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Department of
Agriculture

Marketing and
Regulatory
Programs

Agricultural
Marketing
Service

Livestock and
Seed Program

Items of Interest in Seed Control

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MAIL IRRADIATION UPDATE

Seed Regulatory and Testing Branch Chief Richard Payne and Plant Variety Protection Commissioner Paul Zankowski and four members of the American Seed Trade Association met with officials of the United States Postal Service (USPS) to discuss irradiation of the mail and the implication for seeds shipped through the mail.

The USPS staff made several points:

1. The only mail being irradiated by the USPS at this time is mail sent to the Federal government in Washington, DC (zip codes 205XX and 202XX).
2. The major concern is letters sent by "unknown" mailers and not letters sent by a company or letters with a clear return address.
3. The USPS will notify shippers if the irradiation program is expanded and USPS will work with them to reduce the chance of damage to their products.
4. If mail is irradiated in other locations, the shipper and receiver will be notified.
5. Additional action to safeguard the mail and those that handle the mail will depend, in part, on additional funding.

USPS Recommendations for Mailpiece Design

- Use safety seals and tamper-proof envelopes.
- Use transparent envelopes.
- Use closed window envelopes rather than open window envelopes.
- Use a postmark or indicia that matches the city and state of the return address.
- Use a full return address and recognizable company logo on the outside of mailpieces.
- Include a contact name and phone number or e-mail address in all correspondence.
- Discontinue using "handwritten" fonts.
- Include a toll-free number and web site on the outside of the mailpiece.
- Use indicia or metered postage instead of live postage stamps.
- Inspect all pre-printed inserts.
- Assess use of promotional items (pens, magnets, *etc.*), which make mailpieces lumpy and misshapen.
- Review production processes to eliminate any substances that could be misidentified as a biohazardous material by employees or customers.

VARIETY NAMING VS. BRANDS AND TRADEMARKS

Variety Naming

Variety names (including numbers) are unique to a kind of seed. Varieties of different kinds of seed may have the same variety name if the kinds are not closely related. The name of a variety is the name provided by or assigned by the owner or developer of the variety. If the owner or developer fails to name the variety or chooses not to name the

variety, the variety name then becomes the designation used when the seed is first introduced into channels of commerce (including advertising) in the United States. That means if a variety is advertised by an experimental designation, that experimental designation (with few exceptions) becomes the variety name and is the name that must be used by all parties advertising and labeling the seed.

Once a variety name is used for a specific kind of seed, that name can never be used again by anyone for another introduction of the same kind of seed. Once assigned to a variety, the name remains exclusive forever, even though seed of that variety is never sold again. Exceptions to this rule apply to a number of agricultural and vegetable seed varieties being marketed under several names (synonyms) before July 28, 1956, and for hybrid corn names in use before October 20, 1951.

If you develop a new variety, you cannot use an existing variety name. You also cannot incorporate a major part of an existing variety name in the new variety name unless the new variety is substantially derived from the existing variety.

Seed imported into the U.S. cannot be renamed if the original name of the seed is in the Roman alphabet. Varieties originating outside the U.S. are sometimes given a name not written in the Roman alphabet. Therefore, once the seed enters commerce in the U.S. the name is changed to a name written in the Roman alphabet.

Hybrids

Hybrid designations, whether names or numbers, are variety names. In the case of hybrids, since more than one seed producer or company might use identical parent lines in producing a hybrid variety, it is possible that more than one name might be given to the same parent cross. The same name is required to be used by all companies using the same parent lines to produce the hybrid since they are marketing an identical variety. If the developers of the parent lines have given the hybrid cross a variety name, that is the legal variety name. Otherwise, the name would be the one given by the company that first introduced the hybrid seed into commerce. If any of the initial parent seed lines were altered, the resultant cross would be required to have its own unique variety name.

Brands and Trademarks

The proliferation of the market with trademarks and brand names has greatly complicated variety naming and marketing of varieties. Brands and trademarks were initially used to identify the manufacturer or distributor (source) of the seed and not the product itself. A trademark (especially when registered with the U.S. Patent and Trademark Office) is private property to be used only by, or with permission of, the originator of the trademark. Many companies choose to include all or part of their company's name when naming a new variety. Under the Federal Seed Act (FSA) this practice is allowed but is discouraged because the company name is often trademarked. Once a brand or trademark is used as a part of a variety name, that brand or trademark loses status (the protection given brands and trademarks). This automatically requires other persons to use the brand or trademark in the name of the variety since anyone marketing the variety is required under the FSA to use the exact legal variety name even though the variety name includes a brand or trademarked designation.

The status of a variety name under the FSA and the requirement that the name be used by all parties labeling or advertising the variety is not changed by the registration of the name as either a brand or trademark. When brand and trademarked names are not part of a variety name and are used in labeling and advertising they must be clearly identified as being other than a part of the variety name. The U.S. Patent and Trademark Office will not knowingly issue a trademark for a term or name that has been used as a variety name. Under the FSA, a variety name cannot be a valid brand name, and we do not knowingly allow a brand name to be used as a variety name. Under the FSA, it is also considered false and misleading to substitute a brand name for a variety name.

Summary

If the naming, labeling, and advertising of a seed variety are truthful, it is probably in compliance with the FSA. Keep these simple rules in mind to help eliminate violations and confusion in the marketing of seed:

- Research the proposed variety name before adopting it. Submit the name to the Seed Regulatory and Testing Branch (SRTB) for clearance before adopting it. Since the United States does not have variety registration, SRTB clearance does not guarantee that there is no name conflict.
- Make sure the name cannot be confused with company names, brands, trademarks, or names of other varieties of the same kind of seed.
- Never change the variety name, whether marketing seed obtained from another source, or from your own production. Be especially careful of misnaming when companies merge, because company mergers are not justification for changing variety names. The name used by the supplier on invoicing and labeling the seed should be acceptable and can usually be construed as the correct variety name.

ARE YOU SURE IT'S OTHER CROP SEED?

Some companies apparently are unsure how to label seeds that are of the same kind as the kind shown on the label, but are of a different variety than the labeled variety. We are seeing situations where a seed lot is labeled to be all of a specific variety of a kind, but actually contains some seed of another variety of that kind. In this circumstance, under the Federal Seed Act (FSA), the other variety is considered to be "other crop seed" and should be included as "other crop seed" on the label. If the percentage of the other variety exceeds 5 percent, the name of the other variety and the percentage of pure seed and germination percentage of that variety must appear on the label. The FSA also permits the labeling of the purity and germination percentages of the other variety no matter what purity percentage is present. You should be aware, however, that many States only allow the other variety to be labeled as a separate variety if it is present at a 5 percent or greater rate. The States that disallow labeling varieties that are present at a less than 5 percent rate would require that the other variety be shown as a part of the "other crop seed."

UPCOMING FEDERAL SEED SCHOOL IN GEORGIA

The Georgia Department of Agriculture Seed Laboratory will host a Federal Seed School, May 20-22, 2002, in Tifton, GA. Seed Regulatory and Testing Branch Botanists David Bitzel and Patsy Jackson will be the instructors. The main emphasis will be purity testing and identification of crop and weed seeds of interest to participating seed analysts. Specific germination problems will also be addressed. Due to the hands-on nature of the training and the one-on-one instruction, enrollment will be limited to 20 people. For more information, contact David Bitzel (telephone 301-504-8089; fax 301-504-8098; e-mail david.bitzel@usda.gov).

AOSA ACCREDITATION EXAMINATION

The Association of Official Seed Analysts accreditation examination for seed analysts will be held in Tifton, GA on May 23 and 24, 2002. For further information and details, please contact Dr. Wayne R. Guerke of the Georgia Department of Agriculture at 229-386-3145.

SEED REGULATORY AND TESTING BRANCH RELOCATION PROPOSED

The USDA has put forth a proposal to relocate the Seed Regulatory and Testing Branch (SRTB) from its current site at the Beltsville Agricultural Research Center in Beltsville, MD to a new facility in Gastonia, NC. The earliest this relocation would occur is October 1, 2002.

Currently, a building is being designed to the Branch's specifications to house the laboratory and offices. The building will be adjacent to another Agricultural Marketing Service office and laboratory. The new facility will allow SRTB to be involved in biotechnology testing.

We will give more detailed information as aspects of the relocation are more definitely determined.

FEDERAL SEED ACT CASE SETTLED

The following case was settled administratively under the Federal Seed Act on November 20, 2001. Under the administrative settlement procedure, the Seed Regulatory and Testing Branch and the firm agreed to settle the case for the amount specified, with the firm neither admitting nor denying the charges:

- MFA, Incorporated, Columbia, MO, has paid \$1,125 for a case involving two seed shipments. The alleged violations, while not the same for both shipments, were false labeling as to purity, germination percentage, test date, and noxious-weed seeds. Seed regulatory officials in Illinois cooperated in the initial sampling and inspection.

RYEGRASS FLUORESCENCE LIST

We have had no changes from the National Grass Variety Review Board (NGVRB) since our last issue.

Perennial Ryegrass Variety Name	Percent Varietal Fluorescence	Perennial Ryegrass Variety Name	Percent Varietal Fluorescence
246	0.27%	Caddieshack	1.57%
2CB	1.97%	Caliente	0.74%
856	0.87%	Calypso	1.29%
89-90	2.15%	Calypso II	0.47%
90-14 ¹	7.12%	Catalina	3.18%
96-KSOS-L-1-PR-WVPB-C-24 ¹	6.50%	Cathedral	0.85%
A +	6.23%	Chaparral	1.62%
Academy	2.33%	Charger II ³	0.54%
Accent	0.56%	Charisma	2.39%
Accolade	4.83%	Chatham ³	2.11%
Accord	4.08%	Churchill	2.93%
Achiever	0.93%	Citation III	0.96%
Admire	2.37%	Commander	1.02%
Advent	0.14%	Cutter	1.65%
Affinity	0.77%	Dancer	0.78%
Affirmed	2.59%	Dandy	2.00%
Agresso	2.00%	Delaware Dwarf	2.60%
AllSport	0.92%	Derby Supreme	2.85%
All*Star	0.47%	Dillon	4.14%
Allaire II	1.15%	Divine	3.09%
APM	0.59%	DS95-201 (Enchanted) ¹	1.12%
Aquarius	0.97%	Edge	1.73%
Archer	1.51%	Elegance	1.51%
A.S.A.P.	1.42%	Elf	0.75%
Ascend	3.09%	Elite	4.84%
ASP410	0.18%	Envy	0.22%
Assure	0.72%	EP37 (Magic II) ¹	1.36%
Bayou ¹	1.33%	EP39 (Pronto II) ¹	1.75%
Bedford	1.40%	Equal	1.98%
Bella	0.65%	Esquire ¹	3.10%
Blackhawk	1.17%	Evening Shade	1.17%
Blazer III	1.18%	Exacta	1.22%
Boardwalk	2.72%	Excel ³	1.53%
Breeze	1.57%	Express	4.00%
Brightstar	1.79%	Extreme	1.32%
Brightstar II ³	2.24%	Fiesta II ³	1.14%
Buccaneer	7.44%	Fiesta 3	1.02%
Buccaneer II	5.48%	Galaxy	1.19%
CIS-MBH	1.27%	Gator	0.88%
C-21	6.28%	Gator II	2.50%

Perennial Ryegrass Variety Name	Percent Varietal Fluorescence	Perennial Ryegrass Variety Name	Percent Varietal Fluorescence
Gettysburg	2.74%	Passport ³	1.06%
Goalkeeper	0.82%	Patriot II	0.42%
Greenland	1.20%	Pearl	1.86%
Grimalda	2.00%	Pegasus	2.41%
Headstart	2.09%	Pennant	0.50%
Imagine	1.31%	Pennant II	1.63%
Jet	0.84%	Phantom	2.19%
Jiffie	6.06%	Pick Lp Q-93 ¹	6.44%
Laredo	0.53%	Pleasure	4.09%
Legacy	0.37%	Pleasure XL	1.11%
LF-100 (Continental) ¹	5.88%	PR8820	0.79%
Lindsay	1.72%	Prelude	1.72%
Line Drive	2.72%	Prelude II	2.25%
Linn	5.00%	Prelude III	0.59%
Lowgrow ³	1.31%	Prizm	0.71%
Lowgrow II	1.35%	Prosport	1.36%
LP22 (Vail) ¹	0.82%	Protocol	4.30%
LRF-94-C8 ¹	0.64%	Protocol II ¹	5.28%
Lynx	4.19%	Prowler	0.21%
MB 49 (Nexus) ¹	2.01%	Quickstart	0.18%
Magic	1.21%	R2	1.25%
Majesty	1.59%	Racer	1.23%
Manhattan II ³	0.65%	Regency	0.99%
Manhattan 3 ³	0.88%	Repell	0.33%
Mardi Gras	1.07%	Repell II ³	1.56%
Monterey	2.64%	Repell III	0.80%
Monterey II	1.94%	Reveille	2.00%
Morningstar	0.87%	Riviera	0.58%
MP5 (PDQ) ¹	4.65%	Riviera II	1.08%
Mulligan	1.86%	Roadrunner	2.53%
Navajo ³	0.37%	Rodeo II	2.47%
Newlinn	5.85%	Rosalin	3.26%
NightHawk	1.39%	Saturn II	0.85%
Nobility	7.53%	Seville ³	0.33%
Nomad	1.03%	Sherwood	1.08%
Nova	1.00%	Shining Star	0.10%
Omega 3	0.73%	Sonata	1.20%
Omni	0.51%	SR 4100 ³	0.37%
Pageant	2.22%	SR 4200	0.34%
Pageant II ¹	3.32%	SR 4500 (SRX NJPR, SRX 4NJPR, SRX 4500) ¹	0.24%
Palmer	1.04%	Stallion Select	2.37%
Palmer II	1.51%	Stallion Supreme	1.16%
Palmer III	0.23%	Stardance	1.90%
Panther	1.18%	Statesman	1.27%
Paragon (MML, TMI-MML) ¹	0.88%		

Perennial Ryegrass Variety Name	Percent Varietal Fluorescence	Perennial Ryegrass Variety Name	Percent Varietal Fluorescence
Statesman II	8.42%	WVPB-PR-RS-2 ¹	1.59%
Sunshine	2.65%	WVPB-XB-2 ¹	26.71%
Target ³	3.28%	WVPB-XP-6 ¹	21.69%
Tonga	11.53%	Yorktown III	1.42%
TopGun	1.15%		
Top Hat	0.77%	Annual Ryegrass Variety Name	Percent Varietal Fluorescence
Topeka	2.34%	Florida 80	98.89%
Tove	17.48%	Grazer	99.78%
Twister	3.85%	Gulf	99.02%
Vantage	2.19%	Jackson	98.80%
Vibrant ¹	4.30%	Magnolia ²	---
Vivid	1.24%	Marshall	96.00%
Wilmington	0.17%	Passerel Plus	98.83%
Wind Dance	1.17%	Rio ¹	98.97%
Wind Star	0.47%	Surrey	98.91%
Wizard ³	2.57%	TAM 90	98.45%
WVPB-PR-C-2, C-2 ¹	8.65%		
WVPB-93-KFK ¹	3.84%		
WVPB-PR-Koos-95-9 (Breeze II) ¹	6.85%		

¹ Experimental Designation and/or Variety.

² Exempt from varietal fluorescence testing calculations.

³ The NGVRB is now listing OECD synonym names. **These names are not acceptable for sale in the United States** and are included for informational purposes. The variety and its OECD synonym shown in italics are: Brightstar II-*Polarstar*, Charger II-*Fairway*, Chatham-*Catia*, Excel-*Romadera*, Fiesta II-*Pickwick*, Lowgrow-*Lex86*, Lowgrow II-*Sunbright*, Manhattan II-*Numan*, Manhattan 3-*Triman*, Navajo-*Comanche*, Passport-*Romeo*, Repel II-*Verdi*, Seville-*Leonardo*, SR4100-*Athena*, Target-*Libra*, and Wizard-*Sardinero*.

Additions and Deletions
Of
Plant Variety Protection
Certificates

PLANT VARIETY PROTECTION CERTIFICATES
(Issued November 16, 2001, through January 31, 2002)

KIND VARIETY	APPLICANT	TITLE V (GEN.)	1994 PVPA	KIND VARIETY	APPLICANT	TITLE V (GEN.)	1994 PVPA
CORN, FIELD				RAPE			
SVAP7	Limagrain Genetics		Y	IMC 104	Cargill, Incorporated	Y (*)	Y
SVBE4	Grandes Cultures SA			SORGHUM			
	Limagrain Genetics		Y	PHBR76JJIE	Pioneer Hi-Bred International, Inc.		Y
SVCI17	Grandes Cultures SA			SOYBEAN			
	Limagrain Genetics		Y	CAVINESS	University of Arkansas Agricultural Experiment Station	Y (2)	Y
COTTON							
Acala Nem-X	California Planting Cotton Seed Distributors	Y (*)	Y	Motte	South Carolina Agricultural Experiment Station	Y (2)	Y
BXN 57	Stoneville Pedigreed Seed Company, Inc.		Y				
BXN 58	Stoneville Pedigreed Seed Company, Inc.		Y	S00-A6	Syngenta Seeds, Inc.		Y
				S10-F2	Syngenta seeds, Inc.		Y
ONION				S16-Y6	Syngenta Seeds, Inc.		Y
Marquesa	Seminis Vegetable Seeds, Inc.		Y	S30-Y8	Syngenta Seeds, Inc.		Y
				S38-E9	Syngenta Seeds, Inc.		Y
NuMex Chaco	New Mexico State University Agricultural Experiment Station	Y (3)	Y	SQUASH			
				Bugle	Cornell University Experiment Station		Y
NuMex Freedom	New Mexico State University Agricultural Experiment Station	Y (3)	Y	WHEAT, COMMON			
				766	Virginia Tech Intellectual Properties, Inc.	Y (2)	Y
NuMex Snowball	New Mexico State University Agricultural Experiment Station	Y (3)	Y	Charter	Monsanto Company	Y (*)	Y
				McVey	Minnesota Agricultural Experiment Station	Y (3)	Y
NuMex Sweetpak	New Mexico State University Agricultural Experiment Station	Y (3)	Y	Roane	Virginia Tech Intellectual Properties, Inc.	Y (2)	Y
Texas Legend	Texas Agricultural Experiment Station		Y	WHEAT, DURUM			
				AC Avonlea	Agriculture & Agri-Food Canada	Y (*)	Y
POTATO							
Avalanche	John Mara		Y				
Crispin	John Mara		Y				
Molli	NORIKAI		Y				
	Nordring-Kartoffelzucht- und Vermehrungs-GmbH GroB Lusewitz						
RAPE							
IMC 03	Cargill, Inc.	Y (*)	Y				

(*) No limit to the number of generations of certified seed beyond breeders seed.

PLANT VARIETY PROTECTION CERTIFICATES
(Expired November 16, 2001, through January 31, 2002)

KIND VARIETY	APPLICANT	TITLE V (GEN.)	1994 PVPA	KIND VARIETY	APPLICANT	TITLE V (GEN.)	1994 PVPA
ALKALIGRASS, WEEPING Fults	NK Lawn and Garden Company			SS405B TRITICALE Jenkins Nutricale	Novartis Seeds, Inc. Resource Seeds, Inc. Fred C. Elliott		
ASTER, CHINA Pot 'N Patio Blue	Ball Horticultural Company						
CAULIFLOWER White Rock	Sluis and Groot Research						
MARIGOLD Janie Flame	Goldsmith Seeds, Inc.						
ONION Crystal Wax Pickling	Sunseeds Company						
PEA 77 Early Perfection Image	Nunza B.V. Crites-Moscow Growers, Inc.						
Lacy Lady	Novartis Seeds, Inc.						
RADISH Red King	Harris Moran Seed Company						
RYEGRASS, PERENNIAL Pennant	Agriculture Service Corporation International Seeds, Inc.						
Regal							
SOYBEAN AP 420 Deltapine 246	Advanta USA, Inc. Delta and Pine Land Company						
Deltapine 417	Delta and Pine Land Company						
Deltapine 497	Delta and Pine Land Company						
FFR 560 Hobbit	FFR Cooperative Ohio Agricultural Research and Development Center and USDA-ARS		Y (3)				
HP 3033S RS 2330 Simpson	Advanta USA, Inc. Advanta USA, Inc. Minnesota Agricultural Experiment Station		Y (*)				
SUNFLOWER							

(*) No limit to the number of generations of certified seed beyond breeders seed.

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