



SUBMITTED BY EMAIL

December 10, 2018

Neomi Rao
Administrator
Office of Information and Regulatory Affairs
77725 17th St. NW
Washington, D.C. 20503

Re: US-Canada RCC Request for Information

Dear Administrator Rao:

The Institute for Agriculture and Trade Policy (IATP), a non-profit 501(c)(3) organization headquartered in Minneapolis, Minnesota, appreciates the opportunity to submit these comments in response to the Request for Information (RFI) related to the activities of the US-Canada Regulatory Cooperation Council (RCC), Federal Register Vol. 83, No. 195 at 50689. For more than 30 years, IATP has provided technical expertise, research and analysis on policy that supports family farmers and thriving rural communities, and protects the environment and public health, both in the United States and internationally. IATP regularly participates in the rulemaking process by submitting comments on proposed regulations and in other fora. These comments are jointly submitted with the Center for Food Safety; Center for International Environmental Law; Protect All Children's Environment; and Children's Environmental Coalition.

In response to the six questions/topics on which the Federal Register notice specifically seeks stakeholder insight, our comments are particularly addressing topics: (3) on the appropriate role for stakeholders; (5) on alternatives to direct regulation, including of emerging technologies; and (6) on whether the RCC should continue with existing work plans and activities.

If done right, early consultation by regulators across international borders to discuss developing consistent standards that both protect the public interest and smooth the way for compliance by industry could benefit everyone. An effective regulatory cooperation process requires the following elements:

- **Harmonize upwards.** Where there are differences between Canadian and U.S. standards, agreements to harmonize regulatory approaches must adopt the more protective standard. The RCC must not be used as a mechanism or excuse to deregulate or reduce public protections. For example, Canadian chemical safety communication materials that inform workers and emergency responders are significantly more comprehensive and detailed than those required in the U.S. Accordingly, as an example, the U.S. hazard communications standard should be harmonized upwards to the more protective standard. This approach both eliminates differences between the two standards, a primary goal of the RCC, and insures that an important workplace safety and health standards are maintained and not weakened.
- **Protect the public and environment as new technologies emerge.** Regulatory cooperation should not be used to halt the development of protective standards for rapidly evolving technologies, to limit precautionary

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measures, or to promote the use of voluntary alternatives to enforceable regulations. Instead, the RCC should encourage the sharing of information and expertise in order to promote regulation that fully protects the public interest in both the U.S. and Canada.

- **Full transparency.** Regulatory Cooperation Council activities must be transparent. These activities can lead to significant changes in existing regulations and agreements about how to regulate new processes and technologies for the first time. A commitment to full transparency for RCC activities must include:
 - Public notice of all meetings and other activities. Notice must be sufficient to allow for public participation, and include detailed information regarding the subject matter of the meeting and ways to participate in the meeting.
 - Committee membership, workplans and reports must be readily available on public websites.
 - Meetings must be open to the public and meeting minutes and materials, and a list of all participants, should be posted on a public website.
 - Regulatory cooperation activities should provide meaningful opportunities for public comment to permit meeting participants and other interested stakeholders to provide input on any proposed approach or decisions.
 - All decisions should be posted on public website and include detailed reasons for the decisions.
- **Inclusiveness.** Regulatory cooperation should not be an industry-dominated and directed process. “Stakeholders” including consumer, labor, health, environmental, farm and other civil society experts and advocates representing those who are affected must be invited to participate.
 - If sectoral committees engaged in regulatory cooperation activities include nongovernment members, membership must be balanced and not limited or heavily weighted to industry stakeholders.
 - Civil society should be invited to participate as observers and commenters.
- **State and provincial governments must be consulted and informed, and state policies respected.** Although the RCC Memorandum of Agreement properly focuses on central level regulations, nonetheless RCC activities could have consequences for state government regulatory activities. In fact, there is the potential for harmonized international standards to lead to direct or indirect preemption of state regulations. Particularly where state-level standards are more protective of the public than federal policies, the RCC must not be used as a back-door means to prevent implementation or adoption of those state regulations. States have primary jurisdiction in policy areas, such as regulation of insurance and workers’ compensation, and share jurisdiction over many other policy areas, including air, water and waste regulation. Where federal regulation is lacking or spotty, states are the *de facto* primary regulators, including for example, adopting modern animal welfare protections, regulation of cosmetics, and setting aquaculture standards for coastal states such as Maine and Washington.

Unfortunately, since the RCC was established in 2011, it has not met these guidelines in carrying out its activities. The regulatory cooperation activities undertaken by the RCC appear in most instances to be largely non-transparent, corporate-directed, and with minimal participation by civil society or stakeholders outside of the regulated industries. As just one example, the meat inspection work plan for 2016 provides as a medium-term goal, “CFIA and FSIS will assess and, to the greatest extent possible, implement the Canadian Meat Council (CMC) and the North American Meat Institute (NAMI) proposal to streamline export requirements, in support of new electronic certification platforms”.¹ A list of the participants in the meat sector RCC committee is not posted on the public Internet site, so it is impossible to know who was involved, and the referenced industry-written plan is not linked. Further, detailed minutes of meetings are not posted, and while some reports may be available through other agencies’ websites, there appears to be spotty access to many of the RCC’s work products and proceedings.² It is unclear the extent to which state governments with overlapping regulatory authority have been consulted, if at all.

¹ <https://www.trade.gov/rcc/documents/2016%20RCC%20Meat%20Inspection%20Work%20Plan.pdf>

² <https://www.trade.gov/RCC/>

The renewal and re-starting of the RCC process is an opportunity to approach regulatory cooperation activities differently. Unfortunately, the Federal Register notice seeking comment is focused instead on using the RCC and regulatory cooperation “to serve deregulatory functions”, to reduce costs on businesses, and to promote “alternatives to direct regulation.” We categorically reject this approach. First, the RCC stakeholder and meeting process should be completely revised to incorporate the principles and measures we have articulated. Second, the existing work plans and activities should not automatically be continued, as they do not represent the product of an inclusive and transparent process. Current priorities and work must be reviewed and revised after the RCC is reorganized. Third, the RCC must not be used to promote voluntary measures instead of enforceable regulations, or to advance deregulation.

Thank you for your consideration of these comments.

Respectfully submitted,

A handwritten signature in black ink that reads "Sharon Anglin Treat". The signature is written in a cursive, flowing style with a long horizontal stroke at the end of the word "Treat".

Sharon Anglin Treat
Senior Attorney,
Institute for Agriculture and Trade Policy