

## CHAPTER 4-09 STATE SEED DEPARTMENT

**4-09-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Advertisement" means any representation, other than representations made on labels, which relates to seed.
2. "Agent", when used in connection with the commissioner, means the commissioner's deputy, inspector, analyst, specialist, aide, agent, and employee, when each is acting officially for the commissioner or performing any duty or duties as provided in this chapter or in the rules adopted to implement this chapter.
3. "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.
4. "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.
5. "Brand" means a word, name, or symbol, number, or design used to identify seed of one person to distinguish that seed from seed of another person.
6. "Certified" means the agricultural seed was randomly inspected and found to meet the rules of the department at the time of inspection.
7. "Commission" means the state seed commission.
8. "Commissioner" means the state seed commissioner.
9. "Conditioning" means drying, cleaning, scarifying, and other operations that may change the purity or germination of the seed.
10. "Department" means the seed department of this state.
11. "Flower seed" includes a seed of a herbaceous plant grown for the bloom, ornamental foliage, or other ornamental part, and commonly known and sold under the name of flower or wildflower seed in this state.
12. "Foundation 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.
13. "Germination" means the percentage of seed capable of producing normal seedlings under ordinarily favorable conditions as determined by methods prescribed under the rules established by the association of official seed analysts. The percentage does not include seed that produces weak, malformed, or obviously abnormal sprouts.
14. "Hard seed" means a seed that remains hard at the end of the prescribed test period because the seed has not absorbed water due to an impermeable seed coat.
15. "Inert matter" means all matter not seed and includes the broken seed, a sterile floret, chaff, a fungus body, and a stone.
16. "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, such as corn, oats, alfalfa, or timothy.

17. "Labeler" means the person who furnishes the information required in sections 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2.
18. "Labeling" means a tag or other device attached to or information written, stamped, or printed on any container or accompanying a lot of bulk seed that contains information required by this chapter.
19. "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.
20. "Mixture" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
21. "Noxious weed seed" is divided into three classes defined as:
  - a. "Prohibited noxious weed seed" means a weed seed that is prohibited from being present in agricultural, vegetable, flower, tree, or shrub seed and is highly destructive and difficult to control by good cultural practices and the use of herbicides and includes a seed of leafy spurge (*euphorbia esula* L.), field bindweed (*convolvulus arvensis* L.), Canada thistle (*cirsium arvense* (L.) Scop.), perennial sow thistle (*sonchus arvensis* L.), Russian knapweed (*centaurea repens* L.), absinth wormwood (*artemisia absinthium* L.), hemp (*cannabis sativa* L.) having more than three-tenths of one percent tetrahydrocannabinol, musk thistle (*carduus nutans* L.), spotted knapweed (*centaurea maculosa* Lam.), hoary cress (*cardaria draba* (L.) Desv.), and yellow starthistle (*centaurea solstitialis* L.).
  - b. "Restricted noxious weed seed" means a seed that is objectionable in agricultural crops, lawns, and gardens in this state and can be controlled by good cultural practices or the use of herbicides and includes the seed of dodder (*cuscuta* species), hedge bindweed (*convolvulus sepium* L.), wild oats (*avena fatua* L.), and quackgrass (*agropyron repens* (L.) Beauv.).
  - c. "Undesirable grass seed" means a seed of grass species declared by the commissioner to be a restricted noxious weed seed when found in lawn or turf seed.
22. "Official seed-certifying agency" means:
  - a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or
  - b. An agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under subdivision a.
23. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism causing or capable of causing injury or damage to any plant or part of a plant or any processed, manufactured, or other product of a plant.
24. "Phytosanitary certificate" means a document issued or authorized by the commissioner indicating that the seed or tubers were inspected and considered to be free from quarantine pests and practically free from injurious pests according to the sanitary requirements of the importing country.

25. "Pure seed" means agricultural and vegetable seed, exclusive of inert matter, and all other seed not of the kind or variety being considered.
26. "Record" means all information relating to lot identification, source, origin, variety, amount, processing, testing, labeling, distribution, and file sample of the seed.
27. "Selection" means a subgroup of a variety and commonly used terms include line selection, clonal selection, or strain selection.
28. "Stop-sale" means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount of seed.
29. "Treated" means a seed has received an application of a substance, or a claim has been made that the seed has been subjected to a process.
30. "Tree and shrub seed" includes seed of woody plants commonly known and sold as tree and shrub seed in this state.
31. "Type" means a group of variety so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.
32. "Variety" means a subdivision of a kind that is distinct, uniform, and stable. "Distinct" means the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all varieties of public knowledge. "Uniform" means the variations in essential and distinctive characteristics are describable. "Stable" means the variety will remain unchanged in its essential and distinctive characteristics and uniformity when reproduced or reconstituted as required by the different categories of varieties.
33. "Vegetable seed" means a seed of a crop that is grown in a garden or on a truck farm, and which is generally known and sold under the name of vegetable seed within this state.
34. "Weed seed" means the seed of a plant generally recognized as a weed within this state, including noxious weed seed.

#### **4-09-02. Seed department - Offices and laboratories.**

1. There must be maintained a seed department of the state of North Dakota. The department's headquarters, main offices, and other principal operating facilities and equipment must be located at the North Dakota state university of agriculture and applied science. The commissioner, subject to the approval and supervision of the commission, shall provide and maintain necessary laboratories and facilities properly equipped to make analyses, tests, and variety and disease determinations of seeds and plants, and to do work and effect other results as may be necessary to carry out this chapter. For these purposes, the commissioner may utilize the premises, space, and equipment at North Dakota state university as may be assigned to the commissioner by the university. The commissioner shall permit the facilities and services of the official laboratories to be used by the university at convenient times.
2. The commission may locate and establish branch offices and laboratories at other locations in this state as in the commissioner's judgment are necessary to carry out properly and effectively the provisions of this or other chapters in which the department is charged with duties and responsibilities.

**4-09-02.1. Limitation on authority of political subdivisions regarding seed.** A political subdivision, including a home rule city or county, may not adopt or continue in effect any ordinance, resolution, initiative, or home rule charter regarding the registration, labeling,

distribution, sale, handling, use, application, transportation, or disposal of seed. This section does not apply to city zoning ordinances.

**4-09-03. State seed commission - Members - Meetings - Appointment and duties of commissioner.**

1. The commission is the governing board of the department.
2. The commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the Red River valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association selected by the association's board of directors who operates a state-approved seed conditioning plant, and the agriculture commissioner, or the commissioner's designee, who shall serve as chairman. The associate dean and director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is a voting member of the commission.
3. The commission shall meet a minimum of two times each calendar year and may hold special meetings at the call of the chairman or by request of any two members of the commission. Each member of the commission is entitled to receive compensation at the rate of seventy-five dollars per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings. Compensation under this section may not be paid to any member who receives compensation or salary as a regular state employee or official. 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.
4. The commission shall appoint a qualified manager of the department who must be known as the state seed commissioner. The commission shall fix the salary of the commissioner within legislative appropriation. The commissioner's appointment must be reviewed annually by the commission, and the commissioner is subject to removal for cause. In the event of a vacancy in the office of the commissioner, the commission may appoint a temporary commissioner to serve until the appointment of a permanent commissioner. The commissioner has responsibility for preparing the biennial budget and annual salary schedules that must be approved by the commission before submission to the state budget director. The commissioner is directly responsible to the commission and shall make semiannual reports to the commission and any other reports as requested by the commission.

**4-09-03.1. State seed arbitration board - Compensation and expenses.** Repealed by S.L. 2005, ch. 60, § 31.

**4-09-04. Official seal.** The official seal of the department as recorded in the office of the secretary of state must be used exclusively in connection with the affairs of the department. The use of the seal contrary to this chapter or the commissioner's regulations is punishable as provided in section 4-09-24.

**4-09-05. Rulemaking and delegating authority.** The commissioner may adopt rules as authorized by chapter 28-32. The commissioner may delegate any duty or power of the commissioner to an agent.

**4-09-05.1. Noxious weed seeds - Classifications.** The commissioner may, by rule, add to or delete from the lists of noxious weed seeds defined in section 4-09-01.

**4-09-06. Examination of seed by commissioner - Right of access to premises - Stop-sale order.**

1. The commissioner may inspect, examine, analyze, and test any seed sold, offered, or exposed for sale, held, or distributed within this state for planting purposes, at a time and place, and to an extent, as determined by the commissioner.
2. At a reasonable time, the commissioner has the right of free access to the premises or structures controlled, owned, or operated by any person who may be, or whose seed, or the seed the person may be holding or storing or transporting, may be, investigated or proceeded against, and to any premises or structures or any kind of vehicle or conveyance where any seed may be located or in the process of transportation within the state, to inspect, examine, and sample any seed or seed plant.
3. Any person involved in any way in the handling, transportation, storage, planting, buying, or selling of seed shall cooperate with the commissioner and shall render all possible assistance to aid the commissioner in the carrying out and enforcement of this chapter.
4. The commissioner may issue and enforce a written stop-sale order to the owner or custodian of any lot of seed that the commissioner finds to be in violation of this chapter. The order shall prohibit further sale, conditioning, and movement of the seed until the commissioner has evidence that the law has been complied with and has issued a release. As to seed that has been denied sale, conditioning, and movement, the owner or custodian of seeds has the right to appeal from the order to a court of competent jurisdiction in the locality in which the seed is found, praying for a judgment as to the justification of the order and for the discharge of the order in accordance with the findings of the court. This subsection does not limit the right of the commissioner to proceed as authorized by other sections of this chapter.

**4-09-06.1. Inspection - Export certification - Fees.** The commissioner may inspect agricultural seed, flower seed, vegetable seed, tree and shrub seed, and Irish potato tubers when the seed or tubers are offered for export. The commissioner may issue a phytosanitary certificate to plant quarantine officials and may make reasonable charges for this service. The commissioner may withhold the certificate if the product does not meet sanitary requirements and all state licensing and bonding requirements. The name and address of the consignee on the phytosanitary certificate is confidential.

**4-09-07. Certificates and reports - Publication.**

1. When a report or certificate relating to the findings and determinations made in a laboratory is issued and signed by the commissioner, the document must be accepted as prima facie evidence of the statements contained in the document, but the commissioner is subject to court order for a review of findings as set forth in the document.
2. The commissioner may publish reports or explanatory material concerning seed or inspections, tests, analyses, or other determinations made by the commissioner and may expand the same with material setting forth the value or condition of the seed stocks which are produced in this state or in which North Dakota persons are interested. The commissioner also may publish lists of certified seed.

**4-09-08. Public laboratory service - Fees for tests.** The commissioner shall accept samples submitted for testing and shall determine the types of tests to be conducted on the samples. The commissioner, with the approval of the commission, shall establish and charge fees for laboratory tests and services.

**4-09-09. Testing seeds and plants - Regulations made by commissioner.** The 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.

**4-09-10. Labeling requirements for agricultural seed.**

1. Each container of agricultural seed which is sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent to sell for planting purposes within this state must bear or have attached, or there must be properly delivered with bulk sales or movements of agricultural seed a conspicuous, plainly printed label in the English language with the information required by this section, which may not be modified or denied in the labeling.
2. In seed of wheat, durum, barley, oats, rye, soybeans, field peas, dry beans, and flax, the label must contain the commonly accepted name of the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. Variety identification is not required for seeds labeled "for vegetative cover only". Seed listed in this subsection may be sold by brand if the true variety name or number is clearly stated on the label in a type size equal to or greater than the brand.
3. 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.
4. In all other seed not named in subsections 2 and 3, the label must contain the commonly accepted name of the kind or the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage of weight of each.
5. When more than ten percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding five percent of the whole, the label must contain each component in excess of one percent of the whole named together with the percentage by weight of each. Each component must be listed in the order of its predominance. When more than one component is named, the word "mix", "mixed", "mixture", or "blend" must be appropriately stated with the name of the mixture or blend.
6. For each container of agricultural seed, the label must contain:
  - a. Lot number or other lot identification.
  - b. The origin, state or foreign country, where grown. If the origin is unknown, that fact must be stated.
  - c. The percentage by weight of all weed seed.
  - d. The name and rate of occurrence per pound [453.59 grams] of each kind of restricted noxious weed seed present, if the restricted noxious weed seed is present singly or collectively in amounts in seeds of grasses and small seeded legumes in excess of thirteen seeds per pound [453.59 grams], or in other agricultural seeds, including the cereals, oil seed crops, millets, and seeds of similar size, in excess of five seeds per pound [453.59 grams].

- e. The percentage by weight of agricultural seed that may be designated as crop seed, other than those required to be named on the label.
- f. The percentage by weight of inert matter.
- g. The percentage of germination for each agricultural seed, exclusive of hard seed; the percentage of hard seed if present for each agricultural seed; if desired, the total germination and hard seed for each agricultural seed; and the calendar month and year the test was completed to determine these percentages.
- h. The full name and address of the person who labeled the seed or who sells, offers for sale, or exposes the seed for sale within this state.
- i. If the seed is treated, for which a separate label may be used, a word or statement indicating that the seed has been treated; the commonly accepted, coined, chemical, or abbreviated chemical name of the applied substance; and if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement prohibiting use for food, feed, or oil purposes and for mercurials and similar toxic substances a poison statement or symbol. If the seed is treated with an inoculant, the label must contain the date beyond which the inoculant is not to be considered effective.
- j. The seed container is hermetically sealed.
- k. A disease test result for seedborne diseases.

**4-09-10.1. Labeling requirements for bagged agricultural seed.** Repealed by S.L. 2005, ch. 60, § 31.

**4-09-11. Labeling requirements for vegetable seed.**

- 1. Each container of vegetable seed which is sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent to sell for planting purposes within this state must bear, or have attached a conspicuous, plainly printed label in the English language with the information required by this section, which may not be modified or denied in the labeling.
- 2. For vegetable seed in packets as prepared for use in home gardens or household plantings or vegetable seed in preplanted containers, mats, tapes, or other planting devices:
  - a. The name of kind and variety of seed.
  - b. Lot identification by lot number or other means.
  - c. For seed that germinates less than the standard established by the commissioner, the percentage of germination, exclusive of hard seed; the percentage of hard seed, if present; and the words "below standard" in not less than eight-point type.
  - d. The name and address of the person who labeled the seed or who sells, offers for sale, or exposes the seed for sale within this state.
  - e. 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.

- f. For seeds placed in a germination medium, mat, tape, or other device in a way as to make it difficult to determine the quantity of seed without removing the seed, a statement to indicate the minimum number of seeds in the container.
3. For vegetable seed in containers other than packets prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices:
    - a. The name of each kind and variety of vegetable seed present in excess of five percent and the percentage by weight of each in order of its predominance.
    - b. Lot number or other lot identification.
    - c. 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. In addition, the calendar month and year the test was completed to determine these percentages.
    - d. The name and address of the person who labeled the seed, or who sells, offers for sale, or exposes said seed for sale within this state.
    - e. The labeling requirements for vegetable seed in a container of more than one pound [.45 kilogram] are satisfied if the seed is weighed from a properly labeled container in the presence of the purchaser.
  4. For vegetable seed in any size container, the label for treated seed, for which a separate label may be used, must contain a word or statement indicating that the seed has been treated; the commonly accepted, coined, chemical, or abbreviated chemical name of the applied substance; and if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement prohibiting use for food, feed, or oil purposes and for mercurials and similar toxic substances a poison statement or symbol. If the seed is treated with an inoculant, the label must contain the date beyond which the inoculant is not to be considered effective.
  5. The labeling requirements for vegetable seed in containers of more than one pound [.45 kilogram] are deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.
  6. For vegetable seed in any size container, the label must state the seed container is a hermetically sealed container.

#### **4-09-11.1. Labeling requirements for flower seed.**

1. Each container of flower seed that is sold, offered for sale, exposed for sale, or transported within this state for planting purposes must bear or have attached a conspicuous, plainly printed label in the English language with the information required by this section, which statement may not be modified or denied in the labeling.
2. For all flower seed, the label must contain a word or statement indicating whether the seed has been treated; the commonly accepted coined, chemical, or abbreviated chemical name of the applied substance or description of the process used; and if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement prohibiting use for food, feed, or oil purposes and for mercurials and similarly toxic substances a poison statement and



symbol. If the seed is treated with an inoculant, the label must contain the date beyond which the inoculant is not to be considered effective.

3. For flower seed in packets prepared for use in home gardens or household plantings or flower seed in preplanted containers, mats, tapes, or other planting devices, the label must contain:
  - a. For all kinds of flower seed, the name of the kind and variety or a statement of type and performance characteristics as required by the commissioner, the calendar month and year the seed was tested or the year for which the seed was packaged, and the name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.
  - b. For seed of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established under this chapter, the percentage of germination exclusive of hard seeds and the words "below standard" in not less than eight-point type.
  - c. For seed placed in a germination medium, mat, tape, or other device so as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.
4. For flower seed in containers other than packets prepared for use in home flower gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices the label must contain:
  - a. The name of the kind and variety or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under the provisions of this chapter.
  - b. The lot number or other lot identification.
  - c. The calendar month and year that the seed was tested or the year for which the seed was packaged.
  - d. The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.
  - e. For those kinds of seed for which standard testing procedures are prescribed, the percentage germination exclusive of hard seed and the percentage of hard seed, if present.

#### **4-09-11.2. Labeling requirements for tree and shrub seeds.**

1. Each container of tree and shrub seed which is sold, offered for sale, or exposed for sale, or transported within this state for planting purposes, must bear or have attached a conspicuous, plainly printed label in the English language, giving the information required by this section, which may not be modified or denied in the labeling, except 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.
2. For all tree and shrub seed, the label must contain:
  - a. A word or statement indicating whether the seed has been treated; the commonly accepted coined, chemical, or abbreviated chemical name of the applied substance or description of the process used; and if the substance in

the amount present with the seed is harmful to human or other vertebrate animals, a caution statement prohibiting use for food, feed, or oil purposes and for mercurials and similarly toxic substances a poison statement and symbol. If the seed has been treated with an inoculant, the label must contain the date beyond which the inoculant is not to be considered effective.

- b. The common name of the species of seed and subspecies, if appropriate.
- c. The scientific name of the genus and species and subspecies, if appropriate.
- d. The lot number or other lot identification.
- e. 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 and for 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".
- f. The elevation or the upper and lower limits of elevations within which the seed was collected.
- g. The purity as a percentage of pure seed by weight.
- h. For those species for which standard germination testing procedures are prescribed, the percentage germination exclusive of hard seed; the percentage of hard seed, if present; and the calendar month and year test was completed to determine the percentages. In lieu of this subdivision, the seed may be labeled "Test is in process, results will be supplied upon request". For those species for which standard germination testing procedures have not been prescribed, the calendar year in which the seed was collected.
- i. The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.

**4-09-12. Invoice and records.** Each person whose name appears on the label and handles seed shall keep for a period of three years complete records of each lot of seed handled, and shall keep a file sample of each lot of seed for a period of one year after final disposition of the lot. All records pertaining to the lot involved must be accessible for inspection by the commissioner at any time during customary business hours.

**4-09-13. Tolerances.** The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939 [53 Stat. 1275; 7 U.S.C. 1551 et seq.], and subsequent amendments as of June 30, 2005, except that the tolerance for yellow starthistle must be zero and the commissioner may, by rule, establish tolerances that are more strict than the Federal Seed Act tolerances.

**4-09-13.1. Seed classification system - Weed tolerances.** Expired under S.L. 2001, ch. 62, § 4.

**4-09-14. Prohibitions.**

1. A person may not sell, offer for sale, expose for sale, transport for sale, or hold or store with the intent to sell, any agricultural, vegetable, flower, or tree and shrub seed within this state:
  - a. Unless for agricultural seed, a test to determine the percentage of germination required under section 4-09-10 has been completed within a nine-month period,

- exclusive of the calendar month in which the test was completed or the seed is offered for sale beyond the sell by date exclusive of the calendar month in which the seed was to have been sold;
- b. Unless for flower, vegetable, native grass, or forb seed, a test to determine the percentage of germination required under sections 4-09-10, 4-09-11, and 4-09-11.1 has been completed within a twelve-month period, exclusive of the calendar month in which the test was completed;
  - c. Unless for cool season lawn and turf grasses, including Kentucky bluegrass, red fescue, chewing fescue, hard fescue, tall fescue, perennial rye grass, intermediate rye grass, annual rye grass, colonial bent grass, creeping bent grass, and mixtures or blends of those grasses, a test to determine the percentage of germination has been completed within a fifteen-month period, exclusive of the calendar month in which the test was completed;
  - d. Unless for tree, shrub, agricultural, flower, wildflower, or vegetable seed packaged in a hermetically sealed container under conditions as defined by the commissioner, a test to determine the percentage of germination has been completed within a thirty-six-month period after the last day of the month that the seed was tested for germination before packaging. However, if seed in a hermetically sealed container is offered for sale more than thirty-six months after the last day of the month in which the seed was tested before packaging, the seed must be retested within a twelve-month period, exclusive of the calendar month in which the retest was completed;
  - e. If the seed is not labeled in accordance with this chapter or bears false or misleading labeling;
  - f. If there has been false or misleading advertising in connection with the seed;
  - g. If the seed contains prohibited noxious weed seeds;
  - h. Unless for agricultural or vegetable seed, the seed is labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections 4-09-10 and 4-09-11;
  - i. If the seed is designated, offered, represented, or advertised under any variety name or identification other than the variety name by which the seed was known originally;
  - j. If the seed contains restricted noxious weed seeds in excess of twenty-five seeds per pound [453.59 grams]; or
  - k. If the percentage by weight of all weed seeds in the seed exceeds one percent.
2. The purchaser, vendor, or any person receiving any seed shipped into this state from without the state shall have the same labeled in accordance with this chapter. Certain standardized grades and labeling of seed in use elsewhere may be permitted by the commissioner in connection with shipments of seed into this state from points outside this state in lieu of the labeling provided for in this chapter.
  3. A person in this state may not:
    - a. Detach, alter, deface, or destroy any label provided for in this chapter or to alter or substitute seed in any manner with the intent to defeat the purpose of this chapter;

- b. Disseminate any false or misleading advertisement concerning agriculture or vegetable seed in any manner or by any means;
- c. Hinder or obstruct in any way any authorized person in the performance of the person's duties under this chapter;
- d. Fail to comply with a stop-sale order;
- e. Use on seed labels or tags, or to use or attach to literature, or to state in any manner or form of wording designed as a "disclaimer" or "nonwarranty" clause with the intent to disclaim responsibility of the vendor of the seed for the data on the label required by law;
- f. Use the words "type" or "trace" on any labeling in connection with the name and description of any agricultural and vegetable seed;
- g. Move or otherwise handle or dispose of any lot of seed held under a stop-sale order, except with the written permission of the commissioner and only for the purpose specified in this written permission;
- h. Use the name of the department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the department or official laboratory, except in the case of registered or certified seed; or
- i. Plant any seed labeled "for vegetative cover only" with the intent to harvest for seed or grain.

**4-09-14.1. Seed sales - Seed labeling fee permit - Exception.** A person may not label agricultural, vegetable, flower, or tree or shrub seed within, or for delivery within, this state unless a seed labeling fee permit has been obtained from the commissioner and has been issued to the labeler pursuant to section 4-09-14.4.

**4-09-14.2. Seed labeling fee permit - Cost added to selling price.** The labeler shall remit fees required by section 4-09-14.1 to the state seed department.

**4-09-14.3. Fees.** Repealed by S.L. 2005, ch. 60, § 31.

**4-09-14.4. Permit.** The commissioner may issue a permit to any person to label agricultural, vegetable, flower, and tree and shrub seeds in North Dakota. The person shall apply to the commissioner for a permit and shall furnish the commissioner with an annual statement of all seeds sold in this state when requested by the commissioner. Statements that must be furnished for each reporting period must be delivered to the commissioner not later than thirty-one days after the end of each reporting period and must be accompanied by the appropriate fee. A penalty fee of ten dollars, or five percent of the total amount due, whichever is greater, will be assessed for reports that are not postmarked within thirty-one days after the end of the reporting period. Any person to whom a permit is granted shall show any information in connection with the permit as the commissioner may require as part of the label on all seed sold. The commissioner has the right at all reasonable times to examine the records of any permitholder to verify the correctness of its statements.

**4-09-15. Exemptions.**

1. This chapter does not apply to:
  - a. Potatoes, whether sold or intended for food, manufacturing, or planting purposes.

- b. Seed or grain that is not intended for planting purposes. The seller shall indicate on a form provided by the seller the purpose for which the seed or grain is purchased. The form must be available for inspection by the commissioner. It is unlawful for the seller or buyer to make a false representation as to the use of the seed or grain. A farmer selling the farmer's own seed or grain to a commercial establishment is exempt from the recordkeeping requirements of this subsection.
  - c. Seed stored by or consigned to a seed cleaning or conditioning plant for the purpose of cleaning or conditioning. However, any labeling or other representation made with respect to uncleaned or unconditioned seed is subject to the requirements of this chapter.
  - d. A common carrier with respect to any seed transported or delivered for transportation in the ordinary course of business.
  - e. A farmer who grows the farmer's own seed and sells only the farmer's own seed and does not advertise or use a third party as an agent or broker to bring buyer and seller together. However, a variety for which a certificate plant variety protection has been applied for or issued is not exempt from this chapter. The sale or transfer of protected varieties between farmers for the purpose of planting without the approval of a variety owner or developer is prohibited.
2. A person is not subject to the penalties of this chapter for having sold, exposed for sale, or transported for sale in this state any agricultural, vegetable, flower, or tree and shrub seed that was incorrectly labeled or incorrectly represented as to kind, variety, or origin and which could not be identified through examination, unless the person has failed to obtain an invoice or grower's declaration stating the kind, or kind and variety, and origin, if required, or has failed to take other precautions as may have been necessary to ensure that the seed was properly identified.

**4-09-16. Certified seed.** The commissioner shall:

1. Establish a seed certification system for this state and adopt rules governing application for service, acceptance of suitable seed stocks for the production of a foundation, registered, certified, or inspected crop, field inspection, bin inspections, harvesting, handling, storage, conditioning, and preparation and handling of the seed for market.
2. Accept for certification kinds, varieties, selections, and names of seed stocks, and establish standards of quality, degree of disease infection, and amounts of any admixtures, foreign seeds, noxious weeds, or other weed seeds that are allowed in any lot or stock of seed, which may be or become eligible for field inspection or for final certification of the seed crop.
3. Accept from any person a sample of seed which the person claims to be a new variety, distinct from any commonly known variety of the seed, together with a proposed, distinctive name. The commissioner shall determine the eligibility of a variety for certification based on factors including whether:
  - a. The variety has been accepted into a certification program by a national-designated or state-designated certification authority according to established rule or regulation.
  - b. The variety or selection is sufficiently distinguishable from existing varieties to allow for seed certification.

- c. The variety or selection has been released by a public or private industry breeding program through an acceptable release process or policy.
  - d. Technical information regarding physical traits or genetic markers of the variety or selection has been provided to the commissioner for use in field and laboratory certification programs.
4. Prescribe all labels, seals, certificates, or similar statements that must be used for, or in relation to, any seed, or the various kinds and qualities grown, handled, stored, held for sale, sold, or offered or exposed for sale in this state as "breeders", "foundation", "registered", or "certified" seed, and shall specify what words, terms, or figures the labels, seals, certificates, or the containers of the seed must bear.
  5. Cooperate with the managers of any seed conditioning plants, or any commercially established seed firm, or any person within or outside of the state having proper facilities and equipment to store, condition, and otherwise handle seed which is eligible for certification, for the purposes of handling and marketing "breeders", "foundation", "registered", or "certified" seed.
  6. Cooperate in the selection, testing, and growing of seed for certification purposes and in the arrangement for increase of foundation seed stocks suitable for the production of certified seed.
  7. Establish an equitable schedule of fees and charges, which must be uniform throughout the state, for inspecting, testing, analyzing, and recording the seed, and for other work and duties incident to the growing, handling, marketing, and certifying of North Dakota seed, and shall collect all the fees and charges.

**4-09-17. Certified seed - Regulations governing labeling and representing.** Seed grown in North Dakota, or grown elsewhere and transported into this state, which is sold, offered or exposed for sale, stored, transported, or distributed, or held with intent to sell or plant the same, may not be represented, advertised, labeled, or characterized in any way, either orally or in writing, with or by the use of the term "breeders", "foundation", "registered", "certified", "pedigreed", or "elite" seed, or any term or terms conveying a meaning substantially equivalent to the meaning of any of said terms, without the approval and authorization of the commissioner, who may adopt such rules as the commissioner finds necessary for the proper regulation and protection of the certified seed industry.

**4-09-17.1. Plant Variety Protection Act.** Any seed advertised, offered for sale, or sold by variety name and for which a certificate of plant variety protection has been issued under the Plant Variety Protection Act, as amended [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481 et seq., effective as of July 1, 2007], as being for sale only as a class of certified seed must be certified by an official seed certifying agency in order for the seed to be advertised, offered for sale, or sold by variety name in the state of North Dakota. Seed from a certified lot may be labeled as to variety name when used in a blend or mixture by or with approval of the owner of the variety.

**4-09-18. Certified seed standards.**

1. The rules and requirements for certification of crop seeds, other than potatoes, must be published in the department bulletin.
2. The rules and requirements for seed potato certification must be published in the department bulletin.

**4-09-19. Cooperation by commissioner with institutions, agencies, and organizations.** The commissioner may cooperate and enter into agreements with the United States department of agriculture and with the state departments and agricultural colleges of any of the states, and with organized agricultural fairs or exhibitions, or other organizations or persons in matters relating to the protection, inspection, analysis, testing, registering, and

certifying of North Dakota seed, and the promotion and protection of the interests and welfare of North Dakota seed growers and crop producers. The commissioner may recognize and deal with growers, organizations, and institutions as agencies affiliating with the commissioner in pure seed matters.

**4-09-20. Fees and collections - Disposition.** All moneys arising from the collection of fees and other charges under this chapter must be deposited by the commissioner with the state treasurer and credited to the seed department revolving fund, and must be disbursed, within the limits of legislative appropriations, upon vouchers signed by the commissioner and warrant-checks prepared by the office of management and budget. Royalty, research, or patent fees will be collected on protected varieties when necessary by the commissioner and disbursed less cost of collection. The state treasurer shall, at the direction of the commission, provide for the investment of available moneys from the revolving fund. The state treasurer shall deposit twenty percent of the income from the investment of the moneys in the general fund and the remaining eighty percent of the investment income in the seed department revolving fund.

**4-09-20.1. Liability of commission, department, commissioner, and certified or noncertified agricultural seed producers.** A warranty of any kind, either expressed or implied, including a warranty of merchantability, fitness for a particular purpose, or absence of disease, is not made by the commission, the department, the commissioner, or certified or noncertified agricultural seed producers as to the quantity or quality of the crop produced from the agricultural seeds or as to other produce which is inspected and certified, except as provided in this section. The sole warranty made is that the agricultural seeds or other produce were produced, graded, packed, and inspected under the rules of the department or United States department of agriculture. The commissioner functions and serves only in an official regulatory manner.

**4-09-20.2. Seed arbitration board - Petition - Arbitration hearing.**

1. The state seed arbitration board consists of the agriculture commissioner, the state seed commissioner, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the chairman of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the agriculture commissioner or an authorized designee. Each board member is entitled to receive as per diem compensation sixty-two dollars and fifty cents, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the board, except that compensation under this subsection may not be paid to any member who receives compensation or salary as a regular state employee or official. Compensation and expenses for board members who do not receive compensation or salary as a regular state employee or official must be paid by the department of agriculture.
2. A seed labeler, seed dealer, or seed customer may petition the agriculture commissioner in writing for a hearing to settle a dispute involving a seed transaction. The agriculture commissioner shall submit the dispute to the seed arbitration board, and the board shall arbitrate the dispute. The board, within thirty days after the hearing, shall make a nonbinding recommendation for the resolution of the dispute. Evidence presented to the board and any findings or recommendations by the board are admissible as evidence in any subsequent proceeding. The board shall adopt rules and procedures for arbitration proceedings, including a formula for reimbursement by the parties of the expenses of the arbitration process.

**4-09-21. Enforcement - Hearing by commissioner - Application of chapter 28-32.** The commissioner shall enforce this chapter and the regulations made thereunder. Whenever the commissioner is of the opinion that a violation of this chapter or of the regulations made thereunder exists, the commissioner shall hold a hearing as provided by chapter 28-32. If after the hearing, or without hearing if the person involved fails or refuses to appear, the commissioner decides that the evidence warrants prosecution, the commissioner shall proceed as hereinafter provided. Any proceeding under this chapter for adopting or modifying rules and regulations and

determining compliance with rules and regulations of the commissioner shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

**4-09-22. Prosecution for violations - Duty of attorney general and state's attorney.**

Upon a complaint by the commissioner alleging a violation of this chapter or of any regulation duly made thereunder, the attorney general, or the state's attorney of the county wherein the case arises, shall cause appropriate legal proceedings to be commenced and prosecuted for the enforcement of the penalties provided in this chapter.

**4-09-23. Seizure and injunction - Action.** Any lot of agricultural, flower, tree and shrub, or vegetable seed not in compliance with the provisions of this chapter is subject to seizure on complaint of the commissioner, or the commissioner's agent, to a court of competent jurisdiction in the locality in which the seed is located. In the event that the court finds the seed to be in violation of this chapter and orders the condemnation of said seed, it must be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this state. Provided, that in no instance may the court order such disposition of said seed without first having given the claimant an opportunity to apply to the court for the release of said seed, or permission to process or relabel it in compliance with the provisions of this chapter. Any violation of this chapter may be enjoined in a court of competent jurisdiction without bringing any other civil or criminal action.

**4-09-24. Penalty - Criminal - Civil.**

1. A person who violates this chapter or any rules adopted under this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
3. A person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner through an administrative hearing pursuant to chapter 28-32.

**4-09-25. Plant and seed records - Exempt.** The following records of the state seed commission are exempt from section 44-04-18:

1. Records of any plant or seed analysis or testing and variety or disease determination conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under chapter 4-09, 4-10, or 4-42 from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret.