

SEED LAW

Islamic Republic of Afghanistan

(Final Draft)



**Ministry of Agriculture, Animal Husbandry and Food
Kabul, Afghanistan**

August 2006

In the Name of Allah, the most Compassionate and Merciful

Islamic Republic of Afghanistan

Seed Law

CHAPTER ONE

General Provisions

Article 1 Purpose of Legislation

This Law regulates the production, sale, trade (import and export) and quality of seeds for sowing and other planting materials [and provides for certification of seeds and planting materials and matters connected therewith.]

Article 2 Definitions

In this Law:

- (a) "approved seed cleaning facility" means a facility approved under Article 12(b);
- (b) "Board" means the National Seed Board created under Article 3 of this Law;
- (c) "breeder seed" means the earliest generation seed, which is produced under direct control of the breeder or breeding station and is used for the production of foundation seed;
- (d) "certification tag" means a tag in the established form;
- (e) "certified seed" means seed that is produced from foundation or registered seed and fulfils all established requirements for such seed;
- (f) "certified seed grower" means a person who has been issued a license under Article 21(a);
- (g) "commercial seed" means any seed lot affixed with a non-certification tag bearing downgraded status;
- (h) "container" means a box, bottle, tin, barrel, case, receptacle, sack, bag, wrapper or other object in which seed is placed or packed;
- (i) "distribute" means to import, consign, offer for sale, hold for sale, barter, or otherwise supply seed in Afghanistan.
- (j) "downgrade" means to certify seed at one class lower than that for which application under Article 20 was made;
- (k) "established" means prescribed by the provisions of this Law, subsidiary instruments elaborated under this Law or guidelines elaborated by the Ministry;

- (l) "field standards" mean established standards applicable to the growing of certified seed;
- (m) "foundation seed" means seed produced from breeder seed and fulfils all established requirements for such seed, and is used for the production of registered and certified seed classes;
- (n) "genetically-modified organism" means any living organism that possesses a novel combination of genetic matter obtained through the use of genetic engineering;
- (o) "genetic engineering" means techniques for artificial manipulation or modification of genetic material in order to modify an organism or population of organisms;
- (p) "isolation distance" means the established distance between varieties for growing certified seed;
- (q) "label" means any written or pictorial matter permanently affixed to a container of seed;
- (r) "Law" means this Law, any subsidiary instruments made hereunder or any guidelines issued by the Ministry;
- (s) "Minister" means the Minister responsible for agriculture, and "Ministry" shall be construed accordingly;
- (t) "national emergency" means an earthquake, flood, civil strife or other analogous event;
- (u) "National List of Varieties Eligible for Certification" means the list created, maintained and published under Article 19 of this law;
- (v) "non-certification tag" means a tag in the established form;
- (w) "OECD" means the Organization for Economic Cooperation and Development;
- (x) "official laboratory" means a laboratory which has been accredited under Article 11(c) of this Law;
- (y) "owner", in relation to land, means the occupier of such land or the person receiving rent for land, whether on his or her own account or for any other person, whereas "owner", in relation to any thing, means the person who has or possesses that thing as property;
- (z) "person" means any natural or legal entity, including individuals, Government bodies (at any level) and international, foreign, nongovernmental and intergovernmental bodies, cooperatives and associations;
- (aa) "registered seed" means seed produced from foundation seed and fulfils all established requirements for such seed, and is used for the production of certified seed;
- (bb) "seed" means true botanical seed, a plant or its part used for propagating a variety and includes seedlings, tubers, bulbs, rhizomes, roots, and cuttings used for agricultural purpose;
- (cc) "seed analysis certificate" means a certificate in the established form;
- (dd) "Seed Certification Agency" means an agency authorized under this law to officially certify seed;

- (ee) "Seed Certification Officer" means an officer appointed or designated under Article 10 of this Law;
- (ff) "seed lot" means a specified quantity of seed:
 - (i) which is of one variety; and
 - (ii) whose origin, history and weight are known;
- (ff) "sell" means to offer, advertise, store, display, transport or deliver for sale, or to exchange, or to dispose of to any person in any manner for money or its equivalent but not for solely personal purposes; and "sold", "selling" and "sale" have corresponding meanings;
- (gg) "tag" means any written or pictorial matter attached to a container of seed but which can be removed;
- (hh) "variety" means a cultivar or botanical grouping within a single botanical taxon of the lowest known rank which can be:
 - (i) defined by the expression of the characteristics of a given genotype or combination of genotypes;
 - (ii) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
 - (iii) considered as a unit, with regard to its suitability to be propagated unchanged.

CHAPTER TWO

Administration

Article 3 Establishment of the National Seed Board

The Minister shall establish a National Seed Board to carry out the functions assigned to such Board under this Law.

Article 4 Composition of the National Seed Board

The Minister shall appoint not more than eleven (11) members of the Board as follows:

- (a) from the Ministry:
 - (i) Senior Advisor to the Minister or other person of standing who shall chair the Board;
 - (ii) Director of Research or his/her nominee;
 - (iii) Director of Plant Protection or his/her nominee;
 - (iv) Director of Extension or his/her nominee;
 - (v) Head of Seed Certification Agency or his/her nominee, who shall act as Secretary to the National Seed Board;
 - (vi) Dean of Faculty of Agriculture, Kabul University;
- (b) Up to five representatives from the following non-ministerial groups:
 - (i) Persons proposed by seed producer groups or associations;

- (ii) Persons proposed by trade associations involved in seed distribution; and
- (iii) Farmers representing major agro-ecological zones in Afghanistan.

Article 5 Terms; Removal; Conditions of Service

- (a) Members of the Board shall serve a two-year term and shall be eligible for re-appointment provided that priority in appointment and re-appointment shall be given to candidates for membership from agro-ecological zones or provinces that have not been represented on the Board within the last four years.
- (b) Members of the Board may be removed by the Minister for incompetency or where they have been found guilty of any crime by any court.
- (c) Members of the Board may be eligible for a sitting allowance.

Article 6 National Seed Board Secretariat

- (a) The Minister shall appoint the Head or Acting Head of the Seed Certification Agency to serve the Board as Secretary and, on the proposal of the Board, such other staff as may be necessary for the Board to carry out its functions.
- (b) The Board may co-opt other members as needed and may delegate any of its functions to such co-opted members.
- (c) The Minister shall establish for the Secretariat of the Board a place of work and shall furnish it with the necessary office and other equipment.
- (d) The official expenses of the Board shall be met by the Ministry.

Article 7 National Seed Board Rules of Operation

- (a) The Board may establish such working groups as it deems necessary to discharge any of the Board's functions delegated to that Committee:
 - (i) Members of such Committees shall serve on a voluntary basis; and Committees may comprise Board and non-Board members, as the Board sees fit;
 - (ii) Interested persons from the public or private sector may attend all meetings of the Board and its Committees, although they may not vote.
- (b) The National Seed Board shall establish a Variety Release Committee as one of its Committees.
- (c) Except as provided in this Article and Article 3, the Board may regulate its own procedures.

Article 8 National Seed Board Functions

The Board shall exercise the following functions:

- (a) advise the Minister on the administration of this Law;
- (b) advise the Minister on seed matters;
- (c) advise on the implementation of the National Seeds Policy;

- (d) make recommendations to the Minister regarding any necessary legislative or regulatory amendments to improve the seed regulatory system in Afghanistan;
- (e) act as a board of management of the Seed Certification Agency.

Article 9 Ministry's Functions in Seed Sector

- (a) The Ministry may carry out the following functions:
 - (i) Provide extension services to farmers to advise them on the proper use of improved seeds;
 - (ii) Ensure the provision of basic research on crop varieties and on the release of improved varieties for the benefit of farmers;
 - (iii) Ensure the provision of seed technology research;
 - (iv) Undertake the commercial production of specified classes of seeds for distribution until such time when the private sector can take over these functions;
 - (v) Make provision for the creation of a system of national reserve seed stocks for use in situations of national emergencies using private sector capabilities as far as possible;
 - (vi) Train seed certification staff, seed inspectors and seed multiplication staff and develop training manuals.
- (b) The Ministry shall take such steps as are necessary to ensure that the production and trade in all kinds of seeds are undertaken by the private sector and that the Ministry shall divest itself of all seed production and trading enterprises and activities on condition that:
 - (i) The government seed enterprises can be divested at a reasonable price considering their underlying value;
 - (ii) The private sector seed enterprises have demonstrated the capacity to supply the needs of the farmers for adequate quantities and qualities of seed, taking into account the added capacity of the government seed enterprises that are to be divested;
 - (iii) That the government has obtained the necessary funds and investment in staff training and in seed certification facilities to be able to adequately control and monitor the quality of seed being provided to the farmers.
- (c) Notwithstanding paragraph (b), the Ministry shall continue to multiply those seeds which, in the opinion of the Minister on the advice of the Board, are not being grown by the private sector in adequate quality or quantity to meet farmers' needs.

CHAPTER THREE

Seed Certification Agency and Officers

Article 10 Establishment of Seed Certification Agency and appointment of Seed Certification Officers

- (a) The Minister shall establish a Seed Certification Agency within the Ministry of Agriculture and provide such facilities as necessary to carry out the provisions of this law.
- (b) Pursuant to the technical criteria for appointment listed in Schedule One, the National Seed Board shall appoint or designate a suitably qualified person as Head of Seed Certification Agency.
- (c) Pursuant to the technical criteria for appointment listed in Schedule One, the National Seed Board shall appoint or designate Seed Certification Officers to carry out the functions assigned to such officers under this Law.
- (d) The Ministry will provide facilities and funds to the Seed Certification Agency.

Article 11 Accredited Seed Testing Laboratories

- (a) The Ministry shall establish a Central Seed Testing Laboratory for the purposes of carrying out the seed testing functions under this Law.
- (b) The Ministry will seek international recognition of this Central Seed Testing Laboratory.
- (c) The Central Seed Testing Laboratory may accredit other laboratories in Afghanistan as official laboratories for purposes of carrying out testing under this Law.

Article 12 Seed Cleaning Facilities

- (a) The Ministry may designate facilities in Afghanistan as approved seed cleaning facilities for the purpose of carrying out seed cleaning under this Law.
- (b) To obtain such designation, seed cleaning and treatment facilities shall be registered and be subject to relevant inspection of equipment, training and recordkeeping.
- (c) Facilities may lose accreditation or approval granted under this Article for specified reasons elaborated by the Minister on the advice of the Board.

Article 13 Seed Certification Database

- (a) The Ministry shall keep and maintain a seed certification database, which shall contain at least the following information with regard to any licence granted under Article 21(a) and any authorization granted under Article 20:
 - (i) the name and address of the certified seed grower;
 - (ii) the farm number assigned by the Ministry;
 - (iii) the farm map;

- (iv) the field number where the seed crop will be or is being grown;
 - (v) the growing history of the field referred to in sub-paragraph (iv) for the last five years;
 - (vi) the variety and class of the seed being grown;
 - (vii) all field and laboratory inspection reports;
 - (viii) the decision taken under Article 26 and the number of tags issued;
 - (ix) the plot testing results;
 - (x) any action taken under Article 28(b).
- (b) The Ministry shall ensure that members of the public have ready access to the information contained in the database referred to in paragraph (a).

Article 14 Badges and Certification

- (a) The Ministry shall issue to each seed certification officer appointed or designated under Article 10 a certificate of authority that shall be presented upon demand by any person affected by the officer's exercise of any powers under this Law.
- (b) The Ministry may establish procedures for the annual licensing of Seed Certification Officers for the purposes of the implementation and enforcement of this Law.

Article 15 Functions of Seed Certification Officers

- (a) Seed Certification Officers shall carry out the following functions:
 - (i) inspecting land in connection with issuance of a licence under Article 21(a) and the grant of certification under Article 28;
 - (ii) inspecting growing seed crops, to determine whether the isolation distance is being maintained and whether all other field standards are being met;
 - (iii) taking samples from seed lots and submitting them to an official laboratory for testing;
 - (iv) investigating offences under this Law and taking action to determine whether all of its provisions are being complied with.
- (b) The Ministry may delegate to private organizations or individuals all of the functions listed in this Article except those in paragraph (a)(iv).

Article 16 Powers of Seed Certification Officers

- (a) Subject to paragraph (b), a Seed Certification Officer may, solely upon authorization of the Ministry:
 - (i) take seed samples and submit them to an official laboratory in accordance with established requirements;
 - (ii) enter and search at all reasonable times, with such assistance, if any, as the seed certification officer considers necessary, any place in which he has reason to believe that an offence under this Law has been or is being committed;
 - (iii) break open any container in which any seed may be contained, or break open the entry to any premises where seed may be kept;
 - (iv) upon written demand, order the owner of seed:

- a. not to dispose of such seed for a specified period not to exceed thirty days;
 - b. to remove any defect in such seed and to re-submit the seed for further testing at a date to be set by the officer; or if the owner of such seed does not wish to remove the defect and re-submit the seed, he may choose to use the seed for food or feed, or to destroy the seed if it has been treated with chemicals;
 - (v) seize any seed in respect of which an offence under this Law has been or is being committed;
 - (vi) examine any record, register, document or other thing found in any place mentioned in paragraph (a)(ii) and seize any such thing if he has reason to believe that it may furnish evidence of commission of an offence under this Law.
- (b) The actions listed in paragraph (a) may only be taken with regard to persons or places connected with the transport, delivery or storage of seed for sale.
 - (c) [Subject to this Article, Seed Certification Officers may exercise such other powers as are necessary for carrying out the purposes of this Law.]

Article 17 Obligations of Seed Certification Officers

Where a Seed Certification Officer seizes any thing under Article 16(a) (v)-(vi) or 16(b), he shall:

- (a) give to the person from whom such thing was taken a receipt completed and signed in the established manner;
- (b) within 14 days notify the appropriate legal authority;
- (c) promptly return the thing seized once any investigation has been completed, unless, in the case of seed that has been destroyed in accordance with Article 16(iv)(b).

CHAPTER FOUR

Seed Classes for Certification

Article 18 Generation System of Seed Multiplication

Afghanistan shall follow a four-generation system of seed multiplication, which recognizes four seed classes namely, breeder, foundation, registered and certified seed.

Article 19 National List of Varieties Eligible for certification

The Ministry shall, on the advice of the Board, regularly publish in the established manner a National List of Varieties eligible for Certification in Afghanistan for the purpose of seed certification.

Article 20 Voluntary Seed Certification

- (a) Any person who wishes to sell seeds of varieties that are listed on the National List of Varieties eligible for Certification in Afghanistan may apply in the established manner to the Ministry for certification of his or her seeds.
- (b) The Ministry shall provide a priority in its decision-making to certified seed growers who apply for certification of their seeds under this Article.

Article 21 Application for Certified Seed Grower's License

- (a) Any person who wishes to grow certified seeds for sale may apply for a certified seed grower's license from the Ministry in the established manner.
- (b) In considering an application under paragraph (a), the Ministry may, on its own initiative or at the request of the applicant, send a Seed Certification Officer to inspect the land referred to in the application in order to verify the information it contains.

Article 22 Granting of Certified Seed Grower's License

- (a) Where the Ministry approves an application submitted under Article 21(a), it shall issue a certified seed grower's license subject to any applicable conditions and such license shall be renewed in the established manner every five years.
- (b) The applicant for, and the holder of, a certified seed grower's license shall:
 - (i) grant access to Seed Certification Officers to carry out field inspections at intervals to be determined by the Ministry;
 - (ii) permit Seed Certification Officers to take seed samples to be sent for testing to an official laboratory;
 - (iii) ensure that each seed lot is clearly identified after harvest;
 - (iv) submit each seed lot to an approved seed cleaning facility for cleaning;
 - (v) follow all other established requirements.

Article 23 Denial of Certified Seed Grower's Licence

- (a) Where the Ministry denies an application submitted under Article 21(a), it shall provide written justification to the applicant within a reasonable time.
- (b) An applicant whose application is denied under paragraph (a) may reapply, although any subsequent application shall be treated as a new application under Article 21(a).

Article 24 Cancellation or Surrender of Certified Seed Gower's Licence

- (a) The Ministry shall cancel any licence issued under Article 21(a) where the certified seed grower:
 - (i) fails to comply with the provisions of this Law, including but not limited to failing to follow the established requirements for the applicable variety; or
 - (ii) is convicted of an offence under this Law;
 - (iii) parts with the possession of, or is dispossessed from, some or all of the land described in the application which was submitted under Article 21(a); or
 - (iv) dies or, being a legal person, is wound up or dissolved;

- (v) submits seed that consistently fails any of the field or laboratory inspections;
 - (vi) fails to maintain clear identification of the seed lots between harvest and cleaning.
- (b) In the event of cancellation under paragraph (a)(ii) or (iii), the successor-in-interest to the certified seed grower may continue growing any crops extant at the time of such repeal, although he or she shall within six months apply for a licence under Article 21(a) as if he or she were a new applicant.
- (c) A certified seed grower may voluntarily surrender a licence issued under Article 21(a) by notice in writing to the Ministry.

Article 25 Reinstatement of Certified Seed Grower's Licence

The Ministry may reinstate a certified seed grower's licence that has been withdrawn under Article 23(a) where the certified seed grower takes remedial action as instructed and the Ministry is satisfied that the reasons for the withdrawal no longer exist.

Article 26 Seed Cleaning Facility's Notification to Ministry

After cleaning seed that has been submitted under Article 22(b)(iv), the approved seed cleaning facility shall notify the Ministry and shall make the seed available and accessible to the Ministry to take samples.

Article 27 Samples

Samples taken by a Seed Certification Officer under Articles 16(a)(i) and 26 shall be sealed and marked in accordance with established requirements, and shall be submitted to an official laboratory for testing within the established time.

Article 28 Seed Certification Measures

Upon notification by an official laboratory of the results of testing carried out under Article 27, the Ministry shall:

- (a) where the seed lot meets the established certification standards:
 - (i) issue certification tags for the class upon which authorization was granted under Article 22; or
 - (ii) downgrade the seed lot and issue certification tags for one class below the class upon which authorization was granted;
- (b) where the seed lot does not meet the established certification standards, issue non-certification tags in accordance with Article 33.

Article 29 Seed Certification Appeal

An applicant whose seed is downgraded under Article 28(a)(ii) or declared non-certified under Article 28(b) may appeal this decision to the National Seed Board. The only basis for an appeal is that the Seed Certification Officer has not followed the procedures laid down in the Law and Regulations made under the Law. The National Seed Board shall present their findings to the Minister, who shall make the final decision in this matter.

Article 30 Post-Control Plot Testing

- (a) To verify varietal purity, the Seed Certification Agency shall conduct post-control plot testing on all certified seed lots of a variety.
- (b) The Seed Certification Agency shall use the results of these post-control plots to verify the seed quality control procedures and will undertake such remedial measures as necessary.
- (c) If, after plot testing, the seed does not meet the established varietal purity standards, the Seed Certification Agency shall:
 - (i) downgrade the seed; or
 - (ii) reject the seed as certified seed; and
 - (iii) promptly notify the seller as well as any buyer of the seed of any action taken under paragraph c(i) or (ii) on the basis of the plot testing results.

Article 31 Compensation

- (a) Any person who has bought seed which was certified under Article 28(a)(i) but subsequently downgraded under Article 30(c)(i) or rejected under Article 30(c)(ii), as well as any certified seed grower who has not sold all such seed, may be entitled to compensation according to criteria and procedure in the established manner.
- (b) No seed grower, seed cleaner, seed trader, seed purchaser or seed user may claim compensation against any officer of the Seed Certification Agency for any loss whatsoever, where the officer can show that he or she was acting in good faith in accordance with the Seed Law, the regulations under the Law and the rules and regulations of the Ministry.

CHAPTER FIVE

Non-Certified Seed

Article 32 Minimum Technical Standards When No Certification Scheme Exists

For those varieties for which there is no seed certification scheme in Afghanistan, the Ministry may, on the advice of the Board, establish standards in the established manner that may include:

- (a) minimum limits for germination, physical purity and other requirements;
- (b) the form and content of any labels or tags to be affixed to seed lots of such varieties.

Article 33 Minimum Technical Standards for Rejected Non-Certified Seed

- (a) For those seed lots that are rejected as certified seed under Article 30(c)(ii), the Ministry shall, on the advice of the Board, establish standards in the established manner that may include:
 - (i) minimum limits for germination, physical purity and other requirements;
 - (ii) the form and content of non-certification tags to be affixed to such seed lots.
- (b) Seed lots under paragraph (a) of this Article shall be labeled as commercial seed.

CHAPTER SIX

Import and Export

Article 34 Imported Seed Deemed Certified

- (a) Notwithstanding any quarantine or other import requirements imposed under Afghanistan's legislation, imported seed may be designated certified seed within Afghanistan where the Ministry:
 - (i) is satisfied that the seed has been certified under an OECD or other comparable international scheme and the variety is listed in the National List of Varieties of Afghanistan; or
 - (ii) is otherwise satisfied that the exporting country's certification scheme and the individual seed lots meet all of Afghanistan's standards and the variety is listed in the National List of Varieties of Afghanistan.
- (b) Any variety imported into Afghanistan under this Article for the purpose of seed multiplication shall be tested at research stations under different agro-ecological conditions for a certain number of years or growing seasons as specified in the procedures applicable to imports under Article 35.

Article 35 Procedure for Importing Seed Deemed Certified

An importer who wishes to identify imported seed as certified seed under Article 34 shall apply to the Ministry in the established manner.

Article 36 Procedure for Importing Seed Not Deemed Certified

An importer who wishes to import seed that is not deemed certified may do so provided that:

- (i) the seed is not of a species that is subject to certification under the Seed Law and the regulations under the Seed Law;
- (ii) the seed is being imported for testing for eventual submission to the National Variety List, in which case prior permission for its import must be requested from the Seed Certification Agency;
- (iii) the seed is being imported for further multiplication in anticipation of being entered into the National Variety List, in which case prior application to the National variety List must be demonstrated and prior permission for the import of the seed must be requested from the Seed Certification Agency;
- (iv) the seed is being imported for further multiplication for re-export, in which case the Seed Certification Agency must be satisfied that the growing of such a variety does not pose a risk to farmers in Afghanistan and prior permission for the import of seed must be requested from the Seed Certification Agency.

Article 37 Importer's Obligations

Any person intending to import seed into Afghanistan shall ensure that:

- (a) all import requirements imposed under this Law and other legislation in force in Afghanistan are complied with;
- (b) the seed conforms to the minimum quality standards and other requirements elaborated under Article 32 or has been designated certified seed under Article 34;
- (c) the species and variety of such seed, as well as the country of origin, are shown on an invoice or delivery note accompanying such seed at the time of its importation;
- (d) the seed and its containers, labels and tags meet any other established requirements;
- (e) the Ministry receives notification regarding any genetically-modified organisms in the proposed import..

Article 38 Consequences of Illegal Importation

- (a) Except for seed imported for research purposes, seed imported into Afghanistan in contravention of the provisions of Article 34, 36 or 37 shall be subject to re-export, destruction, or other disposition upon instruction by the Ministry.
- (b) Notwithstanding paragraph (a), the Minister, on the advice of the Board, may specifically authorize the import of essential quantities of seed in the case of a national emergency.

Article 39 Seed Exports

Notwithstanding any other export requirements imposed under Afghanistan's legislation, any person intending to export seed from Afghanistan shall submit the seed lot to an official laboratory for sampling and testing to determine whether it meets the requirements of the importing country and international standards.

CHAPTER SEVEN

Offences and Penalties

Article 40 Offences

It shall be an offence under this Law to:

- (a) sell seed as to which Article 32 or 33 applies, unless such seed conforms to the minimum limits of germination, purity, labelling and other requirements specified in the applicable Article;
- (b) sell certified seed unless it is in a container which is labelled or tagged in accordance with this Law, and unless the seller supplies to the buyer the seed analysis certificate pertaining to the seed lot at the time of sale;
- (c) with the intention of selling, use in the description or name of any seed the word "certified" or any cognate word, in relation to seed which is not certified in accordance with this Law;

- (d) identify himself as a certified seed grower unless he is in possession of a valid licence issued under Article 22(a);
- (e) import seed into Afghanistan except in accordance with established requirements, or sell illegally imported seed;
- (f) export seed from Afghanistan except in accordance with established requirements;
- (g) cause or permit to be submitted for testing any seed sample which to his knowledge does not represent the stock from which it was taken, or tamper with any sample taken under this Law;
- (h) without lawful authority, alter, deface, create or remove any tag, label, certificate, receipt or other official record authorized or issued under this Law;
- (i) obstruct or impede a Seed Certification Officer in the exercise of his or her powers under this Law, including by refusing to provide information or by providing false or misleading information:
 - (i) with respect to any fact or matter to which a Seed Certification Officer is entitled under this Law;
 - (ii) in making any application or filing any document under this Law.

Article 41 Non-disclosure Offence

It shall be an offence under this Law for any person who is employed or appointed under this Law to publish or communicate to any person without lawful authority any information acquired by him in the course of his or her duties.

Article 42 Penalties

Each violation of this Law shall be punishable:

- (a) for a first offence, with a fine to be determined by the court, forfeit of the seed in respect of which the offence was committed (where applicable) or both;
- (b) for a second offence, with a fine to be double that imposed under paragraph (a), forfeit of the seed in respect of which the offence was committed (where applicable) or both;
- (c) for multiple offences, with a commensurate fine and/or a term of imprisonment to be set by the court, and/or forfeit of the seed in respect of which the offence was committed (where applicable).

Article 43 Penalty-Setting Advice

The Minister shall from time to time seek advice from the Board on suggested penalties for violation of the provisions of this Law, and shall submit such suggested penalties to the Cabinet.

CHAPTER EIGHT

Miscellaneous Provisions

Article 44 Cost Recovery

- (a) The cost of any treatment or destruction of seed under Article 16(a)(iv)(b) or 38(a) shall be borne by the owner or the importer, as the case may be.
- (b) The decision by the Ministry to take action where an owner or importer does not promptly do so under Article 16(a)(iv)(b) or 38(a) shall not bar the Ministry from subsequently recovering the costs of any such action as a debt.

Article 45 Regulations

- (a) The Minister shall, on the advice of the Board, make regulations or other subsidiary instruments to carry out the purposes of this Law.
- (b) In particular and without prejudice to the generality of the foregoing, such regulations may prescribe:
 - (i) the functions, financing and management of the Ministry's functions in seed certification under the Law, including whether it may assess fees and in what amounts for each service provided under this Law;
 - (ii) the functions and financing of the Board, including any sitting allowances payable to its members;
 - (iii) the establishment of criteria for the accreditation of official laboratories and the approval of seed cleaning facilities, and for the withdrawal of same;
 - (iv) the qualifications and duties of Seed Certification Officers appointed or designated under this Law, and the details of any licensing scheme established for them;
 - (v) laboratory inspection, field inspection, plot inspection and sampling procedures to be followed by Seed Certification Officers exercising powers under this Law, including the manner in which samples are to be taken, sealed and marked;
 - (vi) the manner of making an application under Article 20 to obtain certification of seed;
 - (vii) the manner of making an application under Article 21(a) to be licensed as a certified seed grower and the manner of its renewal under Article 22;
 - (viii) the establishment of criteria for paying compensation under Article 31 and the manner of making such payments;
 - (ix) the minimum technical standards for varieties for which no certification scheme exists in Afghanistan under Article 32;
 - (x) the minimum technical standards for rejected non-certified seed under Article 33;
 - (xi) the manner of making an application under Article 34 to import seed to be designated as certified seed;
 - (xii) the manner of packing, labelling and tagging containers of seed;
 - (xiii) the form and contents of any applications, licences, certificates, tags or receipts to be issued under this Law, and the fees, if any, attached to them;

- (xiv) the forms of records to be kept by the Ministry and by Seed Certification Officers;
- (xv) any other matter which the Minister deems necessary to carry out the purposes of this Law.

Article 46 Mandatory Non-binding Arbitration

- (a) Notwithstanding any traditional dispute settlement resolution mechanism in place in Afghanistan, in the event of a dispute between the buyer and seller of seed under this Law, before initiating action in a court, either party shall file a notice of arbitration claim with the nearest responsible district office of the Ministry where the field of plants in question is located or the sale took place.
- (b) Each label prescribed under this Law shall contain notice of this arbitration agreement.
- (c) A notice of arbitration shall be filed within a time period that enables the parties and the arbitration council to investigate the field or the seed in question.
- (d) Each party shall nominate one arbitrator to the arbitration council. These two arbitrators shall nominate a third arbitrator who shall chair the council.
- (e) The National Seed Board may maintain a list of qualified arbitrators who have sufficient experience in seed matters and have dispute resolution training.
- (f) The arbitration council shall have all powers necessary to fulfill its functions to find facts, investigate, hold hearings, inspect fields, grow samples, make conclusions and issue recommendations on costs and damages.
- (g) The arbitration council shall issue its report within a reasonable time.
- (h) Each arbitration council shall comply with applicable legislation on arbitration.
- (i) Either party may file an action in a court 14 days after the arbitration council issues its report.
- (j) A court may consider the arbitration council's report as evidence of the facts in the dispute and may use the findings of the arbitration council, including failure to cooperate with the arbitration council by either party, as evidence in the case.

Article 47 International Agreements

If an international agreement signed by the Islamic Republic of Afghanistan contradicts this Law, the provisions of the international agreement shall apply.

Article 48 Entry into Force

- (c) This Law may be cited as the Seed Law.
- (d) This Law shall come into force after the President of Afghanistan signs it.

SIGNATURE
PRESIDENT OF THE
ISLAMIC REPUBLIC OF AFGHANISTAN

SCHEDULE ONE

TECHNICAL CRITERIA FOR APPOINTMENT

OF HEAD OF SEED CERTIFICATION AGENCY AND SEED CERTIFICATION OFFICERS

According to Articles 10(b) and 10(c) of the Seed Law respectively, the Head of Seed Certification Agency (SCA) and Seed Certification Officers shall be appointed by the National Seed Board.

The Head of SCA shall be:

- (a) A person who has an advanced university degree in agriculture or related field; specific training in field and laboratory quality control of seed crops; and at least 5 years experience in practical field inspection and laboratory seed testing.
- (b) Appointed to hold office in the first instance for 3 years; subject to approval by the Board, reappointment shall be for periods not exceeding 5 years at a time.
- (c) Required under the control of NSB to oversee the functioning of the Central Seed Testing Laboratory, and the Seed Certification Officers, and all other services and functions for the regulation of the seed industry as foreseen in this Seed Law.

The Seed Certification Officers shall be:

- (a) Persons who have a university degree in agriculture or related field;
- (c) Appointed to hold office in the first instance for 1 year; subject to approval by the Board, reappointment shall be for periods not exceeding 3 years at a time.

SEED SECTION OF MASTER PLAN

15. SEEDS

15.1. SEED POLICY:

The government policy on seeds is a comprehensive document that addresses a range of issues for the future development of the seed industry. Reference is made to the full document (which runs to 17 pages in the English version), but a summary is supplied here.

The seed policy was developed to meet the need for a mechanism for regulating a focused national seed industry that is aimed at contributing to improvement in crop production, food security and farm income. This would encompass all activities and issues related to variety improvement, germplasm exchange, seed multiplication, quality assurance, and seed trade. The policy extends to a whole range of vegetatively propagated materials where it is recognized that development of varieties and multiplication systems has fallen behind that of the seed crops.

15.2. STRATEGY:

The Government, through its various ministries and departments, under the coordination of the National Seed Committee, will play the lead support role, develop pilot operations, maintain public-service infrastructural and service support required to maintain efficient seed supply, enhance farmer demand for improved seeds, and create an operating and economic environment favorable for investment in seed supply.

The public sector shall withdraw from the commercial production of seed as the private sector capacity increases. Cooperative and supportive participation of both Government and private sector are required to ensure efficient use of funds and national resources, while providing the most effective service to agriculture.

The overall strategy should lead to a situation where, in general, activities/components of a public-service nature which normally require some form of subsidization shall be conducted by Government and its subsidiary organizations.

15.3. ADMINISTRATION:

15.3.1 National Seed Committee:

Under the authority of the Minister of Agriculture and reporting to him, a National Seed Committee (NSC), established under the Seed Law of Afghanistan, shall be formed and shall be charged with the overall responsibility for advising the Government on matters relating to the Seed Law, seed industry planning and implementation of this seeds policy. The NSC shall be composed of representatives drawn from all relevant stakeholders.

15.3.2 Variety Release and Variety Registration:

For variety evaluation, release and withdrawal, a Variety Release Committee (VRC) shall be constituted under the authority of the NSC. All varieties, both domestic and imported, that are used for the purpose of seed multiplication shall be registered under the Seed Law. The NSC will maintain the National Variety List containing details of varieties that are registered and eligible for certification and will regularly publish this list in the required manner.

15.3.3 Control of Varieties and Variety Ownership:

Government accepts that although considerable expense is involved in developing an improved variety, immense benefits from varietal research derive to farmers and the national food supply. To encourage variety development research and permit recovery of development costs, appropriate laws and/or regulations shall be developed to permit the breeder/developer to control seed production/supply of his varieties so as to benefit financially from his development investment, while serving the needs of farmers and the nation's agriculture.

15.3.4 Farmers' Rights:

Farmers will maintain their right to use, exchange, share or sell their farm-saved seed between themselves without any restriction and will have the right to continue using any varieties of their choice without being hampered by the system of compulsory registration provided they do not commercialize production emanating from proprietary varieties.

15.4. SEED PRODUCTION:

15.4.1 Generation System of Seed Multiplication:

Afghanistan shall follow a four-generation system of seed multiplication, which recognizes four seed classes namely, breeder, foundation, registered and certified seed.

Breeder seed is the progeny of nucleus seed. Breeder seed will be under direct control of the breeder or breeding station and will be used for the production of foundation seed.

Foundation seed is the progeny of breeder seed. Registered seed may be produced from foundation seed, under supervision, and with approval of the national certification agency, which will ensure maintenance of genetic purity and identity.

Certified seed will be produced from Foundation or Registered seed and the production will be largely carried out by contract seed growers.

15.4.2 Early Generation Seed Maintenance and Supply:

Maintenance and supply of early generation (breeder and foundation) seed of improved varieties and hybrids are the responsibility of the agency which develops the variety/hybrid. Government shall ensure that Government breeding programs have the capabilities in terms of staff/facilities/budgets to ensure timely supply of the required amounts and kinds of breeder and foundation seed.

15.5. SEED QUALITY ASSURANCE:

15.5.1 Quality Standards:

The planting value of seed depends on its quality, as measured by internationally-established quality-control procedures. Therefore, in order to ensure maximum benefits to farmers, any seed offered for sale shall comply with all applicable quality requirements, and all seed operations and activities shall make every effort to provide seed of maximum quality.

Under the aegis of the NSC, and through expert consultation of all relevant national and international experts, minimum quality standards for seed germination, physical and varietal purity, seed health, etc. will be developed as one of the first acts of the NSC following its formation. The required seed standards as well as field standards for different categories of seed production fields shall to the extent possible be in compliance with international norms.

Initially seed quality standards are expected to be modest and in accordance with Regulations issued under the Seed Law. However as the seed industry and its technology develop, standards shall be expected to rise in order to provide improved service to farmers.

In emergency situations, certain aspects of seed quality standards which do not unduly affect genetic quality may be relaxed temporarily in order to allow adequate quantities of seed to be sourced locally.

15.6. SEED QUALITY CONTROL MECHANISMS:

15.6.1 External Seed Quality Control:

The Ministry of Agriculture, Animal Husbandry and Food shall appropriately maintain and conduct those external quality control systems (*e.g.*, Seed Law, Certification, service testing laboratories, etc) required to protect both seed users and seed suppliers. An adequately equipped, staffed and funded **quality control agency** shall be maintained, and all seed in the formal sector offered for sale shall be subject to requirements of the Seed Law. Considering the current small size of the national seed programme, such quality control activities shall be entrusted to the proposed Seed Industry Development Project (SIDP), until such time as permanent arrangements are made under the Seed Law

As a means of helping develop a quality-oriented seed industry and achieving high seed quality, Government shall pursue the development of an operationally-independent seed Certification, and all seed agencies encouraged to participate to the fullest extent. Certification, in terms of standards, procedures, concept and methodology, shall comply with internationally-recognized norms.

While certification of seeds of the major field crops such as wheat, barley, maize and rice produced and marketed by the formal sector is recommended, it shall not be compulsory. Seed which complies with Seed Law requirements may be freely sold without Certification. Further, as may be specified in plant variety protection laws, disclosure of parentage of proprietary varieties/hybrids shall not be required in order to enter them into Certification.

When the seed certification programme becomes substantial and widespread, a separate agency to be named Seed Control and Certification Agency shall be established and all seed quality control functions of the Seed Industry Development Project including certification shall be transferred to it.

15.6.2 Internal Seed Quality Control:

Government is aware that adequate control of seed quality requires constant supervision, checking, inspection and testing. To ensure effective quality control, every seed program shall be encouraged by Government to maintain its own internal quality control system.

15.6.3 Plant Protection and Quarantine:

Government will seek to strengthen regulations and provide, with the assistance of development partners, the required resources to the Plant Protection and Quarantine Department (PPQD) so that adequate safeguards are developed at the country's borders to prevent introduction of new plant pests and diseases which would affect crop production. These include facilities to fumigate consignments of fresh produce entering and leaving the country (*which would need to be built and operated by the private sector*). As far as possible, plant quarantine relations will be harmonized with those of neighbouring countries to enhance movement of seeds and plants across the borders.

15.6.4 Seed Testing:

In view of the essential role of rapid, reliable and accurate tests of seed quality in the conduct of the seed industry, Government shall establish and maintain a network of adequately equipped and staffed official seed testing laboratories in locations that permit quick delivery of samples

and rapid receipt of test results. All operations shall be conducted in full compliance with recommendations of the International Seed Testing Association (ISTA).

15.7 SEED LAW:

The seed policy notes that a realistic Seed Law which reflects current requirements, constraints and capabilities is essential to ensure reliable standards of seed quality, protect seed users and suppliers, and develop a quality-oriented seed industry.

A draft of a Seed Law has been prepared within the MAAHF with the technical input of FAO and cooperation of other donors. This draft has been reviewed within the MAAHF and by a wide range of stakeholders and is now ready to the Ministry of Justice for technical legal review before submission to parliament. The government is committed to establishing and maintaining a Seed Law which reflects the agreed policy. Under this draft law, provisions are made for defining day-to-day operating details through the development of regulations under the law. These regulations will be issued by the Minister, MAAHF, in accordance with provisions for issuing Ministerial Decrees.

15.8 SEED REGULATIONS:

The seed industry in Afghanistan is currently working under a voluntary Code of Conduct according to the Quality Declared Standards system of FAO, and the current FAO seed project is managing the observance of these standards under the current EC funded and FAO run seed project.

It is anticipated that a new EC/FAO project will be agreed shortly, to be implemented over the period 2006-2010 (1385-1389). This project has provision for technical assistance specifically for the purpose of drafting the technical regulations for the supervision of the seeds and planting materials production and sale, and these regulations will be put in place as the inspectors are trained and other facilities put in place to enforce and monitor the regulations. A full set of regulations is planned to be put in place by the end of 2010 (1389) to bring Afghanistan fully in to line with international standards.

15.9 PLANT VARIETY PROTECTION:

The current seeds policy indicates that the government will consider various aspects of plant variety protection in due course. These include provisions for Plant Breeders' Rights and Plant Patents. Plant variety protection is not considered an issue with an immediate consequence for the country, and there are no plans to look into this issue within the coming year. However, over

the five year period of the Seed Industry Development Project, these issues will be looked at again if raised with the National Seed Committee by interested parties, and decisions made on what action is required.

15.10 GENETICALLY MODIFIED CROPS (GMCs):

The seeds policy includes a brief section on genetically modified crops, which stated that the Government will follow the progress of GMC research and development and will as far as possible investigate the applicability and benefit of relevant aspects to the Afghan situation. At the appropriate time, when this has been done to the satisfaction of all stakeholders, Government will determine the extent and mode of incorporation of relevant aspects of genetically modified crops into the agriculture of Afghanistan.

15.11 POLICY IMPLEMENTATION – SEED INDUSTRY DEVELOPMENT PROJECT:

In December 2004, the MAAHF received a proposal for a project, to be funded by the EC and implemented by FAO, for a five year Seed Industry Development Project to commence early in 2006 (beginning 1385). The process of approval from the EC is still ongoing, and no contract is yet signed. However, it is expected that the donor approval process will be received in time to allow seamless transition from the current EC/FAO seed project in March 2006 (1385). The consultation process means that there have been, and will be, revisions in the project details, but the main outlines are given below.

The Project Purpose is stated as follows:

“Creation of a self-sustainable private sector seed and planting materials industry in Afghanistan producing and marketing seeds and planting materials that meet farmers’ needs for materials that enhance agricultural productivity and ensure food security.”

The project is broader than just merely a quality control and regulatory project. It covers not just seed, but complements the EC Horticultural Development Programme by providing the regulatory basis for the provision of disease free fruit tree (horticultural) materials. The project addresses most aspects of the seed industry, including regulation and commercialisation of the seed industry, although the original proposal omitted the research aspect of new variety development. Later, some funds have been earmarked for variety development in wheat, but this must be seen as only a stop gap measure, and more fundamental programmes for the development of the research and variety development capabilities in Afghanistan are needed.

The various elements that make up a successful seed industry have been put together in this project, and by the end of the project, there will be in place:

15.11.1 Certification and phytosanitary systems:

- Seed and planting materials marketing regulations to guarantee quality of cereal and vegetable seed, potatoes and fruit tree, vine and ornamental planting materials to the farmer/horticulturalist;
- Phytosanitary and plant health systems to ensure that Afghanistan is able to monitor and control the movement of seeds and plant materials;
- Appropriate variety testing procedures to test for agronomic performance that are agreed and are being implemented;
- A seed certification scheme that is being implemented so that certified seed can be produced and marketed locally;

15.11.2 Seed industry development and food security:

- A National Seed Board that can oversee and direct on behalf of the government on issues of seed security, seed law and regulation development, seed industry development of behalf of the farmer and the industry investor.

15.11.3 A private sector seed industry:

- A seed industry that is fully private sector and commercially oriented, with only very limited and transparent government subsidies and support, that meets the needs of the farmer for seed and planting materials that improve agricultural productivity and enhance food security.

15.11.4 Expected results and main activities:

Regulations:

Contractor staff will develop draft regulations relating to seed, fruit, vines, vegetables and ornamentals under the seed law and will recommend and develop further laws and regulations over the project period and will facilitate discussions with MAAHF and Ministry of Justice staff on these laws and regulations. The finalized documents will be translated into Dari and Pashto and passed to the Ministry of Justice for scrutiny before they are submitted to the Minister MAAH for legislative action.

15.11.5 Training topics:

Training will be delivered in the following subject areas:

- Protocols, procedures and guidelines for implementing regulations relating to seed, fruit, vines, vegetables and ornamentals;
- Seed laboratory management and seed testing procedures;
- Management and maintenance of seed cleaning equipment;
- VCU and control plots layout for cereals, cotton, potatoes and other important food and industrial crops as determined by the National Seed Committee.
- Business planning, sales, marketing and production
- Financial management, credit and banking
- Corporate governance
- Other areas as needed to complete the project objectives

15.11.6 Training delivery:

All presentations will be supported with PowerPoint modules in Dari, Pashto and English. Specimens and colour photographic materials will be bound and distributed. Dari, Pashto and English language sets of all the training materials in hard copy and electronic format will be lodged with MAAHF and the training institutions identified as partners in the training sessions.

15.11.7 Institutional development:

This will consist of:

- Development of the role of the regulatory and related institutions in MAAHF;
- Development of an HRD plan for seeds regulatory staff in MAAHF and its relevant constituent departments.
- Development of participatory adult teaching skills in relevant staff groups.
- Development of seed trade associations (national organisation and provincial branches)
- Development of commercial private sector seed businesses
- Development of commercialised public sector seed production company or companies, followed by privatisation of these companies.
- Development of self accounting systems for the government regulatory bodies

Salary support

The project will implement the regulatory part of the seed industry development project through MAAH departments and will pay salary supplements to staff nominated to these certification tasks. In the future, the government will have to re-adjust its salary scales to pay these staff at a living wage level through its normal salary system.

However, for the Improved Seed Enterprise and for the private sector seed companies, proper salaries should be paid out of the proceeds of seed sales. The project will seek to develop proper accounting systems, and the government will have to agree to adjust the rules for paying salaries so that the ISEs can pay salary supplements out of the seed revenues.

The project costs are calculated as follows:

2006	2007	2008	2009	2010
<i>2.5 million</i>	<i>2.1 million</i>	<i>2.2 million</i>	<i>1.6 million</i>	<i>1.6 million</i>

Total project cost 10.0 million US dollars approximately (calculated at €1=US\$1.20)

There is a suggestion that the EC will allocate additional funds for variety development in the absence of other research funding, but this should be included in research funding.

Of the total funding amount, approximately \$1.6 million is allocated to the Improved Seed Enterprise for re-equipping and restructuring ahead of privatisation, and \$0.45 million is allocated to grants for the private sector companies and trade associations.