



CNSC Processes and Practices **Compliance and Enforcement,** **Volume II: Orders Under the *Nuclear Safety and Control Act***

REGDOC-3.5.2, Volume II

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Preface

This regulatory document is part of the CNSC's Processes and practices series of regulatory documents, which provides information about CNSC processes and nuclear technologies.

Regulatory document REGDOC-3.5.2, *Compliance and Enforcement, Volume II: Orders Under the Nuclear Safety and Control Act*, is intended for information only. It describes the processes surrounding making, receiving, reviewing, appealing and redetermining orders under the *Nuclear Safety and Control Act*.

This document is the first version and supersedes regulatory guide G-273, *Making, Reviewing, and Receiving Orders under the Nuclear Safety and Control Act* (2003).

For information on the implementation of regulatory documents and on the graded approach, see REGDOC-3.5.3, *Regulatory Fundamentals*.

The words "shall" and "must" are used to express requirements to be satisfied by the licensee or licence applicant. "Should" is used to express guidance or that which is advised. "May" is used to express an option or that which is advised or permissible within the limits of this regulatory document. "Can" is used to express possibility or capability.

Nothing contained in this document is to be construed as relieving any licensee from any other pertinent requirements. It is the licensee's responsibility to identify and comply with all applicable regulations and licence conditions.

Table of Contents

1.	Introduction.....	1
1.1	Purpose	1
1.2	Scope	1
1.3	Relevant legislation.....	1
2.	About Orders and Other Regulatory Enforcement Tools	1
3.	Who Can Make an Order.....	2
3.1	Inspector.....	2
3.2	Designated officers	2
3.3	The Commission.....	2
4.	Before Issuing the Order	3
5.	Giving the Order	3
6.	Receiving the Order	3
7.	Reviewing the Order.....	4
7.1	Opportunity to be heard	4
7.2	Making the decision.....	5
8.	Appeal and Redetermination of the Order.....	5
8.1	Appeal	5
8.2	Redetermination.....	5
8.3	Making an appeal or application for redetermination of an order	6
9.	Fulfilling the Order.....	6
Appendix A: Actions of Inspectors or DOs in Making Orders		7
Appendix B: Actions of Person(s) Receiving Orders Made by Inspectors or DOs.....		8
Appendix C: Actions of DOs or the Commission in Reviewing Orders		9
Appendix D: Actions of Person(s) Applying for an Appeal or for a Redetermination of Orders Made by Inspectors or DOs		10
Glossary		11

Orders under the *Nuclear Safety and Control Act*

1. Introduction

1.1 Purpose

This document provides information about making, receiving, reviewing, appealing and redetermining orders pursuant to the *Nuclear Safety and Control Act* (NSCA) and its regulations.

1.2 Scope

The guidance in this document is provided for information only and is intended for any person(s) named in, or subject to, an order under the NSCA.

1.3 Relevant legislation

The following provisions of the [Nuclear Safety and Control Act](#) (NSCA) and the regulations made under it are relevant to this document:

- subsections 35(1) and (2); paragraph 37(2)(f) state the powers of inspectors and designated officers to make orders
- section 36 states the duty of person(s) to assist inspectors to carry out their duties
- section 41 states the duty of person(s) to comply with an order
- section 42 states who is liable for costs incurred in complying with an order
- subsections 35(3) and 37(6); paragraph 37(2)(g) list the requirements for the review of orders
- subsections 46(3) and 47(1) describe the orders that may be made by the Commission under exceptional circumstances
- section 38; paragraphs 39(1)(c), 40(1)(c), 40(1)(d), 40(1)(h), 40(1)(i), 40(2)(b), 40(4)(c), and subsection 40(3) describe procedures to be followed for orders
- paragraphs 43(1)(d), 43(2)(e), 43(2)(f), 43(4)(g), 43(4)(j) and subsection 43(3) set the requirements for appeals and redeterminations of orders
- paragraph 48(e) and subsection 51(3) describe offences and punishments

Rules 31–36 of the [Canadian Nuclear Safety Commission Rules of Procedure](#) describe the procedures for making, receiving, reviewing, appealing and redetermining orders.

2. About Orders and Other Regulatory Enforcement Tools

The CNSC uses different regulatory tools to achieve compliance, such as discussions with licensees or the person subject to enforcement action, written notices, orders, administrative monetary penalties and licensing actions. Further information on regulatory tools can be found on the [CNSC's approach to compliance verification and enforcement Web page](#).

To protect the health, safety and security of Canadians and the environment, the CNSC responds to non-compliance by taking the appropriate action(s) necessary to restore full compliance. Regulatory judgment is applied and multiple factors, such as the severity of the non-compliance and the associated risk, are taken into account to determine the most appropriate enforcement strategy for a given situation.

An order is a powerful legal instrument used to compel someone to do something in the interest of health, safety, security, protection of the environment or compliance with international obligations. An order describes the measures required to be taken by the licensee and/or other person(s) subject to the order. If there is more than one measure, each will be addressed individually. An order will state:

- who must take the measures
- what measures must be taken to satisfy the order, including any time limits or restrictions
- when each measure of an order would be considered to be fulfilled

For an order to be issued to a licensee, regardless of whether there has been an inspection, conditions outlined in subsection 35(1) of the NSCA must be met. For an order to be issued to a person(s), the conditions outlined in subsection 35(2) of the NSCA must be met.

A recipient must obey an order. Failure to comply with an order can lead to further regulatory measures, including prosecution or licensing actions.

The CNSC typically posts orders on its [Regulatory Action Web page](#) for a period of two years.

3. Who Can Make an Order

Orders can be made by an inspector, a designated officer (DO) or the Commission.

3.1 Inspector

An inspector is a person who the Commission considers qualified and designates as an inspector for the purposes of the NSCA. The CNSC provides each inspector with a certificate that identifies the inspector and describes the duties. This includes the power to make an order.

3.2 Designated officer

A DO is a person who the Commission considers qualified and authorizes to exercise certain duties under the NSCA. The CNSC provides the DO with a certificate that describes the duties delegated to them by the Commission. These may include:

- making any order that an inspector may make
- reviewing an order made by an inspector and then making a decision to confirm, amend, revoke or replace the order

3.3 The Commission

The Commission may issue an order under the following circumstances:

- Where, after conducting a public hearing, the Commission is satisfied that there is contaminated land, the Commission may order that prescribed measures be taken to lower the level of contamination.
- In case of an emergency the Commission may, without conducting any proceedings, make any order that it considers necessary to protect the environment or the health and safety of person(s) or to maintain national security and compliance with Canada's international obligations.

The NSCA gives the Commission the latitude to deal with these emergency orders in a manner appropriate to the circumstances of each case.

4. Before Issuing the Order

A CNSC inspector or a DO can order a licensee to take measures to ensure that the environment, health, safety and security of persons are protected or to ensure that Canada's international obligations are complied with. After establishing that an order will be issued, and before making it, the inspector or DO will:

- ensure that they can produce their certificate, if requested by the person(s) to whom the order will be made; a DO will also ensure that they are authorized to make orders as defined in their certificate
- inform the person(s) (verbally or in writing) to whom the order is being given of the nature of the order, its basis and the time frame for compliance; this allows the person(s) receiving the order to give any feedback on problems or issues that may arise from complying with the order, and a written order then follows

The method of communication with the person(s) to whom an order will be made prior to making the order is at the discretion and judgement of the inspector or DO, depending on the urgency of the situation and the relevant circumstances.

5. Giving the Order

Once the person(s) has been informed that an order will be issued, the inspector or DO will:

- give the order in writing
- retain a copy of the order, the inspection report and any other relevant information
- refer the order to an authorized DO or the Commission for review as soon as practicable and, in any event, no later than 10 days after the order has been given

See [appendix A](#) for a flowchart that gives an overview of the actions of inspectors or DOs in making orders.

6. Receiving the Order

Any person(s), regardless of whether subject to an order, must give all reasonable assistance to enable the inspector to carry out his or her duties.

Any person(s) named in, or subject to, an order must comply with it within the time limit specified, or immediately if no time limit is specified. The person(s) must comply with the order whether or not they have had the opportunity to be heard. See subsection 7.1 for details on the opportunity to be heard.

The person(s) who are in possession of the nuclear substance, prescribed equipment or prescribed information or the owner or person in charge of the nuclear facility at the time the order is made is, without proof of fault or negligence, liable to pay any costs that any other person incurs in complying with the order.

Once all measures listed in the order have been fulfilled and all requirements have been met to the satisfaction of the CNSC, the recipient will be informed by the CNSC that the matter is considered closed. **Note:** If written confirmation that the matter is considered closed is received prior to the DO or the Commission making a decision to confirm, amend, replace or revoke the order, the person(s) who received the order remain subject to the DO or the Commission's decision.

See [appendix B](#) for a flowchart that gives an overview of the actions of person(s) receiving orders made by inspectors or DOs.

7. Reviewing the Order

Within 10 days of making an order, the inspector or DO will refer the order to the Commission for review.

The Commission will review:

- an order made by an inspector to confirm, amend, revoke or replace the order; if a DO has been authorized to review an inspector's order, the order will normally be referred to the authorized DO for review
- an order made by a DO to confirm, amend, revoke or replace the order

7.1 Opportunity to be heard

As part of the review process, prior to making a decision to confirm, amend, revoke or replace the order, the authorized DO or the Commission will notify the person(s) named in, or subject to, the order, of their opportunity to be heard. This is an opportunity for the person(s) subject to the order to present information to the DO or the Commission for them to consider during their review of the order. Person(s) named in, or subject to, the order are not obliged to use the opportunity to be heard.

In order to be heard, the person(s) must notify the authorized DO or the Commission of their intent to present information and submissions with respect to the order within 10 days of receiving the notification of their opportunity to be heard.

As soon as practicable after receiving notice that the person(s) wants an opportunity to be heard, the authorized DO or the Commission will notify the person(s):

- of the time and manner in which the person(s) may be heard
- whether the information and written submissions are required to be filed with the DO or the Commission and sent to other parties, and if they are, of the format, the time limits for filing and sending the information and the submissions, as well as the names and addresses of other parties

The person(s) named in, or subject to, the order that wants the opportunity to be heard must:

- file with the authorized DO or the Commission, and send to other parties, any information and written submissions within the specified time, as required by the DO or the Commission

- present their information and submissions at the time and in the manner specified in the notice from the DO or the Commission (in person, by teleconference, videoconference or by written submission)

7.2 Making the decision

The authorized DO or the Commission will:

- hold a hearing and review the information
- make the decision to confirm, amend, revoke or replace the order
- provide the decision in writing, within 10 days after it is made, to the person(s) named in, or subject to, the order, and to any other person(s) who intervened in the proceeding

See [appendix C](#) for a flowchart that gives an overview of the actions of the authorized DO or the Commission in reviewing an order.

8. Appeal and Redetermination of the Order

8.1 Appeal

An appeal is a process through which a matter is heard by a higher authority. For example, a DO's decision to confirm, amend, revoke or replace an order made by an inspector can be appealed to the Commission. An appeal of an order can only be made by any person who is directly affected by it.

A person who is "directly affected" is someone who has a personal, financial or legal interest that is directly impacted or could be directly impacted by the order. The personal interest must directly impact the individual and cannot be only a generalized interest such as an interest in the environment or in the nuclear industry.

While a decision of the Commission cannot be appealed under the NSCA, an application for its redetermination may be made.

8.2 Redetermination

A redetermination is a process through which a decision can be reconsidered by the Commission, related to:

- orders issued by an inspector, a DO or the Commission
- DO or Commission decisions to confirm, amend, revoke or replace an order

Any person(s) named in, or subject to, an order may apply to the Commission for a redetermination. The Commission may also, on its own initiative, redetermine any decision or order made by it, by an inspector or by a DO. The procedures for this type of redetermination are found in [Rules 31 and 32](#) of the *Canadian Nuclear Safety Commission Rules of Procedure*.

8.3 Making an appeal or application for redetermination of an order

The person(s) directly affected by an order who wants to appeal it – or any person(s) named in or subject to an order who wants to apply for its redetermination – shall send the Commission the following information:

- a reference to the appropriate paragraph in subsections 43(1) or 43(2) of the NSCA under which the appeal or application is being made
- a reference to the order that is the subject of the appeal or application
- the grounds for appeal or application, including in the case of an appeal a statement showing how the appellant is directly affected by the order being appealed
- a statement of the action that the appellant or applicant wants the Commission to take under subsection 43(4) of the NSCA
- a statement indicating if the appellant or applicant wishes to present new evidence
- a description of the manner in which the appellant or applicant wishes to participate in the proceeding
- the name, address, and telephone and fax numbers of the appellant or applicant
- a statement indicating whether the appellant or applicant intends to be represented by counsel or an agent, and if so, the name, address, and telephone and fax numbers of this person

The Commission will determine the manner in which the appeal or redetermination will be considered and send a written notice to the appellant or applicant and to those persons who were participants in the proceeding related to the order being appealed or redetermined. The person(s) then shall:

- send copies of the information and written submissions to the person(s) specified by the Commission in its notice
- present their information and submissions on the day, at the place, within the time limits and in the manner specified by the Commission in its notice

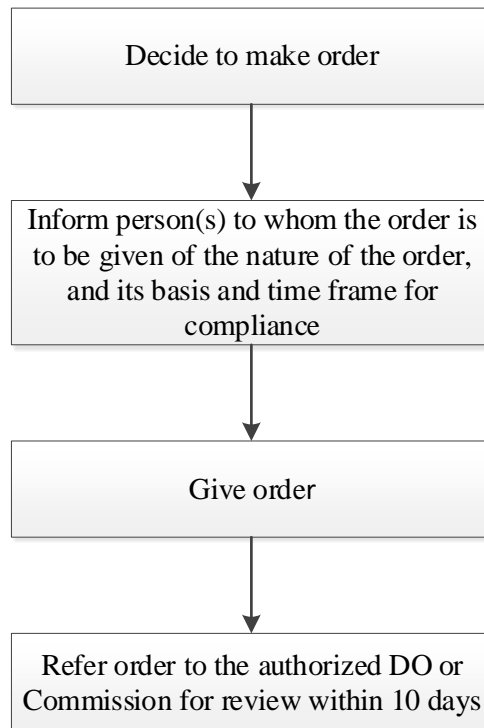
The Commission's decision to confirm, amend, revoke or replace the order will be provided in writing to the appellant or applicant and any other person(s) who intervened in the proceedings.

See [appendix D](#) for a flowchart overview of the actions of person(s) applying for an appeal or a redetermination of orders made by inspectors or DOs.

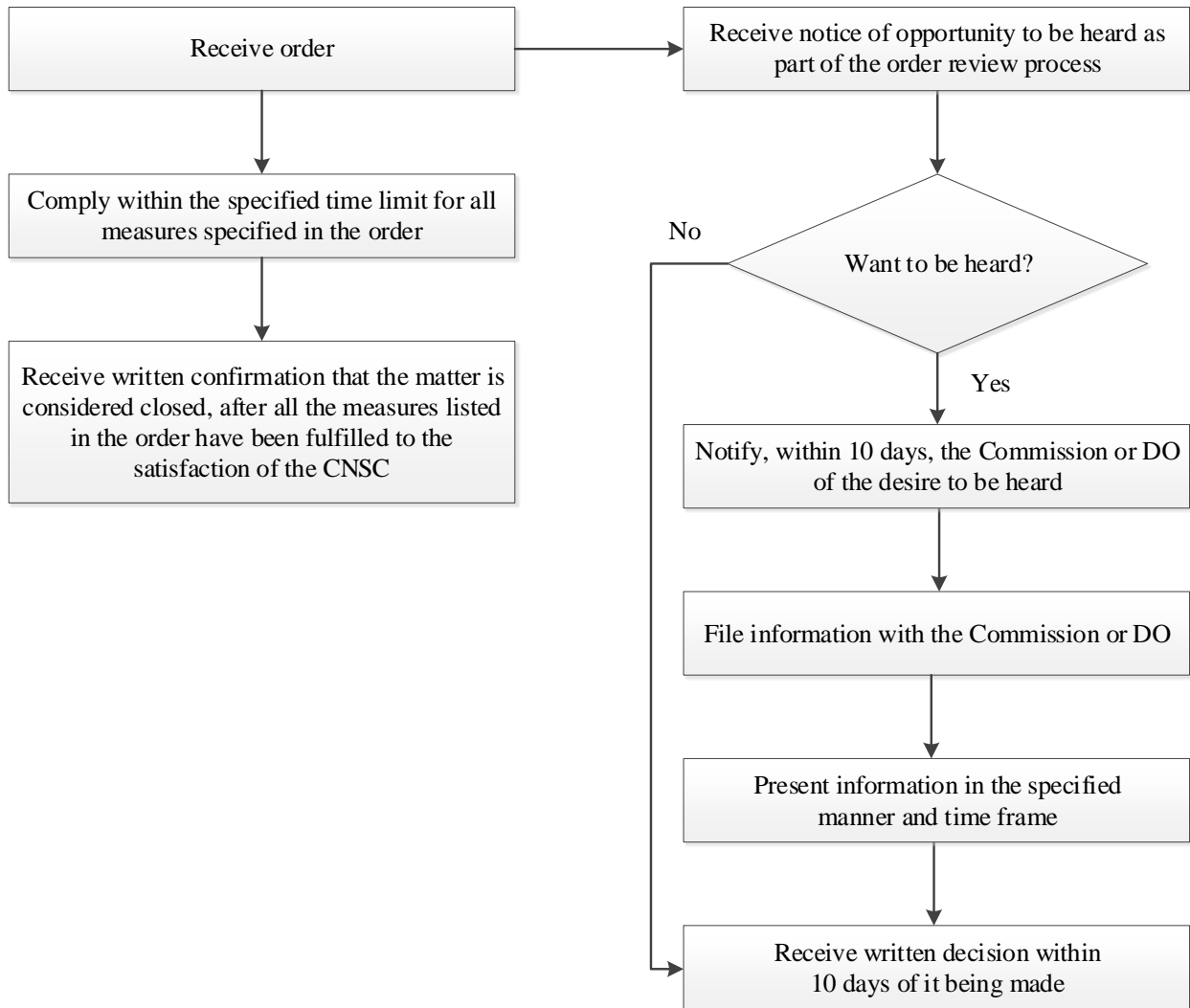
9. Fulfilling the Order

Once all the measures listed in the order have been fulfilled to the satisfaction of the CNSC, the CNSC will inform the recipient that they consider the matter closed.

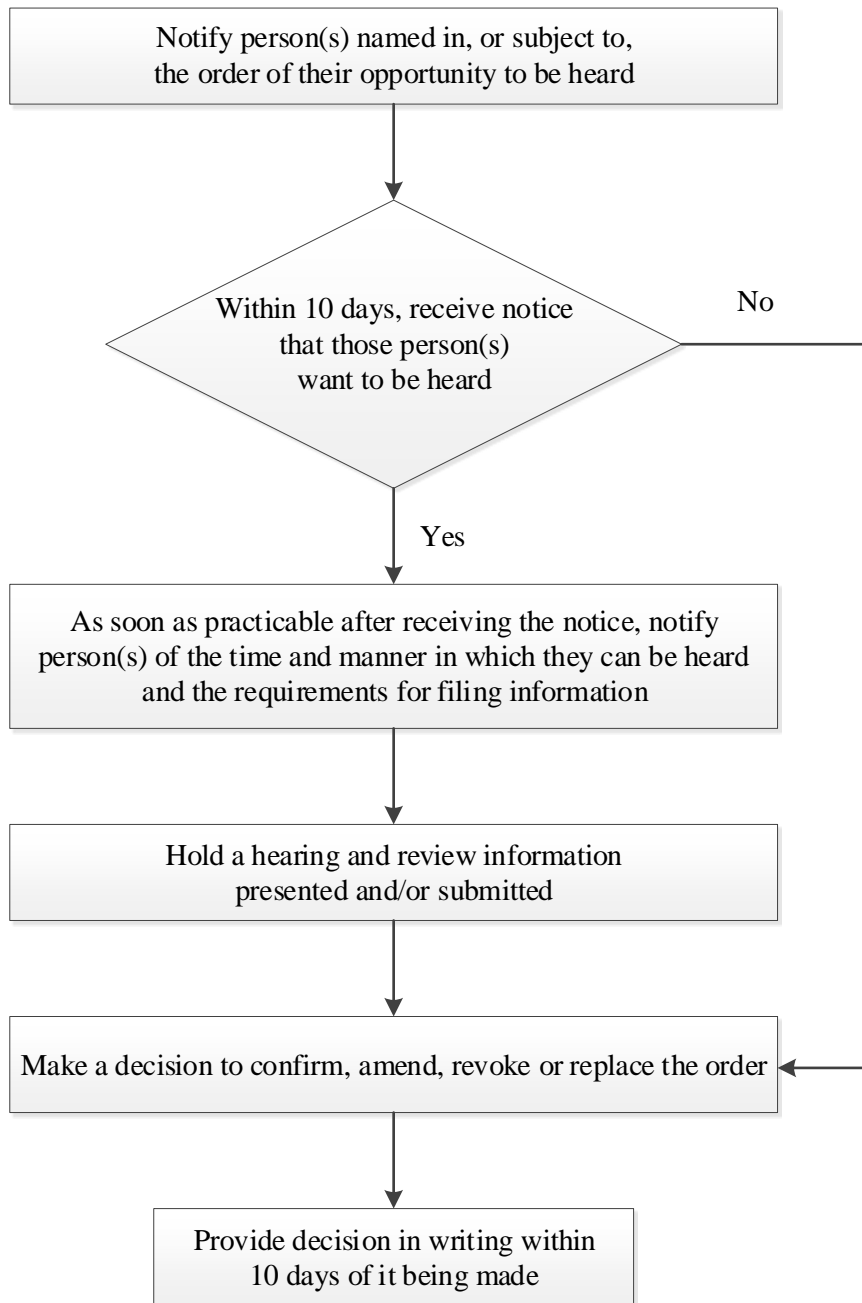
Appendix A: Actions of Inspectors or DOs in Making Orders



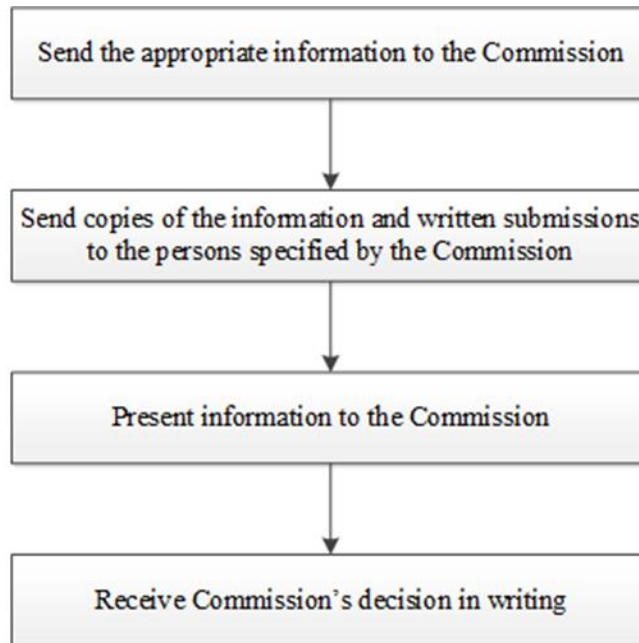
**Appendix B: Actions of Person(s) Receiving Orders
Made by Inspectors or DOs**



Appendix C: Actions of DOs or the Commission in Reviewing Orders



**Appendix D: Actions of Person(s) Applying for an Appeal or
for a Redetermination of Orders Made by Inspectors or DOs**



Glossary

For definitions of terms used in this document, see [REGDOC-3.6, *Glossary of CNSC Terminology*](#), which includes terms and definitions used in the [Nuclear Safety and Control Act](#) (NSCA) and the regulations made under it, and in CNSC regulatory documents and other publications. REGDOC-3.6 is provided for reference and information.

CNSC Regulatory Document Series

Facilities and activities within the nuclear sector in Canada are regulated by the Canadian Nuclear Safety Commission (CNSC). In addition to the *Nuclear Safety and Control Act* and associated regulations, these facilities and activities may also be required to comply with other regulatory instruments such as regulatory documents or standards.

Effective April 2013, the CNSC's catalogue of existing and planned regulatory documents has been organized under three key categories and twenty-five series, as set out below. Regulatory documents produced by the CNSC fall under one of the following series:

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	2.14	Packaging and transport

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	3.3	Financial guarantees
	3.4	Commission proceedings
	3.5	CNSC processes and practices
	3.6	Glossary of CNSC terminology

Note: The regulatory document series may be adjusted periodically by the CNSC. Each regulatory document series listed above may contain multiple regulatory documents. For the latest list of regulatory documents, visit the [CNSC's website](#).