

7.7 Regulatory Management Policy

Policy Statement

The Government of Nova Scotia is committed to regulating in a way that contributes to a prosperous business climate and ensures that citizens, communities, and the environment are well protected. Within this context of maintaining or improving protection, government has committed to making it easier to do business in Nova Scotia, to help business comply with regulation and to improve the quality of regulations.

Regulation will only be chosen as the policy instrument of choice when it is demonstrated that government intervention is warranted and other options fail to demonstrate they will address the issue. When regulation is chosen, it will be designed to produce maximum effectiveness while minimizing to the extent possible negative impacts on stakeholders.

Departments, offices and agencies will apply principles of best practice when considering regulatory options, including when considering issues that *may* result in regulation. Best practices include identifying and understanding the issue or problem, the options, the impacts and input from stakeholders, as well as implementation and evaluation of effectiveness.

Definitions

REGULATION

A principle, rule or condition set by government that governs the behaviours of citizens or enterprises; encompassing a range of instruments that include formal rules, such as statutes, subordinate legislation, and ministerial orders, as well as less formal instruments such as standards, guidelines, codes and education and information campaigns (“*Smart Regulation: A Regulatory Strategy for Canada*”, p.3, September 2004, Government of Canada).

REGULATORY PROGRAM

Most departments, offices and agencies have programs whose goal is to protect the public interest in an area of provincial responsibility through regulation. Generally, in order to achieve the goals of these programs, regulatory tools or alternative

regulatory instruments are employed along with compliance assistance (for example, information and education campaigns, capacity building and plain language guides), compliance assurance (for example, inspection) and enforcement policies and procedures.

REGULATORY TOOL

A policy tool used by government in the form of a law or regulation which governs or influences the way people or businesses behave. Compliance is mandatory and the regulator is able to impose sanctions for non-compliance.

Regulatory tools may take many different forms, for example, price controls, product and process controls, performance standards, licensing, permitting, certifying, disclosure of information, self regulation, modification of private law rights and marketable rights.

ALTERNATIVE TOOL

A policy tool, other than a regulatory tool, that is used to influence the behaviour of individuals or businesses. These types of instruments are often implemented through a regulatory tool.

These tools, often categorized as economic instruments and persuasion, include taxation, expenditure, loans or loan guarantees, user charges, public ownership, insurance schemes/incentives and information/education and voluntary standards.

For the purposes of this policy, **regulatory tools** are limited to:

- Governor in Council regulations (Cabinet approved)
- Governor in Council approved regulations (made by the Minister, or other body, and approved by Cabinet)
- Ministerial regulations (made by the Minister)
- Government legislation.

Policy Objectives

OBJECTIVES

This policy establishes best practice guiding principles to be employed by departments, offices and agencies in the consideration, design, construction, implementation, monitoring and evaluation of regulatory tools including compliance assistance.

The objectives of the Regulatory Management Policy are to:

- protect Nova Scotians' public health and safety, environment, and workplaces while supporting a prosperous business climate;
- improve the quality of regulatory decision making across government through the consistent application of principles of best practice in the development and implementation of regulation; and
- improve the effectiveness of regulatory programs in setting and meeting their objectives.

Application

DEPARTMENTS, OFFICES AND AGENCIES

This policy applies to all departments, offices and agencies establishing or administering regulatory programs.

TYPE OF POLICY ISSUE/REGULATION

This policy applies when a department, office or agency is:

- considering the use of a regulatory tool (legislation, regulation, adoption of performance standards), among other options, to address an issue or problem where no regulatory tool currently exists;
- proposing amendments to existing regulations to address an issue or problem and which will have a new effect;
- developing a regulatory tool;
- reviewing existing regulatory tools.

APPLICATION TO ALTERNATIVE TOOLS

This policy may be applicable to the development of alternative tools to the extent that the application of this policy assists in the decision to use an alternative tool rather than a regulatory tool. Once a decision is made to use an alternative tool, other processes employed by departments, offices or agencies may supercede the application of this policy in the development and implementation of those alternative policy instruments.

POTENTIAL SITUATIONS LIMITING APPLICATION

Situations will arise from time to time requiring immediate action by government. Consequently, for reasons of practicality or expediency, there may be justification to proscribe the full application of the regulatory management policy of a department, office or agency in these specific instances. In such cases, the departmental deputy minister or deputy head of an office or agency will determine the extent to which this policy and the considerations referenced in the Principles can be followed.

Policy

The Government of Nova Scotia is committed to following best practice principles when considering, researching, designing and implementing regulatory programs.

The following best practice principles of regulatory development are to be adopted and incorporated into the procedures and practices of departments, offices and agencies in their regulatory tool development and management processes:

PRINCIPLES

1. **Clearly define the problem to be addressed**

How a problem is defined influences the tools or instruments selected to address it. The problem being considered must be clearly identified and defined in order to frame the issues, to fully understand its root causes and the scope of the problem. Those impacted and those responding to the problem should be involved in the problem definition process. Initial performance measures relating to the desired behavioural outcomes should be considered in the process of problem identification to help conceptualize the problem to be addressed.

2. **Demonstrate that regulation on an identified problem is warranted and required**

The design of an intervention must always be informed by the ability to make the desired impact on the identified problem. The need for regulation, as opposed to some other policy instrument, including an alternative regulatory instrument, must be justified given the available information and the identified risk to be managed. A specific regulatory tool must be justified in terms of government direction and policy coherence as well as in terms of competing demands on departmental resources and departmental priorities.

3. **Provide transparency in regulatory development and implementation**

Given that regulation is under consideration, the active engagement of significantly affected parties will begin as early as possible in the identification and assessment of issues, as well as in the determination of the impacts of a regulatory program or tool. As appropriate, stakeholder engagement should be sustained throughout the development of regulation to contribute to the understanding of implementation issues. Wherever feasible, proposals for regulations should contain clear plans to address all pertinent compliance assistance, assurance and enforcement issues identified by stakeholders.

4. Assess the costs and benefits of regulation

Based on the defined problem, risks are identified and initial objectives are considered early in the regulatory tool development process. The potential impacts of the available regulatory tools need to be examined and assessed if there are regulatory options. Regardless of the regulatory tool chosen, the likely benefits, costs and effects of new or changed regulations must be understood. How costs can be minimized while maximizing benefits must be considered in the development of regulatory tools and their implementation. The enforcement costs of regulations including internal training needs, inspection strategies and enforcement tools must also be considered.

5. Minimize the impacts of regulation on a fair, competitive and innovate market economy

The costs and impacts on a fair, competitive and innovative market economy, as well as the social and environmental impacts, will be considered in decisions relating to the development and implementation of all regulations. The specific regulatory tool will be the best policy alternative to address the identified problem because it provides the greatest public benefit without imposing unnecessary or unreasonable burden on business. In all instances, administrative requirements will be as streamlined as possible without jeopardizing the objectives of the regulatory program.

6. Minimize or eliminate divergent and duplicate regulatory requirements

Duplication or overlap with regulatory regimes in other levels of government must be identified and minimized or eliminated in the development of regulations in order to reduce the regulatory burden impacting business and individuals. To the greatest extent possible, departments must ensure consistency in the intent and outcomes of provincial regulations across sectors or areas. Intra and cross-departmental input must be sought as appropriate to remove unnecessary duplication of requirements and to maximize harmonization of all regulatory regimes.

7. Design regulations that focus on the desired outcomes and objectives

Based on analysis of the information and evidence available, a specific regulatory tool will be chosen because it is the most appropriate method to achieve the identified goals. Regulatory tools should be results-based or performance-based wherever appropriate and to the extent possible. Regulations should be prescriptive when there is a specific and justifiable need to state detailed or technical requirements in order to address the identified problem.

8. Ensure regulations are easily understood, accessible and enforceable

During the selection and development of regulatory tools, departments and agencies will thoroughly consider how these tools should be communicated to all stakeholders. Regulations must be written in a format that best achieves the desired policy objectives while remaining clear and unambiguous. As appropriate, regulatory tools should be accompanied by compliance assistance materials, which may include press releases, brochures, guidance documents and web pages. It must be clear to those impacted by a regulation what their responsibilities are given the compliance expectations. It is not only the technical feasibility of the regulatory option that must be examined to ensure it can be implemented, but also that the necessary and sufficient compliance assistance can be provided.

9. Review the effectiveness and efficiency of regulations routinely

Included in the development and implementation of new regulations will be the consideration of measurement, monitoring, and review procedures. The external conditions that require government intervention can change over time placing an onus on departments, offices and agencies to review all regulations to test whether they are still relevant and effective. Routine review protocols should be part of the implementation planning for new regulatory programs and developed for existing ones. Wherever feasible, efforts should be made to formally evaluate regulations developed to protect the public interest.

Policy Guidelines

Practical advice and direction in implementing this policy is provided in the *Regulatory Management Policy Guide*, May 2008, Treasury and Policy Board.

Accountability**DEPUTY MINISTER/DEPUTY HEAD**

The deputy minister or deputy head is responsible for ensuring that this policy is implemented throughout the department, office or agency.

SENIOR MANAGERS/SUPERVISORS

Senior managers and supervisors are responsible for ensuring the requirements of this policy and associated procedures are followed and for ensuring the appropriate staff have access to the available supports provided to assist in the implementation of this policy.

OFFICE OF POLICY AND PRIORITIES

Analysts at the Office of Policy and Priorities will support the implementation of this policy by challenging departments, offices and agencies to address the objectives of the policy.

DEPARTMENT OF JUSTICE

Solicitor Services

Solicitors assigned to departments are responsible for:

1. participating in the evaluation of the range of regulatory options and advising on the benefits and liabilities of the options;
2. advising on the legality of the use of potential regulatory tools;
3. assisting with drafting instructions for legislation prepared by Legislative Counsel, and drafting regulations;
4. approving proposed regulations as to form and authority on behalf of the Attorney General.

Registry of Regulations

The Registry of Regulations is responsible for reviewing proposed regulations that are made or approved by Governor in Council to ensure that they are drafted in the format and style set out in the *Style and Procedures Manual*, January 2005, issued by the Department of Justice.

COMMUNICATIONS NOVA SCOTIA

Communications Nova Scotia staff assigned to departments, offices and agencies will assist in ensuring regulatory changes are communicated with the appropriate audiences.

Monitoring

The general application of this policy will be monitored by the Office of Policy and Priorities through the analysis of regulatory submissions presented for the approval of Executive Council.

References

Regulatory Management Policy Guide, May 2008, Treasury and Policy Board.
Style and Procedures Manual, January 2005, NS Department of Justice.

Enquiries

Office of Policy and Priorities (902) 424-7751

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