

April 9, 2007

A POLICY ON THE RELEASE OF IMPROVED PLANT VARIETIES, CLONES AND BREEDING MATERIALS BY THE AGRICULTURAL RESEARCH DIVISION, INSTITUTE OF AGRICULTURE AND NATURAL RESOURCES, UNIVERSITY OF NEBRASKA-LINCOLN.*

APPROVED _____
Dean, Agricultural Research Division

DATE _____

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In 1972 the Experiment Station Committee on Organization and Policy (ESCOP) developed and disseminated "A Statement of Responsibilities and Policies Relating to Development, Release, and Multiplication of Publicly Developed Varieties of Seed-Propagated Crops". The first ARD Policy on this subject was derived from this policy. Elements of this policy are still contained in this updated document.

The general principles used in developing this policy include: (i) plant breeding activities are generally supported by public funds and, thus, all decisions concerning variety release must be made in terms of what is in the best interests of farmers, the University of Nebraska, and the general public, (ii) variety release policies should not restrict the free exchange of germplasm among all breeders or hinder cooperative efforts with USDA-ARS plant breeders, and (iii) varieties should be released in a manner which permits expeditious entry into the seed or propagation trade and which gives the best chance for acceptance by growers, and (iv) the University of Nebraska must be legally protected, to the greatest extent possible, when releasing or exchanging plant material.

Development of varieties is one of the desired end-products of a plant improvement program. Plant breeders at the University of Nebraska-Lincoln develop both germplasms and varieties of agronomic, horticultural, and forest crops. The release of a given variety, clone, inbred, hybrid, or genetic material (here-after referred to as a variety) involves two major, but separate decisions: (i) the decision to release the variety, and (ii) the decision concerning the procedures or mechanism of release. A variety will not normally be released unless it is distinctly superior to existing varieties in one or more characteristics important for the crop or superior in overall performance in areas where adapted or offer unique characteristics as a parent for breeding purposes. An improved plant variety is officially "released" through formal action by the cognizant Crop Variety Release Committee for each type of crop, Department Heads in Agronomy and Horticulture, Entomology and Plant Pathology and by the Dean of the Agricultural Research Division (ARD). After release and seed increase, varieties can be licensed and merchandised as certified seed through various states' Crop Improvement Associations, or licensed as proprietary seed or clones by seed and/or horticultural companies.

DECISION TO RELEASE A VARIETY

The release of a variety will be based on the following principles: (i) the release will be an improvement over existing varieties in one or more important characteristics, and (ii) except for germplasms, the release is distinguishable from existing varieties by being eligible for plant variety protection or patenting. The following procedures will be used in the formal release of an improved variety. A summary of this process is located in Appendix A.

- A. The Dean of the ARD will appoint standing Crop Variety Release Committees (CVRC's) for each type or general group of crops produced in Nebraska. The committees will be composed of faculty members having expertise in breeding, production, and protection of the crop. The Director of the Foundation Seed Division (or Husker Genetics) will serve as an ex-officio member of each committee serving as a resource to the inventor and the Committee Chair. A member of the Nebraska Crop Improvement Association will serve as an ex-officio member of the CVRC as relevant.
- B. The originator (breeder) of a new variety is responsible for initiating a recommendation to release a variety/cultivar/germplasm. The recommendation will be made in writing to the chairman of the appropriate CVRC and will include: (i) proposed release number and proposed marketing name, (ii) proposed release date, (iii) name of breeder(s), (iv) brief summary of development of the variety, (v) detailed description of the variety (sufficient for PVP and/or Patent), (vi) performance data, (vii) quality data, (viii) probable areas of adaptation and potential market penetration, and (ix) a completed "Invention Disclosure Form" available at <http://www.unl.edu/research/td/forms.shtml> .
- Note: Inventors are encouraged to complete an "Invention Disclosure Form" as early in the development of the invention as possible. When inventions are developed by USDA-ARS scientists and intended to be co-released with the University of Nebraska, the inventor shall forward to the cognizant CVRC an ARS release notice in draft form for consideration by the committee.*
- C. The CVRC will review the material provided by the breeder and decide if the line/genetic material should be released as a variety/cultivar/germplasm. The CVRC decision will be transmitted in writing to the breeder and head of the cognizant department(s). In the case where the CVRC decides that the variety/cultivar/germplasm should not be released, reasons for the decision shall be stated.
- D. If the CVRC recommends release of a variety, the breeder will prepare a release statement that will be presented to the head of the originating department and, if appropriate, to the heads of the Departments of Plant Pathology and Entomology for concurrence and signature. The signed statement will then be sent to the Dean of ARD. If the head of any cognizant department chooses not to approve the release statement, the document will be forwarded to the Dean of ARD with the non-concurrence noted. The non-concurring department head will provide the breeder, CVRC, and the Dean of ARD with written rationale for not approving the release. The breeder and/or CVRC will have the opportunity to respond in writing to the ARD Dean concerning the rationale provided by the non-concurring department head. The Dean of ARD will consider all input in making the final decision on release of the variety.
- E. After concurrence by the Dean of the ARD, copies of the formal release statement will be sent to interested entities and persons associated with the particular crop by the head of the originating department.

RELEASE PROCEDURES

A. All varieties/cultivars/germplasm, etc... will be released under a number system developed by the breeder. The breeder may also select a name for marketing the material. For example all material will be released/licensed and registered nationally under a number such as NE9001. The breeder, working with the Foundation Seed Director, may select a name with which the material will be marketed and possibly trademarked. In a few cases the breeder may work directly with the Office of Technology and Development. The breeder should keep the Foundation Seed Director informed of any conversations with the Office of Technology Development to ensure that the ARD Dean's office is informed.

Note: Material solely created by USDA-ARS and co-released or released through UNL may follow this procedure. USDA-ARS will review each release, determining on a case-by-case basis how the material will be released and if it will be trademarked by UNL.

B. Nebraska varieties/cultivars/germplasm, etc...will be registered with the Crop Science Society of America, the American Society for Horticultural Science or other appropriate authority.

C. Released material shall be protected by a licensing agreement or Material Transfer Agreement executed by the UNL Office of Technology Development. Appropriate plant material will be named and marketed under the Husker Genetics brand. For example a new wheat variety released as NE9001 could be marketed as "Husker Genetics Brand "Domino" Wheat. This will allow decisions to be made regarding registering "Husker Genetics Brand "Domino" Wheat as a copyrighted name providing further protection. If the inventor, Variety Release Committee and the Director of Foundation Seed Division conclude that the material has potential for wide adaptation further protection may be provided via a plant utility patent and/or a plant variety protection certificate.

CONTRACTS, ROYALTIES AND FEES

A. Varieties/cultivars/germplasm released on a non-exclusive basis will generally carry a royalty, research and development fee, or foundation seed maintenance fee (in the case of ARS developed material) and marketed through Husker Genetics.

B. Varieties/cultivars/germplasm released on an Exclusive basis shall be licensed to an entity (generally) after a competitive process. The license agreement shall require the entity to pay all costs of protection for the material. Royalties, Research and Development Fees or Foundation Seed Maintenance Fees shall generally be required on all licensed material.

C. Distribution of Royalties, Research and Development Fees and Foundation Seed Maintenance Fees shall follow all established UNL Policies. Under no circumstances will UNL distribute Royalties, Research and Development Fees and Foundation Seed

Maintenance Fees directly to an USDA-ARS scientist. Distribution of Royalties from USDA-ARS varieties licensed to UNL by USDA-ARS will stipulate how Royalties and/or Maintenance Fees will be shared.

INTERCHANGE OF UNRELEASED MATERIALS AMONG BREEDERS

. Early generation materials such as F₁ and F₂ seed, germplasm, etc... may be provided to other breeders at the originator's discretion under the protection of a properly executed Material Transfer Agreement developed by the UNL Office of Technology Development. In some cases small amounts of seed exchange need to happen rapidly. In these cases the originator may send the small amount of seed with a completed MTA form for the recipient to sign and return to the UNL Office of Technology Development. In some instances the exchange of material may be covered by a MTA from another entity, such as USDA-ARS. If the agreement is on file with the UNL Office of Technology Development then the MTA requirement shall be considered satisfied.

Appendix A

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Variety Release Process Checklist

This checklist has been developed to assist plant breeders and the Crop Variety Release Committees (CVRC) work through the requirements listed in “A Policy on the Release of Improved Plant Varieties, Clones and Breeding Materials, by the ARD of IANR This process also serves as a guide to interacting with the Office of Technology Development (OTD) and the Foundation Seed Division (FSD) at UNL. If the Inventor has questions regarding this process they are encouraged to contact the Director of the Foundation Seed Division prior to submission to the CVRC. .

Note: Material solely created by USDA-ARS and co-released or released through UNL may follow this procedure. USDA-ARS will review each release, determining case-by-case how the material will be released and if it will be trademarked by UNL.

Checklist for the Inventor (breeder) of the New Variety:

1. Inventor sends a written recommendation for release of a variety to the chairman of the appropriate CVRC. The written recommendation will normally include:
 - a. Variety number that will be used for release and registration and proposed release date.
 - b. Proposed marketing name of variety...Husker Genetics Brand “(XXX)”
 - c. Name of breeder(s) and development team---includes the pathologists, entomologists, cereal chemists, etc
 - d. Detailed description of the variety sufficient to patent/PVP and register with ASOCA.
 - e. Performance data
 - f. Quality data
 - g. Probable area of adaptation and potential market area and penetration
 - h. Completed Disclosure of Invention Form.
2. If CVRC recommends release:
 - a. Breeder prepares a release statement and transmits statement to head of originating department and if appropriate Plant Pathology and Entomology.
 - b. Ensure that the signed statement is forwarded to the ARD Dean for action.
 - c. If Dean concurs a notice shall go out to the NCIA and other States CIA informing them that the material is available for license. If it is a licensed release to a company, the release statement will be sent to FSD and OTD only.

3. With the formal release statement signed the breeder will work with the Foundation Seed Division to market the variety. The inventor, FSD Director and in some cases the UNL Office of Technology Development shall make the final decision on how to protect and market the material. FSD Director will determine how to work with OTD on the release. **In most instances FSD and OTD shall not commence commercialization without formal release of the variety, a completed invention disclosure and information sufficient to patent/PVP and in some cases registration with AOSOCA. Exceptions shall be approved by the ARD Dean's office.**
4. Inventor (breeder) prepares all relevant documents necessary for variety protection. The Breeder, FSD and/or OTD shall jointly decide how fees for variety protection will be paid.

CVRC Checklist

1. The Decision made on the release should be based on the scientific merit of the variety/cultivar/germplasm
 2. CVRC decision transmitted in writing to head of the relevant department and breeder.
 3. If CVRC decides against release reasons shall be stated.
- Note: Once a release has occurred the inventor and the Director of the Foundation Seed Division and possibly the Office of Technology Development will discuss commercialization options.

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Material Transfer Agreement (MTA) Process

Transferring Materials/ Seeds out of the University for any purpose other than Commercialization:

1. Breeder should contact the FSD Director to initiate a MTA.
2. Breeder should provide the following information in order to complete the Material Transfer Agreement:
 - a. Name, address and phone number of company
 - b. Name of researcher at company
 - c. Location where seed will be used
 - d. Material to be transferred
 - e. Name of researcher at the University who will be sending material
3. FSD Director will work with OTD to get a Material Transfer Agreement signed.
4. Copies of final MTA will be sent to Dean of Agriculture Research Division and to FSD.
5. OTD will keep and maintain all original MTA's