



Government
of Canada

Gouvernement
du Canada

Smart Regulation and the Application of Precaution

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Canada The wordmark for Canada, with a small red maple leaf icon above the letter 'a'.

What is Smart Regulation

Smart Regulation is...

...the objectives, principles and practices
used by government...

...to sustain high levels of regulatory
performance and facilitate continuous
improvement.

Origins of Smart Regulation



2000



OAG Report on Federal Health and Safety Regulatory Programs



2002



OECD invited to review Canadian Regulatory system



Recommends "more systemic and strategic review"



2003



Creation of External Advisory Committee on Smart Regulation (EACSR)



2004



EACSR report



Development of the Smart Regulation Policy Framework

We will transform the regulatory system...





Where we are today:

- ✎ Many players, not coordinated
- ✎ Lack of coherence in policy objectives
- ✎ Lengthy, unpredictable processes
- ✎ Transactional and reactive
- ✎ Incremental change, department by department
- ✎ Episodic reforms

Where we want to be:


- ✎ Approach based on cooperation
- ✎ Clear, integrated policy direction targeted at results
- ✎ Timely decisions, predictable processes
- ✎ Planning and setting priorities
- ✎ Managing aggregate effects on sectors
- ✎ Continuous improvement, ongoing renewal across government


based on four *guiding principles*:


-  Protecting the public interest
-  Extending the basic values of democracy
-  Leveraging the best available knowledge
-  Promoting effective and efficient processes


Strengthening Regulatory Governance

Government Directive on Regulating

-  Facilitates continuous improvement through lifecycle approach

-  Sets the framework and policy direction for regulatory governance based on:

 -  Smart Regulation Principles and strategic objectives


 -  Updated process and policy requirements and strengthen impact analysis


New frameworks and guides – for example:


-  Risk management, instruments for government action, effective consultations, compliance.


Improving Coordination and Cooperation


Interdepartmental Theme Tables


 Five federal tables have been established:

 Healthy Canada


 Environmental Sustainability

 Safety and Security


 Innovation, Productivity, Business Environment

 Aboriginal Prosperity and Northern Development

National

 Intergovernmental Working Group on Regulatory Reform

International


 International Regulatory Cooperation Framework.


The way forward for Smart Regulation


Spring 2005

 Publication of the first *Report on Regulatory Action and Plans*


 Publication every six months thereafter


 Launch of the development of the *Government Directive on Regulating*

 Ongoing meetings of the Theme Tables


 First biannual plenary of all Theme Table members

Fall 2005




 Stakeholder consultations on the *Government Directive*

 Establish a permanent external Regulation Advisory Board


Winter 2005-06

 Present proposal for the *Government Directive* to Cabinet

The Development of a Regulatory Risk Management Framework

-  An interdepartmental working group will produce a Framework for Regulatory Risk Management
-  Will build on existing Federal frameworks, including the **Framework for the Application of Precaution in Science Based Decision Making**
-  Informed by approaches used by departments and leading international regulatory authorities, and consultations with stakeholders.

What is risk management?

 From the Integrated Risk Management Framework:

Risk management is a systematic approach to setting the best course of action under uncertainty by identifying, assessing, understanding, acting on and communicating risk issues.


What is the Application of Precaution?


Recognizes that absence of full scientific certainty shall not be used as a reason for postponing decisions where there is a risk of serious or irreversible harm

General Principles of PA Application:


- ✎ A “chapeau statement” on overall scope of applicability to assist decision-makers in implementation of guiding principles
 - ✎ Most domestic uses of precaution deal with special situations, but some integrate both these special situations with a broader application (*CEPA 1999, Oceans Act*)
- ✎ Application of precaution is necessary where
 - ✎ Need for a decision
 - ✎ risk of serious or irreversible harm
 - ✎ significant scientific uncertainty
- ✎ Five general principles of application and five principles for precautionary measures


Development of the Framework

 Consultations with a broad range of stakeholders

 Public interest groups


 Academia


 Industry

 International agencies






 NGOs

 Feedback

 Need for practical guidance vs. flexibility and responsiveness

 Some contested a perceived bias in favour of limiting the use of precaution; others held the opposite view




General Principles

-  Legitimate and distinctive decision-making tool within risk management
-  Society's chosen level of protection against risk
-  Scientific information and its evaluation as basis
-  Mechanisms for reevaluation and consultation
-  Enhanced transparency, accountability and public involvement

General Principles

- ✎ Subject to reconsideration
 - ✎ revisited as science, technology or public tolerance evolve
- ✎ Proportional to the potential severity of the risk and society's tolerance
- ✎ Non-discriminatory and consistent
 - ✎ reference international agreements, federal policy and legislation
- ✎ Cost-effective
 - ✎ measures should generate overall net benefit for society at least cost
- ✎ Least trade-restrictive measure should be applied where more than one option meets above characteristics

In summary

-  Smart Regulation will build upon other work with the goal of increasing consistency
-  Will retain the Framework for the Application of Precaution
-  We will seek early input regarding the principles for a framework, and again on a draft document.