

NFU submission to

House of Commons Agriculture and Agri-Food Committee study on

Government's Regulatory Reform Initiative in Agriculture and Agri-Food Sector

The National Farmers Union (NFU) welcomes the opportunity to contribute to the Committee's study of *Government's Regulatory Reform Initiative in Agriculture and Agri-Food Sector*. We are Canada's largest voluntary direct membership farm organization representing family farmers and farm workers from across the country in all sectors of agriculture. We work to promote a food system that is built on a foundation of financially viable family farms that produce high quality, healthy, safe food; encourage environmentally-sensitive practices that will protect our precious soil, water, biodiversity and other natural resources; and promote social and economic justice for food producers and all citizens.

Key points:

- Regulations are an essential part of Canada's democracy and sovereignty
- Canada must retain regulatory capacity and independence as a matter of national security
- Regulatory change must include farmers in decision-making
- Relying on stakeholders who represent regulated parties for advice results in conflict of interests
- A precautionary approach to new technologies is in the public interest

Recommendations:

- CFIA's Seed Regulatory Modernization was a valuable, inclusive and comprehensive process, the SRM Working Group should participate in developing CFIA's regulatory amendment proposals.
- The Plant Breeders Rights regulatory amendment process currently underway should be halted due to its inadequate regulatory impact analysis and conflict of interest
- Canada should ensure our regulators have capacity to maintain full control over regulatory requirements for seed, feed, fertilizers and animal health products and avoid relying on "trusted jurisdictions" that are, or may become compromised.
- Federal and provincial regulators should prioritize mutual acceptance of provincial abattoir inspection across provincial borders to address interprovincial trade barriers, and enable safe, healthy local meat to be sold direct-to-consumer and in local markets.
- Digitizing administrative processes will improve efficiency, but to ensure accessibility and reliability, there must be back-up systems, alternatives and adequate and timely technical support available to all users.
- Incorporation by Reference policies should be updated to ensure this tool is not used to sidestep democratic public participation in regulatory questions and/or avoid transparency. IBR documents should be posted in a dedicated section of the Canada Gazette to ensure they are accessible.

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Democratic governance and Canadian sovereignty

Regulations are a critical element of democratic governance. The laws Parliament passes usually include regulation-making authority, giving either a Minister or Cabinet as a whole (Governor in Council) responsibility to enact or amend regulations. Canada's regulatory policy sets public participation and transparency requirements. Canadian residents have the right to participate in regulatory decisions, and elected leaders are ultimately accountable.

Characterizing regulations as “red tape” and a “burden” undermines their democratic function.

Regulations often set limits on private actions. This is a legitimate and necessary function that should be used in the public interest. The conversation about regulatory reform must always keep regulations' democratic governance function in the foreground and be on guard to prevent regulatory reform from serving private interests at the expense of the Canadian population, the less powerful, or those without a voice such as future generations.

Regulations are also an instrument of Canadian sovereignty. There are several CFIA proposals to expedite regulatory approvals based on foreign jurisdictions' data, standards, and/or processes. This is a very slippery slope. If Canada increasingly relies on other countries, our own regulatory capacity will shrink, and we will no longer be able to independently assess whether foreign regulations are appropriate for Canada. CFIA's language referring to “trusted jurisdictions” is increasingly problematic: the United States is de-funding and dismantling its research capacity and the regulatory institutions responsible for food safety, human, animal and environmental health.

Maintaining independent, robust regulations is an advantage for agricultural trade as Canada diversifies markets to reduce dependence on the USA. High standards for approvals, and strong inspection and enforcement processes and capacity will make Canadian products trustworthy, supporting demand and even premium prices.

Regulatory change must include farmers in decision-making

AAFC and CFIA often refer to “stakeholders” when speaking about regulatory matters. In the recent Plant Breeders Rights regulatory amendment proposal to eliminate the Farmers' Privilege for PBR-protected varieties of horticultural and hybrid crops, the regulatory impact assessment did not consider impacts on the farmers who use these varieties. Its Small and Medium Enterprise (SME) analysis considered only 56 businesses, yet there are 190,000 farms, including 25,000 that grow horticultural crops. It appears that farmers were not considered “stakeholders” for regulatory purposes.

In many regulatory initiatives it appears that the primary stakeholders being considered are “regulated parties” looking to reduce their costs of compliance. Administrative streamlining (such as the ability to use electronic forms) is cost-saving for both the regulator and the regulated party, but when regulatory proposals shift costs from regulated parties onto farmers, the regulator needs to have a robust and accessible process to allow meaningful participation by farmers in the development and assessment of regulatory proposals.

The CFIA's Seed Regulatory Modernization (SRM) process included representatives of general farm organizations in the SRM Working Group, and provided space for additional farmer (producer)

participants on its sub-committees (Task Teams). The SRM process created a valuable space and time for examining regulatory change from the full range of perspectives. CFIA staff provided technical expertise and secretariat support to the Working Group and Task Teams. The SRM work is nearing completion. If the CFIA maintains inclusive engagement with farmers, it should achieve results that are fair and in the public interest. This type of broad, inclusive process is a good model for future regulatory initiatives.

Digitization

The CFIA's and AAFC's initiatives to allow for electronic documents and create online portals should improve efficiency and save time. Since rural internet is often less reliable, or even unavailable, non-electronic ways of doing business need to be maintained as a back-up or alternative. Digitized administration processes need to be as accessible as possible, with properly staffed telephone and email help and technical support.

Precautionary Principle

When regulating new and emerging technologies and substances, precaution is appropriate. The precautionary principle reduces risk of harm, and avoids costs that would result from those harms. The potential benefits of new technologies and substances are easy to see in the short term, while unexpected consequences emerge more slowly. If the technology or substance is approved and rolled out too quickly, proponents will enjoy the benefits while bystanders or unintended targets suffer the harms. Proponents will resist taking the product off the market, as generally, they will not bear the costs of harms created or exacerbated by those products. It is the regulator's duty to make sure the new technology or substance is well enough understood to ensure public interest safeguards are in place before approval.

The emerging technologies in agriculture include artificial intelligence (AI)-based tools. There is a lot of excitement about AI's potential, which is driving both investment and a degree of anxiety about "being left behind". Yet, every day there are reports of generative AI providing false information, encouraging harmful behaviour and "hallucinating" results. AI is often proposed as a way to increase productivity by reducing labour costs, but the cost of acting upon false answers, or taking time needed to evaluate AI outputs are ignored and/or hard to quantify. The environmental and economic impacts of AI data centers also warrant precaution. AI data centers' extreme energy and water requirements and the opportunity costs of putting resources towards AI instead of other kinds of investments and activities need to be fully assessed and considered by policy-makers before they propose AI-related regulations.

Responses to CFIA's Progress Report on Red Tape Reduction

Support interprovincial trade for small-scale meat producers and abattoirs

Small-scale livestock producers who direct market to local customers, too often are limited by lack of access to provincially inspected abattoirs and cut wrap facilities. Local production for local consumption is an important element of food security and food sovereignty, as well as an economic driver for rural communities, particularly in areas with lower population density. There are numerous situations, including many provincial sub-regions with no federal or provincial abattoirs, where producer and processor viability requires a larger geographic area that straddles provincial borders. To allow these

crucial elements of the local and regional food system to thrive, mutual recognition of provincial meat inspection regulations is necessary. Requiring federal inspection for small abattoirs and meat processors serving local markets near provincial borders is a costly and unnecessary barrier.

The CFIA report notes its accommodations for businesses doing cross-border business in Lloydminster. It amended the Safe Food for Canadians Regulations to exempt Alberta and Saskatchewan food businesses from the federal interprovincial trade requirements when preparing and trading food to or within Lloydminster. A similar regulatory amendment could support livestock and provincially inspected meat processors within a 200 KM corridor along provincial boundaries. The CFIA or AAFC could develop a mutual recognition agreement for meat inspection and meat processing regulation between neighbouring provinces. This approach would support the viability of existing small enterprises that serve communities, and encourage intergenerational transfer of both ownership and the knowledge involved in running these small businesses.

Incorporation by Reference and Variety Registration

Incorporation by Reference (IBR) is a regulatory tool that, once authorized under a statute, allows specific documents to have the same force of law as regulations without the need to amend the regulation each time the document is updated. This transfers the power to create and amend regulations from elected representatives to unelected bureaucrats who are not directly accountable to voters, and who are often unduly influenced by regulated parties. IBR creates a higher risk of bias and conflict of interest than the Canada Gazette process for amending regulations.

The CFIA's IBR amendment policy for internally generated documents provides for notification of selected stakeholders, but does not include a public notice or consultation process. There is no requirement for the Minister or Governor in Council to approve amendments. An IBR amendment comes into force when published on the CFIA's website.

Even before the Seed Regulatory Modernization (SRM) process has concluded, the CFIA inaccurately claims wide support for incorporating by reference the list of crops subject to variety registration (Schedule III). In fact, farmers strongly oppose this idea.

Variety Registration is the cornerstone of Canada's seed system. IBR can develop and approve regulatory changes quickly and behind closed doors with input only from selected stakeholders. IBR is promoted to speed up regulatory change as an alternative to the Canada Gazette process which requires full public disclosure of the proposed regulatory text, a regulatory impact analysis and a mandatory public comment period. The Canada Gazette process recognizes that regulation is an essential element of democratic governance, and makes elected representatives accountable for the rules.

IBR of Schedule III of the Seeds Regulations would make it too easy for seed companies to eliminate Merit requirements by getting crop kinds moved from Part 1 to Part 3 of Schedule III, or to remove crop kinds from Variety Registration altogether.

Part I of Schedule III lists crop kinds such as wheat, lentils, canola and flax, that must demonstrate merit before varieties can be registered. Merit means new varieties must be as good as, or better than existing varieties; they must perform well in Canadian growing conditions and not have negative qualities like

disease susceptibility. To prove merit, varieties listed on Part I are independently tested, evaluated by experts and the data is published. Merit testing provides transparent, unbiased data on agronomic and disease performance parameters that farmers use for decision-making, and it allows Recommending Committees to make informed decisions about whether a new variety should be registered.

Crop kinds listed on Part III of Schedule III do not have to prove merit. Test data is not available, so farmers cannot have full, comparable information needed to make the best decisions for their farms.

There should be a relatively high bar for adding or removing crop kinds, and for moving crop kinds between parts. It should be difficult to move crop kinds from Part I to Part III. Moving crop kinds from Part I to Part III weakens our seed quality standards and would allow varieties to be sold that do not perform well, introduce disease problems, or produce crops that are less valued by our customers. Removing crop kinds from Schedule III altogether would have very serious implications that would affect the quality and value of Canada's seed supply, our crops, and farmers' incomes. The consequences of adding, moving or removing crop kinds from Schedule III are long-term and far-reaching. There is no need to rush changes to Schedule III.

Schedule III should stay in the regulations. It is appropriate for any changes to Schedule III to go through the transparent, public Gazette process which provides a regulatory analysis, and a fully public consultation process, with final decisions made by accountable elected Ministers or Cabinet.

Foreign systems recognition

The CFIA wants legislative amendments so that foreign regulatory decisions for feeds, fertilizers, seeds and veterinary biologics would be applicable in Canada. This is a dangerous proposal to outsource Canadian sovereignty over essential elements of our food system. This proposal is particularly unacceptable regarding seed. We are on the verge of completing a lengthy, comprehensive and inclusive process of reviewing Canada's seed regulations. All that work done in good faith could be made irrelevant if seed companies can obtain approvals using another country's regulations.

As mentioned above, foreign jurisdictions' reliability is not predictable or guaranteed. Furthermore, there is no guarantee of reciprocal recognition of Canadian approvals, thus disadvantaging Canadian products and allowing non-symmetric access to Canada's agricultural space. Truly Canadian products that are well adapted to our growing conditions and/or which were developed to address Canadian farmers' challenges could be squeezed out of our market as a result of unfair competition by foreign countries looking to expand their market share.

Plant breeders' rights

The CFIA anticipates its proposed regulatory amendment to Plant Breeders Rights regulations to remove the Farmers' Privilege for fruit, vegetable, ornamental and hybrid varieties will be enacted. However there has been strong farmer opposition to this initiative. Serious deficiencies in the CFIA's regulatory analysis are grounds for withdrawing this proposal altogether.

Removing the Farmers' Privilege for protected fruit, vegetable, ornamental, and hybrid varieties is an unacceptable encroachment on farmers' age-old practice of saving and using farm-saved seed to plant their crops in future growing seasons.

The ability to use farm-saved seed, cuttings, budding, grafting, etc., to continue growing PBR protected fruit, vegetable, ornamental, and hybrid varieties on their own holdings after having paid the required royalty on the initial purchase, enables farmers to adapt varieties to their specific farming conditions and climates. The Farmers' Privilege also allows farmers to reduce production costs by using farm-saved seed and other propagating material.

Farmers generally do not save seed from hybrid crops as they are aware that subsequent generations do not produce consistent results. The proposed elimination of the Farmers' Privilege on hybrids would encourage breeders to develop hybrid varieties, and to de-register non-hybrid varieties under the Seeds Act, and thereby remove them from the commercial sphere. In short, it provides a way for seed companies to interfere with the widespread seed saving practices of cereal, oilseed and pulse farmers.

Seed saving is vital not only so that farmers have secure access to their most important input, but also because the practice enables on-farm climate resilience through variety adaptation to specific environments and farming practice; replacing lost woody perennial berry and fruit tree stock (due to wildlife and/or excessive cold, drought, flooding) with the same variety when not available commercially; access to propagating material in the event of severe supply chain disruptions, a significant risk for vegetable seed which is mostly imported; reduced seeding/propagating costs (though not a zero cost, as seed saving requires time, skill, storage facilities); price discipline on seed sellers – price hikes will be limited when farmers are able to switch to farm-saved seed if the purchase price rises too high; ability to keep using a variety if the breeder decides to take it off the market before the PBR protected period ends.

The CFIA claims ending Farmers' Privilege on horticultural and hybrid varieties will incentivize investment and innovation, but this is only an assumption. Their PBR monopoly on selling protected varieties allows breeders to increase revenues by increasing annual sales and royalty collection, but there is no requirement for them to use those dollars for plant breeding in Canada or elsewhere.

Strengthening PBR protection by prohibiting seed-saving and increasing the protection period may actually lead to less investment in new varieties, as companies will not need to bring new products onto the market as quickly to maintain or increase their revenue flow.

We have also seen that strengthened PBR regimes go hand in hand with increasing consolidation in the seed sector, with less competition. The global seed system is now dominated by four multinationals – Bayer, BASF, Corteva and Sinochem – as a result of mergers and acquisitions. They may use money gained as a result of the proposed regulatory change to further consolidate their holdings within Canada and internationally, further reducing competition in the seed sector, instead of investing it in plant breeding.

Eliminating Farmers' Privilege for fruit, vegetable, ornamental, and hybrid varieties would transfer too much control over Canada's agriculture sector to an increasingly privatized and concentrated global seed sector.

Conclusion

Regulations are an essential component of our democratic governance system. Updating regulations to adapt to changing needs of Canadian farmers and our food system is necessary and important, and must be done thoughtfully, and in the public interest. Future-proofing our regulatory framework means building a strong foundation for food sovereignty, social and economic justice, climate mitigation and adaptation, intergenerational justice, and to uphold Canada's national sovereignty which will allow us to chart our own course through uncertain and turbulent times.

Respectfully submitted by

The National Farmers Union

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