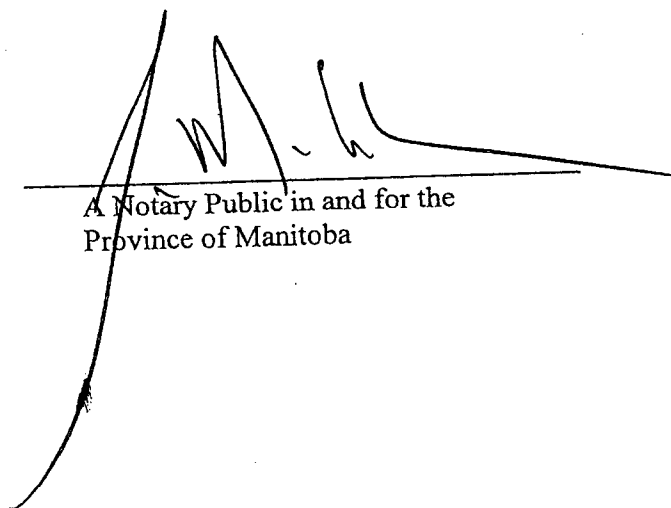


**THIS IS EXHIBIT "1"
REFERRED TO IN THE
AFFIDAVIT OF WARD P. WEISENSEL
SWORN BEFORE ME
THIS 19th DAY OF JUNE, 2007**



A Notary Public in and for the
Province of Manitoba



CANADA
PRIVY COUNCIL • CONSEIL PRIVÉ

P. C. 2007-937
June 7, 2007

Her Excellency the Governor General in Council,
on the recommendation of the Minister of Agriculture and
Agri-Food, pursuant to sections 46, 47 and 61 of the *Canadian
Wheat Board Act*, hereby makes the annexed *Regulations
Amending the Canadian Wheat Board Regulations*.

CERTIFIED TO BE A TRUE COPY - COPIE CERTIFIÉE CONFORMÉ

CLERK OF THE PRIVY COUNCIL - LE GREFFIER DU CONSEIL PRIVÉ

REGULATIONS AMENDING THE CANADIAN WHEAT BOARD REGULATIONS

AMENDMENTS

1. The definition “feed grain” in section 2 of the *Canadian Wheat Board Regulations*¹ is replaced by the following:

“feed grain” means wheat of the grade No. 3 Canada Western Red Spring or wheat of any equivalent or lower level of excellence; (*grains de provende*)

2. Section 9 of the Regulations is replaced by the following:

9. Part III of the Act is extended to barley.

3. Sections 14 to 14.2 of the Regulations are replaced by the following:

14. The Corporation may grant a licence for the export, or for the sale or purchase for delivery outside Canada, of wheat or wheat products if

(a) the export, sale or purchase does not adversely affect the marketing by the Corporation, in interprovincial or export trade, of wheat grown in Canada; and

(b) the applicant pays to the Corporation a sum of money that, in the Corporation’s opinion, represents the pecuniary benefit enuring to the applicant pursuant to the granting of the licence, arising solely by reason of the prohibition of the export of that wheat or those wheat products without a licence, and the then existing differences between the prices of that wheat or those wheat products inside and outside Canada.

14.1 The Corporation may grant a licence for the transportation from one province to another, or for the sale or delivery anywhere in Canada, of wheat or wheat products, but no fee shall be charged for the licence.

14.2 Any person who exports wheat or wheat products from Canada shall, at the time of exportation, give to a customs officer at the customs office that is at the point of exit specified on the export licence

(a) the original export licence for that wheat or wheat product, and a copy of it; or

(b) in the case of an export licence for multiple shipments of that wheat or wheat product,

(i) at the time of every shipment except the final shipment, two copies of the export licence, and

(ii) at the time of the final shipment, the original export licence and a copy of it.

4. Sections 15.2 and 16 of the Regulations are replaced by the following:

¹ C.R.C., c. 397



15.2 Permission is granted to any person to import into Canada wheat and wheat products that are entitled to the benefit of the Mexico Tariff of Schedule I to the *Customs Tariff* and that are owned by a person other than the Corporation.

INTERPROVINCIAL TRANSPORTATION AND SALE OF WHEAT AND WHEAT PRODUCTS

16. (1) Permission is granted to any person who is not a public carrier and who resides or carries on business in Manitoba, Saskatchewan or Alberta to transport or cause to be transported interprovincially within the area that comprises those provinces

- (a) wheat that is not described by a grade name or by reference to a sample taken pursuant to the *Canada Grain Act*; or
- (b) any wheat products.

(2) Permission is granted to any licensee, as defined in section 2 of the *Canada Grain Act*, to sell and buy feed grain or wheat products that are situated in Manitoba, Saskatchewan or Alberta for delivery for consumption by livestock or poultry at any place in Canada elsewhere than in the province of purchase, and to transport or cause to be transported the feed grain or wheat products to that place.

5. Sections 19 and 20 of the Regulations are repealed.

COMING INTO FORCE

6. These Regulations come into force on August 1, 2007.



REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations)

Description

The *Canadian Wheat Board Act* (the Act) provides for the constitution and powers of the Canadian Wheat Board (CWB). The CWB is a shared-governance corporation with the object of marketing in an orderly manner, in interprovincial and export trade, grain grown in Canada.

Part III of the Act allows the CWB to pool wheat and provides for federal government guarantees of initial payments paid to producers. Part IV of the Act gives the CWB the exclusive authority over the regulation of interprovincial and export trade in wheat subject to the *Canadian Wheat Board Regulations* (the Regulations). Subsection 47(1) in Part V of the Act provides that Part III or Part IV or both Parts III and IV may be extended to barley by regulation.

The CWB's monopoly powers over interprovincial and export trade (single desk powers) in relation to barley, along with the ability to establish pools for barley, were created via section 9 of the Regulations, which extends Parts III and IV of the Act to barley.

The amendments to the Regulations will continue to extend Part III of the Act to barley. This will allow the CWB to continue to buy and sell barley and to operate barley pools for those farmers who want to continue to sell their barley through the CWB. The Government will continue to guarantee the CWB's borrowings and initial payments.

Part IV will no longer be extended to barley under the amendments to the Regulations. This will remove barley and barley products from the CWB's single desk powers which will in turn enable barley producers to sell their barley directly to any domestic or foreign buyer, including the CWB.

These amendments to the Regulations will become effective August 1, 2007.

Alternatives

An alternative would have been to amend the Act to remove barley from the application of Part IV. However, amendments to the Act are unnecessary and even if they were made, these regulatory amendments may still be required.

The single desk powers of the CWB in relation to barley were created by regulation and can be removed by amendments to the Regulations. The government decided to bring these amendments into force for the 2007-2008 crop year because it wishes to provide marketing choice for barley producers as quickly as possible.

Benefits and costs

Several economic studies on the costs and benefits of the CWB single desk marketing system have been done over many years. There is no consensus among conclusions of studies on the amount of a benefit – if any – the CWB single desk provides to producers.

The Government believes that each producer should be given the opportunity to make their own economic decisions on how their grain is marketed in order to maximize the revenue for their farming operation.

The amendments to the Regulations will enable prairie barley producers to sell their barley directly to any domestic or foreign buyer including the CWB. Barley producers outside the CWB's designated area (the prairies) will be able to export their barley without having to obtain an export license from the CWB. Canadian processors of barley will be able to provide more accurate and timely market signals to barley producers. Maltsters, brewers and exporters will be able to buy barley directly from producers in the CWB designated area.

In the short term it is possible that the CWB may not receive sufficient barley deliveries from producers into the pool accounts to enable the CWB to honour its sales contracts. Unless the CWB takes measures to ensure delivery on the commercial contracts it has undertaken, some companies with signed purchase contracts with the CWB may have to pay higher prices to obtain barley from grain companies or directly from farmers. The CWB has tools available to it, including cash trading options outside the pool accounts, to allow it to meet its commercial obligations. Some buyers of barley indicate they have had difficulty obtaining assurances that the CWB will take the necessary measures within its powers to do so, which could lead to legal or commercial consequences for the CWB.

Compliance and enforcement

These amendments will remove restrictions on barley marketing that are currently imposed by the Regulations. There are no compliance or enforcement issues.

Consultation

The CWB's marketing mandate has been a contentious issue since the first CWB was established just after the first World War. The views of producers and producer organizations on both sides of the issue have been well known for a considerable length of time.

On July 27, 2006, the Government hosted a roundtable discussion of options for implementing marketing choice or a marketing system where producers could choose

to market their wheat or barley to the buyer of their choice, including the CWB. Participants included: Mr. David Anderson, Parliamentary Secretary for the Canadian Wheat Board, certain farm organizations and other industry representatives, individual grain producers, academics, Members of Parliament, government officials as well as observers from the provincial governments of British Columbia, Saskatchewan and Manitoba.

On September 19, 2006, a task force was struck to recommend options for implementing marketing choice for western wheat and barley producers and to address other issues raised at the July 27 roundtable discussion. The task force consisted of experts in grain marketing from the private and public sectors. Its objective was to address technical and transition issues for the Canadian grain industry related to the change to a marketing choice environment. The task force recommended a four-stage transition from a CWB with single desk marketing powers to a marketing choice environment: preparing for change; forming the new CWB; launching the transformed CWB with transition measures; and post transition.

In March 2007, the Minister of Agriculture and Agri-Food consulted barley producers through a plebiscite to obtain their preferences for marketing barley. Sixty-two percent of barley producers who voted in the plebiscite preferred the removal of the CWB's single desk.

Following approval for pre-publication, the draft amendments to the Regulations appeared in the *Canada Gazette*, Part I, on April 21, 2007, for a 30-day public comment period. About 230 submissions were received.

Written comments were received from the CWB, agriculture critics of the federal opposition parties, provincial governments, barley processing and exporting companies, associations representing producers and other stakeholders in the grain industry, a legal firm representing a group supporting retention of the CWB's single desk marketing authority and about 200 individuals the majority of whom are Western Canadian farmers.

Comments received fell into eight broad categories: (1) comments on the merits of marketing choice versus the CWB single desk; (2) comments on the plebiscite; (3) comments on implementing marketing choice by regulation rather than through legislation; (4) comments on honouring existing contracts and indemnification for any losses; (5) comments requesting another study on the costs versus benefits of the single desk for barley marketing; (6) comments on the need for special transition regulations; (7) comments on the effective date; and (8) comments on the responsibility for policy development.

(1) Marketing Choice versus the Single Desk

Comments received during the public consultation period reflected the long-standing divergence of views among producers and industry groups regarding the marketing

mandate of the CWB. Some parties stated that they believe that the CWB could not function without its single desk powers, that the CWB's single desk provided them with better prices and that producers would lose hundreds of millions of dollars if marketing choice was implemented. Others writing in support of marketing choice mentioned that they expect it will do such things as: allow improved price signals to be sent to barley producers, allow barley users and producers to develop value chain alliances, improve farmer returns, allow farmers greater ability to manage risk and better manage their individual cash flow, pricing and storage needs and result in more investment in research and local processing capacity.

(2) The Plebiscite

A number of parties raised concerns about the plebiscite of barley producers including: they considered the questions biased and confusing; there was no publicly available voters' list; they did not believe that the vote count was properly scrutinized; the CWB was ordered to not spend funds advocating for the single desk during the plebiscite; and their perception that section 47.1 of the Act would oblige the Minister to consult with the CWB's Board of Directors and to conduct a binding producer referendum before excluding barley from the application of Part IV of the Act.

The government is confident that producers were capable of understanding and selecting their preferences from the options presented in the plebiscite. To help producers make an informed decision, three independent specialists wrote short, objective descriptions of each option. It was clear that there was producer support for each of the options put forward. The plebiscite was well publicized and all actual barley producers in the designated area who believed that they met the criteria to vote were given the opportunity to obtain ballots. The voters' list was not made public due to privacy considerations.

The options presented to producers were clear. The options were:

1. The Canadian Wheat Board should retain the single desk for the marketing of barley into domestic human consumption and export markets.
2. I would like the option to market my barley to the Canadian Wheat Board or any other domestic or foreign buyer.
3. The Canadian Wheat Board should not have a role in the marketing of barley.

Producers choosing options 2 or 3 expressed a preference for removing the single desk and constituted a majority of the producers voting. Nearly 30,000 barley producers participated in the plebiscite and 62 percent of those voting wanted a change from the status quo. These results are consistent with other polling results. For example, in recent years, CWB polling which gave producers the same three options presented by the Government in the plebiscite, has shown that a clear majority of barley producers (by an even higher margin than that shown in the barley plebiscite) would prefer no CWB or the CWB competing with other companies for sales in the domestic and export markets. Polls conducted by an independent research firm have reported similar results.

Three senior municipal elections officials from the provinces of Alberta, Saskatchewan and Manitoba acted as scrutineers for the plebiscite. Each confirmed in writing that they witnessed the entire ballot count and were satisfied that the process was conducted in an independent and objective manner. While the Government has directed the CWB not to spend producers' funds to advocate for the single desk, CWB directors and employees are free to express their opinions publicly. The lively public debate during the plebiscite ensured that producers were exposed to all viewpoints in relation to the CWB.

Producers choosing options 1 or 2 expressed a preference for the CWB to continue to be an option available to them for their marketing of barley. The Government believes that the amendments to the Regulations will allow the CWB to provide them with this option.

Although there was no legal requirement to hold a vote before proceeding with these amendments to the Regulations, the Government chose to give barley producers the opportunity to express their opinions on how they would like to market barley in the future through the plebiscite, as part of its policy development process. Comments regarding section 47.1 of the Act are not relevant to these amendments to the Regulations, which are made pursuant to section 47 of the Act.

(3) Regulation versus Legislation

Some parties opposed the proposed amendments to the Regulations, claiming that the move to marketing choice cannot be accomplished by means of a regulation but requires a change to the Act itself. The Canadian Wheat Board and some others requested that the Government of Canada make public a legal opinion advising it that the single desk powers for barley can be removed by regulation. The regulatory amendments are supported by the enabling authorities in section 47 of the *Canadian Wheat Board Act* and legislative change is not required.

(4) Contracts

Some parties asked the government to state that it expects all participants, including the CWB, to be bound by the terms of their contracts and that parties be indemnified for contractual losses in the event of a successful challenge of the regulatory amendments. These issues relate to matters of commercial contracts between the parties involved.

(5) Study on the Costs versus Benefits of the Single Desk for Barley Marketing

A number of individuals commented that there is inadequate analysis on the economic impact of the proposed regulations on farmers' returns. Some individuals asked that the Government ensure that any reductions in revenue from the production and sale of barley be covered under the appropriate business risk management programs.

The Government's response to comments related to a cost-benefit study can be found

in the preceding section on Benefits and Costs.

(6) Special Transition Regulations

Several parties asked that clarification be included in the Regulations to allow grain companies to conclude contracts with producers prior to August 1 for delivery after August 1. These parties are concerned that they are currently prohibited from doing so by section 45 in Part IV of the Act which states that, subject to the Regulations, no person other than the CWB can sell, agree to sell, buy or agree to buy barley in one province for delivery in another province or outside Canada. The Government is of the view that these concerns can be addressed through appropriate commercial contracting arrangements. Furthermore, the Government does not have the regulatory power to do this. Parties may wish to seek professional advice about how to structure contracts for purchase and sale of barley after the coming into force of the regulatory amendments in a manner consistent with their obligations under the current law.

Some comments requested that a contingency plan be considered to ensure that marketing choice proceeds effective August 1, 2007 in the event that the amendments to the Regulation are legally challenged.

(7) Effective Date

Various views were expressed about the optimal date for the regulatory amendments to come into effect, with a view to reducing market uncertainty.

Most comments on the effective date supported August 1, 2007 as the date on which the proposed amendments to the Regulations should come into force.

One organization requested that the effective date be deferred until at least August 1, 2008 and that during the period of deferral, the Government provide a detailed legal analysis supporting its position that the change can be made by regulation and obtain a court ruling as to the validity of the proposed regulatory amendments. Furthermore during that time period, it was requested that the Government meet with the CWB board of directors to review means by which further commercial harm to farmers and the industry can be avoided or at least mitigated, and; meet with the CWB and industry to establish the appropriate compensation for the losses that have been and will be caused by the government's actions.

Another organization requested that the effective date be August 1, 2008, to avoid any market uncertainty, while three other organizations requested that the effective date be advanced to earlier than August 1, 2007 to minimize market uncertainty. The latter would allow producers to enter into contracts with buyers of their barley, prior to August 1, 2007. The Government's views on this latter point are set out under "(6) Special transition regulations" above.

All the grain companies that commented, as well as several associations representing

producers, stated that they supported the proposed effective date. Most also said that any delay in the effective date would lead to increased market uncertainty and that this should be avoided.

Changes to the commercial regulatory framework inevitably create market uncertainty. After considering all viewpoints, the Government has concluded that the previously announced implementation date of August 1, 2007 will best balance producer desire for marketing choice with the need for commercial certainty. As previously stated, the Government is confident that it has the power under section 47 of the Act to make these regulatory amendments, and does not believe that a court ruling is required on this issue. Participants in the barley market are encouraged to seek professional advice adapted to their particular circumstances in order to take best advantage of the market opportunities, and to avoid or mitigate the commercial risks, which will arise from these regulatory changes.

(8) Responsibility for Policy Development

Several individuals and associations commented that the Board of Directors of the CWB is responsible for deciding whether changes are made to the marketing of barley, not the Government of Canada. Such comments were argued on the basis that ten of the Directors are elected by producers and thus should have equal weight to the elected Government in determination of policy concerning the CWB.

The Government of Canada has the key role in setting grain policy for Canada. In doing so, the Government must consider the full range of public interests at stake, and strike the appropriate balance among these interests - those of farmers, other stakeholders throughout the value chain of the grain industry, consumers, and Canada in general. It is in this context that the Government of Canada has made the policy decision to provide Western Canadian farmers the opportunity to sell their barley through the CWB or directly to any other domestic or foreign buyer.

In contrast, the CWB is an administrative body established under the *Canadian Wheat Board Act* to carry out its duties and functions under that Act. The CWB's Board of Directors owes a duty of loyalty to the CWB as a corporate entity. The CWB's Board of Directors does not act for other constituents of the public interest. Nor does the CWB's Board of Directors set public policy - the CWB is an instrument through which public policy is implemented. To that end, the *Canadian Wheat Board Act* gives the CWB extensive powers in the marketplace, and also gives the Government oversight of the CWB's activities, and the authority to regulate the CWB's delegated federal powers over farmers and other private sector firms in the grain industry industry.

Conclusion

As the comments under categories (1), (2), (3), (4), (5), and (8) addressed aspects of the Government's policy on marketing choice rather than any aspect of the proposed regulatory amendments, no changes were made to the proposed amendments to the

Regulations as a result of these comments.

No changes were made to the proposed amendments to the Regulations as a result of the comments under categories (6) and (7).

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