



# CANADIAN SEED TRADE ASSOCIATION

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## Regulations Amending the Seeds Regulations (Part III and Schedule III)

### Canada Gazette Part I

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Submitted by

The Canadian Seed Trade Association (CSTA)

August 25, 2008

The Canadian Seed Trade Association (CSTA) is pleased to provide comments on proposed amendments to the Seeds Regulations, posted in the Canada Gazette on June 28, 2008. As the Canadian national association of seed companies, it is our sincere hope that, in this assessment process, CSTA's input will be given serious consideration and will be weighted to recognize our structure and representation.

### ABOUT THE CSTA

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The Canadian Seed Trade Association brings together 125 member companies who are engaged in all aspects of seed research, production and marketing, both domestically and internationally. Our membership ranges from those who market garden seed and herbs to large western grain handlers; and from small family-run businesses to large multi-national corporations. CSTA members work with seeds from 50 principal crops, including grains, oilseeds, special crops, forage and turf grasses, flowers, vegetables and fruits.

CSTA's direction comes from its membership. Our mission statement commits us to work with our value chain partners towards an environment that promotes innovation and benefits the entire value chain.

### THE CLIMATE FOR INVESTMENT IN INNOVATION

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In 2007 CSTA's member companies invested \$56.1 million in research and development. That is 6% of the total retail sales of these companies, and 26% of the total operating budget. Most of that investment will be in research and development on canola, corn and soybeans.

Additionally, these companies expect to almost double their investment within 5 years to \$106.4 million. Once again, the bulk of that investment will be in canola, corn and soybeans, while the share of private sector investment held by other crops, including forages and cereals, continues to decline and Canadian private sector investment in garden seed is non-existent.

CSTA submits that there are clear reasons for this disparity. We also submit that there are steps that can be taken in partnership with CFIA as our primary regulator, to encourage increased private sector investment across Canadian crop kinds.

The agriculture and agri-product marketplace is changing rapidly. Windows of opportunity open and close very quickly. However, the Canadian industry is at risk of repeating history and missing significant windows of opportunity. Our biggest challenge is our current process for regulatory change, which is cumbersome and slow to respond to the changing needs of industry innovators, farmers and end users.



*Amendments to Seed Regulations*

*Canada Gazette Part I Volume 142, No. 26 June 28, 2008*

## VARIETY REGISTRATION SYSTEM

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The variety registration system is a prime example of a process that is slow and unable to adapt to the changing needs of the market place. The regulatory changes on which we comment now have been in process for almost a decade, but the effort to modernize variety registration has a much longer history than that. Numerous reviews, beginning in the mid-1980s have recognized the need to modernize Canada's system of variety registration. Despite consistent recommendations for a more flexible registration system, starting with the "FAAR" report in 1998, no changes have been made. We submit there is a clear connection between variety registration and private sector investment in plant breeding and research.

- ◆ Where seed innovators are not subjected to variety registration, the level of private sector investment and development of new varieties is high. Corn is not included in the variety registration system. Instead the industry maintains a comprehensive and detailed listing of corn hybrids, developed to capture market opportunities for farmers and end users.
- ◆ Where the system for recommending varieties for registration has had a strong connection to the value chain, new variety development is increasing and investment is strong. A good example is canola, where the Western Canada Canola, Rapeseed Recommending Committee has worked with the Canola Council of Canada to assess and anticipate changes in market and industry needs, and has worked within its mandate to accommodate.
- ◆ Similarly, a strong connection to the value chain drives innovation in soybeans, as does the fact that most soybean innovators are also corn innovators and that has resulted in variety registration recommending committees that are more flexible and forward looking.
- ◆ Ontario cereals are another example where a strong committee that is interested in improvements for the farmer and the industry has created a more flexible and forward looking process.

Conversely, where recommending committees are under-resourced, and encumbered by other regulatory requirements, they are less able to adapt and, we would submit, are less willing to move away from procedures and policies that were established decades ago.

- ◆ A good example can be found in western wheat. The opportunities presented by the growing bio-economy are enormous, but very few new western wheat varieties have been registered in the last few years. In fact, according to SeCan, no new varieties of red winter wheat have been registered in western Canada in five years. In fact, private sector investment in cereals has dropped from over 10% in 1987 to an anticipated 2.5% by 2012.
- ◆ Another example can be found in the forage industry. In many cases variety registration of forage species requires testing and support of recommending committees, where committees are substantially under-resourced, or in some cases don't even exist. As a consequence, the share of private sector investment for forage research is less than 1%.

The amendments proposed with this notice are much overdue and CSTA appreciates that steps are finally being taken to modernize Canada's seed regulations. However these amendments represent only a very slight improvement to the seed regulatory system in Canada. They are not sufficient to create an environment that is conducive to investment and innovation in Canada.

We urge the Government of Canada and the CFIA to take much more significant steps with this set of regulatory amendments to modernize the variety registration system as outlined in our submission

# CSTA'S COMMENTS AND RECOMMENDATIONS FOR THE AMENDMENTS TO PART III OF THE SEEDS REGULATIONS

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## 1. Definitions

It is important that the purpose of the amendments, which is to provide a flexible variety registration system, is evident and clear throughout the regulations.

**(a) Merit** - CSTA suggests that the definition of merit be clarified to ensure that all recommending committees and applicants have the same understanding. We propose that the words in bold be added to the definition currently in the regulations as follows:

“merit” means, with respect to variety, that the variety is equal or superior to appropriate reference varieties with regard to **any single characteristic or combination of characteristics, as defined by the recommending committee**, that render the variety beneficial for a particular use in a specific area of Canada;

**(b) Application** – it is very important that the regulations continue to apply to species, kinds and types of crops. In many cases, the system of registration, or even exemption from registration, must apply differently to different crop kinds, and even different types (eg. forage type, grain type, commodity type, oil type etc.) CSTA supports the continued specific listing of kinds and types in all parts of Schedule III.

## 2. Exemptions

**(a) Retain Section 65** - It is very important that Section 65 remain in the new regulations. Section 65 makes it clear that species, kinds or types of crops not listed in Schedule III of the regulations are exempt from variety registration.

Species and crop kinds such as corn and turfgrass, and types such as soybeans (food grade) are currently not in Schedule III, so under current regulations are exempt. Exemption from variety registration has been very important to development and growth of markets and industries for these species, kinds and types of crops.

In the case of corn and food grade soybeans, exemption from variety registration has allowed the seed sector to adapt very quickly to rapidly changing market demand, benefiting all of the participants in the value chain.

Given the diversity of species grown for turfgrass, the costs and regulatory burden imposed by the variety registration system would prohibit the maintenance and growth of this sector.

## 3. Recommending Committees

**(a) Establishment of Committees** - CSTA has carefully reviewed the proposed regulations for the establishment and operation of recommending committees for Parts 1 and 2 of Schedule III. We are satisfied that these proposals provide the flexibility and transparency that is required to ensure that committees are established and operate in an equitable, consistent and transparent manner.

**(b) Review of Committee Membership and Structure** – CSTA is concerned that the proposed regulations do not specify terms for committee membership, or a review process to ensure that the committee structure and operation continue to comply with the requirements set out in sub-section 65.1. We ask that a regular process for review of committee operation, membership and structure, be specified in the regulations following paragraph (3) of sub-section 65.1

**(c) No Committee for Species, Kinds or Types of Crops in Part III** - We appreciate that the amendment to Section 67 clearly states that all of the provisions regarding recommending committees do not apply to species kinds or types of crops that are listed in Part III of Schedule III.

#### **4. Variety Registration**

It is clear that the current variety registration system lacks the flexibility required to enable the industry to respond to a rapidly changing agricultural environment. The “one size fits all” approach can serve as an impediment to the timely introduction of new varieties, resulting in lost opportunities for the seed industry and for farmers. Since the FAAR report, efforts have been made to create a tiered variety registration system to provide the required flexibility. Now, some 10 years later, regulatory amendments are finally being proposed to create the framework for a tiered system.

**(a) Requirements for Registration** - CSTA accepts that applicants for registration in all three parts of Schedule III would be required to provide information such as the description of the variety, the proposed name, pedigree etc. We do, however have some specific recommendations for improvement:

- i. Improved Clarity** - The effort to spell out what is required for registration, rather than the basis on which registration will be refused is a positive step towards improved clarity and transparency.
- ii. Differentiation from PVP** - CSTA accepts the requirement that the variety be “distinguishable” from all other varieties. In addition, we support that the requirement has been amended to only require comparison with Canadian varieties. However, we do have some concerns around terminology. It is very important that the requirements for variety registration be kept completely separate from requirements for plant variety protection such as Plant Breeders’ Rights. We can accept the use of the word “distinguishable” but terminology such as “DUS” or “Distinct”, which are used for PVP purposes must not be part of any regulatory language or guidance documents for variety registration.

**(b) The 3-Part Structure** – CSTA can generally accept the proposed regulations to divide Schedule III into Parts 1, 2 and 3, but we do have some concerns and suggestions for improvement:

- i. Schedule III Part 1** - We recognize that for some species, kinds and types of crops, the value chain requires that pre-registration testing and merit assessment be maintained. However, even within this part of Schedule III, flexibility is required. It is important that recommending committees continue to have the full authority to make recommendations to CFIA for testing protocols. Committees must also continue to have the authority to recommend which single characteristic or combinations of characteristics constitute merit, as the needs of different species, kinds and types of crops vary.

**ii. Schedule III Part 2** – CSTA is somewhat unsure of the value of this part of the system. It is our understanding that for species, kinds and types of crops registered in this part, recommending committees will develop and propose testing protocols and will be required to recommend registration if testing adheres to the protocols. No merit assessments will be required.

The main rationale for the establishment of this part stated in CFIA documentation is to remove the costs of merit assessment “while ensuring that objective performance information is available to seed growers and producers in making seed purchasing decisions.” CSTA submits that it is very important to distinguish between testing of experimental lines for registration purposes and testing of available varieties for provincial or regional recommendation purposes. Given the stated purpose of this part, CSTA recommends that the regulations make that distinction clear, and only require evidence that the crop species, kind, or type has been entered into trials for the purpose of providing information to producers.

**Schedule III Part 3** – the ability to register varieties without pre-registration testing and the recommendation of a committee is a very important part of the effort to create flexibility in the variety registration system. We caution the CFIA as the regulating body to ensure that applications for registration within this part are simple, timely and are not overly onerous. We urge CFIA, on implementation of the regulatory amendments, to ensure that this part is as close to a simple listing as possible.

**(c) Crop Placement** - Despite the 10 years of work to establish a more flexible system, the framework created by this regulatory amendment, on its own, will do nothing for innovation and opportunity. It is the placement of species, kinds and types of crops within the framework that has the potential to benefit the industry. CSTA is very concerned that even after national and regional consultations and work with the National Forum on Seed, these regulations do not place most of the important species kinds and types of crops. That is left to yet another series of consultations and the regulatory process. Given the length of time that it took just to get regulatory amendment proposals to create the structure, it is understandable that our members are losing patience with the process.

We are also concerned that the regulations do not spell out an efficient and timely process for moving species, kinds or types of crops between the three parts of Schedule III.

**i. Initial Placement** – CSTA submits that CFIA consultations and work done over the last ten years have led to strong rationale and good agreement for the placement of many species, kinds and types of crops in the three parts of Schedule III now. We urge CFIA to include the following initial placement as part of this set of regulatory amendments.

### Schedule III Part 1 (Accepted by CSTA)

Species, Kind or Type	Scientific Name
Barley	
— six-row	<i>Hordeum vulgare</i> L. convar. <i>hexastichon</i> Alef.
— two-row	<i>Hordeum vulgare</i> L. convar. <i>distichon</i> Alef.
Canola, oilseed rape	<i>Brassica napus</i> L., <i>Brassica rapa</i> L. (= <i>B. campestris</i> )
Faba bean (small-seeded)	<i>Vicia faba minor</i> L.
Flax (oilseed)	<i>Linum usitatissimum</i> L.
Lentil (grain type)	<i>Lens culinaris</i> Medikus
Lupine (grain and forage types)	<i>Lupinus</i> spp.
Mustard	<i>Brassica juncea</i> (L.) Czern. & Coss., <i>Sinapis alba</i> (L.) (= <i>B. hirta</i> Moench)
Oat (grain type)	<i>Avena sativa</i> L., <i>Avena nuda</i> L.
Pea, field (commodity type)	<i>Pisum sativum</i> L.
Rye (grain type)	<i>Secale cereale</i> L.
Tobacco (flue-cured)	<i>Nicotiana tabacum</i> L.
Triticale (grain type)	<i>X Triticosecale</i> Wittmack
Wheat, common	<i>Triticum aestivum</i> L. emend. Fiori & Paol.
Wheat, durum	<i>Triticum durum</i> Desf.
Wheat, spelt	<i>Triticum spelta</i> L.

### Schedule III Part 2 (Accepted by CSTA)

CSTA can accept the placement of buckwheat and safflower as proposed in the regulatory amendments, providing that there is a clear understanding that the testing is for the purpose of providing information to producers.

Species, Kind or Type	Scientific Name
Buckwheat	<i>Fagopyrum esculentum</i> Moench
Safflower	<i>Carthamus tintorius</i> L.

### Schedule III Part 3 (Proposed by CSTA)

- ◆ **Potatoes, Sunflower and Beans** - CSTA supports the proposal to move potato (commercial production) and sunflower (non-ornamental) into Part 3 of Schedule III. We also submit that there is consensus to move field beans into Part 3 with this set of regulatory amendments.
- ◆ **Soybeans (oilseed)** - Over the past few months, CSTA has consulted with soybean growers and exporters about the placement of oilseed soybeans. We are confident that there is strong support to also move oilseed soybeans into Part 3.
- ◆ **Forages** - The former Expert Committee on Forage Crops (now the Canadian Forum on Forages and Rangeland (CFFR)) on which CSTA is represented, encompasses the entire forage crop value chain. This group has come to the conclusion that if merit continues to be required for registration of forage species, kinds or types, the lack of resources to conduct merit testing will put the introduction of new forage varieties at risk. As the result the CFFR has, through considerable discussion, arrived at an agreement that merit should no longer be required for forages. CSTA supports that position, and strongly recommends that no forage species, kind or types remain in Part 1. CSTA further submits that this set of regulations should place all forage species, kinds and types in Part 3 of Schedule III.

Species, Kind or Type	Scientific Name
Alfalfa (forage type)	<i>Medicago sativa</i> L. (including <i>M. sativa</i> L. spp. <i>falcata</i> (L.) Arcangeli)
Bean, field	<i>Phaseolus vulgaris</i> L.
Bird's foot trefoil	<i>Lotus corniculatus</i> L.
Bromegrass, meadow	<i>Bromus riparius</i> Rehm.
Bromegrass, smooth	<i>Bromus inermis</i> Leysser
Canarygrass, annual	<i>Phalaris canariensis</i> L.
Canarygrass, reed	<i>Phalaris arundinacea</i> L.
Clover, alsike	<i>Trifolium hybridum</i> L.
Clover, red	<i>Trifolium pratense</i> L.
Clover, sweet (white blossom)	<i>Melilotus alba</i> Medikus
Clover, sweet (yellow blossom)	<i>Melilotus officinalis</i> (L.) Pallas
Clover, white	<i>Trifolium repens</i> L.
Fescue, meadow (forage type)	<i>Festucapratisensis</i> Hudson
Fescue, red (forage type)	<i>Festuca rubra</i> L. var. <i>rubra</i>
Fescue, tall (forage type)	<i>Festuca arundinacea</i> Schreber
Orchardgrass	<i>Dactylis glomerata</i> L.
Potato (commercial production)	<i>Solanum tuberosum</i> L.
Ryegrass, annual (forage type)	<i>Lolium multiflorum</i> Lam.

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<b>Species, Kind or Type</b>	<b>Scientific Name</b>
Ryegrass, perennial (forage type)	<i>Lolium perenne</i> L.
Soybean (oilseed)	<i>Glycine max</i> (L.) Merrill
Sunflower	<i>Helianthus annuus</i> L.
Timothy (forage type)	<i>Phleum pratense</i> L.
Wheatgrass, beardless	<i>Agropyron spicatum</i> (Pursh) Scribn. & J.G. Smith f. <i>inerme</i> (Scribn. & J.G. Smith) Beetle
Wheatgrass, crested	<i>Agropyron cristatum</i> (L.) Gaertner, <i>Agropyron desertorum</i> (Fischer ex Link) Schult.
Wheatgrass, intermediate	<i>Agropyron intermedium</i> (Host) Beauv.
Wheatgrass, northern	<i>Agropyron dasystachyum</i> (Hook.) Scribn.
Wheatgrass, pubescent	<i>Agropyron trichophorum</i> (Link) Richter
Wheatgrass, Siberian	<i>Agropyron sibiricum</i> (Willd.) Beauv.
Wheatgrass, slender	<i>Agropyron trachycaulum</i> (Link) Malte ex H.F. Lewis
Wheatgrass, streambank	<i>Agropyron riparium</i> Scribn. & Smith
Wheatgrass, tall	<i>Agropyron elongatum</i> (Host) Beauv.
Wheatgrass, western	<i>Agropyron smithii</i> Rydb.
Wildrye, Altai	<i>Elymus angustus</i> Trin.
Wildrye, Dahurian	<i>Elymus dahuricus</i> Turcz ex Griseb.
Wildrye, Russian	<i>Elymus junceus</i> Fischer

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- ii. **Movement between Parts** – An important part of a flexible variety registration system will be the process to move species, kinds or types of crops between the parts of Schedule III quickly to react to changing technology and market demand.

The fact that it took a decade to get to this point in the process to create a more flexible variety registration system does not give CSTA confidence that the process to move species, kinds or types of crops between parts will be efficient or flexible.

We urge the CFIA to develop and entrench in this set of regulations, a process that will ensure a responsive and timely system for moving between parts. Our first preference would be to have this set of regulations spell out the details of an administrative process for movement between parts. However, if an administrative process is not acceptable to legal officials, at the very least this set of regulations should include a detailed annual process for regulatory change.

## CONCLUSION

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CSTA has long advocate the development and implementation of a more flexible variety registration to create more positive environment for investment and innovation, and to help farmers capture new opportunities presented by a quickly changing marketplace. The changes incorporated into these regulatory amendments have been over a decade in development, so it is not hard to understand the frustration and in some cases suspicion of the process on the part of those who have worked so hard for the last 10 years.

CSTA supports the variety registration framework that would be established with these amendments, with some suggestions for improvement, as outlined in the submission. However on their own, these changes will not significantly improve flexibility or result in more options for producers.

If these amendments are to have positive results, they must include:

- ◆ Initial placement of the major species, kinds and types of crops in the three parts of Schedule III. CSTA has proposed initial placements based on both official and non-official consultations and communication.
- ◆ A predictable and timely process for moving species, kinds and types of crops between the three parts of Schedule III. CSTA's first presence is an process that does not require regulatory amendment.
- ◆ In addition, exemption from variety registration must continue to be an option. Species, kinds and types of crops not currently listed in Schedule III must continue to be exempt from variety registration.

As the Canadian national association of seed companies, it is our sincere hope that CSTA's input will be given serious consideration and weight that recognizes our structure and representation, in the assessment process.

**Submitted by the Canadian Seed Trade Association  
August,25, 2008**