
Enlightened Practices in Regulatory Programs

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

The Committee is a joint undertaking of the Regulatory Affairs Division of the Treasury Board of Canada Secretariat and the Federal Law Enforcement Under Review Secretariat of the Solicitor General of Canada.

Members of the Committee are departmental representatives from the regulatory community.

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Foreword

In 1991, the Regulatory Affairs Division of the Treasury Board of Canada Secretariat established the Regulatory Best Practices Committee to identify innovative and noteworthy practices in regulatory programs.

Since mid-1992, the 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* by researching, analysing and sharing examples of enlightened regulatory practices.

The Regulatory Affairs Division and the Federal Law Enforcement Under Review Secretariat share a common interest in improving regulatory program management through sharing "best practices" information. Accordingly, the Committee was created under the aegis of both organizations.

The government's reply to the report of the Sub-committee on Regulations and Competitiveness of the Standing Committee on Finance, focuses on creating a more "responsive" regulatory regime. Such a regime would result in developing better regulatory solutions faster. 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 more cost-effective approaches being implemented.

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 document is the first volume in a continuing series. The profiles in this volume reflect the work of the Committee from November 1992 to March 1993. The Committee meets regularly to hear presentations by their colleagues in the regulatory community. The sponsoring department and the Committee prepare and review a profile of the practice before it is published.

The Committee hopes that this document will be a catalyst so that other success stories will be shared as well. If you would like to participate on the Committee or if you know of enlightened practices that should be recognized, please contact Doug Blair of the Regulatory Affairs Division at 952-3463.

Executive Summary

Delegation of Powers to the Private Sector

Four examples have been provided to the Committee of ministerial powers, duties, or functions being successfully delegated to the private sector. Three examples come from Transport Canada, one from Fisheries and Oceans.

Delegation to Company Check Pilots (CCPs)

Company Check Pilots are employed by commercial air carriers to carry out most of the checks of aircraft pilot competence. Transport Canada (TC) grants the CCPs authority to assess the proficiency of commercial pilots, and its inspectors regularly monitor the work of the CCPs. Air carriers and TC both save time and money by relying on CCPs.

Delegation to Designated Flight Test Examiners (DFTEs)

Designated flight test examiners are authorized by TC to conduct flight tests for private and commercial pilot licences. The examiners must meet specific experience requirements, and they have to participate in periodic training. In addition, TC regularly monitors the work of individual DFTEs. The flight testing is done at locations convenient to pilots and to industry. Both industry and the department save time and money.

Delegation of Design Approval for Aeronautical Products

Delegates perform a design approval function similar to that of TC engineers.

Delegates are either aviation industry manufacturers, air carriers, or their designated employees. They approve aircraft and aircraft components. They also approve any repairs and modifications to them. TC engineering standards are used as guides in appointing delegates and renewing their authorization. The department monitors the work of delegates on an ongoing basis. Relying on in-house expertise in the industry yields benefits in cost and convenience for both sides.

External Delegation of Quality Control in Fish Processing

All fish processing plants in Canada must employ a Quality Management Program (QMP) that focuses on "critical control points". Those plants whose plans and practices meet Fisheries and Oceans' (F&O) approval are allowed to promote the quality of their product by using a special logo. This scheme prevents problems and helps fish processing plants market their products. The QMP permits the department to perform primarily a monitoring role, leaving most of the inspection activity and quality control to industry itself.

Discretion to Grant Exemptions or Permissions

Agriculture Canada (AC) has provided one example of discretion to grant exemptions or permissions.

Discretion to Grant Exemptions or Permissions for Importing Non-Crop Seeds

The Seed Section of the Plant Products Division has discretion to authorize the importation of some less common seeds without requiring individual approval in most cases. There are seeds that do not appear on official lists of species utilized for crops. The plan improves departmental efficiency by eliminating unnecessary applications for the director's authorization. Industry and the department save time and money. At the same time the department fulfils its regulatory mandate.

Transfer of Functions to the Private Sector

Consumer and Corporate Affairs Canada (CCAC) has provided an example of transferring functions to the private sector.

Transferring Preclearance of Food and Non-Alcoholic Beverage Commercials to the Canadian Advertising Foundation

Responsibility for preclearing advertisements for food and non-alcoholic beverages has now been transferred from CCAC to the Canadian Advertising Foundation (CAF). The department provides policy input and advice, periodically auditing

the program to ensure it complies with all relevant regulations. The new preclearance process delivers timely regulatory services to industry, while maintaining public safety and accurate consumer information.

Alternative Methods of Securing Compliance

Two examples of alternative methods of securing compliance by industry come from CCAC.

Alternative Methods of Securing Compliance in Administering the *Competition Act*

The Bureau of Competition Policy at CCAC has developed a new scheme to encourage compliance with the *Competition Act*. This scheme is based on communication and education to enhance general understanding of the Act. Bureau staff utilize case selection criteria to identify priority cases for prosecution. These criteria also assist in identifying projects targeted for alternative means of resolving cases. As a result, the Bureau is able to make more efficient use of declining enforcement resources. At the same time, it is able to maintain and encourage competition in a more effective manner.

Alternative Case Resolution Mechanisms in Administering the *Competition Act*

Alternative case resolution techniques are utilized by the department's Bureau of Competition Policy to deal with alleged incidents of non-compliance

with the *Competition Act*. The Bureau uses a range of methods, including investigative visits, written undertakings and consent orders, where appropriate, as alternative means to resolve cases judged to be of low priority. It may refer an investigation to the Attorney General for prosecution or place a case before the Competition Tribunal if it appears unlikely there will be an acceptable resolution. These alternative case resolution mechanisms allow the department to allocate scarce resources more efficiently to the most serious cases, yet ensure that less serious conduct does not go unchecked.

raised and sets out final amendments to the proposed regulations.

Consensus Building

Health and Welfare Canada (HWC) is in the process of developing new approaches to building consensus with industry in forming and implementing new regulations.

Consensus Building with Industry in Developing and Implementing New Regulations

If the government engages in extensive consultations when formulating new regulations industries have the opportunity to comment on policies that directly affect them. These comments may, however, express widely differing opinions, making it difficult to build consensus and to bring the consultation process to a definitive close. Senior officials at HWC are taking new approaches to consultation. These include developing a formal notification document that is distributed to industry. The document outlines concerns

Delegation of Powers to the Private Sector

Delegation to Company Check Pilots (CCPs) (Transport Canada)

Function

In the interests of public safety, it is necessary to ensure that all commercial pilots are competent. Rather than having government aviation inspectors conduct all tests or inspections of pilot proficiency, Transport Canada (TC) delegates much of this responsibility to pilots employed by commercial air carriers. These "in-house" inspectors are known as Company Check Pilots (CCPs). They carry out most of the assessments related to pilot proficiency, as well as renewals of instrument (i.e., non-visual) rating tests.

Organization

A number of criteria are used in choosing CCPs. Among these are a pilot's flying expertise; levels and type of training; and the ability to conduct various tests associated with assessing pilot proficiency. Candidates must have a specific number of flight hours. They must also demonstrate satisfactory understanding of TC policies and procedures, in addition to knowledge of their own air carrier's operating procedures. TC delegates CCP status to only a limited proportion of the pilots in any air carrier company. Approximately 450 CCPs carry out a total of about 7,700 pilot proficiency and instrument rating checks per year.

At present, CCPs carry out more of those checks than TC inspectors. The percentage of checks performed by CCPs is much greater for large air carriers.

Monitoring

When CCPs are appointed, they must attend a training course and are guided step by step through applicable manual materials by departmental officials. As well, a TC inspector monitors new CCPs during the first few pilot proficiency checks.

Overall, TC inspectors monitor CCPs at least annually in two ways. Company check pilots are monitored during their own pilot proficiency check, and while they conduct a pilot proficiency check on another pilot. TC also uses audits as part of the ongoing monitoring process. In serious cases of unsatisfactory results, TC may restrict or revoke a delegated CCP authority.

Advantages

- TC and air carriers that have CCPs in their ranks, particularly in the case of operations located in remote regions, save considerable travel time and costs.
- Industry avoids delays due to waiting for TC staff to become available to carry out inspections.
- Veteran pilots who are constantly in touch with current conditions

through their own employment carry out the necessary but routine checking of pilots.

- TC inspectors are freed up to concentrate on areas where public safety might be at greater risk.

Contact Persons

Grant Mazowita, Director, Legislation and Compliance, Aviation Regulation, Transport Canada (990-1225), or Art Laflamme (990-1121).

Delegation to Designated Flight Test Examiners (DFTEs) (Transport Canada)

Function

Delegation to Designated Flight Test Examiners (DFTE) are authorized to conduct flight tests for private and commercial licences on behalf of the department. They also conduct flight tests for multi-engine endorsements (an additional privilege that may be granted to those holding a licence). Industry requirements for prompt flight testing services are met because DFTEs are available at convenient locations across Canada. Moreover, TC achieves significant net savings by delegating these tasks to DFTEs.

Organization

A number of criteria are used to evaluate DFTE candidates including their pilot record; industry and community reputation; and active employment as a professional pilot. Candidates must meet specific experience requirements for flight test examination categories. In addition, they must attend a training workshop and take written, oral, and practical examinations.

Successful candidates receive an appointment letter from TC. This letter indicates the authority delegated, the flight tests the candidate is authorized to conduct, the period for which the delegation is valid, and the region in which the delegate is authorized to operate. The letter also stipulates the conditions under which a delegate's authority may be cancelled. When DFTEs are appointed, they also receive materials guiding them on how to perform their functions.

Periodic training, in the form of biennial workshops, ensures that DFTEs are up-to-date and consistent in their work with department standards. A delegate is required to attend one workshop every two years in order to have his or her appointment renewed. A joint industry/TC advisory committee meets on an annual as well as an ad hoc basis, in order to deal with all matters relating to flight training and licensing, including the DFTE program.

In 1991 there were 210 DFTEs. They carried out the necessary testing for 3,806 private licences, 1,482 commercial licences, and 939 multi-engine endorsements.

Monitoring

DFTE are monitored in two ways. Departmental inspectors carry out individual monitoring by observing DFTEs in operation. In addition, TC has implemented a centralized database for information on flight tests and examinations. This database is connected to all regions. Departmental personnel can obtain from the computer a list of those DFTEs who, in performing their duties as examiners, have reached a problem stage, or are approaching this point.

Advantages

- Industry requirements for prompt flight testing services are met at convenient locations.
- Industry saves on both waiting and travel time.
- TC realizes significant net savings, making better use of scarce resources.

Contact Persons

Grant Mazowita, Director, Legislation and Compliance, Aviation Regulation, Transport Canada (990-1225), or Jack Scott (990-1005).

Delegation of Design Approval for Aeronautical Products (Transport Canada)

Function

Delegates are involved in approving designs for aeronautical products and for repairs or modifications to those previously approved. (In this profile, the term "delegates" refers to companies and their designated employees to whom design approval functions have been delegated.) Delegates, who may be aviation industry manufacturers, air carriers, or their employees, perform a design approval function similar to that of TC engineers. Delegates may, in turn, engage experienced consulting engineers from outside the company to witness and evaluate tests being conducted on aircraft or aircraft parts.

Organization and Monitoring

Delegates are selected upon their education, area of expertise and work experience. Applicants must have a minimum of one year's experience working directly with TC in processing engineering data. They must also submit their individual Engineering Procedures Manual for departmental approval. Any change in responsibility affecting a delegate requires Transport Canada's approval.

Individual delegates have access to the same specialty courses as TC engineers. The role, responsibilities and limitations of delegates are set out in the *Airworthiness Manual*. Individual delegates are allowed to perform only those duties defined in the approved engineering manual pertinent to their work.

TC engineers monitor the work of delegates informally, as well as through quality assurance reviews in Transport Canada's regional offices. This

monitoring ensures that departmental responsibilities are upheld and that delegates maintain departmental standards.

There are approximately 300 individuals conducting design approval work for companies designated as delegates by and for the Minister of Transport. Delegates perform approximately 4,000 to 5,000 approvals for aircraft and components per year.

Advantages

- Industry receives more timely services and paperwork is reduced. This process also avoids duplication of quality control efforts.
- When properly audited, delegation improves the quality of compliance decisions.
- Delegation provides TC with savings in workload and in time that would be lost to travel.
- Scarce resources are used more efficiently.
- The private sector bears the costs associated with product changes or modifications.

Contact Persons

Grant Mazowita, Director, Legislation and Compliance, Aviation Regulation, Transport Canada (990-1225), or Bob Mather (952-4320).

External Delegation of Quality Control in Fish Processing (Fisheries and Oceans)

Function

In February 1992, Fisheries and Oceans (F&O) launched a new program in cooperation with the fish processing industry, i.e., the Quality Management Program (QMP). While QMP practices may be traced back a decade, this initiative is the first to incorporate QMP principles into a mandatory regulatory framework for industry. Under the program, the role of industry in monitoring its own performance against Canadian Fish Inspection Regulations is increased. As a result, F&O is able to focus its resources on plants with lower compliance levels, and to those areas that have a higher risk.

Organization and Monitoring

In order to receive federal registration to export fish products from their home province and Canada, each processing plant must develop and document its in-house QMP. An F&O inspector evaluates the scheme and verifies that the plant implements its QMP as written.

In-plant QMPs must cover all applicable "critical control points" identified by the F&O, i.e., those points in time or physical location during fish processing when failure of preventive measures exposes consumers to unacceptable risks related to tainted or unwholesome fish products or economic fraud.

Under QMP, each critical control point must be specified in terms of:

- standards to be met;
- monitoring procedures;
- a corrective action or system; and
- a record-keeping system.

The plant's monitoring scheme must specify the sampling measures, and the type and frequency of inspections that will be carried out. (Experience has demonstrated that close monitoring and constant reinforcement is necessary for some processors in the early stages of establishing a QMP scheme.)

Based on the F&O's assessment of a plant's QMP plans and implementation, it receives a rating of either excellent, good, satisfactory, or fail. Plants receiving a "fail" rating must stop processing and correct the deficiencies. Those receiving a "satisfactory" rating are encouraged to strive for a higher rating. Plants rated "good" or "excellent" are granted the right to label their fish products with the "Canada Inspected" logo, thereby receiving product certification benefits. Many plants have undergone voluntary temporary closures to correct shortcomings that could affect their status.

Advantages

- The QMP focuses on preventing problems at the production stage (the pre-marketing stage).
- The QMP provides consumers with greater assurance that Canadian

fish products are safe and wholesome.

- The QMP facilitates compliance with international norms.
- The QMP facilitates the harmonization of inspection schemes.
- Cooperative planning with industry is achieved by developing QMP schemes, as well as by regulations that make it mandatory for the industry to participate in the program.
- The plant rating and product certification aspects of the QMP benefit industry in terms of quality, credibility, and marketability of fish products in Canadian and international markets.

Contact Persons

Dennis Brock, Head of Enforcement, Fisheries and Oceans (990-0108), or Vance McEachern, Chief, Quality Management Program, Fisheries and Oceans (993-6930).



Discretion to Grant Exemptions or Permissions

Discretion to Grant Exemptions or Permissions for Importing Non-Crop Seeds (Agriculture Canada)

Function

To maintain the high standards of seeds used for crops in Canada, Agriculture Canada (AC) screens the importation of seeds of any species not listed as a "crop kind" of plant. This ensures Canada's global reputation for quality agricultural products is maintained. AC developed an innovative scheme that allows the Seed Section of the Plant Products Division, on behalf of the Director, to authorize the importation of seeds that are not on official lists of species used for crops. The department is thus able to eliminate unnecessary applications for the Director's authorization, saving time and money for industry and the department. At the same time, the department fulfills its regulatory mandate.

Organization

When seeking an authorization for importation under s. 33 of the *Seeds Regulations*, potential importers simply make application, identifying

the seed variety they wish to import. AC then performs the requisite research to determine if authorization is appropriate.

Involving the Director or the Director's delegate in examining each case was very inefficient. Yet the Plant Products Division needed to retain discretionary power. In the mid-1980s, the division published a catalogue of "pre-authorized" species. Species on this list do not require special authorization because they are pre-approved. Accompanying this list was a catalogue of "pre-forbidden species," which are not pre-approved for importation. Both lists are updated periodically by adding varieties as they become more common within the industry and more familiar to the department. Only the remaining (unlisted) non-crop species must then be dealt with on an individual basis.

Advantages

- The system as presently organized provides adequate protection to both the Canadian agricultural industry and the general public, without placing undue burden on the industry.
- Publishing the "pre-authorized" and "pre-forbidden" lists of species helps avoid uncertainty and unnecessary applications, saving time and money for both industry and the department.

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- Flexibility in the form of periodic updates to both lists responds to both industry and regulatory needs.

Contact Persons

Mike Scheffel, Chief, Legislation, Seed Section, Plant Products Division, Agriculture Canada (995-7900, ext. 4398).

Transfer of Functions to the Private Sector

Transferring Preclearance of Food and Non-Alcoholic Beverage Commercials to the Canadian Advertising Foundation (Consumer and Corporate Affairs Canada)

Function and Background

Preclearing of commercials for food and beverage products offers protection to both consumers and industry against false and misleading advertising. In recent years, however, there has been a dramatic rise in the volume of commercial scripts submitted to Consumer and Corporate Affairs Canada (CCAC) for preclearance, coupled with declining government resources. This situation has made it increasingly difficult for the department to meet the deadline of providing advance approval of commercial scripts within 10 working days. Industry called for more timely delivery of services, and for a more efficient appeals process for disputed commercial scripts. After review of the process, a recommendation was made that responsibility for preclearing advertisements be transferred to the Canadian Advertising Foundation (CAF). The CAF preclearance program, established in October 1992, provides more timely delivery of regulatory services to industry, yet maintains public safety and accurate consumer information.

Organization and Monitoring

The Preclearance Unit of the CAF reviews commercial scripts submitted for preclearance, and does so within 48 hours of receiving them. Food Advisory and Appeals committees have been established under the program, with representatives from industry, broadcasters, consumers, and CCAC. The Food Advisory Committee oversees the preclearance process, issuing policy guidelines and other preclearance criteria to the CAF. The Advisory Committee will coordinate "user" seminars for industry to provide advice on the submission of commercial scripts, to give updates on preclearance criteria, and to discuss recommendations from interested parties that are intended to enhance regulatory compliance. The Appeals Committee provides reviews of appeals or disputed commercials within 96 hours. Preclearance is carried out on a cost-recovery basis.

CCAC contributes to the preclearance process by providing policy input and advice to both the Food Advisory and Appeals committees. To ensure continuity in the preclearance process, the department is working closely with the CAF during the 12-month transition phase. Before transferring preclearance responsibilities, CCAC published an advisory notice, detailing the new procedure to be followed in submitting scripts for preclearance, as well as giving the applicable fee structure.

To ensure all relevant regulations are complied with, CCAC will periodically audit the preclearance program. The department is in the process of developing a monitoring scheme. Concurrent with transferring preclearance responsibilities to the CAF, CCAC requested that the Canadian Radio-television and Telecommunications Commission amend the regulations under the *Broadcasting Act* that require mandatory preclearance by CCAC. This amendment was completed in April of 1993.

Advantages

- The CAF preclearance program streamlines the regulatory process, while maintaining public safety and accurate consumer information.
- The CAF preclearance scheme provides a more timely delivery of regulatory services, enabling industry to be more competitive.
- The CAF Food Advisory Committee opens the preclearance process to input from all major stakeholders.
- The Appeals Committee provides a more open, timely review of appeals.

Contact Person

Katharine E. Gourlie, Director,
Consumer Products Branch, Consumer
and Corporate Affairs Canada
(953-3187).

Alternative Methods of Securing Compliance

Alternative Methods of Securing Compliance in Administering the *Competition Act* (Consumer and Corporate Affairs Canada)

Function and Background

In enforcing and administering the *Competition Act*, the Bureau of Competition Policy ensures a competitive marketplace for Canadian consumers, producers, retailers and distributors. Concerns over mounting litigation costs, a desire for more timely resolution of disputes, an increase in the volume of complaints received, and declining enforcement resources meant changes had to be considered. To encourage compliance with the Act, techniques based on promoting proactive compliance and alternative case resolution methods are being used. Using this approach, the Bureau is able to make more effective use of resources, while still fulfilling its objectives of maintaining and encouraging competition in a more effective manner.

Organization and Monitoring

The Bureau uses a number of different techniques to encourage and facilitate compliance with the Act. These include

presentations by Bureau staff to trade associations, as well as the production of guidelines and other publications designed to enhance understanding of the Act. Bureau staff also conduct seminars for businesses and associations on topics relevant to the Act, provide consultation to businesses on guidelines regarding application of the Act, and provide advisory opinions to help prevent infractions. Bureau staff also investigate alleged violations of the Act, relying on such sources as complaints received; materials submitted for undertakings or notifiable transaction provisions of the Act; and other sources of information such as industry contacts and trade journals.

A critical component of the Bureau's approach to compliance is the use of case selection criteria to identify priority cases for prosecution, and to help identify those projects targeted for alternative case resolution. Cases are prioritized based on criteria grouped into three major areas: economic welfare, enforcement policy, and management considerations. Projects determined to be low priority are targeted for alternative case resolution means, which include such action as information visits, consent orders, and undertakings. The Bureau's guidelines for ranking cases are provided to staff to assist them in prioritizing cases.

Presently the Bureau is working on a performance measurement project to

evaluate the effectiveness of the overall approach.

Advantages

- Techniques promoting proactive compliance and alternative case resolution techniques enable the Bureau to meet its objectives of maintaining and encouraging compliance in a more effective manner.
- Prioritizing enforcement projects ensures resources are allocated to the most significant cases.
- Prioritizing enforcement projects results in savings in court costs for both industry and government.
- Prioritizing enforcement projects enables the Bureau to deal with complaints in a more timely and effective fashion.

Contact Persons

Don G. Mercer, Director, Compliance and Coordination Branch, Consumer and Corporate Affairs Canada (997-3763), or Marcie Girouard, Senior Commerce Officer, Compliance and Coordination Branch, Consumer and Corporate Affairs Canada (953-9431).

Alternative Case Resolution Mechanisms in Administering the *Competition Act* (Consumer and Corporate Affairs Canada)

Function

The Director of Investigation and Research, Bureau of Competition Policy, may use alternative case resolution mechanisms (ACRMs), to deal with alleged incidents of non-compliance with the *Competition Act*. The Director will turn to ACRMs when case selection criteria reveal that a particular project is of low priority, and therefore not well suited for prosecution in criminal matters. Contested proceedings in the case of civil matters are another situation where the Director will use ACRMs. These mechanisms function most effectively when there is a credible risk of formal proceedings being instituted, and there is an incentive for those under investigation to seek alternate resolutions. The use of ACRMs enables the Bureau to apply its resources more efficiently to the most significant cases. At the same time, it can deter anticompetitive behaviour and secure present and future compliance with the Act.

Organization

A range of ACRMs are available to the Director in resolving low priority cases. In certain instances, an inquiry of alleged anticompetitive conduct may be suspended after an investigative visit reveals that voluntary corrective action

has been taken to resolve the Director's concerns under the Act.

At the next level of priority, written undertakings may be accepted by the Director from the parties under investigation. These undertakings are designed to remedy or surmount actual or potential effects of anticompetitive practices. Written undertakings are voluntary in nature; the party involved is not pressed by the Bureau to enter into negotiations. Once a written undertaking is given and complied with, the Director may either suspend an inquiry or continue to monitor conduct in affected markets for a reasonable period of time. To encourage parties under investigation to adopt written undertakings, the Bureau publicizes the fact that undertakings are available in appropriate cases. The Bureau makes it clear that parties under inquiry must take the initiative in pursuing this alternative. Information letters, information bulletins, and presentations by Bureau staff provide details to industry about this alternative.

Consent orders are the third option available to the Director. For civil matters, these are issued by the Competition Tribunal upon agreement of the Director and the party under investigation. Consent prohibition orders may be obtained on criminal matters, by applying to the Attorney General.

Negotiations will not be pursued for an indefinite period of time. Should the Director not be able to achieve an acceptable resolution to a case, it may either be referred to the Attorney General for prosecution for criminal

matters or placed before the Competition Tribunal for civil matters.

Advantages

- Utilizing ACRMs allows the Bureau to allocate resources more effectively to the most serious cases.
- Using ACRMs increases the capacity of the Bureau to deter anticompetitive behaviour and to encourage present and future compliance with the Act.
- Using ACRMs provides a faster means of resolving low priority cases than relying upon the courts.
- Applying ACRMs to low priority cases ensures that less serious conduct will not go unchecked.
- Applying ACRMs provides a more challenging role for Bureau staff, expanding their function from simple information-gathering to more active participation in investigations and outcomes.

Contact Persons

Don G. Mercer, Director, Compliance and Coordination Branch, Consumer and Corporate Affairs Canada (997-3763), or Marcie Girouard, Senior Commerce Officer, Compliance and Coordination Branch, Consumer and Corporate Affairs Canada (953-9431).

Consensus Building

Consensus Building with Industry in Developing and Implementing New Regulations (Health and Welfare Canada)

Regulation Problem Area

Present requirements for product labelling do not allow consumers to make informed quality comparisons and purchasing choices between those products treated with phosphate salts, and those that are not. Adding phosphate salts and water to hold curing substances to solid cut meat and poultry products is an accepted practice in a number of industrialized countries. This may contribute, however, to reduced protein content in these foods. This is a cause of concern for several government departments, including Health and Welfare Canada (HWC). As a result, HWC is preparing amendments to the *Food and Drug Regulations* to require product display panels to contain a clear statement as to nutrition content.

To secure industry consensus on the proposed regulations, extensive interdepartmental consultations were carried out involving industry and related stakeholders. At present, senior HWC officials are in the process of modifying the consultation process in an attempt to bring about consensus

among a variety of divergent industry views.

Background to Consultation

An extensive review and consultation process between government and industry was a key component in preparing the proposed regulations. An Interdepartmental Consultation Letter was issued to all relevant parties, which in turn led to correspondence and consultation between government and industry on an individual basis. An intersectoral working group was then convened, with representation from all interested parties. After review and consultation between government and the working group, new regulations were developed and published in September 1992 in the *Canada Gazette*, Part I. The working group prepared minutes of meetings and informal reports during this stage, although no formal documentation was produced.

Publication of the proposed regulations in *Canada Gazette*, Part I, did not bring the consultation process to a close as expected. Indeed, the department received an unanticipated level of industry comments and new recommendations for amendments to the regulatory proposal following publication.

Taking New Approaches to Consultation

At present, senior officials at HWC are attempting to build consensus among a variety of divergent industry opinions before the regulations are published in *Canada Gazette*, Part II. Informal meetings have been held with industry to discuss concerns and proposals for changes to the new regulations. In an attempt to bring the consultation process to a definitive conclusion, HWC has prepared a formal notification document to be distributed to industry. This document discusses the concerns raised by industry following initial publication of the new regulations. It also outlines final amendments that will be made to the proposed regulations. Those who receive this notification document will be requested to contact the department by a specific date if they require additional clarification before the regulations are published in Part II.

Barry L. Smith, Chief, Food Regulatory, International and Interagency Affairs Division, Health and Welfare Canada (957-1748).

Advantages

- Carrying out extensive consultations in developing new regulations provides industry and other stakeholders with the opportunity to comment on policies that directly affect them.
- Providing industry with a formal notification document outlining concerns that have been raised and the plans for proceeding should facilitate bringing the consultation process to a conclusion.
- Giving industry this extra opportunity for input should improve the atmosphere for cooperative compliance.

Contact Person

Future Presentations

Exemptions, Waivers, or Dispensations from Regulatory Requirements

Regulatory programs allow different degrees of flexibility for inspectors or managers to grant exemptions from what may sometimes be unfair or inappropriate standards. A balance is needed between observing the essentials, even in the face of irritation on the part of the industry, and preserving some room to manoeuvre.

We have an illustration from the Seed Section, AC, in this volume, but we hope to hear of other precedents on which to draw.

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, for example, the power to seize records, aircraft, or contaminated products. The public, including regulated industries, must have confidence that these delegates have the knowledge and skill to wield such powers. Training and certification are critical facets of delegated regulatory mechanisms.

One program that could be looked at is the plan by F&O to train and certify 100 "Aboriginal Guardians" to act as "fishery guardians," initially monitoring and enforcing food fishing by Indian people.

Public Consultation or Consensus Building on Regulatory Policy and Practices

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

A national office of pollution prevention has been inaugurated by Environment Canada (EC). Part of its task will be to set up round tables with industry to seek consensus on ways to prevent pollution.

HWC is using consensus building with industry in developing new regulations. This is illustrated in the approach described in this document. Other departments may have examples of public consultation from their own experience.

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 TC 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 F&O observers on boats off both the Atlantic and Pacific coasts. A recent innovation concerns two British Columbia fisheries. Operators wanted to lengthen the season to optimize the value of their catch, and agreed to pay the extra enforcement costs incurred by F&O.

Another example from F&O is of interest. The department must obtain biological samples to forecast surpluses of fish stocks that can be harvested and marketed. One method is to allow a fishing company to take an agreed catch (instead of cash) in payment for fish samples and biological information supplied to F&O.

These and other illustrations of cost saving approaches might be profitably addressed at a future meeting of the Committee.

Adopting International Standards as Industry Benchmarks

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

Computer-Based Tracking Systems

A number of departments are contemplating or already making innovative use of computers. Some may use computers to keep track of regulations. Others could use a data bank to monitor the 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 be of interest to all departments.

Sharing Responsibilities with the Provinces and Territories

If mechanisms for sharing responsibilities in an orderly way avoid costly and unnecessary duplication, this could amount to a best practice. Environment Canada (EC) is hoping to negotiate agreements whereby it will not enforce its regulations if a province has equivalent standards. Other departments may supply examples of their current sharing arrangements.

Innovative Approaches to Drafting Regulations

Every regulator complains about the slow process of drafting and processing regulations. EC could describe the advantages and side effects of importing a team of Department of Justice lawyers. This team became temporary in-house drafting counsel to meet a high demand for new regulations.

Finding Alternatives to Regulation

This is a concern of everyone participating in the Regulatory Best Practices Committee. EC hopes to establish a "strategic system" for finding alternatives to regulation. Such a system could prove to be worth copying by other departments.

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