

**National Grain and Feed Association  
North American Export Grain Association**

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*Submitted Electronically*

November 26, 2018

Administrator  
Office of Information and Regulatory Affairs  
White House Office of Management and Budget  
725 17<sup>th</sup> Street NW  
Washington, DC 20503

**RE: US-Canada RCC RFI**

Dear Administrator:

The National Grain and Feed Association (NGFA) and North American Export Grain Association (NAEGA) submit this joint statement in response to the request for information on how the federal government, under the auspices of the United States-Canada Regulatory Cooperation Council, may reduce or eliminate unnecessary regulatory differences between the United States and Canada, as requested in the October 9, 2018 edition of the *Federal Register*.

These comments seek to inform the Office of Information and Regulatory Affairs on areas that would benefit from further regulatory cooperation from the perspective of the grain, feed manufacturing, grain and oilseed milling and processing, and export sectors.

NGFA, established in 1896, consists of more than 1,000 grain, feed, processing, milling, exporting and other grain-related companies that operate more than 7,000 facilities nationwide, and handle more than 70 percent of the U.S. grain and oilseed crop. Its membership includes grain elevators, feed and feed ingredient manufacturers, biofuels companies, grain and oilseed processors and millers, exporters, livestock and poultry integrators, and associated firms that provide goods and services to the nation's grain, feed, processing, milling and export industry. NGFA also consists of 34 affiliated State and Regional Grain and Feed Associations.

NAEGA, a not-for-profit trade association established in 1912, consists of private and publicly owned companies and farmer-owned cooperatives that are involved in and provide services to the bulk grain and oilseed exporting industry. NAEGA-member companies ship and support the

vast majority of the highly competitive, sustainable and fungible U.S. grain and oilseed export supply. NAEGA works collaboratively around the world to improve and maintain the trade of grains, oilseeds and other agri-bulks by informing industry and addressing both commercial and official practices.

Even though the United States and Canada are both net grain exporters, cross collaboration and cooperation on regulatory issues important to the grain trade is vital to promoting best regulatory practices in North America and around the globe. Both Canada and the United States are successful competitors in the global market because of their respective comparative advantages that exist given North America's geographical characteristics, agricultural bounty, superior logistics and innovative, market-based economies. North America's agricultural production is vital to meeting the world's food security needs, and the successful cooperation between Canada and the United States through the RCC and the North American Free Trade Agreement (NAFTA) has enabled specialization within the trade and opened opportunities for niche markets. Our organizations trust that this cooperation will be strengthened further by improvements made under the U.S.-Mexico-Canada Trade Agreement (USMCA), once ratified.

For example, the United States is well-positioned to produce and supply corn and soybeans while Canada is often the supplier of choice for crops such as oats, canola and certain classes of wheat. This specialization has freed up U.S. acreage for crops for which the United States has a strong comparative advantage, such as corn and soybeans, and led to a mutually beneficial expansion of production and exports over the last few decades. Further, Canada's high per-capita income has created opportunities for U.S. exports of value-added agricultural products, such as meat, poultry, dairy and biofuels, that are produced in large part through consumption and utilization of U.S.-produced grains, oilseeds and feed products. Consequently, Canada "indirectly" imports a large quantity of U.S. grains, oilseeds and feed through its import of U.S. value-added agricultural products, thereby contributing to U.S. economic growth, manufacturing jobs in the food and agricultural sector, and to U.S. agriculture's positive contribution to the U.S. balance of trade.

This ongoing market and regulatory cooperation has allowed North America to become closely integrated in agricultural trade and a leader and supplier of choice for customers throughout the world. Continued cooperation through the RCC and as part of the implementation of the USMCA will continue to be vitally important for future success.

### **Regulation Cooperation for Trade**

The growing number of non-tariff barriers that distort and slow cross-border trade flows is of paramount concern to the North American grain, oilseed and value-added agricultural product trade, such as meat and poultry. To help reduce these non-tariff barriers, NGFA and NAEGA have been working constructively with the Trump administration since its inception to promote best official practices, including standards that increase transparency, promote reliability and reduce the risks of disruptions to international trade. Since NAFTA was ratified in 1993, the global international trading environment has changed immensely. Global supply chains are

increasingly complex and subject to overlapping jurisdiction and rules. Trade with Canada is no different. Because of these challenges, NGFA and NAEGA have worked to promote rules and standards that will reduce risk and increase the predictability and certainty of efficiently trading across borders. Over the past two years, NGFA and NAEGA have encouraged the Trump administration to pursue modern, high-standard trade agreements that create rules to level the global playing field for trade and make the global and national rules that regulate trade fair, transparent and efficient. Among these efforts has been the promotion of rules and standards that address:

1. ***Actions at Import:*** Import checks on individual containers or consignments can present a major barrier to trade in agricultural commodities. Checks can result in expensive delays. Goods may be subjected to inspection or detention, or may even be rejected, without scientific justification or adequate or timely notification.
2. ***Science and Risk Analysis:*** Many sanitary and phytosanitary (SPS)-based import bans and restrictions do not conform to the applicable regional and international standards and the promulgating authority often fails to provide a science-based risk assessment as required under the World Trade Organization’s SPS Agreement. The United States and Canada should pursue timely completion of risk assessments with adequate opportunities for comment by importing parties.
3. ***Audit Provisions:*** Often, importing country SPS authorities frustrate trade through the implementation of unjustified and unscientific import bans and restrictions. Audits of importing country SPS authorities provide an objective basis to determine whether control procedures at export are equivalent to or reasonably meet those at import.
4. ***Transparency Provisions:*** Agricultural traders are often kept in the dark about the basis for measures that restrict movement of goods based on alleged SPS and technical barrier to trade grounds. All requirements – including those identified above – should explicitly require disclosure and should be available to governments, as well as commercial parties, prior to implementation. The United States and Canada should pursue clear and transparent timelines for disclosure and resolution of adverse import checks. Further, regulatory authorities should be encouraged to follow transparent and predictable regulatory timelines with adequate room for comment and critique of new regulatory measures.

With the release of the USMCA text, NGFA and NAEGA were delighted to see that many of these principles are addressed. We believe USMCA takes significant steps to promote a more transparent and reliable trading environment in North America.

Moving forward, we encourage U.S. and Canadian officials to work together through the RCC and the trilateral bodies set up in the USMCA agreement to facilitate trade and encourage cooperation and convergence on North American regulatory issues. In particular, NGFA and NAEGA believe the RCC should work to support the implementation of the following USMCA

provisions and standards that will further facilitate trade and promote regulatory cooperation in North America:

1. ***Establishment of a rapid response mechanism (RRM) to facilitate trade during adverse import checks:*** Through the establishment of an RRM, which was advocated by our two organizations, USMCA promises to improve significantly the reliability of the trading environment in the event goods are detained at the border for SPS reasons. USMCA increases certainty by requiring an importing party that prohibits or restricts the importation of a good based on an adverse result of an import check to provide notification *within five calendar days* – an improvement on the Trans-Pacific Partnership Trade Agreement from which the United States withdrew – after the date of the decision to prohibit or restrict, to at least one of the following: the importer or its agent; the exporter; or the manufacturer. In the notification, the importing party is required to provide the reason for the prohibition or restriction; the legal basis or authorization for the action; and information on the status of the affected goods including, where applicable: relevant laboratory results and laboratory methodologies, identification of the pests at the species level, and information on the disposition of goods. This has the potential to reduce trade disruptions and inefficiencies, as well as cross-border transportation backlogs and demurrage costs.
2. ***Enhanced technical consultations for SPS disputes:*** Misapplied or non-science based SPS measures are a growing barrier to international trade, and SPS disputes between countries often are costly and time consuming. The USMCA agreement makes significant progress toward mitigating these barriers by establishing technical consultations that will help the United States, Mexico and Canada resolve SPS disputes in as little as 180 days. In the event technical consultations are unable to resolve the SPS dispute, the parties have the option to use the dispute-settlement process under Chapter 31.
3. ***Regulatory coherence:*** USMCA makes significant and positive steps to enhance regulatory cooperation in North America through the establishment of a chapter on Good Regulatory Practices (Chapter 28). Chapter 28 deepens already robust and functioning cooperative arrangements between North American regulatory authorities by institutionalizing standards, practices and forums for regularly engaging on regulatory issues. Most notably, Chapter 28 sets high standards for information-sharing and public engagement during rulemaking, encourages the use and disclosure of science-based measures, encourages the use of expert advisory groups and sets out areas of engagement between U.S., Mexican and Canadian regulatory authorities. USMCA also provides a forum for the parties to consult at least annually through the establishment of Committees on Agricultural Trade, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, and Agricultural Biotechnology.
4. ***Promoting science-based standards, risk management and risk assessments:*** Establishing rules and regulations that appropriately manage risk and are backed by science are vital to facilitating trade. USMCA improves upon NAFTA by requiring the United States, Mexico and Canada to adhere to regulatory and SPS practices that are

rooted in science, based on proper risk-assessments and implemented using accepted risk-management practices.

5. ***Inclusion of steps to reduce the likelihood of trade disruptions in products of agricultural biotechnology and other seed-breeding innovations.*** USMCA contains major and highly significant steps to improve rules regarding the approval of agricultural biotechnology traits, including new plant breeding innovation techniques (e.g., gene-editing) in an effort to reduce trade disruptions, align and better synchronize regulatory approvals and facilitate trade, while encouraging continued innovation in crop production technologies. In particular, the agreement requires parties to encourage applicants to “submit timely and concurrent applications” for authorization of biotech products; requires parties to maintain rules that provide for the initiation of authorization processes even if the product is not authorized in another country; improves the timeliness of the review of expiring authorizations; improves communication between parties on new and existing authorizations of products; and requires parties to adopt or maintain policies to facilitate the management of low-level-presence (LLP) occurrences, thereby significantly reducing potential trade disruptions. These standards take significant steps to reduce the risk of asynchronous regulation of agricultural biotechnology techniques in the North American market and hopefully will serve as a model for future trade agreements.

We believe that utilizing the RCC to support and facilitate implementation of these rules and procedures will go a long way to achieving the council’s mandate through increased regulatory alignment and transparency, greater alignment, similar and consistent approaches in regulations, recognition of regulatory practices, and smarter, less burdensome regulations in specific sectors. We look forward to engaging with the RCC as it considers future topics to achieve these outcomes.

### **Regulatory Cooperation to Address Differences in Hazard Communication Standards**

The NGFA and NAEGA appreciate efforts made by the U. S. Occupational Safety and Health Administration (OSHA) and Health Canada to reach a formal agreement to enable collaboration as the two countries move toward implementing their respective hazard communication standards in an attempt to minimize the variances between the U.S. Hazard Communication Standard (HCS) and Canada’s Workplace Hazardous Materials Information System (WHMIS).

One of the benefits of such collaboration between the two countries is that it conceivably could enable a larger universe of suppliers and importers in both countries to meet Canadian and U.S. requirements using a single label and safety data sheet (SDS) for most hazardous products.

However, we are concerned about several aspects of Canada’s proposal, including its different definition of the term “combustible dust” and the differing classification of grains and animal feeds, both of which would create potential hurdles to such a seamless approach.

To address this issue, NGFA and NAEGA urge that the RCC as a near-term task consider the following: 1) acknowledge and explain the respective countries' rationale for the differences in their respective definitions of combustible dust; 2) determine if it is possible to bring about a closer alignment on the respective definitions of combustible dust; 3) consider guidance to clarify the applicability of U.S. and Canadian requirements for labeling and safety data sheets for grain and animal feed; and 4) explore steps to better align current grain and feed labeling and SDS requirements.

**Differing Definitions of Combustible Dust:** Canada's proposed classification criteria for the "hazard" of combustible dust are:

- any powder that has been shown to be "liable" to catch fire or explode, and
- any powder that meets the classification criteria for the flammable solids hazard and has 5 percent or more of its composition by weight having a particle size of 500 micrograms or less.

Further, Canada's classification criteria does not appear to apply if the substance is shipped in a non-dust form.

OSHA as yet has **not** provided a specific definition for combustible dust to the final HCS. However, the agency has issued guidance through existing OSHA documents, including the Combustible Dust National Emphasis Program Directive CPL 03-00-008, which includes an operative definition, as well as provides information about current responsibilities to address this matter. In addition, there are a number of voluntary industry consensus standards (particularly those of the National Fire Protection Association) that address combustible dust.

The definition primarily used and relied upon by the grain handling industry is found in OSHA's grain handling standard (29 CFR 1910.272), under which "fugitive grain dust" is defined as combustible dust particles, emitted from the stock handling system, of such size as will pass through a U.S. Standard 40 mesh sieve (425 microns or less).

Given the conflicting definitions of combustible dust between the United States and Canada, there is concern that U.S. companies will have to prepare different SDSs and labels for shipments bound for Canada than are used for shipments transported within the United States.

### **U.S. and Canadian Labeling and SDS Requirements for Grain and Animal Feed Differ**

Another divergence in the two countries' regulatory approach to combustible dust concerns animal feed. Under the HCS in the United States, an SDS is required for shipments to downstream customers for animal feed classified as hazardous. However, no HCS labeling is required by OSHA if the product already is subject to the Federal, Food, Drug and Cosmetic Act and U.S. Food and Drug Administration's (FDA) labeling provisions (under the limited labeling provisions of HCS 2012, as well as earlier versions of the HCS). Whole grains (e.g. corn, wheat and soybeans)

also are subject to labeling requirements of the FDA and, therefore, are exempt from HCS labeling requirements in the United States.

Meanwhile, Canadian labeling and SDS requirements for animal feed and grain differ from OSHA's Hazard Communication Standard. Section 12 of Canada's *Hazardous Products Act* (HPA) establishes both supplier and importer labeling and SDS requirements of WHMIS. While the HPA exempts certain product categories, such as food, pesticides and medical devices, animal feeds and feed supplements are not encompassed by any of these exemptions.

Therefore, in Canada, animal feed and non-food grain (including biofuels) are not exempt under the new regulations and, therefore, would require an SDS and labeling. HPA apparently uses the definition of "food" as embodied in Canada's *Food and Drug Act*, which does not include animal feed and non-food grain. However, in the United States, the exact opposite is the case. Whole grain is classified as a hazard since it produces dust when processed but animal feed and the coproducts of biofuels (e.g. DDGS) are exempt from the OSHA requirements since they are subject to the FDA labeling requirements.

In addition, NGFA and NAEGA have had several additional questions on HCS and WHMIS variances between labeling and SDS requirements that have not been fully answered yet.

### **NGFA-NAEGA Recommendation**

Based upon the differences between the U.S. and Canadian standards for grain and animal feed SDS and labeling requirements, NGFA and NAEGA believe there is a need, at a minimum, for RCC to provide guidance and clarification on these issues forthwith to avoid disruptions in cross-border shipments of grains and oilseeds, and to enable both countries' grain handling industries to avoid costly efforts to comply with different regulatory approaches to combustible dust.

Our organizations are committed to working within the RCC with U.S. and Canadian officials to better align the implementation of the Globally Harmonized System of Classification and Labeling of Chemicals to facilitate cross-border commerce.

### **Conclusion**

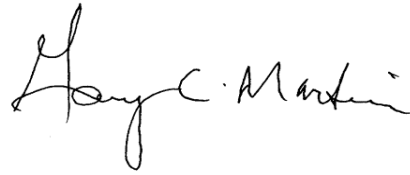
The NGFA and NAEGA are pleased the Trump administration and Office of Information and Regulatory Affairs actively are seeking ways to help facilitate cross-border trade flows in agricultural and other products through higher levels of regulatory cooperation to build upon the existing benefits of North American trade that have facilitated the growth of the U.S. food and agricultural sector, and enabled it to contribute to U.S. economic growth and job creation, while contributing positively to the U.S. balance of trade.

Thank you for your consideration of our views and recommendations. We would be pleased to respond to any questions you may have.

Sincerely,

Handwritten signature of Randall C. Gordon in black ink.

**Randall C. Gordon**  
President and Chief Executive Officer  
National Grain and Feed Association

Handwritten signature of Gary C. Martin in black ink.

**Gary C. Martin**  
President and Chief Executive Officer  
North American Export Grain Association