



North Dakota State
NDSSD
 Seed Department

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**Testimony
 Administrative Rules Committee**

July 2010 Supplement to ND Administrative Code

Ken Bertsch
 ND State Seed Commissioner
 June 10, 2010

Good afternoon Mr. Chairman and members of the Administrative Rules Committee. For the record, my name is Ken Bertsch and I serve as State Seed Commissioner and administrator of the ND State Seed Department (NDSSD). I am here at your request to provide information regarding amendments to Title 74 of ND Administrative Code.

The rules before you today are minimally related to statutory changes resulting from passage of agency legislation in 2009, and primarily drafted by the Department (with industry input) to update certification programs.

I will follow the Legislative Council memo of May 26, 2010 as a format for discussion of the rules promulgated and rulemaking process followed by the Seed Department.

1. There is only one rule directly related to statutory changes by the legislature. Passage of SB 2125 necessitated expanded language found on **Page 299 (74-01-01-04.(3))**. The change replicates language now found in Chapter 4-09 that designates the Seed Department as the official seed certification agency of the state.
2. None of the proposed rules are related to changes in federal statute or regulations.
3. Following is the process followed by the Department for rulemaking;
 - a. **December 1, 2009:** Proposed rules reviewed and approved by Seed Commission at quarterly meeting.
 - b. **December 17, 2009:** Full and Abbreviated notices of Intent to Amend Administrative Rules filed with Legislative Council and sent to ND Newspaper Association. Proposed rules posted on Seed Department web site.
 - c. **December 26, 2009-January 4, 2010:** Notice of Intent to Amend Administrative Rules published in all county newspapers.
 - d. **January 25, 2010:** Hearing on proposed administrative rules at ND State Seed Department. (No attendees)
 - e. **February 8, 2010:** Deadline for comment provided in public notice. One written comment received.
 - f. **March 11, 2010:** Proposed rules submitted to Attorney General for review.
 - g. **April 22, 2010:** Attorney General issues approval of rules as to legality.

h. **April 27, 2010:** Final rules submitted to Legislative Council.

- The Seed Department worked directly with the Edible Bean Seed Growers, ND Pea and Lentil Association and Certified Seed Potato Growers associations in developing rules affecting those constituents. Additionally, the ND Crop Improvement and Seed Association was notified directly of rulemaking process and proposed rules, and invited to review and comment on the rules.

4. No oral comments were offered regarding the rules. One written comment was submitted to the Seed Department in support of the rules proposal regarding edible bean standards.
5. Costs for publishing hearing notices with ND Newspaper Association totaled \$1730.54. Legal review by the Attorney General's office cost a total of \$301.55. Total cost: \$2032.09
6. Virtually all of the rules promulgated update or modernize the technical or operating standards of field crop and potato labeling rules. There are a few standards that required some level of input from seed growers, and are listed below for purpose of the Administrative Rules Committee review:

Page 320: Chapter 74-03-02-01 (Specific Crop Requirements- Small Grains and Flax)

Section 74-03-02-01 outlines a change allowing winter wheat seed to be produced on land which had previously produced spring wheat. This rule mirrors similar standards found in surrounding states, and was requested by winter wheat seed producers. After researching the issue, and with additional data and support provided by Ducks Unlimited, the rule was drafted by NDSSD.

Page 323: Chapter 74-03-07 (Specific Crop Requirements- Grasses)

The rule adds an additional (early season) field inspection to the grass certification program to help identify early season weeds/contaminants such as quackgrass (a ND restricted noxious weed). The change was developed in cooperation with the small number of grass seed producers in ND.

Pages 332-336: Chapter 74-03-12 (Specific Crop Requirements- Soybeans, Chickpeas and Lentils) and 74-03-12.1 (Specific Crop Requirements- Field Peas)

This combination of amendment and new section separates the Field Pea standards from the original combined section that included all pulse crops. Field Pea seed production is increasing, operates under slightly different standards than other pulse crops, and is more easily referenced under a separate section. The rule changes were developed in cooperation with the Pea and Lentil Growers Association.

Pages 345 and 348: Chapter 74-04-01-11 (Official North Dakota seed potato grades)

New language allows for a White Tag seed label to be used for out of state shipments of seed. Previously, the White Tag was only used for non grade-inspected seed shipped within the state of North Dakota. The rule change allows seed to be labeled as certified seed (if not meeting the Blue or Yellow grade standards) and shipped out of state with the White Tag certified seed label.

7. A regulatory analysis was not required or prepared.
8. A small entity regulatory analysis and economic impact statement was not prepared due to Seed Commission exemption from requirements.
9. A constitutional takings assessment was not required or prepared.
10. The proposed rules were not adopted as emergency rules.

Mr. Chairman and members of the committee, this concludes my comments regarding the outline of questions from Legislative Council. I would be happy to review and discuss any of the rules with the committee, and will answer any questions you have. Thank you.