
A Framework for Managing Regulatory Programs

Introduction

Why should you read this?

If you are a regulatory program manager, or are involved in any part of a regulatory process, this guide may be of interest to you.

As with all government programs, regulatory programs face many challenges in today's environment. Program managers are continuously being asked to "do more with less" and to "regulate smarter" while delivering increasingly complex programs and services.

This guide is not intended to promote regulation as a policy instrument, nor is it intended to create more paperwork and administrative overhead for regulatory managers.

Rather it is one of a series of guides we are developing for the regulatory community to familiarize managers with conceptual tools that may be of use in their programs.

Towards an International Standard

This document describes the type of management system that would meet internationally recognized standards for good management - standards consistent with the basic management principles applied in the private sector and under PS 2000 and the Shared Management Agenda.

The elements of the management system described herein are an interpretation of what the International Standards Organization's guidelines for quality management in service organizations (ISO 9004-2) would mean in the context of current federal regulatory policy.

ISO quality standards are one of a number of recognized approaches to quality management. We have selected ISO as the basic for this guide in light of its increasing use and popularity with both private and public sector organizations around the world. We recognize that there are other successful models which you may find better suited to your program or organization.

Helping you comply with the policy

In February 1992, the Treasury Board approved a new Regulatory Policy, setting out requirements for departments and agencies. Among other things, the policy sets out the need for departments to ensure that:

"Systems are in place to manage regulatory resources effectively."

This paper suggests an overall framework departments may wish to use in developing or revamping regulatory program management systems and procedures. The framework, if applied, is consistent with the requirements of the Regulatory Policy.

What you will find in this paper

- A flow diagram illustrating the common elements of regulatory program management.
- Detailed descriptions of the elements and their inter-relationships.
- For each element, a set of factors is described which is general in nature and has to be interpreted to each specific situation.

The Regulatory "Loop"

Why ISO?

Why look at ISO standards for quality service in the context of regulatory programs? The *raison d'être* of the Public Service is to serve the public. The ISO 9000 series of standards provide an internationally recognized method of ensuring quality. The concepts, principles and quality system elements of the ISO 9000 series are applicable to all forms of service, *including those provided by government*. Also, ISO 9004-2 pulls basic quality management principles into a practical, systematic and implementable structure.

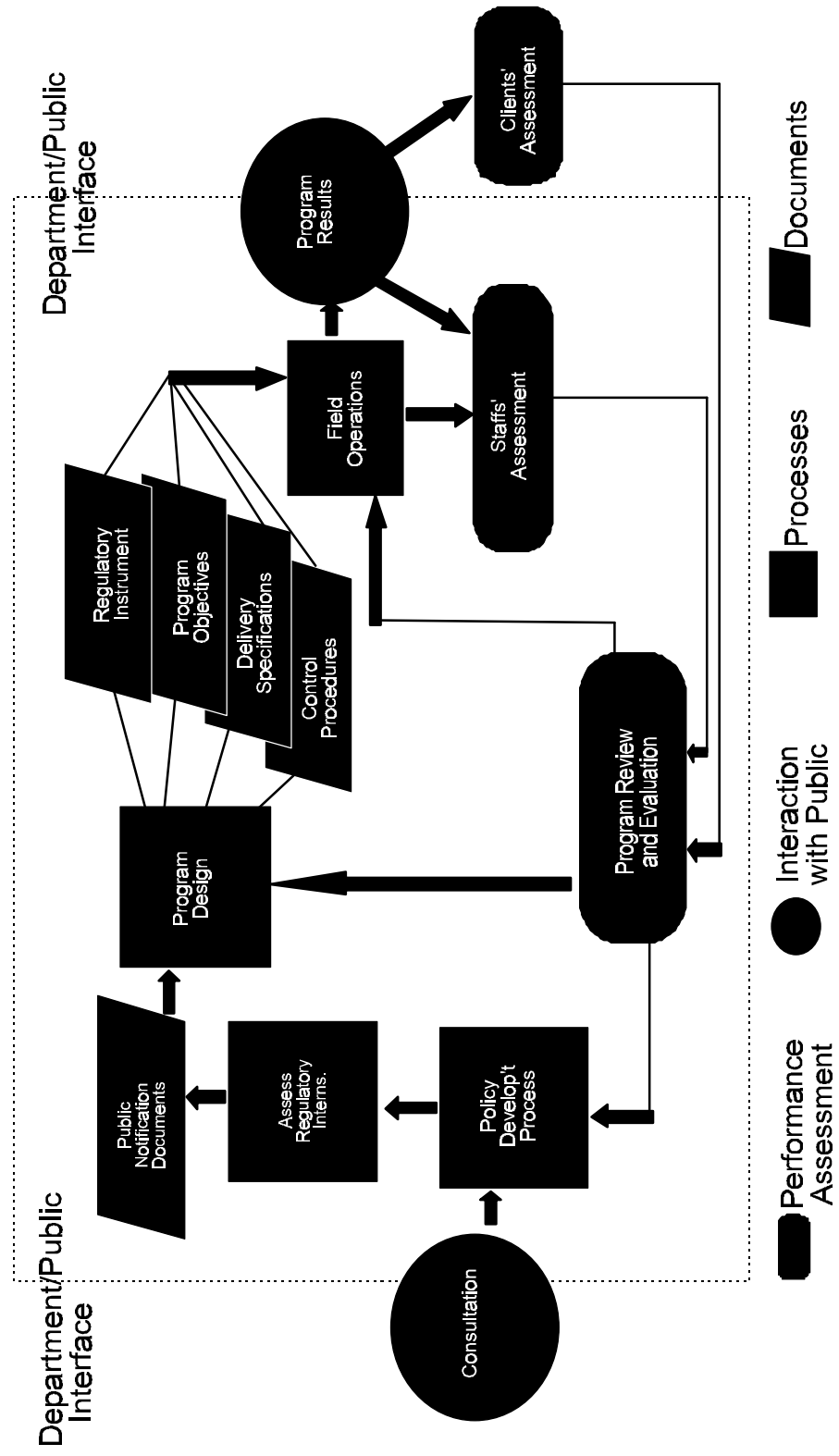
Do regulatory programs provide "service" to "clients"?

Regulatory programs provide diverse services to a wide range of clients: advice to regulatees, education of the public, research, enforcement, approvals, licences, and the like.

Clients include regulatees, beneficiaries of the regulatory program (which are sometimes the regulatees), and the affected or interested Canadian public.

The following diagram is an interpretation of the federal regulatory process using the Service Quality Loop outlined in ISO 9004-2.

The Regulatory "Loop"



Framework Elements

Four types of elements. There are four different types of elements, each type having a different geometric form:

- Circles represent *interaction between the department and clients*. We identify three groups making up clients: the group seeking protection or assisted most directly, such as consumers or employees of certain industries (*beneficiaries*); regulated industries or individuals (*regulatees*); and the general public who have a direct or indirect interest (*the public*).
- Squares represent *processes taking place within the department*. They include the policy development and program design process.
- Rectangles identify the *performance assessment activities* which create a feedback loop to allow for corrections and improvements.
- The last element type represents *documents* that should be generated for each regulatory initiative.

Description

Consultation

The Treasury Board policy requires that departments and agencies, in keeping with the government's desire to have an open regulatory process, be able to demonstrate that all clients are informed about proposed regulatory initiatives and have the opportunity to participate in their development. The policy also requires that departments and agencies carry out certain analyses. Some of the information necessary to carry out this analysis can only be obtained through consultation. And generally, the verity of analysis should be tested through a dialogue with those affected.

Ideally, consultation starts very early in the process, i.e. as soon as a problem is identified. Consultation should review the need for a regulatory response as well as non-regulatory alternatives. If regulation is determined in the end to be the best response, then a Regulatory Impact Analysis Statement (RIAS) and a detailed statement of what the regulation is to contain will be prepared.

Policy development process

This element refers to analysis of the problem and selection of an appropriate solution. Following consultation, regulatory managers must make a decision on the best route to take to solve the problem. This will require considerable analysis depending on the importance of the

problem and the potential impact of the solution. To assist managers, the Regulatory Policy requires that, before putting into place a regulatory solution, departments demonstrate that:

- a problem or risk exists;
- government intervention is justified;
- regulation is the best alternative;
- the benefits of the regulatory activity outweigh the costs.

To do this, departments have to carry out a thorough and valid analysis of:

- the problem for which a regulatory solution is sought;
- the nature and extent of the risks and who should bear them;
- the current regulatory environment for that industry or issue, including activities of other governments;

Departments should also involve those who will have to implement the proposal in decision-making from the outset. This provides a built-in "reality check" to help ensure the proposal is feasible and that resources are available and adequate for compliance activities. Early involvement of your legal services unit is also recommended.

Regulatory alternatives

At this point it is assumed that you have identified a problem that could justify a regulatory response. The next step is to determine what regulatory options or techniques are available to address the regulatory concerns in keeping with the government's regulatory policy. The statutory instrument has been the preferred option frequently in the past. In some cases, it will remain the most appropriate method of regulation, in others it may not be. The reason for government intervention is to modify behaviour. The final decision on how best to achieve this must be based on a complex assortment of considerations. Questions that must be taken into account are:

- Is this the least coercive alternative available?
- What is the impact on competitiveness, on innovation?
- What is the cost of compliance, of government administration, of general efficiency losses for the economy as a whole?
- How will you secure compliance?

Issues to consider:

What is the overall environment within which the program and regulatees operate? For example, do you:

- know how the players in the environment you are influencing operate?
- take into account industry self-regulation and self-imposed guidelines?
- look at needs and expectations of clients?
- consider existing services?
- review your internal ability to deliver services?
- consider the activities of other levels of government?
- understand the industry environment, including competitiveness issues and the regulatory burden created by all levels of government?

How do you set priorities in choosing problems that need to be addressed? Do you fully evaluate the risks involved for each problem and who should bear them?

Do you have a way of ensuring that you have all relevant information for each problem?

How do you develop a list of alternative solutions, including those that don't involve regulation?

Do you assess the potential impacts of each solution? How do you use consultation to add to the list of solutions and help with the assessment of the impacts of each?

How do you conduct your consultation?
What role does consultation play in items 2 through 4?

If the ultimate decision is that the problem can only be addressed by the processing of a regulation, then, a RIAS must be prepared. If on the other hand the regulatory response is not a regulation per se but instead some other alternative method of changing behaviour, the department should provide appropriate public notification summarizing the policy analysis and communicate it by the most effective means to those affected using bulletins, communiques, newsletters, etc.

Public notification documents

In this section we discuss the role and attributes of the public notification document for regulatory proposals. Over the years the RIAS has traditionally served as one of many documents in the decision-making process and as a means of public consultation through its publication in the *Canada Gazette*. Departments have also used other means to notify the public such as bulletins, communiques and newsletters. As part of an effective management framework, public notification by way of a RIAS or by other appropriate means takes on another important function, i.e. that of an accountability document. Such forms of notification represent a public commitment, clearly setting out what the department will be accountable for to the Canadian people in the exercise of the regulatory power it has been delegated by Parliament.

For most departments the idea of a RIAS being an accountability document may seem foreign. This may stem from the common current practice in which the RIAS is viewed as a justification document prepared after a regulation has been drafted.

However, as shown in the Regulatory Loop, the public notification document should be developed prior to designing the program. It should not be solely a justification for a particular regulatory approach, but rather a complete report reflecting the conclusions of the department's policy analysis. Its purpose should be to inform Canadians as to the Government's proposed initiatives - how and why either a regulatory or non-regulatory solution is being recommended. It is a public statement by the Government of why it may be necessary to regulate, what it intends to do, and how it will do it.

Issues to consider:

Do you have a way of verifying that the RIAS or other means of public notification includes accurate and appropriate information, including

- a clear **description** of the regulatory proposal, the problem being addressed and why action is necessary;
- details about **alternatives** considered, both regulatory and non-regulatory;
- a report on the **anticipated impacts** of the regulatory initiative (costs/benefits);
- a summary of the consultation undertaken in developing the proposal;
- an accurate description of what the government will be accountable for in

its compliance and enforcement activities.

Program design

The *program design* element refers to the process of implementing the regulatory initiative described in the public notification document (PND). It includes deciding how best to meet the commitments made in the PND, including how to allocate resources. The decisions made at this stage will result in the following documents: the *regulatory instrument, the program objectives, program delivery specifications, and program delivery control procedures.*

Regulatory instrument

The term *regulatory instrument* refers to the formal document required to put in place the chosen regulatory response. This could include a new regulation or statute, an amendment to an existing regulation or statute, new or revised operational guidelines or procedures for an existing regulatory program, etc. The regulatory instrument should reflect the PND and should be the result of consultation and analysis, not the starting point. In the case of a statutory change, departments will benefit from having a clear, concise, detailed set of drafting instructions before working on the legal text of the regulatory instrument.

Issues to consider:

Do you ensure that comments on the PND and details of the regulatory change have been incorporated into the text of the regulatory instrument?

Does the regulatory instrument meet the commitments made in the PND?

How do you ensure that the Policy Development outcomes, the PND, and the regulatory instrument together make sense, e.g. through third-party review?

Program objectives

The *program objectives* should be a complete and precise statement of all general objectives of the program as well as the more specific goals which the program will achieve.

Issues to consider:

Do you have clear goals for the program? Are your program goals comprehensive, in that they cover every part of your mission?

Have you explicitly incorporated goals of improved efficiency, enhanced service delivery and regulatory reform?

How do you regularly assess if the program as a whole meets these goals?

How do you regularly review how you set up your program?

During your review, do you ask yourself whether the way your operations are organized in such a way that you could reasonably expect to meet your goals?

Have you determined how best to keep all your multiple clients satisfied, consistent with the public interest and professional standards?

Do your goals and plans recognize the principles and importance of good people management?

Program delivery specifications

The *program delivery specifications* describe how you will do what you said you would do in *program objectives*. For most regulatory programs this will cover the gamut from providing advice to applying criminal or civil penalties.

As one of the main components will be ensuring compliance (required by Treasury Board Policy), the *program delivery specifications* will have to include a *compliance policy*. This will be a comprehensive and detailed review of what the department will do to get people to comply with the law. It is essential that this review be carefully crafted given recent judicial pronouncements which redefined the potential liability of government agencies for failing to enforce regulations.

Issues to consider:

Does your compliance policy clearly specify the enforcement standards? Does everyone have clear expectations as to how your staff will react in varying situation? Does the policy reflect operational reality?

Have you identified the service standards essential to meeting your commitments, such as accessibility, completeness, response times, accuracy?

Do you define the standard of acceptability for each characteristic in practical terms?

Have you identified resource requirements, including the type and quality of equipment and facilities?

Have you identified the number and skills of personnel required?

Do you know what the training needs are for each job?

Program delivery control procedures

The *program delivery control procedures* would enable the effective control of each operational activity to ensure that its results consistently meet the program delivery objectives and specifications. This element:

- identifies key activities in each component of program delivery;
- analyzes the key activities for characteristics whose measurement and control will ensure attainment of the regulatory objectives;
- defines methods for evaluating the selected characteristics;
- establishes the means to influence or control the characteristics within specified limits.

Issues to consider:

Are performance indicators used to measure the results of interaction with clients such as compliance activities with regulatees, complaints and so on?

Do performance indicators help you meet the commitments made in the RIAS or other public notification documents?

Do you have a way of knowing if staff have had the training they need for their job?

Do you have information systems in place to keep you informed on the state of compliance with key regulatory activities?

Do you have a way of knowing that any particular job is done only by trained people?

Field operations

Field Operations is the implementation of the *program delivery specifications*. It entails adherence to these specifications, monitoring that the specifications are met and adjusting the process when deviations occur.

As a result of good field operations the program activities should lead to the desired *program results*.

Issues to consider:

Do you ensure the planned activities of the compliance staff will be consistent with the compliance policy?

Do you have a way of knowing whether staff implement and adhere to the compliance policy?

Do you ensure the compliance activities meet commitments made in the RIAS? For example, can your field staff adjust to exceptional cases within the spirit of the compliance policy?

Can the field staff recommend adjustments to the compliance policy based on their experience?

Do you feed their on-going experience back into the compliance policy? Are the experiences of the field staff used to make adjustments to the compliance policy?

Do you ensure you are aware of the results of your field operations? For example, do field staff keep accurate

records of compliance and other operational activities? Are these records used to ensure operational goals are met?

Is everyone vigilant and do all staff feel responsible for identifying potential gaps in compliance?

If a gap is found do you root out the cause?

If you find a case of the compliance policy not being implemented, do you have a way of making sure there is corrective action?

Is someone assigned specific responsibility for making sure corrective action is taken? Is there follow-up to ensure the mistake does not happen again?

Clients' and staff's assessments

Assessments by both departmental staff and the public of how well the program objectives and delivery specifications are being met are important to permit corrective action and improvements.

Issues to consider:

Do you have a way of knowing how well your clients think your program meets their needs?

For example, do you actively seek comments on your program from all clients (regulatees, beneficiaries, the interested public)? Do you have a way of receiving and using suggestions and comments to improve what you do?

Do staff have a way of making known their evaluation of how well the program is working?

Do you have an efficient way of using what the staff think of the program and their impressions of clients' satisfaction to improve what you offer and how you offer it?

Review and evaluation

Continually review and evaluate what you are doing so that you can improve service.

Issues to consider:

Does your program review and evaluation process help you reach your goals?

Do you seek out systemic errors?

Do you look for root causes of problems?

Do you make sure clients' and staffs' assessments are fully understood and used?

Do you make sure the results of program review are used to adjust each step of the service? Can you ensure this happens quickly?

Communication

The final element to think about is communication within your organization.

Issues to consider:

How do you know all staff are aware of the goals of the program, the role and activities of each part of the operation, and their personal responsibility for helping to meet the goals?

How do you know all staff feel responsible for making suggestions and sharing information with other parts of the organization to bring about improvements?

Does every part of the organization solicit suggestions from other parts of the organization they interact with, and act on them?

Do managers of each section feel responsible for working smoothly with every other section?

Conclusion

The framework described above may be useful to departments in developing or revamping regulatory program management systems and procedures. The framework, if applied, is consistent with the requirements of the Regulatory Policy.

This is one of a series of guides intended to familiarize regulatory managers with conceptual tools that may be of use in their programs. It should be noted that more detailed guides are being prepared. These "how to" guides will bring together the best ideas and experiences for each element of the management system described in this paper - from initial consultation to program evaluation. The first will become available late in the fall of 1992.

For more information about this guide and others, please contact Regulatory Affairs, Treasury Board Secretariat, at 952-3459.