility that is located in an offshore area (as defined under the *Canadian Energy Regulator Act*) or boundary waters (as defined under the *Canada Water Act*) that would result in an increase in the number of turbines of 50% or more and a total of 10 or more wind turbines.

However, there is an exemption for projects proposed in an area for which a regional assessment has been carried out when the Minister has identified the project type by separate regulation per paragraph 112(1)(a.2) of the IAA and the proposed project meets the conditions for exemption established by the Minister in those regulations. If these criteria are met, these projects would not be designated projects.

As there is currently no regional assessment for offshore wind power projects, this exemption condition would only apply in the future, if and when, an appropriate regional assessment is completed.

- New *in situ* oil sands extraction facility (where bitumen is extracted in place rather than by mining) that has bitumen production capacity of 2 000 m³ per day or more; or

expansion of an existing *in situ* oil sands facility that would result in an increased production capacity of 50% or more and a total bitumen production capacity of 2 000 m³ per day or more.

However, there is an exemption for facilities in a province that has legislation in force to limit the amount of greenhouse gases released from oil sands sites, provided that provincial limit has not been reached.

- New permanent causeway that is 400 m in continuous length or more through navigable water (as defined in section 2 of the *Canadian Navigable Waters Act*).
- New entries for federal protected areas that expand both the types of protected areas, and the range of activities in them that are now subject to the IAA, in order to support their conservation objectives, including
 - new physical work and specific activities in national parks or land administered or managed by the Parks Canada Agency, as described in the regulation;

- new physical work and specified activities in national marine conservation areas, as described in the regulation; and
- the previous entry for projects within a wildlife area (as defined in section 2 of the *Wildlife Area Regulations*) or a migratory bird sanctuary has been expanded to now include protected marine areas established under the *Canada Wildlife Act*. The list of new project types subject to the IAA if proposed in one of these protected areas or a migratory bird sanctuary now includes aquaculture facility.

b. Project types with changed descriptions

These project types continue to be designated projects under IAA, but the descriptions in the entries have been changed from what it was under the previous CEAA 2012 to better focus on projects with the greatest potential for adverse environmental effects in areas of federal jurisdiction.

- For electrical transmission lines, changes align the Project List with the definition of transmission lines under *Canadian Energy Regulator Act* to maintain the same treatment of these projects as under the CEAA 2012. Under the CEAA 2012, transmission lines were linked to the National Energy Board when they were “regulated under the *National Energy Board Act* or the *Canada Oil and Gas Operations Act*.”
- The entry for new marine terminal designed to handle ships larger than 25 000 DWT no longer contains exemptions for when the terminal “is located on lands that are routinely and have been historically used as a marine terminal or that are designated for such use in a land-use plan that has been the subject of public consultation.” Historical use may not be consistent with the proposed current use and there are no consistent requirements for land-use plans.

A marine terminal expansion entry is also added to clarify what kinds of expansion to existing projects would require assessment, namely those that involve adding a new berth for ships larger than 25 000 DWT and that involves a new permanent structure in the water.

- The entry for new railway yard now has a threshold based on total area (50 hectares or more) rather than on the length of track.

An expansion entry was added to capture an expansion of an existing railway yard that would result in 50% increase in area or more and a total area of 50 hectares or more.

- The entry for new aerodrome is now focused on those designed to handle larger aircraft defined as a new

(a) aerodrome with a runway length of 1 000 m or more;

(b) aerodrome that is capable of serving larger aircraft (Aircraft Group Number IIIA or higher); or

(c) runway with a length of 1 000 m or more at an existing aerodrome.

An expansion entry was added for existing runways that are expanded to serve aircraft meeting certain characteristics (Aircraft Group Number IIIA or higher).

This is a change from the previous entry, which captured all airports, aerodromes located in built-up areas of cities and towns and all-season runways of 1 500 m or more.

- The entry on liquefied petroleum gas storage facility is now focused on natural gas liquids.
- The entry on fossil fuel–fired electrical generating facility is now focused on any fossil fuel–fired power generating facility and would capture both facilities generating electricity and those generating mechanical power.
- For a new hazardous waste facility, only a facility proposed to be built within 500 m of a natural waterbody would be subject to the IAA. The expansion entry was similarly changed.
- For offshore exploratory wells, the focus remains on “the first drilling program in an area set out in one or more exploration licences issued” in accordance with
 - the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act*,
 - the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, or
 - the *Canada Petroleum Resources Act*.

However, there is an exemption for projects proposed in an area for which a regional assessment has been carried out when the Minister has identified the project type by separate regulation per paragraph 112(1)(a.2) of the IAA and the proposed project meets the conditions for exemption established by the Minister in those regulations. If these criteria are met, these projects would not be designated projects.

c. Project types with decreased threshold

For some project types, the description remains the same as under the CEAA 2012, but the size threshold above which they are considered to be designated projects was “decreased” under the IAA in recognition of uncertainty of the potential effects for these novel project types.

- The production capacity threshold for in-stream tidal power–generating facility was decreased from 50 MW to 15 MW. The same change was made in the corresponding expansion entry.
- The production capacity threshold of 5 MW for a tidal power–generating facility, other than an in-stream tidal power facility, was removed (i.e. any project regardless of size would be subject to the IAA). This would include, for example, tidal range technology that uses dams, lagoons and barrages to trap water. The same change was made in the corresponding expansion entry.

d. Project types with increased threshold

For some project types, the description remains the same as under the CEEA 2012, but the size threshold above which they are considered to be designated projects was “increased” under the IAA to better focus on major projects with the greatest potential for adverse environmental effects in areas of federal jurisdiction.

- The threshold for international or interprovincial pipelines, excluding offshore pipelines, was increased from 40 km of new pipe to 75 km of pipeline in new right of way.
- The threshold for all-season public highway was increased from 50 km to 75 km of new right of way.
- For rail, the focus was narrowed to address freight or intercity passenger railway line and the threshold was increased from 32 km to 50 km of new right of way.
- The threshold for all mining types, including metal mills, was increased to 5 000 t per day or more, with the exception of
 - rare earth element mines, uranium mines and uranium mills which had thresholds increased to 2 500 t per day, and
 - stone quarry or sand or gravel pits which maintained the existing threshold of 3 500 000 t per year.
- Gold mines are now treated the same as other metal mines (i.e. 5 000 t per day threshold), and no separate gold mine entry is needed.
- Nuclear fission or fusion reactor, or reactors, now have a threshold for cumulative thermal capacity of more than
 - 900 MWth, if on a site that is within the boundaries of an existing licensed Class IA nuclear facility, or
 - 200 MWth on a site that is not within the boundaries of an existing licensed Class IA nuclear facility.

Previously all nuclear reactors would have been designated projects, regardless of size and location.

In addition, the entry for a new facility for the storage of irradiated nuclear fuel or nuclear waste, which is not within a licensed, existing nuclear facility, was amended to exclude an on-site storage facility that is associated with new reactor(s) that have a combined capacity of less than 200 MWth.

e. Project Types removed from the Project List

The following project types under the CEAA 2012 are no longer included and are not designated projects under the IAA, as it was determined that they did not meet the threshold of projects with the greatest potential for effects in federal jurisdiction related to the environment.

- Decommissioning and abandonment of an existing pipeline, other than an offshore pipeline. These projects would continue to be regulated by the Canadian Energy Regulator and the effects associated with these phases would be assessed when a new pipeline project, that meets the threshold, is assessed.
- Railway line designed for trains that have an average speed of 200 km/h or more, as such projects are likely to be captured under the general railway line entry.
- New apatite mines and the expansion of existing apatite mines, as the effects of these mines are generally lower than those of other mining types.
- Expansion entries for facilities that process nuclear substances and for nuclear reactors. These projects would continue to be regulated by the Canadian Nuclear Safety Commission (CNSC), and the impact assessment process would add little value alongside their existing processes.

The remaining project types retained the same entry as under the CEAA 2012, although some had technical changes to the language used in the entry, including liquefied natural gas, dams and dykes, and canals and locks.

Changes to definitions

For some project types, associated definitions were changed to provide better clarity, including

- changes to the definition of new right of way to clarify that the intent is to address projects that are not alongside and contiguous to existing linear projects;
- changes to the definition of marine terminal to clarify the scope of its application to the marine terminal facility;
- the definition of hazardous waste does not include nuclear substances, domestic waste water or anything collected from households in the course of regular municipal waste collection services; and

- new definitions were added for boundary water, disposal at sea, international electrical transmission line, navigable water, national marine conservation area, national park, offshore area and park community, which cite the relevant Acts.

Transitional provisions

In addition to the transitional provisions included in the IAA, the regulation includes transitional provisions for projects on federal lands or outside Canada conducted under the CEAA 2012. These provisions would exclude these projects from the requirements of the IAA and see these reviews of these projects are continued and completed under the CEAA 2012 if, before the coming into force of the IAA, a federal authority has

- made a determination with respect to the project under section 67 or 68 of the CEAA 2012; or
- indicated in writing that it has commenced a review of the project in order to make such a determination.

Regulatory development

Consultation

Discussions on the Project List began during the government's review of the environmental assessment process, through consultation with stakeholders, Indigenous groups and the expert panel review, which led to the development of the IAA.

A Consultation Paper on Approach to Revising the Project List was published and made available online for public comment between February 8 to June 1, 2018. The comment period was extended from 60 days to over three months in response to calls from stakeholders that additional time was needed to respond. An email was sent out to stakeholders, including over 1 000 Indigenous groups, advising them of the opportunity to provide feedback on the approach. In total, almost 100 submissions were received from industry; Indigenous groups; environmental, non-governmental organizations; provinces and territories; the United States Environmental Protection Agency (U.S. EPA); and individual Canadians. The consultation paper sought comments on the proposed approach to creating the new Project List. Many submissions, however, also provided comments on specific project types, including on whether or not they should be included on the Project List and recommendations on thresholds and exclusion criteria. The consultation paper also sought and received feedback on the frequency for future reviews of the Project List.

In addition, officials from the Agency and other government departments held approximately 100 meetings to discuss different aspects of the IAA, including the Project List, with industry (including representatives from at least 15 large companies and 10 industry associations), Indigenous organizations (at least 35), environmental organizations (15) and provincial and territorial officials. As well, sessions on the

approach to revising the Project List were held with the Minister's Multi-Interest Advisory Committee (MIAC) that was established to provide advice on design and implementation of the IAA and consists of representatives from Indigenous communities; industry; environmental, non-governmental organizations, and with a network of environmental assessment practitioners from provinces and territories.

A public consultation on the Discussion Paper on the Proposed Project List was held from May 1 to May 31, 2019. As of June 7, 2019, the Agency had received 127 written submissions from Indigenous groups (34); industry (53); environmental, non-governmental organizations (20); provincial/territorial or municipal governments (6); and from individual Canadians (14). In addition, 32 meetings were held to directly engage on the proposed Project List.

During the consultation, differing views were heard on the objective of and the approach to creating the Project List. Comments were also received on specific project types to include or exclude and at what thresholds.

Indigenous governments and communities expressed disappointment and felt that the proposed Project List did not sufficiently address the changes they had suggested. Many called for increased engagement and more direct involvement for Indigenous peoples in developing the regulation and for more time for them to review and comment on the regulatory proposal. They opposed the focus on major projects with the greatest potential for environmental effects and not considering potential effects on Indigenous communities, lands and rights. Many recommended that thresholds not be used, as any project, regardless of size, has the potential for effects and should at least undergo a review to see if a full impact assessment is warranted. There were also concerns expressed that thresholds could encourage project splitting to avoid being subject to the IAA. They were concerned that for non-designated projects, there may be a lack of opportunity for meaningful engagement with Indigenous peoples.

Project specific comments included

- Recommended lower thresholds, especially for mining, pipelines and nuclear, with many calling for no thresholds for any project, regardless of size.
- Opposed to any exemptions for *in situ* oil sands projects, including where there is a legislated hard cap on greenhouse gas (GHG) emissions.
- Opposed to any exemption for offshore exploratory wells, including where there is a regional assessment.
- Recommended a greenhouse gas emissions trigger that designates a project where project-related GHG emissions may affect Canada's ability to meet its international commitments to reduce GHG emissions.
- Recommended adding entries for any projects that may have effects on Indigenous rights or cultural areas, protected areas, or species at risk.

Environmental groups expressed disappointment with the proposed Project List and viewed it as too narrow and missing many project types with potential environmental

effects. In the opinion of these groups, the approach should have considered a wider range of effects including effects on Indigenous communities and rights, and terrestrial species at risk. In general they called for lower thresholds, especially for mining, pipelines and nuclear. They also called for entries based on environmental effects (e.g. entry to capture all projects that emit greenhouse gases above a certain threshold) or to require all projects with significant federal involvement (e.g. regulation or funding) to be subject to the IAA. They also recommend addition of multiple new project types.

Project specific comments included

- Recommended lower thresholds for most entries, especially mining, nuclear and pipelines. It was noted that the treatment of tidal and wind energy projects was more stringent when compared to hydroelectric and fossil fuel projects, which they view as having much greater effects.
- Opposed to any exemptions for *in situ* oil sands projects, including where there is a legislated hard cap on greenhouse gas emissions.
- Opposed to any exemptions for offshore exploratory wells, including where there is a regional assessment.
- Recommended a GHG entry that would capture all projects that would emit beyond a set emissions threshold, and entries that would capture projects that impact protected areas or heritage sites.

Industry stakeholders were generally supportive of the approach to focus on projects with the greatest potential for adverse effects and on providing clarity when the IAA applies. Most recommended that projects already regulated by provinces or for which standard mitigations were already routinely used be excluded from the Project List. Some industry sectors, in particular, oil and gas and mining sectors, questioned the consistency of the application of the approach across project types, and perceived their industry as over-represented on the Project List. They generally called for increased thresholds (e.g. for pipelines, small modular reactors, tidal, wind) or to focus on only large or nationally significant projects. They also sought clarification or provided advice on definitions for terms used in the regulations.

Project specific comments included

- Stated there is no evidence to support a lower threshold for uranium and rare earth element mines compared to other metal mines.
- Opposed to the inclusion of *in situ* oil sands projects, even with an exemption where there is a legislated hard cap on GHG emissions.
- Recommended removing natural gas-fired electricity, co-generation projects and upgraders (refineries) from the Project List.
- Recommended removing offshore exploratory wells and requested more information on how the exemption for regional assessments would work.

The final Project List represents those project types that were determined to have the greatest potential for adverse effects in areas of federal jurisdiction related to the environment, while also providing the required clarity as to when a project is subject to the IAA.

In some instances, the proposed Project List detailed in the discussion paper was changed in response to comments received during the consultation, in order to provide greater clarity and eliminate ambiguity, to avoid unintentionally capturing small projects with minimal effects (e.g. the entry for causeways and nuclear storage facilities), and to provide transitional measures for projects on federal lands that are now designated projects under the IAA or are undergoing a federal lands review under the CEAA 2012.

Exemption from prepublication

To meet the Government's objective to implement the new impact assessment process by summer 2019, an exemption from the regulatory policy requirement to publish draft regulations in the *Canada Gazette*, Part I, was granted by the Treasury Board. In lieu of publication in the *Canada Gazette*, Part I, a Discussion Paper on the Proposed Project List was published for public consultation from May 1 to May 31, 2019, in order to provide stakeholders with an opportunity to provide feedback on the regulatory details of the Project List.

Modern treaty obligations and Indigenous engagement and consultation

This Assessment of Modern Treaty Implications builds on the assessment completed for the *Impact Assessment Act* conducted in 2018. It concluded that there would be positive implications for modern treaties from the new impact assessment process resulting from tools to enable harmonization with treaty processes, better consultation processes, increased ability to identify and resolve issues, and a more consistent approach to impact assessments and opportunities for Indigenous involvement. This assessment, however, noted that revisions to the Project List may have implications for alignment between application of the IAA and treaty processes.

There are currently 30 modern treaties and self-government arrangements across the country, of which several have provisions related to environmental, impact or development assessment. Of note, the application of federal environmental assessment legislation is very limited for over half of the treaties, especially in the territories. These treaties were reviewed to determine if the Project List implicated any treaty obligations as a result of differences or overlap with treaties that have their own project list.

The Agency also individually notified each modern treaty and self-governing group of the consultation on the Discussion Paper on the Proposed Project List and offered to meet with them, if interested. Submissions were received from seven groups: the Nunatsiavut Government, the Nisga'a Lisims Government, the Makivik Corporation, the James Bay Cree Advisory Committee on the Environment, the Inuvialuit Game Council, Naskapi Nation of Kawawachikamach, and the First Nations of Maa-Nulth Treaty Society.

Concerns raised by these modern treaty and self-governing groups included the following:

- Regulations should not impede the implementation of modern treaties and decisions should be made such that they are in compliance with any applicable provisions of modern treaties.
- There should be a mechanism to request or require the federal impact assessment when a project is located or impacting on traditional territory, or where there is a potential for effects on treaty rights.
- Failure to designate projects that may take place on traditional territory may limit the opportunity for engagement with Indigenous communities and for collaboration between the federal and Indigenous governments.

The assessment did not identify any modern treaty obligations related directly to the Project List. Any potential implications from differences in lists will be addressed by the federal IAA under which the Project List will be implemented, as follows:

- (a) Where there are parallel assessments under the IAA and modern treaties, there are tools for harmonization and cooperation with Indigenous jurisdictions under the *Information and Management of Time Limits Regulations*.
- (b) For designated projects, where treaty partners may believe assessments should be required to address treaty obligations and impacts, they will have the opportunity in early planning to consult on the need for an assessment.
- (c) For non-designated projects, where treaty partners may believe assessments should be required to address treaty obligations or impacts, they will have the ability to request that the project be designated by the Minister. The IAA provides the Minister with the authority to designate projects if, in the Minister's opinion, the project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or if public concerns related to those effects warrant a designation.

The IAA also includes a general clause, which would ensure that any existing treaty rights would not be affected by the introduction of the new legislation and supporting regulations and policy.

For greater certainty, nothing in this Act is to be construed as abrogating or derogating from the protection provided for the rights of the Indigenous peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.

The Act also provides for the possibility to have it not apply in respect of physical activities to be carried out wholly within lands described in Schedule 2 (certain lands that are subject to a Land Claim Agreement which may be added in future to Schedule 2 by the Governor in Council). This would allow Canada, in consultation with treaty partners, to declare the Act non-applicable in treaty territories, for example in cases of significant duplication of processes.

In addition, under section 109 of the IAA, the “Governor in Council may make regulations [...] (d) varying or excluding any requirement set out in this Act or the regulations as it applies to physical activities to be carried out

- (i) on reserves, surrendered lands or other lands that are vested in Her Majesty and subject to the *Indian Act*,
- (ii) on lands covered by land claim agreements referred to in section 35 of the *Constitution Act, 1982*.”

Instrument choice

A regulation is needed to provide clarity and certainty as to which projects are subject to the IAA and to properly implement the federal impact assessment process. Without the regulation, only projects designated by the Minister would undergo federal impact assessment if, in the Minister’s opinion, the project may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or if public concerns related to those effects warrant a designation.

Regulatory analysis

Costs and benefits

These regulations do not impose any direct costs on proponents. The regulations provide clarity and certainty to proponents as to which projects are subject to the IAA and may be required to undergo an impact assessment. There are no direct requirements imposed by the regulations, aside from directing projects of certain scale and size towards the impact assessment regime.

A designated project would enter into the early planning phase, which provides up to 180 days to determine whether or not an impact assessment is required and, if so, to support early engagement and assessment planning. Proponents are required to submit an initial project description at the outset of the planning phase, and a detailed project description along with a response to issues raised during early engagement. The Agency will then determine whether or not an assessment is required, relatively early in the planning phase. If the Agency determines that an impact assessment of the project is necessary, it will provide notice of the additional deliverables that are needed to conduct the impact assessment.

The *Information and Management of Time Limits Regulations* prescribe the information requirements for proponents during early planning and the impact assessment process, and the products the Agency would be required to deliver to proponents and to make public. Therefore, the costs to proponents or the Agency following on from designation under the Project List are associated with the requirements in the IAA or in the *Information and Management of Time Limits Regulations*. The costs and benefits

associated with the *Information and Management of Time Limits Regulations* have been assessed in the Regulatory Impact Analysis Statement of these Regulations.

It is not possible to predict with certainty the number of projects that will be subject to the IAA in the future, as new resource or other development projects are driven by economic conditions and other considerations that inform proponent decisions. The changes to the Project List are not expected to significantly change the total number of projects that are subject to federal impact assessment annually compared to the current situation under the CEEA 2012. Based on information available, the Agency's analysis suggests that there would likely be a small decrease in the number of projects that would be required to undergo federal impact assessment on an annual basis (up to five fewer projects per year). As a result, changes to the Project List, in and of itself, are not expected to increase overall costs.

Small business lens

Small business impacts are not anticipated as the projects identified in these regulations are large in scale and small businesses are unlikely to undertake a project that meets any of the project types described in the Regulation.

“One-for-One” Rule

The “One-for-One” Rule does not apply. The regulation will replace an existing one and will have no impact on administrative burden costs.

Regulatory cooperation and alignment

This regulation is not part of a proposal related to a work plan or commitment under a formal regulatory cooperation forum.

Impact assessment is one part of a larger regulatory landscape for addressing environmental effects, working alongside other regulatory processes at all levels of government, with complementary roles. Projects may be governed by provincial or territorial regulatory regimes that address environmental impacts along the life of the project or may undergo an environmental assessment at the provincial or territorial level. Projects are also subject to federal regulations or general prohibitions under, for example the *Fisheries Act*, the *Migratory Birds Convention Act, 1994*, the *Species at Risk Act* or the *Canadian Environmental Protection Act, 1999*. Federal lifecycle regulators, such as the Canadian Nuclear Safety Commission (CNSC), the Canada-Nova Scotia Offshore Petroleum Board and the Canada-Newfoundland & Labrador Offshore Petroleum Board or the Canadian Energy Regulator play a key role in assessing and authorizing nuclear, offshore oil and gas, and energy projects. Within this landscape, impact assessment provides a comprehensive and rigorous framework through which to review the projects with the greatest potential impacts.

The approach to developing the regulations recognized the role of impact assessment in the context of Canada's mature regulatory framework. For consideration for the

Project List, a project type must have the greatest potential for adverse environmental effects in one or more areas of federal jurisdiction. For project types that met this criterion, existing provincial regulatory regimes were considered when determining thresholds to focus on major projects where federal impact assessment would add the most value.

The IAA also provides for close cooperation with provinces and Indigenous governing bodies to support the objective of “one project, one assessment,” through the delegation of any part of an impact assessment, the joint establishment of a review panel or the substitution of another process for the impact assessment.

The IAA also allows for projects that require an impact assessment in both Canada and the United States to establish cooperation agreements to assess projects jointly. If a project is designated in Canada, but does not require a federal assessment in the United States and has potential for transboundary impacts, the Impact Assessment Agency has established procedures for the notification of, and consultation with, the United States on potential transboundary effects.

Projects that are not designated on the Project List will continue to be subject to other regulatory instruments and regimes, including assessment and oversight by a federal lifecycle regulator or provincial regulator, where required. Regardless of which jurisdiction leads on project reviews, the federal government would retain authorities in areas of federal jurisdiction.

Strategic environmental assessment

A strategic environmental assessment was conducted on the overall IAA. The results of this analysis indicated that the overall proposal will have a positive effect on the environment that is a result of strong federal impact assessment and regulatory processes. The objective of the Project List is to identify those projects with the greatest potential for adverse environmental effects in areas of federal jurisdiction, so those projects can undergo federal impact assessment to identify and mitigate environmental effects.

Gender-based analysis plus

The gender-based analysis plus (GBA+) that was conducted on the IAA as a whole found that the IAA is expected to have important positive effects on women, Indigenous peoples, and other vulnerable groups resulting from strengthened federal impact assessment processes. It is anticipated that the broadened approach to impact assessment that considers economic, health, gender and social effects will ensure that projects are considered in a holistic manner that recognizes the multiple pillars of sustainability and promotes sustainable development. Most importantly, the broadened approach to impact assessment also includes a GBA+ assessment for each project. The early engagement and planning phase will provide a forum for stakeholders, Indigenous groups, and the general public to identify environmental, social, health,

gender, and economic concerns from the outset of a project. Multiple measures would enable increased participation for the public and Indigenous groups.

Implementation, compliance and enforcement, and service standards

Implementation

This regulation comes into effect on the date that the *Impact Assessment Act* comes into force.

Transitional provisions included in the IAA will govern how projects that had already started under the CEAA 2012 will be addressed under the IAA. Additional transitional provisions to address projects on federal lands, as described above, have been added to this regulation.

Compliance and enforcement

The IAA prohibits a proponent of a designated project from carrying out any activity associated with a designated project unless it meets the conditions established in section 7 of the Act.

The Agency is responsible for promoting, monitoring and facilitating compliance with the IAA and any decision statement issued by the Minister of the Environment. Where projects are also regulated by lifecycle regulators (Canadian Energy Regulator, Canadian Nuclear Safety Commission and offshore boards), there are mechanisms in the Act to provide for compliance and enforcement by these bodies for matters within their mandates.

The Agency raises awareness of the IAA requirements by offering education and training opportunities, doing outreach, and providing information. Engagement was conducted on the new Project List Regulations, which included groups that may be subject to the new regulations. The Agency also has an engagement strategy in place to promote the coming into force of the IAA. Compliance promotion is also a part of the Agency's day-to-day business. This includes sharing information about the IAA during meetings with proponents, federal departments and agencies, provinces, territories, Indigenous governments and Indigenous peoples, industry, environmental groups and other interested parties.

Given the circumstances and subject to the enforcement officer's discretion, the following instruments are available to respond to alleged violations of the IAA:

- notice of non-compliance;
- orders;
- injunctions; and

- prosecutions.

If prosecution of an alleged offence of the IAA leads to an accused person pleading guilty or being found guilty at the conclusion of their trial, fines are the only penalty provided for in the IAA.

Service standards

There are no service standards associated with this Regulation. A designated project would be subject to timelines established in the IAA.