Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation

11 July 2012
Articles 14 and 15 of the North American Agreement on Environmental Cooperation ("Agreement") provide a unique process for any non-governmental organization or person residing or established in Canada, Mexico, or the United States to "bring the facts to light" concerning the enforcement of environmental law in North America. More specifically, the process allows members of the North American public to make an assertion that a Party to the Agreement is failing to effectively enforce its environmental law. This Submission on Enforcement Matters (SEM) process was established to promote transparency and public participation, and to enhance understanding regarding environmental law and its enforcement in North America. In particular, the public submission process is designed to promote information-sharing in order to allow members of the public to draw their own conclusions regarding the effective enforcement of such laws. As a fact-finding, non-adversarial procedure, the SEM process is not a dispute resolution mechanism nor can it result in a Party being required to take specific remedial action. Although filing a public submission does not require any special expertise, submissions should include an accurate and clear presentation of the relevant facts. Members of the public with questions about the process, including the preparation of a submission, are encouraged to contact the SEM Unit of the Secretariat of the Commission for Environmental Cooperation (CEC).

The SEM process begins when the Secretariat receives a submission from a non-governmental organization or person. The Secretariat will then consider whether the submission meets the criteria set forth in Article 14(1) of the Agreement. If the submission meets these basic criteria, such as whether the issues of concern have been communicated to the Party's relevant authorities, the Secretariat will then consider the factors identified under Article 14(2), such as whether the submission asserts an environmental harm to the Submitter. After considering the submission under Articles 14(1) and (2), the Secretariat will determine whether to request a response from the Party named in the submission. If requested by the Secretariat, the response offers an opportunity for the named Party to address the Submitter’s assertion by providing information and clarification regarding the enforcement of the environmental law at issue. Given the information-sharing focus of the SEM process, the Party response is in and of itself a uniquely informative result, promoting transparency and benefitting the Submitter, the public in general, and the Parties themselves.

Upon receipt of a Party response, the Secretariat will then consider whether any central questions of fact remain open that could be addressed in a factual record, and if so, whether to recommend to the Council that a factual record be developed. A submission would be expected to reach this point of the process within one year of the submission being filed.

The purpose of a factual record is to provide an objective presentation of the facts relevant to the assertion set forth in a submission and to allow the readers of the factual record to draw their own conclusions regarding a Party's environmental law enforcement. If a final factual record is prepared, the Council may make it publicly available. If a submission reaches this stage of the process, it would be expected to do so normally within two and half years of the submission being filed. Although a factual record is not to contain conclusions or recommendations, it is expected to generally outline the history of the environmental enforcement issue raised in the submission, the relevant legal obligations of the Party, and the actions of the Party in fulfilling those obligations; therefore, it can be another valuable outcome of this information-sharing process.

The public submission process was established to provide the North American public with timely and relevant information regarding the enforcement of domestic environmental law. The process also serves to provide valuable information to the Parties as they act to fulfill their obligations under the Agreement. Whether it concludes with a response from a Party or with a factual record, the Submission on Enforcement Matters process is a unique and empowering tool that facilitates public participation, supports government transparency, and promotes the effective enforcement of environmental law in North America.
The Public Submission Process

Submission filed with Secretariat

Meets basic criteria? (30 w.d.)

Y

Merits Party Response? (30 w.d.)

14(2)

Y

Party responds (30/60 w.d.)

14(3)

Y

Pending proceeding?

14(3)(a)

N

Secretariat recommends factual record? (120 w.d.)

15(1)

N

Process concludes

Outcome 1:
Normally within 1 year of submission being filed

N

Submission revised (60 w.d.)

Y

Meets basic criteria? (30 w.d.)

N

Council instruction on factual record (60 w.d.)

15(2)

N

Secretariat prepares draft factual record (180 w.d.)

15(3)

Y

Parties may comment (45 w.d.)

15(4)

Y

Secretariat prepares final factual record (45 w.d.)

15(5)

Y

Council vote on factual record publication (60 w.d.)

15(6)

N

Factual record published and process concludes

Outcome 2:
Normally within 2½ years of submission being filed

KEY

☐ - Relevant NAAEC Article

- - Submission process is terminated

w.d. - Working Days (reflects both NAAEC and target timeframes)
FOR MORE INFORMATION

The Council recognizes the value of early dialogue between the public and a Party on issues of concern regarding the effective enforcement of that Party’s environmental law; in particular, before a submission is filed. Therefore, each Party has designated a primary point-of-contact through which members of the public may communicate environmental enforcement concerns. Up-to-date Party contact information may be obtained from the Secretariat. Additionally, non-governmental organizations and persons who are considering filing a submission and who have questions on navigating the SEM process are encouraged to contact the Secretariat for information in this regard.

CEC Secretariat
Commission for Environmental Cooperation of North America
Submissions on Enforcement Matters Unit
393, rue St-Jacques Ouest, Bureau 200
Montréal (Québec) H2Y 1N9
Tel.: (514) 350-4300
Fax: (514) 350-4314
E-mail: SEM@cec.org
Web: http://www.cec.org

CEC Secretariat – Mexico Liaison Office
Progreso No. 3
Viveros de Coyoacan
04110 México, D.F. México
Tel.: (525) 659-5021
Fax: (525) 659-5023

Party Point of Contact
Contact the Secretariat for up-to-date information.

Registry of Submissions
The Secretariat maintains a Registry of Submissions to provide information so that any interested organization or person, as well as the Joint Public Advisory Committee, may follow the status of any given submission during the submission process. The Registry of Submissions is accessible through the Secretariat’s web site by visiting www.cec.org and clicking on “Submissions on Enforcement Matters.” The Secretariat also maintains a physical file on each submission. These documents are available for review and reproduction at the offices of the Secretariat in Montreal and in Mexico City.
GUIDELINES

Article 10 of the North American Agreement on Environmental Cooperation ("Agreement") establishes the Council as the governing body of the Commission on Environmental Cooperation, one of the functions of which is to address questions and differences that may arise between the Parties regarding the interpretation and application of the Agreement. In its capacity as governing body, the Council approved the Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation to describe and clarify the manner in which the public submission process should be implemented.

1. What is a submission on enforcement matters?
   1.1 A "submission on enforcement matters" ("submission") is a documented assertion that a Party to the Agreement is failing to effectively enforce its environmental law.

2. Who can make submissions on enforcement matters?
   2.1 Any non-governmental organization or person established or residing in the territory of a Party to the Agreement may make a submission on enforcement matters for consideration by the Secretariat of the Commission for Environmental Cooperation ("Secretariat"). The term "non-governmental organization" is defined in Article 45(1) of the Agreement.

   2.2 The submission must clearly identify the person(s) or organization(s) making the submission ("Submitter").

3. How are they to be submitted?
   3.1 The submission must be received by the Secretariat at one of the following addresses:

       Commission for Environmental Cooperation
       393, rue St-Jacques Ouest, Bureau 200
       Montréal (Québec)
       Canada H2Y 1N9
       SEM@cec.org

   3.2 Submissions may be made in English, French or Spanish, which are the languages currently designated by the Parties for submissions.

   3.3 Submissions should not exceed 15 pages of typed, letter-sized paper, or the electronic equivalent thereof, excluding supporting information.

   3.4 Submissions must include the complete mailing address of theSubmitter.

   3.5 The Secretariat will promptly acknowledge the receipt of any correspondence or written document(s) relating to the initiation of the submission process.

   3.6 Any correspondence or written document(s) will be considered a submission by the Secretariat if it contains the supporting information necessary to enable the Secretariat, at the proper time, to assess the submission based on the criteria listed in Article 14(1) of the Agreement.

   3.7 Formal notifications by the Secretariat to aSubmitter will be made in writing and sent by any reliable means of notification which provides a record of the notification having been sent and received.

   3.8 The Secretariat will inform the Council of the initiation and progress of all submissions.

   3.9 The Secretariat will inform theSubmitter of the progress of its submission, as provided for in these guidelines.
3.10 The Secretariat may at any time notify the Submitter of any minor errors of form in the submission in order for the Submitter to rectify them.

3.11 The Secretariat, the Parties, and the Council will make their best efforts to take all actions necessary to process a submission in a timely manner.

4. What should be included in a submission?

4.1 The Secretariat may only consider a submission on enforcement matters if that submission meets the criteria set forth in Article 14(1) of the Agreement.

Initial Consideration of a Submission by the Secretariat

5. What criteria must a submission address?

5.1 The submission must assert that a Party is failing to effectively enforce its environmental law and should focus on any acts or omissions of the Party asserted to demonstrate such failure. For purposes of determining if a submission meets the criteria of Article 14(1) of the Agreement, the term “environmental law” is defined in Article 45(2) of the Agreement and must be considered in its entirety. Under Article 45(2), environmental law means any statute or regulation of a Party, or provision thereof:

(a) the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, only through one or more of the following:
   (i) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants,
   (ii) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto, or
   (iii) the protection of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas in the Party’s territory, but does not include any statute or regulation, or provision thereof directly related to worker safety or health.

(b) For greater certainty, the term “environmental law” does not include any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources, and;

(c) The primary purpose of a particular statutory or regulatory provision for purposes of subparagraphs (a) and (b) of Article 45(2) shall be determined by reference to its primary purpose, rather than to the primary purpose of the statute or regulation of which it is part.

5.2 The Submitter must identify the applicable statute or regulation, or provision thereof, as defined in Article 45(2) of the Agreement.

5.3 Submissions must contain a succinct account of the facts on which such an assertion is based and must provide sufficient information to allow the Secretariat to review the submission, including any documentary evidence on which the submission may be based.

5.4 A submission must appear to be aimed at promoting enforcement rather than at harassing industry. In making that determination, the Secretariat will consider such factors as whether or not:

(a) the submission is focused on the acts or omissions of a Party rather than on compliance by a particular company or business; especially if the Submitter is a competitor that may stand to benefit economically from the submission;

(b) the submission appears frivolous.

5.5 The submission must indicate that the matter has been communicated in writing to the relevant authorities of the Party in question and indicate the Party’s response, if any. The Submitter must include, with the submission, copies of any relevant correspondence with the
relevant authorities. The relevant authorities are the agencies of the government responsible under the law of the Party for the enforcement of the environmental law in question.

5.6 The submission should address the factors for consideration identified in Article 14(2) of the Agreement to assist the Secretariat in its review under this provision. Thus, the submission should address:

(a) theSubmitter’s assertion of harm;
(b) whether further study of the matters raised would advance the goals of the Agreement;
(c) the actions, including private remedies, available under the Party’s law that have been pursued by theSubmitter, in particular; and
(d) whether the submission is drawn exclusively from mass media reports.

6. What if the submission does not meet these criteria?

6.1 Where the Secretariat determines that a submission does not meet the criteria set out in Article 14(1) of the Agreement or any other requirement set out in these guidelines, with the exception of minor errors of form contemplated in section 3.10 of these guidelines, the Secretariat will promptly notify theSubmitter of the reason(s) why it has determined not to consider the submission.

6.2 After receipt of such notification from the Secretariat, theSubmitter will have 60 working days to provide the Secretariat with a submission that conforms to the criteria of Article 14(1) of the Agreement and to the requirements set out in these guidelines.

6.3 If the Secretariat again determines that theSubmitter has not met the criteria of Article 14(1) of the Agreement or the requirements set out in these guidelines, the Secretariat will promptly inform theSubmitter of its reason(s), and inform theSubmitter that the process is terminated with respect to that submission.

Determining Whether a Submission on Enforcement Matters Warrants Preparation of a Factual Record

7. When is a response from the Party to the submission merited?

7.1 Where the Secretariat determines that the submission meets the criteria set out in Article 14(1) of the Agreement, the Secretariat will determine whether the submission merits requesting a response from the Party concerned. The Secretariat will accordingly notify the Council and theSubmitter.

7.2 The notification to the Council and theSubmitter of the Secretariat’s determination concerning whether or not a submission meets the criteria in Article 14(1) of the Agreement will include, as appropriate, an explanation of how the submission meets or fails to meet each of those criteria. The notification to the Council and theSubmitter of the Secretariat’s determination concerning whether or not the submission merits requesting a response from the Party concerned will include an explanation of the factors that guided the Secretariat in making the determination, including each consideration set forth in Article 14(2) of the Agreement, if applicable.

7.3 As set forth in Article 14(2) of the Agreement, the Secretariat will, in making that determination, be guided by whether:

(a) the submission alleges harm to the person or organization making the submission;
(b) the submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of the Agreement;
(c) private remedies available under the Party’s law have been pursued; and
(d) the submission is drawn exclusively from mass media reports.

7.4 In considering whether the submission alleges harm to the person or organization making the submission, the Secretariat will consider such factors as whether:

(a) the alleged harm is due to the asserted failure to effectively enforce environmental law;
and
(b) the alleged harm relates to the protection of the environment or the prevention of
danger to human life or health (but not directly related to worker safety or health), as
stated in Article 45(2) of the Agreement.

7.5 In considering whether private remedies available under the Party’s law, such as those
identified in Article 6(3), have been pursued by theSubmitter and others, the Secretariat will
be guided by whether:
(a) continuing with the submission process could duplicate or interfere with private
remedies being pursued or that have been pursued, in particular those that involve the
Party, and in such cases the Secretariat should consider terminating the process in
whole or in part; and
(b) reasonable actions have been taken by theSubmitter to pursue private remedies prior
to making a submission, bearing in mind that barriers to the pursuit of some remedies
may exist in particular cases.

7.6 In taking into account whether a submission is drawn exclusively from mass media reports
pursuant to Article 14(2)(d), the Secretariat should consider if other sources of information
relevant to the assertion(s) in the submission were reasonably available to theSubmitter.

8. What if it is determined that no response from the Party is merited?
8.1 If the Secretariat determines that the submission does not merit a Party Response under
Article 14(2), the process is terminated with respect to that submission, and the Secretariat will
promptly notify the Council and theSubmitter in accordance with section 7.2 of these
guidelines, without prejudice to theSubmitter’s ability to introduce new or supplemental
information in the form of a new submission.

9. How is a response from the Party requested?
9.1 Where the Secretariat determines that a submission merits a response from the Party
concerned, the Secretariat will forward its determination to the Party with a copy of the
submission and, to the extent practical, any supporting information provided by theSubmitter,
in the official language(s) of the Party.

9.2 The Party will advise the Secretariat within 30 working days, or in exceptional circumstances
and on notification to the Secretariat, within 60 working days, of delivery of the request for a
response:
(a) whether the matter is the subject of a pending judicial or administrative proceeding, and
(b) of any other information that the Party wishes to submit such as
(i) whether the matter was previously the subject of a judicial or administrative
proceeding, and
(ii) whether private remedies in connection with the matter are available to the
Submitter, and whether such remedies have been pursued.

9.3 The Party may include in its response whether environmental policies have been defined or
actions have been taken in connection with the matter in question.

9.4 If the Party informs the Secretariat in its response that it is not failing to “effectively enforce its
environmental law” pursuant to Article 45(1)(a) or (b), the Party response should provide
sufficient information to explain how the Party’s action or inaction:
(a) reflects a reasonable exercise of discretion in respect of investigatory, prosecutorial,
regulatory or compliance matters; or
(b) results from bona fide decisions to allocate resources to enforcement in respect of other
environmental matters determined to have higher priorities.

9.5 When the Party, pursuant to section 9.4 of these guidelines, informs the Secretariat in its
response that its actions or inactions do not constitute a failure to “effectively enforce its
environmental law,” as provided for under Article 45(1), the Secretariat is to consider whether
the Party has included sufficient information. If the Secretariat considers that the Party
response does not provide sufficient information, the Secretariat may determine that the
submission warrants the development of a factual record with respect to the relevant
matter(s).

9.6 If, in its response under Article 14(3), the Party informs the Secretariat and explains in writing
that the matter raised in the submission is the subject of a pending judicial or administrative
proceeding, as defined in Article 45(3) of the Agreement, the Secretariat will proceed no
further with the submission and will promptly notify the Submitter and the Council, in writing,
that the submission process is terminated without prejudice to the Submitter’s ability to file a
new submission. If the Party informs and provides the written explanation at any other point in
the submission process prior to a Council instruction that a factual record be prepared, the
Secretariat should consider terminating the process to avoid the potential for duplication or
interference. If the Party informs and provides the written explanation after the Secretariat
has been instructed by the Council to prepare a factual record, the Secretariat is to proceed
with the factual record unless Council directs otherwise.

9.7 Upon receipt of a response from the Party or following the expiration of the response period,
the Secretariat should begin its consideration of whether it will inform the Council that the
submission warrants developing a factual record. In determining whether it should recommend
the preparation of a factual record, the Secretariat is to consider whether central questions of
fact related to the assertion(s) in the submission remain open that could be addressed in a
factual record.

9.8 If the Secretariat determines that the submission, in light of any response provided by the
Party, does not warrant development of a factual record, the Secretariat will promptly notify
the Submitter and the Council that the submission process is terminated without prejudice to
the ability of a Submitter to file a new submission, and will include an explanation of the
factors that guided the Secretariat in making that determination.

10. How is a decision on whether or not to prepare a factual record taken?

10.1 If the Secretariat considers that the submission, in light of any response provided by the Party
or after the response period has expired, warrants developing a factual record, the Secretariat
will so inform the Council. When the Secretariat informs the Council that it considers that a
factual record is warranted, the Secretariat will provide sufficient explanation of its reasoning
to allow the Council to make an informed decision. The Secretariat will provide its
recommendation and reasoning in all three official languages of the Commission. In addition, it
will provide a copy of the submission, the supporting information provided with the
submission, and any other relevant information, when these items have not been provided to
the Council. The Council may request further explanation of the Secretariat’s reasons, which
the Council will receive prior to taking its decision under Article 15(2) of the Agreement
concerning whether or not a factual record will be prepared.

10.2 Five working days after the Secretariat has notified the Council that it considers that a
submission warrants developing a factual record, both the notification and the Secretariat’s
reasoning as to why it considers that a factual record is warranted will be placed in the registry
referred to in section 15 of these guidelines and in the public file referred to in section 16 of these
guidelines.

10.3 The Secretariat may consolidate two or more submissions that relate to the same facts and
the same asserted failure to effectively enforce an environmental law. In other situations where
two or more submissions relate essentially to the same facts and enforcement matter and the
Secretariat considers that it would be more efficient or cost-effective to consolidate them, it
may so propose to the Council.

10.4 If the Council, by at least a two-thirds vote, instructs it to do so, the Secretariat will prepare a
factual record in accordance with those instructions. The Council will provide its reason(s) for
the instructions in writing and they will be posted on the public registry.

11. **How is a factual record prepared?**
11.1 In preparing draft and final factual records, the Secretariat will consider any information furnished by a Party, including information developed by experts and furnished by a Party. The Secretariat may consider any relevant technical, scientific or other information:
(a) that is publicly available;
(b) submitted by interested non-governmental organizations or persons;
(c) submitted by the Joint Public Advisory Committee (JPAC); or
(d) developed by the Secretariat or by independent experts.

11.2 If the JPAC provides relevant technical, scientific or other information to the Secretariat relating to the development of a factual record, the Secretariat will forward copies of the information to the Council.

11.3 All contributors to the factual record process are encouraged to submit only relevant information, reducing wherever possible the volume of material submitted.

11.4 The Secretariat will submit the draft factual record to the Council in the three official languages of the Commission. Any Party may provide comments on the accuracy of the draft within 45 working days of receiving the draft in its official language(s). The Secretariat will then prepare the final factual record for the Council, revising, as appropriate, the document. The Secretariat will provide Council with both the final factual record and a version of the final factual record that makes apparent any changes made to the draft factual record. The Secretariat will prepare the final factual record in the three official languages of the Commission.

12. **What is included in a factual record?**
12.1 Draft and final factual records prepared by the Secretariat will contain:
(a) a summary of the submission that initiated the process;
(b) a summary of the response, if any, provided by the concerned Party; and
(c) any other relevant factual information considered by the Secretariat pursuant to Article 15(4).

12.2 Draft and final factual records are to provide an objective presentation of the facts relevant to the matter(s) raised in a submission. Where draft and final factual records contain information collected pursuant to Article 15(4), they are to include proper citation for all such information.

12.3 If a Party so desires, its comments on the draft factual record will be posted on the registry referred to in section 15 of these guidelines.

13. **Will the final factual record be made public?**
13.1 After receiving the final factual record, the Council may decide, by a two-thirds vote, to make it public. If it so decides, the final factual record will be made public as soon as it is available in the three official languages of the Commission and a copy will be provided to the Submitter. This should normally be within 60 working days of the submission of the final factual record to the Council.

13.2 If the Council decides not to make a factual record available to the public, the Secretariat will inform the Submitter that the factual record will not be made public.

13.3 Independent of any Council decision with respect to the public availability of a factual record, the Council may, by a two-thirds vote, make a factual record available to the JPAC for their information in accordance with Article 16(7) of the Agreement and the JPAC Rules of Procedure.

14. **Can a submission under consideration be withdrawn?**
14.1 If the Submitter requests, in writing, that the submission be withdrawn before the Secretariat has requested a response to the submission from the Party concerned, the Secretariat will proceed no further with the submission and so inform the Submitter and the Council.

14.2 If the Submitter requests, in writing, that the submission be withdrawn after the Secretariat has requested a response to the submission from the Party concerned, the Secretariat will proceed no further unless the Party concerned provides a response per the Secretariat’s original request. If a Party response is provided, the Secretariat will include it on the public registry, after which the Secretariat should proceed no further. The Secretariat is to inform the Council of any such request of withdrawal and, if provided, of the Party response.

14.3 If the Submitter requests, in writing, that the submission be withdrawn after the Secretariat has been instructed by the Council to prepare a factual record, the Secretariat will so inform the Council and proceed with the factual record unless the Council directs otherwise.

14.4 In the case of a submission made by two or more Submitters, a request for withdrawal of a submission to the Secretariat must be made by all of the Submitters, in writing, before such request may be considered pursuant to sections 14.1, 14.2 and 14.3 of these guidelines.

15. How will information on the status of submissions and documents relating to individual submissions be made publicly available?

15.1 The Secretariat will establish a registry to provide information so that any interested non-governmental organization or person, as well as the JPAC, may follow the status of any given submission during the submission process envisaged under Articles 14 and 15 of the Agreement. The registry will be accessible to the public. Subject to the confidentiality provisions of the Agreement and of these guidelines, the registry will include the following information for each submission, unless decided otherwise by the Council:

(a) the name of the Submitter and the name of the Party addressed;
(b) a summary of the matter addressed in the submission that initiated the process, including a brief description of the asserted failure(s) to effectively enforce environmental law;
(c) the name and citation of the environmental law(s) in question;
(d) a summary of the response provided by the Party, if any;
(e) the submission, and to the extent practical any supporting information, including any documentary evidence on which the submission may be based;
(f) the response provided by the Party, if any;
(g) the Party’s written explanation that the matter(s) raised in the submission is the subject of a pending judicial or administrative proceeding, if applicable;
(h) the following notifications, as applicable:
   (i) the Secretariat’s determination whether a given submission meets the criteria set forth in Article 14(1) of the Agreement;
   (ii) the Secretariat’s determination whether a response from the Party is merited as specified in Article 14(2) of the Agreement;
   (iii) the Secretariat’s notification that the submission process is terminated as specified in Article 14(3)(a) of the Agreement;
   (iv) the Secretariat’s recommendation whether the preparation of a factual record is warranted, including an explanation of the Secretariat’s reasoning, as specified in section 10.2 of these guidelines;
   (v) the Secretariat’s notification that the draft and final factual records have been provided to the Council;
   (vi) the Council’s decision on the preparation of a factual record;
   (vii) the Council’s decision regarding whether the factual record will be made publicly available;
(i) Party comments on the draft factual record, if a Party so desires;
(j) the final factual record, where the Council has decided to make it publicly available pursuant to Article 15(7) of the Agreement; and
(k) the Council’s, the Party’s, or the Secretariat’s written explanation of the reason(s) for
not meeting an applicable deadline and the date by which it plans to complete the relevant action.

15.2 Any summary will contain information sufficient to enable interested non-governmental organizations or persons or the JPAC to provide relevant information to the Secretariat for the development of a factual record.

15.3 These documents will be placed in the public registry in a timely manner.

15.4 The Secretariat will maintain a physical file on each submission at its headquarters in a manner suitable for public access, inspection and reproduction. A reasonable charge may be requested for reproduction. Reproductions may also be obtained by mail at a reasonable cost to the public.

15.5 When a submission received by the Secretariat names an individual or entity, the Party concerned may notify that individual or entity of the existence of that submission.

16. In what languages will the information in the registry be available?
16.1 Documents in the public registry, unless otherwise decided by Council, will be made available in the three official languages of the Commission in as timely a manner as practicable, in order to promote transparency and timely action at key steps in the submissions process.

16.2 The Secretariat is encouraged to develop documents using only relevant information, reducing wherever possible the volume of material produced that would then need to be translated.

17. How will privacy and confidentiality be safeguarded?
17.1 In accordance with Article 11(8)(a) of the Agreement, the Secretariat will safeguard from disclosure any information it receives that could identify a Submitter if the Submitter so requests, or the Secretariat otherwise considers it appropriate. In accordance with Article 11(8)(b) of the Agreement, the Secretariat will safeguard from disclosure to the public any information received from a non-governmental organization or person where the information is designated by that non-governmental organization or person as confidential or proprietary. The Parties will have access to this confidential or proprietary information, except information that could identify the Submitter pursuant to Article 11(8)(a) of the Agreement.

17.2 The Secretariat will safeguard from disclosure any information provided by the Council or a Party and designated as confidential.

17.3 Given the fact that confidential or proprietary information provided by a Party, a non-governmental organization or a person may substantially contribute to the opinion of the Secretariat that a factual record is, or is not, warranted, contributors are encouraged to furnish a summary of such information or a general explanation of why the information is considered confidential or proprietary.

17.4 If a Party provides information relating to a submission on enforcement matters to the Secretariat, the Council, the JPAC or another Party, that is confidential or proprietary, the recipient will treat the information on the same basis as the Party providing the information.

18. What is the relationship between these guidelines and the Agreement?
18.1 These guidelines describe the manner in which the submissions on enforcement matters process is intended to be implemented under Articles 14 and 15 of the Agreement. These guidelines do not modify the Agreement and, therefore, at all times, should be interpreted in a manner consistent with the Agreement.

19. How long will key steps in the process take?
19.1 The Secretariat should issue its determination under Article 14(1) normally within 30 working days of receiving the submission. If the Secretariat determines that the submission meets the
Article 14(1) criteria, the Secretariat should issue its Article 14(2) determination normally within 30 working days thereafter. If the Secretariat determines that the submission does not meet the Article 14(1) criteria, the Secretariat is to promptly notify the Submitter who will then have 60 working days to revise the submission, in accordance with section 6.2 of these guidelines.

19.2 In accordance with Article 14(3), a Party is to provide the Secretariat with its response to the submission, if any, within 30 working days or, in exceptional circumstances and on notification to the Secretariat, within 60 working days of delivery of the request.

19.3 The Secretariat, should issue its determinations under Article 15(1) normally within 120 working days of receiving a response from the Party concerned.

19.4 The Council should vote on whether to instruct the Secretariat to prepare the factual record normally within 60 working days of receiving the Secretariat’s recommendation.

19.5 The Secretariat should conclude the preparation of the draft factual record normally within 180 working days of being so instructed by the Council.

19.6 In accordance with Article 15(5), Parties may provide comments on the accuracy of the draft factual record within 45 working days of delivery of the draft in their official language(s).

19.7 The Secretariat, to the extent possible, should conclude revising the draft factual record and provide Council with the final factual record, including a version that makes apparent any changes made, normally within 45 working days of receiving Party comments.

19.8 In accordance with Article 15(7), Council may vote on making the final factual record publicly available, normally within 60 working days following delivery of the final factual record and a version of the final factual record that makes apparent any changes.

19.9 Where the Council or a Party is unable to meet any applicable deadline, it should provide to the Secretariat a written explanation of the reason(s) for such and identify the date by which it plans to complete the relevant action; the Secretariat is to then so inform the Submitter. Where the Secretariat is unable to meet any applicable deadline, it should provide the Submitter and Council with an explanation of the reason(s) for such and identify the date by which it plans to complete the relevant action.