



Canadian Nuclear
Safety Commission

Commission canadienne
de sûreté nucléaire

REGULATORY GUIDE

Making, Reviewing and Receiving Orders under the *Nuclear Safety and Control Act*

G-273

May 2003

REGULATORY DOCUMENTS

The Canadian Nuclear Safety Commission (CNSC) operates within a legal framework that includes law and supporting regulatory documents. Law includes such legally enforceable instruments as acts, regulations, licences and orders. Regulatory documents such as policies, standards, guides, notices, procedures and information documents support and provide further information on these legally enforceable instruments. Together, law and regulatory documents form the framework for the regulatory activities of the CNSC.

The main classes of regulatory documents developed by the CNSC are:

Regulatory policy: a document that describes the philosophy, principles and fundamental factors used by the CNSC in its regulatory program.

Regulatory standard: a document that is suitable for use in compliance assessment and describes rules, characteristics or practices which the CNSC accepts as meeting the regulatory requirements.

Regulatory guide: a document that provides guidance or describes characteristics or practices that the CNSC recommends for meeting regulatory requirements or improving administrative effectiveness.

Regulatory notice: a document that provides case-specific guidance or information to alert licensees and others about significant health, safety or compliance issues that should be acted upon in a timely manner.

Regulatory procedure: a document that describes work processes that the CNSC follows to administer the regulatory requirements for which it is responsible.

Document types such as regulatory policies, standards, guides, notices and procedures do not create legally enforceable requirements. They support regulatory requirements found in regulations, licences and other legally enforceable instruments. However, where appropriate, a regulatory document may be made into a legally enforceable requirement by incorporation in a CNSC regulation, a licence or other legally enforceable instrument made pursuant to the *Nuclear Safety and Control Act*.

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TABLE OF CONTENTS

1.0	PURPOSE.....	1
2.0	SCOPE.....	1
3.0	BACKGROUND	1
3.1	Regulatory framework	1
3.2	Definitions	2
3.2 .1	Definition of an order	2
3.2.2	Definition of an inspector	2
3.2.3	Definition of a designated officer	3
3.3	Relevant legislation	3
4.0	ORDERS MADE BY INSPECTORS OR DESIGNATED OFFICERS.....	3
4.1	Inspectors	3
4.2	Designated officers	5
4.3	Content of orders	5
5.0	REVIEWING ORDERS MADE BY INSPECTORS OR DESIGNATED OFFICERS	7
6.0	RECEIVING ORDERS MADE BY INSPECTORS OR DESIGNATED OFFICERS	8
7.0	APPEALS AND REDETERMINATIONS OF ORDERS MADE BY INSPECTORS OR DESIGNATED OFFICERS	9
7.1	Definition of appeals and redeterminations	9
7.1.1	Appeals	9
7.1.2	Redeterminations	9
7.2	Making an Appeal or Application for Redetermination	9
7.3	Redeterminations on the Commission’s own initiative	10
8.0	ORDERS MADE BY THE COMMISSION	11
 APPENDICES		
A.	Form for making orders	12
B.	Addendum sheet	14
C.	Inspector’s checklist for making orders	15
D.	Actions of inspectors/designated officers in making orders	17
E.	Action of authorized designated officers/Commission in reviewing orders	18
F.	Actions of person(s) receiving orders made by inspectors/designated officers	19
G.	Making an appeal or application for redetermination of orders made by inspectors/designated officers	20

MAKING, REVIEWING AND RECEIVING ORDERS UNDER THE *NUCLEAR SAFETY AND CONTROL ACT*

1.0 PURPOSE

This document provides guidance for making, reviewing and receiving orders pursuant to the *Nuclear Safety and Control Act* (“NSC Act” or “the Act”) and its regulations.

2.0 SCOPE

This guide applies to the inspectors and designated officers (DOs) empowered to make and review orders under the Act and to any person receiving an order under the Act.

With respect to the making and reviewing of orders by an inspector or DO, this guide describes:

- the roles and responsibilities of the Commission, inspectors and DOs, and
- the required steps to carry out these activities. (The form for making orders and an inspector’s checklist can be found in Appendices A and C respectively.)

With respect to receiving orders made by an inspector or DO, this guide describes:

- the rights and responsibilities of persons receiving an order, and
- the actions required for compliance with such orders.

Also addressed in the guide are:

- the roles, responsibilities and the actions required by any person making an appeal or an application for redetermination of an order made by an inspector or DO, and
- orders that the Commission itself may make in exceptional circumstances, such as an emergency.

Failure to comply with the requirements of an order is addressed by the CNSC compliance program and is beyond the scope of this document.

3.0 BACKGROUND

3.1 Regulatory framework

The CNSC is the federal agency that regulates the use of nuclear energy and materials to protect health, safety, security and the environment, and to respect Canada’s international commitments on the peaceful use of nuclear energy.

The Act requires persons or organizations to be licensed by the CNSC for carrying out the activities referred to in section 26 of the Act, unless otherwise exempted. The associated regulations stipulate prerequisites for CNSC licensing, and the obligations of licensees and workers. Persons subject to the NSC Act, in particular licensees, are subject to the controls provided by the Act and its regulations, including the power to make orders.

3.2 Definitions

3.2 .1 Definition of an order

An order is one of the regulatory tools used by the CNSC in carrying out its responsibilities under the Act. It is a powerful legal instrument used to compel someone to do something in the interests of health, safety, the environment, national security or compliance with Canada's international obligations. An order must be obeyed by the recipient; failure to comply can lead to further regulatory measures, including prosecution or licensing actions. The Act describes the circumstances under which orders can be given, and the *CNSC Rules of Procedure* (the Rules) set out procedures for making, reviewing, appealing and redetermining them.

Orders are used for special circumstances. An order can be issued only when the conditions of subsection 35(1) or 35(2) of the Act are met (something must be done to prevent unreasonable risk to the health/ safety /environment / national security/Canada's international obligations or to prevent unsafe use or operation). There are other methods that can be used to achieve compliance by licensees, such as recommendations, warnings, letters, discussions, licence amendments. If possible, it is desirable to use one of these other methods to correct the situation in a timely manner, so that compliance may be achieved without issuing an order. However, if these other methods are not appropriate and the conditions of subsection 35(1) or 35(2) of the Act are met, an order should be made.

3.2.2 Definition of an inspector

An inspector is a person whom the Commission considers qualified and designates as an inspector. Inspectors are provided with a certificate which identifies them as inspectors and describes their powers (section 29 of the Act). This certificate is commonly called the inspector's card. An inspector may be a CNSC employee or a person otherwise employed under an arrangement with the CNSC.

3.2.3 Definition of a designated officer

A DO is a person whom the Commission considers qualified and designates as a designated officer. Designated officers are provided with a certificate which specifies the duties that have been delegated to them (section 37 of the Act). A DO may be a CNSC employee or a person otherwise employed under an arrangement with the CNSC.

3.3 Relevant legislation

The following provisions of the Act pertain to making, reviewing, receiving, redetermining and appealing orders:

- Powers of Inspectors and DOs to Make Orders: subsections 35(1) and (2); paragraph 37(2)(f)
- Duty to Assist Inspectors and Comply with Orders: sections 36, 41, 42, 51(1)
- Review of Orders: subsections 35(3) and 37(6); paragraph 37(2)(g)
- Relevant Procedures: section 38; paragraphs 39(1)(c), 40(1)(c), 40(1)(d), 40(1)(h), 40(1)(i), 40(2)(b), 40(4)(c) and subsection 40(3)
- Appeals and Redeterminations: paragraphs 43(1)(d), 43(2)(e), 43(2)(f), 43(4)(g)-(j) and subsection 43(3)
- Offences and Punishments: paragraph 48(e) and subsection 51(3)
- Orders made by the Commission under exceptional circumstances: subsection 46(3) and 47(1)

Rules 31-36 of the *CNSC Rules of Procedure* (the Rules) describe the procedures for making, reviewing, receiving, redetermining and appealing orders.

4.0 ORDERS MADE BY INSPECTORS OR DESIGNATED OFFICERS

This section describes the roles and responsibilities of inspectors and DOs with respect to making orders, and the steps required to carry out this activity.

4.1 Inspectors

Inspectors are authorized to make orders under subsections 35(1) and 35(2) of the Act.

Subsection 35(1) of the Act gives the inspector very broad powers with respect to orders made to licensees. An inspector can order licensees to take any measures necessary to protect the environment or health and safety of persons, or to maintain national security and comply with international obligations to which Canada has agreed. An order made pursuant to subsection 35(1) of the Act may be made in the course of, or as a result of, a compliance inspection of a place, vehicle or facility, however, in many cases orders will result from an

incident or accident investigation. Whether or not an inspection has been made, inspectors must be sure that they have the necessary evidence and reasons for the order.

Orders made pursuant to subsection 35(2) of the Act are limited to the circumstances described in subsection 30(3) and section 31 of the Act, and can be directed to any person, including licensees. Orders made pursuant to subsection 35(2) of the Act result from an inspector entering or inspecting a vehicle or place under the situations described in this subsection.

The roles and responsibilities of inspectors with respect to making orders are contained in the steps outlined below. See Appendix C for an inspector's checklist for making orders and Appendix D for a flowchart overview.

- 1) To decide whether an order should be given, inspectors:
 - a) should identify the basis for the order;
 - b) should rule out other compliance methods such as recommendations, warnings, letters, discussions, licence amendments as inappropriate; and
 - c) must ensure that the criteria for making an order set out in subsections 35(1) or 35(2) of the Act are met.
- 2) Once it has been established that an order will be made, and before making it, inspectors:
 - a) must inform the persons to whom the order is given of its nature, its basis, and the timeframe for compliance. This can be done orally or in writing (subrule 33(1)).

Note: The extent of any communication with the persons to whom an order will be directed prior to making the order is a matter for the discretion and judgement of the inspector depending on the urgency of the situation and the surrounding circumstances. This is an opportunity for the person receiving the order to give any feedback to problems or issues that may arise from complying with the order.
 - b) must give the order in writing (subrule 33(2));

Note 1: See Appendix A for the "Form for Making Orders". Although no legal requirement exists to use this form, its use is strongly recommended. Orders that do not make use of this form must be clearly identified as an order and must include all relevant information as set out on the form.

Note 2: In situations where an inspector has to take immediate action i.e. stop work immediately, an order can be given orally. This would still have to be followed up with a written order, but the orally issued order would have to be complied with. The powers found in sections 35 and 41 of the Act allow for oral orders to be given in these circumstances.

- c) should keep a record of the order, the inspection report, the checklist (see Appendix C) and their inspection and any other relevant notes; and
- d) must refer the order to the Commission, or an authorized DO, for review, as soon as practicable and, in any event, no later than 10 days after the order has been given (subsection 35(3) of the Act and subrule 34(1)).

Note: If a DO has been authorized to review an inspector's orders pursuant to paragraph 37(2)(g), there is no need for the inspector to refer that order to the Commission itself; the order could go directly to the authorized DO.

4.2 Designated officers

DOs may be authorized under paragraph 37(2)(f) of the Act to make any order that an inspector may make under subsections 35(1) or (2) of the Act.

The roles and responsibilities of DOs with respect to making orders are contained in the steps outlined below.

- 1) Before making an order, designated officers:
 - a) must ensure that they can produce their certificate of designation, if requested (NSC Act 37(3));
 - b) should ensure that they are authorized to make orders as defined in their certificate (NSC Act 37(1)); and
 - c) refer to the steps outlined for inspectors found in section 4.1, steps 1(a) through to 1(c).
- 2) Once it is established that an order will be made, and all the steps listed above are completed, the designated officers:
 - a) refer to the steps outlined for inspectors found in section 4.1, steps 2(a) to (c); and
 - b) must refer the order to the Commission for review, as soon as practicable and, in any event, no later than 10 days after the order has been given (subsection 37(6) of the NSC Act and subrule 34(1)).

4.3 Content of orders

Section 5 a) on the "Form for Making Orders" (see Appendix A) is where the "Actions or measures required to be taken by the licensee and/or other person(s)..." are to be described. If there is more than one item to be addressed within an order, each item should be addressed individually. It should be clear how, when and by whom each item

of the order must be fulfilled. This section of the form should include the following information:

- **who** must take the action or measures;
- **what** actions or measures must be taken to satisfy the order, including any time limits or restrictions; and
- **when** each item of an order would be considered to be fulfilled.

Although other documents and reports may be referenced or appended to the order, the order as much as possible should contain enough information to be a “stand alone” document. Addenda sheets are available (see Appendix B) and can be used if additional space is required to fill out the form. When addenda are attached this should be indicated on the form by checking the appropriate box.

The order is considered closed when all items of an order have been fulfilled. Section 5 b) of the “Form for Making Orders” makes this clear and allows for any closure requirements to be made, such as: written acceptance by the Commission or a designated officer, or the requirement for re-inspection and approval by a CNSC inspector. Note that there is always the option to leave this section blank and in this case the order would be considered closed simply when all items listed in 5 a) have been fulfilled.

Sample entry for Section 5 on the “Form for Making Orders”:

5 a) Actions or measures required to be taken by licensee and/or other person(s) (specify) in respect of any facility, place, substance, vehicle, equipment or information (specify), including any time limits or restrictions:

Actions required by (*name of licensee or person*)

No further work is to be performed in room (*specify*) until such time as:

1. a) Room (*specify*) is decontaminated and the radioactive contamination levels have been reduced to or below the limits X bq/cm², as stated in the licence conditions;
- b) A report of the results of decontamination has been submitted to the CNSC/ authorized staff (*name and/or title if applicable*); and
- c) The CNSC/ authorized staff (*name and/or title if applicable*) has accepted in writing the results of the decontamination report. This fulfils item 1.
2. a) Nuclear substances are securely stored;
- b) A report of the results of the nuclear substance storage has been submitted to the CNSC/authorized staff (*name and/or title if applicable*); and
- c) The CNSC/authorized staff (*name and/or title if applicable*) has accepted in writing the results of the storage report. This fulfils item 2.

5 b) This order is closed when all the items listed in 5 a) have been fulfilled; and the CNSC/authorized staff (*name and/or title if applicable*) notifies (*name of licensee or person*) in writing that the order has been completed and is now closed.

5.0 REVIEWING ORDERS MADE BY INSPECTORS OR DESIGNATED OFFICERS

The Commission must review:

- an order made by an inspector, to confirm, amend, revoke or replace the order (subsection 35(3) of the Act); and
Note: If a DO has been authorized to review an inspector's orders pursuant to paragraph 37(2)(g), there is no need for the inspector to refer that order to the Commission itself; the order could go directly to the authorized DO.
- an order made by a DO, to confirm, amend, revoke or replace the order (subsection 37(6) of the Act).

The roles and responsibilities of the Commission or of an authorized DO, when they receive an order for review (subrule 34(1)), are contained in the steps outlined below (see Appendix E for a flowchart overview). For a review of an order, the Commission or the DO must:

- 1) Notify the persons named in, or subject to, the order of their opportunity to be heard, and the requirement to inform the Commission or DO, within 10 days of receipt of this notice, of any information and submissions they intend to present with respect to the order (paragraphs 34(2)(a) and (b) of the Rules and paragraphs 39(1)(c), 40(1)(c) and 40(1)(d) of the Act).
- 2) Notify, as soon as practicable after receiving notice that information is intended to be presented, the persons named in, or subject to, the order of the time and manner in which the person may be heard and whether information and written submissions are required to be filed with the Commission or DO and sent to other parties; and if they are, the time limits for filing and sending and the names and addresses of other parties (paragraphs 34(3)(a) and (b) of the Rules and paragraphs 39(1)(c), 40(1)(c) and 40(1)(d) of the Act).
- 3) Hold any hearing and review the information presented and/or submitted.
- 4) Make the decision to confirm, amend, revoke or replace the order (subsections 35(3) and 37(6) of the Act); and
Note: If the order is being reviewed by an authorized DO, the DO must report the confirmation, amendment, revocation or replacement of the order to the Commission (paragraph 37(5)(d) of the Act).
- 5) Provide the decision in writing, within 10 days after it is made, to the persons named in, or subject to, the decision, and to any other persons who intervened in the proceeding (subrule 34(4)).

6.0 RECEIVING ORDERS MADE BY INSPECTORS OR DESIGNATED OFFICERS

The rights and responsibilities of the persons required to comply with orders are contained in the steps outlined below (see Appendix F for a flowchart overview). Any person who may be subject to an order must give an inspector all reasonable assistance to enable the inspector to carry out his or her duties (section 36 of the Act) throughout this process.

- 1) Before receiving an order, any person to whom the order is given will be informed of the nature of the order, the basis for it and any proposed time limits for compliance (subrule 33(1)). This will allow the person an opportunity to ascertain whether the order can be safely carried out and to discuss any problems with the inspector or designated officer.
- 2) Upon receipt of a written order, every person named in, or subject to, an order must comply with the order within the time limit specified in the order, or immediately if no time limit is specified. Compliance must be carried out whether or not the person has had the opportunity to be heard (section 41 of the Act).

Note 1: Information on liability for costs is provided in section 42 of the NSC Act.

Note 2: Once all items on an order have been fulfilled and any closure requirements have been met, the order will be considered closed.

- 3) The Commission or DO must notify the persons named in, or subject to, the order of their opportunity to be heard, before the order is confirmed, amended, revoked or replaced (paragraphs 39(1)(c), and 40(1)(c) and (d) of the Act and paragraph 34(2)(a) of the Rules). Note that persons named in, or subject to the order are not obliged to avail themselves of this opportunity.

Those persons named in or subject to the order who want to be heard must:

- a) Notify the Commission or DO if they intend to present information and submissions with respect to the order within 10 days of being notified of their opportunity to be heard (paragraph 34(2)(b) of the Rules);
- b) File with the Commission or DO, and send to other parties any information and written submissions within the specified time limits, as required by the Commission or DO (paragraph 34(3)(b) of the Rules); and
- c) Present their information and submissions at the time and in the manner specified in the notice from the Commission or DO (paragraph 34(3)(a) of the Rules).

The Commission's or DO's written decision on whether to confirm, amend, revoke or replace the order will be provided within 10 days after it is made, to the persons named in or subject to the decision and any persons who intervened in the proceedings (subrule 34(4)).

7.0 APPEALS AND REDETERMINATIONS OF ORDERS MADE BY INSPECTORS OR DESIGNATED OFFICERS

7.1 Definition of appeals and redeterminations

7.1.1 Appeals

An appeal is a process through which a decision can be reconsidered by a higher authority. A decision made by a DO to confirm, amend, revoke or replace an order of an inspector can be appealed to the Commission (paragraph 43(1)(d) of the Act.). An appeal of an order can only be made by a person who is directly affected by it (paragraph 43(1)(d) of the Act).

Note: A person who is “directly affected” refers to someone who has a personal, financial or legal interest that is directly impacted or could be directly impacted by the order. The personal interest must directly impact the individual and cannot be only a generalized interest such as an interest in the environment or in the nuclear industry. In most cases “directly affected” means those who are named in, or are subject to the order.

7.1.2 Redeterminations

A redetermination is a process through which a decision can be reconsidered by the same body that made the decision. While a decision of the Commission can not be appealed under the NSC Act, an application for its redetermination may be made under subsection 43(2).

Any person named in or subject to an order may make an application for the following to be redetermined:

- an order of the Commission (NSC Act paragraph 43(2)(e)); and
- a confirmation, amendment, revocation or replacement by the Commission of an order of an inspector or DO (NSC Act paragraph 43(2)(f)).

The Commission may also on its own initiative redetermine any decision or order made by it, an inspector or a DO (subsection 43(3) of the Act). Subsection 43(3) of the Act allows the Commission to redetermine an order without an application.

7.2 Making an Appeal or Application for Redetermination

The roles, responsibilities and actions required of persons directly affected by an order who want to appeal it, or of any persons named in or subject to an order who want to

apply for its redetermination, are outlined below (see Appendix G for a flowchart overview). These persons shall:

- 1) Send to the Commission the following information (subrule 35(2)):
 - a) a reference to the appropriate paragraph in subsection 43(1) or (2) of the Act under which the appeal or application is being made;
 - b) a reference to the order that is the subject of the appeal or application ;
 - c) the grounds for appeal or application, including in the case of an appeal a statement showing how the appellant is directly affected by the order being appealed;
 - d) a statement of the action that the appellant or applicant wants the Commission to take under subsection 43(4) of the Act;
 - e) a statement indicating whether or not the appellant or applicant wishes to present new evidence;
 - f) a description of the manner in which the appellant or applicant wishes to participate in the proceeding;
 - g) the name, address, and telephone and fax numbers of the appellant or applicant; and
 - h) a statement indicating whether the appellant or applicant intends to be represented by counsel or an agent, and if so, the name, address, and telephone and fax numbers of this person.
- 2) Send copies of the information and written submissions to the persons specified by the Commission in its notice (paragraph 35(4)(c) of the Rules).
- 3) Present their information and submissions on the day, at the place, within the time limits and in the manner specified by the Commission in its notice (paragraph 35(4)(a) and (b) of the Rules).

The Commission's decision to confirm, amend, revoke or replace the order will be provided in writing to the appellant or applicant and any other persons who intervened in the proceedings (Rule 36).

7.3 Redeterminations on the Commission's own initiative

The Commission may on its own initiative (or as recommended by staff), redetermine any order made by it, an inspector or a DO (subsection 43(3) of the Act). The procedures for this type of redetermination are found in Rules 31 and 32.

8.0 ORDERS MADE BY THE COMMISSION

Orders may be made by the Commission under the following exceptional circumstances:

- where, after conducting a public hearing, the Commission is satisfied that there is contaminated land, the Commission may order that prescribed measures be taken to lower the level of contamination (subsection 46(3) of the NSC Act)
- in a case of an emergency the Commission may, without conducting any proceedings, make any order that it considers necessary to protect the environment or the health and safety of persons or to maintain national security and compliance with Canada's international obligations (subsection 47(1) of the NSC Act).

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

APPENDIX A Form for making orders



ORDER UNDER SECTION 35 OR PARAGRAPH 37(2)(f) OF THE NUCLEAR SAFETY AND CONTROL ACT

Page		of	
INDEX			
1	CNSC Licence No. (if applicable)		
2	Date of Order		
	Y	M	D

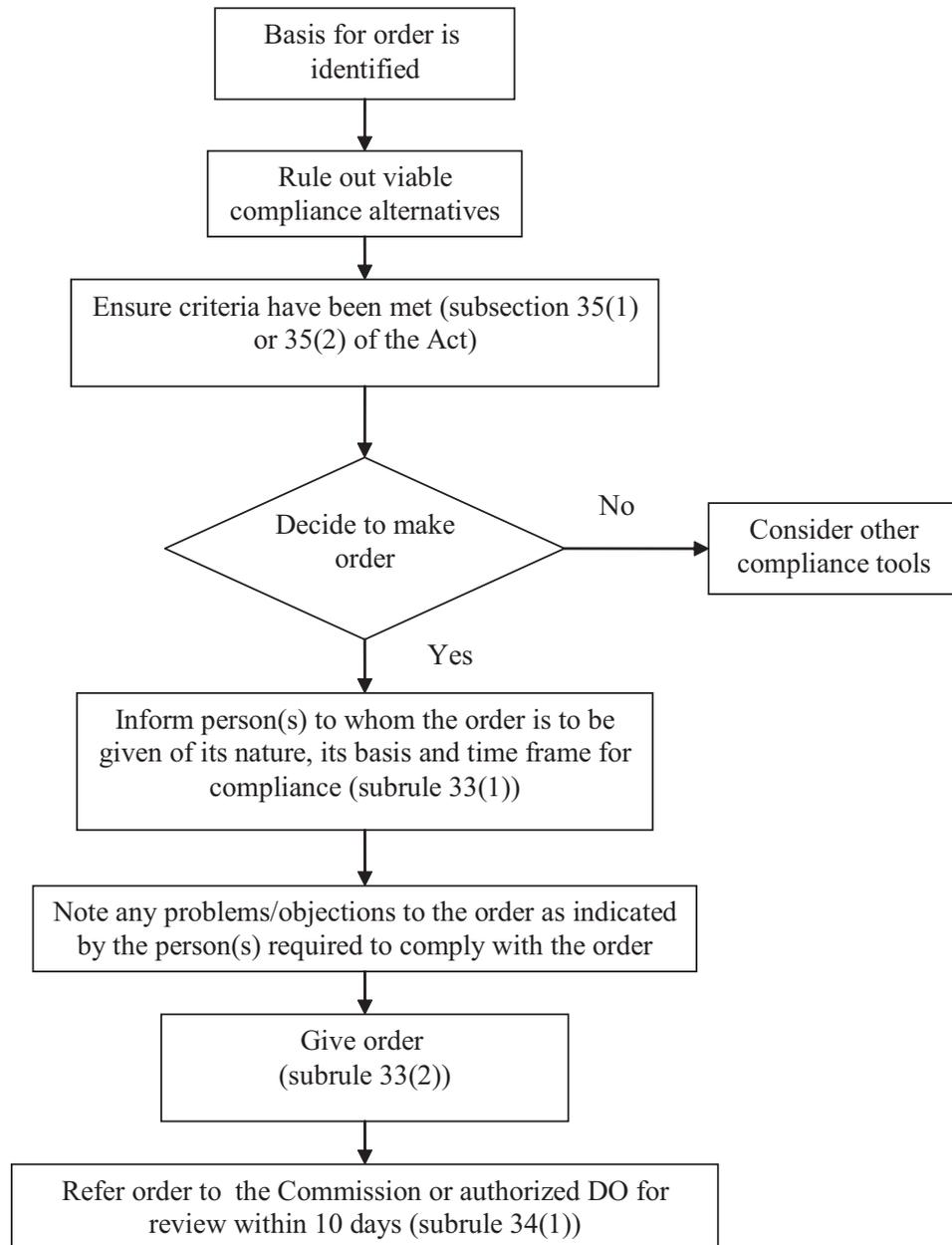
3 Company/Licensee (if applicable) and address 	4 Name (and title or position) of person(s) receiving the Order Print
5a Actions or measures required to be taken by licensee and/or other person(s) (specify) in respect of any facility, place, substance, vehicle, equipment or information (specify), including any time limits or restrictions Addenda attached <input type="checkbox"/>	
5b This order is closed when all items listed in 5a) have been fulfilled; and Addenda attached <input type="checkbox"/>	
6 Information on which Order is based Addenda attached <input type="checkbox"/>	
7 CNSC Inspector or Designated Officer making the Order Name: Tel.: Address: Fax: Signature:	
8 Method of transmitting the Order: Personal delivery <input type="checkbox"/> Mail <input type="checkbox"/> Fax <input type="checkbox"/> Other (specify) <input type="checkbox"/>	

SEE REVERSE SIDE FOR ADDITIONAL INFORMATION



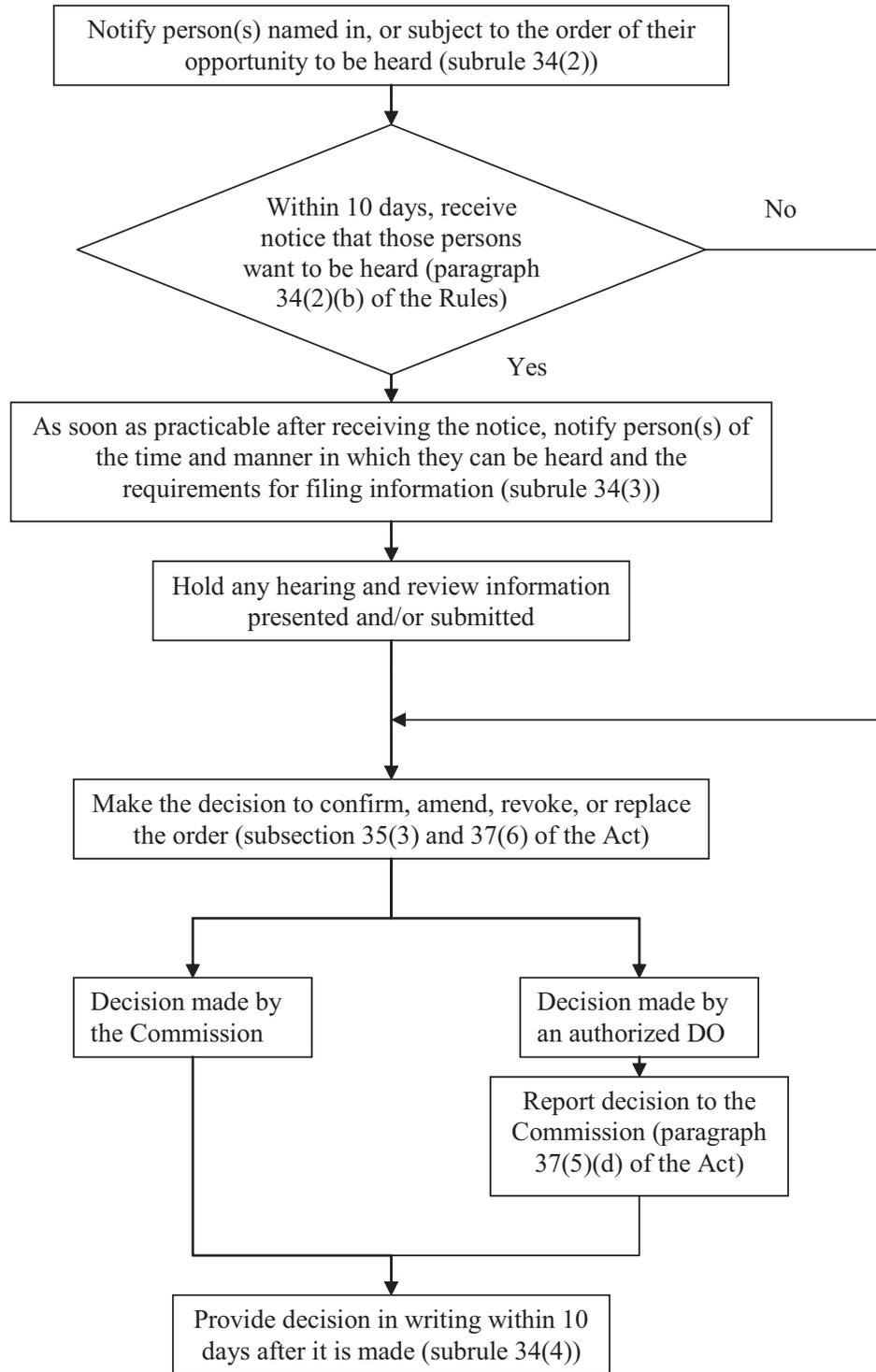
A SUMMARY OF SOME RELEVANT SECTIONS OF THE ACT
<p>ORDERS OF AN INSPECTOR 35(1) Refer to this subsection for Orders issued to licensees. 35(2) Refer to this subsection for Orders issued to any person.</p>
<p>DESIGNATED OFFICERS 37(2) (f) The Commission may authorize a designated officer to make any order that an inspector may make under subsection 35(1) or (2).</p>
<p>PROCEDURES 38 Every order of an inspector and every order of a designated officer under paragraph 37(2)(f) shall be made, and every measure under paragraph 37(2)(c), (d) or (g) shall be taken, in accordance with prescribed <i>CNSC Rules of Procedure</i>.</p>
<p>COMPLIANCE WITH ORDER 41 Every person named in, or subject to, an order of the Commission, an inspector or a designated officer shall, whether or not the person has had an opportunity to make representations with respect to the order, comply with the order within the time specified in it or, if no time is specified, immediately.</p>
<p>OPPORTUNITY TO BE HEARD Refer to sections 39 and 40 of the <i>Act</i>.</p>
<p>LIABILITY FOR COSTS Refer to section 42 of the <i>Act</i>.</p>
<p>OFFENSES AND PUNISHMENT Refer to sections 48 to 65 inclusive of the <i>Act</i>.</p>

APPENDIX D
Actions of inspectors/designated officers in making orders



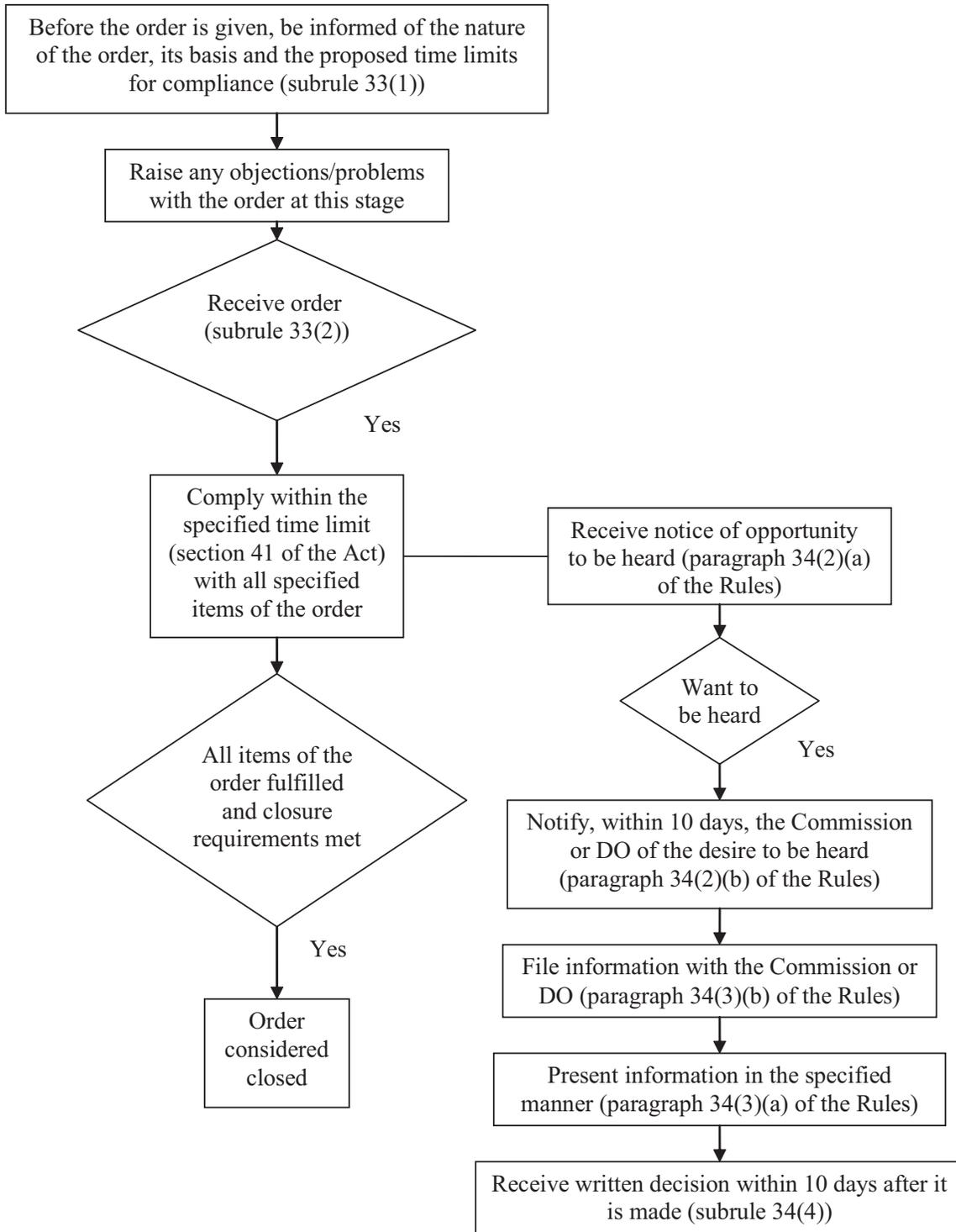
APPENDIX E

Action of authorized designated officers/Commission in reviewing orders



APPENDIX F

Actions of person(s) receiving orders made by inspectors/designated officers



APPENDIX G
Making an appeal or application for redetermination of orders made by inspectors/designated officers

