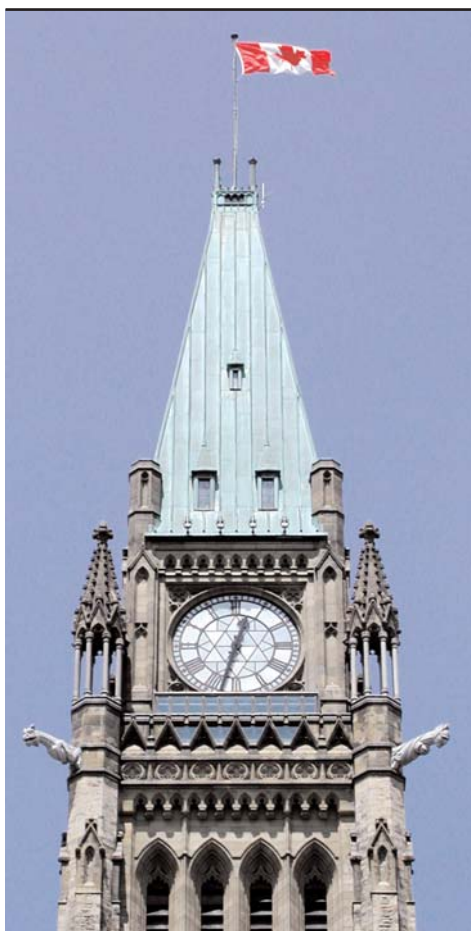




Government
of Canada

Gouvernement
du Canada



CABINET DIRECTIVE ON STREAMLINING REGULATION

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Table of Contents

Our Commitment to Canadians	1
1.0 Introduction.....	2
2.0 Scope of Application	2
3.0 Implementing the <i>Cabinet Directive on Streamlining Regulation</i>.....	2
3.1 Regulatory Process Requirements	3
4.0 Regulatory Analysis	3
4.1 Regulatory consultation	3
4.2 Identifying and assessing public policy issues.....	4
4.3 Setting public policy objectives	5
4.4 Selecting, designing, and assessing regulatory responses.....	5
Selecting the appropriate mix of government instruments	5
Assessing legal implications	6
Compliance with international obligations	6
Coordination and cooperation.....	7
Analyzing the benefits and costs of regulation	8
Recommending an option	9
4.5 Planning for implementation, compliance, and enforcement	9
Planning for implementation.....	9
Planning for compliance and enforcement	9
4.6 Measuring, evaluating, and reviewing regulation.....	10
Measuring and reporting on performance.....	10
Evaluating regulatory programs.....	10
Reviewing regulatory frameworks.....	10
5.0 Responsibilities for Planning and Reporting to Canadians	11
6.0 Enquiries and Further Information	11
Appendix A: Key Departments and Agencies Involved in the Regulatory Process.....	12
The Treasury Board of Canada Secretariat	12
The Department of Justice Canada	13
The Privy Council Office.....	13
Appendix B: International Trade Obligations Regarding Specific Requirements for the Design and Implementation of Technical Regulations, Conformity Assessment Procedures, and Sanitary and Phytosanitary Measures.....	14

Our Commitment to Canadians

The Government of Canada is committed to protecting and advancing the public interest by working with Canadians and other governments to ensure that its regulatory activities result in the *greatest overall benefit to current and future generations of Canadians*.

When regulating, the federal government will:

- **protect and advance the public interest** in health, safety and security, the quality of the environment, and the social and economic well-being of Canadians, as expressed by Parliament in legislation;
- **promote a fair and competitive market economy** that encourages entrepreneurship, investment, and innovation;
- **make decisions based on evidence** and the best available knowledge and science in Canada and worldwide, while recognizing that the application of precaution may be necessary when there is an absence of full scientific certainty and a risk of serious or irreversible harm;
- **create accessible, understandable, and responsive** regulation through inclusiveness, transparency, accountability, and public scrutiny;
- **advance the efficiency and effectiveness** of regulation by ascertaining that the benefits of regulation justify the costs, by focussing human and financial resources where they can do the most good, and by demonstrating tangible results for Canadians; and
- **require timeliness, policy coherence, and minimal duplication** throughout the regulatory process by consulting, coordinating, and cooperating across the federal government, with other governments in Canada and abroad, and with businesses and Canadians.

1.0 Introduction

Regulation is an important tool for protecting the health and safety of Canadians, preserving the environment, and securing the conditions for an innovative and prosperous economy. Regulations are a form of law—they have binding legal effect and usually set out rules that apply generally, rather than to specific persons or situations.

Often referred to as “delegated” or “subordinate legislation,” regulations are made by persons to whom or bodies to which Parliament has delegated authority, such as Cabinet (the Governor in Council), a minister, or an administrative agency. Authority to make regulations must be expressly delegated through enabling legislation.

When drafting enabling legislation, departments and agencies are to ensure that subordinate legislative instruments, including regulations, are subject to the requirements of the *Statutory Instruments Act*. Regulations and other such instruments should not be exempted from these requirements except in exceptional circumstances, when approved by Cabinet.

For more information on the requirements governing legislative instruments, see the *Cabinet Directive on Law-making*.

2.0 Scope of Application

The *Cabinet Directive on Streamlining Regulation* applies to all departments and agencies involved in the federal regulatory process. Government officials are responsible for abiding by the Directive at all stages of the regulatory lifecycle—development, implementation, evaluation, and review.

3.0 Implementing the *Cabinet Directive on Streamlining Regulation*

This directive is supported by a series of frameworks and documents that provide detailed guidance for government officials on the regulatory process. These frameworks can be found at <http://www.regulation.gc.ca>.

When regulating, departments and agencies are responsible for ensuring that relevant legislation and directions from Cabinet and the Treasury Board are followed, including the following:

- *Statutory Instruments Act*;
- *User Fees Act*;
- *Financial Administration Act*;
- *Cabinet Directive on Law-making*;
- *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*;

- *A Framework for the Application of Precaution in Science-based Decision Making about Risk*; and
- *A Framework for Science and Technology Advice: Principles and Guidelines for the Effective Use of Science and Technology Advice in Government Decision Making*.

A review of the Directive will be conducted within five years of its coming into force. Accordingly, the Regulatory Affairs Sector of the Treasury Board of Canada Secretariat (Regulatory Affairs) will work with departments and agencies to develop a performance measurement and evaluation strategy and to monitor the implementation of the Directive. In addition, departments and agencies are expected to submit a report to their senior management and Regulatory Affairs on how they have met the commitments and directions set out here. It is expected that the review of the Directive will include the involvement of interested Canadians.

3.1 Regulatory Process Requirements

In consultation with Regulatory Affairs, departments and agencies will assess regulatory proposals at an early stage to determine where approval processes can be streamlined and where resources should be focussed. The following factors will be considered in this assessment:

- potential impact of the regulation on health and safety, security, the environment, and the social and economic well-being of Canadians;
- cost or savings to government, business, or Canadians and the potential impact on the Canadian economy and its international competitiveness;
- potential impact on other federal departments or agencies, other governments in Canada, or on Canada's foreign affairs; and
- degree of interest, contention, and support among affected parties and Canadians.

Emergency situations—when there is an immediate and serious risk to the health and safety of Canadians, their security, the economy, or the environment—may require an expedited process. In these cases, departments and agencies will work with Regulatory Affairs to proceed in a manner that most effectively protects the public interest.

4.0 Regulatory Analysis

4.1 Regulatory consultation

Departments and agencies are responsible for identifying interested and affected parties, and for providing them with opportunities to take part in open, meaningful, and balanced consultations at all stages of the regulatory process.

When undertaking consultations, departments and agencies are to:

- inform and engage Canadians on the nature and implications of the public policy issue based on available evidence, science, or knowledge;
- include Canadians in developing policy objectives;
- set out the process and timelines in a clear manner so that affected parties can organize and provide input; and
- provide timely feedback to Canadians and affected parties on the outcome of the consultations and on the priorities considered in decision making.

Departments and agencies are also 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*.

Departments and agencies are to publish proposals in the *Canada Gazette*, Part I, to allow for a public comment period and to then take the comments received into consideration. The standard comment period is 30 days, but it can vary based on legislative requirements, international obligations, and other considerations. A minimum comment period of 75 days is required for proposals for new and changed technical regulations that may affect international trade.

Departments and agencies should note that publishing proposed regulations in the *Canada Gazette* is not a substitute for meaningful consultations on the development of regulatory proposals. Cabinet may exempt proposals from publication in Part I of the *Canada Gazette*.

4.2 Identifying and assessing public policy issues

Departments and agencies are responsible for assessing public policy issues, including potential risks, and demonstrating through the best available evidence and knowledge that government intervention is needed.

When assessing and documenting public policy issues, departments and agencies are to:

- analyze the public policy issue, its causes, and context, including its urgency and immediate and long-term impacts;
- review wherever possible relevant evidence-based assessments, analyses, standards, and classification systems of provincial and territorial governments, other countries, or international organizations;
- explain fully to decision makers and Canadians the nature of the issue and how its impacts change over time; and
- describe the scientific and empirical evidence, uncertainties, ethical considerations, and public views of the public policy issue.

Best Practice: For significant proposals, departments and agencies are encouraged to seek independent review of risk assessments. Departments and agencies can use science advisory boards or other existing mechanisms for this review.

When there is a risk of serious or irreversible harm, the government recognizes that the absence of full scientific certainty shall not be used as a reason for postponing decisions to protect the health and safety of Canadians, the environment, or the conservation of natural resources. For guidance on the application of precaution, departments and agencies should consult *A Framework for the Application of Precaution in Science-based Decision Making about Risk*.

4.3 Setting public policy objectives

Once policy issues have been assessed and it is determined that government intervention is required, departments and agencies are responsible for setting public policy objectives that outline tangible outcomes for Canadians. Departments and agencies are to:

- set measurable objectives that address the public policy issue and its causes;
- establish linkages to enabling legislation and government priorities to ensure relevance and consistency; and
- develop and use performance indicators on an ongoing basis to monitor and report on progress against performance expectations.

4.4 Selecting, designing, and assessing regulatory responses

Selecting the appropriate mix of government instruments

Departments and agencies are responsible for assessing the effectiveness and appropriateness of regulatory and non-regulatory instruments for achieving policy objectives.

Departments and agencies are to:

- identify potential points for effective intervention;
- identify the institutions and parties that should be involved in addressing the public policy issue;
- identify the appropriate instrument or mix of instruments, including regulatory and non-regulatory measures, and justify their application before submitting a regulatory proposal;
- demonstrate that the regulatory response is designed to address policy objectives;
- demonstrate that the regulatory response is proportional to the degree and type of risk;
- demonstrate that the regulatory response will not unduly affect areas that it was not designed to address;

Best Practice: Departments and agencies are encouraged to use standardization tools and approaches offered by Canada's National Standards System (NSS). This network provides internationally accepted best practices and test methods, improves market entry and acceptance, and reduces the need for multiple testing or repetitive certification. For more information, please see <http://www.scc.ca/en/nss/index.shtml>.

Regulators may also wish to check *RegWatch*, a search tool that identifies Canadian and international standards referenced in Canadian laws and regulations. Please visit https://alert.scc.ca/rwh/basic_e.jsp.

- specify, particularly for technical regulations, regulatory requirements in terms of their performance rather than their design or descriptive characteristics; and
- make use of all or parts of relevant national or international standards, guidelines, and recommendations as a basis for technical regulations and for conformity assessment procedures when they fulfil intended policy objectives.

Assessing legal implications

When designing regulations, departments and agencies are responsible, with assistance from the Department of Justice Canada, for assessing the legal implications of the proposal and for ensuring that it is legally sound.

Departments and agencies are therefore expected to take measures to ensure that regulations are:

- authorized by enabling legislation or other law;
- consistent with the *Constitution Act, 1867* and the *Constitution Act, 1982* (including the *Canadian Charter of Rights and Freedoms* and with particular note of any obligation relating to Aboriginal and Treaty Rights arising out of s. 35), and the *Canadian Bill of Rights, 1960*; and
- well drafted and able to operate effectively with other related laws, particularly legislation of general application such as that referred to in this document under the heading “Implementing the *Cabinet Directive on Streamlining Regulation*.”

Compliance with international obligations

Departments and agencies are to respect Canada’s international obligations in such areas as human rights, health, safety, security, international trade, and the environment. They must also implement provisions related to these obligations in all stages of regulatory activity.

To ensure the compliance of regulatory proposals, departments and agencies should seek the advice and assistance of:

- the Legal Bureau of Foreign Affairs and International Trade Canada—the Legal Bureau is responsible for the negotiation, creation, and interpretation of Canada’s international legal obligations and provides advice concerning the interpretation and application of such obligations for regulation;

For more information on requirements related to Canada’s international trade obligations for the design and implementation of technical regulations, conformity assessment procedures, and sanitary and phytosanitary measures, departments and agencies should refer to Appendix B of this document.

- Foreign Affairs and International Trade Canada, which is responsible for coordinating the implementation of Canada's international trade obligations, including the implementation of the World Trade Organization (WTO) Agreement and the North American Free Trade Agreement (NAFTA);
- the Department of Justice Canada, with its specialized sections, and its departmental legal services units that are responsible for advising departments and agencies on legal matters, including consistency of regulatory proposals with Canada's international obligations; and
- the Trade Law Bureau of Foreign Affairs and International Trade Canada and the Department of Justice Canada, which provides advice on Canada's international trade obligations.

Coordination and cooperation

Coordinating across the Government of Canada

Federal departments and agencies are responsible for working together to develop and implement regulations to maximize effectiveness and minimize the cumulative and unintended impacts on Canadians and the economy. To do so, departments and agencies are to:

- identify and consult with other federal departments and agencies that have a specific interest in the proposed regulation;
- identify similar or related regulatory requirements—either existing or proposed—in the area being regulated;
- assess these requirements to minimize cumulative impacts and develop complementary and cooperative approaches whenever possible; and
- coordinate the implementation and management of regulation to minimize complexity and duplication.

Best practice: Departments and agencies are encouraged to apply service-oriented approaches to the administration of regulatory programs. Coordinated approaches, such as single-window service delivery, can reduce the administrative burden and improve compliance. For more information, please see the Institute for Citizen-Centred Service website at <http://www.iccs-isac.org>.

Cooperating with provincial and territorial governments

Departments and agencies are responsible for cooperating with provincial and territorial governments in the development and implementation of regulation. Departments and agencies are to:

- involve provincial and territorial counterparts in federal regulatory initiatives;
- identify and assess similar or related provincial and territorial requirements, and work with relevant jurisdictions to manage any cumulative impacts and minimize duplication and conflicting requirements;
- comply with the Government of Canada's intergovernmental agreements, such as the Canadian Agreement on Internal Trade;

- develop cooperative arrangements such as the mutual recognition of requirements, the adoption of consensus-based standards, and consistency in reporting requirements whenever possible; and
- establish national standards or common conformity assessment procedures to support and facilitate internal trade whenever possible.

International cooperation

Departments and agencies are to take advantage of opportunities for cooperation, either bilaterally or through multilateral fora, by:

- reviewing and influencing international best practices, sharing knowledge, adopting or contributing to the development and updating of international standards and conformity assessment procedures, and developing and pursuing compatible approaches with international counterparts;
- limiting the number of specific Canadian regulatory requirements or approaches to instances when they are warranted by specific Canadian circumstances and when they result over time in the greatest overall benefit to Canadians; and
- identifying the rationale for their approach, particularly when specific Canadian requirements are proposed.

Analyzing the benefits and costs of regulation

When determining whether and how to regulate, departments and agencies are responsible for assessing the costs and benefits of regulatory and non-regulatory measures, including government inaction. This analysis should include quantitative measures and, when costs and benefits are difficult to quantify, qualitative measures. The analysis of these impacts provides useful information to decision makers, even when economic efficiency is not the only or the overriding public policy objective.

When assessing options to maximize net benefits, departments and agencies are to:

- identify and assess the potential positive and negative economic, environmental, and social impacts on Canadians, business, and government of the proposed regulation and its feasible alternatives; and
- identify how the positive and negative impacts may be distributed across various affected parties, sectors of the economy, and regions of Canada.

Best Practice: To improve accountability and transparency, departments and agencies should prepare an accounting statement to report on the quantifiable and non-quantifiable costs and benefits of significant proposals.

Recommending an option

When developing the option that maximizes net benefits, departments and agencies are to:

- limit the cumulative administrative burden and impose the least possible cost on Canadians and business that is necessary to achieve the intended policy objectives;
- consider the specific needs of small business and identify the least burdensome but most effective approach to addressing these needs;
- ensure that regulatory restriction on competition is fair, limited, and proportionate to what is necessary to achieve the intended policy objectives;
- prevent or mitigate adverse impacts and enhance the positive impacts of regulation on the environment, the health and safety of Canadians, and competitiveness, trade, and investment;
- identify the scope and nature of residual adverse environmental effects after mitigation and enhancement strategies have been considered; and
- identify necessary follow-up measures to track environmental effects over time.

Departments and agencies should consult the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals* for further guidance on conducting environmental impact assessments.

4.5 Planning for implementation, compliance, and enforcement

Planning for implementation

Departments and agencies are responsible for putting in place the processes to implement regulatory programs and to manage human and financial resources effectively, including:

- publishing service standards, including timelines for approval processes set out in regulations, setting transparent program objectives, and identifying requirements for approval processes;
- taking advantage of opportunities for implementation and delivery coordination with other departments and agencies, and with other governments in Canada that are regulating in the same sector;
- planning for the necessary human and financial resources that the recommended option would require, including compliance and enforcement activities; and
- ensuring that those charged with carrying out regulatory responsibilities have the necessary resources, skills, and abilities.

Departments and agencies should consult the relevant Treasury Board policies for further guidance on the development and evaluation of service standards.

Planning for compliance and enforcement

Departments and agencies are responsible for promoting regulatory effectiveness by developing and implementing compliance and enforcement strategies. These strategies are to:

- be developed in consultation with affected parties, including those that must administer the regulation or comply with it as appropriate;

- use an appropriate range of compliance tools; and
- provide timelines and processes for assessing and reviewing compliance activities.

4.6 Measuring, evaluating, and reviewing regulation

Departments and agencies are responsible for ensuring that regulation continually meets its initial policy objectives and for renewing regulatory frameworks on an ongoing basis.

Measuring and reporting on performance

Departments and agencies are to:

- identify the intended results of regulation in managing a public policy issue and, before submitting a regulatory proposal, develop time-based performance indicators for significant regulatory activities;
- take measures to ensure that monitoring and reporting activities are effective while imposing the least possible burden on government, business, and Canadians;
- integrate performance measures that can be used to adjust compliance plans as needed; and
- collect performance information on the results of existing regulation and provide Canadians with this information in a timely manner.

Evaluating regulatory programs

Departments and agencies are to evaluate their regulatory programs according to the time frames and cycle established in the Treasury Board *Policy on Evaluation* to demonstrate results for Canadians. Subject to the impacts and complexity of the regulatory programs, departments and agencies are to assess the following areas, when appropriate:

- inputs (e.g., resources, mandate, and enabling authorities), activities, effectiveness, ultimate outcomes of the regulatory program, and the extent to which the program contributed to the achievement of reported results;
- value for money (e.g., relevance, efficiency, and cost-effectiveness); and
- governance, decision-making and accountability processes, service standards, and service delivery mechanisms.

Reviewing regulatory frameworks

Departments and agencies are to regularly assess the results of performance measurement and evaluation to identify regulatory frameworks in need of renewal. Once identified, departments and agencies are to examine the regulation with a focus on:

- the effectiveness of the current regulation in meeting the policy objective;
- the current instrument selection, level of intervention, and degree of prescriptiveness;
- clarity and accessibility of the regulation to users; and
- the overall impact on competitiveness, including trade, investment, and innovation.

Planning, priority- and timeline-setting, and the measuring and reporting of outcomes of regulatory review should be determined by departments and agencies in collaboration with affected parties.

5.0 Responsibilities for Planning and Reporting to Canadians

Departments and agencies are to:

- develop regulatory plans and priorities for the coming year(s); and
- report publicly on plans, priorities, performance, and regulatory review in accordance with Treasury Board guidelines.

6.0 Enquiries and Further Information

Treasury Board of Canada Secretariat—Public Enquiries

Telephone: 1-877-636-0656

Email: info@tbs-sct.gc.ca

Website: <http://www.regulation.gc.ca>

Appendix A: Key Departments and Agencies Involved in the Regulatory Process

The Treasury Board of Canada Secretariat

The Regulatory Affairs Sector (Regulatory Affairs) of the Treasury Board of Canada Secretariat (TBS) is responsible for ensuring that the analysis that departments and agencies provide on policy and regulatory proposals is consistent with the commitments and directions set out in the *Cabinet Directive on Streamlining Regulation* and that the analysis effectively supports ministerial decision making. Regulatory Affairs is also responsible for promoting policy coherence among new proposals, existing policies, and the government's policy agenda.

Regulatory Affairs is expected to:

- provide advice and support to departments and agencies concerning the development of regulatory proposals and the implementation of the Directive;
- work closely with departments and agencies to provide ministers and the Cabinet committee responsible for Governor-in-Council decisions with the necessary information to make decisions on the issues before them;
- review regulatory proposals, challenge departments and agencies on the quality of regulatory analyses, and advise them when the directions set out in the Directive have not been met;
- promote regulatory reform and be a centre of expertise on regulatory governance; and
- assess the effectiveness of the Directive and its implementation.

Regulatory Affairs will work with other sectors in TBS to:

- confirm that regulatory proposals appropriately address resource management; and
- formulate advice and guidance to departments and agencies on other government management policies relevant to their regulatory activities.

The Department of Justice Canada

The Department of Justice Canada provides legal advice to departments and agencies on the legality of proposals for enabling and subordinate legislation, and the legal requirements of the regulatory process.

In doing so, the Department of Justice Canada provides drafting services to departments and agencies and, under the *Statutory Instruments Act*, examines all proposed regulations to ensure that they:

- have the necessary legal authorization to be made;
- are consistent with the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights, 1960*;
- are not an unusual or unexpected use of the enabling authority; and
- are drafted in accordance with established standards.

The Department of Justice Canada also provides departments and agencies with legal tools and advice on the appropriate use of government instruments, regulatory techniques, international standards, and compliance and enforcement techniques.

The Department of Justice Canada and the Legal Bureau of Foreign Affairs and International Trade Canada are responsible for advising on the effect of Canada's international legal obligations, including their implementation in domestic law. The Trade Law Bureau of the Department of Justice Canada and Foreign Affairs and International Trade Canada is responsible for advising departments and agencies on Canada's trade law obligations.

The Privy Council Office

The role of the Privy Council Office is to assess memoranda to Cabinet and legislative proposals with regard to instrument selection, regulatory implications, and consistency with this directive and the *Cabinet Directive on Law-making*. It is also responsible for informing and involving Regulatory Affairs when policy proposals may have a regulatory aspect.

Appendix B: International Trade Obligations Regarding Specific Requirements for the Design and Implementation of Technical Regulations, Conformity Assessment Procedures, and Sanitary and Phytosanitary Measures

The *Cabinet Directive on Streamlining Regulation* establishes the responsibility of departments and agencies to seek advice and comply with Canada's international trade obligations. This appendix draws attention to certain specific requirements applicable to technical regulations, conformity assessment procedures, and sanitary and phytosanitary measures contained in the World Trade Organization (WTO) Agreement on Technical Barriers to Trade, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, and Chapter Seven ("Sanitary and Phytosanitary Measures") and Chapter Nine ("Technical Barriers to Trade") of the North American Free Trade Agreement.

In particular, with respect to technical regulations, conformity assessment procedures, and sanitary and phytosanitary measures that affect trade, departments and agencies are to:

- specify, where possible, technical regulatory requirements in terms of performance rather than design or descriptive characteristics;
- consider accepting as equivalent the technical regulations and conformity assessment procedures of other countries, even if different, provided they achieve the intended regulatory objective and offer an equivalent level of assurance of conformity with domestic technical regulations and standards;
- ensure that technical regulations and conformity assessment procedures treat products from one jurisdiction no less favourably than like products from other jurisdictions;
- ensure that sanitary and phytosanitary measures are based on scientific principles and evidence, that they do not arbitrarily or unjustifiably discriminate against other jurisdictions where identical or similar conditions prevail, and that they are based on international standards, guidelines, or recommendations where they exist;
- accept the sanitary and phytosanitary measures of other countries as equivalent, even if different, provided they achieve Canada's appropriate level of sanitary or phytosanitary protection;
- use available international standards, guidelines, and recommendations as a basis for technical regulations and for conformity assessment procedures where they achieve the intended regulatory objective;
- treat regulatees and products from one jurisdiction no less favourably than those from other jurisdictions when assessing conformity to technical regulatory requirements, providing they are in comparable situations;
- have in place a process to review complaints concerning conformity assessment procedures and must take corrective action when justified; and
- publish proposals for new or changed technical regulations, conformity assessment procedures, and sanitary and phytosanitary measures that may affect international trade for a comment period of at least 75 days and take into account the comments received.