

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

03-0009-0075

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 7-25-85
DATE FOR REVIEW 8-3-85
DATE DUE 8-8-85

Adopted w/a hearing ____
Adopted w/o hearing ✓
Temporary rule ____

Approved 8-8-85 Disapproved ____ Returned to Agency ____

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State ____ Revisor approved 7/26/85
disapproved ____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 7.25.85 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 5.27.85.

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency contains minimal statement of impact on small biz

✓ Affidavit of Mailing Notice or rulemaking
6.19.85 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
6.24.85 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
____ Approving H.E.'s Report
____ Approving agency action

Agency's Findings of Fact

LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains small biz statement

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

LIST OF ATTACHED DOCUMENTS

A. Rule as Adopted (Original and three copies). Each copy reflects amendments made in the rules since original publication.

B. Order Adopting the Rule (two copies).

C. Notice of Intent to Solicit Outside Opinion.

D. Order for Notice of Intent to Adopt Rule Without Public Hearing (one copy).

E. Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

F. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

G. Mailing List Certificate (one copy).

H. Rule as Proposed (one copy).

I. Statement of Need and Reasonableness (one copy).

J. Certificate of Compliance with Rulemaking Procedures (one copy).

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO: Judith Wehrwein
Administration - Finance Division
Office of the Attorney General

DATE: 07/26/85

FROM: Carol Milligan, Management Analyst
Planning Division

PHONE: 296-6909

SUBJECT: Review of Rules Governing Variety Labeling of Agricultural Seed (Minnesota Rule 1510.0011)

The Department of Agriculture adopted the above-mentioned rules pursuant to Minnesota Statutes, sections 14.22-14.28. Enclosed with this memorandum are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

The Department fulfilled the requirements of Minnesota Statutes, section 14.115, subd. 4, by notifying small businesses of the expected impact of the rule in the Notice of Intent to Adopt Rules Without Public Hearing. The requirements of subd. 2 are dealt with in the Statement of Need and Reasonableness.

The Department did not receive any comments, requests for a public hearing or requests for notification when these documents were submitted to the Attorney General.

If you have questions, please contact me.

CM:cb

Attachment

RECEIVED
JUL 25 1985
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

cc: Jim Nichols, Commissioner
Rollin Dennistoun, Ph.D., Deputy Commissioner
Anne Kanten, Assistant Commissioner
Jon Murphy, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Director, Planning Division
William O. Bulger, Director, Agronomy Services Division
Charles G. Dale, Supervisor, Agronomy Services Division

SF-00006-03

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO: JIM NICHOLS, Commissioner
Minnesota Department of Agriculture

DATE: 8-9-85

ATTN: JON MURPHY
Special Assistant Attorney General

FROM: J. MICHAEL MILES JMM
Assistant Attorney General

PHONE: 296-6555

SUBJECT: In the Matter of the Proposed Rule of the Department of Agriculture Governing Variety Labeling of Agricultural Seed (Minnesota Rule 1510.0011)

The above-referenced rule has been approved as to its legality by the Attorney General on August 8,1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

JMM:sz

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

AG copy.

Department of Agriculture

Adopted Rule Relating to Seed Variety Labels

Rule as Adopted

1510.0011 LABELING VARIETY, VARIETY NOT STATED, AND BRAND; EXAMPLES.

Subpart 1. **Definition; brand.** As used in this part, "brand" means a word, mark, or picture representing a trademark or a term taken from a trademark which indicates the owner, originator, or labeler of the seed and does not indicate the genetic identity of the seed.

Subp. 2. **Labeling variety.** In accordance with Minnesota Statutes, section 21.82, subdivision 2, paragraph (a), the commissioner designates that all kinds of agricultural and vegetable seed must be labeled to show the variety name unless otherwise specified in subpart 3.

Subp. 3. **Labeling variety not stated.** Unless otherwise specified in this subpart, the words "variety not stated" must be shown on agricultural seed labels if any of the following circumstances exist:

A. the variety name is not known for a nonhybrid seed and it cannot be determined by examining the seed and records of the seed lot;

B. the variety name is known for a nonhybrid biennial or perennial seed, in which case the variety name may be omitted from the seed label but only when written permission to do so is signed by the owner or originator and is part of the record for the seed lot;

C. two or more varieties are combined to form a blend, in which case the variety names and the percentages by weight of the components together may be omitted from the seed label but only when information concerning the varieties used and the proportion of each in the blend is part of the record for the seed lot; or

D. lawn and turf grass seeds are sold in mixtures, in

which case the variety name and the words "variety not stated" may be omitted from the seed label if none of the components are listed and sold by brand name.

Subp. 4. **Labeling brands.** When agricultural seed is labeled with a brand, trademark, or term taken from a brand or trademark, the seed label must clearly identify the term with the word "brand" and as being other than part of the variety name.

Subp. 5. **Examples.** The examples in this subpart indicate the required arrangements of terms used to label variety, variety not stated, and brand. The size type used to indicate the kind name on the seed label must also be used for all other terms specified in the examples.

A. When the variety name is stated, the terms designating the kind and variety may appear in any order but must be in close proximity to each other.

B. When both a brand and variety name are stated, the terms must be shown in the following order from left to right or top to bottom: the brand name, the word "brand," the variety name, and the kind name.

C. When a brand name but no variety name is stated, the terms must be shown on the seed label in the following order from left to right or top to bottom: the brand name, the word "brand," the kind name, and the words "variety not stated." If the seed offered for sale is a blend, the word "blend" must be inserted between the kind name and the words "varieties not stated."

EFFECTIVE DATE. Part 1510.0011 is effective July 1, 1987.

1:23 PM

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 9 1985
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
8/8 19 85
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY _____
ASSISTANT ATTORNEY GENERAL

Rule as Proposed (all new material)

1510.0011 LABELING VARIETY, VARIETY NOT STATED, AND BRAND; EXAMPLES.

Subpart 1. **Definition; brand.** As used in this part, "brand" means a word, mark, or picture representing a trademark or a term taken from a trademark which indicates the owner, originator, or labeler of the seed and does not indicate the genetic identity of the seed.

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B. the variety name is known for a nonhybrid biennial or perennial seed, in which case the variety name may be omitted from the seed label but only when written permission to do so is signed by the owner or originator and is part of the record for the seed lot;

C. two or more varieties are combined to form a blend, in which case the variety names and the percentages by weight of the components together may be omitted from the seed label but only when information concerning the varieties used and the proportion of each in the blend is part of the record for the seed lot; or

D. lawn and turf grass seeds are sold in mixtures, in which case the variety name and the words "variety not stated" may be omitted from the seed label if none of the components are listed and sold by brand name.

Subp. 4. **Labeling brands.** When agricultural seed is

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

CEL

labeled with a brand, trademark, or term taken from a brand or trademark, the seed label must clearly identify the term with the word "brand" and as being other than part of the variety name.

Subp. 5. **Examples.** The examples in this subpart indicate the required arrangements of terms used to label variety, variety not stated, and brand. The size type used to indicate the kind name on the seed label must also be used for all other terms specified in the examples.

A. When the variety name is stated, the terms designating the kind and variety may appear in any order but must be in close proximity to each other.

B. When both a brand and variety name are stated, the terms must be shown in the following order from left to right or top to bottom: the brand name, the word "brand," the variety name, and the kind name.

C. When a brand name but no variety name is stated, the terms must be shown on the seed label in the following order from left to right or top to bottom: the brand name, the word "brand," the kind name, and the words "variety not stated." If the seed offered for sale is a blend, the word "blend" must be inserted between the kind name and the words "varieties not stated."

EFFECTIVE DATE. Part 1510.0011 is effective July 1, 1987.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD775

Agency: Department of Agriculture

Division:

Agency Contact: Carol Milligan

Minnesota Rules: Part 1510.0011

Title: Proposed Rule Relating to Seed Variety Labels

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

Craig E. Lindeke
Senior Assistant Revisor
Phone: 296-0946

Date: May 30, 1985

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rule
of the Department of Agriculture
Governing Variety Labeling of
Agricultural Seed
(Minnesota Rule 1510.0011)

ORDER ADOPTING
RULES

Notice of the Commissioner's intent to adopt the above-entitled rule without a public hearing was published in the State Register on June 24, 1985, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, Section 14.22 on June 19, 1985. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than 25 written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rule,

NOW, THEREFORE, IT IS ORDERED that this rule identified as the Rule Governing Charges Under The Minnesota Seed Law adopted this 25th day of July, 1985, pursuant to authority vested in me by Minnesota Statutes, section 21.82, subd. 2.

STATE OF MINNESOTA

Jim Nichols

JIM NICHOLS
COMMISSIONER
DEPARTMENT OF AGRICULTURE

Department of Agriculture
Agronomy Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Variety Labeling Agricultural and Vegetable Seed.
(Minnesota Rules, Chapter 1510).

Notice is hereby given that the Minnesota Department of Agriculture is seeking information or opinions from sources outside the agency in preparing rules governing variety labeling of agricultural and vegetable seed. The adoption of these rules is authorized by Minnesota Statutes, section 21.82, subd. 2, which permits the department to adopt rules to designate which seeds are required to be labeled as to variety.

The Department requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements of information and comment may be addressed to:

Mr. Gerald Heil
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-1486, and in person at the above address.

All statements of information and comment must be received by June 21, 1985. Any written material received by the Department shall become part of the rulemaking record.

May 14, 1985

Jim Nichols
Commissioner

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture Agronomy Division

Outside Opinion Sought Regarding Proposed Rules Governing Variety Labeling Agricultural and Vegetable Seed

Notice is hereby given that the Minnesota Department of Agriculture is seeking information or opinions from sources outside the agency in preparing rules governing variety labeling of agricultural and vegetable seed. The adoption of these rules is authorized by Minnesota Statutes, section 21.82, subd. 2, which permits the department to adopt rules to designate which seeds are required to be labeled as to variety.

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Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-1486, and in person at the above address.

All statements of information and comment must be received by June 21, 1985. Any written material received by the Department shall become part of the rulemaking record.

May 14, 1985

Jim Nichols
Commissioner

Department of Commerce

Outside Opinion Sought Regarding Proposed Rules Relating to Workers' Compensation Self-Insurance Including the Impact of the Rules on Small Business

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate new rules governing workers' compensation self-insurance. Promulgation of these rules is authorized by Minnesota Statutes, section 176.181, subd. 2.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: David Corum, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 297-3301.

All statements of information and comment shall be accepted until June 28, 1985. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Department of Agriculture

Agronomy Services Division

In the Matter of the Proposed Rule Governing Variety Labeling of Agricultural and Vegetable Seed.

(Minnesota Rule 1510.0011).

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rule without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28.

Persons interested in this rule are encouraged to submit comment in support of or in opposition to the proposed rule, and shall have 30 days to do so. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address, and are encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit them to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt this rule is contained in Minnesota Statutes, Sections 21.85, subd. 11 and 21.82, subd. 2. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed amendment has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rule without a public hearing, the proposed rule, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as adopted, should submit a written statement of such request to Mr. Heil.

The Department is authorized by Minnesota Statutes, Section 21.85, subd. 11, to adopt rules to properly enforce the seed law, and Minnesota Statutes, section 21.82, subd. 2, specifically directs the Department to adopt rules to designate which seeds are required to be labeled as to variety.

The proposed rule will eliminate an unfair market place advantage held by some small seed businesses caused by a loophole in the U.S. Plant Variety Protection Act. The rule will provide more for competition among small seed businesses.

One free copy of this Notice and the proposed rule are available and may be obtained by contacting Mr. Heil.

STATE OF MINNESOTA

Date: June 5, 1985

Jim Nichols

Commissioner of Agriculture

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed
Rule of the Department of Agriculture
Governing Variety Labeling of
Agricultural and Vegetable Seed
(Minnesota Rules 1510.0011)

ORDER FOR NOTICE
OF INTENT TO ADOPT
RULES WITHOUT
PUBLIC HEARING

IT IS ORDERED this 5 day of June, 1985, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Department of Agriculture for that purpose and be published in the State Register.

STATE OF MINNESOTA

Jim Nichols

Commissioner of Agriculture

In the Matter of the Proposed
Rule of the Department of
Agriculture Governing Variety
Labeling of Agricultural Seed
(Minnesota Rules 1510.0011)

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being first duly sworn, deposes and says:

That on the 19th day of June, 1985, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department.

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Marie Skerbitz

Subscribed and sworn to before me
this 19th day of June, 1985.

Diane M. Windham

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed
Rule of the Department of
Agriculture Governing Variety
Labeling of Agricultural Seed
(Minnesota Rules 1510.0011)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, subd. 1, that their names be placed on file with and maintained by the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 2:00 p.m., this 19th day of June, 1985.

Carol Milligan

6. That this Order does not preclude other state agencies from applying for, receiving, accepting, and expending funds available through the above-named federal agency where said agencies are authorized under law and independently of this Order to accept such funds.

This Order repeals Executive Order No. 83-9.

Pursuant to Minnesota Statutes 1984, Section 4.035, this Order shall be effective 15 days after publication in the *State Register* and filing with the Secretary of State and shall remain in effect until it is rescinded by proper authority or it expires in accordance with Section 4.035, Subdivision 3.

IN TESTIMONY WHEREOF, I hereunto set my hands this Fourth day of June, 1985.



PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture

Proposed Rule Relating to Seed Variety Labels

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rule without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28.

Persons interested in this rule are encouraged to submit comment in support of or in opposition to the proposed rule, and shall have 30 days to do so. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Unless 25 or more persons submitt written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address, and are encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit them to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt this rule is contained in Minnesota Statutes, Sections 21.85, subd. 11 and 21.82, subd. 2. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed amendment has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as adopted, should submit a written statement of such request to Mr. Heil.

The Department is authorized by Minnesota Statutes, Section 21.85, subd. 11, to adopt rules to properly enforce the seed law, and Minnesota Statutes, section 21.82, subd. 2, specifically directs the Department to adopt rules to designate which seeds are required to be labeled as to variety.

The proposed rule will eliminate an unfair market place advantage held by some small seed businesses caused by a loophole in the U.S. Plant Variety Protection Act. The rule will provide more for competition among small seed businesses.

One free copy of this notice and the proposed rule are available and may be obtained by contacting Mr. Heil.

June 5, 1985

Jim Nichols
Commissioner of Agriculture

Rule as Proposed (all new material)

1510.0011 LABELING VARIETY, VARIETY NOT STATED, AND BRAND; EXAMPLES.

Subpart 1. Definition; brand. As used in this part, "brand" means a word, mark, or picture representing a trademark or a term taken from a trademark which indicates the owner, originator, or labeler of the seed and does not indicate the genetic identity of the seed.

Subp. 2. Labeling variety. In accordance with Minnesota Statutes, section 21.82, subdivision 2, paragraph (a), the commissioner designates that all kinds of agricultural and vegetable seed must be labeled to show the variety name unless otherwise specified in subpart 3.

Subp. 3. Labeling variety not stated. Unless otherwise specified in this subpart, the words "variety not stated" must be shown on agricultural seed labels if any of the following circumstances exist:

A. the variety name is not known for a nonhybrid seed and it cannot be determined by examining the seed and records of the seed lot;

B. the variety name is known for a nonhybrid biennial or perennial seed, in which case the variety name may be omitted from the seed label but only when written permission to do so is signed by the owner or originator and is part of the record for the seed lot;

C. two or more varieties are combined to form a blend, in which case the variety names and the percentages by weight of the components together may be omitted from the seed label but only when information concerning the varieties used and the proportion of each in the blend is part of the record for the seed lot; or

D. lawn and turf grass seeds are sold in mixtures, in which case the variety name and the words "variety not stated" may be omitted from the seed label if none of the components are listed and sold by brand name.

Subp. 4. Labeling brands. When agricultural seed is labeled with a brand, trademark, or term taken from a brand or trademark, the seed label must clearly identify the term with the word "brand" and as being other than part of the variety name.

Subp. 5. Examples. The examples in this subpart indicate the required arrangements of terms used to label variety, variety not stated, and brand. The size type used to indicate the kind name on the seed label must also be used for all other terms specified in the examples.

A. When the variety name is stated, the terms designating the kind and variety may appear in any order but must be in close proximity to each other.

B. When both a brand and variety name are stated, the terms must be shown in the following order from left to right to top to bottom: the brand name, the word "brand," the variety name, and the kind name.

C. When a brand name but no variety name is stated, the terms must be shown on the seed label in the following order from left to right or top to bottom: the brand name, the word "brand," the kind name, and the words "variety not stated." If the seed offered for sale is a blend, the word "blend" must be inserted between the kind name and the words "varieties not stated."

EFFECTIVE DATE. Part 1510.0011 is effective July 1, 1987.

Department of Commerce

Proposed Rules Relating to the Market Assistance Plan for Liquor Liability Assistance; and Proposed Rules Relating to the Liquor Liability Assigned Risk Plan

Notice of Intent to Adopt Rules without a Public Hearing and Notice of Intent to Adopt Rules with a Public Hearing if Twenty-Five or More Persons Request a Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing unless twenty-five more persons submit written requests for a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Section 14.21-14.28.

PLEASE NOTE, HOWEVER, THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD PURSUANT TO MINNESOTA STATUTES SECTION 14.14-14.20 AND IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THE *STATE REGISTER* OF EVEN DATE AND MAILED ON THIS DATE.

Persons or groups interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed rule.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, Section 14.14-14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to Richard G. Gomsrud, Department Counsel, telephone (612) 296-5689 Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her or his name and address and is encouraged to identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, Section 340.11 subdivisions 21 and 23 and Section 45.023. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available from the Department upon request.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statutes Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness. The rules will affect liquor vendors who are in most cases small businesses in respect to obtaining liquor liability insurance. Insurers will be affected by the rules but are generally not small businesses and will only be affected if there is an assessment; then their involvement will be pro-rated according to their size so that if they are a small business they will only be burdened in proportion to their size.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED RULE OF)
THE DEPARTMENT OF AGRICULTURE GOVERNING)
VARIETY NAME LABELING)
(MINNESOTA RULES 1510.0011)

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed rule of the Minnesota Department of Agriculture governing variety name labeling.

The rule pertaining to variety name labeling is proposed for adoption pursuant to Minnesota Statutes 21.82, subdivision 2, part (a) and Minnesota Statutes 21.85, subdivision 11. These statutes authorize the Department to establish a list of the kinds of seed for which the variety name is required to be shown on the seed label and to make rules for the proper enforcement of the seed law.

The proposed new rulemaking is necessary as a result of a major revision of the Minnesota Seed Law, Minnesota Statutes 21.80 through 21.92, which became effective on July 1, 1983.

The specific item to be considered in the new rulemaking pertains to the establishment of a list of the kinds of seeds for which the variety name must be shown on the seed label and the situations where this requirement would not apply.

The notice of intent to adopt rules without a public hearing was published in the State Register by the Department on June 24, 1985. The Commissioner of the Minnesota Department of Agriculture proposes that the rules be adopted in accordance with Minnesota Statutes 14.22 to 14.28. Responses to the solicitation of outside opinion and consultations with seed industry representatives indicate that the proposed rulemaking is non-controversial.

The discussion provided in this statement is divided into the following parts:

II. Small Business Impact

III. General Overview

IV. Need For And Reasonableness Of The Proposed New And Amended Rules

V. Attachments

II. SMALL BUSINESS IMPACT

Minnesota Statutes 14.115 requires an assessment of the impact on small businesses when laws and rules are enacted that affect them.

In Minnesota, a majority of the small seed businesses are selling agricultural seed as classes of certified seed. A class of certified seed is one which has been verified for pureness of variety by the officially designated but privately operated agency called the Minnesota Crop Improvement Association. In 1983, approximately 1,150 of these small businesses applied for certification on 237,165 acres and over five million bushels of agricultural seed were produced and certified for planting in 1984. Certified seed is divided into three separate classes and the name of each class is indicative of the number of generations of reproduction from the initial seed produced by the plant breeder. These three classes are named Foundation, Registered, and Certified, with the Certified class being the last generation eligible for certification by the Minnesota Crop Improvement Association.

In 1970, a Federal law was enacted in the United States Congress entitled the Plant Variety Protection Act. This act provides that the owner of a newly developed variety of seed may apply for and receive patent protection. This protection provides the owner with the exclusive right to reproduce and sell the variety for a period of 18 years. Title 7, sections 2481 to 2486 of this act provides that in the application for protection, the owner of the variety may specify that it can be sold only as a class of certified seed. When this option is

chosen, the seed of a protected variety must be produced and marketed in Minnesota according to the requirements of the Minnesota Crop Improvement Association.

The certification process costs these small businesses extra because of services which must be provided by the Minnesota Crop Improvement Association. These extra costs include field inspection fees, laboratory testing fees, and the purchase of certification tags. These extra costs result in a higher selling price for the seed produced. In recent years, a number of small seed businesses have sought a marketplace advantage by foregoing the certification process and selling protected varieties without naming the variety on the seed label. By doing this, they avoid direct violation of the U.S. Plant Variety Protection Act. This also means that the selling price for the seed they produce is less than for those small businesses who follow the Act explicitly. This situation has created an unfair marketplace condition for small seed businesses. To correct this problem, the Department is proposing this new rule which would require the variety name to be listed on the seed label. Enactment of this rule would close a loophole by which violators of the U.S. Plant Variety Protection Act could operate without regulatory intervention.

When writing this proposed new rule, consultations with seed industry representatives revealed that in certain situations, requiring variety labeling would be a hardship and in effect, deny consumers access to some kinds of lower priced seed. Because of these situations,

exceptions to required variety labeling were written into this proposed new rule which will not jeopardize the original intent of correcting unfair marketplace conditions for small seed businesses.

In summary, the overall impact of this proposed new rule would be that small seed businesses who obey the U.S. Plant Variety Protection Act, can continue to do so in a fair and competitive marketplace for seed. The impact on small seed businesses who have previously bypassed the U.S. Plant Variety Protection Act by omitting the variety name from the seed label will be that they will now have to label the variety and comply with the Act.

The only alternative method to achieving a fair marketplace for small seed businesses would be to continue with our present seed law and rules. To enforce the U.S. Plant Variety Protection Act, under present law and rules, the Department would have to increase surveillance of small seed businesses in hopes of detecting more of the violations of this Act. This would increase the costs for the seed regulatory program because it would require extra surveillance staff and more administrative costs for the handling of violations. Documentating violations would still be difficult because evidence of the violation wouldn't be readily available without the variety name on the seed label.

A comparison of the advantages and disadvantages of the proposed new rule and that of an existing rule cannot be made since there aren't any existing rules which pertain to required variety labeling.

III. GENERAL OVERVIEW

A. The Need For Variety Name Labeling

A kind of seed is easily identified by generally apparent characteristics of the seed itself. As an example, corn is easily distinguished from oats or wheat seed. Subdivisions of each kind are not so easily identified. Subdivisions of a kind generally must be identified through review of production and sale records of the seed grower and labeler. If conclusive proof of subdivision identity is not provided by records, specialized seed laboratory testing and grow-out trials may need to be conducted. Review of records is the most economical way to make subdivision determination. However, for the keeping of records to be effective for subdivision determination, the subdivision name must be required on the label associated with each sale of seed.

For over 50 years, the universally accepted nomenclature for subdivisions of each kind has been the variety name. Each variety name represents a single subdivision of a kind. As a result, the variety name is commonly used and recognized by consumers, plant breeders, and the seed industry. As an indication of the importance of the variety name, the U.S. Plant Variety Protection Act was enacted by Congress in order that the owners of new subdivisions of kinds could attain patent protection for them.

Before seed of a new variety is accepted and purchased by consumers, testing must indicate performance capability which is superior to other presently used varieties. Comparative variety trials are conducted by both publicly and privately financed research personnel to indicate which varieties show advantage for use by consumers. Consumers have access to performance testing results either in publicly financed research publications or in promotional literature provided by the seed industry. The reference for consumers that ties this performance information to certain superior subdivisions of a kind is the variety name. Required variety name labeling is of utmost importance to consumers in order for them to make objective purchasing decisions based on performance testing results. In addition, required variety labeling will aid in curtailing excessive or exaggerated claims for performance by seed labelers.

In certain situations, requiring variety labeling would be impossible or a hardship on the seed industry. The first situation is when a kind of seed does not have recognized subdivisions and therefore no variety could be stated.

The second situation is when a variety name cannot be determined because records are not available and visual observation or laboratory testing cannot distinguish the variety.

The third situation is when two or more varieties are combined to form a blend based on research that is privately financed. These blends usually have certain advantages for consumers such as a lower price or a performance advantage when compared to popular single varieties. The performance advantage would result from research which shows that a certain combination of varieties will perform nearly as well or even better than a single variety when the crop is subjected to adverse environmental conditions. The varieties in a blend affected by this exception would not be protected. Therefore, forcing the owner of the blend to reveal proprietary information about the amount and name of each varietal component in the blend would penalize research and development of this information.

The fourth situation is when lawn and turf grass seeds are sold in mixtures. In the definitions section of the seed law, a blend is defined as a combination of two or more varieties. Also in this section, a mixture is defined as a combination of two or more kinds. This situation deals only with mixtures of seed and specifically to lawn and turf grass seed mixtures. Consumers of lawn and turf grass seeds are generally considered urban homeowners. This group of consumers is not as sophisticated in seed technology and normally does not recognize either variety or kind names. Requiring the variety name to be stated on the seed label would have only limited value in this situation. Instead of mandating variety name labeling, the seed law has established minimum standards of quality that must be met before lawn and turf grass seed can legally be sold. Because a minimum standard of

quality is assured, variety name labeling is not nearly as important as with other agricultural crops. Therefore, in this situation the variety name and the words "variety not stated" can be omitted from the seed label but only as long as the components of a lawn and turf grass mixture are not represented by any other name such as a trademark or brand name.

The proposed rulemaking is necessary and reasonable to provide protection for consumers through complete and truthful information on labeling for seed sold in Minnesota. Uniformly truthful label information aids in promoting a fair and competitive marketplace for seed and thereby benefits the seed industry as well.

B. Format Of The Proposed Rule

The proposed rule is set forth in the following manner: Labeling variety, variety not stated, and brand; examples.

In this statement, the contents of the proposed rule will not be repeated for the sake of brevity. The number and title of the rule has been noted for reference purposes.

IV. NEED FOR AND REASONABLENESS OF THE PROPOSED RULE

The need for and reasonableness of the proposed rule follows:

1510.0011 Labeling Variety, Variety Not Stated, And Brand; Examples.

This rule is all new material. Minnesota Statutes 21.82, subdivision 2, part (a), of the Minnesota Seed Law, specifies that the Commissioner shall by rule designate the kinds of seed which must be labeled by variety name. Establishing a list proved to be a nearly impossible task which would have required a very elaborate and detailed rule with specific reference to each kind of agricultural seed. Instead of a list, conditions were established that would apply to all agricultural seeds whereby variety name or the words "variety not stated" would be required to be shown on the seed label. It is necessary to establish these variety labeling requirements to inform labelers of the conditions under which the variety name must be shown on the seed label in order to be legally sold in Minnesota. It is further necessary to provide exceptions to required variety labeling because it is not always possible to do so and because under some circumstances it would be an economic hardship for labelers to do so. This is a reasonable rule because it balances the needs of both consumers and sellers of seed. It is further reasonable because it will require a uniform system of labeling seed and thereby encourage a more fair and competitive marketplace for seed.

V. ATTACHMENTS

FACTS ABOUT

NAMING AND LABELING VARIETIES OF SEED

Every year many new varieties of agricultural and vegetable seed reach America's marketplace. New seed varieties, when added to varieties already on the market, provide farmers and home gardeners with a wide selection of seed. But, in order for them to buy intelligently, seed must be correctly named and labeled. This is not always done.

Marketing a product by its correct name might seem to be the most likely way to do business. However, U.S. Department of Agriculture (USDA) seed officials have found that seed, unfortunately, is sometimes named, labeled, or advertised improperly as it passes through marketing channels.

Marketing seed under the wrong name is misrepresentation. It can lead to financial loss for several participants in the seed marketing chain.

The farmer, for example, buys seed to achieve specific objectives such as increased yield, competitiveness in a specialized market, or adaptability to growing conditions of a specific region. If seed is misrepresented and the farmer buys seed other than what was planned, the harvest may be less valuable than anticipated, or worse yet, there may not even be a market for the crop.

In one case, a farmer bought seed to grow cabbage to be marketed for processing into sauerkraut. As the cabbage matured, the farmer found that his crop was not suitable for processing and even worse, that he had no market for the cabbage in his fields. In this case financial hardship was brought about by improper variety labeling.

Seed companies and plant breeders also suffer in a market where problems with variety names exist. For instance, if the name of a newly released variety is misleading or confusing to the potential buyer, the variety may not attract the sales that it might otherwise.

This fact sheet outlines requirements for naming agricultural and vegetable seed. It is based on the Federal Seed Act , a truth-in-labeling law intended to protect farmers and home gardeners who purchase seed. Exceptions to the basic rules and the do's and don'ts of seed variety labeling and advertising also are explained.

WHO NAMES NEW VARIETIES?

The originator or discoverer of a new variety may give that variety a name. If the originator or discoverer can't or chooses not to name a variety, someone else may give that variety a name for marketing purposes. In such a case, the name first used when the seed is introduced into commerce will be the name of the variety.

It is illegal to change a variety name once the name has been legally assigned. In other words, a buyer may not purchase seed labeled as variety "X" and resell it as variety "Y." An exception to this rule occurs when the original name is determined to be illegal. In such an instance, the variety has to be renamed according to the rules mentioned above. Another exception to this rule applies to a number of varieties which were already being marketed under several names before 1956. (See section on synonyms.)

WHAT'S IN A NAME?

To fully understand what goes into naming a variety, you need to know the difference between a "kind" of seed and a seed "variety."

"Kind" is the term used for the seed of one or more related plants known by a common name such as carrot, radish, wheat, or soybean.

"Variety" is a subdivision of a kind. A variety has different characteristics from another variety of the same kind of seed. For example, "Oxheart" carrot and "Danvers 126" carrot or "Bragg" soybean and "Ransom" soybean.

The rules for naming plants relate to both kinds and varieties of seed:

1. A variety must be given a name that is unique to the kind of seed to which the variety belongs. For instance, there can only be one variety of wheat named "Prairie Road."

2. Varieties of two or more different kinds of seed may have the same name if the kinds are not closely related. For example, there could be a "Prairie Road" wheat and "Prairie Road" oat because wheat and oat are kinds of seed not closely related. On the other hand, it would not be permissible to have an "Alta" tall fescue and "Alta" red fescue because the two kinds of seed are closely related.

3. Once assigned to a variety, the name remains exclusive. Even if "Prairie Road" wheat has not been marketed for many years, a newly developed and different wheat variety can't be given the name "Prairie Road."

4. A company name may be used in a variety name as long as it is part of the original, legally assigned name. Once part of a legal variety name, the company name must be used by everyone including another company that might market the seed.

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When a company name is **not** part of the variety name, it should not be used in any way that gives the idea that it **is** part of the variety name. For example, Ajax Seed Company can't label or advertise "Prairie Road" wheat variety as "Ajax Prairie Road" since "Ajax" may be mistaken to be part of the variety name.

The simplest way to avoid confusion is to separate the company and variety names in advertising or labeling.

5. Although USDA discourages it, you may use descriptive terms in variety names as long as such terms are not misleading. "GBR," for instance, is accepted among sorghum growers as meaning "green bug resistant." It would be illegal to include "GBR" as part of a variety name if that variety were not green bug resistant. Similarly, if a sweet corn variety is named "Better Yield Bantam," the name would be illegal if this variety did not produce a higher yield than the standard Bantam sweet corn.

6. A variety name should be clearly different in spelling and in sound. "Alan" cucumber would not be permissible if an "Allen" cucumber were already on the market.

HYBRIDS

Remember that a hybrid also is a variety. Hybrid designations, whether they are names or numbers, also are variety names. Every rule discussed here applies to hybrid seed as well as to nonhybrid seed.

In the case of hybrids, however, the situation is potentially more complex since more than one seed producer or company might use identical parent lines in producing a hybrid variety. One company could then produce a hybrid that was the same as one already introduced by another firm.

When this happens, the same name must be used by both firms since they are marketing the same variety.

If the people who developed the parent lines have given the hybrid variety a name, that is the legal name. Otherwise, the proper name would be the one given by the company that first introduced the hybrid seed into commerce.

U.S. Department of Agriculture seed regulatory officials believe the following situation occurs far too often:

"State University" releases hybrid corn parent lines A and B.

John Doe Seed Company obtains seed of lines A and B, crosses the two lines, and is the first company to introduce the resulting hybrid into commerce under a variety name. John Doe Seed Company names this hybrid "JD 5259."

La Marque Seeds, Inc., obtains lines A and B, makes the same cross, and names the resulting hybrid variety "SML 25." There has been no change in the A and B lines that would result in a different variety. La Marque ships the hybrid seed, labeled "SML 25," in interstate commerce, and violates the Federal Seed Act because the seed should have been labeled "JD 5259."

SYNONYMS—VARIETIES WITH SEVERAL NAMES

As noted earlier, the name originally assigned to a variety is the name that must be used forever. It can't be changed unless it is illegal.

This does not mean that all varieties must be marketed under a single name. In fact, some old varieties may be marketed legally under more than one name. If several names for a single variety of an agricultural or vegetable seed were in broad general use before July 28, 1956, those names still may be used. For hybrid corn this exception applies to names in use before Oct. 20, 1951.

Here are some examples:

The names "Acorn," "Table Queen," and "Des Moines" have been known for many years to represent a single squash variety. They were in broad general use before July 28, 1956, so seed dealers may continue to use these names interchangeably.

If "Ajax 79EDX" hybrid field corn, released in 1949, also became known as "Golden Ajax 79EDX" in the late 1950's, it would be illegal to label or advertise that variety as "Golden Ajax 79EDX." If the two names had been in use before Oct. 20, 1951, the variety could then be marketed under either name.

With the exception of old varieties with allowable synonym names, all vegetable and agricultural varieties may have ***only one*** legally recognized name, and that name must be used by anyone who represents the variety name in labeling and advertising. This includes interstate seed shipments and seed advertisements sent in the mail or in interstate or foreign commerce.

IMPORTED SEED

Seed imported into the United States can't be renamed if the original name of the seed is in the Roman alphabet.

For example, cabbage seed labeled "Fredrikshavn" and shipped to the United States from Denmark can't be given a different variety name such as "Bold Blue."

Seed increased from imported seed also can't be renamed. If "Fredrikshavn" were increased in the United States the resulting crop still couldn't be named "Bold Blue."

Seed with a name that is not in the Roman alphabet must be given a new name. In such a case, the rules for naming the variety are the same as stated previously.

BRAND NAMES

USDA officials have found evidence of confusion over the use of variety names and brand or trademark names. This includes names registered with the Trademark Division of the U.S. Patent Office.

Here are some rules to keep in mind:

1. The brand or trademark name must be clearly identified as being other than part of the variety name.

For example, "Red Giant Brand Arthur 71 wheat" adequately distinguishes between "Red Giant" brand

and the variety "Arthur 71." "Red Giant Arthur 71 wheat," on the other hand, is not an adequate distinction.

2. A brand name must never take the place of a variety name.

Let's say a firm uses "Super Nova" as a brand name for its line of sunflowers. This firm may not relabel or advertise variety "894" hybrid sunflower seed as variety "Super Nova" hybrid sunflower or even "Super Nova 894" variety.

3. If a brand or trademark name is part of a variety's name, that trademark loses status. Anyone marketing the variety under its name is required to use the exact, legal variety name, including brand or trademark.

For instance, say Ajax Seed Company uses "Ajax Deluxe" as a brand or trademark for its line of vegetable seed. If the Ajax people introduce a new tomato variety named "Ajax Deluxe Cherry," they can't retain exclusive rights to that name. If John Doe Seed Company later makes an interstate shipment of seed of this same variety, it must be labeled as "Ajax Deluxe Cherry."

MIXTURES OR BLENDS

The labeling and advertising of a varietal mixture or blend must not create the impression that the seed is a single variety.

The Federal Seed Act allows seed in mixtures or blends to be assigned a brand name but not a variety name. Either the percentages of each varietal component of the blend or the phrase "varieties not stated" must be printed on the label. This rule applies to 36 kinds of agricultural seed.

For example, if a soybean product were a blend of three varieties, the label or advertising could not read "Peninsula Soybean" because "Peninsula" could be mistaken for a variety name. The same soybeans could be sold as "Peninsula Brand Soybean Blend, Varieties Not Stated."

Vegetable seed containing more than one variety must be labeled with the name and percentage of each variety present. The "Varieties Not Stated" option can't be used.

DO YOUR HOMEWORK

If you are in a position to name a new variety, you should investigate the name you wish to use. You should not use a name if it has been used before, or if a confusingly similar name exists.

Let's say Ajax Seed Company is marketing a new variety of red clover called "Verdant." Unknown to Ajax, a "Verdant" red clover was released by another firm more than 18 years ago. This original "Verdant" never did become popular, and today it has all but disappeared from the marketplace. The fact that it has disappeared doesn't matter. Journals, old catalogs, or other records would prove the existence of the original "Verdant," and therefore Ajax Seed Company must rename its variety.

Researching a name to avoid potential conflict is not foolproof. The Seed Regulatory Branch in USDA's Agricultural Marketing Service can assist you in your research. However, there is no official registry of variety names, so the branch's files are incomplete. USDA can't assure you that a name is completely clear.

SUMMARY

If the naming, labeling, and advertising of a seed variety is truthful, it is probably in compliance with the Federal Seed Act.

Keep these simple rules in mind to help eliminate violations and confusion in the marketing of seed:

- Research the proposed variety name before adopting it.
- Make sure the name cannot be confused with company names, brands, trademarks, or names of other varieties of the same kind of seed.
- Never change the variety name, whether marketing seed obtained from another source, or from your own production—for example, hybrid seed that already has a legal name.

FOR MORE INFORMATION

For more information on naming, labeling, and advertising seed, contact the Seed Regulatory Branch of the Livestock, Meat, Grain, and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture.

Write to: Seed Regulatory Branch, Rm. 2603-S, AMS, USDA, Washington, D.C., 20250, or call: (202) 447-9340.

The use of company and variety names in this guide is for illustration only and does not constitute endorsement or indictment by the U.S. Department of Agriculture.

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

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United States Department of Agriculture
AGR 101

In the Matter of the Proposed
Rule of the Department of
Agriculture Governing Variety
Labeling of Agricultural Seed
(Minnesota Rule 1510.0011)

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, (Special Assistant Attorney General) Jon Murphy, do hereby declare that I have examined the rule and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Jon Murphy

Special Assistant Attorney General

Date: 7/25/85