1. Made under one Act

By the Governor in Council:

His Excellency the Governor General in Council, on the recommendation of the Minister of . . . , pursuant to section . . . of the *ABC Act*[a], hereby makes the annexed *XYZ Regulations*.

By a minister:

The Minister of . . . , pursuant to section . . . of the *ABC Act*[a], hereby makes the annexed *XYZ Regulations*.

2. Made under more than one Act

By the Governor in Council:

His Excellency the Governor General in Council, on the recommendation of the Minister of . . . , hereby makes the annexed *XYZ Regulations* pursuant to

(*a*) section . . . of the *ABC Act*[a]; and

(*b*) section . . . of the *DEF Act*[b]

By a minister:

The Minister of . . . hereby makes the annexed *XYZ Regulations*, pursuant to

(*a*) section . . . of the *ABC Act*[a]; and

(*b*) subsection . . . of the *DEF Act*[b] .

3. Approval by the Governor in Council

Before the regulation is made:

His Excellency the Governor General in Council, pursuant to section . . . of the *XYZ Act*[a], hereby approves the making of the annexed *XYZ Regulations* by (name of regulation-making body).

After the regulation is made:

His Excellency the Governor General in Council, on the recommendation of the Minister of . . . , pursuant to section . . . of the *XYZ Act*[a], hereby approves the annexed *XYZ Regulations*, made by (name of regulation-making body).

Note:

Except in the case of a regulation made by the Governor in Council, the order making the regulation should contain a signature block that meets the following requirements:

- a line is drawn for the signature on the right-hand side of the page, below which the incumbent's name and position title are aligned and left-justified;
- the name of the incumbent and the position title are written in regular type; and
- the first letter of all words in the position title are capitalized, except for articles and prepositions.

The signature block is preceded, on the left-hand side of the page, by a line indicating the place and date of signing.

Example:

Ottawa, , 2011

Robert Douglas Nicholson
Minister of Justice

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"PROVIDED THAT"

(Version anglaise seulement)

Grammatically, the word "provided" followed by a noun clause (for example, "provided that it does not rain" or simply "provided it does not rain") indicates a true condition. "Provided" and "provided that" are correctly used if they can be replaced by the word "if".

However, at least by the legal community, the words "provided" and "provided that" have been given other roles. As Driedger states, the proviso has been used as "an all purpose conjunction, invented by lawyers but not known to or understood by grammarians".[111]

"Provided" and "provided that" have been used by the legal community to set up a condition, to create an exception to or a qualification of a general rule, and to create an additional requirement. The meaning in a particular instance will depend on the context. The practice of assigning multiple functions to the words "provided" or "provided that" can lead to ambiguity. Sometimes it is not possible to determine from the context what meaning to give them.

In order to avoid any ambiguity, "provided" and "provided that" should never be used in drafting regulations. They should be replaced by the appropriate conjunction, such as "if" or "when" for a condition, "unless", "but", "except that" or "nevertheless" for an exception or qualification, and "and" or a semi-colon for an additional requirement. The regulatory provision might also be rewritten to avoid the need for a proviso altogether.

There is no objection to using the verb "provide" as a transitive verb or followed by the word "for" or "against".

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[111] Elmer A. Driedger, *The Composition of Legislation* (Ottawa: Department of Justice, 1976) at 96.

PROVINCES AND TERRITORIES: ORDER OF LISTING

(PROVINCES ET TERRITOIRES)

Provinces are listed in the order in which they entered Confederation, unless a different order is required by the context. The territories are listed after the provinces.

Although the Northwest Territories were created before the Yukon Territory, the tradition has been to list the Yukon Territory first, following the order in paragraph 32(1)(*a*) of the *Canadian Charter of Rights and Freedoms*.

Below is the correct order of provinces and territories, and their abbreviations.[112]

Province/Territory	Abbreviation
Ontario	Ont.
Quebec	Que.
Nova Scotia	N.S.
New Brunswick	N.B.
Manitoba	Man.
British Columbia	B.C.
Prince Edward Island	P.E.I.
Saskatchewan	Sask.
Alberta	Alta.
Newfoundland and Labrador	N.L.
Yukon Territory	Y.T.
Northwest Territories	N.W.T.
Nunavut	Nvt.

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[112] See *Standard Geographical Classification (SGC) 2006*, Statistics Canada.

PUNCTUATION

(PONCTUATION)

There are many reference works that deal with the use of punctuation marks. Our intention here is not to review rules than can easily be consulted elsewhere, but to identify practices that are specific to regulations.

THE PERIOD

The period indicates the end of a sentence; it is therefore placed at the end of each sentence in a section or subsection. Its use is governed by ordinary rules of grammar.

The numeral used to designate a section is followed by a period and a space (except where the decimal numbering system is used, in which case there is no final period after the section number).

Examples:

4. The Clerk of the Commission . . .

but

4.1 A person must not . . .

Every definition in a definition provision ends with a period (except in an amendment to a definition that follows older formatting rules, in which case the older rules are followed in the amendment for consistency).

Examples:

"Act" means the *Divorce Act*. (*Loi*)

"child" means child of the marriage. (*enfant*)

The period is **not** used

(*a*) at the end of the title of a regulation or its headings;

(*b*) after a numeral designating a provision in the body of the regulations; and

Examples:

3. The document referred to in section 5 is . . .

6. Subject to subsection 3(2), . . .

(*c*) at the end of a footnote.

Examples:

---

[a] S.C. 1991, c. 24, s. 7(2)
[1] SOR/86-1011

THE COLON

The colon has an annunciatory function and is generally used in an enumeration introduced by the words "the following . . ." or " . . . as (that) follows . . .".

Example:

19.2 The following methods of signalling may be used to send signals to fishing vessels:

(*a*) flag signalling using alphabetical flags;

. . .

The colon is used at the end of amending clauses (except amending clauses that simply repeal a provision).

Examples:

2. Section 5 of the *Regulations* is replaced by the following:

but

3. Subsection 16(3) of the Regulations is repealed.

THE SEMICOLON

The semicolon is generally used at the end of every paragraph (except the last).

Example:

12. . . .

(*a*) . . . ;

(*b*) . . . ; and

(*c*) . . . .

In orders in council and other executive orders that contain "whereas" clauses, the semicolon is used at the end of each of those clauses.

Example:

Whereas the Governor in Council . . . ;

Whereas the Canadian Chicken Marketing Agency has been empowered . . . ;

And whereas the proposed regulation entitled . . . ;

Therefore, the Canadian Chicken Marketing Agency, pursuant to paragraph . . . .

THE COMMA

The comma should be used with restraint and only to improve the readability of a sentence. The meaning of a sentence should not depend on the comma. If the meaning of a sentence depends on the placement of a comma, it may be preferable to redraft the sentence.

The comma is used to mark off a parenthetical phrase or clause.

Example:

17. The Governor in Council, after consultation with the government of a province, may . . .

Note that a defining (restrictive) relative clause, which is a clause that contains information essential to the meaning of a sentence, is not set off or enclosed by commas.

Example:

8. An accountable advance that is not repaid or accounted for as required by subsection (2) may be recovered . . .

The comma is used at the end of paragraphs that must be read together in order to make clear the meaning of a provision.

Example:

9. The fee payable is the greater of

(*a*) . . . , and

(*b*) . . .

It is also used to separate subparagraphs, clauses and subclauses.

Example:

(*a*) any two corporations if

(i) one person or group of persons holds shares in both corporations,

(ii) a person who holds shares in one of the corporations is related, as described elsewhere in this subsection, to a person who holds shares in the other corporation, or

(iii) a person who holds . . . ;

ADDITIONAL SOURCES

See the article "Em Dashes" in ***Legistics***.

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RECOMMENDATION OF THE MINISTER

(RECOMMANDATION DU MINISTRE)

In the Canadian system of parliamentary democracy, the Governor General acts only on the advice of the council of ministers (the Cabinet), although he or she can exercise a certain number of personal prerogatives independently in exceptional circumstances.[113]

It is because of this constitutional convention that legislation generally uses the term "Governor General **in Council**" or "Governor **in Council**"[114] when a power — regulatory or otherwise — devolves upon the Governor General. In order for the power to be exercised, the minister responsible for the sector of government in question must first make a recommendation to that effect. Sometimes the legislation specifies which minister is to make the recommendation.[115] In those cases, the recommendation must originate with that minister in order for the power exercised by the Governor in Council to be valid.[116] In the absence of the minister that is specified in the legislation, another minister who has been authorized by order in council may sign the recommendation on the minister's behalf.[117] All the measures that the Governor in Council proposes to take must therefore be accompanied by a recommendation from the appropriate minister, which is submitted to Cabinet for approval.

The regulations sections do not examine ministerial recommendations under the *Statutory Instruments Act* except on special request. It is the department or the regulatory agency that finalizes these recommendations, making certain that the enabling provision and the title of the regulation are the same as in the order.[118] If a regulations section prepares a ministerial recommendation, the recommendation is not blue stamped.

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[113] Paul Lordon, *Crown Law* (Cowansville: Éditions Yvon Blais/Department of Justice, 1992) at 16.

[114] Although these two terms are synonymous according to the definition in subsection 35(1) of the *Interpretation Act*, the second is more common.

[115] For example, subsection 11(2) of the *Coasting Trade Act* states that " . . . the Governor in Council may, on the recommendation of the Minister of Transport and the Minister of Foreign Affairs, take such action as the Governor in Council considers appropriate."

[116] John Mark Keyes, *Executive Legislation* (Toronto: Butterworths, 1992) at 67.

[117] *Governor in Council Process Guide: Developing a Proposal Seeking the Approval of an Order by the Governor in Council*, Privy Council Office, Regulatory Affairs Division, July 2004 at 8.

[118] See **ORDERS IN COUNCIL AND OTHER EXECUTIVE ORDERS**.

Example 1 (General):

MINISTERIAL RECOMMENDATION

(*departmental or ministerial letterhead*)

(*date*)

To His/Her Excellency the Governor General in Council:

The undersigned has the honour to recommend that Your Excellency in Council, pursuant to section . . . of the . . . *Act*, make the annexed . . . *Regulations* (or *Regulations Amending . . .*) (or *Regulations Repealing . . .*).

Respectfully submitted,

(*signature*)

(*name*)
Minister of (*name of department*)

Example 2 (Coming-into-force order):

MINISTERIAL RECOMMENDATION

(*departmental or ministerial letterhead*)

(*date*)

To His/Her Excellency the Governor General in Council:

The undersigned has the honour to recommend that Your Excellency in Council, pursuant to section . . . of the *ABC Act*, chapter . . . . of the Statutes of Canada, (*year*), fix (*month, day, year*) as the day on which sections 1 to 4 of that Act come into force.

Respectfully submitted,

(*signature*)

.....

(*name*)
Minister of (*name of department*)

* * * * *

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RECOMMENDATION OF THE TREASURY BOARD

(RECOMMANDATION DU CONSEIL DU TRÉSOR)

Sometimes an enabling statute specifies that the Governor in Council may make regulations on the recommendation of the Treasury Board (a committee of Cabinet).[119] In this case, the recommendation must be made in order for the power exercised by the Governor in Council to be valid.[120] The recommendation must be mentioned in the executive order.

Even if the enabling statute makes no mention of it, the recommendation of the Treasury Board is sometimes required to enable the Board to fulfil its responsibilities under the *Financial Administration Act* for resource allocation, expenditure management, sound financial and personnel management and the administration of government.

It is up to the regulatory department or agency to determine whether a submission to Treasury Board is required under Treasury Board policy. If so, the Treasury Board recommendation should be mentioned in the executive order, although its inclusion is not mandatory.

If there is any doubt, the sponsoring department or agency should consult the appropriate branch of the Treasury Board Secretariat to determine whether a submission is to be made to Treasury Board.

Treasury Board submissions of regulations that may have significant financial implications or that, by virtue of their enabling statute, require Treasury Board approval or recommendation are listed under Part A of the Treasury Board Meeting Agenda. (Regulations and orders that are submitted to Treasury Board when it is acting on behalf of Cabinet are listed under Part B of the Treasury Board Meeting Agenda.)

SOURCES:

1. *Policy on Service Standards for External Fees*, Treasury Board Secretariat, November, 2004.

2. *Regulatory Process Guide: Developing a Regulatory Proposal and Seeking its Approval*, Privy Council Office, Regulatory Affairs Secretariat, June, 2004.

3. *Governor in Council Process Guide: Developing a Proposal Seeking the Approval of an Order by the Governor in Council*, Privy Council Office, Regulatory Affairs Secretariat, July, 2004.

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[119] See section 5 of the *Financial Administration Act*.
[120] John Mark Keyes, *Executive Legislation* (Toronto: Butterworths, 1992) at 67.

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REGULATORY IMPACT ANALYSIS STATEMENT (RIAS)

(RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION (REIR))

Government departments and agencies are subject to the government's policy on the publication of proposed regulations.[121] The *Regulatory Process Guide*[122] requires that proposed regulations be published with a Regulatory Impact Analysis Statement (RIAS). The regulations affected are regulations within the meaning of the *Statutory Instruments Act*, in other words, instruments designated "SOR".

The RIAS is published in the *Canada Gazette*, Part I, then in the *Canada Gazette*, Part II, along with the final publication of the regulations. Regulations that are not subject to the prepublication policy and other documents and statutory instruments that are required to be published in the *Canada Gazette*, Part II, are published with an explanatory note (see **Explanatory Note**) instead of a RIAS.

The RIAS is prepared by the department or agency sponsoring the regulations and is submitted for review, along with the proposed regulations, to the Regulatory Affairs Division (Treasury Board Secretariat). The department or agency is responsible for the content of the RIAS. The Departmental Legal Services Unit must examine the legal aspects of the proposed regulations and the RIAS before they are sent to the appropriate regulations section.[123]

Under the Framework for the Triage of Regulatory Submissions,[4] regulations are classified according to their relative importance. "Low" significance proposals will use an abridged RIAS, while "medium" and "high" significance proposals will continue to use the current RIAS.

The current RIAS comprises six parts:

1. Description
2. Alternatives
3. Benefits and costs
4. Consultation
5. Compliance and enforcement
6. Contact

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[121] See *Cabinet Directive on Streamlining Regulation (2007)*, item 4.1.
[122] *Regulatory Process Guide: Developing a Regulatory Proposal and Seeking Its Approval*, Privy Council Office, 2004.
[3] *Ibid.*
[4] Regulatory Affairs Division – Privy Council Office, 31 May 2006.

The RIAS for a regulation sponsored by the Department of Transport often has a separate heading dealing with the regulation's impact on the environment.

The abridged RIAS comprises four parts:

1. Description
2. Alternatives
3. Consultation
4. Contact

For details on how to draft a RIAS, consult the *RIAS Writer's Guide* (1992), published by the Privy Council Office.

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REMISSION ORDERS

(DÉCRETS DE REMISE)

Remission orders are the means by which the government remits customs duties, income taxes and other taxes, penalties and any other debt. The remission may be in respect of amounts payable; a remission order does not necessarily imply disbursement of money by the government.

Most remission orders are made under the *Financial Administration Act* or the *Customs Tariff*.

1. *Financial Administration Act*

Subsection 23(2) of the *Financial Administration Act* authorizes the Governor in Council, on the recommendation of the appropriate minister, to "remit any **tax or penalty**, including any interest paid or payable thereon, where the Governor in Council considers that the collection of the tax or the enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax or penalty."

Subsection 23(2.1) of that Act authorizes the Governor in Council, on the recommendation of the Treasury Board, to "remit any **other debt**, including any interest paid or payable thereon, where the Governor in Council considers that the collection of the other debt is unreasonable or unjust or that it is otherwise in the public interest to remit the other debt."

The terms "other debt", "penalty" and "tax" are defined as follows in subsection 23(1) of the *Financial Administration Act*:

> "other debt" means any amount owing to Her Majesty, other than a tax or penalty or an amount in respect of which subsection 24.1(2) applies;
>
> "penalty" includes any forfeiture or pecuniary penalty imposed or authorized to be imposed by any Act of Parliament for any contravention of the laws relating to the collection of the revenue, or to the management of any public work producing tolls or revenue, notwithstanding that part of such forfeiture or penalty is payable to the informer or prosecutor, or to any other person;
>
> "tax" includes any tax, impost, duty or toll payable to Her Majesty, imposed or authorized to be imposed by any Act of Parliament.

Remission orders made under section 23 of the *Financial Administration Act* are not "regulations" within the meaning of the *Statutory Instruments Act* (see **Definition "regulation"**, item 2.3 in Part 2). However, under paragraph 11(3)(*d*) of the *Statutory*

Instruments Regulations, they must be published in the *Canada Gazette*, Part II, and are therefore examined by the appropriate regulations section (see **EXAMINATION**, item 4 in Part 2). These remission orders are designated "SI" and are accompanied by an explanatory note rather than a Regulatory Impact Analysis Statement (RIAS).

Unlike regulations, which generally come into force on the date of registration, remission orders made under the *Financial Administration Act* come into force on the date they are made.[124] If a specific coming-into-force date is required, a coming-into-force provision is inserted at the end of the order (see **COMING-INTO-FORCE PROVISIONS**).

The format of these remission orders is flexible. In some cases, the remission is dealt with in the order in council itself, while in other cases it is dealt with in an annexed order, with or without schedules.

The reason for the remission is set out in the order in council, since a remission can be made only if the Governor in Council considers that the collection of the tax or other debt or the enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax, penalty or other debt.

Example 1: Remission in order in council (GST)

> Her Excellency the Governor General in Council, considering that it is in the public interest to do so, on the recommendation of the Minister of Finance, pursuant to subsection 23(2)[a] of the *Financial Administration Act*[b], hereby remits to Albaraka Leasing Ltd. tax under Part IX of the *Excise Tax Act*[c] in the amount of $32,503.56.

[a] S.C. 1991, c. 24, s. 7(2)
[b] R.S., c. F-11
[c] R.S., c. E-15

Example 2: Remission in order in council (penalty — ascertained forfeiture)

> Her Excellency the Governor General in Council, considering that the enforcement of the penalty is unjust, on the recommendation of the Minister of National Revenue, pursuant to subsection 23(2)[a] of the *Financial Administration Act*[b], hereby remits the amount of $439,263.00, representing the ascertained forfeiture demanded from Provincial Airlines Ltd. on June 20, 1996 pursuant to paragraph 133(1)(*c*) of the *Customs Act*[c].

[124] For additional information on the coming into force of statutory instruments, see **COMING INTO FORCE**, item 7 in Part 2.

[a] S.C. 1991, c. 24, s. 7(2)
[b] R.S., c. F-11
[c] R.S., c. 1 (2nd supp.)

Example 3: Order in council with attached order

Her Excellency the Governor in Council, considering that it is in the public interest to do so, on the recommendation of the Minster of Finance, pursuant to subsection 23(2)[a] of the *Financial Administration Act*[b], hereby makes the annexed *Prescribed Areas Forward Averaging Remission Order*.

[a] S.C. 1991, c. 24, s. 7(2)
[b] R.S., c. F-11

PRESCRIBED AREAS FORWARD AVERAGING REMISSION ORDER

INTERPRETATION

1. The following definitions apply in this Order.

"Act" means the *Income Tax Act*. (*Loi*)

"averaging amount" has the meaning assigned by subsection 110.4(1) of the Act as that subsection applied to the 1987 taxation year. (*montant d'étalement*)

REMISSION

2. Remission is granted to a taxpayer in respect of the 1987 taxation year of an amount equal to the amount, if any, by which

(*a*) the total of the taxes and penalties, and interest on that total, payable by the taxpayer for that year under the Act

exceeds

(*b*) the total of the taxes and penalties, and interest on that total, that would have been payable by the taxpayer for that year under the Act if the taxpayer's averaging amount for that year were reduced by the amount that the taxpayer was entitled to deduct under section 110.7 of the Act in computing the taxpayer's taxable income for that year by reason of having resided in an area prescribed by subsection 7303(5) or (6) of the *Income Tax Regulations*.

CONDITIONS

3. The remission is granted on condition that

(*a*) the taxpayer makes an application for the remission in writing to the Minister of National Revenue on or before December 31, 1997; and

(*b*) the amount of the reduction determined under paragraph 2(*b*) in the taxpayer's averaging amount for the 1987 taxation year is excluded in determining the taxpayer's accumulated averaging amount under paragraph 110.4(8)(*a*) of the Act after 1987.

2. *Customs Tariff*

Subsection 115(1) of the *Customs Tariff* authorizes the Governor in Council, on the recommendation of the Minister of Finance or the Minister of Public Safety and Emergency Preparedness, **by order**, to remit duties. The term "duties" is not defined as such in the *Customs Tariff*; however, under section 4 of that Act, the definition "duties" in subsection 2(1) of the *Customs Act* applies. That definition reads as follows:

> "duties" means any duties or taxes levied or imposed on imported goods under the *Customs Tariff*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Special Import Measures Act* or any other Act of Parliament, but, for the purposes of subsection 3(1), paragraphs 59(3)(*b*) and 65(1)(*b*), sections 69 and 73 and subsections 74(1), 75(2) and 76(1), does not include taxes imposed under Part IX of the *Excise Tax Act*;

Remission orders made under subsection 115(1) of the *Customs Tariff* are "regulations" within the meaning of the *Statutory Instruments Act*, even if they apply to one person only. They are therefore designated "SOR" and published with a RIAS. The format of these remission orders is the same as for any regulation; consequently, a coming-into-force provision must be included.

Note that, unlike remission orders under the *Financial Administration Act*, the Governor in Council is not subject to the unreasonableness or public interest test; the Governor in Council's power to remit is not limited to any specific criteria.

Example 1: Remission order with conditions

> Her Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to section 115[a] of the *Customs Tariff*[b], hereby makes the annexed *Order Remitting Customs Duties on Grinding Beads*.

[a] S.C. 2005, c. 38, par. 142(e), 145(2)(j)
[b] S.C. 1997, c. 36

ORDER REMITTING CUSTOMS DUTIES ON GRINDING BEADS

REMISSION

1. Remission is hereby granted of the customs duties paid or payable under the *Customs Tariff* on grinding beads produced by melting together the oxides of zirconium and silicon with lesser amounts of other oxides of tariff item No. 3823.90.90.

CONDITIONS

2. The remission is granted on the condition that

(*a*) the grinding beads were imported into Canada during the period beginning on July 1, 1996, and ending on December 31, 1997;

(*b*) the grinding beads are for use in the wet grinding of minerals; and

(*c*) an application for remission is made to the Minister of National Revenue within three years after the date of importation of the grinding beads.

COMING INTO FORCE

3. This Order comes into force on the day on which it is registered.

Example 2: Remission order containing a schedule

Her Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to section 115[a] of the *Customs Tariff*[b], hereby makes the annexed *Order Remitting Customs Duties on Certain Fresh and Semi-processed Fruits and Vegetables Imported for Processing*.

[a] S.C. 2005, c. 38, par. 142(e), 145(2)(j)
[b] S.C. 1997, c. 36

ORDER REMITTING CUSTOMS DUTIES ON CERTAIN FRESH AND SEMI-PROCESSED FRUITS AND VEGETABLES IMPORTED FOR PROCESSING

REMISSION

1. Remission is hereby granted of the customs duties paid or payable under the *Customs Tariff* by or on behalf of the company listed in column 1 of the schedule up to the amount listed in column 4, in respect of the product listed in column 2, if the product was imported for processing during the year listed in column 3.

CONDITION

2. The remission is granted on condition that an application for remission is made to the Minister of National Revenue no later than December 31, 1998.

COMING INTO FORCE

3. This Order comes into force on the day on which it is registered.

SCHEDULE

(Section 1)

Item	Column 1 Company	Column 2 Product	Column 3 Year	Column 4 Amount ($)
1.	Carrière Foods Inc.	Asparagus	1995	67,583.24
2.	Fraser Valley Foods	Asparagus	1995	21,204.48
		Strawberries	1994	11,014.62
		Strawberries	1995	32,749.63
3.	Multifoods Inc.	Cucumbers (gherkins)	1994	53,289.13

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SCHEDULES TO REGULATIONS

(ANNEXES DU RÈGLEMENT)

Schedules generally contain lists, tables, tariffs, forms, figures, charts or other factual or statistical information. They are accessory to provisions set out in the body of the regulations and should not contain substantive provisions.

Example:

> **1.** An offence under a provision, or a combination of provisions, of a Regulation set out in column 1 of Schedules 1 to 4 is designated as a contravention for the purposes of the *XYZ Act*.

Following a convention adopted by the Legislative Services Branch in 1996, schedules in new regulations are numbered using Arabic numerals.

In regulations amending regulations that contain schedules numbered in Roman numerals, the drafter is encouraged to replace the numbers with the corresponding Arabic numerals if it is appropriate to do so; for example, if a large portion of the regulations is being replaced or the regulations are very short, or at the request of the client. In such cases, it is possible to use general amending formulas designed to replace an expression throughout the regulations. If, however, the regulations are very long or the client wishes to keep the old numbering system, the drafter is advised not to make the change. For uniformity, a single numbering system should be used for a series of schedules.

These numbering rules also apply to parts, divisions, tables and columns.

If a regulation has only one schedule, the schedule is not numbered. References to it in the body of the regulation are not capitalized, i.e. "schedule". If a regulation has more than one schedule, references to it in the body of the regulation are capitalized, i.e. "Schedule 2".

The heading "SCHEDULE", in full capitals, is centered at the top of the first page of the schedule. The regulatory provisions that refer to the schedule are indicated in parentheses and in italics on the line immediately under the heading. The title of the schedule, in full capitals, is centered below.

Example:

SCHEDULE 2
(Section 12 and subsection 33(2))

LIST OF PROHIBITED SUBSTANCES

The word "schedule" takes the preposition "to", not "of".

Example:

Schedule 1 to the Regulations . . . .

The sections or items of a schedule are numbered using Arabic numerals.

In a schedule set out in the form of tables (columns) or lists, the item numbers are not in bold. In a schedule that consists of sentences or that is divided into sections, subsections, paragraphs and so forth, the section numbers appear in bold.

In stamped copies, schedules and tables consisting of more than one page should not bear the heading "SCHEDULE (*Continued*)" or "(*Concluded*)". The *Canada Gazette* staff will insert the heading "SCHEDULE (*Continued*)" on all the pages of a schedule after the first page.

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SENATE AND HOUSE OF COMMONS

(SÉNAT ET CHAMBRE DES COMMUNES)

When Senators and members of the House of Commons are mentioned in the same provision of a regulation, the reference to the Senators precedes the reference to the members of the House of Commons. This order is in keeping with the order of precedence established by the Table of Precedence for Canada.[125]

Example:

1. The definitions in this section apply in these Regulations.

…

"member" means a member of the Senate or the House of Commons and includes a former member who resigned from the Senate or the House of Commons because of disability. (*parlementaire*)

The same order is followed when referring to both institutions of Parliament, the Senate and House of Commons, in the same provision of a regulation.

Examples:

10. Every disability allowance must be paid in accordance with standard payment procedures of the Senate or the House of Commons, as the case may be.

18.1 The Chief Electoral Officer may carry out studies on voting, including studies respecting alternative voting means, and may devise and test an electronic voting process for future use in a general election, a by-election or a referendum. Such a process may not be used for an official vote without the prior approval of the committees of the Senate and of the House of Commons that normally consider electoral matters.

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[125] The Table of Precedence for Canada is an instrument of protocol established by the Sovereign to indicate the relative precedence of the various actors within the Canadian Federation.
http://www.pch.gc.ca/pgm/ceem-cced/prtcl/precedence-eng.cfm

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(TABLE DES MATIÈRES)

A table of contents acts as a summary and a guide to the logical structure of the regulation as a whole[126].

A table of contents may be prepared for a new regulation that is long (e.g., more than 10 pages) or that has several parts or divisions and it consists of the regulation's headings, subheadings and marginal notes (use only the first marginal note if the section is divided into subsections).

A table of contents follows the order in council or executive order. It is printed before the regulation and, even though a note appears at the top of the table stating that it is not part of the regulation, it is stamped.

A table of contents is published together with the text of the regulation in the *Canada Gazette* but it is not updated or amended through the regulatory process. The client department may administratively publish an updated version. Also, it is possible to obtain an update by selecting the pdf version of the regulation found on the Department of Justice Laws Website. Note that in the pdf version it is referred to as a table of provisions rather than a table of contents.

For an example of a table, see the *Canadian Payments Association By-law No. 1 – General* (SOR/2003-174).

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[126] Previous articles recommended using "Table of Provisions" when the regulation contained marginal notes and "Table of Contents" when the regulation did not. This article eliminates the distinction.

TERMINOLOGY

(TERMINOLOGIE)

The terminology used in a regulation must be consistent with that used in the enabling statute and, to the extent possible, with that used in other statutory instruments made under the same Act.

Terms must be used correctly. For spelling and usage, *The Canadian Oxford Dictionary* is the accepted standard for the English version and *Le Petit Robert* for the French version.

Terminology should be kept as simple as possible. Latinisms, foreign phrases and neologisms that have not been accepted into ordinary usage should be avoided.

To the extent possible, common terms should be used, in their ordinary meaning. It is appropriate, in technical regulations, to use technical terms or to assign a specialized meaning to common terms. In such cases, definitions may be advisable (*see* **DEFINITIONS**).

Defined terms and expressions must be used in a uniform manner. Whenever possible, specialized or key terms and phrases should also be used in a uniform manner, in order to ensure the consistency of the regulatory corpus.

In case of doubt about the use of terms that may have a specific meaning in common law or civil law, the Bijural Revision Services Group of the Legislative Services Branch should be consulted.

The essence of the language should be respected. Neither language version should be a slavish translation of the other.

If the regulation incorporates a rule by reference, the terminology used in that rule should, to the extent possible, be consistent with that used in the regulation. At the very least, the terminology should not be inconsistent with that used in the regulation.

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TIME LIMITS

(DÉLAIS)

The expression of time limits, dates, periods of time, time of day and age must take into account sections 26 to 30 of the *Interpretation Act*.

Following are examples of phrases customarily used to express time limits, dates and periods of time:

> ". . . the statement shall be filed **not later than 30 days after** the day on which the Minister sends a notice in writing to the corporation. . . "
>
> ". . . goods imported **on or after July 1, 1997** are subject to the rate of duties set out in Schedule 1 . . ."
>
> ". . . goods imported **on or before July 1, 1998** . . ."
>
> ". . . goods imported during the period **beginning** on April 15, 1990 and **ending** on June 15, 1990 are exempt from the application of sections . . ." (see Note)
>
> ". . . beginning on July 1 **in one year** and ending on June 30 **in the next year** . . ."

Note: Use of the term "between" to describe a period of time may result in uncertainty about the beginning and end of the period, or both. A sentence construction such as "goods imported between April 15, 1990 and June 15, 1990. . ." is not recommended.

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TITLE OF REGULATIONS

(TITRE DU RÈGLEMENT)

The title is an essential component of a regulation. It identifies the regulation, for which it serves as a sort of "label", and tells the reader the general content of the text. The title reflects an important purpose or aspect of the regulation. The title may also be used to interpret the regulation.[127]

Unlike federal Acts, which generally have two titles (a short and a long one), regulations now have only one title. Note that in some provinces, including Quebec, British Columbia and Alberta, both Acts and regulations have only one title.

Drafting guidelines

Since the title of a regulation is very important, it should be chosen with great care. Finding a good title is not always an easy task. Here are some guidelines for the drafter:

- To the extent possible, the title should be short but complete, and simple but precise.
- It should employ terms that are used in the regulation.
- It should not mislead or create a false impression.

Form

A reference to the title of a regulation in orders in council and other executive orders, as well as in the body of the regulation, is in italics. The first letter of each word in the title is capitalized, except articles, conjunctions and prepositions that have fewer than five letters, unless they are placed at the beginning or at the end of the title. Note that the definite article that precedes the title of the regulation is not in italics, since it does not form part of the title.

Examples:

5. The operator of an establishment shall submit the application in accordance with section 21 of the *Pest Control Products Regulations*.

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[127] See Pierre-André Côté, *The Interpretation of Legislation in Canada*, 3rd ed. (Carswell, 2000) at 55-57; Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed. (Butterworths, 2002) at 290-295.

23. The *Aircraft Regulations* do not apply to airplanes to which these Regulations apply.

Drafting rules

As a rule, the first element of the title, which is followed by the word "Regulations", describes the subject matter.

Examples:

Meat Inspection Regulations

Medical Devices Regulations

In the case of amending regulations, the title begins with the words "*Regulations Amending the*", followed by the title of the regulations that are being amended.

Examples:

Regulations Amending the Motor Vehicle Regulations

Order Amending the Customs Duties Accelerated Reduction Order and Repealing the Duties Reimbursement Order

Regulations Amending the Transportation of Dangerous Goods Regulations (Miscellaneous Program)

See **MISCELLANEOUS AMENDMENT REGULATIONS** for details on the titles of miscellaneous program regulations.

In some cases, other than in the context of miscellaneous amendment regulations, a regulation may amend more than one regulation made by the same regulation-making authority. This situation usually occurs if the amendments deal with the same subject; for example, the revocation of a right to appeal provided for in three separate regulations. It is recommended, in these cases, that the title refer to the common subject-matter to which the amendments relate.

Examples:

Regulations Amending Certain Regulations Made by the Minister of Immigration (Revocation of the Right to Appeal)

Regulations Amending Certain Regulations Made Under the Customs Tariff (Tobacco Advertising)

Regulations Amending Certain Regulations Concerning the Shipping of Grain

If the amendments have no common subject-matter, it might be necessary to mention the titles of the regulations being amended. If more than two regulations are being amended, we recommend making a general reference to these regulations to avoid a lengthy title.

Examples:

Regulations Amending the Meat Inspection Regulations and the Carcass Grading Regulations

Regulations Amending Certain Regulations Made Under the Customs Act

When a regulation-making authority makes a new regulation to replace an existing one, the fact that the existing regulation is being repealed or that the new regulation is making consequential amendments to another regulation is not mentioned in the title. The consequential amendment or provision repealing the existing regulation is placed at the end of the new regulation, generally before the coming-into-force provision (see **AMENDING REGULATIONS**).

The title of the new regulation need not be different from the title of the regulation being repealed, if it is determined that the existing title is the most appropriate one in the circumstances. For example, if the *Medical Devices Regulations* are being rewritten and replaced by a new regulation, the most appropriate title might still be the *Medical Devices Regulations*. There is no need to add a year to the title of the new regulation; however, in some instances that may be a useful means of distinguishing the new from the old. This will be determined in discussion with the client and considering the possibility for confusion between the old and the new texts.

In some cases, words like "defining" and "repealing" are used to describe the content of the regulation.

Examples:

Order Repealing the Aircraft Inspection Regulations

Regulations Defining Certain Expressions for the Purposes of the Customs Tariff

Exceptions

If voluminous regulations are amended frequently, it might be useful to add specific identifiers at the end of the title to avoid confusion, especially when persons are invited to submit their comments on a particular set of amendments.

This practice is followed in amendments to the *Food and Drug Regulations* and the *Motor Vehicle Safety Regulations*, where specific identifiers are inserted in brackets at the end of the titles. In the case of the *Food and Drug Regulations*, a sequential numbering system is used, which may be combined with a descriptive identifier. In the case of the *Motor Vehicle Safety Regulations*, the subject-matter to which the amendment relates is added at the end of the title.

Examples:

Regulations Amending the Food and Drugs Regulations (1044)

Regulations Amending the Food and Drug Regulations (1454 – Imazethapyr)

Regulations Amending the Motor Vehicle Safety Regulations (Rearview Mirrors)

In other cases, it might be appropriate to add to the title a number, a year or both to avoid confusion, particularly in annual or periodical regulations.

Examples:

Temporary Entry Remission Order, No. 44

Special Appointment Regulations, No. 1996-18

Prohibition of Entry on Certain Lands Order, No. 13 of 1996

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VERB FORMS

(FORMES DU VERBE)

Tense and Mood

As the law is "always speaking", verbs in legislation should generally be written in the present tense[128] and the indicative mood.

Examples:

5. A licence **is** valid for one year after the day on which it is issued.

6. These Regulations **come** into force on the day on which they are registered.

The major exception[129] regarding mood occurs in rules of conduct; e.g., when someone is required or permitted to do something, as in "Every person **shall** (or **must** or **may**)[130] . . . ."

Active vs. Passive Voice

In a sentence using the active voice, the agent performing the action serves as subject; e.g., "The superintendent shall examine all applications." In a sentence using the passive voice, the recipient of the action serves as subject; e.g., "An application must be submitted each year."

Use of the active voice is generally preferred over use of the passive voice. The active voice is better at stating who has a power or an obligation. The active voice should also be used when creating rules of conduct that, if contravened, are to be offences. The passive voice is preferable if

- it is not necessary to identify the person or thing carrying out the action. In this case, the person or thing carrying out the action would be implied or undetermined;
- the emphasis is intended to be on the subject of the action and not on the person or thing carrying out the action.

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[128] See section 10 of the *Interpretation Act*.
[129] The use of modal verbs is fully discussed in *Legistics*, Part 2, in the article entitled "Present Indicative".
[130] See **"MUST", "MAY" AND "SHALL"** in *Legistics*.

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"WITH ANY NECESSARY MODIFICATIONS"

(« AVEC LES ADAPTATIONS NÉCESSAIRES »)

When a particular word or expression used in a regulation is to be replaced by another word or expression by means of a global amendment, the expression "with any necessary modifications" is included in the amending formula. The use of this expression authorizes any amendment required to make the new word or expression fit the grammatical structure of the provisions into which it is inserted, e.g. putting it in the singular or plural, capitalizing it, or, in the French version, making gender agreements. The expression is used only if the replacements involve modifications. Sometimes they do not.

Example:

5. Schedule IV to the Regulations is amended by replacing "walk-in van-type truck" with "walk-in van", with any necessary modifications, in the following provisions:

(*a*) subsection 203(2);

(*b*) paragraph 204(1)(*a*);

(*c*) subsection 208(13); and

(*d*) paragraph 212(1)(*b*).

The expression is also used to extend the scope of certain provisions while avoiding repetition.

Examples:

(5) The provisions of section 6 apply, **with any necessary modifications**, to an appeal under subsection (4).

36. The provisions of this Part relating to motor vehicles apply, **with any necessary modifications**, to a bicycle or any cycle regardless of the number of wheels it may have.

The expression should be used with restraint in this type of case as it is not always clear what modifications will be required. The Standing Joint Committee for the Scrutiny of Regulations has expressed its reservation about the use of similar expressions. See the Justice Summaries of Substantive Legal Issues Identified by the SJCSR, record numbers 1995 (24-15) and 2000 (1-38).

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PART 5

DEVELOPING REGULATIONS

The Basic Steps and the Plain Language Approach

March 1998

Department of Justice and
Treasury Board

Ministère de la Justice et
Conseil du Trésor

This document was prepared by the Plain Language Partnership, which is composed of representatives of the Department of Justice, the Treasury Board Secretariat, Natural Resources Canada, Industry Canada, Transport Canada and Human Resources Development, National Literacy Secretariat.

We also acknowledge the valuable contributions of Vicki Schmolka.

Publié aussi en français sous le titre : *L'Élaboration des réglements : Les principales étapes et la lisibilité*

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DEVELOPING REGULATIONS: THE BASIC STEPS AND THE PLAIN LANGUAGE APPROACH

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PART 5

Developing Regulations: The Basic Steps and the Plain Language Approach

INTRODUCTION

This Guide is intended for anyone involved in preparing regulations. It should help everyone who participates in the process, including the technical and policy officers in the sponsoring department and the legal advisers from the Department of Justice in the departmental legal services units (DLSUs).

This Guide performs two functions. First, it gives an overview of the process of drafting regulations. Although much has been written on the subject, there is no "road map" to point out the choices confronted by the government regulator or to identify the documents to refer to along the way. This Guide introduces you to the basic steps to follow when you prepare a regulation, and it refers you to reference documents for further details on particular points. The reference documents are primarily federal government publications, as well as certain documents on plain language.

The second basic function of the Guide is to introduce plain language elements that can be used when drafting regulations. These elements affect both the process by which regulations are prepared and the words and format used. Plain language is much more than the words and grammar used to communicate an idea. It is a process that starts before you put pen to paper. It starts with forming a team, getting a clear understanding of your objective, recognizing your "audience" and their needs and abilities.

Many people are interested in making regulations easier to read and understand by using a plain language approach. We are still in the early stages of applying plain language principles to regulations, but changes are being made.

There are many drafting conventions that apply to regulations, but it is beyond the scope of this Guide to cover all of them. The drafting part of this Guide is limited to highlighting the plain language processes and techniques that may currently be used in developing federal regulations. Other plain language techniques are being considered and, as these are approved, they will be communicated to regulators. These new processes and techniques will be added to the comprehensive *Federal Regulations Manual* prepared by the Regulations Section, Department of Justice, which sets out virtually all the drafting rules for federal regulations. This Guide should be used in conjunction with that Manual.

The steps outlined in this Guide combine traditional approaches to drafting regulations with more innovative ones based on plain language principles. Certain stages in the creation of a regulation, for example, the formal making, registration and publication of a regulation, will be familiar to anyone who has been involved in the process. Other elements, such as the emphasis on teamwork, consultation and usability testing, represent a less traditional approach to drafting that makes use of plain language principles. In the course of developing regulations, time and resource pressures may limit how closely you are able to follow the plain language approach outlined in this Guide; for example, urgent circumstances could justify not conducting usability testing.

1.PRELIMINARY STEPS

1.1 Identify the Issue and the Objectives

Good drafting depends on knowing what you want to say and saying it well. A critical element of successful drafting is thorough policy formulation. There are, of course, other important elements: good organization of the text, appropriate choice of words, clarity of style, presentation and testing for usability. However, if the regulation is not based on a clearly formulated policy, the other elements cannot make up for this omission, and the result will be an ineffective regulation. A French poet, philosopher and linguist once said:

Whatever is well conceived is clearly said, And the words to say it flow with ease.[131]

[131] Nicolas Boileau-Despréaux (1636-1711), *The Art of Poetry* [1674], canto I, l. 153

These words, written in 1674, are still valid today. The purpose of the written word is to convey a message, no less in legislative drafting than in other writing. Regulations convey rules. In order for those rules to be expressed clearly and accurately, they must be clear in the regulator's mind. The issue and objectives must be identified.

This section of the Guide provides you with a framework and checklist for finding the most practical approach to identify the issue and determine the remedial objectives.

(A) Principles

The first step in establishing clear rules is to identify the objective clearly. You may not be motivated by a negative or difficult situation. You may instead be aware of an issue or new initiative that you want to address. In either case, you must recognize and analyze the realities of the situation that your department wants to address. In doing so, you will have to identify powerful external factors, economic, cultural, social or psychological, that usually influence people's behaviour in the situation. It is not sufficient to conclude that there is a problem or issue that needs to be addressed; you must also know:

- why the situation needs to be addressed;
- how the circumstances combine to generate the issue;
- how severe the need is to address the issue;
- how often the issue arises; and
- what the costs of not dealing with it are.

You should assemble a team of people to flesh out the issue. By forming a working team at the beginning of the project, you can ensure that the team leader is informed and guided when identifying the issue, weighing the risks associated with the various options, and deciding which approach to take. You will need people with technical and legal expertise in the area concerned. Once the issue is defined, it must be looked at in its legal and governmental context. Call on your DLSU and the Regulations Section of the Department of Justice for assistance. Analysis of the legal and governmental context will tell you:

- whether the matter falls within federal and departmental jurisdictions. This step is essential because if the matter is outside those bounds, you cannot address it through regulations, nor are you responsible for the solution.

- Other government sectors or public interest groups may be concerned and should be consulted. Consultation is a key means of taking the views of the various stakeholders into consideration. The objective of consultation is to ensure harmonization and avoid duplication with other action taken to address the issue. You should refer to the Privy Council Office publication *Consultation Guidelines for Managers in the Federal Public Service* for more information on this subject.

(B) Checklist

What is the issue that you want to address?
Is government intervention warranted?
What is your objective and the purpose of intervention?
What is creating or contributing to the issue?
Who are the key players?
To what extent are the various players involved in the situation?
What external factors are influencing their behaviour?

- Do people understand and acknowledge that there is an issue?
- Do they understand and acknowledge their contribution?
- Do they understand and accept the government's objectives?
- Do they understand and accept the way you want them to behave?
- Are they capable of behaving that way?
- What economic, cultural, social or psychological factors are involved?
- Can the government or other bodies adequately monitor the solution?

What changes do you want to see?
How much change do you really need?
Which instruments will best bring about the desired result?

1.2 Assess Ways of Achieving your Objectives

Once you have identified the issue, you should explore possible ways of addressing it. No matter what solution you consider, you must ensure that the relevant legislation is broad enough to address the problem. To ensure that any potential solution is legally viable, you should consult with your DLSU. You should also consult with the people who are likely to be directly or indirectly affected by the possible solutions. Diagram 1 on the following page provides an overview of the steps and considerations involved in assessing alternative ways of achieving your objectives.

(A) Principles

One way of achieving your objectives is, of course, by making regulations. This method has its drawbacks, however, chief among them being a significant investment of time and money. Before you decide to address the issue by writing regulations, you need to ask yourself if there are alternatives to regulation that could help you address the issue.

Alternatives may include such government intervention as taxing, owning businesses or promoting voluntary action.

The questions listed in the checklist in (B) below will help you to assess the best way of reaching your objective. The checklist is an analytical framework to help you discover whether there are other solutions that would work just as well as traditional regulation to achieve the results you seek. The following are examples of alternatives, some of which do not involve regulations at all:

- taxation (raising or lowering the cost of a particular behaviour, such as the tax on cigarettes)
- expenditure (such as subsidizing purchase of pollution-abatement equipment)
- loans and loan guarantees (such as retro-fitting workplaces to meet new safety standards)
- user charges (such as charges for disposal of toxic waste)
- public ownership
- persuasion (such as promoting voluntary action)
- modification of private law rights (such as creating new legal rights of action)
- insurance schemes (such as adjusting the premium to encourage or discourage certain behaviour)

Another option would be to consider alternative forms of regulation, such as:

- imposing direct product controls (such as putting price ceilings on public utility services)
- imposing supplier entry and exit controls (such as licensing to control the number of suppliers in the market)
- imposing production process controls
- imposing information controls
- establishing marketable rights

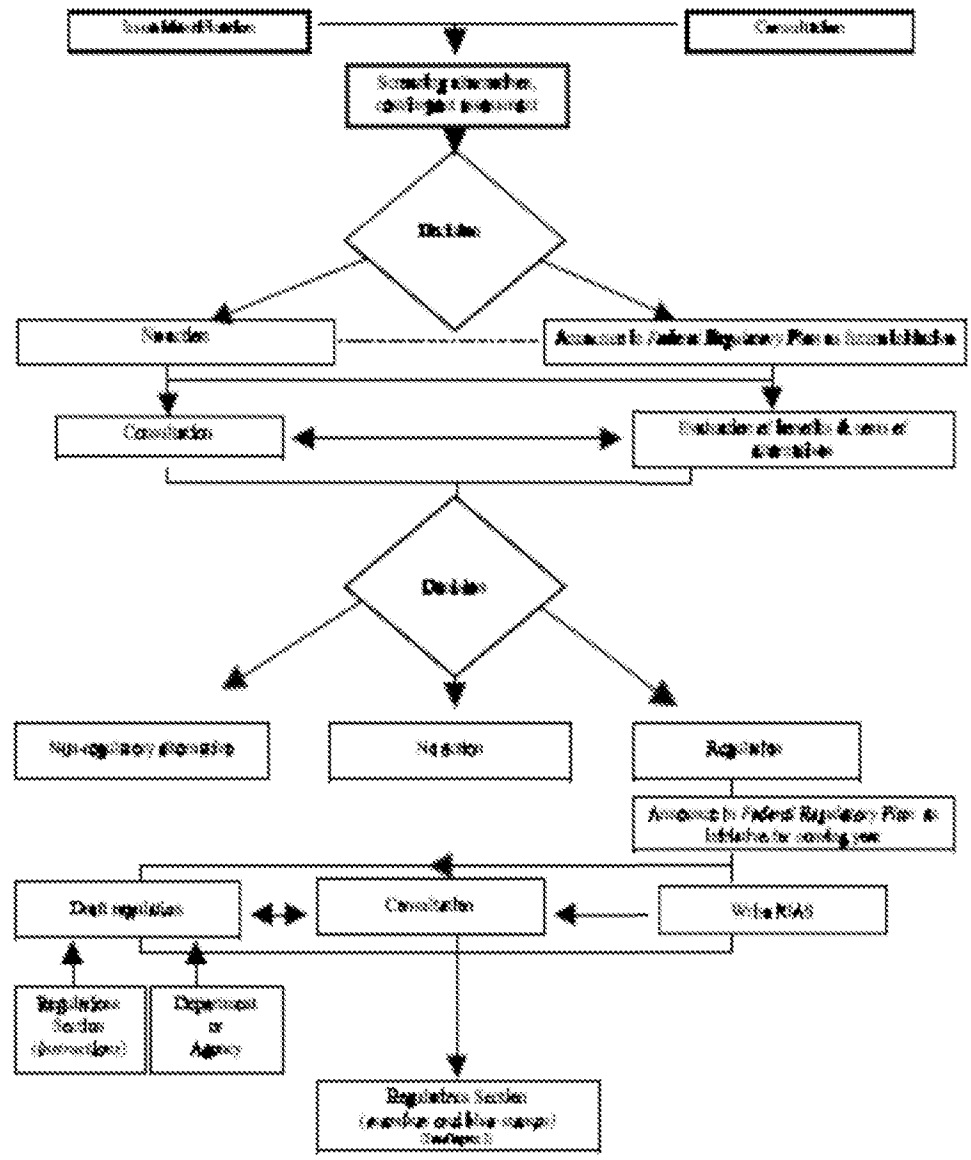
You may decide that the best strategy is to use incentives to strengthen the factors that bring about the desired result, or to use disincentives to weaken or eliminate the factors that bring about undesirable results.

Your decision on how to handle an issue must be based on a systematic comparison of possible alternatives. If you decide to regulate, you must demonstrate that the benefits of a regulation outweigh its cost.

The costs related to a proposal can be many and varied. Costs include any negative impact on business (for example, the paper burden and the ability to compete and be innovative), on consumers (for example, higher prices and less product choice), on governments (for example, compliance, enforcement and administrative costs), on the environment, and on health and safety. If the regulation is expected to have a wide effect with significant economic implications, one useful diagnostic tool is the Business Impact Test. For example, a Business Impact Test that was used to assess cost recovery proposals revealed that Canadian businesses that are starting up often have particular difficulties finding the funds to pay for approvals. This finding was helpful in choosing how to implement a cost-recovery program in those circumstances.

The next section of the Guide gives you a framework and checklist for finding the most practical approach to address the issue.

DIAGRAM 1
ASSESSING THE ALTERNATIVES



(B) Checklist

What instruments (directives, regulations, policy documents) and approach (incentives, disincentives) will bring about the desired result?
How would each alternative work in practice?
Do you have the resources to do it? Implementing an alternative without the resources to execute it could attract liability.
What are the comparative advantages of each alternative?
How might each alternative be expected to alter the key issues that you have identified?

Different types of approaches, whether regulatory or non-regulatory, give different levels of assurance that the risk will be reduced. To judge which regulatory and non-regulatory alternatives are options, you will need to assess each of them according to the following criteria:

- **Is it legal?** The *Constitution Act* allocates legislative (and governing) authority, establishing the division of powers between the federal and provincial governments. The *Canadian Charter of Rights and Freedoms* sets limits on *how* governments can exercise their authority. Contact your DLSU for help in this area.
- **Would it be effective?** How would this alternative strengthen or weaken the factors that influence the behaviour contributing to the issue? How difficult and costly would it be to detect non-conforming behaviour?
- **Would it be efficient?** An efficient solution is one where the benefits equal or exceed the costs.

Your analysis will have two parts: quantifiable and non-quantifiable impacts.

- **Would it be fair?** Who would win and who would lose? By how much? How would this alternative change the relative standings of the various stakeholders affected?
- **Is it too intrusive?** How many people would be affected by this method of intervention? How detailed would the standards of behaviour be? Is this macro or micro management? What form would the behavioural specifications take? If, for example, a standard is required, can you get by with a performance specification or will you have to address technical design attributes? What kind of behaviour is being addressed? Is it something that is generally accepted as being the government's business, or is it something that is better left to other forces to resolve?

- **How visible would it be?** Government is there to serve the people; people need to know if, when, and how they are being served. If this alternative is used, therefore, will it be evident that government is taking action to deal with the situation? Is this alternative more, or less, visible than others? Can its visibility be increased through government action such as public announcements or other communications?
- **How fast can you have it?** You should be prepared to estimate how quickly each alternative could be implemented and how long it would take to generate results. For instance, regulation might be more effective, but it might take two to three years to implement.

A voluntary approach might result in somewhat lower levels of compliance but might be achievable in 6 to 12 months.

- **Is it responsive?** The alternative has to respond to the issue and be seen as responsive. If it doesn't address the contributing behaviour head-on, people may think that the government isn't taking the issue seriously. If it isn't tangible, if it doesn't have form, structure, and specifications that define the desired result, it may be viewed as a smoke screen.
- **What type or what combination of alternatives would work best?** Factors that influence the situation you want to modify are likely to be complex and interrelated. The best solution will probably be a combination of techniques that work on different aspects of the situation. Most regulatory systems rely on an assortment of techniques to achieve the desired result; for example, the techniques of training, public communications and financial assistance can be used to promote compliance. Various forms of requirements are often mixed together in statutes and regulations. For example, licensing systems may control who can provide a product, but they often also incorporate standards and pricing controls.

REFERENCE DOCUMENTS

For more information on alternative approaches to regulation, see the following Treasury Board Secretariat publications:

Assessing Regulatory Alternatives (May 1994). *Benefit-Cost Analysis Guide for Regulatory Programs,* Chapter 2, Screening the Alternatives (1995).
Competitiveness and the Design of Regulations (Dec. 1992).
Intergovernmental Cooperation, Summary (Nov. 1994).
Enlightened Practices in Regulatory Programs, Vols. 1 & 2 (May 1993).
The Business Impact Test.

See also:
Tort Liability of Public Authorities: Review of Jurisprudence, 2nd Ed., Administrative Law Section, Department of Justice (Feb. 1995).

1.3 Preparing to Write a Regulation

You have assessed the available alternatives and you have been advised that you have legislative authority to proceed with a regulatory solution. At this point, you will either amend an existing regulation or write a new one. The considerations and steps involved in either process are set out below.

(A) Form a Team

Once the decision is made to write a new regulation or to amend an existing regulation, call together a team of people to serve as the key resource contacts. Ideally, the team should be made up of representatives of all of the groups who are to be involved in the regulation's development: a project leader, a technical adviser, a legal adviser from your DLSU, two drafters from the Regulations Section, Department of Justice (one for the French version and one for the English), and a representative of any other group that can contribute to the drafting effort. Regulations are prepared in both official languages; the one version is not simply a translation of the other. You must have people on the team who can provide the necessary expertise in each official language.

To promote interaction and emphasize the complementary roles of the various team members, define each member's roles and responsibilities at the outset and be sure they are understood. It may not be necessary for every team member to attend every meeting, but it is very important that the team members know who to contact if certain issues arise.

You will find that the drafters from Regulations Section will be better able to respond to the needs of the client and to the situation in which the regulation will operate through their contact with the rest of the team. This contact should reduce, if not prevent, the delays and frustrations that result from discovering problems at a late stage in the process.

Identifying all the players from the start makes the process more efficient and saves time and money.

(B) Determine What can be Done under the Authorizing Statute

It is essential to determine the legal framework set by the authorizing statute, because it gives the team an understanding of their legal constraints. These constraints rest on two legal bases:

- that the regulation-making authority has no regulation-making powers beyond those delegated to it by Parliament in the authorizing statute, and
- that in the regulations themselves it must confine itself to acting within the scope, subject-matter and legal limits that Parliament has set it in the authorizing statute.

To define the scope of the legal framework, you need to answer these questions:

- Who can exercise the regulatory power?
- What is the extent of the regulatory power, given the wording of the authorizing statute?
- How far can the holder of the regulatory power go in subdelegating matters?

The Regulations Section drafter is a specialist in the area of delegated legislation. The DLSU legal adviser is a specialist in the department's legal interests. Together, they can advise other members of the team on the extent of the legal authority the team has to work with.

REFERENCE DOCUMENTS
For more information on the legal framework for regulations, see the following Justice publication:
Federal Regulations, Department of Justice Regulatory Awareness Program, Privy Council Office Section (1992).

(C) Develop a Realistic Regulatory Strategy and a Work Plan

Team members should develop a strategy and create a work plan for the regulation. The work plan should realistically take into account all the steps in preparing, implementing and enforcing the regulation.

Once your team has a work plan, you can estimate the resources necessary to accomplish the task and determine whether enough funding is available.

REFERENCE DOCUMENTS

These reference documents provide practical advice for improving compliance with regulatory objectives. They also identify alternatives to the traditional "command and control" model of regulation, such as the use of incentives and self-regulation techniques:

Designing Regulatory Laws that Work, Administrative Law Section, Department of Justice (1995).

A Strategic Approach to Developing Compliance Policies, Treasury Board Secretariat, Regulatory Affairs (1992).

2. PREPARE THE REGULATORY APPROACH

2.1 Consult with Users and Public Sector Administrators

Consultation is the pathway to fair and "transparent" regulatory development. If time and resources permit, it is helpful to involve the policy-makers and the drafters in the consultation process. Involving them will lead to a better understanding of the user-regulator relationship and will result in more effective regulations. Depending on the scope of the consultations and the form they take, you may also want to include researchers. Consultation is conducted principally with two groups: users and stakeholders; and public sector administrators. You should consult with both groups at the same time because their differing policy concerns can have a profound effect on the outcome. Consultation with stakeholders should also be conducted from the outset (see section 1.2), to reduce the chances of choosing an ineffective or inappropriate solution.

The examination of policy objectives normally starts with the regulator and extends out, by means of consultation, to the various stakeholder and user groups. The policy is continually tested for effectiveness, with adjustments being made to correct flaws as they are identified.

Consultation will involve selecting target groups and drafting questions to draw out the key issues, tailoring the methods to the users when necessary. The Research and Statistics Section of the Department of Justice may be able to help you in this regard. If the client department has a research or evaluation unit, it should be brought into the project, since it will likely have valuable substantive knowledge about the regulated area that the Department of Justice researchers will not have.

The sponsoring department may also have other internal resources that could help during the consultation phase, such as a Public Affairs Section. The Research and Statistics Section of the Department of Justice has research experience and considerable knowledge about the plain language process, and can provide a useful liaison role in the technical discussions with the client department's research unit. Research is a resource-intensive activity, and the availability of resources will be crucial in determining what ca be done and by which organization.

Consultation may take the form of visits to selected users. If the user group is relatively small or well-organized, one-on-one meetings with representatives may work best. If the group is diverse and largely unorganized, a representative sample will have to be identified and consulted, possibly in the form of a focus-group discussion, to make the process credible. Consultation can also be conducted using client-specific newsletters, conferences and electronic media (e.g. the Internet).

(A) Consult with Users and Stakeholders

The first step is to identify and consult with the users of the proposed regulation and any associated stakeholders. Users can range from the regulator and the compliance and enforcement network all the way to the end user, often the general public. For their part, stakeholders differ from users in that the stakeholders do not directly use the regulations, although they do have an interest in the area covered by the regulations. Stakeholders may include other federal departments, provincial authorities, municipal bodies, international organizations, industry associations or consumer organizations. For example, in the context of an environmental regulation, the users would be the industry that has to comply with emissions standards, whereas the stakeholders would be the general public. Identifying all stakeholders is critical to having a complete, well-balanced and productive consultation process.