



# The North Dakota Seed Journal

JANUARY 2021

Newsletter of the North Dakota State Seed Department

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## Lost Opportunities Cost Money

Steve Sebesta, Deputy Commissioner

North Dakota seed certification rules permit seed growers to cancel field inspections without reason, as long as it is communicated to us before the inspection. Ordinarily, cancelations are due to field issues such as drown-out, drought, and occasionally volunteers from the previous crop. For the last five years, an average of nearly 3,000 acres are canceled each year.

On occasion, seed growers cancel fields because they don't think they'll need as much seed of a particular variety. Sometimes that strategy to save a few dollars backfires when the grower determines later that he could have had a market for that seed. Therein is your "opportunity cost".

What is "opportunity cost"? That is the value of what you gain or lose when choosing between two or more options. Let's use spring wheat as an example because it's the largest crop we certify and, therefore, we have a lot of data points, but it could be any crop grown by seed producers in North Dakota, like flax, for example.

The average size of a spring wheat seed field is 123 acres. The cost of field inspection is \$2.50 per acre, so it would cost a seed grower \$307.50 for field inspection. The average yield in North Dakota last year was 49 bushels per acre so we'll assume the seed grower produced 6,027 bushels. If we assume the grower cleans his own seed, and 10% clean-out, the grower would end up with 5,424 bushels of clean seed eligible for final certification. Lab testing (germ, purity and seed count) totals \$50, the lot fee is \$10 and final certification fees, at \$0.07 per bushel costs \$379.68. So, the seed grower has \$747.18 into his spring wheat seed lot for certification costs. We'll also assume the grower uses our online bulk certificate tool, so he can print his own bulk certs for nothing. In this example, simple math would show that a seed grower's total costs for certification services is only 13.8 cents per bushel.

We encourage seed growers to carefully consider their reason for cancelling a field inspection, especially if it is only due to financial reasons. Make sure you understand the markets and consider your opportunity cost. Completing field inspection gives growers options and actually costs very little. Using the example above, the field inspection component of certification for our average field of spring wheat would cost less than 6 cents per bushel. Once harvest is complete and the seed is in the bin, growers can determine the best option for that seed. They can have it conditioned, tested and complete final certification for labeling and retail the seed themselves, or they can sell it in the dirt to an approved facility and let them complete certification and incur those costs. Canceling field inspection on a good field eliminates your options. Keep your options open.



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# From the Commissioner's Desk

Like millions of other people, I am really glad to see 2020 in the rearview mirror. I could unload a full range of gripes and complaints- from constant concern surrounding health of family and workplace- to politics and elections- to the Bison missing (most of) a fall football season. Come to think of it, even though they played...the Vikings mostly missed one too. But I digress.

The reality is, the past year probably helps us understand what is really important. Family. Educational and social opportunities for kids. The collective health and financial well-being of our communities and businesses. Co-workers and friends. Pets.

Part of my last *Seed Journal* article lamented the lack of in-person interaction with customers, growers and industry partners during pandemic times. External relations and interaction with people and groups is important to my job and our agency's work. This in-person, face to face communication element of our jobs is never more important than during a legislative session. Fortunately for the Seed Department, we are a self-funded agency and not dependent on appropriations to operate. Regardless, we do depend on the lawmaking body of this state just like every agency or citizen does. Unfortunately, easy access to the legislature and legislators normally enjoyed by North Dakota's will be drastically reduced this year.

The challenge is more profound for those seeking financial support or dependent on legislative appropriations. Entities dependent on state funding for agriculture, especially NDSU Agriculture and state Agriculture Department programs, will be hard-pressed to avoid cuts, much less enjoy gains in fiscal support for the services and products they provide.

While the Seed Department's funding isn't subject to legislative oversight, the lifeblood of our work

Ken Bertsch.....State Seed Commissioner  
Steve Sebesta.....Deputy Seed Commissioner  
Kent Sather.....Director, Potato Program  
Jason Goltz.....Field Seed Program Manager  
Joe Magnusson.....Field Seed Program Manager  
Jeanna Mueller.....Seed Laboratory Manager  
Starr Thies.....Business Manager  
Mike Oosterwijk.....Potato Program Supervisor

revolves around variety development and plant pathology programs, especially those that are funded with public monies. I've always believed that a balance of public and private variety development is crucial to the well-being of agriculture: that having a choice between a private and public variety is good for producers. Breeding programs (including cereal, oilseed, pulse and potato) at our public institutions provide that choice, and require the distribution of public monies through the appropriations process to maintain and expand these efforts.

This statement of support is not advocating a public vs private variety development position; it's a stance that more is better, and that both public and private company varieties have an equally important place in the industry. Our work with and for private seed companies is just as important to producers; utilization of certified seed from both sources is ultimately the best thing for them and the ag industry. For the next few months, the critical message to the legislature is to help maintain that balance by adequately funding public breeding programs.

One last thing: The most overused term of 2020 was the word "essential". Turns out agriculture is essential; who would have guessed? In doing a radio interview a few weeks ago my knee-jerk response to a question about our agency operating in a pandemic was something like "when you think about it, there's nothing more essential on a farm than good quality seed". There's some truth to that.

ASTA uses the saying "first, the seed". For years, the ND Certified Seed outline has been "good seed doesn't cost, it pays". My colleague, Steve Sebesta, has dreamed up and kicked off an ad campaign surrounding the theme "you don't get a mulligan" referring to the one-off of using poor seed. The pandemic version of seed slogans could be "superior seed-essential to your bottom line". Right? There's a reason I'm not in marketing.

Best wishes, and best of luck. Stay healthy.



## Seed Labeling and Reporting Requirements

*Jason Goltz, Regulatory Manager*

State seed law requires a seed labeling permit for anyone labeling seed for sale. Seed law also requires permit holders to comply with annual reporting requirements. Annual report forms are sent to labelers in July. The deadline for reporting sales is September 1, after which a late fee applies if fees are owed; payment is not required if less than five dollars.

The annual report of seed sales is not the same as the research fee report. They are two separate reports with separate fees. Some think if they didn't have sales they don't have to report, however, this is incorrect. If you didn't have sales, indicate so on the report and return to the department. When someone does

### Seed Labeling and Reporting Requirements

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## Joe's Certification FAQs

Joe Magnusson, Certification Manager

Many of the same questions arise every year at this time. With new seed growers and retailers entering the certified seed business each year, I thought it would be useful to share some of these with everyone.

### Q. How many times can certified seed be moved?

A. After final certification is completed, a maximum of two physical transfers are allowed to help maintain seed quality. The main concern is for certified seed that is sold by the initial labeler to an approved retailer. No additional transfers to a different retailer is allowed. That seed must be sold to the consumer.

**One move:** from the initial labeler → consumer, OR

**Two moves:** from the initial labeler → approved retailer → consumer

After the first sale to an approved retailer, the certification number will change to a Relabel (R#) and then that seed can only be sold directly to the consumer.

### Q. Can seed from two or more lots, purchased from different labelers, be combined for resale?

A. Seed from multiple lots or labelers may be commingled for resale. Send, fax or email to [ndseed@ndseed.ndsu.edu](mailto:ndseed@ndseed.ndsu.edu), all of the certificates for the seed lots you received and request new certificates. The analysis will be adjusted to reflect the commingled lot. Change the lot number to identify the seed at your location. A good practice is to include the bin number in the new lot number.

### Q. I have carryover seed. How do I get new bulk certificates?

A. Obtain a representative sample from the bin and send to our department (preferably in NDSSD manila seed envelope) for a new germination test. Include with the sample, a completed Relabeling Request for Carryover Seed form, which can be found on our website under Online Forms.

### Q. Can several lots of carryover seed be combined into one bin?

A. Before carryover seed is combined, each lot should be tested for germination to ensure they have not gone out of condition. Submit a representative sample with a Relabeling Request for Carryover Seed form from each bin. Note on each form that you would like to combine the lots for resale. Change the lot number to identify the new combined lot.

### Q. How do I get new certificates if carryover seed was combined prior to testing?

A. Obtain a representative sample from the bin either by probing the top and bottom of the bin or by removing approximately 5 percent of the total quantity in the bin for sampling. Submit the representative sample along with a Relabeling Request for Carryover Seed form. Indicate on the form the certification numbers along with the quantity of each lot combined. Change the lot number to identify the new combined lot.

### Q. How long do records and samples for a seed lot need to be retained?

A. Records of seed sales must be kept for three years and samples must be kept for one year after final disposition of the lot.

### Q. Can field inspected seed be sold to another grower and can they condition it for their own use?

A. No. Field inspected seed must be conditioned by a North Dakota approved conditioning facility to be eligible for certification and sale. Field inspected seed may be sold to an approved conditioning or bulk retail facility for final certification and labeling.

## Seed Labeling and Reporting Requirements

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not the return the report, we have no way to tell if they just forgot, or if they indeed had no sales. It is also important to return the report with the payment. Checks received without documentation will be returned.

We will follow up with labelers who don't report, but anyone not reporting by the end of the calendar year will be considered inactive and their permit will be cancelled.

Permits will not be cancelled until the labeler has had ample opportunity to comply. If you feel your permit should not have been cancelled, contact me and I will work with you to resolve the issue. Finally, NDSSD does not send mail unnecessarily; call us if you have any questions when you receive correspondence from us.

## 2021 Facility Applications and Inspections

**Kyle Bednar, Field Seed Inspector II**

The annual facility inspection process started in early October but due to safety concerns, was completed by phone interviews. Thanks to the facility members and NDSSD staff for adapting to this new process. By now, managers should have received the 2021 permit along with a copy of this year's inspection report. Please display the permit appropriately and review the inspection report with the appropriate employees for any nonconformity found during the inspection and then file.

This year inspectors focused on issuing bulk certificates, labeling bins and retaining samples. The following tips can help ensure compliance with seed laws.

- Labelers have the option of printing bulk certificates online as soon as a seed lot passes final certification. No waiting for the paper forms to arrive by mail. Each transaction is recorded instantly and that quantity is subtracted from your inventory. There are no log sheets or unused bulk certificates to return after the sales season.
- Label all bins containing certified seed with lot, class and variety. Adhesive bin labels are provided for each lot once it is certified. Keep an updated bin chart to ensure all approved seed bins are identified and physically numbered.
- Retain a two-pound sample of each seed lot for one year after final disposition of the lot labeled with lot, class and variety. A copy of a bulk certificate works well for this requirement.

Facilities processing and/or handling certified seed products must be inspected and approved by the Seed Department. To be approved, facilities must meet all requirements listed in administrative rules. Approval is granted on an annual basis and may be revoked by the seed commissioner at any time without notice for issues of noncompliance, or violations of North Dakota seed laws, the Federal Seed Act, or the Plant Variety Protection Act.

The process to become an approved facility is quite simple. The first step is to submit the appropriate agreement form. These are found on the department web site under FORMS. We can send you an application if you prefer. It's important to make sure the information on the application is correct, as this will be printed in the *Field Seed Directory*, the *ND Certified Seed Guide*, and our website. Secondly, a Seed Department inspector will contact you to schedule an inspection of the facility to ensure the facility meets the minimum requirements, and to review seed certification procedures.

As always, thanks for your cooperation and support this year. I encourage you to contact the office or your regional facility inspector if you have any questions.

### Know What You Grow

**Steve Sebesta, Deputy Commissioner**

Altogether, the Seed Department inspected 344 unique varieties planted on nearly 2,500 fields in 2020. We had 2,224 certified fields; half of those were spring wheat and about 20% were soybeans. We also conducted service inspections on 266 fields, more than 70% were soybeans.

It is very important that seed growers, conditioners and retailers understand how all these varieties are protected to ensure they are operating within the law. It is equally important to understand seed certification rules which include, as a first step, field inspections. We will not certify fields that were not inspected, so growers need to understand their customers' needs as well as intellectual property rights for the varieties they are producing. The certification process is not a buffet; one cannot choose which

parts of laws they wish to observe.

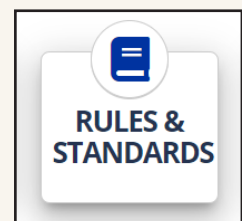
All soybeans varieties, regardless of whether they are inspected in our QA program or our certification program are protected by at least one, and sometimes two federal intellectual property rights laws, the Plant Variety Protection Act and plant patents. It is safe to say that all private brand varieties contain a patented trait that prohibits a grower from saving seed for replanting.

Other than soybeans, we inspected 191 commercial varieties for certification in 2020. Of these, 139 varieties are protected by the Plant Variety Protection Act which gives the variety owner the exclusive authority to determine who may produce and market seed of a protected variety. The majority of these varieties are further protected by the certification option. If the variety owner chooses to require certification at the time the PVP application is completed, then all seed of that variety must be

certified to be sold. These varieties are identified in commerce as PVP Title V. Some variety owners do not allow a Registered class, so even though a seed grower may purchase and plant Foundation class seed, the product will only be eligible for the Certified class.

Intellectual property rights laws are in place to protect the rights of variety owners. Some people erroneously believe we have the authority to ignore federal laws. We do not. In fact, we take our responsibility to enforce federal laws to the extent our state seed laws permit, which includes seed certification, testing and labeling.

For more information on state seed laws, certification rules and standards and intellectual property rights, go to our website, [ndseed.com](http://ndseed.com) and click on



## Promoting Certified Seed on Your Behalf

*Steve Sebesta, Deputy Commissioner*

Each year, the Seed Department allocates a portion of the fees we collect for final certification to the certified seed promotion fund. For fall 2020/spring 2021, we had budgeted more than \$67,000 to promote the North Dakota certified seed industry (seed growers, conditioners, retailers and variety owners). Of this total, about 60% goes into electronic media (TV and radio), about 20% goes toward products such as wall calendars and caps and 15% goes toward print ads in various publications.

Rest assured, our efforts to promote certified seed did not end when the COVID pandemic struck, we simply made adjustments to the types of media we used. For example, the funds we budgeted for TV sponsorships of high school football playoffs, as well as booth space at every trade show that was cancelled was reallocated to sponsor weathercasts on three TV stations blanketing the state. Like everyone else, we're hopeful that high school tournaments for winter sports and Bison football will resume in the spring. If so, we'll be there on your behalf.

We produced four new radio ads for this year. And, recognizing that women have an increased role in decision-making in many farm operations, we opted to add a female voice to the ads this time. We also produced a new print ad for the 2021 *Seed Guide* which we have re-purposed into a wall poster. As Jason explains in his article, we expect to resume regulatory inspections of facilities this winter and we will be delivering this poster to all facilities approved to handle certified seed at that time. It is our hope that facility managers will display these posters at your points of purchase. We believe that it

## Regulatory Expectations During the Pandemic

*Jason Goltz, Regulatory Manager*

Regulatory inspections begin each year in January and continue through April until seed sales cease for the spring planting season. During that time, inspectors draw samples of seed lots to verify truth-in-labeling. It is also an educational opportunity.

At the present time, with infection rates across the state decreasing and with better knowledge about how to safely and effectively interact with each other during the pandemic, we plan to resume inspections again and will monitor the situation as the season progresses. This year, you can expect the following from our team, but in order for this season to proceed effectively and safely we need your cooperation.

- Inspectors will call ahead to make an appointment.
- Inspectors are required to wear masks at all times and respect the six-foot guideline.
- Anyone at your facility interacting with our inspectors will also be required to wear a mask.
- No witness signature will be required on the sampling reports.
- Copies of labels must be provided in a way which do not violate the six-foot guideline.
- Sampling assistance must be accomplished while observing social distancing.

Regulatory inspections are a critical component of the seed industry. Label verification protects both the labeler and their customers. We usually find at least one instance each season where bins have been mislabeled and we also will discover seed which may be beginning, or has gone, out of condition.

Our educational efforts also prevent unintentional regulatory violations from occurring, some of which can potentially lead to financial penalties. If we all do our part, we can have a successful season in spite of the continued uncertainty of an ongoing pandemic.

effectively captures the advantages of planting certified seed.

Finally, *The North Dakota Seed Journal* is not just another newsletter used to communicate what's taking place at the Seed Department. We see it as a tool that you should use to promote your products and services to your customers. Certified seed brings value to multiple levels of the agriculture supply chain. Obviously, it adds value to seed producers' farming operations. And, since many varieties developed and released today are protected by PVP Title V, certification provides you and your customers access to many of the best products available today. We believe certification is the best way to capture the value plant breeders incorporate in new, genetically improved varieties.

**North Dakota State Seed Department**

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# NDSSD Calendar

The following events are current as of publication date. Please check with the organization for schedule or format changes. Most virtual meeting require online registration to receive the meeting log-in invitation. Check their websites for details.

- Feb 3** .....ND Crop Improvement annual meeting (virtual)
- Feb 10** .....National Hard Spring Wheat Show, Williston (hybrid)
- Feb 11** .....MonDak Pulse Day, Williston (hybrid)
- March 3-5**.....KMOT Ag Expo, Minot
- March 10-14**.....North Dakota Winter Show, Valley City
- March 21-23**.....ND Grain Dealers annual meeting, Fargo