

GENERAL ADMINISTRATION MANUAL

VOLUME 2: HIGHWAYS AND PUBLIC WORKS POLICIES

TITLE: CODE OF REGULATORY CONDUCT

EFFECTIVE: October 1, 1998

1 SCOPE**1.1 Authority**

This policy is issued under authority of Cabinet meeting #98-32 dated September 17, 1998.

1.2 Application

This policy applies to all departments and agencies of the Government of Yukon but does not apply to boards such as the Workers' Compensation Health and Safety Board, Yukon College, and the Yukon Utilities Board unless approved by their governing body.

1.4 Background

The impact of legislation and regulation on the public is a concern for all governments. The business sector, in particular, has been burdened with extra costs and paperwork resulting from compliance with government regulation. The Government of Yukon is committed to reducing the regulatory burden. The *Code of Regulatory Conduct* has been developed to provide for public input into the regulatory process and to ensure that alternatives to regulation are considered. Guidelines are attached to help regulatory authorities apply the *Code*.

1.5 Definitions

Regulation means any regulation, proclamation, rule, order or bylaw made under the authority of any Act of the Legislature but does not include:

- a) an order or decision of a judicial tribunal,
- b) rule, order, regulation, resolution or bylaw made by a local authority, or
- c) rule, regulation or bylaw of a company incorporated under the laws of the Yukon.

GOVERNMENT OF YUKON

CODE OF REGULATORY CONDUCT

The people and the business community of the Yukon are entitled to a sensible, effective and accessible regulatory regime.

OBJECTIVES OF THE CODE

1. To ensure that the public and Yukon businesses have better access, understanding and input into the regulatory process and the decisions that affect them.
2. To reduce red tape
3. To provide guidance to government departments and agencies preparing regulations or legislation for Cabinet's consideration

RESPONSIBILITY OF ORIGINATOR

Before implementing regulatory measures, Yukon government departments and agencies will:

1. Consult with interested parties who will be affected by the regulations.
2. Examine non-regulatory alternatives
3. Identify the potential costs and benefits to businesses and the public resulting from the proposed regulations.
4. Ensure that the new regulatory measure is written in plain language.

CHARACTERISTICS OF THE REGULATORY PROCESS

Regulatory processes shall be characterized by:

1. Advance notice, to the sectors most affected, about proposed regulatory changes and initiatives.
2. Opportunity and reasonable time for affected sectors to provide input into bills and regulations.
3. Provisions for periodic review of statutes and regulations and their objectives, to ensure continued relevancy.

4. Efforts to minimize regulatory conflicts, overlap and duplication within the Yukon government and with other government jurisdictions.
5. Uniform drafting styles and standards.
6. Clearly articulated policy objectives and criteria for making and implementing decisions.
7. Clear communication about regulatory and legal requirements.

EFFECTIVE DATE

This Code of Regulatory Conduct is effective October 1, 1998.

IMPLEMENTATION GUIDELINES

Code of Regulatory Conduct

All legislation and major regulation drafting projects must be approved in principle by Cabinet before legislative drafting is begun. A chart defining the legislative drafting process is available from Executive Council Office.

The *Code of Regulatory Conduct* represents the Government of Yukon's commitment to the public on the manner in which legislation and regulations will be developed. To a large extent, the *Code* is a statement of current government practices and procedures. For example, prior consultation with sectors of the public affected by government decisions is a well-established practice.

The requirements of the *Code* are not intended to overburden departments and agencies in their pursuit of fair and equitable legislation and regulations. The intention is to encourage government to think about the impacts of proposed regulatory measures, such as direct and indirect costs and the paper burden, and to look for possible alternatives. If a preliminary analysis of these factors indicates that the negative impact on the affected public is minimal, or that the regulatory measure confers a public benefit, consultation may not be necessary; a detailed cost/benefit analysis may not be indicated. All that may be necessary is for the information presented to the decision-makers to include a rationale for the action that was or was not taken.

The following guidelines are suggestions that may help to clarify how the *Code* is to be interpreted and applied.

1. Consultation

Before undertaking public consultation, regulatory authorities should refer to the publication entitled "Consultation Guidelines", available from Executive Council Office.

The *Code* provides for organizations and individuals to have input into the development of regulatory measures that will affect them. Consultation begins with the identification of those affected parties and advance notice to them of the proposed regulatory measure, including clearly stated objectives. "Advance notice" means allowing enough time for meaningful two-way dialogue that achieves a mutual understanding of the issues and regulatory and non-regulatory options to meet the desired objectives. Interested groups may have information that can be used to improve the regulatory process.

Asking the following questions may help you identify whom to consult:

- At whom is the proposed action aimed (business, municipalities, non-governmental organizations, etc.)? In other words, who would have to change their behaviour? All such groups should be consulted.

- Who would be adversely affected indirectly? This category might include companies in related industries, consumers or anyone who might incur costs or be inconvenienced.
- Who would benefit?

While consensus is desirable, it is not the objective in each and every circumstance. When warranted, opportunity should be provided for public input. However, the final outcome will continue to rest with the decision makers within the legislative and regulatory process.

2. Alternatives

"Regulations where necessary, but not necessarily regulations" should be the guide. Where non-regulatory alternatives exist, the Code requires that these alternatives be identified and given consideration and a justification be provided when they are not chosen. In all cases, "the public interest" should be the deciding factor. For example, safety or the environment must not be compromised in order to avoid regulation.

Before identifying alternatives, you should first "scope the issue" by addressing three questions:

What is the Issue?

What is happening or not happening that creates the issue?

What events or behaviours contribute to it?

Is this a new issue? Long standing? Growing concern?

Who will have to do what differently if the issue is to be solved? Is it a small, clearly identifiable group or a large, undefined one?

What is motivating those people or groups that are contributing to the issue?

How has this group previously responded to requests for change in behaviour (if known)?

Is Government Intervention Justified?

Individuals, organizations and markets can sometimes deal with issues without government participation. Past experiences with the stakeholders involved may be helpful in making this decision. Everything else being equal, solutions developed without formal bureaucratic restrictions are preferable. Ask yourself whether government action is both needed and appropriate.

What are the Government's Objectives?

The government's objective may appear obvious: to make the issue go away. Rarely, however, will it prove possible to accomplish this completely, so asking some additional questions should help:

Does everyone (consumers, industry, scientific experts, etc.) agree that there is an issue?

Can the issue be eliminated?

How significant is it in the greater scheme of things? Is it a minor irritant or a sizable danger? How does it compare to other priorities?

Can you make a distinction between critical and less important, though desirable objectives?

Some examples of alternatives to regulations are:

- education programs
- public information / advertising campaigns
- non-regulated standards
- administrative policies and procedures

Regulatory authorities should remain open to considering new and innovative solutions that may emerge from their consultations.

3. Cost/Benefit Analysis

The Code requires the identification of costs and benefits, both direct and indirect, resulting from legislation and regulations. The scope of the analysis should be directly proportional to the potential impacts of the regulatory measure under consideration. As a result, all regulations will not require that formal cost/benefit analysis be undertaken.

At a minimum, the costs and benefits section should demonstrate that potential costs and benefits have been considered from the perspective of both the government regulator and those who will be directly affected by the regulation. To justify the proposed regulation, it must be evident that the benefits clearly outweigh the costs. The Treasury Board of Canada publication *Benefit/Cost Analysis Guide for Regulatory Programs* contains several checklists which can be used for guidance in determining what questions could be asked to demonstrate consideration of potential costs and benefits. The *Guide* can be found at the Treasury Board of Canada Web site located at:

http://www.tbs-sct.gc.ca/fin/sigs/revolving_funds/bcag/bca2_e.asp

4. Uniform Drafting Style

The requirement for maintaining a uniform drafting style is normally met by using the legislative drafting expertise in the Department of Justice.

- Requests for legislative drafting services should be addressed to the Chief Legislative Counsel with a copy to the Assistant Deputy Minister of Legal Services.
- While departments have some discretion about when to involve Legislative Counsel in the regulatory process, the following guidelines are suggested:
 - Where simple regulations are being developed, the department may choose to prepare a draft for review and editing by legal draftspersons just before submission to Cabinet for approval. Advance notice (to Legislative Counsel) of the department's intentions is nevertheless essential.
 - Where complicated regulations and legislation require drafts to be produced by Legislative Counsel, that office should be involved very early in the process. This allows Legislative Counsel to allocate sufficient resources to help departments meet their commitments in a timely fashion.
 - In either case, departments must allow plenty of time for the legislative drafting process to be completed and for translation into French.
 - Care must be taken to ensure that departments' instructions to Legislative Counsel are clear and unequivocal.
- Clarity of meaning is paramount. Since citizens have a right to understand what their government is doing, plain language is preferred (see Communications Policy 1.3 in GAM).
- Language must be gender inclusive.

5. Periodic Review of Statutes and Regulations

The requirement for periodic review of statutes and regulations has no pre-determined time period attached. This matter is left to the discretion of the originating department or agency, with the ultimate objective being "... continued relevancy". When developing new regulations, departments should establish and maintain a review schedule. Old regulations or statutes superseded by proposed new ones should be revoked as part of the approval process.

6. Clear Policy and Objectives

Clearly articulated policy objectives and criteria will be the basis for the legislative and regulatory decision-making process. This requirement is intended to dispel the old cliché of "legislation for legislation's sake". Clearly stated objectives and consideration of alternatives will ensure that regulatory measures are used *only* when they are the best way to achieve the desired result.

7. Jurisdictional Overlap

Conflicting regulations and legislation exist both within the Government of Yukon and with other levels of government. In part, these conflicts can be explained by differences in regulatory and legislative objectives. However, there is a need to identify conflicts, overlaps and duplication with a view of minimizing them.

8. Monitoring / Compliance

The department or agency originating the regulatory measure is responsible for ensuring that the Code has been followed. Departments should discuss their compliance with the Code of Regulatory Conduct in their submissions to the decision-making body. Executive Council Office analysts will look for evidence of compliance in departmental submissions. The page following these guidelines is suggested as a fact sheet for attachment to Cabinet submissions, outlining how the Code of Regulatory Conduct has been applied to the regulatory measure under consideration.

CODE OF REGULATORY CONDUCT

FACT SHEET FOR (name of regulatory measure)

1. CONSULTATION

Group(s) Organization(s) and/or <u>Individuals Consulted</u>	<u>Date(s) Consultation Occurred</u>	<u>Response to Consultation</u>
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2. RESULT OF CONSULTATION

(Were the views of consulted parties incorporated into these Regulations? If so, how? If not, why not?)

3. POTENTIAL COSTS AND BENEFITS

4. NON-REGULATORY ALTERNATIVES

(Were any non-regulatory alternatives identified? If so, why were they not implemented?)

5. CONFLICT WITH OTHER JURISDICTIONS

(Are there similar Regulations in other jurisdictions that may conflict with these Regulations?)