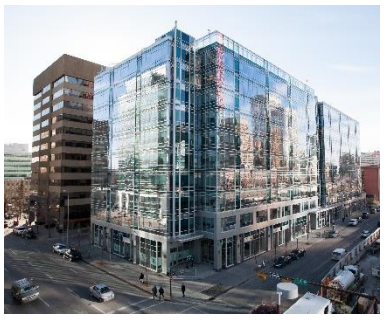
Canada Energy Regulator | Régie de l'énergie du Canada

Regulatory Framework Program



EVALUATION

Performance & Results

Corporate Performance

December 2020

Canada

Canada Energy Regulator | Régie de l'énergie du Canada

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Veuillez noter que dans le présent document, la forme masculine est employée comme générique et l'intention n'est nullement discriminatoire.

Table of Contents

Acronyms

BoD	Board of Directors
CDR	Cabinet Directive on Regulation
CEO	Chief Executive Officer
CER	Canada Energy Regulator
CERA	Canadian Energy Regulator Act
COGOA	Canada Oil and Gas Operations Act
CR	Core Responsibility
DRF	Departmental Results Framework
EVP	Executive Vice President
FTE	Full-time Equivalent
NEB	National Energy Board
NEBA	National Energy Board Act
NRCan	Natural Resources Canada
OECD	Organisation for Economic Co-operation and Development
PCO	Privy Council Office
PIP	Performance Information Profile
PMEC	Performance Measurement and Evaluation Committee
RDIMS	Records and Document Information Management System
RF	Regulatory Framework
S&EO	Safety and Environment Oversight
TBS	Treasury Board of Canada Secretariat
VP	Vice President

Chapter 01

About the Evaluation

Evaluating the Regulatory Framework Program (RF Program) took place in 2019–20 in response to a commitment made in the Canada Energy Regulator's (CER) Evaluation Plan. This commitment initially came from one of the RF Program's performance indicators to review the RF Program every three years.[1]

Purpose

This evaluation examines the governance of the Regulatory Framework (RF) and the design of the Regulatory Framework Program in order to make recommendations for improvement. This evaluation also looked for good practices in other organizations that can be considered when making improvements to RF Program design.

Audience

The RF Program official and RF Program staff are the primary audience for this evaluation as they manage the RF Program's day-to-day processes and influence its design. As the Regulatory Framework creates the context for delivering the CER mandate, other interested parties include the Chief Executive Officer (CEO)/Deputy Head, the Board of Directors (BoD) and other program officials. Their interest in the RF stems from their roles and responsibilities—the CEO/Deputy Head is responsible for overall program performance, the BoD has an important role in providing strategic direction and advice to the CER and other program officials are responsible for delivering RF results.

Methodology

The evaluation was planned, conducted and reported according to the requirements set out by the Treasury Board of Canada Secretariat (TBS) Policy on Results and Standard on Evaluation as well as the CER's internal processes for evaluation.

Information to answer evaluation questions came from a variety of sources:

- 50 interviews (15 in planning phase and 35 in examination phase)
- 1 internal survey and trend analysis of survey results (methodology in Appendix, page 50)
- Internal/external document review/analysis and timesheet analysis
- Research and literature review

An evaluation status update was provided to the RF Program in December 2019 to share preliminary findings, good practices and the results of the internal survey.

Limitations and Mitigation Strategies

This evaluation mainly used qualitative methods with multiple lines of evidence as this information was the most readily available and useful for assessing program design. This was sufficient to draw conclusions and no special mitigation strategies were required.

Type of Evaluation: Program Design

1: This and other indicators were suspended in late 2019; however, the Evaluation was still supported as the means to help support program design and improvement including program performance indicators.

Chapter 01

About the Evaluation

Roles and Responsibilities

This evaluation was carried out by a credentialed evaluator (CE) from the Corporate Performance Team. As part of the evaluation process, a Project Working Group was formed with staff from the Regulatory Framework Program to obtain input and feedback throughout all phases of the evaluation, specifically on the evaluation terms of reference, evaluation plan and draft evaluation report.

Structure of the Report

Findings in this evaluation are made in response to the evaluation questions and are developed after carrying out the planned evaluation methods against evaluation criteria. They can also lead to the identification of opportunities for improvement.

Recommendations in the evaluation are directed at the RF Program and identify specific priority areas that, if addressed, will help to close gaps identified and improve RF Program design. Recommendations require a management action plan (Appendix pages 61) and are formally monitored internally for timely implementation.

Opportunities for Improvement are provided for the RF Program's consideration. They do not require a management action plan and will not be formally tracked. Some of them, however, refer to good practices that may help when responding to recommendations.

Note to Readers

During this evaluation, the National Energy Board (NEB) became the Canada Energy Regulator (CER) on August 28, 2019. This transition did not impact the scope of the evaluation; however, this report may refer to the NEB for some legal documents or historical topics. For the most part though, the report refers to the CER/Regulator.

More Information about this Evaluation is available in the Appendix, pages 46-51.

Executive Summary

The Canada Energy Regulator exists to independently regulate several parts of the energy industry in Canada. This includes regulating pipelines, energy development and trade in a way that protects the public and the environment while supporting efficient markets and respecting Indigenous rights and interests.

The CER's **Regulatory Framework** helps to translate this mandate and purpose into actual practice to achieve policy objectives. The RF consists of enabling legislation (acts), requirements (such as regulations) and guidance. The Framework requires continual review to update elements in response to policy shifts, legislative change, input from stakeholders, technological change and new developments and approaches or concepts from other regulators or regulatory bodies.

The CER's **Regulatory Framework Program is a unique program and serves a fundamental function for the Regulator.** RF Program staff are responsible for using their expertise to manage and update the RF in a way that complies with specific internal and external requirements such as the Cabinet Directive on Regulation and related TBS policies. The RF is relevant to all programs across the organization and requires their involvement at times in RF Program processes.

This is the first evaluation of the RF Program since this policy function was formalized as a program. The evaluation examined the design of the RF Program, including governance of the Regulatory Framework, to determine opportunities for improvement. This evaluation did not assess performance of the RF Program, the Regulatory Framework or the Regulatory Policy Team.

The key questions in this evaluation along with recommendations are shared on these next two pages. These recommendations will improve the CER's conceptualization of the Regulatory Framework and help mature the RF Program design. Recommendations will be tracked internally for adequate and timely implementation.

What are the opportunities for improvement for the governance of the Regulatory Framework?

Recommendations

1. **Clear Regulatory Framework**. The RF Program should use a new approach to define the Regulatory Framework in the context of lifecycle regulation. This starts with a more comprehensive description of Regulatory Framework components, its lifecycle and a more complete description of governance.

2. **Clear Regulatory Framework and Regulatory Framework Program Governance.** Governance is unclear thus the RF Program must help improve organizational awareness and understanding of the governance structure that is used for a lifecycle approach to regulation (Regulatory Framework) and managing resources to deliver results (Regulatory Framework Program). To do this the RF Program should determine and clarify the governance of both the RF and RF Program by assigning accountabilities and defining and documenting roles and responsibilities, including those outside the RF Program.

Continued on the next page

Executive Summary

To what extent does the design of the Regulatory Framework Program:
- Meet requirements and expectations for program design?
- Effectively incorporate a regulatory lifecycle approach?

Recommendations

3. **Complete and Accessible Program Documentation.** One of the key areas of program design that needs to be addressed is program documentation. For example, by developing and finalizing clear processes and related process documentation, the RF Program can eliminate the risk of person-dependent tasks.

    - The RF Program should build on the foundational elements it has drafted and apply more rigour in the finalization of its program design (including performance measurement) considering specific internal and external requirements and applying good practices.

    - Processes and related process documentation should be made available and kept up to date on the CER's Process Dashboard.

4. **Useful and Accessible Training and Support.** In support of regulatory lifecycle regulation as well as improved collaboration and understanding of the Regulatory Framework and program requirements, the RF Program needs to:

    - Develop and provide training to all RF Program staff on the Regulatory Framework and RF Program components including governance and processes and how to access and use process documentation so that RF Program staff are knowledgeable and equipped to carry out their work.

    - Offer customized training to other key stakeholders or users of the RF Program so that they understand the Regulatory Framework and RF Program components, including governance of both.

5. **Well-Designed Databases.** The RF Program is the custodian of two important inventories that can help the CER organize, track and retrieve information on regulatory instruments and cooperative agreements. For an inventory to be functional it has to be designed to meet the requirements of different types of users. It also has to be comprehensive, regularly updated and maintained. To achieve this, the RF Program should:

    - Work on the initial design of the inventories so that they are easy to look at and use and ensure that information can be more readily analyzed. This should also include a review of completeness and accuracy of information already in them;
    - Clearly note the date of last update on the inventory, and
    - Schedule and conduct regular review to keep these databases up to date.

What can be learned from other organizations and the available research for governing, developing and managing a regulatory framework?

At the end of this report, opportunities for improvement are noted for the RF Program's consideration as part of continual improvement of program design and some are in support of implementing the recommendations. Many of these have their origins in other regulators where good practices were observed during this evaluation.

Chapter
02

Background

A New Results Structure

When the government's Policy on Results (2016) came into effect, departments were required to shift from a Management, Resources and Results Structure (MRRS)—which had been around since 2010—into a new model called the Departmental Results Framework (DRF). With this change the former Program Alignment Architecture became the Program Inventory.

In 2016, the NEB designed its DRF around four core responsibilities (CR) each with their own departmental results and departmental indicators to show how progress would be assessed.

As well, the NEB formally identified programs for each CR with corresponding performance information profiles that contained outcomes and indicators along with several other elements as required or recommended by TBS.

Progress and performance is monitored and discussed at planned intervals throughout the year by the Performance Measurement and Evaluation Committee (PMEC). Plans for the organization, based on the DRF, are reported publically in the Departmental Plan and results are reported publically in the Departmental Results Report. The program results are reported and shared through a TBS platform: GC Infobase.

CORE RESPONSIBILITIES AND PROGRAMS

Energy Adjudication

- Infrastructure, Tolls & Export Applications Program
- Participant Funding Program

Safety and Environment Oversight

- Company Performance Program
- Emergency Management Program
- Management System & Industry Program
- **Regulatory Framework Program**

Energy Information

- Stakeholder Engagement Program
- Indigenous Engagement Program

Engagement

- Energy System Information Program
- Pipeline Information Program

A regulatory or enforcement agency is different from the rest of government because *"the core of their mission involves the imposition of duties. They deliver obligations, rather than services*"...not to mention they also have awesome powers which in turn involves more public scrutiny as well as distinct strategic and managerial challenges.

Malcolm Sparrow
The Regulatory Craft, 2000

Background

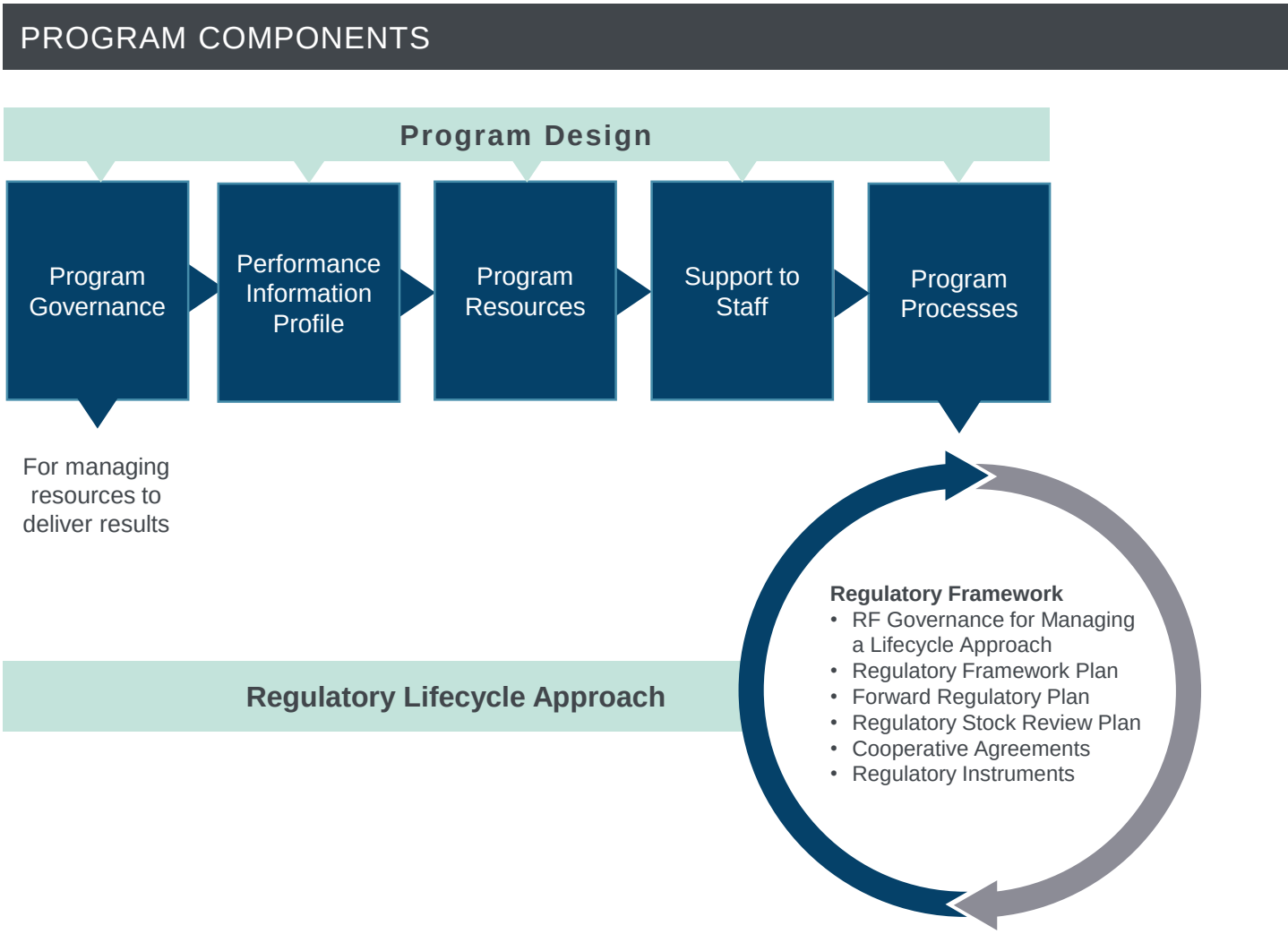
A New Program

The Regulatory Framework Program is part of the Safety & Environment Oversight (S&EO) CR. RF Program staff are from the Regulatory Policy Team and report to the VP of Integrated Energy Information and Analysis (IEIA) who is also the RF Program official.

The main role of the RF Program is to carry out the policy function for the CER and to manage regulatory cooperation processes. Staff are regulatory and technical specialists from the market and supply analyst job families. Staff are responsible for developing and updating the CER's Regulatory Framework Plan, Forward Regulatory Plan, Regulatory Stock Review Plan and carrying out policy research, analysis, development and implementation.

Staff are project managers when they carry out the regulatory development process from start to finish and they collaborate with other program staff on the development and implementation of regulatory guidance as well as regulatory instruments such as orders. Staff also actively participate in or lead external committees, working groups and communities of practice.

The Regulatory Policy Team also spends time on other program processes. Staff support finance processes by writing budget proposals and Treasury Board (TB) submissions. They also provide support and preparation for the CER's participation in federal and international activities such as appearances at government committees, the OECD or other energy regulator meetings.



Background

The Foundations of the Regulatory Framework

The Cabinet Directive on Regulation ("Cabinet Directive" or "Directive") establishes the overarching framework for the development and management of regulations that are registered under the Statutory Instruments Act.

The Directive prescribes what is required for a regulatory practice and includes the guiding principles and steps in the regulatory lifecycle. This lifecycle includes developing and communicating regulations and guidance, regulatory management of regulatory programs and regulations as well as evaluating performance and effectiveness.

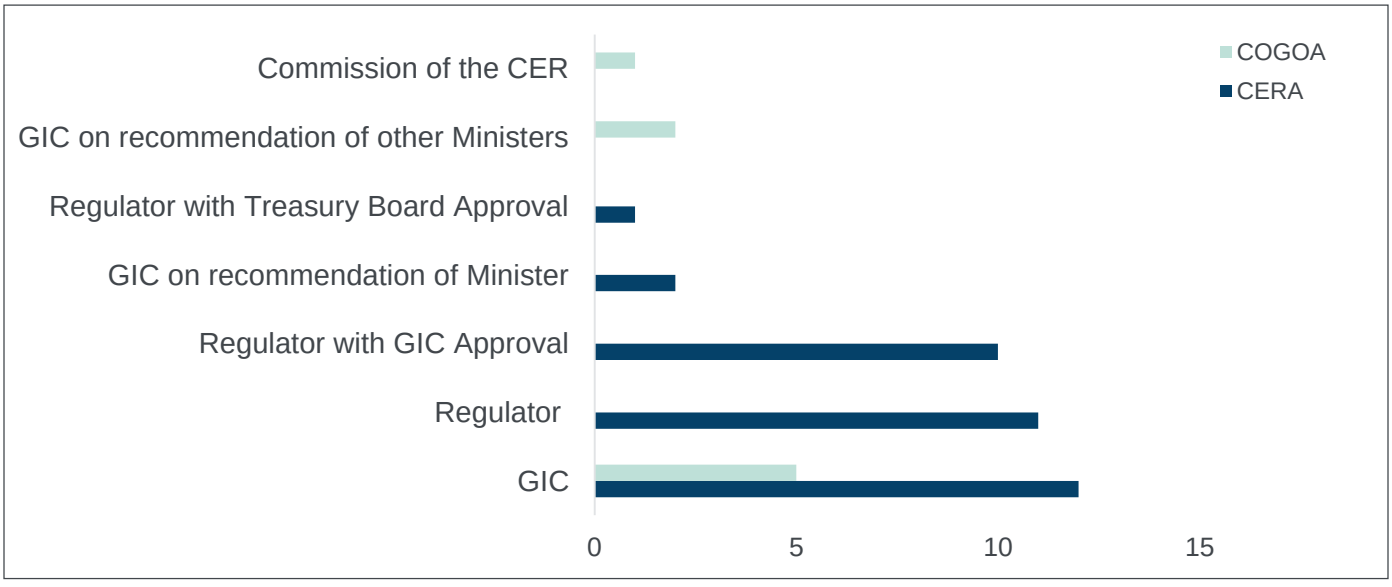
Through the Canadian Energy Regulator Act (CERA) the federal government has created an independent body—the Canada Energy Regulator—that must regulate energy transmission activities that may affect, among other things, the safety and security of people, property and the environment.

The CERA sets out the legal framework for the CER and contains its purpose and mandate. It details the "musts and the mays" of the CER which includes, but is not limited to, issuing orders, certificates and licenses with conditions.

Further, the CER has other responsibilities outlined in other legislation, such as the Canada Oil and Gas Operations Act (COGOA). Both the CERA and COGOA specify who ***may*** make regulations. The chart below shows how often these authorities are provided in these Acts. Note that the CER does not make regulations in every instance under these Acts.

FRAMEWORK: The supporting structure around which something can be built. It can also be thought of as a system of rules, ideas or beliefs that are used to plan or decide something.[1]

Number of times the COGOA and CERA provide regulation making abilities to CER (Regulator), the Governor in Council (GIC) or Treasury Board.



1: Cambridge Dictionary Online (Web link)

Background

The Regulatory Framework at the CER has evolved over its 60 year history. Below is a visual that quantifies certain RF components as of December 2019.

1959

National Energy Board is established.

32 Regulations
Under NEBA, CERA and COGOA
1959–2019

19 General Orders
to all companies
1961–2019

1 Directive
1997

5 POLICIES
1988–2019

41 Safety & Information Advisories
1994–2019

6669 Certificate Conditions
issued between 2010–2019

8 other Acts* with a total of 51 regulations that relate to the NEB/CER Regulatory Framework

+52,000 Regulatory Instruments**
issued between 1959–2019

54 Inspection Officer Orders
1999–2019

+50 Guidance Documents
1994–2019

1 Protocol
2013

36 Significant or Commercial Discovery Declarations
issued under the Canadian Petroleum Resources Act

11 Operating Licenses under COGOA
FY 2019-20

Canada Energy Regulator is established

2019

*Does not include the Canada–Newfoundland and Labrador Atlantic Accord Implementation Act as the CER does not have responsibilities or authorities under this legislation

**Regulatory Instruments include Orders, Certificates, Permits and Licenses that were issued by the NEB or CER. In this visual, it does not include Hearing Orders or General Orders.

Findings

REGULATORY FRAMEWORK GOVERNANCE

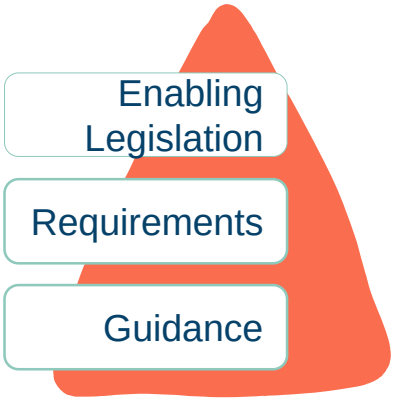
To what extent is there a clear and effective governance structure for the Regulatory Framework?

Governance determines who has power, who makes decisions, how others make their voices heard and how account is rendered. Governance helps an organization to achieve its mandate, goals and objectives.[1]

The Cabinet Directive on Law Making and the Cabinet Directive on Regulation outline the roles, responsibilities and requirements of departments for making laws and regulations. There are also more detailed requirements specified in the CERA including the governance model for the organization.

What is the CER's Regulatory Framework?

The CER illustrates the Regulatory Framework as a pyramid containing legislation, requirements and guidance and provides a few examples of each component (page 36). The CER states on its website that it implements its mandate through this Regulatory Framework.



Regulatory Framework Description

The CER needs a new approach to convey the overall Regulatory Framework.

- The description of the Regulatory Framework—which is on the CER website—is simplistic and does not provide sufficient detail for staff or the public. For example, the RF description does not fully explain how the CER implements all aspects of its mandate as per the relevant legislation.
- Although the CER addresses many topics on its website related to energy regulation there is no overarching corporate document where the CER has thoughtfully and methodically presented its Regulatory Framework in one place.

Regulatory Framework Governance

The roles, responsibilities and accountabilities for the Regulatory Framework are not well explained and thus not well understood.

- The CER is a departmental corporation and is part of the Natural Resources Canada (NRCan) portfolio. Legislation makes it clear who may make regulations; however, the roles, responsibilities and accountabilities for working together on the Regulatory Framework with NRCan and other departments has not been well documented for staff nor the public.

1: Institute on Governance (Web link)

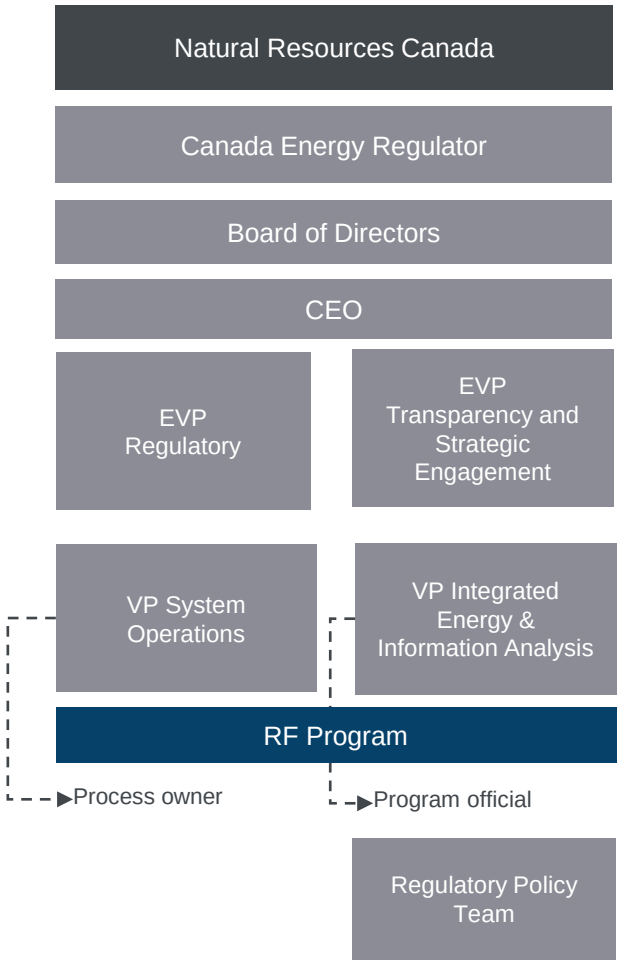
Findings

- The Board of Directors approved a guidance document in Nov 2019 titled Governance of the Canada Energy Regulator: Mandate, Roles and Responsibilities and shared it publically. It is meant to be a governance tool to explain the role of the Board, CEO and Commission. However it does not explicitly reference the Regulatory Framework nor does it mention that the Board approves both the plans for drafting regulations and the final regulations.

- Describing the governance for the Regulatory Framework is made more difficult in this evaluation because the Framework is not fully defined and elaborated upon. This may also explain why staff find it hard to understand their role within the Regulatory Framework and how their work is integrated with it.

- The CER describes roles and responsibilities of staff and management in various internal/external documents, presentations and on its website. For example, the People and Workforce Program provides a job family definition document (2017) with some detail for each of the 13 job families in the organization. Only four of them specifically mention the Regulatory Framework in relation to a job responsibility and this does not include the leadership job family.

- Before the governance structure for the Regulatory Framework can be evaluated for effectiveness, the Regulatory Framework first needs to become better defined.



Findings

Views on Regulatory Framework Governance

Summary of Survey Results:

Staff from programs in all the core responsibilities as well as legal and financial staff were invited to complete the survey. For more information on the survey methodology see Appendix, page 50.

Within the organization there is uneven knowledge of Regulatory Framework governance.

- 47% of survey respondents (51 people across all programs surveyed) do not know how the Regulatory Framework is governed. Of these, 38 people have been at the NEB/CER for five or more years.
- Comments from respondents relate to having limited or no knowledge of governance or they are unclear how Regulatory Framework changes are approved under the CER governance model. Others mentioned that they are familiar with the components that relate to their work only and not the rest of the RF.

Staff who interact with the RF and the RF Program need improved clarity and practical information on who is responsible and accountable for each component of the Regulatory Framework.

- Survey respondents indicated that it is clear who is accountable and responsible for legislation. This clarity decreases for requirements and guidance.
- Comments from respondents suggest staff think there is little clarity in the responsibility for developing and managing guidance with some commenting that it is made in a vacuum. Respondents also suggested that there could be improved internal communication about accountability and responsibility for the components of the Regulatory Framework, including better definitions of each component.
- There were also comments suggesting that documentation of roles and responsibilities for regulatory development is missing between CER and NRCan when it comes to carrying out regulatory projects. This affects collaboration and timelines.

> Ideally all CER staff would have knowledge and understanding of how the Regulatory Framework is governed especially since the RF underpins the work of the Regulator. It should not be a ‘black box.’

Chapter 04

Findings

PROGRAM DESIGN

To what extent has the RF Program developed and documented the necessary components of a program?

A program can help an organization deliver on its mandate. The Policy on Results has requirements for naming programs and defining their purpose and scope through a program description and documenting a performance information profile (PIP). The TBS Interim Guide on Results provides further instructions and good practices.

Being clear about the governance of the RF Program is important to its success and the effective delivery of its processes. The RF Program must have a program official and with this comes certain responsibilities. Program officials must work in close collaboration with managers of the RF Program as well as other program officials and the Head of Evaluation and Head of Performance Measurement.[1]

Element 1: Program Governance

Program Design > Program Governance • PIP • Program Resources • Support to Staff • Program Processes

The RF Program's governance is established but it is not fully understood by staff within the RF Program or across the organization.

- The RF Program meets the government's requirements for designating a program official and designating staff to respond to inquiries from the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations (SJCSR). It also meets the CER's Standard for Process Management for assigning the roles of process owner and process steward for the RF Program processes.

- Meetings with staff suggest that they want clarity around overall governance of the RF Program. This would include improving awareness of the line of sight across all program processes and how each person contributes to the Regulatory Framework in their own work.

PROGRAM: Individual or groups of services, activities or combinations thereof that are managed together within the department and focus on a specific set of outputs, outcomes or service levels.

- Treasury Board Secretariat Glossary

1: The VP Performance and Results is designated as Head of Performance Measurement and Head of Evaluation.

Findings

Views on the RF Program's Purpose, Scope and Governance

Summary of Survey Results:

RF Program knowledge

- 54% of survey respondents are knowledgeable of the RF Program's purpose.
- Some respondent did not feel informed on the RF Program and, in some cases, were not aware of it. They also lacked connection to the work of the RF Program even though their job is to determine compliance with the Regulatory Framework requirements.

Program position in the DRF

- More than 50% of survey respondents were neutral or had no opinion about the placement of the Program in the DRF.
- Comments suggest that it is not logical to have the Program under its current core responsibility especially since the Regulatory Framework is enterprise-wide. Others suggest there are silos between the RF Program and other programs even though they are under the same core responsibility.

> The need for governance exists anytime a group of people come together to accomplish an end.
> - Institute on Governance

- Staff indicated in the survey and interviews that it was confusing that the RF Program staff are organizationally situated outside of the S&EO CR. They also noted that business units that deliver programs under this CR report to a different VP/EVP than RF Program staff. Furthermore they note that it has not been well explained why the process owner is not the same person as the RF Program official (page 14).

Integration with other programs

- 20% of survey respondents that have worked at the NEB/CER for five or more years indicated that they do not understand the relevance of the RF Program to their work.
- Comments from respondents suggest that staff may understand the overall Regulatory Framework but know little to nothing about the RF Program. It would be helpful if the RF Program provided more outreach and information about what it is and does and how it relates to their area of work.

Describing RF Program governance

- 47% of survey respondents cannot describe how the RF Program is governed, including a few respondents from the RF Program itself.
- Comments suggest that the governance model for the RF Program does not support coordinated decision-making and accountability for quality of work is unclear. In particular, respondents are confused that the RF Program official and process owner are different people.

Findings

Element 2: Performance Information Profile

Program Design > Program Governance • PIP • Program Resources • Support to Staff • Program Processes

A Performance Information Profile (PIP) is the document that identifies the performance information for a program. It must be developed with sufficient detail to support program management. The PIP template from TBS can be structured to meet an organization's needs while still meeting PIP requirements. The program official is responsible for establishing, implementing and maintaining the PIP, including ensuring that data is collected for it. TBS provides these requirements in the Policy on Results and further guidance on initial program design, including performance measures, is available on the government's internal results portal and in the Interim Guide on Results.

Program Description

The intent of having a program description has not been met.

- RF Program staff have made efforts to design and document the RF Program in accordance with requirements, but there is room for improvement.
- The RF Program description briefly describes the Regulatory Framework but it does not state specifically what the RF Program is or does, its overall objective and how it relates to its core responsibility. In fact, all CER programs, except for the Participant Funding Program, have written their program descriptions without actually describing what the program is or does.
- Gender-based Analysis Plus (GBA+) is to be taken into consideration when developing a program description (PD) and PIP. Although the PD acknowledges that the Regulatory Framework is updated based on input from stakeholders, it does not specifically mention GBA+ as part of the RF Program description or activities.

Performance Information Profile

The RF Program PIP exists but it is only partially developed and not maintained.

- The RF Program PIP was last updated May 2018 and with the passage of time, some of the information is now inaccurate. The RF Program also suspended its performance indicators during this evaluation.
- The CER PIP template also does not prompt programs to develop program specific risks or to discuss GBA+ considerations in their design and delivery. Work is currently underway at the CER to develop more supporting program templates, tools and a program standard for the organization. There may also be the potential to convert the paper-based PIPs into an electronic format which would likely improve the uptake and use of PIPs.
- The PIP also lists some efficiency measures for the RF Program; however, they are designed in a way that will not actually measure efficiency

Findings

Issues, Risks and Opportunities

The RF Program has not documented program-specific risks. Doing so would promote risk-based thinking that can enable the RF Program to proactively monitor, review and take action on factors that affect the achievement of program outcomes.

- If risks are not managed effectively, this can result in increased program costs and missed opportunities, which can compromise program outcomes. Identifying and reviewing internal and external issues as well as risks and opportunities and taking actions to address them are essential to the functioning of a management system.
- The RF Program has not identified program specific-risks in its PIP. Instead it refers to corporate risks. In the future managing program specific risks may change when a risk management approach is established throughout the organization.
- Discussing risks related to core responsibilities is an agenda item for PMEC meetings. Presumably this would include the risks related to each program that falls under a core responsibility. If PIPs include program risk and monitoring, then this information could easily and systematically be retrieved.

Element 3: Program Resources

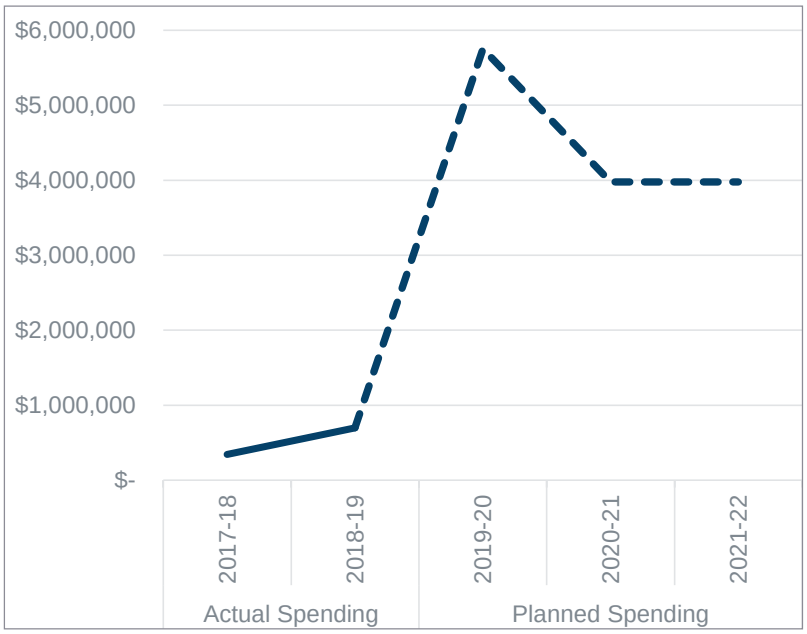
Program Design > Program Governance • PIP • Program Resources • Support to Staff • Program Processes

Spending

- In 2019-20, the RF Program's planned spending represents:

  – 6% of total CER spending
  – 9% of all CR spending
  –19% of all S&EO CR spending

- The RF Program uses Operating and Maintenance Costs (O&M) mainly for i)professional and special services ii)information and iii) transportation/ telecommunication. In 2018-19, O&M was $698,000 which represents 0.6% of all O&M costs at the NEB during that year.
- The RF Program will experience a 30% drop in planned spending in 2020-21 compared to the previous year. This adjusted level is planned for years to come.



Data Source: Financial and FTE data extracted from GC Infobase in Dec 2019.

Note: Actual spending between 2017-2019 only reflects the O&M portion of RF Program costs. Personnel costs were attributed to another program in the S&EO CR in those years.

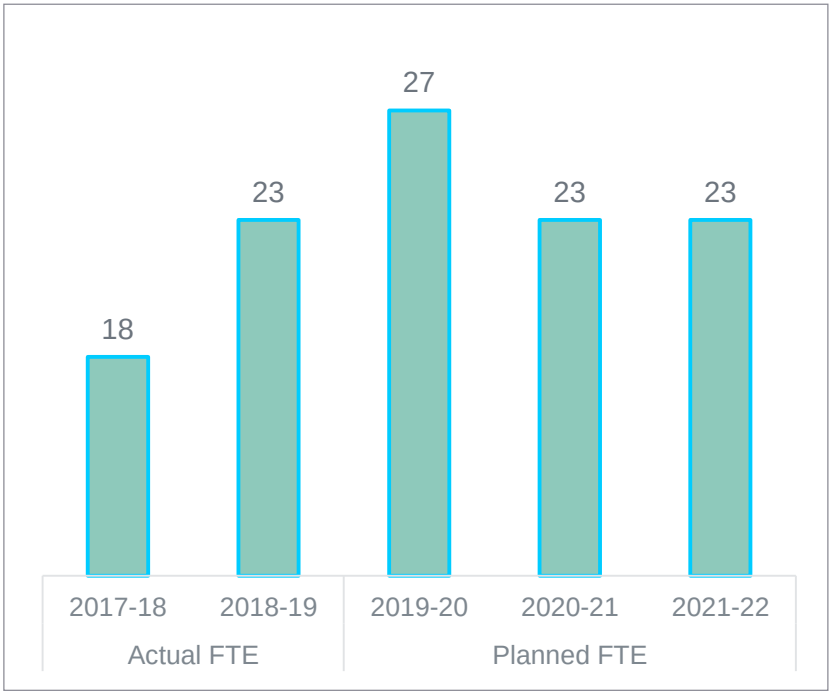
Resources are determined, provided and reviewed through program participation in corporate processes for annual planning, monitoring and reporting.

Findings

Staffing

Full-Time Equivalents (FTE)

- In 2019-20, the RF Program staffing represented:
  - 5% of all CER FTEs
  - 8% of all CR FTEs
  - 17% of all S&EO CR FTEs
- The RF Program has funded and unfunded positions as per the internal resource allocation plan (RAP). This means some positions do not have a temporary or permanent source of funding and are risk-managed.
- The RF Program will experience a 15% drop in planned FTEs in 2020-21 compared to the previous year and this new level will continue into the next year.



Data Source: Financial and FTE data extracted from GC Infobase in Dec 2019.

Tracking Resource Needs and Use with Timesheet Data

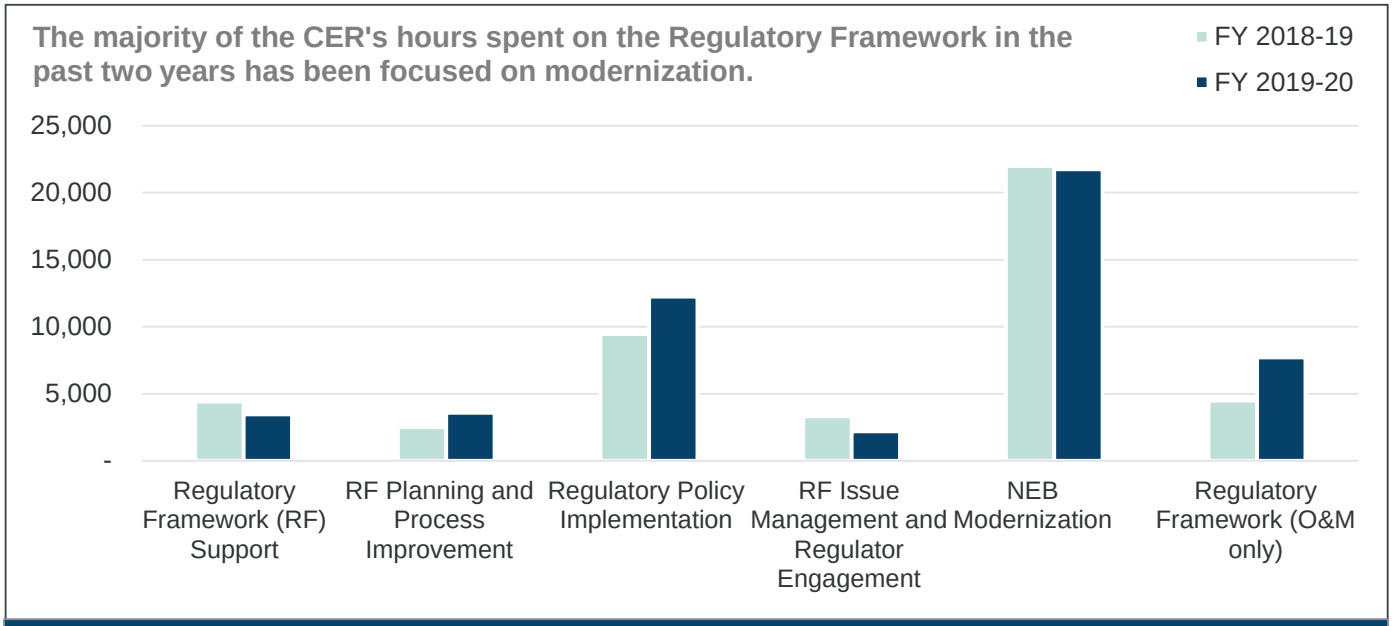
There has been a missed opportunity to use timesheets as a source of information for program management and planning because the time codes have not been developed in sufficient detail to explain how time is spent.

- Timesheet data is underutilized for the purposes of RF Program planning with part of the issue being that the data is not as meaningful as it could be.
- Main activity (MA) time codes need to better connect to processes and processes need to better connect to programs so that the true cost of running the RF Program—delivering services and achieving planned outputs and outcomes—can be understood. The data is a potential asset but the approach to MA time codes needs re-design in either the TIME System or in the future timesheet module in SAP (Systems, Applications and Products).
- Tracking time codes have been a feature of the TIME System since 2003 and are used in tandem with a MA code to track specific activities or projects. The RF Program has never used tracking codes for specific regulatory projects until 2019 when it introduced one for the purposes of tracking time worked against updating the Onshore Pipeline Regulations.
- Interviews with senior management suggest that they are aware of the limitations of the TIME System and the implementation of the SAP in the near future will help produce better program activity data, enable measurement of both resource pressures and program efficiency and also allow the CER to know the true cost of running any given program.

Findings

Time Spent on the Regulatory Framework by the CER

The RF Program has six main activity time codes. These codes can also be used by the rest of the organization in their timesheets if staff are doing work related to the RF Program. Likewise RF Program staff can use main activity time codes that belong to other program areas. The graph below shows the total number of hours worked at the CER against these time codes.



Between 6-8% of the CER's total working hours are spent on the Regulatory Framework.

- The modernization MA time code is one of the top 10 time codes used by the organization in both fiscal years, representing approximately 3% of all working hours at the CER. It has been used by almost all business units for time spent on modernization work. In 2019-20, it was used more than 50% of the time by those staff who were part of the modernization implementation team.

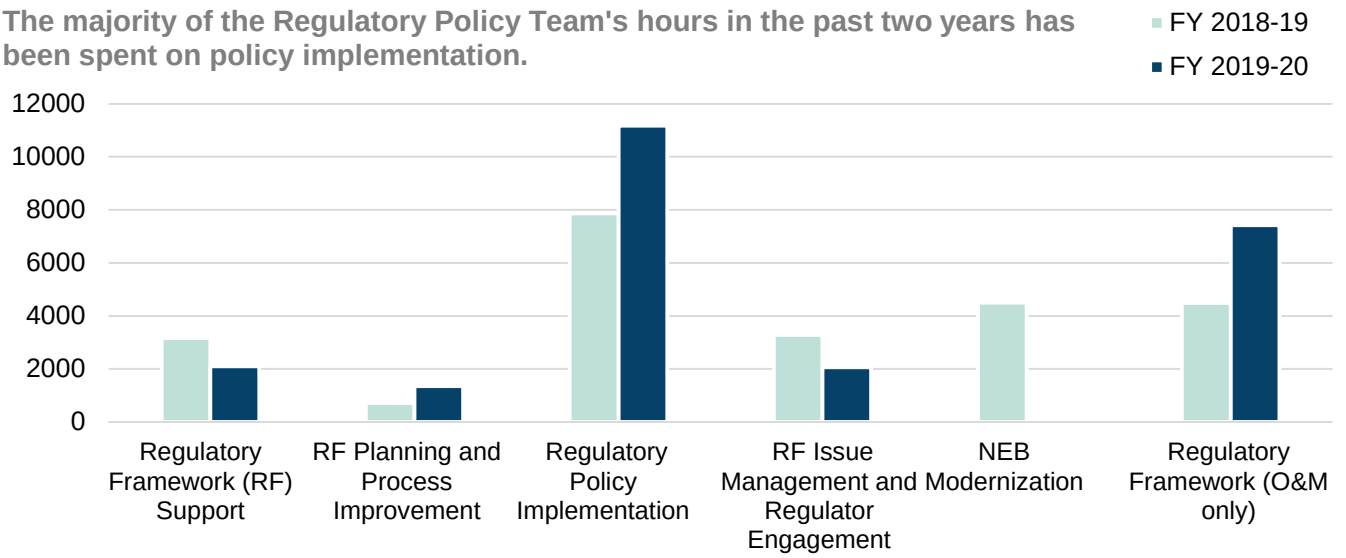
- The description of the modernization time code provided by the RF Program—support for the Modernization Panel, related initiatives/projects, etc., —does not include suggested or required tracking codes that are associated with it. Despite this, some timesheets that have used the modernization time code have included a tracking time code to specify a certain activity.

Note: The FY 2019-20 data was retrieved March 12, 2020 and reflects hours submitted in timesheets up to early March 2020.

Findings

Time Spent on the Regulatory Framework by the Regulatory Policy Team

The majority of the Regulatory Policy Team's hours in the past two years has been spent on policy implementation.



The Regulatory Policy Team accounts for 41-52% of the CER's time worked on the Regulatory Framework as per these RF Program time codes.

- Most of the team's working hours are spent on regulatory policy implementation which is related to the *design, development and/or amendment of policies, regulations, related consultations, etc*.
- Activities related to program planning and process improvement have the fewest hours– between 3 and 6% in these past two fiscal years.
- In 2019–20, the Regulatory Policy Team barely used the modernization MA time code while the rest of the organization used it as much as it did in 2018–19 (the RF Program time guidance says it should not be used). Instead the team increased their hours under the policy implementation MA time code.

Guidance on time codes is insufficient to generate meaningful information and analysis to measure efficiency over time or assist in future program resource planning.

- Basic RF Program time code guidance is provided to program staff but not the rest of the organization when linking their work to these time codes. Furthermore, the RF Program, like all programs at the CER, does not have oversight over how main activity time codes are ultimately used by the staff in other programs.
- It was not clear from RF Program time guidance which codes RF Program staff should use if they work on a TB submission or regulatory cooperation activities such as MOUs or international engagement.
- The RF Program's time guidance also indicated that the "O&M only" code should be used for work directly related to implementing the CERA under Budget 2018. While it may be useful to track total hours of work related to temporary funding, this does not result in useful information to understand, for example, how many hours on average it takes to plan, develop and implement a new or revised regulation.

Findings

Overtime, Banked Time and Travel

Occasionally regulatory policy staff have had to work overtime or they have extra hours in their day due to work-related travel. Pre-approval of overtime is required in the CER's TIME System. Staff are also allowed to voluntarily work additional hours above their normal hours (banked time) as long as they have an agreement in place with their manager to do so. These hours can be accumulated to a maximum and can be redeemed as leave with pay at another time. The collective agreement outlines the requirements for overtime, travel and banked time.

The Canadian Centre for Occupational Health and Safety suggests that workplace stress can be related to workload (under or overload). At the CER, overtime, banked time and travel can indicate workload.

Most of the time the Regulatory Policy Team has regular working hours.

- Around half the team did overtime in the past two years which ranged from a total of 2.75 hours to 133.5 hours per employee.
- In 2018–19 when doing overtime, it was most common to do 1 hour and in 2019–20 it was 2 hours. As well, overtime and banked time mostly occurred during weekdays.
- Based on the data for the last two years, overtime does not appear to be significant for the RF Program overall; however, when analyzing the hours by individuals, there are differences among staff for who completes overtime, banked time and travel. Those with 100 hours or more of banked time were also the same staff that had overtime hours.
- This may be partially due to the feasibility of completing extra work for any particular staff member but it could also be related to the demands of the projects in which staff are involved. They may have to work banked or overtime hours to meet deadlines.

Regulatory Policy Team

Breakdown of working hours from FY 2018-19 to FY 2019-20:

- 94% were regular
- 4% were banked
- 1% were overtime
- 1% were travel

Element 4: Support to Staff

Program Design > Program Governance • PIP • Program Resources • Support to Staff • Program Processes

Ensuring that people have the necessary competence through education, training and experience is an essential component of a management system. If competence is needed then a program must take action to ensure it is acquired.

Findings

Training and Tools

The RF Program identifies training opportunities and onboarding resources for its staff.

- The RF Program has a recommended training list with the expectation that staff will follow it to develop knowledge, competency and skills. Some courses are offered by the CER and others by the Canada School of Public Service or other providers. They relate to the organization overall, federal government and regulation making, as well as energy topics.
- The RF Program keeps track of staff attendance at certain courses; however, this spreadsheet provides limited information. It does not note the last date it was updated, nor who is responsible for doing so. For staff it also does not note when the course was taken or if an expiry date is applicable.
- The RF Program has developed onboarding material for new staff. It consists of corporate information such as plans, reports, mission and vision of the organization and reference information related to human resources, records management and the Process Dashboard. It also has more detail about the RF Program such as roles and responsibilities.
- The RF Program has a list of current team assignments and shares this in onboarding material. This helps explain to new and existing staff who is leading specific aspects of program management and delivery, including assignments on specific regulatory projects.
- The RF Program has an intranet page with a link to training; however, it has minimal information and has not been updated since December 2017. As well, none of the course hyperlinks on the page work.
- Onboarding staff to the Process Dashboard is a good practice so that they become aware of the RF Program's processes, where to find them and how to provide input for continual improvement. It is a missed opportunity in communicating the most current information to help staff in their work when the processes and process documentation are not kept up to date, which is the current situation.

The Regulatory Instrument Inventory

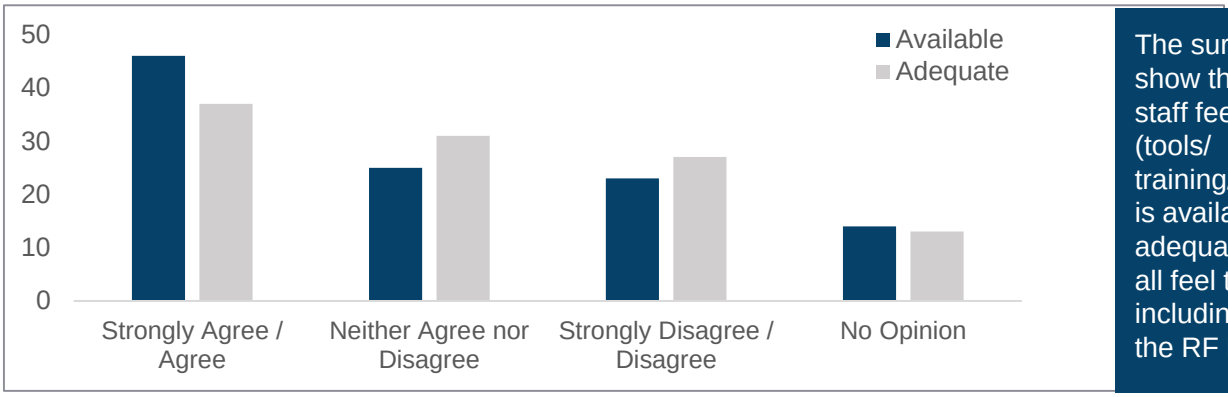
- The RF Program has a spreadsheet for the **Regulatory Instrument Inventory**.
- The inventory is shared on the RF Program intranet webpage which is accessible to all staff. It contains a list of acts, related regulations and the associated guidance and public information that exists. It also has a list for orders and advisories. For all of these, it notes the date of issue or last amendment and the location of the document which is helpful for retrieving information.
- The inventory does not contain all information on the Regulatory Framework because some regulatory instruments are managed in other databases and by other CER programs. For example, inspection officer orders, permits and licences are recorded in other databases but these databases are not listed in the Regulatory Instrument Inventory.

Inventory: A complete list of items.

Findings

Views on the RF Program's Purpose, Scope and Governance

Summary of Survey Results:



The survey results show that some staff feel support (tools/ training/guidance) is available and adequate, but not all feel that way, including staff in the RF Program.

Comments suggest that some staff are unaware if there is training or tools available from the RF Program and if they do exist, they are unclear how to access them. Suggestions from survey comments include:

- More training so that staff can better understand the RF and apply it in their work, especially if they work on projects related to regulations and guidance. Staff from other programs also suggest they need tools and guidance specific to their work (e.g., inspections, enforcement, rights and interests).
- Improved consistency in the processes that relate to developing orders and guidance.
- More time provided by the RF Program when requesting feedback from staff on aspects of the Regulatory Framework so that collaboration is more effective.

PROGRAM DESIGN

To what extent has the RF Program established a process approach for its operations and to meet internal/external requirements and expectations?

To what extent is the RF Program designed to pursue opportunities for regulatory cooperation, alignment and coordination on regulations and associated regulatory initiatives?

The CER established a Process Management Standard (Standard) in 2017 and it applies to all processes undertaken by the CER. It addresses the generic roles and responsibilities for process design and management and requires process measures to help monitor process effectiveness and the quality of outputs or services.

The Standard also helps to establish consistency in the look and feel of process maps and documentation (policies, procedures, work instructions, standards, guidelines) which are to be made accessible on the CER's intranet through the Process Dashboard (PDB). The PDB is the platform used by the CER to host the most current business processes and process/program documentation. It helps staff with version control of processes and related documents. Staff can also use it to provide feedback for process improvement and process owners to review and track actions related to process change.

Process Management Standard

Findings

Element 4: Program Processes

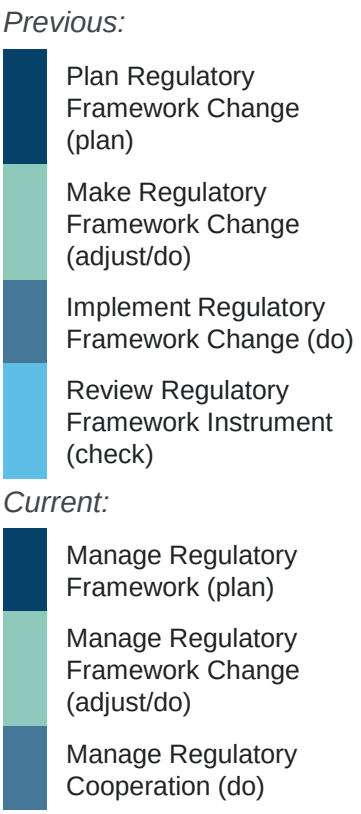
Developing Processes

The RF Program is actively working on developing and finalizing its processes.

- The roles of process owner and process steward were assigned to the RF Program in 2018 and since then staff have been working on drafting RF Program processes. Originally this resulted in an overall structure that followed the cycle of “plan, do, check, adjust” as shown to the right under ‘previous’. Many sub-level role-based processes were named but were still in draft or not yet started during the evaluation.

- Towards the end of conducting this evaluation, staff had started to re-think the approach and were re-doing their process mapping along with all other programs under the Safety and Environment CR. The plan is to simplify previous process maps and show more integration with the processes of other programs. The next step will involve developing process measures once the processes are approved.

- Given that work is still underway to finalize the new processes, there is an opportunity to clarify a process or a procedure that describes how staff intend to “check” the effectiveness and performance of the RF Program or specific regulatory instruments so that the policy function can guide the CER's approach to continual improvement of the Regulatory Framework.



Developing Process Documentation

The RF Program has not kept the process dashboard up to date which means there is a gap in communicating what is required of staff and providing the tools they need to do their work. It is important to make updates in a timely manner because staff need access to the latest approved RF Program work instructions.

- The RF Program first started using the PDB in 2006. The documents that are currently on the dashboard are processes, procedures, templates, guides and training on the development of regulations. These documents date between 2006 and 2013 and align with the April 2012 Cabinet Directive on Regulatory Management which has been replaced by the 2017 Cabinet Directive on Regulation.

- Staff indicated that the RF Program’s time and efforts have been driven by the policy agenda of the federal government for the past several years. The demand for Regulatory Framework change took priority over work on RF Program design especially process development.

Having a process approach is an essential component of a management system.

Findings

- In the most recent third-party assessment of the internal "process for developing regulations" in 2015–16 this critical process was assessed at 2.2 out of 5 in terms of meeting baseline requirements for documentation, training, measures and feedback. This suggests that there is an opportunity for improvement.

- All process documents need to be updated or retired given the corporate changes within the organization such as the DRF structure (2016) which establishes the Regulatory Framework Program, the new Cabinet Directive on Regulation (2018) and the CER's more recent Process Management Standard (2017).

Managing Process Documentation

The RF Program's process documentation on the PDB is missing some key elements.

- The RF Program's existing process documents only relate to developing regulations and do not address all aspects of regulatory development or other areas that the RF Program helps lead or guide. For example:

  - Guidance or templates for developing and issuing guidance;
  - Guidance on developing orders, directives, guidance notes, protocols, etc.; and
  - Guidance related to stakeholder or Indigenous engagement on regulatory projects.

The RF Program stores process documents outside of the PDB.

- Although the RF Program has not kept the PDB up to date over the years, staff indicated that they have folders in the CER's records and document information management system (RDIMS) that contain resources for regulatory development. These include templates and examples from past projects that can be used for reference. New staff are encouraged to look here when they need information.

- This area of RDIMS contains 21 folders of information some of which include subfolders. Having to navigate this area to find templates could be time consuming and is an inefficient way of directing staff to find templates for their work.

- Included in these folders is a basic template for writing a discussion paper. It is not linked to a procedure to guide its use. This is also the case for the project charter, work plan and engagement templates. These templates also have pre-determined security classification at the Protected B level when this level may not apply in all cases.

A TIMELINE:
Government requirements for the development of legislation and regulations

1978-2001
- Government of Canada Regulatory Policy
- Cabinet: Preparation of Legislation
- Guide to the Making of Federal Acts and Regulations
- Cabinet Directive on Law-making
- Guide to Making Federal Acts and Regulations

2002-2004
- Federal Smart Regulation Initiative

April 2007
- Cabinet Directive on Streamlining Regulation (rescinded)

April 2012
- Cabinet Directive on Regulatory Management (rescinded)

Sept 2018
- Cabinet Directive on Regulation

The federal government has issued new or revised requirements & expectations for regulations **3** times in the past **10** years.

Findings

Process Measures

The Process Management Standard requires that programs develop process measures to measure process effectiveness and the quality of outputs/products. Given that the RF Program is still developing and finalizing its processes, process measures have not been developed at the time of this evaluation and cannot be assessed.

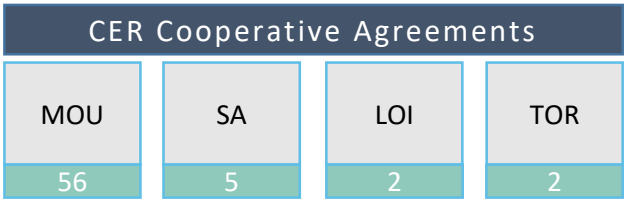
Regulatory Cooperation

Departments are to seek opportunities for regulatory cooperation, coordination and alignment for regulations and regulatory activities according to the Cabinet Directive on Regulation.

Over the past several decades, many areas across the organization, including the RF Program, have established cooperative agreements with other interested parties on a variety of topics. There are agreements that are customized to a specific energy project review and others which are, for example, a commitment to joint training, emergency response and coordination, cooperation on regulatory program activities, sharing data, best practices and technical expertise.

As of January 2020, the CER was a signatory to: 56 Memorandum of Understanding (MOU), 5 Service Agreements (SA), 2 Letters of Intent (LOI) and 2 Terms of Reference (TOR).

The oldest agreements are two MOUs that were signed in 1992. Cooperative agreement types are defined in more detail in the Evaluation Appendix, page 52.



Type of Interested Party	MOU	SA	LOI	TOR
Other Boards, Regulators or Commissions in Canada	22	2		1
Foreign Governments	5		2	
Provincial Governments	5			1
Councils or Committees	2			
Research Institutes	2			
Territorial Governments	2	2		
Other Federal Departments	23	1		
Not for Profits	2			1
Municipal Government	1			

This table shows that most MOUs are with other federal departments or other boards, commissions or regulators in Canada. SAs, LOIs and TORs are used less frequently by the CER.

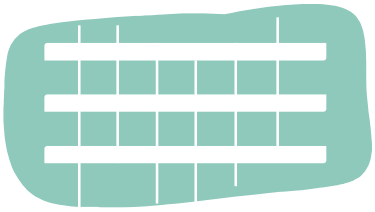
Note that a cooperative agreement may include more than one type of interested party thus the total numbers in this table may appear higher than the actual total number of agreements.

Findings

The Cooperative Agreements Inventory

The RF Program created a spreadsheet in early 2017 which is considered the master inventory of all cooperative agreements that are active, under development or terminated. It contains information on the agreement, a link to the document, signatories, effective and expiry dates if they exist, the year that they will be reviewed and a narrative of recommended actions or next steps.

This spreadsheet is not functional as an inventory as it has not been designed as a database which makes it very difficult to search, filter, sort or analyze information. If someone wanted to know the exact number of active MOUs, for example, it would take some time to determine this from the spreadsheet because agreements appear in duplicate and those under development are called ‘active’. The list of cooperative agreements on the CER website also does not provide a complete picture since not all agreements have been published.



To develop an accurate list of active agreements and analyze their characteristics, much time in this evaluation was spent on re-organizing information in the inventory, improving consistency of data formatting, validating completeness and accuracy and cross-checking with the publically available list to determine differences.

MOU inventory:

- Not all agreements in the internal inventory are linked to a signed and dated version of the document.
- 46 MOUs, 2 SAs, 2 LOIs and 2 TORs do not have expiration dates.
- The information in the inventory does not always match what is on the website and vice versa.
- 15 MOUs from the master inventory have not been published online and the agreements themselves do not specify that they are confidential.
- Some MOUs imply that there could be costs (e.g., paid training/travel); however, the way they are worded makes it unclear whether additional costs are permitted and will be paid out as per the MOU (which is not legally binding nor supposed to involve funding) or if a separate contract would be arranged if there is a financial implication.
- MOUs have not explicitly incorporated performance measurement over the years.

MOU webpage:

- Many MOUs posted on the CER website share original signatures. The MOU procedure does not indicate that this is mandatory although the CER practice for other corporate documents is to use the statement “original signed by...”.
- Other organizations have changed their name over the years; therefore, it may be unclear who are the parties to the MOU. For example, the Alberta Energy Resources Conservation Board and the Alberta Energy and Utilities Board became the Alberta Energy Regulator (AER). The agreements the CER has with the AER are from between 1995 and 2010 and the name changes have not be noted on the webpage.
- The webpage is simply a listing of agreements. While it is easy to sort and filter by interested party, topic or date, there is no further information on how these agreements are linked to the CER’s mandate, core responsibilities, programs or the Regulatory Framework.

Findings

Developing Cooperative Agreements

A procedure for MOUs was first created in 2009 and was periodically updated throughout that year and again between 2014-2017. To pursue a MOU, the procedure requires that there be an expected overall benefit to the CER based on certain criteria. There is also an accompanying template to guide staff in developing the essential components of an agreement.

- The first service agreement procedure and template were developed in 2017. There are currently no procedures or templates for Letter of Intent or Terms of Reference.

- The approach to developing, managing and overseeing cooperative agreements was not as formalized in past years as it should be. Since many agreements precede the formalization of processes and guidance, they vary in their look, content and style. Some agreements appear as a hybrid of MOU/Service Agreement. They also vary because CER was not always the lead in writing the agreement.

Views on Regulatory Cooperation

Summary of Survey Results:

There was no strong agreement by respondents across all programs surveyed when they were asked whether developing cooperative agreements was supported by clear internal processes, adequate oversight and monitoring and measuring performance.

The main themes from the survey comments are concerns related to:

- Agreements being outdated;
- Lack of transparency of the master inventory list (not shared internally);
- Lack of clarity on how agreements apply to an individual's job or to the RF overall;
- Non-compliance of final agreements with processes and requirements for developing them;
- Limited resources for oversight; and
- No mechanisms for reviewing the actual performance and execution of cooperative agreements by the CER or the other signatories.

Improvement Noted

The RF Program is currently drafting a new high level process for regulatory cooperation and have a designated team member as the coordinator for cooperative agreements. The current draft outlines the role of the RF Program in drafting the agreement and tracking regulatory cooperation activities. This could help to improve consistency in the required content of agreements, as could process measures. The RF Program has also taken steps to review each agreement every five years. This will help to keep agreements up to date with newer requirements such as fixed termination dates.

For more information about regulatory cooperation see Evaluation Appendix, page 54.

Findings

REGULATORY LIFECYLE APPROACH: “Plan”

To what extent is the RF Program designed to meet the requirements and expectations for identifying and communicating policy issues?

The CER has an internal Regulatory Framework Plan (“the Plan”) that the RF Program helps to develop and update both annually and throughout the year. It covers a three year period and includes projects to develop or amend regulations, guidance, templates and procedures. It also acknowledges CER work on technical standards committees. RF Program staff indicated that the timing of their annual update to the Plan is aligned with corporate business planning processes.

To develop the RF Plan, the RF Program conducts an environmental scan over the summer months to determine emerging areas of work. Staff indicated that they share the draft RF Plan in the fall with all business units and engage with other program staff directly to identify relevant projects that should be added to the next update of the RF Plan. The Plan is reviewed in the spring by the Regulatory Leadership Group and approved by the EVP Regulatory. The current 2019–2022 RF Plan has 23 projects listed. 61% are due to legislative change and the rest relate to continual improvement.

Internal Planning

- During the evaluation the RF Program provided their written procedure (the Procedure) for developing the RF Plan. The Procedure has been documented using the corporate procedural template; however, it has not been placed on the Process Dashboard, even though it has existed since 2016 and was last updated in February 2019. In 2016, the RF Program drafted work instructions on gathering and analyzing information to develop the Regulatory Framework Plan, but they are still draft and provide limited information related to the steps.

- The Procedure erroneously suggests that the RF Plan helps to implement the RF Program, when in fact it is the other way around as the RF Plan is an output of a RF Program process.

- The RF Program also shared a document that is a chronological record for the current and past RF Plans, indicating key dates and links to key documents that relate to the development, approval and monitoring of the Plan. This is a useful program document and could be more readily shared with the rest of the organization as a reference resource via the RF Programs’ internal webpage.

- The RF Plan is easy to read and provides an overview of all work, project status and progress, a brief description of scope and identification of roles for leading and supporting this work.

- One element that is missing from the RF Plan is formal prioritization of regulatory projects in relation to each other. The Procedure for the RF Plan suggests that the projects identified in the Plan are all priority regulatory projects. The RF Plan Procedure has implied since 2016 that the RF Program will develop a risk assessment procedure to prioritize projects; however, it does not yet exist.

Findings

Regulatory Framework Plan Oversight

An oversight function with defined roles and accountabilities for regulatory initiatives, including overseeing quality, is essential to project management and a key feature in a management system approach to the Regulatory Framework. It should be considered when defining the RF governance structure.

- At the time of the evaluation, there was no specific standing committee or forum with broad membership across the organization that could meet regularly and dedicate itself to strategic policy discussions and ongoing planning, prioritization and monitoring of the Regulatory Framework.

- There are two leadership groups known as the Transparency Leadership Group (TLG) and the Regulatory Leadership Group (RLG)—each led by the respective EVP and attended by corresponding VPs and professional leaders. However, these leadership groups do not normally work together to co-develop the strategic direction for the Regulatory Framework nor to monitor progress. Furthermore, the RF Program official reports to the EVP who leads the TLG and has not been as regularly involved in attending RLG meetings.

- For several years now, staff have been interested in having a committee with representation across the different business units to serve as an advisory function for regulatory development and improvement projects and to be a forum for discussing and resolving policy matters related to the Regulatory Framework. A terms of reference for such an advisory committee was drafted and the idea was recommended to the RLG in July 2016. This recommendation was not supported for implementation at the time.

Identifying and Communicating Policy Issues

The Cabinet Directive on Regulation contains the requirements for regulations that will be developed and registered under the Statutory Instruments Act (Section 6). This includes requirements for consultation and engagement, determining the regulatory approach, publishing plans, writing the Regulatory Impact Analysis (RIA)[1], pre-publishing regulatory text and final publication in Canada Gazette. Carrying out this process is supported by TBS policies and guidance and assistance from the Department of Justice in drafting regulatory text.

Departments are required to provide advance notice of upcoming regulatory changes over the next 24 months. This is a publically available list with descriptions known as the Forward Regulatory Plan. It allows stakeholders and Indigenous Peoples to plan for future regulatory changes and engagement in regulatory development.

- The CER publishes a Forward Regulatory Plan to its website and updates it annually. It provides the minimum information required by TBS—a description of each regulatory initiative including the objective, potential business impacts and opportunities for engagement or consultation and contact information. When regulatory work is led by Natural Resources Canada (NRCan), a link is provided to their website.

> “Consultation should be woven into all aspects of regulatory development”
>
> – TBS Policy on Regulatory Development.

1: A RIA includes the analysis of benefits and costs, impacts on the environment, GBA+, assessment of regulatory cooperation opportunities, strategic environmental assessment, assessment of modern treaty implications, and international obligations.

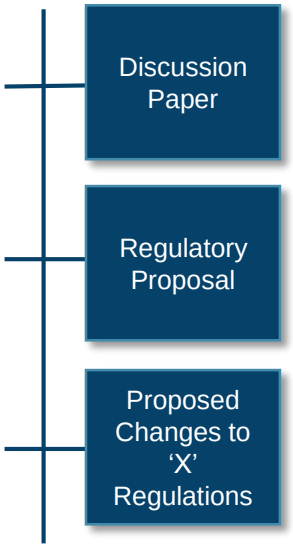
Findings

Communicating with the Public, Stakeholders and Indigenous Peoples

The regulatory process must be modern, open and transparent which means that regulations and related activities are created, maintained and reviewed in an open, transparent and inclusive way.[1] Departments are also advised to:

- Document comments received during consultation and make them available upon request.
- Use modern, digital, accessible and secure platforms and tools for consultation and engagement.

- When the RF Program undertakes a regulatory initiative, it engages the public through a variety of approaches such as preparing informational documents to share on the CER website or other online platforms. Based on current and past examples, these documents have been called by different names but seek to gather feedback from the public, stakeholders and Indigenous Peoples on the regulatory approach or wording of draft regulations.



- To date, these documents that the RF Program develops do not have a consistent appearance. They are also missing the basic features of a finalized document such as a title page and a date/year of creation or release. They have also not been formally published (ISBN/Catalogue Number).

- The RF Program uses several tools to obtain and record feedback on regulatory initiatives. This could be through emails created for specific initiatives or by using the CER Dialogue online platform to share a consultation opportunity and related material. In past years, the corporate REGDOCS system has also been used to communicate regulatory proposals and related guidance and to solicit comments received and summarize what was heard.

- Many areas across the CER use an online case management system called Client Relationship Management (CRM) to record and track engagement activities. The RF Program has recently started using CRM but they are still working with the Engagement Program to figure out how best to use the system based on unique program needs.

1: Guiding Principle 2 of Federal Regulatory Policy, CDR (Web link)

Findings

REGULATORY LIFECYCLE APPROACH: "Do"

To what extent is the RF Program designed to meet the requirements and expectations for developing, implementing and communicating the Regulatory Framework?

Guidance and public information are part of the CER's Regulatory Framework. The CER is responsible for developing and publishing guidelines for the public to help clarify regulatory requirements. TBS writes, in its Policy on Regulatory Transparency and Accountability, that achieving these outcomes requires accessibility and predictability which means:

Accessibility: Information about how regulations are developed and managed should be publically available, easily obtained and written in clear and concise plain language.

Predictability: Publically available information on regulations should be timely, meaningful, accurate and up to date.

Publically available guidance on the CER website varies considerably by name, age and format. This patchwork may be partially due to the passage of time but it also shows that corporate oversight and requirements for developing, publishing and maintaining guidance are missing.

- The CER explains its regulations and processes and shares this information directly on its website as guidance or general information in both official languages, as well as in either HTML or PDF formats and in some cases both.
- Guidance also appears in the REGDOCS system where the guidance was developed and communicated by the past NEB Board and the current CER Commission (for example 'Guidance Notes'). While this system is accessible via the CER's website, this guidance is embedded in correspondence or attachments and limited to PDF only.
- Many guidance documents have been out of date for some time. Some contain the previous NEB address even though over five years have passed.
- Guidance documents go by different names, for example: guidance, manual, guideline, guidance note, memorandum of guidance or further instruction. There is no glossary for types of guidance in the Regulatory Framework. Guidance varies in format with some looking less formalized with no visible corporate identity or graphics that are blurry when published which means they have not been sent to the CER's design team to be professionally designed.
- Names of staff and specific work contact information in guidance and on webpages has been the regular practice rather than using position names and general CER contact information. In many cases the guidance documents have outlived staff in their roles and thus this contact information is not enduring.

> It is important to provide the public and regulated communities with all relevant information on what is expected of them in a format that is easy to understand.
>
> - Cabinet Directive on Regulation

Findings

Guidance on Guidance

The RF Program has drafted but not finalized requirements for the creation of guidance documents. As a result, staff across the organization are missing the information they need to consistently create, review and maintain up-to-date guidance documents for the public.

Staff from the RF Program indicated that the RF Program plays a key role in the development, review and approval of guidance; however RF Program staff point out that this has not always been recognized and they find themselves sometimes engaged very late in the process by other programs. They also pointed out that it is unclear who approves guidance as this has not been formally established by the CER.

- The RF Program shared three draft documents that were initiated in 2015 but never finalized and approved:
    - The draft **Procedure for Developing Guidance** describes the steps for developing, approving guidance and document control. It does not prescribe a template or set sufficient quality requirements.
    - The draft **Guidance for Publishing Guidance** acknowledges that obtaining ISBN/ISSN numbers are part of the process for publishing guidance documents.
    - The draft **Work Instructions for Guidance Document Control** refers to a central database of all guidance documents to support coordinated management and document control.

Sharing Information on Web Platforms

There are minimum information sharing requirements regarding acts, regulations, plans and reports online with the public to support regulatory transparency and accountability. Likewise, the CER also has an internal web platform (iWeb) for staff to communicate with each other, share information, tools, updates and access to processes, documents and other systems needed in work.

iWeb

For the iWeb to be a resource it needs to be maintained and updated regularly.

- Several of the hyperlinks are broken. As well, there is a link for staff to provide internal feedback, but it did not work when checked during this evaluation. Very little feedback appears to have been submitted using this form between 2016-2019 which may indicate the link has been broken for some time or staff are not aware of its existence.
- Some of the pages contain limited information and when they do the information is often dated.
- Instead of providing a link to the current RF Plan, the one provided is from 2017–2020 and is incorrectly labelled Protected B. Additionally, Protected B information should not be shared on the iWeb.
- There is a link to the regulatory instruments spreadsheet but one cannot be certain if it is current because it does not note the date of last update.

Findings

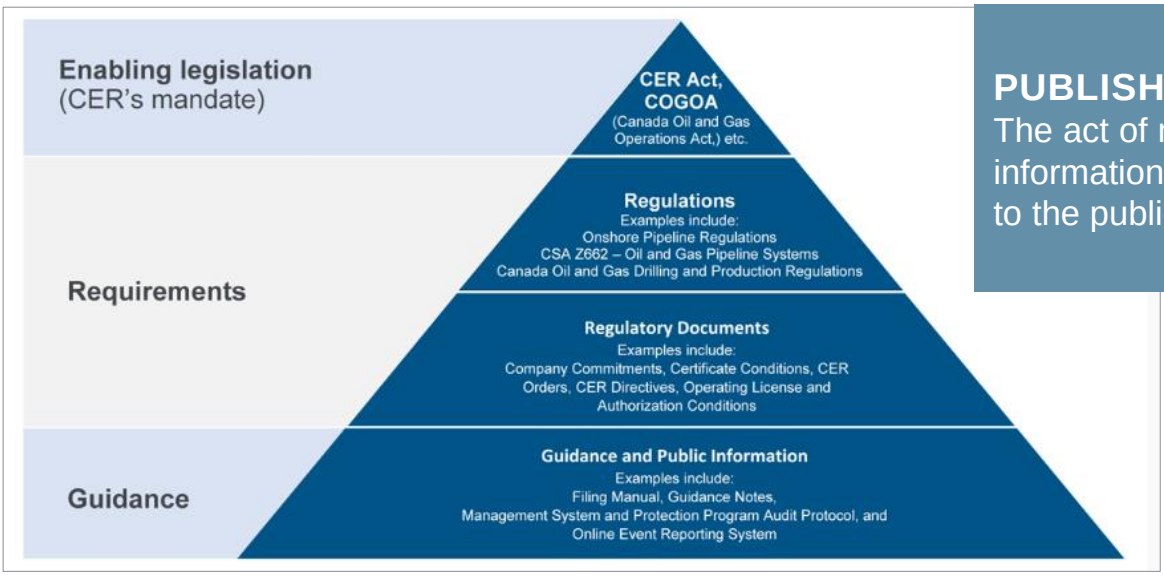
Acts and Regulations Webpage

The RF Program has published the required information on its Acts and Regulations on the CER website but there are steps that can be taken to make it more informative.

- The list of Acts is not current. CEAA 2012 has been repealed for months but this has not been noted. As well, the Impact Assessment Act is not mentioned and linked.
- Some Acts that are directly related to energy regulation and the CER's RF appear under the category of "other" along with legislation of broad application to all federal departments such as the Privacy Act and Official Languages Act. This approach makes it less clear how 'other' legislation is directly relevant to the RF.
- The Policy on Providing Guidance on Regulatory Requirements follows the template and layout from TBS; however, it has not yet been updated to refer to the CER. The Policy also states that "the NEB holds public consultations to seek input on its new or updated regulatory documents."

  While this may be true, it may not occur in all cases since 'regulatory documents' in the CER Regulatory Framework (shown below) includes orders, directives, company commitments, operating licenses and authorization conditions. These may have limited or no public consultation.
- The terminology varies in publically shared information and documents on the Regulatory Framework as well as the RF Program PIP. As well, the terms have not been defined in relation to each other. For example:
  - regulatory obligation
  - regulatory requirements
  - rules
  - regulatory tools
  - regulatory instruments
  - other regulatory instruments
  - regulatory documents
  - documents
  - guidance
  - regulatory guidance
  - guidance materials
  - guidance notes
  - regulatory improvement initiatives
  - regulatory initiatives
  - regulatory instrument projects

CER REGULATORY FRAMEWORK



PUBLISHING:
The act of making information available to the public (TBS).

Findings

REGULATORY LIFECYCLE APPROACH: "Check and Adjust"

To what extent is the RF Program designed to review and assess the results of the Regulatory Framework in achieving intended policy objectives and making evidence-based improvements?

Just like the requirements of a management system, the regulatory lifecycle approach also includes steps to check results and adjust accordingly. This means departments must examine and analyze regulations through all stages of their lifecycle. The Cabinet Directive on Regulation provides an approach and suggests that as part of this review, departments:

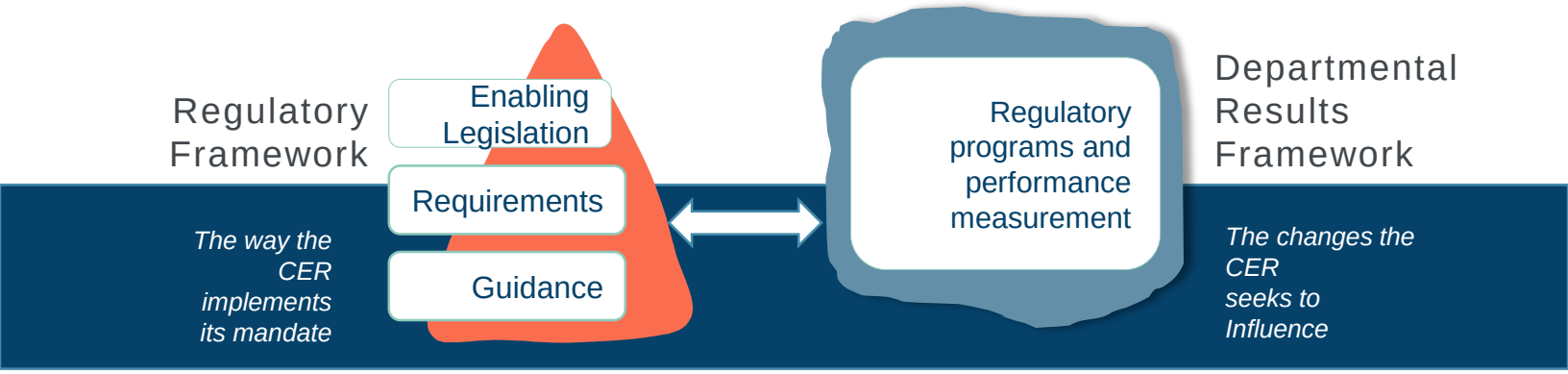
- Determine the effectiveness of regulations in achieving stated objectives.
- Demonstrate that regulatory objectives have been achieved in a cost-effective manner.
- Amend regulations to resolve enforcement issues identified through implementation.
- Identify new opportunities to reduce regulatory burdens on stakeholders.
- Institute other changes, as appropriate, to strengthen policy objectives and performance.

Continual Improvement

The RF Program states that the CER focuses on continual improvement of the Regulatory Framework through the Departmental Results Framework (DRF). The DRF reflects what the CER is trying to achieve and how programs influence these results. Performance indicators have been developed for both departmental results and program outcomes and are updated as needed to measure and describe progress. Generally they relate to accessibility, transparency, timeliness, fairness, capturing perspectives and data from compliance/enforcement. Plans and results are formally reported through the Departmental Plan and Departmental Results Report.

- The DRF is reviewed on a regular basis by the CER's PMEC. From the agenda, meeting minutes and supplementary reports for these meetings, PMEC is focused on reviewing recent performance results and discussing focus areas, corporate risks and progress against management action plans.

- PMEC could potentially be a bridge between the DRF and RF by virtue of having preliminary strategic policy discussions on organizational and program performance.



Findings

Checking the Regulatory Framework Program

- When there are policy shifts, the RF Program helps the CER review its existing requirements, such as regulations, for relevance and applicability and/or develop new regulations. This may also require public consultation and industry engagement. During these transitions, the CER must also assess if there are gaps in its oversight of safety and environmental protection. If gaps exist, they are immediately addressed through tools such as issuing orders to companies. The RF Program and other CER programs may also have to work together to update or create new guidance documents and develop public information.

- All programs at the CER must have one or more outcomes with indicators. Some of these are reported on publically. According to TBS, program outcomes can be short-, medium- or long-term and are more directly influenced and within the immediate control of a department compared to Departmental Results.

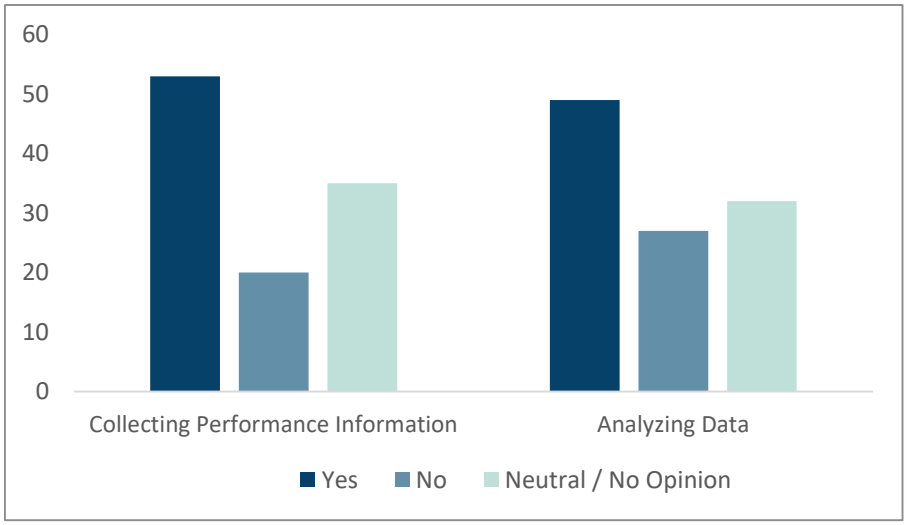
- The RF Program supports continual improvement of the Regulatory Framework but theoretically, this is also done through the DRF. Another consideration is performance measurement of the RF Program itself although TBS acknowledges that *the policy process is inherently complex and non-linear making it hard to measure and evaluate...it can be hard to quantify the results of a policy process*.[1] More information about the TBS approach is in the Evaluation Appendix, page 60.

- The RF Program has several outcome indicators as part of its Performance Information Profile. These were rightfully suspended in advance of this evaluation as they do not provide useful information about RF Program or RF performance. As well, the efficiency indicators are not ideal for measuring efficiency of Program processes.

Views on Continual Improvement of the Regulatory Framework

Summary of Survey Results:

The CER makes decisions to adjust the Regulatory Framework by…



More often than not, survey respondents indicate that they believe adjustments to the RF are made by collecting performance information and analyzing data and consulting and engaging with the appropriate stakeholders. However this has not been everyone's experience or perception.

1: TBS Backgrounder: Measuring the Performance of Policy Functions (Government Intranet - Results Portal)

Findings

Ideas for Checking the Regulatory Framework and RF Program

Much has been written about regulatory and policy performance measurement by academics, governments and other non-governmental institutions. Two examples are below.

The OECD states in 2014,[1] that

> there is no "holy grail" to simply demonstrate a causal link between the design and implementation of regulatory policy measures on the one hand and the achievement of strategic outcomes in the economy on the other hand.

And while it found that

> there is great value in systematically evaluating the design and implementation of regulatory policy against the achievement of strategic regulatory objectives and while there is not enough data and information available to evaluate the functioning and impact of regulatory policy in most OECD countries, every OECD country can take steps to improve the evaluation of regulatory policy.

In his expert paper prepared for the OECD[2] on the subject of measuring regulatory performance, C. Coglianese notes that evaluating regulation (individual rules or a collection of rules) involves an inquiry into how it changed behaviour and what are the positive and negative impacts. He states that at its most basic level: *regulation seeks to change behaviour in order to produce desired outcomes.*

He suggests that evaluation can focus on one or both:

1. **Outcome/Impact Evaluation** to examine whether outcomes are achieved from individual regulations or a set of regulations.

2. **Design and Delivery** of the regulatory policy program as well a review of the implementation and enforcement of regulations. Either way the evaluation framework would be the same for answering these questions:

OECD

The OECD proposes a framework for regulatory policy evaluation which looks similar to a logic model and demonstrates on a spectrum what is easier(1) to more difficult (3) to evaluate:

1. Evaluating the design of regulatory policy design (inputs, processes)
2. Evaluating implementation (outputs and intermediate outcomes)
3. Evaluating strategic outcomes in regulatory quality and regulatory outcomes

Outcome Performance

How well do regulations work? Evaluate if the regulation/s changed behavior and did it/they help achieve regulatory intermediate and ultimate outcomes (measured through indicators).

Regulatory Administration

How well does regulatory policy work? Evaluate how well regulations or regulator policies are administered, judged against ideal/required administrative goals (measured through indicators).

More information on this approach is in the Evaluation Appendix, page 60.

1: Launch of the publication "OECD Framework for Regulatory Policy Evaluation" – 6th Expert Meeting on Measuring Regulatory Performance, 17 June 2014 (Web link)

2:Measuring Regulatory Performance: Evaluating the Impact of Regulation and Regulatory Policy, Cary Coglianese, OECD Expert Paper No.1, August 2012 (PDF link)

Findings

Administrative Burden of the Regulatory Framework

The Government is committed to monitoring and controlling the administrative burden (red tape) of regulations on business.
Cabinet Directive on Regulatory Management, 2012

Meeting Mandatory Reporting Requirements

Administrative burden is created by regulations and mandatory forms. When the CER amends or creates new regulations that result in a new administrative burden, it must follow the one-for-one rule by reducing the administrative burden elsewhere in its regulatory stock[1]. Alternatively, a portfolio approach can be taken which would require NRCan or the Canadian Nuclear Safety Commission (CNSC) to make a change that reduces administrative burden.

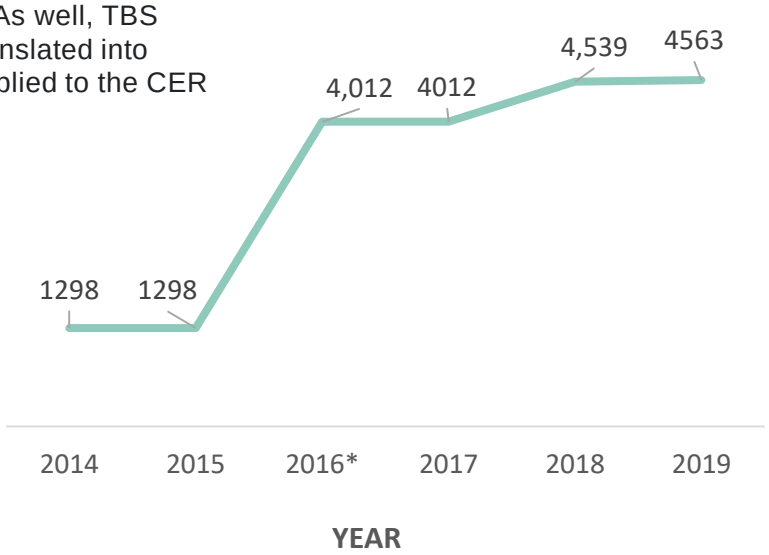
The CER, like other departments, must publically report certain information on administrative burden each year. This reporting requirement began in 2014 which is considered the baseline.

Examples of Burden

- A company having to complete an application seeking permission or exemption from an activity.
- A company having to fill in a physical or electronic form) to notify the CER about certain activities it undertakes.

- The CER reports information on administrative burden (AB) and updates it every year on its website.
- This requirement to count and report has not been acknowledged in a RF Program process. As well, TBS requirements/ guidance have not been translated into specific program work instructions and applied to the CER context.
- It's important for the RF Program to capture the CER's methodology for carrying out this manual counting exercise to reduce the risk of relying solely on individual knowledge and experience.
- Counting and reporting administrative burden is an administrative task in itself. Rather than just "ticking a box," the CER could potentially use information on AB counts and trends as an input into the Regulatory Stock Review Plan (more on this in the next section) or generally in its oversight of the burden posed by the Regulatory Framework overall.

Administrative Burden



* The NEB acknowledged that there were errors in counting between 2015 and 2016 because administrative requirements from electronic forms that are part of the newly introduced online event reporting system (OERS) had been missed.

1: Regulatory stock is all the regulations under the authority of the CER.

Findings

Reviewing the Regulatory Framework

…it is necessary to periodically review and amend regulations to reflect changing risk environments and to provide flexibility to adjust to changing circumstances.
TBS, Regulatory Stock Reviews.

Making Plans to Review the Regulatory Framework

As part of the regulatory lifecycle, departments must conduct regular review of existing regulatory stock to make sure that regulations are appropriate, effective and achieve their intended policy objectives.[1] This could include technical guidance and associated policies.

As required, the CER published its first multi-year Regulatory Stock Review Plan (Review Plan) on its website on April 1, 2019. This plan is a new requirement in the CDR.

- The CER's Regulatory Stock Review Plan did not satisfy the intent set out by the CDR.
- Instead of addressing the explicit requirement to schedule a review of existing regulatory stock and consider including technical guidance and associated policies, it looks more like a Forward Regulatory Plan as it lists plans for developing new regulations (not part of existing stock).
- The CER's Review Plan does not address the complete regulatory stock, and as a result it covers a shorter time frame for review (three years). Other departments that have addressed their entire regulatory stock have estimated a 10 year time frame. The CER is not the only organization that did not present a stock review plan for its entire regulatory stock.
- CER staff indicate that the Review Plan was prepared close to the April 1st deadline and that TBS guidance was hard to find. This may have occurred because the guidance is not readily available on the TBS website and must be accessed via the governments intranet (GCpedia).
- The inventory of regulatory instruments could be a potential starting point when developing a Review Plan to ensure it covers the full suite of regulations. As well, TBS recommends prioritizing the elements in the Review Plan in a way that makes sense to the CER and stakeholders.

Regulatory Stock Review Plan

Frequency:
- Published with updates to CER website on April 1 each year.

Purpose:
- Help CER develop and showcase a systematic, transparent plan to review its existing regulations.

What it includes:
- All existing regulatory stock and can include technical guidance and associated policies.

Outcome of a review:
- No change, amend, remove or replace.

Requirements and guidance on completing the plan and the review:
- Cabinet Directive on Regulation (Sept 2018).
- TBS Guidance: Regulatory Stock Reviews, Working Guide (Sept 2018).

1: Cabinet Directive on Regulation, 2018 (Web link)

Findings

Reviewing the Stock and Evaluating Results

Departments must review and assess the results of regulation by reviewing the performance of regulatory programs together with the regulatory stock. Furthermore it is considered a good regulatory practice by the OECD to assess the results and impacts of regulations.

In the past, to support implementation of the Cabinet Directive on Streamlining Regulations (2007), departments had to prepare a performance measurement and evaluation plan (PMEP) if their regulatory proposal was high impact. It was optional if the proposal was medium impact and not required if low impact.

The PMEP template required information on planning, monitoring, evaluating and reporting on results throughout the regulatory lifecycle and as a result provided a roadmap for lifecycle regulation. It also forced departments to proactively think about performance measurement and gain experience in creating logic models for their regulatory proposals. This meant they had to connect resources and activities to expected results, develop indicators that would help determine whether initial policy objectives were met, and ensure that over the lifetime of the regulations, that information would be collected for evaluation and decision making.

What are regulatory programs?

- Compliance and enforcement.
- Inspection and licensing.
- Compliance promotion and outreach activities.
- Data gathering from regulated industry.
- Measuring performance.
- Providing information and services to Canadians related to regulations and regulatory/legal responsibilities.

The Cabinet Directive on Regulation (2018) does not require a PMEP and instead states that departments are responsible for reviewing the effectiveness of a regulation and evaluating the performance of regulatory programs. The TBS Regulatory Stock Reviews Working Guide supports this and provides an approach or ‘lens’ to guide the review of regulatory stock.

- The RF Program indicated that they have never had to complete a PMEP over the last decade because all regulatory proposals have been low impact. As a result, the RF Program has not gained the valuable experience of designing PMEPs and carrying out systematic measurement of the performance of regulations.

- Furthermore, the CER is a small department and is not subject to the same requirements as large departments under the newer Standard on Evaluation. Nevertheless, an evaluation planning exercise is carried out each year at the CER to assess program risks (using the guidance from the TBS Interim Guide on Results). It identifies areas for evaluation, audit or review. It also takes note of the external providers (evaluation/audit) who provide assurance, often horizontal audits or evaluations across several departments on certain topics.

- To date there have been no formal evaluations or audits of the effectiveness of the CER’s regulations or compliance with regulatory processes requirements.

Opportunities for Improvement

	Opportunity for Improvement	Reference	Program Component
1	**Regulatory Framework and Governance** Consider the approach used by other organizations that have documented their regulatory framework and governance.	Rec 1 & 2 **Good Practice:** Describing the Regulatory Framework, Appendix pages 55-56.	Regulatory Framework
2	**Governance Arrangements** Consider developing a formal agreement (e.g., protocol or procedure) with NRCan policy staff that details the roles, responsibilities and approach for collaboration and cooperation when working on regulatory development projects.		
3	**Understanding RF Program Governance** Ideally all staff should have some knowledge and understanding of each program across the organization even if they do not interact with it regularly. Knowledge and understanding of the RF and RF Program could be improved by developing customized training or workshops for new and existing staff in other program areas which emphasis on how their work and processes are related and integrated. The rationale for RF Program governance should also be discussed and agreed to and shared in order to limit confusion.	Rec 2 & 4	Program Governance
4	**Tracking RF Program Resources** The RF Program could re-evaluate its current approach to time codes/tracking codes to ensure that timesheet data will be related to key activities in RF Program processes. If all CER programs, including the RF Program, communicated guidance to each other in sufficient detail for how they want their main activity time codes used, then the quality of data could start to improve. Better data on the use of time codes will help the RF Program to understand areas of pressure, analyze for efficiency over a period of time and make evidence-based projections for RF Program resource needs.		Program Resources
5	**RF Program Description** Update the RF Program description to describe what it does, taking into account the TBS requirements and guidance. This is easily done by stating, for example, “The RF Program exists to do “a, b, c “...		Performance Information Profile
6	**Performance Measurement** The RF Program outcome could be measured with the right indicators. First there needs to be definitions/thresholds for ‘robust’ and ‘current’, and the difference between ‘requirements and expectations’ and finally the threshold for determining if something is ‘clear’ and ‘publically available.’ The RF Program may also want to consider creating one or more program specific outcomes for its PIP that helps it monitor program and/or process performance.	Measuring the Policy Function, Appendix page 60.	Performance Information Profile

RF Program Outcome:
The CER's Regulatory Framework is robust, current and regulatory requirements and expectations are clear and publically available.

- What is “robust”?
- What is “current”?
- What are requirements versus expectations?
- Clear and available according to whom?

Opportunities for Improvement

	Opportunity for Improvement	Reference	Program Component
7	**Training and Information on the RF Program** • A training list is useful for RF Program staff especially when they are new or developing their learning and development plans. To continue being useful this list needs more frequent updates. The last update was in fall 2018. • As well, if the iWeb is meant to be a resource for information and training, the RF Program could consider implementing scheduled updates to the RF Program's iWeb pages, including checking the hyperlinks on documents and training materials.	Rec 4	Support to Staff
8	**Guidance on Guidance** • The RF Program could collaborate with staff across the organization who have expertise in communications, graphic design, publishing/cataloguing and editing and work towards finalizing corporate guidance/procedures for guidance developed in support of the components in the Regulatory Framework. This 'guidance on guidance' should help to clarify roles and responsibilities for document development, design, production and publishing to achieve improved quality and consistency of CER guidance products. • The guidance could also include standards on the quality of graphics and diagrams. Testing this guidance/procedure with staff across the organization prior to finalization may also help to ensure it meets their information needs.	Rec 3 Rec 4 **Good Practice:** Guidance Management, Appendix page 57.	Program Processes & Support to Staff
9	**Managing RF Program Processes** • If RDIMS continues to be used to host resources for staff to consult, it should be limited to examples of past projects. In keeping with the corporate approach, the PDB is more suitable for hosting the most current approved templates, guidance and procedures and staff should be directed to the PDB for this information. • The RF Program needs to re-consider assigning Protected B as the default to its templates in keeping with the CER's Guideline for Determining and Marking Sensitive Information. • The change from NEB to CER triggers the need to update all processes, procedures and templates. Specifically, the RF Program will need to update its Procedure for Developing the RF Plan taking into consideration the role of Commissioners and the Board of Directors in the Plan's development, approval, monitoring and reporting.	Rec 3 **Good Practices:** Program Essentials, Appendix page 58.	Program Processes

Opportunities for Improvement

Opportunity for Improvement		Reference	Program Component
10	**Regulatory Instrument Inventory** This inventory's functionality could be enhanced if it: • Had a brief description or listed the sections of legislation that apply to the Regulatory Framework. For example, it is not clear from the inventory how the Species at Risk Act is related to the Regulatory Framework; • Specified the relevant programs of the organization that are responsible for each guidance or public information document. This would make it easier for the RF Program to identify relevant internal stakeholders when overseeing RF updates and maintenance, and • Stated the names or locations of other databases or systems that contain all other regulatory instruments developed by CER.	Rec 5	Program Processes
11	**Making Plans and Priorities** • Prioritization of regulatory projects is important so that resources can be planned and allocated to address the drivers for change and identified risks in a timely way. As well, a steering committee responsible for planning and priorities and ongoing RF discussions is a feature at other departments that the CER may want to consider including those department's risk assessment and prioritization frameworks.	Rec 2 **Good Practice:** Regulatory Framework Committees and Prioritization, Appendix page 56.	Program Processes: Regulatory Lifecycle Approach
12	**Communicating RF Plans and Progress** • The only publically information related to plans for the Regulatory Framework is through the Forward Regulatory Plan or Regulatory Stock Review Plan and the information is minimal. The RF Program could improve communication and outreach with the public by sharing more detailed information, as appropriate, on the CER website with respect to the projects that relate to updating or adjusting the RF. These project webpages could include an overall timeline, planned milestones, project phases and also report regularly on progress and next steps.	Rec 2 & Rec 3 **Good Practices:** Publishing Detailed Regulatory Framework Plans, Appendix page 58.	Program Governance & Program Processes: Regulatory Lifecycle Approach
13	**Regulatory Projects** • The RF Program should develop more formality around its discussion papers by considering the approaches used by other departments. NRCan and the CNSC formally publish their consultation papers/policy intents/discussion papers. The CNSC also describes what discussion papers are and how they are used in the regulatory development process.	Rec 3 **Good Practice:** Discussion Papers, Appendix page 59.	Program Processes: Regulatory Lifecycle Approach
14	**Monitoring the Regulatory Framework** • Additional efforts are needed to determine the performance information and data that should be intentionally collected and analyzed to monitor and improve the RF. Staff also suggest more formality in the process for analysis including timelines and defined roles and responsibilities across the organization for undertaking data collection, analysis and engagement for the continual improvement of the RF.	Rec 3	Program Processes: Regulatory Lifecycle Approach

Appendices

ROLES AND RESPONSIBILITIES

Evaluation Team:
The evaluation was carried out by a credentialed evaluator from the Corporate Performance Team which is situated within the Performance and Results business unit at the CER. Supervision and feedback throughout the evaluation was provided by the Director of Corporate Performance.

- Margaretha Ysselstein - Internal Audit and Evaluation Specialist, Corporate Performance

Project Working Group (PWG):
Forming a PWG is part of the CER's evaluation process and consists of people who are familiar with the topic being evaluated. The purpose of this group is to review key evaluation deliverables for accuracy and provide input as well as provide access to RF Program documentation upon request. These members came from the Regulatory Framework Program.

- VP, Integrated Energy and Information Analysis / RF Program official
- Director, Regulatory Policy
- Technical Specialist - Regulatory Development
- Technical Leader - Regulatory Development

SCHEDULE

The evaluation was initiated in mid-2019 and went according to the schedule below.

Phase	Deliverable	Completion Date
Plan	• Evaluation Terms of Reference • Evaluation Plan	○ CEO signed 14 May 2019 ○ CEO signed 8 October 2019
Examine	• Document Review, Data Analysis, Interviews, Internal Survey	○ September 2019 to January 2020
Report	• Evaluation Status Update • Draft Evaluation Report	○ December 2019 ○ February to March 2020
Review	• Internal Review and Feedback	○ April to June 2020
Publish	• Final Evaluation Report & Summary	○ CEO signed September 2020

Appendices

EVALUATION QUESTIONS

KEY QUESTION: GOVERNANCE

What are the opportunities for improvement for the governance of the Regulatory Framework?

- To what extent is there a clear and effective governance structure for the Regulatory Framework?

KEY QUESTION: PROGRAM DESIGN

To what extent does the design of the RF Program meet requirements and expectations for program design?

- To what extent has the RF Program developed and documented the necessary components of a program?
- To what extent has the RF Program established a process approach for its operations and to meet internal/external requirements and expectations?
- To what extent is the RF Program designed to pursue opportunities for regulatory cooperation, alignment and coordination on regulations and associated regulatory initiatives?

To what extent does the design of the RF Program effectively incorporate a regulatory life cycle approach?

- To what extent is the RF Program designed to meet the requirements and expectations for identifying and communicating policy issues?
- To what extent is the RF Program designed to meet the requirements and expectations for developing, implementing and communicating the Regulatory Framework?
- To what extent is the RF Program designed to review and assess the results of the Regulatory Framework in achieving intended policy objectives and making evidence-based improvements?

KEY QUESTION: LEARNING FROM OTHERS

What can be learned from other organizations and the available research for governing, developing and managing a regulatory framework?

- What are the characteristics of the function/program that develops and manages the regulatory framework at other organizations?
- What are the good practices/models for governing, developing and managing a regulatory framework?

Appendices

KEY DOCUMENTS OR REFERENCES

Federal Government:

- Library and Archives Canada: ISSN Canada
- PCO: Cabinet Directive on Law Making, 1999
- PCO: Guide to Making Federal Acts and Regulations, 2001
- PCO: Cabinet Directive on Regulation, 2018
- TBS: Canada.ca Style Guide
- TBS: Canadian Cost-Benefit Analysis Guide, 2019
- TBS: Counting Administrative Burden Regulatory Requirements
- TBS: Directive on Results, 2016
- TBS: Directive on the Management of Communications, 2018
- TBS: Glossary
- TBS: Guide on Counting Administrative Burden
- TBS: Guide on Limiting Regulatory Burden on Business, 2018
- TBS: Guide to Regulatory Development and RIAS Writing, 2019
- TBS: Guide on Regulatory Stock Reviews, 2018
- TBS: Guidance on Service Standards and the Canada.ca Template, 2018
- TBS: Guidance on Regulatory Transparency and Accountability Web Content and Layout, 2019
- TBS: Integrating Gender-Based Analysis Plus into Evaluation
- TBS: Interim Guide on Results, 2018
- TBS: Policy on Communications and Federal Identity, 2016
- TBS: Policy on Cost-Benefit Analysis, 2018
- TBS: Policy on Limiting Regulatory Burden on Business, 2018
- TBS: Policy on Regulatory Development, 2018
- TBS: Policy on Regulatory Transparency and Accountability, 2018
- TBS: Policy on Results, 2016
- TBS: Procedures for Publishing, 2013
- TBS: Red Tape Reduction Action Plan (RTRAP), 2012
- TBS: Standard on Web Accessibility, 2013

External:

- ISO 9001:2015 Quality Management System Requirements
- OECD Framework for Regulatory Policy Evaluation
- Writings on regulatory topics: Cary Coglianese, Ph.D and Malcolm Sparrow, Ph.D.

CER:

- CER Website
- RLG/TLG/PMEC Terms of Reference
- Competency Framework
- Forward Regulatory Plan
- Internal Survey Results
- Intranet (iWeb)
- Job Family Definitions
- Management System Manual, 2019
- Meeting Minutes
- Process Dashboard
- Process Documentation
- Process Maps
- Program Performance Information Profile
- Program Training and Onboarding
- Regulatory Framework Plan
- Regulatory Stock Review Plan
- Standard for Process Management, 2018
- 2019-20 Executive Accountabilities

Appendices

OBTAINING INFORMATION / MEETINGS

Internal

Throughout the planning and examination phases of this evaluation, a total of 52 meetings were held. Documents, information and perspectives were also obtained through email and an internal survey.

- Chief Executive Officer
- EVP Regulatory
- EVP Transparency and Strategic Engagement
- EVP Law and General Counsel
- Chief of Staff
- Counsel
- Secretary of the Commission
- Assistant Secretary of the Commission
- VP Integrated Energy and Information Analysis
- VP Data and Information Management
- VP System Operations
- VP Field Operations
- VP Energy Adjudication
- Director Regulatory Policy
- Director Indigenous Engagement
- Director Programs & Evaluation
- Director Internal Communication Services
- Director Adjudications System Excellence
- Director Energy Outlooks
- Technical Specialists Regulatory Development
- Technical Leader Regulatory Development
- Technical Leader Indigenous Engagement
- Group Leader Library
- Financial Management Advisors
- Program Manager Engagement
- Project Manager Modernization
- Programs and Evaluation Analyst
- Audit, Enforcement & Investigations Staff
- Regulatory Analysts
- Market Analysts
- Communications Officers
- Website Administrator
- Interchange Canada Staff

External

Several meetings were conducted by telephone with managers or senior staff within the regulatory policy areas of several federal departments to learn more about their approach to the policy function as well as their good practices. TBS also was helpful in providing further information and context around the DRF and Cabinet Directive on Regulation.

- Canadian Nuclear Safety Commission
- Environment and Climate Change Canada
- Health Canada
- Immigration, Refugees and Citizenship Canada
- Natural Resources Canada
- Parks Canada
- Treasury Board of Canada Secretariat

Appendices

INTERNAL SURVEY BACKGROUND

<table>
<tr><td>Purpose</td><td colspan="2">• One of the methods to answer several evaluation questions relied on the views of staff.</td></tr>
<tr><td>Design and Analysis</td><td colspan="2">• The survey questions were developed based on the evaluation plan and response options were based on a 6 point scale (Strongly Agree, Agree, Disagree, Strongly Disagree, Neither Agree nor Disagree, No Opinion).
• The survey was available in French and English.
• A total of 271 people were invited to complete the survey. The list was compiled based on availability to complete the survey and included indeterminate, casual, assignment, term and interchange staff, directors, managers, technical specialists, group leaders and professional leaders who are in certain job families across the organization or within certain programs.
• Survey responses and comments were analyzed for trends and themes.</td></tr>
<tr><td>Survey Duration</td><td colspan="2">November 5, 2019 – November 14, 2019</td></tr>
<tr><td>Response Rate</td><td colspan="2">• 40% (108 completed surveys)
• Of this, 72% responses were from those who have been at the CER for more than five years (19% for between 2-5 years and 9% for less than 2 years)</td></tr>
<tr><td rowspan="15">Survey Response</td><td>Program</td><td>Number of Responses</td></tr>
<tr><td>Infrastructure, Tolls and Export Applications</td><td>30</td></tr>
<tr><td>Participant Funding</td><td>2</td></tr>
<tr><td>Company Performance</td><td>20</td></tr>
<tr><td>Management System and Industry Performance</td><td>10</td></tr>
<tr><td>Emergency Management</td><td>5</td></tr>
<tr><td>Regulatory Framework</td><td>13</td></tr>
<tr><td>Energy System Information</td><td>7</td></tr>
<tr><td>Pipeline Information</td><td>1</td></tr>
<tr><td>Stakeholder Engagement</td><td>4</td></tr>
<tr><td>Indigenous Engagement</td><td>0</td></tr>
<tr><td>Other</td><td>16</td></tr>
<tr><td>Internal Services – Financial Management & Reporting</td><td>Unknown</td></tr>
<tr><td>Internal Services – Legal Services</td><td>Unknown</td></tr>
</table>

Appendices

INTERNAL SURVEY QUESTIONS

Views on Regulatory Framework governance

The evaluation survey asked staff the extent to which they agree with these statements:

- ❑ I can describe how the Regulatory Framework is governed
- ❑ Accountability for the CER Regulatory Framework is clearly defined for legislation, requirements and guidance.
- ❑ Responsibilities for the CER Regulatory Framework have been clearly defined for legislation, requirements and guidance.

Views on the RF Program's purpose, scope and governance

The evaluation survey asked staff the extent to which they agree with these statements:

- ❑ I am knowledgeable of the Regulatory Framework Program's purpose at the CER
- ❑ I understand the relevance of the Regulatory Framework Program to my work
- ❑ I can describe how the Regulatory Framework Program is governed
- ❑ The placement of the Regulatory Framework Program within the Departmental Results Framework enables it to function effectively and efficiently.

Views on the tools, training and guidance

The evaluation survey asked staff the extent to which they agree with these statements:

- ❑ When involved on Regulatory Framework components (legislation, requirements, guidance), the support (tools, training and guidance) are available to me and adequate for me.

Views on regulatory cooperation

The evaluation survey asked staff the extent to which they agree with this statement:

- ❑ Engaging in and developing cooperative agreements (MOU or Service Agreements) for regulatory cooperation between the CER and other entities is supported by clear internal process; adequate oversight and monitoring and measuring performance.

Views on the approach to continual improvement of the Regulatory Framework

The evaluation survey asked staff the extent to which they agree with this statement:

- ❑ The CER makes decisions to adjust the Regulatory Framework by: collecting performance information / analyzing data / consulting or engaging appropriate internal stakeholders / consulting or engaging appropriate external stakeholders.

Appendices

DEFINED TERMS

- **Accountability:** The obligation of an individual or an organization to account for its activities and associated consequences (TBS).
- **Responsibility:** The work, function or activities assigned to an organization, unit or individual (TBS).
- **Role:** The position or purpose that someone or something has in a situation, organization, society or relationship (Cambridge Dictionary).

- **A MOU** defines a working relationship between the CER and one or more other parties but it is not legally binding.
- **A Letter of Intent** is a document used to outline general plans or a course of action between the signing parties. It is not legally binding.
- **A Service Agreement** is a legal contract between the CER and a crown entity and is used to document the services or resources that the CER will provide or receive. It is the only type of cooperative agreement that involves paying or billing for costs.
- **A Terms of Reference** documents the background, objectives and purpose related to a project, program or proposal that is being undertaken by a committee, organization or association. It is not legally binding.

- **A Publication:** Publications include products such as books, reports, booklets, brochures, periodicals, maps, charts, prints, audio recordings, films, videos, television programs, audiovisual and multimedia productions, guides and handbooks, online publications and serial publications. Publications do not include promotional or short-lived items, like calendars, news releases, advertising, backgrounders, forms and presentation decks. Publications also do not include HTML webpages (Adapted from TBS Procedures for Publishing, 2013).
- **GC InfoBase:** An interactive tool created by the Government of Canada to present visualizations of federal data such as expenditure information across all departments and agencies.
- **GCpedia:** A wiki website used by the Government of Canada employees for internal collaboration.

Appendices

REGULATORY FRAMEWORK COMPONENTS

A summary of several components as of December 2019:

LEGISLATION

1. Canadian Energy Regulator Act
2. Canada Oil and Gas Operations Act
3. Canada Petroleum Resources Act
4. Oil and Gas Operations Act
5. Petroleum Resources Act
6. Northern Pipeline Act
7. Energy Administration Act
8. Mackenzie Valley Resource Management Act
9. Impact Assessment Act
10. Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act

REGULATIONS

- Regulations are available on the CER Website

POLICIES

CER:
- Financial Regulatory Audit Policy (2010)
- Enforcement Policy (2019)
- Policy on Public and Media Access at CER Hearings (2019)
- Policy on Providing Guidance on Regulatory Requirements (2019)

Government of Canada:
- September 1988 Canadian Electricity Policy

DIRECTIVES

- Implementation of Recommendations in the Stress Corrosion Cracking Inquiry Report (1997)

PROTOCOL

- Management System and Protection Program Audit Protocol (2013)

SAFETY, SECURITY and INFORMATION ADVISORIES

- Current and Archived Advisories are available on the CER Website

OPERATING LICENSES UNDER COGOA

- Licenses are available on the CER Website

OTHER TYPES OF REGULATORY COOPERATION AND COLLABORATION

Regulatory Alignment

Referencing internationally accepted standards, other regulations or other instruments within regulations (incorporation by reference) can be an effective tool to achieve regulatory outcomes. The Cabinet Directive on Regulation states that incorporated documents must be accessible, bilingual and regularly reviewed.

- The RF Program has a guidance document on the incorporation of standards in regulations. It helps guide the decision making around this option and states that these types of standards will be regularly reviewed. This document was last updated in early 2017 and should be edited to align with changes in the organization's context. It also should be part of the process documentation on the process dashboard.

- The RF Program has compiled all the instances where incorporation by reference is used by the NEB Act and COGOA. For example, the Onshore Pipeline Regulations reference the Canadian Standards Association's CSA Z662 Oil and Gas Pipeline Systems standard.

- Aspects of this CSA standard were formally reviewed by the NEB, most recently in August 2018, as part of a technical paper commissioned by the NEB that was focused on identifying current gaps in existing standards related to pipeline fittings.[1]

- Incorporation by reference in other regulations includes other organizations such as:
    - American Petroleum Institute Recommended Practices or Specifications or Standards
    - Det Norske Veritas notes, guidelines or rules
    - International Electrotechnical Commission publications
    - National Fire Protection Association Standards

The Canadian Standards Association's CSA Z662 Oil and Gas Pipeline Systems standard is available in both English and French and in multiple formats (PDF, Paper, Ebook). They cost $800.

This standard was shared freely by the CER as part of a two year pilot project (April 2017–March 2019). It was accessed by both staff and external users.

The CER, CSA and other regulators are currently working on a sustainable funding model to give free public online access to the standard.

Until then, the standard can be purchased, viewed in-person at the CER library or requested via an interlibrary loan through an academic, institutional or public library.

Regulatory Forums

The RF Program pursues continual improvement of the Regulatory Framework by participating in international engagement and regulatory cooperation activities. These forums include the Organization of Economic Cooperation and Development (OECD) Network of Economic Regulators, Arctic Offshore Regulator's Forum and the International Regulator's Forum.

1: National Energy Board: Recommendations to Improve Quality Assurance of Quenched and Tempered Pipeline Fittings – White Paper, August 2018 (Web link)

GOOD PRACTICES

Describing the Regulatory Framework

Australia Department of Environment and Energy
Regulatory Framework, 2017

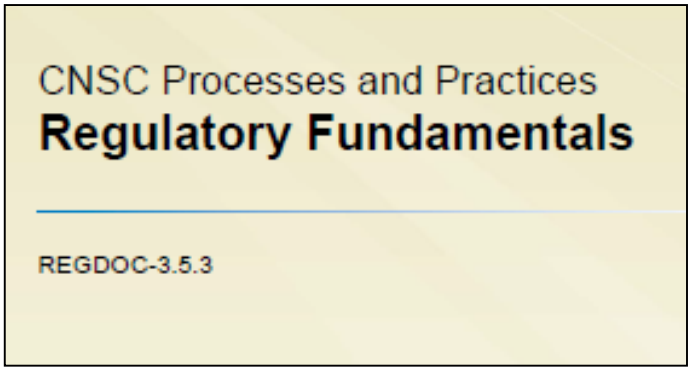
A clear document that outlines the way the department develops and administers environmental and energy regulation. It sets out the purpose of the framework, outcomes, roles and principles, approach to regulation, how the framework is implemented and how it will be evaluated and improved.

Canadian Nuclear Safety Commission (CNSC)

Regulatory Fundamentals , 2018

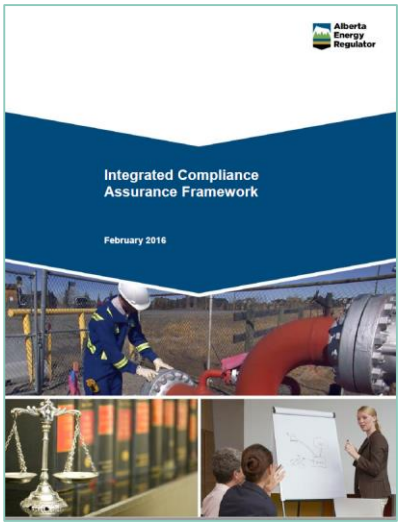
An informative document (located on the regulatory documents webpage) that contains the Commission's philosophy and approach to applying its legislation. This document provides information to industry and the public so that they can better understand the regulatory approach of the CNSC as well as the purpose of consultation and engagement.

Although CNSC has also used a pyramid visual and called it the regulatory framework, they acknowledge that the framework is more than what is in the pyramid and that it refers to much more.



Alberta Energy Regulator (AER)
Integrated Compliance and Assurance Framework, 2016

A summary document that outlines the AER's vision and overall approach to assuring compliance. The document addresses setting regulatory requirements and provides a compliance assurance model that incorporates promoting compliance (education), verifying compliance (prevention) and compelling compliance (enforcement). It also speaks to managing performance through a plan, do, check and adjust cycle.



GOOD PRACTICES

	Purpose	Legally Enforceable	Approval by	Applicable to
Legislation				
Regulation				
General Order				
Condition in Certificate				
Directive				
Safety Advisory				
Guideline				
Etc.				

Canadian Nuclear Safety Commission (CNSC)
Reference Table Summarizing Instruments (e.g., regulations) and tools (e.g., discussion paper).

A tool that provides a practical view on each type of regulatory instrument or guidance. CER could adopt this type of table as part of its Regulatory Framework document/description or develop something similar to serve as a reference on its website/intranet. This could be further expanded by overlaying a specific RACI, as appropriate, against each instrument/tool.

Regulatory Framework Committees and Prioritization

Other federal regulators have a specific committee with representation (equivalent to VP level at CER) across the organization that regularly meets to identify projects, set priorities and ensure issues are identified and addressed.

- **Environment Canada** – has a Regulatory Planning and Priorities Committee that shares and discusses emerging regulatory issues, sets priorities and oversees regulatory planning and progress. It is chaired by the Legislative and Regulatory Affairs Directorate and meets quarterly to discuss issues and to update plans and re-prioritize as needed. This committee supports a ADM-level (equivalent of CER EVP) policy committee.
- **CNSC** – has a Regulatory Framework Steering Committee that meets monthly and provides real-time approval and direction. It is chaired by the Regulatory Policy Division (process owner of the RF) and reports to the management committee twice a year.

Other federal regulators also have evergreen plans and prioritize their regulatory initiatives by using their own prioritization tool such as a matrix with criteria.

- **Environment Canada** – has a documented prioritization tool that results in ranking regulatory projects using a set of specified criteria.
- **Health Canada –** has a prioritization tool for ranking regulatory projects as priority 1 (emergency) to 4 (administrative).

GOOD PRACTICES

Guidance Management

Canadian Nuclear Safety Commission (CNSC)

REGDOC

(not related to the CER REGDOCS system)

- The CNSC organizes and presents its regulatory documents on one central webpage. A document presents requirements (shall/must) and guidance (should/mays).
- The Regulatory Affairs Division facilitates REGDOC development and updates. They discuss them with the RF Steering Committee, consult publically on each document before finalizing and receiving Commission approval. The webpage containing all the REGDOCS indicates which documents are currently under development or that are identified but not yet developed.
- Each document has been consistently created, assigned a unique number (e.g. REGDOC 1.1.2) and made available in PDF/HTML.
- Each REGDOC is officially published with a catalogue and ISBN number. No new software/IT system is required for a REGDOC as it is simply an approach to present information using existing tools that is accessible to everyone. It is also useful to CNSC staff to retrieve and access current guidance/ requirements in their work.

REGDOC index

Table of contents

- 1.0 Regulated facilities and activities
  - 1.1 Reactor facilities
  - 1.2 Class IB facilities
  - 1.3 Uranium mines and mills
  - 1.4 Class II facilities
  - 1.5 Certification of prescribed equipment
  - 1.6 Nuclear substances and radiation devices
- 2.0 Safety and control areas
  - 2.1 Management system
  - 2.2 Human performance management
  - 2.3 Operating performance
  - 2.4 Safety analysis
  - 2.5 Physical design
  - 2.6 Fitness for service
  - 2.7 Radiation protection
  - 2.8 Conventional health and safety
  - 2.9 Environmental protection
  - 2.10 Emergency management and fire protection
  - 2.11 Waste management
  - 2.12 Security
  - 2.13 Safeguards and non-proliferation
  - 2.14 Packaging and transport
- 3.0 Other regulatory areas
  - 3.1 Reporting requirements
  - 3.2 Public and Indigenous engagement
  - 3.3 Financial guarantees
  - 3.4 Commission proceedings
  - 3.5 CNSC processes and practices
  - 3.6 Glossary of CNSC terminology

1.5 Certification of prescribed equipment

Documents in this category apply to prescribed equipment such as particle accelerators, industrial irradiators and cancer therapy machines.

Title	PDF	Status
REGDOC-1.5.1, *Application Guide: Certification of Radiation Devices or Class II Prescribed Equipment* ▶ Supersedes ▶ Associated Documents	PDF, 34 pages, 2771 KB	Published April 2018

CNSC website

GOOD PRACTICES

Publishing Detailed Regulatory Framework Plans

Canadian Nuclear Safety Commission (CNSC)

Framework Plan

In addition to sharing a Forward Regulatory Plan, CNSC also publishes a more detailed Regulatory Framework Plan covering a five year period and both regulations and guidance. It indicates what stage of the project will occur in what quarter of which fiscal year.

Canadian Nuclear Safety Commission	2017-18				2018-19				2019-20				
Regulatory Framework Plan 2017-2022	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
Regulations													
Targeted amendments to the Class I Nuclear Facilities Regulations, Uranium Mines and Mills Regulations and Radiation Protection Regulations that focus on the Fukushima Action Plan	Develop	Approve	Publish										
General amendments to the Radiation Protection Regulations	Develop	Develop	Develop	Develop	Develop	Develop	Consult	Develop	Develop	Approve	Publish		
Amendments to Nuclear Non-Proliferation Import and Export Control Regulations	Develop	Develop	Develop	Develop	Develop	Develop	Consult	Develop	Develop	Approve	Publish		

RF Program Essentials

Environment and Climate Change Canada (ECCC)

- ECCC has a regulatory quality management system based on ISO standards that details the steps to be completed and approvals to be obtained during the development and publication of regulations.
- A 2016 internal audit of the ECCC acknowledged that they have a *rigorous regulatory development process in place.*
- The department shared several of their practices (documents/templates) in the course of this evaluation which are key elements in their management system.

Processes
- Processes and approvals flowchart for the development and publication of regulations
- Processes and approvals flowchart for the development and publication of “X” guidelines

Templates and Tools:
- Record of decision templates
- Criteria for assessing regulatory priority
- Risk assessment scale and scoring
- Target audience characterization tool and gender-based analysis plus (TACT+) template
- Preliminary or Final Implementation Strategy for “X” template

Guides:
- Instrument Choice Framework for Risk Management
- Process guide for the development and publication of regulations
- Integrating GBA+ in the regulatory process
- Roles and responsibilities for the development of regulations
- Team approach to the development of regulatory initiatives

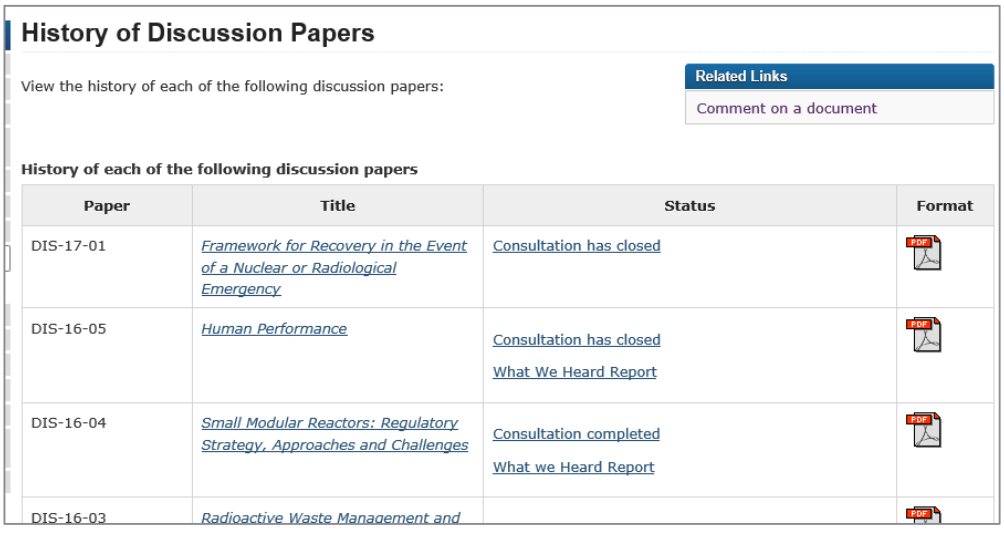
Other:
- Regulatory Planning and Priorities Committee Terms of Reference

GOOD PRACTICES

Discussion Papers

Canadian Nuclear Safety Commission (CNSC)

- The CNSC has developed public information to explain what a discussion paper is, its purpose and its format. The department describes the approach it takes to develop a discussion paper which includes rigorous internal review, an approval process, final editing, formatting and translation.
- When the CNSC publishes a discussion paper on its website, it gives it a unique internal reference number, title page and ISBN page. The document is dated, formatted and includes a bibliography. It also describes the purpose of a discussion paper and how it relates to the overall policy process. There is a common look and feel which clearly shows that there is a process for development and a standard for publishing quality.
- Under its Acts and Regulations webpage, the CNSC lists its current consultations which includes regulations and guidance. This is a convenient way of organizing information for the public, stakeholders and staff as it includes a status for all projects, relevant documents for review including draft wording of a regulation/guidance and a call to action for comments on the project.
- The CNSC also has a table that readily gives access to past discussion papers and the results of consultation (What We Heard Report) or workshops.



History of Discussion Papers

View the history of each of the following discussion papers:

Related Links

Comment on a document

History of each of the following discussion papers

Paper	Title	Status	Format
DIS-17-01	*Framework for Recovery in the Event of a Nuclear or Radiological Emergency*	Consultation has closed	
DIS-16-05	*Human Performance*	Consultation has closed What We Heard Report	
DIS-16-04	*Small Modular Reactors: Regulatory Strategy, Approaches and Challenges*	Consultation completed What we Heard Report	
DIS-16-03	*Radioactive Waste Management and*		

CNSC website

REGULATORY FRAMEWORK MEASUREMENT

Measuring the Policy Function

C. Coglianese suggests the following process and substantive outcomes that an evaluation of regulatory policy can address:

Administrative	□ How long does it take to implement regulations in terms of staff time (FTEs) or chronological time (start-to-finish)? □ How much does it cost government to implement regulations (monetary costs, proportion of budget, number of staff, proportion of staff etc.)? □ Do regulators produce regulations that minimize subsequent disputes or litigation?
Democratic	□ How many members of the public participate in regulatory decision making? □ How meaningful is that participation (quality of comments, impact of comments)? □ What is the level of public support for or perceived legitimacy of the regulation?
Technocratic	□ How effective is the regulation in solving the problem it was designed to address? □ What is the quality of the scientific analysis underlying the regulation? □ To what extent do regulated entities comply with the regulation?
Economic	□ How cost-effective is the regulation? □ How efficient is the regulation (net benefits)? □ What are the impacts of the regulation on the overall economy (e.g. jobs, competitiveness, innovation)?

TBS suggests that the performance of a policy function can be assessed with a focus on outputs and qualitative indicators.

- **Outputs/Outcomes indicators:**
  - Outputs which are products/services as a result of a policy function's activities are more typically within its control.
- **Qualitative indicators:**
  - Help gage a perception or judgment of something and can be obtained through a survey for example with a standardized rating scale.

Some possible options are developing measurement around the following outcomes that relate to a policy function:

- Quality/Utility of research, analysis and synthesis produced
- Use and impact of policy work
- Efficacy of consultation, collaboration, liaison and networking activities
- Monitoring/oversight activities

MANAGEMENT RESPONSE AND ACTION PLAN

Management accepts all of the recommendations identified in the Evaluation Report.
Management notes that the Regulatory Framework Program (RF Program) was under review for updates at the time the evaluation was undertaken. This is due in large part to significant legislative changes to the Canada Energy Regulator's (CER) regulatory framework, including its governance structure and mandate as it transitioned from the National Energy Board to the CER.

Management also notes that it began RF Program improvements during the course of the evaluation. In that regard, the RF Program finalized its processes in spring 2020 and is currently drafting associated procedures and work instructions. Work has also begun to revise the description of the Regulatory Framework as well as the Performance Information Profile for the Regulatory Framework Program.

Recommendation		Responsible Area(s)	Target Completion Date
1.	**Clear Regulatory Framework:** The RF Program should use a new approach to define the Regulatory Framework in the context of lifecycle regulation. This starts with a more comprehensive description of Regulatory Framework components, its lifecycle and a more complete description of governance.	Accountable VP: VP, Integrated Energy Information and Analysis (IEIA).	March 31, 2021
	Action Plan: A more comprehensive description of the regulatory framework is under development for the benefit of both internal and external audiences. It is anticipated that these materials will be published by March 31, 2021. An appropriate engagement strategy will be employed to capture input from key internal stakeholders and best practices from other government departments and agencies. The final product will be approved by the CEO of the CER, based upon input from the Commission and input and direction from the Board of Directors.		
2.	**Clear Regulatory Framework and Regulatory Framework Program Governance:** Governance is unclear thus the RF Program must help improve organizational awareness and understanding of the governance structure that is used for a lifecycle approach to regulation (Regulatory Framework) and managing resources to deliver results (Regulatory Framework Program). To do this the RF Program should determine and clarify the governance of both the RF and RF Program by assigning accountabilities and defining and documenting roles and responsibilities, including those outside the RF Program.	Accountable VP: VP, Integrated Energy Information and Analysis (IEIA).	March 31, 2021
	Action Plan: In consultation with leaders involved with the RF program, the Program Official will develop a proposal for CEO approval regarding the revised governance structure for the RF Program (a CER management and oversight responsibility). Once the structure is approved by the CEO of the CER, work will begin to incorporate the structure for the RF Program documents (as discussed in Action Plan #3, below). It is expected that work will be completed by March 2021.		

MANAGEMENT RESPONSE AND ACTION PLAN

Recommendation		Responsible Area(s)	Target Completion Date
3.	**Complete and Accessible Program Documentation:** One of the key areas of program design that needs to be addressed is program documentation. For example, by developing and finalizing clear processes and related process documentation, the RF Program can eliminate the risk of person-dependent tasks. • The RF Program should build on the foundational elements it has drafted and apply more rigour in the finalization of its program design (including performance measurement) considering specific internal and external requirements and applying good practices. • Processes and related process documentation should be made available and kept up to date on the CER's Process Dashboard.	Accountable VP: VP, Integrated Energy Information and Analysis (IEIA).	a. Program processes, procedures and work instructions – May 2022 b. All other RF Program documentation including performance indicators – Sept 2021
	Planned Actions: Processes, procedures and work instructions for the RF Program are being documented as part of a larger CER contracted project with a pre-existing schedule and designated resources. The development, approval and implementation of these processes and procedures will follow the CER's management system. Final completion of that aspect of the action plan is expected by May 2022. Other RF Program documentation contained within the Performance Information Profile (such as RF Program governance, the RF Program description and performance indicators) will be considered by senior management through its Performance Management Executive Committee processes, and approved by the CEO. Where appropriate, engagement with external parties whose input could help inform this work will be undertaken. It is expected that work will conclude in September 2021 for measurement commencing for the 2022-2023 fiscal year.		

MANAGEMENT RESPONSE AND ACTION PLAN

Recommendation		Responsible Area(s)	Target Completion Date
4.	**Useful and Accessible Training and Support:** In support of regulatory lifecycle regulation as well as improved collaboration and understanding of the Regulatory Framework and program requirements, the RF Program needs to: • Develop and provide training to all RF Program staff on the Regulatory Framework and RF Program components including governance and processes and how to access and use process documentation so that RF Program staff are knowledgeable and equipped to carry out their work. • Offer customized training to other key stakeholders or users of the RF Program so that they understand the Regulatory Framework and RF Program components, including governance of both.	Accountable VP: VP, Integrated Energy Information and Analysis (IEIA).	August 31, 2021
	Planned Actions: Assigned program staff will work with an adult education professional to develop and execute training covering the key aspects of the RF Program and the Regulatory Framework itself. The content of the training will be informed by the program development work underway in the 2020-21. Once the RF Program staff are trained, targeted training for other key internal CER stakeholders will be implemented. It is anticipated that training will be developed and delivered between April and August 2021.		
5.	**Well-Designed Databases:** The RF Program is the custodian of two important inventories that can help the CER organize, track and retrieve information on regulatory instruments and cooperative agreements. For an inventory to be functional it has to be designed to meet the requirements of different types of users. It also has to be comprehensive, regularly updated and maintained. To achieve this, the RF Program should: • Work on the initial design of the inventories so that they are easy to look at and use and ensure that information can be more readily analyzed. This should also include a review of completeness and accuracy of information already in them; • Clearly note the date of last update on the inventory, and • Schedule and conduct regular review to keep these databases up to date.	Accountable VP: VP, Integrated Energy Information and Analysis (IEIA).	March 31, 2021
	Planned Actions: The action for this recommendation will take place in two phases. The first phase will consist of collecting data from inventory users. This investigative work will take place during the fall of 2020. The second phase will entail the development of a plan to improve the databases. This plan will be in place by March 2021.		