

The “New NAFTA” and Agribusiness’ Secretive Plans to Unravel Food Safety and Worker Protections

Little-known council linked to NAFTA subverts public safety to free trade

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As Congress and the public debate the pros and cons of the United States-Mexico-Canada Agreement (USMCA), or New NAFTA, behind the scenes and in the shadows transnational corporations are doubling down on their plans to weaken and eliminate public protections through a related entity, the secretive Regulatory Cooperation Council (RCC). This little-known council has the mission of promoting trade by “reducing, eliminating or preventing unnecessary regulatory differences” between Canada and the United States. Since the RCC’s inception, agribusiness—including factory-farmed livestock producers, the feed industry, and chemical and pesticide manufacturers and linked transportation businesses—has had a seat at the regulatory cooperation table. Their focus, without exception, has been advocating the scaling back and even elimination of important safety protections in both countries. In the U.S., recommendations made by the RCC feed directly into regulations enacted (or eliminated) by the Department of Agriculture, Food and Drug Administration and Environmental Protection Agency, among others.

Cross-border [regulatory cooperation](#) activities aimed at eliminating so-called “non-tariff barriers” to trade—standards that can increase the cost of importing products that don’t meet another country’s health and safety protections, or prevent the import altogether—began following the signing of the original NAFTA. Initially, informal working groups were established to harmonize pesticide and other regulations. The RCC was formally created in 2011 by an Executive Order from President Obama, and proceeded to establish work plans to harmonize U.S. and Canadian regulations in [23 policy areas](#), including meat and plant inspections, food safety, workplace chemicals, chemicals management, rail safety and transport of dangerous goods. The RCC was revitalized in June 2017 by the Trump and Trudeau administrations with a new [Memorandum of Understanding](#).

The Trump administration recently sought comment from “stakeholders” on what the RCC’s activities and focus should be going forward. It is very clear that the administration’s RCC initiative is part of its broader deregulatory plan. The [U.S. request for comment](#) specifically states that international regulatory cooperation initiatives “may serve deregulatory functions and help agencies achieve the objectives of [Executive Order 13771](#).” This executive order “requires that, for each fiscal year, agencies must identify in their Regulatory Plans offsetting regulations for each regulation that increases incremental cost” and at a minimum, must repeal two regulations for every one that is adopted. The Trump government intends for the RCC process to promote these regulatory rollbacks.

Predictably, the RCC stakeholder submissions were mostly from transnational corporations

and industry associations. Most of the public, as well as many food, consumer and environmental groups, have never heard of the RCC. ([IATP's comments](#) were among very few from civil society.) The corporate commenters have a consistent message, which mirrors that of the Trump administration: Use the RCC to get rid of regulations. Many also see the RCC as a mechanism for implementing new restrictions on public protections that are [part of the New NAFTA](#). Here are some of the most egregious industry asks:

- All inspections of imported meat at the border should be eliminated. In their [joint comments](#) on the RCC, the North American Meat Institute (NAMI) and Canadian Meat Council (CMC) said that “microbial and residue testing of meat products at the border should be eliminated” in order to facilitate trade, and opined that “Free Trade Agreements between the US and Canada provide the legal basis” for this action. As [Food & Water Watch has pointed out](#), the no-inspection demand is one these meat industry lobbyists have been making since the RCC was established in 2011. Border inspections are important for protecting public health because U.S. and Canadian food standards and practices are not the same. It also protects the public as government is [privatizing meat inspection](#) and shifting to self-reporting while [slaughtering line speeds increase](#). Food & Water Watch gives the example of USDA’s zero tolerance policy for the pathogen *Listeria monocytogenes* on all products it regulates. Canada does not have this ban. Without checking at the border, there is no way to know if Canadian products that violate U.S. policy on this pathogen are being imported into the U.S. While the industry’s earlier demands to end border inspections were upended by a major recall of contaminated Canadian beef in 2012, the industry is trying again under the Trump administration. This time, they may succeed.
- If all border inspections aren’t eliminated, then food safety inspectors should reduce tested sample size. If you test less of a product, you will undoubtedly find fewer violations. Of course, this isn’t the reason meat industry lobbyists NAMI and CMC give for their request that the RCC focus on reducing sampling lot size—instead they say their goal is to prevent food waste! When it comes to food safety, what you don’t know *can* hurt you.
- Prevent Canada’s new mandatory Front of Package health and nutrition labels from going into effect. The [U.S. Meat Export Federation](#) wants the RCC to harmonize front-of-package labeling between the U.S. and Canada. What does this mean? The industry’s goal is to use the RCC process to stop Canada from implementing new health warnings on packaged foods. In their regulatory cooperation comments, [NAMI and CMC](#) assert that food nutrition labels proposed by Health Canada were promulgated in a manner inconsistent with “good regulatory practice as outlined in the text” of New NAFTA, and that the proposed rule “creates a non-tariff trade barrier for U.S. companies.” The groups falsely claim that the Canadian measures are not evidence-based and “will be unique in the world and set a dangerous precedent,” mentioning particularly their objection to linking the labeling provisions to restrictions on marketing to children. In fact, health warnings on junk food packaging has been effectively implemented in several countries to combat obesity, diabetes and other diet-related diseases. As we [reported previously](#), U.S. negotiators, egged on by agribusiness, sought to prevent Canada (as well as Mexico and the U.S.) from implementing effective front-of-package junk food warning labels. The proposed

anti-labeling negotiating text was leaked, and the ensuing public outcry killed the proposal. It appears that the meat industry wants to use this secretive regulatory cooperation process to achieve through the back door what it was unable to accomplish directly in New NAFTA.

- Allow Canadian-grown meat to be sold with chemical treatments and in packaging that currently isn't allowed. Canada doesn't allow some "food safety interventions and packaging" that the U.S. does, according to meat industry lobbyists CMC and NAMI. The industry suggests that since some U.S. meat products exported to Canada are allowed to be sold even when chemically treated or in packaging that Canada does not allow domestically, "there is a compelling rationale to converge these approval processes." In their view, Canada should simply adopt the U.S. standard, and the RCC can help achieve this outcome.
- Reduce safety testing of containers used to transport pesticides and other hazardous chemicals. The [Industrial Packaging Alliance of North America](#) (IPANA) wants to use the RCC to limit required safety inspections of containers used to transport hazardous goods. Currently, under U.S. Pipeline and Hazardous Materials Administration rules, these containers must be retested every 12 months. Right now, Transport Canada does not require any periodic safety retesting, but it has proposed testing every five years. The industry group says the U.S. standard "represents a competitive cost disadvantage for U.S. manufacturers" and that changing to the Canadian proposal "would eliminate a significant and unnecessary regulatory burden." How would workers and others exposed to leaking pesticides or exploding hazardous materials be affected if these containers fail because of inadequate testing? IPANA doesn't say.
- Use obscure words instead of plain language to hide information from consumers. The [Chamber of Commerce](#) thinks the RCC should help get rid of a U.S. rule that requires English words instead of obscure Latin terms for 57 ingredients on some consumer product labels. Since Canada allows the Latin terms, harmonizing the two countries' regulations to the Canadian standard presents a unique opportunity to further confuse consumers trying to decipher what's really in these household products—and whether they are safe.
- Exempt U.S. exporters from some Canadian safety standards for explosive grain dust in animal feed and non-food grain. This is one of many joint requests from the National Grain and Feed Association and North American Export Grain Association. Canada requires hazard labeling and safety data sheets for workers handling animal feed and non-food grain, whereas the U.S. does not. The [feed associations](#) want the RCC to harmonize regulations intended to prevent [dangerous grain dust explosions](#) by allowing the less protective U.S. standard to apply. The industry solution? Of course, harmonize downward.
- Roll back controls on climate-harming hydrofluorocarbon gases. The [Chemistry Society of Canada and the American Chemistry Association](#) want Canada to piggy-back on a Trump administration attempt to [roll back rules](#) meant to prevent the leaking and venting of organic compounds called hydrofluorocarbons

(HFCs) from large refrigerating and air-conditioning units. HFCs contribute to global warming and ozone depletion. The chemical industry lobbyists state the RCC should be used to “encourage collaboration between Canada and the U.S., which could reduce burden, enhance compliance, and promote a North American market.” It would also further accelerate climate change, not to mention contribute to [more cases of skin cancer](#), facts the chemical industry fails to mention.

It is very clear that the Regulatory Cooperation Council, and related language in the new NAFTA, is part of a broader deregulatory plan. New NAFTA hasn’t yet been sent to Congress for ratification and isn’t in effect, but that hasn’t stopped industry lobbying groups from trying to use it to deregulate. Several comments submitted by industry groups made the case that provisions in New NAFTA should be implemented through the RCC, or that a domestic regulation they object to violates provisions in the deal. As we discuss above, in their objections to Canada’s new junk food labeling rule, the meat industry claims the rule is inconsistent with New NAFTA’s [“Good Regulatory Practices” \(GRP\) chapter](#). The GRP chapter includes provisions defining what information and studies may be used to develop domestic regulations, how other countries should be involved in the rule-making process, and procedures for adopting, reviewing and repealing regulations. It also includes [many provisions promoting regulatory cooperation and harmonization](#). Other New NAFTA chapters, including [provisions on technical rules including labeling](#), also encourage or require regulatory cooperation prior to adoption of new mandatory public protections.

While different regulations in the two countries could be harmonized to the most protective of the divergent standards, that approach is not reflected in any of these recent industry demands. Nor is it what actually happened during the decade since the RCC was established. Perhaps there is no more devastating and obvious proof of this than U.S. and Canadian regulators’ actions both before and after the 2013 [Lac Mégantic train disaster](#).

From the early days of the RCC, it was a forum for regulators to seek to harmonize regulations governing rail safety and the transport of dangerous goods, including policies regulating the rail transport of volatile crude from North Dakota’s Bakken formation and Alberta’s oil sands through Canada and the U.S. We know now that these [regulatory cooperation initiatives](#) did nothing to improve rail safety, either before *or after* a 72-car runaway oil train crashed and [exploded like a bomb](#) in the Quebec village of Lac Mégantic, directly killing 47, destroying the community’s historic center, and spilling thousands of gallons of crude oil on the edge of what had been a pristine lake and tourist destination.

The disaster was caused by reckless industry cost-cutting, abetted by massive regulatory failure as the Canadian government pursued a single-minded focus on deregulation. This deregulatory agenda has many parallels with [what’s going on now under the Trump administration](#), including the arbitrary and foolish 2-for-1 policy that requires repealing two existing regulations for every new rule. Transport of dangerous goods and rail safety continue to be part of the RCC’s mission. It’s hard to see how secretive discussions aimed at eliminating regulatory differences that impede free trade will improve safety, especially with the Trump administration busy rolling back many measures intended to address some of the biggest safety gaps that led to the Lac Mégantic disaster. As [Bruce Campbell’s book on Lac Mégantic](#) details, these rollbacks include delaying or completely stopping:

- measures to require more than one crew member on dangerous goods

- transporting trains;
- positive train control, the remote control satellite-based protection system that helps prevent derailments;
- a rule requiring certain trains carrying high-hazard liquids to be operated with an [electronically controlled pneumatic braking](#) system by 2021;
- prospective regulations to address track deterioration;
- and proposals to require engineers to be screened for sleep apnea.

The current RCC agenda, added to New NAFTA’s “Good Regulatory Practices,” points to a concerted effort by corporations and their allies in government to lower standards in North America and beyond. Neither the Canadian nor U.S. government seems likely to use the RCC to harmonize rules upwards. Obviously, when at least one of the two countries seeking to harmonize regulations across the border is hell-bent on rescinding public protections, harmonization will lead to lower standards. Protective standards and oversight are already deficient in both countries—from [meat inspection and food safety](#), to protecting workers and the public from exploding grain elevators and exploding oil trains. Without the will to hold industry accountable and adopt strict protections, regulatory cooperation in and of itself does nothing to improve those standards. In fact, as the rail safety example illustrates, the RCC experience *even under the more regulation-friendly Obama administration* failed the public interest. Indeed, just this month there was another [major derailment](#) which killed the crew as a freight train plunged 60 meters off a bridge near the British Columbia-Alberta border.

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