Capacity Building Guide
FOR GOOD REGULATORY PRACTICES
Considerations for Development Practitioners

This document was produced for review by the United States Agency for International Development. It was prepared by the Trade and Competitiveness Activity, contract number AID-OAA-C-17-00110. Its contents are the sole responsibility of the author and do not necessarily reflect the views of USAID or the U.S. Government.
Acknowledgements

This report was written by Nathan Frey of Regulatory Strategies and Solutions Group under the Trade and Competitiveness Activity implemented by Resonance Global.

This publication was developed with guidance from the U.S. Agency for International Development (USAID) Bureau for Development, Democracy, and Innovation’s (DDI) Center for Economics and Market Development (EMD).
# Table of Contents

Executive Summary ........................................................................................................ 4

Explaining Good Regulatory Practices: What are they? Why are they important? How do they work? ........ 6
   What are GRPs and the key principles that define them? ............................................. 7
   Which institutions and practices support GRPs? ......................................................... 8

How to Structure a Regulatory Improvement Process .................................................. 11
   Best Practices in Internal Coordination, Consultation, and Review .......................... 11
   Best Practices in Public Consultation .......................................................................... 14
   Best Practices in Regulatory Impact Assessment .................................................... 18

GRP Capacity Building Project Design: Mainstreaming GRP Integration in Developing Countries ........ 23
   GRP Capacity Building Recommendations .............................................................. 23

Conclusion ................................................................................................................... 26

Annex 1: Capacity Building Examples: El Salvador, Brazil, Zambia, and Thailand .................. 27
   El Salvador ................................................................................................................. 28
   Brazil ....................................................................................................................... 29
   Zambia ................................................................................................................... 30
   Thailand ................................................................................................................. 32

Annex 2: Incorporation of GRPs in International Trade Agreements .................................. 33

Annex 3: GRPs and International Economic Organizations: Best Practice Clearinghouses
   and Benchmarking Regulatory Reforms ................................................................... 36
# List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANSI</td>
<td>American National Standards Institute</td>
</tr>
<tr>
<td>APEC</td>
<td>Asia-Pacific Economic Cooperation</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
</tr>
<tr>
<td>ATEC</td>
<td>Agreement on Trade and Economic Cooperation (Brazil)</td>
</tr>
<tr>
<td>BRRA</td>
<td>Business Regulatory Review Agency (Zambia)</td>
</tr>
<tr>
<td>BUSBC</td>
<td>Brazil–U.S. Business Council</td>
</tr>
<tr>
<td>CAMEX</td>
<td>Chamber of Foreign Trade (Brazil)</td>
</tr>
<tr>
<td>CNI</td>
<td>National Confederation of Industry (Brazil)</td>
</tr>
<tr>
<td>GRPs</td>
<td>Good Regulatory Practices</td>
</tr>
<tr>
<td>ICT</td>
<td>Information and Communications Technology</td>
</tr>
<tr>
<td>ITA</td>
<td>International Trade Administration (United States)</td>
</tr>
<tr>
<td>KORUS FTA</td>
<td>U.S.–Korea Free Trade Agreement</td>
</tr>
<tr>
<td>MCC</td>
<td>Millennium Challenge Corporation (United States)</td>
</tr>
<tr>
<td>MDIC</td>
<td>Ministry of Development, Industry and Foreign Trade (Brazil)</td>
</tr>
<tr>
<td>MOI</td>
<td>Memorandum of Intent</td>
</tr>
<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
</tr>
<tr>
<td>OCS</td>
<td>Office of the Council of State (Thailand)</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>OMR</td>
<td>Regulatory Improvement Organization (El Salvador)</td>
</tr>
<tr>
<td>PSDRP</td>
<td>Private Sector Development Reform Program (Zambia)</td>
</tr>
<tr>
<td>RIA</td>
<td>Regulatory Impact Assessment</td>
</tr>
<tr>
<td>ROB</td>
<td>Regulatory Oversight Body</td>
</tr>
<tr>
<td>SEAE</td>
<td>Secretariat of Competition Advocacy and Competitiveness (Brazil)</td>
</tr>
<tr>
<td>SMEs</td>
<td>Small and Medium Enterprises</td>
</tr>
<tr>
<td>TBT</td>
<td>Technical Barriers to Trade Agreement</td>
</tr>
<tr>
<td>TIC</td>
<td>U.S.–Ecuador Trade and Investment Council</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
</tr>
<tr>
<td>USMCA</td>
<td>United States–Mexico–Canada Agreement</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
</tbody>
</table>
In developing countries, incoherent regulatory environments can undermine economic growth by impeding competition and innovation, discouraging business development, and precluding trade and investment opportunities. Small and medium enterprises (SMEs) require a regulatory environment that provides certainty and rule of law for investors while allowing entrepreneurs and established businesses to innovate, expand their domestic and international markets, improve productivity, and generate profits. However, in many economies, outdated and poorly designed administrative procedures remain, and they imply high costs of compliance for businesses, particularly SMEs. Lengthy and cumbersome procedures impede innovation, establish barriers to entry, and create unnecessary barriers to trade, investment, and economic efficiency. Most often, governments do not create these conditions intentionally, and they recognize the need for reforms but lack the resources and capacity to execute them.
Certain Good Regulatory Practices (GRPs) can help governments regulate more effectively at home and can help businesses trade more effectively abroad, encouraging innovation, small business development, inclusive economic growth, and higher living standards. These practices include consulting with the public about pending regulatory changes, using evidence-based analysis to inform policy choices and making the most of government-wide coordination to achieve coherent policy implementation. The predictable and transparent policy processes that GRPs promote help mutually reinforce public trust in government and the desire and confidence to invest in the economy.

For GRPs to achieve their full potential, they must be implemented government-wide through a “whole-of-government” approach. And, to be sustainable, policy and often legal reforms are required. For developing countries with less mature regulatory systems, the incorporation of GRPs into existing governance frameworks requires political will and support from the highest levels of government to facilitate the necessary changes in administrative culture and policy development processes. It also requires significant time, resources, and expertise that will likely be insufficient internally.

Capacity building efforts aimed at mainstreaming GRPs in developing countries must be guided by the long view that systemic reform takes time and requires allies inside and outside of government to be successful. Building the case for GRPs is the first—and easiest—step because the benefits are obvious and have been widely documented. The difficult work of mainstreaming GRPs involves sustained efforts to build the human capital, bureaucratic expertise, and decision-making infrastructure needed to implement the regulatory management tools that facilitate effective regulatory governance. Engaging the private sector is critical to the success of regulatory reform efforts, not only for its advocacy in the initial stages but also to achieve its buy-in as an essential participant in the process going forward.

This guide intends to help United States Agency for International Development (USAID) Missions, their implementing partners, and other partner country development practitioners to make the case for regulatory reforms to implement GRPs, understand some of the implementation challenges, and consider capacity building recommendations. Importantly, there is not a one-size-fits-all approach to GRP implementation. The unique sociopolitical, cultural, institutional, and legal frameworks of countries should influence the design of any GRP capacity building intervention. By providing insight into the key variables and challenges involved in GRP implementation, it is expected that practitioners will be better equipped to design and implement future capacity building efforts.
Explaining Good Regulatory Practices

What are they? Why are they important? How do they work?
WHAT ARE GRPs AND THE KEY PRINCIPLES THAT DEFINE THEM?

Good Regulatory Practices (GRPs) are core administrative procedures that help governments to achieve a more coherent regulatory system and to produce regulations that are more transparent, efficient, effective, and equitable. The most salient and impactful GRPs include internal coordination of rulemaking activity, public consultation in the policy development process, and Regulatory Impact Assessment (RIA). In the international community there is growing consensus regarding key policies and practices that form a common foundation for effective regulatory governance. These best practices help policymakers come to informed decisions about what, whom, and how to regulate. These practices are introduced briefly below and described in more operational detail later in this document.

Well-designed regulations are necessary to protect public welfare by correcting failures of the market to provide for public goods, like health and safety, environmental protection, and the rights of consumers. Modern economies and societies need effective regulations to support growth, investment, innovation, and market openness and to uphold the rule of law. However, poorly designed regulations can impose unnecessary costs or alter behavior in unintended ways, generating higher prices for consumers, misallocation of resources, lack of product innovation, and inadequate service quality. Opaque and inconsistent regulatory environments can undermine business competitiveness, especially for small and medium enterprises (SMEs), erode citizens’ trust in government, breed corruption in public governance, and elevate risks that drive trading partners elsewhere.

The challenge of any well-functioning regulatory system is to ensure that regulations are appropriate, necessary, and cost effective and that they serve the best interests of society. When regulated entities of all sizes can easily understand how regulators make policy choices and when they have opportunities to provide input into the policy process, the likelihood that costly regulatory decisions will be made arbitrarily—and will disproportionately impact certain groups—diminishes substantially. Regulatory systems that are developed with the right incentives, principles, procedures and institutions of government more effectively incentivize private investment and competition, mitigate rent-seeking behavior, and reduce market uncertainty. These dynamics send positive signals to the international community, inviting foreign investment and expanding trade opportunities.

Regulatory oversight bodies (ROBs) support government-wide policy coordination and serve as centralized clearinghouses or gatekeepers to control the quality of regulations government-wide. These oversight bodies are commonly provided with the authority to approve or reject regulatory proposals if regulatory agencies do not follow specified procedures of the rulemaking process. Two principal rulemaking procedures have the greatest impact on regulatory quality: Regulatory Impact Assessment and public consultation. As a result, ROBs typically focus much of their efforts on the implementation of these practices, providing guidance to regulators to help ensure quality and consistency, with the authority to scrutinize and reject regulatory proposals if standards are not met.

This guide is designed to assist United States Agency for International Development (USAID) Missions, implementing partners, and other partner country development practitioners in advocating meaningful regulatory reforms to implement core GRPs, understand some of the implementation challenges, and consider key capacity building recommendations. USAID can work with partner countries to help ensure that regulations protect the public without posing overly burdensome requirements. Fostering transparency and government-wide capacities for regulatory review and planning offers our partner countries a valuable “two for one.” It institutionalizes core coordinating capacities that support SME development, innovation, inclusive and equitable economic growth, and revenues while enhancing compliance with World Trade Organization (WTO) and U.S. trade agreements that prevent the creation of unnecessary obstacles to international trade and foreign investment.
WHICH INSTITUTIONS AND PRACTICES SUPPORT GRPs?

A “whole-of-government” approach to regulation with internal coordination and consistent procedures is essential to ensuring that regulations achieve their objectives efficiently and effectively. Consistent policies covering the roles and functions of regulatory agencies provide greater confidence that regulatory decisions are made on an objective, impartial, and consistent basis, without conflict of interest, bias, or improper influence. Institutionalizing regulatory policies, practices, and procedures helps to promote a coherent regulatory system that provides certainty for regulators, stakeholders, and consumers.

BOX 1

HOW GRPs BENEFIT REGULATORS

GRPs can help insulate regulators from policy controversy and can enhance public trust in three ways:

1) Following administrative laws that prescribe consistent and transparent procedures to develop and implement regulations reduces public uncertainty and the likelihood that regulations will be issued capriciously.

2) Public consultation allows the public to inform policy options with best available data and helps balance competing interests by providing equitable opportunities for stakeholder input.

3) Publishing RIAs concurrently with regulatory proposals promotes transparent, evidence-based decision-making and mitigates the risk of arbitrary policy decisions.

Regulatory Impact Assessment helps ensure that regulatory decisions are evidence-based, transparent, and cost-effective. Also commonly known as “regulatory cost-benefit analysis,” RIA is an analytical framework that allows decision-makers to evaluate the costs and benefits of various regulatory options and to provide an objective basis for the regulatory choice that maximizes social benefits. At its core, RIA is a decision-making tool that allows regulators to show their work regarding how policy decisions are made, which allows stakeholders to clearly understand the trade-offs considered in those decisions. Importantly, RIA disciplines regulators to identify the most efficient and effective policy options before making a regulatory decision. When RIAs are published concurrently with regulatory proposals, interested parties are able to scrutinize regulatory options and to provide feedback on cost-benefit estimates and on the full rationale for the proposed decision. This valuable stakeholder input helps regulators address data gaps, test assumptions, and avoid unintended consequences. By providing the opportunity for public comment on RIAs, regulators can course correct before finalizing new regulatory requirements.

Public consultation in the rulemaking process allows regulators to incorporate the expertise, perspectives, and ideas for policy alternatives of those directly affected by their decisions. After all, stakeholders are often more informed than governments about the potential impacts of regulatory proposals. By increasing the transparency of the regulatory policy process, public consultation can help foster public confidence in government while insulating regulators from arbitrary decision-making among controversial options. To be effective, the consultation should be as open as possible to all interested parties, be conducted as early in the policy development process as possible, and provide for multiple opportunities for input before a final decision is made. Although a wide range of policies can be used to facilitate public consultation, the most common and fundamental is the publication of regulatory proposals in official online public registries, with a public comment period of sufficient duration for all interested parties to provide meaningful input.
BOX 2
HOW GRPs BENEFIT SMEs

A genuine appreciation of the value of SMEs in generating jobs and economic growth is demonstrated when governments routinely assess whether proposed regulations impose significant economic effects on a substantial number of SMEs and governments subsequently take steps to minimize those adverse economic impacts.

Arbitrary regulations and procedures, especially at the border, can prevent small businesses from marketing new products, competing in the economy, and succeeding in global markets.

• Predictable and streamlined customs-related regulations and procedures help ensure that all individuals and businesses have more opportunities to benefit from recent advances in global trade, logistics, e-commerce, and the new digital economy.

• Well-functioning public consultation procedures allow for all interested persons, regardless of where they live or who they are, to have meaningful opportunities to receive timely notice of new regulatory proposals and to offer comments to improve these proposals.

This feedback fosters a dynamic SME ecosystem in which entrepreneurs and small businesses can create, innovate, and grow.1

Small and medium enterprises are often disproportionately impacted by regulations due to outsized costs of compliance and because of lack of resources and access for influencing decision-makers. Despite their importance for economic growth, SMEs face greater barriers to entry and are less able to absorb costly new regulatory requirements relative to larger firms. GRPs help level the playing field for SMEs by allowing all interested parties to have access to the same information and analyses that inform regulatory decisions and by providing nondiscriminatory opportunities for input during public comment processes. The use of information and communications technology (ICT) to publicly convey information about regulatory developments, compliance and enforcement guidance, disposition of permit applications, and stakeholder comments on regulatory proposals can further equitize participation in the regulatory policy process. Finally, the implementation of GRPs can also provide for special consideration of the impact of regulations on SMEs by specifically targeting administrative burden–reduction initiatives, consultation procedures, and compliance alternatives to these entities. Several targeted SME-specific regulatory policies are discussed later in this document, with country-specific examples.

Poorly constructed regulations are more easily leveraged by officials for corrupt purposes, such as rent seeking and/or regulatory capture, which inordinately impacts SMEs, raising costs, disrupting supply chains, and impeding trade and investment. Corruption robs developing countries of an estimated $1.26 trillion annually, while destabilizing democratic societies, undermining the rule of law, and diminishing the integrity of institutions.2 Institutionalizing GRPs, however, cultivates an administrative culture of transparency, peer review, coordination, evidence-based decision-making, and accountability. The GRP framework serves to check discretionary powers throughout the lifecycle of regulatory development, and thereby serves to prevent maladministration.

---

BOX 3
HOW GRPs SUPPORT ANTICORRUPTION INITIATIVES

GRPs mitigate corruption risks by helping to ensure the independence, autonomy, and accountability of regulatory agencies. Information asymmetries between regulators, industry, and the public create opaque conditions for public-private transactions that can breed corruption within regulatory decision-making. The following GRPs help mitigate corruption:

1) Regulatory oversight bodies establish the guidelines for how regulations are developed and the procedures by which the public may interact with regulators during the policy process. These rules can help insulate against regulatory capture from interest groups.

2) RIA strengthens the transparency of regulatory decisions and their rational justification. This enhances the credibility of regulatory decisions and increases public trust in regulatory institutions and policymakers.

3) Public consultation allows all interested parties to have equal opportunities for input into regulatory decision-making processes. Making the results of public consultation public and establishing rules for how interactions with regulators take place are best practices that strengthen public trust in the process.

International Organizations and GRPs

International organizations have developed a large body of knowledge regarding the strategies, institutions, tools, and practices of regulatory policy and governance. Institutions such as the Organisation for Economic Co-operation and Development (OECD), Asia-Pacific Economic Cooperation (APEC), and the World Bank provide guidance for implementing best practices in regulatory governance and have developed methodologies to measure the progress of regulatory performance. In doing so, they have helped build consensus in the international community around the business case for GRP and have provided a forum for collaboration and dialogue to address implementation challenges. For more information about the important work that international organizations are doing to promote GRPs, refer to Annex 2.
How to Structure a Regulatory Improvement Process

BEST PRACTICES IN INTERNAL COORDINATION, CONSULTATION, AND REVIEW

Centralized, government-wide coordination of the policies and procedures governing the rulemaking process is essential to achieving a coherent regulatory system. A whole-of-government approach to regulatory policy is needed to help ensure that the process by which regulations are made is consistent, transparent, and predictable. This is important for several reasons. First, without a predictable and transparent regulatory environment, businesses (small and large) face operational uncertainty, making long-term investment in the economy unattractive. Second, regulators need policy guidance and direction to regulate efficiently and effectively and to ensure appropriate “arms-length” interactions with the regulated community. Finally, the public places greater confidence in government when policymaking processes are coherent, transparent, and free from perceptions of impropriety. A whole-of-government approach to regulatory policy through centralized, internal coordination of rulemaking activity creates the structural conditions that make these goals possible.
Regulatory Oversight Bodies

Regulatory oversight bodies play a vital role in facilitating the internal coordination of rulemaking activity necessary to achieve a government-wide approach to regulatory policy. First, ROBs play a quality control or “gatekeeper” role to monitor adequate compliance with guidelines and processes governing how regulations are developed. This involves scrutinizing the application of regulatory management tools, such as RIA and public consultation, and assessing the legal quality of regulations. ROBs typically provide guidance and support to regulators to facilitate compliance with these management tools and may also have the authority to challenge and reject regulatory proposals if quality standards are not met. Secondly, regulatory oversight bodies perform an important coordinating role, serving as a liaison across regulatory agencies to facilitate interagency policy coordination, regulatory planning activities, and the appropriate application of management tools and directives. Finally, ROBs may support compliance with international trade and investment obligations, identify issues of small business concern, ascertain areas where regulations can be made more effective, and offer recommendations for the systemic improvement of regulatory governance through changes to policymaking frameworks or institutional relations.

Although ROBs are becoming increasingly common throughout the world, there is wide variability in their institutional design, the source of their mandates, and the scope of their oversight authorities. It is important to keep in mind that there is no blueprint for a particular institutional or legal setting to facilitate effective regulatory oversight for every country. These conditions are country specific and highly contextual—a function of history, administrative culture, and the maturity of the regulatory framework.

FIGURE 1. Display of geographical distribution of RIA adoption globally.
**Institutional Design**

ROBs function best when they are situated at the center of government with high-level political support. Locating the ROB in a politically accountable part of the center of government can help ensure that it is held accountable to the electorate and public interest. This can also help allay potential concerns about undue influence of regulated industries or other interest groups because the ROB is independent from any specific sector of the economy and not seen “as the fox watching the hen house.” In many cases, ROBs are housed within economic or finance ministries where professional staff may be better trained and equipped to scrutinize regulatory quality and to coordinate government-wide efforts than are smaller offices at the center of government. It should be noted that in some countries other mechanisms such as inter-agency committees may carry out the coordination function.

**Source of Mandate Authority**

Typically, the authority of ROBs is established through an Act of Parliament or the legislature or through Executive Order or Presidential Decree. Importantly, ROBs established through Acts of Parliament or legislatures carry the force and effect of law, and the process to revert them is difficult. ROBs established through Executive Order or Decree are less durable because they can be more easily disavowed by subsequent political administrations. The takeaway is that the more permanent the mandate the better, because more limited mandates could make ROBs more vulnerable to political cycles.

**Scope of Oversight**

The scope of an ROB’s oversight authority can vary depending on the budgetary resources, human capital of professional staff, and the political economy of the country. Ideally, ROBs should have sufficient resources and capabilities to scrutinize both the stock of existing regulations and the flow of new regulations. In practice, ROBs mainly focus their oversight on the development of new regulations to discipline the flow of additional regulation in the economy. However, regulations can also become outdated or ineffective over time and should be continuously evaluated to ensure that they are achieving their policy objectives.

Periodic retrospective reviews of existing regulations can help identify opportunities to modify, streamline, or even eliminate unnecessary or outdated regulation. It should be noted that public consultation and RIAs can and should be used to scrutinize both new and existing regulations. However, in practice, many developing countries facing resource constraints often focus primarily on applying GRPs to the management of new regulations, and they often lack the capacity to conduct ex-post reviews of existing regulations.

Publicly available guidelines that specify the ROB’s scope of oversight authorities, functions, and rules of engagement with regulators provide transparency to the public, regulators, and the regulated community about what is expected of them. These rules of procedure may also specify decision-making criteria involved in the scrutiny of regulatory proposals, as well as the procedures and time frames involved in the regulatory review process. One feature of ROBs that makes them highly effective as gatekeepers of regulatory quality is the “challenge function.” The ability of ROBs to challenge and reject the regulatory proposals of regulators if quality standards are not met is a powerful tool that helps curtail overly burdensome and unjustified regulation. However, ROBs with this authority are exceedingly rare, with only a handful of advanced economies that have ROBs at the center of government benefiting from this capacity.
Resources of ROBs

ROBs should be staffed by trained professionals capable of evaluating regulatory proposals and options, as well as their impacts on business and society. Technical knowledge can help identify the significant impacts, trade-offs, and alternatives of regulatory choices—informing politicians and policymakers, as well as the public, of both the promise and pitfalls of regulation. ROBs are typically staffed by lawyers and economists, but more specialized expertise in other fields, like public health, toxicology, statistics, and engineering, can also be helpful in regulatory review. Training is also vital to develop the specialized expertise needed to scrutinize RIA and other regulatory management tools. However, underbudgeted ROBs often struggle to meet these needs. Addressing ROB capacity building priorities through targeting assistance from the international community has yielded meaningful results in several specific examples that are discussed later in this document.

BOX 4

REGULATORY OVERSIGHT BODY CASE STUDIES

As part of the regulatory improvement process, El Salvador and Zambia, with the support of the Millennium Challenge Corporation (MCC), established regulatory oversight bodies that provide examples of the scope of authority, the regulatory reform approaches, enabling regulations, and the capacity building functions.

• The Regulatory Improvement Organization (OMR by its Spanish acronym) was established in El Salvador to oversee a regulatory reform process in two phases. In Phase I, OMR pursued reforms in critical and particularly time-sensitive areas, identified during a consultative process with the private sector. During Phase II, OMR worked with ministries in the Executive Branch to take inventory of all administrative procedures and to prioritize reforms.

• Zambia enacted the Business Regulatory Act, which initiated its most important phase of regulatory improvement reforms. The law established the Business Regulatory Review Agency (BRRA) within the Cabinet Office to oversee the reforms and to build capacity among regulators.

Brazil has traditionally implemented the oversight of regulatory reforms for trade and investment through the Ministry of Economy, in coordination with Casa Civil within the Office of the Presidency.

• In Brazil, the Ministry of Economy’s Secretariat for Competition Advocacy and Competitiveness (SEAE) has primary responsibility for assessing the quality of RIAs and for overseeing capacity building efforts.

For more information, refer to Annex 1.

BEST PRACTICES IN PUBLIC CONSULTATION

Public consultation in the regulatory policy process has profound benefits for improving the quality of regulation. When stakeholders have meaningful opportunities for input in regulatory policy proposals, they can provide valuable information to policymakers regarding the potential impacts of regulatory options, alternative policy approaches, and important trade-offs. This helps policymakers to avoid potential unintended consequences of misinformed regulations and to make better-informed decisions about balancing the costs and benefits of policy options. Public consultation also adds transparency and legitimacy to the regulatory policy process that helps affirm public trust in government.

The design of public consultation processes matter for their effectiveness. As with other regulatory management tools, governments should take a whole-of-government approach to public consultation, where the policies and procedures governing the process are uniformly applied government-wide. This is important not only for improved
policy coherence but also because predictable, easy-to-understand consultation processes have higher participation rates and because public consultation works best when diverse views are heard.

• First, consultation should take place as early as possible in the policy development process. This allows policymakers to more effectively scope regulatory options.

• Second, to the extent feasible, consultation should take place multiple times throughout the policymaking cycle to help ensure that interested parties can provide input on impactful incremental changes before a final outcome.

• Third, the duration of the consultation period should be of a sufficiently meaningful duration for interested parties to understand the regulation and its impacts and to provide substantive, actionable input. To provide an even playing field and to avoid public perceptions of rent-seeking behavior, the consultation should be as open as possible to all interested parties.

• Finally, the results of the consultation, including the regulators’ responses to stakeholder input and the rationale for their consideration, should be made public (preferably online). Completing the cycle in this manner enhances legitimacy and public trust in the entire process and helps policymakers make better-informed decisions by fully thinking them through.

Without a legal basis or strong policy commitment at the highest levels of government, public consultation can be difficult to consistently implement. This level of commitment helps maintain the integrity of the process and makes it a durable fixture of regulatory policy.

Online Registries of Regulations and Supporting Documents

Governments should establish an online public registry of all existing and pending regulations. A public registry is an important prerequisite to establishing a public consultation policy, because stakeholders must first be able to understand how to access the policies of interest to them and to fully grasp their requirements to meaningfully participate in the public consultation process. The same online registry should also contain a repository of the public comments submitted on regulations during the consultation process, as well as the regulators’ responses to those comments and the rationale for how they were considered. The registries should also concurrently publish online all supporting documents that accompany regulatory proposals, such as RIAs and other relevant analytical information. Public comments on RIAs provide some of the most valuable information to policymakers because of the difficulties associated with estimating regulatory costs and benefits and because of the paucity of data to inform these estimates. By providing public notice of pending regulations and by offering the opportunity for comment on the proposal and its supporting analyses, all stakeholders have the same access to participate in the regulatory policy process.

Establishing online registries of regulatory information can involve significant investments in information technology infrastructure and staff training to implement properly. It is not uncommon for financial and other resources to be a significant impediment for developing countries. Assistance programs from the international community focused on trade and investment promotion have increasingly focused on providing resources and training to build the necessary infrastructure for online registries.
Early Regulatory Planning

Providing the public with advanced notice of planned regulatory actions is an important aspect of public consultation that allows stakeholders to anticipate and prepare for opportunities to provide input on upcoming draft regulations. Often referred to as Regulatory Agendas, regulators typically publish an annual list of regulations that they reasonably expect to propose or adopt within the following 12 months. As a best practice, each regulation identified in the list should be accompanied by: a) a concise description of the planned regulation; b) a point of contact for a knowledgeable individual in the regulatory authority responsible for the regulation; and c) an indication, if known, of sectors to be affected. Entries in the list should also include, to the extent available, timetables for subsequent actions, including advance notice of opportunities for public comment.

Supplementary Consultation Procedures

A variety of additional tools can be used to supplement the standard public notice and comment consultation process. For example, particularly complex or controversial regulations may benefit from public awareness campaigns to inform and prepare stakeholders for impactful proposed policy changes. Public hearings can also be used to exchange information between regulators and the regulated community about policy options and their trade-offs and to elevate specific issues about the regulation for public debate.

Standing expert advisory bodies, within or independent of the administration, can also be established to provide technical or scientific advice to inform broad areas of regulation, often in particular economic sectors. This type of body has the advantage of contributing regulatory policy expertise with an independent perspective and can help as a policy driver supporting regulatory reforms through advocacy and public hearings. For transparency purposes, it is important that regulatory authorities provide public notice of the names of the advisory

---

**FIGURE 2.** Graphical display showing the distribution of ROB functions among countries that have them.

group’s members and their affiliations, the mandate or functions of the advisory group, information about forthcoming meetings, and summaries of meeting outcomes.

**Consultation can also take place more informally through symposiums and workshops** to learn about specific industries or the perspectives of interest groups. This can be particularly useful when governments undertake regulation in new sectors or to facilitate the policy advocacy of civil society groups.

**Public Comment Period Duration**

Public consultation periods for regulatory proposals should be of sufficient duration for interested parties to submit considered and meaningful comments. Stakeholders need time to fully understand what is being required of them and to understand the trade-offs of the policy options being considered so they can provide fully informed input. It is typical for consultation processes to have standardized time durations for public comment periods. For example, in the United States, the standard regulatory public comment period is 60 days. However, more complex regulations may merit longer public comment periods, and less complex regulations may warrant shorter ones. ROBs should establish clear criteria for exceptions to the standardized comment period, as well as for granting extensions to comment periods if circumstances warrant them.

**Soliciting Useful Information**

Public comments are most useful to regulators when the comments provide actionable recommendations based on objective data and analysis. Stakeholders most impacted by regulations are often in the best position to provide useful information to regulators about the trade-offs of policy options and their costs and benefits. Regulatory proposals and their supporting documents should therefore be accompanied by specific calls to action, asking for information and suggestions about particular aspects of the regulation that the regulators are lacking data on. Regulators can even design targeted questions and embed them in the text of the proposed regulation to elicit specific responses and information. Publication of RIA documents concurrently with a regulatory proposal is one of the most helpful tools that regulators have at their disposal to help inform their deliberations about the trade-offs of policy options and their costs and benefits. This is extremely useful to help inform evidence-based regulations that maximize social benefits while minimizing costs and burden to industry.

**Steps in the Consultation Process**

The first step in the public consultation process is to establish a consultation strategy for the regulation in question. An integral part of this step is to set the consultation objectives for the regulation, clarifying which types of information should be solicited, identifying where data gaps may exist, and preparing specific calls to action for stakeholders to provide information in those areas. This step is less about setting goals for receiving a certain number of comments and more about devising a plan for how to reach stakeholders who can provide the most useful information and giving them a roadmap to provide it. Stakeholder mapping for each regulation can help achieve this, particularly when a diversity of views can be helpful to achieve equitable regulatory outcomes.

After setting objectives and mapping stakeholders, the next step is to determine the methods and tools to use to conduct the consultation. This can involve decisions about the length of comment periods, calls to action to comment on specific topics, and decisions on whether to supplement notice and comment procedures with additional consultation tools, like advisory groups or public meetings. It is vitally important for governments to establish consultation websites housing online repositories of pending regulations, supporting documents, and public comments—prior to launching consultation activities. Although it is possible to conduct consultation activities without them, it is inherently much less transparent and more difficult to manage.
After establishing the consultation strategy, the consultation work begins, announcing the opportunity to provide input and communicating to stakeholders the parameters of the consultation timeline and process. After receiving public comments through the tools and methods established in the consultation strategy phase, it is then time to analyze the input received and to make decisions about whether and how to make changes to the regulatory proposal based on that input.

The final step in the consultation process is to communicate the results of the consultation back to the public. This communication should also respond to individual comments regarding whether they were considered or not and why. This helps add legitimacy and builds public trust and confidence in the process to encourage future participation.

**FIGURE 3. Steps in the consultation process**

![Steps in the consultation process](https://ec.europa.eu/info/files/chapter-7-stakeholder-consultation_en.png)

**PHASE 1**
- Establish the Consultation Strategy
  - Set consultation objectives
  - Map stakeholders
  - Determine consultation methods and tools, and ensure accessibility
  - Create consultation webpage

**PHASE 2**
- Conduct Consultation Work
  - Announce and communicate
  - Run consultation
  - Inform on contributions
  - Analyze content

**PHASE 3**
- Inform Policymaking
  - Synopsis of consultation results and feedback

**BEST PRACTICES IN REGULATORY IMPACT ASSESSMENT**

Regulatory Impact Assessments strengthen the transparency of regulatory decisions and their rational justification, enhancing the credibility of regulations and increasing public trust in regulatory institutions and policymakers. Introducing RIA into existing government frameworks is challenging because it involves both administrative cultural change for how governments regulate and significant technical expertise and bureaucratic buy-in to implement effectively.

A consistent and well-thought-out roadmap for RIA implementation can help to resolve those challenges. Institutions matter. Before embarking on designing and implementing a RIA process, policymakers involved with regulatory management need to consider whether some basic preconditions are in place and to what extent existing institutions can provide a good framework for implementation. These preconditions include strong political commitment, the integration of RIA at the beginning of decision-making processes and with other regulatory management tools, and a commitment to capacity building and continuous improvement. With these conditions in place, governments can focus on the mechanics and methodologies of RIA, tailoring them to their unique conditions, and work toward a whole-of-government approach to implementation.

---

3 Source: https://ec.europa.eu/info/files/chapter-7-stakeholder-consultation_en (p. 438)
Institutional Frameworks for Effective RIA Implementation

Having the right setup or system design is crucial for the effectiveness of RIA. Like all regulatory reform strategies, high-level political support is essential for successful RIA implementation. This can occur either through an explicit policy statement via Executive Order or Presidential Decree, or it can be achieved through legal mandates requiring RIA, both of which are common to countries that introduce RIA. While achieving internal buy-in from government stakeholders is essential, it is also important to facilitate external buy-in from the public, via awareness campaigns and through the integration of RIA with public consultation processes.

Building dedicated teams responsible for RIA within regulatory agencies is another essential element of effective RIA implementation. Because RIAs are developed concurrently with regulatory proposals, the drafters of regulations need to be synced up with the drafters of RIA documents. Having a dedicated RIA unit within regulatory agencies can facilitate this coordination. RIA teams should be staffed by multidisciplinary personnel with legal, economic, and policy expertise to effectively evaluate the trade-offs of regulatory options. The goal is to integrate RIA within the policymaking process. Without dedicated personnel to facilitate this integration, it will not happen.

RIA needs to be integrated with other regulatory management tools, including public consultation and the management of regulatory oversight bodies. In overseeing RIA quality control, ROBs typically review and provide support for improving individual RIA reports, develop methodological guidance, and provide training for RIA teams within regulatory agencies. They also help ensure that RIA is integrated within the overall regulatory policy process, including public consultation procedures. To be effective, the oversight body must be able to question the quality of RIA and regulatory proposals. This is sometimes referred to as a “challenge function.” An oversight body needs the technical capacity to effectively scrutinize RIA and must have the political power to ensure that its view prevails when quality standards are not met.

FIGURE 4. Graphical display of regulatory public consultation implementation broken down by global regions.

Proportions of Economies

<table>
<thead>
<tr>
<th>Region</th>
<th>Proportion</th>
</tr>
</thead>
<tbody>
<tr>
<td>High income: OECD</td>
<td>1.00</td>
</tr>
<tr>
<td>Europe &amp; Central Asia</td>
<td>0.77</td>
</tr>
<tr>
<td>East Asia &amp; Pacific</td>
<td>0.68</td>
</tr>
<tr>
<td>South Asia</td>
<td>0.57</td>
</tr>
<tr>
<td>Sub-Saharan Africa</td>
<td>0.37</td>
</tr>
<tr>
<td>Latin America &amp; Caribbean</td>
<td>0.37</td>
</tr>
<tr>
<td>Middle East &amp; North Africa</td>
<td>0.21</td>
</tr>
</tbody>
</table>
Core Elements of the RIA Process

The first—and perhaps most important—step of conducting RIA for proposed regulatory changes is to clearly define the problem that the regulation intends to address, along with the policy objectives of the regulatory proposal. If regulators cannot define these elements precisely, they should not proceed to regulate. The second step is to provide a clear description of the regulatory proposal, which should detail the existing regulatory framework and how and why the new regulatory proposal will modify those requirements. This step should also identify the regulatory agency or agencies responsible for implementing and enforcing the proposal. It should outline the enforcement regime and proposed strategy for ensuring compliance. Third, policy options or alternatives should be identified as possible solutions to address the problem identified in the first step. That is, regulators should carefully consider whether alternatives to regulation would solve the problem more efficiently or whether no intervention would do less harm than regulation. For example, publishing studies that educate the public, reliance on market-based incentives, and adoption of voluntary standards can often achieve policy objectives and more effectively alter public behavior than direct controls.

Only after systematically analyzing the costs and benefits of each policy option can the preferred solution be identified. Once the preferred solution is identified, the RIA should outline how and in what ways the regulatory proposal is superior to the alternatives that were considered. In addition, the RIA document should describe the monitoring and evaluation framework to measure how the regulation achieves its original objectives, including necessary data requirements to demonstrate effectiveness. After the RIA document has been completed, it should undergo public consultation concurrently with the regulatory proposal so stakeholders may have sufficient information to provide input concerning the costs and benefits of the proposed policy changes and to help identify and address data gaps in the analysis.

FIGURE 5. Elements Integrating RIA


Key Implementation Considerations

There is no single correct model for the implementation of RIA systems. The best practice for elaborating RIA documents recognizes a number of key elements. How RIA is conducted in practice involves implementation considerations that can depend on the conditions of individual countries.

This first consideration involves determining criteria for which regulations should be subjected to RIA. Particularly for nascent RIA programs in countries with less mature regulatory systems, it is often not possible to conduct RIA for every regulation. Screening criteria can be defined in policy guidelines governing RIA implementation that can help triage which regulations are prioritized for RIA. Some examples of screening criteria could include economic impact thresholds, whether the regulation in question involves interagency conflicts between multiple regulators, budgetary impacts, and disproportionate compliance impacts. Whichever screening criteria are employed should be established through policy statements and should be made publicly available for transparency purposes.

The complexity of RIA should be proportional to the complexity and impact of the problem being addressed through regulation. It makes little sense to apply complicated methodologies and analyses to simple, low-impact regulations or to apply overly simplified analyses to complex, high-impact regulations. RIA should be fit for purpose. As RIA practitioners gain experience, they become more adept at fitting appropriate RIA methodologies to the analysis of regulations.

The importance of data collection is often overlooked in the context of RIA implementation. The usefulness of RIA as a decision-making tool depends in part on the availability of quality data to inform it. This is often an issue in developing countries that lack robust data management and statistical programs within government, making it difficult to generate credible estimates of economy-wide regulatory costs and benefits. As with RIA, progress does not come overnight. It takes time to develop robust data collection and management systems, but governments seeking to introduce RIA should also prioritize building capacity in these areas. In the meantime, nascent RIA programs can utilize the public consultation process to generate data from stakeholders about the likely impacts of regulation.

RIA should be utilized by regulators to systematically evaluate the economic impacts of policy proposals on SMEs. Regulations disproportionately impact SMEs, and there is often minimal official economic data about SMEs in developing countries. As a result, regulators often unintentionally fail to consider more flexible or less burdensome compliance options for SMEs when developing regulatory proposals. Conducting this specific analysis for regulatory proposals can help regulators gain valuable information to inform potential alternative compliance options. For example, as part of the RIA process in the United States, the Regulatory Flexibility Act requires federal agencies to “evaluate the economic impacts of regulatory proposals anticipated to have a significant impact on a substantial number of small entities.” Importantly, section 603(c) requires that each regulatory flexibility analysis contain a description of any significant alternatives to the proposal that accomplish the statutory objectives and minimize the significant economic impact of the proposal on small entities. Policy or legal mandates to conduct RIA should include explicit provisions requiring analysis of regulatory impacts to SMEs and should be accompanied by guidance for how to target SMEs for consultation on these impacts.

Importance of RIA Implementation Guidance for Regulators

One of the biggest challenges facing most nascent RIA programs is insufficient institutional support and a lack of staff with appropriate skills to conduct RIA. Despite its importance for improving regulations, RIA can be challenging to implement successfully because it requires significant resources, time, technical expertise, and political

---

commitment. Providing adequate guidance to regulators for how to conduct RIA is extremely vital to the success of government-wide RIA implementation. Particularly in the early stages of RIA implementation, regulatory agencies will likely not be staffed adequately with personnel familiar with the process. Robust guidance for how to conduct RIAs and when to apply them is therefore essential not only for RIA implementation in the short term but also to build expertise and familiarity for the long term. RIA guidance is typically developed by ROBs and should be prioritized within initial RIA implementation planning efforts.

**Continuous Evaluation and Improvement of RIA**

Governments need to decide whether to implement RIA all at once or gradually. Given limited resources and experience with RIA, developing countries may find it necessary to implement RIA gradually. Regardless of pace, governments need to plan systematically for how to introduce RIA and to track progress with measurable goals. There are several potential ways to gradually introduce RIA, depending on local conditions. One common approach is to first develop a pilot phase in which RIA is conducted for one or more demonstration cases and then used as an example to expand to additional regulations. Similarly, it might make sense to start by implementing RIA within one or more regulatory agencies that have greater expertise and resources before expanding to others. Incremental approaches to introducing RIA methodologies can also help build capacity over time by starting with simplified, qualitative approaches before advancing to full quantitative analyses. Even starting by introducing the preliminary steps of RIA, such as problem definition and options identification, can begin to train practitioners about how to think about RIA implementation, and this can serve as a helpful impetus for cultural change among regulatory agencies.
Mainstreaming GRP Integration in Developing Countries

International evidence and expertise are vital to support domestic policymakers in developing effective, evidence-based policies in a highly interconnected world. Information exchanges to share best practices and capacity building expertise can assist countries seeking to improve the quality of their regulatory environments. Capacity building exchanges to promote GRPs can help build trust among trading partners because the subject matter is generally not controversial, and the outcomes are mutually beneficial. With increased trust among parties, cooperation can lead to steps to increase the compatibility of policies in specific sectors of mutual interest.

Increasingly, capacity building efforts to promote the use of GRPs have occurred bilaterally or via multilateral forums, such as the OECD, APEC, and the World Bank. They often begin with information exchanges to socialize the economic and societal benefits of GRPs and then build political momentum for reforms to implement them. Sharing expertise about best practices in the implementation of regulatory management tools, like the establishment of ROBs and the use of RIA and public consultation, are also common. Typically, these exchanges are ad-hoc and light touch in nature, which helps keep them from the realm of controversy. While information exchanges are extremely helpful in laying the groundwork for future GRP adoption, there is typically less focus on in-depth training for personnel within regulatory agencies and among line ministries that will eventually carry out GRP implementation. For real progress on the ground, capacity building efforts need to focus on training GRP practitioners who will carry out the daily work of GRP implementation.

GRP CAPACITY BUILDING RECOMMENDATIONS

Mainstreaming GRPs into the regulatory process of developing countries is often an iterative process. Given that this process can involve significant reforms to domestic regulatory policy, the first step is to build political will and buy-in at the highest levels of government. Often, this takes place organically among countries seeking greater integration in the global economy, but it can also be aided through the advocacy or observation of neighboring countries, trading partners, or international organizations. Without political will and support at the highest levels of the host government, it is next to impossible to introduce GRPs to a new economy, let alone to mainstream them.

With political will, the focus can turn to evaluating the extent to which a country’s current regulatory governance infrastructure supports or impedes GRP integration. Assessing this landscape involves examining the regulatory policy processes, legal frameworks, management tools, and bureaucratic expertise involved in the existing regulatory policy architecture. If existing laws and policies governing the regulatory process prohibit or impede the uptake of core GRP management tools, legal and policy reforms may be necessary.
Interventions designed to facilitate the mainstreaming of GRPs will have the most success in countries that have already done work to implement structural reforms addressing the causes of economic weakness. It is especially helpful to target GRP capacity building efforts soon after policy or legal reforms are made, when the need for implementation guidance is greatest. In these cases, capacity building efforts can focus on the practical and technical details of how to conduct regulatory oversight, RIA, or public consultation.

It is helpful to work with the leadership of ROBs if they have been established to target interventions according to felt needs. If ROBs have not yet been established, there are typically regulatory agencies or ministries that are more advanced than others in their familiarity with GRPs, and they can champion reform efforts and serve as effective interlocutors with other regulatory agencies. In developing countries, typically economic or finance ministries have the elevated influence in government administrations to lead the reform effort. It is also vitally important to involve the private sector in GRP capacity building efforts to facilitate buy-in for reforms and to prepare the private sector for active participation in the regulatory policy process after regulatory management tools are in place.

---

**BOX 6**

**STREAMLINING AND DIGITALIZATION OF ADMINISTRATIVE PROCEDURES**

Burdensome paperwork requirements associated with business formation, permitting, customs and duty procedures, and regulatory compliance can be costly barriers to entry for SMEs, particularly in developing countries. Administrative simplification reforms to streamline paperwork requirements and move them online is often embraced as low-hanging fruit for creating a more business-friendly regulatory environment in developing countries.

Examples of common reforms include acceptance of digital signatures for online forms, incorporating digital payments for duty fees, single-window and one-stop-shop permitting and licensing procedures, and trusted trader programs that streamline customs procedures for frequent users.

El Salvador and Zambia began their regulatory reform efforts with a focus on administrative simplification efforts to build momentum for more systemic institutional reforms to their regulatory processes. (For more information, refer to Annex I.)

---


In countries that have not yet made the necessary policy and legal reforms to facilitate whole-of-government use of GRPs, it may be helpful to initiate capacity building efforts with pilot projects. For example, poor business enabling environments, characterized by overly burdensome business licensing procedures, are a common affliction for developing countries. A popular starting point to build momentum for broader regulatory reform is to focus on administrative simplification of business licensing procedures. By targeting this low-hanging fruit, it is possible to address immediate pain points in the economy while demonstrating the benefits of better regulation. Commonly, this approach helps lay the groundwork for more systemic reforms, but it is important to emphasize that administrative simplification represents a starting point and not an end point. Another way to pilot efforts toward broader reforms is to apply regulatory management tools, like RIA or public consultation, to one or more regulations as test cases to help staff gain familiarity with concepts and to gain operational experience. Such pilot testing can also apply to specific sectors of the economy or specific regulatory agencies that may be more ready to participate than others. By piloting RIA concepts and demonstrating small successes at the earliest stages of the GRP implementation process, pilot programs can help build momentum for the reforms needed for more systemic reforms and eventual whole-of-government GRP integration.

**GRP capacity building efforts often start and end at the information exchange stage.** While it is helpful to conduct workshops and conferences that gather international experts to discuss the merits of GRP, this type of intervention needs to lead to more self-sustaining efforts. After countries reach the GRP implementation stage, their most important need is often staff training on the mechanics of regulatory management tools. RIA, for example, requires a significant amount of expertise and technical know-how to implement effectively, and it is exceedingly rare that these capabilities are present when RIA is first introduced. Building these skills takes time and requires intensive training for the uninitiated. Training should focus on achieving a critical mass of host country expertise so that those who have the experience can then train others internally, making the intervention self-sustaining.
Conclusion

This guide was designed to highlight the critical role that GRPs can play in supporting inclusive economic growth. Particularly for developing countries, the implementation of GRPs provides increased opportunities for trade and investment by demonstrating governments’ commitment to the rule of law, competitive markets, and public accountability. GRPs also help foster innovation and entrepreneurship, particularly for SMEs. Small businesses require a regulatory environment that provides certainty for investors while allowing entrepreneurs and established businesses to innovate, expand their domestic and international markets, improve productivity, and generate profits. GRPs foster these conditions through predictable, transparent rules of the road that level the playing field for all participants in the economy to understand and participate in the regulatory policy process. Importantly, there is not a one-size-fits-all approach to GRP implementation. The unique sociopolitical, cultural, institutional, and legal frameworks of countries should influence the design of any GRP capacity building intervention. Hopefully, with the support of this guide, practitioners are better able to make the case for GRP reforms, prepare for implementation challenges, and consider capacity building recommendations.
Annex 1

Capacity Building Examples: El Salvador, Brazil, Zambia, and Thailand

The experiences of El Salvador, Brazil, Zambia, and Thailand highlight GRP capacity building approaches that can help inform future efforts. El Salvador, Zambia, and Thailand followed very similar pathways and timelines in their approaches to advance whole-of-government adoption of GRPs. As a first step, each country engaged the private sector to identify opportunities to reduce barriers associated with business licensing procedures. They used the momentum from these efforts to pursue foundational legal, policy, and administrative reforms to create the necessary infrastructure to promote government-wide GRP adoption. Each country has received significant assistance from the United States and from international organizations to advance their efforts and has made significant progress toward achieving whole-of-government GRP implementation.

The case of Brazil presents an innovative model of multistakeholder regulatory cooperation that led to a durable bilateral regulatory cooperation agreement between the United States and Brazil. In all four efforts, the countries’ regulatory reform efforts were linked to trade and investment promotion and relied heavily on the consultation of the private sector. These factors have helped put these countries on a sustainable path toward continuous regulatory improvement.
EL SALVADOR

One of three large-scale projects in the Millennium Challenge Corporation (MCC)—El Salvador investment compact, the El Salvador Investment Climate Project was designed to boost the productivity of the tradable sector through increased private investment. The project included the Regulatory Improvement Activity, which designated $6 million in funding toward cutting bureaucratic red tape and improving the quality of regulations that affect investment and business in El Salvador.

As part of the project, the Regulatory Improvement Organization (OMR) was established to oversee a regulatory reform process aimed at implementing government wide Good Regulatory Practices (GRPs). OMR’s work is marked by two distinct approaches to regulatory reform. During Phase I, which extended from 2015 to late 2017, OMR pursued reforms in the areas of customs, business registration, and construction permits. Prominent private sector interests had identified reforms in these areas as critical and particularly time-sensitive. During Phase II, which lasted from late 2017 to mid-2019, OMR worked with ministries in the Executive Branch to take inventory of all administrative procedures and to prioritize reforms from the bottom up, based purely on procedures’ administrative burden. These efforts helped build the momentum and political capital to enact a series of wide-ranging reforms to the regulatory system of El Salvador.

In December 2017, El Salvador’s Legislative Assembly enacted the Administrative Procedures Law, which went into effect in February 2019. The Assembly enacted additional foundation reforms to the legal system in December 2018—the Regulatory Improvement Law and the Law on Elimination of Bureaucratic Barriers—which took effect in April 2019. These three laws provide the structure and tools necessary for the implementation of the OMR. Taken together, these laws set up a series of positive and negative incentives in favor of regulatory improvement—not only outlining resources available to ministries that would like to pursue reform but also outlining consequences if ministries fail to efficiently conduct their administrative processes.

Notably, the Regulatory Improvement Law requires regulatory agencies to conduct Regulatory Impact Assessment (RIA) and public consultation for all new regulation and requires them to submit regulatory improvement plans detailing how they plan to reduce unnecessary regulatory burdens and to implement regulatory management tools. Since the enactment of these foundational laws, OMR has built an online repository to house all national regulations and regulatory public consultations. It has also initiated capacity building work to train officials to conduct regulatory improvement plans and to use the online repository. To date, El Salvador has not yet undertaken capacity building work, and RIA public consultation processes have not been uniformly implemented government-wide. Nonetheless, the foundational legal reforms enacted by El Salvador have laid the groundwork for an ambitious regulatory improvement agenda in the years to come.

---

9  Ibid.
10  https://omr.gob.sv/gerencia-del-registro-nacional-de-tramites/.
BRAZIL

Building on the auspices of the bilateral government-to-government engagement mechanism of the U.S.–Brazil Commercial Dialogue, trade and regulatory experts across the U.S. government collaborated with the Government of Brazil to develop a series of multistakeholder “Regulatory Coherence Dialogues,” held from August 2014 to November 2015 in São Paulo and Brasília. Private sector engagement from the Brazil–U.S. Business Council (BUSBC), the American Chamber of Commerce of Brazil, and Brazil’s National Confederation of Industry (CNI) was a key feature of the dialogues.

As part of the dialogues, the U.S. Department of Commerce International Trade Administration (ITA) engaged the CNI and BUSBC, in addition to government colleagues at Brazil’s Ministry of Development, Industry and Foreign Trade (MDIC) and Chamber of Foreign Trade (CAMEX) to organize Regulatory Coherence Roundtables to discuss potential areas of regulatory cooperation. The dialogues culminated in the signing of the Memorandum of Intent (MOI) concerning Joint Cooperation on Regulatory Coherence and Meaningful Engagement with the Private Sector.¹¹

The MOI established an avenue for continued engagement on Good Regulatory Practices and provided a clear description of the key principles and practices of regulatory coherence, essentially serving as an early roadmap for regulatory reform. In 2018, the United States and Brazil continued their regulatory cooperation efforts through the US/Brazil Memorandum of Understanding (MOU) Regarding Joint Cooperation on Good Regulatory Practices.¹² This MOU added Brazil’s Casa Civil and the U.S. Office of Information and Regulatory Affairs, within each country’s Presidential Offices, as signatories. Elevating cooperation to this level adds political influence, signals to the private sector that it is a bilateral priority, and adds cohesion and durability to continued cooperation.

Private sector engagement, interagency coordination, and high-level political support on both the U.S. and Brazilian side were crucial to the success of the Commercial Dialogue process and can be observed as a model to be potentially replicated elsewhere in other bilateral engagements to promote regulatory reform. Identifying specific target sectors as pilots for broader reforms focused on GRPs will continue as a focus of cooperation under the MOU and the new U.S.-Brazil Trade Rules and Transparency Protocol’s GRP Annex.

Beginning in the late 1990s, Zambia initiated a program of economic reforms focused on improving government institutions and promoting growth through an improved investment climate. Recognizing the links between a strong investment climate and increased growth, Zambia launched the Private Sector Development Reform Program (PSDRP) in 2004. Assisted by an MCC Threshold Compact, the reform program focused on administrative simplification of business licensing procedures, a common theme for initial regulator reform efforts. Notably, the development of the PSDRP took place in close consultation with stakeholder groups both among government ministries and the private sector, which helped to identify the key reform priorities among diverse perspectives.

In May 2014, Zambia enacted the Business Regulatory Act, which initiated the country’s most important phase of regulatory improvement reforms. The law established the Business Regulatory Review Agency (BRRA) within the Cabinet Office to oversee the reforms and to build capacity among regulators. The law mandates several critical reforms aimed at improving the quality of regulatory system:

1) Requiring public notice at least two months prior to issuing new regulations
2) Holding public consultations on proposed regulations for at least 30 days prior to issuance
3) Requiring RIA for all new proposed regulations
4) Granting authority of the BRRA to approve new regulations only if the first three requirements are met
5) Establishment of an online electronic registry of business regulations and application procedures to maintain transparency of current laws and procedures

Since passage of the Business Regulatory Act, capacity building efforts have focused on establishing the administrative infrastructure and human resource capacities to manage RIA and public consultation. RIA capacity building efforts have been assisted through the USAID Standards Alliance program, a public-private partnership with the American National Standards Institute (ANSI) that assists developing countries in effectively implementing their commitments under the World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement. The program has carried out numerous workshops on trainings on RIA in Zambia, beginning with basic information exchanges among U.S. private sector experts, the BRRA, and Zambian regulators. Subsequent capacity building efforts have emphasized the training of regulators in the methodologies and processes of RIA and in assisting the BRRA with the elaboration of a RIA Handbook that provides guidance to Zambian regulators regarding RIA implementation. In total, more than 200 Zambian government officials have received RIA sensitization training, and more than 75 have participated in in-depth trainings to support RIA implementation.

The World Bank has supported Zambia’s efforts to implement public consultation policies, procedures, and infrastructure. Much of this work has focused on building an online public registry of all regulations, business licensing and permitting requirements, and public comments on pending regulations. The first of its kind in Africa, the website also contains all relevant policies and laws governing the use of GRPs and is managed by BRRA, which is the regulatory oversight body. The next phase of work for the project will focus on socializing the use of the website among the public, particularly the private sector, to build a culture of participation in the regulatory policy process.

Thailand has a history of introducing reforms to update its system of regulatory policymaking in accordance with GRPs. For example, in 2003, a cabinet resolution was passed that introduced the OECD Reference Checklist for Regulatory Decision-Making into Thailand. In 2015, Royal Decree on Revision of Law, B.E. 2558 (2015, the “Sunset Law”), and the Licensing Facilitation Act, B.E. 2558 (2015), were introduced to reduce the administrative burden on licensing procedures and to require ex-post review of regulations after five years. Private sector advocacy was instrumental to the passage of these legal reforms, paving the way for broader reforms in the years to come.

In 2017, the Constitution of the Kingdom of Thailand was amended to, among other functions, establish explicit principles and tools of Good Regulatory Practice. Section 77 of the 2017 Constitution establishes core principles for good regulatory governance and formalizes the deployment of GRPs across the state institutions and throughout the decision-making process. Thailand has also passed several laws requiring the use of better regulation in policymaking across the Thai administration. Most recently, the Thai government published the Act on Legislative Drafting and Evaluation of Law (2019) which introduces wide-reaching reforms to include mandating the use of RIA, stakeholder engagement, and ex-post review. The 2019 act also established the Office of the Council of State (OCS) as the oversight body responsible for both promoting the use of Good Regulatory Practices across the Thai government and scrutinizing RIA and stakeholder engagement efforts before laws can receive final approval from the Council of Ministers. Notably, the Government of Thailand relied heavily on international best practices to inform the design of its regulatory reforms.

The challenge for Thailand going forward will be to sustain the momentum of the reforms while building the capacity of the bureaucracy to fully implement them. The OCS has been tasked with managing the implementation of Good Regulatory Practices across Thailand’s government and with driving further GRP reforms. Full implementation of the reforms can be aided by fostering buy-in and participation of key stakeholders, careful communication, sequenced approaches, and capacity building to support critical areas for effective implementation. It will also require working collaboratively with units across government to gain buy-in and to support culture change both upstream among decision-makers and downstream with line ministries and government agencies.

Several international organizations have played prominent roles in providing ongoing capacity building support for Thailand’s regulatory reform efforts. Thailand is an active member of the Association of Southeast Asian Nations (ASEAN) and of Asia-Pacific Economic Cooperation (APEC), and it adheres to the standards and guidelines on GRPs that they promote. The Organisation for Economic Co-operation and Development (OECD) Thailand Country Program was initiated in 2018 and is composed of 15 projects drawing on four pillars: good governance and transparency, business climate and competitiveness, “Thailand 4.0,” and inclusive growth. The purpose is to assist Thailand in aligning with OECD standards while supporting its domestic reform agenda. Although Thailand has taken significant steps to implement GRPs government-wide, it lacks a strategy and action plan that can systematize the deployment of policy reforms across the government in a coherent way, something that the OECD has explicitly called for in a recent study of Thailand’s regulatory reform progress.

---

20  Ibid.
21  Ibid.
22  Ibid.
Incorporation of GRPs in International Trade Agreements

Trade and regulatory policy have become increasingly interconnected. Opaque and divergent regulatory requirements among trading partners can impose significant costs on cross-border commercial activity, creating barriers to trade and investment. Contemporary trade agreements have focused on addressing these unnecessary obstacles by incorporating mechanisms to promote GRP and regulatory cooperation.

Trade agreements that address domestic regulation are not a new phenomenon. The OECD notes that in and by themselves, trade agreements contribute to better quality and more coherence in regulatory matters through their core principles of nondiscrimination in domestic regulations and their emphasis on designing least-trade-restrictive regulations. In addition to these core design principles, trade instruments often contain specific provisions that promote adoption of international standards and encourage the use of mutual recognition and equivalence of domestic technical regulations. However, as trade agreements have become increasingly complex and ambitious, stand-alone chapters dedicated to domestic GRP implementation have become more prevalent. While stand-alone regulatory policy chapters in trade agreements are a relatively new development, they symbolize an increasing focus on addressing nontariff trade barriers via domestic regulatory reform.
**BOX 7**

**UNITED STATES–MEXICO–CANADA AGREEMENT**

The USMCA came into force on July 1, 2020, as the first U.S. trade agreement with an entire chapter devoted explicitly to GRP commitments by the parties.\(^{23}\)

USMCA Chapter 28, “Good Regulatory Practices,” outlines commitments in key areas of regulatory policy, including internal coordination of rulemaking activity by regulatory bodies, RIA, public consultation, encouraging regulatory compatibility and regulatory cooperation, and minimizing adverse economic impacts of regulation on small enterprises.\(^{24}\)

The GRP chapter also includes extensive transparency requirements to publish key regulatory information online, including draft regulations, annual regulatory agendas, forms used by regulatory agencies, licensing and permit fees, as well as judicial or administrative procedures available to challenge regulations.

Finally, USMCA Chapter 12 promotes enhanced regulatory compatibility in the “Sectoral Annexes,” which contain provisions with respect to chemical substances, cosmetic products, information and communications technology, energy performance standards, medical devices, and pharmaceuticals.

*Note:* Several of the USMCA’s other chapters include publication requirements and other topic-specific best practices that advance regulatory coherence and compatibility to strengthen closer trade and investment relations.\(^{25}\)

---

**PRINCIPAL U.S. TRADE AGREEMENTS WITH GRP PROVISIONS**

**GRPs have been a key focus of U.S. trade agreements across several presidential administrations.** The first U.S. trade agreement to specifically reference GRP was the U.S.–Korea Free Trade Agreement (KORUS FTA), which emphasized the role of regulatory cooperation to address divergences and included a notional list of Good Regulatory Practices as part of the “Technical Barriers to Trade” chapter.\(^{26}\) Subsequent to this agreement, the United States has further emphasized GRP in numerous trade agreements negotiations, including several with stand-alone chapters dedicated to GRPs.

**The U.S.–Brazil Protocol on Trade Rules and Transparency,** signed in October 2020, modernizes the 2011 Agreement on Trade and Economic Cooperation (ATEC) by adding new commitments on Trade Facilitation, Good Regulatory Practices, and Anticorruption. These annexes to the existing agreement were modeled after the relevant United States–Mexico–Canada Agreement (USMCA) chapters. The Protocol’s Good Regulatory Practices Annex is intended to foster greater transparency about Brazilian regulatory procedures and to more closely align the regulatory policymaking procedures of the two countries. Specifically, the annex calls for online publication of draft regulatory proposals, encouragement of the use of RIA, a dedicated website for regulatory planning, and recognition of the role that nongovernmental advisory groups can play in the rulemaking process, along with increased transparency about how they may provide input.\(^{27}\) Taken together, these three annexes are expected to deliver practical benefits to traders across all industry sectors.

---

\(^{23}\) The Trans-Pacific Partnership, which was signed by President Obama in 2016 and then withdrawn by President Trump in 2017, contains Chapter 25 on “Regulatory Coherence,” which calls explicitly for the parties to employ the use of GRPs domestically.


Building on the USMCA and the U.S.–Brazil Protocol, the U.S.–Ecuador Trade and Investment Protocol includes four new annexes on Customs Administration and Trade Facilitation, Good Regulatory Practices, Anticorruption, and Small and Medium Enterprises, updating the existing U.S.–Ecuador Trade and Investment Council (TIC) Agreement. The Good Regulatory Practices and anticorruption annexes are virtually identical to the U.S.–Brazil Protocol’s annexes. The annex on small and medium enterprises (SMEs) represents a streamlined version of the USMCA SME chapter, with specific emphasis on providing online information for SMEs doing business between Ecuador and the United States and fostering cooperation and dialogue between the two countries to increase trade and investment opportunities for SMEs. The Customs Administration and Trade Facilitation Annex expands on the multilateral WTO Trade Facilitation Agreement to include online publication of customs, taxes and duties information, single window for export, import, and transit processes, and electronic systems for traders, including submission of customs declaration and related documentation, among other provisions.

At the Ninth Summit of the Americas held in Los Angeles in 2022, the United States announced a new joint declaration on Good Regulatory Practices (GRPs) alongside 13 other countries: Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Haiti, Panama, Paraguay, and Uruguay. The Declaration affirms that GRPs are fundamental to transparent governance and fair trade. They promote development of better regulations, prevent and reduce nontariff barriers, and support compliance with international trade obligations. The Declaration builds on shared understandings on GRP with a broad set of regional partners, as many trade agreements in the hemisphere, such as the USMCA, MERCOSUR, and the Pacific Alliance, as well as other bilateral arrangements, contain provisions on Good Regulatory Practices.

28 https://ustr.gov/sites/default/files/SOA%20GRP%20Declaration%2005192022.pdf
Annex 3

GRPs and International Economic Organizations: Best Practice Clearinghouses and Benchmarking Regulatory Reforms

**OECD**

The OECD’s leadership has been instrumental in helping to build consensus around the benefits of GRPs and in facilitating the institutional reforms needed to implement them. The OECD has developed a wide variety of programs aimed at improving the quality of regulation and strengthening regulatory governance for both member and nonmember countries. The Regulatory Policy Division carries out this work through the publication of policy recommendations, technical guidelines, and country profile assessments to support the implementation of GRPs.

In 2012, the OECD published its Recommendation on Regulatory Policy and Governance\(^\text{29}\), the first document of its kind to address regulatory policy, management, and governance as a whole-of-government activity. Informed by a decade of OECD experience in implementing systematic regulatory reform, it provides governments with advice on the development of institutions and the application of regulatory management tools. It also provides practical measures or benchmarks against which countries can assess their capacity to develop and implement quality regulation. The OECD conducts this benchmarking through its triennial *Regulatory Policy Outlook*, which compiles evidence on the implementation of the 2012 *OECD Recommendation on Regulatory Policy and Governance*, detects gaps, and suggests core reforms for individual countries to close them. The 2021 *Regulatory Policy Outlook*\(^\text{30}\) is the third and latest in the series. In addition to the benchmarking analysis, it introduces new agile and innovative approaches to rulemaking, such as regulatory sandboxes, behavioral insights, and outcome-based, data-driven, and risk-based regulation. The OECD publishes guidance and recommendations on many more specific thematic areas of regulatory policy and reform on its regulatory policy website.\(^\text{31}\)

**APEC**

APEC has also undertaken a significant body of work in GRP capacity building. Since 2001, the APEC Sub-Committee on Standards and Conformance and the Economic Committee has alternated hosting an annual Conference on Good Regulatory Practices. The aim of these conferences is to gather member government representatives, technical experts, and the private sector to discuss and present findings of GRP capacity building efforts and to analyze

---


\(^{30}\) [https://read.oecd.org/10.1787/38b0f6b1-en?format=html](https://read.oecd.org/10.1787/38b0f6b1-en?format=html).

\(^{31}\) [https://www.oecd.org/governance/regulatory-policy/](https://www.oecd.org/governance/regulatory-policy/).
reform innovations needed to address emerging issues. In collaboration with the OECD in 2005, the two organizations developed the APEC-OECD Integrated Checklist on Regulatory Reform[^32], a voluntary self-assessment tool for evaluating regulatory quality, competition policy, and market openness. The checklist provides a flexible framework for economies to evaluate their existing regulatory policies and to tailor reforms according to their priorities and needs.

**In 2011, APEC developed the Good Regulatory Practices in APEC Member Economies—Baseline Study[^33],** which analyzed the application of the foundational GRPs (internal coordination of rulemaking activity, Regulatory Impact Assessment, and public consultation) across the 21 APEC members. The report focuses on quality standards specific to the GRPs that are particularly important to trade and investment, such as accountability of regulators, reform capacity, consultation, efficiency, and transparency. Follow-up reports issued in 2014[^34] and 2016[^35] have evaluated progress of member countries since the baseline report was issued.

**World Bank**

The World Bank Regulatory Policy and Management Group focuses on institutional, whole-of-government, and systemic aspects of regulatory reform. The goal is to improve the sustainability and effectiveness of regulation as a core tool of government. The Group’s approach employs a mix of lending tools, institutional analysis, technical assistance, capacity building, and global engagement. Priority issues include better use and understanding of RIA and public consultation systems, as well as supporting better integration of regulatory reform initiatives into broader public sector reforms. In particular, the program provides expertise and support in: a) regulatory reform diagnostics; b) tools for evidence-based regulatory policymaking (such as RIA); c) notice and comment systems; and d) business-to-government feedback mechanisms.

The **Global Indicators of Regulatory Governance project explores how governments interact with the public when shaping regulations that affect their business community.** The data gathered by the project was collected in 2018 and covers six aspects of regulatory governance: transparency of rulemaking, accessing laws and regulations, public consultation, ex-post review, impact assessments, and challenging regulations. The project presents data for 186 economies, (46 in sub-Saharan Africa, 31 in Latin America, 23 in Eastern Europe and Central Asia, 25 in East Asia and the Pacific, 20 in the Middle East and North Africa, 7 in South Asia, and 34 OECD high income economies).[^36] The data presented by the project provides a valuable tool for benchmarking the progress of economies in implementing Good Regulatory Practices.

[^34]: https://www.apec.org/apecapi/publication/getfile?publicationId=423808ad-9fda-4241-b539-c773ee6b98c3.