Guidelines for Effective Regulatory Consultations

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1. Purpose

These guidelines are issued to advise managers and functional specialists on interpretation of the requirements of the *Cabinet Directive on Streamlining Regulation* regarding regulatory consultation and to provide tools to support effective consultations throughout the regulatory life cycle.

2. Context

Federal regulatory activity is governed by the *Cabinet Directive on Streamlining Regulation*, which requires that interested and affected parties be consulted on the development or amendment of regulations, the implementation of regulatory programs, and the evaluation of regulatory activity against stated objectives. Government departments and agencies must therefore make systematic efforts to ensure that interested and affected parties have the opportunity to take part in open, meaningful, and balanced consultations at all stages of the regulatory process, that is, development, implementation, evaluation, and review.

> The process for developing and approving regulations is subject to the *Cabinet Directive on Streamlining Regulation*
> www.regulation.gc.ca
>
> Additional guidance is available at:
>
> *Regulatory Process: Learning Tool*
> http://publiservice.tbs-sct.gc.ca/ri-qr/rplt-oapr/index_e.asp
>
> *Cabinet Directive on Law-Making*
> http://www.pco-bcp.gcca/.asp?Language=E&Page=informationresources&Sub=p&Doc=leg/lmgcabinetdirective_e.htm

Although this guide focusses on regulatory consultation, consultation with interested and affected parties should begin long before the decision to proceed with a regulatory approach is taken. Consultations should be woven into all aspects of policy development, including the discussions as to which instrument (i.e. legislation, regulations, voluntary mechanisms, guidelines, or policy) would best meet the public policy objectives.
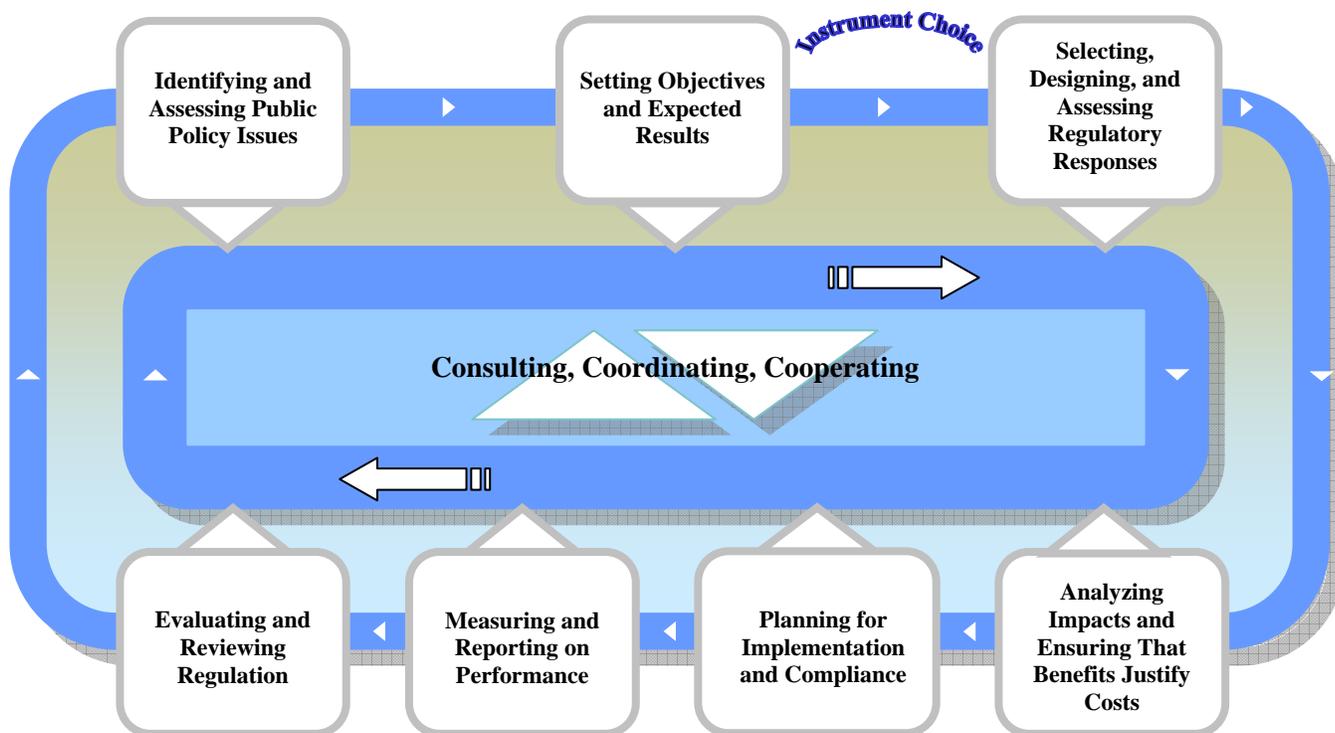
3.   Regulatory Consultations

The extent to which stakeholders are involved in a consultation process varies considerably, from simply providing them with information to engaging them in a true partnership with shared decision making. Regulatory consultations tend to fall somewhere in the middle of this continuum, since the final decision regarding regulation rests with a specific individual (i.e. the Minister) or body (i.e. the Governor in Council). These Guidelines focus primarily on the consultation process, which entails a two-way exchange in which stakeholders are given an opportunity to provide input and affect the outcome of a regulatory proposal. A good consultation process assists in developing quality regulations and mitigates implementation risks.

There is no one-size-fits-all approach to regulatory consultations. The size and scope of the consultative process depend on the proposed regulations and the number of people or groups affected by them. Regulations may be broad in scope and affect all Canadians (e.g. *Canada Pension Plan Regulations*), may affect a large stakeholder group (e.g. *Canadian Aviation Regulations*), or may affect relatively few individuals (e.g. *Oaths of Office Regulations*). The process, therefore, may be broad (e.g. many stakeholders, across several regions) or more targeted (e.g. specific stakeholders, specific regions).

When a department determines that regulation is the best tool for achieving the government's objectives, it launches a process of planning and public consultation. It then writes its regulatory proposal and a regulatory impact analysis statement (RIAS). The RIAS is a public accounting of how the regulatory proposal has followed each element of the *Cabinet Directive on Streamlining Regulation*, including information on the consultations that have taken place to date (who was

consulted, their views, and how their comments were addressed, among other things) and a summary of the expected impact of the proposed regulations.

The RIAS is itself a consultation tool, in that it is pre-published in the *Canada Gazette*, Part I (http://canadagazette.gc.ca/index-e.html). It should be comprehensive and written in simple, clear, concise language that the general public can easily understand.

Departmental officials are required to submit a draft of the RIAS to the Regulatory Affairs Sector of the Treasury Board of Canada Secretariat (the Secretariat) to obtain feedback on the regulatory proposal, confirm consistency with the *Cabinet Directive on Streamlining Regulation*, and ensure that it is clear, complete, and understandable to those who will be affected by the regulations.

Unless otherwise specified, draft regulations must be approved by the appropriate Cabinet committee (currently the Treasury Board) before they are pre-published in the *Canada Gazette*, Part 1. Pre-publication is intended to provide a final opportunity to obtain comments on the proposed regulations, determine whether any stakeholders were missed in the consultative process, and examine the extent to which the proposal is in keeping with the original consultations.

When draft regulations are pre-published, interested and affected parties are allowed a period of time—usually 30 days—to express their views. The pre-publication comment period may also be determined by international agreements, such as World Trade Organization agreements and the *North American Free Trade Agreement*. The *Cabinet Directive on Streamlining Regulation* requires a comment period of a minimum of 75 days for regulations with a potential impact on international trade.

In some (limited) circumstances, an exemption from pre-publication may be granted. For regulations made or approved by the Governor in Council, exemptions may be granted by the designated Cabinet committee on a case-by-case basis. Secretariat analysts can provide advice on the appropriateness of an exemption from pre-publication if they are engaged early in the regulatory development process.

Consulting with Aboriginal groups involves special considerations. A fiduciary relationship arising out of their historic relationship exists between the Government of Canada and Aboriginal peoples. Departments and agencies are to work with First Nations, Inuit, and Métis communities and peoples; national, regional, and local Aboriginal organizations; and Aboriginal governments and ensure that they meet all obligations that may exist in relation to rights protected by section 35 of the *Constitution Act, 1982*.

Officials must ensure that regulatory consultations are consistent with all relevant statutes related to the proposed regulations. All regulatory consultations must be consistent with the *Official Languages Act*.

4. Components of Effective Regulatory Consultations

4.1 Ongoing, Constructive, and Professional Relationship with Stakeholders

Broadly defined, stakeholders are individuals, groups, or organizations likely to be affected by proposed regulatory changes. In conducting regulatory consultations, officials should recognize and understand the multiplicity of stakeholders, with their different levels of interest, points of view, and expectations concerning the nature and content of a proposed regulatory regime.

An ongoing, constructive, professional relationship between government and stakeholders is key to achieving a quality outcome from consultations. Applying the following principles will help to achieve this type of relationship.

> **Examples of Stakeholders**
>
> **Citizens and community groups**
> **Industry groups**
> **Non-governmental organizations**
> **Provinces, territories, municipalities**
> **Foreign governments**
> **Unions**
> **Individual companies**
> **International organizations**
> **Professional associations**
> **Consumer groups**

- **Meaningfulness**: Officials conducting the consultations should be open to stakeholders' views and opinions and should take these into account in preparing the proposed regulations. They should be impartial with respect to the views expressed and willing to allow them to influence the final version of the proposed regulations, if appropriate. If some aspects of the proposal are not subject to change, this should be clearly communicated, so that participants can focus their efforts and provide meaningful input. Clarity regarding the purpose and objectives of the consultation and the proposed regulations is an essential underpinning of a positive relationship.

- **Openness and balance**: All stakeholders, whether directly or indirectly affected, should have an opportunity to contribute their views. Significant effort should be made to identify the "most affected stakeholders." Officials should ensure that an appropriate balance of views is represented in the consultation process.

- **Transparency**: The relationship between the department and stakeholders should be transparent. A transparent approach is essential to building trust. Officials should ensure transparency of:

  – the overall regulatory consultation process
  – pertinent non-sensitive information
  – the decision-making process
  – how stakeholder input will be used

- **Accountability**: Departments should demonstrate accountability by documenting how the views of stakeholders were considered during the development of the regulations and informing stakeholders of how those views were used. Where stakeholder input could not be reflected in the proposed regulations, officials should be able to outline the reason(s) why. Accountability also involves ensuring that the consultations take place over a reasonable period of time, so that participants have sufficient time to submit their views.

Introducing successful regulatory proposals requires the development and nurturing of ongoing relationships between the government and stakeholders. A climate of mutual trust and respect will often carry forward to future consultations. Developing a network of stakeholders allows officials to tap into a wider array of knowledge and information that can greatly assist in the effective and efficient development of regulations.

4.2   Consultation Plan

Good regulatory proposals begin with good planning. A clear and comprehensive consultation plan is key to achieving the goals and objectives of the proposed regulations and facilitating a smooth consultative process. The development of the consultation plan requires an upfront investment of time, budget, and effort.

The consultation plan should frame the boundaries of the consultation process. It should precisely state the objectives of the process and include the issues under review, a public environment analysis, key participants, timelines, and a mechanism for reporting consultation results. It should clearly describe the proposed consultative approach and "rules of engagement," so that interested parties can decide whether or not to participate and, if so, how.

Where appropriate, stakeholders can be invited to provide input on the development of the consultation plan, including on how the consultation should be conducted and which consultative tools would be most appropriate. Stakeholder input can also be requested during the consultations that take place at the policy development or instrument choice analysis phase. Pre-consultations also help stakeholders to plan their input, budget, and time.

The consultation plan should be commensurate with the expected impact and scope of the proposed regulations. A well-designed regulatory consultation allows stakeholders to provide input through a variety of mechanisms (e.g. public forums or advisory groups) that are both convenient and adapted to their abilities and resources. However, in some circumstances, a detailed consultation plan may not be necessary. For example, in many cases, departments use established ongoing committees or councils made up of all stakeholders affected by a particular regulated area (e.g. civil aviation). In such cases, "terms of reference," a charter, or other similar document should be developed to support the work of the consultation mechanism. As well, for routine or low-impact proposals (e.g. administrative amendments), a detailed plan may not be necessary.

4.2.1   Statement of purpose and objectives

The consultation plan should begin with a clear statement of the purpose and objectives of the consultations. A well-defined statement of purpose will help to keep the consultations focussed and on track and will clarify the scope and boundaries of the consultative effort.

The statement of purpose should plainly set out the problem or outcome that the proposed regulatory initiative purports to address. The *Cabinet Directive on Streamlining Regulation* requires that interested and affected parties be given the opportunity to contribute to issue identification and the objectives for government intervention. Seeking stakeholder input on the problem or issue statement can help to ensure that the regulatory solution effectively addresses

the problem. The statement of purpose should also present a compelling argument for government intervention, clearly demonstrate the need for the proposed regulations, and explain why regulation is the tool of choice over other instruments such as legislation, policy, or voluntary codes.

Invariably during a consultation process, some stakeholders will raise issues that are not central to the consultations. A clear statement of purpose and objectives can help officials to maintain a definite focus and to deflect distractions that are outside the consultations' parameters. The statement of purpose should be broad enough and flexible enough to accommodate stakeholders' views, but precise enough to keep the discussion centred on the issue at hand.

Checklist 1

A clear statement of purpose at the beginning of the consultation plan should:

Yes   N/A

☐   ☐   Explain the problem the proposed regulations are addressing

☐   ☐   Explain why the regulations are being developed (i.e. economic, social, or safety benefits)

☐   ☐   Define what the proposed regulations will do

☐   ☐   Describe how the regulations will be developed (i.e. process to be followed)

☐   ☐   Outline the scope of the regulatory consultation process (i.e. what can and cannot be considered as part of the consultations)

☐   ☐   Identify the authority for the regulations

☐   ☐   Be written in plain, easy-to-understand language

4.2.2 Public environment analysis

The consultation plan should include an analysis of both the internal and external environments.

An **internal scan** is necessary to confirm that there is ministerial and senior management support, policy approval, and consistency with government priorities.

An **external scan** assesses the level of public and media interest and the potential positions of stakeholders (e.g. what they may propose, their perspectives on the issue, and potential sources of conflict). This will help to identify any potential communications challenges arising from the consultations and form the basis of a communication plan, if necessary, to address these and any other challenges that may arise.

The public environment analysis is an important component of the regulatory triage process that should be undertaken at the outset of regulatory development. The analysis should consider

factors to determine the size and scope of the consultation process and the type of tools needed to conduct the consultation. The checklist below provides some key considerations for determining the importance and scope of the consultation exercise.

Checklist 2

In conducting an **internal scan**, officials should:

Yes   N/A

☐   ☐   Determine senior management's commitment to the proposal

☐   ☐   Confirm ministerial support for the proposal

☐   ☐   Determine whether there is appropriate policy authority for the regulatory proposal

☐   ☐   Assess consistency with government priorities (e.g. Speech from the Throne, budget)

☐   ☐   Research emerging legislation, policy, or litigation that could affect the consultation

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Checklist 3

In conducting an **external scan**, officials should:

Yes   N/A

☐   ☐   Determine the level of public interest (e.g. public opinion research, degree of impact on citizens)

☐   ☐   Examine how the general public might perceive the issue

☐   ☐   Assess stakeholders' perceptions of the proposal

☐   ☐   Review past positions of stakeholders (e.g. websites, previous submissions, letters, past consultations)

☐   ☐   Determine whether the issue is contentious (e.g. whether there is special interest or media interest)

☐   ☐   Assess the social, economic, health, and/or environmental impacts of the proposal

☐   ☐   Examine relevant reports from parliamentary committees

☐   ☐   Review reports from relevant independent bodies

☐   ☐   Assess potential provincial, territorial, and municipal government views

☐   ☐   Review any previous lobbying by stakeholders

(cont'd)

☐	☐	Assess whether there will be difficult choices or trade-offs
☐	☐	Determine whether certain stakeholder groups benefit more than others
☐	☐	Determine whether there were similar approaches taken by other governments

4.2.3 Developing realistic timelines

The consultation plan should include realistic timelines that identify activities and set milestones for all aspects of the consultative process. It should also be flexible enough to allow for unforeseen circumstances.

The amount of time required for a consultation depends on the complexity of the issue and the consultation methods selected. It is easy to underestimate how long it will take to plan, implement, and evaluate a consultation process.

Involving stakeholders in determining timelines can be an important part of building and securing a positive relationship with them. Whether or not they take part in setting time frames, participants should be kept informed of the schedule and, in particular, of when their input will be solicited. This will keep them focussed and allow for monitoring throughout the process and for any adjustments that may be required in objectives and plans.

Sufficient time should be allowed for groups and individuals to become informed, examine the issues, debate/dialogue/consult within their organizations, and develop a response.

Consultations should be managed in a way that ensures that stakeholder time is well spent, in order that stakeholders feel that their time investment was worthwhile and meaningful. Agendas should be sent to stakeholders in advance of consultation sessions.

Consultations should take place early enough in the policy (or regulatory) development process to ensure adequate time for all aspects of the regulatory process (e.g. drafting by the Department of Justice Canada, senior management approval, ministerial sign-off, Treasury Board of Canada Secretariat review, parliamentary schedule, pre-publication timelines, final approval).

Checklist 4

In developing realistic timelines, officials should:

Yes   N/A

☐   ☐   Assess the level of knowledge, understanding, and expertise of stakeholders (i.e. determine whether there is a significant level of learning required on the part of the public and/or the government for informed discussions to take place)

☐   ☐   Determine what information needs to be developed or collected for stakeholders

☐   ☐   Determine the appropriate time of year for the consultations to take place (e.g. account for summer holidays)

☐   ☐   Assess whether the deadlines for decision making are realistic

☐   ☐   Factor in the timing of other aspects of the regulatory process (e.g. drafting by the Department of Justice Canada, senior management approval, ministerial sign-off, Treasury Board of Canada Secretariat review, parliamentary schedule, pre-publication timelines, final approval)

☐   ☐   Prepare and implement a communication plan

☐   ☐   Assess the time needed for participants and stakeholders to understand material, consult with their constituencies or members, and prepare input

☐   ☐   Research the availability of both government officials and stakeholders

☐   ☐   Determine the amount of time required for the consultation

☐   ☐   Determine the time required for contracting outside help (i.e. bidding times, internal process, approval)

☐   ☐   Assess how many consultation sessions are required

☐   ☐   Determine how much time is required to analyze the results and report back to stakeholders

☐   ☐   Determine the time required for translation of material / background documents and participant input, if necessary

4.2.4 Internal and interdepartmental coordination

Internal: In developing a consultation plan, officials should first communicate internally within their department so that interested colleagues are aware of the proposed consultative process and proposed regulations. This internal process may include discussions with other policy centres, corporate services (e.g. contracting, financial services, and translation), communication experts, consultation experts, and those involved in the implementation of regulations, such as inspectors and evaluators.

Interdepartmental: Officials should also coordinate regulatory consultations across departments and agencies before seeking the views of stakeholders, in order to ensure consistency and support. Depending on the issue, such consultations may range from phone calls or emails to a series of interdepartmental meetings. Significant effort should be made to ensure that all relevant departments and agencies have an opportunity to participate and that differences are resolved before outside stakeholders are engaged. Other government departments should not be viewed as "stakeholders," but as partners in the consultation process.

Interdepartmental discussion and coordination give officials the opportunity to consider how their initiative fits in with those of other departments that regulate the same stakeholders. The number of departments and agencies that have responsibilities or interests in the development of particular regulations can be significant. It is not unusual for specific stakeholder groups to deal with several bodies of regulations emanating from multiple departments or agencies. As a result, stakeholders can find themselves involved in separate consultation processes on the same subject led by two or more government departments or agencies. In some cases, "consultation fatigue" can set in, leading to skepticism and jeopardizing the government's relationship with stakeholders.

Coordination across departments allows the government to speak with one voice and to convey consistent messages. It also shows respect for stakeholders, particularly in light of the time and resources they invest in preparing for and participating in consultations. As well, it can provide for the effective and efficient use of government resources.

When coordinating across government departments, officials should allow adequate time for other departments to review the proposed consultations and regulatory proposals and provide meaningful input. This should be done far enough in advance of the public release to allow time to consider alternatives.

As much as possible, the consultation activities of several departments and/or agencies should be combined. This is particularly important where the proposed regulations affect a community of stakeholders that is regulated by several departments. Maintaining an ongoing and constructive relationship with counterparts in other departments can assist in determining whether related consultations with the same stakeholders have taken place, are in progress, or are planned. The government's consultation portal (www.consultingcanadians.gc.ca), which provides single-window access to listings of consultations by selected departments and agencies, is a helpful tool in this regard.

Regional officials both in the sponsoring department and in other federal departments and agencies should be informed of planned consultations that may involve participants from, or issues related to, their regions. Working in partnership with these officials is essential, as they know the local communities and stakeholders and the issues and challenges they face in their regions regarding a regulatory proposal. If possible, regional officers should be included in the consultation process.

In cases were several jurisdictions are involved in regulating a similar problem, departments may also wish to explore coordinating the consultations with provincial and territorial governments.

Checklist 5

In developing a consultation plan, officials should:

Yes   N/A

☐   ☐   Discuss the proposal with relevant policy centres within the department

☐   ☐   Seek the advice of departmental communications and consultation experts

☐   ☐   Liaise with corporate services (e.g. financial, contracting, translation, webmaster)

☐   ☐   Conduct a file search for similar consultations

☐   ☐   Resolve internal departmental issues

☐   ☐   Conduct a scan of other departments' roles and mandates to determine whether other departments are concerned (i.e. review websites, liaise with other departments)

☐   ☐   Review and update the Consulting With Canadians website

☐   ☐   Determine whether other departments have recently conducted consultations on similar topics

☐   ☐   Examine potential areas of collaboration with other government departments

☐   ☐   Contact regional offices and provinces and territories if required

☐   ☐   Hold meetings to brief other government departments on the proposal

☐   ☐   Identify the views of different departments on the proposal

4.2.5 Selecting consultation tools

Many consultation tools are available. However, given the wide variety of regulatory proposals and their differing impacts, no single one-size-fits-all tool works for all consultations.

The consultation plan should include an assessment of the most appropriate consultation tool based on the size and scope of the proposal, regional considerations, and the types of stakeholders.

Engaging stakeholders early in pre-consultations gives them the opportunity to help decide which consultation tools would be best. Officials should contact not only those who are directly involved, but also those indirectly affected by the regulatory change. In some cases, this may require "outreach" endeavours to engage people or groups who traditionally do not take part in regulatory consultations.

Consultation Tools

Interviews
Toll-free hotlines
Questionnaires/surveys
Open house / public meetings
Conferences/workshops
Bilateral meetings
Focus groups
Advisory boards / committees
Comment forms
Requests for written submissions
Websites/forums
Task forces
Video conferencing

The process for selecting an appropriate consultation tool may require special effort to develop approaches that effectively engage persons who are visually or hearing impaired or members of ethno-cultural or Aboriginal communities.

Regulatory Consultations			
Educate	*Inform and Obtain Feedback*	*Involve*	*Carry Out Joint Planning*
Open houses	Telephone	Public meetings	Planning workshops
Direct mail	Hotlines	Public forums	Negotiation and mediation
Exhibits	Focus groups	Advisory groups	Partnering
Conferences	Surveys	Workshops	
Newspaper inserts	Website	Dialogue sessions	
Reference centre			

Checklist 6

In selecting consultation tools, officials should:

Yes   N/A

☐   ☐   Research previous consultations to determine the methods usually used for consulting on this issue and with these stakeholders

☐   ☐   Assess the advantages and disadvantages of using various consultation tools

☐   ☐   Facilitate stakeholder involvement in selecting the most appropriate consultation tools

☐   ☐   Determine whether different interest groups should be brought to the same consultation meeting

☐   ☐   Assess whether consensus is the goal of the consultations

☐   ☐   Ensure that the consultation tool selected is appropriate for the size and scope of the proposal

4.2.6   Selecting participants

The consultation plan should include criteria for selecting participants. Again, given the variety of regulatory proposals, there is no single approach to selecting stakeholders. Some consultations may be geared toward specific clients and stakeholders. In other situations, participants might be selected on the basis of technical or local knowledge, subject-matter expertise, or the level of impact on their activities. Depending on the size and scope of the proposal, consideration should be given to how the general public would be consulted.

In developing a comprehensive work plan for regulatory consultations, officials need to consider the contributions of individuals with a wide variety of backgrounds, perspectives, and expertise. The extent of the involvement of participants will depend on their level of interest and the extent to which decisions are likely to directly or indirectly affect them and their ability to participate. It is also a matter of seeking input and involvement from those who can make a meaningful contribution to the decision-making process.

The consultation plan should specify the roles and responsibilities of officials and stakeholders in the process. In developing questions for participants, thought should be given to the type of comments sought and how the views of stakeholders will be taken into consideration. The right question is important for a fruitful and comprehensive review of the issues.

Participants also need to know how their views will be taken into consideration, which departmental official is authorized to decide on the proposed course of action, and what the "rules of engagement" will be. It may be necessary to work with participants to develop a code of conduct for the meetings in order that the participants understand and agree to the delegated roles and responsibilities.

Checklist 7

In selecting stakeholders, officials should:

Yes   N/A

☐   ☐   Define the range of stakeholder involvement

☐   ☐   Identify which regions of the country should be represented

☐   ☐   Develop criteria for selecting participants

☐   ☐   Determine participant availability

☐   ☐   Research who has been consulted on similar topics

☐   ☐   Contact key stakeholder groups for advice on who should participate

☐   ☐   Do a web search for relevant groups

☐   ☐   Consult other officials or departments to identify participants

☐   ☐   Post a notice on the departmental website advising of the consultation process

☐   ☐   Send a letter to stakeholder groups

☐   ☐   Consider advertising in local newspapers or trade publications, or on radio or television

4.2.7 Effective budgeting

Good planning requires good budgeting. It also requires an appropriate investment of personnel and time. The degree of financial, personnel, and time investment should be commensurate with the size and scope of the regulatory proposal.

Consultation should form part of the business planning, resource allocation, and management processes for the development of regulations. Budgeting may cover communications, technical information, logistical and travel arrangements, third-party support (e.g. facilitators), participant funding, and translation (i.e. written and simultaneous translation). Budgeting for intervener funding (if available) may also be necessary. Officials should consult internally in their departments to determine whether intervener funding is available.

Checklist 8

In developing a budget for a regulatory consultation, officials should:

Yes	N/A	
☐	☐	Determine the funds available
☐	☐	Determine whether the consultations will be facilitated by a third party
☐	☐	Assess whether funds are adequate for the scope of the consultations
☐	☐	Examine whether other government departments can contribute to the funding
☐	☐	Evaluate whether contractors are needed for the preparation of written materials
☐	☐	Determine whether translation (written and simultaneous) is required
☐	☐	Determine whether an independent evaluator is required
☐	☐	Assess whether IT support is necessary (e.g. webmaster)
☐	☐	Calculate travel costs (based on regions of the country that need to be visited)
☐	☐	Determine the kind of facilities required (e.g. hotels, conference centres, government facilities)
☐	☐	Calculate the cost of notifying participants or the public of the consultations (i.e. advertising, mail-out, website)
☐	☐	Determine whether arrangements might be required for participants with special needs
☐	☐	Assess whether intervener funding is available

4.2.8 Ongoing evaluation, end-of-process evaluation, and documentation

Evaluations should be conducted both as the consultations are taking place, so that changes can be made if necessary, and at the end of the consultations, to assess the results. The consultation plan should detail how these evaluations will be conducted.

At the design and planning stage of the consultation, officials should establish an evaluation framework and identify the supporting methodologies and tools. The framework should allow officials to measure the effectiveness and impact of the consultation in terms of meeting its objectives, so that any areas requiring improvement can be identified and processes adjusted if necessary.

The evaluation framework should address each element of the consultation plan (e.g. statement of purpose, participant selection, most appropriate consultation tools) to determine whether the plan is (was) effective and whether the right methodology is being (was) used.

Officials should work collaboratively with their departmental evaluation specialists and with outside experts when identifying and planning evaluation requirements. For complex proposals, evaluations may be carried out by evaluation experts.

Two factors should be considered when conducting both ongoing and final evaluations: (i) whether the process is working (has worked), and (ii) what results are being (have been) achieved. Both consultation officials and stakeholders should participate in the evaluation process.

Ongoing evaluation

Ongoing evaluation throughout the process enables officials to determine how well the consultation plan is being implemented (i.e. whether the process is effective), measure success (i.e. whether the information gathered is valid and reliable), and determine whether adjustments should be made to advance the consultation objectives. Ongoing evaluation also allows participants to suggest next steps and helps to identify the elements of a troubled process (e.g. lack of interest or power struggles).

For complex proposals, it may be useful to have a neutral observer sit in on some events to assess how the process is unfolding. In some cases, a subject-matter expert should review the information received and assess its validity. In other cases, an evaluation specialist should be engaged to provide feedback on the measures chosen and the instruments developed to capture information.

Checklist 9

In conducting an ongoing evaluation, officials should:

Yes   N/A

☐   ☐   Determine the tangible results expected from the consultation process

☐   ☐   Assess the key activities that need to be carried out as part of the consultation

☐   ☐   Determine whether a neutral observer would be beneficial for monitoring the process

☐   ☐   Assess whether the methods used are appropriate for the identified objectives

☐   ☐   Evaluate whether the timetable allows enough time for input

☐   ☐   Develop a tracking document

☐   ☐   Ensure that all comments are recorded

☐   ☐   Determine whether there is an appropriate number of participants

☐   ☐   Assess whether stakeholders feel that the consultation is worthwhile

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Evaluation at end of process

An evaluation at the end of the process enables officials to gauge the success, impact, and results of the regulatory consultation, allowing them to identify what worked best and whether there were any unanticipated outcomes. The evaluation should determine (i) the quality of the information and advice collected; (ii) the extent to which the results have been integrated into the regulatory initiative; and (iii) the degree to which the consultation process itself was successful.

The end-of-process evaluation will also allow officials to document lessons learned so that these can be shared within the institution and with other departments and agencies. This helps to ensure that current and future processes are informed by past experience through roundtable seminars, case studies, and articles in newsletters, among other means.

Checklist 10

In conducting a final evaluation of the process and results of the consultations, officials should ask the following questions:

Yes	N/A	
☐	☐	Were the views received what you anticipated?
☐	☐	Was the method effective in engaging different groups and individuals?
☐	☐	Did those consulted feel the process was worthwhile?
☐	☐	Did the methods suit the objectives?
☐	☐	If more than one method was used, what were the advantages and disadvantages of each?
☐	☐	Were the quantitative and qualitative information, response rate, and representative sample anticipated?
☐	☐	Was the timetable clear and adhered to? If not, why not?
☐	☐	Was enough time allowed for input?
☐	☐	Was the information used in the process effective?
☐	☐	Was relevant information made available to the appropriate participants?
☐	☐	Was the information easy to access, relevant to the consultation, produced in plain language, easy to understand, and available in other languages and formats?
☐	☐	Was the process adequately budgeted for?
☐	☐	Were the supporting materials effective? For example, did the consultation document encourage informed deliberation and dialogue? Was the information easy to access, clear, and objective?
☐	☐	Did you follow up with those consulted, and was that input used?

4.2.9 Feedback/follow-up

The consultation plan should include options for providing feedback. Feedback is an important part of accountability. A department should demonstrate accountability by taking into consideration the views of stakeholders in developing the regulations and by informing stakeholders of how those views were used. Where the input of stakeholders could not be reflected in the proposed regulations, officials should clearly explain why.

Feedback should be obtained both during the consultations and when the consultations are completed. During the process, it can be elicited either informally or by means of interim reports, questionnaires, and evaluations. At the end of the process, a final consultation report should be drafted presenting what was heard, how it is consistent with the consultation plan, and how the input has been used.

The final consultation report should be distributed to participants in a timely manner and posted on a website. The report is also summarized in the RIAS, which provides a synopsis of who participated, what was heard, how comments were addressed, what method of consultation was used, and what the time frame was.

Officials should follow up with stakeholders with timely thank-you letters and the final consultation report, as a sign of respect and accountability. Stakeholders should also be informed of the next steps.

4.3   Conducting the Consultations

In conducting regulatory consultations, officials should keep in mind the key principles for maintaining an ongoing positive relationship with stakeholders: meaningfulness, openness and balance, transparency, and accountability. In keeping with these principles, officials should conduct consultations with the following in mind:

- communicating neutral, relevant, and timely information related to the regulatory proposals; and

- ensuring that officials have the necessary skills to conduct regulatory consultations.

4.3.1 Communicating neutral, relevant, and timely information

Ongoing communication and information exchange are critical to successful regulatory consultations.

Those involved in such consultations have views based on the information and experience available to them up to that time. Often the parties involved, including departmental officials, are not fully aware of all of the issues and impacts of proposed regulations.

To make meaningful contributions, participants must have access to neutral, timely, and relevant information. Inherent in the notion of accessibility is the need for terminology and language to be appropriate, relevant, and understandable to the stakeholders.

Departments and agencies should where possible take steps to develop and provide documents supporting the consultation efforts. Such documents are particularly helpful to stakeholders, to enable them to give meaningful input. Stakeholders should have all the

> Officials should recognize that consultations play an important **educational role** for many stakeholders. Stakeholders (including members of the public) often have much to learn about the process of regulatory development, the issues involved, and any technical or scientific aspects associated with proposed regulations.

information they need during the consultation process, including the supporting rationales, technical or scientific information, analyses performed, costs and benefits, trade-offs considered, risk assessment, potential impacts and consequences, and alternatives examined. While some sensitive information (e.g. Cabinet confidences and certain economic and security-sensitive information) cannot be shared, every effort should be made to ensure transparency.

When possible, stakeholders should be given the draft regulatory text to help them develop specific, precise comments. Departments may share regulatory texts with stakeholders prior to the text being blue-stamped by the Department of Justice Canada. Once the text has been blue-stamped, it may not be publicly released until pre-publication of the proposed regulations.

Consultation material, including contact names and numbers, should be distributed well in advance so that participants have time to familiarize themselves with the issue and the consultation process at hand.

Checklist 11

In communicating neutral, relevant, and timely information, officials should:

Yes   N/A

☐   ☐   Determine the level of knowledge, including technical knowledge, and range of expertise among participants

☐   ☐   Provide timely information in clear, plain language

☐   ☐   Explore whether a learning event is necessary

☐   ☐   Distribute necessary background information

☐   ☐   Decide whether stakeholders should be provided with a draft regulatory text

☐   ☐   Include contact names and related contact information

☐   ☐   Ensure that all stakeholders are provided with the same information

☐   ☐   Develop a code of conduct for the consultation and obtain the agreement of participants

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4.3.2 Ensuring that officials have the necessary skills

A successful regulatory consultation process needs to be effectively managed, facilitated, mediated, and communicated. Officials conducting the consultations should have the skills required to support effective consultations and maintain ongoing, constructive, and professional relationships with stakeholders.

Having officials with the appropriate skill set helps to ensure that stakeholders are not frustrated by the process and that situations in which stakeholders take an adversarial approach can be defused.

Officials need to have the interpersonal skills necessary to listen, build consensus, and accept the views of stakeholders, occasionally in hostile environments that can be prone to conflicting views and demands. Because conflicts may be difficult to avoid during consultations, understanding how to manage them and how to help others manage them can reduce their overall impact.

The officials need to understand the objectives of the regulatory proposal, the issues that might be raised, and the parameters of the decision-making process.

The consultative process should be led by officials (or contractors) who can supervise the details, deal with unexpected situations, and modify the process as required. They should also be able to encourage the exchange of ideas and help participants articulate their opinions.

Considerations in selecting a consultation facilitator should include the scope and impact of the regulatory proposal, the differing views of stakeholders, the potential for conflict between stakeholders, and the level of trust the stakeholders have in government. The individual selected should ideally be able to gain the trust of stakeholders, ensure credibility, and have the skills, personality, and temperament to manage and defuse conflict.

Consultation Skills/Knowledge
Consensus building   **Facilitation**   **Meeting management**   **Negotiation**   **Conflict resolution**   **Problem solving**   **Risk management**   **Information management**   **Communication**

Active listening by officials is necessary so that the views of stakeholders are considered. Stakeholders should be provided with meaningful opportunities to influence decisions rather than simply validate those already made.

Officials involved in regulatory consultations may wish to take courses in facilitation, communication, conflict management, negotiation, and mediation. The Canada School of Public Service offers courses in these areas (http://www.myschool-monecole.gc.ca/).

Checklist 12

In facilitating a regulatory consultation process, officials should:

Yes   N/A

☐   ☐   Share expectations for the consultation process with participants and encourage participants to do the same

☐   ☐   Establish a participant code of conduct

☐   ☐   Let participants express their viewpoints, without expressing their own thoughts or feelings

☐   ☐   Understand the importance of the issue for participants, and whether any conflicts need to be resolved or can be set aside momentarily

☐   ☐   Separate the problem into components and develop solutions for each component

☐   ☐   Determine the potential for satisfactory resolution of a problem

☐   ☐   Determine whether participants are willing to explore alternative solutions

5.   Full Checklist

Defining the purpose and objectives of the regulatory consultation

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Checklist 1

A clear statement of purpose at the beginning of the consultation plan should:

Yes   N/A

☐   ☐   Explain the problem the proposed regulations are addressing

☐   ☐   Explain why the regulations are being developed (i.e. economic, social, or safety benefits)

☐   ☐   Define what the proposed regulations will do

☐   ☐   Describe how the regulations will be developed (i.e. process to be followed)

☐   ☐   Outline the scope of the regulatory consultation process (i.e. what can and cannot be considered as part of the consultations)

☐   ☐   Identify the authority for the regulations

☐   ☐   Be written in plain, easy-to-understand language

Public environment analysis

Checklist 2

In conducting an **internal scan**, officials should:

Yes   N/A

☐   ☐   Determine senior management's commitment to the proposal

☐   ☐   Confirm ministerial support for the proposal

☐   ☐   Determine whether there is appropriate policy authority for the regulatory proposal

☐   ☐   Assess consistency with government priorities (e.g. Speech from the Throne, budget)

☐   ☐   Research emerging legislation, policy, or litigation that could affect the consultation

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Checklist 3

In conducting an **external scan**, officials should:

Yes   N/A

☐   ☐   Determine the level of public interest (e.g. public opinion research, degree of impact on citizens)

☐   ☐   Examine how the general public might perceive the issue

☐   ☐   Assess stakeholders' perceptions of the proposal

☐   ☐   Review past positions of stakeholders (e.g. websites, previous submissions, letters, past consultations)

☐   ☐   Determine whether the issue is contentious (e.g. whether there is special interest or media interest)

☐   ☐   Assess the social, economic, health, and/or environmental impacts of the proposal

☐   ☐   Examine relevant reports from parliamentary committees

☐   ☐   Review reports from relevant independent bodies

☐   ☐   Assess potential provincial, territorial, and municipal government views

☐   ☐   Review any previous lobbying by stakeholders

☐   ☐   Assess whether there will be difficult choices or trade-offs

☐   ☐   Determine whether certain stakeholder groups benefit more than others

☐   ☐   Determine whether there were similar approaches taken by other governments

Developing realistic timelines

Checklist 4

In developing realistic timelines, officials should:

Yes   N/A

☐   ☐   Assess the level of knowledge, understanding, and expertise of stakeholders (i.e. determine whether there is a significant level of learning required on the part of the public and/or the government for informed discussions to take place)

☐   ☐   Determine what information needs to be developed or collected for stakeholders

☐   ☐   Determine the appropriate time of year for the consultations to take place (e.g. account for summer holidays)   *(cont'd)*

☐	☐	Assess whether the deadlines for decision making are realistic
☐	☐	Factor in the timing of other aspects of the regulatory process (e.g. drafting by the Department of Justice Canada, senior management approval, ministerial sign-off, Treasury Board of Canada Secretariat review, parliamentary schedule, pre-publication timelines, final approval)
☐	☐	Prepare and implement a communication plan
☐	☐	Assess the time needed for participants and stakeholders to understand material, consult with their constituencies or members, and prepare input
☐	☐	Research the availability of both government officials and stakeholders
☐	☐	Determine the amount of time required for the consultation
☐	☐	Determine the time required for contracting outside help (i.e. bidding times, internal process, approval)
☐	☐	Assess how many consultation sessions are required
☐	☐	Determine how much time is required to analyze the results and report back to stakeholders
☐	☐	Determine the time required for translation of material / background documents and participant input, if necessary

Internal and interdepartmental coordination

Checklist 5

In developing a consultation plan, officials should:

Yes	N/A	
☐	☐	Discuss the proposal with relevant policy centres within the department
☐	☐	Seek the advice of departmental communications and consultation experts
☐	☐	Liaise with corporate services (e.g. financial, contracting, translation, webmaster)
☐	☐	Conduct a file search for similar consultations
☐	☐	Resolve internal departmental issues
☐	☐	Conduct a scan of other departments' roles and mandates to determine whether other departments are concerned (i.e. review websites, liaise with other departments)
☐	☐	Review and update the Consulting With Canadians website

(cont'd)

☐ ☐ Determine whether other departments have recently conducted consultations on similar topics

☐ ☐ Examine potential areas of collaboration with other government departments

☐ ☐ Contact regional offices and provinces and territories if required

☐ ☐ Hold meetings to brief other government departments on the proposal

☐ ☐ Identify the views of different departments on the proposal

Selecting consultation tools

Checklist 6

In selecting consultation tools, officials should:

Yes N/A

☐ ☐ Research previous consultations to determine the methods usually used for consulting on this issue and with these stakeholders

☐ ☐ Assess the advantages and disadvantages of using various consultation tools

☐ ☐ Facilitate stakeholder involvement in selecting the most appropriate consultation tools

☐ ☐ Determine whether different interest groups should be brought to the same consultation meeting

☐ ☐ Assess whether consensus is the goal of the consultations

☐ ☐ Ensure that the consultation tool selected is appropriate for the size and scope of the proposal

Selecting participants

Checklist 7

In selecting stakeholders, officials should:

Yes N/A

☐ ☐ Define the range of stakeholder involvement

☐ ☐ Identify which regions of the country should be represented

☐ ☐ Develop criteria for selecting participants

☐ ☐ Determine participant availability

☐ ☐ Research who has been consulted on similar topics

(*cont'd*)

☐	☐	Contact key stakeholder groups for advice on who should participate
☐	☐	Do a web search for relevant groups
☐	☐	Consult other officials or departments to identify participants
☐	☐	Post a notice on the departmental website advising of the consultation process
☐	☐	Send a letter to stakeholder groups
☐	☐	Consider advertising in local newspapers or trade publications, or on radio or television

Effective budgeting

Checklist 8

In developing a budget for a regulatory consultation, officials should:

Yes	N/A	
☐	☐	Determine the funds available
☐	☐	Determine whether the consultations will be facilitated by a third party
☐	☐	Assess whether funds are adequate for the scope of the consultations
☐	☐	Examine whether other government departments can contribute to the funding
☐	☐	Evaluate whether contractors are needed for the preparation of written materials
☐	☐	Determine whether translation (written and simultaneous) is required
☐	☐	Determine whether an independent evaluator is required
☐	☐	Assess whether IT support is necessary (e.g. webmaster)
☐	☐	Calculate travel costs (based on regions of the country that need to be visited)
☐	☐	Determine the kind of facilities required (e.g. hotels, conference centres, government facilities)
☐	☐	Calculate the cost of notifying participants or the public of the consultations (i.e. advertising, mail-out, website)
☐	☐	Determine whether arrangements might be required for participants with special needs
☐	☐	Assess whether intervener funding is available

Ongoing evaluation, end-of-process evaluation, and documentation of consultations

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Checklist 9

In conducting an ongoing evaluation, officials should:

Yes   N/A

☐   ☐   Determine the tangible results expected from the consultation process

☐   ☐   Assess the key activities that need to be carried out as part of the consultation

☐   ☐   Determine whether a neutral observer would be beneficial for monitoring the process

☐   ☐   Assess whether the methods used are appropriate for the identified objectives

☐   ☐   Evaluate whether the timetable allows enough time for input

☐   ☐   Develop a tracking document

☐   ☐   Ensure that all comments are recorded

☐   ☐   Determine whether there is an appropriate number of participants

☐   ☐   Assess whether stakeholders feel that the consultation is worthwhile

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Checklist 10

In conducting a final evaluation of the process and results of the consultations, officials should ask the following questions:

Yes   N/A

☐   ☐   Were the views received what you anticipated?

☐   ☐   Was the method effective in engaging different groups and individuals?

☐   ☐   Did those consulted feel the process was worthwhile?

☐   ☐   Did the methods suit the objectives?

☐   ☐   If more than one method was used, what were the advantages and disadvantages of each?

☐   ☐   Were the quantitative and qualitative information, response rate, and representative sample anticipated?

☐   ☐   Was the timetable clear and adhered to? If not, why not?

(cont'd)

☐	☐	Was enough time allowed for input?
☐	☐	Was the information used in the process effective?
☐	☐	Was relevant information made available to the appropriate participants?
☐	☐	Was the information easy to access, relevant to the consultation, produced in plain language, easy to understand, and available in other languages and formats?
☐	☐	Was the process adequately budgeted for?
☐	☐	Were the supporting materials effective? For example, did the consultation document encourage informed deliberation and dialogue? Was the information easy to access, clear, and objective?
☐	☐	Did you follow up with those consulted, and was that input used?

Communicating neutral, relevant, and timely information related to the regulatory proposal

Checklist 11

In communicating neutral, relevant, and timely information, officials should:

Yes   N/A

☐	☐	Determine the level of knowledge, including technical knowledge, and range of expertise among participants
☐	☐	Provide timely information in clear, plain language
☐	☐	Explore whether a learning event is necessary
☐	☐	Distribute necessary background information
☐	☐	Decide whether stakeholders should be provided with a draft regulatory text
☐	☐	Include contact names and related contact information
☐	☐	Ensure that all stakeholders are provided with the same information
☐	☐	Develop a code of conduct for the consultation and obtain the agreement of participants

Ensuring that officials have the necessary skills to engage in regulatory consultations

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Checklist 12

In facilitating a regulatory consultation process, officials should:

Yes   N/A

☐   ☐   Share expectations for the consultation process with participants and encourage participants to do the same

☐   ☐   Establish a participant code of conduct

☐   ☐   Let participants express their viewpoints, without expressing their own thoughts or feelings

☐   ☐   Understand the importance of the issue for participants, and whether any conflicts need to be resolved or can be set aside momentarily

☐   ☐   Separate the problem into components and develop solutions for each component

☐   ☐   Determine the potential for satisfactory resolution of a problem

☐   ☐   Determine whether participants are willing to explore alternative solutions

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