

Restricted Components Regulations
Posted in Canada Gazette Part I, August 12 – November 10, 2006
Received comments and concerns. Answers and resulting modifications.
Rev.: March 2008

The Government of Canada's Proposed Restricted Components Regulations and accompanying Regulatory Impact Analysis Statement were posted in Canada Gazette Part I from August 12 to November 10, 2006. During this time, a request letter from the Minister of Natural Resources Canada (NRCan) was sent out to the Canadian stakeholder community requesting their review of the proposed Regulations and subsequent submission of comments/concerns/questions to NRCan by November 10, 2006.

NRCan would like to thank all stakeholders for providing their timely and constructive input. Two hundred and twenty five (225) responses and a number of requests for clarification were received from a total of sixty two (62) stakeholders, mainly Canadian companies and associations. The stakeholders included individuals, corporations, Government Departments, and associations such as the Canadian Fertilizer Institute, the Canadian Chemical Producers Association, the Canadian Association of Chemical Distributors, the HP Panel of the American Chemistry Council, the Canadian Federation of Agriculture, the Canadian Sodium Chlorate Manufacturers Security Task Force, the Ontario Agri Business Association, the Canadian Association of Agri-Retailers, the Railway Association of Canada, the Canadian Laboratory Suppliers Association and the Institute of Makers of Explosives.

Summary of Response to Consultations

Comments received during consultations focused for the most part on clarifying the scope and text of the regulations, reducing administrative burden, and supporting effective transition.

The Department has undertaken a number of minor regulatory modifications to address these comments:

- UN numbers of restricted component chemical have been added (s. 2) and the previous Section 28 has been removed.

- Sales to authorized laboratories have been exempted from the Regulations (s. 3. (2)). Threshold limits have also been established under which record-keeping requirements related to purchasers would not apply (s. 19. (3)). The records retention time has been reduced from three to two years (s. 33).
- The purchaser identification document list has been extended to include purchaser registration under the Controlled Goods Regulations; and a business or corporation licence or registration number (s. 18. (c)).
- The obligation to report to the seller has been changed to a requirement for a purchaser or end-user to report to the police directly signs of theft at the end-user locations (s. 31. (b)).
- Section 31 has been modified to reflect that purchasers are recommended to store AN in secure locations when not attended and to report to the police any indications of theft or loss. AN re-sale is prohibited.
- The option to use seals to secure rail shipments has been added (s. 30. (2)). The requirement to call the train dispatcher to determine the status of a shipment has been replaced with that of the sender having the means to track the shipment on a daily basis (s. 30. (2)).
- A coming into force grace period of about three months (June 1, 2008) has been provided for ammonium nitrate and a one year grace period (March 1, 2009) will apply to the remaining eight restricted component chemicals (s. 35).
- The complete list of restricted components will be assessed every three years to ensure supportable relevance. This will take into account changes in technology and any evolution in security threat assessments of the restricted components and other chemicals. Depending on the outcomes of this assessment, both regulatory and non-regulatory responses will be considered.

Detailed Response to Consultations

The following matrix has been developed by NRCan to respond to the feedback received from the stakeholder community.

	Your Questions/Comments\ Concerns	Replies from NRCan
1	Suggest that UN numbers be added.	<p>Since the stakeholders understand the requirement to apply the Transportation of Dangerous Goods Regulations in the course of their work, the following UN numbers have been added to the chemical names.</p> <p>Hydrogen peroxide: UN 2015, 3149 Nitric acid: UN 2031, 2032 Nitromethane: UN 1261 Potassium Chlorate: UN 1485 Potassium Nitrate: UN 1486, 1499 Potassium perchlorate: UN 1489 Sodium Chlorate: UN 1495 Sodium Nitrate: UN 1498, 1499</p> <p>Also, the word “solid” has been added to the latter two.</p>
2	Suggest that CSA numbers be added	CSA numbers have not been added as many stakeholders have indicated that there is limited requirement and understanding of this classification.
3	What are the requirements for possession for substances other than AN?	Currently there is no intent to put additional requirements on the possession for the other eight (8) chemicals.
4	Will there be restrictions for min/max, size, exemptions (limited quantity exemption), thresholds or thresholds for quantities sold?	An exemption has been added for sales to authorized laboratories. Also, thresholds have been added for the sales record keeping.
5	Clarification requested regarding Sections 2(a), 2(b) and 2(c). Are the regulations intended only to apply to pure products?	Blends or dilutions to specified levels are included in the case of ammonium nitrate, hydrogen peroxide and nitric acid.

	What are the requirements for mixtures and/or blends?	Only the pure form is targeted for the other six chemicals.
6	The regulation should stipulate if liquid or solid AN or both are being addressed. In Section 2(a), what is the form of AN? Are bagged blended fertilizers or modified salts exempted?	Only solid AN is addressed as written in the regulations. Blended fertilizers are currently still exempted unless they contain more than 28% nitrogen (or more than 80% AN).
7	Request for more control on nitromethane.	No change at this time. However, since a chemical cannot simultaneously be considered both a restricted component and an explosive, the NRCAN is considering declaring nitromethane as an explosive under the <i>Explosives Act</i> which would require import permits from the Division. Before this change is brought into force, a new regulation would need to be developed, and posted in Canada Gazette. It is NRCAN's intent to follow up on this at a later date.
8	Requests that sodium nitrate and potassium nitrate be excluded from the list. Request to consider calcium nitrate as a restricted component.	<p>The subject of restricted components was studied by the U.S. National Research Council and the nine (9) chemicals appearing to pose the greatest risk were recommended for control. Calcium Nitrate was not included but sodium nitrate and potassium nitrate were.</p> <p>Additionally, three options were considered in addressing this request, i.e., exclusion of the two precursors; introducing a third tier with fewer regulatory controls; and retaining the precursors with measures to reduce burden and support compliance. A decision to retain these chemicals on the precursors list, the third option, was made following independent security threat assessments. These assessments both concluded that these chemicals continue to be of significant terrorist interest. These two chemicals are similarly regulated in the United States. Based on advice received from Canadian experts and the approach taken by international counterparts, the Department concluded that</p>

		<p>potassium nitrate and sodium nitrate remain within the scope of the Regulations.</p> <p>As an additional measure to address these concerns, the complete list of restricted components will be assessed every three years to ensure supportable relevance. This will take into account changes in technology and any evolution in security threat assessments of the restricted components and other chemicals. Depending on the outcomes of this assessment, both regulatory and non-regulatory responses will be considered.</p>
9	<p>Request for exemption for agricultural use -- 30% H2O2 be changed to 35% H2O2.</p> <p>Hydrogen peroxide (HP) being sold at 3% over the counter in medicinal preparations. Why would it be restricted at concentrations of 30% or higher?</p>	<p>No change at this time. NRCAN has determined it is acceptable to exclude the lower available concentrations as much effort is required in order to concentrate H2O2 to produce a useful concentration. There is a requirement for controls for 30% and higher since there is no need to concentrate it.</p>
10	<p>Should the substances be reported if they are not marketed as such in Canada?</p>	<p>Yes, the substances would have the same chemical composition regardless of the name brand.</p>
11	<p>Section 25 prohibits export as the United States and other foreign buyers would not have the identification (ID) documents currently listed.</p>	<p>Export is not prohibited but identification is required hence the inclusion of s. 17. (c) & s. 25. (c): non-Canadian ID will also be acceptable as identification if it contains a photo.</p>
12	<p>Clarification requested on whether Canadian exporters need to enroll.</p>	<p>Since an exporter is a seller, s/he needs to enroll.</p>
13	<p>Clarification requested on whether import is controlled.</p> <p>Are entities covered if they just import HP into Canada?</p> <p>The definition of seller doesn't adequately cover the situation of an organization in Canada that imports a restricted component for their own use. Also, does a farmer who</p>	<p>Under the new regulations, an end-user importing for his or her own personal use would not be required to enroll. However, all other vendors importing for the purpose of sale need to enroll.</p>

	<p>imports directly for his own use need to enroll?</p> <p>Because of the fees linked in the Hazmat, would US importers need to enroll if Canada does not ask for fees.</p>	
14	<p>Clarification was requested on requirements for identification verification. More identification options were also requested.</p>	<p>In addition to the three possible identification documents previously listed, an additional two types of identification documents will be acceptable:</p> <ul style="list-style-type: none"> - A Purchaser registration which is registered under the <i>Controlled Goods Regulations</i>; and - A business or corporation licence or registration number (option excluded for AN).
15	<p>In s. 18 & s. 27, a seller cannot definitively know what the use will be by the purchaser.</p>	<p>Changes were made in order to reflect the French version of “intended use” or “stated use”.</p>
16	<p>Huge burden with sales records because of high number of small transactions.</p>	<p>Sales to authorized laboratories have been exempted from the Regulations (s. 3. (2)). Threshold limits have also been established under which record-keeping requirements related to purchasers would not apply (s. 19. (3)).</p>
17	<p>Difficulty with suspicious activity identification and reporting.</p>	<p>The Canadian Fertilizer Institute (CFI) ON-GUARD guidelines can be used as a reference to assist with this process.</p> <p>Purchasers need to present a valid identification and the purpose for their purchase. In regard to Ammonium Nitrate, the decision to sell or not would be based on the answers to specific questions relating to the use of Ammonium Nitrate as a fertilizer. For example the acreage under cultivation, the type of crop, the application rate, alternative products; all designed to determine whether or not the purchaser is a bona fide farmer/horticulturalist. If Ammonium Nitrate is being purchased for use as an explosive, the purchaser would need to demonstrate that they have the appropriate explosive</p>

		license.
18	In s. 21. (c), keeping current list of employees at every location where AN is stored or sold is impractical.	Since employers already maintain current employee information, the word “keep” has been deleted.
19	<p>Difficulty with having to provide the so many notices for safekeeping at each and every sale.</p> <p>Part 2, 31 – having to report to the seller an apparent loss of AN at the site of a “person who is not a seller” entangles a seller in something that is not in their control. All parties with AN should be responsible for their own reporting of loss.</p> <p>Proposes that NRCAN makes the notice available through their Web site.</p>	<p>The notice is only required for ammonium nitrate, not for the sale of the other 8 chemicals.</p> <p>The notice for the end-user has been changed from “reporting to seller” to “reporting to police”.</p> <p>NRCAN will prepare a notice for end-users and make it available on our Web for easy access.</p>
20	Clarification requested on whether the identification process must be repeated each time a restricted component is sold.	An Annual Purchase Contract is sufficient for all referencing Purchase Orders (POS) under it.
21	Clarification requested on the term “proof”, in s. 17. (b).	Proof is the NRCAN enrolment number of the seller.
22	Will a list of approved sellers be available and shared?	No. However, NRCAN can be contacted in order to confirm whether a seller has not enrolled.
23	<p>Clarification requested on meeting security provisions related to “attend” in s. 29:</p> <p>Does this mean a full time guard?</p> <p>What does “alert and constantly watchful” imply?</p> <p>Practicality of implementing all security provisions.</p>	No change - the “attend” reference in s. 29. (b) was and remains educational. Attend is defined in the regulations and it can be achieved in various ways as long as the intended outcome is achieved. For instance, a seller that has an access-controlled site does not need to lock the buildings that are on that site since the latter are secured by the controlled access. Also, employees working within a 24/7 fenced facility would also meet the intent of being alert and constantly watchful.
24	<p>Revisit the “immediate” of the written report in s. 15. (4).</p> <p>Proposal made for the non-AN category.</p>	<p>More clarification has been added. The reporting requirement has been modified to reflect that the seller is required to inform the Chief Inspector within a 24 hour period.</p> <p>Additionally, if requested by an inspector, the seller is</p>

		required to submit a written report if requested by a NRC inspector.
25	Concern with locking chemical cabinets at the customer location.	The Regulations do not require that storage at end-users be locked. However, the sellers of ammonium nitrate are required to educate their customers by providing them a notice on the safe keeping of their products while in their possession and on the prohibition to re-sell.
26	Concern with posting signs depicting warning against unauthorized access to the restricted components. Stakeholders understand that they have to post the name of the chemical as written in s. 14. (a) & s. 21. (a).	It is not recommended that the name of the chemical be shown on the sign, but rather that “unauthorized access” be stated. Regulations have been clarified to avoid this confusion.
27	In s. 20. (1) (a), would this also include manholes, hatches and discharge valves/outlets?	Only manholes are excluded.
28	Clarification requested on the definition of “facility” or “locked facility”.	Standard dictionary definition.
29	Weekly inspections (s. 23. (2)) of bulk product may not be feasible – suggest monthly. Lots of work to do weekly reconciliation and year end inventory.	The weekly inspection is a weekly walk around, not a weekly inventory reconciliation. The inventory audit reconciliation is required on an annual basis only.
30	Annual report: How to account for production variance based on fluctuating prill density. Does this exclude in-process product?	In the annual report, there will be opportunity to submit your variance figures. Only finished saleable products need to be reported – not in-process products.
31	The expectations & responsibilities of the entities completing the forms are not provided on the drafts.	An earlier version was consulted by this group. Both the application and the annual forms now specify that an authorized contact person of the applicant is responsible for completing the forms. A “responsible” person means this person is “authorized” by the company to reply on its behalf.
32	What are the definitions of precursor and precursor activities in terms of their use in these forms?	The legal term for precursor is Restricted Component. The activities are the sale of these Restricted Components.

33	Clarification requested regarding “person” in s. 5 Should include companies.	A person includes companies and is well defined in the dictionary. The person applying for enrolment is the applicant.
34	Third parties who neither sell nor use restricted components are not addressed in the regulations.	Third parties who do not sell do not enroll. However, a seller using 3 rd parties (e.g.: companies doing bagging /distributing) needs to enroll. Users are not included in the current regulations.
35	Regarding the definition of a registered dealer on the application; what if the entity is not registered with a province? What if its head office isn’t in Canada – how is head office in Canada defined?	Consultations were held on an earlier version of the application form where the wording of registered dealer was used. The correct wording is “a person enrolled on the list of sellers”. In the case where the head office is not located in Canada, it falls into the category of non-Canadians selling into Canada. Whoever sells in Canada or into Canada needs to enroll.
36	Specify that days are “calendar days” and request to increase the number of days in s. 5 & s. 7.	The requirement to inform the Chief Inspector in writing of any change to the information has been increased from 7 days to 10 days. When not specified otherwise, “days” are always “calendar days”.
37	Are designated agents eligible to sign the reporting forms if they are not the “senior person in Charge”?	Consultations were held on an earlier version of the form. The wording has been changed, and it is the applicant (or his authorized contact person) who signs the forms.
38	How often do you have to renew these forms? What is the process after the five years for re-enrolment or renewal?	The enrolment is valid for five (5) years. The validity of the 5 years is linked with the enrolment date, not at each amendment. Sellers will be reminded (via letter) two months prior to the 5 year expiry date stating that their enrolment is about to expire. Sellers may also apply for re-enrollment prior to receiving this reminder letter.
39	Do farmers have to enroll? Will farmers be inspected by	No, farmers as other end-users are currently excluded from

	NRCAN?	enrolment and inspection.
40	On the annual report, is there a provision for alternate reporting in pounds?	No, it will remain with kg or metric tonnes
41	S. 5 – it is recognized that not all applicant, corporate or otherwise, will have a fax or e-mail address.	If the applicant does not have a fax or an e-mail, it does not need to be provided.
42	Recommendation that a shorter retention period for records of 2 years be adopted in s. 33.	The retention time has been reduced from 3 to 2 years.
43	<p>Sales records must be locked when not in use in s. 18. (2). Would “locked” include “password protected” ?</p> <p>It is recommended that NRCAN review the expectation-- given the normal practices in business today an increasing number of organizations operate with electronic records while some organizations/individuals still operate on a paper system. S. 18 (2) seems overly onerous and could be problematic in a large multinational corporation. S. 18. (2) implies records must be attended or when not attended they must be secured. However by definition of “attend” in section 1, this action can only be applied to a restricted component and not a record. It is recommended that NRCAN evaluate the use of the word attended in s. 18. (2) given the definition from s. 1 and consider using an alternative word in place of attended.</p>	<p>Yes, it includes password protection.</p> <p>The words “not attended” have been removed. in the relevant sections.</p>
44	<p>Collection of sales volume data could be commercially sensitive. NRCAN could clarify that records provided may be declared as confidential business information and not subject to release to the general public.</p> <p>Sales are inherently a commercial transaction between two parties. A disclosure of these activities could have material harm if the seller and buyer are competitors.</p>	It is an offence under s. 23 of the Explosives Act to disclose confidential information.
45	One association recommends that the location at which restricted components are to be stored or sold report within the	This suggestion could not be accepted since it would not allow NRCan to meet all the intents of the Restricted

	following ranges: a) 1-1000 tonnes, b) 1000-10,000 tonnes and c) greater than 10, 000 tonnes.	Components Regulations, such as data gathering for statistical purposes.
46	We do not ask in our <i>Explosives Act</i> that records be locked. To add in plain language?	No, not at this time. Requirement to “attend” records will be removed.
47	Clarification requested regarding the definition of vehicle and if rail is included in s. 29. (1).	Rail is not included in s. 29. (1) whereas s. 29. (2) deals with rail shipments. The same definition as per the <i>Explosives Act</i> applies to the Restricted Components Regulations. “Vehicle” means any truck, automobile or other conveyance for use on land but does not include any vehicle running only on rails to which Part II of the Canada <i>Transportation Act</i> applies. Additionally, “train” has been modified to “rail car”.
48	It would be useful to define the size of the loss of extremely minute product in s. 15. (3) & s. 23. (3).	Further clarification has been made by adding to loss a “not attributable to normal loss”.
49	There is no emergency response assistance plan (ERAP) requirement for AN in TDG. Requirement for an ERAP to be out of place. S. 28. (b) is too onerous. NRCAN proposed shipping parameters are redundant with TDG. How will NRCAN handle-the security of transport/during transport in railyards and on railroads? In s. 28: who is the transportation provider?	Duplication with TDG has been removed (old s. 28).
50	Trailers can’t be locked, there is only a tarpaulin, see s. 29. (1) (a). Open hatches as used by farmers cannot be locked.	At this time, locking is not required where it is not feasible. Based on later threat assessments, this may be revisited.
51	On rail shipments, can seals be sufficient as a replacement to locks? Too many security parameters for shipping AN.	The sealing with security cables has been added to rail shipments.
52	Are seals acceptable as a replacement for locks?	Yes, for rail but not for truck shipments - a lock is required as stated.
53	Tank cars and/or trucks require to be “locked” when not	Yes. The seller is to educate the transporters by providing the

	attended?	notice stating that “shipments should be attended at all times unless the load is parked in a secure location or the load is locked”.
54	Farmers transport under quantities requiring UN placards. Request that sections 28 & 29 specifically exempt farmers.	The previous s. 28 has been removed. The seller is obliged to provide the notice to the farmer for educating the latter on the safe keeping of the product. The only obligation on the farmer is the prohibition to re-sell.
55	When shipping by rail, it should be the railway who calls the shipper and the consignee. S. 29. (2) should be re-worded to reflect alternatives to calling the train dispatcher to know the whereabouts of the shipment.	The “...calling the train dispatcher daily” has been modified to “the seller must have the means to track the shipment on a daily basis until delivery occurs and investigate if the shipment has not arrived”.
56	Concern with locking and attending shipments as in s. 29. (1) in certain cases such as couriers.	An exemption has been added whereby the requirements for shipments of less than 1kg are now excluded.
57	How to accurately determine inventory in a silo. Will we need load cells?	This can be done volumetrically.
58	Recommendation that NRCAN add a clear definition of ‘store’ and ‘storage’. A definition excluding bulk shipments or product shipped in tank car or truck would provide clarity.	Product in transit is not in storage.
59	S. 35 establishes when the regulations come into force. Government and organizations should be allowed sufficient time for compliance.	A coming into force grace period of about three months (June 1, 2008) is provided for ammonium nitrate and a one year grace period (March 1, 2009) will apply to the remaining eight restricted component chemicals (s. 35).
60	Clarification requested regarding interplant transfers of AN for the purpose of manufacture of another product.	Interplant transfers are considered as sale and require related security measures. The enrolment application form is developed so that a corporation can list all of their operations/locations within one single application. Plant transfers or third parties operations/locations would all be provided by this same

		corporation. Locations selling/storing AN/FO would not be added on the application since there is no sale of AN by itself.
61	Clarification requested whether explosive licensees type F\V would be affected.	If sales occur, you need to enroll. If you sell emulsion blends or AN\FO, you are not required to enroll.
62	Request for “terms of reference” for the proposed regulations, specifically: roles & responsibilities of NRCAN, list of the other regulatory groups within NRCAN and who is the group that coordinates the regulatory affairs within Canada.	Natural Resources Canada (NRCAN) is responsible for the administration of the <i>Explosives Act</i> and Regulations. These control the manufacture, importation, sale and storage of commercial explosives, fireworks and other pyrotechnics. This is accomplished through a licensing system that is supported by an inspection and compliance program that is delivered nationwide. NRCAN is the only regulatory body that regulates explosives and has sole responsibility for the coordination of federal regulatory affairs concerning explosives throughout Canada. Amendments to the <i>Explosives Act</i> contained within Part VII of the <i>Public Safety Act, 2002</i> provide additional authority to regulate the sale and security of restricted components of explosives (i.e. precursor chemicals which can be used to make explosives) such as ammonium nitrate and concentrated hydrogen peroxide.
63	Can we see the changes before going to Canada Gazette II (CGII) ?	The regulatory process does not allow the sharing of this information prior to CGII publication as the regulations (or the proposed regulations) are cabinet protected. Notwithstanding, comments received during consultations focused for the most part on clarifying the scope and text of the regulations, reducing administrative burden, and supporting effective transition. No major changes were undertaken.
64	Concern that costs will get downloaded onto farmers.	Following extensive consultations, the Regulations have been

		designed to protect restricted components from terrorist and criminal acquisition without introducing burdensome impacts on legitimate commerce and end users such as farmers.
65	NRCAN needs to clarify the intent and requirements of the regulation as regarding sales and other types of actions related to restricted components.	With the changes made following feedback from CGI publications, sufficient clarification has been made especially with respect to export and ID verifications when sales occur between businesses.
66	There is recognition for the need for emergency powers or permissions. But, this should be limited to situations where actions are in the national interest and at the discretion of the Minister. See proposal from Controlled Drugs and Substances Act (s. 56 & 57).	Within the parameters of the <i>Explosives Act</i> , this is not possible.
67	When do sales commence?	Sales can start once the enrolment is effective which commences on the date specified in the enrolment document. The NRCAN turn around time for processing the applications is expected to be within seven (7) working days.