Guide to Limiting Regulatory Burden on Business

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# Introduction

The [*Policy on Limiting Regulatory Burden on Business*](https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/policy-limiting-regulatory-burden-business.html#toc8-2) was published on September 1, 2018, and sets out the specific requirements for the one‑for‑one rule and the small business lens. The one‑for‑one rule has its legal basis in the [*Red Tape Reduction Act*](http://laws-lois.justice.gc.ca/eng/acts/R-4.5/page-1.html) and the [*Red Tape Reduction Regulations*](http://laws-lois.justice.gc.ca/eng/regulations/SOR-2015-202/page-1.html). The rule and the lens are outlined in the [*Cabinet Directive on Regulation*](https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/cabinet-directive-regulation.html), which establishes the requirements for federal regulatory proposals.

This guide has been developed by the Centre of Regulatory Expertise in the Regulatory Affairs Sector of the Treasury Board of Canada Secretariat (TBS) to further clarify the policy. The guide clarifies how the Regulatory Affairs Sector interprets the policy requirements and provides examples from actual regulatory proposals where possible. The guide should be read alongside the policy and is organized to align with the structure of the policy.

# Definitions (section 5)

Section 5 of the policy provides definitions that apply to the one‑for‑one rule and the small business lens. Following are some examples that supplement the definitions.

#### Administrative versus compliance activities

The one‑for‑one rule requires regulators to identify administrative burden on businesses arising from regulatory requirements. The small business lens requires that both administrative and compliance burden on small businesses be identified.

Deciding whether activities relate to administration or to compliance can be challenging, because some activities could fall into either category. The key is to identify the purpose of the requirement itself.

**Compliance activities** directly support the regulatory outcome. **Administrative activities** are done to demonstrate compliance with the regulatory requirements.

Consider whether the intended regulatory outcome would be achieved if the requirement did not exist.

**Examples**

**Food safety scenario**

A requirement to refrigerate food at a specific temperature to make sure the food is safe is a **compliance** activity. If the food isn’t kept at this temperature, it might not be safe.

A requirement to provide the regulator with reports on routine temperature readings over a certain period is an **administrative** activity. The reports provide useful information for regulatory oversight, but reporting the temperatures is not necessary to keep the food safe.

**Logbook scenario**

A regulated party might be required to maintain a logbook of specific information about the regulated activity and to keep the logbook on the premises. The logbook might serve several different purposes. For example, it might contain a list of emergency contacts, or information on materials located on the premises. These operational purposes suggest that maintaining the logbook could be a compliance activity. However, regulatory inspectors might also use some of the information in it, which suggests that it could be an administrative activity under the definition in the [*Red Tape Reduction Act*](http://laws-lois.justice.gc.ca/eng/acts/R-4.5/page-1.html)and the [*Policy on Limiting Regulatory Burden on Business*](https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/policy-limiting-regulatory-burden-business.html#toc8-2).

Table 1 has been developed:

* to help regulators distinguish between administrative and compliance activities
* to categorize the activities appropriately

**Table 1: activities and their administrative and compliance components according to the requirements**

| **Activity** | **Administrative component** | **Compliance component** |
| --- | --- | --- |
| Handling general documents | * Completing general documents, reports, licence applications and authorizations
* Submitting these documents to government
* Filing and retrieving these documents
 | * Purchasing filing cabinets or servers to store information
 |
| Handling comprehensive and complex documents | * Submitting plans to government and summarizing them

  | * Preparing a risk assessment, an operational plan, a training plan, an emergency response plan, and a performance measurement and evaluation plan
* Collecting scientific data to prepare a report
* Purchasing filing cabinets or servers to store information
 |
| Filing and retrieving information  | * Filing or retrieving information associated with a federal government obligation
 | * Purchasing filing cabinets or servers to store information
 |
| Labelling | Not applicable | * Labelling is considered to be a compliance activity
 |
| Training | * Keeping records of training
* Submitting training records to government
 | * Training staff or purchasing training materials
 |
| Testing requirements | Not applicable | * Testing methods and requirements are generally considered to be compliance activities
* Changing methods or modifying testing procedures generally have no administrative costs
 |
| Pre-market approvals  | Not applicable | * Pre-market approvals for activities or products such as drugs, medical devices, banks, telecommunication devices and environmental assessments are generally considered to be compliance activities
 |
| Enforcement, audits and inspections | * Collecting and retrieving information and assisting government inspectors or auditors related to the enforcement of a regulation
 | Not applicable |

#### Taxes, fees and penalties

Taxes and penalties are transfers and are not considered to be administrative or compliance burden. They are therefore excluded from cost calculations under both the one‑for‑one rule and the small business lens.

Fees constitute a cost to regulated parties in exchange for a good or service, and should be included in costing under the small business lens. Doing so is consistent with the methodology of the cost-benefit analysis. The one‑for‑one rule, however, considers only administrative burden, which does not include fees.

# The one‑for‑one rule (section 7)

## Overview (subsection 7.1)

**Figure 1: flow chart illustrating the one-for-one rule**



## Policy requirements (subsection 7.2)

The one‑for‑one rule applies to regulatory changes that impose incremental administrative burden on businesses. The following questions will help regulators determine whether the one‑for‑one rule applies to a regulatory proposal.

1. Is the proposed regulation made or approved by the Governor in Council or made by a minister of the Crown?
* If neither applies, the rule is not triggered
* If one the above applies, proceed to **both questions 2 and 3**
1. Does the proposed regulation impose or remove administrative burden on Canadian businesses?
* If neither applies, Element A of the rule is not triggered
* If one the above applies, Element A of the rule is triggered, and the regulator must proceed with the analysis set out in the policy and include this analysis in the one‑for‑one rule section of the Regulatory Impact Analysis Statement (RIAS)
1. Is the proposed regulation a new regulatory title that imposes new administrative burden on business, or does it repeal an existing regulatory title (or multiple titles)?
* If neither applies, Element B of the rule is not triggered
* If one of the above applies, Element B of the rule is triggered, and the regulator must proceed with the analysis set out in the policy and include this analysis in the one‑for‑one section of the RIAS

### Identifying administrative activities (subsection 7.2.1)

#### “Voluntary” participation in a regulated activity

Sometimes, a business that is not otherwise subject to a regulation may choose to participate in an activity that is set out in a regulation in order to derive some sort of benefit.

In these situations, even though the decision to participate in the regulated activity was voluntary, any requirements that apply because of that decision are not. In other words, once a business is doing something that is a regulated activity, it is subject to the related requirements and penalties regardless of why it is doing the activity.

In such situations, regulators must calculate the administrative burden imposed and offset this burden within two years, as required under section 5 of the [*Red Tape Reduction Act*](http://laws-lois.justice.gc.ca/eng/acts/R-4.5/page-1.html).

#### Applying the one‑for‑one rule when schedules are amended

Regulatory amendments to schedules of an act or regulation can trigger the one‑for‑one rule, depending on the specific circumstances of the amendment.

Schedule amendments that do not impose new administrative burden on business do not trigger the one‑for‑one rule, because the rule is concerned only with incremental administrative requirements and new regulatory titles that introduce these requirements.

For example, Environment and Climate Change Canada may seek Governor in Council approval to add a substance to Schedule 1 of the *Canadian Environmental Protection Act*, 1999. Adding a substance to the act does not place new administrative burden on business. The addition only enables the minister to take further action to manage the risks associated with the substance. If further action involves a regulatory change, the one‑for‑one rule would apply if it imposes new administrative burden costs on business.

The rule is not triggered by amendments to schedules that allow a business to enter ("opt into") an existing regulatory regime. In this scenario, the number of regulated parties changes but not the scope of the regulatory activity. Even though population is a factor under the Standard Cost Model, if the scope of the regulation does not change and the burden estimates are not revisited, the addition of a business to a schedule does not trigger the rule.

For example, if a business becomes a bank, an amendment to Schedule 1 of the *Bank Act* is required so that the business is listed in the schedule. However, the one‑for‑one rule does not apply since there is no change to the regulatory requirements, only the addition of a new entrant into the existing regulatory regime.

However, the one‑for‑one rule is triggered if a regulatory amendment to a schedule imposes new administrative requirements on businesses by expanding the scope or reach of the regulation.

For example, the establishment of a new national park involves a regulatory change to include the new land mass in Schedule 1 of the *National Parks Act*. In this case, the breadth of the regulation is expanded, and new regulatory requirements apply to businesses that are already operating or would like to operate in the new park. The one‑for‑one rule would be triggered because the regulatory change imposes new administrative requirements where they did not exist previously, which constitutes incremental administrative burden.

In short, the amendment of a schedule does not automatically trigger the one‑for‑one rule. It depends on:

* whether the amendment results in burden in or out on business
* whether the amendment expands the scope of the regulatory requirements

#### Applying the one‑for‑one rule to regulatory changes that involve incorporation by reference

The rule can be triggered by regulatory changes that incorporate a document by reference, such as a standard, a technical document, or legislation of another jurisdiction, when doing so results in new administrative burden costs on business.

In some cases, regulations may incorporate a document that is expected to be updated periodically without requiring a regulatory change to bring the updated document into effect. Such an arrangement is known as an “ambulatory” incorporation by reference. The one‑for‑one rule applies only when the regulatory change is made, and subsequent changes to the incorporated documents do not trigger the rule.

#### Applying the one-for-one rule to responsibilities shared between federal, provincial and territorial governments

With regard to shared activities, federal departments are required to meet the requirements of the one‑for‑one rule.

If the federal government replaces a federal process or requirement with a provincial or territorial process or requirement, the potential decrease in administrative burden on business could be monetized and captured as burden out (and “title out,” where appropriate).

If the federal government creates a regulation to backstop a provincial or territorial process, and the regulation applies only to businesses in provinces or territories that do not have a similar requirement or process in place, the incremental increase in administrative burden costs on business must be monetized and counted as burden in.

If a new agreement involves the federal minister making regulatory changes that impose new administrative burden costs on business at the request of a province or territory, the federal minister sponsoring the regulatory change will be assigned burden in (and “titles in,” where applicable) under the one‑for‑one rule.

#### Applying the one‑for‑one rule to agreements with other jurisdictions

Regulators should ensure that all international agreements and obligations are designed, where possible, to minimize administrative burden on business. If the federal government has no discretion over the instrument choice or the design and administration of the regulation, the obligation may be deemed non-discretionary, and an exemption from the Treasury Board (Part B) could be sought. Regulators should not expect regulatory changes that they bring forward to be exempt from the requirement to offset if they have control over the design and administration of the regulation.

### Validating estimates of administrative burden (subsection 7.2.2)

It is essential that the assumptions used to estimate the impacts of a proposal be as accurate as possible. Regulators should validate these assumptions as early as possible in the regulatory development process.

The assumptions should be informed by meaningful input from stakeholders, which can be obtained in a number of ways. Regulators may choose to engage stakeholders as part of a broad, formal consultative process, though it might also be appropriate to connect informally with key stakeholders. Ultimately, regulators are best positioned to determine how to validate the assumptions, and the one‑for‑one rule section of the RIAS should indicate how this has been done.

If it is impractical to engage stakeholders, regulators must explain how they validated the assumptions in the proposal. Regulators might choose to refer to previous discussions with stakeholders about the assumptions, assuming that the information is still considered valid. The information from previous interactions should be indicated in the one‑for‑one rule section of the RIAS.

There is a separate requirement to fill out the consultation section of the RIAS. To limit duplication, the consultation section should provide a comprehensive overview of all consultation activities. The one‑for‑one rule section should highlight any specific issues related to the rule and refer the reader to the consultation section for greater detail.

### Calculating administrative costs (subsection 7.2.3)

Administrative costs to business must be calculated for proposals that trigger the one‑for‑one rule. The calculation should be developed using the Regulatory Cost Calculator, which:

* is based on the Standard Cost Model
* applies the methodology set out in the *Red Tape Reduction Regulations*

The completed Regulatory Cost Calculator must be provided to TBS.

Although regulators are strongly encouraged to use the Regulatory Cost Calculator, they may use an alternative tool as long as they provide the tool to the Regulatory Affairs Sector of TBS before publication in the *Canada Gazette* for confirmation that the required methodology as specified the *Red Tape Reduction Regulations* has been applied properly.

#### Multiple compliance options and outcome-based regulatory requirements

Regulators are encouraged to provide flexibility in regulatory design in order to better address the needs of regulated parties. The *Cabinet Directive on Regulation* states that regulators should “seek to design outcome, or performance-based, regulations when appropriate, with a view to minimizing the amount of regulatory burden imposed on businesses and Canadians.”

Outcome-based regulatory requirements allow regulated parties to decide how they will achieve the outcome a regulation requires without having to follow a prescribed process. Typically, parties then have to give the regulator more information about their methodology so that the regulator can make sure it is sound. Outcome‑based regulations therefore tend to represent more administrative burden than prescriptive regulations, where the methodology is built into the requirements.

Some regulated parties, however, prefer a prescriptive approach. Having a fixed compliance process means they don’t have to spend time and effort working out a process for themselves. Because the process is known, the prescriptive approach tends to have less administrative burden. Regulators may prescribe one or several ways to comply with a regulatory requirement; they might also provide an outcome-based path to comply with the requirement.

If given a choice, regulated parties will choose the option that best suits their situation. Sometimes, an outcome‑based regulation that provides flexibility in relation to compliance might be efficient for regulated parties even though it has higher administrative costs. However, the one‑for‑one rule does not cover savings on compliance burden because compliance burden it is outside the scope of the [*Red Tape Reduction Act*](http://laws-lois.justice.gc.ca/eng/acts/R-4.5/page-1.html)and regulations. Regulators must offset increased administrative burden, but they cannot count compliance efficiencies. As a result, an unintended effect of the rule is that regulators are actually deterred from using an outcome-based regulatory approach.

To address this unintended effect, when costing different options, regulators should assume that the administrative burden imposed is the minimum amount that a regulated party will incur to comply with the requirement. When calculating the administrative burden, regulators should assume that **all** regulated parties will select the lowest-cost option. If the lowest-cost option does not impose administrative burden on business, the rule will not be triggered. This approach of using the lowest‑cost option in the costing process applies to the costing process for all combinations of prescriptive or outcome‑based requirements, but:

* it applies only when multiple options achieve exactly the same outcome. For example, if the outcome is that a technical standard is met, then all options must meet the standard. Options that achieve a different outcome (for example, something other than meeting a standard) cannot use this approach and must be costed separately from one another based on the anticipated uptake of each activity.
* it does not apply to situations where the regulated party can choose to not participate in the regulated activity. The decision to not participate does not achieve the same regulatory outcome as participating, so it is not equivalent and cannot be considered the lowest-cost option for the purposes of costing.

Using the lowest-cost option as the basis for costing can create inconsistency between the one‑for‑one rule section and the cost-benefit-analysis section in the RIAS. The cost-benefit analysis:

* estimates the net benefit based on assumptions about the uptake of each option
* does not assume 100% uptake of the lowest administrative cost option

When different assumptions are used in the one-for-one rule section and the cost-benefit-analysis section of the RIAS, the disparity should be stated clearly in the section on the one‑for‑one rule to ensure clarity and transparency.

#### Packaged regulations

Sometimes it is necessary to use multiple regulatory instruments to take all of the technical actions associated with a regulatory change. There could be a combination of new regulations, regulatory amendments and orders that are packaged and approved together, each with its own Statutory Orders and Regulations (SOR) number. Often, there is a single RIAS for the entire initiative that appears with one of the instruments and the other instruments refer to the instrument that contains the RIAS.

If the initiative changes the administrative burden on business, this change needs to be calculated and counted under the one‑for‑one rule. The net administrative burden for the initiative (Element A) can be stated as a single figure in the RIAS. For initiatives that use one instrument only, the burden can also be stated as a single figure in the RIAS.

If the initiative includes several new regulations (as defined in the *Policy on Limiting Regulatory Burden on Business*), each would count as a title in under Element B. If every instrument in the package does not implement particular changes that increase burden, counting titles this way could unnecessarily inflate the portfolio’s balance under Element B.

To avoid this type of inflation, it is important to indicate in the RIAS precisely:

* which instrument includes the requirement or requirements that result in changes in administrative burden
* the amount of burden associated with each instrument

Doing so ensures that only those instruments that add new burden will be counted under Element B.

### Valuation of administrative costs (subsection 7.2.4)

To remove the effect of inflation and to account for the opportunity cost of capital, cost figures must be expressed in constant, discounted dollars. This permits meaningful and consistent comparison, regardless of the year in which outcomes occur or were measured.

The *Red Tape Reduction Regulations* set out how to adjust the administrative costs included in proposed regulations. The figures that appear in the RIAS must be identical to those generated by the Regulatory Cost Calculator. The only rounding of figures permitted is to the dollar.

The *Red Tape Reduction Regulations* require that 2012 be used as the price year, as well as the present value base year, for the valuation of burden in and burden out. A discount rate of 7% must be used for the valuation of burden in and burden out. Wages can be adjusted to 2012 price levels using the following formula:

|  |  |  |
| --- | --- | --- |
| Estimated hourly cost | x | Ratio of the Consumer Price Index (CPI) value for 2012 to the CPI value for the year when the cost was estimated[[1]](#footnote-2) |

Regulators must use a 10-‑year-forecast period for the valuation of burden in and burden out. This 10-‑year forecast should begin from the date that the regulations are registered.

### Offsetting administrative costs (subsection 7.2.5)

Under Element A of the rule, regulatory changes that impose new administrative burden costs on business must be offset with an equivalent reduction in administrative burden costs from the stock of regulations.

This offsetting can be achieved in one of a number of ways, such as by:

* removing specific requirements to keep information
* changing reporting timelines
* allowing information to be collected electronically
* allowing information to be shared between government departments or other levels of government

The one‑for‑one rule applies only to regulatory changes as defined in the *Red Tape Reduction Act*, and regulators cannot take credit for burden out through policy or program changes that reduce administrative burden costs on business unless the reduction in costs is directly tied to the regulatory change.

Regulators are encouraged to proactively identify existing burden that can be removed. Doing so benefits businesses immediately, and burden out can be applied to existing offsetting obligations or saved to address future requirements.

### Offsetting regulatory titles (subsection 7.2.6)

#### Types of regulations that meet Element B

**Spent regulations**

A spent regulation is one that is no longer in effect because the regulated activity is no longer being carried out or the regulation had an expiry date that has passed. When removing a spent regulation, regulators can obtain credit only under Element B.

**Regulations that have business impacts**

A regulatory title can be removed to obtain credit under Element B. Credit may also be obtained under Element A if the regulation reduces administrative costs to business.

**Regulations that have no business impacts**

A regulation that has no impact on business can be removed to meet Element B; however, no credit can be obtained for the removal under Element A.

#### Repeal and replace

In a repeal-and-replace situation, the treatment of the titles in and out depends on whether the new title results in an incremental change in administrative burden on business.

If the new regulation results in an incremental change in administrative burden on business (that is, if Element A is triggered), the new title and the repealed title are counted as a title in and a title out, respectively. If more than one title is repealed, each title is counted as a title out. Any incremental change in administrative burden on business is counted under Element A.

If the new regulation does not result in an incremental change in administrative burden on business (that is, if Element A is **not** triggered), the new title is not counted as a title in, and the first repeal is not counted as a title out; however, if multiple titles are repealed, each subsequent title is counted as a title out.

For clarification purposes, Table 2 shows how this is applied.

**Table 2: application of the one‑for‑one rule**

|  |  |  |
| --- | --- | --- |
| **Change in burden** | **A change that imposes administrative burden** | **A change that does not impose administrative burden** |
| **Net zero** | Under Element B, the new title is counted as a title in, and the repeal is counted as a title out. Any incremental change in administrative burden is counted under Element A. | Under Element B, the new title is not counted as a title in, and the repeal is not counted as a title out.  |
| **Net out** | Under Element B, the new title is counted as a title in, and **every** title repealed is counted as a title out.Any incremental change in administrative burden is counted under Element A. | Under Element B, the new title is not counted as a title in. The **first** repeal is not counted as a title out, but each additional title repealed is counted as a title out. |

#### Automatic repeals

A new regulation will sometimes include a clause that allows for it to be repealed automatically, without the need for a separate repealing instrument. Such a clause will also indicate what would trigger the repeal, for example:

* a specific date in the future
* a variable date in the future
* a condition or set of conditions

When a regulation will be repealed automatically, state this in the one‑for‑one rule section of the RIAS. Discuss the matter with the Regulatory Affairs Sector analyst to confirm the proper application of elements A and B.

When developing the new regulation, you need to anticipate the application of the one‑for‑one rule to the eventual repeal (see subsection 3.2.6 of the policy and the information in this section on applying Elements A and B).

* A new regulatory title introducing new administrative burden on business would trigger both elements A and B of the rule; presumably, the administrative burden and the title would be counted when introduced and then removed when the repeal occurs.
* A new regulation with no administrative burden would trigger neither Element A nor Element B when introduced but would trigger Element B when repealed.

For the purposes of the one‑for‑one rule, the repeal of the title (and burden, where applicable) counts as title (and burden, where applicable) out on the date it is repealed. This means that the new title and burden count as title and burden “in” as soon as the regulation is made, but the repeal counts as title and burden out only once it is actually repealed. The counting is done this way because the regulation could be amended in such a way that the repealing provision could be amended or not triggered and result in the regulation “out” not actually happening.

When you record the repeal of a regulation that imposed administrative burden on business, you need to state the incremental impact of the repeal. For Element A (burden), since there is no separate regulatory amendment, there is no opportunity to recalculate this impact. In such cases, you will need to rely on the original calculation of annualized impact. For Element B (titles), the title that was counted as a title in is simply counted as a title out.

For regulations that do not impose administrative burden on business, the one‑for‑one rule would not be triggered when the regulation is made. However, the repeal of the regulation would trigger Element B, meaning that the eventual net result would be zero administrative burden but minus one regulatory title. The title out is not counted until the repeal formally takes place. The negative balance is a result of the different criteria for titles in and titles out under subsection 5(2) of the *Red Tape Reduction Act*.

When the date of repeal is a specific date, indicate the date in the RIAS and state that the repeal will be counted as of that date. If the date for the repeal is variable (for example, related to the coming into force of a separate instrument of a non-regulatory action) state this also. The Regulatory Affairs Sector analyst will then note, in the one-for‑one rule section of the RIAS, the conditions for the eventual repeal. Inform the Regulatory Affairs Sector analyst when the conditions for triggering the repeal are approaching.

For the purpose of public reporting, automatic repeals are counted in the fiscal year in which they formally take place. They form part of the data described in paragraph 7(b) of the *Red Tape Reduction Regulations* that is to be reported in the annual report contemplated in section 9 of the *Red Tape Reduction Act*.

### Portfolio-based reconciliation (subsection 7.2.7)

#### Joint ministerial responsibility

Subsection 7.2.7 of the policy states that “when two ministers have shared responsibility under the law and jointly sponsor the regulatory change, the burden or title in or out is assigned to the minister who plays the lead role in designing and administering the regulatory change.”

For example, the Minister of Health and the Minister of the Environment are jointly responsible for assessing toxic substances under the *Canadian Environmental Protection Act, 1999*. Both Ministers might jointly sponsor regulations to address the threat that polychlorinated biphenyls (PCBs) pose to human health and the environment. However, since the Department of the Environment leads the design and administration of these regulations, 100% of the administrative costs would be assigned to the Minister of the Environment.

### Non-compliance with requirement to offset (subsection 7.2.8)

#### Addressing non-compliance with elements A and B

Subsection 7.2.5 of the policy sets out the requirement to offset new administrative costs within two years, and subsection 7.2.6 covers the same process in relation to new regulatory titles that impose a burden on business. The Regulatory Affairs Sector of TBS monitors:

* the introduction of new regulatory and administrative requirements and titles
* the offsetting of related costs and titles in subsequent regulatory changes

In situations where a department or agency is non-compliant (for example, a department or agency is unable to remove existing regulatory requirements or titles) within this time frame, a number of steps are required:

1. TBS notifies the portfolio lead when the portfolio is approaching the two-year deadline for offsetting new burden in and asks them to outline how they intend to achieve the offset in advance of the deadline
2. If the portfolio lead is not currently planning a regulatory change that would achieve the offset, they are expected to conduct a thorough review of the existing stock of regulations to identify any existing requirements or titles that could be removed
3. Ultimately, if the portfolio lead is unable to identify administrative requirements or titles for removal, Treasury Board (Part B) will consider options for bringing the portfolio back into compliance
4. The President of the Treasury Board may report situations of non-compliance in public reports, such as the Annual Report to Parliament, to ensure transparency with stakeholders and regulated parties

### Exemptions (subsection 7.2.9)

Section 6 of the *Red Tape Reduction Regulations* sets out three categories of exemptions from the requirement to offset new regulatory burden or titles. The decision on whether to exempt a proposal rests with the Treasury Board (Part B), and regulators must consult with the Regulatory Affairs Sector of TBS on the rationale for exemption. The Treasury Board approves or rejects requests for exemption individually, and it alone decides whether a proposal meets the criteria for exemption.

The first question to ask when considering a request for an exemption is whether the proposed change would impose new administrative burden on business. Exemptions apply only to the requirement to offset burden introduced and are relevant only to regulations that would impose new administrative burden in. If there is no new administrative burden, then there is no reason to seek an exemption.

Exemptions do not apply to regulations that remove administrative burden (burden out or title out). Regulators are required to identify burden reductions in regulatory proposals; these burden reductions can be saved and applied to offset future burden.

The considerations for each category of exemption are set out below.

#### Tax or tax administration

To seek an exemption under this category, regulators must demonstrate that the proposal relates to tax or tax administration. The anticipated administrative costs should be estimated and reported according to the requirements in subsections 7.2.2 and 7.2.3 of the policy.

If the exemption is granted by the Treasury Board, the costs introduced under the proposal are not subject to the offsetting requirement under Element A; however, regulators should estimate and report the administrative costs associated with the regulatory proposal for the purposes of transparency.

#### Non-discretionary obligations

To seek an exemption under this category, regulators must demonstrate that they have no discretion over how the regulations are designed and administered. This demonstration would include information on:

* the source of the obligation
* the constraints placed on regulatory design and administration by the obligation

The anticipated administrative costs should be estimated and reported according to the requirements in subsections 7.2.2 and 7.2.3 of the policy.

If the exemption is granted by the Treasury Board, the costs introduced under the proposal are not subject to the offsetting requirement under Element A; however, regulators should estimate and report the administrative costs associated with the regulatory proposal for the purposes of transparency.

#### Emergency, unique or exceptional circumstances

This category provides significant flexibility for the Treasury Board to exempt regulatory proposals from the requirement to offset. Recognizing this flexibility, the granting of this category of exemption must not unduly compromise the spirit or integrity of the *Red Tape Reduction Act*. Regulators must clearly articulate the rationale for the exemption, including the specific risks associated with not receiving an exemption.

If the exemption is granted by the Treasury Board, the costs introduced under the proposal are not subject to the offsetting requirement under Element A. However, the anticipated administrative costs should be estimated and reported, according to the requirements in subsections 7.2.2 and 7.2.3 of the policy, for the purposes of transparency.

This category of exemption is not used frequently, but it has been used in regulations that introduce an immediate regulatory response. This exemption provides sufficient time for regulators to develop and propose a more permanent regulatory measure. In such situations, the exemption could be considered for an interim measure, and the one‑for‑one rule could be applied to the subsequent permanent measure.

### Requirements in Regulatory Impact Analysis Statements (subsection 7.2.10)

The information required in the one‑for‑one rule section of the RIAS is determined by a number of factors, the most important of which is whether the rule applies to the proposed regulation. The following is an overview of the information required in a number of scenarios.

#### The one‑for‑one rule does not apply

**Outside the scope of the rule**

The proposal is outside the scope of the rule as defined in section 2 of the Cabinet directive and section 3 of the policy.

The scope of the rule covers regulations made or approved by the Governor in Council and those made by a minister of the Crown. It does not include regulations made by an agency, tribunal or other entity that has been given the authority by Parliament to do so in a given area.

If the proposal includes a one‑for‑one rule section, it should state: “The one‑for‑one rule does not apply as the regulation is made by an independent regulatory authority and is outside of the scope of the rule.”

**No business impacts and no titles in or out**

The proposal does not have any impact on any type of business as defined in section 5 of the policy, and there are no titles in or out.

In this scenario, the one‑for‑one rule section should state: “The one‑for‑one rule does not apply as there is no impact on business.”

**No change in administrative burden on business and no titles in or out**

The proposal may impact business, but it does not result in an incremental change in administrative burden; there are also no titles in or out and the proposal is not a repeal-and-replace.

In this scenario, the one‑for‑one rule section should state: “The one‑for‑one rule does not apply as there is no incremental change in administrative burden on business and no regulatory titles are repealed or introduced.

#### The one-for-one rule applies

**Element A is triggered**

The proposal imposes or removes incremental administrative burden on business. In the one‑for‑one rule section, the proposal must indicate whether the regulation is burden in or out under the rule, and the value of the change in administrative burden.

In this scenario, the one‑for‑one rule section should state: “The one‑for‑one rule applies since there is an incremental increase/decrease in administrative burden on business, and the proposal is considered burden in/out under the rule. No regulatory titles are repealed or introduced.”

This statement would be followed by the analysis undertaken as required, including the net change in administrative burden.

**Elements A and B are triggered**

The proposal does one of the following:

* it introduces a new regulatory title that results in an incremental change in administrative burden on business
* it removes an existing regulatory title that results in an incremental change in administrative burden on business

If the proposal is considered a title in under Element B, it will necessarily trigger Element A as well. In this scenario, the one‑for‑one rule section should state: “The one‑for‑one rule applies since there is an incremental increase/decrease in administrative burden on business, and a new regulatory title (title in) is introduced.”

If the proposal removes an existing title and results in an incremental increase or decrease in administrative burden on business, the one‑for‑one rule section of the RIAS should state: “The one‑for‑one rule applies since there is an incremental increase/decrease in administrative burden on business, and an existing regulatory title is repealed (title out).”

The relevant statement would be followed by the analysis undertaken as required, including the net change in administrative burden.

**Element B is triggered**

If the regulation is a title out under Element B but does not result in a change in administrative burden on business, the one‑for‑one rule section of the RIAS should state: “The one‑for‑one rule applies since a regulatory title is repealed, and the proposal is considered a title out.”

This statement would be followed by the analysis undertaken as required.

**Repeal and replace with a change in administrative burden on business**

The proposal repeals an existing regulatory title and replaces it with a new title, and the change results in an incremental change in administrative burden on business.

Under this scenario, Element A applies because of the net change in administrative burden, and the repeal and replace results in a net of zero under Element B.

The one‑for‑one rule section of the RIAS should state: “The one‑for‑one rule applies as the proposal results in an incremental change in administrative burden on business. The proposal repeals an existing regulation and replaces it with a new regulatory title, which results in no net increase or decrease in regulatory titles.”

This statement would be followed by the Element A analysis undertaken as required, including the net change in administrative burden.

**Repeal and replace with no change in administrative burden on business**

The proposal repeals an existing regulatory title and replaces it with **one** new regulatory title that substantially addresses the same issue.

In this scenario, Element B of the rule applies but neither regulation is counted as a title in or out. The one‑for‑one rule section of the RIAS should state: “The one‑for‑one rule applies as the proposal repeals an existing regulation and replaces it with a new regulatory title. There is no incremental change in administrative burden on business, and no net increase or decrease in regulatory titles.”

**Repeal and replace (net out)**

The proposal introduces a new regulatory title and repeals **more than one** existing regulatory title that substantially addresses the same issue.

In this scenario, Element B of the rule applies, and the net difference in regulatory titles is counted as titles out.

The one‑for‑one rule section of the RIAS should state: “The proposal repeals [insert number] existing regulatory titles and replaces them with one new regulatory title; as a result, a net of [insert number] titles out is counted under the rule.”

This statement would be followed by the analysis undertaken as required.

**Automatic repeals**

When a new regulation has a clause for it to be repealed at some point in the future, do not count the effect of the repealing when the regulation is introduced. Instead, in the one‑for‑one rule section, note that the regulation is set for automatic repeal. Then, monitor the conditions for repeal in your tracking of the Element B balance and, where applicable, its Element A balance.

The one‑for‑one rule section should include the relevant wording from the above sections to indicate the Element A implications of the new regulation. It should also include the following text related to Element B, as applicable:

* if Element A **is not** triggered on the new regulation: “The regulation will repeal automatically on (date/condition) and will be counted as a title out at that time.”
* If Element A **is** triggered on the new regulation: “The regulation will be repealed automatically on (date/condition) and will be counted as a title out at that time. In addition, the administrative burden on business currently being introduced will be removed at that time.

#### Exemptions

The Treasury Board can exempt a proposal from the requirement to offset any new burden or titles in. The following is the standard text required in the one‑for‑one section of the RIAS for each of the three categories of exemption.

1. **Tax or tax administration**

The one‑for‑one rule section should state: “The proposal relates to tax or tax administration and is exempt from the requirement to offset administrative burden and regulatory titles under the one‑for‑one rule.”

1. **Non-discretionary obligations**

The one‑for‑one rule section should state: “The proposal implements a non-discretionary obligation and is exempt from the requirement to offset administrative burden and regulatory titles under the one‑for‑one rule.”

1. **Emergency, unique or exceptional circumstances**

The one‑for‑one rule section should state: “The proposal addresses a (emergency/unique/special) circumstance and is exempt from the requirement to offset administrative burden and regulatory titles under the one‑for‑one rule.”

Although an exemption removes the requirement to offset new burden and titles introduced, it is still beneficial for ministers and the public to have a sense of the impact of a change on administrative burden for the purposes of transparency. Regulators are strongly encouraged to describe in qualitative terms any known burden that will be imposed, and to include quantitative and costing information wherever possible.

### Requirement to report annually (subsection 7.2.11)

Section 9 of the *Red Tape Reduction Act* requires that a report be made public each year on the application of section 5 of the act during the preceding fiscal year. The policy requires that a report to Parliament be tabled annually to:

* fulfill the reporting requirement in the *Red Tape Reduction Act*
* report on other regulatory management initiatives

The annual report may also highlight cases of non-compliance with the requirement to offset under the one‑for‑one rule. In such situations, it is expected that the process outlined in subsection 7.2.8 of the policy will have already taken place.

The first annual report to Parliament (2016 to 2017 fiscal year) reported on the one‑for‑one rule and on the benefits and costs of significant regulations. The format and contents of the annual report can change over time since the Treasury Board President may choose to include information on other regulatory management initiatives.

# The small business lens (section 8)

## Policy requirements (subsection 8.2)

The small business lens applies to regulatory changes that impose new, incremental administrative or compliance burden on small businesses. The following questions have been prepared to help regulators determine whether the lens applies to a regulatory proposal.

Is the proposed regulation made or approved by the Governor in Council or made by a minister of the Crown?

* If no, the lens is not triggered.
* If yes, proceed to question 2.

Does the proposed regulation impact Canadian businesses?

* If no, the lens is not triggered.
* If yes, proceed to question 3.

Does the proposed regulation impact Canadian small businesses (as defined in the policy)?

* If no, the lens is not triggered.
* If yes, the lens is triggered.

If the lens is triggered, regulators must follow the requirements set out in the policy. Section 10 of this guide describes the information and standard text to be included in the RIAS for all of the scenarios listed above.

### Identifying impacts on small business (subsection 8.2.1)

For all regulatory proposals, regulators are required to state whether the regulation would impact small business. Under the previous design, the small business lens applied to:

* significant regulations
* low-impact regulations that would have a disproportionate impact on small businesses

The new design of the small business lens applies to all proposals, although the analytical requirements may vary depending on the costs associated with the proposal.

### Describing impact on small business (subsection 8.2.2)

Once it has been determined that there will be impacts on small businesses, these impacts must be described in the small business lens section of the RIAS. The description of the impacts will form the basis of the eventual costing of the impact on small business. The cost description is aligned with the requirements of the proposal’s cost-benefit-analysis statement. For more detailed information, see the analytical requirements set out in subsection 6.1 of the [*Policy on Cost-Benefit Analysis*](https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/policy-cost-benefit-analysis.html).

The level of impact is determined primarily by the anticipated **total national cost** of the proposal and not by the total costs to small businesses.

For proposals that have projected annual costs of less than $1 million, a qualitative description of the impacts on small business is required. Quantitative and monetized information can also be included, if available.

For proposals that have projected annual costs of $1 million or more, a quantitative description of the impacts on small business is required. In situations where **benefits** cannot be monetized practically, a quantified analysis of benefits can be provided; however, all costs must be monetized.

The small business lens applies to proposals that would **reduce** administrative and compliance burden on small businesses. The description of this reduced burden must be included in the small business lens section and stated in terms that are appropriate to the proposal’s impact level. Both positive and negative impacts should be included in the narrative and in the costing tables for significant-cost-impact proposals that impact small business.

### Validating estimates of administrative and compliance burden (subsection 8.2.3)

It is essential that the assumptions used to estimate the impacts of a proposal be as accurate as possible, and regulators should validate these assumptions as early as possible in the regulatory development process.

The assumptions should be informed by input from stakeholders, which can be obtained in a number of ways. Regulators may choose to engage stakeholders as part of a broad, formal consultative process, although it might also be appropriate to connect informally with key stakeholders. Ultimately, regulators are best positioned to determine how to validate the assumptions, and the small business lens section of the RIAS should indicate how the assumptions were validated.

If it is impractical to engage stakeholders, regulators must explain how they validated the assumptions in the proposal. Regulators might refer to previous interactions where the assumptions were discussed with stakeholders if this information is still valid. The previous interactions should be indicated in the small business lens section of the RIAS.

There is a separate requirement for a consultation section in the RIAS. To minimize duplication, the consultation section should provide a comprehensive overview of all consultation activities. The small business lens section should highlight any specific issues related to the lens and refer the reader to the consultation section for greater detail. For further information on the consultation section, see the Guide to Regulatory Development and Regulatory Impact Analysis Statement Writing.

### Accounting for small business needs (subsection 8.2.4)

Regulators should consider how the proposed regulation would impact small businesses and design the regulation so that these impacts are mitigated as much as possible. The small business lens section in the RIAS should explain this process so that decision-makers are aware of how the proposal is sensitive to the needs of small businesses.

Minimizing administrative or compliance costs for small business cannot be at the expense of greater health, security or safety for Canadians.

The small business lens does not prescribe a particular approach for addressing the needs of small businesses, and regulators can select any option among the following examples or other options as appropriate:

* more time to comply with the requirements, longer transition periods or temporary exemptions
* performance-based standards
* partial or complete exemptions from compliance, especially for firms that have good track records (legal advice should be sought when considering this option)
* reduced compliance costs
* reduced fees or other charges or penalties
* use of market incentives
* simplified and less frequent reporting obligations and inspections
* licences granted on a permanent basis or renewed less frequently

The collection of information from regulated parties can be burdensome for businesses in general and small business in particular. Regulators may consider ways to reduce this burden, including:

* using streamlined processes to collect information, such as BizPaL or the Canada Border Services Agency single window initiative
* using information (other than personal information) already collected by another department or jurisdiction instead of requesting the same information from small businesses[[2]](#footnote-3)
* using forms that are pre-populated with the information or data that are already available to the department in order to reduce the time and cost of completing the forms
* using electronic or online reporting and data collection, including electronic validation and confirmation of receipt of reports where appropriate
* aligning reporting with generally used business processes or international standards where possible

When a regulation is expected to reduce the administrative or compliance impacts on small businesses, this requirement to describe how impacts will be mitigated is applied differently from how it would be applied if the regulation were expected to impose new costs. Since the outcome is beneficial for the small business, there might be no reason to mitigate the impacts. In these situations, it is sufficient to indicate that the impacts are beneficial.

Sometimes, a new regulation will result in a small net reduction in costs for small businesses but an even greater reduction in costs for larger businesses. This situation can raise issues about competitiveness for small businesses. In such situations, this impact should be described, along with any potential measures to mitigate this.

### Considering flexibility for small business (subsection 8.2.5)

In addition to designing the regulation in a way that is sensitive to the needs of small businesses, regulators may also offer alternative compliance or administrative requirements that provide further flexibility for small businesses. These flexible requirements do not need to be limited to small businesses and can be provided to businesses of all sizes. The options should be described in detail in the small business lens section of the RIAS.

It is recognized that there will be situations where such flexibility is inappropriate or not possible, such as when the enabling legislation provides a narrow or prescriptive regulatory authority. In such situations, regulators are expected to explain these reasons in the small business lens section of the RIAS.

In situations where the regulation is expected to reduce the administrative or compliance impacts on small businesses, this requirement to describe how impacts will be mitigated is often applied differently from how it would be applied if the regulation were expected to impose new costs. Since the outcome is beneficial for the small business, there might not be a reason or opportunity to provide additional flexibility to the impacted parties. In these situations, there is no need to refer to additional flexibility unless there are different options that a small business might have for realizing the anticipated benefits.

### Calculating administrative and compliance costs (subsection 8.2.6)

Administrative and compliance impacts on small businesses must be calculated for proposals that have significant cost impacts. In practice, this information would be developed as part of the cost-benefit analysis for the proposal. The small business lens section of the RIAS should:

* refer specifically to the impacts on small businesses only
* refer the reader to the cost-benefit-analysis section for more detailed information

If the impacts on small business in a significant-cost-impact proposal are calculated as part of the cost-benefit analysis, the figures should be expressed in the same price year as in the cost-benefit analysis, and the price year must be stated explicitly in the small business lens section.

For low-cost-impact proposals, a cost-benefit analysis is not required; however, if quantitative and monetized data on the impact on small business are available, regulators can use the TBS Regulatory Cost Calculator or another tool to develop administrative and compliance cost estimates. Evidence supporting the calculations, including the model, data and assumptions, must be provided to TBS. The price year for the small business lens cost impact estimates must be clearly stated in the small business lens section of the RIAS.

### Requirements for Regulatory Impact Analysis Statements (subsection 8.2.7)

The information required for the small business lens section of the RIAS is determined by a number of factors, the most important of which is whether the lens applies to the proposed regulation. The following is an overview of the information required under a number of specific scenarios.

#### No small business analysis is required

Even if the lens is not triggered, it is still necessary to include an explanation of why the small business lens does not apply in the small business lens section in the RIAS. The following scenarios are described in order of priority and are based on the decision tree set out in subsection 4.1 of this guide. The rationale provided for why the lens does not apply must be based on the highest level of the decision tree and supplemental reasons should be included as outlined below.

**Outside scope of lens**

The proposal is outside the scope of the lens as defined in section 2 of the Cabinet directive and section 3 of the policy.

The scope of the lens covers regulations made or approved by the Governor in Council and those made by a minister of the Crown. It does not include regulations made by an agency, tribunal or other entity that has been given the authority by Parliament to do so in a given area.

If the proposal includes a small business lens section, it should state: “The regulation is outside the scope of the small business lens as it is made by an independent regulatory authority.”

**No impact on business**

The proposal does not have any impact on any type of business, as defined in section 5 of the policy.

In this scenario, the small business lens section should state: “Analysis under the small business lens concluded that the proposed regulation will not impact Canadian small businesses.”

The section should also include a brief explanation of the nature of the regulation and the entity or entities that will be impacted.

**No impact on small businesses**

The proposal does not have any impact on small business but does have impacts on businesses that exceed the criteria used to define a “small business” in section 5 of the policy.

In this scenario, the small business lens section should state: “Analysis under the small business lens concluded that the proposed regulation will not impact Canadian small businesses.”

Given that there are impacts on larger businesses, a brief, qualitative explanation of these impacts is recommended for the purposes of transparency.

#### Small businesses impacts identified and described

The small business lens is triggered if the proposed regulation would result in new administrative or compliance impacts on Canadian small businesses. When the lens is triggered, the small business lens section of the RIAS should state: “Analysis using the small business lens concluded that the proposed regulation will impact small businesses.”

The analysis required using the small business lens must be included after this statement and should clearly answer three questions:

* What are the impacts on small businesses?
* How have these impacts been addressed in the design of the regulation?
* Has additional flexibility been provided for small businesses? If not, why not?

The impacts on small businesses must be described according to the requirements set out in subsection 8.2.2 of the policy.

All proposals must describe the impacts on small businesses in qualitative terms so that decision-makers are able to understand the nature of the impacts. Significant-cost-impact proposals must also provide monetized analysis of the impacts on small businesses and quantitative supporting information as appropriate. Low-cost-impact proposals require only a qualitative description but may also include monetized or quantitative analysis if available.

The section should include information such as:

* the number of small businesses impacted
* the estimated cost per small business
* how the small business population affected compares with the population of medium and large businesses affected

The section must also include how the estimates and assumptions were validated or informed by input from stakeholders.

According to subsection 8.2.4 of the policy, the small business lens section should include an explanation of how small business needs have been factored into the regulatory design. If there is no discretion in the design of the proposal, this should be explained in a brief and informative way.

Subsection 8.2.5 of the policy requires regulators to consider additional flexibility for small businesses in the design of the regulation. The small business lens section should include a description of any such flexibility. If no added flexibility is provided, the section should include a brief explanation of why this is the case.

The calculated costs of administrative and compliance activities:

* must be stated for regulations that have significant cost impacts and that trigger the lens
* should be provided in narrative form, and monetized figures should be associated with each activity identified
* must be summarized in the table format below and be included in the RIAS for significant proposals where there are impacts on small business and the lens applies

**Table 3: small business lens summary template**

**Small business lens summary**

Number of small businesses impacted: #

Number of years: # (also state years, for example, 2020 to 2029)

Price year: 20##

Present‑value base year: 20##

Discount rate: #%

##### Benefits

|  |  |  |  |
| --- | --- | --- | --- |
| **Administrative or compliance** | **Description of benefit** | **Present value** | **Annualized value** |
| **Administrative** | For example, less frequent reporting requirements | **$** | **$** |
| **Compliance** | For example, removal of package labeling requirements | **$** | **$** |
| **Total** | **Total benefits** | **$** | **$** |

##### Costs

|  |  |  |  |
| --- | --- | --- | --- |
| **Administrative or compliance** | **Description of cost** | **Present value** | **Annualized value** |
| **Administrative** | For example, introduction of premises inspections | **$** | **$** |
| **Compliance** | For example, increased fees for services | **$** | **$** |
| **Total**  | **Total costs** | **$** | **$** |

##### Net impacts

|  |  |  |
| --- | --- | --- |
| **Amount** | **Present value** | **Annualized value** |
| **Net impact on all impacted small businesses** **[Total benefits minus total costs]** | **$** | **$** |
| **Average net impact on each impacted small business****[Net impact divided by number of impacted small businesses]** | **$** | **$** |

# Small business lens checklist (Appendix C)

Before 2018, regulators had to use the small business lens checklist and include it in the published version of the RIAS. The checklist is no longer mandatory, but it can be useful. It was therefore streamlined and updated, and it is included in the policy as a tool to help regulators consistently and systematically consider how new regulations or regulatory amendments affect small businesses. The checklist is in Appendix C of the policy.

1. . Use the data in Statistics Canada’s [Table: 18-10-0005-01](https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1810000501). If there is no CPI data for the year when the cost was estimated, use the data for the year closest to when the estimate was made. [↑](#footnote-ref-2)
2. . The collection, retention, use, disclosure and disposal of personal information are all subject to the requirements of the *Privacy Act*, and any questions about compliance with the *Privacy Act* should be referred to the department or agency’s access to information and privacy office or legal services unit. [↑](#footnote-ref-3)