

USDA-AMS-PLDC Revisions to the Federal Seed Act Regulations

ASTA Comment Report

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On March 25, 2020, the American Seed Trade Association (ASTA) submitted comments regarding the pending amendments to the regulations that implement the Federal Seed Act. ASTA held multiple meetings among a broad representation of its membership to ensure their input and consensus for its comments. The association appreciates USDA-AMS-SRTD's consideration of our comments in the final rule.

ASTA also provided an overarching comment for consideration that pointed out that the rules should recognize the unique characteristics of the subsets of the industry, specifically the vegetable and conservation seed sectors.

The notations below refer to the suggestions that ASTA included in its comments to AMS, and do not detail all of the changes. ASTA either agreed with the other proposed changes or deferred to other professional organizations for comment. The complete version, with detailed explanation and intention, is available through the links above. In addition, ASTA has compiled a document listing all changes, "FSA Regulations Change Detail 2020".

Reference: Terms defined 201.2(q)

Proposed Language: Coated Seed. The term "coated seed" means any seed unit covered with any substance that changes the size, shape, or weight of the original seed. Seeds coated with ingredients such as, but not limited to, rhizobia, dyes, polymers, biologicals, and pesticides are excluded.

ASTA COMMENT: *The definition should be changed to align with the definition of coating material, as follows: The term "coated seed" means any seed unit covered with ~~any substance that changes the size, shape, or weight of the original seed. Seeds coated with ingredients such as, but not limited to, rhizobia, dyes, polymers, biologicals, and pesticides are excluded~~ a coating material.*

Need to add a definition for coating 'material' also. "Coating material. Any substance that is intended to change the size, shape, or weight of the original seed. Ingredients such as, but not limited to, rhizobia, dyes, polymers, biologicals and pesticides are excluded." Coating material is referenced in other sections of this document [201.46(d)(1)&(2), 201.51(c)(2)&(3), 201.51b(b)&(c)&(f), and 201.58(c)].

AMS RESPONSE: AMS agrees that because coating material is referenced elsewhere in the regulation and is not currently defined, it makes sense to split the proposed definition of coated seed into two definitions for greater clarity. Accordingly, AMS is revising the proposed language for § 201.2(q)—Coated Seed and adding a new § 201.2(nn)—Coating Material, based on the comment. AMS does not agree with the commenter's proposal that material only be considered coating material if it is intended to change a seed's size, shape, or weight. Regardless of intent, if a substance changes the size, shape, or weight of the original seed and is not one of the excluded materials, it is considered coating material.

Final Language:

(q) Coated seed. The term "coated seed" means any seed unit covered with a coating material.

(nn) Coating material. The term "coating material" means any substance that changes the size, shape, or weight of the original seed. Ingredients such as rhizobia, dyes, polymers, biologicals, and pesticides are not coating material for purposes of this part.

Final Language: 201.2 (q) Coated seed. The term "coated seed" means any seed unit covered with a coating material.

Final Language: 201.2 (nn) Coating material. The term "coating material" means any substance that changes the size, shape, or weight of the original seed. Ingredients such as rhizobia, dyes, polymers, biologicals, and pesticides are not coating material for purposes of this part.

Reference: Terms defined 201.2(w)

Proposed Language: Purity. The term “purity” means the name or names of the kind, type, or variety and the percentage or percentages thereof; the percentage of other agricultural seed; the percentage of weed seeds, including noxious-weeds seeds; the percentage of inert matter, including coating material if any is present; and the names of the noxious-weed seeds and the rate of occurrence of each.

ASTA COMMENT: *We opposed. The statement is redundant since inert matter is already defined to include coating material [201.51(c)(3)].*

AMS RESPONSE: AMS agrees that it is not necessary to include the phrase “and coating material, if any is present,” which was proposed as a clarification to the definitions of purity and inert matter. As described in § 201.51(c)(3), coating material that has been washed from seed but is still present is considered inert material. Any coating material adhering to the seed after it is washed during the testing process is considered part of the seed. Accordingly, AMS is revising the proposed language for § 201.2(w) by removing the reference to “coating material, if any is present” when determining the percentage of inert matter, and by making no changes to the current language of § 201.19, based on comments.

Reference: Terms defined

Proposed Language: (no current definition) “Acceptable test. The term “acceptable test” means any testing method described in § 201.45 through § 201.66 of this part, or to testing methods in accordance with Association of Official Seed Analyst (AOSA) rules.”

ASTA COMMENT: *We oppose the addition of this definition. This language will present a problem for reclamation seed businesses, since they rely on tetrazolium (TZ) testing and TZ tests are not allowed per AOSA rules.*

AMS RESPONSE: The current regulations do not specify which testing rules can be followed to determine seed germination and purity. AMS's proposal was intended to standardize testing by naming two conventions that would be considered acceptable but realizes the proposal would not provide adequate flexibility to the industry. Accordingly, based on the comments, AMS is not adding a new definition for Acceptable test, as proposed, and is not adding the term acceptable test to the language in §§ 201.6 and 201.7, based on the comment. To conform with these revisions to the proposed language, AMS also removed the proposed reference to acceptable test in § 201.2(l)(1).

Reference: Terms defined

Proposed Language: (no current definition) Brand. The term “brand” means word(s), name, symbol, number, mark, design, unique design, or any combination of those which distinguishes seed of one entity from seed of another entity identifies a product.

ASTA COMMENT: *The word ‘entity’ could be confused as meaning a legal (company entity) rather than a genetic seed product. The suggested change clarifies that definition.*

AMS RESPONSE: AMS agrees that a brand should identify a seed product, but also believes a brand should distinguish between sellers. To address the commenter's concern about use of the word “entity,” AMS referenced the definition of brand used by the American Marketing Association (AMA). AMA's definition is similar to what was originally proposed by AMS and provides for both identification of seed as requested by the commenter and differentiation of seed of different sellers. Accordingly, in response to the comment, AMS revised the proposed definition of brand to mean a name, term, sign, symbol, design, or any combination of them intended to identify the seed of one seller or group of sellers and to differentiate that seed from the seed of other sellers.

Final Language: 201.2 (oo) Brand. The term “brand” means a name, term, sign, symbol, or design, or a combination of them that identifies the seed of one seller or group of sellers and differentiates that seed from the seed of other sellers.

Reference: 201.10(a) Variety

Proposed Language: (no current notation) Add radish to kinds that shall be labeled to show variety name or the words “Variety Not Stated”

ASTA COMMENT: *Support. We would also suggest including chicory, collards and kale, since they are also used in cover crop mixes in the same manner.*

AMS RESPONSE: AMS understands that chicory, collards, and kale may be included in cover crop seed mixtures. However, revising the proposed regulations to add those crops would require further notice and

opportunity to comment. AMS may make such a proposal in the future. At this time, AMS is making no changes to the proposed rule based on the comment.

Final Language: In § 201.10 amend paragraph (a) by adding the word “Radish;” after the word “Peanut”

Reference: 201.19 Inert matter

Proposed Language: "The label shall show the percentage by weight of inert matter, including coating material if any is present"

ASTA COMMENT: We oppose. This is the wrong place for this language. Inert matter is already defined to include coating material (201.51(c)(3)). The addition of this language would create unintended negative consequences for the general practices of the vegetable seed industry.

AMS RESPONSE: Accordingly, AMS is revising the proposed language for § 201.2(w) by removing the reference to “coating material, if any is present” when determining the percentage of inert matter, and by making no changes to the current language of § 201.19, based on comments.

Reference: 201.23 and 201.27 Name of shipper or consignee

Proposed Language: [TITLE] "Name of interstate shipper or name of consignee

"The full name and address of the interstate shipper shall appear upon the label. If the name and address of the interstate shipper are not shown upon the label, a code designation identifying the interstate shipper shall be shown along with the full name and address of the consignee"

ASTA COMMENT: Needs clarification. Propose: "The full name and address of the interstate consignor shipper shall appear upon the label or package. If the name and address of the interstate shipper are not shown upon the label or package, a code designation identifying the interstate consignor shipper shall be shown ~~along with the full name and address of the consignee~~"

This clarifies confusing terminology:

- *Consignor. An individual, business, or Government agency responsible for shipping property.*
- *Consignee. An individual, business, or Government agency to whom a shipment is delivered.*

It would be extremely difficult for the manufacturer/distributor to print the name of the receiver of all future shipments.

AMS RESPONSE: AMS agrees that revisions to §§ 201.23, 201.24, 201.27, and 201.28 should alleviate confusion about the label requirements. AMS agrees also that the regulations should specify that labeling requirements pertain to consumer packages or containers of seed. AMS believes the commenter is confused about the use of the term consignee in the regulation. Accordingly, AMS revised the proposed language to better clarify labeling requirements for agricultural and vegetable seed, based on the comment. The revisions clarify that labels for containers or packages of seed must contain the shipper's full name and address or an AMS designated code to identify the shipper. Further, if a code—rather than the full name and address—is used to identify the shipper, the label must include the consignee's full name and address. Finally, the revised provisions include definitions of the terms shipper and consignee as used in those sections to clarify their meaning.

Final Language:

201.23 - Seller and buyer information. Consumer packages or containers of agricultural seed for interstate shipment must be labeled as follows:

- (a) The full name and address of the interstate shipper or a code designation identifying the interstate shipper, pursuant to § 201.24, must be printed on the label.
- (b) If pursuant to paragraph (a) only a code is used to identify the interstate shipper, the full name and address of the consignee must appear on the label.
- (c) For purposes of this section and § 201.24, the term shipper means the seller or consignor who puts the seed into interstate commerce, and the term consignee means the buyer or recipient of the seed shipment.

201.27 - Seller and buyer information. Consumer packages or containers of vegetable seed for interstate shipment must be labeled as follows:

- (a) The full name and address of the interstate shipper or a code designation identifying the interstate shipper, pursuant to § 201.28, must be printed on the label.
- (b) If pursuant to paragraph (a) only a code is used to identify the interstate shipper, the full name and address of the consignee must appear on the label.

(c) For purposes of this section and § 201.28, the term shipper means the seller or consignor who puts the seed into interstate commerce, and the term consignee means the buyer or recipient of the seed shipment.

Reference: 201.24 and 201.28 Code designation

Proposed Language: "The code designation used in lieu of the full name and address of the person who transport or delivers seed for transportation in interstate commerce shall be approved by the Administrator of the Agricultural Marketing Service or such other person as may be designated by him for the purpose. When used, the code designation shall appear on the label in a clear and legible manner along with the full name and address of the ~~consignee~~ consignor."

ASTA COMMENT: see previous comment

AMS RESPONSE: see previous response

Final Language:

201.24 - Code designation. The code designation used in lieu of the full name and address of the interstate shipper pursuant to § 201.23(a) shall be approved by the Administrator of the Agricultural Marketing Service (AMS) or such other person designated by the Administrator for the purpose. When used, the AMS code designation shall appear on the label in a clear and legible manner, along with the full name and address of the consignee.

201.28 - Code designation. The code designation used in lieu of the full name and address of the interstate shipper pursuant to § 201.27(a) shall be approved by the Administrator of the Agricultural Marketing Service (AMS) or such other person designated by the Administrator for the purpose. When used, the AMS code designation shall appear on the label in a clear and legible manner, along with the full name and address of the consignee.

Labeling Vegetable Seeds

Reference #1: 201.29 Germination of vegetable seed in containers of 1 pound or less

Proposed Language: "Vegetable seeds in containers of 1 pound or less which have a germination percentage equal to or better than the standard..."

Proposed Language: (no current language) Each variety of vegetable seeds in containers of more than 1 pound shall be labeled to show the percentage of germination and the percentages of hard seed or dormant seed (if any).

Reference #2: 201.30 Hard Seed

Current language: ~~The label shall show the percentage of hard seed, if any is present, for any seed required to be labeled as to the percentage of germination, and the percentage of hard seed shall not be included as part of the germination percentage.~~

If hard seed or dormant seed as defined in §§ 201.57 or 201.57a, respectively, is present in the seed kinds indicated in those sections, the label shall show the percentage of hard seed or dormant seed present. The percentages of hard seed and dormant seed shall not be included as part of the germination percentage.

ASTA COMMENT: We oppose. Two considerations:

1. Vegetable seed is generally sold by count rather than by weight. That consideration should be included in determining container germination percentages.
2. AOSA procedures don't test for dormant seed in vegetables, only hard or dead (combined), thus making the language impossible to comply with.

Reference #3: 201.63

Proposed Language: The following tolerances are applicable to the percentage of germination and also to the sum of the germination plus the hard seed and dormant seed when 400 or more seeds are tested.

ASTA COMMENT: We oppose. AOSA tests are not required to establish dormancy in a germ test. ISTA determines dormancy with a post germ TZ test for greater than 5% firm seed. The proposed additional term "acceptable test" (previously explained) will complicate this further, which is another reason to eliminate the term in the proposed rules.

AMS RESPONSE: Label information about the germination and amount of hard seed is expressed as percentages on the label, regardless of the way seed is sold. Accordingly, AMS is making no change to the proposed addition of the word "percentage" to the language in § 201.29 based on the comment. Further, AMS recognizes that compliance with the proposed requirement to account for dormant seed

could be burdensome for some segments of the seed industry, because not all testing conventions require testing for dormant seed. Accordingly, AMS changed the language as proposed by removing the requirement to show the amount of dormant seed on labels in §§ 201.29, 201.29a, and 201.30, and by removing the proposed reference to dormant seed in § 201.63, based on the comment. Finally, AMS removed the proposed reference to dormant seed in the revised language for § 201.31 to conform with other revisions, even though the commenter did not address that section in the comment

Final Language: 201.29 - Germination of vegetable seed in containers of 1 pound or less.

Vegetable seeds in containers of 1 pound or less which have a germination percentage equal to or better than the standard set forth in § 201.31 need not be labeled to show the percentage of germination and date of test. Each variety of vegetable seed which has a germination percentage less than the standard set forth in § 201.31 shall have the words "Below Standard" clearly shown in a conspicuous place on the label or on the face of the container in type no smaller than 8 points. Each variety which germinates less than the standard shall also be labeled to show the percentage of germination and the percentage of hard seed (if any).

Labeling in General

Reference: 201.31a(b) Labeling treated seed

Proposed Language: "Name of substance. The name of any active ingredient substance as required by paragraph (a) of this section shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name. The label shall include either the name of the genus and species or the brand name as identified on biological product labels. Commonly accepted coined names are free for general use by the public, are not private trademarks, and are commonly recognized as names of particular substances, such as thiram, captan, lindane, and dichlone. Examples of commonly accepted chemical (generic) names are blue-stone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene, and ethyl mercury acetate. The terms "mercury" or "mercurial" may be used in labeling all types of mercurials. Examples of the genus and species names for brand named biologicals are Bacillus subtilis (Kodiak) for a single species, and Bradyrhizobium japonicum, Penicillium bilaiae (TagTeam Soybean Granular Inoculant) for a mixture. Examples of commonly accepted abbreviated chemical names are BHC (1, 2, 3, 4, 5, 6-Hexachlorocyclohexane) and DDT (dichloro diphenyl trichloroethane).

ASTA COMMENT: *Supportive of the statement, although we would suggest that the examples be excluded since products constantly evolve and the statement would be out of date in a short time. And, the examples noted are definitely non-inclusive.*

AMS RESPONSE: AMS agrees that the listed examples are likely to be obsolete in a short time. Accordingly, we revised the proposed language for § 201.31a(b) by removing the genus and species name examples.

Final Language: 201.31a - (b) Name of substance or active ingredient. The name of any active ingredient substance as required by paragraph (a) of this section shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name. The label shall include either the name of the genus and species or the brand name as identified on biological product labels. Commonly accepted coined names are free for general use by the public, are not private trademarks, and are commonly recognized as names of particular substances, such as thiram, captan, lindane, and dichlone. Examples of commonly accepted chemical (generic) names are blue-stone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene, and ethyl mercury acetate. The terms "mercury" or "mercurial" may be used in labeling all types of mercurials. Examples of commonly accepted abbreviated chemical names are BHC (1,2,3,4,5,6-Hexachlorocyclohexane) and DDT (dichloro diphenyl trichloroethane).

Certified Seed

Reference: 201.68 (b) Eligibility requirements for certification of varieties

Proposed Language: "A statement concerning the variety's origin and the breeding ~~procedures~~ technique(s) or the reproductive stabilization procedures used in its development"

ASTA COMMENT: *Clarification of this language is needed. The author did not intend to affect reporting of the specific breeding method. The intent was targeted at grasses that were selected from turf that is 'naturally mutated' to have a desirable characteristic and then reproduced. The language as it is*

proposed will have a significant impact on worldwide regulations and will impact innovative breeding techniques, which is not in the jurisdiction of USDA-AMS-SRTD.

ASTA COMMENT: *Remove the word 'technique' from the suggested language*

AMS RESPONSE: *AMS agrees that requiring developers to reveal breeding techniques could negatively impact plant breeding and innovation. Accordingly, we removed the word "technique" from the proposed language for § 201.68, based on the comment.*

Final Language: 201.68 - (b) A statement concerning the variety's origin and the breeding or reproductive stabilization procedures used in its development.

NOT IN PROPOSED RULE

Reference §201.8 Contents of the label.

Current Language: The label shall contain the required information in any form that is clearly legible and complies with the regulations in this part. The information may be on a tag attached securely to the container or may be printed in a conspicuous manner on a side or the top of the container. The label may contain information in addition to that required by the act, provided such information is not misleading.

ASTA COMMENT: *Suggest allowing the option for a Quick Response (QR) code, a machine-readable optical label that contains information about the item to which it is attached. This technology is widely used in other industries and readily available.*

AMS RESPONSE: AMS acknowledges that many products now include QR codes on labels to provide consumers with additional product information. However, we do not believe the technology is widely enough available to trust that all consumers will have access to the required label information. As provided in the regulation, seed labelers may include QR codes to convey additional product information, but the required label information must still be printed and attached to the seed container as specified in the regulation. Accordingly, AMS made no changes to the regulation based on the comment.