

Notice is hereby given that the Governor in Council, pursuant to section 69.4^a of the *Telecommunications Act*^b, proposes to make the annexed *Telecommunications Apparatus Regulations*.

Interested persons may make representations with respect to the proposed Regulations within 30 days after the date of publication of this notice. All such representations must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be addressed to Claude Beaudoin, Manager, Interconnection Planning and Coordination, Industry Canada, Spectrum Engineering Branch, Industry Canada, 300 Slater Street, Room 1303A, Ottawa, Ontario K1A 0C8 (E-mail: beaudoin.claude@ic.gc.ca).

Persons making representations should identify any of those representations the disclosure of which should be refused under the *Access to Information Act*, in particular under sections 19 and 20 of that Act, and should indicate the reasons why and the period during which the representations should not be disclosed. They should also identify any representations for which there is consent to disclosure for the purposes of that Act.

Ottawa, , 2001

Rennie M. Marcoux
Acting Assistant Clerk of the Privy Council

^a S.C. 1998, c. 8, s. 8

^b S.C. 1993, c. 38

Her Excellency the Governor General in Council, on the recommendation of the Minister of Industry, pursuant to section 69.4^a of the *Telecommunications Act*^b, hereby makes the annexed *Telecommunications Apparatus Regulations*.

^a S.C. 1998, c. 8, s. 8

^b S.C. 1993, c. 38

TELECOMMUNICATIONS APPARATUS REGULATIONS

INTERPRETATION

1. The following definitions apply in these Regulations.

"Act" means the *Telecommunications Act*. (*Loi*)

"model" means telecommunications apparatus identified by, and permanently marked with, a unique brand, trade name, symbol or logo and an identification code composed of letters, numbers or a combination of these. (*modèle*)

TECHNICAL SPECIFICATIONS

2. The technical specifications applicable to telecommunications apparatus or to any class of telecommunications apparatus are those established by the Minister pursuant to paragraph 69.3(1)(d) of the Act and set out in the document entitled *Terminal Equipment - Technical Specifications List*, as amended from time to time, published by the Department of Industry.

CERTIFICATION REQUIREMENTS

3. Every telecommunications apparatus, in respect of which the Minister has established technical specifications under paragraph 69.3(1)(d) of the Act, requires a technical acceptance certificate, unless, it is the subject of

(a) a certificate issued by the Minister before the coming into force of these Regulations;

(b) a certificate issued by a foreign certification body that is designated under an international agreement, convention or treaty respecting telecommunications apparatus to which Canada is a party and that is recognized by Canada under that agreement, convention or treaty as competent to certify telecommunications apparatus, to the effect that the telecommunication apparatus complies with the applicable technical specifications;

(c) a declaration by the manufacturer, reseller, distributor, importer or other agent that the telecommunications apparatus complies with the applicable technical specifications; or

(d) a certificate issued by a Canadian certification body that meets the requirements set out in the *Requirements for Certification Bodies*, as amended from time to time, published by the Department of Industry, to the effect that the telecommunications apparatus complies with the applicable technical specifications.

4. (1) A person who applies for a technical acceptance certificate shall demonstrate to the Minister, or to a person authorized by the Minister to issue a technical acceptance certificate on the Minister's behalf, that the model or the models that are the subject of the application comply with the applicable technical specifications.

(2) The Minister, or a person authorized to do so by the Minister, shall issue a technical acceptance certificate, if the Minister or that person determines that

(a) the model referred to in the application under subsection (1) complies with the applicable technical specifications; or

(b) the models referred to in the application under subsection (1) possess similar technical characteristics and comply with the applicable technical specifications.

MARKING REQUIREMENTS

5. (1) Every telecommunications apparatus shall be marked with markings established by the Minister under subsection 69.3(1) of the Act, unless markings were applied to it before the coming into force of these Regulations in accordance with the Minister's instructions.

(2) For greater certainty, subsection (1) does not preclude affixing markings for purposes other than the purposes of these Regulations.

(3) No person shall remove, replace or alter any markings that have been affixed, in accordance with subsection (1), on telecommunications apparatus.

(4) No person shall mark telecommunications apparatus in accordance with subsection (1) to indicate compliance with the applicable technical specifications unless the apparatus complies with those technical specifications.

(5) No person shall mark or label or otherwise indicate how to modify telecommunications apparatus so that it will not comply with the applicable technical specifications.

COMING INTO FORCE

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

*REGULATORY IMPACT ANALYSIS STATEMENT
RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION*

*(This statement is not part of the Regulation.)
(Ce résumé ne fait pas partie du règlement.)*

Department or Agency:

Department of Industry

Ministère ou organisme :

Ministère de l'Industrie

Title of Proposal:

*Telecommunication Apparatus
Regulations*

Titre du projet :

*Règlement sur les appareils de
télécommunications*

Statutory Authority:

*Telecommunications Act,
section 69.4*

Fondement législatif :

*Loi sur les télécommunications,
article 69.4*

**Federal Regulatory
Plan No.:**

Not applicable

**Numéro de Projets de réglementation
fédérale :**

Ne s'applique pas

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Gazette du Canada

Minister of Industry/Ministre de l'Industrie

REGULATORY IMPACT ANALYSIS STATEMENT
(This statement is not part of the Regulations.)

DESCRIPTION

The Department is creating the *Telecommunications Apparatus Regulations* to set out the detailed arrangements required to implement the prohibitions found in the *Telecommunications Act*, 1998. These regulations require that, unless otherwise prescribed, all telecommunications apparatus that is distributed or imported into Canada have a technical acceptance certificate and that all apparatus comply with the applicable technical specifications and be marked or labeled accordingly. These regulations are also intended to help modernize Canada's regulatory framework to meet the new realities of the liberalized global telecommunications marketplace.

In the past, the Department relied heavily on the voluntary cooperation of manufacturers and service providers with respect to meeting technical specifications and marking requirements. However, with advances in technology, more standard testing and certification practices had to be adopted. Until now, Industry Canada laboratories were the only bodies authorized to certify telecommunications apparatus to Industry Canada's technical specifications. Changes in the telecommunications environment - including increased competitiveness amongst manufacturers and importers of telecommunications apparatus - required that an appropriate legal framework be implemented to ensure standardized compliance and fairness amongst competing companies. Because of the international Mutual Recognition Agreements/Arrangements (MRAs) which Canada has signed, a regulatory framework was required to help ensure that no substandard telecommunications apparatus be permitted to enter the Canadian marketplace.

The MRAs are international agreements or arrangements entered into between Canada and several other countries or trading blocks such as the United States, Switzerland and the European Union, to name a few, and which have the support of Parliament. The signatory countries of these MRAs required that the domestic laws of participatory countries meet the agreed upon requirements of the agreements.

The MRAs will have an impact on the testing and certification of telecommunication apparatus manufactured outside Canada but intended for import and sale in Canada, by allowing foreign bodies to test, certify and label telecommunications apparatus in accordance with Canadian technical specifications in their own countries. Consequently, the Department is also ensuring that interested Canadian parties will be permitted the same treatment for telecommunications apparatus manufactured in Canada which is intended for export and sale to the international market.

Also, these regulations will permit Canadian manufacturers to certify telecommunications apparatus to Canadian standards, a role previously only performed by Industry Canada's laboratories, which will expand the Canadian marketplace to Canadian companies.

Via the creation of these regulations, the Canadian consumer will be afforded some assurance that telecommunications apparatus distributed, leased, sold and imported for sale in Canada will meet Canadian standards and technical requirements. They will also provide a marketplace which will encourage the protection of our telecommunications infrastructure, respect our hearing aid compatibility requirements and will ensure that telecommunications apparatus of quality are available to the Canadian public.

ALTERNATIVES

The only alternative to regulating in this situation is to maintain the status quo which is represented by the current system of quasi-judicial compliance as governed by CRTC Decision 82-14, which sets out the Terminal Attachment Programme Advisory Committee's (TAPAC) standard CS-03 and Industry Canada's certification procedures (CP-01) as guidelines for telecommunications apparatus certification, and which is enforced by service providers. This CRTC decision allows service providers to disconnect service to users in possession of non-certified telecommunications apparatus.

Uncertified apparatus are problematic because, although the CRTC Decision 82-14 helps regulate telecommunications apparatus use, the Decision only applies to telephone service providers and companies. This leaves a large portion of the telecommunications apparatus manufacturing market un-regulated and open for the production of telecommunications apparatus which does not meet the required technical specifications.

The *Telecommunications Apparatus Regulations* are being written to support and implement the legislative provisions of Bill C-17 (amendments to *Telecommunications Act*, 1998). Good regulatory practice requires regulations to be written in conjunction with and support of legislation when necessary.

The current situation, or the status quo, is unsatisfactory as it does not address the real needs of the changing telecommunications environment internationally or domestically.

BENEFITS AND COSTS

By creating these regulations, Canadian industry will benefit by being able to access the markets of those countries that participate in the MRAs which could potentially aid growth and create jobs in the Canadian economy through new import/export opportunities. Being permitted to certify Canadian manufactured equipment in Canada to foreign standards is a benefit of being a member of the MRAs. And, only countries which are signatories to the various agreements may participate in this process.

Another benefit of these regulations is that they will help promote conformity of the assessment process between Canada and the international community in accordance with the MRAs. These regulations will also help Canada address the problem of non technically compliant telecommunications apparatus which are imported for sale, or sold, in Canada. This

type of telecommunications apparatus costs industry and the Canadian consumer both money and in quality of equipment. Manufacturers, importers, distributors or vendors of substandard apparatus have an unfair cost advantage over companies who do test and certify their apparatus to Canadian standards. These regulations will help solve this problem as they will require all distributors, vendors and importers of all telecommunications apparatus to comply with Canadian standards thus creating a more level playing-field in the market.

The requirements of these regulations are intended to reflect and reinforce the current administratively-based system of certification of telecommunications apparatus in Canada. The difference will mean that, as well as the telephone companies who enforce compliance with certification specifications through CRTC Decision 82-14, Industry Canada will seek compliance of technically sound equipment at the manufacturer and distribution levels.

Therefore, the addition of a legislative and regulatory framework to the existing system should be seamless and place little or no extra burden on industry. It should also protect the investments that the industry has already made in the existing system. These regulations will have little or no negative impact since industry participants generally comply with the current system of certification which is compatible with these regulations and which has been in practice for several years.

CONSULTATION

Consultations with TAPAC on the amendments to the *Telecommunications Act* (Bill C-17) were held on June 25, 1995. TAPAC is an advisory committee to the Department consisting of telecommunications apparatus manufacturers, consumer associations, testing laboratories, and service providers. Their feedback was positive and supported the amendments to the *Telecommunications Act*. Further informal consultations on these regulations were conducted in late 1999/2001 in the form of public meetings at major cities including Vancouver, Winnipeg, Niagara Falls, Toronto, Ottawa, Montreal and Halifax, and formally via two Gazette Notices issued in May, 2001, which address, first, the conformity assessment process for telecommunications terminal equipment and, secondly, a proposed importation monitoring scheme for radio and telecommunications apparatus.

The consultation period for one of these Notices ended on July 4, 2001 and all comments received were in support of Industry Canada's approach. Also, international support has been obtained. In fact, other parties to these arrangements/agreements are anxiously awaiting Canada's implementation of this scheme so that they may participate.

Further consultation will be carried out following the publication of these regulations in the *Canada Gazette*, Part I in the Summer of 2001. The reception of these regulations is expected to be as positive as that of Bill C-17 domestically as well as internationally. International partners are awaiting the publication of these regulations by Canada to be able to commence the reciprocal agreements.

The necessary operational framework for the enforcement of these regulations is largely already in place. The changes these regulations make relate, for the most part, to the enforceability of the current requirements and therefore there should be few, or minimal additional costs to industry.

COMPLIANCE AND ENFORCEMENT

The Department intends to create a schedule under the *Contraventions Act* to issue tickets for non-compliance with sections 64.2 and 64.3 of the *Telecommunications Act* as well as certain provisions of the *Regulations*. Canada Customs and Revenue Agency (CCRA) has been consulted on enforcement at Canadian borders which would permit information pertaining to apparatus' specifications to be requested from importers via CCRA's customs tracking system and subsequently provided to Industry Canada through a memorandum of understanding.

Site audits and requested testing of certain telecommunications apparatus by the Department, in conjunction with inspections and CCRA's help at Canadian borders will round out the enforcement plan.

CONTACT PERSON

Claude Beaudoin
Manager, Interconnection Planning and Coordination
Spectrum Engineering Branch
Industry Canada
300 Slater Street, Room 1303A
OTTAWA, Ontario
K1A 0C8

Tel.: (613)990-4714
Fax.: (613)957-8845
Internet: beaudoin.claude@ic.gc.ca