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Regulations Amending the Seeds Regulations

Statutory authority

Seeds Act

Sponsoring agency

Canadian Food Inspection Agency

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 Canadian Food Inspection Agency (CFIA) is therefore

proposing to remove the KVD-related restrictions in the Regulations on wheat seed imported into the CWB Area in western Canada. This regulatory amendment would provide producers with timely access to new varieties and would be 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.

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 15, 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 amended this variety registration requirement for wheat varieties in the CWB Area following the Minister's announcement of the broader domestic policy change. New varieties require several years (two to three) of field and laboratory testing prior to registration in Canada.

Current wheat import requirements

Similarly, the CFIA has regulations in place that require 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 are

- (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 being 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 being imported in the CWB Area, the aforementioned KVD-related restrictions apply.

Changes to Canadian domestic wheat policy

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.

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.

Proposed regulatory amendments to seed import requirements

In light of the broad domestic policy decision to eliminate KVD, the CFIA is proposing minor amendments to the Regulations in order to ensure consistency between import and domestic policy. Specifically, the regulatory amendments would revoke section 42 of the Regulations to remove KVD-related restrictions on importation of wheat into the CWB Area.

Implementation of this amendment would be consistent with Canada's international trade obligations by removing KVD requirements for imported wheat seed that have already been removed for Canadian wheat seed. This would permit the import of seed of unregistered wheat varieties 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), as is currently the case for all other crop kinds.

This regulatory amendment would also remove the specific import requirements for spring barley seed to 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.

General characterization of the current wheat sector and wheat seed production

Western Canadian wheat production is of major importance to Canadian agriculture. According to the 2006 Census of Agriculture, wheat remains Canada's largest field crop. Canada is the world's sixth largest producer and one of the largest exporters of wheat, annually producing an average of over 25 million tonnes and exporting approximately 19 million tonnes. As production significantly exceeds requirements for domestic consumption, the Canadian wheat industry is export-oriented. In Canada in 2006, approximately 9.8 million hectares were planted to wheat. The CWB Area produces the vast majority of Canada's wheat with 94% of wheat grown in Canada in 2006 being produced in western Canada.

Regulatory options considered

In the development of this regulatory amendment, the following four options were considered.

Option one – Status quo

Maintaining the current KVD-related import restrictions would result in a discrepancy between requirements for domestic and imported wheat seed, which is inconsistent with Canada's international trade obligations. It would be inconsistent to continue to require that seed of imported wheat varieties are visually distinguishable for each quality class when the domestic policy change will not require it

for varieties within Canada as of August 1, 2008. This option would also reduce the benefit to Canadian producers by limiting their choice in new varieties for planting to only varieties that are registered in Canada.

This option is not recommended as it would lead to a discrepancy between requirements for domestic and imported wheat seed, which would be inconsistent with Canada's international trade obligations.

Option two — Removal of KVD-related restrictions on importation of seed of wheat into western Canada (recommended)

This option would amend the current Regulations to remove the KVD-related requirements for the importation of seed of wheat varieties into western Canada. Implementation of this amendment would ensure that requirements for domestic and imported wheat seed are aligned to ensure consistency with Canada's international trade obligations.

Implementation of this option would permit the import of seed of unregistered wheat varieties for seeding by the importer, production of pedigreed seed (for export or in anticipation of registration of the variety in Canada) or research purposes, as is currently the case for all other crop kinds. This would allow a producer to import seed of unregistered wheat varieties for planting, but not for sale as seed.

As a result of this regulatory change, producers would have the opportunity to access varieties from other regions to meet their specific needs (e.g. seed of feed wheat varieties not registered for the CWB area). Since KVD has not been a requirement for wheat outside of western Canada, a wide range of varieties is currently available. This will allow access to foreign varieties that may be in the process of being evaluated for registration (a two- to three-year process) or seed production (several years) in

Canada. This access may be especially advantageous while new, “non-KVD” varieties are being developed domestically. The grain produced from these unregistered varieties would only be eligible for delivery into the grain handling system as feed wheat, not milling wheat. The Regulations would continue to require that wheat varieties are registered prior to sale of seed in Canada.

This option is recommended as it would be consistent with Canada’s international trade obligations by removing KVD requirements for imported wheat seed that have already been removed for Canadian wheat seed.

Option three — Staged removal of KVD-related restrictions on importation of seed of wheat into western Canada

This option would amend the current Regulations as in option two, however, the regulatory amendments would come into force later than when the Regulations are registered. For example, implementation of the changes could be delayed for two years following registration of the Regulations. Inclusion of a staged implementation date would allow for a transition period to provide additional time for industry and the Canadian Grain Commission to ensure continued quality assurance in a post-KVD environment by addressing concerns respecting the implementation of appropriate segregation tools in the grain handling system.

This option is not recommended as deferring implementation of the regulatory amendment to remove the KVD restrictions for import would maintain a discrepancy between requirements for domestic and imported products for the intervening period, which could be inconsistent with Canada’s international trade obligations.

Option four — Removal of KVD-related restrictions on importation of seed wheat into western Canada with continued restrictions on import of seed of unregistered

varieties for seeding by the importer

This option would amend the Regulations to remove the KVD-related requirements for the importation of seed of wheat varieties into western Canada. However, this option differs from option two in that it would continue to prohibit importation of unregistered wheat varieties for seeding by the importer. Allowing importation of registered varieties only facilitates tracking and tracing of grain entering the grain handling system since registration of a variety ensures that information related to its identity is available to regulators. With this option, producers would not be permitted to import foreign, unregistered varieties. They would only have access to foreign varieties that have been entered into the registration process (two to three years) and subsequently registered in Canada.

Given the Minister's announcement of the domestic policy decision that KVD will be eliminated for all classes of western Canadian wheat as of August 1, 2008, it would be inconsistent to maintain this import restriction for wheat. Implementation of this option is not recommended as it would not provide producers with timely access to new varieties.

Conclusion

Option two, removal of KVD-related restrictions on import of seed of wheat into western Canada, is the recommended option. This amendment would be consistent with Canada's international trade obligations by removing KVD requirements for imported wheat seed that have already been removed for Canadian wheat seed and would provide producers with increased choice in and timely access to innovative and value-added wheat varieties.

Consultation

In December 2006, the Standing Committee on Agriculture

and Agri-Food (SCAAF) 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 proposing 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 the proposed regulatory amendments are consequential to the Minister's announcement of the Government of Canada policy decision to eliminate KVD, the CFIA has not held consultations specifically on the changes to seed import regulations proposed above.

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 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.

Implementation, enforcement and service standards

Prior to the coming into force of the proposed regulatory amendments to remove KVD-related restrictions on the import of wheat seed into western Canada, the CFIA will work internally with operational staff and with the Canadian Border Services Agency to communicate the specific changes to import requirements and to inform them of any resulting modifications to operational procedures.

Once the proposed regulatory amendments are published in the *Canada Gazette*, Part I, the CFIA will inform key stakeholders (and the public) of the amendments. 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 email.

The proposed regulatory amendments would remove regulatory restrictions thereby allowing the import of wheat seed that is not visually distinguishable for each wheat quality class. Removing this import-related regulation would result in reduced enforcement activities for the Canadian Border Services Agency, which is responsible for enforcement of regulations related to products being imported into Canada. However, an expected increase in the importation of seed of unregistered wheat varieties for seeding by the importer could result in increases in the illegal sale of seed of unregistered varieties within Canada. This would result in an increase in the administration and enforcement of the

Regulations by the CFIA. It would also result in increased monitoring and enforcement for the Canadian Grain Commission.

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

Contact

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PROPOSED REGULATORY TEXT

Notice is hereby given that the Governor in Council, pursuant to subsection 4(1) ([see footnote a](#)) of the *Seeds Act* ([see footnote b](#)), proposes to make the annexed *Regulations Amending the Seeds Regulations*.

Interested persons may make representations concerning the proposed Regulations within 30 days after the date of publication of this notice. All such representations must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be addressed to Michael Scheffel, National Manager, Seed Section, Plant Production Division, Canadian Food Inspection Agency, 59 Camelot Drive,

Ottawa, Ontario K1A 0Y9 (tel.: 613-221-7541; fax: 613-228-4552; e-mail: seedsemence@inspection.gc.ca).

Ottawa, May 15, 2008

MARY PICHETTE
Assistant Clerk of the Privy Council

REGULATIONS AMENDING THE SEEDS REGULATIONS

AMENDMENTS

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

41. Seed of any variety is exempt from the operation of paragraph 3(1)(b) of the Act in so far as it may be imported into Canada for the purpose of

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.

[21-1-o]

[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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