**Regulatory Stock Reviews**

**Working Guide**

## **Using this guide**

The Guide to Regulatory Stock Reviews (the Guide) outlines expectations for federal regulatory departments and agencies subject to the Cabinet Directive on Regulation (the Directive) who are undertaking a review of their regulatory stock, as required in **Section 7** of the Directive. Both Governor-in-Council and ministerial regulations are captured under the review requirements set out in the Directive. The Guide also proposes a common framework to develop a stock review plan and for reporting publically on the status and order of a department or agencies’ review of its regulatory stock. Finally, the Guide provides questions for regulators to consider while undertaking the evaluations and reviews of the regulatory stock.

This is a working document and is intended to grow the base of knowledge and experience of federal regulators who undertake regulatory stock reviews. As regulators implement the Directive, this Guide will be amended to highlight best practices and lessons learned.

## **Definitions**

**Regulations**,as defined by the *Statutory Instruments Act*, are statutory instruments that are established pursuant to legislative powers conferred under an Act of Parliament that may result in the imposition of legal sanctions if they are contravened. Regulations are used by government as an instrument for mandating or enabling particular behaviours or outcomes in order to achieve public policy objectives.

The **regulatory stock** is all of the regulations under the authority of a minister and administered by that federal department or agency.

A **stock review plan** is a framework published online to help regulators develop and showcase a systematic, transparent plan to review their existing regulations over a set period of time. The stock review plan includes the titles of the regulations that will be reviewed, the date each regulation was last reviewed, and the proposed date to launch a new review.

**Ex-post evaluation** is an assessment focused on the results and impacts of a regulation, and is considered a good regulatory practice by the Organisation for Economic Co-operation and Development (OECD).

**Stakeholders** are individuals or parties, including but not limited to, Canadians, Indigenous peoples, governments, organizations, businesses, or trading partners, with an interest or concern in federal regulations and related federal government initiatives.

**The Cabinet Directive on Regulation and Regulatory Stock Review**

**Effective regulatory review: purpose and challenges**

Regulations help protect the health, safety and security of Canadians and the environment, and ideally, also enable innovation and competitiveness within the economy. Removing regulations is not the ultimate purpose of a regulatory review. Rather, amendments to regulations, programs, and enforcement processes can support efficiencies, reduce costs, and improve opportunities for growth and innovation while strengthening underlying policy objectives for Canadians. Given that industry innovations and new technologies are continually emerging, and the manner in which regulations were designed and drafted may have evolved since the time that the regulation was originally made, it is necessary to periodically review and amend regulations to reflect changing risk environments and to provide flexibility to adjust to changing circumstances.

The OECD notes that “the evaluation of existing laws and regulations through ex-post impact analysis is necessary to ensure that they are effective and efficient. In the absence of a systematic review process, the overall burden of complying with regulations tends to increase over time. This complicates the daily life of citizens and impedes the efficient functioning of business.” With Canada’s current complement of over 2,600 regulations enabled by 800 Acts across 50 federal regulatory departments and agencies, review of regulatory stock (also known as ex-post evaluation) and modernization efforts provide an avenue for Canadians and businesses to benefit from new economic opportunities.

**What does the Cabinet Directive on Regulation require for a stock review?**

The Directive introduces a requirement for departments and agencies to undertake a regular review of its existing regulatory stock. To do this, they must create a plan and timeline that outlines how they will review the department’s or agencies’ regulations. The Directive also sets out a list of analytical lenses that should be applied during the review.

To meet the requirements set out in the Directive, departments and agencies must communicate two things to stakeholders and the Treasury Board of Canada Secretariat (TBS):

1. a list of the regulations that will undergo a review, prioritized in a way that makes sense to the regulator and stakeholders; and
2. a timeframe for the review(s).

Regulators must seek stakeholder feedback on these components, and take into consideration issues raised through the consultation and feedback process when finalizing the stock review plan. To ensure consistency in the way stock reviews are presented publicly, this guide sets out a framework or template for the stock review plan for regulators to follow, as shown in **Appendix A**.

The stock review plan includes the titles of the regulations that will be reviewed, the date each regulation was last reviewed, and the proposed date to launch a new review. The plans are posted online through the department or agency’s Acts and Regulations webpage and should be updated annually by April 1. This update should align with updates to the department and agency’s Forward Regulatory Plan. It must also be linked to the Forward Regulatory Plan, as required by the Policy on Transparency and Accountability

As set out in the Directive, the President of the Treasury Board of Canada has the authority to require a department or agency to undertake a review of a regulation(s) or to participate in a centrally-led regulatory review process. Regulators participating in centrally-led regulatory reviews, such as those directed by the President of the Treasury Board or another Government of Canada decision, should indicate this participation in their stock review plan, and should indicate which regulations are part of that central review process.

When it makes sense, regulations can be grouped within the stock review plan under the umbrella of one review. When the anticipated approach to a review is already known by the department (i.e., as part of a mandatory or ad-hoc review of a statute), this should be included in the stock review plan. Regulators can also indicate that the approach is “to be determined” and incorporate stakeholder feedback into the planning process. When a regulation is reviewed in parts, rather than in its entirety, regulators should list the parts that were reviewed and explain the rationale for the partial review in a short narrative piece.

Evidence gathered during the review will support decisions about the next steps for a regulation, which can be categorized as one of the following outcomes:

* **reviewed and confirmed** – the regulation continues without change;
* **amended** – the regulation remains, but changes are made to improve it;
* **removed** – the regulation is removed without replacement; or
* **replaced** – the regulation is replaced or substantially redesigned.

## **Approaches to reviewing the regulatory stock**

**Analytical Lenses**

A list of factors or “lenses” that should be considered during the review are set out in **Section 7.2** of the Directive. These lenses guide the review process and help regulators in evaluating the overall performance and effectiveness of a regulation. Regulators must consider a mix of lenses when they undertake a review.

**Appendix B** sets out a series of guiding questions a department or agency could ask while reviewing regulations. Departments and agencies are not required to address all questions, but as a good regulatory practice, they are encouraged to include sufficient information in the outcomes of the review to touch upon these core issues:

* relevancy;
* instrument choice;
* effectiveness;
* flexibility and alignment; and
* efficiency.

**Planning and Evaluation Methodology**

**Appendix C** provides examples of evaluation methods and process steps that can be adopted by departments and agencies undertaking a stock review. This includes planning for the review, suggestions on coordination, and how to best engage stakeholders throughout the review process.

The approach to the review could also be shaped by other statutory or policy requirements, such as legislative reviews or audits. When this is the case, departments and agencies should indicate this process in their stock review plan to explain the rationale for the review.

**Timeframe**

The first assessment period will begin April 1, 2019. Updates to stock review plans should be posted publically on the departmental Acts and Regulations webpage by April 1, each year.

**Resources**

* Proceedings from the 9th OECD Conference on [Measuring Regulatory Performance](http://www.oecd.org/gov/regulatory-policy/Proceedings-9th-Conference-MRP.pdf) (2017)
* The [OECD Framework for Regulatory Policy Evaluation](http://www.oecd.org/regreform/framework-for-regulatory-policy-evaluation.htm) (2014)
* Webpage: [Ex Post Evaluation of Regulatory Tools and Institutions](http://www.oecd.org/gov/regulatory-policy/expostevaluationofregulatorytoolsandinstitutions.htm) (2004)

**Appendix A:**

**Stock Review Template**

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| **[Area for the Departmental/Agency Banner]** | | |
| **[Area for the Breadcrumbs]** | | |
| **[Area for the Departmental/Agency Navigation]** | **Regulatory Stock Review Plan**  This Regulatory Stock Review Plan is a public list and description of planned reviews of regulations that **[insert department/agency name]** is proposing within a **[insert X year period]**. It is intended to give Canadians, including businesses and Indigenous peoples, and trading partners, greater opportunity to inform the reviews of regulations and to plan for the future. **[Department can insert a sentence or two on how the stock review plan is developed and prioritized]**  The stock review plan identifies a **[insert “departmental” or “agency”]** contact point for the planned reviews. The stock review plan will be adjusted and updated over time to reflect **[insert department/agency name]**’s regulatory priorities and changes to the operating environment. | |
| **Stock Review Plan [start year – finish year]** | | |
| **Title or Working Title of the Regulation(s)** | | **Requirement:** The title of the regulatory initiative must be clear and concise and reflect the nature or subject matter of the regulatory initiative or change being proposed. |
| **Enabling Act(s)** | | **Requirement:** Departments and agencies must include the title(s) of the Enabling Act(s) that provides the authority for the proposed regulation(s). |
| **Rationale** | | **Requirement:** A line summarizing the reason for the regulatory review. |
| **Narrative** | | **Narrative:** For reviews of significant regulations, departments and agencies can describe the anticipated review process and indicate the key objective(s) of the review. This section can also be used to explain why a partial review of a regulation is being proposed, or why several regulatory titles are being grouped together.  When known, departments and agencies should use this section to describe the planned approach to the review (e.g., as part of a statutory requirement for a legislative review). A “TBD” response is also appropriate.  Departments and agencies should also feel free use this section to communicate a rationale or policy considerations to stakeholders, as required. |
| **Date of last review or amendment (Year)** | | **Note:** If only a chapter or section of the regulation(s) were reviewed last, indicate the chapter or section, in addition to the year of that review. |
| **Targeted start for review (Year)** | | **Requirements:** For transparency and to give stakeholders sufficient notice, a timeframe /date for the start of the review should be established. |
| **Stakeholder Feedback**  *(once complete)* | | **Requirement:** A brief statement is included to summarize stakeholder input and/or considerations. This section is included once stakeholders are consulted on the review plan. |
| **Outcomes** *(once complete)*   * Reviewed and confirmed * Amended * Removed * Replaced | | **Requirements:** A brief statement is included to describe the outcomes for the regulation(s). This section is included once the review is complete. |
| **For further information** | | **Requirements:** For ease of reference by stakeholders, departments and agencies should provide hyperlinks to additional information such as data, research, or analysis related to the review. |
| **Departmental or agency contact:** | | **Requirements:** Departments and agencies should provide a contact point for an official that has the knowledge necessary to respond to questions from the public on that initiative. |

## **Appendix B: Guiding Questions for a Regulatory Review**

Reviewing a regulation may require dedicated resources but is a necessary step for the successful implementation of the lifecycle approach. Below are a set of questions that can be considered by regulators undertaking a review exercise to help identify and analyse impacts and outcomes. These questions can be part of the methodological framework and systematic plan developed by a regulator for the review, and will help meet the review requirements set out in **Section 7** of the Directive.

Note, this is not an exhaustive list, but a starting point for the review exercise.

**Issue 1: Relevance**

* What problem was the regulation meant to solve? Does that problem still exist?
* What is the role or objective of the federal government in this regulated area/sector?
* Why is government or regulatory action still needed?
* Do the regulations continue to serve the public interest?
* Are the appropriate international and/or domestic standards and references incorporated by reference and up-to-date?
* Do(es) the regulation(s) still align with Canada’s international obligations?
* Do regulatory objectives align with broader government objectives for the regulated area/sector including facilitating innovation, promoting economic growth, or competitiveness? Is there an opportunity to modify the regulation or program to support these objectives?

**Issue 2: Effectiveness**

* When compared to the initial regulatory proposal, has the regulation resulted in the expected benefits?
* Have you examined the original Regulatory Impact Analysis and Cost Benefit Analysis assumptions? How were they different (or similar) to the way the regulation has been implemented and managed?
* How does the regulatory regime encourage innovation and complement market forces?
* What is the impact of the regulatory regime on investment and innovation?

**Issue 3: Efficiency**

* Has the regulation led to unintended impacts and/or costs on either the regulated party or the Government? Is there a better way to gather compliance information or manage the implementation of the regulation?

**Issue 4: Flexibility and Alignment**

* Can compliance requirements be minimised without jeopardizing the regulatory objectives, including public health, safety, security, the environment?
* Can additional flexibility be given to small businesses to minimise administrative and/or compliance burden?
* Could a performance or outcome based regulatory regime be applied with better results?
* Are there opportunities for coordinating or cooperating with other jurisdictions, international partners, or other government departments?
* Can we better align or harmonize with similar regimes of our trading partners?

**Issue 5: Instrument Choice**

* Is regulation still necessary or could other policy instruments be applied to achieve the same outcomes? Have you examined examples from similar cases or areas?
* Which types of instruments are likely to be most effective in this particular regulated area/sector?
* Are there legal risks associated with allowing the use of alternative instruments in this particular regulated area/sector?

**Appendix C: Planning Approaches for Regulatory Stock Reviews**

**Phase 1: Plan and Prioritize**

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**Prioritization:**

Departments and agencies are responsible for developing and publishing a review plan. How to prioritize the regulations within the stock should be determined by a set of criteria, as decided by the department or agency. Regulators should take into account stakeholder concerns or indications of problems when deciding what analytical questions to ask and what regulations to review in order.

When appropriate, departments and agencies should work together to share information that may facilitate planning a stock review.

In situations where the administration of a regulation is shared among more than one department or agency, the department or agency responsible for implementation should lead the review. When two or more departments or agencies are responsible for implementation, the review should be coordinated between the responsible departments or agencies and timelines should be reflected in both stock review plans.

Time and resources allocated to the review should be proportionate to the level of impact of the regulation, as initially defined during the development of a regulation at the triage stage. This means that low or no-impact regulatory reviews should be allocated a shorter timeline with less analytical effort applied than a significant impact regulation.

**Timeframe:**

Departments and agencies must establish a timeframe for their stock review plan. The time horizon for the plan (for example, three, five or ten years) should be aligned with existing planning exercises within an organization to meet corporate needs, departmental audit programs or evaluation committees’ requirements. Corporate functions often have subject matter expertise in the selection of performance measures or indicators and in data collection.

**Phase 2: Engage and Consult**

The plan should be published on the department or agency’s Acts and Regulations web page and linked to its Forward Regulatory Plan to allow businesses, Canadians, and other orders of government to provide input.

As part of the engagement process, departments and agencies should provide a mechanism to receive feedback and suggestions from stakeholders and should plan to address external stakeholders’ questions or concerns about the review plan. It is at the departments and agencies discretion on how to best manage this process with their stakeholders.

**Phase 3: Conduct the Review and Report the Results**

Departments and agencies are responsible for identifying an approach or a mix of approaches to assess their existing regulatory stock.

When evaluating a regulation against a set of criteria to determine its effectiveness in solving the public policy problem, departments and agencies should use multiple lines of evidence (qualitative and quantitative) to demonstrate the performance of the regulations and to support findings. They should also consider the original assumptions and estimates from the Regulatory Impact Analysis and the Cost-Benefit Analysis as part of their review, to determine if they regulation resulted in the expected impacts or if there are areas of analysis to adjust.

There are several avenues through which a department or agency can plan and perform a stock review, such as using ongoing stock management to comply with the requirements of the *Red Tape Reduction Act* and the implementation of the One-for-One Rule, leveraging centrally-led sectoral reviews (such as those recently launched from Budget 2018 to examine bottlenecks to innovation), capitalizing on ad-hoc departmental reviews of statutes and/or regulations, as well as using mandatory reviews of statutes and/or regulations, and regulatory program evaluation to meet the Directive requirements.

Regulatory stock reviews should have a clear methodology to allow for the collection and analysis of valid and reliable data. Reviews should include sufficient and appropriate consultation with external stakeholders, and should be conducted in a cost-effective manner.

Upon completing a review, departments and agencies should report outcomes. Lessons learned, policy conclusions, or other findings can also be shared on their website to promote transparency and inform other federal regulators or other jurisdictions of best practices when undertaking a review.