



Government of Canada
Privy Council Office

Gouvernement du Canada
Bureau du Conseil privé

GOVERNMENT OF CANADA REGULATORY POLICY

November 1999
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Canada The wordmark for Canada, with a small red maple leaf icon integrated into the letter 'a'.

Government of Canada Regulatory Policy

Effective date

The present document contains the Government of Canada Regulatory Policy as approved by Cabinet in November 1999. It replaces the 1995 version of this policy.

Policy objective

To ensure that use of the government's regulatory powers results in the greatest net benefit to Canadian society.

Policy statement

Canadians view health, safety, the quality of the environment, and economic and social well-being as important concerns. The government's regulatory activity in these areas is part of its responsibility to serve the public interest.

Ensuring that the public's money is spent wisely is also in the public interest. The government will weigh the benefits of alternatives to regulation, and of alternative regulations, against their cost, and focus resources where they can do the most good.

To these ends, the federal government is committed to working in partnership with industry, labour, interest groups, professional organizations, other governments and interested individuals.

Application

This policy applies to federal regulatory authorities.¹

Policy requirements

When regulating, regulatory authorities must ensure that:

¹ When exceptional circumstances affect a regulatory authority's ability to fulfil a policy requirement, the regulatory authority must justify and document the exception.

1. Canadians are consulted, and that they have an opportunity to participate in developing or modifying regulations and regulatory programs;
2. they can demonstrate that a problem or risk exists, federal government intervention is justified and regulation is the best alternative;
3. the benefits outweigh the costs to Canadians, their governments and businesses. In particular, when managing risks on behalf of Canadians, regulatory authorities must ensure that the limited resources available to government are used where they do the most good;
4. adverse impacts on the capacity of the economy to generate wealth and employment are minimized and no unnecessary regulatory burden is imposed. In particular, regulatory authorities must ensure that:
 - information and administrative requirements are limited to what is absolutely necessary and that they impose the least possible cost;
 - the special circumstances of small businesses are addressed; and
 - parties proposing equivalent means to conform with regulatory requirements are given positive consideration.
5. international and intergovernmental agreements are respected (see Appendix A) and full advantage is taken of opportunities for coordination with other governments and agencies;
6. systems are in place to manage regulatory resources effectively. In particular, regulatory authorities must ensure that:
 - the Regulatory Process Management Standards are followed (see Appendix B);
 - compliance and enforcement policies are articulated, as appropriate; and
 - resources have been approved and are adequate to discharge enforcement responsibilities effectively and to ensure compliance where the regulation binds the government.
7. other directives from Cabinet concerning policy and law making are followed such as the Cabinet Directive on Law-making and the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals and the Cost Recovery and Charging Policy.

Responsibilities

Regulatory Authorities

Regulatory authorities are responsible for developing, maintaining and enforcing regulatory programs that follow the Regulatory Policy and for having regulatory management systems in place that meet the Regulatory Process Management Standards. Regulatory authorities are responsible for reviewing their performance and reporting to their senior management on how they have met the Management Standards. Copies of the review reports are to be provided to the Treasury Board Secretariat (Comptrollership Branch).

Regulatory authorities are responsible for including information on planned regulatory initiatives in their annual Report to Parliament on Plans and Priorities and for reporting on results of the regulatory plans in the annual Departmental Performance Reports to Parliament.

Privy Council Office

The Privy Council Office is responsible for assessing the effectiveness of this Policy, its implementation and its elaboration. To do this, the Privy Council reviews existing sources of information such as regulatory information in annual departmental reports to Parliament on Plans and Priorities and Performance Reports, regulatory submissions to the Governor in Council, Regulatory Impact Analysis Statements and departmental reports on their review of the Regulatory Process Management Standards. The Privy Council Office provides advice to regulatory authorities on the Policy requirements, develops guides and supports capacity building to help regulatory authorities comply with the Policy.

Treasury Board Secretariat

The Treasury Board Secretariat is responsible for providing guidance to regulatory authorities on how to include regulatory information in their annual departmental Reports on Plans and Priorities and in the annual Departmental Performance Reports, which are both tabled in Parliament.

Department of Justice

The Department of Justice is responsible for offering legal advice to regulatory authorities. For example, the Department provides regulatory authorities with the legal tools and legal opinions on alternative regulatory solutions, harmonization of regulatory

requirements, compliance and enforcement techniques, and use of performance and international standards.

Canadians

This policy is also dependent on the input of Canadians — industry, labour, interest groups, professional organizations, other governments and individuals — into the design and review of regulations and regulatory programs. Through an open and transparent regulatory process, Canadians have an opportunity to make a contribution and help the government develop regulatory programs that will benefit Canadian society as a whole.

Enquiries and Further Information

Regulatory Affairs and Orders in Council Secretariat

Privy Council Office

Telephone: (613) 943-5076

Facsimile: (613) 943-5071

PCO web-site: <http://www.pco-bcp.gc.ca>

APPENDIX A

International and Intergovernmental Agreements: Obligations for Regulators

General

When developing or changing regulations, federal regulatory authorities must ensure that regulatory officials are aware of and adhere to obligations set out in international and intergovernmental agreements and accords.

Specific Requirements

When developing or changing technical regulations, federal regulatory authorities must

1. ensure that regulatory officials are aware of and take account of obligations agreed to by the Government of Canada, such as the provisions of the World Trade Organization (WTO) Agreement, the North American Trade Agreement (NAFTA), and other multilateral, regional and bilateral Agreements such as the Safety of Life At Sea Convention of the International Maritime Organization;
2. ensure that regulatory officials are aware of and take account of their general obligations as laid out in the WTO Technical Barriers to Trade Agreement (TBT) and the Sanitary and Phytosanitary Agreement (SPS); and the NAFTA Articles on Technical Barriers to Trade (Chapter 9) and sanitary and phytosanitary measures (Section B of Chapter Seven); and other multilateral, regional and bilateral Agreements referring to regulations and standards; and
3. adhere to those procedural and substantive obligations agreed to by the Government of Canada through intergovernmental agreements such as the Canadian Agreement on Internal Trade (AIT) Article 405 provisions relating to specific sectors of the economy.

In particular, for technical regulations that affect trade, federal regulatory authorities must:

4. with regard to notification
 - prepublish proposals for new or changed technical regulations in *Canada Gazette, Part I* for a period of at least 75 days, except in urgent circumstances, and take into account comments received;

5. with regard to performance-oriented requirements
 - specify, where possible, technical regulatory requirements in terms of performance rather than design or descriptive characteristics;
 - give positive consideration to accepting as equivalent other forms of technical regulatory requirements, if satisfied that they adequately fulfil the objectives of the existing regulations;
 - for TBT, ensure technical regulations treat products from one jurisdiction no less favourably than like products from another;
 - for SPS, ensure measures do not arbitrarily or unjustifiably discriminate where identical or similar conditions prevail;
 - ensure technical regulations are no more restrictive of entry into markets than is necessary;
6. with regard to international standards
 - use available international standards, guidelines and recommendations where those standards achieve the regulatory objective;
7. with regard to enforcement
 - treat regulatees and products from one jurisdiction no less favourably than those from other jurisdictions when assessing conformity to technical regulatory requirements, providing they are in comparable situations;
8. with regard to complaint resolution
 - have in place a process to review complaints concerning conformity assessment procedures and must take corrective action when justified.

Responsibilities

The Department of Foreign Affairs and International Trade (DFAIT) is responsible for coordinating the implementation of WTO, NAFTA and other international trade agreements by federal departments and agencies and by provincial and regional bodies.

The Canada Food Inspection Agency has the main responsibility for coordinating the implementation of the WTO and NAFTA SPS measures (Section B of Chapter Seven) Agreements by federal departments and agencies, and by provincial and regional bodies.

Industry Canada (IC) is responsible for representing the federal government in the ongoing intergovernmental process under the Agreement on Internal Trade and for coordinating implementation of the Agreement by federal departments and agencies.

The Department of Justice, including the Trade Law Division at DFAIT, is responsible for advising regulatory authorities on their legal obligations under the above agreements and on how to draft technical regulations so as to comply with them.

The Privy Council Office reviews regulatory proposals for adherence to the Regulatory Policy. The appropriate departments or agencies are notified if there are concerns regarding possible violations of international or intergovernmental obligations.

Enquiries

Enquiries about NAFTA or WTO should be directed to:

Director, Technical Barriers and Regulations Division (EAS)
Department of Foreign Affairs and International Trade

Enquiries about the Agreement on Internal Trade should be directed to:

Director General, Internal Trade Consultations and
Federal/Provincial Relations
Industry Canada

APPENDIX B

Regulatory Process Management Standards

Application

These standards apply to federal regulatory authorities.

Requirements

General responsibility

Federal regulatory authorities must meet the Regulatory Process Management Standards set out below. It is the responsibility of regulatory authorities to develop and maintain a system to manage the regulatory process that meets the standards, and to document clearly how they are met for each proposal to create or amend regulations

Reporting

The following departments are responsible for submitting a report to their senior management by December 31, 1999 on how they have met the management standards: Canadian Food Inspection Agency, Environment Canada, Health Canada, Industry Canada, Transport Canada, Revenue Canada, Fisheries and Oceans Canada. They are to send a copy of the review report to the Treasury Board Secretariat (Comptrollership Branch). A self-assessment guide was published in November 1996 to assist departments in reviewing their compliance with the Standards. It is entitled *Regulatory Process Management Standards: Compliance Guide*.

Assessment of future requirements of related to the Regulatory Process Management Standards will be decided in the context of ongoing assessment of the Regulatory Policy.

Regulatory Process Management Standards

Policy Development and Analysis

General. Regulatory authorities proposing new regulatory requirements or regulatory changes must have evidence that a problem has arisen, that government intervention is required and that new regulatory requirements are necessary. When health, safety and environmental risks are involved, regulatory authorities must consider whether the relative and absolute risks posed are such that intervention is required at this time.

The problem. The problem must be described and documented in clear, concise terms. The problem must be analyzed. Interested parties must be consulted on alternative ways to solve the problem.

Alternative solutions. It must be demonstrated that new regulatory requirements will help solve the problem. Alternative regulatory solutions must also be analyzed to ensure the most effective and efficient is chosen.

Benefit-cost analysis. It must be demonstrated that the benefits of regulatory requirements are greater than their costs. When regulations address health, social, economic or environmental risks, it must also be demonstrated that regulatory effort is being expended where it will do the most good. For all regulatory proposals, a benefit-cost analysis must be carried out to assess potential effects, such as impacts on the environment, workers, consumers and other sectors of society. The Business Impact Test, or equivalent analysis, must be undertaken to assess the effect that major regulatory proposals will have on Canadian businesses.

Regulatory burden. It must be demonstrated that adverse impacts on Canada's sustainable development - this concerns the long run capacity of both the economy and the environment to generate well-being, wealth and employment for Canadians - are minimized and that no unnecessary regulatory burden has been imposed. Information and administrative requirements should be limited to what is absolutely necessary and impose the least possible cost on regulatees. The impact of additional regulatory burden on small businesses in particular must be considered, and the least burdensome but effective alternative for their circumstances should be chosen.

Flexibility. Positive consideration must be given to parties proposing equivalent means to conform with regulatory requirements. If proposals are not accepted, the rationale for doing so must be documented.

Intergovernmental coordination. Regulatory authorities must determine what, if any, related regulatory requirements already exist and which other departments, agencies or governments are involved. New regulatory requirements must be coordinated with existing ones to avoid duplication and to take advantage of possible efficiencies. When standards are being considered, reference should be made, if appropriate, to existing standards developed within the National Standards System or internationally. Pertinent international and federal-provincial agreements must be respected.

Implementation. The regulatory program design must include program objectives, program delivery specifications and delivery control procedures. It will also include a simple and effective complaint resolution system embodying the principles set out in *Guide XI, Effective Complaint Management* published by the Treasury Board Secretariat.

Consultation

Regulatory authorities proposing new regulatory requirements, or changes to existing regulatory requirements, must carry out timely and thorough consultations with interested parties. The consultation effort should be proportional to the magnitude of the impact of the proposed regulatory change. Notice of proposed regulations and amendments must be given so that there is time to make changes and to take comments from consultees into account.

Regulatory authorities must clearly set out the processes they use to allow interested parties to express their opinions and provide input. In particular, authorities must be able to identify and contact interested stakeholders, including, where appropriate, representatives from public interest, labour and consumer groups. If stakeholder groups indicate a preference for a particular consultation mechanism, they should be accommodated, time and resources permitting. Consultation efforts should be coordinated between authorities to reduce duplication and burden on stakeholders.

Regulatory authorities should consider using an iterative system to obtain feedback on the problem, on alternative solutions and, later, on the preferred solution.

Consultations should begin as early as possible in order to get stakeholder input on the definition of the problem, as well as on proposed solutions.

Communications

Regulatory authorities creating new regulatory requirements must tell stakeholders about the proposal in simple, clear, complete and concise language that the general public can easily understand.

New regulations must be written in plain language that regulatees can easily understand.

New regulations and changes to existing regulations, as well as material incorporated by reference, must be well publicized and easily accessible to stakeholders.

When a Regulatory Impact Analysis Statement is required, the document must

- describe the problem and explain why regulation is required;
- provide a clear and concise description of the regulatory proposal;
- outline the alternatives considered and the reasons for choosing to regulate;
- describe the major anticipated impacts;
- summarize the consultations undertaken; and
- explain the procedures and resources that will be used for compliance and enforcement

Training

Regulatory authorities must ensure their personnel are competent to carry out the requirements of the Regulatory Process Management Standards.

Documentation

Regulatory authorities must document their regulatory policy and processes, including the responsibilities, authorities and interrelationships of personnel who manage, carry out and review regulatory programs.

The process followed to develop each new or changed regulation must be documented. The documentation should include, but not be limited to, a description of the problem, alternative solutions, the risks involved, the reasons for regulating, the consultation process used and the benefit-cost analysis.