Presentation by the **National Farmers Union** to the
Senate Standing Committee on Agriculture and Forestry
regarding **Bill C-18, the *Agricultural Growth Act***

February 3, 2015

The National Farmers Union (NFU) welcomes this opportunity to present its views on Bill C-18, the *Agricultural Growth Act* to the Senate Standing Committee on Agriculture and Forestry.

The NFU is a voluntary direct-membership, non-partisan national farm organization. Founded in 1969, and with roots going back more than a century, the NFU represents thousands of farm families across commodities and from coast to coast. The NFU works toward the development of economic and social policies that will maintain small and medium sized family farms as the primary food-producers in Canada. The NFU believes that agriculture should be economically, socially, and environmentally sustainable and that food production should lead to healthy food for people, enriched soils, a more beautiful countryside, jobs for non-farmers, thriving rural communities, and biodiverse natural ecosystems. The NFU is a leader in articulating the interests of Canada's family farms, in analyzing the farm income crisis, and in proposing affordable, balanced, and innovative solutions that benefit all citizens. NFU policy positions are developed through a democratic process via debate and voting on resolutions at regional and national Conventions, as governed by our Constitution.

Summary of concerns about the Bill

The NFU's careful analysis of Bill C-18, the "*Agricultural Growth Act*" concludes that it should not be passed because it would increase farmers' costs, reduce farmers' autonomy and compromise Canadian sovereignty while providing substantially increased revenue and more power and control to multi-national agri-business corporations.

Bill C-18 is an omnibus bill. Its 108 pages amend nine Acts: the *Plant Breeders' Rights Act*, the *Feeds Act*, the *Fertilizers Act,* the *Seeds Act*, the *Health of Animals Act*, the *Plant Protection Act*, the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the *Agricultural Marketing Programs Act* and the *Farm Debt Mediation Act*. The Bill has far-reaching implications which cannot be fully debated in the limited time available. Several very controversial measures have been incorporated into this Bill, including, but not limited to the proposed amendments to the *Plant Breeders Rights Act*.

Instead of introducing an omnibus bill the government should have introduced amendments to each Act in separate bills. This would have allowed full debate and the proper opportunity for this Committee to propose appropriate amendments to each bill prior to Third Reading.

The NFU recommends that Bill C-18 be defeated; that separate bills be introduced for each Act being amended, and that Canada's Plant Breeders Rights Act be maintained in its current form.

We will now turn to specific aspects of the Bill and detail our concerns.

Incorporation by reference

Bill C-18 would add the authority for the Governor in Council to use incorporation by reference in regulations created under the *Feeds Act*, the *Fertilizers Act*, the *Seeds Act*, the *Health of Animals Act* and the *Plant Protection Act.* The language used is identical in the proposed amendments to each Act.[1]

The Incorporation by Reference clauses authorize incorporation of any document ***regardless of its source as it is amended from time to time***, which is also known as "ambulatory" or "dynamic" incorporation by reference. These clauses authorize the federal cabinet to put into law measures that would be under the purview of third parties not democratically accountable to Canadians.

In December 2007, the Joint Standing Committee for the Scrutiny of Regulations concluded that ambulatory incorporation by reference violates the rule of law."[2] The government rejected the committee's analysis, arguing that third parties would change documents for their own reasons and not for purposes of changing Canada's regulations.[3] Bill C-18 attempts to side-step the democratic accountability issue by having Parliament authorize the use of ambulatory incorporation by reference.

The government is already preparing to use the powers it expects to obtain via Bill C-18. The Canadian Food Inspection Agency (CFIA) proposal for new Variety Registration Regulations under the Seeds Act calls for incorporating by reference the table defining the crop kinds in Part 1 (full review including merit assessment by Variety Recommending Committee) and Part 3 (registration with no review). Changing this table currently requires an amendment to the Seeds Act Regulations. Incorporation by Reference would eliminate the public review process required when regulations are amended. Instead, the Minister or CFIA President could move crop kinds through an administrative decision. This use of incorporation by reference was requested by the Canadian Seed Trade Association, a lobby that represents the multinational seed corporations in Canada.[4] Thus, we can already see how Bill C-18 would be used to side-line citizens' participation and to privilege corporate interests.

The NFU expects that incorporation by reference will be used primarily as a mechanism to accelerate regulatory harmonization and to give multinational agribusiness corporations more influence over our agricultural regulations. It facilitates adoption of regulations made in, by and for other countries to replace made-in-Canada regulations that reflect the values, interests and aspirations of Canadians. We are also concerned that by allowing documents "from any source" to be incorporated by reference, Bill C-18 opens the door to regulation by private entities, such as industry associations and private standard-setting bodies, that are focussed on advancing their own interests rather than the Canadian public interest.

The federal government seeks to accelerate trade by removing regulatory impediments that increase the cost of doing business for multinational agribusiness corporations, allowing them to increase their share of every country's market as they displace local and regional businesses. The heavy lifting on this front is being accomplished by trade deals while the finer points are taken care of through domestic measures such as Bill C-18.

Reduced, streamlined, harmonized and/or suspended regulations governing approvals for feed, seed, fertilizer, animal health products and plant health raises a red flag for the health and safety of consumers as well as the farmers who use these products. Regulatory harmonization also reduces Canada's ability to differentiate our export products by quality, with the result that Canadian producers must compete on the basis of price alone. Given our climate (winter), our prevailing wages and higher labour and environmental standards, it will be

difficult to compete with countries with lower production costs. This scenario would exert downward pressure on the price of Canadian agricultural products and promote further lowering of environmental standards, wages for farm labourers and farmers' incomes.

By not requiring publication of regulations incorporated by reference in the *Canada Gazette*, Bill C-18 fails to ensure transparency and puts the onus on the public and/or the regulated party to seek out the third party document.

Foreign reviews

Bill C-18 would permit the regulator to use reviews and evaluations conducted by foreign entities when considering applications under regulations pursuant to the *Feeds Act*, the *Fertilizers Act*, the *Seeds Act*, the *Health of Animals Act* and the *Plant Protection Act* instead of relying on Canada's own science to support approvals and licensing of agricultural products in Canada.[5]

Allowing consideration of foreign studies would undermine Canada's science capacity – both public and private - and allow the regulated party to pick and choose the most favourable studies from around the world when seeking regulatory approval.

Canada's public science capacity has been severely reduced as a result of federal funding cutbacks. Canadian science should be used to make decisions about products used and sold in Canada and their potential impacts on our farms, agricultural ecosystems, economy, environment, animal and human health. Studies done in, by and for foreign countries or associations of foreign countries cannot adequately assess the products or processes as they might be used in Canada under our climate in various regions of the country or how they might affect Canadians. To allow for non-Canadian research to underpin regulatory decisions is to abandon vital Canadian interests for the sake of political and budgetary expediency.

Under Bill C-18 the incorporation by reference powers and the consideration of foreign studies for regulatory approvals will be used for the benefit of multinational corporations to harmonize more of Canada's rules with those of our trading partners, thinning international borders, reducing the effect of regulatory differences among countries on business decisions, and giving the greatest advantage to global corporations. The corporate sector is simultaneously lobbying governments in other countries, aiming to undermine public interest regulations world-wide. The voice and interests of Canadians disappear when the legal framework of our economy is created elsewhere and by others. Bill C-18 would accelerate the loss of Canadian economic sovereignty by allowing important agricultural regulations and regulatory decisions to be made by and in the interests of third parties and/or based on other countries' science.

Agricultural Marketing Programs Act (Advance Payment Program) issues

Bill C-18 amends the *Agricultural Marketing Programs Act* by changing who is eligible for advance payment loans, the duration of such loans and the type of security authorized lenders may use to obtain the government's guarantee for the loan. While cash-strapped farmers may welcome easier access to operating loans, there are troubling implications.

Under the current Act, a corporation involved in agricultural production is not eligible for the program unless Canadian citizens or permanent residents control a majority of its shares. Under Bill C-18 the Canadian ownership requirements are diluted significantly. A corporation would be eligible if controlled by another corporation in which Canadians were entitled to at least half the profits. "Control" of such a corporation is to be

defined later by regulation. Depending on the corporation's internal rules, it is possible for an owner with as little as 1/3 of the shares to have a controlling interest. Those shareholders who receive dividends (profits) are not necessarily entitled to vote. Thus, a corporation where voting shares were held by non-Canadians that paid over half of its dividends to non-voting Canadian shareholders, and which in turn had a controlling interest in a corporation involved in agricultural production in Canada, would have access to the Advance Payments program.

We know there are farmland investment corporations purchasing large tracts of farmland with capital raised from non-farm Canadian investors. These companies are primarily speculators. While they wait for land prices to rise, they seek to maximize their annual revenues by growing crops with hired farm operators or by renting out the land. Investors are entitled to the profits, but they are in no way farmers. The farmland investment companies are in direct – and unfair – competition with family farmers, bidding up land prices and increasing rents. Bill C-18 would extend to these corporations a program that was established to help bona-fide farmers (as individuals or as members of incorporated family farms and cooperatives) manage seasonal cash flow and limit post-harvest commodity price depression. If Bill C-18 is passed farmland investment companies would be able to use the Advance Payment Program to reduce the costs of financing their operations and apply the savings to further land purchases, exacerbating the farmland access problems that already exist.

The shift to a multi-year loan program means that loans must be secured by assets that endure instead of by marketable inventory on hand. The precise security requirements are not stated in the Bill, but would be detailed in regulations yet to be written. Farmers are currently liable for loss of inventory value due to no fault of their own. Borrowing against expected sales of future production is inherently more risky than borrowing against current inventory. Assumptions must be made regarding future yields, prices, and currency exchange rates. It is likely that security requirements would expand to include land, buildings and equipment that are not susceptible to such losses. If or when interest rates increase and/or crop failure occurs, these productive assets would be vulnerable.

The amendments to the Advance Payments Program in Bill C-18 appear to be a way for the government to avoid responsibility for the long-term failure of Canada's agriculture policy to ensure the economy returns a sustainable income to farmers. Year over year farmer losses are due in part to a devotion to agriculture policy that seeks to increase exports even at prices below the cost of production. Escalation of farm debt, increasing reliance on off-farm employment to supplement or replace inadequate farm income, and an erosion of the farm population as potential young farmers look elsewhere to earn their livelihood are some of the outcomes. The destruction of orderly marketing institutions such as the single desk Canadian Wheat Board and the provincial hog marketing boards have put farmers at a disadvantage in relation to the purchasers of their products. Bill C-18's amendments to PBR legislation will result in increased production costs as seed companies' new exclusive rights will enable them to charge both royalties and higher prices for seed. The net result of these policy decisions is that an ever higher portion of the wealth created by farmers is captured by others, while farmers shoulder ever higher debt loads just to stay in business. This is unsustainable. Increasing access to credit is a band aid measure that will only make the debt problem more acute when interest rates increase from their current record low levels.

Plant Breeders Rights issues

To plant a seed is the most fundamental act of agriculture. For millennia, farmers have been the keepers of seed – choosing and saving seed from each harvest for the next year's planting. By selecting, storing, selling and exchanging the seeds with needed qualities, farmers have created the wealth of agricultural biodiversity that feeds the world today and provides the source for future varieties that will thrive in tomorrow's uncertain

conditions. Canada's publicly funded public plant breeding institutions built upon this heritage by developing and releasing new varieties to meet farmers' agronomic needs as well as societal goals for healthy food and robust agriculture ecosystems. Canada's public plant breeding system – along with related public institutions and regulations – has also created sought-after exports, including quality Canadian wheat.

Bill C-18 turns farmers' ancient relationship with seed inside out by constricting farmers' ability to save and re-use seed and giving plant breeders exclusive rights to authorize all reproduction, conditioning (cleaning and treating), stocking (bagging, binning and storing), using varieties to produce hybrids, use of plant material for vegetative reproduction of ornamental plants, importing and exporting of PBR protected varieties of seed for 20 years. Along with these exclusive rights Bill C-18 authorizes breeders to demand payment of royalties as a condition for using varieties in any of the above ways.

Bill C-18 is designed to make Canada's plant breeders' rights legislation part of the UPOV '91 intellectual property rights regime. Plant breeders' rights are socially constructed and thus do not exist in the absence of legislation. UPOV was established in 1961 as an international forum to create model laws for member countries to create property rights for plant breeders – a mechanism to control access to seed in order to capture wealth from the users of new plant varieties. UPOV's priority is to protect and promote the control of seed by and for private companies alone, with no role for farmers or their communities. When in conflict with farmers' traditional practices, UPOV puts plant breeders first.[6]

Each time UPOV has updated its model laws it has created greater rights for plant breeders and tighter restrictions on farmers. While UPOV is recognized by the World Trade Organization (WTO) for international trade purposes, WTO countries may also create their own (*sui generis*) laws to protect the legitimate interests of plant breeders. Most of the text of Bill C-18 that deals with plant breeders' rights is copied directly from the UPOV '91 model law.

Bill C-18 defines "breeder" as any person who originates or discovers and develops the plant variety or any person whose officers, servants or employees originate, discover and develop the plant variety while performing their assigned duties. The definition of *person* includes corporations. In Canada, private plant breeding is dominated by the seed divisions of a Monsanto, DuPont Pioneer, Syngenta, Limagrain, Land O Lakes, KWS, Bayer Cropscience, and Dow AgroSciences – all multinational corporations with headquarters outside of Canada.

Farmers Privilege

The "farmers' privilege" provisions in Section 5.3 (2) of Bill C-18 appear to guarantee farmers the ability to save, clean and reuse seed on their own holdings.[7] However, Bill C-18 does not extend farmers' privilege to stocking (storing, binning, bagging) seed. "Farmer's holdings" is not defined in the Act or elsewhere. We have been unable to obtain a clear answer from the Plant Breeders Rights Office as to how this term would be interpreted in practice: does it include rented or leased land, or only land to which the farmer has title? Would it include land that is mortgaged? Apparently these questions are open until decided by the courts.

Similarly, the term "stocking" is not clearly defined. Often, farmers prudently save enough seed in a good year to plant crops for several years to come, knowing that early frost, disease, drought, or poor harvesting conditions could destroy the next crop or compromise its quality for seed. In Australia, only one year's supply of seed is exempt from End Point Royalty charges per that country's implementation of the UPOV '91 farmers' privilege option. UPOV does not provide official guidance regarding the interpretation of "stocking" in the context of farmers' privilege. Bill C-18 would leave it up to PBR holders to decide at what point a farmer has saved too much seed or for too long and then sue for infringement. If plant breeders decide that farmers' privilege only

allows for saving one year's seed supply a critical element of farmers' traditional risk management practice would be eliminated.

While the farmers' privilege measures are somewhat ambiguous, Section 50 (4) of Bill C-18 is very clear. It authorizes the Governor in Council to make regulations to exclude classes of farmers and plant varieties from the farmers' privilege and to restrict or put conditions on farmers' use of harvested material grown under the farmers' privilege.[8]

UPOV advises governments on how to interpret their obligations upon adopting UPOV '91,[9] stating that farmers' privilege should be understood "*to relate to selected crops where the product of the harvest is used for propagating purposes, for example small-grained cereals where the harvested grain can equally be used as seed.*" It goes on to say, "*it may be considered inappropriate to introduce the optional exception for agriculture and horticultural sectors, such as fruit, ornamentals and vegetables, where it has not been a common practice for the harvested material to be used as propagating material*." Thus UPOV advises governments to apply farmers' privilege to save seed only to wheat, barley, and oats, for example, and deny it to farmers who grow vegetables, fruit, soybeans, canola and lentils, etc.. Such restrictions on farm-saved seed would be detrimental to food sovereignty. In addition, UPOV advises governments to consider factors such as the type of variety or crop, the size of the farm, the value of the crop, the area of the crop grown and the proportion of the farmers' crop allowed under the farmers' privilege. Finally, UPOV's explanatory note recommends countries "*limit the level of farm-saved seed to those levels which had been common practice before the introduction of plant variety protection.*" Thus UPOV '91 would initiate a ratchet that would prevent farmers from resuming seed-saving practices in crops such as soybeans and canola where, for a variety of reasons, many farmers have moved away from seed-saving.

The regulatory authority in Section 50 (4) is a claw-back provision designed to minimize, and perhaps eventually eliminate, the farmers' privilege granted under Section 5.

Interaction with other regulations and policies

When their protected period ends, plant varieties enter the "public domain" and farmers can freely use them without asking for permission or paying royalties. For most crop kinds farmers can sell their crop at full price only if they use registered varieties. In June 2014 the Variety Registration regulations were amended to allow companies to de-register their varieties at will. PBR holders are now in a position to withdraw varieties before their exclusive rights expire, and can use this power to prevent older varieties from being commercially useful once they enter the public domain, increasing the pressure on farmers to use seed that is subject to royalty payments. See NFU Comments on Regulations Amending the Seeds Regulations - May 2013 at www.nfu.ca/story/nfu-comments-regulations-amending-seeds-regulations for more information.

End point royalties

Section 5.1 of Bill C-18 enables plant breeders to collect royalties on the whole crop following harvest (end-point royalties, or EPRs) if they did not collect when they sold the seed.[10]

EPR systems entail compulsory payments by farmers to plant breeders upon sale of a crop grown from a PBR-protected variety. Companies involved in plant breeding find this approach attractive because it allows them to collect royalties on the entire yield of a crop and thus obtain higher total revenues. The Canadian Seed Trade Association, which promotes the interests of its member plant breeders, has been promoting adoption of an EPR system.[11]

The seed trade apparently interprets farm-saved seed as a circumstance that denies plant breeders the opportunity to collect royalties on seed, thus justifying an EPR system that would require farmers to pay royalties on the whole crop instead. This interpretation further devalues the farmers' privilege in Section 5.3 (2) by simply moving the royalty collection point from the point of seed sale to the sale of the harvested crop. The farmer would have the privilege of using farm-saved seed, but would not have access to the full value of the crop that seed produces.

Australia has adopted UPOV '91 and now uses an EPR system. Farmers there must submit an annual declaration by variety, reporting on volumes of grain produced; volumes sold to grain traders or end users (e.g. millers); grain used on farm as livestock feed; grain stored on farm or warehoused for later sale; and grain retained for use as seed in the following year. EPRs are collected on the whole harvest: the only exception is for that portion that is retained to be used as seed for one subsequent crop. EPRs are also collected on each cut of hay, on grazing land, and crops used for feed if PBR-protected varieties are planted. There are several Australian EPR-royalty management companies that collect money from farmers on behalf of PBR holders. These companies are increasingly integrated with grain traders to "streamline" the paperwork required to administer EPRs.

Royalty rates (whether on initial seed purchase or EPRs) would be set solely by the PBR holder. In Australia, EPRs (per tonne) for the 2014/15 crop year are $7 - $12 for soy; $1- $4 for barley: $5 for canola: $2.50 - $6.50 for pulse crops: $.95 - $4.25 for wheat: and $1 - $3 for other cereals. Amounts are in Australian dollars, at par with the Canadian dollar at time of writing. In 2013 Canadian farmers produced 17,960,100 tonnes of canola – if 80% of the crop had been subject to EPRs at the Australian rate of $5/tonne, the approximately 16,000 farmers who grew canola would have paid at total of nearly $90 million in royalties to PBR holders (primarily Monsanto and Bayer for canola).

No guarantee breeding will be done in/for Canada, Canadian conditions

Restrictions on farmers' seed saving, which result in a massive transfer of wealth from farmers to seed companies, are not necessary for the development of useful new varieties. Bill C-18 would enable private breeders to charge royalties, but farmers would have no say in how the money thus gained would be used.

The new exclusive rights under C-18 will encourage seed companies to sell seed they import from other countries. Combined with existing and proposed variety registration rules, Bill C-18 would increasingly force farmers to buy PBR protected varieties regardless of (and without independent information about) the seed's performance. Furthermore, private plant breeders focus on creating private benefits (such as cross-selling other input products), and do not necessarily produce varieties that respond to agronomic conditions; changing climate, pests and diseases; food processing qualities; consumer nutritional needs or biodiversity goals.

There is no incentive for companies to develop new varieties that are better suited to the wide range of growing conditions in Canada. Bill C-18 makes it easy for plant breeders to import varieties they already sell in larger markets. By de-registering older varieties, a company could simply use its PBR rights to compel farmers to buy its most profitable varieties developed for other markets, which may not benefit Canadian farmers or consumers. Bill C-18 would streamline the importation of foreign varieties.

Under Bill C-18, breeders retain control over any variety deemed to be "essentially derived" from a protected variety. Thus, if farmers purchased a PBR-protected variety, grew it on their own farms, and selected and saved their own seeds for several years to develop seed that was adapted to their farm conditions, the farmers' varieties would likely be considered "essentially derived" from the original protected variety. This adapted

variety would therefore remain under the protection of the original plant breeder and subject to its exclusive rights. This is a disincentive for Canadian farmers, as well as public breeders and other independent breeders to create locally-adapted varieties.

Abandonment of public plant breeding

Canada has been well served by very successful publicly funded, public-interest plant breeding to the variety level. Public-interest plant breeding developed some of our most important crops, including canola, the Laird lentil, and most of Canada's cereal varieties. The economy of the whole country benefits from public investment to develop new varieties. Better varieties can confer a number of benefits: more reliable and higher quality crops leading to premium export markets; higher farmer incomes; a healthy rural economy; local investment; and additional public revenue via income taxes paid by farmers. In addition, a public-interest breeding program provides the qualities our international customers want, and thus has positive effects on Canada's international balance of payments.

Public breeders often work with farmers to develop varieties that are regionally adapted, are less input-dependent and can help farmers and our food system adapt to changing climate. Varieties developed by public breeders are more likely to be sold with low or no royalties attached and remain registered once the PBR period expires. Public plant breeding is supported not only by federal funding, but also through farmer contributions in the form of "check-offs." These small, per-tonne payments are allocated to farmer-directed organizations such as the Western Grains Research Foundation, which use the money to support breeding according to farmers' priorities.

Public institutions may collect royalties on varieties developed by public-interest breeders and have done so under Canada's current PBR Act. While Bill C-18 won't eliminate this possibility, the federal government has severely curtailed the work of Agriculture Canada's public plant breeders. AAFC has decided to abandon public plant breeding to the variety level in important cereal crops. Public breeders will be allowed to develop germplasm, but can no longer continue development to the final variety stage. Publicly developed germplasm must now be sold to private breeders for commercialization allowing them alone to collect PBR royalties. Once sold, this germplasm will be the property of private corporations that will be able to claim exclusive rights to any varieties they develop, and any varieties that other breeders might develop from this germplasm by way of the exclusive rights to "essentially derived" varieties that Bill C-18 confers.

Bill C-18's interaction with trade agreements

The federal government is negotiating several trade deals, including the Canada-European Union Comprehensive Economic and Trade Agreement (CETA). These agreements are negotiated behind closed doors. The text of the CETA agreement was released recently – after the details were finalized.

CETA includes Intellectual Property Rights (IPR) enforcement provisions that would permit an IPR holder to use the courts to seek an injunction and/or use precautionary seizure of assets, equipment and inventory against the alleged infringer.[12] Plant Breeders Rights is recognized as a form intellectual Property protected under CETA.[13] If a plant breeder suspected someone was infringing on its rights it could use these new, more powerful tools to prosecute the alleged infringer.

Pre-emptive seizure of a farmer's property, crop and bank account on mere *suspicion* of infringement would deny the farmer the means to mount a defence in court. We know from the Supreme Court decision in the *Monsanto v. Schmeiser* case that Canadian law considers a farmer to be in violation of patent law regardless of

how the patented genes contained in the seed arrive on the farmer's land[14]. If the courts interpret PBR infringement the same way, farmers whose public domain seed might contain small amounts of a PBR variety could lose everything as a result of a mere accusation of PBR infringement. To avoid such risk, farmers may decide to simply purchase and plant PBR-protected seed every year and pay the royalties. "Litigation chill" would result in a severe loss of farmer autonomy as well as a massive annual transfer of wealth from farmers to seed companies.

The new enforcement tools that would be available under CETA combined with the enhanced rights plant breeders would obtain through Bill C-18 would give companies such as Monsanto and Bayer undue control over seed, a fundamental component of agriculture and the foundation of our food supply.

Conclusion

Bill C-18 should not pass. As an omnibus bill it is undemocratic. The full implications and content of this complex and wide-ranging bill cannot be properly debated in the time available. Senators are being asked to vote for a package that contains many elements that are against the public interest, even if they believe parts of it are worthwhile. The bill should be severed into individual bills, each amending an individual Act so that proper debate and consideration can occur. The Plant Breeders Right Act amendments should be discarded altogether due to the irretrievable harm to agriculture in Canada that would result from handing over effective control of our seed system to a few multinational companies that are acting in their own self-interest, and not in the interest of Canadians.

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[1] Bill C-18: For example, see the proposed amendment to the Feeds Act:
Incorporation by reference
5.1 (1) A regulation made under subsection 5(1) may incorporate by reference any document, **regardless of its source**, either as it exists on a particular date or **as it is amended from time to time**. [emphasis added]
Accessibility
(2) The Minister must ensure that any document that is incorporated by reference in a regulation made under subsection 5(1), including any amendments to the document, is accessible.
Defence
(3) A person is not liable to be found guilty of an offence or subjected to an administrative sanction for any contravention in respect of which a document that is incorporated by reference in a regulation made under subsection 5(1) is relevant unless, at the time of the alleged contravention, the document was accessible as required by subsection (2) or it was otherwise accessible to the person.
No registration or publication
(4) For greater certainty, a document that is incorporated by reference in a regulation made under subsection 5(1**) is not required to be transmitted for registration or published in the Canada Gazette** by reason only that it is incorporated by reference. [emphasis added]

[2] Joint Standing Committee for the Scrutiny of Regulations, Report No. 80 – Incorporation by Reference, http://www.parl.gc.ca/content/hoc/Committee/392/REGS/Reports/RP3204106/392_REGS_Rpt02/392_REGS_Rpt02.pdf

[3] Government Response to the Second Report of the Standing Joint Committee For The Scrutiny Of Regulations, *Government's Response To Report No. 80 (Incorporation By Reference)*
http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3407491&Language=E&Mode=1&Parl=39&Ses=2

[4] "The CSTA has long maintained policy requesting that changes to the placement of crop kinds and types not be by regulation. We welcomed the provision in Bill C - 18, the Agricultural Growth Act, that included Incorporation by Reference in the proposed amendments to the Seeds Act..." *Canadian Seed Trade Association Oilseeds, Pulses and Western Cereals Committee, Board Liaison Report*, July 2014. http://cdnseed.org/wp-content/uploads/2014/06/2-Committee-Package-for-printing.pdf

[5] Bill C-18: Identical language is used to amend each affected Act. The following text amends the Feeds Act:
5.8 In considering an application made under the regulations in relation to a feed, the Minister may consider information that is available from a review or evaluation of a feed conducted by the government of a foreign state or of a subdivision of a foreign state or by an international organization, or association, of states.

[6] See UPOV 91 Article 15 (2): "Notwithstanding Article 14, each Contracting Party may**, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder**, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or (ii)." [emphasis added] http://www.upov.int/en/publications/conventions/1991/act1991.htm

[7] Bill C-18: **Farmers' privilege**
5.3 (2) The rights referred to in paragraphs 5(1)(*a*) and (*b*) do not apply to harvested material of the plant variety that is grown by a farmer on the farmer's holdings and used by the farmer on those holdings for the sole purpose of propagation of the plant variety

[8] Bill C-18: The following is added to the scope of regulations authorized under Section 75 of the *Plant Breeders Rights Act*:
(*l.1*) respecting any classes of farmers or plant varieties to which subsection 5.3(2) is not to apply;
(*l.2*) respecting the use of harvested material under subsection 5.3(2), including any circumstances in which that use is restricted or prohibited and any conditions to which that use is subject;

[9] *Explanatory Notes on Exceptions to the Breeder's Right,* International Union for the Protection of New Varieties of Plants. http://www.upov.int/edocs/expndocs/en/upov_exn_exc.pdf

[10] Bill C-18: **Rights respecting harvested materials**
5.1 Subject to the other provisions of this Act and the regulations, the holder of the plant breeder's rights respecting a plant variety has the exclusive right to do any act described in any of paragraphs 5(1)(*a*) to (*h*) in respect of any harvested material, including whole plants or parts of plants, that is obtained through the unauthorized use of propagating material of the plant variety, unless the holder had reasonable opportunity to exercise his or her rights under section 5 in relation to that propagating material and failed to do so before claiming rights under this section.

[11] *Funding Plant Breeding and Variety Development: A Technology Value System*, Canadian Seed Trade Association http://cdnseed.org/wp-content/uploads/2014/06/The-Technology-Value-System-Concept-May-2014.pdf

[12] *Consolidated CETA Text*, Chapter 22, Section 3 Enforcement of Intellectual Property Rights http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/22.aspx?lang=eng

[13] *Consolidated CETA Text*, Chapter 22, Article 13. 4 of CETA states Intellectual Property Rights provisions apply to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights. http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/22.aspx?lang=eng

[14] *Supreme Court Judgments* **,** Monsanto Canada Inc. *v.* Schmeiser, [2004] 1 S.C.R. 902, 2004 SCC 34, http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2147/index.do