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Bill C-18:
An Act to amend certain Acts relating to agriculture and agri-food

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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Legislative Summary of Bill C-18
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-18: AN ACT TO AMEND CERTAIN ACTS RELATING TO AGRICULTURE AND AGRI-FOOD

1 BACKGROUND

On 9 December 2013, the Honourable Lynne Yelich introduced Bill C-18, An Act to amend certain Acts relating to agriculture and agri-food (short title: Agricultural Growth Act), in the House of Commons on behalf of the Honourable Gerry Ritz, Minister of Agriculture and Agri-Food. **The bill was referred to the House of Commons Standing Committee on Agriculture and Agri-Food on 17 June 2014 for study. The committee amended the bill, as reflected in this Legislative Summary, before reporting it to the House of Commons on 5 November 2014. The amendments relate mainly to the Advance Payments Program.**

The goal of this bill is to support innovation and open up new international markets while continuing the modernization process begun by the Canadian Food Inspection Agency (CFIA) under the Food and Consumer Safety Action Plan.[1] The Government is presenting Bill C-18 as a complementary initiative to the *Safe Food for Canadians Act*, passed in November 2012.

Bill C-18 proposes amendments to the following Acts, which the CFIA is responsible for enforcing:

- *Plant Breeders' Rights Act*,[2]
- *Feeds Act*,[3]
- *Fertilizers Act*,[4]
- *Seeds Act*,[5]
- *Health of Animals Act*,[6]
- *Plant Protection Act*,[7] and
- *Agriculture and Agri-Food Administrative Monetary Penalties Act*.[8]

Bill C-18 would also amend the *Agricultural Marketing Programs Act*[9] and the *Farm Debt Mediation Act*.[10] These Acts are administered by Agriculture and Agri-Food Canada.

With these changes, the Government intends to:

- toughen enforcement of intellectual property rights for the creation or development of plant varieties;
- speed up the approval and registration processes for new agricultural products in Canada;

- strengthen certain trade requirements and the powers of inspectors; and
- reduce red tape in program delivery, particularly by making the Advance Payments Program more flexible.[11]

1.1 Plant Breeders' Rights

In Canada, plant breeders' rights are governed by the CFIA's Plant Breeders' Rights Office. These rights enable plant breeders to collect royalties on the sale of reproductive material resulting from the creation or development of new plant varieties (that is, seeds, cuttings, budwood or runners). Under the *Plant Breeders' Rights Act*, breeders can enjoy exclusive rights to sell reproductive material for up to 18 years.

The Act meets the requirements of the 1978 revision of the *International Convention for the Protection of New Varieties of Plants* (commonly abbreviated to "UPOV," and in this case to "UPOV 1978"),[12] which created the International Union for the Protection of New Varieties of Plants[13] – an intergovernmental organization – in 1961 to recognize breeders' rights internationally and to encourage them to develop new plant varieties. Canada ratified UPOV 1978 on 5 February 1991.

However, during the Standing Senate Committee on Agriculture and Forestry's hearings on research and innovation efforts in the agriculture and agri-food sector, witnesses from the agriculture sector indicated that the Act does not comply with the update to UPOV agreed to on 19 March 1991 ("UPOV 1991"). The witnesses argued that UPOV 1991 provides additional protection to breeders and promotes private investment. UPOV 1991 contains a clause restricting breeders' rights. Article 15 stipulates that:

> [Optional exception] Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or Article 14(5)(a)(ii).

The changes proposed in Bill C-18 aim, among other things, to harmonize the Act with UPOV 1991. The amendments would:

- extend the scope of breeders' rights,
- provide for provisional protection for a new variety, and
- extend the period of protection for these rights.

According to the Government, these changes will not impinge on farmers' privilege to keep, condition and reuse the seeds of protected plant varieties in order to replant them on their own land.

Similar changes were previously put forward in Bill C-80, the Canada Food Safety and Inspection Act, during the 1st Session of the 36th Parliament. This bill was introduced in the House of Commons in April 1999, but did not pass first reading because Parliament was prorogued in September 1999.

1.2 Strengthening the Approval Process for New Products and Increasing Inspection Powers

1.2.1 Approval of New Agricultural Products

The proposed amendments to the *Feeds Act*, *Fertilizers Act*, *Seeds Act* and *Health of Animals Act* aim to take scientific research from other countries into account in the approval and registration processes for new agricultural products.

During its study on research and innovation efforts in the agriculture and agri-food sector, the Standing Senate Committee on Agriculture and Forestry heard from some witnesses about the importance of mutual recognition in the approval process. This recognition of scientific data from Canada's partner countries would enable a product approved in a country like the United States to be quickly approved in Canada.

Member of Parliament Bev Shipley's Motion M-460, introduced in the House of Commons on 12 March 2010, also addressed the importance, in the Canadian approval process, of considering scientific research and regulatory approval processes in Canada's partner nations as equivalent to that carried out in Canada.[14] According to some industry stakeholders, this mutual recognition would accelerate the approval process while preventing duplication of research activities internationally.

1.2.2 Inspection Powers and Trade Requirements

The above-mentioned changes, including those for the *Plant Protection Act*, enable inspectors to pull imported agricultural products from the Canadian market or destroy them if they judge that the products do not meet the CFIA's requirements.

Some amendments, including those made to the *Feeds Act* and *Fertilizers Act*, would require issuing licences to operators and registering fertilizer and animal feed manufacturers for the import, export or interprovincial sale of agricultural products.

Similar revisions were proposed in Bill C-27, Canadian Food Inspection Agency Enforcement Act. This bill was introduced in November 2004 during the 1st Session of the 38th Parliament, and it died on the *Order Paper* when Parliament was dissolved in November 2005.

1.3 PENALTIES

The *Agriculture and Agri-Food Administrative Monetary Penalties Act* establishes:

> a system of administrative monetary penalties for the enforcement of the Canada Agricultural Products Act, the Farm Debt Mediation Act, the Feeds Act, the Fertilizers Act, the Health of Animals Act, the Meat Inspection Act, the Pest Control Products Act, the Plant Protection Act and the Seeds Act.[15]

The purpose of this Act is to offer an alternative to the penalty regime of other enforcement actions in agri-food laws already in force. The administrative monetary penalties (AMP) system is a civil penalty regime that encourages compliance with the law. "An … AMP can be either a notice of violation with a warning, or a notice of violation with a penalty."[16]

1.4 FARM DEBT

1.4.1 ADVANCE PAYMENTS PROGRAM

The Advance Payments Program (APP) is governed by the *Agricultural Marketing Programs Act*. This program provides loan guarantees at preferential rates to offer crop and livestock producers easier access to credit through cash advances. The APP is administered by producer organizations, and the federal government guarantees repayment of cash advances issued to farmers.

The proposed changes to the Act include:

- enabling the approval of cash advances for any type of agricultural product, including breeding animals, by regulation;
- providing for multi-year advance and repayment guarantee agreements with program administrators to reduce the paperwork burden; and
- clarifying producer eligibility by accepting applicants whose income does not derive exclusively from agricultural activities in order to take into account the realities of the sector.

1.4.2 FARM DEBT MEDIATION

The *Farm Debt Mediation Act* helps producers who are unable to meet their financial obligations and their creditors to reach a mutual agreement through the use of a mediator. The Act's application is overseen by Agriculture and Agri-Food Canada's Farm Debt Mediation Service.

The amendments to the Act proposed by the federal government include enabling the minister to take part in the mediation when the minister is a guarantor of a producer's debt issued under the APP.

2 DESCRIPTION AND ANALYSIS

The substantive amendments Bill C-18 makes to nine Acts relating to agriculture or agri-food are summarized below.

To interrupt reading as little as possible with often complex references to the provisions discussed in this Legislative Summary, citations have generally been placed in endnotes, keyed to the relevant paragraphs or groups of paragraphs in the text. References to specific clauses in the bill or sections in the Acts have been placed in the text where it was thought that they would be particularly useful for the reader.

2.1 AMENDMENTS TO THE *PLANT BREEDERS' RIGHTS ACT* (CLAUSES 2 TO 51)

2.1.1 DEFINITIONS (CLAUSES 2, 3, 29(3), 31, 50(3) AND 50(4))

Bill C-18 amends a number of definitions in section 2(1) of the *Plant Breeders' Rights Act*. Notable among the amendments are the following.

2.1.1.1 BREEDER

Under the amended definition of "breeder," a person who merely discovers or finds a plant variety is not entitled to breeders' rights. To qualify as a breeder, a person must have developed the plant variety.

2.1.1.2 COUNTRY OF THE UNION

The definition of "country of the Union" is amended to reference UPOV specifically, and to automatically include all parties to the Convention as well as World Trade Organization members. Currently, a country or other such entity can only be a "country of the Union" if prescribed in regulations. Clause 50(3) makes a consequential amendment to the regulatory power in section 75(1)(*f*).

2.1.1.3 PLANT VARIETY

The definition of "plant variety" is amended to reflect the UPOV 1991 definition, which confirms that a plant variety:

- may not consist of plants of more than one species;
- includes synthetic varieties and hybrids;
- exists irrespective of whether the conditions for the grant of a plant breeder's rights are fully met; and
- does not comprise a single plant, trait or chemical element, such as DNA.

2.1.1.4 Various Definitions

New definitions for "document," "filing date," and "person" are added to the Act.

In particular, the definition of "person" clarifies that a person may be Her Majesty or an organization.

2.1.1.5 New Variety

Plant breeders' rights may only be granted for new varieties of plants. Bill C-18 provides new guidance in section 4 of the *Plant Breeder's Rights Act* for determining whether a plant variety is a new variety. It depends on the propagating material or harvested material of the variety not having been sold by, or with the concurrence of, the breeder or the breeder's legal representative within a given period preceding the filing date of the application for the grant of plant breeders' rights. The given period varies depending on the variety and whether the sale is inside or outside Canada. The Governor in Council is given a regulatory power to prescribe classes of sales that are not to be considered sales for determining whether a plant variety is a new variety.[17]

2.1.2 New Rights for Plant Breeders (Clauses 5, 30, 50(1), 50(2) and 50(4))

2.1.2.1 New Rights

Bill C-18 amends the list of exclusive rights granted to plant breeders by adding, in sections 5 to 5.2 of the *Plant Breeder's Rights Act*, new exclusive rights:

- to reproduce propagating material of the plant variety (currently the exclusive right is limited to *producing* propagating material);
- to condition the variety's propagating material for the purposes of propagating the variety (clause 50(2) adds a related regulatory power in section 75(1)(*c.1*) of the *Plant Breeder's Rights Act*);
- to export or import propagating material of the variety;
- to stock propagating material of the variety for the purpose of exercising any of the plant breeders' rights; and
- to exercise plant breeders' rights for:
    - any harvested material – including whole plants or parts of plants – that is obtained through the unauthorized use of propagating material of the plant variety, unless the breeder had a reasonable opportunity to exercise his or her breeder's rights in relation to the propagating material and failed to do so;
    - any other plant variety that is essentially derived from the initial plant variety, unless the initial plant variety is not itself essentially derived from another plant variety (guidance is provided for determining whether a plant variety is essentially derived from another plant variety);

- any other plant variety that is not clearly distinguishable from the plant variety; and
- any other plant variety whose production requires the repeated use of the plant variety.

In addition, the geographical limitation of a plant breeder's exclusive right to sell or produce propagating material of the plant variety "in Canada" is eliminated.[18]

2.1.2.2 Exceptions

New sections 5.3(1) and 5.4 of the *Plant Breeder's Rights Act* specify that plant breeders' rights do not apply to any act done:

- privately and for non-commercial purposes;
- for experimental purposes;
- for the purpose of breeding other plant varieties; or
- in relation to material of a plant variety after the material has been sold in Canada by, or with the consent of, the plant breeders' rights holder.

In this context, "material" means propagating material and harvested material, including whole plants and parts of plants. However, plant breeders' rights *do* apply if such an act involves either the further propagation of the plant variety, or the export of material – for a purpose other than consumption – of the plant variety to a country that does not protect such a plant variety.

2.1.2.3 Farmers' Privilege

Significantly, Bill C-18 adds new section 5.3(2) to the *Plant Breeder's Rights Act*, which expressly allows farmers to use harvested material (seeds) from the plant varieties they grow on their own holdings to propagate such plant varieties on those holdings. **An amendment made by the House of Commons Standing Committee on Agriculture and Agri-Food clarifies that this farmers' privilege includes the right to store and stock seeds as well as produce, reproduce and condition seeds.**

The Governor in Council may make regulations respecting any classes of farmers or plant varieties to which farmers' privilege does not apply, or respecting the use of harvested material, including any circumstances in which that use is restricted or prohibited and any conditions to which that use is subject. Clause 50(4) adds new related sections 75(1)(*l.1*) and 75(1)(*l.2*) to the *Plant Breeder's Rights Act* to provide for this regulatory power.

2.1.2.4 Term of Rights

Bill C-18 amends section 6(1) of the *Plant Breeder's Rights Act* to extend the default term of the grant of plant breeders' rights from 18 years to 20 years, except in the case of a tree, a vine or any category specified in the regulations, in which case the term is extended to 25 years. Clause 50(2) adds a related regulatory power in section 75(1)(*c.2*) of the Act.

2.1.2.5 Fee

Under amended section 6(2), the prescribed annual fee payable during the term of the grant of plant breeders' rights must now be paid "within the prescribed time." Clause 50(1) makes a related amendment to the regulatory power in section 75(1)(*a*) of the *Plant Breeder's Rights Act*.

2.1.3 Applications for Plant Breeders' Rights (Clauses 6, 7 and 27)

2.1.3.1 Breeder's Connection to a Country

Under amended section 7 of the *Plant Breeders' Rights Act*, a plant breeder or a plant breeder's legal representative may apply for a grant of plant breeders' rights if he or she is a citizen or resident of Canada, a country of the Union or an agreement country.[19] In the case where the breeder or legal representative is not an individual, that person may apply for a grant of plant breeders' rights if it has an establishment in Canada, a country of the Union or an agreement country. Currently, that person is required to have a "registered office" in Canada in order to apply.[20]

The requirement in current section 7 of the Act that the breeder or legal representative of the breeder not have sold or concurred in the sale of the variety within a given period before applying for a grant of plant breeders' rights is being modified and incorporated into the new definition of "new variety" in section 2(1) of the Act.

2.1.3.2 Content of Application

Bill C-18 modifies section 9 of the *Plant Breeder's Rights Act*, which sets out how applications are to be made, by clarifying the existing language and stipulating that the application must include prescribed information. Modified section 9 also provides for an applicant to request, if desired, that plant breeders' rights, if granted, be exempted from compulsory licensing and to include with that request the applicant's reasons for it. Compulsory licensing is described in section 2.1.7.2 of this Legislative Summary.

2.1.3.3 Filing Date of Application

The filing date of the application for a grant of plant breeders' rights is important for several purposes, including determining priority between breeders and determining whether a plant variety is a new variety. Bill C-18 amends section 10 of the *Plant Breeder's Rights Act* to stipulate that the filing date is the date the Commissioner of

Plant Breeders' Rights (the Commissioner[21]) has received *all* of the information, fees, documents and other materials required to apply for a grant of plant breeders' rights. The Commissioner must send the applicant a notice specifying the filing date.

2.1.3.4 Competing Claims

In new section 10.1 and modified sections 11 and 12 of the *Plant Breeder's Rights Act*, Bill C-18 clarifies language regarding the priority of competing claims for a grant of plant breeders' rights in respect of the same plant variety.

In a case where a breeder claims priority based on an earlier application made in a country of the Union or an agreement country, Bill C-18 amends section 11(3) to require the applicant to provide – within three years of the earlier application – evidence that the applicant has begun the required tests and trials to determine whether the plant variety is a new variety. Currently, the breeder is required to furnish material required under the Act and regulations before the expiry of a prescribed period.

2.1.4 Denominations (Clauses 10 to 12)

A plant variety is given a name ("designated by means of a denomination"), which the applicant proposes and the Commissioner approves. Bill C-18 clarifies the existing wording of sections 14 and 15 of the *Plant Breeders' Rights Act*, which address the designation of denominations.

New section 16.1 gives the Commissioner the power to direct the plant breeders' rights–holder to change the denomination, subject to the Commissioner's approval of the new denomination, if the Commissioner has reasonable grounds to believe that the use of the denomination is unsuitable or that the prior rights of another person are prejudiced by its use.

2.1.5 Provisional Protection (Clauses 14, 19(1), 24(1), 34(1), 41(2) and 47)

Sections 19 to 21 of the *Plant Breeders' Rights Act* provide for provisional protection (currently called "protective direction") of rights for a plant variety during the period after an application for a grant of rights is made and before rights are actually granted. Bill C-18 amends these sections as follows:

- Currently, a person applying for a grant of plant breeders' rights for a plant variety and who desires provisional protection of rights for that variety must apply for such protection, and can be refused if the Commissioner has reason to suspect that the person is not entitled to apply for the grant of rights.

  Under Bill C-18, provisional protection is automatic when a person applies for a grant of rights for a plant variety.[22]

- Currently, in order to be granted provisional protection for a plant variety, an applicant is required to undertake not to sell propagating material of the plant variety, except for stated purposes, during the period of provisional protection.

  Under Bill C-18, no such undertaking is required.[23]

- Currently, during the period of provisional protection, anything done that would constitute an infringement of plant breeders' rights if the rights were granted is actionable.

  Under Bill C-18, the person who applies for plant breeders' rights is entitled to equitable remuneration from any person who carried out acts that require the authorization of the applicant during the provisional period if:

  - the applicant had notified in writing the person who carried out the acts that the application had been filed; and
  - the applicant, ultimately, is granted plant breeders' rights for that plant variety.[24]

- Currently, the Commissioner is empowered to withdraw provisional protection at the request of the person to whom it has been granted, and the Commissioner is required to withdraw provisional protection under certain stated circumstances.

  Under Bill C-18, an applicant's entitlement to equitable remuneration for unauthorized acts carried out during the period of provisional protection is extinguished if the application for a grant of plant breeders' rights is withdrawn, rejected, refused or deemed to have been abandoned. However, these rights are deemed never to have ceased for an application that was deemed to have been abandoned if such an application is subsequently reinstated.

  As a consequence of the Commissioner's no longer having the power to withdraw provisional protection, Bill C-18 repeals the Commissioner's power – formerly in section 27(2) of the *Plant Breeder's Rights Act* – to refuse an application for a grant of plant breeders' rights on the grounds that the Commissioner had withdrawn provisional protection because the person to whom it was extended breached an undertaking not to sell propagating material of the plant variety.[25]

Bill C-18 also adds a new provision, in section 21, which specifies that, even if an applicant has made a claim respecting priority on the basis that an earlier application was filed in a country of the Union for the same plant variety and the same breeder, the provisional protection for that plant variety in Canada only commences upon the filing date of the application for a grant of plant breeders' rights in Canada.[26]

2.1.6 Consideration and Disposition of Applications (Clauses 16(4) and 17)

Section 23(3) of the *Plant Breeder's Rights Act* lists items an applicant must provide in order to have the Commissioner consider an application for a grant of plant breeders' rights. Clause 16(4) adds to the list a new requirement to provide "any prescribed information, documents or materials."

In determining whether a plant variety is a new variety, the Act allows the Commissioner to rely on the official results of tests and trials with the plant variety carried out in countries other than Canada. Clause 17 amends section 24(1) to limit the countries from which obtained results may be relied on to "any country of the Union or an agreement country."

2.1.7 Automatic and Compulsory Licences (Clauses 7, 19(1), 20, 22(1), 24(3), 24(4), 50(3) and 50(4))

2.1.7.1 Automatic Licences

Currently, persons holding plant breeders' rights for plants falling into certain categories can be required to licence other persons to do any act that the rights-holder would otherwise have the exclusive right to do. This "automatic licensing," as it is termed, is effected through section 29 of the *Plant Breeder's Rights Act*, which provides for regulations that set conditions to which a grant of plant breeders' rights – related to certain categories of plants – are subject.

Clause 20 of Bill C-18 repeals section 29, and clause 50(3) makes a consequential amendment to the related regulatory power in section 75(1)(*k*).

2.1.7.2 Compulsory Licences

The *Plant Breeder's Rights Act* also includes provisions (sections 32 and 33) under which the Commissioner may confer a licence – termed a "compulsory licence" – on a person "who can demonstrate to the Commissioner that the holder of the right of a particular variety has unreasonably refused to license them."[27] A compulsory licence gives the licence-holder rights to do anything that the plant breeders' rights–holder might authorize another person to do.

Bill C-18 amends section 9 of the Act to allow for an application for a grant of plant breeders' rights to include a request (along with reasons for it) that those rights be exempted from compulsory licensing. The bill also adds a new section 27(2.1) to the Act empowering the Commissioner to approve, at the time of the grant of plant breeders' rights, such a request if the Commissioner is satisfied with the reasons given by the applicant for the request.

The bill amends section 32(1) of the Act to permit, rather than require, the Commissioner to confer a compulsory licence if he or she considers that it is appropriate to do so to any person who has applied for a compulsory licence.

Finally, Bill C-18 repeals the Commissioner's power to revoke the rights of a plant breeder on the grounds that "there has been a failure to meet any obligation imposed by, and for the benefit of the holder of, a compulsory licence affecting any such rights." This change relates to sections 35(1)(*e*) and 35(2) of the Act, as replaced and repealed respectively by clauses 24(3) and 24(4) of the bill. Clause 50(4) makes a consequential change to the regulatory power in section 75(1)(*k*) of the *Plant Breeder's Rights Act*.

2.1.8 Annulment and Revocation of Grants (Clauses 23 and 24)[28]

2.1.8.1 Annulment

Bill C-18 amends the Commissioner's power, in section 34 of the *Plant Breeder's Rights Act*, to annul a grant of plant breeders' rights to allow the Commissioner to annul a grant if the Commissioner is satisfied that the requirements set out in section 4, which lists all the conditions for protection, were not fulfilled at the time of the grant.

Currently, the Commissioner can annul a grant of rights if the Commissioner is satisfied that one specific requirement for a plant variety to be a new variety, set out in section 4(2)(*a*) of the Act (and section 4(2)(*b*) of the Act as amended by Bill C-18), is not fulfilled. Also, the current wording does not specify when the non-fulfilment of that requirement is to have taken place in order to justify annulment of rights.

Also, with the addition of new wording in section 34, the Commissioner has the power to annul a grant if the rights-holder "was otherwise not entitled under this Act to the grant" at the time of the grant of those rights.

2.1.8.2 Revocation

Under two new conditions in section 35(1) of Bill C-18, the Commissioner may revoke plant breeders' rights if he or she is satisfied that:

- the rights-holder has failed to comply with a direction to change the denomination (name) of the plant variety; or
- the plant variety no longer meets either of two technical conditions (is stable in its essential characteristics and is sufficiently homogeneous).

2.1.9 Offences (Clause 37)

Bill C-18 amends section 53 of the *Plant Breeder's Rights Act*, which establishes offences under the Act, to include the requirement that various acts be carried out "knowingly" in order to constitute an offence. Currently, some of the provisions in the English and French versions of section 53 are inconsistent with each other, and other provisions use the word "wilfully" in the English version rather than "knowingly."

Sections 53(7) and 53(8) of the Act, which establish a limitation period of two years for instituting a prosecution for a summary conviction offence under the Act, are amended such that the period begins when the subject matter of the prosecution becomes known to the Commissioner, as opposed to the Minister of Agriculture and Agri-Food, as is currently the case.

2.1.10 Records (Clauses 35 and 45)

Currently, under section 67(2) of the *Plant Breeder's Rights Act*, the register, the index and other prescribed documents are open for inspection by the public at the Plant Breeders' Rights Office. Bill C-18 updates this provision to require that the Commissioner make such records and documents accessible to the public on the Internet and, if the Commissioner considers it appropriate, by any other means.

The bill also repeals a requirement, currently in section 67(4), that the Commissioner not publish an application for plant breeders' rights or make it available to the public before particulars of the application are published in the *Canada Gazette*, except in certain stated circumstances.[29]

2.1.11 Other Changes to the Regulatory Powers (Clause 50(2))

Currently, section 75(1)(*d*)(i) of the *Plant Breeders' Rights Act* provides a power for the Governor in Council to make regulations requiring that prescribed particulars respecting proposals, approvals and changes of denominations be published in the *Trade Marks Journal*. Bill C-18 amends this power to more generally provide for the Governor in Council to make regulations "respecting the publication in the *Trade Marks Journal* of information relating to proposals, approvals and changes of denominations."

Also, the bill repeals a power currently in section 75(1)(*d*)(ii) of the Act that provides for regulations requiring the advisory committee's advice as a prerequisite for the execution of any functions by the minister or the Commissioner.

2.1.12 Transitional Provisions (Clause 51)

As added by clause 51 of Bill C-18, transitional provisions in sections 79 to 81 of the *Plant Breeder's Rights Act* state that:

- in respect of plant breeders' rights granted before the amendments come into force, the current Act, as it reads before being amended by Bill C-18, continues to apply;
- in respect of an application for a grant of plant breeders' rights made – and not "disposed of" (which, in this context, means not fully dealt with) – before the amendments come into force, the amended Act applies; however, current sections 19 to 21 dealing with provisional protection (termed "protective direction" under the current Act) continue to apply; and
- a proceeding commenced under the current Act that is pending before a court and in respect of which no decision has been made when the amendments come into force shall be dealt with and disposed of under the current Act.

2.2 Amendments to the *Feeds Act*, the *Fertilizers Act*, the *Seeds Act*, the *Health of Animals Act* and the *Plant Protection Act* (Clauses 52 to 112)

Bill C-18 makes some similar amendments to the following five Acts, under which various agricultural products or animals are regulated:

- the *Feeds Act*, under which feeds and nutritional substances for livestock are regulated;
- the *Fertilizers Act*, under which fertilizers and supplements are regulated;
- the *Seeds Act*, which relates to the testing, inspection, quality and sale of seeds;
- the *Health of Animals Act*, which addresses diseases and toxic substances that may affect animals or that may be transmitted by animals to persons; and
- the *Plant Protection Act*, the purpose of which is "to protect plant life and the agricultural and forestry sectors of the Canadian economy by preventing the importation, exportation and spread of pests and by controlling or eradicating pests in Canada."[30]

2.2.1 New Long Titles

Bill C-18 changes the long titles of three of the five Acts as follows:

- *Feeds Act* – from "An Act to control and regulate the sale of feeds" to "An Act respecting feeds" (clause 52);
- *Fertilizers Act* – from "An Act to regulate agricultural fertilizers" to "An Act respecting fertilizers and supplements" (clause 62); and
- *Seeds Act* – from "An Act respecting the testing, inspection, quality and sale of seeds" to "An Act respecting seeds" (clause 73).

2.2.2 Manufacture, Sale or Import into Canada

2.2.2.1 Registration or Approval

Currently, among other requirements, a feed, fertilizer or supplement must be registered as prescribed before a person may manufacture (feed only), sell or import the feed, fertilizer or supplement. Bill C-18 amends this requirement to provide that, as an alternative to registration, a feed, fertilizer or supplement may be approved by the minister in accordance with regulations.[31]

2.2.2.2 Use of Foreign Evaluation

The bill gives the minister a new ability, in considering an application in relation to a feed, fertilizer, supplement, seed, animal or thing, to consider information available from a foreign or international review or evaluation of a feed, fertilizer, supplement, seed, animal or thing.[32]

2.2.2.3 Risk of Harm

An amended provision in the *Feeds Act*, and a new provision added to the *Fertilizers Act* and the *Seeds Act*, states that no person shall manufacture (does not apply for seeds), sell, import or export in contravention of the regulations any feed, fertilizer, supplement or seed, as the case may be, that presents a risk of harm to human, animal or plant health or the environment.[33]

Regulations made under the related new regulatory power may, among other things, establish preclearance or in-transit requirements for an imported feed, fertilizer, supplement or seed, as the case may be, or anything imported with it.[34]

"Environment" is defined to mean all the components of the Earth, including the air, land, water, all layers of the atmosphere, all organic and inorganic matter and living organisms, and the interacting natural systems that include such components.[35]

2.2.2.4 Recall Order

Bill C-18 adds a new prohibition against selling an item or thing regulated under any of the five Acts that is the subject of a recall order referred to in section 19(1) of the *Canadian Food Inspection Agency Act*.[36]

2.2.3 Registrations and Licences in Relation to Imports and Exports

Bill C-18 requires that a person be registered or licensed, or both, before the person may conduct "a prescribed activity in respect of a prescribed [feed, fertilizer or supplement] that has been imported for sale – or that is to be exported or sent or conveyed from one province to another."[37]

Similarly, an establishment must be registered before a person may conduct, in that establishment, "a prescribed activity in respect of a prescribed [feed, fertilizer or supplement] that has been imported for sale – or that is to be exported or to be sent or conveyed from one province to another."[38]

A person may apply to the minister for a registration or licence, which is not transferable, and which is subject to prescribed conditions as well as any additional conditions the minister considers appropriate. The minister may, subject to the regulations, amend, suspend, cancel or renew such a registration or licence.[39]

2.2.4 Export Certificates

Bill C-18 provides a new power for the minister to issue any certificate or other document setting out any information that the minister considers necessary to facilitate the export of any feed, fertilizer, supplement or seed.[40]

2.2.5 Incorporation by Reference

Incorporating a document by reference into a second document means including the first document within the second document by referring to the first document – and stating that it is incorporated by reference – in the second document. Regulations sometimes incorporate outside standards by reference, with the result that the regulations do not have to be updated every time the standards are updated.

A new section added to each of the five Acts allows regulations made under each Act to incorporate any document by reference. Such a document incorporated by reference need not be transmitted for registration or published in the *Canada Gazette*, but the minister must ensure that it – and any amendments to it – is accessible. If such a document is not accessible at the time when a person contravenes a related requirement, the person cannot be found guilty or subjected to an administrative sanction for the contravention.[41]

2.2.6 Regulations

Regulatory powers that Bill C-18 either adds to various Acts or amends to be consistent with other Acts, and that have not already been described are summarized below.

2.2.6.1 International or Interprovincial Movement

The bill adds the power to make regulations:

- respecting the sending or conveying from one province to another or the importation or exportation of any feed, fertilizer, supplement or seed (such regulations may establish preclearance or in-transit requirements for any imported feed, fertilizer, supplement or seed, or anything imported with it);
- respecting the manufacturing (does not apply for seeds) or sale of any feed, fertilizer or supplement that is to be exported or to be sent or conveyed from one province to another; or
- respecting the sale of any feed, fertilizer, supplement or seed that has been imported.[42]

2.2.6.2 Samples

The bill adds the power to make regulations requiring persons to take or keep samples of any feed, fertilizer or supplement – or its package or label – or any animal or thing, and to provide the minister or an inspector with access to those samples. Samples may be disposed of in any manner that the minister considers appropriate.[43]

2.2.6.3 Exemptions

The bill adds the power to make regulations exempting things, items, persons or activities from the application of the Act or the regulations, in whole or in part, with or without conditions.[44]

2.2.6.4 Quality or Safety Programs or Plans

The bill adds the power to make regulations respecting quality or safety programs or plans to be implemented by persons who conduct activities regulated under the *Feeds Act*, the *Fertilizers Act*, the *Seeds Act* or the *Health of Animals Act*.[45]

2.2.6.5 Evaluation

The bill adds the power to make regulations respecting the evaluation of a feed, fertilizer or supplement, including the provision of samples of and information about a feed, fertilizer or supplement, and the evaluation of the risk of harm and potential impact of a feed, fertilizer or supplement.[46]

2.2.6.6 Documents

The bill adds the power to make regulations requiring persons to prepare, keep or maintain documents and to provide the minister or an inspector with access to those documents. Such regulations may, among other things, require persons to alert the minister or an inspector if they become aware that an item or thing regulated under the Act presents a risk or does not meet the requirements.[47]

2.2.7 Enforcement

2.2.7.1 Inspectors' Powers

Bill C-18 adds a new stipulation to an existing provision in each of the five Acts: an inspector may use his or her powers under the Act "for a purpose related to verifying compliance or preventing non-compliance" with the *Feeds* Act, the *Fertilizers Act*, the *Seeds Act*, the *Health of Animals Act*[48] or the *Plant Protection Act*,[49] as the case may be.[50] The bill also adds two new powers:

- An inspector may remove anything from a place in order to examine it, conduct tests or take samples.
- An inspector may order a person to provide a document, information or sample.[51]

2.2.7.2 Release of Seized Thing

Bill C-18 amends an existing provision in each of the five Acts that currently requires release of a seized feed, fertilizer, supplement, seed, animal or thing ("thing"), depending on the Act, after six months or after an inspector believes the provisions of the Act have been complied with, unless related proceedings have been instituted, in which case the thing can be detained until the proceedings are concluded. Under an amended provision, a seized thing must be released if an inspector is satisfied that the provisions of the Act and regulations that apply with respect to a thing seized under the Act have been complied with.[52]

2.2.7.3 Unlawful Imports

Under Bill C-18, an inspector may order that an imported "thing" be removed from Canada or destroyed if the inspector has reasonable grounds to believe that the thing was imported in contravention of the *Feeds Act*, the *Fertilizers Act*, the *Seeds Act*, the *Health of Animals Act* or the *Plant Protection Act*, as the case may be – or regulations made under one of those Acts – or that a relevant regulatory requirement in respect of the thing has not been met. If the thing is not removed from Canada or destroyed within the specified period, or if no period is specified, within 90 days, the thing is forfeited to the Crown and may be disposed of. An inspector may suspend or cancel such a forfeiture if he or she is satisfied that the thing is unlikely to result in harm, will not or has not been sold during the relevant period, and required measures will or have been taken to comply with the relevant Act and regulations.[53]

In Bill C-18, a section is added to the *Health of Animals Act* to provide that an animal or thing is forfeited to the Crown if the minister determines that the animal or thing has been unlawfully imported or an attempt has been made to unlawfully import the animal or thing, or that a regulatory requirement has not been met for an imported animal or thing.[54]

Bill C-18 adds to the *Plant Protection Act* three additional bases on which an inspector may order an imported thing removed from Canada or destroyed. They are that an inspector has reasonable grounds to believe that an imported thing:

- is a pest;
- is or could be infested with a pest; or
- constitutes or could constitute a biological obstacle to the control of a pest.[55]

2.2.7.4 Analysis

A new power provides for an inspector to submit for analysis and examination samples taken under the *Feeds Act*, the *Fertilizers Act* or the *Seeds Act*, or anything removed or seized under one of those Acts.[56]

2.2.7.5 Provision of a Document, Information or Sample

Bill C-18 adds a new general power to each of the *Health of Animals Act* and the *Plant Protection Act* empowering an inspector (or officer in the case of the *Health of Animals Act*) to order a person to provide a document, information or sample for the purpose of detecting diseases, toxic substances or pests, or for a purpose related to verifying compliance or preventing non-compliance with the Act.

A provision of the *Health of Animals Act* that required the operator of a cheese factory, creamery or dairy to supply samples of milk or cream for inspection is repealed.[57]

2.2.7.6 Limitation on Liability

Bill C-18 either amends or adds a section, depending on the Act, stating that the Crown is not liable for any costs, loss, damage, fee, rent or charge resulting from compliance with the Act or for what is done or permitted to be done under the Act. A new section added to each of the five Acts states that no person who exercises powers or performs duties or functions under the Act is liable for anything done or omitted to be done in good faith in the exercise of those powers or performance of those duties or functions.[58]

2.2.8 Offences and Punishment

2.2.8.1 Failure to Follow an Order

Bill C-18 amends the offence provision of each of the *Feeds Act*, the *Fertilizers Act* and the *Seeds Act* to make it an offence for a person to fail to do anything that the person is ordered to do by an inspector under the Act.[59]

2.2.8.2 Parties to an Offence

Bill C-18 amends an existing provision of the *Feeds Act*, the *Health of Animals Act* and the *Plant Protection Act* and adds a new section to the *Fertilizers Act* and the *Seeds Act* relevant to a case where a "person other than an individual" (for example, a corporation) commits an offence under the Act. In such a case:

> any of the person's directors, officers or agents or mandataries[60] who directs, authorizes, assents to or acquiesces or participates in the commission of the offence is a party to the offence and is liable on conviction to the punishment provided for by the Act, even if the person is not prosecuted for the offence.

For example, if a corporation commits an offence under the Act, a director of the corporation who authorized the commission of the offence may be convicted personally for the offence even if the corporation itself is not prosecuted for the offence.[61]

2.2.8.3 Proof of an Offence

Currently, in a prosecution for an offence under any of the five Acts, it is sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused. Bill C-18 amends this provision to include "mandatary," and it provides a defence to an accused who establishes that the offence was committed without the knowledge or consent of the accused and that the accused exercised due diligence to prevent the commission of the offence.[62]

2.2.8.4 Limitation Period

Bill C-18 amends the provision setting out a two-year limitation period – or, in the case of a misrepresentation of the variety name or purity of variety of a seed under the *Seeds Act*, a three-year limitation period – during which summary conviction proceedings for an offence under the Act may be instituted. Under the amendment, the period begins on the day on which the subject matter of the proceedings arise, as opposed to the day on which the minister becomes aware of the subject matter, as is currently the case.[63]

2.2.9 Amendments Specific to Three of the Five Acts

2.2.9.1 *Feeds Act*

2.2.9.1.1 Exemptions

A current exemption from the application of the *Feeds Act* for a feed that is sold by an individual grower and that is free from prescribed deleterious substances is repealed. A second exemption is amended so that the *Feeds Act* does not apply in respect of a feed that is manufactured by a livestock producer if it is not sold and has not had incorporated into it any drug or other substance that presents a risk of harm to human or animal health or the environment.[64]

2.2.9.1.2 Inspection Mark

Bill C-18 defines an "inspection mark" as a mark, stamp, seal, product legend, word or design, or any combination of those things, set out in the regulations. Every inspection mark is a trademark and the exclusive property of the Crown.[65]

The bill uses this definition of "inspection mark" to provide for the regulation, in the *Feeds Act*, of the application or use of an inspection mark, as well as the advertisement or sale of anything with or connected to an inspection mark. A person found in possession of such a thing is considered to be in possession of it for the purpose of advertising it or selling it, in the absence of evidence to the contrary. The bill also sets out prohibitions related to applying or using a thing that so resembles an inspection mark that it is likely to be mistaken for it.[66]

2.2.9.1.3 Standards for Manufacturing

Bill C-18 also adds a new power to the *Feeds Act*, providing for the Governor in Council to make regulations prescribing standards for the manufacturing or the safety of feeds.[67]

2.2.9.2 *Health of Animals Act*

2.2.9.2.1 Exports

Bill C-18 amends the *Health of Animals Act* to allow the Governor in Council to regulate the exportation of veterinary biologics and the exportation of products of animal deadyards, rendering plants and animal food factories.[68]

2.2.9.2.2 Designation of Diseases

Bill C-18 amends the *Health of Animals Act* to specify that, in making regulations prohibiting or regulating the importation, exportation and possession of animals and things, the Governor in Council may authorize the minister to designate diseases, in order to prevent the introduction of any vector, disease or toxic substance. The *Statutory Instruments Act* does not apply to a notice designating a disease.[69]

2.2.9.2.3 Imports

Bill C-18 adds a new provision to the *Health of Animals Act*, stating that regulations regulating the importation of animals or things may regulate those animals or things after they are imported.[70]

2.2.9.3 *Plant Protection Act*

2.2.9.3.1 Prohibitions

Bill C-18 adds two new sets of prohibitions to the *Plant Protection Act* related to:

- documents:
  - altering, destroying or falsifying a document under the Act;
  - possessing or using an altered document;
  - using a document under the Act for an unintended purpose; or
  - possessing or using a document that so closely resembles a document issued or made under the Act that it is likely to be mistaken for it; and
- markings and identification:
  - altering, destroying or falsifying a mark, label, tag or seal required under the Act;
  - possessing or using an altered or falsified mark, label, tag or seal;
  - using a mark, label, tag or seal for an unintended purpose; or
  - possessing or using any mark, label, tag or seal – or any device designed or adapted to create a mark – that so closely resembles a mark, label, tag or seal required under the Act that it is likely to be mistaken for it.[71]

2.2.9.3.2 Presentation to an Inspector

An existing provision in the *Plant Protection Act* requires a person importing or exporting any thing that is a pest, could be infested with a pest or could constitute a biological obstacle to the control of a pest to produce to an inspector all permits, certificates and other required documentation.

Bill C-18 adds a new power to make related regulations respecting the circumstances in which a thing must be presented to an inspector and imposing conditions on the inspector's authority to require that a thing be presented.[72]

2.2.9.3.3 Authorization to Perform an Activity

A new section added to the *Plant Protection Act* gives the President of the Canadian Food Inspection Agency the power to authorize any person to perform a specific activity related to ensuring that a thing is not a pest, is not or could not be infested with a pest or does not constitute a biological obstacle to the control of a pest. Such an authorization may be subject to conditions, is not transferable, and the President may amend, suspend or revoke it.[73]

2.2.9.3.4 Regulations

New regulatory powers added to the *Plant Protection Act* provide that import regulations made under the Act may establish preclearance or in-transit requirements for any imported thing, and that regulations may authorize the minister or an inspector to prohibit or restrict the carrying out of any activity in respect of a thing – or prohibit or restrict the use of a place or a thing – on reasonable belief that the thing is a pest, the thing or place is infested with a pest, or the thing constitutes a biological obstacle to the control of a pest.[74]

2.3 Amendments to the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (Clauses 113 to 119)

2.3.1 Responsible Minister (Clause 113)

Clause 113 amends the definition of "Minister" in section 2 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* so that it no longer always refers to the Minister of Agriculture and Agri-Food. In relation to a violation involving a contravention of the *Pest Control Products Act*, it refers to the Minister of Health. Under the amendment, the Minister of Health is also responsible for enforcing provisions relating to food safety, and the Minister of Public Safety and Emergency Preparedness is responsible for enforcing provisions of various agriculture and agri-food Acts related to inspecting passengers and imports at airports and other Canadian border points.

2.3.2 Maximum Penalties (Clause 114(2))

Bill C-18 amends section 4(2)(*b*) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* to increase the maximum penalty for a violation, as follows:

Table 1 – Maximum Penalty for a Violation Under the
Agriculture and Agri-Food Administrative Monetary Penalties Act

Type of Violation	Current Maximum Penalty	New Maximum Penalty
Violation committed by an individual other than in the course of business and that is not committed to obtain a financial benefit	$2,000	$2,000 (No change)
In any other case:		
• Minor violation	$2,000	$5,000
• Serious violation	$10,000	$15,000
• Very serious violation	$15,000	$25,000

2.3.3 Limitation Period (Clause 119)

Under current section 26 of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the limitation period during which proceedings in respect of a violation may be commenced is six months in the case of a minor violation, and two years in the case of a serious or very serious violation. Bill C-18 amends section 26 so that the periods are counted starting from the day on which the subject matter of the proceedings arises rather than the day on which the minister becomes aware of the violation, as is currently the case.

2.4 Amendments to the *Agricultural Marketing Programs Act* (Clauses 120 to 140)

2.4.1 Definitions and Eligibility (Clauses 120, 121, 123 and 128(1) to 128(4))

2.4.1.1 Producer

Clause 120 amends the definition of a producer of an agricultural product in section 2(1) of the Act. Currently, a corporation can only qualify as a producer (and therefore potentially participate in the Advance Payments Program (APP)) if a majority of the voting shares of the corporation are held by Canadian citizens or permanent residents.

Under the amendments, a corporation may be a producer if it is *controlled* by one or more Canadian citizens, permanent residents, or other specified organizations dominated by Canadian citizens or permanent residents. Guidance is provided, in new section 2(2), for determining whether a corporation is, in fact, directly or indirectly controlled by a person or entity. A portion of the current definition of “producer” in section 2(1) is repealed so that a “producer” may no longer include a person or entity entitled to an agricultural product or a share in it as lessor, vendor, mortgagee or hypothecary creditor.

2.4.1.2 Eligible Producer

The eligibility requirements for a producer to participate in the APP are set out in section 10(1) of the *Agricultural Marketing Programs Act*. Bill C-18 makes the amendments described below to this section. To be eligible to participate in the APP, a producer must:

- **continuously own** the agricultural product for which the advance payments will be made; be responsible for marketing it; and – under a new requirement – either have produced the agricultural product, or be producing it;[75]
- no longer **necessarily** be principally occupied in a farming operation or be entitled to the agricultural product or a share in it as lessor, vendor, mortgagee or hypothecary creditor;[76] (according to the government backgrounder, this change makes the APP "reflective of the realities of the sector today");[77]
- not only demonstrate that the producer is capable of meeting obligations under the repayment agreement, as is currently the case, but also demonstrate that the producer is meeting all obligations under any other repayment agreements;[78] and
- demonstrate that the producer's agricultural product is of marketable quality and stored or maintained so as to remain of marketable quality until disposed of. The bill adds that this disposition is to be "in accordance with the repayment agreement."[79]

Also, currently, a producer that is a corporation, partnership, cooperative or other association of persons cannot be eligible to participate in the APP unless at least one of its shareholders, partners or members is an individual. Amendments made by Bill C-18 to sections 10(1)(*c*) and 10(1)(*d*) allow for a producer that is an association, which is, in turn, held by other associations, to be eligible to participate in the APP if "the individual who makes the application for an advance" on the producer's behalf – as opposed to the current stipulation that it be "at least one of the shareholders, partners or members" – has attained the age of majority, and if liability for the producer's liability under the APP is assumed *either* by each of the shareholders, partners or members, as the case may be, *or* by a guarantor.[80]

2.4.1.3 Related Producers

Section 3(1) of the *Agricultural Marketing Programs Act* stipulates that "[p]roducers are related for the purposes of [the] Act if they do not deal with each other at arm's length."[81] For example, producers carrying on a farming operation in partnership are related producers.

The concept of related producers is relevant because a percentage of an amount advanced to a related producer is attributable to the producer for the purpose of:

- calculating the amount of interest the minister is required to pay per producer who receives advances during a program year under section 9; and
- calculating whether a producer has received the maximum amount of advances eligible for a guarantee during a program year under section 20.

Bill C-18 amends section 3 of the *Agricultural Marketing Programs Act* by simplifying the language specifying in what circumstances producers are presumed to be related. Provisions listing family and cohabitation relationships are repealed, and numerous other listed circumstances involving corporations, partnerships, cooperatives or other types of associations ("groups of persons") are distilled to five new circumstances in which producers are presumed to be related, in the absence of proof to the contrary:

- one producer directly or indirectly controls another producer;
- the producers are directly or indirectly controlled by the same person or group of persons;
- the producers carry on a farming operation in partnership;
- the producers, while not in partnership, share any management or administrative services, equipment, facilities or overhead expenses; or
- any other circumstances set out in regulations.[82]

The bill also amends sections 9(2) and 20(2) of the Act, with the result that the percentage of – or method of calculating – the amounts of advances received by a related producer that are attributable to a producer are moved into regulations.[83]

2.4.1.4 Eligible Agricultural Products

Bill C-18 amends sections 4.1(2) and 4.1(3) of the *Agricultural Marketing Programs Act* such that, under the APP, animals that are or were used as breeding animals are no longer categorically ineligible agricultural products. Rather, the ineligibility of such animals is now subject to regulations that the Governor in Council may make designating – with any related conditions – breeding animals or classes of breeding animals as being eligible agricultural products under the APP.[84]

2.4.1.5 Program Year

In a new definition added to section 2(1) of the *Agricultural Marketing Programs Act* by clause 120(4), the "'program year', in respect of an advance, means the period that is specified in the advance guarantee agreement and the repayment agreement that relates to the advance." The existing definition of "production period" remains. The production period "in respect of an agricultural product, means the period of up to 18 months – or any longer period that is fixed by the Minister – specified in the advance guarantee agreement relating to the agricultural product" (section 2(1)). Accordingly, the "program year" and the "production period" are two different time frames. The former is "in respect of an advance," and the latter is "in respect of an agricultural product."

Bill C-18 substitutes "program year" for "production period" in various existing provisions of the Act. For example, section 9 is amended to require the minister to pay the interest on the first $100,000 (or other amount fixed by regulation) of advances received by (or attributed to) each producer during the "program year" as opposed to during the "production period." As a second example, section 20(1) is

amended to specify the maximum amount of advances in any "program year" – as opposed to in any "production period" – that are eligible for a guarantee in relation to a producer (or to a related producer to the extent that the advances are attributable to the producer).[85]

According to the government backgrounder, Bill C-18 "allow[s] for multi-year advance guarantee agreements and repayment agreements with administrators to reduce red tape for producers and improve program delivery."[86]

2.4.2 Advance Guarantee Agreements

Under section 5 of the *Agricultural Marketing Programs Act*, the minister enters into an advance guarantee agreement with an "administrator" (a third party organization, generally a producer organization) – or with an administrator and a lender, which is generally a financial institution – under which agreement the minister may guarantee the repayment of advances that the administrator makes to eligible producers. Sections 5(3) and 5(3.01) set out obligations of the administrator that must or may, respectively, be included in an advance guarantee agreement. The following parts describe the substantial changes that Bill C-18 makes to these sections.

2.4.2.1 Advances in Specific Areas and in Relation to Specific Agricultural Products (Clause 124(5))

Bill C-18 adds the following two new items to the section 5(3.01) list of terms that may be included in an advance guarantee agreement:

- "the administrator must agree to make advances to producers solely in the areas specified in the agreement"; and
- "the administrator must agree to make advances to producers solely in relation to the agricultural product specified in the agreement."

The government backgrounder states that Bill C-18 will:

> [s]implify delivery and ease access to the APP for producers by allowing all administrators to issue advances on any type of agricultural product, not just those they market. For producers this means they could have the option of obtaining advances on all their eligible commodities from a single window.[87]

2.4.2.2 Security for an Advance (Clauses 124(1), 128(3), 128(7), 129 to 131, 132(4), 138(3) and 138(8))

Section 5(3)(*e*) and sections 10(1)(*h*) and 10(2)(*b*) of the *Agricultural Marketing Programs Act* currently impose obligations on each of an administrator and a producer, respectively, before an advance is made, to ensure that the producer will be able to repay amounts advanced. Bill C-18 amends these sections to add a new, alternative means for an administrator to take – and for a producer to give – security for amounts advanced. Specifically, the administrator must take steps to ensure – and a producer must demonstrate – that "the amount of the advance is covered by the security referred to in section 12." Clause 132(4) makes a consequential amendment to section 19(3) of the Act limiting the maximum amount of an advance

eligible for a guarantee, which depends on the amount of the value of the security referred to in section 12.

Section 12 refers to security required by the regulations. Bill C-18 amends section 12 by repealing a limitation that such security may only be in agricultural products and any amount that may be received from certain government financial support programs that are listed in the schedule to the Act. The government backgrounder on Bill C-18 states that this increased flexibility in what will be accepted as security "means producers could qualify for larger advances by putting up additional security."[88]

Also, the bill adds a new section 13, which stipulates that if the security taken under section 12 includes an agricultural product that is an animal raised in a particular area, the value of that agricultural product is considered to be 50% (or another percentage fixed by regulation) of the average price payable to producers of that agricultural product in that area. Clauses 138(3) and 138(8) add a related regulatory power and a stipulation that regulations may be made only on the minister's recommendation with the concurrence of the Minister of Finance in sections 40(1)(*e*) and 40(2) of the Act, respectively.

As specified in the *Agricultural Marketing Programs Act*, one of the means of ensuring that a producer will be able to repay amounts advanced is by confirming that the agricultural product for which an advance is made is of marketable quality and that it is maintained or stored so as to remain of marketable quality. Clause 129 of Bill C-18 amends section 11, which addresses a situation in which an agricultural product ceases to be in marketable condition through no fault of the producer. In such a situation, a producer is no longer required to repay the portion of the advance attributable to the unmarketable agricultural product "immediately"; the producer must repay that portion "within the period specified in the advance guarantee agreement." Also, the current requirement that the producer pay interest on that portion of the advance is **amended to clarify that the producer is not responsible for paying interest on the first $100,000; the minister pays the interest on this amount under section 9 of the Act.**

A further amendment to section 11 made by the House of Commons Standing Committee on Agriculture and Agri-Food clarifies that if the producer defaults under the repayment agreement after the application of section 11, the producer becomes liable to the administrator for the outstanding amount, interest on the outstanding amount and costs incurred by the administrator to recover the outstanding amount and interest.

2.4.2.3 Default of the Administrator (Clause 124(4))

Bill C-18 adds new section 5(3)(*j*) to the *Agricultural Marketing Programs Act*, which specifies how an administrator must agree, in an advance guarantee agreement, to address a situation where an administrator has not met all of its obligations under an advance guarantee agreement and the minister has sent notice to the administrator. In such a case, at the request of the minister, the administrator must assign its rights

and obligations under the advance guarantee agreement to any entity that the minister specifies.

2.4.2.4 Administration Fees (Clause 124(7))

Section 5(4) of the *Agricultural Marketing Programs Act* specifies that an administrator may charge fees to producers to recover administrative costs of the APP. The bill adds new words to section 5(4) to specify that administrators may charge fees to producers to recover "costs related to the recovery of outstanding amounts from producers who are in default under a repayment agreement."

2.4.2.5 Withholding Amounts from an Advance (Clause 124(8))

Finally, new section 5(6) allows an administrator – with the minister's approval – to withhold from an advance made to a producer amounts for a purpose authorized under the advance guarantee agreement.

2.4.3 Administrator's Percentage and Amount of Advances (Clauses 124(2) to 124(4), 124(6), 125, 126, 132, 138(3) and 138(6))

Currently under sections 5(3)(*g*) and 5(3)(*h*) of the *Agricultural Marketing Programs Act*, an administrator is required to agree in an advance guarantee agreement that, in the event of a producer's default, the administrator would cover a certain percentage (ranging from 1% to 15%) of the producer's liability, plus any interest resulting if the administrator fails to cover this portion of the producer's liability. In order to cover this potential liability, most administrators would:

> do a holdback on cash advances equal to the administrator's liability. The holdback is applied to pay the administrator's liability in case the producer defaults and is remitted with interest to the producer upon repayment in full of the cash advance.[89]

Bill C-18 repeals these obligations of an administrator to cover a percentage of a defaulting producer's liability, and makes a number of consequential amendments.

In a related change, the bill amends the formula in section 19 for calculating the amount of an advance eligible for a guarantee under the APP. Currently, the minister guarantees an advance equal to up to 50% (or a percentage fixed by regulation) of the average price that the minister estimates producers would receive for the relevant agricultural product in an area. Under the amendments, that amount of an advance eligible for a guarantee is reduced by the "administrator's percentage," which now ranges from 3% to 10%. A related regulatory power for determining the administrator's percentage is added in section 40(1)(*f.3*) of the Act.

An amendment to clause 125 of the bill made by the House of Commons Standing Committee on Agriculture and Agri-Food specifies that the amount of an advance is not reduced by the "administrator's percentage" if the advance is guaranteed by a person or entity other than the minister. A government representative explained at one of the committee meetings that this amendment applies to producers who have repayment guarantees from a

province and therefore are not guaranteed by the federal government, but access the APP for the $100,000 interest-free benefit provided in section 9 of the Act.[90]

2.4.4 Minister's Payment of Interest on an Advance (Clause 127(1))

Under section 9(1) of the *Agricultural Marketing Programs Act*, the minister pays the interest on the first $100,000 (or the amount fixed by regulation) of the total amount advanced to a producer – plus amounts advanced to all related producers to the extent that they are attributed to the producer – for the producer's agricultural products during the program year. Bill C-18 amends section 19 to specify that each producer may only receive, interest-free, the first $100,000 of the *total* amount advanced to the producer, including amounts advanced under any other advance guarantee agreement.

2.4.5 New Means of Repaying an Advance (Clauses 124(4), 124(5), 128(5), 128(6), 128(8) and 138(5))

Section 10(2)(*a*) of the *Agricultural Marketing Programs Act* lists the means by which an eligible producer may agree to repay an advance. Section 10(2)(*a*)(v) anticipates that a producer may repay the advance, up to an amount prescribed by the regulations, without proof that the relevant agricultural product has been sold. Bill C-18 amends this item to specify that if such a repayment exceeds the amount prescribed by the regulations, the producer must pay interest to the administrator on the excess amount. If this situation occurs, under new section 5(3)(*h.*1), the administrator must pay back the minister any interest the minister already paid on the same amount.

Under new section 5(3.02), the minister may designate in an advance guarantee agreement agricultural products or classes of agricultural products for which an amount of an advance may be repaid, without proof that the agricultural product has been sold, before the expiry of the production period. If the minister so designates an agricultural product or class of agricultural products in an advance guarantee agreement, under new section 10(2)(*a.1*), a producer who enters into a repayment agreement for such an agricultural product must repay the amount of the advance for the agricultural product, with or without proof that it has been sold, before the expiry of the production period.

Bill C-18 also provides (in sections 10(2)(*a*)(vi) and 40(1)(*f.01*)) for regulations prescribing any other means by which the producer may agree to repay the advance. However, new section 10(2.1) of the Act gives an administrator a new power to waive – with the minister's approval – requirements of a repayment agreement specifying how a producer will repay an advance. Such a waiver permits a producer to repay an advance under the agreement if the administrator is satisfied that the producer has not disposed of the agricultural product in respect of which the advance has been made.

2.4.6 Default of a Producer

2.4.6.1 Circumstances of Default (Clauses 134(1) to 134(3))

Bill C-18 amends the list of circumstances in section 21(1) of the *Agricultural Marketing Programs Act* defining when a producer is in default under a repayment agreement.

One amendment corrects a difference in the wording in the current English and French versions of section 21(1)(*a*): the English version states that the producer who has not met *any* of the relevant obligations under the agreement within 20 days after the administrator provides notice to that effect is in default. The French version refers to *all* ("toutes") of the relevant obligations. The bill eliminates this discrepancy by replacing "any" with "all" in the English version. It also extends the period to 21 days.

Other new circumstances are added, including:

- the producer has not met all relevant obligations under the agreement and either becomes the subject of proceedings under the *Companies' Creditors Arrangement Act* or has made an application under section 5 of the *Farm Debt Mediation Act*; or
- the producer is at fault for causing or contributing to a decrease in the value of the security taken by the administrator under section 12 of the *Agricultural Marketing Programs Act*, and as a result, the value of the security is less than the value of the outstanding amount of the advance.

2.4.6.2 Stay of Default and Costs of Default (Clauses 134(4), 135(2) and 138(6))

Section 21(2) of the *Agricultural Marketing Programs Act* is amended to provide for regulations governing a ministerial order to stay a default. A new section 21(2.1) specifies that a producer is liable to pay the costs incurred by the administrator in relation to a stay of default. These costs, as well as any costs incurred by the administrator to recover outstanding amounts and interest (referred to in section 22(*c*)), are other than the costs the administrator has recovered by means of an administrative fee referred to in part 2.4.2.4 of this Legislative Summary. The producer must also pay the administrator "any other outstanding amounts under the repayment agreement" (new section 22(*d*)).

2.4.6.3 Payments to Be Made by Minister (Clause 136)

Section 23(1) of the *Agricultural Marketing Programs Act* states that if a producer is in default and the administrator or lender to whom the guarantee is made requests payment, the minister must pay the outstanding amount of the guaranteed advance, interest on the outstanding amount from the date of the advance, and the costs incurred by the administrator to recover the outstanding amount and interest.
Bill C-18 amends section 23(1) to clarify that the interest the minister must pay on the outstanding amount is other than the interest paid by the minister under section 9(1) on the first $100,000 advanced to the producer.

Bill C-18 also adds new section 23(1.1), which allows the minister to pay outstanding amounts (including interest and costs) of the guaranteed advance of a producer in default in either of the following two circumstances:

- the producer has made an application under section 5 of the *Farm Debt Mediation Act*; or
- the producer has been in default under the repayment agreement for the period specified in the advance guarantee agreement.

The government backgrounder states that the changes proposed by Bill C-18 will:

> [a]llow the Minister to participate in a mediation under the Farm Debt Mediation Act as a guarantor of the APP advance for better service delivery. For producers this means expedited processing under the Farm Debt Mediation Act and, with the right people at the table to negotiate repayment arrangements, producers will have quicker resolution of their situation.[91]

Amendments Bill C-18 makes directly to the *Farm Debt Mediation Act* are discussed in part 2.5 of this Legislative Summary.

Also, the *Agricultural Marketing Programs Act* provides that the minister is subrogated[92] to the administrator's rights against the producer in default to the extent that the minister pays the producer's outstanding amounts, including interest and related costs. Bill C-18 amends section 23(2) to clarify that, in such a case, the minister may maintain an action, in the name of the administrator or in the name of the Crown, against the producer.

Amendments made to clause 136 of the bill by the House of Commons Standing Committee on Agriculture and Agri-Food add more details about the application of the existing six-year limitation period during which the minister may initiate an action to recover amounts owing. Amended section 23(5) includes, for use in Quebec, a new reference to "compensation against," which is the civil law counterpart of "set-off,"[93] which the Act already provides for. New section 23(6) provides that the six-year limitation period restarts if the producer acknowledges the debt at any time, and new section 23(7) defines what counts as an acknowledgement. Any period in which the commencement or continuation of an action against the producer is prohibited does not count in the calculation of the limitation period (new section 23(8)). Finally, new section 23(9) clarifies that these related provisions do not apply to an action to execute, renew or enforce a judgment.

2.4.7 Five-Year Review of the Act (Clause 139)

Bill C-18 replaces existing section 42(1) requiring the minister to review the provisions and operation of the *Agricultural Marketing Programs Act* every five years with an identical provision, which has the effect of requiring the next review five years after the coming into force of the section.

2.4.8 Transitional Provisions (Clause 153)

The current *Agricultural Marketing Programs Act* continues to apply for advance guarantee agreements and repayment agreements entered into under the current Act that will still be in existence when the amendments come into force. However, amounts remaining unpaid for advances made under the current Act are to be taken into account for the purposes of applying the amended Act.

Clause 153(5) reads:

> A default under a repayment agreement entered into under the Spring Credit Advance Program or the Enhanced Spring Credit Advance Program is deemed to be a default under a repayment agreement entered into under the new Act.[94]

2.5 Amendments to the *Farm Debt Mediation Act* (Clauses 141 to 152)

2.5.1 Amendments to Bring the Minister into the Mediation Process (Clauses 142 to 144, 146, 147 and 149)

Bill C-18 makes a number of non-substantial changes to the *Farm Debt Mediation Act* to clarify the existing language. It also amends the Act, as described in the following points, to bring the Minister of Agriculture and Agri-Food into the existing mediation process if the minister is the guarantor of a farmer's debt that is owed to a creditor listed in the farmer's application for mediation. Note that in the context of the *Farm Debt Mediation Act*, the "administrator" is a person designated under the Act to receive and review applications from farmers, appoint a mediator and generally administer the program.

- The administrator must send notice of a farmer's application for mediation to the minister as well as to creditors.[95]
- The administrator's review of a farmer's financial affairs may include:
  - a recommendation that the minister participate in the mediation if the minister is the guarantor of a farmer's debt that is owed to a non-secured creditor;[96] and
  - the preparation of recovery plans for the purpose of reaching financial arrangements with creditors and the minister.[97]
- After the administrator's review of a farmer's financial affairs is complete and a report is prepared, the administrator must appoint a mediator and
  - inform the farmer, all of the relevant creditors and the minister – if the administrator gave the minister notice of the application under section 7(1)(*a*)(iii)) – of the mediator's appointment;[98] and
  - provide a copy of the report to the mediator and to all the persons and "entities" (includes departmental personnel) that will be participating in the mediation.[99]
- The mediator then examines the report and meets with all the persons and "entities" listed above to help them reach an arrangement.[100]

- If the administrator directs that a stay of proceedings be terminated, the administrator must inform the farmer, all of the creditors listed in the application, and – if the administrator gave the minister notice of the application under section 7(1)(*a*)(iii)) – the minister.[101]
- If a farmer enters into an arrangement with a creditor or with the minister as a result of the mediation, the administrator shall see to its signing by the parties.[102]
- Except as authorized under the Act, no person shall knowingly communicate or knowingly allow to be communicated to any person any information that is obtained under this Act from a farmer, from a farmer's creditor or from the minister.[103]

2.5.2 Notice of Intention (Clause 148)

Section 21 of the *Farm Debt Mediation Act* requires a secured creditor who intends to enforce any remedy against the property of a farmer – or commence any proceedings or any action, execution or other proceedings for the recovery of a debt, the realization of any security or the taking of any property of a farmer – to give the farmer written notice of the creditor's intention to do so. The notice must advise the farmer of the right to make an application for review of the farmer's financial affairs and mediation between the farmer and creditors under the Act. Clause 148 amends section 21(2) to stipulate that the notice must be in the form established by the minister and in accordance with the regulations, and that it must be given to the administrator as well as to the farmer.

2.5.3 Five-Year Review (Clause 152)

Bill C-18 amends section 28 of the *Farm Debt Mediation Act* – which required the minister to undertake a review of the operation of the Act every three years – to require such a review every five years after the coming into force of the amended section.

2.6 Coming into Force (Clause 154)

The amendments Bill C-18 makes to the various Acts come into force "on a day or days to be fixed by order of the Governor in Council." Note, however, that all the amendments Bill C-18 makes to the *Plant Breeders' Rights Act* come into force on a single day to be fixed by order of the Governor in Council.

NOTES

1. Canadian Food Inspection Agency, *Bill C-18: Agricultural Growth Act – CFIA*.
2. *Plant Breeders' Rights Act*, S.C. 1990, c. 20.
3. *Feeds Act*, R.S.C., 1985, c. F-9.
4. *Fertilizers Act*, R.S.C., 1985, c. F-10.

5. *Seeds Act*, R.S.C., 1985, c. S-8.
6. *Health of Animals Act*, S.C. 1990, c. 21.
7. *Plant Protection Act*, S.C. 1990, c. 22.
8. *Agriculture and Agri-Food Administrative Monetary Penalties Act*, S.C. 1995, c. 40.
9. *Agricultural Marketing Programs Act*, S.C. 1997, c. 20.
10. *Farm Debt Mediation Act*, S.C. 1997, c. 21.
11. Canadian Food Inspection Agency, "Harper Government proposes changes to support agricultural sector growth through modernization," News release, 9 December 2013.
12. *International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991*.
13. At the time of writing, the International Union for the Protection of New Varieties of Plants (UPOV) had 71 members, including the United States, the European Union, Australia, China, Japan and Canada.
14. House of Commons, *Debates*, 3rd Session, 40th Parliament, 12 March 2010, 1330 (Mr. Bev Shipley, Member of Parliament for Lambton–Kent–Middlesex).
15. This description is the full title of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.
16. Canadian Food Inspection Agency, *Administrative Monetary Penalties (AMPs)*.
17. Clauses 29(3), 31 and 50(4) make consequential changes to sections 43(3), 46 and 75(1)(*l*) of the *Plant Breeders' Rights Act*, respectively.
18. Clause 30 makes a consequential change to section 45(1) of the *Plant Breeders' Rights Act*.
19. An "agreement country" is a country or other entity (such as a colony, protectorate, territory, etc.) that is designated by the regulations as an agreement country with a view to the fulfilment of an agreement concerning the rights of plant breeders made between Canada and that entity. See Bill C-18, c. 2(2).
20. A consequential amendment is made to section 39 of the *Plant Breeders' Rights Act* by clause 27.
21. According to the *Plant Breeders' Rights Act*, s. 2(1),

    > 'Commissioner' means the Commissioner of Plant Breeders' Rights designated pursuant to section 56(2) [of the *Plant Breeders' Rights Act*] and, except in section 56, includes any person acting under a written authorization given pursuant to section 58.

22. Clause 14 amends section 19 of the *Plant Breeders' Rights Act*.
23. Clause 14 repeals section 19(2) of the *Plant Breeders' Rights Act*, and clause 24(1) makes a consequential change to section 35(1)(*c*) of the Act.
24. Clause 14 replaces section 19(3) with new section 19(2) of the *Plant Breeders' Rights Act*.
25. Clauses 14 and 19(1) amend sections 20 and 27(2), respectively, of the *Plant Breeders' Rights Act*.
26. Clause 14 replaces section 21 of the *Plant Breeders' Rights Act*. Also, clauses 34(1), 41(2) and 47 make consequential amendments to sections 50(1)(*b*), 63(*h*) and 70 of the Act, respectively.
27. Canadian Food Inspection Agency, *Guide to Plant Breeders' Rights in Canada*.

28. Annulment is retroactive in nature because the rights-holder was not entitled to a grant of rights at the time the rights were granted. By contrast, revocation of rights is not retroactive. The Commissioner may revoke rights if the rights-holder fails to comply with a requirement, pay a fee or meet an obligation during the term of the rights. See sections 34 and 35 of the *Plant Breeders' Rights Act*.

29. Clause 35 makes a consequential amendment to section 51 of the *Plant Breeders' Rights Act*.

30. *Plant Protection Act*, s. 2.

31. Clauses 54(1) and 64(1) amend section 3(1)(*a*) of the *Feeds Act* and section 3(*a*) of the *Fertilizers Act*, respectively. Clause 56 makes consequential amendments to sections 5(*a*) and 5(*c*), and adds new section 5(*b.1*) to the *Feeds Act*. Clause 66 makes consequential amendments to sections 5(1)(*a*) and 5(1)(*c*), and adds new section 5(1)(*b.1*) to the *Fertilizers Act*.

32. Clauses 57, 67, 77 and 96 add new section 5.8 to the *Feeds Act*, new section 5.7 to the *Fertilizers Act*, new section 4.13 to the *Seeds Act*, and new section 64.2 to the *Health of Animals Act*, respectively.

33. Clause 54(3) amends section 3(3) of the *Feeds Act*. Clause 65 adds new section 3.1 to the *Fertilizers Act*. Clause 75 adds new section 3.1 to the *Seeds Act*.

34. Clauses 56(2) and 56(8) add new regulatory powers in section 5(*c.1*) – which becomes section 5(1)(*c.1*) – and in section 5(2), respectively, of the *Feeds Act*. Clauses 66(2) and 66(7) add new regulatory powers in sections 5(1)(*c.1*) and 5(1.1), respectively, of the *Fertilizers Act*. Clauses 76(1) and 76(5) add new regulatory powers in sections 4(1)(*a.2*) and 4(3), respectively, of the *Seeds Act*.

35. Clauses 53, 63 and 74(2) add a new definition of "environment" to section 2 of each of the *Feeds Act*, the *Fertilizers Act* and the *Seeds Act*, respectively.

36. Clauses 55, 65, 75, 86 and 100 add section 3.4 to the *Feeds Act*, section 3.4 to the *Fertilizers Act*, section 3.2 to the *Seeds Act*, section 11.1 to the *Health of Animals Act* and section 6.1 to the *Plant Protection Act*, respectively.

37. Clause 55 adds new sections 3.1 and 3.2 to the *Feeds Act*. Clause 65 adds new sections 3.1 and 3.2 to the *Fertilizers Act*.

38. Clause 55 adds new sections 3.2 and 3.3 to the *Feeds Act*. Clause 65 adds new sections 3.2 and 3.3 to the *Fertilizers Act*.

39. Clause 57 adds new sections 5.2 to 5.4 to the *Feeds Act*. Clause 67 adds new sections 5.2 to 5.4 to the *Fertilizers Act*. Also, clause 56(5) adds new related regulatory powers in section 5(*h.1*) – which becomes section 5(1)(*h.1*) – of the *Feeds Act*. Similarly, clause 66(5) adds a new related regulatory power in section 5(1)(*h.*1) of the *Fertilizers Act*.

40. Clauses 57 and 56(7) add new section 5.5 and a new and related regulatory power in section 5(*k.3*), respectively, of the *Feeds Act*. Clauses 67 and 66(6) add new section 5.5 and a new and related regulatory power in section 5(1)(*j.2*), respectively, of the *Fertilizers Act*. Clauses 77 and 76(4) add new section 4.11 and a new and related regulatory power in section 4(1)(*j.2*), respectively, of the *Seeds Act*.

41. Clauses 57, 67, 77, 96 and 109 add section 5.1 to each of the *Feeds Act* and the *Fertilizers Act*, section 4.1 to the *Seeds Act*, section 64.1 to the *Health of Animals Act* and section 47.1 to the *Plant Protection Act*, respectively.

42. Clauses 56(2) and 56(8) add new regulatory powers in sections 5(*c.2*) to 5(*c.4*) (which become sections 5(1)(*c.2*) to 5(1)(*c.4*)) and new section 5(2), respectively, to the *Feeds Act*. Similarly, clauses 66(2) and 66(7) add new regulatory powers in sections 5(1)(*c.2*) to 5(1)(*c.4*) and new section 5(1.1), respectively, to the *Fertilizers Act*. Clauses 76(1) and 76(5) add new regulatory powers in sections 4(1)(*a.3*) and 4(1)(*a.4*), and new section 4(3) to the *Seeds Act*.

43. Clauses 56(4) and 57 add new sections 5(*g.1*) and 5.6, respectively, to the *Feeds Act*. Clauses 66(4) and 67 add new sections 5(1)(*g.1*) and 5.6, respectively, to the *Fertilizers Act*. Clauses 76(3) and 77 add new sections 4(1)(*g.1*) and 4.12, respectively, to the *Seeds Act*. Clause 95(5) adds new sections 64(1)(*w.1*) to the *Health of Animals Act*; section 49 of that Act already provides for disposition of samples. Clause 108(3) adds new section 47(*r.2*) – which becomes section 47(1)(*r.2*) – to the *Plant Protection Act*; section 37 of that Act already provides for disposition of samples.

44. Clauses 56(2), 66(2) and 76(2) amend section 5(*d*) of the *Feeds Act*, section 5(1)(*d*) of the *Fertilizers Act* and section 4(1)(*f*) of the *Seeds Act*, respectively. Clauses 95(2) and 108(4) add section 64(1)(*o.1*) to the *Health of Animals Act* and section 47(*t*) – which becomes section 47(1)(*t*) – to the *Plant Protection Act*, respectively.

45. Clauses 56(5), 66(5), 76(4) and 95(3) add new section 5(*h.2*) to the *Feeds Act*, new section 5(1)(*h.2*) to the *Fertilizers Act*, new section 4(1)(*j.3*) to the *Seeds Act* and new section 64(1)(*s.1*) to the *Health of Animals Act*, respectively.

46. Clauses 56(7) and 66(3) add new section 5(*k.1*) to the *Feeds Act* and section 5(1)(*f.1*) to the *Fertilizers Act*, respectively.

47. Clauses 56(7) and 56(8) add new section 5(*k.2*) – which becomes section 5(1)(*k.2*) – and section 5(3), respectively, to the *Feeds Act*. Clauses 66(6) and 66(7) add new sections 5(1)(*j*.1) and 5(1.2), respectively, to the *Fertilizers Act*. Clauses 76(4) and 76(5) add new sections 4(1)(*j.1*) and 4(4), respectively, to the *Seeds Act*. Clauses 95(6) and 95(7) amend section 64(1)(*z.3*) of, and add new section 64(1.4) to, respectively, the *Health of Animals Act*. Clauses 108(3) and 108(5) add new sections 47(*r.1*) – which becomes section 47(1)(*r.1*) – and 47(5) to the *Plant Protection Act*.

48. Under the *Health of Animals Act*, an inspector or officer may also exercise his or her powers under the Act "for the purpose of detecting diseases or toxic substances." (Clause 91 of Bill C-18 amends section 38(1) of the *Health of Animals Act*.)

49. Under the *Plant Protection Act*, an inspector may also exercise his or her powers under the Act "for the purpose of detecting pests." (Clause 103 amends section 25(1) of the *Plant Protection Act*.)

50. Clauses 58, 68 and 79 amend section 7 of the *Feeds Act*, section 7 of the *Fertilizers Act*, and section 6 of the *Seeds Act*, respectively. As mentioned in the two previous notes, clauses 91 and 103 amend section 38(1) of the *Health of Animals Act* and section 25(1) of the *Plant Protection Act*, respectively.

51. The two amendments summarized in bulleted form are not made to either of the *Health of Animals Act* or the *Plant Protection Act*.

52. Clauses 59, 69, 80, 92(1) and 104(1) amend section 9(2) of the *Feeds Act*, section 9(2) of the *Fertilizers Act*, section 8(2) of the *Seeds Act*, section 45(1) of the *Health of Animals Act* and section 32(1) of the *Plant Protection Act*, respectively.

53. Clauses 60, 70, 81 and 89 add new section 9.1 to the *Feeds Act*, new section 9.1 to the *Fertilizers Act*, new section 8.1 to the *Seeds Act* and new section 18 to the *Health of Animals Act*, respectively, and clause 101 amends section 8 of the *Plant Protection Act*.

54. Clause 89 amends section 17 of the *Health of Animals Act*.

55. Clause 101 amends section 8 of the *Plant Protection Act*.

56. Clauses 60, 70 and 81 add new section 9.2 to the *Feeds Act*, new section 9.2 to the *Fertilizers Act* and new section 8.2 to the *Seeds Act*, respectively.

57. Clause 90 adds new section 36 to the *Health of Animals Act*, and clause 85 repeals section 6 of the Act. Clause 102 adds new section 23.1 to the *Plant Protection Act*.

58. Clause 60 adds new sections 9.3 and 9.4 to the *Feeds Act*. Clause 70 adds new sections 9.3 and 9.4 to the *Fertilizers Act*. Clause 81 adds new sections 8.3 and 8.4 to the *Seeds Act*. Clause 94 amends existing section 50 of the *Health of Animals Act* and adds new section 50.1 to that Act. Clause 107 amends section 38 of the *Plant Protection Act* and adds new section 38.1 to that Act.

59. Clauses 61(1), 71 and 82(1) amend section 10(1) of the *Feeds Act*, section 10 of the *Fertilizers Act* and section 9(1) of the *Seeds Act*, respectively.

60. "Mandatary" is the civil law term meaning "agent."

61. Clauses 61(2), 98 and 112 amend section 10(2) of the *Feeds Act*, section 71 of the *Health of Animals Act* and section 54 of the *Plant Protection Act*, respectively. Clauses 72 and 82(2) add new section 10.1 to the *Fertilizers Act* and new section 9(2) to the *Seeds Act*, respectively.

62. Clauses 61(3), 72, 82(2), 98 and 112 amend section 10(3) of the *Feeds Act*, section 11 of the *Fertilizers Act*, section 9(3) of the *Seeds Act*, section 72 of the *Health of Animals Act* and section 55 of the *Plant Protection Act*, respectively.

63. Clause 61(4) amends section 10(4) of the *Feeds Act*. Clause 72 replaces current section 10.1 of the *Fertilizers Act* with new section 11.1. Clause 83 amends section 10 of the *Seeds Act*. Clause 97 amends section 68 of the *Health of Animals Act*. Clause 111 amends section 51 of the *Plant Protection Act*.

64. Clause 55 amends section 4 of the *Feeds Act*.

65. Clauses 53 and 57 add a new definition to section 2 of the *Feeds Act* and a new section 5.7 to the same Act, respectively.

66. Clauses 55 and 56(3) add new sections 3.3 and 5(*e.2*) to the *Feeds Act*.

67. Clause 56(3) adds new section 5(*e.1*) to the *Feeds Act*.

68. Clauses 95(3) and 95(4) amend sections 64(1)(*s*) and 64(1)(*v*), respectively, of the *Health of Animals Act*.

69. Clause 95(7) adds new sections 64(1.1) and 64(1.2) to the *Health of Animals Act*.

70. Clause 95(7) adds new section 64(1.3) to the *Health of Animals Act*.

71. Clause 106 adds new sections 36.1 to 36.4 to the *Plant Protection Act*.

72. Clause 108(1) adds new section 47(*a.1*) – which becomes section 47(1)(*a.1*) – to the *Plant Protection Act*.

73. Clause 109 adds new section 47.2, and clause 108(2) adds a related regulatory power in section 47(*b.1*) – which becomes section 47(1)(*b.1*) – of the *Plant Protection Act*.

74. Clause 108(5) adds new sections 47(2) to 47(4) to the *Plant Protection Act*.

75. Clause 128(1) amends section 10(1)(*a*) of the *Agricultural Marketing Programs Act*.

76. Clause 128(1) amends section 10(1)(*b*) of the *Agricultural Marketing Programs Act*.

77. Agriculture and Agri-Food Canada, "Agricultural Growth Act: Proposed Changes to the Agricultural Marketing Programs Act (AMPA)," Backgrounder, 9 December 2013.

78. Clause 128(2) amends section 10(1)(*f.1*) of the *Agricultural Marketing Programs Act*.

79. Clause 128(3) amends section 10(1)(*h*) of the *Agricultural Marketing Programs Act*.

80. Clause 128(1) amends sections 10(1)(*c*) and 10(1)(*d*) of the *Agricultural Marketing Programs Act*. Clause 138(4) adds a related regulatory power in section 40(1)(*e.11*) of the Act. Clause 128(4) appears to correct a technical error in section 10(1.1) of the Act.

81. *Agricultural Marketing Programs Act*, s. 3(1).

82. Clause 121 amends sections 3(2) and 3(3) of the *Agricultural Marketing Programs Act*. Clause 138(1) adds related regulatory powers in sections 40(1)(*a.2*) and 40(1)(*a.3*) of the Act.

83. Clauses 127(2) and 133(2) amend sections 9(2) and 20(2) of the *Agricultural Marketing Programs Act*, respectively. Clause 138(3) adds two new related regulatory powers in sections 40(1)(*e.01*) and 40(1)(*e.02*) of the Act.

84. Clause 123 amends sections 4.1(2) and 4.1(3) of the *Agricultural Marketing Programs Act*, and clause 138(2) makes a consequential amendment to a related regulatory power in section 40(1)(*b*) of the Act.

85. Clauses 127(1) and 133(1) substitute the term "program year" for "production period" in sections 9(1) and 20(1) of the Act, respectively.

86. Agriculture and Agri-Food Canada (2013).

87. Ibid.

88. Ibid.

89. Agriculture and Agri-Food Canada, "6. As a producer organization, what am I liable for?," *Advance Payments Program – Frequently Asked Questions for Producer Organizations*.

90. House of Commons, Standing Committee on Agriculture and Agri-Food, *Evidence*, 4 November 2014 (Mr. Rosser Lloyd, Director General, Business Risk Management Programs Directorate, Programs Branch, Department of Agriculture and Agri-Food).

91. Agriculture and Agri-Food Canada (2013).

92. Subrogation means "assuming the legal rights of a person for whom expenses or a debt has been paid" (Law.com, *subrogation*). In the context of the *Agricultural Marketing Programs Act*, the minister being subrogated to the administrator's rights means that, to the extent that the minister pays any part of the producer's debt to the administrator, the minister may exercise rights against the producer as if the minister were the administrator.

93. In this context, "set-off" means that amounts the producer owes to the minister are recovered from any amounts that the federal government owes to the producer.

94. "The ESCAP [Enhanced Spring Credit Advance Program] was put in place in 2006 as a transitional program … while amendments were being made to the *Agricultural Marketing Programs Act*." (Agriculture and Agri-Food Canada, "Table 11-B: Details on Transfer Payments Programs for Agriculture and Agri-Food Canada," *Departmental Performance Report 2006–07*, item 6.)

    "The Spring Credit Advance Program… has been merged with the Advance Payments Program… to form a single program." (Agriculture and Agri-Food Canada, "1. Is this program new?," *Advance Payments Program – Frequently Asked Questions for Producers*.)

95. Clause 142 adds new section 7(1)(*a*)(iii) to the *Farm Debt Mediation Act*.

96. Clause 143 amends section 9(2)(*b*) of the *Farm Debt Mediation Act*.

97. Clause 143 amends section 9(2)(*c*) of the *Farm Debt Mediation Act*.

98. Clause 144(1) amends section 10(1)(*b*) of the *Farm Debt Mediation Act*.

99. Clause 144(1) amends section 10(1)(*c*) of the *Farm Debt Mediation Act*.

100. Clause 144(1) amends section 10(2) of the *Farm Debt Mediation Act*.

101. Clause 146 amends section 14(3) of the *Farm Debt Mediation Act*.

102. Clause 147 amends section 19 of the *Farm Debt Mediation Act*.

103. Clause 149(1) amends section 24(1) of the *Farm Debt Mediation Act*.