



Treasury Board of Canada  
Secrétariat

Secrétariat du Conseil du Trésor  
du Canada

Canada

# Exploring Regulatory Experimentation



Presentation to the Community of Federal Regulators  
Regulatory Speakers Series: January 23, 2019  
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# Overview

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1 Federal regulatory modernization agenda and targeted regulatory reviews

2 Exploration of Regulatory Experimentation

3 Invitation to Conversation

# Canada's Regulatory Modernization Agenda

In recent years, the Government of Canada has undertaken a number of initiatives to modernize the regulatory system and improve its performance for both Canadians and businesses:

## Enhanced regulatory cooperation

- Canada-United States Regulatory Cooperation Council
- Federal/Provincial/Territorial Regulatory Reconciliation and Cooperation Table (RCT)
- Canada-European Union Regulatory Cooperation Forum (RCF)
- Canada-Mexico Memorandum of Understanding

## Amendments to the *Red Tape Reduction Act*

- Amended the *Red Tape Reduction Act* to encourage better alignment with key trading partners and recognize the role regulatory cooperation plays in lowering costs
- Will undergo full review by 2020

## Renewed the Cabinet Directive on Regulation

- Responded to emerging risks, improved Good Regulatory Practices, addressed stakeholder frustrations, and aligned with the Government's new agenda
- Foundation for second stage of modernization agenda

## Targeted Regulatory Reviews

- The Treasury Board of Canada Secretariat (TBS) is coordinating the three-year targeted regulatory review process with federal departments and agencies

# Targeted Regulatory Reviews

- Stakeholders have identified regulatory reviews as a key part of modernizing Canada's regulatory system (e.g. Advisory Council on Economic Growth)
- In 2018, the Government made regulatory reviews a priority by funding, over three years, targeted reviews of regulatory requirements and practices that are bottlenecks to innovation
- The first wave of targeted reviews focused on 3 high-growth sectors:



Agri-Food and  
Aquaculture



Health and  
Bio-Sciences

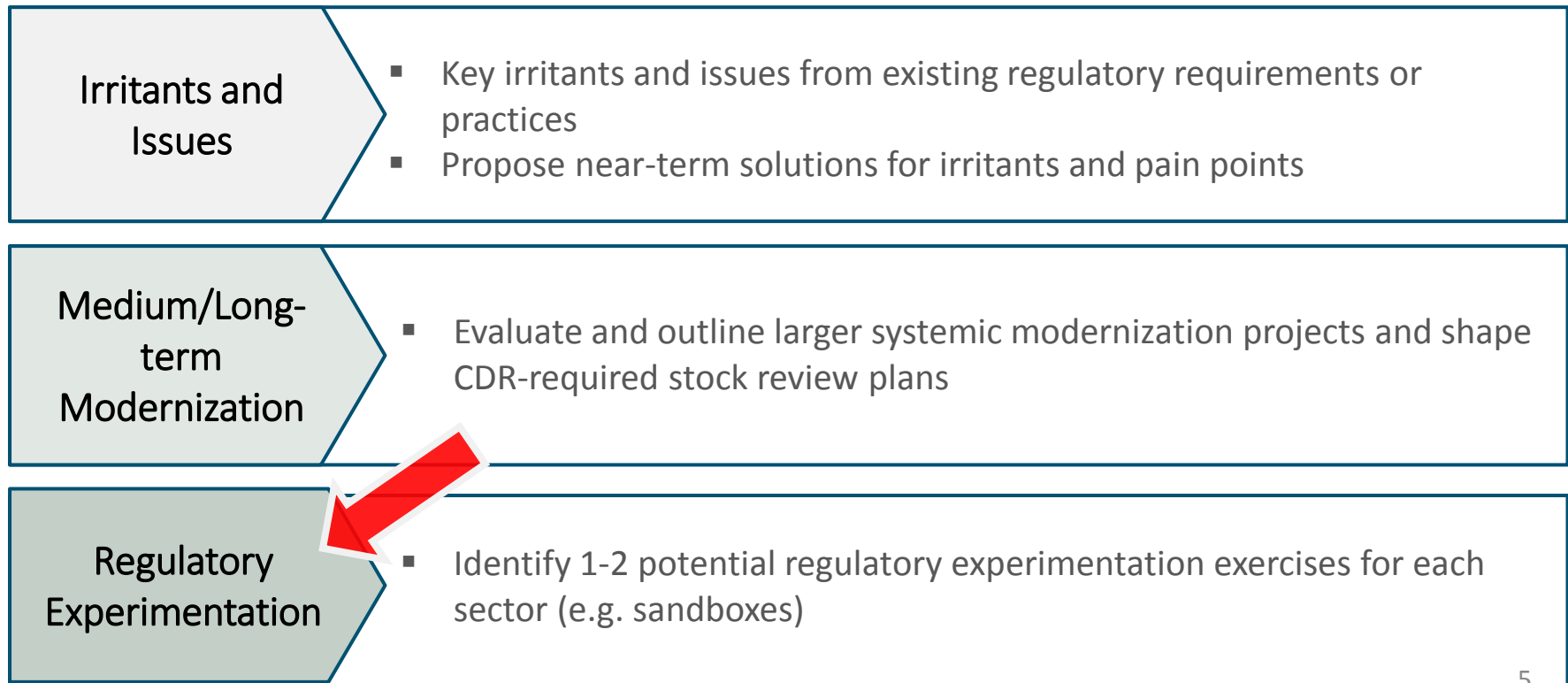


Transportation  
and Infrastructure

# Engagement is key to identify areas for modernization

TBS lead national engagement with stakeholders, Canadians, and other levels of government through:

- A public consultation posted in the *Canada Gazette*, Part I
- Leveraging existing relationships with stakeholders (e.g., Regulatory Cooperation Council) and Economic Strategy Tables
- Targeted engagement on a case-by-case basis (e.g., Business Council of Canada)



# 2018 Fall Economic Statement

## Launch a Centre for Regulatory Innovation

“...the Government will create a Centre for Regulatory Innovation. The Centre will work as a convener and focal point that is business-facing, helping businesses connect with relevant regulators and managing a roster of sandboxes—such as a physical space with regulators onsite while new systems are being tested—that support innovation and competitiveness, while also ensuring that Canadians' expectations around the protection of health, safety and the environment continue to be met.

To support the Centre and its objectives, the Government proposes to provide up to \$11.4 million over five years, and \$3.2 million per year ongoing, to enable business and the Government to work together to develop and implement regulatory experimentation approaches that encourage innovation, but do not compromise consumer trust and confidence.”

# Next Steps on Regulatory Experimentation



# Types of Regulatory Experimentation

## Working with Regulators to Start Developing Common Definitions

No Regulatory Regime Exists

Iterative Co-Development

Could it mean this?

- Working with industry and other stakeholders to identify what instrument, if any, is appropriate for disruptive or innovative process or products.
- Novel approach because of **enhanced** consultation on instrument choice.

Regulatory Regime in Place is a Barrier

Regulatory Sandbox

Could it mean this?

- Existing regulations prevent the innovation or technology.
- Exemptions from specific requirements issued on case by case basis to individual proponents.
- Continued regulator oversight.

Experimentation with Regulations

Pilot Project

Could it mean this?

- Regulations of general application, but of limited scope.
- Not a case by case basis
- May be a subset of other regulations carving out a short term approach for evaluation

Ambiguity in Regulations

Combination of Regulatory Approaches

Could it mean this?

- Co-development with stakeholders to determine where there is fit, if at all
- Exemptions / non-enforcement letters
- Creation of new regulations? Or removal of ambiguity?



# Regulatory Sandboxes – Exploration of Best Practices for Design

## 1 Scope of Authority to Exempt – All Rules or Just Some?

- If authority to create a “regulatory sandbox” is conferred, what should be its scope to exempt?
  - The Act and the regulations?
  - Any and all provisions?
  - Are some fundamental provisions of the Act or regulations that should not be waived or altered in the regulatory sandbox?
  - What are essential “safeguard mechanisms”?
  - Imposition of terms and conditions – co-development?

# Regulatory Sandboxes – Exploration of Best Practices for Design

## 2

### Individual or General Approach – Players in the Regulatory Sandbox

- Innovations (new and emerging technology) or innovative ways to apply existing technology is inherently individual and requires a case-by-case assessment.
  - Exemption or waiver powers should be limited to individualized exemptions
  - *Cabinet Directive on Regulation, Statutory Instruments Act*
  - Capacity (resources, expertise) of the regulator to assess the individual proponents
  - Regulatory sandboxes are a form of testing, not intended to enable permanent regulatory waivers or exemptions (OECD)

# Regulatory Sandboxes – Exploration of Best Practices for Design

## 3 Eligibility – Criteria for Participation

- Assessment of technologies or innovations – who gets to play in the sandbox?
  - Who will establish criteria for participants?
  - Should there be standard criteria across the federal government?
  - Requirement for a “genuine innovation”?
  - Should there be a requirement that a benefit is anticipated? How will we know?
  - Should the proponent have to demonstrate that they are “ready”?
  - Who should determine if there is a regulatory barrier?

# Regulatory Sandboxes – Exploration of Best Practices for Design

## 4 Transparency – Applications, Decisions, Results

- Regulatory sandboxes can confer market advantage and require transparency in:
  - Criteria for who is eligible to participate
  - Process for application and disposition of proposals
  - Publication of decisions to grant or deny permission
  - Publication of terms and conditions
  - Time limited
  - Report on results and accountability

# Regulatory Sandboxes – Exploration of Best Practices for Design

## 5

### Designing the Details of the Sandbox

- Consideration to be given to:
  - Can we choose between incumbents and new entries, and do we want to?
  - Can we limit the numbers of sandboxes?
  - Do regulators have the resources to monitor and adapt?
  - Determination of duration
  - Revocation and termination principles
  - General Act or individual Acts – what will our approach be?

# Regulatory Sandboxes – Exploration of Best Practices for Design

6

Starting the Conversation

Canada can be a leader in developing a coherent approach to regulatory sandboxes that respect good regulatory practices

Let's talk!