



What We Heard: Online Consultation on the Draft Cabinet Directive on Regulation

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From Treasury Board of Canada Secretariat

September – November 2017

Background

Canada's federal regulatory policy has evolved over the last decade. In 2007, based on the recommendations of the External Advisory Committee on Smart Regulation, the Cabinet Directive on Streamlining Regulation (CDSR (Cabinet Directive on Streamlining Regulation)) was developed and implemented, institutionalizing good regulatory practices like cost-benefit analyses, stakeholder engagement and regulatory impact analysis (RIA (Regulatory Impact Analysis)) as requirements for federal departments and agencies to implement and publish as part of their regulations.

In 2012, the Cabinet Directive on Regulatory Management (CDRM (Cabinet Directive on Regulatory Management)) came into effect. The Directive built upon the CDSR (Cabinet Directive on Streamlining Regulation), by instituting initiatives to minimize burden on business through the "One-for-One" Rule and the Small Business Lens. It also increased transparency and predictability through the introduction of:

- Forward Regulatory Plans to provide advance notice of the federal government's intent to regulate;
- Service Standards for High-Volume Regulatory Authorizations (e.g., permits, licences and certifications) to address the timeliness of decision-making; and
- Interpretation Policies to provide stakeholders with information on how they are to meet the requirements outlined in regulation.

When it was adopted, the Treasury Board of Canada Secretariat (TBS (Treasury Board of Canada Secretariat)) committed to conduct a review of the CDRM (Cabinet Directive on Regulatory Management) after five years.

Since the CDRM (Cabinet Directive on Regulatory Management) came into effect, regulatory cooperation has increasingly been seen as a good regulatory practice, which has had a significant impact on the evolution of Canada's federal regulatory policy. Since 2011, the Government of Canada has pursued formal regulatory cooperation with the United States (U.S. (United States)) through the Canada-U.S. (United States) Regulatory Cooperation Council (RCC (Regulatory Cooperation Council)) as a means to reduce unnecessary and duplicative regulatory burdens that act as barriers to trade and economic growth.

Beyond efforts with the U.S. (United States), the Canada-European Union (E.U. (European Union)) Comprehensive Economic and Trade Agreement (CETA (Comprehensive Economic and Trade Agreement)) is the first bilateral trade agreement in which Canada has included a stand-alone chapter on regulatory cooperation, which has established a formal process for Canadian and European regulators to work together to align their frameworks.

Domestically, on July 1, 2017, the federal government and the provinces and territories signed the Canadian Free Trade Agreement (CFTA (Canadian Free Trade Agreement)), which includes a Regulatory Reconciliation and Cooperation Table (RCT (Regulatory Reconciliation and Cooperation Table)). The table will make recommendations on where federal, provincial and territorial regulatory barriers can be removed to promote trade across the country. Through these multiple initiatives, it is clear that regulatory cooperation is increasingly important as a tool to facilitate economic growth.

Canada's regulatory policy framework must continue to evolve to address new and emerging trends in good regulatory practices, as well as social and economic challenges that regulators are striving to address. That is why TBS (Treasury Board of Canada Secretariat), in consultation with regulatory departments and agencies, has developed the draft Cabinet Directive on Regulation (CDR (Cabinet Directive on Regulation)), which would replace the CDRM (Cabinet Directive on Regulatory Management). The draft CDR (Cabinet Directive on Regulation) (see Annex A) outlines the Government's expectations and requirements on federal departments and agencies as they regulate.

The draft CDR (Cabinet Directive on Regulation) also reflects the Government's ongoing and new priorities by emphasizing a life-cycle approach to regulating - development; management; and review of regulations. It proposes to make it mandatory that departments and agencies undertake periodic reviews of their regulatory stock to ensure that regulations continue to be appropriate, effective and relevant in achieving intended

policy objectives. It also enshrines regulatory cooperation and stakeholder engagement throughout the entire regulatory life-cycle, while strengthening analytical requirements for the Government's priorities in areas such as environmental impacts, gender-based analysis (GBA+ (gender-based analysis)), and engagement with Indigenous peoples.

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Consultation

Underpinning the draft [CDR \(Cabinet Directive on Regulation\)](#) is the principle of openness and transparency throughout the regulatory life-cycle where regulators must engage stakeholders early and often. By posting the draft [CDR \(Cabinet Directive on Regulation\)](#) for public comment, interested parties including Canadians can have a say in the policy that governs the regulations affecting them.

On September 30, 2017, [TBS \(Treasury Board of Canada Secretariat\)](#) published a [Notice to interested parties — Consultation on the draft Cabinet Directive on Regulation](#). The notice was accompanied by an online consultation component to seek feedback from interested parties including the public on the proposed draft [CDR \(Cabinet Directive on Regulation\)](#). Interested Canadians were invited to provide comments and suggestions based on their experience and familiarity with the federal regulatory process.

The draft [CDR \(Cabinet Directive on Regulation\)](#) is arranged into eight sections and an appendix:

1. Purpose
2. Scope of Application
3. Guiding principles of federal regulatory policy
4. Regulatory Lifecycle Approach
5. Development of Regulations
6. Regulatory management
7. Review and Results
8. Supporting policies

Appendix A: Roles and responsibilities

- Governor in Council, Departments and Agencies, Treasury Board of Canada Secretariat, Privy Council Office and Department of Justice

To solicit feedback and suggestions, five guiding questions were used (see Annex B). These questions were embedded at the end of sections 4, 5 and 7 in the draft CDR (Cabinet Directive on Regulation). Interested parties or stakeholders were given a choice to select the question(s) they wished to answer based on experience and familiarity with the federal regulatory process. As a result, we received uneven input from section to section. ¹

The online consultation was posted on open.canada.ca initially from September 30 to October 29, 2017. An extension until November 20, 2017 was given to accommodate the requests from several organizations. Interested parties had a choice to post comments publicly online or to submit them by email. Overall we received comments from 28 interested parties. These parties include: four business owners or companies, six individuals, 18 associations or non-profit organizations and a parliamentary committee. All comments have been reviewed and summarized in this report.

What we heard

► In this section

The following seven themes emerged from the consultation on the draft CDR (Cabinet Directive on Regulation):

Theme 1: Engage early at the design and instrument choice stage for greater transparency.

“To get meaningful input from stakeholders, we believe that consultations should be early at the point when government thinks there is a problem or issue that requires regulation”.

Overall, several stakeholders indicated that they want departments and agencies to engage them much earlier than at the publication of the draft regulations in Canada Gazette, Part I. They believe that stakeholders should be brought in at the design and instrument choice stage, as well as consistently throughout the life-cycle. Some

stakeholders indicated that they want to see more prescriptive requirements for early consultation and a stronger oversight role for TBS (Treasury Board of Canada Secretariat) to ensure that such early engagement is occurring.

Some stakeholders pointed out that it should be a mandatory requirement for departments and agencies to report the results of engagement in the design and instrument selection as part of the Regulatory Impact Assessment Statement (RIA (Regulatory Impact Analysis) S), with one stakeholder advocating a check-list to be signed off by the sponsoring minister of the regulation. An additional suggested requirement was to publish a Notice of Intent (NOI (Notice of Intent)) to regulate in the Canada Gazette for a 60-day comment period, before a draft regulation is developed. The NOI (Notice of Intent) could be an early version of a RIA (Regulatory Impact Analysis)S with drafting instructions upon which stakeholders would be able to provide relevant input as to costs, operational and implementation issues. These factors would assist regulators in the design phase.

Theme 2: Consider regulatory cooperation and regulatory alignment at all times.

Several stakeholders approved of the federal government's leadership in advancing regulatory cooperation and alignment and noted the progress being made through initiatives such as the Canada – U.S. (United States) RCC (Regulatory Cooperation Council). They look forward to similar progress being made under additional trade agreements such as the CFTA (Canadian Free Trade Agreement) and the CETA (Comprehensive Economic and Trade Agreement). Some stakeholders even suggested direct harmonization or alignment of regulatory activities with the U.S. (United States) should be a priority.

“The Directive should make regulatory cooperation and alignment a pre-requisite when considering approaches and instruments and entrench this approach within the departmental and agency work”.

Several stakeholders repeatedly expressed encouragement that regulatory cooperation and alignment are given a higher profile in the draft CDR (Cabinet Directive on Regulation). They encouraged departments and agencies to better balance regulatory cooperation and alignment as an incentive for economic growth with existing protections for public health, safety and the environment.

A few stakeholders went further, suggesting that regulatory cooperation and alignment should be made a pre-requisite when designing approaches and instruments. In new areas of regulation, they have suggested that departments and agencies should align

regulatory efforts by default. When departments and agencies choose not to align by default, they should provide a detailed explanation as to why they have chosen to create a misalignment. At the same time, stakeholders cautioned that a focus on regulatory cooperation and alignment leading to economic growth should be properly balanced with strong protections for citizen and environmental health and well-being, where precaution, privacy and confidentiality, need to be underscored throughout the regulatory life-cycle.

Theme 3: Incorporation by reference.

“The absence of any reference to “Incorporation by Reference” (IBR (incorporation by reference)) in the draft Cabinet Directive is surprising to us given that the Incorporation by Reference in Regulations Act came into force in 2015.”

Building on the importance of coordination, cooperation and alignment, some stakeholders believe that incorporation by reference (IBR (incorporation by reference)) should be more strongly reflected in the draft CDR (Cabinet Directive on Regulation). A few stakeholders noted that departments and agencies need to assess the cost to incorporate standards developed by accredited domestic and international bodies. They advocate that regulators should be directed to place a stronger emphasis on the use of IBR (incorporation by reference) as a drafting technique, as this is an essential way for governments to regulate in this climate of rapid change. They also believe that regulations using this technique would better assist intergovernmental cooperation and harmonization.

Theme 4: Analyze regulatory costs, benefits and impacts systematically.

A majority of stakeholders noted that in their view, departments and agencies are not consistent in how they approach cost-benefit; nor do these stakeholders feel that departments and agencies always undertake thorough analysis of costs and benefits.

“Our experience is that not all agencies or departments do cost benefit analysis of all regulations and when they do they are often cursory and fail to properly assess the impact and cost”.

Several stakeholders commented that regulatory proposals often underestimated costs on industry by using out-of-date information and data.

A few stakeholders suggested that regulatory impact analysis could consider different lenses such as a rural lens and / or a municipality lens in addition to the current Small Business Lens. Additionally, some stakeholders remarked that the draft CDR (Cabinet Directive on Regulation) should make it a requirement to assess cumulative regulatory burden on industry. A few suggested that assessment of cumulative cost should also include guidance documents, and not just the regulation.

With respect to the “One-for-One” Rule, comments from stakeholders varied. A number of stakeholders noted that the drafting of the CDR (Cabinet Directive on Regulation) made the government’s commitment to the Rule unclear. Some believe that the scope should be expanded to include costs beyond administrative. Some believe that TBS (Treasury Board of Canada Secretariat) should increase enforcement efforts to ensure consistent use of the Rule across regulatory proposals. Others have suggested eliminating the Rule altogether.

Theme 5: Endorse mandatory and periodic stock reviews.

A majority of stakeholders endorsed the proposed mandatory requirement for regular reviews of regulations as proposed in the draft CDR (Cabinet Directive on Regulation). The same proportion of stakeholders want to be consulted or asked which regulations should be reviewed.

The draft CDR (Cabinet Directive on Regulation) gives departments and agencies the flexibility to establish their own timelines by which they intend to conduct a stock review. Some stakeholders felt that TBS (Treasury Board of Canada Secretariat) should prescribe a timeframe in order to allow for greater predictability.

“We are supportive of the need for departments and agencies to undertake periodic reviews. These periodic reviews should be a matter of public consultation with affected stakeholders”.

“‘Periodic review’ should include a specific time frame (e.g. every 5 years or more frequently)”.

“Technical guidance documents for regulations under review are often lacking”.

In addition to prescribing a timeframe for a review of the existing regulatory stock, some stakeholders strongly suggested that technical and guidance documents issued by departments and agencies to accompany a regulation should also be part of the stock review. In this way, should a department or agency decide to remove obsolete or spent

regulations from its stock, it should also take into consideration all related technical and guidance documents that would be impacted by the removal of the regulations and make the necessary adjustments.

A few stakeholders suggested the following additional criteria to consider when regulators review their existing stock of regulation and regulatory programs:

- the importance of improving the competitiveness of Canadian firms relative to other jurisdictions, with the aim to increase foreign investment opportunities; and
- the status of alignment or harmonization of regulatory activities with trade partners to minimize burden.

Theme 6: Single portal for regulatory activities and easier access for regulated parties.

“The federal government needs a comprehensive and systematic approach to online consultation”.

“We feel that the federal government should look at better methods of direct engagement”.

Business entities who reviewed the draft CDR (Cabinet Directive on Regulation) expressed the need for a comprehensive list of regulatory activities and changes that can impact product compliance in one single portal or one comprehensive data source to which stakeholders have access.

A few stakeholders felt that, over the years, the federal government has made some improvements with its regulatory consultations. Yet more efforts should to be made to reach out to communities and consumer groups directly. In their view, this could be facilitated by the development and use of a consultation portal for regulations, similar to what is used in the U.S. (United States) (www.regulations.gov). Such an online portal for all regulatory consultations should include functionality for all stakeholders to directly provide comments. These comments could also be published via the same portal, so that all Canadians could see suggested improvements and/or concerns generated by regulatory proposals.

Theme 7: Enhance accountability, predictability, co-development, coordination and cooperation with other levels of government.

Some stakeholders noted that the draft CDR (Cabinet Directive on Regulation) should require departments and agencies to have a “customer service” strategy to assist industry with the interpretation of guidance or technical documents in order to assist regulated parties to comply with regulations in a timely and coordinated fashion.

“Our industry has benefited and actively participated in the consultations that have flowed from the Forward Regulatory Plan”.

“We suggest that the federal government should move from a consultative model to a co-development model. To facilitate co-development, the Directive should include additional requirements on transparency, timelines and consultation opportunities”.

“For shared responsibilities in implementing regulations, departments and agencies should work together to respond to stakeholders’ requests rather than working in silos”.

A few stakeholders recommended that compliance, enforcement, inspection strategies and activities should be done with greater coordination across all departments and agencies. Furthermore, the draft CDR (Cabinet Directive on Regulation) should require greater cooperation with other levels of government for efficiency and coverage in rural and remote areas where consumer regulations are less likely to be enforced.

For greater predictability, departments and agencies should make the progress of their regulatory proposals available to the public with clear timelines.

Looking ahead, a few stakeholders noted that the federal government could look for opportunities to co-develop regulations and supporting technical guidance as a way to better engage stakeholders early and often.

Next Steps

Stakeholder input is currently being considered in the finalization of the draft CDR (Cabinet Directive on Regulation) as well as the development of supporting policies, guidance, tools, and templates. Once TBS (Treasury Board of Canada Secretariat) has analyzed the comments, it will publish an update to this document indicating how the recommendations raised by stakeholders have been addressed.

Annex A: Cabinet Directive on Regulation

► In this section

1.0 Purpose

The (draft) Cabinet Directive on Regulation sets out the Government of Canada's expectations and requirements in the development, management, and review of federal regulations.

Under the Statutory Instruments Act, regulations are statutory instruments that are established pursuant to legislative powers conferred under an Act of Parliament, and/or that entail the imposition of legal sanctions if they are contravened.

They are used by government as an instrument for mandating or enabling particular behaviours or outcomes in order to achieve public policy objectives.

2.0 Scope of Application

This Directive applies to all regulations, as defined by the Statutory Instruments Act, made by or with the approval of the Governor in Council, the Treasury Board of Canada, or a minister of the Crown. Certain regulations are not made through the Cabinet or Governor-in-Council process; in these cases, the regulation-making authorities should follow the regulatory life-cycle approach set out in this Directive.

3.0 Guiding Principles of Federal Regulatory Policy

It is the duty of the Government of Canada to respect Parliament and the authorities granted by Parliament, as expressed in legislation; and to ensure that regulations result in the greatest overall net benefits to current and future generations of Canadians. In fulfilling this duty, departments and agencies will be guided by four principles:

1. **Regulations protect and advance the public interest and support good government:** Regulations are justified by a clear rationale in terms of protecting the health, safety, security, social and economic well-being of Canadians, and the environment.
2. **The regulatory process is open and transparent:** Regulations, and their related activities, are accessible and understandable, and created in an open, transparent, and inclusive way that meaningfully engages the public and Aboriginal peoples early on.

3. **Regulatory decision-making is evidence-based:** Proposals are made, and decisions are based, on evidence, robust analysis of costs and benefits, and the assessment of risk, while being open to public scrutiny.
4. **Regulations support a fair and competitive economy:** Regulations should aim to support and promote inclusive economic growth, entrepreneurship, and innovation for the benefit of Canadians and businesses. Opportunities for regulatory cooperation and the development of aligned regulations should be considered wherever possible.

4.0 The Regulatory Lifecycle Approach

The regulatory lifecycle approach requires departments and agencies to examine and analyze regulations through all stages of the lifecycle, including: the **development** of regulations (section 5.0); regulatory **management** (section 6.0); and, **review and results** (section 7.0).

During all stages of the lifecycle, regulators must seek opportunities to engage Indigenous people and stakeholders; pursue regulatory cooperation and regulatory alignment, where appropriate; and, coordinate across all levels of government to minimize cumulative and unintended impacts of regulations on Canadians, business, and the economy.

4.1 Consultations and Engagement ²

4.1.1 Stakeholder Engagement

Departments and agencies are responsible for identifying impacted stakeholders, Indigenous people and meaningfully consulting and engaging with them throughout the development, management, and review of regulations. In doing so, they should follow the Government of Canada's policies and guidance for consultation and engagement.

Departments and agencies should seek opportunities to use modern, digital, accessible and secure platforms and tools for consultation and / or engagement. Communication tools should support meaningful and inclusive consultation and/or engagement, with consideration given to any limitations on accessibility for stakeholders and Indigenous peoples. Departments and agencies must follow the requirements for digital government and communication as set out in Treasury Board policies and directives: Policy on Communication, Policy on Federal Identity and the Policy on Official Languages.

4.1.2 Consultations with Aboriginal Peoples ³

If Aboriginal peoples may be impacted by any proposed regulation, departments and agencies must provide reasonable assurance that all obligations in relation to rights protected by section 35 of the Constitution Act, 1982, and international human rights obligations are met.

In addition, when considering conduct that might adversely impact potential or established Aboriginal or treaty rights, departments and agencies shall meet the Crown's duty to consult and, accommodate.

Departments and agencies shall also ensure that the Government of Canada respects any consultation obligations or processes such as those set out in modern treaties, throughout the regulatory process.

4.2 Regulatory Cooperation and Regulatory Alignment

Departments and agencies will assess opportunities for cooperating with other jurisdictions, domestically and internationally, on regulations and associated regulatory activities. This includes assessing the feasibility of aligning regulatory approaches and/or outcomes with key trading partners, in order to reduce the regulatory burden on Canadian business, while maintaining or improving the health, safety, security, social and economic well-being of Canadians, and the environment.

Regulatory cooperation is a process to find efficiencies across jurisdictions and reduce unnecessary regulatory differences, achieving domestic policy goals while aiming to facilitate trade and investment, promote economic growth and job creation, and increase consumer choice. A central pillar of regulatory cooperation is the maintenance or enhancement of standards of public health and safety and environmental protection.

Regulatory alignment occurs when there is any agreement or arrangement, formal or informal, which reduces or eliminates differences between independent regulatory systems and/or regulatory activities, including inspections, certification, standards, and product and testing approvals.

4.3 Coordination

Departments and agencies are responsible for working with each other to coordinate regulatory efforts within the Government of Canada including engagement / consultation with stakeholders and Indigenous peoples.

Departments and agencies should examine ways to reduce regulatory duplication, promote efficiencies, and share relevant information to support the consideration of the cumulative impacts of regulations on stakeholders and reduce reporting and other administrative burdens where possible.

5.0 Development of Regulations

At the beginning of the regulatory lifecycle, departments and agencies determine the approach to address an issue, set objectives, undertake consultations with stakeholders, and analyse the risks, impacts, and costs and benefits of a regulatory proposal, in accordance with applicable policies, guidelines, and good regulatory practices.

5.1 Determination of Regulatory Approach

5.1.1 Issue Identification

Departments and agencies are responsible for identifying public policy issues to be addressed. This includes outlining risks to health, safety, security, the economy, and the social and economic well-being of Canadians and the environment and demonstrating through the best available evidence and analysis that government intervention is needed.

Where there are threats of serious or irreversible damage or harm, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent harm.

5.1.2 Instrument Choice

Departments and agencies are responsible for assessing the effectiveness and appropriateness of regulatory and non-regulatory instruments for achieving policy objectives. Departments and agencies should demonstrate that they have considered relevant domestic and international best practices as part of the instrument choice exercise. Where relevant best practices exist, regulators should seek to identify opportunities to cooperate or align, in order to avoid or reduce duplication or unnecessary burden.

When appropriate, the results of an instrument choice exercise should be included as part of the Regulatory Impact Analysis Statement to demonstrate through evidence and analysis that a regulation is the best tool to achieve the desired public policy objectives. It should also begin to examine the costs and benefits of regulatory options to inform this decision.

Departments and agencies should seek to design outcome-based or performance-based regulations, when appropriate, with a view to minimizing the amount of regulatory burden imposed on businesses and Canadians.

Outcome and performance-based regulations specify the desired result that a regulation intends to achieve, rather than a prescriptive description of compliance. This type of regulation increases flexibility for regulated parties as well as departments and agencies, and requires the regulated communities to focus on achieving specific and measurable outcomes.

5.1.3 Forward Regulatory Plans

Departments and agencies should provide advance notice to Canadians and stakeholders on upcoming regulatory changes over a period of 24-month so stakeholders can engage in regulatory development and plan for future regulatory changes at the earliest opportunity.

Advance notice is given on an annual basis which outlines departments' and agencies' plans for new regulations, regulatory amendments, repeals, and stock reviews. Regulatory proposals should be included on a forward regulatory plan before being pre-published in the Canada Gazette, Part I.

5.1.4 Consultations Prior to Pre-Publication

Departments and agencies will consult when appropriate and engage potentially impacted stakeholders, Indigenous people, including all partners with whom the Government of Canada has a formal regulatory cooperation arrangement, during the development of a regulatory proposal. Departments and agencies are responsible for determining the size and scope of the consultations or engagement. Publication in the Canada Gazette, Part I, (i.e., pre-publication) is not a substitute for early consultation.

Departments and agencies should not postpone pre-publishing a proposal in the Canada Gazette, Part I, in the absence of unanimity of views from stakeholders. Rather, consultations and engagement with stakeholders and Indigenous people on a regulatory proposal should be viewed as an ongoing dialogue, with consultations or engagement before pre-publication identified as an important, but not the only, tool to seek stakeholder input.

5.2 Regulatory Impact Analysis (RIA (Regulatory Impact Analysis))

Departments and agencies must conduct a Regulatory Impact Analysis (RIA (Regulatory Impact Analysis)) on all regulatory proposals, to support stakeholder engagement and evidence-based decision-making. In conducting RIA (Regulatory Impact Analysis), departments and agencies will comply with relevant Acts, regulations, Treasury Board policies, and adhere to guidance, tools, and directives, and will engage with the Regulatory Affairs Sector at Treasury Board of Canada Secretariat (TBS (Treasury Board of Canada Secretariat)).

Regulatory Impact Analysis (RIA (Regulatory Impact Analysis)) is the systematic approach to the identification and critical assessment of the potential positive and negative effects and implications of a regulatory proposal for consideration by the public, stakeholders and Cabinet. It is an important element of evidence-based decision-making.

RIA (Regulatory Impact Analysis) must examine potential positive and negative effects of a regulatory proposal on the health, safety, security, social and economic well-being of Canadians businesses, and the environment. RIA (Regulatory Impact Analysis) should include qualitative and quantitative analysis that is proportional to the expected impacts of a regulatory proposal. Departments and agencies must conduct an early assessment, known as a Triage, of a regulatory proposal to determine its expected impact level and the appropriate mix of analytical requirements of the following elements:

5.2.1 Analysis of Benefits and Costs

Departments and agencies will examine and quantify the potential positive and negative impacts of a proposed regulation and its feasible alternative options on Canadians, business, governments and the environment, and identify how impacts are distributed across the various parties. When it is not possible to quantify the benefits and/or costs, a rigorous qualitative analysis of costs and/or benefits in support of the regulatory proposal is expected.

Stakeholders	Examples of Impacts Considered
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Stakeholders	Examples of Impacts Considered
Canadians	<ul style="list-style-type: none"> • Impacts on wellbeing (health, safety and security, ability to make informed choices) • Consumer Impacts (cost of living, prices, quality and variety of goods available) • Income • Employment opportunities
Businesses	<ul style="list-style-type: none"> • Costs to comply with regulatory requirements (including administrative burden) • Changes in profit and revenue • Business opportunities, growth and innovation • Business sustainability
Government	<ul style="list-style-type: none"> • Costs to implement and administer regulatory programs (compliance and enforcement, outreach, data management, responding to events) • Costs and benefits for other orders of government (provincial, territorial, Indigenous, municipal) • Impacts on government revenue

5.2.2 Impacts on the Environment

Departments and agencies will undertake an assessment of potential effects on the environment for each regulatory proposal, in accordance with the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals.

An assessment of environmental impacts involves examining the scope and nature of the likely environmental effects (positive or negative); the need for mitigation to reduce or eliminate adverse effects or opportunities for enhancement, and the likely importance of any adverse environmental effects, taking mitigation into account. This helps inform the public that environmental factors have been appropriately considered when decisions are made.

5.2.3 Gender Based Analysis Plus (GBA+ (gender-based analysis))

Departments and agencies will undertake an assessment of social and economic impacts of each regulatory proposal on diverse groups of Canadians, in accordance with the Government of Canada's commitment on implementing Gender-based Analysis.

Gender-based Analysis Plus (GBA+ (gender-based analysis)) is an analytical tool used to help identify the impacts of government initiatives on diverse groups of women, men, and gender-diverse people. The "plus" acknowledges that GBA goes beyond sex and gender differences to consider multiple identity factors that intersect to make people who they are (such as race, ethnicity, religion, age, and mental or physical disability).

5.2.4 Minimizing Burden on Business

Departments and agencies will identify and estimate the cost of administrative burden impacts of regulatory proposals on Canadian businesses, as set out in the Red Tape Reduction Act and the Red Tape Reduction Regulations, with a view to minimizing this burden to the greatest extent possible without compromising the health, safety and security of Canadians, the environment or the economy.

Departments and agencies will also consider the impact of proposed regulations specifically on small businesses to ensure that small businesses do not unnecessarily bear a disproportionate burden when complying with regulations.

5.2.5 Regulatory Cooperation

Departments and agencies will analyse the feasibility of minimizing regulatory differences and aligning regulations with other jurisdictions, domestically and internationally. Where differences remain, departments and agencies must provide a rationale for the Canada-specific approach.

5.2.6 Modern Treaty Implications

Pursuant to the Cabinet Directive on the Federal Approach to Modern Treaty Implementation, departments and agencies will undertake an Assessment of Modern Treaty Implications (AMTI (Assessment of Modern Treaty Implications)). The law-making authorities and rights of modern treaty partners and self-governing Indigenous groups must be respected when developing and implementing a regulatory proposal. The Government of Canada must also ensure it meets its obligations under Modern Treaties and Self-government agreements. In the event that modern treaty implications are

identified, departments and agencies should engage with implicated modern treaty partners and self-governing Indigenous groups on the findings of the AMTI (Assessment of Modern Treaty Implications).

5.2.7 International Obligations

Departments and agencies will respect Canada's international obligations in areas such as human rights, health, safety, security, international trade, and the environment.

Departments and agencies should also implement provisions related to these obligations at all stages of regulatory activity, including consultation and notification, as applicable.

5.2.8 Implementation

Departments and agencies must plan for the implementation of the regulatory proposal as part of their analysis. This could include examination of timing, infrastructure requirements (e.g., information management and information technology), fund sources, compliance promotion and outreach, training, and enforcement plans. This analysis could also include consideration of evaluation metrics.

5.3 Regulatory Impact Analysis Statement Requirements

Departments and agencies will develop a Regulatory Impact Analysis Statement (RIA (Regulatory Impact Analysis)S) in accordance with the guidelines set out in the Policy on Regulatory Development.

A Regulatory Impact Analysis Statement (RIA (Regulatory Impact Analysis)S) is a clear, non-technical synthesis of expected impacts of a proposed regulation. It is published in the Canada Gazette with the regulatory text.

5.4 Publication and Consultation

5.4.1 Pre-publication and Consultation

Departments and agencies will submit a regulatory proposal to be considered by Treasury Board (Governor-in-Council), or the regulation-making authority, for pre-publication in the Canada Gazette, Part I. Pre-publication of a regulation will include the draft legal text as well as a RIA (Regulatory Impact Analysis)S.

The standard comment period following pre-publication is 30 days unless otherwise prescribed by legislative requirements and international obligations.

A minimum comment period of 70 days may be required for consultations on proposals for new and amended technical regulations that have a significant effect on international trade.

5.4.2 Exemption from Pre-publication

Exemptions to pre-publication requirements may be granted by Treasury Board (Governor-in-Council) or the regulation-making authority, when there is no statutory requirement to pre-publish. In cases where a regulatory proposal is not pre-published, a brief rationale for the exemption must be included in the final RIA (Regulatory Impact Analysis)S, as a best practice. Departments and agencies must consult with the Regulatory Affairs Sector at TBS (Treasury Board of Canada Secretariat) if they are considering seeking an exemption.

5.4.3 Final Publication

In accordance with the Statutory Instruments Act, all approved regulations must be published in Canada Gazette, Part II, after they are made and registered except where exempted under section 15 of the Statutory Instruments Regulations (C.R.C., c. 1509). A Regulatory Impact Analysis Statement must be included along with all published regulations.

5.5 Exceptional Measures

Exemptions from certain regulatory development requirements can be granted by Treasury Board (Governor-in-Council) or Cabinet in cases of serious and immediate risk to the health and safety of Canadians, their security, the environment, the economy, internal government reorganizations, or other exceptional circumstances.

Departments and agencies must consult with the Regulatory Affairs Sector at TBS (Treasury Board of Canada Secretariat) if they are considering seeking an exemption for an exceptional measure.

6.0 Regulatory Management

Departments and agencies are responsible for the ongoing management of regulations and their associated programs and activities to improve the effectiveness of regulatory programs in setting and meeting their objectives.

Regulatory program activities could include: compliance and enforcement, inspections and licensing, compliance promotion activities and outreach, data gathering, measuring performance, and providing clear and transparent information and service to Canadians on regulations, and regulatory and legal responsibilities.

To encourage compliance with regulations, it is important for departments and agencies to provide the public and regulatees with all relevant information on what is expected of them in a format that is easy to understand.

6.1 Enhancing Predictability

Departments and agencies are responsible for developing, publishing, and reviewing service standards for High Volume Regulatory Transactions that promote the timeliness of decision-making and provide Canadians with clear information on expectations for interactions and service.

Departments and agencies are also responsible for developing and publishing guidelines for the public to help clarify regulatory requirements for stakeholders and improve information sharing between the regulator and regulated stakeholders.

6.2 Compliance and Enforcement

Departments and agencies are responsible for promoting the effectiveness of their regulations through the development and implementation of compliance and enforcement strategies and programs. These strategies and programs should:

- Consider the use of risk-based approaches in the design and enforcement of compliance strategies;
- Ensure resources are allocated to address the most significant risks;
- Engage with the regulated communities on a proactive basis with a view to improving compliance rates, as appropriate; and,
- Provide clear guidance on compliance with regulations, when appropriate.

7.0 Review and Results

The final stage in the regulatory lifecycle is the review and assessment of results of a regulation. Regulations are one instrument within a program, and as such, a review of a regulation's effectiveness in contributing to results cannot be viewed in isolation of the full program's objectives and results.

Reviewing both regulatory programs and the regulatory stock allows departments and agencies to consider impacts and burden on impacted stakeholders, while ensuring that the health, safety, security, environment and the social and economic well-being of Canadians remains protected.

7.1 Reviews of Regulatory Programs

Departments and agencies are responsible for evaluating the performance of their regulatory programs, and are required to adhere to the Treasury Board Policy on Results and the Treasury Board Policy on Internal Audit. Outcomes of a review of a regulatory program could inform the review of the regulatory stock.

7.2 Reviews of the Regulatory Stock

Departments and agencies must undertake a periodic review of their existing regulatory stock to ensure regulations continue to be appropriate and effective, achieve their intended policy objectives.

While undertaking a review, departments and agencies must examine regulations with a view to:

1. Removing obsolete or spent regulations from the stock as soon as practical;
2. Increasing efficiency and effectiveness;
3. Mitigating unintended impacts;
4. Ensuring that references to technical standards are accurate and incorporate the latest version, where appropriate;
5. Identifying new regulatory cooperation opportunities;
6. Reducing regulatory burden on stakeholders;
7. Minimizing impacts on small business;
8. Instituting other changes, as appropriate, to strengthen policy objectives and performance; and,
9. Amending regulations to resolve enforcement issues identified through implementation.

Review plans for a department or agency's regulatory stock as well as planned amendments to regulations identified as part of review processes should be published in Forward Regulatory Plans. Results of a review should inform future regulatory development, thereby continuing the regulatory life-cycle.

Departments and agencies are responsible for establishing timelines to undertake a stock review. The President of the Treasury Board has the authority to require departments and agencies to undertake specific reviews or participate in centrally-led reviews.

7.3 Standing Joint Committee for the Scrutiny of Regulations

Departments and agencies must respond to issues raised by the Standing Joint Committee for the Scrutiny of Regulations (SJCSR (Standing Joint Committee for the Scrutiny of Regulations)) in a timely manner.

The Standing Joint Committee for the Scrutiny of Regulations reviews and examines regulations amongst other things to ensure they respect the powers conferred to a regulation-making authority by an Act of Parliament and for matters of related to legal drafting. Every regulation issued is permanently referred to the Standing Joint Committee for review.

8.0 Supporting Policies

The President of the Treasury Board has the authority to establish policy requirements in support of this Directive. The Secretary of the Treasury Board of Canada has the authority to update references to relevant acts, regulations, policies, guides, and tools, which are incorporated into this Directive's text and may be amended from time to time.

Annex B: Roles and Responsibilities

► In this section

Governor in Council

Governor General in Council or Governor in Council means the Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada.

Since December 2003, advice to the Governor General on behalf of the Queen's Privy Council has been provided by the Treasury Board.

Treasury Board ministers consider the regulatory submission and decide whether to recommend that the Governor General make the regulations as presented in their final form.

Departments and Agencies

Federal departments and agencies must comply with this Directive and its related policies and guidance at all stages of the regulatory life cycle.

When drafting enabling legislation, departments and agencies will ensure that subordinate legislative instruments are subject to the requirements of the Statutory Instruments Act. Regulations should not be exempted from these requirements except in exceptional circumstances, when approved by Cabinet. Seeking to obtain an exemption from the Statutory Instruments Act to avoid the requirements of the Cabinet Directive on Regulation is not justified.

Requirements governing legislative instruments are set out in the Cabinet Directive on Law-making.

Treasury Board of Canada Secretariat

The Treasury Board of Canada Secretariat (TBS (Treasury Board of Canada Secretariat)) is responsible for supporting Ministerial decision making and oversight. TBS (Treasury Board of Canada Secretariat) is expected to:

- provide advice and guidance to departments and agencies concerning the development of regulatory proposals and compliance with the Directive;
- work with departments and agencies to provide ministers and the Cabinet committee responsible for Governor-in-Council decisions with the necessary information to make decisions on the issues before them;
- review regulatory proposals, challenge departments and agencies on the quality of regulatory analyses, and advise them when the directions set out in the Directive have not been met;
- promote policy coherence among new proposals, existing policies, and the government's policy agenda;
- be the source of expertise on good regulatory practices; and,
- assess the effectiveness of the Directive and its implementation.

TBS (Treasury Board of Canada Secretariat) is responsible for stakeholder education and awareness for the regulatory process and good regulatory practices.

It will also maintain current policies, guidance, and tools in support of the implementation of the Cabinet Directive on Regulation.

Privy Council Office

The role of the Privy Council Office (PCO) is to assess memoranda to Cabinet and legislative proposals with regard to instrument selection, regulatory implications, and consistency with this Directive and with the Cabinet Directive on Law-making. Under the Statutory Instruments Act, the PCO- OIC also has a number of responsibilities in the regulatory process:

- **Examination:** Together with the Department of Justice, examines regulations for any issues and advises the regulation-making authority.
- **Registration:** Within seven (7) days after making a regulation, the regulation-making authority transmits copies of the regulation in both official languages to PCO, which then registers them. PCO can refuse registration if it deems that certain sections of the Statutory Instruments Act were not followed.
- **Coming into force:** As normally regulations come into force the day they are registered or later as specified in the regulation, a justification must be provided to PCO for those that are expressed to come into force earlier than the day of registration.
- **Quarterly consolidated index of regulations:** prepares a quarterly consolidated index of all regulations and amendments to regulations in force at any time after the end of the preceding calendar year.
- **Revisions and consolidation:** after consultation with the Deputy Minister of Justice, can ask regulation-making authorities to revise or consolidate regulations.

Department of Justice

The Department of Justice provides legal advice to departments and agencies on the legality of proposals for enabling and subordinate legislation, and the legal requirements of the regulatory process.

In doing so, the Department of Justice provides drafting services to departments and agencies and, under the Statutory Instruments Act, examines all proposed regulations to ensure that they:

- have the necessary legal authorization to be made;
- are consistent with the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights, 1960;
- are not an unusual or unexpected use of the enabling authority; and,
- are drafted in accordance with established standards.

The Department of Justice also provides departments and agencies with legal tools and advice on the appropriate use of government instruments, regulatory techniques, international standards, and compliance and enforcement techniques.

The Department of Justice and Global Affairs Canada are responsible for advising on the effect of Canada's international legal obligations, including their implementation in domestic law. The Trade Law Bureau, of the Department of Justice and Global Affairs Canada, is responsible for advising departments and agencies on Canada's trade law obligations.

Annex C: Guiding questions for the online and open consultation on the draft Cabinet Directive on Regulation, from September 30 to November 20, 2017

► **In this section**

Instructions

In this consultation, there are eight sections of the draft CDR (Cabinet Directive on Regulation) is open for comments:

1. Purpose
 2. Scope of Application
 3. Guiding principles of federal regulatory policy
 4. Regulatory Lifecycle Approach
 5. Development of Regulations
 6. Regulatory management
 7. Review and Results
 8. Supporting policies
- Appendix A

In addition, there are five (5) guiding questions for solicit input. These questions are intended to seek feedback on the new federal regulatory policy called the Cabinet Directive on Regulation (CDR (Cabinet Directive on Regulation)). The feedback received from this consultation will be taken into account as the Treasury Board of Canada Secretariat is finalizing the CDR (Cabinet Directive on Regulation).

Guiding questions can be found at the end of Sections 4, 5, 7 and Appendix A. Please answer these questions based on the experience and familiarity with the federal regulatory process. Do not feel obliged to answer a question if it does not apply to you. When providing your comments and suggestions for improvement, please specify the question number (for example, Q1 or Q2 or Q3 or Q4 or Q5).

Guiding questions

Q1: In this proposed policy update, during the regulatory development process, we put emphasis on considering regulatory cooperation where possible. Are there any requirements missing? Please explain and provide suggestions for improvement.

For more information, please refer to section 4.2 “Regulatory Cooperation and Regulatory Alignment” and section 5.1 “Determination of Regulatory Approach”.

Q2: In this proposed policy update, we believe your involvement throughout the different stages of the regulatory lifecycle is important. What are your ideas in how you can best inform us of solutions to regulatory problems when designing, implementing and reviewing regulations or regulatory programs? Please explain and provide suggestions for improvement.

For more information, please refer to following sections:

- Section 4.1 “Consultation and Engagement” and sub-sections 4.1.1 and 4.1.2 inclusively
- Section 5.1 “Determination of Regulatory Approach” and sub-sections 5.1.1 to 5.1.4 inclusively

Q3. In this proposed policy update, we place significant importance on showing the impact, cost and benefits of all regulatory proposals. Are there any requirements missing? Please explain and provide suggestions for improvement.

For more information, please refer to section 5.2 on “Regulatory Impact Analysis” and sub-sections 5.2.1 to 5.2.8 inclusively.

Q4. In this proposed policy update, we believe that on-going reviews or frequent reviews of the regulations on the books are necessary (see section 7.2). Are there any requirements missing? Please explain and provide suggestions for improvement.

For information, please refer to section 7.0 “Review and Results”.

Footnotes

- 1 Throughout the report, “some stakeholders” refers to a maximum of nine organizations or entities; “several stakeholders” refers to a range of 10 to 19 and “a majority of stakeholders” refers to 21 or more.
 - 2 Stakeholder engagement provides opportunities to ensure that issues and concerns of the stakeholders and the regulators are consistently understood and considered.
 - 3 The terms “consultation with Aboriginal peoples” refer to the legal obligation of the Crown to consult with Aboriginal peoples that is distinct from stakeholder engagement. To align with section 35 of the Constitution Act, 1982, the term Aboriginal peoples will be used throughout the Directive.
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