Government of Canada | Gouvernement du Canada

31 May 2006

FRAMEWORK FOR THE TRIAGE OF REGULATORY SUBMISSIONS

Regulatory Affairs Division/
Division des affaires réglementaires
Privy Council Office/Bureau du Conseil privé
155 Queen Street, Suite 1100H,
Ottawa, Ontario, Canada, K1A 0A3

Canada

TABLE OF CONTENTS

INTRODUCTION

The *Framework for the Triage of Regulatory Submissions* (the Triage Framework) attempts to have federal regulatory proposals treated according to their relative importance through a consistent, open and transparent triaging process by systematically categorizing their regulatory proposals into "low," "medium" or "high" significance levels. It replaces the definitions of "major" and "significant" regulations in the 2004 Regulatory Process Guide.

The Triage Framework is guided by the principle of proportionality. Given that the government must use public resources as efficiently and effectively as possible, analytical efforts dedicated to regulatory proposals should be commensurate to their level of expected impact on Canadians, including the expected impact of not regulating.

A complete review of the Framework will take place one year after its implementation. Implementation of the Framework will be closely monitored by Regulatory Affairs Division (RAD) analysts.

RATIONALE FOR REGULATORY TRIAGE

Federal regulatory authorities currently endeavour to achieve a level of effort and analysis required for their regulatory proposals that is in line with their significance or potential impact. However, this is done on an ad hoc basis and without clearly defined significance categories or criteria for classification. Observers and participants in the regulatory process agree that the depth and quality of analysis summarized in the Regulatory Impact Analysis Statement (RIAS) is highly variable and that insignificant items may receive too much analytical effort while highly significant items may receive insufficient analysis.

The External Advisory Committee on Smart Regulation also observed the need for proportionality in its September 2004 report.[1] It identified the need for more clearly defined "tiers" and better criteria for classification. Therefore, it recommended that the new regulatory policy "*target or 'tier' the procedural requirements to accommodate such matters as level of risk and impacts"* and develop guidelines to define "less significant," "significant" and "very significant."

Other countries from the Organization for Economic Co-operation and Development (OECD), including the United States and Australia, already use formal triage systems to improve administrative efficiency and ensure that analytical effort is commensurate with the significance of the potential impact of regulatory proposals. The United States and Australia observed that a formalized and systematic tiering approach better accommodates the information needs of citizens, industry stakeholders, parliamentarians and other decision makers, in addition to being a valuable tool for a more efficient use of regulatory resources.[2]

[1] External Advisory Committee on Smart Regulation, Administrative Procedures. 2004. *Smart Regulation: A Regulatory Strategy for Canada*. September, p. 50. Available at <www.smartregulation.gc.ca>.

[2] OECD. 1999. *Regulatory Reform in the United States: Government Capacity to Assure High Quality Regulation;* Steve Argy and Matthew Johnson. 2003. *Mechanism for Improving the Quality of Regulations: Australia in an International Context.* Staff working paper.

Consequently, RAD, with the participation of regulatory departments, developed the Triage Framework to improve the efficiency and effectiveness of the regulatory system, and the resulting benefits:

- The use of criteria, such as the level of impacts to government, society, the economy and the environment, allows for a more systematic categorization of proposals, and makes the process and considerations that shape decision making clearer, more transparent and predictable to interested parties.
- The level and quality of regulatory analysis is consistent across the federal government and regulatory proposals.
- The Framework streamlines the regulatory process for proposals of low significance through an abridged RIAS and potentially an exemption from pre-publication.
- For both the RAD and departments, the early use of triage makes for a more collaborative approach, ensures a horizontal lens is applied and assists the regulatory department to work out, or at least identify, horizontal issues or barriers early in the process.
- The Framework could also prove helpful in the very early stages of impact assessment, that is, before regulatory options are analyzed in detail. In fact, the screening questionnaire provided by the Framework can help department/agency officials improve the instrument choice analysis by focussing analytical efforts in areas of greatest concern.
- It may also provide insights into how to assess a regulation against good governance criteria, when it is introduced, and periodically throughout its life span (e.g., by highlighting key impacts and implementation issues that should be monitored to ensure that intended policy objectives are being met).
- This Framework could also be used to identify the regulatory initiatives to report in Parliamentary reporting documents, such as the Report on Plans and Priorities, which require the identification of “major” or “significant” regulatory initiatives that are scheduled for implementation during the planning period.

WHO WILL USE THE TRIAGE FRAMEWORK?

The Triage Framework is intended for use by persons involved in developing regulatory proposals to be considered for approval by the Governor in Council.

QUESTIONNAIRE

A questionnaire containing 13 questions on the expected impact (both positive and negative) of the proposal has been developed to assist in establishing their significance level (Annex 1). These questions are grouped into six categories: health and safety, environment, economic, social and ethical, security, and other impacts. These questions should be approached based on readily available information or consultation with stakeholders, not necessarily on in-depth analysis. The cumulative impact of the proposed regulations with other regulations should also be considered.

ESTIMATING LEVEL OF SIGNIFICANCE

Significance Levels

For each of the 13 questions, regulators will evaluate the expected effects of a proposal and mark the result in one of three columns.

- If an answer falls in Column 1, the proposal receives a low significance mark for that question.
- If an answer falls in Column 2, the proposal receives a medium significance mark for that question.
- If an answer falls in Column 3, the proposal receives a high significance mark for that question.

Low Significance

A proposal of low significance is generally acknowledged as acceptable to the public, routine, and administrative in nature or has a negligible negative impact on the economy, human health and safety, society and ethics, security, the environment, etc. In many cases, RAD would support a recommendation to ministers for an exemption from pre-publication.

If the proposal registers low significance marks for all 13 questions, it is of low significance and its RIAS will be prepared using the abridged RIAS provided in Annex 2.

Medium Significance

A proposal of medium significance could impact the environment, economy, government, society and ethics, security, human health and safety, and impose some costs or savings onto the target population (e.g., industry and small businesses).

If a proposal receives a medium mark on any of the 13 questions, the proposal is of medium significance. Such a proposal will continue to be subject to the current RIAS format. For areas where a medium mark is received, a qualitative (narrative-oriented) analysis supported with any readily available quantitative (measurement-oriented) information must be provided for that area.

High Significance

A proposal of high significance involves very high impacts on the environment, economy, government, society and ethics, security, human health and safety and major costs or savings for stakeholders (e.g., industry and small businesses).

If a proposal receives one high mark on any of the 13 questions, it is considered of high significance. Such a proposal will continue to be subject to the current RIAS format. For areas where a medium mark is received, a qualitative analysis supported with any readily available quantitative information will be required. A quantitative analysis will also be required for areas that receive a high mark unless it is not possible to quantify the impacts; then a qualitative analysis will be required.

Emergency

Emergency situations – when there is an immediate and serious risk to the health and safety of Canadians, their security, the economy or the environment – may require an expedited process so the government can respond in a timely way. In such cases, after contacting RAD, it may be determined that the Triage Questionnaire is not required.

STEP-BY-STEP TRIAGING PROCESS

Step 1	At the earliest opportunity in the regulatory development process, regulatory authorities apply the Triage Questionnaire (Annex 1) to their upcoming proposal.
Step 2	Regulatory authorities submit the Triage Questionnaire to their RAD analyst. This form must be signed by the responsible director (or higher) for the regulatory proposal. The form needs to be completed and sent to RAD as early as possible in the regulatory development process so RAD analysts can provide input before the department or agency has initiated the analysis to draft the RIAS.
Step 3	Regulatory authorities and RAD, as an important part of the central agency's challenge function, agree on and confirm the level of significance of the proposal and its applicable RIAS format.
Step 4	1. For proposals of low significance, an abridged RIAS may be completed (Annex 2) and, in many cases, RAD would support a recommendation to ministers for an exemption from pre-publication. 2. For proposals of medium significance, a full RIAS will be required. For areas where a medium mark is received, a qualitative analysis supported with any readily available quantitative information must be provided. 3. For proposals of high significance, a full RIAS will be required. For areas where a medium mark is received, a qualitative analysis supported with any readily available quantitative information will be required and a quantitative analysis will be required for areas that receive a high mark unless it is not possible to quantify the impacts, then a qualitative analysis will be required.

Regulatory authorities should re-submit the Triage Questionnaire (Step 2) to their RAD analyst as soon as they find the results have changed from their initial assessment.

After Step 4, the regulatory process follows its course.

ANNEX 1

The Triage Questionnaire needs to be completed and sent to RAD as early as possible in the regulatory development process so RAD analysts can provide input before the department or agency has initiated the analysis to draft the RIAS. As an important part of the central agency's challenge function, these questions should be approached based on readily available information or consultation with stakeholders, not necessarily on in-depth analysis. The cumulative impact of the proposed regulations with other regulations should also be considered. The use of the word "impact" in this document refers to both positive and negative impacts. When relevant, long-term effects should also be considered. RAD analysts should be contacted concerning any questions or concerns in completing this form.

Note that the Triage Questionnaire is intended as an initial estimate to determine the potential impacts of regulatory proposals. It is non-binding and as new information becomes available and additional analysis and consultation is completed, the previously assessed impact level may change. Regulatory authorities should re-submit the Triage Questionnaire (Step 2) to their RAD analyst as soon as they find the results have changed from their initial assessment.

FRAMEWORK FOR THE TRIAGE OF REGULATORY SUBMISSIONS – QUESTIONNAIRE				
Title of the regulatory proposal:				
Enabling authority:				
Description:				
Approximate date of submission of regulatory proposal to RAD:				
Emergency situations: An immediate and serious risk to the health and safety of Canadians, their security, the economy or the environment may require an expedited process so the government can respond in a timely way. In these cases, departments and agencies are expected to consult RAD.				
IMPACTS		LOW	MEDIUM	HIGH
HEALTH AND SAFETY				
1	Impact on health or safety risk	low	medium	high
If a regulatory proposal has no or minimal expected impact on health or safety, it receives a low mark; if it is expected to cause some impacts (e.g., reduce delays or the need for medical attention or hospitalization) it receives a medium mark; and if it is expected to have a significant impact on physical well-being or mortality, it receives a high mark.				
Rationale:				
ENVIRONMENT				
2	Environmental impact	low	medium	high
If a regulatory proposal has no or minimal impact on the environment, it receives a low mark; if it may cause some environmental impact, it receives a medium mark; and if it may cause important environmental impacts (e.g., irreversible harm or damage to a sensitive ecosystem), it receives a high mark.				
Rationale:				

ECONOMIC				
3	Present value of total direct gross costs or savings to government, industry, consumers and others	$0 to $10 M	$10 M to $100 M	above $100 M
OR	Annual gross costs or savings to government, industry, consumers and others	$0 to $1 M	$1 M to $10 M	above $10 M
Government costs or savings include the monitoring, administrative, enforcement, general administrative and overhead costs associated with new regulations and foregone revenue (e.g., tax/duty remissions). They also include the costs or savings relating to incentive-based regulations, such as tradable permits, and capital cost allowance. Present value should be based on at least a 10-year forecast and an 8% discount rate.				
Rationale:				
4	Annual compliance costs or savings of any single firm as a percentage of gross revenue	0% to 1%	1% to 5%	above 5%
OR	Impact to businesses	low	medium	high
Impacts on businesses are not limited to increases in financial costs or savings, but could also include other impacts on productivity, competition, innovation, business risk, sales/revenue, market share, liability, branding, copyrights/patents, liquidity, human resources, price, logistics, product and others.				
Rationale:				
5	Jobs lost or gained as a percentage of total sector labour force	0%	0% to 1%	above 1%
OR	Impact on Employment	low	medium	high
If a regulatory proposal has no or negligible impacts on employment, it receives a low mark; if it may cause some job loss or gain up to 1% of total sector labour force, it receives a medium mark; and if it may cause job losses or gains above 1% of total sector labour force, it receives a high mark.				
Rationale:				
6	Effects on international competitiveness of Canadian firms or sector	0% to 1%	1% to 5%	above 5%
OR	Impact on international competitiveness	low	medium	high
If a regulatory proposal has no or negligible impact on competitiveness (e.g., loss or gain of 0% to 1% of international market share for Canadian business), it receives a low mark; if it may cause some impact (e.g., loss or gain of 1% to 5% of international market share for Canadian business), it receives a medium mark; and if it may cause significant impacts (e.g., loss or gain of more than 5% of international market share for Canadian business), it receives a high mark.				
Rationale:				

7	Meets or complies with international trade agreements or obligations, or foreign relations	low	medium	high
If a regulatory proposal meets or complies with international trade agreements or obligations, or foreign relations, it receives a low mark; if there is minor non-compliance, it receives a medium mark; and if it may not comply, it receives a high mark.				
Rationale:				
SOCIAL				
8	Social impacts	low	medium	high
If a regulatory proposal causes no or negligible social impacts (e.g., changes to people's way of life, culture, community, political systems, well-being, personal and property rights, fears and aspirations or raise ethical concerns) it receives a low mark; if it may cause some social impacts, it receives a medium mark; if it may cause significant social impacts, it receives a high mark. Special consideration should be given to vulnerable social and economic groups (e.g., Aboriginal, lower income Canadians, gender, children, the elderly, cultural groups and recent immigrants).				
Rationale:				
REGIONAL DISTRIBUTION OF IMPACTS				
9	Effects on a certain region of Canada	low	medium	high
If a regulatory proposal may cause no or negligible impacts on a certain region of Canada (e.g., Aboriginal communities, remote and rural regions or cities), it receives a low mark; if it may cause some localized impact (e.g., an impact on a few rural communities), it receives a medium mark; and if it may cause large regional impacts, it receives a high mark.				
Rationale:				
PUBLIC SAFETY				
10	Impact on public safety	low	medium	high
If a regulatory proposal has no or minimal impact on public safety (e.g., national safety and security, transportation and travel safety, criminal activity/policing, emergencies and disasters, family and home safety, financial safety, internet safety, product/consumer protection, recreational safety, school safety, bullying and workplace safety), it receives a low mark; if it has some impact, it receives a medium mark; and if it may cause significant impact, it receives a high mark.				
Rationale:				

OTHER IMPACTS				
11	Controversy or opposition	low	medium	high
If a proposal is not controversial and is supported by all key stakeholder groups, including political/lobby groups, it receives a low mark; if it is slightly controversial and/or is opposed by some stakeholders, it receives a medium mark. However, if the proposal is highly controversial, opposed by most stakeholders and/or faces large opposition, it receives a high mark.				
Rationale:				
12	Inconsistent or interferes with action taken/planned by another federal department/agency or another level of government	low	medium	high
If a regulatory proposal has no impact and is consistent with action taken/planned by another federal department/agency or another level of government (provincial, territorial, Aboriginal or municipal), it receives a low mark; if it may cause some minor inconsistencies or interferences (this can occur when there are overlapping mandates), it receives a medium mark; and if it may cause major inconsistencies or interference, it receives a high mark.				
Rationale:				
13	Raises novel legal/policy issues, is in a new area of activity for government or sets a precedent	low	medium	high
If a regulatory proposal does not raise novel legal/policy issues, is not in a new area of activity for government or does not set a precedent, it receives a low mark; if it raises some novel legal/policy issues, is in a new area of activity for government or sets a significant precedent, it receives a medium mark; and if it may raise large novel legal/policy issues, is in a completely new area of activity for government or sets a major precedent, it receives a high mark. To answer this question, one needs to consider the immediate impacts of this regulation and how it could potentially impact the development of future regulations and policies. For example, a regulatory proposal that provides a small subsidy may set the precedent for future and much larger subsidies.				
Rationale:				

TOTAL *(Add the total number of low, medium and high.)*			
LEVEL OF SIGNIFICANCE			

To estimate the level of significance of the regulatory proposal, use the following criteria.

- *Low Significance: If the proposal registers low significance marks for all 13 questions, it is of low significance. For proposals of low significance, an abridged RIAS may be completed (Annex 2)* and, in many cases, RAD would support a recommendation to ministers for an exemption from pre-publication.
- *Medium Significance: If a proposal receives a medium mark on any of the 13 questions, the proposal is of medium significance. Such a proposal will continue to be subject to the current RIAS format. For areas where a medium mark is received, a qualitative (narrative-oriented) analysis supported with any readily available quantitative (measurement-oriented) information must be provided.*
- *High Significance: If a proposal receives one high mark or more, it is considered of high significance. Such a proposal will continue to be subject to the current RIAS format. For areas where a medium mark is received, a qualitative analysis supported with any readily available quantitative information will be required and a quantitative analysis will be required for areas that receive a high mark unless it is not possible to quantify the impacts, then a qualitative analysis will be required.*

Departmental contact name and address (signature not required): _____

Director or higher signature: _____
Date: _____

RAD analyst signature: _____
Date: _____

ANNEX 2[3]

DRAFT TEMPLATE FOR LOW-SIGNIFICANCE RIAS
(Medium- and high-significance proposals will continue to be subject to the current RIAS with more in-depth analysis in areas where impacts are expected to be most important according to the triage questionnaire.)

Regulatory Impact Analysis Statement

Résumé de l'étude d'impact de la réglementation
(This statement is not part of the Proposed Regulations.)
(Ce résumé ne fait pas partie du projet de Règlement.)

Department or Agency	**Ministère ou organisme**
Title of Proposal	**Titre du projet**
Statutory Authority	**Fondement législatif**
Submitted for Consideration for: Pre-publication	**Soumis en vue de** : Publication préalable

_____
Minister of XXX / Ministre de XXX

RIAS has four required sections:

- ***Description***
- ***Alternatives***
- ***Consultation***
- ***Contact***

[3] Consult the *RIAS Writers Guide* for further information <www.pco-bcp.gc.ca/raoics-srdc/default.asp?Language=E&Page=Publications&Sub=Current>.

TEMPLATE FOR THE CURRENT VERSION OF THE RIAS[4]

Regulatory Impact Analysis Statement

Résumé de l'étude d'impact de la réglementation
(This statement is not part of the Proposed Regulations.)
(Ce résumé ne fait pas partie du projet de Règlement.)

Department or Agency	**Ministère ou organisme**
Title of Proposal	**Titre du projet**
Statutory Authority	**Fondement législatif**
Submitted for Consideration for: Pre-publication	**Soumis en vue de** : Publication préalable

_____
Minister of XXX / Ministre de XXX

RIAS has six required sections:

- ***Description***
- ***Alternatives***
- ***Benefits and Cost***
- ***Consultation***
- ***Compliance and Enforcement***
- ***Contact***

[4] The current RIAS format is subject to change.