



1400 Independence Avenue, SW
Room 2055-S, STOP 0201
Washington, D.C. 20250-0201

November 8, 2023

[Chief Executive Officer/President/Chairman]
[Company]
[Address]

Dear [Chief Executive Officer/President/Chairman]:

I am enclosing a Notice to Trade published by the U.S. Department of Agriculture's Agricultural Marketing Service (AMS) on March 6, 2023, clarifying varietal labeling requirements of the Federal Seed Act (FSA) to enhance transparency for growers.¹ We ask that you carefully review this notice and take any steps necessary to ensure compliance with the FSA regulations.

AMS is committed to the enforcement of the varietal labeling provisions of the FSA and, through Section 409 of FSA (7 U.S.C. 1599), AMS is authorized to initiate administrative proceedings against anyone who violates any FSA provision or regulation. Enforcement outcomes may range from cease-and-desist orders and monetary penalties to seizure of the seed and criminal sanctions in the Federal court system. AMS invites the reporting of complaints or tips to AMS' Seed Regulatory and Testing Division at seedcomplaints@usda.gov.

AMS receives questions involving the proper use of Brand names. Brand names may be associated with the name of the kind or variety of seed; however, the Brand must be clearly identified as not being the kind or variety name. In addition, if seed advertised under a Brand name is a mixture of varieties and if the variety names are not stated in the advertising, a varietal description or a comparison with a named variety cannot be used if it creates the impression that the seed is of a single or known variety. AMS underscores the importance of avoiding representations that may claim or give the impression that seed Brands add diversification for a grower when that representation is false or misleading.

The FSA regulations require seed kind and varietal information to be printed on seed containers, or labels, in a form that is clearly legible. This requirement allows a purchaser of seed to make reasoned and informed decisions.

¹ Available at <https://www.ams.usda.gov/content/usda-ams-clarifies-varietal-labeling-requirements-federal-seed-act-enhance-transparency>.

As described in the enclosed Notice to Trade, AMS expects that farmers be informed of kind and variety at the earliest opportunity, usually at the time of purchase and no later than the commencement of shipment. This can be accomplished by allowing the grower to physically review the seed container and its label, by making the labeled claims easily accessible to the grower (i.e., a link to an image of the actual label), or through other appropriate means.

Ultimately, legal compliance and best practices start at the top. AMS encourages you and your boards of directors to establish best practices in accordance with the Notice to Trade. In particular, we would encourage you, as [Chief Executive Officer/President/Chairman], to ask the following questions of your executive leadership and staff as you examine how your company operates in the best interest of your farmer stakeholders.

1. Have we as a company taken steps in response to the Notice to Trade to ensure that our company's practices are in the interests of our farmer stakeholders?
 - a. If yes, please explain to the executive leadership how and when the company makes kind and variety information available to farmers. If your practices differ by crop type, please assess how and when your company provides kind and variety information to farmers for each crop.
 - b. If no, please assess why not, including any obstacles to informing farmers of kind and variety at the earliest opportunity. How can the executive leadership team facilitate quick and efficient varietal disclosure in the best interests of farmers?

We request that you distribute copies of the notice and this letter to your subsidiaries. This letter does not reflect any assessment as to whether you are in violation of FSA. We are also distributing these letters to other companies.

Sincerely,
/s/ Bruce Summers
BRUCE SUMMERS
Administrator

Enclosure

Notice to Trade (March 6, 2023)

The U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) today reiterates its standing policy related to varietal labeling requirements for agricultural and vegetable seed shipped in interstate commerce. AMS's policy is based on requirements of the Federal Seed Act (FSA) (7 U.S.C. 1551-1611), a truth-in-labeling law that regulates the labeling of seed in interstate and foreign commerce. The FSA does not regulate seed that is grown, conditioned, and traded within individual States. This policy statement makes clear that AMS views false advertising and mislabeling of seed varietal names as serious violations of the FSA.

Periodically, AMS receives questions from seed businesses and customers related to varietal labeling requirements. The most common question is whether varietal names are required on vegetable and agricultural seed. For vegetable seed shipped in interstate commerce, the seed must be labeled with kind and variety name. There is no exception to this requirement.

Agricultural seed has three options for labeling: (1) kind name; (2) kind and variety name; or (3) kind name and the words "variety not stated". The "variety not stated" description only applies to 37 agricultural seed kinds (§201.10). The 37 agricultural seed kinds are: Alfalfa; Bahiagrass; Barley; Bean, field; Beet, field; Brome, smooth; Broomcorn; Clover, crimson; Clover, red; Clover, white; Corn, field; Corn, pop; Cotton; Cowpea; Crambe; Fescue, tall; Flax; Lespedeza, striate; Millet, foxtail; Millet, pearl; Oat; Pea, field; Peanut; Radish; Rice; Rye; Safflower; Sorghum; Sorghum-sudangrass; Soybean; Sudangrass; Sunflower; Tobacco; Trefoil, birdsfoot; Triticale; Wheat, common; and Wheat, durum.

The second most common question involves the proper use of Brand names. Brand names may be associated with the name of the kind or variety of seed; however, the Brand must be clearly identified as not being the kind or variety name. For example, ABC123 Brand sweet corn may not be advertised in a way that creates the impression that ABC123 is a kind or variety name. In this example, the word "Brand" after the word "ABC123" is sufficient to distinguish the Brand.

In addition, if seed advertised under a Brand name is a mixture of varieties and if the variety names are not stated in the advertising, a varietal description or a comparison with a named variety cannot be used if it creates the impression that the seed is of a single or known variety. AMS underscores the importance of avoiding representations that may claim or give the impression that seed Brands add diversification for a grower when that representation is false or misleading. AMS invites the reporting of complaints or tips to farmerfairness.gov or directly to AMS's Seed Regulatory and Testing Division, contact below.

Kind and variety information is important to farmers purchasing seeds. The Federal Seed Act regulations require seed kind and varietal information to be printed on seed containers, or labels, in a form that is clearly legible. This requirement allows a purchaser of seed to make reasoned and informed decisions. AMS expects farmers to be informed of kind and variety at the earliest opportunity, usually at the time of purchase and no later than the commencement of shipment. This can be accomplished by allowing the grower to physically review the seed container and its label, by making the labeled claims easily accessible to the grower (e.g., a link to an image of the actual label), or through other appropriate means.

AMS is committed to the enforcement of the varietal labeling provisions of the FSA and, through Section 409 of the FSA (7 U.S.C. 1599), the USDA is authorized to initiate administrative proceedings against anyone who violates any FSA provision or regulation. Enforcement outcomes may range from cease-and-desist orders and monetary penalties to seizure of the seed and criminal sanction in the federal court system. Anyone with knowledge of potential violations of the FSA is encouraged to report them to AMS.

Please contact AMS's Seed Regulatory and Testing Division Director, Ernest Allen, at Ernest.Allen@USDA.gov or (704) 810-8884 for additional information and questions.