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COMPLIANCE TECHNIQUES
FINAL REPORT

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Consommation
et Corporations
Canada

Consumer and
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FINAL REPORT

Program Evaluation Division
Bureau of Policy Coordination
Consumer and Corporate Affairs Canada
April 1988

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Executive Summary

This study is one of several being prepared as part of the departmental compliance project, which has its origins in the department's Compliance Strategy. This report responds specifically to the stated need to "... identify a range of educational, promotional and sanctioning compliance approaches ... and to apply such approaches ..." so as to achieve "... the best level of private sector compliance ...". The study encompasses the five sub-activities previously studied.

The purpose of the study is to describe the compliance instruments used; to determine the frequency with which each is employed; to examine relative costs of each instrument; and to examine the relative effectiveness or impact of each instrument on compliance. In effect, this information provides a status report on compliance techniques as a basis for further review and study by the sub-activities and incorporation into the compliance strategies.

The main conclusions of the study are as follows:

1. A wide variety of compliance techniques are employed by the five sub-activities examined.
2. Opportunities exist to creatively alter the mix of techniques and to make useful additions to the inventory of techniques employed.
3. In general, the frequency with which techniques are used varies substantially, reflecting the differing needs of the sub-activities.
4. Although the MIS system employed provide a wealth of information, it is not usually collected so as to provide cost data by individual technique.
5. Little quantitative information is available on the relative effectiveness of specific techniques.
6. Each sub-activity should consider whether improvements in comprehensiveness and detail of cost and effectiveness data may not be justified.

The study identifies eight specific ideas dealing with compliance techniques which are presented as examples of the opportunities which exist to refine and broaden the inventory of techniques utilized.

1. INTRODUCTION

1.1 Purpose and Scope

This study is one of several being prepared as part of the departmental compliance project. The departmental compliance project is being undertaken in support of the department's Compliance Strategy which calls for the determination of "the best level of private sector compliance to be achieved" and to "... identify a range of educational, promotional and sanctioning compliance approaches" In order to make the work manageable, the focus of attention has been on five sub-activities felt to be broadly representative of the department as a whole.

Previous work has included reports on compliance concepts (see Compliance Framework: Conceptual Considerations) detailed descriptions of five compliance systems (see Departmental Compliance Systems) and examined compliance indicators (see Measuring Regulatory Compliance). These studies are available from the Bureau of Policy Coordination.

The present study builds on the previous work and provides an examination of techniques or instruments used to ensure compliance with relevant Acts and regulations. The purpose of the study is to describe the compliance instruments used; to determine the frequency with which they are employed; to examine the relative cost of each instrument; and to examine the relative effectiveness or impact of each instrument on compliance. In effect, this information provides a status report on compliance techniques as a basis for further review and study by the sub-activities.

The scope of the study includes the compliance activities undertaken by the Consumer Products, Weights and Measures, Corporations, Bankruptcy and Marketing Practices sub-activities.

1.2 Outline of the Study

The outline of the study is as follows. Section 2 provides the general analytical framework for the study and includes a description of the approach and methodology, a discussion of the issues examined and a review of terminology, specifically the definitions of the techniques as used in this study. Section 3 applies the analytical framework to the five sub-activities examined and provides the main information and evidence collected in the course of the work. Section 4 brings together the overall conclusions of the study. Section 5 provides some suggestions for possible follow-up work. This report also draws heavily on the descriptive material contained in the report on Departmental Compliance Systems.

2. ANALYTICAL FRAMEWORK

2.1 Approach and Methodology

The project team undertook the following tasks in preparing the study:

- . reviewed the conclusions of the Cornwall workshop on the "Compliance Strategy";
- . reviewed relevant academic literature on compliance techniques and instruments;
- . prepared a preliminary list of techniques, together with a definition of each, used within the department;
- . prepared and administered a written survey to collect information on techniques employed, frequency of use, relative costs and relative effectiveness;
- . prepared a preliminary report and revised it in light of comments received from management of each sub-activity.

The study team would like to acknowledge the cooperation and support received from each of the five sub-activities examined. Preparation of this report would not have been possible without this cooperation and support.

2.2 Issues

To ensure that the analysis was both consistent and comprehensive, and given the constraints in terms of resources available for the study, the study team agreed that the report would examine the compliance techniques or instruments used by each of the sub-activities within an analytical framework covering the following issues:

- . compliance instruments used - what compliance instruments are currently used? What are examples of how the instruments are used in practice?
- . frequency of use - how frequently or intensively are various instruments used? What factors influence the frequency of use?
- . relative cost - What information is available on the relative cost of using each technique? Is it relatively expensive or inexpensive to use each technique?

- relative effectiveness - what information is available on the relative effectiveness or impact of using each technique? Is the impact of using each technique relatively high or relatively low?

These issues form the basis for the analysis in Section 3 of the study.

2.3 Definitions of Techniques

In the preliminary phase of this work, it became clear that various sub-activities frequently used and applied terms in somewhat different ways, and that this could potentially create some difficulties in collecting valid information and in making comparisons across sub-activities. Given this situation, the members of the project team agreed that a first and critical task was to develop a list of compliance techniques that was reasonably comprehensive and to develop a clear definition for each. The work proceeded in an interactive fashion with initial definitions provided to sub-activity managers and their comments or questions used to refine the list of techniques and definitions. The results of this exercise are shown in Appendix 1.

This list was used to classify and record the various techniques and to extract examples and information on each for this report. Given the complexities of the various sub-activities, the differences among them, and the manner in which information is aggregated, it was at times difficult to match the listed items to the available information. However, we believe that the approach proved useful and does exhibit both the strengths and the weaknesses of the information available to managers.

2.4 Presentation of Findings

Section 3, "Compliance Techniques", describes the information collected for each of the five sub-activities. The core of the information for each is presented in an exhibit which provides:

- o an example/description for each technique utilized by the sub-activity;
- o an indication of the frequency of use, as available;
- o a priority code providing an indication of the relative importance of the technique to the sub-activity, based on the usage, resource allocation and priority usually assigned to the technique;
- o the resource implications or costs of each technique, when available;

- o comments on effectiveness of each technique, especially where quantitative evidence is available.

The balance of the sub-sections of section 3 provide a narrative describing the compliance framework, the techniques generally being used, evidence available regarding costs and effectiveness of techniques and a summary reflecting the four aspects of compliance techniques examined, namely:

- o compliance instruments used;
- o frequency of use;
- o relative costs;
- o relative effectiveness.

3. COMPLIANCE TECHNIQUES

3.1 Consumer Products

3.1.1 Description

Consumer Products encompasses a variety of activities aimed at protecting consumers against product misrepresentation and providing accurate information to consumers. The sub-activity is responsible for the development and administration at all trade levels of the Consumer Packaging and Labelling Act, the Textile Labelling Act, the Precious Metals Marking Act, and the National Trade Mark and True Labelling Act and those provisions under the Food and Drugs Act that concern economic fraud. It is also responsible for the retail level administration of several Acts in the agriculture and fisheries area and for the administration of several voluntary programs.

The sub-activity has three strategic objectives as follows:

- . to protect consumers against product misrepresentation through detection, control and prevention;
- . to assist consumers in making effective product choices by ensuring the provision of factual product information;
- . to promote equity and fair competition in the marketplace.

Through its compliance activities, Consumer Products seeks to obtain high levels of compliance with:

- . product specifications concerning packaging, labelling, quality and quantity;
- . information disclosure requirements;
- . misleading advertising prohibitions;
- . voluntary industry guidelines.

3.1.2 Compliance Techniques and Uses

The approach used by Consumer Products to achieve compliance emphasizes the use of inspections to monitor, detect, deter and ensure correction in situations of non-compliance. A wide variety of enforcement techniques are utilized where non-compliant products are found. The sub-activity is proactive in detecting violations and enforcing standards.

COMPLIANCE TECHNIQUES

CONSUMER PRODUCTS

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
1.0 Information Approaches:					
1.1 Moral suasion	Canada Care Labelling Program is voluntary and therefore its use can only be encouraged through moral suasion (program provides for information labels indicating proper care method for textiles).		1		
1.2 Consultation on rules	A cornerstone of current regulatory process, not optional. Regulatory changes related to irradiated food were discussed with Grocery Products Manufacturers of Canada and others.		1		
1.3 Information	Information brochures and pamphlets are prepared and distributed. Responses to inquiries from traders and consumers. Also provide copies of Acts and Regulations.	About 85,000 complaints and enquiries were handled in 1986/1987.	1	About 10.2 PYs were devoted to complaints and enquiries in 1986/1987.	
1.4 Education	Involves preparation and delivery of seminars, meetings and materials for traders, trade organizations, consumers and consumer organizations. Includes private meetings between field staff and	1995	2	About 4.0 PYs devoted to consumer/trader education in 1986/87.	Trader education shown to be a significant determinant of trader compliance.

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
	Industry for the sole purpose of education (not enforcement). Includes preparing, setting up, manning and taking down displays, information booths, etc.				
1.5 Performance standards	Incorporated as part of Regulations, e.g. milk fat content allowed in cheeses; voluntary standards such as care labelling and Canada Standard Sizing programs.		1		
1.6 Liaison/consultation (scheduled)	Industry/government committees meet to discuss departmental activities e.g. inter-sectoral working group on nutritional labelling (included industry, consumers, health professionals, etc.).		1		
1.7 Advice/counselling/opinions	Undertaken in the course of education activities (1.4 above) and in the course of inspection activities. e.g. food advertising pre-clearance and food label reviewing activities.		1		
1.8 Compliance policy (public)					
1.9 Public criticism					
2.0 Interventive Approaches:					
2.1 Information letters/visits	Letter or contact with the trade noting specific requirements of the legislation but making no warnings as to more stringent action. Undertaken in the case of a first offence or minor infraction (e.g. incorrect size or type on label declaration).	5694	2		

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
2.2 Regulator correction	Inspector reconditioning shell eggs, fruit or vegetables which failed grade. Branch prefers that the trader undertake reconditioning of lot.	520	1		
2.3 Regulatee correction	Trader correction is correction of violative product prior to resale by the trader, e.g. sale of product not permitted in store until advertising correction made (see also 3.6 below); trader relabels mislabelled meat cuts during inspection; etc.		3		
2.4 Technical assistance	Provided in response to trade request and during inspections. e.g. show trader methods for accurate net quantity verification through proper use of scales.		1		
2.5 Self audits/inspections					
2.6 Government audits					
2.7 Examine fillings		About 8,550 label reviews and 14,000 ad reviews handled in 1986/87.			
2.8 Incentives (financial/tax)					
2.9 Licences/permits/exemptions					
2.10 Warnings (verbal)	Oral warning given to a dealer which specifies the nature of the violation	4737	2		

P* priority ranking in use (highest is 5).

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Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
	In question, the specific legislation and explicitly advises the trader that more stringent action may be considered if the situation is repeated or is not rectified.				
2.11 Inspections	Principal activity of Branch. Visits to establishments at all trade levels (i.e. manufacturing, import/wholesale, retail, etc.), for compliance with several Acts, Regulations, and programs focussing on quantity, quality & labelling of consumer products. Cooperation with Health & Welfare, Agriculture Canada, Fisheries Oceans, and Canada Customs.	About 34,000 Inspections in 1986/87.	5	Time devoted to inspections was about 46.1 PYs in 1986/87 with a further 17.9 PYs for inspection support.	Frequency of inspection is particularly important for quantity compliance.
2.12 Self certification					
2.13 Third party monitoring					
3.0 Enforcement Approaches				All enforcement actions used about 22.2 PYs in 1986/87.	
3.1 Refusal at entry	Refusal by Customs (see 2.11) of textile articles where fibre content is misrepresented.	148	1		
3.2 Investigations	Suspicion of fraud. Laboratory program for compositional analysis of packaged goods e.g. frozen vegetables of correct grade etc. Inspectors screen with microscopes, perform gold analysis, check textile fibre content on site; examine for documentary evidence.		1		
3.3 Warnings (written)	A formal written notice to a dealer	2515	2		Written warnings shown to be an ef-

P* priority ranking in use (highest is 5).

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
	<p>which specifies the nature of the violation in question, the specific legislation and sections violated, and explicitly advises the trader that more stringent action may be considered if the situation is repeated or is not rectified.</p> <p>E.g. presence of a prohibited component in a food (per Food & Drugs Act).</p>				effective tool, especially for labelling compliance.
3.4 Show cause hearings	A meeting (formal or informal) is held at district offices with trader as a more serious follow-up to written warning. Record of proceedings is kept on file. This is the last step before prosecution. A reinspection date is set to verify results.	300	2		Tends to be very effective since most traders would prefer to avoid the trouble and expense of going to court.
3.5 AVCs/undertakings					
3.6 Trader commitment	Agreement by a dealer to correction of all future productions or shipment of goods, within a mutually agreed period of time. This includes next label printing, next importation or any other period of time agreed upon with the inspector, including newspaper and magazine ads, while allowing continued sale of existing product (i.e. sale of products is permitted to continue without corrections made - see item 2.3 above).	14618	3		Trader commitment shown to be an effective tool, especially for labelling and product quality compliance.
3.7 Voluntary disposal/removal	The trader, in the presence of the inspector, has removed the violative items for sale and disposed of them (e.g. exported, destroyed, or sent to charitable)	1423 + 1415 + 33 = 2871 (see Description).	2		

P* priority ranking in use (highest is 5).

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Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
	organization). e.g. recall where retailer sells goods for which fibre content not identified. Voluntary disposal (1423 cases), transfer of goods (1415 cases), and recall (33 cases).				
3.8 Orders/directives					
3.9 Ticketing					
3.10 Seizure/detention/forfeiture	Seizure and detention actions taken to ensure control of the product and/or where alternative actions have failed to maintain control. e.g. forfeiture at wholesale level where standardized food does not meet compositional requirements per Food & Drugs Act.	1288	2		
3.11 Injunctions					
3.12 Prosecutions (or recommendations)	This is the last resort failing response to written warning and show-cause hearing (see above). e.g. Repeat infraction where wholesaler uses common name for a food in a misleading manner (per Food & Drugs Act).	59	1		
3.13 Intervention in court action					
3.14 Fines/Court orders/Imprisonment	Fines are common as a result of prosecution.		1		
3.15 Cost recovery (civil)					

Given the complexity of the compliance program, it is convenient to describe compliance techniques used under three headings: inspections and enforcement; complaints and enquiries; and trader education and consumer information.

Inspections are undertaken to ensure that a high degree of compliance is maintained at various trade levels. Consumer Products inspectors located in district offices have responsibility for undertaking these inspections and enforcement activities. Inspections at the district level are guided by national and regional priorities.

A visit to an establishment, other than one which is scheduled or planned, may be initiated for a number of reasons, including a complaint, a referral from another region or government agency, a follow-up to a previous visit, a sample pick-up or a problem-products blitz. The activities which may form part of an inspection include inspection of products for compliance with quality, quantity and/or labelling regulatory areas and undertaking of enforcement actions such as providing trader correction, giving oral warnings and seizing and detaining products.

Increased emphasis is being placed on comprehensive inspections which focus on the identification and correction of fraudulent or deceptive violations which have an impact which cannot be assessed by consumers. In-office enforcement activities may involve product evaluations or label reviews, advertising reviews, writing letters (for information and warning purposes), preparing educational materials and referrals to other regions or government agencies.

The sub-activity handles complaints and enquiries received from consumers, industry, other government agencies and the media concerning departmental activities, services and legislation. Complaints and enquiries are useful in isolating problems and trends in the marketplace, identifying the need for new regulations, clarifying policy, and changing inspection emphasis. This can facilitate timely corrective action being taken in an important product area.

The sub-activity also undertakes informational activities such as the preparation and delivery of seminars, media interviews, and meeting traders, trade organizations, consumers and consumer organizations. The purpose of this work is to develop a higher level of consumer and trader awareness and understanding of legislative requirements. These information activities are performed as an alternative to direct inspection for achieving marketplace compliance.

With respect to frequency of use, inspections, which are the cornerstone of the compliance system, are the most frequently used compliance technique. Other frequently used techniques in 1986/87 were trader correction, information letters, trader commitment, verbal warnings, written warnings and trader education. Harder enforcement measures such as voluntary disposal, transfer of goods and seizures were less frequent but still important in 1986/87. Recommendations for prosecution were relatively infrequent.

3.1.3 Costs and Effectiveness of Techniques

It is not possible to disaggregate available cost information to make the linkages with all of the specific techniques utilized by Consumer Products, but some information on person-year costs by function and relevant outputs is available. In some cases, it is possible to get a rough idea of unit costs in terms of person-years from this data.

The most comprehensive information available on relative effectiveness of compliance techniques comes from a recent Program Evaluation study which used Toronto as the site for a pilot study. A random sample of 898 establishments was selected from a list of establishments available in the Toronto office files. The sampling strategy ensured that establishments in all trade levels and product classes were selected. Data on the history of compliance were extracted from the establishment files. Information extracted from the establishment files was recorded as data items for inclusion into a database, and statistical models were based on these items.

The study developed basic models which related increases in percentage compliance between consecutive inspections to a number of explanatory factors. The major findings which deal with program effectiveness are described below:

- . trader education, written warnings and trader commitment as part of inspections are all effective instruments in bringing about increases in labelling compliance;
- . the one enforcement action which is effective in bringing about an increase in quality compliance is trader commitment;
- . both trader education and trader commitment as part of inspections are effective in bringing about an increase in mean compliance for all regulatory areas.

These results indicated that what occurs in an inspection, rather than the fact of an inspection itself, is usually the most important factor in determining increases in compliance. In relation to the area of quantity compliance, however, the study found that the time between inspections was an important factor in determining increases in compliance. The positive effects of an inspection in quantity compliance were less if the time between inspections was large.

Actions such as trader education, written warnings and/or trader commitment all have incremental effects on compliance. Other mechanisms, such as oral warnings and trader corrections, were not seen to have significant impacts. In considering these findings, it must be remembered that they are based solely on data from the Toronto district and that the sample sizes employed were relatively small.

3.1.4 Summary

Consumer Products uses a wide variety of instruments to achieve compliance with the Acts and voluntary programs which it administers, however, the main emphasis in the compliance program is on inspections as a means of monitoring, detecting, deterring and ensuring correction in situations of non-compliance.

The information available on the cost of employing techniques and the relative effectiveness of specific techniques is limited.

Evidence available from previous evaluations suggests that what occurs in an inspection, rather than the fact of an inspection itself, is usually the most important factor in bringing about increases in compliance.

3.2 Weights and Measures

3.2.1 Description

Weights and Measures is responsible for accurate measurement and equity in trade transactions based on measurement. The sub-activity is responsible for administering the Weights and Measures Act and some quantity provisions of the Consumer Packaging and Labelling Act and the Feeds, Seeds, Pest Control Products and Fertilizers Acts.

Strategic objectives for the sub-activity are:

- . to minimize inaccurate measurement;
- . to ensure equity in trade of commodities and services provided on the basis of measurement;
- . to ensure that only legal units of measurement defined in the Weights and Measures Act are used in trade.

Weights and Measures is concerned with achieving high levels of compliance (in some cases 100 percent) with:

- . standards of mass, volume and length;
- . requirements for new types of trade devices;
- . requirements for initial and periodic inspections of trade devices;
- . requirements for traded services and commodities.

3.2.2 Compliance Techniques and Uses

Metrological control is accomplished through four principal operations. Each of these involves using one or more compliance instruments.

First, standards of mass, volume and length are calibrated and certified in accordance with a legislated schedule to achieve and maintain uniformity of measurement in domestic and international trade. Reference standards are traceable to NRC primary base units of measurement.

Second, new trade devices are examined and tested for compliance with legislated requirements intended to ensure a population of trade devices that are reliably accurate and to minimize the possibilities of fraudulent device usage.

COMPLIANCE TECHNIQUES

WEIGHTS AND MEASURES

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
1.0 Information Approaches:					
1.1 Moral suasion					
1.2 Consultation on rules	Dealing with industry associations of device manufacturers and business users on new specifications and rules. Recently introduced new specifications in consultation with Propane Gas Association of Canada.	The "1" shown in the next column shows the low intensity of resource use. In terms of importance this technique is ranked highly by program management.	1		
1.3 Information	Information brochures, etc., may be issued during an inspection or in response to an official request (i.e. Complaints & Enquiries).		1		
1.4 Education	Involves preparation and delivery of seminars, meetings and materials for traders, trade organizations, consumers and consumer organizations. Includes private meetings between field staff and industry for the sole purpose of education (not enforcement). Includes preparing, setting up, manning and taking down displays, information booths, etc.		1		

* Priority ranking in use (highest is 5)

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
1.5 Performance standards					
1.6 Liaison/consultation (scheduled)	Scheduled semi-annual meetings are held with some Associations (e.g. Canadian Association of Scale Manufacturers) to review problem areas and concerns and to discuss possible new regulations as appropriate.		1		
1.7 Advice/counselling/opinions	Manufacturers and users request opinions on the design and performance features of measuring devices and systems prior to manufacturing the device or installing the system.		2		
1.8 Compliance policy (public)					
1.9 Public criticism					
2.0 Interventive Approaches:					
2.1 Information letters/visits	Used to induce compliance, mostly for commodity quantity infractions where it is deemed that further information may bring about improved compliance. Often used to inform more senior levels of a firm about operational problems of which they may not be aware.		2		
2.2 Regulator correction	Adjustments made by an Inspector which are considered minor in nature (such as zeroing/levelling scale).		2		
2.3 Regulatee correction	When a device is found to be out of tolerance a Notice of Non-Compliance report is issued and the device tagged	60-65 thousand expected FY87/88.	3		

* Priority ranking in use (highest is 5).

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
	for repair and reinspection.				
2.4 Technical assistance	Advice is provided on request to help traders bring devices or quantities of pre-packaged goods into compliance. Lists are available for alternative parts suppliers and repair outlets as appropriate.		1		
2.5 Self audits/inspections					
2.6 Government audits					
2.7 Examine filings					
2.8 Incentives (financial/tax)					
2.9 Licences/permits/exemptions	New or prototype trade devices are examined and tested for compliance under controlled conditions.	About 340 approvals in 1986/87.	2	About 6 PYs were used on approvals in 1986/1987.	Since approvals ensure devices are fit to perform the intended uses, they are highly effective for this purpose.
2.10 Warnings (verbal)	Conducted during Inspector's exit interview where warranted, such as in cases of repeat offenders to indicate that prosecution may be pursued if record does not improve.		2		
2.11 Inspections	Principal activity of the Branch. Device inspection types include: initial factory inspection; initial field inspection; zone inspection; control inspection; complaint inspection; request inspection; and re-inspection. Commodities are also inspected for net quantity compliance.	In 1986/87 there were about 286,000 device inspections and about 3,400 establishments visited for commodity compliance inspections.	5	About 59 PYs devoted to device inspections and 3 PYs to commodity inspections in 1986/87.	Initial inspections ensure that all devices are in compliance before being put into trade use and are highly effective. Evidence suggests that periodic inspections are effective in bringing about compliance.

* Priority ranking in use (highest is 5).

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
2.12 Self certification					
2.13 Third party monitoring					
3.0 Enforcement Approaches					
3.1 Refusal at entry					
3.2 Investigations	An investigation is undertaken when fraudulent device usage is suspected. The device is often in compliance, but is deliberately manipulated to cause over or under measurement.		2		
3.3 Warnings (written)	This is similar to the information letter with the additional threat of prosecution if compliance record is not improved.		1		
3.4 Show cause hearings					
3.5 AVCs/undertakings					
3.6 Trader commitment	Informal procedure used at Inspector's discretion where a minor offence or deviation from acceptable tolerances exists, which if required to be corrected would cause major disruption and inconvenience. Typically used in an initial inspection when rejection of the device may preclude the opening of business. A short time for correction (usually a week or two) is agreed upon. Conducted during exit interview where warranted.	Rare.	2		

* Priority ranking in use (highest is 5).

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Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
3.7 Voluntary disposal/removal	Usually when owner of device agrees to forfeit a seized device or agrees to mark a non-compliant device "Not for Use in Trade".		2		
3.8 Orders/directives					
3.9 Ticketing					
3.10 Seizure/detention/forfeiture	Used in more serious, repeat offender cases and almost always in cases of non-compliance for net quantity infractions. Use or release is not allowed until infraction has been corrected.		2		
3.11 Injunctions					
3.12 Prosecutions (or recommendations)	Prosecutions are undertaken for serious cases of repeat device non-compliance, where the inspection record serves as the primary evidence and in cases of fraudulent device use pursuant to an investigation.		1		
3.13 Intervention in court action					
3.14 Fines/Court orders/Imprisonment	Legislation provides for penalties upon conviction.		1		
3.15 Cost recovery (civil)					

Third, all approved devices are inspected before they are used in trade, and periodically thereafter as discussed below, to ensure they continue to comply with prescribed tolerances and are not being used in a fraudulent manner.

Fourth, commodities and services traded on the basis of measure are inspected periodically to ensure they are measured and priced accurately within prescribed tolerances.

Field inspections often involve the use of complex equipment and certified standards of mass, volume, or length. The inspection work is planned using two distinct approaches.

One approach is general and is usually planned by geographic zone, or device or trade group (zone inspections). This approach is intended to detect non-compliance, to improve compliance by maintaining a presence in the marketplace, to act as a deterrent to careless and fraudulent practice, and to identify specific problem areas for subsequent resolution. The other approach is selective and concentrates on real and significant problem areas which have been previously identified (control inspections).

In addition to the initial, zone and control inspections, other inspections are undertaken for specific purposes, namely:

- . request inspections - inspections conducted at the request of a trader;
- . reinspections - reinspection of non-compliant devices following repair/recalibration by owner;
- . complaint inspections - inspections responding to specific concerns raised by individuals or firms;
- . standards calibration - calibration and certification of CCAC and some industry standards which are used by the department;
- . approvals - inspection of devices on conditional approval.

Enforcement action is always taken where the error is beyond allowable limits and in favour of the trader. This action involves increasingly severe enforcement instruments to achieve compliance. These instruments include written warnings, voluntary disposal or removal, device seizures or prosecutions. In addition to inspection and enforcement activities, significant effort is put into trader and consumer education including seminars, liaison, consultations, advice, counselling, advisory opinions and technical assistance.

In terms of frequency of use, inspections are by far the most frequently applied compliance technique. The most often used inspections are zone and initial factory inspection followed by re-inspection, control, initial field, request and complaint inspections. Standards calibrations are very frequently used but approvals for new or prototype devices less so. Notices of non-compliance and trader correction are the most frequent follow-up activity.

3.2.3 Costs and Effectiveness of Techniques

Some information on resource utilization and outputs for key Branch functions is available. These sources do not, however, provide information at the level of all individual techniques since this information is not collected for the MIS. In addition, as part of a study done jointly by the Branch and Program Evaluation, detailed cost estimates were made for eight activities (initial factory, initial field, zone, control, complaint, request, and re-inspections plus standards calibrations) for twenty-six device classes.

Weights and Measures uses a proactive approach to the prevention, detection and correction of non-compliant devices and inaccurately measured commodities. Compliance is predicated on ensuring that only approved and certified devices are used in trade and on maintaining a vigorous level of enforcement. A basic premise of the compliance strategy is that the higher the proportion of the device population inspected, the higher the level of compliance that can be achieved. The purpose of field inspections is to detect and deter non-compliance since most buyers and sellers are unaware when non-compliance occurs.

With respect to the effectiveness of the techniques used, it is best to briefly consider individually each of the four main functions:

- . calibration of standards of mass, volume and length - at the present time the Branch is responsible for the calibration of some 70,000 standards each year including weights, liquid measure and volumetric proving equipment. This activity is highly effective in ensuring that a system of common, consistent units of measurement are disseminated throughout the country. However, this function is not a set of compliance techniques, but rather an essential precondition of a weights and measures system;
- . approvals - the examination and testing of new trade devices to ensure their conformity with regulations and specifications for design, performance and installation is highly effective in ensuring that weighing and measuring devices are suitable for their intended uses. Approvals are used to fully evaluate devices for all performance/design requirements under variable or controlled conditions;

- device inspections - initial inspections are undertaken before a device is put into service. They assure that devices are working properly before being put into trade use and are highly effective for this purpose. Devices are also inspected periodically to ensure that the devices and their usage are in compliance. Data from re-inspections indicate that devices found in non-compliance are usually brought back into compliance as required;
- commodity inspections - commodity measurement is used to determine whether or not measured commodities comply with net quantity requirements. They thus capture an additional dimension of the buying and selling process, since devices which are in compliance may still be improperly used resulting in inequity of measurement. Program management believes that this is a fairly effective tool although little hard evidence is available.

3.2.4 Summary

Metrological control is accomplished through four main operations: calibration of standards; approval of new trade devices; initial and periodic reinspection of trade devices; and inspection of commodities and services. Inspections are the most frequently used compliance technique.

Cost information is available for certain key functions, but not for every technique employed.

Available evidence, much of it qualitative, suggests that techniques currently employed are effective in bringing about compliance.

3.3 Bankruptcy

3.3.1 Description

The Bankruptcy Act of 1949 was designed to equitably resolve the interests and claims of insolvent debtors, creditors, and the general public. The Act aims to relieve the bankrupt of his debt burden and return him to economic life in a rehabilitated state. Protection is afforded to creditors in order to maintain confidence in the integrity of the financial credit system.

Strategic objectives of the Bankruptcy sub-activity are:

- . to restore resources locked up in insolvencies to more productive uses;
- . to ensure fair and equitable treatment of debtors and creditors;
- . to prevent fraud in insolvent estate administration.

Bankruptcy attempts to gain high levels of compliance with such matters as:

- . duties and responsibilities of bankrupts;
- . duties and responsibilities of trustees;
- . creditors claims.

3.3.2 Compliance Techniques and Uses

Compliance with the Bankruptcy Act is maintained through four main-functions. First, the Bankruptcy Branch supervises the administration of bankruptcy estates. Actual administration of bankruptcy estates is handled by the bankruptcy trustees who are private sector individuals, frequently members of firms. Specific activities or techniques employed by the Branch as part of supervision of estate administration include registration of estates, examination of debtors (called for in the Act but only performed in some 50 percent of cases owing to resource limitations) to ensure that disclosure is complete and accurate, chairing creditor meetings, referring debtors to trustees, investigating suspected abuse and making referrals to the RCMP as appropriate. The Supervision of Estate Administration (SEA) program is designed to ensure adequate levels of compliance with requirements of the Bankruptcy Act.

Second, Bankruptcy verifies and enforces trustee compliance. Trustees are trained and examined by the Bankruptcy Branch and are licensed (and may be delicensed) by the

COMPLIANCE TECHNIQUES

BANKRUPTCY

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
1.0 Information Approaches:				About 12 PYs for all information approaches.	
1.1 Moral suasion					
1.2 Consultation on rules	Joint Committee on Bankruptcy (JCB) includes trustees and meets quarterly to discuss bankruptcy issues and to make recommendations to the Superintendent of Bankruptcy.		2		
1.3 Information	Brochures made available to public, response to public enquiries.		1		
1.4 Education	Branch works with Canadian Insolvency Association on professional development and training seminars for trustees.		1		
1.5 Performance standards	Superintendent issues Directives to trustees indicating expected conduct and offering clarification on technical matters.		1		
1.6 Liaison/consultation (scheduled)	See 1.2 above re JCB.		1		
1.7 Advice/counselling/	Responses given to process participants'				

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
opinions	questions concerning specific estates. Official Receivers visit trustees and counsel them on how to better comply with Branch requirements. Official Receiver maintains continuing contact with trustee through Supervision of Estate Administration program.				
1.8 Compliance policy (public)					
1.9 Public criticism	Insolvency Bulletin lists convictions and sentences given.		1		
2.0 Interventive Approaches:				About 85 PYs for all interventive ap- proaches.	
2.1 Information letters/ visits					
2.2 Regulator correction					
2.3 Regulatee correction					
2.4 Technical assistance	Official Receivers offer counselling to trustees e.g. correct method for calcu- lation of interest; allocation of in- terest income between estate accounts.		2		
2.5 Self audits/inspections					
2.6 Government audits	National Audit Group examines trustees to verify compliance with Act.		3		
2.7 Examine filings	Official Receiver reviews documents sub- mitted by trustee per Act upon applica-	In 1987/88, the Branch was involved	5		Basic premise of Branch is that compliance can be increased by en-

P* is priority ranking in use (highest is 5)

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Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
	tion for discharge and submits Letter of Comment on findings to the Court. Ongoing examination of estate documents through Supervision of Estate Adminis- tration program.	with some 33,000 filings, 18,000 ex- aminations, 18,000 meetings of credi- tors and 30,000 let- ters of comment.			uring adequate level of visibility for key functions. For increasing the level of key techniques/outputs listed to the left, there seems on the basis of qualitative informa- tion to have been improvements in compliance.
2.8 Incentives (financial/ tax)					
2.9 Licences/permits/exemp- tions	Trustees licenced by Minister CCAC on advice of Superintendent. Annual renew- al.		2		Licences are revoked/suspended although rarely for improper trustee behaviour.
2.10 Warnings (verbal)	OR warns errant trustee and Branch may advise Canadian Insolvency Association of trustee problems to press for correc- tion of behaviour or practices.		2		
2.11 Inspections					
2.12 Self certification					
2.13 Third party monitoring					
3.0 Enforcement Approaches				About 12 PYs for all enforcement ap- proaches.	
3.1 Refusal at entry					
3.2 Investigations					
3.3 Warnings (written)					
3.4 Show cause hearings					
3.5 AVCs/undertakings					

P* is priority ranking in use (highest is 5)

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Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
3.6 Trader commitment					
3.7 Voluntary disposal/re- moval					
3.8 Orders/directives					
3.9 Ticketing					
3.10 Seizure/detention/for- feiture					
3.11 Injunctions					
3.12 Prosecutions (or recom- mendations)	Branch submits Investigation Order to RCMP who investigate and lay charges if sufficient evidence found.		1		
3.13 Intervention in court action					
3.14 Fines/Court orders/im- prisonment	Provisions made in Bankruptcy Act; Crim- inal Code also applies re fraud.		1		
3.15 Cost recovery (civil)					

Minister of CCAC on the recommendation of the Superintendent of Bankruptcy. The SEA program mentioned above together with the work of the National Audit Group play major roles in monitoring and verifying trustee performance. General direction is provided to the trustees through detailed directives issued by the Superintendent. Corrective action is taken when monitoring activities indicate problems with trustee management of a given estate.

Third, Bankruptcy provides information on bankruptcies and the bankruptcy process. The key source of bankruptcy data is through the collection of various types of information pertaining to the bankrupt and his or her financial affairs. This information is used to create a file for each estate and to produce aggregate bankruptcy statistics. This information is made available to the credit community and other interested parties through the Canada Gazette, the Insolvency Bulletin, the Report of the Superintendent of Bankruptcy or directly from the Branch. The Branch also participates in presentations, conferences and seminars to provide information on the bankruptcy process to interested groups.

Fourth, Bankruptcy handles a large number of inquiries and complaints. These serve to ensure that appropriate information is made available to the public and serve as a source of information on possible abuse.

The most frequently employed compliance techniques include filings of statements of affairs and examination of debtors using the filings as a starting point in the examination.

3.3.3 Costs and Effectiveness of Techniques

Relatively little quantitative information is available on the cost and effectiveness of compliance techniques used by the Bankruptcy Branch. One reason for this is that Bankruptcy as currently administered is not primarily a compliance system but is concerned with the provision of a government mandated service to individuals and firms.

Some information on person-years employed and outputs is available for key functions of the Branch. From this information, one can get some idea of the cost of delivering certain outputs.

During interviews, it became clear that the techniques employed by the Branch to ensure compliance with the Bankruptcy Act are felt to be quite useful. However, at this time there is little quantitative evidence of the effectiveness of Branch activities.

3.3.4 Summary

Of the sub-activities examined, Bankruptcy conforms least to the usual idea of a compliance program, but there are important areas in which Bankruptcy seeks to increase compliance of private sector agents including debtors, creditors and trustees. The most frequently employed compliance techniques are filings of the bankrupt's statement of affairs and examination of the bankrupt.

Little quantitative information is available on the costs or effectiveness of the techniques employed.

3.4 Corporations

3.4.1 Description

Corporations is responsible for the administration of a number of Acts including most importantly Canada Business Corporations, Canada Corporations, Boards of Trade, Canada Co-operative Associations and Trade Unions. The Canada Business Corporations Act, which is at the core of the sub-activity's work, regulates the creation and existence of federal business corporations.

Corporations Branch has two principal strategic objectives:

- . to regulate the creation and existence of federal corporations;
- . to maintain order and fairness in the corporate environment.

Corporations work is concerned with achieving high levels of compliance in such areas as:

- . incorporation and amendments to articles;
- . corporate names;
- . financial disclosure;
- . annual returns;
- . prospectuses;
- . insider interest reporting;
- . proxy solicitation circulars;
- . take-over bids.

3.4.2 Compliance Techniques and Uses

Corporations provides government mandated services to firms, organizations, the business community and the general public. The quality and quantity of this service is heavily dependent on its compliance system.

In discussing compliance techniques, it is useful to distinguish between statutory shareholder protection provisions and statutory filings. The approach to statutory shareholder protection provisions takes into account the fact that they are partly self-enforcing. Minority stockholder rights are protected through review of complaints, documents, media reports and court applications with

COMPLIANCE TECHNIQUES

CORPORATIONS

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
1.0 Information Approaches:					
1.2 Consultation on rules	Consultation on potential changes to the CBCA, CCA and Regulations. eg: Uniform Insider Trader Report consultations over past year.		1		
1.3 Information	Information kit on exemptions, how to fill out forms, names, etc. In addition Branch is responsible for statutory filing and provision of corporate information. These tools are aimed at improving decision making in the market but also improving compliance by encouraging self-enforcement.	Continuous; also the Branch handled some 163,000 statutory filings and 139,000 requests for corporate information.	1	Insignificant costs.	Responds to all requests.
1.4 Education	Seminars held across country to explain new legislation. eg: Director's speech to Institute of Corporate Secretaries. Contact with Canadian Institute of Chartered Accountants (self-enforcing).	Up to 5 times (explaining the legislation).	1	Insignificant costs.	Careful targetting of the events results in high interest and retention of information and awareness.
1.5 Performance standards					
1.6 Liaison/consultation (scheduled)	Canadian Association of Corporate Law Administrators (CACLA) annual conference with provincial counterparts.		1		

* Priority ranking in use (highest is 5)

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
	To advance the cause of uniformity.				
1.7 Advice/counselling/ opinions	Review and comment on draft Court applications re arraignments in view of Director's right to appear and be heard.	Must determine once or twice per month whether Director's appearance is warranted.	1		Very effective in anticipating and avoiding problems of compliance and fairness in relation to transactions with large economic implications. Lawyers may informally advise the Branch of their intentions to obtain an advance opinion if the situation may be contentious.
1.8 Compliance policy (public)					
1.9 Public criticism	Publication in Bulletin of corporations convicted of failure to send financial statements.		1	Negligible (automated).	Bulletin circulation somewhat limited.
2.0 Interventive Approaches					
2.1 Information letters/ visits	Reminder notices to corporations required to send financial statements or annual returns.	5000	5	\$1700 Postage (automated and computerized).	Study showed that it produces significantly higher compliance rates.
2.2 Regulator correction	Correction of filings with telephone assistance of regulatee.		2		
2.3 Regulatee correction	Voluntary correction of errors and omissions in proxy and take-over bid circulars.		2		Often used where pure clerical error is found.
2.4 Technical assistance					
2.5 Self audits/inspections					
2.6 Government audits					

* Priority ranking in use (highest is 5).

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
2.7 Examine filings	Examine proxy circulars and take-over bid circulars for compliance with Act and Regulations.	550	3	1 PY	Compliance rate is 90%. Corporations are informed of deficiencies and immediate correction is achieved where considered critical.
2.8 Incentives (financial/tax)					
2.9 Licences/permits/exemptions	Grant exemptions from disclosure and other provisions of the Act. eg: Financial auditors.	450	3	1 PY	Essential to the objective of fairness in the corporate environment because it provides relief from strict application of the Act.
2.10 Warnings (verbal)					
2.11 Inspections					
2.12 Self certification					
2.13 Third party monitoring					
3.0 Enforcement Approaches				About 12 PYs were used on all enforcement techniques in 1986/87.	
3.1 Refusal	Applications and suggested names of corporations refused under certain circumstances.		2		
3.2 Investigations	a) Investigation of failure to send financial statements to the Director and prosecution where evidence found, i.e. if required documents to not arrive then it must be established that they	800	3	1 PY plus legal fees and Department of Justice resources.	Compliance rate is around 90%. Most (over 50%) prosecutions result in convictions and the receipt of the financial statements. Fines are very low (\$100 to \$200).

* Priority ranking in use (highest is 5).

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Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
	{should have. An interruption in anticipated paper flow triggers suspicion and leads to examination and search for evidence.				
	{b)Investigation of complaints concerning other sections of the CBCA and CCA, including allegations of shareholder oppression.	60	1	PY plus legal fees.	Some cases are very effective in contributing to the objective of order and fairness in the corporate environment. In others, limited powers in the statutes limit the action that can be taken.
3.3 Warnings (written)	{Corporate Services Division issues warning letters through an automated system.		1		
3.4 Show cause hearings					
3.5 AVCs/undertakings					
3.6 Trader commitment					
3.7 Voluntary disposal/removal					
3.8 Orders/directives	{Director can order changes of name or issue compliance orders as well as exemption orders.		2		
3.9 Ticketing					
3.10 Seizure/detention/forfeiture					
3.11 Injunctions	{Compliance orders obtained by the Director from the Court ordering compliance with the Act.	{Not used to date.	1	{n/a	{The mere existence of this power seems to be sufficient to produce voluntary compliance without the need to threaten its use.

* Priority ranking in use (highest is 5).

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Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
3.12 Prosecutions	Prosecution of corporations for failure to send financial statements to the Director, fines on conviction.	74	2	Included above.	See 3.2 a) above.
3.13 Intervention in Court Actions	Appearing in Court during the hearing of an application for an investigation order under s.222 of the CBCA (back-up or endorsement); also s.234 - Director on his own, s.240 -Injunctions and s.198 -Take-over bids.	Extremely infrequent since most such third party applications are on private disputes with no public interest.	1	n/a	
3.14 Fines, etc.	Prosecution of corporations for failure to send financial statements to the Director, fines on conviction.	39	1	Included above.	See 3.2 a) above.
3.15 Cost-recovery	Seeking an order to recover damages to Javelin International Ltd. and its shareholders arising from the actions of management.	One or two major cases on average.	1	Included above.	Most of these cases are very effective in terms of favorable judgements or settlements.

inquiries and investigations conducted in cases of suspected abuse. The approach to statutory filings is proactive and includes a variety of tools including monitoring and reminders to file, information on filing requirements and, as a last resort, prosecution or dissolution for non-complying firms. At the present time, the sub-activity is largely reactive in its approach to violations of statutory shareholder protection provisions, but would like to become more proactive as resources permit.

In undertaking its work, the sub-activity undertakes five major functions. First, the sub-activity is responsible for incorporation and amendments to articles. This work involves examining all articles and applications for conformity with relevant Acts and results in an orderly framework for the conduct of business.

Second, Corporations grants and, where necessary forcibly removes corporate names. This function helps to avoid confusion of identity among corporations, and prevents encroachment upon the goodwill developed by existing corporations.

Third, the sub-activity obtains and processes corporate information. This information includes financial statements prospectuses, insider interest reporting, proxy solicitation circulars and takeover bid circulars. The sub-activity's role is to ensure that up to date corporate information is received, filed and stored in a retrievable manner. Firms and insiders can apply for exemptions in cases where disclosure would result in undue prejudice, burden or cost.

Fourth, Corporations disseminates corporate information to the public. This information allows the public to have necessary, timely and accurate information for research and decision making concerning federal corporations. This information also increases the transparency of business operations and thereby contributes to shareholder protection.

Finally, the sub-activity conducts inquiries and investigations and participates in legal proceedings in cases of alleged or suspected abuse. This enforcement activity encourages compliance with relevant Acts, helps to maintain public perceptions of the fairness of the corporate environment and helps to protect shareholders.

The most frequently employed techniques include provision of information, statutory filings and enforcement actions.

3.4.3 Costs and Effectiveness of Techniques

Information is available on volumes, costs and revenues for major outputs. The range in costs for 1986-87 is worth noting, ranging from \$1.63 per statutory filing to \$8085.00 per investigation. Clearly, the heavy use of automation has made it possible to keep the costs for the routine outputs at a low level.

Some quantitative information is available on overall sub-activity effectiveness. In particular, compliance rates are available for financial statements filed, annual returns filed and completeness of proxy solicitation circulars. The compliance rates achieved in all of these areas suggest that the techniques used to bring about compliance with CBCA and other Acts administered by Corporations Branch are effective. However, with respect to statutory shareholder protection provisions, little is known about their effectiveness.

3.4.4 Summary

Corporations employs a large number of compliance techniques in bringing about compliance with the CBCA and other Acts. Heavy use of computerization has enabled it to utilize large numbers of compliance actions with fairly limited resources.

Cost information is available for major outputs but not for all compliance techniques employed.

Although quantitative evidence on impact is not available, there is a fairly good data base which could be used to explore effectiveness as a means of further improving value for money.

3.5 Marketing Practices

3.5.1 Description

Marketing Practices is responsible for administering sections 36 through 37.3 of the Competition Act. The Marketing Practices sub-activity relies primarily on general prohibitions against false or misleading representations. The sub-activity is also responsible for enforcing several related provisions of the Competition Act which prohibit specific trade practices, such as the use of false tests and testimonials in representations, double ticketing, pyramid selling, referral selling, bait and switch selling, and sale above advertised price. The primary focus of marketing practices enforcement has been on representations in advertising, particularly price or other "commercial" aspects of a promotion.

The basic strategic objectives of the Marketing Practices sub-activity are as follows:

- . to promote a marketplace in which purchasers can make informed and rational decisions;
- . to reduce incidence of violation of marketing practices provisions of the Competition Act.

Marketing Practices is concerned with ensuring high rates of compliance with the provisions of the Competition Act outlined above.

3.5.2 Compliance Techniques and Uses

The compliance orientation of the Marketing Practices sub-activity arises from the criminal law origins and foundation of the competition legislation in which it is situated. While the predominant enforcement activity of the Program is direct investigation/prosecution, the focus of the enforcement activities is not primarily punitive, but is preventative in nature. The sub-activity is largely reactive in responding to complaints of alleged violations of the Act.

Marketing Practices employs a range of compliance techniques including investigation/prosecution, information letters, information visits, and firm and consumer education activities (e.g. speeches, seminars, the Misleading Advertising Bulletin, and the Misleading Advertising Guidelines). The sub-activity also maintains a "Compliance Program", under which firms may obtain advisory opinions on whether materials to be used in proposed promotions comply with legislative requirements. More recently, alternative case approaches including prohibition orders and negotiated settlements have started to be considered.

COMPLIANCE TECHNIQUES

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MARKETING PRACTICES

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Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
1.0 Information Approaches:					
1.1 Moral suasion					
1.2 Consultation on rules	Extensive, prolonged discussions have taken place with the Direct Sellers Association concerning reform of the provisions of the Competition Act dealing with pyramid selling schemes.	No other consultation in past 10 years.	1	Insignificant (less than 0.2 PY).	
1.3 Information	Branch publishes a Misleading Advertising Bulletin describing the provisions of the Act and how they are enforced. Other descriptive material published non-periodically.	MA Bulletin is published quarterly. 277 requests for information and interviews in 1986/87.	1	Approximately 0.3 PY.	Bulletin is viewed as useful by traders.
1.4 Education	Speeches are routinely given to interested businesses and consumer groups; seminars are conducted for university level courses and for individual firms where appropriate. Frequent contact with some Associations (Branch officers often attend meetings of automobile dealer and jewellers associations).	Total of 161 in 1986/87.	1	About 0.2 PY in 1986/1987.	
1.5 Performance standards	In addition to MA Bulletins (see 1.4 above) a publication titled "How to	See 1.3 above.	1	Insignificant other than those expended	

Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
	Avoid Misleading Advertising: Guide- lines" has been published and is sold in government book stores.			in relation to 1.3 above.	
1.6 Liaison/consultation (scheduled)					
1.7 Advice/counselling/ opinions	eg: Requests for advisory opinions are received from a wide variety of busi- nessmen and lawyers, usually re promo- tional contests or multi-level selling schemes.	About 350 written opinions and 900 oral opinions are provided each year.	3	1.0 PY in 1986/87.	Director's Program of Compliance is viewed as useful by those who use it.
1.8 Compliance policy (public)					
1.9 Public criticism	MA Bulletin (see 1.3 above) is the pri- mary vehicle to report on convictions. In exceptional cases, there may also be an individual press release.		1		
2.0 Interventive Approaches:					
2.1 Information letters/ visits	This is a routine procedure applied to cases of lesser impact and to those where evidence is likely to be difficult to acquire. An information contact, whether by visit or letter, involves communicating to a firm the nature of a complainant's al- legations and an explanation of the relevant legislation and jurisprudence.	About 1300/year.	4	0.9 PY for informa- tion visits and 1.5 PY for enquiries in 1986/87.	Appears to be a useful supplement to "harder" techniques.
2.2 Regulator correction					
2.3 Regulatee correction					

P* is priority in use (highest is 5).

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Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness	
2.4	Technical assistance					
2.5	Self audits/inspections					
2.6	Government audits					
2.7	Examine filings					
2.8	Incentives (financial/ tax)					
2.9	Licences/permits/exemptions					
2.10	Warnings (verbal)					
2.11	Inspections					
2.12	Self certification					
2.13	Third party monitoring					
3.0	Enforcement Approaches					
3.1	Refusal at entry					
3.2	Investigations	This is the primary activity of the Branch. Investigations are typically triggered by a complaint.	About 2200 investigations commenced in 1986/87 stemming from 12,000 complaints.	5	15.3 PYs for investigations and 5.6 PY for complaints in 1986/87.	See comments for prosecutions ((3.12) below. Prosecutors believe that investigations are of high quality which should improve their effectiveness.
3.3	Warnings (written)					
3.4	Show cause hearings					

P* is priority in use (highest is 5).

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Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
3.5 AVCs/undertakings (Assurance of Voluntary Compliance)		To be implemented in the near future.			
3.6 Trader commitment	Often in borderline cases an informal undertaking to discontinue a practice will be sufficient to close a case.	Several dozen/year.	1	None additional needed.	Appears to be useful and is potentially cost-effective if compliance can be obtained without costly legal action.
3.7 Voluntary disposal/removal					
3.8 Orders/directives					
3.9 Ticketing					
3.10 Seizure/detention/forfeiture					
3.11 Injunctions	One Consent Prohibition Order obtained in relation to s.30(2) of the Act was negotiated earlier this year. Several more possible cases are being pursued.	Presently rare, but expected to become an important alternative to prosecution.	1	Not distinguishable from those attributed to investigations.	It is premature to judge the effectiveness of this tool, but it appears to be potentially a very useful innovation.
3.12 Prosecutions (or recommendations)	Standard procedure when sufficient evidence is available.	About 140 proceedings commenced in 1986/87, or 15% of investigated cases.	3	3.8 PYs in 1986/87 for prosecutions and case development.	There is evidence that the program is having a positive effect through specific deterrence as well as some evidence of general deterrence.
3.13 Intervention in court action					
3.14 Fines/Court orders/imprisonment	As provided for by the Act. For example, \$1M fine against Sears re diamond sales; fine against chocolate				

P* is priority in use (highest is 5).

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Technique	Description/Examples	Frequency of Use	P*	Resources	Comments on Effectiveness
3.15 Cost recovery (civil)	bar manufacturer for contest where initial wave of winners was followed by near absence of winners.				

Marketing Practices does, however, have a clear orientation toward a criminal law/general deterrence enforcement model. This is reflected in the background and attitudes of the sub-activity personnel, in their general sense of "mission", and in the balance of cases that are dealt with through investigation. Many of the investigators have previous experience as police officers. Investigatory skills are clearly necessary and valued in the sub-activity since judicial enforcement is seen generally as the most important and effective mechanism for meeting the overall objectives of the legislation.

Cases which appear to involve violations of the legislation, but which are not assigned for investigation, may be handled through information letters or information visits. In 1985-86, the number of complaints streamed to the investigation route (1042) was virtually the same as the number handled through these alternative enforcement responses (1109). Approximately 27% of the complaints (involving local marketing practices only) were not pursued due to resource limitations.

Once a matter has been assigned for investigation, a field investigator will commence the process of information gathering. The development of each case file is reviewed periodically by the investigator and field management. Headquarters may be consulted by field management, but decision-making regarding case development at this state is largely decentralized. When sufficient information has been obtained, a decision is taken on whether there is enough evidence to refer the matter to the Attorney General. At any stage of an investigation, the matter may be re-routed and handled through an information letter or information visit, or simply be dropped with notification to the firm involved.

Some perspective on the balance in enforcement activities of the Program can be obtained by reviewing the resource utilization for the various activities. In 1985-86, the resources used in investigation, case development and prosecution were about six times the resources used in the education program, the compliance program, information visits, and information letters.

3.5.3 Costs and Effectiveness of Techniques

Some information on costs and outputs for major Marketing Practices functions is available.

The effectiveness of Branch activities was examined as part of a recent Program Evaluation study. As part of this study a telephone survey of 994 businesses was conducted. The sampling strategy focussed on differences in experience with the Branch (i.e. randomly selected businesses, businesses which had been investigated but not prosecuted, and businesses which had been prosecuted), in differences by trade level (i.e. manufacturers, retailers, other) and in differences by region.

The evaluation found that each of the activities employed by the Branch is effective taking into considerable the level of resources available. Some key findings include:

- o specific techniques such as provision of the Marketing Practices bulletin or the Director's Program of Compliance are viewed as useful by those in the business community who use them;
- o there is evidence that the program is having a positive impact through specific deterrence, i.e. deterrence among those who have been prosecuted for violations of the advertising and marketing practices provisions of the Act;
- o there was also some evidence of general deterrence, i.e. deterrence among the general population of businesses.

3.5.4 Summary

Marketing Practices has traditionally employed a narrower range of techniques than some other sub-activities. Investigation of alleged infractions supplemented with information tools and compliance opinions have been the main instruments employed. More recently the sub-activity has been exploring the possible use of a wider range of instruments including assurances of voluntary compliance.

Cost information is available for the main components of the case-oriented approach employed by Marketing Practices.

There is some recent evidence on the effectiveness of Marketing Practices activities, but collecting definitive information on impact is hampered by the near impossibility of collecting valid compliance data given the nature of the criminal law enforced by Marketing Practices.

4. CONCLUSIONS

The purpose of this study was to provide information on the status of compliance techniques utilized by the five sub-activities under consideration. This information is to form part of the basis for further review and study of alternatives and serve as an input to the development of compliance strategies by the sub-activities. Hence, the study team, with the assistance of program management, has recorded the facts as they exist without searching for improvements or changes to the inventory of techniques.

However, the study team did note certain possibilities which could prove useful, and although program managers have not been given an opportunity to review these ideas, they have been included in the next section in the hope that they may contribute to the search for more effective approaches in the future.

Based on the above description and analysis, the following conclusions appear warranted.

1. Each of the sub-activities examined employs a wide variety of compliance techniques spanning the range from information approaches (such as brochures and guidelines), to interventive approaches (such as filings and inspections), and to enforcement approaches (such as investigations and prosecutions). The study provides examples of how the techniques are used in practice in the various sub-activities.
2. Notwithstanding the wide variety of techniques currently in use, there are other techniques described in the list of definitions which are currently not used in the department and others which are only used by some sub-activities. This is not to say that programs should set as a target the utilization of the largest number of techniques possible, nor to imply that useful techniques are being neglected. What this fact does illustrate is the richness of possibilities and therefor the need to creatively monitor and analyse possibilities on a regular basis.
3. There are considerable variations both within and among sub-activities in the frequency with which various compliance techniques are used. The frequency of use of compliance techniques is affected by such factors as the general compliance approach (e.g. proactive vs. reactive), the enforcement resources available to the sub-activity, the perceived effectiveness of the technique, the cost of the technique, the compliance behaviour of the regulated population and the perceived impact on society of non-compliance.

4. Although sub-activities collect considerable financial information, it is not available in a sufficiently disaggregated form to allow for the detailed costing of all the compliance techniques employed by the sub-activities. However, for some sub-activities detailed cost and output information is available for certain key techniques, and for all sub-activities person-year cost and output information is available at least for certain functions. From this information, it is possible to get at least a rough idea of the relative cost of using certain techniques.
5. With the exception of some econometric findings for Consumer Products, little quantitative information is available on the relative effectiveness of various compliance techniques. Some qualitative information on relative effectiveness of techniques is available for Weights and Measures and Marketing Practices. Information on effectiveness is more limited for Corporations and Bankruptcy.
6. Knowledge of costs and effectiveness should play an important role in the selection of techniques and in identifying the optimal or best mix thereof. The more accurate and complete the information is the more certain program management will be in making its selections. Generally speaking, each sub-activity has some information available, however, each should consider whether improvements in comprehensiveness and detail may not be justified.

5. OBSERVATIONS

In reviewing compliance aspects of the five sub-activities for this and previous reports, a number of possibly useful ideas emerged. Although no in-depth review of these suggestions was undertaken by the project team, they are reviewed here as one possible source of ideas for program management when developing their compliance strategies. Also, it is hoped that they will contribute to further research and analysis leading to other ideas for incorporation into the inventory of compliance approaches and techniques utilized by the Department.

Ticketing

The ticketing scheme has evolved not only as a possible effective compliance enhancer, but also as a reaction to the difficulties, delays and costs involved in pursuing offenders through the court system.

In our opinion, this scheme deserves serious consideration by compliance program managers, because it provides a much simplified, and no doubt less expensive alternative to court prosecution. Second, it could be implemented on an incremental basis. Not all offences in a particular program have to be immediately included in the scheme.

A good example would be the follow-up action required by device owners, upon the issuance of a "Notice of Non-Compliance". Since it is the owner's responsibility to repair the device and report that the repair was successfully completed, failure to comply would seem to fit the ticketing scheme well. Experience with this aspect of the program could be used to establish the feasibility of expanding the use of ticketing.

Ticketing would not be a reasonable follow-up for many offences, including those related to misleading advertising, because of the many diverse considerations that are taken into account by the courts in determining appropriate sentences. It may have greater prospect of implementation with respect to offences that are limited to one or two variables.

Causes of Non-Compliance

In order to focus compliance techniques and to select the most appropriate ones, it is necessary to pay increasing attention to the determination of the actual causes of non-compliance. A primary goal for each compliance program should be the elimination or reduction of these causes of non-compliance.

For example, if it is found that the major cause of non-compliance in a particular program is lack of knowledge of the standards which must be met, the program could devise and utilize more effective information programs, and its priorities could be changed so that resources would be re-deployed to the increased effort in information dissemination. This also calls for increased analysis of results to ensure the increased effort is effective and is creating the expected change.

One example of this kind of targetting is reflected in the emphasis placed by Marketing Practices on providing information to industry sectors found to be especially problematic and in the efforts to expand the use of the "How To Avoid Misleading Advertising: Guidelines" booklet.

A possible example may exist in the Bankruptcy sub-activity. If it were determined that one cause of non-compliance was insufficient knowledge of regulatory requirements or skill in some aspects of bankruptcy administration in the ranks of existing trustees, it may be possible to develop a rating system for trustees, reflecting problems encountered with each. This could then be used as a basis for determining whether a particular trustee should be required to write the trustee examination prior to re-newal of his license.

Use of MIS Information

The MIS data captured by some of the compliance systems is rich in useful information. It is a challenge for program managers to use this information in innovative ways, not just as aggregated compliance statistics.

For instance, Weights and Measures is commencing to use the data to identify specific areas of non-compliance for special visits and information programs. In this way, it can concentrate its efforts on obtaining improvements in compliance from the individuals and groups specifically contributing to the lowering of the overall compliance rate. The use and analysis of the data in this way will also be undertaken at the regional level.

Furthermore, detailed analysis of data may also uncover results which tend to be contrary to expectations. These should be investigated in order to determine the underlying causes and make appropriate corrections. One such example is the tendency in Weights and Measures to find that the error is more frequently in favour of the retailer, even though one would expect an equal distribution.

Extension of Automation in Corporations

Corporations sub-activity ensures that firms are filing annual and financial returns as appropriate and takes corrective action as needed. Given the volume of returns, it is not possible to verify that all returns are accurate, nor to ensure they are complete. It may be possible to convert the returns to machine readable format and allow a greater degree of verification at least of completeness at possibly lower cost.

A second advantage would be that other relationships among returns could also be automatically verified. For instance, firms must report their annual sales volume on the annual return. Based on the level of annual sales, the firm may be required to submit financial statements. This requirement could be automatically verified to ensure reporting takes place as required.

Graduated Fees Scale for Corporations

Much of the compliance activity in Corporations is oriented towards ensuring the timely filing of returns. Extra costs are incurred in follow-up activities such as the sending of reminder notices and ultimately dissolution of offending corporations.

Given this, it would seem fair to provide for late filing penalties. The penalty, or surcharge, could be graduated depending on the length of the delay. This may not only encourage compliance, but would help recover the extra costs incurred in reminder activities.

Weights and Measures Self-Audits

Although it is recognized that a full inspection of a particular scale requires the use of a number of different valued standard weights, in general, should one standard indicate that a scale is out of tolerance, it is reasonable to assume that the other standards may also indicate error. This may well lead to the opportunity to introduce a level of self-audit for Weights and Measures.

In essence, this addition to the program would involve retailers and other scale users having available (perhaps included in the purchase price of the device) one or two of the most appropriate standards. On a prescribed schedule, it would be the scale owner's responsibility to check his or her device and record the results in an audit ledger. The inspection by the department's inspector would then involve both a verification of the device's accuracy, and a review of the ledger to ensure testing occurred as required and that corrective action was taken as needed.

It must be noted that such a system could be potentially feasible only for certain device types where simple standards (i.e. weights) are used. This could then lead to concerns over uniformity of treatment and even charter issues pertaining to possible unevenness of treatment.

It may be possible to introduce incentives and checks into the system to increase its effectiveness. For instance, fines could be tailored to include a larger penalty when the device is found to be excessively differing in accuracy between the inspector's finding and that last recorded in the ledger. Furthermore, repairs could be recorded and signed for, to verify they actually took place.

Finally, it could be potentially feasible to develop the approach and conduct a trial on a small sample of devices to ensure the merit of this approach.

Targetting Consumer Products Inspections

Consumer Products enforcement activities at the district level are targetted on the basis of such factors as problems identified in the field; the nature and mix of local economic activity and establishment compliance performance. This practice has not been adequately rationalized with the Consumer Products sub-activity principle of setting national priorities on the basis of dollars at risk criteria. To rationalize the two approaches and establish a uniform basis for resource allocation within the sub-activity, it is suggested that a new index be used to target inspections. The Consumer Products sub-activity could develop and use an "establishment risk index" as the primary method for resource planning and allocation in the field. This new index would include such factors as relative establishment size, the seriousness of the violation, and the historical compliance rate for the establishment.

Bankruptcy Effectiveness

In recent years, considerable effort has been made to increase the visibility of the Bankruptcy sub-activity in the face of an increasing workload. The number of examinations of debtors and the frequency of attendance at initial meetings of creditors have both increased dramatically. The Supervision of Estate Administration program has improved consistency of estate administration. However, there is little hard evidence on the effectiveness of such measures. It would be useful to examine, in some depth, the relative effectiveness of Bankruptcy activities in order to help ensure the optimal allocation of resources and targetting of the work.

An examination of this nature may well wish to review alternative approaches and means for detecting non-compliance. For instance, the sub-activity may wish to consider the advantages of approaches which are more compliance and less interventionist in nature. One such alternative would involve field staff taking on a role more adequately described as "inspector", than "receiver", or "administrator". This would entail resources being diverted more toward investigating and rating (judging) the work of trustees and taking remedial action as necessary as opposed to direct involvement in the estate administration process. In this manner trustees may well be held more accountable for all aspects of estate administration.

DEFINITIONS OF COMPLIANCE TECHNIQUES

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AND THEIR UTILIZATION WITHIN CCAC

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1.0 INFORMATION APPROACHES

This category consists of techniques which are geared towards informing the regulatee population as a whole as to the requirements of the law and to seek their commitment to comply.

1.1 Moral Suasion

Encouraging regulatees to heed the government's wishes by informing them of the benefits of avoiding government reaction or new regulations. Undertaken in the absence of specific regulations in order to avoid the costs of regulation to the government.

1.2 Consultation on Rules

Consulting regulatees and other interested parties in the development of new legislation or regulations or changes thereto.

1.3 Information (brochures, etc.)

Providing regulatees and other interested parties with copies of acts, regulations and explanations thereof which will assist those concerned in complying and in detecting non-compliance. May include explanations of consequences of non-compliance and criteria for deciding on regulatory actions to be taken.

1.4 Education (seminars, etc.)

Participation in or provision of seminars, training sessions and speeches to interested parties regarding any or all facets of the compliance program.

1.5 Performance Standards (guidelines)

Development and distribution of explanatory descriptions indicating the actions necessary or to be avoided in order to ensure compliance with a prescribed standard or rule.

1.6 Liaison/Consult (scheduled)

Regularly scheduled meetings with regulatees and/or interested parties in order to ensure problem resolution and to provide continuing input to the changing regulatory framework.

1.7 Advice/Counselling/Opinions

Provision of assistance to regulatees in the form of advice on how to comply, counselling on changes and possible improvements regulatees may make and prior opinions as to whether contemplated action may constitute non-compliance.

1.8 Compliance Policy (public)

Issuance of a public document, providing program transparency, which describes the compliance standards, the responsibilities of the regulatee and regulator, the alternative consequences of non-compliance, how the consequences will be applied, and the criteria which will be utilized to decide the consequence to be applied in each case of non-compliance.

1.9 Public Criticism

Publication of the results of non-compliance through speeches, press releases, regular reports or other public means. May be all inclusive or restricted to cases deemed to have maximum effect.

2.0 INTERVENTIVE APPROACHES

This category consists of techniques which are usually applied to individual regulatees and are non-punitive in nature.

2.1 Information Letters/Visits

A letter or visit with the regulatee noting specific requirements of the legislation/regulations, but making no warnings implying the possibility of more stringent action.

2.2 Regulator Correction

The act by the inspector or other regulatory officer of correcting noted violations with or without the regulatees assistance, such as in re-grading shell eggs found to be undergrade.

2.3 Regulatee Correction

The voluntary action taken by the regulatee to correct a violation which has been identified, such as removing violative product or advertisement, a return of product to supplier, etc.

2.4 Technical Assistance

Provision of technical advice to the regulatee as to the steps he should take to ensure compliance. May include advice on upgrading of equipment or repairs to be made.

2.5 Self Audits/Inspections

Compliance audits and/or inspections performed by regulatee according to predefined standards and procedures providing an audit trail which is periodically checked by regulator representative.

2.6 Government Audits

Audits performed by regulator of the affairs of the regulatee to ensure predefined standards are followed and that the financial transactions of the regulatee comply with the requirements and are not fraudulent.

2.7 Examine Filings

When regulatees are required to make regular or incident specific reports or filings of documents, the regulator inspects these filings to ensure accuracy and completeness and also to ascertain that required filings are made according to prescribed schedule.

2.8 Incentives (financial/tax)

Provision of financial incentives to regulatees to encourage compliance such as tax deductions, subsidies, grants, or payment for specialized equipment which are normally provided upon proof being submitted that the required activity has been completed.

2.9 Licences/Permits/Exemptions

Regulatees are granted a licence or permit to perform certain activities or given an exemption from having to perform certain activities to ensure that compliance is achieved or in recognition of compliance.

2.10 Warnings (verbal)

Oral notice to a regulatee which specifies the nature of the violation in question, the specific legislation and regulation violated, and explicitly advises the regulatee that more stringent action may be considered if the situation is repeated or is not rectified.

2.11 Inspections

Inspections performed by the regulator of the products or actions of the regulatee in order to ascertain whether the prescribed standards of conduct, equipment specifications or product requirements are being complied with.

2.12 Self Certification

Certification by regulatee that he has complied fully with the law or parts thereof, subject to periodic audit or inspection to confirm by regulator.

2.13 Third Party Monitoring

Inspections or audits are undertaken by a party or parties unrelated to either the regulatee or regulator, but who are specifically licenced or approved to undertake these activities on behalf of the regulator. Special fees for this service are usually charged to the regulatee.

3.0 ENFORCEMENT APPROACHES

Techniques in this category are most often applied to individual regulatees and are coercive and usually punitive in nature carrying with them official threat of financial or other consequences or directly punishing the regulatee for not complying.

3.1 Refusal At Entry

Disallowing the entry into Canada of goods found to be in contravention of federal legislation or regulations.

3.2 Investigations

Pursuit of evidence of non-compliance for the purpose of determining whether court action should be undertaken and if so, the gathering of evidence to be used in laying charges against the regulatee and proving evidence at the proceedings.

3.3 Warnings (written)

Formal written notice to a regulatee which specifies the nature of the violation in question, the specific legislation and regulation and sections violated, and explicitly advising the regulatee that more stringent action will be considered if the situation is repeated or is not rectified.

3.4 Show Cause Hearing

Meeting between regulatee and regulator representatives to discuss the regulatee's record of compliance, and his intentions regarding future compliance, with a record of the proceedings kept on file.

3.5 Assurance of Voluntary Compliance (AVC) / Undertakings

Contractual agreement by regulatee with regulator indicating specific steps which will be taken to rectify non-compliance or to ensure compliance in the future. Regulator usually agrees not to prosecute with respect to the specifics included in the agreement as long as regulatee upholds the specified terms.

3.6 Trader Commitment

Similar to AVC'S, but may be less formal. Regulatee agrees to eventual correction of all future actions or products, based on a mutually agreed period of time. For example may include next label printing, or next newspaper advertisements, but would allow current actions to proceed until completed.

3.7 Voluntary Disposal/Removal

Regulatee voluntarily removes violative product or ceases violative actions to the full satisfaction of the regulator.

3.8 Orders/Directives

Official orders or directives given to regulatee by authorized representative of the regulator prescribing actions or the avoidance of future actions by the regulatee, usually carrying with it a prescribed penalty or further action in the event the regulatee does not comply with the terms of the order/directive.

3.9 Ticketing

Regulatee is issued a ticket for a specific incidence of non-compliance which is specified and carries with it a prescribed fine. The regulatee has the option of paying the fine, within a prescribed time limit, or arguing his case against the infraction in court.

3.10 Seizure/Detention/Forfeiture

Action by the regulator of taking control of violative product or device and/or the release by the regulatee of the violative product or device to the crown.

3.11 Injunctions

Court ordered cessation of non-compliant activities by regulatee with the threat of further court action should regulatee fail to observe the prescribed terms.

3.12 Prosecutions (or recommendations therefor)

Either civil or criminal court proceedings against non-compliant regulatee.

3.13 Intervention in Court Action

Intervention by regulator in either civil or criminal proceedings against a regulatee, brought by a third party, in order to provide additional evidence regarding the non-compliant activities of the regulatee and to ensure such actions are adequately penalized.

3.14 Fines/Court Orders/Imprisonment

Penalties extracted against non-compliant regulatee in order to ensure against re-occurrence of violative actions and to serve as examples to other regulatees of the regulators insistence that the law be upheld.

3.15 Cost Recovery (civil)

Civil action taken against a regulatee in order to recover the damages caused to third parties by non-compliant actions.

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