



## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Parts 201 and 202**

**[Doc. No. AMS-ST-19-0039]**

**RIN 0581-AD91**

#### **Revisions to the Federal Seed Act Regulations**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the regulations that implement the Federal Seed Act (FSA). Revisions are made to seed labeling, testing, and certification requirements. The revisions add certain seed species to the lists of covered kinds of seed and update the lists to reflect current scientific nomenclature; update regulations related to seed quality, germination and purity standards, and acceptable seed testing methods; and update seed certification and recertification requirements, including new eligibility standards and the recognition of current breeding techniques. This rule aligns FSA regulations with current industry practices, harmonizes FSA testing methods with industry standards, and clarifies confusing or contradictory language in the existing regulations. The revisions are expected to reduce trade burden associated with interstate seed commerce and encourage compliance with State and Federal laws.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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**SUPPLEMENTARY INFORMATION:** The FSA (7 U.S.C. 1551-1611) regulates interstate commerce of planting seeds for agricultural and gardening purposes. The FSA requires seeds to meet certain germination rate, purity, and certification standards. Under the FSA, seeds must be truthfully labeled with specific quality information. As well, the FSA requires all persons shipping agricultural seed in interstate commerce to maintain records of seed variety, origin, treatment, germination, and purity. Regulations established under the FSA (7 CFR part 201) (regulations) implement the requirements of the FSA and are administered by the Agricultural Marketing Service (AMS).

From time to time, AMS finds it necessary to update the regulations to reflect current industry standards and practices and to remove obsolete references. AMS last updated the regulations in 2011 (76 FR 31790). AMS met with representatives of major seed industry stakeholder organizations in February 2019 to discuss possible revisions to make the regulations more reflective of current industry practices and updated testing methods. Based on stakeholder input, the Seed Regulatory and Testing Division of AMS's Science and Technology Program initiated this action to update the regulations.

AMS published a proposed rule in the **Federal Register** on January 27, 2020 (85 FR 4603), describing proposed revisions and updates to the regulations. The proposed rule provided a 60-day public comment period ending March 27, 2020. Seven comments were submitted. After considering the comments, AMS revised some of the proposals based on those comments. The comments and AMS's responses are discussed in detail in the Comments section later in this document.

This final rule updates the lists of seed kinds which are covered by the regulations and revises the names of several agricultural and vegetable seeds to provide updated scientific nomenclature. This rule further adds or revises the definitions of other terms used in the regulations to provide greater clarity for regulated entities. Other revisions in this rule update the seed labeling, testing, and certification requirements to reflect revised terminology, as well as the evolution of industry practices. Finally, this rule makes several revisions of an administrative nature to correct misspellings and other errors in the regulations. Specific revisions are described below.

## **Revisions**

### *Nomenclature*

The regulations specify the kinds of agricultural and vegetable seed that are subject to regulation. This rule revises the list of agricultural seed covered by the regulation in § 201.2(h) by adding *camelina*, *radish*, and *teff* to the list. The revisions add *radish* to the list of seed kinds for which the variety is required on the label in § 201.10(a); add *camelina*, *radish*, and *teff* to the list of seed kinds for which sample weights are specified in Table 1 to § 201.46(d)(2)(iii); add *camelina*, *radish*, and *teff* to the list of seed kinds for which germination requirements are specified in Table 2 to § 201.58(c)(3); add *teff* to the list of seed kinds for which purity percentage tolerances are increased in § 201.60(a)(1); and add *camelina*, *chickpea*, *hemp*, *radish*, and *sun hemp* to the list of seed kinds for which standards related to certification are specified in Table 5 to § 201.76.

To assure clear market communication about seeds, the regulations use the Latin scientific names assigned to plants in the *International Code of Nomenclature for*

*Cultivated Plants*<sup>1</sup> and recognized throughout the world. Occasionally, the International Union of Biological Science's International Commission for the Nomenclature of Cultivated Plants revises those scientific names. This rule further revises § 201.2(h) by updating the scientific names for 15 agricultural seed kinds already on the list (*big bluestem, mountain brome, buffalograss, crambe, galletagrass, guineagrass, forage kochia, browntop millet, pearl millet, napiergrass, green needlegrass, green panicgrass, bird rape, turnip rape, and smilo*), and by adding another common name for *sunncrotalaria*, one of the kinds already on the list. The rule also updates the scientific name for *tomato*, which is on the list of vegetable seed kinds in § 201.2(i). Such changes align regulatory language with current terminology and nomenclature recognized in the industry.

Other sections of the regulations reference scientific names, as well. This final rule updates those references by revising the scientific names for *quackgrass* in § 201.17(a); *buffalograss, sunflower, small-seeded legumes, carrot, and mint* in § 201.47a; *legumes* and *crucifers* in 201.48(a); *sunflower, carrot, and mint* in 201.48(f); *buffalograss* in 201.48(g)(1); *legumes* in 201.51(a)(1); *quackgrass* in 201.51(b)(2)(iv) and (v); *sunflower* in 201.51(b)(4), and *carrot* in 201.56(d).

#### *Other Terminology*

Section 201.2 defines other terms used in the regulations. This rule updates some terms to reflect changes in industry and AMS needs and processes. This rule revises the term for “person” in § 201.2(b) to include *individuals* and *agents* to clarify that such entities are also subject to the regulations. A revision to § 201.2(l)(1) clarifies that each

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<sup>1</sup> The International Code of Nomenclature for Cultivated Plants (ICNCP or Cultivated Plant Code), published by the International Society for Horticultural Science. The ICNCP was most recently updated in 2016.

person must keep required records regarding seed treatment, including, but not limited to, records about seed coating, film coating, encrusting, or pelleting. This rule makes corresponding revisions to references to “treatment” in § 201.4(b). Revisions to § 201.2(p) clarify that seed mixtures consist of more than one kind or variety of seed, each present in excess of 5 percent by weight of the whole, and that combinations of more than one variety of a single kind of seed may be referred to as “blends.” A revision to the definition of “coated seed” in § 201.2(q) clarifies that coated seed is any seed covered with a coating material, while new § 201.2(nn) defines “coating material” to mean any substance that changes the size, shape, or weight of the original seed, and clarifies that ingredients such as rhizobia, dyes, polymers, biologicals, and pesticides are not considered coating materials. A revision to the term “purity” in § 201.2(w) removes the reference to “crop seed.” A revision to § 201.2(x) revises the definition of “inoculant” to mean a product consisting of microorganisms applied to the seed for the purpose of enhancing the availability or uptake of plant nutrients through the root system. Such a change aligns FSA regulations with the current Environmental Protection Agency definition of a plant inoculant,<sup>2</sup> which is recognized and used by the industry.

Finally, this rule adds a new paragraph (oo) to § 201.2 to define the term “brand,” which means a name, term, sign, symbol, or design, or a combination of them that identifies seed as the product of a seller or group of sellers and distinguishes that seed from the seed of other sellers. The term’s definition will clarify its use in § 201.36b(e).

### *Records*

The FSA regulations require seed shippers to maintain records and samples for each lot of agricultural and vegetable seed shipped in interstate commerce. Sections

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<sup>2</sup> See 40 CFR 152.6(g)(2) – EPA’s definition of plant inoculant.

201.4 through 201.7a specify the recordkeeping requirements related to seed origin, germination testing, purity testing, and treatment. This rule revises § 201.4 to clarify that complete records about seed treatments include records about treatments such as coating, film coating, encrusting, and pelleting treatments.

### *Labeling*

The FSA requires each container of agricultural and vegetable seed shipped in interstate commerce to be labeled with specific information. For agricultural seed, the label must include, among other things, the name of each kind of seed comprising more than 5 percent of the contents, and for certain kinds of seed, the labels must show the variety(ies). Prior to this rule, § 201.12a of the regulations required mixtures of lawn and turf seed to be labeled as mixtures and required the name and percentage of each seed component to be listed on the label in the order of predominance. This rule revises § 201.12a by removing the reference to turf and lawn seed mixtures, requiring all mixtures of agricultural seed for seeding or planting purposes to be designated mixtures on the label, and requiring the label to list each seed component on the label in order of predominance. This rule adds a similar requirement for labeling vegetable seed mixtures by adding a new § 201.26a – Vegetable Seed Mixtures, which requires labels for mixtures of vegetable seeds to list each seed component in order of predominance. This change reflects the current market practice of packaging vegetable seed mixtures, which has not previously been addressed in the regulations.

The regulations prohibit the interstate shipment of agricultural seeds containing seeds or bulblets of certain noxious weeds identified in § 201.16(b). This rule revises the list of prohibited noxious weed seed in § 201.16(b) by updating the scientific names of

several species to reflect the current names recognized in the market. Where the shipment of noxious-weed seed is not prohibited under § 201.16(b), the rate of occurrence in agricultural seed cannot exceed the rate permitted by each State into which the seed is shipped or reshipped, and the label must include the rate of occurrence according to each State's requirements. *See* 7 CFR 201.16(a). This rule adds a new § 201.30c that provides similar restrictions for shipments of noxious-weed seed in vegetable seed in containers weighing more than one pound. This addition supports State laws regarding noxious-weed seed in vegetable seed.

Prior to this rule, § 201.18 specified that when agricultural seeds other than the predominant kind, variety, or type named on the label are included, they could be collectively identified as “crop seeds” or “other crop seeds” by percentage. A change to § 201.18 removes the reference to “crop seeds” to reduce confusion about what is in the seed. Another labeling change removes the reference to coating material in § 201.19 – Inert matter, since coating material is excluded by definition in another provision.

Under § 201.21, seed labels are required to show the percentage of hard seed – seed with an impermeable seed coat that doesn't absorb water and germinate – apart from the agricultural seed germination percentage. A change to §201.21 requires labels to also show the percentage of dormant seed – seed other than hard seed that fails to germinate under specified conditions – apart from the germination percentage. This change is necessary to reflect the emerging industry practice of labeling dormant seed as such and providing the percentage of dormant seed on the label.

A change to the heading and introductory paragraph of § 201.31 clarifies that the germination standards for vegetable seeds in interstate commerce are minimum standards.

Prior to this rule, the regulations required seed labels to include the full name and address of the shipper or consignee, or to show a code that identifies the shipper. Revisions to §§ 201.23, 201.24, 201.27, and 201.28 require the labels of both agricultural and vegetable seed to show the full name and address of the interstate shipper or show both a code identifying the interstate shipper and the full name and address of the consignee. Sections 201.23 and 201.27 are further revised to define the terms “shipper” and “consignee” as they pertain to labeling. AMS intends these changes to reduce industry confusion about the labeling requirements.

Section 201.31a requires seed labels to include the name or description of any treatment applied to the seed. Paragraph (b) of that section specifies the names that can be used to identify substances used in seed treatments. This rule revises § 201.31a(b) to clarify that active ingredient substances used in seed treatments must be included in the label, and that biological active ingredients should be identified by their brand names or genus and species names.

#### *Seed Testing*

The regulations specify testing requirements for seed shipped in interstate commerce. Seed testing methodology continues to evolve as new equipment and processes are developed. In addition to the revisions described earlier in this document, this rule makes the following revisions to the testing regulations in 7 CFR part 201 to

ensure the requirements reflect methods and procedures that have been adopted in the industry and by AMS.

The rule revises the introductory text of § 201.48 to clarify that pure seed includes all seeds of each kind that are present in excess of 5 percent by weight of the whole. Revisions to § 201.48(g)(3) remove references to *chewings fescue*, *red fescue*, and *orchardgrass* from the list of species for which special purity testing procedures are provided in § 201.51a(b). Corresponding revisions to the Table of Factors to Apply to Multiple Units in § 201.51a(b)(2)(ii) reflect the revisions to § 201.48(g)(3). A revision to § 201.51a(a) adds more precise instructions relating to the Uniform Blowing Procedure used to separate pure seed and inert matter for seed testing, and the revision better aligns the regulation with AOSA standards. A revision to § 201.58(a) clarifies that if the date for a final count for germination testing falls on a weekend or public holiday, the count can be taken on the following workday. A revision to § 201.60(b)(2) corrects a reference to tolerance determinations for “crop seeds” to refer to tolerance determinations for “other crop seeds.” A revision to § 201.61 revises the title of the table in that section to be “Fluorescence Tolerance, Based on Test Fluorescence (TFL)” to clarify that the ryegrass fluorescence tolerances shown for 400-seed fluorescence tests are based on the test fluorescence level (TFL) calculated under § 201.58a.

This rule clarifies § 201.64 – Pure live seed by clarifying that dormant seed is considered in the calculation and by adding a mathematical formula to show how the tolerance for pure live seed is calculated.

*Certification*

The regulations require seed certifying agencies to meet specified qualification standards and comply with procedures outlined in the regulations. One such procedure provided in § 201.68 requires certifying agencies to obtain specific information from certification applicants. This rule revises the introductory text of § 201.68 to clarify that point, as the regulations have been confusing, making it unclear that certifying agencies must request the specified information. A further revision to § 201.68(b) requires entities applying for certification to supply information about the breeding or reproductive stabilization procedures used to develop the variety. This change is necessary to recognize that breeders use different processes to develop new plant varieties.

A revision to § 201.70(a) permits recertification of seed beyond the standard two generations past the Foundation seed generation only when neither Foundation nor Registered class seed are being maintained. Previously, the regulations allowed recertification of Certified class seed when no Foundation seed is being maintained, even if Registered seed was being maintained. This revision prohibits recertification of Certified class seeds when Registered class seed is being maintained. Adding this restriction precludes recertification of Certified class seed when seed of a higher certification class is available. AMS intends such a restriction to prevent recertification of the class of seed most likely to have changed over time when more stable alternatives are available. Revisions to §§ 201.74 and 201.75 remove the caveat that certified seed labeling requires the variety name only if the seed has been certified as to variety. This change removes contradictory or confusing language from the regulations, since all certification is varietal.

Section 201.76 of the regulations establishes production standards for Foundation, Registered, and Certified classes of various crop seeds. As well as adding the five new crop kinds mentioned earlier in the *Terminology* section, this rule adds four explanatory footnotes to the chart of production standards in § 201.76. New footnote 60 explains that land on which certain seed is grown for certification must not have been planted in cruciferous crops during the previous five years, or for the previous three years if the previous crop was of the same variety and of the same or higher certification class. New footnote 61 explains that fields producing any class of certified seed must be at least 50 feet from any other variety or from fields of the same variety that do not meet the varietal purity requirements for certification. New footnote 62 pertains to the production of sunn hemp and explains that no other varieties of *Crotolaria* species are allowed in Foundation, Registered, and/or Certified seed production fields. New footnote 63 explains that producers of certified seed of any class for that crop should refer to the requirements established by certifying agencies in the production States for applicable production standards. AMS added these footnotes to explain specific standards for the new crops that were added to the Table in § 201.76 (*camelina, chickpea, hemp, radish, and sunn hemp*), but most are generic in nature and could apply to other crops in the future, as well.

Section 201.78 provides additional certification requirements related to pollen control for hybrids of certain crops. Paragraph (e) in § 201.78 specifies the determination of the pollen production index (PPI) for hybrid alfalfa. Paragraph (e) in § 201.78 provides maximum PPI for various hybrids of Foundation and Certified class seed. This rule revises § 201.78(e) to provide greater specificity about maximum PPI allowances for

hybrid alfalfa that would depend on the production method, parentage, and generation of hybrid seed being analyzed. The industry requested this revision in response to a change in production practices for hybrid alfalfa seed. AMS expects this revision to recognize the breadth of hybridization methods currently used by different plant breeders.

#### *Administrative Changes*

AMS made several revisions of an administrative nature to the regulations to correct typographical errors and update addresses and other references to reflect current business practices or provide clarity. A revision to § 201.2(a) replaces the reference to “the FSA” with the words “the Federal Seed Act” to clarify the meaning of the term “Act” used throughout the regulations. References to the “Act” replace references to the “act” throughout the regulations, and minor misspellings have been corrected in several sections. A revision to § 201.51a(a)(3) updates the address for obtaining calibration samples and instructions from the Seed Regulatory and Testing Division to its current address in Gastonia, North Carolina. A revision to the entries for “*Oat*” and “*Brussels Sprouts*” in Table 2 to paragraph (c)(3) in § 201.58 moves the additional germination directions for fresh and dormant seed into the correct table column. Finally, AMS revised the headings for Parts 201 and 202 to remove an undesignated center heading in Part 201 that is no longer needed. These changes replace references to the terms “Rules” or “Regulations” with terms that comply with Code of Federal Regulations nomenclature conventions.

#### **Comments**

AMS received seven comments on the proposed rule. One comment from an individual supports the proposed updates to scientific nomenclature and to the standards

relating to seed quality. The commenter wrote that the proposed changes are likely to help buyers obtain quality seed. Four comments from individuals expressed neither support nor opposition to the proposed rule, but addressed topics unrelated to this rulemaking. For example, comments advocated the production and use of home-grown and patient-grown *Aloe vera* products in veterans' hospitals and the reduction of tariffs and restrictions on seed trade so people everywhere could have access to vital seeds. Accordingly, AMS is making no changes to the rule as proposed based on these comments.

Two comments were submitted by seed trade industry associations. Both comments support the proposals generally. One commenter expressed support for the proposed changes in sections not directly dealing with seed certification, saying that the sections dealing with shipping, labeling, and seed testing are closely related and important to seed certification activities. Both commenters suggested revisions to certain proposals. One commenter noted generally that AMS's proposals seemed intended to align the requirements for vegetable seed more closely with those for agricultural seed and that in some cases, that wouldn't be appropriate. Both commenters' specific concerns are summarized and addressed below.

*Comment:* Section 201.2(q) of the regulations defines *coated seed* as seed coated with any substance that changes the seed's size, shape, or weight, excluding certain specified coating material ingredients. AMS proposed to add polymers and biologicals to the list of excluded coating materials ingredients. One comment agreed with the addition of polymers and biologicals to the list, but suggested further revising the proposed language by specifying that coated seed is any seed coated with coating material and

adding a second definition for *coating material*. The commenter suggested that *coating material* be defined as any substance intended to change the seed's size, shape, or weight, excluding certain specified ingredients, including polymers and biologicals, thus retaining the proposed language, but including it in a separate definition. The commenter pointed out that coating material is referenced in several other provisions of the regulations. Thus, defining the term would help clarify those provisions.

*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.

*Comment:* Section 201.2(w) of the regulations requires the inclusion of the names and percentages of other materials in the seed, such as crop seed and inert matter, when describing the purity of seed. AMS proposed revising § 201.2(w) by removing the reference to crop seed and by specifying that inert matter includes coating material, if any is present. A commenter agreed with removing the reference to crop seed, as it is redundant to agricultural seed, which is specified in the regulation. The commenter opposed adding the specification that inert matter includes coating material, if any is

present, because inert matter is already defined as including coating material if any is present in § 201.51(c)(3).

AMS further proposed to revise the current definition of inert matter in § 201.19 to specify that inert matter includes coating material, if any is present. The commenter also opposed this proposed revision, again citing § 201.51(c)(3), and saying that the addition of this language would create unintended negative consequences for the industry, but not explaining what those would be.

*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.

*Comment:* AMS proposed to add the term *acceptable* to §§ 201.6 – Germination and 201.7 – Purity to clarify for regulated entities the kinds of tests related to seed germination and purity for which records must be kept. AMS proposed also to add a new definition – *Acceptable test* – to the regulations to mean testing according to methods provided in the FSA regulations or according to the rules of the Association of Official Seed Analysts (AOSA). Finally, AMS proposed to replace the reference to “analyses, tests, and examinations” with a reference to “acceptable tests” in § 201.2(l)(1), which

defines the term *Complete record*. One comment opposed adding the definition for *Acceptable test*, as well as adding the term *acceptable* to recordkeeping requirements in §§ 201.6 and 201.7, saying that AOSA rules don't allow the use of tetrazolium (TZ) testing, which is important to the reclamation seed business. According to the commenter, the U.S. Bureau of Land Management (BLM) is the industry's largest single purchaser of native seed, and BLM uses TZ tests to verify purchases of native seed before the seed is distributed for reclamation projects.

*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 removed the proposed reference to *acceptable test* in § 201.2(1)(1), even though the commenter did not address that reference in the comment.

*Comment:* The term *brand* appears in various provisions of the regulations, but it is not defined. AMS proposed to define *brand* to mean word(s), name, symbol, number, mark, design, unique design, or any combination of those which distinguishes the seed of one entity from the seed of another. One commenter supported addition of the new definition, but opposed the phrase "distinguishes the seed of one entity from the seed of another." The commenter wrote that incorporating the word "entity" in the definition might be too confusing. The commenter recommended rewording the proposed

definition of *brand* to mean word(s), name, symbol, number, mark, design, unique design, or any combination of those which identifies the product.

*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.

*Comment:* AMS proposed to add radish to the list of agricultural seeds that must be labeled as to variety under § 201.10(a). One commenter supported the proposal and recommended that chicory, collards, and kale also be added because they, too, are included in seed mixtures used as cover crops.

*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.

*Comment:* Section 201.8 of the regulations specify, among other things, that the required information on the seed label can be in any form that is clearly legible and may be on a tag securely attached to the container or printed in a conspicuous manner on the

side or top of the container. The label may also contain information in addition to that required by the Act, provided such information is not misleading. One commenter suggested that § 201.8 be revised to provide that label information could be conveyed through a machine-readable optical label (Quick Response or QR code) affixed to the container. The commenter asserted that the 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.

*Comment:* Currently, the regulations require seed labels to include the full name and address of either the shipper or the consignee (the entity buying or receiving the shipment). If the shipper's full name and address are not provided, the label must show an AMS-approved code that identifies the shipper, and the consignee's full name and address must also appear on the label. AMS proposed to revise §§ 201.23, 201.24, 201.27, and 201.28 to clarify the labeling requirements for both agricultural and vegetable seed. AMS proposed to clarify that labeling requirements pertain to interstate shipments and that if the shipper is identified only by a code, the consignee's full information must appear on the label. The proposals were intended to reduce industry confusion about the labeling requirements. One commenter requested that AMS revise

the proposed language by replacing the word “shipper” with “consignor,” and by clarifying that label requirements are for the seed package. The commenter further requested that consignee information not be required because it would be impossible to know the final destination of every seed package.

*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.

*Comment:* AMS proposed to revise § 201.29 to clarify that the germination of vegetable seed in containers of one pound or less should be expressed as a percentage on the label. AMS further proposed to revise §§ 201.29, 201.29a, 201.30, and 201.63 to provide that seed labels should show the amounts of dormant seed in containers of seed as separate from the germination percentage. AMS also proposed a revision to § 201.31 that would clarify that minimum germination standards for vegetable seeds in interstate commerce would be construed to include hard seed and dormant seed. Currently, only

the amount of hard seed is shown on labels, and the germination standards for vegetable seed in interstate commerce are construed to include hard seed. One comment agreed with the clarification about expressing germination by percentage, but opposed the requirement to account for dormant seed. According to the commenter, vegetable seeds are sold by count rather than weight, which should be considered when determining container percentages. The commenter explained further that AOSA rules do not include testing procedures for dormant seed, making compliance with the requirement burdensome for the industry.

*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.

*Comment:* AMS proposed to revise § 201.31a(b) to clarify that the name of any active ingredient substance used to treat seed must be included on the label. AMS further proposed to include examples of genus and species names for brand-named biologicals

that might be used to identify active ingredient substances on labels. One commenter agreed with the clarification that the names of active ingredient substances must be included on labels, but opposed listing specific examples because products constantly evolve, and the proposed examples would be out of date in a short time.

*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.

*Comment:* AMS proposed to revise § 201.68 to clarify that when the developer or owner of a variety requests certification of that variety, the certifying agency must request certain information, including a statement concerning the variety's origin and the breeding technique or reproductive stabilization procedures used in its development. Two commenters supported the proposal in general, but opposed requiring the developer to state what breeding technique was used. One of those commenters explained that when the industry met with AMS in early 2019 as described earlier in this document, the subject was discussed in light of situations where new varieties were selected from among natural mutations rather than intentionally developed. Both commenters agreed that requiring variety developers to reveal breeding techniques would negatively impact plant breeding innovations. One commenter asserted further that removing the word "technique" from the proposed language would not have a negative impact on the review process.

*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.

*Comment:* AMS proposed a revision to § 201.70(a) that would permit recertification of seed beyond the standard two generations past the Foundation seed generation only when neither Foundation nor Registered class seed is being maintained. One commenter wrote that this section of the regulations is especially important in cases where supplies of parent seed are insufficient to meet demand. The commenter added that the proposed changes add clarity and expressed support for the proposal.

*AMS response:* AMS agrees that this proposal gives the industry added ability to produce desired seed varieties in case of higher demand or emergency. Accordingly, AMS made no changes to the proposal based on the comment.

*Comment:* Section 201.76 of the regulations establishes production standards for Foundation, Registered, and Certified classes of various crop seeds. As well as adding the five new crop kinds mentioned earlier in the *Terminology* section, AMS proposed to add four explanatory footnotes to the chart of production standards in § 201.76. One comment supported the addition of the footnotes,

*AMS response:* Each of the newly added crops requires unique growing conditions. The footnotes provide specific standards for the production, protection, and quality maintenance for certified classes of crop seed. Accordingly, AMS made no changes to the proposal based on the comment.

*Comment:* AMS proposed to revise § 201.78(e) to provide greater specificity about maximum pollen production index (PPI) allowances for hybrid alfalfa that would

depend on the production method, parentage, and generation of hybrid seed being analyzed. One comment supported the proposed revision.

*AMS response:* AMS's proposal reflects evolving trends in hybrid alfalfa production for certification. Accordingly, AMS made no changes to the proposal based on the comment.

## **Rulemaking Analyses**

### *Executive Orders 12866, 13563, and 13771*

AMS is issuing this final rule in conformance with Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

In the development of this rule, AMS considered alternatives, including updating only the list of regulated seed varieties or making no changes at all. Ultimately, AMS rejected those alternatives because many references and processes in the regulations were obsolete and did not reflect modern business and industry practices. AMS believes making these revisions best serve the industry by aligning seed species references with internationally recognized scientific names, clarifying processes to simplify regulatory compliance, and improving AMS's customer service. AMS does not expect this rule to provide any environmental, public health, or safety benefits.

This rule does not meet the criteria of a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those Orders. Because this rule does not meet the criteria of a significant regulatory action, it does not trigger the requirements in Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

AMS does not expect the revisions to impact compliance costs for the private sector because the industry has already adopted the practices reflected by the regulatory changes in order to comply with State laws. AMS expects seed industry stakeholders to benefit from the references to updated scientific nomenclature, which provides a common language for marketing seed. Likewise, AMS expects updating the labeling, testing, and certification requirements to simplify compliance and facilitate the interstate marketing of seed. AMS also expects stakeholders to benefit from streamlined AMS business practices.

#### *Regulatory Flexibility Act*

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) ([5 U.S.C. 601 et seq.](#)), AMS has considered the economic impact of this action on small business entities. The affected industry falls under the North American Industry Classification System (NAICS) as code 54171--Research and development in the physical, engineering, and life sciences. This classification includes firms that are not plant breeders/plant research; however, no detailed industry data was available for the analysis.

Table 1 shows the most recent descriptive data for the industry, obtained from the County Business Pattern 2016 survey. This data set provides information on the number of establishments, number of employees and total annual payroll.

Table 1. Number of Establishments, Revenue and Payroll by Employee Count, NAICS Code 54171, 2016 County Business Patterns <sup>3</sup>			
	Number of establishments	Number of Paid Employees	Annual Payroll (\$1,000)
All establishments	17,292	695,810	\$82,865,611

The Small Business Administration (SBA) determines firm size for this industry by number of employees, but on a per firm basis, with small firms defined as having fewer than 1,000 employees and 1,000 or more employees per firm classified as large. Because firms may own more than one establishment, and the County Business Patterns data are compiled on an establishment rather than a firm basis, we must use the Economic Census data to determine the number of small and large firms for the industry.

Table 2 shows the most recent data available on the breakdown between small (<1,000 employees) and large (1,000 or more employees) firms in this industry, according to SBA’s guidance.<sup>4</sup> The data are from the 2002 Economic Census, with monetary values converted to 2016 dollars. More recent Economic Census data is not available at this level of detail for this industry.

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<sup>3</sup> Geography Area Series: County Business Patterns by Employment Size Class, 2016 Business Patterns, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=BP\\_2016\\_00A3&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=BP_2016_00A3&prodType=table)

<sup>4</sup> “Table of Small Business Size Standards Matched to North American Industry Classification System Codes”, Small Business Administration, effective January 1, 2017, [https://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf)

Table 2. Number of Firms and Establishments, Revenue and Payroll by Employee Count, NAICS Code 54171, 2002 Economic Census <sup>5</sup>					
Size of Firm by Number of Employees	Number of Firms	Number of Establishments	Number of Paid Employees	Revenue* (\$1,000)	Annual Payroll* (\$1,000)
Small-- Firms with fewer than 1,000 employees	10,200	11,753	273,601	\$49,702,793	\$24,780,487
Large-- Firms with 1,000 employees or more	79	1,380	283,816	\$30,095,258	\$27,776,903
All firms	10,279	13,133	557,417	\$79,798,051	\$52,557,389
*Adjusted to 2016 values.					

The 2002 Economic Census reported that fewer than one percent of firms were considered large (79 of 10,279 firms, or 0.54 percent). The 10,279 firms at that time owned a total of 13,133 establishments, with 1,380 (nearly 11 percent) of these facilities owned by the 79 large firms.

The tables show the extent of growth in the industry over time. The number of establishments has grown from 13,133 in 2002 to 17,292 in 2016 (32 percent, or 2.3 percent per year). Total employment increased from 557,417 workers to 695,810 (25 percent, or 1.8 percent per year), and total annual payroll from \$52,557,389 to \$82,865,611 (58 percent or 4 percent per year). These figures indicate that the industry has seen small to moderate growth, with a more highly paid work force over time. There do not appear to be significant changes in the structure of the industry between 2002 and 2016. AMS expects that the size distribution of the firms affected by these revisions is

<sup>5</sup> Professional, Scientific, and Technical Services: Subject Series - Establishment and Firm Size: Employment Size of Firms for the United States: 2002 Economic Census of the United States, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2002\\_US\\_54SSS25&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2002_US_54SSS25&prodType=table)

consistent with data reported in the 2002 Economic Census. Therefore, affected firms would mostly be considered small business entities under the criteria established by SBA (13 CFR 121.201).

As a result of meeting with representatives of major seed industry stakeholder organizations in February 2019, AMS is updating regulations to reflect current industry standards and practices and to remove obsolete references. The revisions to the existing FSA regulations do the following:

1. Update the lists of seed kinds which are covered by the regulations and revise the names of several agricultural and vegetable seeds to provide updated scientific nomenclature;

2. Revise the definitions of other terms used in the regulations to provide greater clarity for regulated entities;

3. Update the seed labeling, testing, and certification requirements to reflect revised terminology and industry practices; and

4. Correct misspellings and other errors in the regulations.

Most of the revisions listed above (1, 2, and 4) are changes in the regulations that would not impact costs to the private sector. The third revision listed above is expected to lower the costs of seed testing for three grass species. The revisions will eliminate the requirement to segregate certain components of seed in purity testing for those three species. This will reduce the number of component separations for those species from five to four. Cost savings are difficult to estimate. Information on the exact costs of the tests was difficult to obtain because of the variability in seed testing fees by third-party labs. Costs for these tests are generally based on hourly laboratory charges and can range

between \$10 and \$50 per test. Without data on the breakdown of cost for each of the separations performed in the test, it is assumed testing costs for the three affected crops could fall by 20 percent as a result of the proposed revisions.

The revisions ease the requirement to follow test procedures according to the Federal Seed Act before engaging in interstate commerce by allowing the use of seed testing methods from Association of Official Seed Analysts Rules used by most seed testing laboratories in the U.S. These revisions also expand the time requirement of the current regulation by allowing testing to be completed only on laboratory workdays, which effectively acknowledges the existence of weekends and holidays, eliminating the need for staff to work or reschedule completion dates.

The burden of labeling radishes is also expected to fall, as it was not previously considered agricultural seed under the Federal Seed Act. Radishes were previously considered only as a vegetable crop and had to be labeled by variety. Inclusion of radishes as agricultural seed under the Act will allow the industry to exclude varieties in labeling agricultural radish seed.

This rule reduces the trade burden associated with interstate seed commerce and encourages compliance with State and Federal laws. AMS has determined that this action would not have a significant negative economic impact on a substantial number of these small business entities.

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information requirements under the regulations have been approved previously by OMB and assigned OMB No. 0581-0026. No changes are necessary in those

requirements as a result of this action. Reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Should any changes become necessary, they would be submitted to OMB for approval.

*Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. § 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule as defined by 5 U.S.C. § 804(2).

*E-Government Act*

USDA is committed to complying with the E-Government Act (44 U.S.C. 3601, et seq.) by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

*Executive Order 13175*

This action has been reviewed in accordance with the requirements of Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct impacts on Tribal governments or significant Tribal implications.

*Executive Order 12988*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to judicial challenge to the provisions of this final rule.

**List of Subjects**

**7 CFR Part 201**

Certified seed, Definitions, Inspections, Labeling, Purity analysis, Sampling.

## **7 CFR Part 202**

Administrative practice and procedure, Agricultural commodities, Imports, Labeling, Seeds, Vegetables.

For the reasons set forth in the preamble, 7 CFR parts 201 and 202 are amended as follows:

### **PART 201 – FEDERAL SEED ACT REQUIREMENTS**

1. The authority citation for part 201 continues to read as follows:

**Authority:** 7 U.S.C. 1592.

2. In part 201, revise the heading to read as set forth above.

3. Remove the undesignated center heading “RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE”.

#### **§ 201.2 [Amended]**

4. Amend § 201.2 by:

a. In paragraph (a), removing the word “FSA” and adding in its place the words “Federal Seed Act”;

b. In paragraph (b), removing the words “a partnership” and adding in their place the words “an individual partnership” and removing the words “or trustee” and adding in their place the words “trustee, or agent”;

c. In paragraph (h):

i. Removing the terms “Bluestem, big – *Andropogon gerardii* Vitman”, “Brome, mountain—*Bromus marginatus* Steud.”, “Buffalograss—*Buchloe dactyloides* (Nutt.) Engelm.”, “Crambe—*Crambe abyssinica* R.E. Fr.”, “Crotalaria, sunn—*Crotalaria*

*juncea* L.”, “Galletagrass—*Hilaria jamesii* (Torr.) Benth.”, “Guineagrass—*Panicum maximum* Jacq. var. *maximum*”, “Kochia, forage—*Kochia prostrata* (L.) Schrad.”, “Millet, browntop—*Brachiaria ramosa* (L.) Stapf”, “Millet, pearl—*Pennisetum glaucum* (L.) R. Br.”, “Napiergrass—*Pennisetum purpureum* Schumach.”, “Needlegrass, green—*Stipa viridula* Trin.”, “Panicgrass, green—*Panicum maximum* Jacq.”, “Rape, bird—*Brassica rapa* L. subsp. *campestris* (L.) A.R. Clapham”, “Rape, turnip – *Brassica rapa* L. subsp. *campestris* (L.)”, and “Smilo—*Piptatherum miliaceum* (L.) Coss”;

ii. Adding in alphabetical order the terms “Bluestem, big – *Andropogon gerardi* Vitman”, “Brome, mountain – *Bromus carinatus* var. *marginatus* (Steud.) Barworth & Anderton”, “Buffalograss – *Bouteloua dactyloides* (Nutt.) Columbus”, “Camelina – *Camelina sativa* (L.) Crantz subsp. *sativa*”, “Crambe – *Crambe hispanica* L. subsp. *abyssinica*”, “Crotalaria, sunn or sunn hemp – *Crotalaria juncea* L.”, “Galletagrass – *Pleuraphis jamesii* Torr.”, “Guineagrass – *Megathyrsus maximus* (Jacq.) B. K. Simon & S. W. L. Jacobs”, “Kochia, forage – *Bassia prostrata* (L.) A. J. Scott”, “Millet, browntop – *Urochloa ramosa* (L.) T. Q. Nguyen”, “Millet, pearl – *Cenchrus americanus* (L.) Morrone”, “Napiergrass – *Cenchrus purpureus* (Schumach.) Morrone”, “Needlegrass, green – *Nassella viridula* (Trin.) Barkworth”, “Panicgrass, green – *Megathyrsus maximus* (Jacq.) B. K. Simon & S. W. L. Jacobs”, “Radish – *Raphanus sativus* L.”, “Rape, bird – *Brassica rapa* L. subsp. *oleifera*”, “Rape, turnip – *Brassica rapa* L. Subsp. *oleifera*”, “Smilo – *Oloptum miliaceum* (L.) Röser & Hamasha”, and “Teff – *Eragrostis tef* (Zuccangi) Trotter”;

d. In paragraph (i), removing the term “Tomato—*Lycopersicon esculentum* Mill.” and adding in its place the term “Tomato – *Solanum lycopersicum* L.”;

- e. In paragraph (j), removing the word “act” and replacing it with the word “Act”;
- f. In paragraph (l)(1) in the first sentence after each use of the word “treatment” adding the words “(including but not limited to coating, film coating, encrusting, or pelleting)”;
- g. In the second sentence of paragraph (l)(1), removing the word “treatment” and adding in its place the words “chemical or biological treatment”.
- h. Revising paragraphs (p) and (q);
- i. In paragraph (w), removing the words “or crop seed”;
- j. In paragraph (x), removing the words “commercial preparation containing nitrogen fixing bacteria applied to seed” and adding in their place the words “product consisting of microorganisms applied to the seed for the purpose of enhancing the availability or uptake of plant nutrients through the root system”;
- k. In paragraph (z), removing the word “act” and adding in its place the word “Act”;
- l. In paragraph (mm), removing the word “detasselling” and adding in its place the word “detasseling”; and
- m. Adding paragraphs (nn) and (oo).

The revision and additions read as follows:

\*\*\*\*\*

(h) \*\*\*:

Bluestem, big—*Andropogon gerardi* Vitman

\* \* \* \* \*

Brome, mountain—*Bromus carinatus* var. *marginatus* (Steud.) Barworth & Anderton

\* \* \* \* \*

Buffalograss—*Bouteloua dactyloides* (Nutt.) Columbus

\* \* \* \* \*

Camelina—*Camelina sativa* (L.) Crantz subsp. *sativa*

\* \* \* \* \*

Crambe—*Crambe hispanica* L. subsp. *Abyssinica*

\* \* \* \* \*

Crotalaria, sunn or sunn hemp—*Crotalaria juncea* L.

\* \* \* \* \*

Galletagrass—*Pleuraphis jamesii* Torr.

\* \* \* \* \*

Guineagrass—*Megathyrsus maximus* (Jacq.) B. K. Simon & S. W. L. Jacobs

\* \* \* \* \*

Kochia, forage—*Bassia prostrata* (L.) A. J. Scott

\* \* \* \* \*

Millet, browntop—*Urochloa ramosa* (L.) T. Q. Nguyen

\* \* \* \* \*

Millet, pearl—*Cenchrus americanus* (L.) Morrone

\* \* \* \* \*

Napiergrass—*Cenchrus purpureus* (Schumach.) Morrone

Needlegrass, green—*Nassella viridula* (Trin.) Barkworth

\* \* \* \* \*

Panicgrass, green—*Megathyrsus maximus* (Jacq.) B. K. Simon & W. L. Jacobs

\* \* \* \* \*

Radish—*Raphanus sativus* L.

\* \* \* \* \*

Rape, bird—*Brassica rapa* L. subsp. *oleifera*

Rape, turnip—*Brassica rapa* L. subsp. *oleifera*

\* \* \* \* \*

Smilo—*Oloptum miliaceum* (L.) Röser & Hamasha

\* \* \* \* \*

Teff – *Eragrostis tef* (Zuccagni) Trotter

\* \* \* \* \*

(p) *Mixture*. The term “mixture” means seeds consisting of more than one kind or variety, each present in excess of 5 percent by weight of the whole. A mixture of varieties of a single kind may be labeled as a blend.

(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.

(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.

5. Revise § 201.3 to read as follows:

**§ 201.3 Administrator.**

The Administrator of the Agricultural Marketing Service may perform such duties as the Secretary requires in enforcing the provisions of the Act and of the regulations in this part.

**§ 201.4 [Amended]**

6. Amend § 201.4 by:

a. In paragraph (a), removing the word “act” and adding in its place the word “Act”; and

b. In paragraph (b) after the word “treatment” wherever it appears adding the words “(including, but not limited to, coating, film coating, encrusting, or pelleting)” and removing the word “act” and adding in its place the word “Act”.

**§ 201.7 [Amended]**

7. Amend § 201.7 by removing in the first sentence the words “analyses, tests, and examinations” and adding in their place the word “tests,”.

**§ 201.8 [Amended]**

8. Amend § 201.8 by removing in the last sentence the word “act” and adding in its place the word “Act”.

**§ 201.10 [Amended]**

9. In § 201.10 amend paragraph (a) by adding the word “Radish;” after the word “Peanut;”.

10. Revise § 201.12a to read as follows:

**§ 201.12a Seed mixtures.**

Seed mixtures intended for seeding/planting purposes shall be designated as a mixture on the label and each seed component shall be listed on the label in the order of predominance.

11. Amend § 201.16 by:

a. In paragraph (a) in the first sentence removing the word “state” and adding in its place the word “State”;

b. In paragraph (b):

i. Removing the terms “*Emex australis* Steinh.”, “*Emex spinosa* (L.) Campd.”, “*Leptochola chinensis* (L.) Nees”, “*Pennisetum clandestinum* Chiov.”, “*Pennisetum macrourum* Trin.”, “*Pennisetum pedicellatum* Trin.”, “*Pennisetum polystachion* (L.) Schult.”, and “*Rubus fruticosus* L. (complex)”; and

ii. Adding in alphabetical order the terms “*Cenchrus caudatus* (Schrad.) Kuntze”, “*Cenchrus clandestinus* Morrone”, “*Cenchrus pedicellatus* (Trin.) Morrone”, “*Cenchrus polystachios* (L.) Morrone”, “*Dinebra chinensis* (L.) P. M. Peterson & N. Snow”, “*Rubus plicatus* Weihe & Nees”, “*Rumex hypogaeus* T.M. Schust & Reveal”, and “*Rumex spinosus* L.”.

The additions read as follows:

**§ 201.16 Noxious-weeds seeds**

\* \* \* \* \*

(b) \*\*\*

*Cenchrus caudatus* (Schrad.) Kuntze

*Cenchrus clandestinus* Morrone

*Cenchrus pedicellatus* (Trin.) Morrone

*Cenchrus polystachios* (L.) Morrone

\* \* \* \* \*

*Dinebra chinensis* (L.) P. M. Peterson & N. Snow

\* \* \* \* \*

*Rubus plicatus* Weihe & Nees

*Rumex hypogaeus* T.M. Schust & Reveal

*Rumex spinosus* L.

\* \* \* \* \*

**§ 201.17 [Amended]**

12. Amend § 201.17 by removing the words “Quackgrass (*Elytrigia repens*)” and adding in their place the words “Quackgrass (*Elymus repens*)”.

13. Revise § 201.18 to read as follows:

**§ 201.18 Other agricultural seeds.**

Agricultural seeds other than those included in the percentage or percentages of kind, variety, or type may be expressed as “other crop seeds,” but the percentage shall include collectively all kinds, varieties, or types not named upon the label.

14. Revise § 201.20 to read as follows:

**§ 201.20 Germination**

The label shall show the percentage of germination for each kind, kind and variety, kind and type, or kind and hybrid of agricultural seed comprising more than 5 percent of the whole. The label shall show the percentage of germination for each kind, kind and variety, kind and type, or kind and hybrid of agricultural seed comprising 5 percent of the whole or less if the seed is identified individually on the label.

15. Revise § 201.21 to read as follows:

**§ 201.21 Hard seed or dormant seed.**

The label shall show the percentage of hard seed or dormant seed, as defined in § 201.57 or § 201.57a, if any is present. The percentages of hard seed and dormant seed shall not be included as part of the germination percentage.

16. Revise § 201.23 to read as follows:

**§ 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.

17. Revise § 201.24 to read as follows:

**§ 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.

**§ 201.25 [Amended]**

18. Amend § 201.25 by removing in the third sentence the word “act” and adding in its place the word “Act”.

19. Add § 201.26a to read as follows:

**§ 201.26a Vegetable seed mixtures.**

Vegetable seed mixtures for seeding/planting purposes shall be designated as a mixture on the label, and each seed component shall be listed on the label in the order of predominance.

20. Revise § 201.27 to read as follows:

**§ 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.

21. Revise § 201.28 to read as follows:

**§ 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.

22. Revise § 201.29 to read as follows:

**§ 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).

23. Add § 201.30c to read as follows:

**§ 201.30c Noxious-weed seeds of vegetable seed in containers of more than 1 pound.**

Except for those kinds of noxious-weed seeds shown in § 201.16(b), the names of kinds of noxious-weed seeds and the rate of occurrence of each shall be expressed in the label in accordance with, and the rate shall not exceed the rate permitted by, the law and regulations of the State into which the seed is offered for transportation or is transported. If in the course of such transportation, or thereafter, the seed is diverted to another State of destination, the person or persons responsible for such diversion shall cause the seed to be relabeled with respect to noxious-weed seed content, if necessary, to conform to the laws and regulations of the State into which the seed is diverted.

24. Amend § 201.31 by revising the heading and the introductory paragraph to read as follows:

**§ 201.31 Minimum germination standards for vegetable seeds in interstate commerce.**

The following minimum germination standards for vegetable seeds in interstate commerce, which shall be construed to include hard seed, are determined and established under section 403(c) of the Act:

\* \* \* \* \*

25. Amend § 201.31a by revising paragraph (b) to read as follows:

**§ 201.31a Labeling treated seed.**

\* \* \* \* \*

(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).

\* \* \* \* \*

**§ 201.33 [Amended]**

26. In § 201.33 amend paragraphs (a) and (b) by removing wherever it appears the word “act” and adding in its place the word “Act”.

**§ 201.36b [Amended]**

27. In § 201.36b, amend paragraph (a) by removing wherever it appears the word “act” and adding in its place the word “Act”.

**§ 201.37 [Amended]**

28. Amend § 201.37 by removing wherever it appears the word “act” and adding in its place the word “Act”.

**§ 201.38 [Removed and Reserved]**

29. Remove and reserve § 201.38.

**§ 201.39 [Amended]**

30. In § 201.39, amend paragraph (c) by removing the word “proble” in and adding in its place the word “probe”.

31. Amend § 201.46 by:

a. Revising paragraph (b); and

b. Adding in Table 1 to paragraph (d)(2)(iii) entries for “Camelina”, “Radish”, and “Teff” in the “Agricultural Seed” section in alphabetical order.

The revisions and additions read as follows:

**§ 201.46 Weight of working sample.**

\* \* \* \* \*

(b) Mixtures consisting of one predominant kind of seed or groups of kinds of similar size. The weights of the purity and noxious-weed seed working samples in this category shall be determined by the kind or group of kinds which comprise more than 50 percent of the sample.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(iii) \* \* \*

<b>Table 1 to paragraph (d)(2)(iii)</b>			
<b>Name of Seed</b>	<b>Minimum weight for purity analysis (grams)</b>	<b>Minimum weight for noxious-weed seed examination (grams)</b>	<b>Approximate number of seed per gram</b>
Agricultural Seed			
*****			
Camelina	4	40	880
*****			
Radish	30	300	75
*****			
Teff	1	10	3,288
* * * * *			

**§ 201.47a [Amended]**

32. Amend § 201.47a by:

a. in paragraph (b)(6) removing the words “*Buchloe dactyloides*” and adding in their place the words “*Bouteloua dactyloides*”;

b. In paragraph (c) removing the word “Compositae” and adding in its place the word “Asteraceae”;

c. In paragraph (d) removing the word “Legumionsae” and adding in its place the word “Fabaceae”;

d. In paragraph (e) removing the word “Umbelliferae” and adding in its place the word “Apiaceae”; and

e. In paragraph (f) removing the word “Labiatae” and adding in its place the word “Lamiaceae”.

33. Amend § 201.48 by revising the first sentence of the introductory text and paragraphs (a), (f), and (g)(1) and (3) to read as follows:

**§ 201.48 Kind or variety considered pure seed.**

The pure seed shall include all seeds of each kind or each kind and variety under consideration present in excess of 5 percent by weight of the whole. \* \* \*

(a) Immature or shriveled seeds and seeds that are cracked or injured. For seeds of legumes (Fabaceae) and crucifers (Brassicaceae) with the seed coats entirely removed refer to § 201.51(a)(1);

\* \* \* \* \*

(f) Intact fruits, whether or not they contain seed, of species belonging to the following families: Sunflower (Asteraceae), buckwheat (Polygonaceae), carrot (Apiaceae), valerian (Valerianaceae), mint (Laminaceae) and other families in which the

seed unit may be a dry, indehiscent one-seeded fruit. For visibly empty fruits, refer to inert matter, § 201.51(a)(6);

(g) \* \* \*

(1) Intact burs of buffalograss (*Bouteloua dactyloides*) shall be considered pure seed whether or not a caryopsis is present. Refer to § 201.51(a)(6) for burs which are visibly empty.

\* \* \* \* \*

(3) Special purity procedures for smooth brome, fairway crested wheatgrass, standard crested wheatgrass, intermediate wheatgrass, pubescent wheatgrass, tall wheatgrass, and western wheatgrass are listed in § 201.51a(b).

\* \* \* \* \*

#### **§ 201.51 [Amended]**

34. Amend § 201.51 by:

a. In paragraph (a)(1) removing the words “Leguminosae”, “crucifers”, and “Cruciferae”, and adding in their places the words “Fabaceae”, “brassica”, and Brassicaceae”, respectively;

b. In paragraph (b)(2)(iv) removing the word “Agropyron” and adding in its place the word “*Elymus*”;

c. In paragraph (b)(2)(v) removing the words “A. repens” and adding in their place the words “E. repens”; and

d. In paragraph (b)(4) removing the word “Compositae” and adding in its place the word “Asteraceae”.

35. Amend § 201.51a by revising paragraph (a) and the table in paragraph (b)(2)(ii) to read as follows:

**§ 201.51a Special procedures for purity analysis.**

(a) The laboratory analyst shall use the Uniform Blowing Procedure described in this paragraph to separate pure seed and inert matter in the following: Kentucky bluegrass, Canada bluegrass, rough bluegrass, Pensacola variety of bahiagrass, orchardgrass, blue grama, and side-oats grama.

(1) *Separation of mixtures.* Separate seed kinds listed in this section from other kinds in mixtures before using the Uniform Blowing Procedure.

(2) *Calibration samples.* Obtain calibration samples and instructions, which are available on loan through the Seed Regulatory and Testing Division, S&T, AMS, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina, 28054.

(3) *Blowing point.* Use the calibration samples to establish a blowing point prior to proceeding with the separation of pure seed and inert matter for these kinds.

(i) Refer to the specifications on the calibration samples for Kentucky bluegrass, orchardgrass, and Pensacola variety of bahiagrass to determine their appropriate blowing points for the Uniform Blowing Procedure.

(ii) Use the calibration sample for Kentucky bluegrass to determine the blowing points for Canada bluegrass, rough bluegrass, blue grama, and side-oats grama.

(A) The blowing point for Canada bluegrass shall be the same as the blowing point determined for Kentucky bluegrass.

(B) The blowing point for rough bluegrass shall be a factor of 0.82 (82 percent) of the blowing point determined for Kentucky bluegrass. The 0.82 factor is restricted to the General-type seed blower.

(C) The blowing point for blue grama shall be a factor of 1.157 of the blowing point determined for Kentucky bluegrass. Before blowing, extraneous material that will interfere with the blowing process shall be removed. The sample to be blown shall be divided into four approximately equal parts and each blown separately. The 1.157 factor is restricted to the General-type seed blower.

(D) The blowing point for side-oats grama shall be a factor of 1.480 of the blowing point determined for Kentucky bluegrass. Before blowing, extraneous material that will interfere with the blowing process shall be removed. The sample to be blown shall be divided into four approximately equal parts and each part blown separately. The 1.480 factor is restricted to the General-type seed blower.

(4) *Blower calibration.* Calibrate and test the blower according to the instructions that accompany the calibration samples before using the blower to analyze the seed sample. Use the anemometer to set the blower gate opening according to the calibration sample specifications.

(i) Determine the blowing point using a calibrated anemometer.

(ii) Position the anemometer fan precisely over the blower opening, set it at *meters per second* (m/s), run the blower at the calibrated gate setting, and wait 30 seconds before reading the anemometer.

(iii) Use this anemometer reading to determine the blower gate setting whenever the Uniform Blowing Procedure is required.

(5) *Pure seed and inert matter.* Use the calibrated blower to separate the seed sample into light and heavy portions. After completing the initial separation, remove and separate all weed and other crop seeds from the light portion. The remainder of the light portion shall be considered inert matter. Remove all weed and other crop seeds and other inert matter (stems, leaves, dirt) from the heavy portion and add them to the weed seed, other crop seed, or inert matter separations, as appropriate. The remainder of the heavy portion shall be considered pure seed.

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

**TABLE OF FACTORS TO APPLY TO MULTIPLE UNITS<sup>a</sup>**

Percent of single units of each kind	Crested wheat-grass <sup>b</sup>	Pubescent wheat-grass	Intermediate wheat-grass	Tall wheat-grass <sup>c</sup>	Western wheat-grass <sup>c</sup>	Smooth brome
50 or below	70	66	72	—	—	72
50.01-55.00	72	67	74	—	—	74
55.01-60.00	73	67	75	—	—	75
60.01-65.00	74	67	76	—	—	76
65.01-70.00	75	68	77	—	60	78
70.01-75.00	76	68	78	—	66	79
75.01-80.00	77	69	79	50	67	81
80.01-85.00	78	69	80	55	68	82
85.01-90.00	79	69	81	65	70	83
90.01-100.00	79	70	82	70	74	85

<sup>a</sup>The factors represent the percentages of the multiple unit weights which are considered pure seed. The remaining percentage is regarded as inert matter.

<sup>b</sup>Includes both standard crested wheatgrass and fairway crested wheatgrass.

<sup>c</sup>Dashes in table indicate that no factors are available at the levels shown.

**§ 201.56 [Amended]**

36. In § 201.56, amend paragraph (d) by removing the word “Umbelliferae” and adding in its place the word “Apiaceae.”

37. Amend § 201.58 by:

- a. Revising paragraphs (a)(1) and (b)(13);
- b. Adding in Table 2 to paragraph (c)(3) entries for “Camelina”, “Radish”, and “Teff” in the “Agricultural Seed” section in alphabetical order;
- c. Revising in Table 2 to paragraph (c)(3) the entry for “Oat” in the “Agricultural Seed” section; and
- d. Revising in Table 2 to paragraph (c)(3) the entry for “Brussels Sprouts” in the “Vegetable Seed” section.

The revisions and additions read as follows:

**§ 201.58 Substrata, temperature, duration of test, and certain other specific directions for testing for germination and hard seed.**

\* \* \* \* \*

(a) *Definitions and explanations applicable to table 2--(1) Duration of tests.* The following deviations are permitted from the specified duration of tests: Any test may be terminated prior to the number of days listed under “Final count” if the maximum germination of the sample has then been determined. The number of days stated for the first count is approximate and a deviation of 1 to 3 days is permitted. If at the time of the prescribed test period the seedlings are not sufficiently developed for positive evaluation, it is possible to extend the time of the test period two additional days. If the prescribed test period or the allowed extension falls on a weekend or public holiday, the test may be

extended to the next working day. (Also, see paragraph (a)(5) of this section and § 201.57.)

\* \* \* \* \*

(b) \* \* \*

(13) *Fourwing Saltbush (Atriplex canescens)*; preparation of seed for test. De-wing seeds and soak for 2 hours in 3 liters of water, after which rinse with approximately 3 liters of distilled water. Remove excess water, air dry for 7 days at room temperature, then test for germination as indicated in Table 2.

(c) \* \* \*

(3) \* \* \*

Table 2 to paragraph (c)(3)						
Name of seed	Substrata	Temperature (°C)	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
AGRICULTURAL SEED						
*	*	*	*	*	**	
Camelina	TB	20	4	7		
*	*	*	*	*	**	
Oat	B, T, S	20; 15	5	10	Prechill at 5 or 10° C for 5 days and test for 7 days or predry and test for 10 days	
*	*	*	*	*	**	
Radish	B, T	20	4	6		
*	*	*	*	*	**	
Teff	TB	20 – 30	4	7	KNO <sub>3</sub>	
* * * * *						
VEGETABLE SEED						
Brussels Sprouts	B, P, T	20 – 30	3	10	Prechill 5 days at 5 or 10 °C for 3 days; KNO <sub>3</sub> and Light	
* * * * *						

\* \* \* \* \*

**§ 201.59 [Amended]**

38. Amend § 209.59 by removing wherever it appears the word “act” and adding in its place the word “Act”.

**§ 201.60 [Amended]**

39. Amend § 201.60 by:

a. In paragraph (a)(1) adding in the second sentence the word “teff,” after the words “sweet vernalgrass,”;

b. In paragraph (a)(2) removing in the first sentence the word “act” and adding in its place the word “Act”; and

c. In paragraph (b)(2) adding in the first sentence the word “other” before the words “crop seeds”.

40. Amend § 201.61 by revising the table heading to read as follows:

**§ 201.61 Fluorescence percentages in ryegrasses.**

\* \* \*

FLUORESCENCE TOLERANCE, BASED ON TEST FLUORESCENCE (TFL)

\* \* \* \* \*

41. Revise § 201.64 to read as follows:

**§ 201.64 Pure live seed.**

The tolerance for pure live seed shall be determined by applying the respective tolerances to the germination plus the hard seed and dormant seed, and the pure seed.

$$PLS = \frac{[\text{Germination \%} + \text{Hard Seed \%} + \text{Dormant Seed \%}] \times \text{Pure Seed \%}}{100}$$

42. Amend § 201.68 by revising the introductory text and paragraph (b) to read as follows:

**§ 201.68 Eligibility requirements for certification of varieties.**

When a seed originator, developer, owner of the variety, or agent thereof requests eligibility for certification, the certification agency shall require the person to provide the following information upon request:

\* \* \* \* \*

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

\* \* \* \* \*

43. Amend § 201.70 by revising paragraph (a) to read as follows:

**§ 201.70 Limitations of generations for certified seed.**

\* \* \* \* \*

(a) Recertification of the Certified class may be permitted when no Foundation or Registered seed is being maintained; or

\* \* \* \* \*

**§ 201.74 [Amended]**

44. Amend § 201.74 by removing in paragraphs (a), (b), and (c) the words “(if certified as to variety)”.

**§ 201.75 [Amended]**

45. Amend § 201.75 by removing in paragraphs (b)(1) and (c) wherever it appears the words “(if certified as to variety)”.

46. In § 201.76 amend Table 5 by adding in alphabetical order entries for “Camelina”, “Chickpea”, “Hemp”, “Radish”, “Sunn hemp” and footnotes “60” through “63” to read as follows:

**§ 201.76 Minimum Land, Isolation, Field, and Seed Standards.**

\* \* \* \* \*

Table 5 to § 201.76												
Crop	Foundation				Registered				Certified			
	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed
*	*	*	*	*	*	*						
Camelina	<sup>81</sup>	<sup>6150</sup> ( <sup>59</sup> 15.24m)	5,000	0.1	<sup>81</sup>	<sup>6150</sup> ( <sup>59</sup> 15.24m)	2,000	0.2	<sup>81</sup>	<sup>6150</sup> ( <sup>59</sup> 15.24m)	1000	0.3
Chickpea	<sup>71</sup>	<sup>230</sup>	10,000	0.1	<sup>71</sup>	<sup>230</sup>	2,000	0.2	<sup>71</sup>	<sup>230</sup>	1,000	0.2
*	*	*	*	*	*	*						
Hemp	<sup>63</sup>	<sup>63</sup>	63	63	<sup>63</sup>	<sup>63</sup>	63	63	<sup>63</sup>	<sup>63</sup>	63	63
*	*	*	*	*	*	*						
Radish	<sup>605</sup>	<sup>1,320</sup> ( <sup>59</sup> 402.34m)	0	0.05	<sup>605</sup>	<sup>1,320</sup> ( <sup>59</sup> 402.34m)	1000	0.1	<sup>605</sup>	<sup>660</sup> ( <sup>59</sup> 201.17m)	500	0.25
*	*	*	*	*	*	*						
Sunn hemp	<sup>71</sup>	<sup>1,320</sup> ( <sup>59</sup> 402.34m)	<sup>625000</sup>	0.1	<sup>71</sup>	<sup>660</sup> ( <sup>59</sup> 201.17m)	<sup>62100</sup> 0	0.25	<sup>71</sup>	<sup>330</sup> ( <sup>59</sup> 100.58m)	<sup>62500</sup>	0.5
* * * * *												

\* \* \* \* \*

<sup>60</sup>Land must not have grown or been seeded to any cruciferous crops during the previous 5 years. This interval may be reduced to 3 years, if following the same variety and the same or higher certification class.

<sup>61</sup>Field producing any class of certified seed must be at least 50 feet from any other variety or fields of the same variety that do not meet the varietal purity requirement for certification.

<sup>62</sup>No other *Crotalaria* species allowed in Foundation, Registered and/or Certified production fields.

<sup>63</sup>Refer to the certifying agency in the production State(s) for certification standards.

47. Amend § 201.78 by revising paragraph (e) to read as follows:

**§ 201.78 Pollen control for hybrids.**

\* \* \* \* \*

(e) *Hybrid alfalfa*. When at least 75 percent of the plants are in bloom and there is no more than 15 percent seed set, 200 plants shall be examined to determine the pollen production index (PPI). Each plant is rated as 1, 2, 3 or 4 with “1” representing no pollen, “2” representing a trace of pollen, “3” representing substantially less than normal pollen, and “4” representing normal pollen. The rating is weighted as 0, 0.1, 0.6 or 1.0, respectively. The total number of plants of each rating is multiplied by the weighted rating and the values are totaled. The total is divided by the number of plants rated and multiplied by 100 to determine the PPI. For hybrid production using separate male and female rows, the maximum PPI allowed for 95 percent hybrid seed is 14 for the Foundation class, and 6 for the F1 hybrid. For hybrid production using comingled parent lines, the maximum PPI allowed for 75 percent hybrid Certified class seed is 25, with an allowance for blending to reach a PPI of 25 for fields with a PPI above 25, but no greater than 30.

**PART 202 – FEDERAL SEED ACT ADMINISTRATIVE PROCEDURES**

48. The authority citation for part 202 continues to read as follows:

**Authority:** 302, 305, 402, 408, 409, 413, 414, 53 Stat. 1275, as amended; 7 U.S.C. 1582, 1585, 1592, 1598, 1599, 1603, and 1604.

49. In part 202, the heading is revised to read as set forth above.

**Subpart C – Provisions Applicable to Other Proceedings**

50. In subpart C, revise the heading to read as set forth above.

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Bruce Summers, Administrator,

Agricultural Marketing Service.

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