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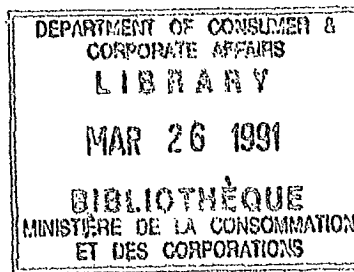coordination
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Bureau
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Coordination

FRAMEWORK FOR COMPLIANCE

STRATEGIES IN C.C.A.C.

FINAL REPORT

Consommation
et Corporations
Canada

Consumer and
Corporate Affairs
Canada

6559

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FINAL REPORT

Compliance Strategy Project
Program Evaluation Division
Bureau of Policy Coordination
Consumer & Corporate Affairs

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TABLE OF CONTENTS

1.0   PURPOSE OF FRAMEWORK

Given the major regulatory mandate of the department, Consumer and Corporate Affairs has always placed a high priority on efforts to increase the effectiveness of its compliance activities. As such, the department is committed to its role as the marketplace regulator, to ensuring the currency of its legislative framework, to regulatory reform, and to increased efficiency and effectiveness.

This has resulted in effective and comprehensive compliance approaches, extensive regulatory training programs, comprehensive management information systems, the articulation of compliance and enforcement policies and procedures, guidelines for regulatee marketplace behavior and timely revisions to departmental statutes and regulations.

This report is intended to provide a framework of matters for consideration in the development within Bureaux of specific compliance programs and criteria. It is not intended in any way to substitute or replace the independent authority and decisions in case matters that are the statutory responsibility of officials who are designated to administer and enforce such legislation, including their decisions as to the development and application of specific criteria in relation to their particular statutory responsibilities.

The DM and Executive Committee have set the development of compliance strategies as a strategic priority within the department, as follows:

"EFFICIENCY AND EFFECTIVENESS – (responding
                                          to increasing demands
                                          with fewer resources)

3.   Compliance strategy

To determine, for each of the department's programs and policies the best level of private sector compliance to be achieved given the resources available, to identify a range of educational, promotional and sanctioning compliance approaches and criteria for their application and to apply such approaches in order to achieve this level of compliance."

The work previously completed by the Compliance Strategy Project Team and the two studies entitled "Measuring Regulatory Compliance" and "Compliance Techniques" are the starting points in the development of a compliance strategy for each sub-activity.

In order to provide context, it would be useful to first define compliance and strategy:

- Compliance is a measure of private action or inaction relative to a standard of conduct requested or required by government and the applicable laws;

- Strategy is a carefully devised plan or scheme which defines goals, identifies and takes account of the key factors (variables) to be considered and indicates the ways and means by which the goals will be achieved.

Hence a compliance strategy may be described as a master plan, careful devised, which identifies compliance goals to be achieved and the methods and means to be employed in order to achieve the goals.

From this definition and the compliance strategy enunciated for the Department it follows that each sub-activity should ideally:

- Define a compliance goal(s) to be sought (including targets for indicators, if applicable);

- Devise the best compliance methods (techniques) to apply and their criteria; and

- Effectively/efficiently apply these techniques.

Given the above, a compliance strategy should be able to act as a "dynamic" decision making framework which allows for change and adjustment with time.

The objectives of a compliance strategy would include:

- charting the future of the program;
- exhibiting some available alternative approaches and directions;
- allowing capitalization on strengths and improvementof weaknesses;

- providing for program adjustments as circumstances and market conditions change;
- increasing accountability and understanding of goals to be achieved;
- providing a basis for work planning.

In preparing this framework, which is generally applicable to any compliance program, it was recognized that differences between the nature, administration and legal framework of various programs (sub-activities) would necessitate the use of discretion in application. Some sub-activities will wish to concentrate on specific aspects of their program, giving less attention to others. However, a standardized format has the advantages of ensuring all factors are given consideration and that the results may be more easily compared and aggregated by senior management, if deemed desirable.

Hence, each sub-activity should tailor the contents of its compliance strategy to its specific needs and priorities, while ensuring a commonality of approach.

2.0 OVERVIEW OF SUGGESTED CONTENTS

This framework has categorized the key components of a compliance strategy to correspond with the "Compliance Decision Framework" which was developed for use at the September, 1987 departmental workshop on compliance in Cornwall. The utility of this approach is that the framework may be used by managers in developing their compliance strategies to ensure all factors have been considered and reflected, as appropriate.

The key components are as follows:

- overview of the legislative framework of the program and possible changes thereto (Sec. 3.1);

- basic objective(s) to be achieved and how generally it (they) will be accomplished (Sec. 3.2);

- organization of program resources and possible changes, as appropriate (Sec. 3.3);

- major changes sought in regulatee attributes and description of current situation (Sec. 3.4);

- compliance techniques to be utilized, their inter-relationships and criteria for optimizing their use (Sec. 3.5);

- criteria for when and how each technique is to be applied and the corresponding rationale (Sec. 3.6);

- desired level of compliance to be achieved (in qualitative form, if necessary) and contingency plans in case not met or exceeded (Sec. 3.7); and

- MIS requirements of the compliance program including how information is to be utilized and collected (Sec. 3.8).

Section 3.0 (following) describes the above elements in detail and its eight sub-sections are marked on the copy of the Compliance Decision Framework appended hereto.

3.0 SUGGESTED CONTENTS OF A COMPLIANCE STRATEGY

Eight basic elements of a compliance strategy are described hereunder, giving for each its purpose, suggested details to be considered for inclusion and the basic question each is attempting to resolve.

3.1 Legislative Framework

To clearly indicate what the compliance strategy is trying to achieve and to elicit ideas for change.

Suggested items to be addressed are:

- Acts administered and their basic objective(s);
- Synopsis of applicable regulations and rules pursuant to each with which regulatees must comply;
- Needs and attributes of beneficiaries and how they relate to objective(s), regulations and rules;
- Listing of the compliance standards emanating from the above;
- Other, more general or policy oriented, standards including voluntary standards;
- Possible changes to above.

What legislation, regulations and rules (standards) are applicable to the program? What must regulatees comply with?

3.2 General Program Direction (Orientation)

To briefly describe the basic nature of the program so it may be reflected in following sections and to establish areas which could be changed through re-orientation or changes to legislative framework.

Suggested items to be addressed are:

- Will program be complaint or inspection oriented;
- How large a roll will enforcement play;
- Does it need prescribed processes for regulatees to follow;
- How much of program is administration of the act as opposed to monitoring compliance with the act by others;
- What roles are to be played by other parties (i.e. R.C.M.P.).

Given the standards, what is the general orientation which the program will take i.e. reactive/proactive, prescriptive/prohibitive, enforcement/compliance, etc.?

3.3 Organizational Framework

To ensure all in organization understand where accountabilities have been vested and to establish a framework which can be reviewed and changed, when necessary.

Suggested items to be addressed are:

- Split of responsibilities on operational and functional aspects and as between H/Q and regions;
- How is information to be used in setting the direction of the program, in deciding on technique usage and in scheduling work and setting priorities;
- Who should have responsibilities for effectiveness, efficiency and planning;
- Means for ensuring optional program delivery (such as training and manuals);
- Should results be monitored and priorities and plans set centrally or regionally.

How should resources for the program be organized and managed and who should have responsibilities involved in delivery of the program?

3.4 Regulatee Attributes

To ensure adequate knowledge available for target-setting and technique selection.

Suggested items to be addressed are:

- A description of regulatee population and their general knowledge and stance towards compliance;
- An analysis of the causes of non-compliance;
- Alternative means available for increasing regulatee awareness and sensitivity;
- Means by which to determine regulatee orientation;
- Criteria for judging and changing regulatee attitudes and behaviour.

How well do regulatees understand their responsibilities and how willing are they to comply? How can these aspects be increased and measured?

3.5 Compliance Techniques (Instruments) to be Utilized

To provide an inventory of applicable techniques from
which to choose and the criteria for arriving at the
optimal mix given the governing circumstances.

Suggested items to be addressed are:

-   Techniques applicable to the program;
-   The approximate cost of each technique (or
    relative cost);
-   The effectiveness (preceived) of each (or
    relative effectiveness);
-   Relationship between techniques;
-   Criteria for mixing techniques to ensure overall
    effectiveness;
-   Causes of non-compliance best remedied by each
    technique.

Given the compliance standards, program direction,
organization and regulatee orientation what techniques
should be applied and what is the optimum mix?

3.6 Criteria for Applying Techniques (Instruments)

To provide general guidance to program staff in the
delivery of specific compliance techniques and to
suggest how change should occur as circumstances
change.

Suggested items to be addressed are:

-   Criteria for choosing any particular technique
    based on:
    -   the nature of the non-compliance;
    -   the extent of non-compliance;
    -   and the expected results (effects) on
        others;
-   With what vigor (priority) should the technique
    be applied;
-   To which regulatee or group of regulatees
    would it be targetted.

Under what circumstances of non-compliance should each
applicable technique be applied, with what vigor and
at which group of regulatees?

3.7 Level of Private Sector Compliance to be Achieved

To provide program management with specific
accountabilities for achievement of compliance with
legislation.

Suggested items to be addressed are:

- How compliance is to be measured;
- A description of the specific target level(s)
  to be achieved for each compliance standard(s),
  if applicable;
- May have to be stated in more general
  (qualitative) terms, if compliance level cannot
  be measured;
- What extra effort will be undertaken, if level
  is not met, such as plans for diversion of
  resources;
- If level is exceeded, are resources to be
  diverted, and if so, how?

What is the specific (or general) level of compliance
sought and what specific action(s) (including resource
reallocation) should be taken when target level is not
met, is met or is exceeded?

3.8 Monitoring and M.I.S. Specifications

To ensure availability of adequate information sources
and to prescribe how the information is to be
collected and used in administration of the program.

Suggested items to be addressed are:

- A description of information needs for
  the program and its uses;
- Description of how information will be collected
  and to whom it will be available;
- Listing of other information (not currently
  available) which would be useful for program
  management;
- Plans, if any, for improvements.

What are the monitoring (measurement) and overall
information needs of the program to support effective
administration?

COMPLIANCE DECISION FRAMEWORK

Factor	Key Question	Key Considerations	Action Options	Objective
APPROPRIATENESS OF COMPLIANCE STANDARD(s)	Is compliance standard(s) readily discernable and appropriate given legislative objective, and is it implementable?	*Clarity of legislative objective *Feasibility of implementation *Appropriateness of legislative objective *Reflection of objective in regulations and standards	*Review/adjust legislation *Evaluate feasibility *Adjust regulations/standards *Adjust work procedures	Clear and appropriate legislative/regulatory framework. 3.1
COMPLIANCE PROGRAM ORIENTATION	Is program orientation (proactive/reactive) appropriate given objectives/resources?	*Public sensitivity *Ease of applying rules *Resource availability *Social consequences (ie.costs) of non-compliance	*Gauge media awareness *Determine complexity *Management decision *Study injury/non-compliance *Set policy	Clear policy for achieving compliance objectives 3.2
RESOURCE EFFECTIVENESS/ EFFICIENCY	Are resources utilized effectively and applied efficiently?	*Qualifications of staff *Personal suitability of staff *Knowledge of standards and work procedures *Motivation towards work *Management effectiveness *Work instruments and budgets *Work procedures *Productivity	*Review selection standards *Provide training *Provide management training *Review organization *Undertake work studies/ simplification *Ensure proper specialization *Establish accountability *Establish performance measurement system(s)	Effective operational/ managerial framework 3.3
REGULATEE'S PROPENSITY TO COMPLY	Are regulatees committed to complying with the law (compliance standards)?	*Knowledge of expectations *Committment to comply *Accountability to comply *Causes of non-compliance *Economic gain/loss of non-compliance *Risk of detection *Cost to comply	*Educate and inform *Involve in process *Apply standards predictably *Identify regulatee's officer *Study incidence and adjust techniques *Set appropriate penalties *Establish effective monitoring(self or others) *Take into account	Clear understanding by regulatees of their responsibilities and consequences of failure to comply.(Publish Compliance Policy) 3.4
COMPLIANCE TECHNIQUES USED	Is the mix of compliance techniques optimal, ensuring desired level met at minimum cost?	*Cost of each technique *Effectiveness of each technique *Range of techniques	*Establish costs *Gauge effectiveness *Find new techniques *Optimize mix of techniques *Develop criteria for use	Optimal mix of techniques to utilize and criteria for use 3.5
REGULATEE POPULATION CHARACTERISTICS	Are characteristics appropriately reflected in program orientation, targeting, and techniques used?	*Homogeneity *Geographic dispersion *Industry characteristics *Extent of "natural" compliance	*Establish tiering *Target sources of non-compliance *Work through associations *Identify "natural" compliance	Criteria for targeting compliance techniques 3.6
DESIRED LEVEL OF COMPLIANCE	Is a desired level definable, necessary, and achievable given objectives?	*Measurability *Compliance program orientation	*Adjust objectives to optimum *Use results above *Define optimal level	Defined desired level of compliance. (Measurable or in policy terms) 3.7
ACTUAL LEVEL OF COMPLIANCE	Is deviation from desired level of compliance acceptable?	*Amount of deviation *Measurability	*Set corrective strategy *Establish means to measure	Clear monitoring guidelines and M.I.S. specifications. 3.8

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* COMPLIANCE *
* STRATEGY / *
* RESOURCE *
* UTILIZATION *
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