



# **What We Heard Report Consultation on the Annual Regulatory Modernization Bill: keeping pace with change**

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annuel sur la modernisation de la réglementation : suivre le rythme du changement

# What We Heard Report Consultation on the Annual Regulatory Modernization Bill: Keeping Pace with Change

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Regulatory Affairs Sector

Treasury Board of Canada Secretariat

Between March 27 and June 19, 2023, the Government of Canada led a consultation on the Annual Regulatory Modernization Bill: Keeping Pace with Change on the Let's Talk Federal Regulations online engagement platform.

Stakeholders were invited to:

1. propose legislative amendments that could improve how the regulatory system keeps pace with rapid innovation and evolving regulatory environments while maintaining protections for Canadians' health, safety and security, and for the environment
2. provide feedback on the possibility of granting all federal regulatory organizations the authority to **set up regulatory sandboxes**
3. provide feedback on the possibility of granting all federal regulatory organizations the authority to **incorporate by reference internal documents on an ambulatory basis**

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## Background

Introduced in the 2018 Fall Economic Statement, the Annual Regulatory Modernization Bill (ARMB) is intended to be a recurring bill that helps keep the regulatory system relevant and up to date.

The ARMB is used to make regular, common-sense updates to existing legislation that have negative impacts on the regulatory environment. These updates are intended to facilitate innovation and business competitiveness while continuing to protect the health and safety of Canadians and the environment. More information about the ARMB can be found on the [Annual Regulatory Modernization Bill](#) page, including information on the first and second ARMBs and their status.

The ARMB is one part of the Government of Canada's effort to [modernize the federal regulatory system](#). The goal of modernization is to:

- ensure that the regulatory system keeps pace with rapid innovation and evolving regulatory environments while maintaining protections for Canadians' health, safety and security, and for the environment
- encourage the development of new products and technologies within the regulatory system
- make cross-border trade easier through more consistent rules across governments

- address overly complicated, inconsistent or outdated requirements
- control the administrative burden on businesses

## Overview of consultations

This consultation is the second that the Treasury Board of Canada Secretariat (TBS) has undertaken since 2018 related to ARMB. It was hosted on the [Let's Talk Federal Regulations](#) interactive online engagement platform, which encourages transparent and dynamic engagement with stakeholders.

A total of 94 stakeholder communications were received, either through the Let's Talk Federal Regulations platform or by email. Among these, 78 were substantive submissions directly related to the consultation. The remainder were queries, clarifications, extension requests and other types of inquiries, such as meeting requests. Acknowledgements were sent to thank stakeholders for their submissions, information was provided in response to queries and clarifications, and meetings were held with stakeholders upon request.

Of the 78 submissions:

- 33 originated from 30 organizations
- 45 were submitted by 39 individuals (some individuals and organizations were considered to have made more than one submission)

Organizations that participated were mostly industry representatives, including those from national and international companies and trade associations that represent key industries in the Canadian economy. Non-profit organizations, professional associations, and consumer and advocacy groups also participated. The [appendix](#) contains a list of all participating organizations.

## Next steps

Stakeholder feedback on opportunities for improvement will be considered and tracked for future legislative initiatives, including the Annual Regulatory Modernization Bill. Submissions linked to specific departmental mandates or initiatives have been shared with the appropriate departments and agencies for their consideration. Feedback on proposals relating to regulatory sandboxes or to incorporation by reference has been integrated into ongoing policy analysis on each topic.

## Annual Regulatory Modernization Bill: legislative amendments

Stakeholders supported and welcomed the use of the ARMB to:

- remove regulatory burden and irritants
- promote innovation
- increase agility and flexibility in the regulatory system

Stakeholders also provided feedback on the two additional elements of the consultation relating to the proposals to provide all federal regulatory organizations the authority to:

1. set up regulatory sandboxes
2. incorporate by reference internal government documents on an ambulatory basis

Respondents identified a wide range of opportunities to:

- address barriers to efficiency
- address overly restrictive or complicated legislation
- address inconsistent or unnecessary requirements
- streamline and harmonize requirements
- adopt international standards

Much of the feedback also related to non-legislative issues, such as:

- regulatory changes
- policy changes
- program implementation considerations

These non-legislative issues are outside the scope of the ARMB, which can only address changes to legislation, so the feedback is not discussed in this report. However, it has been analyzed and provided to relevant departments and agencies for their consideration and action. All feedback received for this consultation, including out-of-scope responses, is available on the Government of Canada's [Open Government Portal](#).

## **1. Addressing barriers to efficiency, overly restrictive legislation and unnecessary requirements**

About 30% of the organizations that provided feedback were industry representatives, and they provided over 40 specific recommendations. The submissions supported continued efforts to modernize the legislative and regulatory frameworks by:

- enabling the use of digital technologies
- harmonizing requirements across jurisdictions
- increasing flexibility and agility in the system

Stakeholders identified a wide range of opportunities for improvement, with concerns varying across sectors. These opportunities fell into four broad categories as outlined with examples below.

### **Modernize legislation to increase flexibility, efficiency and agility**

- Amend sections of the *Canadian Environmental Protection Act, 1999* that relate to the export of substances to provide further flexibility to the department to address substances that may be restricted but have exemptions under different regulations.
- Amend the *Canada Not-for-Profit Corporations Act* regarding changes to:
  - the distinction between soliciting and non-soliciting corporations for accounting purposes

- voting rights for non-voting members and classes of members and delegates
- Develop more efficient processes to implement authorizations under the *Fisheries Act*.
- Streamline immigration and customs processes through amendments to the *Immigration and Refugee Protection Act* and *Customs Act*.
- Modernize the mandate of the Canadian Transportation Agency by amending the *Canada Transportation Act* to:
  - provide the agency with investigative powers
  - better define the minister's power to direct the agency's activities or override its decisions
  - establish a specialized rail unit for informal dispute resolution processes

### **Correct inconsistencies, errors and increase clarity**

- Make changes to the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* to address inconsistencies between English and French wording and remove obsolete provisions.
- Make changes to the *Canada Not-for-Profit Corporations Act* to provide clarity on vague and unclear provisions, such as:
  - the requirements to verify the lawfulness of articles
  - exceptions for when property can be distributed to members

### **Digitize and enable the use of technology**

- Enable the use of digital processes and methods, such as allowing the use of electronic communications, remote participation and examination in the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*.
- Enable the use of electronic signatures through changes to the *Personal Information Protection and Electronic Documents Act*.
- Enable the use of technology to facilitate virtual and hybrid meetings and voting under the *Canada Not-for-Profit Corporations Act*.



- Amend the *Canadian Air Transport Security Authority Act*, *Customs Act*, *Aeronautics Act* and *Privacy Act* to keep up with the use of digital technologies.
- Ensure better protection of aviation safety data through amendments to the *Canadian Aeronautics Act* and *Access to Information Act*.

## Miscellaneous

- Amend the *Select Luxury Items Tax Act* to eliminate the luxury tax on aircraft.
- Amend the *Income Tax Act* to specify timelines for resolving objections to income tax assessment issues.
- Broaden the scope of the *Red Tape Reduction Act* to have the one-for-one rule apply to the *Income Tax Act* as well as other compliance instruments such as legislation, policies and guidelines.
- Change the *Canada Transportation Act* requirements that relate to foreign ownership and transfer some oversight for investment and competition of air carriers to the *Investment Canada Act* and the *Competition Act*.
- Establish a new legislative framework for insolvency services for micro and small enterprises that provide access to restructuring opportunities.

## 2. Regulatory sandboxes

The Government of Canada invited all stakeholders to share ideas on the proposal to provide all federal regulators the authority to set up regulatory sandboxes.

A regulatory sandbox allows for the controlled testing of a novel product, service, process, or regulatory approach, with the aim of generating evidence for how regulations are designed and used. The primary goal is to gather data and insights that can inform the creation or management of regulatory frameworks—all while continuing to uphold protections for

health, safety, and the environment. Some federal regulators have this authority in their legislation, but most lack the authority to specifically provide this flexibility.

The consultation sought feedback on proposed criteria intended to ensure that regulators use this authority in a consistent, transparent, and accountable manner. Criteria include, for example, imposing requirements on regulators to set clear time limits, consult with impacted parties, and report publicly on the use and results of regulatory sandboxes.

Comments were provided by 26 stakeholders, mostly from industry but also from professional and public associations, provincial organizations, and some individuals. Most of these stakeholders emphasized the advantages of regulatory sandboxes, such as:

- enhancing regulatory agility in response to technological changes
- fostering industry innovation
- identifying process efficiencies

In addition to highlighting the benefits of regulatory sandboxes, most submissions were supportive of the proposed criteria and stressed the importance of having safeguards in the following areas:

- appropriate justification for the use of regulatory sandboxes
- notification, consultation, and engagement with stakeholders before, during, and after a regulatory sandbox is undertaken
- transparency on the use and results of regulatory sandboxes with the public

Some stakeholders suggested areas where regulatory sandboxes could be useful. For example, testing the use of emerging technologies in the agriculture and agri-food sector, such as drones, sensors, and robotics. These technologies have been adopted by farmers globally, and regulatory sandboxes could be used to explore changes to regulations required to support their adoption in Canada.

A few stakeholders, including two professional and public associations, did not support the proposal. Their concerns included:

- the potential lack of transparency in sandboxes
- challenges in regulatory capacity to design and implement sandboxes
- the potential for misuse of sandbox exemptions to undermine safety measures

### **3. Incorporation by reference of internal documents on an ambulatory basis**

The Government of Canada invited all stakeholders to share ideas on the proposal to provide all federal organizations the authority to incorporate by reference internal documents on an ambulatory basis (that is, as the document changes over time).

Incorporation by reference allows:

- information related to the regulation to be put into a published document
- the regulation to refer to that published document

This approach allows the content of the document to have the same force of law as if that content were in the text of the regulations. Incorporation by reference is often used in situations where technical information or requirements are expected to change over time. Examples are:

- scientific test methods, where advances in science and technology are likely to create new and more accurate versions of those tests in the future
- lists that are expected to be updated periodically, such as a list of allowable ingredients in certain kinds of products

Currently, all federal organizations already have the authority to:

- incorporate by reference documents created by external organizations, such as from international standard-setting bodies, including the

International Organization for Standardization (ISO)

- update those documents on an ambulatory basis

However, only certain regulators under specific pieces of legislation can do this with their internal documents.

The consultation sought feedback on:

- allowing all federal regulatory departments to incorporate by reference internal documents
- criteria that could be used to ensure that regulators use this authority in a transparent, predictable and accountable manner

Comments were provided by 38 individuals and 25 organizations, most from industry and some from professional and public associations and provincial organizations. Most organizations supported the authority, but most individuals did not.

Those that were supportive noted that the authority was appropriate if the following safeguards were in place:

### **Governance and accountability**

- Entrenchment of consistency, transparency and accountability principles in legislation or regulation
- TBS oversight through tracking, monitoring and regular review of the use of this authority to ensure alignment with the principles of transparency and accountability
- Alignment with existing federal government policies on incorporation by reference

### **Stakeholder engagement and communication**

- Notification, meaningful consultation, engagement and open communication with stakeholders before, during and after the development of documents

- Appropriate transition timelines to implement any changes to requirements
- Lower level of consultation and engagement for less impactful, minor or administrative changes to documents

## **Document development and management**

- Avoidance of policy or regulatory “creep”
- Tracking of changes across subsequent versions of documents and access to previous versions of documents
- Different approaches for when the authority is used to promote market access versus restricting it
- Definition of technical or minor changes versus more substantive changes
- Requirement to review the document every five to 10 years

Those that were not supportive of this authority raised concerns relating to the following:

## **Oversight and accountability**

- Lack of clarity on how this authority could erode parliamentary oversight
- Reduced oversight by elected officials and concentration of power in the bureaucracy
- Lack of recourse mechanism to challenge and resolve misuse or inappropriate use of the authority
- Lack of resources and power to enforce the requirement that regulators follow the principles of transparency, consistency and accountability

## **Delegation of authority and complexity**

- Authority to approve changes to documents being delegated to lower levels within the regulator
- Incorporation of requirements that go beyond the scope of the intended authority

- Further complication of how and where regulatory requirements are accessed where there has been incorporation by reference
- Circumvention of comprehensive requirements currently in place for regulatory changes.

## Conclusion

The Government of Canada thanks all participants for their feedback. Submissions and comments have been shared with the appropriate departments and agencies.

Input will be considered during the development of the next edition of the Annual Regulatory Modernization Bill. Updates will be posted on the [Annual Regulatory Modernization Bill website](#).

Bill S-6, An Act respecting regulatory modernization, is before Parliament as of February 2024, and the speed of movement of Bill S-6 through the parliamentary process may impact the timing of future ARMBs.

If you would like to stay up to date on the ARMB and other regulatory modernization activities, register on the Let's Talk Federal Regulations platform or email us at [regulation-reglementation@tbs-sct.gc.ca](mailto:regulation-reglementation@tbs-sct.gc.ca) to join our distribution list to receive newsletters and other updates.

## Appendix: participating organizations

Some participants registered on the Let's Talk Federal Regulations platform without indicating whether they are an individual or organization. The following list contains all identified organizations (in alphabetical order).

- Association of Equipment Manufacturers
- Canadian Apparel Federation
- Canadian Association of Insolvency and Restructuring Professionals
- Canadian Bar Association
- Canadian Business Aviation Association

- Canadian Cattle Association
- Canadian Chamber of Commerce
- Canadian Consumer Specialty Products Association
- Canadian Federation of Agriculture
- Canadian Federation of Independent Business
- Canadian Generic Pharmaceutical Association
- Canadian Health Food Association
- Canadian Produce Marketing Association
- Canadian Union of Public Employees – Airline Division
- Canadian Vehicle Manufacturers’ Association
- Canadian Owners and Pilots Association
- Centre for International Governance Innovation
- Conseil Patronal de l’Environnement du Québec
- Consumers Council of Canada
- Electricity Canada
- Fertilizer Canada
- Food Health and Consumer Products of Canada
- Innovative Medicines Canada
- Keystone Agricultural Producers
- National Airlines Council of Canada
- National Farmers Union
- Nova Scotia Health Innovation Hub
- Ontario Ministry of Agriculture, Food and Rural Affairs
- Private Motor Truck Council of Canada

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