An analysis completed by Ernst & Young (EY) for the Canadian Energy Pipeline Association (CEPA) has found that over the past several years an increase in volume, complexity and duplication of regulations imposed upon the pipeline industry, in addition to other factors, has had a negative effect on the competitiveness of the sector.

Rather than one specific item, the report analyzes the cumulative effect of many factors which make it more difficult to develop new projects and attract investment. This is demonstrated by evidence of steadily increasing regulatory timelines, a significant drop in new pipeline applications and shifting of capital from Canada to the US.

Based on EY’s analysis, CEPA proposes the following recommendations for consideration by governments:

**EY Conclusion and CEPA Recommendations**

1. **EY Conclusion: Regulatory certainty has been decreasing.**
   
   **CEPA Recommendation:** A primary objective of changes to the regulatory landscape should be to increase stability and transparency in the regulatory process, including process predictability.
   
   Legislation and regulation pertaining to regulatory processes should be stable and reflect the long-term nature of transmission pipeline approval, construction and operation.

   While it is a best practice to periodically review legislation and regulations, reviews should not be done too frequently and should be transparent and predictable to all stakeholders when undertaken. Governments should focus these reviews on predictability of process and should ensure wholesale changes to effective regulatory systems are avoided. Legislation and regulations supporting infrastructure development should not be subject to the whims of election cycles and should withstand changes in governments.
2. EY Conclusion: Regulatory overlap exists to a certain extent.

CEPA Recommendation: Federal and provincial governments should develop and agree upon a common regulatory strategy that is committed to eliminating unharmonized regulations, establishing equivalency agreements and inspiring a high level of confidence for affected parties, including the public, to discourage unnecessary complexity, duplication and inefficiency.

3. EY Conclusion: Regulatory transparency and clarity is an issue.

CEPA Recommendation: Regulations must have a clear path to compliance. This requires clear policy guidance on regulatory intent and the avoidance of regulatory overlap (where multiple regulations affect the same activity but with different intended or unintended outcomes). Regulations should be complementary rather than overlapping or, in the extreme case, competitive. A holistic approach to regulatory policy is needed so regulations are not developed in isolation. In addition, timelines for implementing new regulations must be adequate to ensure new processes, information requirements and guidance are clearly understood by all stakeholders.

4. EY Conclusion: Predictability of process and outcomes has been decreasing.

CEPA Recommendation: Regulatory processes must be predictable, transparent and based on science and facts. To promote continued investment in pipeline infrastructure in Canada, governments must provide the utmost confidence that the outcomes of a regulatory process are not subject to political interference. This becomes especially important for long, complex and costly regulatory reviews.

5. EY Conclusion: Canada has a mix of prescriptive and outcome-based regulation. Leveraging new technology and innovation needs to be embraced and encouraged to be more effective and efficient.

CEPA Recommendation: Regulations should be outcome-based to ensure the maximum degree of flexibility for compliance. Unnecessarily prescriptive regulations should be avoided as they often lead to inefficient and sometimes ineffective requirements. Further, outcome-based regulations encourage both cost-effective and innovative compliance approaches that can embrace new science and technologies.

6. EY Conclusion: Timelines in Canada are not always consistent or predictable, and have been trending upwards.

CEPA Recommendation: Regulatory processes should include reasonable and enforceable timelines. The total time required to undertake regulatory reviews in Canada is undermining competitiveness. As such, governments and regulators must ensure regulatory reviews reflect practical and realistic timelines that include consideration of commercial requirements and competitiveness.

7. EY Conclusion: Regulation is impacting costs, and there is not a high degree of cost certainty. Tax advantages that Canada once had no longer exist.

CEPA Recommendation: Federal and provincial governments must consider impacts on business competitiveness, regulatory efficiency and effectiveness, and economic growth when developing and amending new and current regulations to ensure the regulatory burden on industry does not undermine industry’s ability to remain competitive. As mentioned in the federal government’s fall 2018 economic outlook, government must commit and take actionable measures to make it easier for businesses to grow by modernizing federal regulations and encouraging regulators to consider economic competitiveness when designing and implementing regulations.

Closing

Overall, impacts on the competitiveness of the pipeline industry as well as the overall Canadian economy should be a foundational piece of all new and existing legislation and regulations. The current flood of new regulations that must be complied with at the federal, provincial and other levels (or that is currently in the planning/consultation phase) is overwhelming. Due to this reality, a full analysis of the cumulative impacts of new and planned regulations is needed. Any such analysis must include consideration of the comparative regulatory burden of other international jurisdictions that are competing for limited capital investment.