

March 2010

Introduced by

1 A BILL for an Act to create and enact....

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1. Definitions.** In this chapter, unless the context otherwise requires:

4 1. "Agricultural seed" means:

5 a. The seed of grass, forage, cereal, fiber, or oil crops;

6 b. Irish potato seed tubers;

7 c. Lawn seed;

8 d. Any other seed designated by the seed commissioner as agricultural seed;

9 and

10 e. Any mixture of seeds referenced in this subsection.

**NOTE:** Current law provides that agricultural seed means "the seed of grass, forage, cereal, fiber, oil crops, Irish potato seed tubers, and any other kind of seeds commonly recognized within this state as agricultural seed, lawn seed, and mixture of these seeds. The committee directed that the current law be amalgamated with the following definitions:

Federal Seed Act (FSA):

Agricultural seed means grass, forage, and field crop seeds which the Secretary of Agriculture finds are used for seeding purposes in the United States and which he lists in the rules and regulations prescribed under Section 1592 of this title.

California statute:

Agricultural seed means the seed of any domesticated grass or cereal, and of any legume or other plant that is grown as turf, cover crop, forage crop, fiber crop, or field crop, and mixtures of such seeds. It does not, however, include any variety that is generally known and sold as flower seed or vegetable seed.

The proposed language recognizes that there may be additional seeds that fall into the definition. However, instead of referring to such seeds as those that are "commonly recognized within this state" as agricultural seed, the language parallels the FSA requirement that there be an official finding by the Secretary of Agriculture and requires that there be a determination by the Seed Commissioner.

- 1           2.   "Blend" means seed that consists of more than one variety, provided each variety  
2                   constitutes more than five percent of the whole, by weight.
- 3           3.   "Brand" means a word, name, symbol, number, or design used to identify seed of  
4                   one person and distinguish the seed from that of another person.
- 5           4.   "Certification" means a process that is:
- 6                   a.   Designed to maintain the genetic purity and varietal identity of crop cultivars;  
7                         and
- 8                   b.   Requires a variety of components, including:
- 9                         (1)   An examination of records provided by the producer;  
10                        (2)   An inspection of the field in which the plants producing seed for  
11                           certification are growing; and
- 12                        (3)   The testing and grading of a representative sample taken from the  
13                           harvested seed by the producer.

**NOTE:**

1.   This is a reworked definition of certification. Paragraph 3 attempts to indicate that the "representative sample" is provided by the producer. Is this accurate? Does the Seed Department ever obtain the representative sample?
2.   Should the subsection specify that the Seed Department is responsible for the various steps?
- 14           5.   "Certified" means a designation that the seed department has authorized a labeler  
15                   to use on seed that met the requirements for certification.
- 16           6.   "Conditioning" means drying, cleaning, scarifying, and other operations that may  
17                   change the purity or germination of the seed.

**NOTE:** The FSA defines "processing" as cleaning, scarifying, or blending to obtain uniform quality, and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or variety without cleaning, or the preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

There is an inconsistency between the current state law, which references operations that "may change the purity or germination of the seed", and the FSA definition, which references operations that "would change the purity or germination of the seed."

Seed Department personnel suggested defining conditioning as "any process to obtain uniform quality that may change the germination or purity of the seed."

A general Internet search of seed conditioners suggests that conditioning is "any process to remove unwanted material from a seed lot in order to produce a uniform product."

Aside from the definition, the word "conditioning" is used in only four sections:

4-09-03(2) A representative ... who operates a seed conditioning plant ...

4-09-06(4) The order shall prohibit further ... conditioning ...

4-09-15(1) Seed stored by or consigned to a seed cleaning or conditioning plant. ...

4-09-16(1) The commissioner shall adopt rules governing ... conditioning ...

- 1       7.   "Flower seed" means the seed of a herbaceous plant grown for its bloom,  
2           ornamental foliage, or other ornamental part.

**NOTE:** Current law also states that the phrase "flower seed" includes seed "commonly known and sold under the name of flower or wildflower seed in this state." This verbiage was removed because the definition standing on its own appeared to include wildflower seed.

- 3       8.   "Germination" means the physiological process of development and the  
4           emergence from the seed embryo of essential structures that are indicative of the  
5           ability to produce a normal plant under favorable conditions.

- 6       9.   "Hard seed" means a seed that has an impermeable seed coat and has not  
7           absorbed water by the end of the prescribed test period.

- 8       10. "Inert matter" means anything other than unbroken seeds.

**NOTE:** Is it commonly understood that an unbroken seed is one in which more than half of the seed is present or does this need to be included in the definition?

- 9       11. "Kind" means one or more related species or subspecies known singly or  
10           collectively by a common name.

- 11       12. "Label" means a tag or device attached to a seed container, stamped or printed  
12           information on a seed container, or written information accompanying a lot of bulk  
13           seed.

- 14       13. "Labeler" means the person whose name and address appears on the label.

- 15       14. "Lot" means an identifiable quantity of seed that is uniform within permitted  
16           tolerances for the factors that appear on its label.

- 17       15. "Mixture" means seed consisting of more than one kind, each in excess of five  
18           percent of the whole, by weight.

- 19       16. "Official seed-certifying agency" means:

- 20           a. An agency that is authorized under the laws of a state, territory, or possession  
21           to officially certify seed and which has standards and procedures approved by

- 1                   the United States secretary of agriculture to assure the genetic purity and  
2                   identity of any seed it certifies; or  
3            b.   An agency of a foreign country if the United States secretary of agriculture  
4                   has determined that the agency adheres to seed certification procedures and  
5                   standards that are comparable to those generally adhered to by a  
6                   seed-certifying agency meeting the criteria set forth in subdivision a.

7    17.   "Prohibited weed seed" means:

- 8            a.   The seed or propagule of any weed designated as noxious by the agriculture  
9                   commissioner in accordance with section 4.1-47-05; or  
10           b.   The seed or propagule of any weed determined by the seed commissioner to  
11                   be highly destructive and difficult to control by good cultural practices or by  
12                   the use of herbicides.

**NOTE:** A propagule is any structure that can give rise to a new individual organism, especially parts of a plant that serve as means of vegetative reproduction, such as corms, tubers, offsets, or runners. Seed and spores are also propagules. (A corm is a fleshy underground stem that is similar to a bulb but stores its food as stem tissue and has fewer and thinner leaflike scales. The crocus and gladiolus produce new shoots from corms.)

13    18.   "Pure seed" means agricultural and vegetable seed excluding all inert matter and  
14                   excluding all seed not of the kind or variety being considered.

15    19.   "Record" includes all information relating to lot identification, source, origin, variety,  
16                   amount, processing, testing, labeling, distribution, and file sample of the seed.

17    20.   "Restricted weed seed" means a seed that is determined by the seed  
18                   commissioner to be:

- 19            a.   Objectionable in agricultural seed, lawn or turf seed, vegetable seed, and  
20                   flower seed; and  
21            b.   Controllable by good cultural practices or the use of herbicides.

**NOTE:** Current law provides that a restricted (noxious) weed seed is one that is objectionable in "agricultural crops, lawns, and gardens ...". The proposed language suggests that for purposes of this chapter, the seed is objectionable when it is found in the containers of the various other seeds and not in the crops or lawns per se.

22    21.   "Selection" means a subgroup of a variety and includes clones, lines, and strains.

23    22.   "Treated" means a seed has received an application of a substance intended to  
24                   enhance the performance of the seed or alter a physiological process of the plant.

25    23.   "Variety" means a subdivision of a kind that:

- 1           a. Can be differentiated by one or more identifiable morphological, physiological,
- 2                   or other characteristics from other varieties of the same kind;
- 3           b. Has describable variations in essential and distinct characteristics; and
- 4           c. Will remain unchanged in its essential and distinct characteristics and
- 5                   uniformity when reproduced or reconstituted, as required by the different
- 6                   categories of varieties.

**SOURCE:** Section 4-09-01.

1. The definition of "type" was deleted at the recommendation of Seed Department personnel.
2. Current law provides that "[f]oundation seed, registered seed, and certified seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the rules of an officially recognized seed-certifying agency. This definition also was deleted at the recommendation of Seed Department personnel. In its place is a definition of "certification" and a reworked definition of "certified."

7           **SECTION 2. Seed department - Location.** The North Dakota seed department is the  
8 official seed-certifying agency of the state. The seed department must be located on the  
9 campus of North Dakota state university of agriculture and applied science.

**SOURCE:** Section 4-09-02.

10           **SECTION 3. Official seal.** The seed department shall have and use an official  
11 departmental seal that has been recorded in the office of the secretary of state.

**SOURCE:** Section 4-09-04.

12           **SECTION 4. Seed commission - Membership.** The seed commission is the  
13 governing board of the seed department. The seed commission consists of the following nine  
14 members:

- 15           1. An individual appointed by the North Dakota crop improvement association;
- 16           2. An individual appointed by the North Dakota certified seed potato growers  
17                   association;
- 18           3. An individual appointed by the North Dakota dry edible bean seed growers  
19                   association;
- 20           4. An individual appointed by the North Dakota agricultural association;
- 21           5. An individual who is a member of the North Dakota potato council, selected by the  
22                   North Dakota potato council;

- 1           6. A resident of this state appointed by the northern plains potato growers
- 2                 association;
- 3           7. An individual who operates a seed-conditioning plant approved by the seed
- 4                 department, appointed by the North Dakota grain dealers association;
- 5           8. The director of the agricultural experiment station or the director's designee; and
- 6           9. The agriculture commissioner or the agriculture commissioner's designee.

**SOURCE:** Section 4-09-03.

7           **SECTION 5. Seed commission - Chairman - Meetings.**

- 8           1. The agriculture commissioner shall serve as the chairman of the seed commission.
- 9           2. The chairman shall call all regular meetings of the seed commission and shall call
- 10                 a special meeting within seven days if petitioned to do so by two members of the
- 11                 seed commission.
- 12           3. The seed commission shall hold at least two regular meetings each year.

**SOURCE:** Section 4-09-03.

- 13           **SECTION 6. Seed commission - Appointment of proxy.** If a member of the seed  
14 commission is unable to attend a meeting of the commission, the member may appoint a proxy.  
15 The appointment must be in writing and must be presented to the chairman. The vote of the  
16 proxy is final.

**SOURCE:** Source 4-09-03.

**NOTE:** Current law provides that a "commission member unable to attend a meeting of the commission may be represented by a proxy who has written authorization from the absent commission member." The rewrite adds that the authorization must be presented to the chairman and that the vote of the proxy is final. Neither current law nor the proposed rewrite restricts the number of times that a proxy may be authorized by an absentee member.

- 17           **SECTION 7. Seed commission - Members - Compensation.** Each member of the  
18 seed commission, except the agriculture commissioner and the director of the agricultural  
19 experiment station, is entitled to receive compensation at the rate of one hundred thirty-five  
20 dollars per day and reimbursement for expenses, as provided by law for state officers, if the  
21 member is attending a commission meeting or performing duties directed by the commission.

**SOURCE:** Section 4-09-03.

- 22           **SECTION 8. Seed commission - Powers.** The seed commission may:

- 1           1. Establish branch offices and laboratories at locations in this state, other than the  
2                   campus of North Dakota state university, if the seed commissioner determines that  
3                   they are necessary to carry out the duties of the seed commission, the seed  
4                   commissioner, or the seed department;
- 5           2. Dismiss the seed commissioner for cause; and
- 6           3. Appoint an acting seed commissioner if the position becomes vacant.

**SOURCE:** Sections 4-09-02 and 4-09-03.

7           **SECTION 9. Seed commissioner - Powers.** The seed commissioner may:

- 8           1. Contract with the North Dakota state university for the use of facilities and  
9                   equipment; <sup>1</sup> and
- 10          2. At any time, enter upon real property and access any structure and personal  
11                   property to:
  - 12           a. Inspect, sample, and test seed for compliance with this chapter; and
  - 13           b. Inspect records for compliance with this chapter. (Section 4-09-06)

**SOURCE:** Sections 4-09-02(1) and 4-09-06.

**NOTE:** <sup>1</sup> Current law provides that the "commissioner may utilize the premises, space, and equipment at North Dakota state university as may be assigned to the commissioner by the university."

14          **SECTION 10. Seed commissioner - Duties.**

- 15          1. The seed commissioner shall:
  - 16           a. Provide, equip, and maintain offices, laboratories, and any other facilities  
17                   necessary to carry out this chapter, subject to the approval of the seed  
18                   commission;
  - 19           b. Manage the seed department;
  - 20           c. Prepare the biennial budget and annual salary schedules for the seed  
21                   department;
  - 22           d. Submit the seed department's biennial budget to the office of management  
23                   and budget;
  - 24           e. Provide semiannual reports to the seed commission;
  - 25           f. Establish and change fees for laboratory tests and services; and
  - 26           g. Perform any other duties as directed by the commission. <sup>1</sup>

- 1           2.   The seed commissioner shall permit the university to use the seed department  
2                   facilities and the services of the seed department laboratories at convenient  
3                   times. <sup>2</sup>
- 4           3.   The commissioner shall determine the nature and size of any seed and plant  
5                   samples required by the seed department in order to conduct official tests or make  
6                   official determinations and shall prescribe the manner in which the seed and plan  
7                   samples are to be procured and delivered to the seed department. <sup>3</sup>

**SOURCE:** Sections 4-09-02, 4-09-03, 4-09-08, and 4-09-09.

**NOTE:**

<sup>1</sup> Subsection 1(g), as rewritten, requires the Seed Commissioner to perform any other duties as directed by the commission. Current law requires that the Seed Commissioner "make ... any other reports as requested by the commission."

- <sup>2</sup> a. Current law provides that the "commissioner shall permit the facilities and services of the official laboratories to be used by the university at convenient times." Current law does not clarify whether this is with or without the approval and supervision of the Seed Commission.
- b. The committee might wish to determine whether this is a point that needs to be separately articulated or whether it could be considered as part of the Seed Commissioner's power to "[C]ontract with the North Dakota State University for the use of facilities and equipment." (See Section 9(1) of this rewrite.)

<sup>3</sup> Section 4-09-09 provides that "[t]he commissioner may make rules and regulations governing the size and nature of the sample of seed or plants submitted to the laboratory, as may be necessary to make a reliable or official test, analysis, description, or determination of grade, quality, or condition of disease infection on any lot of seed or plants. The commissioner may prescribe the necessary manner of taking samples from given lots of seed in order to represent properly the various circumstances and purposes for which samples are taken, and to preserve the identity, and to provide for proper delivery to the laboratory, of the seed samples or plant specimens."

The committee may wish to determine whether this should be a requirement of the Seed Commissioner and appropriately placed in the section setting forth the Seed Commissioner's "duties." If the intent is merely to authorize this activity, that authorization already exists by virtue of Chapter 28-32 and does not need to be reiterated.

8           **SECTION 11. Stop-sale order - Issuance - Enforcement - Appeal.**

- 9           1.   The seed commissioner may issue a written stop-sale order to the owner or  
10                   custodian of any lot of seed that the seed commissioner finds to be in violation of  
11                   this chapter.
- 12           2.   The stop-sale order shall prohibit any further conditioning, movement, or sale of the  
13                   seed, except under written permission of the seed commissioner.



- 1           3.   The stop-sale order shall remain in effect until the seed commissioner is satisfied  
2                   that the violation no longer exists. Upon making that determination, the seed  
3                   commissioner shall remove the stop-sale order.
- 4           4.   The seed commissioner shall do all things necessary and proper to enforce a  
5                   stop-sale order issued under this section.
- 6           5.   Any person subject to a stop-sale order under this section may appeal the order to  
7                   a court of competent jurisdiction.

**SOURCE:** Section 4-09-06.

**NOTE:**

1. Section 4-09-06 also authorizes the Seed Commissioner to enter premises and inspect, examine, analyze, and test seed. That provision has been moved to Section 9, which addresses the powers of the commissioner.
2. It is recommended that this section be located with other enforcement provisions.

8           **SECTION 12. Certificates and reports - Publication.** If the seed commissioner signs  
9 a document relating to the findings and determinations made in a laboratory by seed  
10 department personnel, a court shall accept the document as prima facie evidence of the  
11 statements contained in the document. The seed commissioner is subject to court order for a  
12 review of the findings and determinations set forth in the document.

**SOURCE:** Section 4-09-07.

**NOTE:** It is recommended that this section be relocated.

13           **SECTION 13. Label requirements - Agricultural seed.**

- 14           1.   Agricultural seed offered for sale or sold in this state, for planting purposes, must  
15                   be labeled.<sup>1</sup>
- 16           2.   a.   If the agricultural seed is offered for sale or sold in a container, the label must  
17                   be conspicuously placed on or attached to the container and plainly printed in  
18                   English.
- 19               b.   If the agricultural seed is offered for sale or sold in bulk, the label must be  
20                   provided to the purchaser at or before the time of delivery.<sup>2</sup>

**SOURCE:** Section 4-09-10(1).

**NOTE:**

<sup>1</sup> The FSA also provides that it is unlawful for any person to "transport or deliver for transportation in interstate commerce" any agricultural seeds, unless "each container bears a label. ..." Does the reference to transportation need to be maintained or do the regulatory duties of the Seed Department commence only upon an offering for sale?

<sup>2</sup> Current law indicates that with respect to bulk sales or movements of agricultural seed, the label must be "properly delivered." Seed Department personnel have indicated that this requires the label to be provided to the purchaser at or before the time of delivery.

1       **SECTION 14. Agricultural seed - Label - Content.** A label required by section 13 of  
2 this Act must include:

- 3       1. The lot number or other lot identification;  
4       2. a. The state or foreign country in which the seed was grown; or  
5       b. A statement indicating that the origin of the seed is unknown;  
6       3. The percentage by weight of all weed seed;  
7       4. The name of each restricted weed seed present and its rate of occurrence per  
8       pound [453.59 grams], if:  
9       a. In seeds of grasses and small seeded legumes the rate of occurrence  
10       exceeds thirteen seeds per pound [453.59 grams]; or  
11       b. In any other agricultural seeds, the rate of occurrence exceeds five seeds per  
12       pound [453.59 grams];  
13       5. The percentage by weight of any other crop seeds present; <sup>1</sup>  
14       6. The percentage by weight of inert matter;  
15       7. a. The percentage of germination, exclusive of hard seed;  
16       b. The percentage of hard seed, if applicable; and  
17       c. The month and year in which the percentages were determined; and  
18       8. The full name and address of the labeler.

**SOURCE:** Section 4-09-10(6).

**NOTE:** What is a crop seed as opposed to an agricultural seed? Could the subsection state: "The percentage by weight of any other seed present"?

19       **SECTION 15. Agricultural seed - Label requirements - Treated seed.**

- 20       1. In addition to any other requirements set forth in this chapter, if the seed has been  
21       treated, the label must indicate that the treatment has occurred and must include  
22       the commonly accepted, coined, chemical, or abbreviated chemical name of the  
23       substance used in the treatment.  
24       a. If the substance <sup>1</sup> with which the seed was treated is harmful to humans or to  
25       other vertebrate animals, the label must contain a cautionary statement  
26       prohibiting the use for the seed for human or animal consumption. <sup>2</sup>

- 1            b. If the substance with which the seed was treated is a mercurial or a similarly  
2            toxic substance, the label must contain a statement and symbol indicating that  
3            the substance is poison.
- 4            c. If the substance with which the seed was treated is an inoculant, the label  
5            must contain the date beyond which the inoculant is claimed not to be  
6            effective for use on that particular seed. <sup>3</sup>
- 7            2. The information required by this section may be placed on a separate label. <sup>4</sup>

**SOURCE:** Section 4-09-10(6).

**NOTE:**

<sup>1</sup> Current law requires a cautionary statement if "the substance in the amount present with the seed is harmful to human or other vertebrate animals. ..." At the recommendation of Seed Department personnel, this has been changed to require a cautionary statement "if the substance is harmful to humans. ..."

<sup>2</sup> Current law requires that the cautionary statement prohibit the use of the seed "for food, feed, or oil purposes." At the recommendation of Seed Department personnel, this has been changed to require that the cautionary statement prohibit the use of the seed "for human or animal consumption."

<sup>3</sup> Because inoculants can have different degrees of longevity depending on the seed to which they are applied, the rewrite clarifies that the date beyond which the inoculant is claimed not to be effective is the date applicable to the particular seed being treated.

<sup>4</sup> Does the separate label have to meet the requirements of the primary label?

- 8            **SECTION 16. Agricultural seed - Label requirements - Hermetically sealed**  
9            **containers.** In addition to any other label requirements set forth in this chapter, if agricultural  
10           seed that is offered for sale or sold is in a container that has been hermetically sealed, the label  
11           must so indicate.

**SOURCE:** Section 4-09-10(6).

- 12           **SECTION 17. Agricultural seed - Additional label requirements - Limited**  
13           **applicability.**

- 14           1. a. In addition to any other label requirements set forth in this chapter, the label  
15           on each container of barley, canola, dry beans, durum <sup>1</sup>, field peas <sup>2</sup>, flax,  
16           oats, rye, soybeans, and wheat seed offered for sale or sold in this state, for  
17           planting purposes, must include:
- 18           (1) The kind of each agricultural seed;  
19           (2) The variety of each agricultural seed component constituting more than  
20           five percent of the whole; and

- 1                   (3) The percentage by weight of each agricultural seed component  
2                               constituting more than five percent of the whole.
- 3                   b. Paragraphs 2 and 3 of subdivision a are not applicable to agricultural seed  
4                               labeled as being for vegetative cover only.
- 5                   2. In addition to any other requirements set forth in this chapter, the label on each  
6                               container of agricultural seed other than barley, canola, dry beans, durum, field  
7                               peas, flax, oats, rye, soybeans, and wheat seed, offered for sale in this state for  
8                               planting purposes:
- 9                               a. Must include the kind of each agricultural seed;  
10                              b. May include the variety of each agricultural seed component constituting more  
11                              than five percent of the whole; and
- 12                              c. Must include the percentage by weight of each agricultural seed component  
13                              constituting more than five percent of the whole.

**SOURCE:** Section 4-09-10(2) and (4).

**NOTE:**

<sup>1</sup> Is there a reason to reference durum and wheat separately?

<sup>2</sup> According to the North Dakota State University Department of Agricultural Economics, a "field pea" is also known as a "dry pea." Chapter 4.1-07, which pertains to the Dry Pea and Lentil Council, consistently uses the phrase "dry peas and lentils" and defines that phrase as including chickpeas, lupins, and fava beans.

- 14                   **SECTION 18. Selling of seed by brand - Requirements.** The seed of barley, canola,  
15 dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat may be sold by brand,  
16 provided the true variety name or number is clearly stated on the label in a type size equal to or  
17 greater than that of the brand.

**SOURCE:** Section 4-09-10(2).

**NOTE:** Is it necessary to require use of the "true" variety name or is it sufficient to refer just to the variety name?

- 18                   **SECTION 19. Canola seed - Additional label requirements.** In addition to any other  
19 requirements set forth in this chapter, the label on each container of canola seed must contain a  
20 statement indicating that the seed has been:

- 21                   1. Certified by the seed commissioner as meeting the standards of this state <sup>1</sup>; or

- 1           2. Certified by another state or province having canola certification standards that are  
2                   determined by the seed commissioner <sup>2</sup> to meet or exceed the standards of this  
3                   state. <sup>3</sup>

**SOURCE:** Section 4-09-10(3).

**NOTE:** Current law states that "In seed of canola, the label must contain a statement that the seed is certified by the commissioner as meeting the standards of this chapter or certified by another state or province having certification standards for canola which meet or exceed standards adopted by this chapter."

<sup>1</sup> Because the canola certification standards are found in the North Dakota Administrative Code, the rewrite clarifies that the certification standards are those of "this state" and not "this chapter."

<sup>2</sup> Because current law provides that the canola seed may be "certified by another state or province having certification standards for canola which meet or exceed standards adopted by this chapter," the rewrite clarifies that the Seed Commissioner will determine whether or not the standards of another state or province meet or exceed those of this state.

<sup>3</sup> Within a chapter setting forth label requirements, this section appears to prohibit the sale of any canola seed that is not certified. If that is the intent, perhaps the section should be reworded and then relocated.

- 4           **SECTION 20. Agricultural seed components - Label requirements - Mixture**  
5 **designation.** If more than ten percent of the whole consists of an aggregate of agricultural  
6 seed components, each present in an amount not exceeding five percent of the whole, the label  
7 must include each component in excess of one percent of the whole named together with the  
8 percentage by weight of each. Each component must be listed in the order of its  
9 predominance. If more than one component is named, the word "mix", "mixed", "mixture", or  
10 "blend" must be stated appropriately with the name of the mixture or blend.

**SOURCE:** Section 4-09-10(5).

**NOTE:** In order for this section to be applied, each of the agricultural seed components may not exceed five percent of the whole. If the requirements of the section are met, the word "mix", "mixed", "mixture", or "blend" must be used on the label. However, under current law, "mixture" is defined as "seed consisting of more than one kind, each in excess of five percent by weight of the whole" and "blend" is defined as "seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole."

- 11           **SECTION 21. Labeling requirements - Vegetable seed.**

- 12           1. Each container of vegetable seed offered for sale or sold in this state, for planting  
13                   purposes, must be labeled.

- 1           2.   The label must be placed conspicuously on or attached to the container and plainly  
2                    printed in English.

**SOURCE:** Section 4-09-11(1).

**NOTE:** The FSA also provides that it is unlawful for any person to "transport or deliver for transportation in interstate commerce" any vegetable seeds, unless "each container bears a label ..." Does the reference to transportation need to be maintained or do the regulatory duties of the Seed Department commence only upon an offering for sale?

3           **SECTION 22. Vegetable seed - Label - Content.** The label for vegetable seed  
4 packed in units of one pound or less <sup>1</sup> and the label for vegetable seed on prepared mats,  
5 tapes, or in preplanted containers must include:

- 6           1.   The kind and variety of seed;  
7           2.   The lot number or other lot identification;  
8           3.   The full name and address of the labeler;  
9           4.   The month and year in which the germination test was completed; and  
10          5.   a.   The percentage of germination; or  
11                b.   The date by which the seed must be sold. <sup>2</sup>

**SOURCE:** Section 4-09-11.

**NOTE:**

<sup>1</sup> Current law references vegetable seed in packets prepared for use in home gardens or household plantings. The FSA separates requirements by the weight of the package, i.e., containers of one pound or less and containers of more than one pound. At the recommendation of Seed Department personnel, the rewrite reconciles the North Dakota Century Code with the FSA.

<sup>2</sup> Current law requires that the label include:

The calendar month and year the germination test was completed and a statement stating the sell by date that may be no more than twelve months from the date of test, exclusive of the month of test, or the percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within twelve months, exclusive of the month of test.

A question arose about the option to allow "the percentage germination ... provided the germination test was completed within twelve months ...".

Current law is not clear whether this is to be within 12 months of the date on which the product was labeled or within 12 months of the date on which the product is sold.

The language recommended by Seed Department personnel, which has been incorporated in this section, allows a labeler to select a sell by date but does not set an outer limit for that date.

1           **SECTION 23. Vegetable seed - Additional label requirements.** If the germination  
2 test referenced in section 22 of this Act results in a finding that the seed does not meet the  
3 standards for germination, as established by the commissioner, the label must include:

- 4           1. The percentage of germination, exclusive of hard seed;
- 5           2. The percentage of hard seed, if present; and
- 6           3. The words "below standard" in at least eight-point type.

**SOURCE:** Section 4-09-11(2)(c).

7           **SECTION 24. Vegetable seed - Quantity - Label requirement.** If the vegetable  
8 seeds are on a mat, on tape, or in some other germination medium and the quantity of seed  
9 cannot be readily determined, the label must include the minimum number of seeds per  
10 definable unit.

**SOURCE:** Section 4-09-11(2)(f).

11           **SECTION 25. Vegetable seed - Larger units - Label requirement - Exception.**

12           1. The label for any vegetable seed other than that referenced in section 22 of this  
13 Act must include:

- 14           a. The lot number or other lot identification;
- 15           b. (1) The kind and variety of vegetable seed present in excess of five percent  
16 by weight; <sup>1</sup>  
17               (2) The percentage by weight of each seed referenced in paragraph 1, in  
18 order of its predominance;  
19               (3) The percentage of germination for each seed referenced in  
20 paragraph 1, exclusive of hard seed;  
21               (4) The percentage of hard seed, if present; and  
22               (5) The month and year that the percentages were determined; and <sup>2</sup>

23           c. The full name and address of that labeler.

24           2. If a person purchases more than one pound of vegetable seed, the container into  
25 which the seed is placed is exempt from the label requirements of this section,  
26 provided that, in the presence of the purchaser, the seed is removed from a  
27 properly labeled container and weighed. <sup>3</sup>

**SOURCE:** Section 4-09-11(3) and (5).

**NOTE:**

<sup>1</sup> Current law requires the label to note the "kind and variety of vegetable seed present in excess of five percent. ..." Seed Department personnel indicated that the reference is to 5 percent "by weight" not by number.

<sup>2</sup> Section 4-09-11(3)(c) states:

For each named vegetable seed, the percentage of germination, exclusive of hard seed, and the percentage of hard seed if present, and if desired, the total germination and hard seed.

Because the underlined phrase appears to be "optional" it has been omitted from the list of statutory requirements.

<sup>3</sup> The committee might wish to discuss the enforceability of this provision.

1     **SECTION 26. Treated vegetable seed - Additional requirements.**

2     1. In addition to any other requirements set forth in this chapter, if the vegetable seed  
3         has been treated, the label must indicate that the treatment has occurred and must  
4         include the commonly accepted, coined, chemical, or abbreviated chemical name  
5         of any substance used in the treatment.

6     2. If the substance with which the seed was treated is harmful to humans or to other  
7         vertebrate animals, the label must contain a cautionary statement prohibiting the  
8         use for the seed for human or animal consumption. <sup>1</sup>

9     3. If the substance with which the seed was treated is a mercurial or a similarly toxic  
10        substance, the label must contain a statement and symbol indicating that the  
11        substance is poison.

12    4. If the substance with which the seed was treated is an inoculant, the label must  
13        contain the date beyond which the inoculant is claimed not to be effective on that  
14        particular seed. <sup>2</sup>

15    5. The information required by this section may be placed on a separate label.

**SOURCE:** Section 4-09-11(4).

**NOTE:**

<sup>1</sup> Current law requires a cautionary statement "if the substance in the amount present with the seed" is harmful to human or other vertebrate animals. The FSA requires a cautionary statement if "the substance used in such treatment in the amount remaining with the seeds is harmful to humans or other vertebrate animals. ..."

How is the threshold amount determined?

Seed Department personnel recommended that the cautionary statement be required if the substance is harmful to humans or other vertebrate animals.



<sup>2</sup> Seed Department personnel indicated that the date beyond which an inoculant is no longer effective can vary depending on the seed that is subject to treatment. Therefore, the rewrite provides that the label must contain the date beyond which the inoculant is claimed not to be effective "on that particular seed."

1       **SECTION 27. Vegetable seed - Label requirements - Hermetically sealed**  
2 **containers.** In addition to any other label requirements set forth in this chapter, if vegetable  
3 seed that is offered for sale or sold is in a container that has been hermetically sealed, the label  
4 must so indicate.

**SOURCE:** Section 4-09-11(6).

**NOTE:** Current law requires the label to state that the seed container is a hermetically sealed container. The rewrite clarifies that this requirement is in place only if the container is in fact hermetically sealed.

5       **SECTION 28. Flower seed - Label - Content.**

- 6       1. Each container of flower seed offered for sale or sold in this state, for planting  
7       purposes, must be labeled.  
8       2. The label must be conspicuously placed on or attached to the container and plainly  
9       printed in English.

**SOURCE:** Section 4-09-11.1(1).

10       **SECTION 29. Flower seed - Label content.** The label for flower seed packed in units  
11 of one pound [453.59 grams] or less<sup>1</sup> and the label for flower seed on prepared mats, tapes, or  
12 in preplanted containers must include:

- 13       1. a. The kind and variety; or  
14       b. The information required by rule with respect to type and performance  
15       characteristics;  
16       2. a. The month and year in which the seed was tested; or  
17       b. The year for which the seed was packaged; and  
18       3. The full name and address of the labeler.

**SOURCE:** Section 4-09-11(3)(a).

**NOTE:**

<sup>1</sup> Current law references flower seed in packets prepared for use in home gardens or household plantings. Similar provisions with respect to vegetable seed were changed to reflect FSA weight categories, i.e., containers of one pound or less and containers of more than one pound. While this change has been made in the rewrite for purposes of consistency, its appropriateness should be discussed.

1           **SECTION 30. Flower seed - Quantity - Label requirement.** If the flower seeds are  
2 on a mat, on tape, or in some other germination medium and the quantity of seed cannot be  
3 readily determined, the label must include the minimum number of seeds per definable unit.

**SOURCE:** Section 4-09-11.1(3)(c).

4           **SECTION 31. Flower seed - Standard testing procedures - Label content.** If the  
5 flower seed is of a kind for which standard testing procedures are prescribed by the association  
6 of official seed analysts, and if the seed does not meet the standard for germination required by  
7 rule, the label must include the percentage of germination exclusive of hard seeds and the  
8 words "below standard" in at least eight-point type.

**SOURCE:** Section 4-09-11.1(3)(b).

**NOTE:** Current law references seeds for which standard testing procedures are prescribed. The rewrite clarifies that these standard procedures are prescribed by the Association of Official Seed Analysts.

9           **SECTION 32. Flower seed - Label content.**

- 10           1. The label for any flower seed other than that referenced in section 29 of this Act  
11           must include:
- 12           a. (1) The kind and variety; or
  - 13           (2) The information required by rule with respect to type and performance  
14           characteristics;
  - 15           b. The lot number or other lot identification;
  - 16           c. (1) The month and year in which the seed was tested; or  
17           (2) The year for which the seed was packaged; and
  - 18           d. The full name and address of the labeler.
- 19           2. If the flower seed is of a kind for which standard testing procedures are prescribed  
20           by the association of official seed analysts, the label must also include:
- 21           a. The percentage of germination exclusive of hard seed; and
  - 22           b. The percentage of hard seed, if present.

**SOURCE:** Section 4-09-11.1(4).

23           **SECTION 33. Treated flower seed - Additional requirements.**

- 24           1. In addition to any other requirements set forth in this chapter, if the flower seed has  
25           been treated, the label must indicate that the treatment has occurred and must

- 1           include the commonly accepted, coined, chemical, or abbreviated chemical name  
2           of the substance used in the treatment. <sup>1</sup>
- 3           2. If the substance with which the flower seed was treated is harmful to humans or to  
4           other vertebrate animals, the label must contain a cautionary statement prohibiting  
5           the use for the seed for human or animal consumption. <sup>2</sup>
- 6           3. If the substance with which the seed was treated is a mercurial or a similarly toxic  
7           substance, the label must contain a statement and symbol indicating that the  
8           substance is poison.
- 9           4. If the substance with which the seed was treated is an inoculant, the label must  
10           contain the date beyond which the inoculant is claimed not to be effective on that  
11           particular seed. <sup>3 and 4</sup>

**SOURCE:** Section 4-09-11.1(2).

**NOTE:**

<sup>1</sup> Current law appears to offer the labeler an option, i.e., indicate that the treatment has occurred and include the commonly accepted coined, chemical, or abbreviated chemical name of any substance used in the process or include a description of the treatment process. At the recommendation of Seed Department personnel, the latter option has been removed.

<sup>2</sup> Current law requires a cautionary statement "if the substance in the amount present with the seed is harmful to human or other vertebrate animals." How is the threshold amount determined? Seed Department personnel recommended that the cautionary statement be required if the substance is harmful to humans or other vertebrate animals.

<sup>3</sup> Does the phrase "on that particular seed" need to be included or do flower seed inoculants have standardized expiration dates? (See note regarding the use of inoculants on vegetable seeds.)

<sup>4</sup> Similar label information when required with respect to vegetable seeds may be contained on a separate label. Is this also the case with respect to flower seeds?

12           **SECTION 34. Labeling requirements for tree seed and shrub seed.**

- 13           1. Each container of tree seed or shrub seed offered for sale or sold in this state, for  
14           planting purposes, must be labeled.
- 15           2. The label must be conspicuously placed on or attached to the container and plainly  
16           printed in English.

**SOURCE:** Section 4-09-11.2(1).

**NOTE:** This subsection also provides that "labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis

tag attached to the invoice if each container is clearly identified by a lot number stenciled on the container or if the seed is in bulk."

1. What is meant by the phrase "seed supplied under a contractual agreement"?
2. Please review the phrases in this sentence and clarify the intended grammatical modifications. It is not clear whether version #1 or #2 is intended.

Version #1:

Seed supplied under a contract may be labeled by:

1. Invoice accompanying the shipment; or
2. An analysis tag attached to the invoice if each container is clearly identified by a lot number stenciled on the container or if the seed is in bulk.

Version #2:

Seed supplied under a contract may be labeled by invoice accompanying the shipment or by an analysis tag attached to the invoice provided:

1. Each container is clearly identified by a lot number stenciled on the container; or
2. The seed is in bulk.

In the section pertaining to the labeling of agricultural seed, the rewrite states that if agricultural seed is "offered for sale or sold in bulk, the label must be provided to the purchaser at or before the time of delivery." Should the language in the two sections be reconciled?

1 **SECTION 35. Tree seed and shrub seed - Label - Content. A label required by this**

2 section must include:

- 3 1. The common name of the tree or shrub species and, if appropriate, the name of  
4 the subspecies;
- 5 2. The scientific name of the genus, the species, and if appropriate the name of the  
6 subspecies;
- 7 3. The lot number or other lot identification;
- 8 4. The elevation at which or the upper and lower elevations within which the seed  
9 was collected;
- 10 5. The percentage of pure seed by weight; and
- 11 6. The full name and address of the labeler.

**SOURCE:** Section 4-09-11.2(2).

**NOTE:** Current law requires the "purity as a percentage of pure seed by weight." Subsection 5 has clarified this concept. However, the definition of "pure seed" under current law is applicable only to agricultural and vegetable seed. Should the definition of pure seed be expanded?

- 1           **SECTION 36. Statement of origin.** In addition to any other label requirements set  
2 forth in section 35 of this Act, the label of tree seed or shrub seed must include a statement  
3 regarding the seed's origin.
- 4           1. If the seed was collected from a predominately indigenous stand, the label must  
5 identify the location of the indigenous stand by:
- 6           a. Latitude and longitude;  
7           b. Geographic description <sup>1</sup>; or  
8           c. Political subdivision. <sup>2</sup>
- 9           2. If the seed was collected from a location other than a predominantly indigenous  
10 stand, the label must identify the place from which the seed or plants were  
11 originally introduced or state "origin not indigenous." <sup>3</sup>

**SOURCE:** Section 4-09-11.2(2)(e).

**NOTE:**

<sup>1</sup> The current language provides that the label must contain:

The origin for seed collected from a predominately indigenous stand as identified by the area the trees are growing and collected given by latitude and longitude, geographic description, or political subdivision ...

According to Seed Department personnel, the phrase "latitude and longitude" is specific, whereas the phrase "geographic description" is nonspecific. Might a "geographic description" be so broad as to be ineffective?

<sup>2</sup> Should the reference to a "political subdivision" be refined to narrow down the term (e.g., county, township, etc.) or is it acceptable to literally reference any political subdivision?

<sup>3</sup> Current law states: "[F]or seed collected from other than a predominantly indigenous stand as identified by the place from which the seeds or plants were originally introduced or state "origin not indigenous." Is this seeking to require identification of the seed source? If so, does the source need to be more specific than merely a "place"?

12           **SECTION 37. Percentage of germination - Label requirements.**

- 13           1. If the tree seed or shrub seed belong to a species for which standard germination  
14 testing procedures are prescribed by the association of official seed analysts, the  
15 label must include:
- 16           a. (1) The percentage of germination, exclusive of hard seed;  
17           (2) The percentage of hard seed; and  
18           (3) The month and year in which the percentage of germination was  
19 determined; or



<sup>3</sup> Current law requires that the cautionary statement prohibit the use of the seed "for food, feed, or oil purposes." At the recommendation of Seed Department personnel, this has been changed to require that the cautionary statement prohibit the use of the seed "for human or animal consumption."

<sup>4</sup> Because inoculants can have different degrees of longevity depending on the seed to which they are applied, the rewrite in other sections clarifies that the date beyond which the inoculant is claimed not to be effective is the date applicable to the particular seed being treated. Is that appropriate here as well?

1       **SECTION 39. Invoice and records.**

- 2       1.   A labeler shall retain a record <sup>1</sup> of each lot of seed handled for three years <sup>2</sup> after  
3           final disposition of the lot.
- 4       2.   A labeler shall retain a file sample of each lot of seed handled for one year after  
5           final disposition of the lot.
- 6       3.   A labeler shall make the records and file samples required by this section available  
7           to the seed commissioner upon request.

**SOURCE:** Section 4-09-12.

**NOTE:**

<sup>1</sup> Current law requires that a labeler keep "complete records." Because the definition of a record under this chapter includes "all information relating to lot identification, source, origin, variety, amount, processing, testing, labeling, distribution, and file sample of the seed," the rewrite refers only to "a record."

<sup>2</sup> Because current law does not clarify when the three-year period begins, the rewrite adds that the records must be retained for three years "after final disposition of the lot."

8       **SECTION 40. Tolerances.**

- 9       1.   In order to determine correctness and accuracy in labeling seed as required by this  
10           chapter, the seed commissioner shall:
- 11           a.   Use the tolerances established by the Federal Seed Act of August 9, 1939  
12                [53 Stat. 1275; 7 U.S.C. 1551 et seq.], as amended through June 30, 2011; <sup>1</sup>  
13                or
- 14           b.   Establish stricter tolerances by rule.
- 15       2.   Notwithstanding subsection 1, the tolerance for yellow starthistle is zero.

**SOURCE:** Section 4-09-13.

**NOTE:** Current law references the FSA as amended through 2009. The rewrite provides for amendments through June 30, 2011.