

## **REGULATORY PROCESS – CANADA**

The federal regulatory process in Canada is defined both by specific legal requirements set out in the [\*Statutory Instruments Act\*](#) and by policy requirements that are articulated in the [\*Cabinet Directive on Streamlining Regulation\*](#).

### **Regulations as a Policy Instrument**

In Canada, regulations are made by the Governor in Council, a minister, or an administrative agency, to whom Parliament has delegated its authority in an act. Regulations are a form of law—they have binding legal effect and usually set out general rules rather than specific ones that are directed toward persons or situations.

The process described herein assumes that officials have evaluated the range of instruments available to them for achieving a given policy objective and have determined that regulation is a necessary part of the instrument mix.

### **Overview of the Federal Regulatory Development Process**

The federal regulatory development process is structured so as to provide a consistent approach to making regulations across government while ensuring that the policy commitments and legal obligations of the Government of Canada are met.

#### **Step 1: The Triage Statement**

The first step in the regulatory development process is to assess the level of impact of the regulatory proposal, prepare a Triage Statement, and have the statement approved by Treasury Board Secretariat.

It is also at this stage that the potential impact of a proposal on international trade will be determined. In cases where a regulating organization cannot adequately assess such impact, Treasury Board Secretariat consults with the Department of Foreign Affairs and International Trade.

#### **Step 2: Analysis and Development of the Regulatory Impact Analysis Statement**

The Cabinet Directive on Streamlining Regulation requires regulatory organizations to conduct detailed analyses and undertake thorough consultations when developing a regulatory proposal. The results of these processes are summarized and presented to decision makers and the public in the Regulatory Impact Analysis Statement. This document provides a cogent, non-technical

synthesis of information that allows the various audiences to understand the issue that is being regulated, the reason the issue is being regulated, the government's objectives, and the costs and benefits of the regulation and who will be affected, who was consulted in developing the regulation, and how the government will evaluate and measure the performance of the regulation against its stated objectives.

The regulatory organizations identifies parties that may be interested in or affected by a regulatory proposal and provides these parties with opportunities to take part in open consultations at all stages of the regulatory process.

When undertaking consultations, the regulatory organization does the following:

- Informs and engage Canadians on the nature and implications of the public policy issue based on available evidence, science, or knowledge;
- Includes Canadians in developing policy objectives;
- Sets out the process and timelines in a clear manner so that affected parties can organize and provide input; and
- Provides timely feedback to Canadians and affected parties on the outcome of the consultations and on the priorities considered in decision-making.

### **Step 3: Drafting the Regulations**

Drafting instructions are prepared in both Canadian official languages (English and French).

### **Step 4: Examination by the Department of Justice Canada Legislative Counsel and Stamping**

The Department of Justice conducts a legal examination of all proposed regulations to ensure that the following:

- The regulation is authorized by the enabling act.
- The regulation does not constitute an unusual or unexpected use of the authority under which it is to be made.
- The regulation does not trespass unduly on existing rights and freedoms and is not inconsistent with the *Charter of Rights and Freedoms* or with the *Constitution Act, 1982*.
- The form and drafting of the regulation is in accordance with established standards.

### **Step 5: Signed Submission Goes to Privy Council Office – Order in Council**

Regulatory proposals, once approved for submission by the sponsoring minister, are forwarded to Privy Council Office – Order in Council, which is responsible for putting the proposal before the Treasury Board.

## **Step 6: Treasury Board Meeting and Decision**

Treasury Board Secretariat is responsible for briefing Treasury Board ministers on regulatory proposals. Officials of the regulatory organization are sometimes required to be available during the meeting to provide additional information.

The Treasury Board, as a Cabinet committee, may make any of the following decisions:

- Approve or reject pre-publication of the proposed regulation;
- Approve or reject requests for exemptions from pre-publication;
- Send the item to Cabinet or one of its other committees for consideration;
- Refer the matter back to the responsible minister for further consideration and information; and
- Defer the item to another meeting.

## **Step 7: Pre-Publication in the *Canada Gazette*, Part I**

If the approval of the Treasury Board is obtained, Privy Council Office – Order in Council forwards the proposed regulation and the accompanying Regulatory Impact Analysis Statement to the Canada Gazette Directorate of Public Works and Government Services Canada.

The proposed regulation and the Regulatory Impact Analysis Statement are then pre-published in the *Canada Gazette*, Part I. It is through publication in Part I that the government includes Canadians in the regulatory process. Pre-publication gives all Canadians a chance to submit their comments about a proposed regulation before it is made.

## **Seeking Final Approval, Publication, and Registration**

Following the pre-publication period, many of the same steps are undertaken again in a modified form to complete the regulatory development process.

## **Step 8: Post-Pre-Publication Analysis**

All comments received during the pre-publication period are given careful consideration to determine whether changes to the text are warranted

If changes are required to the proposed regulation, the Department of Justice Legislative Counsel will examine them and make those changes that are appropriate. In addition to public and stakeholder comments, any changes that may have occurred, domestically or internationally, that could affect the wording or intent of the proposed regulation are considered.

## **Step 9: Examination by the Department of Justice Legislative Counsel and Stamping**

The Department of Justice Legislative Counsel performs the same legal examination function at this stage as during the pre-publication stage (see Step 4).

### **Step 10: Final Regulatory Submission Goes to Privy Council Office – Order in Council**

Once the final regulatory proposal has been approved by the responsible minister(s), the relevant documents are sent to the Assistant Clerk of the Privy Council. Unless specified otherwise, all documents are required in both official languages of Canada (English and French).

### **Step 11: Making of the Regulation by the Governor in Council**

The Governor in Council is the Governor General of Canada acting on the advice of Cabinet. Since December 2003, the Treasury Board has provided advice to the Governor General on behalf of the Queen's Privy Council.

Similar to proposals seeking pre-publication, Treasury Board Secretariat briefs Treasury Board ministers on submissions seeking final approval. The ministers consider the results of pre-publication along with other information in the regulatory submission and decide whether to recommend that the Governor General make the regulations as presented in their final form.

### **Step 12: Registering, Coming into Force, Publishing in *Canada Gazette*, Part II**

#### **Registration**

Although it is required that a regulation be transmitted to the Clerk for registration within seven days, the registration is usually done within 48 hours of the Treasury Board meeting at which the regulation is considered. The regulation is assigned a number, preceded by the acronym SOR, which stands for statutory orders and regulations, or SI, which stands for statutory instruments.

#### **Coming into Force**

Regulations that must be registered generally come into force at midnight on the date of registration or on a day after registration that is specified in the regulations.

#### **Publication**

Regulations are published in the *Canada Gazette*, Part II, within 23 days of their registration (Part II is published every second Wednesday).

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