

March 25, 2020

To: Ernest Allen, Director, Seed Regulatory and Testing Division, Science and Technology Program, AMS, USDA

Regarding: Comments on proposed revisions to regulations that implement the Federal Seed Act (FSA)

The American Seed Trade Association (ASTA) is submitting these comments on the currently pending amendments to the regulations that implement the Federal Seed Act on behalf of our membership. The association has held multiple meetings among a broad representation of our membership to ensure their input and consensus to this comment letter. We also appreciate the agency's willingness to coordinate communication between all facets of the seed industry to ensure awareness and interaction. It is our opinion that all facets of the seed industry are aware of these suggested changes and have had the opportunity to comment.

Founded in 1883, ASTA is one of the oldest trade organizations in the United States. Its membership consists of over 700 companies involved in seed production and distribution, plant breeding, and related industries. ASTA is a diverse organization – it represents all types of seed companies and technologies – seed from alfalfa to zucchini, technologies from organic to biotechnology, and companies from “mom and pop” to multinationals. It works on behalf of all of its members at the state, national, and international levels. In other words, ASTA represents every seed company that would be affected by the proposed amendments, in addition to the rest of agribusiness and consumers, whom the proposed amendments would ultimately benefit.

Our comments and suggestions are below. Thank you for your consideration.

General Comment

ASTA COMMENT: Our comments are based on the unique characteristics of the subsets of the industry including the vegetable and conservation seed sectors. It is apparent that these proposed changes attempt to integrate vegetable seeds toward similar regulations as crop seeds. An example of one significant issue is that vegetable seed is generally sold by count, not weight. That issue complicates and conflicts with the general concept of these changes, and are noted throughout our comments. Before the integration of any rules affecting vegetable seeds, the regulations should consider correcting and clarifying the count vs. weight issues that have arisen in several parts of the rules as a result of these proposed changes, in addition to further consideration of other aspects of the segments that are affected.

Definitions

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)].

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 oppose. The statement is redundant since inert matter is already defined to include coating material [201.51(c)(3)].

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. The U.S. Bureau of Land Management (BLM) uses TZ tests to verify purchases prior to distribution. NOTE: BLM is the largest single purchaser of native seed [contact Patricia Roller, BLM National Seed Coordinator, proller@blm.gov to verify].

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.

Records for Agricultural and Vegetable Seeds

Reference: 201.6 Germination

Proposed Language: "The complete record shall include the records of all acceptable laboratory tests for germination and hard seed for each lot of seed offered for transportation in whole or in part"

ASTA COMMENT (new): We oppose the term ‘acceptable’, as referenced in the proposed addition of the definition (see terms defined). Plus, this language conflicts with the proposed definition of “acceptable test”.

Reference: 201.7 Purity (including variety)

Proposed Language: "The complete record for any lot of seed shall include (a) records of acceptable tests including statements of weed seeds, noxious weed seeds, inert matter, other agricultural seeds, and of any determinations of kind, variety, or type and a description of the methods used"

ASTA COMMENT: We oppose the term ‘acceptable’, as referenced in the proposed addition of the definition (see terms defined).

Labeling Agricultural Seeds

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.

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.

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.

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

Labeling Vegetable Seeds

Reference: 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).

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 germinations 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: 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. See previous comment.

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.

Tolerances

Reference: 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.

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

NOT IN PROPOSED RULE

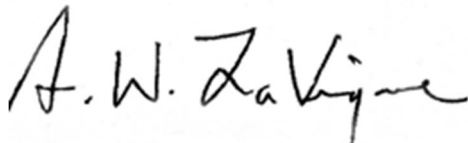
Reference §201.8 Contents of the label.

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.

Thank you again for the opportunity to comment and we would be happy to provide additional information regarding our comments raised in this document.

Sincerely,



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