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### INTRODUCTION

Passenger conveyance means any aircraft, train, vessel, motor vehicle or other mode of public transportation that is used commercially to transport passengers, as designated in the Regulations. The proposed *Canada Health Protection Act* would provide legislative and regulatory authority needed to ensure the health protection of the traveling public on passenger conveyances. This paper describes the current context and activities, the proposed changes and makes suggestions for discussion of the issue. The paper is divided in three main parts:

- ▶ The legislative context
- ▶ The current Public Health Programme for Passenger Conveyances, including its evolution and the services provided
- ▶ The legislative proposal.

The legislative proposal section identifies the current situation in relation to the cited provision, the proposed changes and desired outcomes, followed by related questions for discussion or comment.

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## PART 1 THE LEGISLATIVE CONTEXT

Health Canada's Public Health Programme for Passenger Conveyances derives its authority from the *Department of Health Act* and the *Potable Water Regulations for Common Carriers*. Other legislative and regulatory requirements that are applied or serve as a standard include the *Canada Shipping Act* and the *Ship's Crews Food and Catering Regulations*, the *Canada Labour Code* and the *Marine Occupational Safety and Health Regulations*; and the International Health Regulations. These legislative and regulatory provisions, as they apply to passenger conveyances, are briefly described below.

### 1.1 THE DEPARTMENT OF HEALTH ACT

The *Department of Health Act (DHA)* is the enabling legislation for the Department of Health (Health Canada). The powers, duties and functions of the Minister of Health are set out in section 4 of the *DHA*:

#### A) The powers, duties and functions of the Minister of Health -

##### Section 4. (1)

*"4(1) The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction relating to the promotion and preservation of the health of the people of Canada not by law assigned to any other department, board or agency of the Government of Canada."*

#### B) Application of *DHA* to passenger conveyances and ancillary services

##### Section 4. (2)

*"4(2) Without restricting the generality of subsection (1), the Minister's powers, duties and functions relating to health include the following matters:*

*...*

*(e) the protection of public health on railways, ships, aircraft and all other methods of transportation, and their ancillary services<sup>1</sup>;*

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<sup>1</sup> The term ancillary services is not defined in the *DHA*. Ancillary services has been interpreted to mean those services provided to aircraft which are provided by facilities within the airport and on the grounds of the airport such as flight kitchens.

**C) Application of *DHA* to passenger conveyances and boundary waters between Canada and the United States**

**Section 4. (2)(g)**

*“(g) the enforcement of any rules or regulations made by the International Joint Commission, promulgated pursuant to the treaty between the United States of America and His Majesty, King Edward VII, relating to boundary waters and questions arising between the United States and Canada, in so far as they relate to public health.”*

**D) The Minister’s Power to designate inspectors**

**Section 5.**

*“5. The Minister [of Health] may designate any person to be an inspector or an analyst for the purposes of any Act for which the Minister has responsibility, and sections 22 to 29 and 35 of the Food and Drugs Act apply, with such modifications as the circumstances require, to the persons designated pursuant to this section.”*

**E) Governor-in-Council may make regulations**

**Section 11(1)**

*“11(1) The Governor in Council may make regulations to give effect to and carry out the objects of this Act.”*

Currently, the only regulations enacted pursuant to the *DHA* which apply to passenger conveyances are the *Potable Water Regulations for Common Carriers*.

**F) Enforcement**

A violation of the *Potable Water Regulations for Common Carriers* may result in a summary conviction under the *Criminal Code* which prescribes penalties of up to a \$2000 fine and/or six months in jail, or both, for a person (reference section 787(1) of the *Code*) and \$25,000 for a corporation (reference section 735(1) of the *Code*).

**1.2 THE POTABLE WATER REGULATIONS FOR COMMON CARRIERS**

The *Potable Water Regulations for Common Carriers*, promulgated in 1954, were enacted in 1972 in accordance with section 12 of the *Department of National Health and Welfare Act* to achieve the objectives set out in paragraph 4(2)(d) of that Act.

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The *Department of National Health and Welfare Act* was repealed and replaced with the *Department of Health Act* in 1997 which contains similarly, but not identically, worded objectives which have the same power to make regulations and a provision authorizing the appointment of inspectors and setting out their powers.<sup>2</sup>

The *Potable Water Regulations for Common Carriers* are intended to address public health concerns about the possible transmission of water-borne communicable diseases to passengers on “conveyances” operated by “common carriers.” Essentially, the *Potable Water Regulations for Common Carriers* outline the responsibilities of common carriers and provide that common carriers shall not supply raw water for use on any conveyance for drinking or culinary purposes. The *Potable Water Regulations for Common Carriers* identify special requirements for vessels and outlines the powers relating to inspections, the issuance of certificates and the imposition of penalties in the case of violations.

Health Canada currently relies upon the *Potable Water Regulations for Common Carriers* as the legal basis for inspections of passenger conveyances and the facilities that provide their ancillary services in order to inspect for the presence of communicable diseases that could be transmitted to passengers by water, air, food or poor sanitation.

Inspections related to air, food or poor sanitation are largely extra-legislative inspections which are set out in a series of voluntary compliance agreements with different sectors of the travel industry.

### **A) Interpretation of the Regulations**

Section 2 of the *Potable Water Regulations for Common Carriers* is the definition section for the *Regulations*.

The term conveyance

*”means any aircraft, train, vessel, motor vehicle or other mode of transportation that is used in*

*(a) international traffic,*

*(b) interprovincial traffic,*

*(c) traffic on the sea coast of Canada and on the salt water bays, gulfs, and harbours of Canada, and*

*(d) traffic on the Great Lakes and inland waters of Canada.”*

Vessels are defined as

*”Any boat, ship or other mode of transportation by water that is used in any traffic mentioned in the definition of conveyance.”*

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<sup>2</sup> Under the former *Department of National Health and Welfare Act*, the Minister’s powers included the supervision, with respect to the public health, of railways, boards, ships, aircraft and all other methods of transportation and their ancillary services. Under the *Department of Health Act* the wording has changed slightly to refer to the protection of public health in the same areas.

### Jurisdictional Limitations

Stakeholders have raised concerns with Health Canada that inspections of purely intraprovincial conveyances may fall outside the legislative authority of Parliament. It appears that the *Potable Water Regulations for Common Carriers* apply not only to interprovincial and international conveyances, but also to those which ply the sea coast of Canada, the salt water bays, gulfs and harbours of Canada and the Great Lakes and inland waters of Canada.

However, in order for the *Potable Water Regulations for Common Carriers* to apply, the conveyance or common carrier must fall within the legislative authority of Parliament as defined in the *Constitution Act, 1867*. Health Canada relies on the following sections:

- ▶ 91(10) shipping and navigation; and
- ▶ 91(13) ferries between a province and any country or between two provinces.

The powers of the provincial legislatures are prescribed by section 92 of the *Constitution Act, 1867*. Section 92(10) provides that the provincial legislatures have jurisdiction over:

- ▶ local works and undertakings 92(10) other than such as are of the following classes:
  - (a) *Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the provinces, or extending beyond the Limits of the provinces;*
  - (b) *Lines of Steamships between the Province and any British or Foreign Country*
  - (c) *Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.*

The exclusion of the matters described in paragraphs (a) to (c) from section 92(10) makes those matters the legal responsibility of the federal government.

### B) Airports

In accordance with the *Potable Water Regulations for Common Carriers*, Health Canada is obligated to provide potable water inspections at airports (on the air side at terminals and on conveyances). The *Potable Water Regulations for Common Carriers*, however, apply to common carriers and not to airport operators.

In cases where the water supply to airports is managed by municipalities, provincial legislation will apply to these drinking water systems.

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**C) Examination and inspection of potable water and potable water systems**

Section 10 of the *Potable Water Regulations for Common Carriers* provides for the inspection of potable water and potable water systems on common carriers, provides for the issuance of a notice in cases where a health risk has been identified and, in such cases, common carriers are required to take appropriate action.

“10 (1) *An official of the Department duly authorized by the Minister may examine and inspect from time to time the potable water and potable water system of any conveyance that is operated by a common carrier.*

*(2) Where the Minister is not satisfied that the potable water or the potable water system complies with the requirements of these Regulations, he shall forward to the common carrier who owns the conveyance a notice containing particulars of the manner in which the requirements of the Regulations are not complied with.*

*(3) When a common carrier receives a notice under subsection (2), he shall take whatever action is necessary to ensure that the requirements of these Regulations specified in the notice are complied with.”*

**1.3 INTERNATIONAL HEALTH REGULATIONS**

The World Health Organization has stated that the intention of the *International Health Regulations (IHR)* is to “*strengthen the use of epidemiological principles as applied internationally, to detect, reduce or eliminate the sources from which infection spreads, to improve sanitation in and around ports and airports, to prevent the dissemination of vectors and in general, to encourage epidemiological activities on the national level so that there is little risk of outside infection establishing itself*”.

As a World Health Organization signatory, Canada has committed itself to fulfilling its role in meeting this objective for the benefit of both the Canadian public and the Global Community. This is evident by Canada’s acceptance of the International Health Regulations without reservation and all of the obligations conferred by this acceptance.

Under the *International Health Regulations*, international sea-going vessels are required to obtain a de-ratification certificate every six months declaring the vessel is free of rats or evidence of rats. The issuance of a certificate requires a full inspection of the ship by a qualified Derat Inspector (*Health Canada - Workplace Health and Public Safety Programme*). These certificates are available at any port designated and listed by the World Health Organization.

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## PART 2 THE PUBLIC HEALTH PROGRAMME FOR PASSENGER CONVEYANCES

The Public Health Programme is one of the means by which Health Canada exercises the authority of the Minister of Health under the *DHA* to provide for the protection of public health on passenger conveyances, and fulfil related domestic and international responsibilities. The following statistics<sup>1</sup>, recorded in 2002, provide a picture of the scope of this activity in that this protection extended to approximately:

1. 35 million air passengers
2. 22 million ferry passengers
3. 5 million passengers on cruise vessels
4. 5 million passengers on trains

Another illustration of the scope of this activity is that in 2002, with regard to ancillary services, 26 million meals were served by one flight kitchen company alone.

The Public Health Bureau of the Workplace Health and Public Safety Programme (WHPSP-PHB) works to reduce health and safety risks to the traveling public and it is mandated to carry out public health inspections on domestic and international passenger conveyances. Its staff and consultants provide potable water, food safety and general sanitation consultation and advice. The Bureau also implements voluntary compliance programs and carries out food and sanitation inspections on airlines, ferries, cruise ships, trains and federal lands facilities.

### 1.1 EVOLUTION OF THE PASSENGER CONVEYANCE INSPECTION PROGRAMME

Health Canada has considered several options to ensure that it has the necessary authority to efficiently fulfil its responsibilities for protecting the health and safety of the travelling public. As a result of these assessments, work is currently ongoing to review the existing Potable Water Regulations for Common Carriers and develop regulations dealing with common passenger conveyances. In 1996, a Voluntary Compliance Programme was established in partnership with the Industry. Public health inspections are now carried out in a variety of settings: Federal Lands, National Parks, Passenger Conveyances, Flight Kitchens and Cruise Vessels.

Initially, pursuant to the *Potable Water Regulations for Common Carriers* and their predecessors, drinking water was inspected on board international and interprovincial passenger conveyances. Over time, these inspections were expanded to include food handling facilities and practices, as well as sanitation and hygiene on board these conveyances. Extended inspections of cruise ships began in the Western region in the late 1970's, and in the Eastern region, in the early 1990's. Unlike the potable water inspections, food services inspections were not specifically provided for in any regulation or statute. The Minister of Health was providing a public health service as part of his general "powers, duties and functions" to

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<sup>1</sup> Insert source of statistics

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promote and preserve the health of all Canadians. This activity led to the establishment, in 1996, of a Voluntary Compliance Programme for the health and safety of the travelling public, developed by Health Canada in partnership with stakeholders.

## **1.2 THE VOLUNTARY COMPLIANCE PROGRAMME**

Through consultation with the cruise ship, passenger train and flight kitchen industry, Health Canada implemented voluntary compliance inspection programs to prevent the introduction, transmission and/or spread of communicable disease in Canada. These inspections are complemented by surveillance activities monitoring the incidence of gastro-intestinal outbreaks on cruise ships.

While there is no formal written contract between the passenger conveyance operators or service providers, Health Canada in consultation with the Industry has developed administrative guidelines and service standards that describe the inspection programme and related services, the scoring system, appropriate corrective action in cases where the standards are not met, and the action to be taken in the event of a disease outbreak. These services are provided on a cost recovery basis and a breakdown of the fees is also included in the service standards.

The proactive and collaborative approach between the passenger conveyance industry and Health Canada is exemplified by the industry's high level of compliance with Health Canada's standards. This approach allows the industry to participate actively in ongoing development of the programme and ultimately aims to encourage high standards with respect to food safety, drinking water and sanitation.

The World Health Organization has called the Voluntary Compliance Programme ground breaking and it is now considered a successful practice of interest to many countries. In 2002, WHPS- PHB was presented with the prestigious Alexander Officer Award<sup>2</sup> for Innovation and Excellence in Programme Development and Management of its Travelling Public Programme.

## **1.3 SERVICES**

The main goal of the Travelling Public Inspection Programme is to protect public health by ensuring safety practices are in place for the provision of safe food, water quality and other environmental health conditions onboard passenger conveyances. This goal is accomplished through onboard inspections of passenger conveyances carried out by a team of Environmental Health Officers. Health Canada Environmental Health Officers are nationally trained and are certified by the Canadian Institute of Public Health Inspectors.

Where deficiencies are identified during an inspection, the owner or operator of the passenger conveyance provides a statement of corrective actions taken and of standard operating procedures implemented to prevent the recurrence of the deficiencies. The following paragraphs describe the type of inspections that take place.

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<sup>2</sup>*This award is presented annually by the Canadian Institute of Public Health Inspectors to an organization or health agency for outstanding and meritorious achievements in the area of public health and environmental health.*

In 1999, as part of the Voluntary Compliance Programme, with the support of the cruise ship industry, Health Canada began unannounced public health inspections on international cruise ships travelling in Canadian waters. The inspections are conducted once per year during the international cruise ship sailing season which extends from April to the end of October. This activity is referred to as the Cruise Ship Inspection Programme (CSIP).

The CSIP is harmonized with the United States' (US) Vessel Sanitation Program (VSP) administered by the US Center for Disease Control and Prevention (CDC). Health Canada has adopted the CDC/VSP administrative guidelines and technical criteria for cruise ships inspections, with the applicable jurisdictional changes. This represents a North American compliance approach for the prevention and containment of communicable diseases on cruise ships.

In 1999, Health Canada also established a Flight Kitchen Food Safety Programme (FKFSP). As part of this program, Health Canada conducts flight kitchen food safety audits, food preparation inspections, food transportation inspections and food handling education to ensure the safety of food serviced on the aircraft departing from Canadian airports. Those inspections are undertaken in collaboration with the major carriers in the airline industry on a voluntary compliance basis.

In 2001, Health Canada reached an agreement with VIA Rail Canada to conduct on an annual basis periodic inspections of the food and water quality and the sanitation in general on board and off board VIA Rail Canada passenger trains. Similar voluntary inspection programs are being developed nationally in collaboration with airports, airlines and passenger ferries.

To meet the obligations imposed by the World Health Organization's International Health Regulations, Health Canada inspects vessels, upon request, arriving at designated and other ports from international waters to detect the presence of rats, which may be carriers of the plague infected flea. Based on the inspection, derating certificates are issued. Over 700 derat inspections were conducted by Programme staff in fiscal 2002-2003.

To assess water quality, for all inspections, environmental health officers use the *Guidelines for Canadian Drinking Water Quality*<sup>3</sup>.

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<sup>3</sup> <http://www.hc-sc.gc.ca/hecs-sesc/water/pdf/summary.pdf>

#### 1.4 ENFORCEMENT

As indicated in the legislative context (Part 1), currently there are no regulations pursuant to the *DHA* applicable to food or sanitation. With regard to the *Potable Water Regulations for Common Carriers*, there has been no recent update to the definition of potable water, some administrative provisions such as the issuance of certificates and maintaining a list of water supplies are no longer applied, and the penalty provisions of the Regulations no longer reflect the levels set under the *DHA*. The *Guidelines*, however, are not regulations and therefore confer no enforcement powers on Health Canada. There have also been calls for clarity pertaining to jurisdictional matters and the powers of inspectors.

These legislative or regulatory gaps have a direct impact on Health Canada's enforcement capacity under the Public Health Programme for Passenger Conveyances. As described above, the Voluntary Compliance Programme was one of the means used to address this challenge and is the basis for a large part of Public Health Programme for Common Carriers.

Conveyance operators or ancillary service providers are under no obligation to permit department officials to conduct food inspections. Following an inspection, if department officials are of the view that a conveyance does not meet agreed upon health and safety standards, they can provide advice on corrective action but cannot require an owner to take the necessary action to bring the conveyance into compliance. The department can, however, under the Minister's general mandate, issue warnings to the travelling public where conditions on board a conveyance might constitute a danger to public health.

The only exception to the contractual nature of this relationship is when Health Canada acts unilaterally (e.g. when issuing a travel advisory where warranted by conditions on board a cruise ship). While the department consults with the owner in developing such advisories, agreement is not necessary since Health Canada may exercise the Minister's authority as set out in the Department of Health Act and Potable Water Regulations for Common Carriers.

In summary, the success of the Voluntary Compliance Program is tied to the success of Health Canada's partnership with the industry and the latter's high level of compliance with the standards agreed to as part of that partnership. It does not, however, provide a safeguard for the travelling public in cases of non-cooperation. Legislative and regulatory authorities are therefore needed to provide the necessary legal framework. The following steps have therefore been taken to address these gaps:

- ▶ The *Potable Water Regulations for Common Carriers* are being updated.
- ▶ The Legislative Proposal for a *Canada Health Protection Act* includes a section specific to common passenger conveyances which, in addition to providing clarity around the application of the Act and the powers of inspectors, would also include a general safety requirement for passenger conveyances and their ancillary services.

The next part of this paper addresses the details of this legislative proposal and outlines questions for possible discussion.

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## PART 3 THE LEGISLATIVE PROPOSAL

Under the proposed *Canada Health Protection Act*, Section E covers the provisions applicable to passenger conveyances. These provisions would address current regulatory gaps by providing the necessary regulation-making authority to establish health and safety standards for passenger conveyances with regard to water, food, ventilation systems and general sanitation. In addition to any specific safety standards set out in regulations, the proposed *Act* would establish a General Safety Requirement that would apply to all passenger conveyances and ancillary service providers as set out in the afore-mentioned regulations.

This part of the paper briefly describes the present situation applicable to each the provisions, cites the provision and suggests questions and issues for discussion or comment. The proposed provisions cover:

- E1 - Definition of Passenger Conveyance
- E2 - Provision of necessary regulation-making authority
- E3 - Establishment of a General Safety Requirement related to sanitation, food, water and waste removal
- E4 - Risk based decision-making
- E5 - Monitoring and corrective action
- E6 - Responsibility for food inspection

This part of the paper will also provide highlights of the enforcement provisions of the proposed *Act* and propose a few questions for discussion around voluntary compliance.

### E1 - DEFINITION OF PASSENGER CONVEYANCE

#### Present Situation

In Canada, the *Potable Water Regulations for Common Carriers* define passenger conveyance as any aircraft, train, vessel, motor vehicle or other mode of public transportation that is used in international traffic, interprovincial traffic, traffic on the sea coasts, salt water bays, gulfs and harbours of Canada, and traffic on the Great Lakes and inland waters. The following legislative/gaps have been identified:

- ▶ The definition is interpreted as, but does not specify commercial conveyances.
- ▶ The references to international and interprovincial traffic are clear, however, there is a need to clarify whether or not c) and d) refer as well to intra-provincial commercial passenger conveyance traffic on all Canadian waters.
- ▶ The size of the conveyance is also a question that could be addressed in new legislation or regulations pursuant to the legislation.

- ▶ While applied in the context of the Voluntary Compliance Program, this definition has no legal force when used in regard to ancillary service providers of food and sanitation.

### **Proposal**

*E1 - In this section, "passenger conveyance" means any aircraft, train, vessel, motor vehicle or other mode of public transportation that is used commercially to transport passengers, as designated in the Regulations.*

*Should the Regulations limit the application of this section to aircraft, trains, cruise ships, etc.? Should it apply only to passenger conveyances of a certain size? Should they apply to: a) international traffic; b) interprovincial traffic; c) traffic on a sea coast of Canada; d) traffic on the Great Lakes or inland waters of Canada; or e) traffic within a province?*

### **Desired Outcome**

Clarification of the definition of "passenger conveyance" and application with regard to territory and bodies of water.

### **Questions and Issues**

Do you think

- E1 A the proposed definition of "*aircraft, train, vessel, motor vehicle or other mode of public transportation that is used commercially to transport passengers*" is sufficiently clear? If not, what would you suggest?
- E1 B regulations pursuant to the Act should limit application a conveyances of a certain size? If so, what would you suggest and why?
- E1 C the legislation or regulations should apply to intra as well as inter provincial traffic on the sea coast, Great Lakes and inland waters of Canada? If so, would you recommend any exclusions?
- E1 D there should be a reference to ancillary services in this definition?

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## E2 - PROVISION OF NECESSARY REGULATION-MAKING AUTHORITY

### Present Situation

The standards used by Health Canada in the inspection and audit programmes for passenger conveyances comply with the World Health Organization *International Health Regulations* of which Canada is a signatory.

Under these regulations, Health Canada must ensure that every airport provides safe drinking water and wholesome food from approved sources for public use and consumption on the premises or on board aircraft. This also includes the deratification inspection of vessels and certification.

Currently there is no domestic regulatory authority to fully implement Canada's obligations under these regulations. Owners of conveyances are therefore under no obligation to permit to public health inspections (except for as specified under the *Potable Water Regulations for Common Carriers*) and refusing to permit an inspection has no effect on their right to operate the conveyance. In summary, where department officials are of the view that the conveyance does not meet the standards, they are unable to require that an owner take action to bring the conveyance into compliance.

### Proposal

*E2 - Subject to responsibilities assigned by law to other departments, boards or agencies (e.g. Canada Labour Code), the proposed Act would provide the necessary regulation-making authority to establish health and safety standards to protect passengers on board passenger conveyances, with regard to water, food, and general sanitation, and to fully implement Canada's obligations under the International Health Regulations.*

### Desired Outcome

Regulatory authority to ensure compliance and fully implement Canada's obligations under the *International Health Regulations*.

### Questions and Issues

- E2 A Do you agree with the intent to give Health Canada the regulatory authority described in the proposal? If not, why?
- E2 B What, according to you, should be the key elements of any regulations pursuant to the new legislation?
- E2 C What exclusions, if any, should be included?

### **E3 - ESTABLISHMENT OF A *GENERAL SAFETY REQUIREMENT* RELATED TO SANITATION, FOOD, WATER, VENTILATION SYSTEM AND WASTE REMOVAL**

#### **Present Situation**

There is currently no legislated safety requirement applicable to passenger conveyances. Through its voluntary compliance programmes, Health Canada has established and implements national agreements with industries operating or providing services to passenger conveyances. The main goals of these compliance programs is to protect public health by ensuring safety practices are in place for the provision of safe food, water and other environmental health conditions (eg. sanitation). This goal is accomplished through cost recovery inspections and continuous surveillance for unusual incidences of gastrointestinal illnesses.

The new legislation and any regulations drafted pursuant to that legislation will attempt to address the previously discussed regulatory gaps. Nevertheless, in a changing environment it would still be difficult to do so in a manner that would successfully cover all safety risks identified over time.

A General Safety Requirement (GSR) is one means to clarify the responsibility of the industry in a way that allows for changes over time and recognizes its inherent expertise. This requirement would apply to the entire duration of operation of the passenger conveyance in a federally regulated area and would complement legislation and regulations by acting as a safety net when the latter do not adequately address a hazard.

#### **Parameters of the *General Safety Requirement***

The *GSR* would place a proactive responsibility on the operators of common passenger conveyances, to ensure, under reasonably foreseeable conditions, that they:

- ▶ have sanitary conditions;
- ▶ provide to passengers food or potable water that is not contaminated;
- ▶ have a water supply system that is not contaminated;
- ▶ have safe conditions for fabricating, packaging preserving, transporting or storing food or water;
- ▶ have a ventilation system that is not contaminated or polluted with toxic or dangerous substance;
- ▶ have a waste removal system that adequately protects the health of passengers, properly contains waste throughout the voyage, and has adequate safeguards to address the risk of waste being discharged into the environment; or
- ▶ have food or water provided to passengers that would not be expected to come in contact with other contaminated products or with the waste removal system.

A GSR would also make operators of passenger conveyances responsible for having adequate safeguards with regard to the design, structure or characteristics of the ventilation system, the food preparation system, the water supply system or the waste removal system to address and prevent any risk to the health of the passengers. See also E4 Factors for Decision-Making.

### **Examples of Non-Compliance**

Examples of non-compliance with the GSR could include situations that could cause harm to a person because of:

- ▶ inadequate or incorrect use of food preparation, water supply or waste removal systems;
- ▶ insufficient information about the safe ways of using and disposing of any of the aforementioned systems;
- ▶ content or emission of harmful substances or radiation without adequate safeguards;
- ▶ poisonous, corrosive, flammable, explosive, infectious or dangerously reactive properties when there are no adequate safeguards to address the risk.

### **Proposal**

*E3 - In addition, a General Safety Requirement would apply to passenger conveyances designated in the Regulations. It would provide that:*

*E3.1 - no person shall operate a passenger conveyance, or offer a service in support of the operation of a passenger conveyance (e.g. flight kitchen), in a manner that could, under reasonably foreseeable conditions, cause adverse effects to the health of a passenger because:*

*E3.1.1 - the passenger conveyance is unsanitary;*

*E3.1.2 - food provided to the passengers could be contaminated;*

*E3.1.3 - the drinking water or water used to make ice provided to passengers is not potable;*

*E3.1.4 - the water supply system on the passenger conveyance could be contaminated;*

*E3.1.5 - the food or water provided to passengers is fabricated, packaged, preserved, transported or stored in a place or under conditions that could cause it to become unsafe;*

*E3.1.6 - the ventilation system on the passenger conveyance could be:*

*E3.1.6.1 - contaminated; or*

*E3.1.6.2 - polluted with toxic or dangerous substances;*

*E3.1.7 - the waste removal system:*

*E3.1.7.1- could be unable to provide adequate protection for the health of passengers;*

*E3.1.7.2 - could fail to properly contain waste throughout the voyage;*

*E3.1.7.3 - has inadequate safeguards to address the risk of waste being discharged into the environment;*

*E3.1.8 - food or water provided to passengers could be expected to come in contact with other contaminated products or with the waste removal system, thus creating a risk to the health of passengers, and there are not adequate safeguards to address the risk;*

*E3.1.9 - the water supply system or the waste removal system, could create a risk to the health of the passengers, and there are not adequate safeguards to address the risk;*

*E3.1.10 - such other cause as may be specified in the Regulations.*

### **Desired Outcome**

A complement to the legislative and regulatory authority provided to ensure health and safety compliance by the passenger conveyance industry.

Pro-active guidance for the industry in identifying its responsibility for the health and safety of its customers and taking preventive action.

### **Questions and Issues**

- E3 A Do you or members of your association/organization/industry see problems with complying with the proposed GSR? If so, how could these difficulties be addressed, without compromising health and safety?
- E3 B Do you agree with the proposed scope of the GSR (E3.1.1 to 3.1.10)? If not what would you add or remove and why?
- E3 C Are there any conditions or situations that you believe should be excluded from the application of the General Safety Requirement? If so, why? If they are excluded, what is the impact on health and safety and what means exist of addressing related risks?
- E3 D In addition to any specific situations or conditions, what other factors, should be used to identify exclusions to the GSR?

E3 E Do you find your obligations under a GSR are clear and easy to understand? If not, what would assist you in this understanding them and applying them?

#### **E4 - FACTORS FOR DECISION-MAKING**

##### **Present Situation**

Under the Voluntary Compliance Program, risk-based inspection standards and criteria are currently used by Health Canada for the inspection of food, water and sanitation on passenger conveyances. The standards are part of voluntary agreements established in consultation with the industry. These standards are reviewed and evaluated on a yearly basis to reflect new scientific knowledge and industry standards. Currently, there are no formalized regulatory compliance agreements, memorandum of understanding agreements (identifying roles and responsibility of the parties) or regulations in place (except for potable water on common carriers) with the passenger conveyance industry.

Within the proposed legal framework, with its enforcement powers, there will be a need to formalize health and safety standards, inspections and risk assessment criteria for decision making. More specifically, with a GSR in force, there will be a need to establish a basis for decision making to determine whether the passenger conveyance operator has exercised reasonable care.

##### **Assessing Reasonable Care**

To provide and clarify the basis for decision making, Section E4 of the proposed *Act* provides a list of factors that would be considered when assessing whether or not a conveyance operator has exercised reasonable care.

The first refers to the principles of risk based decision making:

*“In summary: the assessment of risk should be based solely on science and objective observation; potential positive and negative effects for the people must be weighed; the concept of precaution will be applied; Canadians will be allowed to make informed decisions concerning their own health; consideration will be given to the fact that the same measure may impact differently on various people; and the connection between human health and the environment must be acknowledged.”<sup>4</sup>*

Other factors include the nature and function of the passenger conveyance; the likelihood and seriousness of any potential adverse health effects; the level of safety that the passenger may reasonably expect; and the degree of vulnerability of the passenger. The last two imply that passengers also have responsibilities like seeking the advice of their physician, if warranted or making specific arrangements before travelling, when suffering from severe allergies or a serious medical condition.

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<sup>4</sup> See Section A2.3 of the Proposed Canada Health Protection Act : Making decisions regarding risk

Other considerations would be the scientific knowledge and the state of the art and technology available about the various systems; federal, provincial or territorial laws applicable to the passenger conveyance or to similar conveyances; generally accepted health and safety standards applicable to the passenger conveyance or to similar conveyances (e.g., compliance agreements or industry guidelines; and the level of expertise one can reasonably expect from the various participants involved in the supply chain and their respective responsibilities. On the level of expertise, for example, the person in charge of the flight kitchen will be expected to be more knowledgeable about food preparation system than the airline that is serving the prepackaged food to the passengers. Conversely, the cruise ship operator will be responsible for the ship's food storage, preparation and serving areas, its waste removal system, its ventilation system and the water provided to passengers for any purpose.

**Proposal**

- E4 - Factors such as the following would be considered in determining whether the passenger conveyance operator has exercised reasonable care in these circumstances:*
- E4.1 - the guiding principles on risk decision making;*
  - E4.2 - the nature and function of the passenger conveyance;*
  - E4.3 - the likelihood and seriousness of any potential adverse health effects;*
  - E4.4 - the level of safety that the passenger may reasonably expect;*
  - E4.5 - the degree of vulnerability of the passenger;*
  - E4.6 - the scientific knowledge and the state of the art and technology available about the various systems;*
  - E4.7 - federal, provincial or territorial laws applicable to the passenger conveyance or to similar conveyances;*
  - E4.8 - generally accepted health and safety standards applicable to the passenger conveyance or to similar conveyances;*
  - E4.9 - the level of expertise one can reasonably expect from the various participants involved in the supply chain and their respective responsibilities; and*
  - E4.10 - other factors as identified in the Regulations.*

**Desired Outcome**

Health and safety standards/guidelines and criteria for inspections and the assessment of passenger conveyance operators exercise of reasonable care.

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**Questions and Issues**

- E4 A Do you agree with the proposed decision making factors? If not, which would you modify or remove and why?
- E4 B Would you include additional factors? If so, which one(s) and why?
- E4 C What other mechanisms/systems/processes can be used to assess conformity of a system or procedure to the GSR?
- E4 D Do you find the factors easy to understand and apply? If not, what would assist you in clearly understanding them?
- E4 E A GSR puts the burden of proof on the operator to demonstrate it has exercised due diligence, do you foresee any challenges for you to meet this burden or what could assist you in doing so?

**E5 - MONITORING AND CORRECTIVE ACTION**

**Present Situation**

Passenger conveyance operators are currently not obligated to monitor and report adverse health incidents or report corrective action taken to address these incidents to Health Canada.

Under the Health Canada Cruise Ship Inspection Programme which has been developed and implemented with the cruise ship industry, Health Canada provides continuous surveillance for unusual incidences of gastrointestinal illnesses. Standardized gastrointestinal illness reporting is required to be submitted 24 hours before the vessel's arrival at a Canadian port.

These surveillance activities and the corrective action undertaken by cruise ship operators when the incidence rate rises above a certain level (3%) have contributed to reduced rates of gastro-intestinal illness in an global environment of increased rates of communicable diseases. International passenger conveyances are also one of the means by which carriers of communicable agents may enter Canada. Including reporting activities as part of the legislative or regulatory prevention activities for the passenger conveyance industry would also be consistent with other activities undertaken to prevent the spread of communicable disease in Canada.

**Proposal**

*The responsibilities of the passenger conveyance operator would include monitoring adverse health incidents and taking appropriate corrective action (including reporting to Health Canada)*

**Desired Outcome**

A reporting and monitoring function covering all of the passenger conveyance industry, and provide the enforcement authority needed if corrective action is not undertaken.

**Questions and Issues**

- E5 A Do you agree that the operator should be required to monitor adverse health effects and incidents related to a system or procedure after it has been implemented and to take corrective actions if necessary?
- E5 B Do you agree that the person who provides the product (e.g. the retailer or third party through a contractual agreement) should be required to transmit information relating to the safety of the system and to cooperate with the operator in implementing corrective actions?
- E5 C What types of adverse incidents would you recommend be reported to Health Canada?
- E5 D What could be done to assist you in meeting reporting requirements?

**E6 - RESPONSIBILITY FOR FOOD INSPECTION**

**Present Situation**

Food inspection under the proposed Canada Health Protection Act is directed at monitoring the safety of the systems in place on a conveyance for food preparation, handling and storage as well as transportation in the case of flight kitchens. The primary legislative mandate for enforcing the safety of food products sold to operators currently rests with, and will remain with, the Canadian Food Inspection Agency. Section E6 reiterates this division of responsibility.

**Proposal**

*The Canadian Food Inspection Agency Act would not be responsible for enforcing this part of the Act, even as it relates to food.*

**Desired Outcome**

Clarifying the responsibility for food inspections on passenger conveyances.

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**Questions and Issues**

- E-6 A - Do you agree with the proposed allocation of responsibility for food inspections on passenger conveyances? If not, what would you propose?

**ENFORCEMENT**

This paper does not focus on enforcement or dispute resolution. Section H of the proposed *Act*, includes provisions for administration of the *Act*, including enforcement and dispute resolution provisions which would apply to common passenger conveyances. The following excerpts<sup>5</sup> highlight some of the provisions that will apply to passenger conveyances:

- ▶ *“Enforcement: The Act would provide more effective legal tools to ensure compliance with the law. For example, maximum penalties would be increased to \$1,000,000 and three years of imprisonment. Courts could issue additional remedial orders, such as prohibiting a person found guilty of contravening the law from engaging in similar activities for a period of time. The Minister could exercise a broad range of preventive measures, such as ordering a supplier to take corrective measures to protect the public or suspending the sale of a product while seeking further information on its safety. Cooperative agreements on enforcement measures could be entered into with other governments or public authorities, on certain conditions.”*

*In the case of passenger conveyance operators it could include an order to take corrective action or in severe or high risk cases, to cease operations.*

- ▶ *“Emergency Response: The Minister of Health could, under certain conditions, issue an interim order if immediate action is required to deal with a significant risk to human health or to the environment.”*
- ▶ *Dispute Resolution: The proposed Act would provide the necessary authority to establish dispute resolution mechanisms.*

**Questions**

- ENFORCEMENT A What circumstances should exist before consideration of an order to prohibit operations pending corrective action?
- ENFORCEMENT B What criteria should be used by Health Canada to prohibit operation? (Evidence of risk, injury, ...)
- ENFORCEMENT C What comments do you have on enforcement that apply specifically to passenger conveyances?

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<sup>5</sup> Background Documents - Health Protection Legislative Renewal - the Proposal in 7 Pages

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For a detailed look at the enforcement provisions see Section H2 of the proposed *Canada Health Protection Act*. General or detailed comments can be provided in writing or through the Legislative Renewal Website<sup>6</sup>.

### **VOLUNTARY COMPLIANCE**

Voluntary compliance does not refer to a choice by an industry to provide safe products and services or ensure a safe and healthy environment, where these apply. Even in the absence of a regulatory framework, there is a legal expectation to do so. Voluntary compliance refers to cooperative action and agreements entered into by stakeholders to provide clarity around expected standards, to meet or exceed implicit or explicit legal obligations and to work together to seek and share relevant knowledge as well as protect the consumer and workers within an industry.

The rich and successful tradition of voluntary compliance within the passenger conveyance industry is therefore one that could still have a place in a regulatory environment. Through its voluntary inspection programs and surveillance activities and the pro-active cooperative partnerships with government that led to them, this tradition has served to identify and address new risks and establish standards of service, health and safety to the benefit of both the industry and its consumers.

Legislative and regulatory frameworks attempt to be flexible and applicable over time. Nevertheless, the rapid pace of change, new technology and approaches in a global economy, with their associated health risks, frequently mean that the practice precedes updates to statutes and regulations. Cooperative partnerships and voluntary agreements will therefore continue to play a role in ensuring the highest quality of service to consumers in a safe and healthy environment. They will also serve to identify successful practices, gaps and needed changes to the legal or regulatory frameworks over the years.

The nature of voluntary compliance activities may therefore change to reflect a new legal framework but will still have a place within an industry that wishes to remain a leader in terms of health and safety.

### **Questions**

**VOLUNTARY COMPLIANCE A** Among the current activities you currently undertake as part of voluntary compliance, which ones do you feel would have a role under the new framework?

**VOLUNTARY COMPLIANCE B** What other pro-active activities would you suggest that would maintain your industry's leadership in terms of health and safety?

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<sup>6</sup> See <http://renewal.hc-sc.gc.ca> or write to

Legislative Renewal - Passenger Conveyances  
The Office of Policy and Regulatory Affairs  
Workplace Health & Public Safety  
171 Slater Street  
Ottawa, Ontario  
Canada, K1A 0L3

VOLUNTARY COMPLIANCE C What incentives would you suggest for participation in such activities?