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Subject:  
The Human Pathogens and Toxins Act: Bill C-11/La loi  
sur les agents pathogènes humains et les toxines:  
Projet de loi C-11  
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(Français Åsi-dessous)

Colleagues,

I am writing to you as a follow-up to the information sessions that we had with you this past Spring/Summer in May-July, 2008, and Winter 2009 following the first tabling of the proposed Human Pathogens and Toxins Act (HPTA). The Public Health Agency of Canada would like to thank you for sharing your views, concerns, ideas and support with us at those meetings and I would now like to inform you that the bill was re-tabled this week in the House of Commons, as C-11.

You will find attached a direct link to a copy of the bill that was tabled February 9, 2009.

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3658282&Language=e&Mode=1>

Input we received from you at our meetings this Spring/Summer was extremely useful and has resulted in an updating of the schedules within the HPTA. For example, Leishmania can now be found in Schedule 2 instead of Schedule 3. Many other issues that were raised regarding the schedules have also been addressed. For a detailed summary of the changes that have occurred for bill C-11, please see the summary below.

Our discussions with you also helped to focus our attention on aspects of the proposal that we will have to address thoroughly at the implementation stage, for example, the proposed licensing system. We hope to continue these discussions over the course of the winter with additional information sessions, so that we can move forward with the development of a regulatory framework.

Once again, thank you very much for your input thus far, and we look forward to further discussions. Representatives of the Public Health Agency of Canada will be in contact with your offices in the coming months as we move forward.

Regards,  
Theresa Tam,  
Director General,  
Centre for Emergency Preparedness and Response,  
Public Health Agency of Canada

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## Summary of changes from bill C-54 to C-11.

Additions are indicated with an underline, while deletions are indicated with a strikethrough.

### General

The first set of changes relates to technical adjustments to the scheduled list of human pathogens and toxins in the Human Pathogens and Toxins Act. These changes reflect input received from stakeholders during cross-Canada information sessions regarding Bill C-54 in June and July of 2008, as well as an update of the taxonomy of the human pathogens and toxins listed in the schedules that was undertaken by the Public Health Agency of Canada after Bill C-54 died on the Order Paper in September of 2008.

A second change involves adding ~~transferring~~ to the list of controlled activities in section 7(1)(e) of the Human Pathogens and Toxins Act.

The third set of changes relate to Section 41 of the Human Pathogens and Toxins Act, and aim at helping to provide additional clarity regarding the powers of inspectors, and in particular the power for inspecting conveyances.

Finally, it is worth noting that in a final review of the draft legislation, jurilinguists at the Department of Justice slightly altered the French language version of the bill to ensure complete consistency with the English language version.

None of these changes affects in any way the policy intent of the former Bill C-54, and they will not impact on biosafety, biosecurity or public health.

### Specific Changes:

Changes to the Schedules: After Bill C-54 was tabled, some stakeholders noted some minor errors with how a few of the human pathogens were listed in the schedules; specifically, a few human pathogens such as *Leishmania* were listed on the wrong schedule. These problems have been addressed. As well, scientists at the Public Health Agency of Canada have reviewed the schedules to better ensure that they reflect the most up to date taxonomy of the listed agents. The changes that have been made to the schedules in the bill are, therefore, taxonomical name changes, clarifications and a slight re-organization. Other changes included moving *Acanthamoeba castellanii* to the Schedule 2 protozoa list, and removing all "Echinococcus" from the legislation altogether.

Amendment to Section 7(1)(e): Section 7(1)(e) has been amended to include the word transferring to the list of controlled activities in section 7 (1). This has been done to clarify the authority to require a licence for transfers.

Amendments to Section 41 Inspection Powers: Amendments to Section 41 have been made to clarify elements of the section and to modify the power of inspectors regarding the inspections of conveyances; most importantly, to permit inspectors to stop conveyances if they have reasonable grounds to suspect that controlled activities under the Act are being conducted in or on the conveyance.

As well, based on the advice of the Department of Justice, section 41 was slightly revised to ensure that the section accorded with current understanding of human rights law, and to ensure that certain sections were consistent with similar sections in other federal legislation. None of the adjustments will impact on biosafety, biosecurity or public health. They are minor in scope, as the inspection powers as now outlined in the Human Pathogens and Toxins Act are still standard inspection powers as found elsewhere in federal government legislation.

#### Specific Changes to Sections 7 and 41

Section 7 and 41 of the previously tabled Bill C-54, the Human Pathogens and Toxins Act, has been specifically amended as follows:

Section 7(1)(e): This has been amended to make clear the authority to regulate transfers. This was considered to already exist by virtue of section 7(1)(d), which states that, No person shall knowingly conduct any of the following activities unless a licence has been issued by the Minister that authorizes the activity:...(d) permitting any person access to a human pathogen or toxin... It was thought that permitting access would include transferring the human pathogen or toxin, and that an authority to regulate transfers would exist based on this subsection.

The subsection 7(1)(e) has been amended to state as follows, No person shall knowingly conduct any of the following activities unless a licence has been issued by the Minister that authorizes the activity:...(e) transferring a human pathogen or toxin... The added word is underlined to clarify the authority to regulate transfers. The present section 7(1)(e) will now become section 7(1)(f), and so forth for the rest of the subsections in section 7.

Section 41 - Preamble: This has been amended to say that the inspector can inspect based on "reasonable grounds" - an objective test, rather than what was there before, which allowed inspections based on the "opinion" of the inspectors. This reflects the concern that the section correspond to latest thinking around human rights law, in that, inspections should have an objective, rather than subjective basis.

The preamble formerly said, Subject to section 42, an inspector may, for the purpose of verifying compliance or preventing non-compliance with this Act or the regulations, enter at any reasonable time any place or conveyance where, in the inspectors opinion, an activity to which this Act or the regulations apply is conducted...

This has been changed to, Subject to section 42, an inspector may, for the purpose of verifying compliance or preventing non-compliance with this Act or the regulations, enter at any reasonable time any place or conveyance in which the inspector believes on reasonable grounds that an activity to which this Act or the regulations apply is conducted...

Section 41(2): This section has been amended to emphasize that an inspector enters a place or conveyance for the purposes referred to in subsection 1.

The new subsection 41(2) now says as follows, An inspector who enters a place or conveyance may, for the purpose referred to in subsection (1),... The addition is underlined, and links the two subsections, 1 and 2.

Section 41(2)(c): This subsection was altered to delete a line that the Department of Justice considered to be redundant, as follows, An inspector who enters a place or conveyance may, for the purpose referred to in subsection (1),... (c) seize and detain for any time that may be necessary any material, equipment or document found there, or any conveyance, if it is relevant to the administration of this Act or the regulations;... The strike out is noted. The addition of the purpose qualifier to the end of the preamble in subsection 41(2) (underlined immediately above) makes this redundant, as the administration of the Act or regulations is part of the purpose.

Section 41(2)(f): This subsection was altered to correspond to changes in inspection powers in other Health Portfolio legislation. It expands the powers of inspectors somewhat to include an authority to order of the movement (or not, or the restriction of the movement) of material, documents and conveyances, as opposed to just conveyances as in the previous draft.

The section previously said as follows, An inspector who enters a place or conveyance may, for the purpose referred to in subsection (1),... (f) direct the owner or the person having possession, care or control of the conveyance to move it...

It will now read as follows, with the changes underlined, An inspector who enters a place or conveyance may, for the purpose referred to in subsection (1),... (f) direct the owner or the person having possession, care or control of any material, equipment or document found in the place or conveyance - or of the conveyance - to move it or, for any time that may be necessary, not to move it or to restrict its movement... This expanded authority assures that the inspector is not only limited to an ability to order the movement of conveyances.

Section 41(3):A new section 41(3) will be added in order to correspond to changes to other Health Portfolio legislation. The new subsection will state as follows, (3) For the purpose of entering the conveyance, the inspector may order the owner or person having possession, care or control of the conveyance to stop it or move it to a place where they can enter it.

This will ensure that an inspector who has reasonable grounds to think that activities governed by the HPTA are underway in a conveyance can actually stop a conveyance in order to inspect it.

Section 41(7), formerly Section 41(6):This section has had a portion deleted to remove a redundancy, as follows, An inspector who is carrying out their functions and any person accompanying the inspector may enter on and pass through or over private property without being , and they are not liable for doing so and without the owner of the property having the right to object to that use of the property. The deleted part is as struck out, and a slight addition is made to ensure a slight separation of the concept of right to enter and pass through from the concept of no liability on the part of an inspector for doing so. Note that with an inspection authority to traverse private property, the mention of a lack of a right to object is redundant.

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