



Natural Resources
Canada

Ressources naturelles
Canada

PROPOSED *INDIGENOUS MINISTERIAL ARRANGEMENTS REGULATIONS*

PHASE 1 EARLY TOUCH BASE

HANDBOOK

2022



INTRODUCTION

This handbook provides background information and context on the proposed *Indigenous Ministerial Arrangements Regulations* (the proposed Regulations). Natural Resources Canada (NRCan) has committed to work with Indigenous Peoples on the development of the proposed Regulations. This is why, through Phase 1 Early Touch Base sessions, NRCan will be asking key Indigenous Peoples and organizations to share knowledge on the best way to engage throughout the regulatory development process. In addition, NRCan will be seeking any initial considerations that should be explored during the development of the proposed Regulations. This is the first phase in a planned five-phase approach to engagement on the proposed Regulations.

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

NRCan is committed to advancing reconciliation with Indigenous Peoples in a manner that is consistent with the [United Nations Declaration on the Rights of Indigenous Peoples](#) (the Declaration) and to fostering trust and confidence through fulsome communication, transparency and inclusive engagement.

Working together with Indigenous Peoples in a manner that is consistent with the Declaration and that promotes reconciliation, respects the rights and cultures of Indigenous Peoples, and protects and ensures the inclusion of Indigenous knowledge is at the core of our approach to the development of policies and regulations. The proposed Regulations will be developed in a manner that respects the Declaration.

PROPOSED INDIGENOUS MINISTERIAL ARRANGEMENTS REGULATIONS

OVERVIEW OF THE PROPOSED REGULATIONS

The goal of the proposed Regulations is to enrich collaborative, meaningful, and inclusive Indigenous involvement in the oversight of federally regulated energy projects under the *Canadian Energy Regulator Act* (CER Act). The proposed Regulations would provide the authority for the Minister of Natural Resources to enter into arrangements with Indigenous governing bodies¹ and may authorize any Indigenous governing body that enters into such an arrangement to exercise powers, duties, and functions under the CER Act, as outlined in the arrangement. The proposed Regulations may include:

- An outline of the process for entering into an arrangement;
- Any conditions for entering into an arrangement;
- The contents of an arrangement; and,
- A description of any powers, duties or functions that are varied or excluded from an arrangement.

¹ The CER Act defines an Indigenous governing body as a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. Note: Guidance will be sought from Indigenous Peoples on how this will be applied when the policy framework is developed later in the regulatory development process.

ENGAGEMENT ON THE PROPOSED REGULATIONS

ENGAGEMENT AND THE REGULATORY DEVELOPMENT PROCESS

The Treasury Board of Canada's [Cabinet Directive on Regulation](#) sets out the expectations and requirements for the development, management, and review of federal regulations. The directive and its associated policies also provide guidance on how consultation and engagement for the development of regulations should be approached.

The perspectives and knowledge of Indigenous Peoples are essential in the development of the proposed Regulations and the accompanying implementation framework.³ The development of the proposed Regulations will include five engagement phases. The intent is to ensure that Indigenous Peoples and Organizations have opportunities throughout the regulatory development process to provide input and help shape the proposed Regulations. These opportunities include informal engagement, such as the current Early Touch Base, and formal engagement through the publication of the proposed Regulations in Canada Gazette, Part I² for comment. For additional information, please see Figure 1 below.

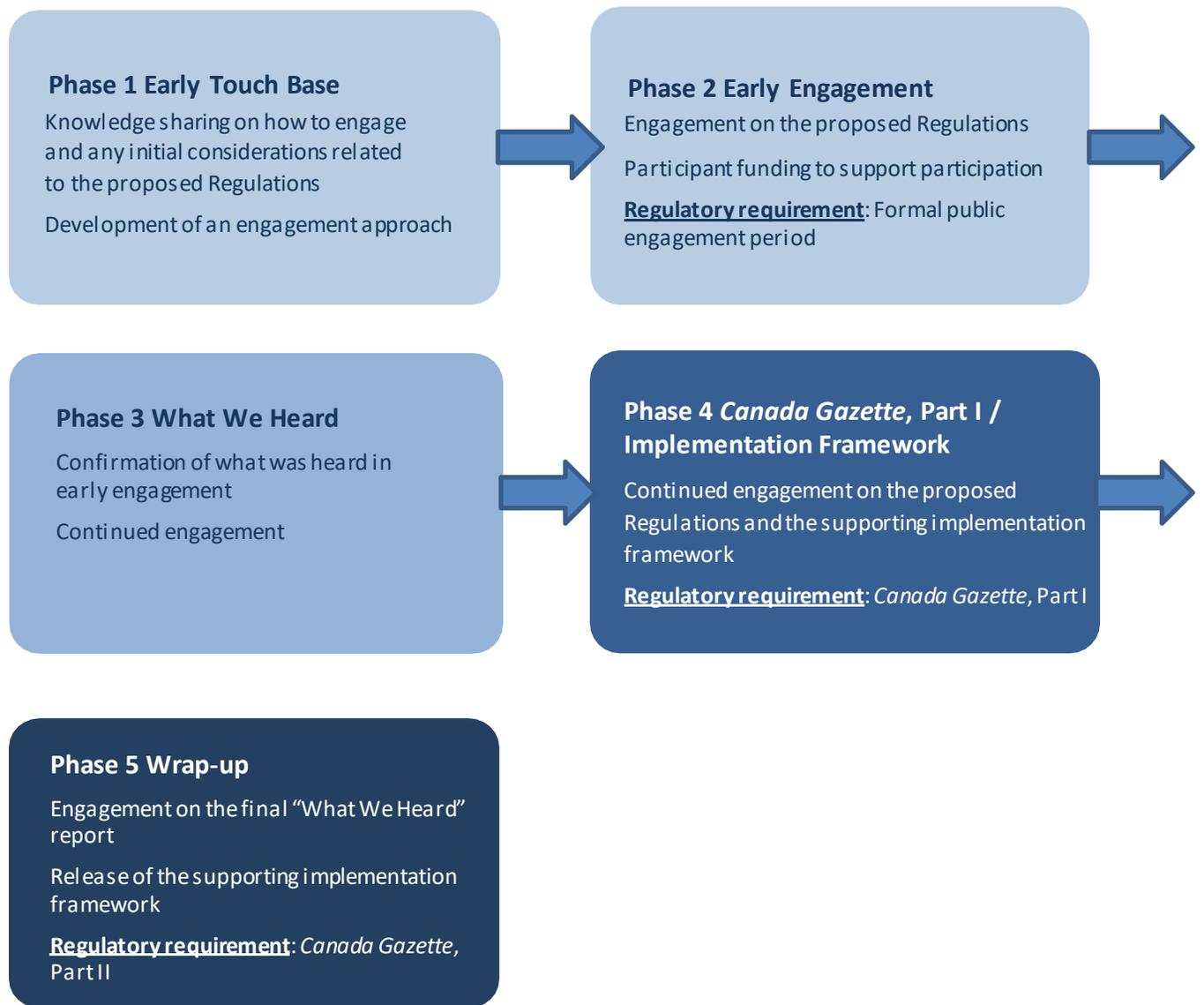
PHASES OF ENGAGEMENT

The five phases of engagement outlined in Figure 1 are aligned with the formal regulatory development process.

² The *Canada Gazette* is the official newspaper of the Government of Canada. Through the *Canada Gazette*, federal departments and agencies give interested groups, individuals and all Canadians the opportunity to review and comment on proposed regulations before they become official.

³ The implementation framework will outline what needs to be considered in implementing the Regulations and how implementation will be achieved.

FIGURE 1. FIVE PHASES OF ENGAGEMENT



PHASE 1 –2022

The intent of the Phase 1 Early Touch Base is to have early conversations on:

- How to meaningfully engage with Indigenous Peoples to allow for knowledge sharing throughout the development of the proposed Regulations and the supporting implementation framework; and,
- Any initial considerations on the development of the proposed Regulations.

Although these initial discussions will be targeted to groups that have experience with the CER Act, NRCan is open to meeting with Indigenous Peoples and organizations that express interest in participating in the Phase 1 Early Touch Base. Our intent is to engage and share knowledge on key matters of interest and ensure the meaningful participation of Indigenous Peoples throughout the entire regulatory development process.

PHASES 2 THROUGH 5 – STARTING IN LATE 2022/EARLY 2023

Phases 2 through 5 will provide timely and meaningful engagement opportunities with a greater number of groups. The approach for these phases of engagement will depend on the results of the initial discussions with Indigenous Peoples and organizations from Phase 1.

Other interested parties, such as landowners, industry groups and the public, will also have the opportunity to be engaged throughout regulatory development to ensure that the process is open, transparent and inclusive.

PARTICIPANT FUNDING

Participant funding will be made available during Phase 2 Early Engagement.

BUILDING ON THE COLLABORATIVE ACTIVITIES OF INDIGENOUS PEOPLES WITH THE CANADA ENERGY REGULATOR (CER)

THE CER'S ONGOING COLLABORATION WITH INDIGENOUS PEOPLES

A key intent of the proposed Regulations is to build on the collaborative activities that are already underway between the CER and Indigenous Peoples, and to further enhance the role of Indigenous Peoples throughout the life-cycle of energy projects. Additional information on the CER and its mandate can be found in Annex A.

The CER has identified reconciliation with Indigenous Peoples as one of its four key strategic priorities. The CER is transforming the way it works with Indigenous Peoples—with a commitment to implementing the Declaration—by enhancing the involvement of Indigenous Peoples in how the CER carries out its mandate. The CER uses a cooperative and respectful approach, based on the recognition of Indigenous rights and the right to self-determination, to engage with Indigenous Peoples in all aspects of its regulatory oversight. The CER is working to transform its approach to collaborating with Indigenous Peoples—recognizing their unique cultures, knowledge, histories and connection to the land. Meaningful engagement with Indigenous Peoples supports better decisions, improved safety and environmental protection, and effective issues resolution.

The CER continues to enhance its collaboration with Indigenous Peoples to strengthen its involvement in the oversight of federally regulated energy projects through:

- Indigenous representation on the CER’s Commission and Board of Directors;
- The establishment of an Indigenous Advisory Committee in August 2020;
- Participation in Government of Canada’s Indigenous Advisory Monitoring Committees (IAMC) [for the Enbridge Line 3 Replacement Project and the Trans Mountain Pipeline Expansion];
- Implementation of the Indigenous Knowledge Policy Framework;
- Indigenous monitoring on construction oversight and compliance verification activities for new and upcoming projects on the Nova Gas Transmission Ltd System; and,
- Exploration of new mechanisms for more effective capacity and participant funding support.

WORKING WITH OUR FEDERAL PARTNERS

WHOLE-OF-GOVERNMENT APPROACH

NRCan is leading the development of the proposed Regulations in close collaboration with the CER. A “whole-of-government” approach will be taken, whenever possible, to engage on cross-cutting regulatory and policy objectives, which will allow for more efficient use of resources, help reduce consultation fatigue, and ensure consistency.

NRCan will consider feedback received from its federal partners, including the CER and the Impact Assessment Agency of Canada (the Agency), as well as Indigenous Peoples and other interested parties in the development of the proposed Regulations.

REGULATIONS UNDER THE CER ACT VERSUS THE IMPACT ASSESSMENT ACT

The Agency is in the process of developing the proposed *Indigenous Cooperation Regulations*, which will enable the Minister of Environment and Climate Change Canada to enter into agreements to allow Indigenous governing bodies to exercise powers and perform duties and functions under the *Impact Assessment Act* (IAA) related to impact assessments on lands specified in the agreement.

The distinction between the two sets of proposed regulations is that NRCan’s proposed Regulations would cover the life-cycle oversight of energy projects, while the Agency’s proposed regulations would focus on the impact assessment of specific projects designated under the IAA.

NRCan is collaborating with the Agency to ensure alignment in the approach to the regulatory development process for the Agency-led *Indigenous Cooperation Regulations* and the NRCan-led *Indigenous Ministerial Arrangements Regulations*, as well as to ensure alignment with each other and with Government of Canada policy objectives.

WHAT WE HAVE HEARD SO FAR

Since 2017, NRCan has engaged extensively with Indigenous Peoples across Canada to understand their views on how the regulation of energy projects (e.g. pipelines, power lines) could be improved. This process included an expert panel, several discussion papers, dozens of engagement sessions across Canada, and hundreds of submissions from Indigenous Peoples. The feedback received helped shape key Indigenous provisions in the CER Act, which replaced the *National Energy Board Act* in 2019.

Notably, the authority to put in place regulations under the CER Act resulted from what was heard throughout this process. We heard repeatedly that Indigenous Peoples should be more involved in continuous monitoring of pipelines in their respective territories and that this involvement can improve monitoring, given their profound understanding and knowledge of the land. We heard that Indigenous Peoples want greater autonomy on their traditional lands.

DISCUSSION QUESTIONS

PERSPECTIVES ON ENGAGEMENT

Throughout NRCan's engagement with Indigenous Peoples across Canada on improving the regulatory system for energy infrastructure, several key themes emerged in relation to meaningful and effective engagement. First, for Indigenous Peoples to participate meaningfully in engagement processes, there must be capacity. To support capacity, participant funding will be made available during the regulatory development process, starting in Phase 2. In addition, it was made clear that if our intent is to collaborate with Indigenous Peoples on the development of these proposed Regulations, we must not simply come forward with a fully developed engagement approach. Instead, we should work together to build this approach.

A crucial objective of this Early Touch Base is to ask key Indigenous Peoples and Organizations to share knowledge on how to meaningfully engage with Indigenous Peoples on the proposed Regulations.

Question 1. How can we best ensure that we meaningfully engage with Indigenous Peoples throughout the regulatory development process? How can we best ensure that Indigenous Peoples are able to share knowledge on these proposed Regulations?

Question 2. What challenges do you foresee in implementing and maintaining a meaningful engagement approach throughout the entire regulatory development process? How could we work to address these challenges?

Question 3. How can we ensure that we engage in a respectful and culturally appropriate way? What are some strategies to better include women, gender-diverse peoples, youth, Elders, harvesters, and urban members?

INITIAL CONSIDERATIONS REGARDING THE PROPOSED REGULATIONS

Early discussions with Indigenous Peoples on the proposed Regulations have highlighted that they have the potential to significantly improve stewardship of the land in proximity to energy projects, particularly when it comes to respecting and protecting heritage resources and sites of significance for Indigenous Peoples. The proposed Regulations would also provide an important opportunity to build on the collaborative work of Indigenous Peoples and the CER in life-cycle monitoring of energy projects.

These early discussions have also highlighted a number of complex issues that we will need to work closely with Indigenous Peoples to resolve. For example, we heard that the proposed Regulations have the potential to create conflict amongst Indigenous Peoples given the number of groups that are typically involved in pipeline projects. We have also heard that we will need to work closely with Indigenous Peoples to determine whether an Indigenous governing body has the needed capacity and qualifications to exercise specific regulatory authorities. A number of other issues have been raised, for example, with respect to private land, procedural fairness, and ensuring a distinctions-based approach.

Question 4. Are there any initial considerations that you would like to raise about the proposed Regulations? Do you see any initial advantages that the proposed Regulations could have for Indigenous Peoples? Can you suggest any strategies for maximizing the advantages and addressing any challenges?

NEXT STEPS

This Handbook is being provided in advance of Phase 1 Early Touch Base sessions to allow groups to have an early opportunity to consider the questions on which we are seeking their input. After the completion of the Early Touch Base sessions, we will work on the development of an engagement approach that considers what we heard during Phase 1.

CONTACT US

For additional information or to submit comments in writing, please send an email to [Indigenous Ministerial Arrangements Regulations – Règlement sur les accords ministériels autochtones](mailto:imar-rama@nrcan-rncan.gc.ca) (imar-rama@nrcan-rncan.gc.ca).

ANNEX A – CANADA ENERGY REGULATOR

WHO IS THE CER?

The Canada Energy Regulator (CER) was established under the CER Act and works to keep energy moving safely across the country. They are responsible for reviewing energy development projects and sharing energy information, all while enforcing some of the strictest safety and environmental standards in the world.

WHAT DOES THE CER DO?

The CER oversees how energy moves across Canada. They are in charge of keeping watch over the companies operating oil and gas pipelines and electrical power lines that cross a national, provincial or territorial border.

This includes:

- Reviewing applications for new projects and upgrades to current ones;
- Providing oversight of oil and gas exploration and activities on frontier lands and offshore areas not otherwise regulated under territorial law or joint federal/provincial accord;
- Deciding what can be transported in pipelines and how much companies are allowed to charge for their services;
- Approving the export and import of natural gas and the export of oil; and,
- Providing people with energy statistics, analysis and information they can trust.

The CER regulates for the complete life cycle of a pipeline or power line project. When projects are being built, they are present. When projects are being operated, they are present. Also, when a project has reached the end of its usefulness and is being abandoned, they are present – so the work is done safely and in a way that protects the environment and the public.

For information on CER's mandate, please see Figure 2.

FIGURE 2. CER MANDATE OVERVIEW

				
Oil & Gas Pipelines	Electricity Transmission	Imports, Exports & Energy Markets	Exploration and Production	Offshore Renewables
Construction, operation, and abandonment of of interprovincial and international pipelines and related tolls and tariffs	Construction, operation, and abandonment of of international power lines and designated interprovincial power lines	Imports and exports of certain energy products; monitoring aspects of energy supply, demand, production, development and trade	Oil and gas exploration and production activities in the offshore and on frontier lands not covered by an accord	Offshore renewable projects and offshore power lines
CER Act, Part 2 and Part 3	CER Act, Part 2 and Part 4	CER Act, Part 7 and Part 1	<i>Canada Oil and Gas Operations Act (COGOA), Canadian Petroleum Resources Act (CPRA)</i>	CER Act, Part 5