

December 16, 2021

Clean Fuel Standard Team
Environment and Climate Change Canada
351 St. Joseph Boulevard, 12th Floor
Gatineau, QC
K1A 0H3

Via email: ec.cfsncp.ec@canada.ca

Re: Proposed *Clean Fuel Regulation: Land Use and Biodiversity Criteria – Regulatory Changes Post-Canada Gazette 1.*

The Canadian Canola Growers Association (CCGA) and the Canola Council of Canada (CCC) have actively participated in the development of the Clean Fuel Regulation (CFR). This submission is in response to Environment and Climate Change Canada's update provided on December 9th, 2021, where stakeholders were asked to identify any 'red flags'. As such, brief comment is provided on select areas addressed in the presentation.

1. Coming into Force (Slide 4)

The proposed change to delay the coming onto force of the LUB criteria to January 1, 2024 is supported.

- The rationale provided for the proposed *Canada Gazette 2* approach is appropriate as it reflects the Canadian agricultural production cycle. Additionally, as satisfying the LUB criteria appears to be more complex and uncertain (see No. 2 below), the additional time will hopefully allow provinces and their farmers to achieve aggregate compliance through legislative recognition. It will also allow national associations such as ours to help ready the industry for compliance and participation in the CFR.

2. Protected Areas (Slide 7)

The proposed change to the protected areas section is very problematic.

- As proposed, it is difficult to ascertain if Canadian provinces will meet compliance with this regulatory element to achieve legislative recognition. The current lack of definition around concepts such as 'rare', 'vulnerable', 'threatened species' and 'vulnerable ecosystem' leaves stakeholders with no ability to analyze the current situation and assess the potential for compliance.
- For a domestic federal regulation, the potential that some provinces will be able to meet compliance via legislative recognition, and some will not, is very concerning. The construction of this regulatory element and its proposed application is an inappropriate means to meet the broad policy objective. This could plausibly lead to a situation where some provinces do and do not

comply when this takes effect. In Canada, canola (and other crops) enters the commercial system (e.g. at country elevator or at processing plants) freely under commercial terms and inter-provincial traffic of grain, especially in Western Canada, is currently unfettered. As currently understood, this policy element could lead to the imposition of new regulatory burden and the differential treatment of farmers within their own country.

- For provinces not meeting compliance upon coming into force, the need to have third party certification for farmers until such time the province can meet legislative recognition (if ever) is a punitive pathway for regulatory compliance. This will add material cost and administrative burden on the agricultural sector of a particular province, lessening their competitiveness relative to other jurisdictions. This is an unacceptable outcome of a domestic regulation.
- This policy element and the uncertainty it currently creates will be an issue affecting Canadian competitiveness and the likely ability to attract capital investment. In 2021, the Canadian canola sector witnessed four announcements of major investments in processing facilities, poised to provide a 50% increase in capacity from 2020 by 2024-25. The current CFR, and the proposed application of the LUB criteria, is not providing the industry any sense of comfort due to the regulatory uncertainty, which could harm the actual deployment of capital into these facilities in Canada.
- Currently, Canadian grain, grain products and finished biofuels can cross the international border with relative ease. There are several grain handling and processing facilities that are strategically located in the United States to draw Canadian grain into their facilities. Additionally, Canada is the only jurisdiction to have been granted aggregate compliance status for biofuel feedstock production under the United States' Renewable Fuel Standard program. It is plausible that this proposed regulation is not viewed favourably in the United States and our access to this major market is imperilled.

Before the Regulation is finalized, we strongly recommend that:

- **ECCC provide guidance and clarity on the protected area criterion to provincial and industry stakeholders.**
- **ECCC confirm a clear pathway for all provinces and the United States to meet compliance to the protected area criterion via legislative recognition.**

3. Legislative Recognition – Canadian Analysis (Slide 19)

Conferring legislative recognition for the ‘damaging agents’ criteria on the basis of the *Plant Protection Act* is supported.

4. Material Balancing – Declaration Periods (Slide 21)

The proposed approach of streamlining the declaration requirement is supported.

- Changing the frequency required for documentation and the ability to work the required elements into the existing form of commercial contracts is a welcomed development. As canola farmers typically do not directly deliver to biofuel plants, they have no foreknowledge of if their canola is

destined for that market. Keeping this policy element as streamlined as possible, with the required language embedded within the framework of existing contractual documentation is a positive approach to practical implementation of this policy element.

These regulatory elements are important to Canada's canola farmers and the entire value chain. Having these clarified in the final regulation and forthcoming guidance documents, in plain text, will provide greater certainty to industry and leave potential market participants with no room for misinterpretation. Additionally, for crop-based feedstocks, it will allow organizations such as ours to precisely explain to Canadian farmers and industry the mechanics and compliance requirements of the regulation.

The Canadian canola industry continues to view the CFR as an opportunity. Addressing the above noted issues will work towards implementing a regulation that enables our industry to contribute to the achievement of the overarching policy goals of the CFR. We look forward to continued interaction with ECCC on this important issue.

Sincerely,

Original signed by

Rick White
President & CEO
Canadian Canola Growers Association

Original signed by

Jim Everson
President
Canola Council of Canada