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Registration

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SEEDS ACT

**Regulations Amending the Seeds Regulations**

P.C. 2008-1335 July 28, 2008

Her Excellency the Governor General in Council, on the recommendation of the Minister of Agriculture and Agri-Food, pursuant to subsection 4(1) ([see footnote a](#)) of the *Seeds Act* ([see footnote b](#)), hereby makes the annexed *Regulations Amending the Seeds Regulations*.

**REGULATIONS AMENDING THE SEEDS  
REGULATIONS****AMENDMENTS**

**1. (1) The portion of section 41 of the *Seeds Regulations* ([see footnote 1](#)) before paragraph (a) is replaced by the following:**

**41. (1)** Subject to subsection (2), seed of any variety is exempt from the operation of paragraph 3(1)(b) of the Act if it is imported into Canada for the purpose of

**(2) Section 41 of the Regulations is amended by adding the following after subsection (1):**

(2) Seed of any variety of spring wheat, winter wheat or durum wheat that is imported into the Canadian Wheat Board Area is exempt from the operation of paragraph 3(1)(b) of the Act only if it is imported for the purpose of

(a) conditioning;

(b) research; or

(c) sale pursuant to subsection 5(4).

**2. Section 42 of the Regulations is repealed.**

**COMING INTO FORCE**

**3. These Regulations come into force on the day on which they are registered.**

**REGULATORY IMPACT  
ANALYSIS STATEMENT**

*(This statement is not part of the Regulations.)*

***Issue and objectives***

On February 11, 2008, the Minister of Agriculture and Agri-Food and Minister for the Canadian Wheat Board (CWB) announced the Government of Canada policy decision to eliminate kernel visual distinguishability (KVD) requirements from all classes of western Canadian wheat as of August 1, 2008. This change in domestic wheat policy necessitated the removal of the policy requirement for seed of wheat varieties to be visually distinguishable for each quality class in order to be registered in Canada. As a consequence, the only regulatory change within the larger Government of Canada policy decision is a minor amendment to the *Seeds Regulations* (the Regulations).

The Government of Canada, on the recommendation of the Canadian Food Inspection Agency (CFIA), is therefore removing the KVD-related restrictions in the Regulations on wheat seed imported into the CWB Area in western Canada. This regulatory amendment is consistent with Canada's international trade obligations by removing KVD requirements for imported wheat seed that have already been removed for wheat seed of national origin (World Trade Organization Technical Barrier to Trade Agreement, Article 2.1).

### ***Description and rationale***

#### ***Background***

Western Canada has used KVD as a tool for segregating wheat in the grain handling system into classes (quality types) based on end use (bread, pasta, pastry, etc.). KVD requires the grain of wheat varieties with similar quality characteristics to have similar appearances.

Historically, CFIA policies and regulations have acted as “gate-keepers” for the KVD-based grain quality assurance system by only allowing seed of wheat varieties that are visually distinguishable for each quality class to be sold or imported into the CWB Area. Specifically, the CFIA has supported the grain quality assurance system through its variety registration system and import requirements.

KVD is a requirement only for wheat and only in the CWB Area. Eastern Canada and other countries instead rely on contracts, declarations, documentation and laboratory testing to ensure separation of wheat into quality classes in their grain handling systems.

#### ***Changes to canadian domestic wheat policy***

The requirement for seed of wheat varieties to be visually distinguishable (colour, size and shape) for each wheat quality class has been identified as an impediment to the

development of new wheat varieties with improved characteristics for traditional milling uses (e.g., bread and pasta flours) or different characteristics for other uses (e.g., livestock feed and biofuels markets).

To address this issue, on February 11, 2008, the Minister of Agriculture and Agri-Food and Minister for the CWB announced the Government of Canada policy decision to eliminate KVD from all classes of western Canadian wheat as of August 1, 2008. Following this announcement, the CFIA removed the policy requirement for seed of wheat varieties to be visually distinguishable for each quality class in order to be registered in Canada. Wheat varieties continue to be subject to all other requirements for variety registration. The Government of Canada is working collaboratively with industry and producers to ensure continued quality assurance in a post-KVD environment.

#### *Variety registration requirements*

Except for specific cases, it is only permissible to sell in or import into Canada seed of a variety that is registered pursuant to Part III of the Regulations. In Canada, the variety registration system is designed to ensure that health and safety requirements are met and that the identity of varieties is known to regulators to prevent fraud. Until February 11, 2008, one of the registration requirements for new wheat varieties in the CWB Area was for the grain to have a visual appearance that was consistent with the quality class to which it belongs (KVD). The CFIA eliminated this variety registration requirement for wheat varieties in the CWB Area following the Minister's announcement of the broader domestic policy change.

#### *Wheat import requirements*

Similarly, the CFIA has had regulations in place that have required that wheat seed imported into the CWB Area conform with KVD requirements (visual kernel appearance

is consistent with quality class requirements). In support of the KVD-based grain policy, section 42 of the Regulations has specifically required that wheat seed imports into the CWB Area be

(a) pedigreed seed of a registered variety;

(b) visually distinguishable from all registered varieties suitable for milling, baking or making alimentary pastes; or

(c) for plant breeding or research purposes.

For all crops except wheat that is imported into the CWB Area, seed of unregistered varieties may be imported for conditioning, research, seeding by the importer or for production of pedigreed seed (for export or in anticipation of registration of the variety in Canada). For wheat imported in the CWB Area, the aforementioned KVD-related restrictions have applied.

### *Regulatory amendments to seed import requirements*

In light of the broad domestic policy decision to eliminate KVD requirements for domestic wheat, consequential amendments to the Regulations are required to ensure consistency between import and domestic wheat policy. These amendments repeal section 42 of the Regulations to remove KVD-related restrictions on importation of wheat into the CWB Area and add a subsection to section 41 that, (along with paragraph 3(1)(b) of the *Seeds Act*), continues to prohibit importation of seed of unregistered wheat varieties into the CWB Area for seeding by the importer.

These amendments permit the importation of wheat seed into the CWB Area if it is

- Pedigreed or common seed of registered wheat varieties;

- Seed of unregistered wheat varieties for conditioning;
- Seed of unregistered wheat varieties for research purposes (as was previously permitted in the Regulations); and
- Pedigreed seed of unregistered wheat varieties for closed-loop production of pedigreed seed for export or in anticipation of registration of the variety in Canada.

The importation of seed of unregistered wheat varieties into the CWB Area for seeding by the importer is not permitted.

These amendments also remove the requirement that spring barley seed be distinguishable from other registered varieties for imports into the CWB Area. While distinguishability has not been a requirement for variety registration or importation of spring barley since 1996, the Regulations were not previously amended to reflect this change.

While paragraphs 42(a) and (c) are not specifically related to the removal of KVD import requirements, they were also repealed in these amendments.

Removal of paragraph 42(a) eliminates the requirement for seed of wheat varieties imported into the CWB Area to be of pedigreed status. The World Trade Organization trade rules require that imported products are not treated any less favourably than domestically produced products. It has therefore been decided to eliminate the requirement that all wheat seed imported into the CWB Area be of pedigreed status when domestic seed sold in Canada may be of either common or pedigreed status.

Paragraph 42(c) outlines specific requirements to allow the importation of seed of unregistered wheat varieties into the CWB Area for plant breeding or research purposes. While paragraph 42(c) provides extensive detail

on the specific import requirements for wheat, this research allowance is also covered under paragraph 41 (c) for all crops.

These amendments ensure Canada is consistent with its international trade obligations by aligning import with domestic wheat seed requirements as per the Minister's announcement that KVD will be eliminated on August 1, 2008. These amendments also maintain the role of variety registration in supporting the grain handling system, while continuing to allow the flexibility for the introduction of new varieties for feed and ethanol markets.

### ***Alternatives***

On May 24, 2008, proposed amendments to the *Seeds Regulations* were pre-published in Part I of the *Canada Gazette*, with four options. Since then, the CFIA has further explored the two options that would accomplish the objectives of the removal of KVD-related import requirements and the alignment of import with domestic wheat seed requirements. One option proposed the removal of all wheat-specific import requirements and would allow importation of unregistered wheat varieties for seeding by the importer (Option 2 in the *Canada Gazette*, Part I, pre-publication — the previously recommended option), and the other option proposed to remove wheat-specific import requirements but continue to restrict the importation of seed of unregistered wheat varieties into the CWB Area for seeding by the importer (Option 4 in the *Canada Gazette*, Part I, pre-publication).

In order to respond to the preference indicated by the majority of stakeholders during the pre-publication period in Part I of the *Canada Gazette*, the CFIA is proceeding with the regulatory change option that removes the KVD import requirement for seed of wheat varieties being imported into the CWB Area, but continues to prohibit the importation of seed of unregistered wheat varieties for seeding by the importer (Option 4). These amendments have been implemented to ensure Canada is consistent

with its international trade obligations by aligning import with domestic wheat seed requirements towards the August 1, 2008 implementation date for the removal of KVD.

Many stakeholders indicated that by allowing importation of unregistered varieties for seeding by the importer, the removal of all wheat-specific import requirements would have been going beyond the changes required to align with the domestic policy to remove KVD and to remain consistent with international trade obligations. The option recommended in Part I of the *Canada Gazette* included the removal of the KVD requirements for wheat seed imported into the CWB Area but was broadened to also remove the prohibition on the importation into the CWB Area of seed of unregistered wheat varieties for seeding by the importer (producer). The scope of this Option 2 had been expanded to provide producers the opportunity for immediate access to varieties, to be consistent with the direction of broader grains sector policy; however, it is not a KVD-related amendment. Recognizing this distinction, the current Regulations reflect only the removal of KVD-related import restrictions.

While this regulatory amendment does not provide immediate access to foreign varieties of wheat that have not been registered in Canada, foreign and Canadian-bred varieties will be available to producers after variety testing and registration in Canada. After two years of agronomic trials and disease testing, Canadian or foreign-bred ethanol and feed varieties are eligible for registration. Further increasing the timeliness of access to new varieties, only a single year of testing is required for interim (time-limited) registration of varieties. These varieties may then be eligible for permanent registration after further testing. In summary, foreign varieties may be eligible for variety registration in Canada after registration requirements have been met and then available to producers after testing and registration in Canada, possibly as early as spring 2009.



The CFIA will hold supplementary consultations to address the issue of importation of unregistered varieties for “seeding by the importer.” These consultations will ensure that the issue of importation of unregistered varieties into the CWB Area will be considered separately from the KVD issue. Results of the consultations could form the basis for a subsequent proposal for regulatory change.

Several comments of support for continued restrictions on seeding by the importer received during the prepublication period included an interpretation of the regulatory text as it would appear under this option. The CFIA engaged many of these stakeholders in further discussions to clarify their support for the concept of maintaining the current prohibition on the importation of unregistered varieties for seeding by the importer, given that the specific regulatory text was not outlined in the Regulatory Impact Analysis Statement published in Part I of the *Canada Gazette*.

### ***Consultation***

In December 2006, the Standing Committee on Agriculture and Agri-Food tabled a report on a third-party review of the *Canada Grain Act* and the Canadian Grain Commission. This report recommended the removal of KVD from all classes of western Canadian wheat and required a government response within 120 days. Subsequently, on April 16, 2007, the Minister of Agriculture and Agri-Food and Minister for the CWB set a target date for the complete removal of KVD from all western wheat classes by 2010. The Minister’s announcement on February 11, 2008, advanced the timeline for removal of KVD to August 1, 2008, and formalized the change in domestic policy for wheat in the CWB Area.

The CFIA is making these regulatory amendments to align requirements for imported wheat seed with those for domestic wheat seed in order to ensure Canada is

consistent with its international trade obligations. As these regulatory amendments are consequential to the Minister's announcement of the Government of Canada policy decision to eliminate KVD, the CFIA did not hold consultations specifically on the changes to seed import regulations described above, prior to pre-publication in Part I of the *Canada Gazette*.

In recent years, however, the Government of Canada has received feedback on various aspects of broader KVD policy, including the burden imposed by KVD on wheat breeders and the time, cost and technological considerations for implementing alternative tools to segregate wheat in the grain handling system in western Canada. Feedback received by the Government of Canada has indicated both support for and concerns with respect to the removal of KVD from the grain quality assurance system in western Canada.

The Canadian Grain Commission has held extensive consultations over the past six years on how to transition away from KVD. Through these consultations, stakeholders identified the need to end KVD for all western Canadian wheat classes but stakeholders differed on the precise timing of its removal.

With the announcement of the end of KVD in 2008, the Canadian Grain Commission is presently working with an industry committee to develop and implement appropriate quality management practices and protocols to ensure the integrity of the grain quality assurance system in a post-KVD environment.

### *Responses received during Canada Gazette, Part I publication*

On May 24, 2008, the proposed amendments to the *Seeds Regulations* were pre-published in Part I of the *Canada Gazette*, for a 30-day public comment period. During the pre-publication period, the CFIA received 12 submissions

from major stakeholder organizations and one individual producer, together representing most sectors of the wheat industry. These organizations included producer associations, breeders, grain handlers, a livestock association, and a processor.

Eight of the twelve submissions received by the CFIA indicated opposition to the recommended option, which allows importation of seed of unregistered wheat varieties, and support for Option 4, which does not allow importation of seed of unregistered wheat varieties for seeding by the importer. The Western Grain Elevator Association, the Canadian Wheat Board, the Inland Terminal Association of Canada, the Canadian Grain Commission, the Canadian Seed Growers' Association and an individual producer strongly opposed the recommended option and supported Option 4. Keystone Agricultural Producers and the Canadian National Millers Association opposed the recommended option and were supportive of the concepts identified in Option 4.

The major concern raised with the recommended option was that allowing the import of unregistered varieties for seeding by the importer would increase the risk of the delivery of unregistered varieties into the grain handling system, thus impacting the quality of grain shipments. In particular, allowing import of unregistered varieties would inhibit tracking and tracing of seed and, subsequently, the tracking and tracing of the resulting crop entering the grain handling system. Concerns were raised that the industry needs time to adjust to the “post-KVD” environment with the new producer declaration system before introducing unregistered varieties that could potentially compromise grain quality. Another common concern was that the removal of wheat-specific import requirements, including import of unregistered varieties for seeding by the importer, would go beyond what is required to implement the removal of KVD and to remain consistent with international trade obligations.

Three of the twelve submissions received by the CFIA

preferred the recommended option. The Canadian Cattlemen's Association, the Crop Development Centre and the Alberta Grain Commission want producers to have immediate access to unregistered wheat varieties from other countries for biofuel and livestock feed markets.

One response from the Grain Growers of Canada did not indicate a preference for either option but requested an extension to the consultation period in their submitted responses. The Canadian National Millers Association also requested an extended consultation period.

During the 30-day consultation period, the CFIA also had communications with representatives from the seed industry and with other producer organizations. This allowed discussion of the proposed options for regulatory change.

### ***Implementation, enforcement and service standards***

The CFIA will work internally with operational staff and with the Canada Border Services Agency to communicate the specific changes to import requirements and to inform them of any resulting modifications to operational procedures.

The CFIA will inform key stakeholders (and the public) of the amendments. In addition to the publication of the Regulations in Part II of the *Canada Gazette*, the main communication tools will be information bulletins that will be posted on CFIA's Web site and distributed internally. Key seed industry stakeholders identified during previous seed consultations will be notified of the amendments via electronic mail.

The regulatory amendments remove regulatory restrictions, thereby allowing the import of wheat seed that is not visually distinguishable for each wheat quality class. Amending these import-related Regulations results in reduced enforcement activities for the Canada Border

Services Agency which is responsible for enforcement of regulations related to products being imported into Canada. There may be a slight increase in the importation of seed of unregistered varieties for conditioning or production of pedigreed seed (for export or in anticipation of registration of the variety in Canada). However, it is not expected that this will result in a significant increase in the administration and enforcement of the Regulations by the CFIA nor result in any increased monitoring and enforcement for the Canadian Grain Commission since the importation of seed of unregistered wheat varieties for seeding by the importer is not permitted.

The CFIA will continue to collaborate with stakeholders and with the Canadian Grain Commission and Agriculture and Agri-Food Canada to facilitate the transition to a non-KVD based registration and segregation system for western wheat that extends beyond these regulatory amendments.

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### **[Footnote a](#)**

S.C. 2001, c. 4, s. 117

### **[Footnote b](#)**

R.S., c. S-8

### **[Footnote 1](#)**

## C.R.C., c. 1400

**NOTICE:**

The format of the electronic version of this issue of the *Canada Gazette* was modified in order to be compatible with hypertext language (HTML). Its content is very similar except for the footnotes, the symbols and the tables.

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