

**ASSOCIATION OF AMERICAN
SEED CONTROL OFFICIALS**

**ADMINISTRATIVE PRACTICES
HANDBOOK**

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Administrative Practices Handbook

TABLE OF CONTENTS

Purpose of Seed Law Enforcement	1
Federal-State Cooperation Under the Federal Seed Act	1
Dealer's Records	5
Noxious-Weed Seeds	5
Variety Names	7
Certified Seed	8
Trademarks, Brands, Blends and Variety Names	12
Treated Seed	13
Vegetable Seeds	16
Flower Seeds	17
Tree and Shrub Seeds	17
Imported Seed	18
Exported Seed	21
The Administration of the Plant Variety Protection Act	23
Title V - Federal Seed Act	27

ADMINISTRATIVE PRACTICES HANDBOOK

ADMINISTRATION

PURPOSE OF SEED LAW ENFORCEMENT

Consumer protection is the primary purpose of seed law enforcement. In obtaining the maximum protection for the consumer the law enforcement agency must work within the available funds, personnel, and time available. With uniform and impartial enforcement of the seed law, a predictable business climate is produced in which the seedsman and the entire seed industry can operate to advantage. When a seed dealer has the assurance that his competitors are operating within the framework established by the seed laws, then he knows the limits available to himself and the entire industry in which to develop his business to the maximum. Seed dealers operating within the law are the means by which the seed law-enforcing agency secures the protection for the consumers which is provided in the seed laws.

FEDERAL -STATE COOPERATION UNDER THE FEDERAL SEED ACT

“Federal-State cooperation” is the keystone of enforcement of the interstate provisions of the Federal Seed Act. Without enforcement activity and cooperation at the state level there is virtually no enforcement of the Federal Seed Act with respect to shipments into a state. Without the Federal Seed Act, the state ordinarily has no direct legal recourse against an out-of-state shipper.

Nearly all seed marketed is subject to the state seed law and is exposed to inspection by the state. It is estimated that about one-half of all seed marketed moves in interstate commerce and is, therefore, subject to the Federal Seed Act. This means that about half of the time the state seed inspector can serve a dual role by inspecting seed for the enforcement of both laws. The state and federal governments have historically cooperated in seed enforcement work rather than duplicating efforts or going separate ways.

State and Federal Jurisdiction

These cooperative efforts require recognition of a delicate line that separates the jurisdiction and responsibilities of the federal and state agencies. Interstate commerce is the responsibility of the federal agency and intrastate commerce is the jurisdiction of the state agency. The dividing line of responsibility is usually that point at which seed in the interstate commerce comes to rest within the state. The state agency may take action to prevent further sale of seed within the state in violation of the state seed law. It may also take action against the party within the state that violates the state law. It is the jurisdiction of the federal agency to take action against the interstate shipper who

violates the Federal Seed Act. If seed is shipped in violation of the Federal Seed Act, the state authority may request the federal agency to seize the seed under the Federal Seed Act, or the state may report its findings of an apparent violation and submit evidence to the federal agency for investigation and action against the shipper. The federal agency informs the interested state agency of each action taken under the Federal Seed Act.

Cooperative Agreements

USDA's Agricultural Marketing Service (AMS) has a Cooperative Agreement with each of the 50 states for the cooperative enforcement of seed laws. These agreements provide for mutual assistance and cooperation between the state and federal agencies. The federal agency authorizes qualified state officials to sample seed, inspect records pertaining thereto, and otherwise inspect seed and screenings subject to the Federal Seed Act. The federal officials assist the state authorities in developing enforcement procedures that will effectively accomplish the objectives of both the state law and the federal law. The state agency furnishes evidence of apparent violations of the Federal Seed Act to the federal agency. The federal agency initiates all actions to be taken under the Federal Seed Act. The federal agency reserves the right to make further investigations within the state when necessary. Qualified state seed inspectors are issued credentials authorizing them to inspect seed and records under the Federal Seed Act.

State and Federal Laws Compared

The state and federal seed laws are generally very similar in substance. They are truth-in-labeling laws. They require labeling to show certain factors of quality, prohibit false labeling, and prohibit excessive noxious-weed seeds. The purpose of the labeling is to permit the consumer to make an intelligent choice of seed. The laws tend to encourage the marketing of high quality seed. The Federal Seed Act, by virtue of its basic similarity to state seed laws, supplements the state laws. The federal law bases its determination of what seeds are weed seeds and noxious-weed seeds on the basis of the requirements of the law of the state into which the seed is shipped.

There is an important distinction between the two laws regarding the time at which each can be violated. The state law can be violated at the time the seed is sold or offered for sale, or in other words, at the time the seed is inspected. The Federal Seed Act can be violated at the time of interstate shipment. This is an important consideration when false labeling as to germination (or hard seed) is detected. Seed inspected several months after interstate shipment may be offered for sale in violation of the state law because of a mislabeled germination percentage, but there may be some doubt as to any mislabeling at the time of interstate shipment.

Most state laws provide for an administrative "stop-sale" order, but the Federal Seed Act does not. A "stop-sale" order may also be administratively rescinded if seed is brought into compliance with the state law. The Federal Seed Act and some state seed laws

provide for “seizure” of seed. Seizure orders are issued by the Courts, by the Federal District Court, in any case under the Federal Seed Act. The owner may appear before the court as claimant of the seed.

Most state seed laws and the Federal Seed Act provide for penalty proceedings in court against violators. The penalties levied by the courts are not burdensome; often less than the violator might have profited by sale of the seed. It is believed, however, the publicity resulting from such prosecutions is the deterrent.

Investigations Under the Federal Seed Act

Investigations of alleged violations of the Federal Seed Act are made to determine (1) that the Act was, in fact, violated, (2) the extent of any violation, (3) the circumstances surrounding any violation, and (4) additional facts necessary to prove the alleged violation. Hearsay, suspicion, or desire is not sufficient basis for accusing a person of violating the law. The government, whether state or federal, must be prepared to establish its case before citing anyone for violating the law.

The state agency is not expected to make any investigation prior to the point where the seed came to rest after the arrival in that state. If circumstances warrant, the federal agency will call on the interstate shipper and inspect its records, obtain copies of records (including portions of file samples), and obtain other information from the shipper relative to the basis for labeling the seed.

The purpose of the inspection of the shipper’s records, aside from obtaining pertinent documents is to attempt to learn why the seed was mislabeled. From the circumstances surrounding the mislabeling it may be possible to determine whether the shipper made a reasonable effort to determine the quality of the seed. Such determination has a bearing on the type of action to be taken against the shipper. It is often possible to draw attention to the seedsman of the weaknesses in his procedures that result in mislabeling. When it is known why a violation occurred, useful recommendations can be made to the shipper.

Sometimes several parties are liable under the Federal Seed Act in connection with a single lot of seed. It may be necessary to trace a shipment back through two or more seed houses before the identity of all responsible parties is established. It is frequently necessary to call on the grower of a lot of seed if varietal labeling is in question.

After all pertinent documents are assembled, the file of the case is studied and a report of the investigation is prepared by USDA’s Federal Seed Regulatory and Testing Branch for review and action.

Actions Under Federal Law

The extent of any apparent violation and the circumstances surrounding the violation must be considered in determining the action to take.

No action is taken if the law is not violated or if the extent of the violation is so trivial that action does not seem warranted. Also, action cannot be taken in some cases because some key evidence or information is not available. In enforcement of the Federal Seed Act, “administrative” tolerances are applied in addition to the “official” tolerances set forth in the regulations under the Act. These administrative tolerances are followed in determining whether to take no action or to issue warnings in minor violations.

Warnings or notices are provided for under the Federal Seed Act and may be provided for under some state laws. Warnings under the Federal Seed Act are official actions and should be regarded seriously as they provide a record which may make a difference in determining the appropriate regulatory action for future seed labeling violations. Warnings are usually issued in connection with violations of a technical or less serious nature.

Charge sheets are issued for serious seed labeling violations. Charge sheets may be issued as active or pending according to the number of interstate shipments with violations. When issued in an active status the shipper is afforded an opportunity to further explain the transaction. The shipper may reply in writing or present his views orally. These proceedings are informal and a transcript is not made. Additional evidence may be introduced by the shipper. After the opportunity to present views has been afforded the complaint is reviewed again. When the charge sheet is issued in a pending status, the shipper is notified that the charge sheet is held pending either additional future violations or no additional violations. In the instance of the former, the charge sheets may be upgraded to active. If no additional violations occur the charge sheet will be waived.

Serious violations are usually resolved with a monetary settlement as authorized by the Debt Collection Act. Under this procedure, the interstate shipper agrees to the monetary penalty, but neither accepts or denies guilt. Details of the violations and information concerning the settlement are published as a “Program Announcement” by the USDA.

If a settlement is not reached, the case may be referred by the Seed Regulatory and Testing Branch to the Office of the General Counsel of the Department of Agriculture. The case is again reviewed in that office, and if it appears in order, the case is forwarded to the United States Attorney in the defendant’s federal court district for filing. The U. S. Attorney may elect to (1) not file the case, (2) accept a compromise settlement from the defendant under section 406(b) without a judgment being entered, (3) agree to consent to judgment in a stipulated amount under section 406(b), or (4) pursue trial of the case under section 406(a) or (b).

A seizure action is against the seed, not the shipper. Any seed shipped in violation of the Federal Seed Act is liable to seizure; however, seizure is usually recommended only if the seed is unfit for seeding purposes and cannot be re-labeled in compliance with the law. Seed with extremely low germination, prohibited or excessive noxious-weed seeds, or excessive weed seeds are usually causes for seizure. Each step in seizing

the seed must be rapid if seizure is to be effected before the seed is used. When seizure is requested, the state should always hold the seed under a “stop-sale” order to make sure the seed is available when the Federal Marshal arrives to effect seizure. Seizure requests by the state official should state the date and amount transported, the origin and destination of the interstate shipment, the amount and location of the seed to be seized, the kind and lot number or other description, and the factor in violation. A recommendation for seizure will then be prepared and forwarded to the Office of the General Counsel. From there the request goes to the United States Attorney in the federal court district where the seed is located. The documentary evidence follows the request through the same offices by letter mail.

DEALER’S RECORDS

The Federal Seed Act and most state seed laws require that seed dealers keep certain records. The purpose of keeping records is not only for the effective enforcement of the seed laws but also for the dealer’s own guidance and defense. The laws authorize inspection of these records by enforcement officers.

Under the Federal Seed Act, complete records include records of purchases and receiving; origin; cleaning or processing; bulking or blending; storage; packaging; treatment; testing for purity, germination, and noxious-weed seeds; labeling; and sales and shipment of each lot of seed. A file sample of sufficient size for a noxious-weed seed test is a part of the complete record. The records are required under the Federal Seed Act to be kept for three years; except that the file sample may be discarded one year after the lot of seed represented by the sample has been disposed of. The records shall be kept in such a manner that they can be related to records required to be kept by others and so that origin, variety and treatment of the seed can be traced from the ultimate consumer back to the grower if necessary.

State seed laws may differ in certain details, such as the requirement that records be kept, the kinds of records, and the time required to be kept.

NOXIOUS-WEED SEEDS

“Noxious-weed seed” generally means seed of a weed especially undesirable and specifically named under the seed law of one or more states. There are two general classes of noxious-weed seeds. Prohibited or primary noxious-weed seeds are usually those of perennial weeds that not only reproduce by seeds but also spread by stolons or rhizomes and which, when once established, are difficult and expensive to control or eradicate. Restricted or secondary noxious-weed seeds are seeds of weeds that are highly objectionable but which can be controlled or eradicated by good cultural practices.

Each state designates in its seed law or regulations what weed seeds shall be regarded as noxious in that state. This procedure provides for consideration of local weed problems in establishing what is prohibited or restricted. The Federal Seed Act supplements these state laws by prohibiting interstate shipment of agricultural seed unless labeled to show the kinds of noxious-weed seeds and the rate of occurrence of each. The rate shall be expressed in accordance with and shall not exceed the rate allowed for shipment or sale of such noxious-weed seeds by law and regulations of the state into which the seed is shipped. Under the Federal Seed Act, the Secretary of Agriculture is authorized to designate additional weeds as noxious.

Some States define “Undesirable Grass Seeds” as noxious-weed seeds in lawn and turf seed products. Undesirable grass seeds are enforced as noxious weed seeds under the FSA. As the name states, undesirable grass seeds are grass seeds that, for whatever reason, are undesirable in a particular use. An example might be that one does not want tall fescue in a lawn that is a turf-type perennial ryegrass and red fescue mixture. For this particular usage, tall fescue is undesirable.

Species are listed in the regulations under the Federal Seed Act as noxious-weed seeds; agricultural or vegetable seed containing seeds or bulblets of the species stated in 201.16b are prohibited from interstate shipment. (See a complete listing under section 201.16 of the Federal Seed Act Regulations)

Title 7: Agriculture

1. PART 201—FEDERAL SEED ACT REGULATIONS labeling agricultural seeds

§ 201.16 Noxious-weed seeds.

(a) Except for those kinds of noxious-weed seeds shown in paragraph (b) of this section, the names of the kinds of noxious-weed seeds and the rate of occurrence of each shall be expressed in the label in accordance with, and the rate of occurrence shall not exceed the rate permitted by, the law and regulations of the state into which the seed is offered for transportation or is transported. If in the course of such transportation, or thereafter, the seed is diverted to another State of destination, the person or persons responsible for such diversion shall cause the seed to be relabeled with respect to the noxious-weed seed content, if necessary to conform to the laws and regulations of the State into which the seed is diverted.

(b) Seeds or bulblets of the following plants shall be considered noxious-weed seeds in agricultural and vegetable seeds transported or delivered for transportation in interstate commerce (including Puerto Rico, Guam, and the District of Columbia). Agricultural or vegetable seed containing seeds or bulblets of these kinds shall not be transported or delivered for transportation in interstate commerce. Noxious-weed seeds include the following species on which no tolerance will be applied:

The Regulations under the Federal Seed Act may be viewed online at the Seed Regulatory & Testing Branch web page at: <http://www.ams.usda.gov/seed>

Search the Code of Federal Regulations Title 7 CFR Section 361.6 for noxious-weed seed in imported seed.

The Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, maintains a compilation of Noxious-weed seed requirements of all the states. It is revised annually. This list is available on their website.

The seed trade is concerned about uniform names and labeling requirements so that seed may be shipped to any state in an area with the same labeling. As it is now, different labels have to be printed for many states. The seedsman's employees must consult the state law before printing the labels and making each shipment. Many mistakes are made.

VARIETY NAMES

Variety is defined under the International Code of Nomenclature for Cultivated Plants as "an assemblage of cultivated individuals which is distinguished by any characters (morphological, physiological, cytological, chemical or other) significant for the purposes of agriculture, forestry, or horticulture and which, when reproduced (sexually or asexually), retains its distinguishing features." The term "variety" is defined under the Federal Seed Act and many state seed laws as a subdivision of a kind which is characterized by growth, plant, fruit, seed, or other characters by which it can be differentiated from other sorts of the same kind.

The variety name is the name given by the person who discovers or develops a new variety, or the first name under which the new variety is introduced into channels of commerce if the discoverer chooses not to name it. It shall not be misleading in itself. Variety names are in the public domain and are free for anyone to use. It is unlawful to use any other name for the variety.

The purpose of using a name to identify a variety is to substantiate one short name for the complete description of the variety. If the variety name is to accomplish its purpose, it should bring to everyone's mind that is familiar with the variety the same characteristics. An aid to this understanding is the description of varieties by the breeder or those working with the crop.

Old variety names have been a difficult problem in the seed enforcement program because in many cases there are no descriptions of the varieties and no authentic seed stocks available for comparison. Therefore, one must find the best available source of seed stocks and develop his own description of the variety.

Synonyms of variety names should be unlawful under the seed laws and should be discouraged as much as possible. A few synonyms have become established by usage in certain areas as variety names and their elimination would result in unnecessary confusion.

The word “type” is used with the variety name in some states. In such cases, the word type is a hedging word indicating the uncertainty of the true variety name. The Federal Seed Act and some state seed laws do recognize type designations while some states do not permit their use. The Association of American Seed Control Officials has recommended that its use should be discouraged. Hybrid designations are recognized as variety names. Variety names may be names or numbers, or a combination of letters and numbers.

There is no mandatory registration of new varieties in the United States. Anyone can introduce and name a new variety. There is no requirement that new varieties be described or that type samples or breeders’ seed be maintained.

CERTIFIED SEED

Seed certification is the system used to keep pedigree records for crop varieties and to make genetically pure seed and propagating material available for general distribution. This is done by means of inspection of fields and seeds and with provisions for checking on the isolation of fields, seed production, harvesting, cleaning, testing, and tagging of each lot of seed. Certified seed also may be required to meet certain minimum quality standards. Certified seeds are not only true to variety but are of satisfactory quality for planting.

Certification Agencies

Seed certification is the responsibility of the states. Authority to carry on this service is given by state legislation to an agency or organization whose responsibility for the work is defined by law or it is given to a person or organization, such as the Director of the Agricultural Experiment Station or the Director of the Department of Agriculture who can delegate the work of certification to an organization to do the actual certification. There are three state agencies that may be delegated responsibility for certification: (1) the state Experiment Station or Extension Service, (2) the State Department of Agriculture, or (3) a Crop Improvement Association.

Certification Standards

Certification agencies in the United States and Canada have formed an organization known as the Association of Official Seed Certifying Agencies, for many years known as the International Crop Improvement Association. This association has worked to provide more uniform certification procedures among the various states. Basic standards for seed certification are established by the Association of Official Seed Certifying Agencies. Each state agency complies with these basic standards, although many states adopt higher standards. In order to determine the specific standards used by a certification agency in a particular state, it is necessary to write to the seed certification agency to obtain a copy of their standards.

Four classes of certified seed are recognized in the certification programs throughout the United States. These are defined by the Association of Official Seed Certifying Agencies as follows:

1. "Breeder seed" is seed or vegetative propagating material directly controlled by the originating, or in certain cases the sponsoring plant breeder, institution, or firm, and which supplies the source for the initial and recurring increase of foundation seed.
2. "Foundation seed" shall be seed stocks that are so handled as to most nearly maintain specific genetic identity and purity.

Production must be carefully supervised and approved by the certifying agency and/or the agricultural experiment station. Foundation seed shall be the source of all other certified seed classes, either directly or through registered seed. (Foundation seed may be shipped interstate by an individual or dealer.)

3. "Registered seed" shall be the progeny of foundation seed that is so handled as to maintain satisfactory genetic identity and purity and that has been approved and certified by the certifying agency. This class of seed should be of a high quality suitable for production of certified seed.
4. "Certified seed" shall be the progeny of foundation or registered seed that is so handled as to maintain satisfactory genetic identity and purity and that has been approved and certified by the certifying agency. Registered and certified seed are distributed through regular seed trade channels.

At the discretion of the certifying agency, and with the agreement of the originating plant breeder or originating agency, foundation seed may be the progeny of foundation seed, if the genetic purity will not be altered by permitting such exception. For many forage crops, the number of multiplications is limited to two or three generations of increase from breeder seed, one each for foundation, registered and certified seed production. In some varieties, the registered class has been omitted. Through its elimination, there is one less chance of introducing or multiplying any contaminant that may adversely affect varietal purity or "genetic shift" from natural selection under environmental stress.

Certification Tags

Certified seed is packaged in various kinds of sealed containers. Field crop seeds may be packaged in traditional paper bags or mini-bulk bags / boxes. The certification tag is applied in a manner that prevents easy removal so it cannot be removed and used again.

The certification label may be sewn to the bag, glued on, or preprinted on the bag. All states use a blue tag for certified seed, generally a purple tag for registered seed, and a white tag for foundation seed. The tag usually carries a statement that the seed is certified. It tells which state has performed the certification, gives the crop and variety name, and includes a number which identifies the grower and the lot of seed or a serial number by which the certification records can be traced.

Since state seed laws and the Federal Seed Act require that all seed including certified seed shall be properly labeled with certain information, there is a temptation for the certifying agency to put the required analytical item on the certification tag. This often gives rise to the controversy as to just who is responsible for the quality of the seed. Many certifying agencies have adopted the two tag system. Under this system the certification tag carries only information pertaining to certification and may be attached and sealed to each bag or container by a representative of the certifying agency. The detailed labeling information is carried on another tag, usually supplied by the grower, handler or vendor. This separate tag makes it possible for the distributor to re-label the certified seed to comply with state and federal laws without disturbing the certification tag and seal, and emphasizes that responsibility for correct labeling rests with the seed dealer.

Methods for labeling and sealing containers of materials other than cloth vary with the type of package. Paper containers may bear a certification label that is glued or cemented to the container across the opening in such a way that it must be torn when the package is opened. The certifying agency determines the effectiveness of sealing devices for special containers. Sometimes a certifying agency authorizes the imprinting of the certification label on the container.

The certification tag or label tells the planter that the seed so labeled is the variety it is claimed to be; that the germplasm and performance were known to the plant breeder who developed the variety; that it has been tested under various environments and management systems; and that its potential is known. It tells him that it is a good variety---not necessarily the best under all conditions, but a satisfactory one where its use is recommended. The certification label can be thought of as the stamp of acceptability from an impartial agency. The label does not mean that the seed is perfect---the physical quality of the seed may vary, but it is assurance for buyers of seeds.

Certified seed is distributed through the established seed-marketing channels---seed firms, brokers, retailers and others who normally engage in the merchandising of seed. In some crops, such as small grains, soybeans, and hybrid corn, certified seed is often sold by the growers to other farmers.

Substandard Seed

It is recognized that certain lots of seed that may be desirable for the advancement of crop improvement would be lost if regular certification standards were always adhered to. Therefore, under certain circumstances, seed failing to meet certification standards other than those affecting genetic purity may be certified. The certification tag or label attached to such seed shall clearly show the respects in which the seed does not meet the regular certification standards.

Interagency Certification

Two or more agencies may perform the services required to certify a lot of seed. This is referred to as interagency certification. An agency in one state may make the field inspection and supervise the harvesting of the seed. That agency identifies the seed in containers with official evidence of its eligibility. The seed is then shipped into the jurisdiction of the agency in another state for cleaning, sampling, testing, and after all requirements are met, the final tagging of the seed is accomplished. The label attached to such seed indicates the states participating in the certification procedure. Seeds may also be completely certified in one state and may be further conditioned or they may be blended with other lots of seed under interagency certification in another state. Again, in such cases, the certification label will show both states involved.

Certified Seed and the Federal Seed Act

In order to qualify as a seed certifying agency under the FSA, an agency must enforce standards and procedures that meet or exceed those found in Sections 201.68 through 201.78 of the FSA Regulations. (Section 201.67)

In addition, Section 102 of the Federal Seed Act addresses the issue of false certification:

Section 102. Any labeling, advertisement, or other representation subject to this Act which represents that any seed is certified seed or any class thereof shall be deemed to be false in this respect unless (a) it has been determined by a seed certifying agency

that such seed conformed to standards of genetic purity and identity as to kind or variety and is in compliance with the rules and regulations of such agency pertaining to such seed; and (b) the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and specified “kind or variety.”

TRADEMARKS, BRANDS, BLENDS AND VARIETY NAMES

A trademark is a term or symbol by which goods may be distinguished as coming from a certain dealer. It may be used by the owner on one product or on more than one product. The function of the trademark is to identify the dealer of the product, not the product itself. Although quality connotations may follow the use of trademarks on certain products, there are no requirements that the quality or identity of a trademarked product must remain the same.

A trademark is private property. A variety name cannot legally be trademarked because a variety name is a generic term available for use by everyone in the United States to identify the characteristics of a particular crop.

Some seedsmen have used their trademarks to name certain varieties of crops which they have developed and introduced into channels of commerce. If these varieties can be reproduced by seed, they may be produced and sold by anyone. When this is done, the variety name may be used by anyone, even though it was originally a trademark. This is possible in the United States because variety names are not valid trademarks. If the owner of a trademark uses it as a variety name, he abandons his trademark rights and automatically permits other persons to use it as the name of this variety. To prohibit others from having the same privilege violates the fundamental distinctions between a variety name and a trademark and creates confusion.

The regulations under the Federal Seed Act provide that the variety name shall be either the name assigned by the originator, or if the originator chooses not to name the variety, the name shall be the first name under which the seed is introduced into commerce. If “XYZ brand” is the variety name given by the originator or the variety name of the seed first used in commerce, “XYZ” is the variety name.

Variety names which include the word “brand” are considered misleading; therefore, the word “brand” would be deleted from the variety name. The regulations further say, “The representation of kind or kind and variety shall be confined to the name of the kind or kind and variety...” Another section provides that, “The status under the Federal Seed Act of a variety name is not modified by the registration of such name as a trademark.”

Another section on advertising says, in part, “Terms taken from trademarks may be associated with the name of the kind or variety as an indication of source, provided the terms are clearly identified as being other than a part of the name of the kind or variety.”

There is no objection under the Federal Seed Act to the use of trademarks on the labels or containers or in the advertising of seed as long as they can be clearly identified as such and not confused as part of the kind or variety name.

False or misleading labeling and advertising in interstate commerce is prohibited by the Act. When a trademark is used in interstate commerce in a manner which may create the false impression it is a variety, the Act is violated.

The Federal Seed Act does not require that all agricultural seed be labeled as to variety. It is possible in such circumstances to use a trademark to indicate source and not variety, but at the same time create confusion if it is not made clear that the brand name is not a variety name.

If a mixture or blend of varieties is advertised in a manner that may create the impression it is a single variety, it is considered misleading.

State seed laws that require the variety name of agricultural seed be shown on the label prevent enforcement problems with respect to the use of brand names in labeling, but the problem of confusion still exists in advertising of blends where variety names are not required to be shown. Lack of a requirement in the seed laws for labeling agricultural seed as to variety, accompanied by the right to use brand names, can and does result in confusion.

Requiring seed to be labeled "Variety Not Stated" when the variety is not stated will, in its broad application, assist in preventing confusion between variety names and brand names in labeling. Individual advertisements may continue to be misleading despite this labeling requirement.

TREATED SEED

History

Seed treatment developed, not by chance or through adaptation from foliar or soil treatments, but because a real need existed. It is known that diseases of grains were injurious in ancient times. Attempts to reduce smuts of grains and grasses about 1000 years ago consisted of throwing diseased grain through an open fire. At that time, uncontrolled plant diseases and insects caused more deaths and misery through famine than did droughts, fire, and wars. By 1670, a few Welsh farmers had, by accident, discovered that salt water would reduce smut in wheat seed. During the 19th century a few scientists and progressive farmers further reduced grain smuts through the use of copper washes, copper sulphate, formaldehyde, hot water or mercuric chloride.

During World War I chemists synthesized a multitude of compounds and many of these were formulated into seed-treating materials. Since then the spectrum of seed treatments has extended to bactericides, growth regulators, insecticides and repellents. There has been a clamor for safer and highly specific seed treatments.

Classification of Seed-Treating Substances

Seed-treating substances and processes are commonly classified according to their action or general purpose. Those effective in removing or killing surface-borne, but not established, organisms are disinfectants. Other processes or substances - especially volatile chemicals, hot water, energy rays and anaerobic storage - eliminate disease agents that have infected the seeds and hence are disinfectants.

Some substances placed on seeds are residual and hence protect them from organisms in the soil or storage areas. Others afford only temporary or short-term control of the pest or disease.

Specifically, seed treatments may be classified as bactericides, fungicides, insecticides, repellents, and rodenticides.

According to composition or source, seed treatments may be biological, chemical, antibiotics (microbial origin), physiological or thermal.

By its physical state a treatment may be classified as a dust, gas, liquid concentrate, liquid ready-mix, slurry, wettable powder, or invisible form of energy. Legally, seed treatments are grouped according to their relative toxicity, expressed colloquially as poisonous, harmful and harmless. Unfortunately these words describe the active ingredient per se and often do not represent the toxicity of the treated seed chemical name. Proprietary names are those assigned by the manufacturer to its brand or formulations. The specific naming of seed treatments is, according to most law, restricted to the commonly accepted coined name, the chemical name or the abbreviated chemical name. Proprietary names are those assigned by the manufacturer to its brand or formulations.

Application

The method and thoroughness of treating seeds are important to control officials interested in detecting and measuring the effectiveness of treatment. A fumigant, a volatile mercury or certain halogenated sulfur compounds, may be an effective disinfectant or disinfectant if placed on only a few of the seeds. A protectant, to be fully operative, must be applied quite uniformly to every seed.

Commercial seed treating machines include dust, slurry, mist-type and rocket-type treaters. Additionally, seedsmen have designed continuous-action atomizing treaters and even double action (both dust and slurry) machines. The physical condition of the treating substance such as dusts, wettable powders, concentrate liquids, emulsions, slurries, or ready-mix liquids, requires a certain type of treating equipment.

The treating substance or formulation may also be improved by the addition of another material (adjuvant) during the treating process. The adjuvant may be an antifreeze, a counter-irritant, a dye or pigment, a lubricant, a masking agent, a sticker or a wetting agent.

Toxicity of, and Precautions in Handling Treated Seeds

Toxicity is often specific for a group of organisms, usually bacteria, fungi or insects. Unfortunately, some of the better fungicides, organic mercurials for example, are also highly toxic to mammals. Certain of the chlorinated hydrocarbon insecticides, dieldrin, heptachlor, etc. and the organic phosphate insecticides, ethion, phorate, etc. are also highly toxic to mammals. But neither these, nor other chemicals, are poisonous or even harmful unless they contact reactive tissues of a man or other organisms.

The most harmful pesticide is like the common cold; the one that is most irritating or annoying is not the one that is lethal. Protection and precautions are the keys to avoid health hazards. The protective measures include exhaust hoods, working in ventilated areas, wearing of rubber gloves, prompt removal of any pesticide, and intermittent handling of treated seed. All treated seed should be held in accident-proof and rodent-proof containers with distinctive markings.

As evidenced by sound research, cattle and swine are not injured by the ingestion of limited amounts of captan or thiram-treated corn seed. But it is possible that these substances could be harmful, so their removal from seed is advised or required for seed to be diverted to feed. Such removal is accomplished by washing, brushing or partial dehulling (removal of pericarp).

Labeling Requirements

In most states, treated seeds are subject to these labeling requirements; (1) must be labeled as treated; (2) name of the treatment or of its active ingredient must be given; (3) suitable caution statement must be shown; (4) process must be named and described; and (5) the labeling must be legible and conspicuous.

In accordance with the Federal Seed Act, certain treatments - especially chlorinated hydrocarbons and organic phosphates - are named and placed in a mandatory

poisonous-labeled group. A few treatments are named as harmless at specified dosage levels and no caution is required. An intermediate group is regarded as harmful and a caution label is required for certain size containers of the treated seeds.

A few states apply the poisonous labeling requirements only to seeds treated with fungicides and insecticides. Apparently a poisonous material not designed as a fungicide or insecticide could be ignored. The laws of other states, to the contrary, are directed toward the poisonous nature of the seed.

Coloration Requirement

Certain states require that seeds which could be diverted to feed or food be identifiably colored if a harmful or poisonous substance is present. The purpose of the coloration requirement is simply to prevent the inadvertent or malicious use of treated seeds for feed or food. Almost all small grains are currently treated with a red-dyed liquid or red-pigmented dust.

VEGETABLE SEEDS

The Federal Seed Act and the laws of most states regulate the marketing of vegetable seeds. The labeling requirements for vegetable seeds differ from agricultural seeds, and may differ for vegetable seeds in small packets as compared to larger containers.

Under the Federal Seed Act, seeds in small packets of one pound or less need to be labeled to show only the name of the kind and variety, the name and address of the shipper, and the treated seed labeling, if treated; provided the germination of the seed is equal to or above the standards established in section 201.31 of the regulations. If the germination is below the established standard, the labeling shall show the words "Below Standard" and the percentage germination and the date of test.

Vegetable seed in containers of more than one pound is required to be labeled as above except the percentage of germination and date of test is required in all instances and the words "Below Standard" are not required.

Note that the kind and variety names of vegetable seeds are required under the Federal Seed Act. If seed is a mixture of kinds or varieties, the percentage of each is required to be stated on the labeling.

If any variety of seed present is hybrid seed, it shall be designated in the labeling as "hybrid". Any variety present that is over 95 percent hybrid may be designated "hybrid". Any variety present that is over 75 percent hybrid but less than 95 percent hybrid shall be designated "75% to 95% hybrid" or the precise percentage of hybrid seed stated.

Treated vegetable seeds are required to be labeled the same as agricultural seeds.

FLOWER SEEDS

Seeds of flowers or plants used for ornamental purposes may be included in the state seed law of some states. They are not subject to the Federal Seed Act.

TREE AND SHRUB SEEDS

Some states have tree and/or shrub seeds included in their state seed law either by specific reference or by interpretation. The labeling requirements of these state seed laws vary considerably.

As indicated by the labeling requirements, the most significant item to be determined in collecting tree seed is the origin or the zone in which it is collected and the elevation. The difficult part of this is that it cannot be tested to determine whether the zone and elevation given is correct. Obviously, this will not be known for 25 or 50 years after the tree has developed to the stage where it may be adversely affected by the local conditions because it is growing at an improper elevation. Because of this difficulty, the certification agencies of Oregon and Washington have established a certification program with respect to origin and elevation as well as species. It is patterned somewhat after the verified origin service for red clover and alfalfa which the U. S. Department of Agriculture administered for many years. It is a service being supported entirely by the tree seed conditioners. The forest tree region of both states have been set up in zones depending on altitude and the pickers are required to indicate the zone in which the cones were picked. These labels are attached to the bags when the picker fills the bag on the premises and the label remains on the bag when it is transported to the local buyer. A local buyer buys the seed and keeps each species, origin and elevation separate for shipment to the conditioner. A record of the purchase is made on the bank draft and this bank draft includes the species, the zone from which the cones came, and the quantity.

These records all support the certification of this seed as to origin, elevation, and species.

Certification of tree seed from nursery stands is in its infancy in several states. This operates similar to certification of farm seed, primarily on fast-maturing species such as pine and poplar.

IMPORTED SEED

The Federal Seed Act of August 9, 1939, and as subsequently amended, includes provisions to regulate importation of seed into the United States. These provisions cover agricultural and vegetable seeds only and require that these seeds meet certain standards in order to gain admission into the commerce of the United States.

Title III of the Federal Seed Act pertaining to imported seed is currently enforced by APHIS.

Jurisdiction of the Federal Government

In order to carry out the inspection of such seed in the most economical and efficient manner, the Congress assigned the responsibility for drawing representative samples to the Secretary of the Treasury. The sampling is done by the Customs Service of the United States Treasury Department at the port of entry that is the port at which the duty is collected on imported merchandise.

The responsibility for examining these samples and determining whether the seed meets the requirements for importation rests with the Secretary of Agriculture. This responsibility is delegated to the Animal and Plant Health Inspection Service, United States Department of Agriculture.

Procedures and regulations pertaining to the importation of seed are set forth in the rules and regulations of the Secretary of Agriculture and in the joint rules and regulations of the Secretary of the Treasury and the Secretary of Agriculture.

The Federal Seed Act, the rules and regulations, and the joint rules and regulations can be obtained from the Seed Regulatory and Testing Branch, and from the Animal and Plant Health Inspection Service (APHIS).

Requirements for Importation (Note – most of the references in this section are not referring to the FSA, but to the APHIS Regulations (Code of Federal Regulations, Title 7 – Agriculture, Chapter III, Animal & Plant Health Inspection Service, Part 361 – Importation of Seed & Screenings under the Federal Seed Act)

A. Noxious-weed seed. Seed containing noxious-weed seeds is prohibited entry. There are currently one hundred three (103) kinds considered to be noxious-weed seeds under the import provisions of the Federal Seed Act. Ninety-four (94) are prohibited. Nine (9) are allowed entry with tolerances applicable to their introduction. They are listed in section 361.6 of the APHIS rules and regulations.

B. Labeling. A minimum of labeling is required under the import provisions of the Act. Agricultural seed must be labeled with the name of the kind of seed and a lot number. Vegetable seed must be labeled with the name of the kind and variety and a lot number. Hybrid seed must be designated as “hybrid.”

Customs regulations require that the country of origin be shown on each container. Treated seed must be labeled the same as seed in interstate commerce. Seed may be refused admission if any labeling pertaining thereto is found to be false or misleading in any respect. In order for the Animal and Plant Health Inspection Service to determine whether seed complies with the minimum requirements for labeling and whether that labeling or any other labeling is false or misleading in any respect, the importer is required to file a declaration of labeling. This declaration of labeling is a copy of the commercial invoice which has shown thereon under a heading “Declaration of Labeling” any information on or attached to the containers the kind and variety; distinguishing marks; origin; percentage of pure seed, weed seed, inert matter, other crop seed, pure-live seed, germination and hard seed; the date of test; the name and rate of occurrence of noxious-weed seed; and the name of any substance or process used in treating the seed.

The declaration is filed with the collector of customs who compares the information on the declaration with the information on the containers. The customs official notes any differences in labeling or certifies that the declaration of labeling is correct. The declaration is forwarded to the seed laboratory along with the sample for a determination as to whether the labeling is correct. Correction of false or misleading labeling is required before seed may gain admission into the commerce of the United States.

Exemptions

Seed such as wheat, oats, and mustard that have been found to be imported in substantial quantities for other than seeding purposes are exempt from the import provisions of the Act, providing a declaration is filed at the time of entry, setting forth the purpose for which the seed is imported. (See section 361.4 (a) (1) of the APHIS rules and regulations).

It is unlawful to sell or offer for sale for seeding purposes any seed which is imported for other than seeding purposes. (See section 304 (a) (1) of the Federal Seed Act.)

Limited quantities of seed may be imported for experimental or breeding purposes, regardless of its quality, if it is not for sale. A declaration stating the purpose for which imported must be filed. (See section 361.4 of the APHIS rules and regulations.)

Small quantities of seed are not ordinarily sampled and are released without test. (See section 361.5 of the APHIS rules and regulations.)

Seed which has been grown in the United States and then exported to a foreign country may be returned to the United States without regard to the import requirements, provided proof of origin is submitted, along with proof that the seed was refused admission into the foreign country and was not commingled with other seed after being exported.

Tests

Tests are made in accordance with the rules for testing seeds, which are a part of the rules and regulations under the Act. The results obtained from the tests made for import purposes are not made available to the importer unless the results show the seed failed to meet the requirements for importation. The official import sample can be tested upon request, and the results reported to the importer on a fee basis.

Re-delivery Bond

After seed has been sampled by the customs officials it may be moved from the port of entry under the provisions of a bond conditioned upon the re-delivery of the seed to customs' custody upon demand. This movement of seed under bond prior to action under the Act is necessary to prevent excessive storage or demurrage charges which would result if it were required that seed be held at the port of entry until its status under the Act was determined. This is the usual procedure for all imported merchandise. This also permits seed to be in transit to its final destination while tests required under the import provisions are in progress.

Seed forwarded under re-delivery bond must not be tampered with or removed from the containers until its status has been determined, except under supervision.

Seed under re-delivery bond is considered to be in foreign commerce until released by the U. S. Department of Agriculture if it is not moved interstate after reaching the importer of record or consignee or directly to a third party. State seed inspectors holding

federal authorization cards may sample seed that was moved interstate after it reaches the importer of record or consignee or the third party.

Disposition of Rejected Seed

Mixing rejected seed with any seed to raise the quality of the rejected seed to gain admission is prohibited. However, under certain circumstances two or more lots of rejected seed may be mixed for the purpose of re-cleaning or staining. Rejected seed may be re-cleaned under supervision of a representative or authorized agent of the U. S. Department of Agriculture at the expense of the owner or consignee. If the re-cleaned seed meets the import requirements, it may be admitted. The refuse in such instances must be destroyed under supervision.

If desired, rejected seed may be exported. This includes re-cleaned seed that fails to meet requirements and the refuse from the cleaning operation. The exportation is accomplished under the supervision of the customs officials. A sample of the seed presented for exportation is drawn and forwarded to the seed laboratory for comparison with the original sample to determine whether the seed exported is the same as that offered for importation and refused admission.

Rejected seed may be disposed of by destruction under supervision. This may be accomplished whenever the owner or consignee desires. If rejected seed has not been disposed of within the 12-month period from the date of refusal, its destruction is mandatory.

EXPORTED SEED

Seed delivered for transportation to a destination outside the United States is regarded as seed being exported. There are no labeling or other requirements under the Federal Seed Act for such seed. This is also generally true for state seed laws.

Many foreign countries, however, have plant quarantine requirements which regulate the importation of seed along with other plant materials. It may be necessary for the importer to first obtain an import permit from the Department of Agriculture of his country, which he must forward to the exporter in the United States.

Information regarding these requirements may be obtained from:

http://www.aphis.usda.gov/import_export/index.shtml

Some foreign countries require federal inspection certificates (phytosanitary export certificates) issued by Plant Protection and Quarantine inspectors, while other countries will accept state inspection certificates if they are in accordance with the international model. A few countries accept state inspection certificates whether or not they are in accordance with the international model.

The inspection on which the phytosanitary export certificate is issued is for the purpose of determining whether the seed or plant material to be exported complies with the import requirements of destination as to freedom from specified pests, primarily diseases and insects. The inspection may be made by sampling the seed after it is ready to ship. In some cases preliminary or growing season inspections may have to be made of the growing crop before harvest.

These are requirements that a shipper should determine sufficiently in advance of the time of shipment to permit the proper inspection to be made. A state seed control official may find it possible to assist seedsmen who are planning to make export shipments by supplying the seedsmen with correct information on how to proceed in obtaining the proper documents.

Preliminary or growing season inspections, on which phytosanitary export certificates are sometimes based, are made by the state agencies which are members of the four regional plant boards: Eastern Plant Board, Central Plant Board, Southern Plant Board, and Western Plant Board.

If the state agency cooperates with the Federal Plant Protection and Quarantine (PPQ) Office in issuing growing season certificates when required, then the phytosanitary certificate issued by the state is used by the Federal PPQ office as a basis for federal inspection and certification when the seed reaches the port from which it will be shipped. The PPQ does rely on state inspectors for the growing season inspection required by many foreign countries, and in the absence of such certificates the PPQ cannot certify the plants or plant material.

Many foreign countries also have import requirements for seed quality factors such as purity, germination and noxious-weed seed content. There appears to be no single source from which information can be obtained regarding these quality requirements of all foreign countries.

Information may be obtained from:

<http://www.fas.usda.gov/exportprograms.asp>

Another source may be the consular service of the country in question. Inquiries can be addressed to their office in Washington, D. C., or possibly to New York, Chicago or San

Francisco where the country may maintain an office. If inquiry is made a sufficient time in advance, then it may be directed to the government of the country involved, which will be the most authoritative source of information.

Foreign buyers may require a seed laboratory report on a sample of the seed involved. In some cases a report from an official state seed laboratory will suffice. There may be a request for a test according to the Rules of the International Seed Testing Association. The Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, provides such a service on a fee basis as authorized by the Agricultural Marketing Act. A special form of white certificate (USDA Seed Analysis Certificate) modeled after the certificates sponsored by the International Seed Testing Association is used in reporting tests made in accordance with the International Rules. The U. S. Department of Agriculture does not issue certificates on the orange or blue forms furnished by the Secretariat of the International Seed Testing Association.

Another option for international seed shipments may be the Accredited Seed Laboratory (ASL) certificate, which may be issued by seed laboratories participating in the ASL Program.

THE ADMINISTRATION OF THE PLANT VARIETY PROTECTION ACT

Introduction

The Plant Variety Protection Act (PVPA) was signed into law December 24, 1970. In 1994 the PVPA was amended and most of the changes in 1994 do not extend to varieties that were protected under the PVPA in 1970.

The purpose of this Act is to encourage the development of novel varieties of sexually reproduced plants and to make available to the public, provide protection to those who breed, develop, or discover them, and thereby promote progress in agriculture in the public interest. In carrying out this responsibility, the Plant Variety Protection Office (PVPO) (1) conducts examinations to determine whether to grant or deny certificates of plant variety protection to applicants, (2) maintains lists of names and descriptions of plant varieties, (3) maintains a library of publications dealing with names and descriptions of plant varieties, and (4) develops and maintains relationships with foreign, federal and state agencies; seed associations; and scientific groups. The PVPO web site is: www.ams.usda.gov/science/pvp

Principles of the Law

The PVPA is based on five principles:

1. All applications and participation shall be voluntary. The breeder has the choice to release a new plant variety without applying for protection, if he wishes to do so.
2. The protection of the variety shall be based on novelty. The application for which variety protection is sought must distinguish that variety from all other varieties.
3. No performance test is required of the new variety.
4. The enforcement of the Act shall not interfere with the release distribution, and free exchange of germplasm.
5. Enforcement of the rights shall be the responsibility of the owner except when the owner requests Title V protection under the Federal Seed Act.

Term of Protection

Under PVPA 94, the term of plant variety protection expires 20 years from the date of issue of the certificate. The term of protection will also expire if the owner fails to replenish a seed sample upon request. The owner may assign or sell his rights granted by the certificate during the 20-year period.

Request for a Protected Variety to be Sold as Certified Seed

An applicant for plant variety protection may specify that seed of this variety is to be sold by variety name only as a class of certified seed. Such seed may be labeled "Unauthorized Propagation Prohibited, To Be Sold By Variety Name Only As A Class Of Certified Seed, U. S. Protected Variety." To sell or offer for sale or advertise such seed by variety name as uncertified seed constitutes a violation of Title V under the Federal Seed Act. Plant Variety protected seed is subject to the same seed enforcement regulations as other seed in channels of commerce. In addition, seed specified to be sold by variety name only as a class of certified seed must be certified seed when bearing that variety name on the tag. This requirement is enforceable under Title V of the Federal Seed Act.

Notification of Protected Varieties

If a variety is novel and entitled to protection, the Secretary of Agriculture issues a certificate of protection to the applicant. A public notice that the variety is protected is made in the Official Journal of the Plant Variety Protection Office and on the PVPA web site: <http://www.ars-grin.gov/cgi-bin/npgs/html/pvplist.pl>

Infringement of Plant Variety Protection

(PVP Act & Regulations, Title III, Plant Variety Protection and Rights, Chapter 11, Section 111. Infringement of Plant Variety Protection)

(a) It is an infringement of the rights of the owner of a novel variety to perform without authority, any of the following:

1. sell the novel variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it;
2. import or export the variety, (into or from) the United States
3. sexually multiply the variety, or propagate by a tuber or a part of a tuber, the variety as a step in marketing (for growing purposes) the variety;
4. use the variety to produce (as distinguished from developing) a hybrid or a different variety,
5. use seed marked "Unauthorized Propagation Prohibited" or progeny of that seed to propagate the variety,
6. dispense the variety to another, in a form which can be propagated, without notice as to its being protected.
7. condition the variety for the purpose of propagation, except to the extent that the conditioning is related to the activities permitted under section 113;
8. stock the variety for any of the purposes referred to in paragraphs (1) through (7);
9. perform any of the foregoing acts even in instances in which the variety is multiplied other than sexually, except in pursuance of a valid U. S. Plant Patent,
10. instigate or actively induce performance of any of the foregoing acts.

See the complete wording at this link:

<http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3002796>

Requirement to use Variety Name on Varieties Protected under PVP 94

PVP Act & Regulations, Title III, Plant Variety Protection and Rights, Remedies for Infringement,

Sec. 128. False Marking; Cease and Desist Orders

(a) Each of the following acts, if performed in connection with the sale, offering for sale, or advertising of sexually reproducible plant material or tuber or parts of tubers, is prohibited, and the Secretary may, if the Secretary determines after an opportunity for hearing that the act is being so performed, issue an order to cease and desist, said order being binding unless appealed under section 71:

- (1) Use of the words "U.S. Protected Variety" or any word or number importing that the material is a variety protected under certificate, when it is not.
- (2) Use of any wording importing that the material is a variety for which an application for plant variety protection is pending, when it is not.
- (3) Use of either the phrase "Unauthorized Propagation Prohibited" or "Unauthorized Seed Multiplication Prohibited" or similar phrase without reasonable basis. Any reasonable basis expires one year after the first sale of the variety except as justified thereafter by a pending application or a certificate still in force.

4) Failure to use the name of a variety for which a certificate of protection has been issued under this Act, even after the expiration of the certificate, except that lawn, turf, or forage grass seed, or alfalfa or clover seed may be sold without a variety name unless use of the name of a variety for which a certificate of protection has been issued under this Act is required under State law.

Labeling

Varieties for which applications have been submitted for certificates may be packaged and labeled "U. S. Variety Protection Applied For, Unauthorized Propagation Prohibited --- (Unauthorized Seed Multiplication Prohibited)." After the certificate is issued, the wording may be "U. S. Protected Variety, Unauthorized Propagation Prohibited (Unauthorized Seed Multiplication Prohibited)." Protected varieties sold under Title V of the Federal Seed Act may specify on the label that seed of the variety shall be sold by variety name only as a class of certified seed. If a variety is grown for testing or increased for the owner before applying for protection, it may be labeled "U. S. Variety Protection Contemplated----Unauthorized Propagation Prohibited - For Testing (Or Increase) Only." This labeling may not be used more than one year after the first sale to the public for seeding purposes. Additional clarifying information may be used on the label, if it is not misleading.

Requirements for a Protected Variety

The law requires that a variety must meet three qualifications for protection as a novel variety:

1. The variety must be distinct. It must differ from all other known varieties by one or more identifiable morphological, physiological, or other characteristics (Such as the milling or baking characteristics of a wheat variety).
2. Uniformity in the sense that any variations are describable, predictable and commercially acceptable.
3. Stability in the sense that the variety, when sexually reproduced or reconstituted, will remain unchanged with regard to its essential and distinctive characteristics with a reasonable degree of reliability commensurate with that of varieties of the same category in which the same breeding method is employed.

The owner of a variety may receive protection under the law if he develops or discovers the variety and sexually reproduces it (final breeding) or legally obtains ownership. Except for seed produced for experimental purposes or increased for the owner, varieties in channels of commerce over one year previous to filing an application or that were available to workers and adequately described in a publication more than one year previous to filing an application are not eligible for protection. The filing period for

foreign application is up to five years after filing in a foreign country if the delay is due to an official growing test required in that country.

Confidential Requirements

PVPO must keep all information confidential on applications while processing plant variety protection certificates, except (1) the application number and date filed, (2) the name of the variety or temporary designation, (3) the name of the kind of seed and (4) whether the applicant specified that the variety is to be sold by variety name only as a class of certified seed, together with a limitation in the number of generations that it may be certified. Additional information, such as the name and address of the applicant or a brief description of the novel variety may be published only upon request or approval received from the applicant.

False Labeling

The use of the words “U. S. Protected Variety” or words importing that the variety is protected under a certificate, when it is not, or importing that the variety is one for which an application is pending, when it is not, or the use of the phrase, “propagation prohibited” or similar phrases, without basis, is prohibited and is a violation of the Plant Variety Protection Act, which could result in issuance of a cease and desist order. Violation of this order could result in a fine of more than \$10,000 and not less than \$500.00.

In addition, the Act stipulates that anyone whose business is damaged, or is likely to be damaged by the marking alleged to be false may have remedy by civil action. It is evident that false labeling may also be in violation of the Federal Seed Act and the state seed laws.

Reciprocity

Protection under the Act is limited to nationals of the United States, except that nationals of a foreign country shall be entitled to so much of the protection here afforded as is afforded by said foreign state to nationals of the United States for the same genus and species. Basically, the U. S. will not issue a certificate of protection to a foreign applicant on a species, which is not granted protection in his own country. These limitations are generally based on the species of crop and the length of time the species is protected, but may also deny the foreign applicant protection under Title V of the Federal Seed Act if mandatory certification is not required in his own country.

TITLE V - FEDERAL SEED ACT

Title V of the Federal Seed Act (FSA) reads, in part, as follows:

Title V - SALE OF UNCERTIFIED SEED OF PROTECTED VARIETY

Sec. 501. It shall be unlawful in the United States or in interstate or foreign commerce to sell or offer for sale or advertise by variety name, seed not certified by an official seed certifying agency, when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: provided that seed from certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owners of the variety.

Title V was added to the FSA in late 1970 when the Plant Variety Protection Act (PVPA) was signed into law. In 1994 the PVPA was amended and most of the changes in 1994 do not extend to varieties that were protected under the PVPA in 1970.

A general knowledge of the PVPA is essential to an understanding of Title V of the FSA. Under the PVPA, the holder of a certificate of plant variety protection may turn to civil court action, if there is an infringement on his variety protection rights for the normal 18 years duration of the 1970 PVPA certificate; 1994 PVPA = 20 years, 25 for grapevines and trees.

An additional protection may be granted to the owner of a protected variety. The additional protection is in Title V of the FSA. Under this additional protection, any person who sells, offers for sale, or advertises by variety name, uncertified seed of the specially protected variety violates Title V of the FSA (with the exception noted below). Since the seed must be certified to be legally sold by variety name, the additional protection under Title V of the FSA is sometimes called "Protection under the Certification Option." It may also be referred to as "Title V Protection".

"Protection under the certification option" or "Title V Protection" arises in this way:

- The applicant for plant variety protection specifies in his application that his variety is to be sold by variety name only as a class of certified seed.
- The certificate of protection issued under the PVPA specifies sale by variety name only as a class of certified seed.

As Title V quoted above indicates, there is this exception to the requirement that the seed be certified to be sold by variety name: with the approval of the owners of the varieties, seed from certified lots of specially protected varieties can be sold by variety name as uncertified seed in mixtures.

Some noteworthy features about Title V of the FSA:

Except for the PVPA "Farmer's Exemption" (for varieties protected under the original PVP 1970 law), no one, not even the owner of the variety, can sell seed of a Title V protected variety, by variety name, unless it is certified (subject to the exception noted above). The PVP 1994 Act limits the "Farmer's Exemption" to saving and planting for his own use on his own holdings. He cannot sell the seed of a PVP 94 protected variety.

Any kind of seed for which the certificate of protection specifies sale by variety name only as a class of certified seed is a Title V protected variety. The kind of seed does not have to be one of those kinds of agricultural or vegetable seed listed in sections 201.2 (h) and (l) of the FSA regulations.

The 1970 PVPA's "Farmer's Exemption", farmer-to-farmer sales, by variety name, of uncertified seed of "Title V varieties" do not violate Title V of the FSA if the sale complies with state law. However, the exemption does not extend to advertising. An advertiser must be offering properly certified seed to be safely in compliance with FSA, Title V.

The prohibited sales under Title V are illegal whether occurring entirely within a particular state or in interstate or foreign commerce.

For Title V protection to be in effect the PVPA certificate of protection must have been issued; i.e., sales of uncertified seed by variety name prior to issuance of the certificate of protection do not violate Title V of the FSA.

Unlike the PVPA protection, which is enforceable by the owner in a private infringement suit, Title V protection is enforceable in the form of regulatory actions initiated in the Seed Regulatory and Testing Branch of USDA.

Section 102 of the FSA imposes a restriction on the certification of "Title V protected" varieties. That section states "Seed of a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed shall be certified when (1) the basic seed from which the variety was produced was furnished by authority of the owner of the variety if the certification is made during the term of protection, and (2) it conforms to the number of generations designated by the certificate, if the certificate contains such a designation."

Complaints of apparent violation of Title V of the FSA should be submitted to the Seed Regulatory and Testing Branch personnel. Ordinarily, the following information will be sufficient for consideration of action under the FSA: evidence of the sale by variety name and that the seed was uncertified (e.g., invoice, label, statement of buyer or others having personal knowledge of the sales transaction, oral or written representations made concerning the varietal identity of the seed, and whether seed was uncertified).

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