

AGRICULTURE: Agricultural seeds containing noxious weed seeds must not indicate that there are no noxious seeds when such seeds are present.

SEEDS:

April 29, 1950

5/1/50

Mr. James P. McGinnis, Director
Seed Division
Department of Agriculture
Jefferson City, Missouri



Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department reading as follows:

"Will you please give us a written opinion as to whether or not a seed labeler is permitted to show 'None' or leave the space blank following noxious weeds on a label of field seed if three or more noxious weed seeds are present in a fifty (50) gram working sample.

"Section 14268, Subsection (d) requires the labeler to show the name and number of noxious weed seeds which are present singly or collectively when in excess of 1 in 5 grams of timothy, redtop, tall meadow oat grass, orchard grass, etc. In a fifty (50) gram working sample the labeler is permitted ten (10) plus the Federal tolerance of two (2), or a total of twelve (12).

"A number of labelers have been labeling their seeds "None" or leaving the space blank following noxious weeds if though eight (8) to ten (10) are present. Regulation 6 in part reads as follows: 'Blank spaces on the label will be deemed to imply 'None' when such interpretation is reasonable."

Section 14268, Revised Statutes of Missouri 1939, referred to in your letter, provides as follows:

"Every lot of agricultural seeds, as defined in section 14265 of this article, except as herein otherwise provided, when in bulk, packages, or other containers of one (1) pound or more, shall have affixed thereto, in a conspicuous place, on the exterior of the container of such agricultural seeds, a plainly written or printed tag or label in the English language, stating:

(a) Commonly accepted name of such agricultural seeds.

(b) The approximate percentage by weight of purity; meaning, the freedom of such agricultural seeds from inert matter and from other seeds distinguishable by their appearance.

(c) The approximate total percentage by weight of weed seeds, the term 'weed seeds' as herein used being defined as the noxious weed seeds or bulblets listed in sub-section (d), and all seeds not listed in section 14265 as agricultural seeds.

(d) The name and number of each kind of the seeds or bulblets of the following named noxious weeds which are present, singly or collectively, as follows: (1st) in excess of one seed or bulblet in each five (5) grams (approximately one-sixth of one ounce avoirdupois) of timothy, reedtop, tall meadow oat grass, orchard grass, Canada bluegrass, Kentucky bluegrass, fescues, brome grasses, perennial and Italian rye grass, crimson clover, red clovers, white clover, alsike clover, sweet clover, lespedeza, alfalfa, and all other grasses and clovers not otherwise classified; (2nd) one in twenty-five (25) grams (approximately six-sevenths of an ounce avoirdupois) of millets, rape, flax and other seeds not specified in first (1st) or third (3rd) of this sub-section; (3rd) one in one hundred (100) grams (approximately

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three and one-half ounces avoirdupois) of wheat, oats, rye, barley, buckwheat, vetches and other seeds as large or larger than wheat; and for the purpose of this section the following shall be defined as noxious weeds; quack grass, dodders, Russian thistle, wild carrot, buckhorn and other varieties of plantain, wild onion, red sorrel, ox-eye daisy, garlic, and such other weeds as the state department of agriculture may designate as noxious.

(e) The approximate percentage of germination of such agricultural seeds (including hard seed) the month and year said seeds were tested.

(f) The percentage of hard seeds.

(g) The full name and address of the vendor of such agricultural seeds, together with the number of said vendor's permit.

(h) Name of state and, in case of field corn, county, where seed was grown, and if this is unknown, a statement to that effect."

It is to be noted that such section pertains to labeling only, and the only prohibition against selling agricultural seeds containing prohibited weed seeds is found in Section 14271. Therefore, as long as the provisions of Section 14268 are followed and agricultural seeds are labeled correctly, such seeds may be sold even though the noxious weed seeds exceed the tolerances allowed by sub-section (d).

We believe that the name and number of the noxious seeds need not be listed unless the tolerances allowed by sub-section (d) are exceeded. However, we believe it to be contrary to the requirements of the act to place on the label after a listing of "noxious seeds" the term "none" or leaving such space blank if as a matter of fact there are noxious weed seeds in the agricultural seed, even though such noxious weed seeds are within the tolerances allowed by sub-section (d).

When there are noxious weed seeds in agricultural seed within the tolerances allowed by sub-section (d) such fact

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must be stated on the label, that is, instead of listing "none" or leaving a blank after "noxious weed seeds" on the label, the listing must be that noxious weed seeds are present only within the tolerances allowed by sub-section (d), Section 14268, Revised Statutes of Missouri 1939.

CONCLUSION

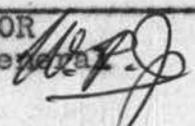
It is the opinion of this department that where noxious weed seeds are present in agricultural seed, but not in excess of the tolerances allowed by sub-section (d), Section 14268, Revised Statutes of Missouri 1939, when in bulk, packages or other containers of one pound or more, the label of such agricultural seed should not list "none" or leave a blank space after the term "noxious weed seed" but should show that the noxious weed seeds do not exceed the tolerances allowed by sub-section (d) of Section 14268, Revised Statutes of Missouri 1939.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

Approved:

J. E. TAYLOR
Attorney General



CEB:lrt