

# ON THE RIGHT TRACK: CANADIAN GOVERNMENT'S KEY CHANGES TO TRANSPORTATION OF DANGEROUS GOODS REGULATIONS

Posted on January 10, 2023

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## Modernization of the Canadian Transportation of Dangerous Goods Regime

On November 26, 2022, the Canadian government announced significant upcoming changes to its transportation of dangerous goods regulatory regime to streamline cross-border trade of dangerous goods and to eliminate administrative barriers with key trade partners.<sup>[1]</sup>

These changes address administrative and practical inefficiencies within the existing regime. One of the changes reduces the number of permits transporters of dangerous goods will require when shipping across the Canada-U.S. border. Another change harmonizes Canadian numbering and naming requirements with international standards, meaning Canadian stakeholders will no longer need to prepare labels to meet multiple standards. An additional change eases administrative red tape to enable efficient transport of certain industrial, aerial and medical goods by air to remote communities in Canada.

These proposed regulatory changes are not yet in force and are subject to revision following the Canadian government's ongoing public consultation period, which will conclude on February 9, 2023.<sup>[2]</sup>

## Background of Transportation of Dangerous Goods Regime in Canada

The *Transportation of Dangerous Goods Act* (the "TDGA") regulates and promotes public safety when handling, offering for transport or transporting dangerous goods by all modes of transport.<sup>[3]</sup> There are nine classes of dangerous goods under the TDGA, including explosives, gases, flammable liquids and solids, corrosives and other miscellaneous substances that the Canadian government deems to be dangerous to life, health, property or the environment.

The *Transportation of Dangerous Goods Regulations* (the "TDGR"), in turn, prescribes safety standards and requirements for thousands of different dangerous goods including documentation, safety marks, means of containment, training, Emergency Response Assistance Plans and reporting requirements.<sup>[4]</sup> Further, the TDGR identifies the nature, level of hazard and risk associated with dangerous goods depending on their

classification.

Examples of dangerous goods that are regulated by the TDGR include lithium ion batteries<sup>[5]</sup>, which are key components within electrical vehicle rechargeable batteries and battery-powered vehicles, as well as oil well cartridges<sup>[6]</sup>.

Consignors and consignees, those who sell and purchase dangerous goods, along with carriers are key stakeholders that generally must comply with TDGA rules. These main supply chain groups are involved in the manufacture, distribution, transportation and/or physical receipt of dangerous goods.

Transport Canada implements its mandate under the TDGA through prescribing safety standards, providing expert advice and conducting inspections on dangerous goods in Canada.<sup>[7]</sup> The Canada Border Services Agency's mandate includes to regulate and enforce border matters concerning importers' and exporters' shipments of dangerous goods.<sup>[8]</sup>

### **Alignment Between Canada-U.S. Dangerous Goods Labelling and Permit Requirements**

The amended regulations aim to eliminate inconsistencies between Canadian and U.S. requirements that apply to the labelling of cross-border dangerous goods. While Canada recognizes the validity of U.S.-issued labels applied on imported dangerous goods into Canada, Canada prohibits goods to be exported from Canada with U.S.-issued labels.<sup>[9]</sup> As a result, Canadian exporters may be subject to additional burdens when shipping a dangerous good to the United States, causing further delays and adding costs. The amended regulations eliminate these inconsistencies by allowing either Canadian or U.S.-issued labels to be applied on dangerous goods upon export to the United States.

The amended regulations also streamline special permit requirements for transporting dangerous goods between the two countries. Special permits are required to carry on an activity related to transporting dangerous goods in a way that is not compliant with the TDGR. This will happen by allowing dangerous goods to be exported from Canada under either Canadian or U.S.-issued special permits. Both countries currently require cross-border transporters of dangerous goods to carry these permits for road and rail. While Canada recognizes U.S.-issued permits for goods imported into Canada, Canada does not currently allow goods to be exported from Canada to the United States under U.S.-issued permits.<sup>[10]</sup> Consequently, if a dangerous good was shipped from the United States to Canada, then had to be shipped back to the United States, consignors would have to apply for two permits concerning the same shipment for the Canadian and U.S. portions of their transport route.

### **Compliance with International Examination, UN Numbers and Naming Requirements**

Canada's transportation of dangerous goods rules currently lack harmonization with global frameworks. This

has competitively and economically disadvantaged Canadian businesses through imposing additional administrative burdens. As a result, the Canadian government has proposed to adopt the 22nd edition of the *United Nations Model Regulations on the Transport of Dangerous Goods* (“**UN Recommendations**”) and the *International Maritime Dangerous Goods Code* into the TDGR in order to align Canada with global standards.

Canada’s amended regulations will adhere to these global standards, eliminating the current need for a consignor to examine goods that are otherwise defined as a “dangerous good” under the TDGA upon importation. Currently, if a good imported into Canada is defined as a dangerous good<sup>[11]</sup> under the TDGA, a consignor must still examine it through conducting experimental tests to confirm that it is in fact dangerous.<sup>[12]</sup> However, under the current global standards, if a good is considered dangerous, it is automatically considered as such upon arrival and no further examination is required. Following the amendments, this will occur in Canada as well.

Another important change will be Canada’s adoption of 16 new United Nation (“**UN**”) numbers<sup>[13]</sup> and names found in the most recent edition of the UN Recommendations. As a result, Canadian stakeholders will only classify certain goods, such as lithium batteries and flammable solids, with numbers that are in use by their international trade partners. Canada’s current classification system may inadequately communicate how dangerous a good may be when transported because the TDGA requires technical names instead of common names.<sup>[14]</sup> This may cause significant safety risks to those transporting and receiving these goods due to an inconsistency in hazard communication.

Standardizing the classification system and allowing a good’s “common name” to be used on labels promotes better safety practices and removes the requirement to produce multiple shipping document copies with different goods’ names for the same shipments. Currently, distributors and consignors in Canada must prepare two shipping labels: one label containing the technical complex name to align with Canadian standards and another label containing the common name to align with the international standards used by other countries.<sup>[15]</sup>

### **Broadened Exemptions for Air Transport of Dangerous Goods**

The Canadian government has proposed exemptions for the air transport of certain industrial, aerial and medical dangerous goods for more timely and efficient shipment deliveries to remote communities.

For industrial goods, the amended regulations will allow for the air transport of certain explosives without requiring an equivalency certificate to limited access locations on flights without passengers. Canadian requirements currently prohibit the transport of certain explosives on aircrafts in Canada, despite a different requirement compelling the same explosives to be transported by air for various mining and construction activities. Currently, when consignors need to transport these explosives, they have to apply for special permits

(also called equivalency certificates) exempting them from certain obligations under the TDGA.

For goods used in aerial activities, the amended regulations will expand the scope of activities that are eligible for an exemption. The regulations currently exempt certain dangerous goods that are being used on the sites of fire suppression, avalanche control and forestry activities. Where the dangerous goods being transported did not fit into a specific category under the TDGA, consignors had to apply for equivalency certificates to otherwise transport the goods, even if it was from one work location to another. The amended regulations will provide an aerial work exemption for any activities regulated under the *Canadian Aviation Regulations* and for dangerous goods that are being transported to and from a location for fire suppression.

For medical goods, the amended regulations will create an exemption for the transport of dangerous goods on certain aircrafts used for emergency responding. This new exemption will address a gap in the current laws, while eliminating needless redundancies and allowing Canada's remote communities to be better served.

### **Compliance with Amended Regulations**

Once the amended regulations come into force, the Canadian government will grant a six-month transition phase and allow stakeholders to continue to comply with the current regulations until that period expires. Also, stakeholders' shipments of dangerous goods will still be subject to compliance inspections and where applicable, non-compliance measures including a fine, revocation of a certificate or, in the most serious of offences, criminal prosecution.<sup>[16]</sup>

### **Conclusion**

The Canadian government anticipates that these regulatory changes will significantly benefit Canadian businesses to facilitate cross-border trade through eliminating many administrative inefficiencies and easing requirements. Changes made to the display of labels, by allowing "common names" to be used on them, will help promote safety on a global scale, while eliminating the need for exporters to prepare multiple copies of shipping documents when crossing the Canada-U.S. border. In addition, harmonization of current Canadian requirements with international standards will make Canadian businesses more competitive in global trade through removing administrative hurdles.

McMillan LLP will continue to monitor and provide updates on Canada's upcoming regulatory changes to transportation of dangerous goods requirements.

[1] "[Canada Gazette, Part I, Volume 156, Number 48: Regulations Amending Certain Regulations Made Under the Transportation of Dangerous Goods Act, 1992](#)" (November 26, 2022), *Government of Canada*.

[2] *ibid.*

[3] *Transportation of Dangerous Goods Act, 1992*, SC 1992, c 34.

[4] *Transportation of Dangerous Goods Regulations*, SOR/2001-286.

[5] Schedule 1 of the TDGR classifies lithium ion batteries as dangerous goods, which are included in Class 9, Miscellaneous Products, Substances or Organisms.

[6] Schedule 1 of the TDGR classifies oil well cartridges as dangerous goods, which are included in Class 1, Explosives.

[7] "[About Transport Canada](#)" (August 8, 2019), *Transport Canada*.

[8] "[What we do](#)" (March 31, 2021), *Canadian Border Services Agency*

[9] *Supra Note 1*.

[10] *Supra Note 1*.

[11] The TDGA defines a "dangerous good" as a product, substance or organism included by its nature or by the regulations in any of the classes listed in the Schedule. See: *Transportation of Dangerous Goods Act*, 1992, SC 1992, c. 34 s.2.

[12] "[Bulletin: Consignor's Certification](#)", (August 2017), *Government of Canada*.

[13] UN numbers are used globally to identify dangerous goods and are associated with shipping names for international and domestic transportation, per "[Understanding the Emergency Response Guidebook](#)", (August 23, 2021), *Transport Canada*.

[14] *Supra Note 1*.

[15] *Supra Note 1*.

[16] Currently, a person who contravenes the TDGA, a direction, a regulation, a security measure or an interim order is liable to imprisonment for a term not exceeding two years or a maximum fine of \$50,000 for a first offense, and \$100,000 for every subsequent offense. In addition, any person convicted of an offense may have their licence temporarily revoked and/or be directed to complete additional training. See: *Transportation of Dangerous Goods Act*, 1992, SC 1992, c. 34 ss. 33-34.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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