

Appendix 3-H How Regulations Are Prepared

The power to make regulations is contained in a statute (act) made by the Legislature. The act enables the regulation making authority (usually either the Governor in Council (Executive Council + the Lieutenant Governor), a minister, or a board or commission, or some combination of them) to make regulations for specific reasons or about a subject matter listed in the enabling section of the act.

The *Regulations Act* requires all regulations to be filed with the Registrar of Regulations and to be published, with some exceptions, in the Royal Gazette Part II. Regulations are not effective until the date of filing unless a future date is specified or the act allows effect retroactively.

The regulatory process itself is usually initiated by the department of the minister responsible for the administration of the act. At this point, the department uses the Regulations (Red Tape Reduction) Criteria Checklist (Appendix 3-E) as a tool to determine if regulations are needed and are the best intervention. The Criteria Check List is a tool to assist departments as they are developing new regulations and for the ongoing review of existing regulations that impact business. It should cause departments to conduct rigorous policy assessment that includes the impacts and benefits of the proposal.

If it is determined that regulations are the best intervention, either instructions for drafting or actual drafts of the proposed regulations are prepared by department staff, who usually work with the solicitor assigned to that department by the Department of Justice.

From this point on in the process, the draft regulations take different paths, depending on how they are authorized to be made by their enabling acts.

According to the *Interpretation Act*, the power to make regulations also includes the power to amend or **repeal regulations, and the process remains the same for all. Therefore, where the word "regulations"** is used in the following descriptions, it also includes amendments to regulations and repeals of regulations.

Regulations made or approved by the Governor in Council

When the draft regulations are in a form satisfactory to the department and the solicitor assigned by the Department of Justice, the solicitor approves them on behalf of the Attorney General as to their form and the legal authority under which they are made, in accordance with the *Regulations Act*. The regulations are then sent to the Registrar of Regulations for further review as to form under the *Regulations Act*.

The Registry edits the draft regulations to ensure compliance with the Department of Justice's *Style and Procedure Manual*, making sure that the regulations are consistent with existing regulations, ensuring consistency of form and language, and commenting on any matters that may require reconsideration by the department or the solicitor.

Once regulations have been approved as to form and authority by the solicitor and as to form by the Registrar of Regulations, they are also signed by the minister responsible and forwarded to the Executive Council Office along with a Report and Recommendation, a Regulations Analysis Form, Regulations (Red Tape Reduction) Criteria Check list, and the Communications Plan. The Executive Council Office logs it as being received and forwards it to the Treasury Board Office and Office of Policy and Priorities for analysis before it is submitted to the Executive Council for review and approval. On the recommendation of Executive Council, regulations are delivered to the Lieutenant Governor for approval.

Once the regulations have been made or approved by the Lieutenant Governor, the Order in Council, the regulations, and, if applicable, the Order of the Minister or regulation-making body are returned to the Registrar of Regulations for filing and publication in the next issue of the Royal Gazette Part II.

Regulations made by or approved by the Minister (without Governor in Council approval)

When the draft regulations are in a form satisfactory to the department and the solicitor assigned by the Department of Justice, they are forwarded to the minister responsible in the form of an order for the minister's review and approval. Upon approval, the minister signs and dates the order to give effect to the regulations. The Ministerial Order and regulations are then forwarded to the Registrar of Regulations for filing and publication in the next issue of the Royal Gazette Part II.

Regulations made by an agency, board, commission, or other body (without Governor in Council approval)

In this scenario, the regulation-making body initiates the process and then, depending on the circumstances, may work together with the department's staff and solicitor, or prepare the regulations themselves. Once finalized, the order of the regulation-making body is signed and forwarded together with the regulations to the Registrar of Regulations for filing and publication in the next issue of the Royal Gazette Part II.