

SEEDSMEN'S RESPONSIBILITIES UNDER SEED LAWS

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We are living in a period of time in which the regulation of business by government is frequently considered excessive. Therefore, it is sometimes unpopular for someone in regulatory activities to occupy that part of a program that speaks to compliance and responsibilities under regulations and laws.

Seed laws, just like other commodity laws and regulations, establish the boundaries of acceptable marketing practices for that commodity. In that sense, they may well be considered as "trade practice rules". They are necessary in a free-enterprise marketing system. Without such trade practice rules, unfair competition could destroy the competitive marketing systems of seed.

Seed laws help in keeping the market of seed as fair and equitable as possible for seedsmen and seed consumers. They also speak to the legal parameters on which a consideration of values and/or damages may emerge when there are different opinions about the quality of seed.

Most responsible seedsmen are careful to stay within these "rules of practice", not only to maintain good public relations, or to prevent costly legal involvement, but because they have a dedication to provide a useful product that will benefit and satisfy the consumer. The future of their business depends on it.

One must also consider the consumer's position in the examination of these "trade practice rules". We live in an enlightened society. Many farmers are well educated, to the point that they can communicate professionally about genetics, fungicides, seed germination and vigor, and economics. They can also discuss perhaps with legal assistance, consumers' rights, businessmen's liabilities, and claims for damages if they believe seed have been misrepresented to them.

It seems apparent, then, that seed distribution, as now practiced, could not survive without regulations adequate to protect both the seller and the buyer, and to assure fair competition in a seed marketing system that includes individuals and firms of all sizes and all kinds.

Basic Information on Seed

What do these trade practice rules, or marketing laws, require other than the requirements established for all commodities, such as the unit of measurement (weight or count) and the name of the supplier? Seed laws basically require that information be preserved and transmitted about three subjects: identity, contamination and viability of seed.

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Perhaps its elementary for me to tell you that the components of identity are: lot number, origin, name of kind and variety, and the vendor's name. Some states and the Federal Seed Act permit seed to be labeled, "No Variety Stated". At least one state, and maybe more, require the wording "Variety Not Known" in lieu of the variety statement. It should be remembered that seedsmen are responsible for knowing which varieties are protected under the Plant Variety Protection Act. If the variety is protected under seed certification options, the variety may only be sold as a class of certified seed. Stop sales will be issued on lots of those varieties if they are not certified. If the variety is protected without the certification option, you may be sued by the owner of the variety. However, no stop sales will be written by your seed control official.

Contamination must be classified into one or more of the following: inert matter, other crop seed, common weed seed, and the name and number per pound of noxious weeds.

Viability is expressed as percent germination with the date the test was made supporting the label statement.

Two basic facts must be recognized. All the statements based on laboratory evaluations are only estimates. There are no absolute statements of quality. Also, the laboratory information is of little or no value unless the sample tested is a representative sample from a uniform lot of seed. These tests should be made by Registered Seed Technologists or an official laboratory under standard rules for testing seed.

All seed laws require special labels for seed which have been treated. Other information is optional but usually provided for specific reasons, such as the sizing information on hybrid field corn seed.

Within the framework above, I would suggest several responsibilities of seedsmen under most State and Federal Seed Laws.

Lot Uniformity

Regardless of its routing, you should be sure a seed lot qualifies under the definition of a lot. That is, it should be uniform throughout for the qualities stated on the label. If a lot does not meet this requirement, you will have difficulties no matter how many other requirements you meet. No sample from it will be representative. There is no way to satisfactorily merchandize a lot of fescue seed, for example, when some bags have 54 curled dock per pound, while others have in excess of 1200 curled dock per pound. This is not an exaggerated example. It describes more than 2,000 bags of seed currently under restriction in North Carolina today. Every bag label carries the same lot number.

Dealer's Responsibility to Know the Law

Seedsmen who ship interstate have the responsibility to determine whether their seed and labels are acceptable in the state to which they are sent. Unfortunately, most states have some specific requirements which their Legislature or Board of Agriculture, believe are important.

This is especially true of noxious weeds. It is a good idea to keep in your files the current laws and regulations of each state into which your seed will move. If you do not keep a current file, quick references are either the "Directory and Buyers Guide, Southern Seedsmen's Association", or the "Seed Trade Buyers Guide", published by Seed World. Concerning noxious weeds, remember that if your test is made by a state seed laboratory or many commercial testing laboratories, the noxious weed identification may include only the noxious weeds of that state. The lot may move into states which have different noxious requirements. For this reason, it is to your advantage to ask for an all states noxious test if your seed will move outside your state.

Records

You should give high priority to keeping a complete records system. These records should include:

a) Receiving invoices - showing source, amount received, variety identification, which may include a growers affidavit or other identification of parent stock. An additional item is to make and record a moisture test.

b) Processing records - which note the quantity of cleaned seed and the identification you establish for the lot.

c) Seed analysis records - which may include purity examinations, noxious weed analyses, germination tests, cold tests, TZ tests or other viability tests. It is a good idea to obtain both preliminary germination test records and the processed lot germination records.

d) Chemicals applied - which show the identify of the chemicals, rate used, and any other modification of seed such as encapsulating, addition of rhizobial bacteria, etc.

e) Shipping records - which include numbered and dated invoices, being especially sure the invoices show the lot numbers which are related to the receiving records.

f) Labeling information - which can be simplified by keeping copies of the labels attached to the lot. Most seedsmen give themselves a little protection labeling slightly under the quality value of a laboratory report. Pure seed might be 99.80% on the report. It is advisable in most seedsmen's opinion to label the pure seed as 99% or even less to allow for the variability within each lot. A seedsman should never label better than the test results. Tolerances established in seed law enforcement are intended to take care of sampling and testing variability, not lot variability.

g) Seed sample file - This should be a sample from the lot after it is processed. It is a good idea to attach a copy of the label to the sample.

h) Records and samples - are required to be kept two years by most state seed laws. The Federal Seed Act requires records and samples to

be kept three years, or one year after the lot is depleted.

Labeling or Pretagging Seed Containers

A basic requirement of labeling is that each container of seed must be labeled when it leaves the processor. This requirement has only one restricted exception. Under the Federal Seed Act, seed may move interstate without individual container labeling, but only if: (1) the shipment is 20,000 pounds or more, (2) the required labeling information is transmitted by other documents, such as an invoice or lab report and (3) each container is marked with the lot number. The last requirement mentioned is most frequently ignored. We have much difficulty in our state with seed in unmarked bags which bear no labels. There is no good assurance that the proper labels will ever be attached to the bags for which they are intended. Seed regulatory officials are forced to issue stop sale orders, assess a service penalty and complete the analysis before the stop sale is lifted when seed are delivered without meeting the requirements stated above. Mailing the labels, or sending them with the truck driver does not satisfactorily meet the requirement that each container of seed be labeled or identified under the exception mentioned.

Labeling or Advertising Information Not Required by Law

Much useful and desirable information may be provided concerning seed which is not required by law. However, just because the law doesn't require it does not absolve the seedsman of his responsibility if it is false. It is often said that seed laws are "truthful labeling" laws. Most seed laws prohibit misrepresentation of seed in any manner by labeling or advertisement. There are two areas of special concern about non-required labeling information.

The first concerns disease resistance. Almost every year we have complaints from farmers whose crops are seriously affected by plant diseases, and therefore believe that the seed or the variety has been misrepresented. Most people who have a reasonable association with plant pathology recognize that "resistance" does not mean "immunity". This is little consolation to the farmer who believes "resistance" gives him some insurance against crop failure from the disease to which "resistance" is claimed. A case in point is a North Carolina farmer who purchased hybrid corn which was characterized as resistant to MDMV and stunt virus. This resistance was the feature which led him to buy the hybrid for the first time. His crop was a failure due to MDMV and stunt virus, according to the plant disease clinic at NCSU. In my opinion, the hybrid was misrepresented even though it was probably a little more resistant than some other hybrids. However, the "resistance" was not adequate to give him the needed protection. I understand there is some effort now underway between the American Seed Trade Association, plant breeders and plant pathologists to establish common terminology for characterizing varieties for disease resistance. Such standards are badly needed.

Another subject which invites our attention is labeling for vigor. I have identified myself with the belief that more precise testing for germination and/or vigor is inevitable. I also believe such information

is valuable to the consumer. However, we lack experience in estimating and representing vigor for seed marketing. Vigor claims will likely be abused, and some grief is expected before a consensus and an acceptable labeling structure is developed. There are now trade marks, logos, and brand names of seed which address the terms such as "vigor tested", "vigor proven", "vigor rated", and one system called "TP₃" seeds. The "TP₃" translates into total plant physiological processes. There are others. Additionally, many advertisements refer to a company's seed products as vigorous which could be implied to mean all the seed they sell have high germination vigor. One company's handbook on corn hybrids claimed early seedling vigor in all their description hybrid. They were referring to the vigor associated with genetic selection. What a paradox it is that a hybrid which is genetically vigorous may be notably non-vigorous in terms of germination and growth. How do you reconcile a complaint about that lot?

This subject must be addressed and soon by seedsmen, seed analysts and seed control officials. There is some agreement among seed control officials in the southeast that vigor should not be claimed unless a numerical statement of vigor is made along with a date of test and identification of the test procedure used to support the claim. Such a claim can be verified at least for a reasonable period of time. What the industry and seed control officials need to fear is the kind of advertisements and claims which promise vigor by calling attention to it, whether or not it is delivered. As vigor statements become more prominent and more frequent, all seedsmen are going to find themselves in the competitive position of making similar claims. This is truly a subject that will require some sound judgment in the development of acceptable terms and claims in trade practice rules or seed regulations.

Arbitration of Complaints

Regardless of how efficiently your business is conducted, you will eventually have a complaint against the performance of your seed. We can all accept the fact that poor stand development or market rejection of a commodity produced from your seed is often due to factors other than seed quality. Different companies follow different procedures or policies in answering complaints. Some companies try to ignore them or procrastinate until all possible interactions of time and climate obscure the real reason for failure. Others believe an adjustment sets a precedent that would bring on unlimited similar complaints. There are companies who make adjustments for complaints when they know that the seed were not responsible for the failure. Apparently, each company must establish the policy which is best for the company.

I call your attention to the "Investigation and Arbitration" committees that are receiving a lot of attention among seedsmen. The State of Florida was the first state to establish an arbitration committee under their Seed Law. North Carolina was second. Provisions for a model arbitration law have been added to the Recommended Uniform States Seed Law with the support of the American Seed Trade Association. This model law provides for a committee to investigate complaints that seed have failed to perform as represented. The complaints must be formal and the committee assignment requested in writing. There is a

time limit after which the committee may not be assigned. In North Carolina that limit is 10 days after first notice of failure. All evidence must be left undisturbed so the committee has something on which to make decisions. The composition of the committee is restricted to provide for expertise in the crop being investigated and balancing any prejudice that might exist. In North Carolina, three members must be appointed; one each on the recommendation of the Director of Research, NCSU; the Director of Extension, NCSU, and the President of the North Carolina Seedsmen's Association. Two other members are appointed by the Commissioner of Agriculture, one of whom must be a farmer not engaged in producing or selling seed. The fifth member is a free choice of the Commissioner and is usually a member of his staff.

The committee is charged with investigating all details related to the complaint and must make a written report to the Commissioner. In that report the committee may recommend a monetary settlement if they consider the complaint against the seed was valid.

A copy of the report is provided the seedsmen and the farmer. They are not bound in any way to accept the committee's recommendation for settlement, if such a recommendation is made. If they do not agree with the findings or recommendations of the committee, either party may enter civil court action for settlement.

We believe the committee has been of benefit to both farmers and seedsmen. Farmers have come to realize that the committee is going to investigate weather data, planting conditions, pesticides used, inspect the planting equipment, test any remnant seed lots, survey the performance of other parts of the lot planted by other farmers, and pursue any other details which have merit on the performance of the seed. Therefore, the farmer is not likely to make frivolous complaints unless he truly believes his complaint will be supported by a complete investigation.

On the other hand, we find that seedsmen are becoming more eager to respond to complaints. They seem to be more willing to agree to adjustments, if they believe the seed quality will not bear full investigation. Also, they seem to want to make the first offer of adjustment rather than have a committee make a recommendation.

Our policy, upon receiving a complaint, is to advise the farmer and seedsmen to review the seed performance together if they have not already done so. We recommend that they agree, if possible, on the reason for matters of complaint and on adjustments if they concur that an adjustment is advisable. Only when they are at an impasse do we advise a formal request for committee review.

It is not possible to review all responsibilities or examples of each circumstance which might arise. I want to leave you with the suggestion that you establish communication with your seed control official on any question you are not completely sure about. Do this, preferably, before you commit yourself in the market. Perhaps he can help you avoid some penalties, or at least some agony. I like to think that our seedsmen feel perfectly at ease to call me to discuss any

question on their mind. I want to believe the seed control official in your state has the same kind of communication with you. Most difficulties are more easily resolved when close communications are maintained.

Finally, I urge each of you to ally yourself with some seed association. It may be a Certified Growers Association, your State's Seedsmen's Association, the Southern Seedsmen's Association, or the American Seed Trade Association. Your benefits will far outweigh the cost. Each of these associations have legislative committees which are dedicated to your business interest. Seed control officials expect and appreciate the chance to work with these associations in matters of seed legislation. These are the forums in which the "Rules of Practice" are established. Once established, you will find yourself under the obligation of those rules. You should be and you probably will be held to those rules for the common interest of your profession as well as the consumers of your product.