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# Enlightened Practices in Regulatory Programs

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This volume is the second in a series of brief profiles of noteworthy or innovative practices by federal government departments and agencies, developed and distributed by the Regulatory Best Practices Committee.

The Committee is a joint undertaking of the Treasury Board Secretariat, the Regulatory Affairs Division and the Federal Law Enforcement Under Review Secretariat (FLEUR), of the Solicitor General of Canada. It is made up of departmental representatives from the regulatory community.

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## Foreword

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In 1991, the Regulatory Affairs Division of the Treasury Board Secretariat established a committee to identify innovative and noteworthy practices in regulatory programs.

Since mid-1992, the Regulatory Best Practices Committee has provided a forum for regulatory managers to share ideas, concerns and success stories. The objective is to build a greater esprit de corps within the regulatory community by researching, analyzing and sharing examples of enlightened regulatory practices.

The Regulatory Affairs Division and the Federal Law Enforcement Under Review Secretariat (FLEUR) of the Solicitor General of Canada share a common interest in improving regulatory program management. Accordingly, the committee was created under the aegis of both organizations.

In its reply to the Standing Committee on Finance called Regulations and Competitiveness, the government focuses on creating a more "responsive" regulatory regime. Such a regime will result in faster development of better regulatory solutions. This means more efficient and more effective protection for Canadians.

Consumers will also benefit by gaining earlier access to a wider range of products and services. In addition, the regulatory burden imposed on industry will be reduced, and Canadian taxpayers

will benefit from the implementation of more cost-effective approaches.

The government is committed to making regulatory programs more responsive to the new challenges facing Canada. To meet these challenges we can build on many innovative ideas already in use throughout the regulatory community.

This is the second volume of a series that reflects the work of the committee from April to December 1993. The committee meets regularly to hear presentations of enlightened practices by colleagues in the regulatory community. A profile of each practice is prepared and reviewed by the sponsoring department and the committee prior to its publication.

It is hoped that this document will act as a catalyst for the continued sharing of such success stories. If you would like to participate on the committee or if you know of enlightened practices that should be recognized, please contact Doug Blair, Regulatory Affairs Division, TBS, at (613) 952-3463.

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## Executive Summary

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### Engaging PCO(Justice) Lawyers as In-House Regulation-Makers (Environment Canada)

A special PCO (J) unit operates in Environment Canada (EC) to provide early advice on the drafting of regulations, to participate in the drafting, and to provide legal opinions on statutory criteria to be met in regulation drafting. The unit also provides related training for EC staff to enhance departmental capabilities in this area. The presence of the unit streamlines the regulation-making process, and encourages cooperation among departmental officials and drafting lawyers.

### Adopting International Standards for Packaging in the Transportation of Dangerous Goods (Transport Canada)

Along with many other countries, Canada has implemented the recommendations of the United Nations Committee of Experts on the Transportation of Dangerous Goods for the design and production of dangerous goods packaging. All dangerous goods manufactured and packaged in Canada and carried by international marine transport, international or domestic air transport, must be in packaging that displays the UN

marking. Adoption by Canada of the UN recommendations promotes the international harmonization of standards. In addition, the adoption of a new preventive approach, based on the monitoring of markings and conformity assessment has produced higher levels of conformity with standards than the previous system did.

### Using Advisory Panels in the Regulatory Review Process (Agriculture and Agri-Food Canada)

Agriculture and Agri-Food Canada has established the External Regulatory Panel to oversee and assess the Department's regulatory plans and policies. The Panel ensures that the Department's Annual Regulatory Plan meets federal regulatory policy objectives, and that the viewpoints of stakeholders are taken into account. As a result, external stakeholders can oversee and comment on the regulatory review process. The Panel also provides the Department with a way to obtain an initial reaction from stakeholders before engaging in a comprehensive outside consultation process.

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## Stakeholder Consultation in the Development of Regulatory Policy and Regulations (Federal Environment Assessment Review Office)

FEARO has adopted a novel approach to the development of regulations required under the new Canadian Environmental Assessment Act (CEAA). A Regulatory Advisory Committee (RAC) has been meeting regularly since November 1991 to provide all major stakeholders with an opportunity to contribute to the formation of regulatory policy and regulations. The RAC process enables the achievement of consensus on certain issues early in the regulatory development process, highlights areas where differences of view must be resolved, and gives participants some sense of ownership in the legislative package.

## Training and Designation of Guardians Holding Delegated Powers (Fisheries and Oceans)

Fisheries and Oceans (F&O) now trains and certifies special Aboriginal Fishery Guardians to monitor fishing activities by people from their own groups. The program enables the Department to carry out its responsibilities more effectively with the same number of full-time officers. Hiring aboriginal enforcement officers provides

employment to people in their local areas and allows them to draw upon their knowledge, experience, and community links.

## Administrative Penalties as Alternatives to Prosecution (Agriculture and Agri-Food Canada)

The Food Production and Inspection Branch has designed an Administrative Monetary Penalties System (AMPS) that emphasizes compliance rather than punishment for regulatory violations. The system is intended for serious violations or for violations that other administrative actions fail to deter. Allowing the Branch to levy penalties or to negotiate appropriate remedial measures encourages offenders to begin immediate corrective action. The AMPS is more efficient and cost effective than the prosecution process, and allows for a more consistent treatment of those in the industry.

## Using Front-End Assessment Guidelines for Regulatory Initiatives (Agriculture and Agri-Food Canada)

Agriculture and Agri-Food Canada developed Front-End Assessment Guidelines for regulatory initiatives to ensure that all relevant issues are fully considered prior to drafting and implementation. A Guidelines document details the steps to be taken by Department program officers in carrying out a front-end assessment, including the

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completion of a preliminary impact assessment for all potential regulatory or non-regulatory options identified. The front-end assessment of regulatory initiatives ensures that the Department determines the availability of resources to enforce initiatives in advance. These assessments also enable the Department to identify potential problem areas and to amend proposed initiatives accordingly, prior to implementation.

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# Engaging PCO(Justice) Lawyers As In-House Regulation-Makers (Environment Canada)

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## Function and Background

A large number of current and anticipated requirements for the drafting of regulations peculiar to Environment Canada's regulatory functions led to an increased need for consultation with the Privy Council Office, Justice Section (PCO(J)). As a result, Environment Canada (EC) requested that a PCO(J) special unit be set up at the Department to provide early advice on compliance with regulation drafting prerequisites, to participate in the drafting of regulations, and to provide training in these areas for EC personnel. The unit also occasionally gives legal opinions on statutory criteria to be met in the drafting of regulations and on the interpretation of regulation-making powers in departmental legislation. This two-year pilot project has operated since January 1992.

The Best Practices profile presented here demonstrates the advantages and key elements of innovative approaches to the drafting of regulations.

## Organization

The PCO(J) unit does not supplant the role played by the Department's Legal Services Unit (LSU), which provides EC with advice on all aspects of its work. The PCO(J) unit provides specialized expertise on the legal and drafting criteria of

the Statutory Instruments Act and on the interpretation of regulation-making provisions of departmental statutes. As in the past, LSU lawyers work with EC officials in the development of regulatory policy to ensure that regulations reflect managerial thinking and are enforceable. Managers, PCO(J) and LSU lawyers work together in public consultation and in drafting, from the earliest stages.

EC is developing a departmental listing of drafting priorities based on a similar system and used by Agriculture and Agri-Food Canada. In the interim, the general PCO(J) system for setting priorities among drafting needs is used. For example, regulations that may lapse if not renewed and those under which the government collects money may have a higher priority than opinion files and new drafting projects. EC has adapted the PCO(J) system to take departmental priority lists into account.

The Department encourages officials to telephone or drop in on the unit with questions concerning drafting criteria. During meetings on regulations, the principles for drafting are explained. In addition, the PCO(J) unit has offered one-day drafting seminars, in which a significant number of departmental

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lawyers and officials have participated. At the request of early participants, follow-up seminars have been held that included case studies and practical drafting exercises. Orientation seminars have also been offered for directors. All of these efforts have contributed to the training of EC personnel.

The PCO(J) unit works bilingually in drafting, editing and training. All personnel and office costs come from the EC budget.

As a result of this pilot project, EC is considering establishing a centralized regulatory affairs office to coordinate all EC regulatory activities. Such a system could facilitate problem-solving and the flow-through of the regulatory process.

#### **Advantages**

- Because the PCO(J) unit is dedicated to the work of EC and EC regulations do not have to compete for time with those of other departments, the turnaround time for making regulations is reduced.
- The initial involvement of the unit in the development of certain regulations may be useful when EC consults with industry on these regulations.
- Obtaining advice on compliance with statutory criteria for drafting reduces the likelihood of time-wasting errors.
- Seminars and the availability of rapid advice increase employees' knowledge of

regulation drafting, which enhances the Department's capabilities in this area over the long term.

- The presence of an exclusive PCO(J) unit has increased the level of mutual understanding between departmental officials and drafting lawyers, minimizing potential frustrations of all involved and creating an environment of cooperation and team-building.
- The ability to drop in on the unit has allowed Department officials to meet revisers and editors, whom they would not encounter in the normal course of events.
- Because the unit is on site, it is easier to organize problem-solving meetings and to make quick changes.

#### **Contact Person**

Bill Findlay, Manager, Regulatory Affairs, Environment Canada, 997-3207.

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# Adopting International Standards for Packaging in the Transport of Dangerous Goods (Transport Canada)

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## Background

Previously in Canada, responsibility for compliance with standards in the construction of packagings for the transport of dangerous goods rested with manufacturers. This self-certification program was changed to a preventive approach based on a conformity assessment after a study by the Transport of Dangerous Goods (TDG) Directorate of Transport Canada revealed high levels of non-conformance with existing standards. At about the same time, the standards themselves were also changed when Canada, along with many other countries, implemented the recommendations of the United Nations Committee of Experts on the Transportation of Dangerous Goods for the design and production of dangerous goods packaging. The TDG Directorate and an advisory committee are establishing and implementing the UN standards. Since January 1991, the packaging of all dangerous goods manufactured and packaged in Canada and carried in international marine transport or international or domestic air transport must display the UN marking.

The Best Practices profile presented here demonstrates the advantages and key elements of the adoption of

international standards as the basis for regulation.

## Organization and Monitoring

To implement the UN packaging standards in Canada, a UN package design registration system has been established. The specific requirements manufacturers must follow for the construction, performance testing and marking of UN packagings are set out in National Standard of Canada CAN/CGSB 43.150. It was written by the Canadian General Standards Board, an organization accredited by the Standards Council of Canada. The standards have been incorporated, by reference, into the Transportation of Dangerous Goods Regulations.

Manufacturers follow specific procedures to develop dangerous goods packagings. First, they must determine the packing group for the dangerous good to be transported and the relevant code for the packaging design type. The severity of the performance tests then carried out to evaluate packaging integrity varies according to the packing group to which the packaging has been assigned. The objective is to achieve a package design that performs in a consistent fashion when filled and closed for shipment.



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Once all required performance tests have been carried out, the manufacturer prepares and submits a Packaging Design Report to the TDG Directorate, which evaluates the report. The Directorate registers approved designs and assigns each one a Design Registration Number.

This number must be displayed in the marking on all UN-standard packagings manufactured after 1991 and filled in Canada.

In addition, to ensure that the tested design continues to be applied during production, the UN standard requires a quality assurance program. To enable the TDG Directorate to evaluate these programs effectively, manufacturing facilities that produce packagings such as steel and plastic drums for higher-risk goods must register with an independent quality assurance auditing organization.

Manufacturers may register with an auditing organization accredited by the Standards Council of Canada, such as the Quality Management Institute or the Canadian General Standards Board, which use ISO 9002 or CSA Z 299.3 standards to assess a manufacturer's quality assurance program. A letter from the auditing organization certifying adherence to the relevant standards is also acceptable.

### **Advantages**

- Adoption of the UN recommendations for dangerous goods packaging promotes the international harmonization of standards.
- Adoption of international standards assures that Canada uses high standards without unnecessarily

duplicating standard-setting efforts.

- The quality assurance program required by the UN standards ensures that the tested design continues to be applied during production.
- The adoption of the conformity assessment approach, which focuses on problem prevention rather than on assessment after production, has produced higher levels of conformity with standards than the previous system did, as well as cost savings for government.
- Reliance on performance standards, rather than the previous system of restrictive and detailed design specifications for packaging, gives industry more flexibility.
- Working with an expert advisory committee on UN and Canadian standards maintains a pool of shared expertise and helps government consult with industry more effectively.

### **Contact Persons**

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# Using Advisory Panels in the Regulatory Review Process (Agriculture and Agri-Food Canada)

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## Background

In accordance with directives on regulatory review given in the February 1992 federal Budget, Agriculture and Agri-Food Canada conducted an assessment of its regulations. To assist the Department in this review, a 1992 Regulatory Advisory Panel was convened. In assessing the Department's regulations, the Panel considered: industry needs for improving competitiveness; the health, safety, and economic welfare of consumers; environmental effects; and regional considerations.

The Panel's final report to the Minister recommended that an ongoing external advisory panel on regulations be established to oversee the Department's regulatory plans and policies, and to assess progress against the Department's regulatory plans. As a result of this recommendation, the Agriculture and Agri-Food Canada External Regulatory Panel was established.

The Best Practices profile presented here demonstrates the advantages and key elements of using advisory panels in the regulatory review process.

## Organization

Reporting to the Deputy Minister, the Agriculture and Agri-Food

Canada External Regulatory Panel provides the Department with a permanent challenge and advisory function. The Panel will ensure that the Department's Annual Regulatory Plan meets federal regulatory policy objectives and the criteria applied during the Department's 1992 Regulatory Review. In addition, the Panel ensures that the Department pursues issues identified in the 1992 Regulatory Review, that ongoing regulatory planning focuses on interdepartmental and federal-provincial regulatory matters, and that the Department makes progress in delineating interdepartmental and federal-provincial roles and responsibilities. The Panel will also play an advisory role in any other regulatory reviews carried out in related subject areas in any part of the Department to ensure that they are appropriate and that the viewpoints of stakeholders are taken into account. Finally, the Panel will develop an information exchange-working relationship with other relevant Department panels, such as the Food Production and Inspection Panel, as well as with any other industry regulatory advisory panels that may be established.

The Panel currently consists of seven individuals, including a private consultant and people from the agri-food sector, a consumer

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group and, academe. The members do not represent particular constituencies. A secretariat to be established at the Department's Food Production and Inspection Branch will support the Panel's work. It is anticipated that the Panel will meet approximately three times per year.

Inspection Branch, Agriculture and Agri-Food Canada (992-2114).

### **Advantages**

- The Panel allows external stakeholders, knowledgeable about the impact of regulations on industry and on other sectors, to oversee and comment on the regulatory review process.
- The Panel provides the Department with a way to obtain an initial reaction from affected stakeholders before engaging in a comprehensive outside consultation process.
- Working with the Panel ensures that the Department remains focused on the relevant policy issues identified in the Department's 1992 Regulatory Review and that the Department's Annual Regulatory Plan meets federal regulatory policy objectives.

### **Contact Persons**

Mary Komarynsky, Acting Director, Regulatory Affairs Division, Management Strategies and Priorities Directorate, Food Production and Inspection Branch, Agriculture and Agri-Food Canada (992-2114, ext. 4143), or Alan Goldrosen, Food Production and

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# Stakeholder Consultation in the Development of Regulatory Policy and Regulations (Federal Environmental Assessment Review Office)

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## Background

The process of assessing potential ecological impacts of proposed projects involving certain federal responsibilities is currently carried out under the Environmental Assessment and Review Process (EARP) Guidelines Order. A new statute, the Canadian Environmental Assessment Act (CEAA), was passed in 1992, but will not be proclaimed until related regulations are finally approved. A major package of four regulations was published in the Canada Gazette in September 1993. The Federal Environmental Assessment Review Office (FEARO) is shepherding the development of the regulations for the new statutory regime.

FEARO chose to adopt a novel approach to the formulation of regulations. It has consulted extensively with all stakeholders throughout the process of regulatory planning and drafting.

The Best Practices profile presented here demonstrates the advantages and key elements of stakeholder consultation in the development of regulatory policy and regulations.

## Organization

In the autumn of 1991, FEARO carried out public consultation

meetings on regulatory planning in different parts of the country. That experience led FEARO to decide that a transitory process would not be as good as receiving continuing advice. Consequently, a Regulatory Advisory Committee (RAC) was set up. It has been meeting every two to three months since November 1991.

The RAC members come from the following diverse constituencies: six from industry associations; four from environmental non-governmental organizations; two from aboriginal groups; four from provincial governments; and four from federal departments (Environment, Fisheries and Oceans, Industry, and Natural Resources). FEARO provides the Chair and the Secretariat and covers the consultation costs.

By having a multi-stakeholder process at all stages, FEARO hoped to avoid a last-minute confrontation with parties claiming they were not adequately involved in the regulatory planning, as sometimes happens. Tougher issues might surface sooner, enabling all sides to recognize the real problems. The process is also seen as more democratic than that used in the formulation of most regulations.

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The RAC has also provided input concerning the parent statute, the CEEA, and in June 1993 asked that it be proclaimed quickly. The RAC has helped to promote the concept of a public registry of environmental assessment documents, as outlined in the CEEA. This public registry, and the relatively easy access to data would provide it, could turn out to be the best monitoring and implementation tool in the Act. The RAC has also disseminated information about the CEEA and the planned regulations.

In mid-September 1993, a major package of regulations under the CEEA was published in Part I of the Canada Gazette, although stakeholders had not yet reached a consensus on all elements of the regulations. Some stakeholders argue that aspects of these regulations, particularly those determining which kinds of projects must be assessed, reflect the pro-industry bias of some provincial governments, rather than the balance arrived at through the RAC.

Other observers suggest that the regulations published in the Canada Gazette reflect concerns of federal departments that were not subjected to scrutiny by the RAC.

### **Advantages**

- The RAC is a democratic process enabling all major stakeholders to have input into the development of regulatory policy and regulations in the early stages.
- The RAC allows all sides to reach consensus on certain issues early in the regulatory development process, so

they can focus on the major stumbling blocks.

- A consensus achieved through multi-stakeholder consultation is more likely to be in the general public interest.
- Regulations that have undergone extensive scrutiny and consideration are likely to be better crafted.
- The RAC process reduces the possibility that one player will raise major objections when an agreed package appears ready for promulgation and implementation.
- The partners in the process are likely to feel more ownership of the legislative package, and are more likely to cooperate in the implementation of the Act and regulations.

### **Lessons Learned**

- The RAC mechanism, which provides a stable sounding board during the development of regulatory initiatives, is preferable to ad hoc public consultation meetings.
- It is important to involve interested federal departments from the outset of stakeholder consultations as active participants, rather than as observers, so that their concerns can be discussed adequately, rather than being held back until the later stages.

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- While stakeholders should be encouraged to feel ownership in the draft regulations and policies around which a consensus is built, it must always be clear that the government has ultimate responsibility for producing regulations. Bodies such as the RAC are advisory only.

### **Contact Person**

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Federal Environmental Assessment  
Review Office (997-2217).

## **Training and Designation of Guardians Holding Delegated Powers (Fisheries and Oceans)**

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### **Background**

For geographical, cultural and legal reasons, fisheries regulations have been difficult in areas where Aboriginal peoples traditionally fish.

Recent legal decisions and negotiations regarding aboriginal fishing rights have added to the complexity. Yet the Department and Aboriginal leaders have similar goals, namely to ensure adequate but sustainable yields of fishery resources.

On May 31, 1990, in the Sparrow decision, the Supreme Court of Canada ruled that Aboriginal communities have a right under Section 35 of the Constitution to fish for food, social and ceremonial

purposes. The court said natives have first claim on the fish resource after conservation needs are met and that native fishing rights must be interpreted flexibly over time to permit their evolution.

The department's response was the \$140 million, seven-year Aboriginal fisheries strategy (AFS). Part of the strategy was to involve aboriginal people in the conservation and protection of fishing resources in order to recognize their right to enhanced participation in the fishery under Sparrow and to aid DFO in carrying out its mandate to preserve and protect the resource.

The best practices profile presented here, demonstrates the advantages

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and key elements of providing training and delegated responsibility to the Aboriginal people for the monitoring and enforcement of their fishery.

### **Organization**

Under AFS, DFO and aboriginal groups agreed to a program to train Aboriginal Guardians to work with regular DFO fisheries guardians in enforcement.

Monitoring by Aboriginal Guardians commenced in 1992. The Department negotiated agreements with aboriginal Bands to provide monitoring and enforcement services. Aboriginal Guardians from the Band monitor and control Band fishing activities. They now carry out all of the duties of a Fishery Guardian except those requiring the use of force, weapons or searches.

Most Aboriginal guardians are employed on a seasonal basis. Their tenure varies from Band to Band. Some Aboriginal Guardians work in pairs; some work together with full-time DFO Fishery Officers. A few Aboriginal Guardians have subsequently entered the departmental Fishery Officer Career Program and are now employed as Fishery Officers for the Department.

### **Training**

The initial component of the Aboriginal Fishery Guardian Training Program consists of five weeks of classroom training combined with field training with an experienced DFO Fishery Officer. By June 1993, about 150 Aboriginal Guardians had completed the course in the Atlantic and Pacific Regions. People who want to become Aboriginal Guardians must

apply and be nominated by their tribal organization prior to commencing the training.

The minimum requirements for entry into the program require the Aboriginal Guardians to: a) meet the security clearance requirements, which are identical to those for DFO officers; b) be nominated and hired by their Band; and c) preferably possess grade 12 or equivalency. The law is a big component of this training and in accordance with the varying educational backgrounds of these individuals, written or oral tests are given.

### **Advantages**

The Aboriginal Guardian Program has become one of the most visible and highly successful elements of the AFS. Not only does it augment DFO's enforcement capacity, but it has become an important vehicle for increasing the involvement of native Canadians in the aboriginal fishery.

- Aboriginal Fishery Guardians have a vested interest in ensuring the viability of their fishery as well as having an intimate knowledge of it.
- The involvement of Aboriginal people as partners in the enforcement of their fishery speaks to their position that they should be the custodians.
- Aboriginal Guardians have a good success rate at apprehending those from their communities who break the law.
- Alternative, non-criminal forms of enforcement have

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proven to be successful for the Aboriginal people.

- The program assists in creating a climate to promote conservation, enhance resource stocks, improve quality data collection, reduce capital investment and reduce conflict between user groups.
- The program provides employment to people in their home localities, drawing upon their knowledge, experience and community links.
- This initiative has resulted in better and more equitable management, community-based development, and conflict resolution and has increased the enforcement capability of the Department of Fisheries and Oceans.

**Contact Person**

Dennis Brock, Director,  
Enforcement Branch, Department of  
Fisheries and Oceans (990-0108).



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# Administrative Penalties as Alternatives To Prosecution (Agriculture and Agri-Food Canada)

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## Background

Agriculture Canada's 1992 Regulatory Review recommended more effective enforcement options to improve compliance. Agricultural industry associations also saw a need for more equitable enforcement in their sector, including better monitoring of imports. To address industry and departmental concerns, the Food Production and Inspection Branch has designed an Administrative Monetary Penalties System (AMPS).

The Best Practices profile presented here demonstrates the advantages and key elements of [alternative methods of securing compliance](#).

## Organization

The Food Production and Inspection Branch (the Branch) intends to replace most prosecutions with administrative monetary penalties. The main goal of the AMPS is to obtain compliance rather than to punish. Criminal prosecution, imprisonment and a criminal record are often overly severe penalties for regulatory violations. The AMPS allows the Department and industry to negotiate appropriate solutions to non-compliance.

Agriculture and Agri-Food Canada relies heavily on warnings, seizure of products and prosecutions to enforce regulations. Yet even such

sanctions are often not enough of a deterrent. The AMPS gives regional officials another enforcement option. An AMP could be imposed in lieu of or in addition to other sanctions. The AMPS is intended for serious violations or for situations where other administrative actions have not had the appropriate deterring effect. In addition to fines for serious violations, the AMPS would issue tickets for minor violations.

Where a violation is extremely serious, or a negotiated AMPS solution does not work, prosecution would remain an option. The Branch will continue to prosecute offenses that are conducted wilfully or with negligence, and actions that pose a significant health and safety hazard or constitute significant fraud.

Under the planned AMPS, fines may be reduced or waived if a violator agrees to corrective actions to ensure that regulations are no longer violated. Such solutions may include plant and equipment improvement, changes to processing techniques, training of staff, or maintenance of quality control records. The Department will publicize information about infractions and the fine paid or corrective actions taken by the offender.

Under the AMPS, the Department will be doing less hands-on

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inspection in plants and moving toward more of a monitoring role.

The AMPS will permit quicker response to offenses, and will make it easier to deal equitably with imported and domestic products.

The Branch has developed charts or matrices, which will be put into regulations, to ensure consistency and fairness in the application of fines. Among the factors built into the matrices are a range of monetary penalties that depend on the severity of the offence, and that allow increases for aggravating circumstances and decreases for mitigating circumstances. Other factors to be considered are the compliance history of the violator, the degree of intent to commit a violation and the amount of harm done.

Payment of a fine within a prescribed time would lead to a reduction of the fine. If a violator and the Department agree on a course of action, a fine can be reduced by \$1 for every \$4 that the individual or company spends on immediate corrective action to ensure future compliance.

Negotiations could include restitution where an individual or group suffers a determinable financial loss.

A provision will be made for an independent review of any assessed penalty. This review could take the form of an informal meeting, an impartial review by an independent tribunal or an appeal through the Federal Court.

### **Advantages**

- Regulations that have undergone extensive

scrutiny and consideration are likely to be better crafted.

- The AMPS will allow the Department to increase enforcement activities because the system is more efficient and cost effective than the prosecution process.
- The AMPS will encourage immediate corrective action by allowing the Branch to negotiate with industry for non-compliance. Corrective action results in better products, improved health and safety and more effective enforcement.
- Applying consistent standards in industry regulation could increase the competitiveness of the agri-food sector.
- Introduction of the AMPS will give regional officials another option for enforcing regulations, making it easier to choose the most appropriate response to violations.
- Rapidity of response could increase deterrence.
- As the Department moves from in-plant inspection to monitoring, the AMPS allows for more appropriate and effective sanctions.
- The AMPS will make it easier to deal equitably with imported and domestic products.

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## **Contact Persons**

Reg Gatenby, Regulatory Affairs  
Division, Food Production and  
Inspection Branch, Agriculture and  
Agri-Food Canada (992-2114).

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# Using Front-End Assessment Guidelines for Regulatory Initiatives (Agriculture and Agri-Food Canada)

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## Background

Front-End Assessment Guidelines were inaugurated in 1991 at Agriculture Canada, Regulatory Affairs Division, in response to the increasing awareness of problems with the regulatory process. Previously, regulations were being drafted before departmental regulatory policies were completely developed. Failure to determine in advance whether sufficient funds existed to support new regulatory initiatives was contributing to enforcement problems. In addition, industry was complaining about the length of time required to complete the regulations. The Department hoped that use of the Guidelines for regulatory initiatives would ensure that all relevant issues were given full consideration prior to drafting and implementation, thus streamlining the regulatory process and increasing efficiency.

The Best Practices profile presented here demonstrates the advantages and key elements of [using front-end assessment guidelines for regulatory initiatives](#).

## Organization

The Front-End Assessment Guidelines document builds on Treasury Board's regulatory policy and includes the criteria used in the 1992 regulatory review carried out by Agriculture Canada.

The Guidelines details the steps Department program officers should take in completing a front-end assessment of regulatory options. Part I of the document contains guidelines for the development and assessment of options. Program Officers must describe the circumstances creating the need for new initiatives; outline the anticipated reaction of industry, consumers and other relevant stakeholders; and compare the regulatory initiatives taken by major trading partners for the subject area. They should, if possible, identify current federal expenditures in the area, and specify all potential non-regulatory and regulatory options that could resolve the issue.

In order to determine the appropriate course of action, program officers must complete a preliminary impact assessment for each potential regulatory or non-regulatory option identified. The Guidelines contain a checklist of questions to be addressed to ensure that the appropriate information is obtained. Program Officers should assess an action's potential impact on society, including environmental sustainability, consumer, welfare, ethics and social values; on industry, using the competitiveness test and the "beneficiary pays" principle; and on government and international trade. Benefit/cost

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comparisons are summarized for all affected groups and used to determine the preferred course of action.

Part II of the Guidelines outlines the steps program officers should take to implement the chosen initiative. They must formulate an action plan that will achieve completion by the desired date; prepare an outline of the resource implications of the initiative; develop a communications plan; and begin or maintain consultations with affected stakeholders.

A number of workshops have trained program officers in the use of the Guidelines. Efforts to increase use of the Guidelines at the Department, as well as to streamline the process and improve the quality of assessments being completed, are presently in progress.

### **Advantages**

- Front-end assessment of regulatory initiatives ensures that the impact of proposed regulations on relevant stakeholders is considered prior to drafting and implementation.
- Front-end assessment of regulatory initiatives ensures that the availability of resources to enforce initiatives is determined in advance.
- Front-end assessment of regulatory initiatives enables the Department to identify potential problem areas and amend proposed initiatives

accordingly, prior to implementation.

- Using the Front-End Assessment Guidelines ensures that all regulatory and non-regulatory options are identified, and the impact on affected stakeholders adequately assessed for all options.
- Using the Front-End Assessment Guidelines should help those involved in the regulatory process incorporate all relevant regulatory review criteria.
- The Guidelines provides the Department's External Regulatory Panel with a valuable tool to use in overseeing the Department's regulatory plans and policies.

### **Contact Persons**

Mary Komarynsky, Acting Director, Regulatory Affairs Division, Management Strategies and Priorities Directorate, Food Production and Inspection Branch, Agriculture and Agri-Food Canada (992-2114, ext. 4143), or Alan Goldrosen, Food Production and Inspection Branch, Agriculture and Agri-Food Canada (992-2114).

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# Future Best Practices Profiles and Presentations

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## Introduction

Examples of good regulatory practices provided by members of the Regulatory Best Practices Committee are described in a series of profiles presented in Volume 1, *Enlightened Practices in Regulatory Programs*, May 1993. Additional exemplary practices have come to light, which are noted in this volume.

These were reviewed by the Regulatory Best Practices Committee on September 22, 1993.

Other innovative approaches that could be presented in the future as best practices are listed below. We are all aware that a procedure that operates as a "Best Practice" in one context may not be entirely adaptable for another department or situation. That caveat must be borne in mind when seeking to draw lessons from the helpful examples in this volume.

Programs or approaches that constitute "Best Practices" could address public safety consumer benefits, road blocks or line-ups that hamper competitiveness, the soundness of the regulated industry, perceptions of fair treatment by the industry and by individual players, matters of environmental protection, the concerns of politicians, the impact on and prudent use of departmental resources, the credibility of the program, and the credibility and effectiveness of the department. Taking into account these criteria, many regulatory

initiatives undertaken by departments could be labelled "Best Practices."

We encourage you to review the "best practice" profile topics outlined below and to consider whether certain programs of your department or agency are success stories that should be shared with the regulatory community. Consider too, whether innovative practices that do not fit the categories covered thus far should be brought to the attention of the Regulatory Best Practices Committee. If so, inform the Regulatory Affairs Division, Treasury Board Secretariat, or the consultants assisting the Best Practices Committee. Contact names and numbers are provided in this volume.

## Exemptions, Waivers or Dispensations from Regulatory Requirements

Regulatory programs allow varying degrees of flexibility for inspectors or managers to grant exemptions from standards that may sometimes be unfair or inappropriate. Regulators need to find a balance between observing the essentials, even in the face of industry irritation, and preserving some room for manoeuvring.

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We have an illustration from the Seed Section of Agriculture and Agri-Food Canada in Volume 1, Enlightened Practices in Regulatory Programs, but would like to hear of additional precedents.

## Certification and Training of Investigative or Enforcement Staff Holding Delegated Powers

Enforcement officers and inspectors have extraordinary powers delegated to them to discharge their responsibilities, such as the power to seize records, aircraft, or contaminated products. The public, including regulated industries, must have confidence that these employees have the knowledge and skill to wield such powers. Training and certification are critical.

One illustrative program is the plan by Fisheries and Oceans to train and certify "Aboriginal Guardians" to act as "fishery guardians", initially to monitor and enforce food fishing regulations in aboriginal communities.

## Public Consultation or Consensus Building on Regulatory Policy and Practices

Industry stakeholders want to comment on regulatory policy which could have an impact on them. They want to be sure that their freedom to act is not more constrained than that of their competitors. Sometimes consumer groups also want to be consulted.

Health Canada is using consensus building with industry in the development of new regulations. FEARO has established a mechanism in which major stakeholders are given an opportunity to contribute to the development of regulatory policy and regulations. Both approaches are described in this volume and in volume 1, Enlightened Practices. Other departments may have examples of public consultation.

Environment Canada has inaugurated a national office of pollution prevention. Part of this office's mandate will be to set up roundtables with industry to seek consensus on ways to prevent pollution.

## Innovative Ways of Avoiding or Recovering Costs

Some departments have found ways to augment inspection services while having industry assume the costs.

In some situations where Transport Canada inspections involve unscheduled travel to foreign countries or to remote parts of Canada, air carriers provide transportation without charge to the inspectors.

The fishing industry pays for Fisheries and Oceans observers on boats off both the Atlantic and Pacific coasts. A recent innovation concerns two B.C. fisheries. Operators wanted to lengthen the season to optimize the value of their catch, and agreed to pay extra enforcement costs incurred by Fisheries and Oceans.

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## Alternative Methods of Securing Compliance

Two examples of alternative methods of securing industry compliance are outlined in Volume 1, Enlightened Practices.

Agriculture and Agri-Food Canada has designed an Administrative Monetary Penalties System (AMPS) as an alternative to prosecution. The system emphasizes compliance rather than punishment for regulatory violations.

## Front-End Assessment Guidelines for Regulations

Agriculture and Agri-Food Canada promotes the use of front-end assessments for evaluating and implementing regulatory initiatives. Guidelines are provided to Department program officers to assist them in carrying out front-end assessments. These assessments ensure that all relevant issues are given full consideration prior to drafting and implementing regulations.

Perhaps other departments have examples of similar efforts that should be presented to the Committee.

## Education to Introduce New Regulatory Programs

FEARO has developed an education package for managers and practitioners of environmental assessments, to ease the transition to the new Canadian Environmental

Assessment Act (CEAA) and related regulations. Other examples of using education as an aid in transition to new regulatory programs may exist, and deserve recognition.

## Public Involvement in Regulatory Compliance

Under the new CEAA, a federal authority responsible for carrying out a particular environmental assessment will be required to establish a public registry of related documentary records. It is intended that the public will have quick and convenient access to these records, thus acting as a check on official compliance with environmental assessment responsibilities.

This public registry system will be monitored by FEARO or a successor agency. Perhaps other departments have examples of innovative ways of involving the public in monitoring compliance.

## Adoption of International Standards as Industry Benchmarks

Health Canada is considering adopting food safety standards set by an international commission. This move might avoid some duplication and delays in developing standards, and could have competitiveness implications. There may be examples of such a strategy being used by other departments.



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## Computer-Based Tracking Systems

A number of departments are making innovative use of computers. Some may use computers to keep track of regulations. Others could use data banks to monitor riskier aspects of a regulated industry or as a tool in deciding when to grant an exemption or waiver. Initiatives in this area are likely to interest all departments.

## Sharing of Responsibilities with the Provinces and Territories

Mechanism to avoid costly and unnecessary duplication through the orderly sharing of responsibilities could be considered best practices.

Environment Canada is hoping to negotiate agreements whereby it will not enforce its regulations if a province has equivalent standards. Other departments may supply examples of current sharing arrangements.

## Alternatives to Regulation

This option is a concern of everyone participating in the Best Practices Committee. Environment Canada hopes to establish a "strategic system" for finding alternatives to regulation. Such a system could prove to be a practice worth devising or emulating.

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# The Regulatory Best Practices Committee

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