



North Dakota State  
**NDSSD**  
 Seed Department

1313 18<sup>th</sup> St. N., P.O. Box 5257  
 Fargo, ND 58105-525  
 Phone: (701) 231-5400  
 Fax: (701) 231-5401  
 Web: [ndseed.com](http://ndseed.com)

**Testimony  
 Administrative Rules Committee**

**September, 2012 Supplement to ND Administrative Code**

Ken Bertsch  
 ND State Seed Commissioner  
 September 13, 2012

Good morning 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 primarily related to changes to certification standards for field crops and potatoes and drafted by the Department (with industry input) to update certification programs.

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

1. None of the proposed rules are related to changes in by the Legislative Assembly.
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. **March 27, 2012:** Proposed rules reviewed and approved by Seed Commission at quarterly meeting.
  - b. **March 29, 2012:** 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. **April 8-14, 2012:** Notice of Intent to Amend Administrative Rules published in all county newspapers.
  - d. **May 21, 2012:** Hearing on proposed administrative rules at ND State Seed Department. (No attendees)
  - e. **May 31, 2012:** Deadline for comment provided in public notice.
  - f. **June 4, 2012:** Proposed rules submitted to Attorney General for review.
  - g. **July 27, 2012:** Attorney General issues approval of rules as to legality.
  - h. **July 30, 2012:** Final rules submitted to Legislative Council.
- The Seed Department worked directly with the ND Edible Bean Seed Growers, ND Pea and Lentil Association and ND Certified Seed Potato Growers associations in developing rules affecting those constituents. Additionally, the ND Crop Improvement and Seed Association was

notified of the rulemaking process and proposed rules, and invited to review and comment on the rules.

4. No oral or written comments were offered regarding the rules.
5. Costs for publishing hearing notices with ND Newspaper Association totaled \$1814.02. Legal review by the Attorney General's office cost a total of \$316.64. Total cost: \$2130.66
6. Virtually all of the rules promulgated update or modernize the technical or operating standards of field crop and potato labeling rules (found primarily in Chapter 74-03-01). In many cases, the modernization of rules follows the same approach as taken with the rewrite of Seed Department century code passed during the 2011 session (HB 1027). There are a few standards that required some level of input from seed growers (found in Chapter 74-03-02), and are listed below for purpose of the Administrative Rules Committee review:

### **Chapter 74-03-01: General Seed Certification Requirements**

#### **Pages 98-99: Chapter 74-03-01-03 (Eligibility requirement for certification of crop varieties)**

The entirety of changes in this section involves standardizing the language used by member agencies of American Association of Seed Certification Agencies (AOSCA) regarding the eligibility of varieties for entry into certification programs.

#### **Pages 104-107: Chapter 74-03-01-11 (Seed conditioning, sampling and laboratory inspection)**

This section has been reorganized into a more logical format. The only significant change appears in the official samples section, which more clearly reflects the process for collection, testing and billing of samples collected by the Seed Department.

#### **Pages 108-113: Chapter 74-03-11-12 (Labeling)**

This section also seeks to reorganize labeling and bulk seed handling language into a more readable format and creates language that is more consistent with Federal Seed Act requirements.

#### **Pages 114-116: Chapter 74-03-01-17 (Interagency certification)**

The section is reorganized into a more logical and readable format.

#### **Pages 116-117: Chapter 74-03-01-18 (Exclusion of warranty)**

This is existing language that has been moved from field inspection sections to the proper section of rules.

### **Chapter 74-03-02: Specific Crop Standards**

The changes in this chapter are minor, and have been proposed with the input and approval of the industry being affected by the rule change. Additionally, you will note that the ND Century Code citations at the end of each section have been updated to reference the new code chapter, in this case Chapter 4.1-53. The most notable changes in the Crop Standards are:

#### **Pages 129-131: Chapter 74-03-09.1 (Specific Crop Requirements- Hybrid canola and rapeseed)**

This is a new chapter created to promulgate rules for the production of hybrid canola. Seed Department rules now distinguish between hybrid and non-hybrid certification standards.

#### **Page 137: Chapter 74-03-12.1 (Specific Crop Requirements- Field peas)**

This language adds the requirement for mandatory variety identification testing for field peas (similar requirements exist for spring wheat and barley).

## **Chapter 74-04-01: Seed Potato Certification Standards**

### **Pages 141-142, and 151: Chapter 74-04-01-11 (Official North Dakota seed potato grades)**

Language in these subsections further clarifies the use of White Tag seed label, and provides for a tolerance for various types of tuber rot allowed for the lowest grade of seed. Page 151 (74-04-01-11, Subsection 4-5) provides that blue, yellow and white tag grades must be inspected, and non-inspected seed is to be noted as such on the official label or bulk certificate.

There is a misprint on Page 142. The language should read "the label must state no grade".

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. The proposed rules do not have a fiscal effect on the state or agency.
10. A constitutional takings assessment was not required or prepared.
11. 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.