



**CIAC Submission on the**  
*Enhancing the Regulatory Framework for Emergency  
Response Assistance Plans (ERAPs): Consultation Document  
on Proposed Amendments to Part 7 of the TDG Regulations  
and Associated Guidance Material*

**Submission to Transport Canada**  
**April 28, 2017**



**CHEMISTRY INDUSTRY  
ASSOCIATION OF CANADA**



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Our commitment to sustainability.

## Introduction

The Chemistry Industry Association of Canada (CIAC) is pleased to have the opportunity to submit its comments and recommendations on the *Enhancing the Regulatory Framework for Emergency Response Assistance Plans (ERAPs): Consultation Document on Proposed Amendments to Part 7 of the TDG Regulations and Associated Guidance Material*.

CIAC is the voice of Canada's \$53 billion chemistry sector. We represent the interests of Canada's leading chemistry companies – from petrochemical, inorganic and specialty chemical producers, to bio-based manufacturers and chemistry-related technology and R&D companies. Canada's chemistry industry employs 87,500 Canadians directly, and supports another 525,000 jobs in the Canadian economy.

CIAC members produce goods that are needed everywhere; they are essential to Canada's economy and our quality of life. Among them, hundreds of dangerous goods are also manufactured and shipped across Canada daily.

Safety is a top priority for Canada's chemistry industry, both at plant sites and along transportation routes. During the past 25 years, CIAC members have invested hundreds of millions of dollars in transportation-related research and upgrades; and have set the gold standard for transportation safety through the TRANSCAER® (Transportation Community Awareness and Emergency Response) and TEAP® III (Transportation Emergency Assistance Program) initiatives. Canada's chemistry industry goes above and beyond what is required by Canadian laws related to the transportation of chemical products, including dangerous goods.

As part of our commitment to Responsible Care® – the Association's United Nations recognized sustainability initiative - CIAC verifies that each of its members and transportation partners is meeting Responsible Care's stringent safety standards, by requiring independent, public verifications of these companies every three years. Verification reports are publicly available at [www.canadianchemistry.ca/responsiblecare](http://www.canadianchemistry.ca/responsiblecare).

### **Comments on the *Enhancing the Regulatory Framework for Emergency Response Assistance Plans (ERAPs): Consultation Document on Proposed Amendments to Part 7 of the TDG Regulations and Associated Guidance Material*.**

Overall, CIAC is supportive of Transport Canada's efforts to amend Part 7 of the Transportation of Dangerous Goods Regulations to clarify its expectations for stakeholders and agrees that the ERAP program plays a key role in protecting the safety of the public and first responders. Additionally, CIAC is supportive of the identified guiding principles including: protecting and promoting the safety of Canadians; supporting first responders; coordination of response and use of existing expertise; avoiding unnecessary burden on stakeholders; engagement and transparency; and, clarity of requirements and expectations.

After reviewing the proposals published in *Enhancing the Regulatory Framework for Emergency Response Assistance Plans (ERAPs): Consultation Document on Proposed Amendments to Part 7 of the TDG Regulations and Associated Guidance Material* following are the areas/factors CIAC recommend be considered, clarified, or updated.

#### **Mandatory Call to ERAP Telephone Number**

**TC Proposal: Require any person who has the charge, management or control of a means of containment to call the ERAP telephone number, as soon as possible, in situations where the means of transport carrying the dangerous goods requiring an ERAP cannot continue to its intended destination without intervention to the dangerous goods or to the minimum required means of containment.**

CIAC recommends that in the proposal the term “intervention” be replaced with the full definition of intervention to increase clarity. It is also noted there will need to be outreach and education on this update so it would be a consistent expectation and practice carried out amongst all carriers.

### **Who Can Activate?**

**TC Proposal: The ERAP holder must make the decision to activate the ERAP or not.**

CIAC supports the decision to activate an ERAP being the responsibility of the ERAP holder. In the proposals and guidance documents it is recommended that a clear definition of ERAP holder is established considering there various terms in use currently such as plan holders or plan owners etc...

### **Availability of a Technical Advisor**

**TC Proposal: A technical advisor must be available to answer a call to the ERAP telephone number 24 hours a day, 7 days a week, while the dangerous goods requiring an ERAP are in transport.**

CIAC is supportive of having technical advisors available at all times when the dangerous goods requiring an ERAP are in transit. In the consultation document, there is a 10 minute timeline identified for connecting with a technical advisor by phone. CIAC and its members would like to clarify that the 10 minute timeline is intended to be a guideline as opposed to being explicitly noted in the regulations. While ordinarily 10 minutes is a reasonable timeframe, at times there may be exceptional circumstances that could slightly increase the time to connect with an advisor. In this instance, CIAC is seeking reassurance that if reasonable measures are taken but there is a slight delay it will not be a regulatory offense. Amending the wording to “10 minutes or as soon as reasonably possibly” could also help in addressing this.

Additionally, it would be beneficial in the guidance material to clarify what the expectation at the 10 minute point is regarding the interaction with the technical advisor. For instance, CIAC understands the expectation to be that a technical advisor has been reached and could be taking information about the incident as opposed to being expected to be providing specific advice on what actions to take to address the incident. Finally, it would be helpful if the qualifications or expectations of a technical advisor role were also clarified in the guidance material.

### **Criteria for ERAP Activation**

**TC Proposal: An ERAP must be activated if any of the following criteria are met for dangerous goods requiring an ERAP:**

- **Could the integrity of the Means of Containment have been compromised?**
- **Is a transfer anticipated or required?**
- **Is there a release or an anticipated release?**
- **Did a First Responder/Authority Having Jurisdiction/Carrier ask for assistance to mitigate the situation?**

**Activation of an ERAP will also be permitted if the above criteria are not met, but the ERAP holder judges that activation is necessary.**

CIAC members are supportive of the noted criteria that would require an ERAP to be activated. However, CIAC wishes to stress the important role carriers play in working with the ERAP holders to be able to gather the information required to make the determination to activate the ERAP. Additionally, CIAC members ask that further detail surrounding the qualifications and competency of an individual to determine if the integrity of the means of containment has been compromised be considered. For instance, a qualified individual can determine if the means of containment has been compromised versus if superficial jacket damage has occurred. These two instances could require significantly different actions, resources, etc...to address the incident effectively.

#### **First Responder Access to ERAP Telephone Number**

**TC Proposal: TC will clarify that first responders may call the ERAP activation number to provide information or ask questions, without the ERAP necessarily being activated.**

CIAC supports it being clarified that a discussion with first responders can take place without the ERAP necessarily being activated. To help clarify this further, it is recommended that the term “ERAP activation number” be amended and the term “activation” removed since it could be misleading and further support the false notion that the activation will automatically occur. Further guidance and discussion on the information provided and expectations for the 24-hour versus ERAP phone number are encouraged.

#### **ERAP Activation**

**TC Proposal: Once the decision to activate has been made, the ERAP holder must contact CANUTEC as soon as reasonably possible, taking into account the need to ensure public safety.**

CIAC is supportive of the term “reasonably possible” being used since there are often many unique and competing priorities in an incident that could factor into when it would be “reasonably possible” to inform CANUTEC. In the guidance material some of the key considerations in determining what factors play into determining this from Transport Canada’s perspective would be helpful to understand. Additionally, CIAC is seeking clarification regarding this proposal and is particularly interested in guidance surrounding what can take a technical discussion, or any other services the technical advisor is able to offer, into an activation.

#### **Tiered Service Levels**

**TC Proposal: The ERAP holder must activate to Tier 1 (provision of technical advice over the telephone) upon activation of the ERAP.**

CIAC does not have any concerns with this proposal and is generally supportive of the three identified tiers and associated described activities. However, throughout the regulatory updates and anticipated guidance materials terminology will play a key role in clarifying expectations. One important aspect to consider and address is the various circumstances, scenarios and arrangements that exist for ERAPs such as ERAP holders versus owners etc....

#### **Implementation of Tiered Service Levels**

**TC Proposal: Descriptions of potential accidents and responses corresponding to the three Tiers of Service must be included in the Potential Accident Assessment going forward, in order for an ERAP to be approved or renewed.**

CIAC is not opposed to having a component of the PAA linked to the tiers of service and are supportive of the development of guidance material in this area as well as a commitment to a flexible approach. However, CIAC is seeking clarity regarding if this would be required for every scenario or if select examples demonstrating the reasoning and grasp of the expectation would be sufficient. Additionally, CIAC is seeking clarification on when this would be implemented – when ERAPs are approved or renewed or would all ERAPs be expected to be updated within an identified timeframe. It is recommended that if this is addressed by an amendment to the regulations with a standard six-month transition period that any organizations renewing their ERAP would have the full transition period even if their ERAP was up for renewal sooner.

**TC Proposal: TC will develop guidance material providing expectations for response times and situations where activation to new Tier of Service is recommended as per the table above.**

CIAC agrees that many factors such as location, weather conditions, time of day, etc... can influence response times. While it is important to strive for the timeliest responses possible, it is not advised to include prescriptive response timelines in the regulations. This can set unrealistic expectations for first responders and potentially incentivize unsafe actions in order to arrive within the prescribed timeframe.

**TC Proposal: The ERAP holder must call CANUTEC as soon as possible each time the ERAP is activated to a new Tier of Service.**

CIAC is supportive of the term “reasonably possible” being used since there are often many unique and competing priorities in an incident that could factor into when it would be “reasonably possible” to inform CANUTEC. In the anticipated guidance material, some of the key considerations in determining what factors play into determining this from Transport Canada’s perspective would be helpful to include for reference.

#### **ERAPs for Shipments of Residual Amounts of Dangerous Goods**

**TC Proposal: When a means of containment identified as “Residue – Last Contained” on a shipping document is returned back to its origin in Canada, the ERAP holder does not need to notify the Director General of permission granted to another person to use their ERAP.**

CIAC is supportive of this proposal and would like to see it broadened. Therefore, it is suggested that the wording “back to its origins in Canada” be removed.

#### **TC Proposal:**

- **Infectious substances that are included in Risk Group IV of the Human Pathogens and Toxins Act (HPTA) will require an ERAP.**
- **Infectious substances affecting animals only will not require an ERAP.**

As this is not a typical Class of dangerous good transported for CIAC members no comments on this proposal are included.

#### **Termination of an ERAP**

**TC Proposal: An amendment will be introduced into Part 7 (ERAPS) allowing TC to terminate an ERAP. ERAP holders will also be required to notify TC and permitted users as soon as possible when a person is no longer involved in activities requiring ERAP.**

CIAC is supportive of this proposal. It is thought this can help increase communication and information sharing by all those involved in the process. However, for due diligence it is recommended that a sound review process be put in place before the ERAP is terminated since ERAPs are essential for shipping many products.

## **Conclusion**

CIAC remains committed to ensuring the safety of the public and first responders and is supportive of Transport Canada's efforts to amend Part 7 of the Transportation of Dangerous Goods Regulations to clarify its expectations for stakeholders.

Throughout the regulatory updates and anticipated guidance materials terminology will play a key role in clarifying expectations. One important aspect to consider and address is the various circumstances, scenarios and arrangements that exist for ERAPs such as ERAP holders versus owners etc... Furthermore, terms such as "activation number" should be reviewed for clarity as well as Tiers of Service vs. Response Tiers.

CIAC is very supportive of the use of a flexible versus prescriptive approach. It is also important to stress that any timelines being proposed are clearly understood as guidelines with the recognition that many factors can influence their ability to be met.

CIAC appreciates this opportunity to comment on the proposed updates and is open to continuing to collaborate and engage with Transport Canada in the next steps of the regulatory process as well as the creation of the noted guidance materials.

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