

Securing Seed Sovereignty

An Examination of Ohio's Seed Regulations

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Overview:

- Definitions
- Brief History
- Law Overview
- Recent Events
- Significant Issues
- Proposed Solutions



Definitions

Food Sovereignty is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems. [1]



Seed Sovereignty:

-Reclaims seeds and biodiversity as common and public good. The farmer's rights to breed and exchange diverse open source seeds which can be saved and which are not patented, genetically modified, or controlled by emerging seed giants.

“Saving seed for me, is defending life. Saving seeds in these vulnerable times, is making sure we can imagine with hope, that life will continue in all its vibrance, in all its diversity, in all its beauty.” [2]

-Vandana Shiva

Availability v. Access



In Context/By Definition

Availability: The quality of being able to be used. **Access:** Ease to use, attainable.



Presentation Credit: Jack Loomis, Vermont Law School

Brief History Surrounding Seed Sharing

- Patent Office secured funding from Congress to collect and distribute agricultural seed and statistics.
- That, in turn, established a free seed distribution program through the Postal Service. By 1855, the office had shipped out over 1 million seed packages.
- The final successor in the free seed program was the USDA. When it was birthed in 1862, one of USDA's primary purposes was the procurement, propagation and distribution of new and valuable plant varieties. [3]

At one point, **30%** of USDA budget was devoted to collecting/distributing seed. [4]



Presentation Credit: Jack Loomis, Vermont Law School

1883: American Seed Trade Association forms.

-Members were private seed companies that came together to promote their interests before Congress.

-1924: USDA seed program was terminated.

Important because monopolization continues to grow and impede seed sovereignty. Seed sovereignty helps promote autonomy over food access and availability.

Often, older seed laws are blamed disproportionately for negative effects on sovereignty. It is worth remembering that many of these laws were put in place to protect farmers and the industry itself. Agriculture has changed over time (but seed laws are not inherently bad).

“I think everyone sees the importance of (seed libraries), but old legislation didn’t foresee these, so we’ve got to clarify what the statute is,” Harr said. “They weren’t meant to be outlawed...Our enforcement of this is to try to coach and bring them along, rather than just come in and blast them.” [5]

Seed Law and Policy; Why Is This Important?

- Ensures safety through proper labeling and regulation.
- Effort to protect farmers (so they may legally save seed).
- Where plant protection is concerned, laws can protect the user and inventor.
- Aim to reduce the spread of weed seed and pathogens.



Relevant Stakeholders and Laws

- Federal Seed Act of 1939
- Plant Protection Act (PPA) of 2000
- Animal and Plant Health Inspection Service (APHIS)
- U.S. Department of Agriculture (USDA)
- Association of American Seed Control Officials (AASCO)
- Recommended Uniform State Seed Law (RUSSEL)

How it works

The Federal Seed Act (1939)

- Sets accurate labeling and purity standards for seeds in commerce
- Prohibits the importation and movement of adulterated or misbranded seeds. [6]

AND



(Continued)

Works alongside the **Plant Protection Act of 2000**. [7]

which mandates 

The Animal and Plant Health Inspection Service (**APHIS**) to regulate the importation of seeds at the Federal level. [8]

(Including field crop, pasture and forage, or vegetable seed that may contain noxious weed seeds.) AND 

USDA's Agricultural Marketing Service is responsible for enforcing the labeling and purity standard provisions at the State level. [9]

Law Writers:

Association of American Seed Control Officials (**AASCO**) updates the Recommended Uniform State Seed Law (**RUSSL**) which they developed and maintain as a "model" law for states and federal programs.

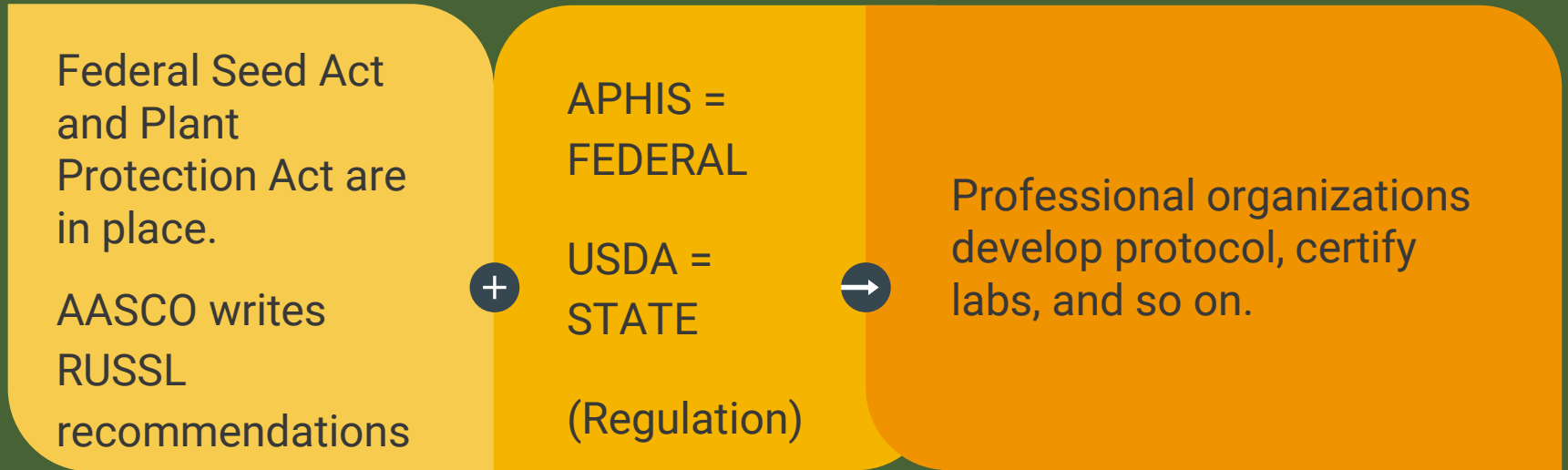


RUSSL = Very Important.

Really.

Just Remember RUSSL if nothing else,
honestly.

Visual



Simpson Library Case

Seed Libraries are non-profit, community based organizations which help improve access and availability.



"Part of the idea behind a seed library is to help develop a locally adapted seed stock...we wanted to get that seed back from gardeners that they had planted the previous year so that it can be planted this year...that would help improve the strains over many generations of seeds...we've got them labeled so people know they're donated by local gardeners. They might not have the greatest germination rate, they might possibly not be true to type, but we feel like that's part of the education process."

-Carla Powers, Duluth Public Library

What Happened

-Library was participating/facilitating free seed exchanges.

“Being a collection point and broadcasting to the public at large that they were a continuous source of seed fell under two sections (of the state seed act): addressing licensing and labeling.” [10]

-Consumer protection and truth in labeling.

Example :“Black nightshade, which is poisonous, is indistinguishable from a small hot pepper seed.” [11]

Issues

- State interpreted exchange to fall under 2004 Seed Act, regulates the sale and distribution of seeds:
- Unlawful to sell or offer for *sale* seeds that have not been tested to determine the percentage of germination; contain prohibited noxious weeds; are not properly labeled; or have been advertised in a misleading manner.
- “Sales of seeds” was interpreted to include *exchanges*, where no money changes hands.

Protected Seed

-Protect intellectual property rights of variety originators [12]

“Seed is not intellectual property, [it] doesn't pop out of anyone's head. Intellectual property is defined as "Property and products of the mind." Here is a very material, biological system that is suddenly redefined as intellectual property.” [14]

But, for legal purposes, Plant Patents and Utility Patents restrict both seed saving and breeding under PPA.

-So, no distribution of **these** seeds without expressed permission of certificate holder.

Developments

-Coalition wrote for clarification.

-Because seed exchanges, “operate on a **noncommercial basis** and do not sell, offer for sale, expose for sale, or transport seeds,” the letter’s cosigners contend, nonprofit seed exchanges are not subject to these sections of the law. [13]

In accordance with RUSSEL:

-At each location involved with non-commercial seed sharing a legible and visible sign shall state that the seeds being distributed may not meet germination or varietal purity standards prescribed by the state seed law. The sign must also state that patented seed or varieties protected by the Plant Variety Protection Act will not be accepted or distributed without permission of the certificate holder.

Relevance to Ohio

-Like most state seed laws, Ohio's refers to sales of seeds. That term, however, has been defined to include exchanges, where no money changes hands.

-Officials aren't out to get local seed exchangers, but are required by law to intervene.



Main Issues

-Distribution

-Labeling

-Language

Proposed Solutions



Language

Currently “sell” or “sold” defined by:

(1) Transferring ownership, offering or exposing for sale, exchanging, distributing, giving away, or transporting in this state;

(2) Storing, carrying, or handling in aid of traffic in this state, whether in person or through an agent, employee, or others;

(3) Receiving, accepting, or holding on consignment for sale. [16]

Redefine Sell and Variations

Redefine “sell” to reflect the plain meaning of the word and remove the potential for this word to be interpreted to include and non-commercial seed sharing. [17]

Sell: Give or hand over something in exchange for money.

Added Exemptions for Clarity

- Exempt non-commercial seed sharing from:
- Labeling requirements (907.03, 907.07, 907.08)
- Seed labeler's permits and fees (907.13, 907.14)
- Record maintenance requirements (907.04)
- Exempt micro-enterprises (sales <\$10,000) from requirements as above.

Follow the Footsteps:

Minnesota, Chapter 114, HF 976: Provided certain fee exemptions...modifying Minnesota Noxious Weed Law...modifying certain permit requirements; providing for federal law compliance; providing for certain easements.

California, Nebraska, Illinois have taken similar steps.

“We wanted to create the legal framework for an alternative system that is not reliant on large companies to provide open-pollinated seed varieties” -Neil Thapar

“If we don't have access to the first link of a food chain, we have no control over what to grow and what food is available to us...the scale can be small, but the impacts can be so large.” -Sara McCamant

Current Recommendations

RUSSL Familiarity and Compliance (for example):

With non-commercial seed sharing a legible and visible sign shall state that the seeds being distributed may not meet germination or varietal purity standards prescribed by the state seed law. The sign must also state that patented seed or varieties protected by the Plant Variety Protection Act will not be accepted or distributed without permission of the certificate holder.

“RUSSL is a reasonable and progressive living document that protects consumers and allows standardization and predictability for the seed industry, while promoting uniformity at the state level...” American Seed Trade Association

RUSSL Noncommercial Labeling

- (a) The name of the species
- (b) A word or statement indicating if the seed has been treated.
- (c) Some form of reference identification that provides traceability.
- (d) Name and city or address of the non-commercial seed sharing entity.
- (e) The calendar month and year the seed was donated.

(f) The seed shall be free of foreign material, other than coatings or treatments, including germination medium, mulch, fertilizer, pre-planted containers, mats, tapes, or other planting devices.

(g) No distributed container shall hold more than eight (8) ounces of agricultural seed or four (4) ounces of vegetable or flower seed.

(h) Germination and purity analysis is not required, however if a germination or purity percentage is noted on the label, it must be noted whether or not the analysis was performed according to the AOSA rules for testing seed.

Proper Labeling [15]

What's on a Label?

ABC 123 Brand	
Kind: Corn	Number per pound: 1,379.3
Variety: 1234	Origin (state or foreign country): Iowa
Lot number: 789	Germination Test Date: 3/26/16
Pure seed: 98%	For hybrid field corn relative maturity: 102 day
Weed seed: 1%	Net weight: 58 lb.
Other crop: 1%	Labeler's name: Company Name
Germination: 95%	Labeler's mailing address: 123 Elm St. Anywhere, NE 12345
Hard (dormant) seed (if present): n/a	
Total germination plus hard (dormant) seed (optional): n/a	
Noxious weed seeds: 0.0%	

The "brand" name is optional. It typically identifies the company marketing the seed. The brand name might be on the label as long as it is not misleading or can't be confused with a variety name.

The seed "variety" is required on labels and refers to a subdivision of a "kind," which is distinct, uniform, stable and possesses certain characteristics.

Seed labels are required to provide certain important information to farmers, such as variety and brand name. These two descriptors are important to tell apart. Check variety name on each unit you buy and compare it with others, even from different companies, to ensure genetic diversity. While you're looking at the label, check germination rates and testing dates to set expectations in your fields. If you have any questions about what you see on the label, talk to your seed rep, who should be able to address your concerns.

901:5-27-03 Labeling seed as to kind and variety.

Seed kinds labeled with a brand name and not a variety name shall be labeled with the phrase "variety not stated." Varieties of the following kinds of seeds are generally labeled as to variety and shall be labeled as to kind and variety or, in lieu of the variety name, the phrase "variety not stated," or "VNS":

**ANALYSIS
TAG**

Kind: _____

Variety: _____

Origin: _____

Net Weight (lbs): _____

Pure Seed (%): _____

Inert Matter (%): _____

Other Crop Seed (%): _____

Weed Seed (%): _____

Germination (%): _____

Hard Seed (%): _____

Test date: _____

Noxious Weed/lb: _____

Lot Number: _____

Vendor: _____



Sharing &
Saving
Seeds
Across MN

Want info on harvesting and saving your seeds from year to year? Visit www.doitgreen.org

Variety/Species:

Organic Y N Heirloom Y N
Non-GMO Y N Hybrid Y N

Growing Info:

Funded by a Gannett Foundation grant, as recommended by Kare 11.

Further Advice

- Start building your seed bank
- Design packaging for your seeds.
- Design a website and a catalog for your seed business.
- Prepare descriptions and pictures of the plants that customers can grow from each of the seed varieties you offer.
- Market your seed [18]

-Know where your seed is coming from, and what variety it is.

-Label it well.

-Err on the side of caution to avoid conflict with law/remember Federal preemption.



Further Seed Saving Resources (1)

A Seed Saving Guide for Gardeners and Farmers, Organic Seed Alliance, 2010
https://seedalliance.org/wp-content/uploads/2010/04/seed_saving_guide.pdf

Association of Official Seed Analysts (AOSA)
<http://www.analyzeseeds.com/>

International Seed testing Association (ISTA)
<https://www.seedtest.org/en/home.html>

American Seed Trade Association (ASTA)
<http://www.betterseed.org/resources/seed-testing-accreditation-schemes/>

Resources Continued (2)

Ohio Seed law Chapter 907: Agricultural Seed

<http://codes.ohio.gov/orc/907>

Recommended Uniform State Seed Law

http://www.seedcontrol.org/pdf/russl_2016.pdf

Association of Official Seed Certifying Agencies; <https://www.aosca.org/>

Additional References

- [1] DECLARATION OF NYÉLÉNI, 2007
- [2] Vandana Shiva
- [3] U.S. Seed Law History Primer, Delta Farm Press
- [4] *id*
- [5] http://www.omaha.com/news/legislature/omaha-lawmaker-wants-to-rid-seed-libraries-of-outlaw-status/article_d3f5f42b-c1ea-5fe6-909d-8c5cbdfcab82.html
- [6] Federal Seed Act of 1939
- [7] Plant Protection Act, 2000
- [8] Animal and Plant Health Inspection Service, 2017
- [9] U.S. Department of Agriculture, 2017
- [10] <https://www.farmanddairy.com/news/swapping-seeds-theres-law/242774.html>
- [11] *id*
- [12] David Francis' Presentation, 2017; Ohio Seed Law Ch. 907
- [13] http://www.alliednews.com/news/lifestyles/seed-libraries-in-pa-now-exempt-from-costly-law/article_4e769364-e86d-5964-9ebb-f18deacca83d.html
- [14] Vandana Shiva
- [15] David Francis, Presentation, 2017
- [16] Ohio Seed Law, Ch. 907 et. al.
- [17] Neil Thapar, Sustainable Economies Law Center
- [18] <http://365days365businessideas.blogspot.com/2013/12/starting-seed-business.html>

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Audience, Thanks for your time!

Questions or Comments?

Thank You!