

TABLE III—EXTERNAL DEFECTS—Continued

Defects	Damage	Serious damage <sup>1</sup>
* .....	*	*
Sprouts .....	When more than 5 percent of the potatoes in any lot have any sprout more than ¼ inch in length at shipping point; more than ½ inch in length at destination; or have numerous individual and/or clusters of sprouts which materially detract from the appearance of the potato.	When more than 10 percent of the potatoes in any lot have any sprout more than ½ inch in length at shipping point; more than 1 inch in length at destination; or have numerous individual and/or clusters of sprouts which seriously detract from the appearance of the potato. Serious damage by sprouts shall only be scored against the U.S. Commercial and U.S. No. 2 grades.
*	*	*

<sup>1</sup> The following defects are considered serious damage when present in any degree: 1. Freezing. 2. Late blight. 3. Ring rot. 4. Southern bacterial wilt. 5. Soft rot. 6. Wet breakdown.

#### § 51.1565 [Amended]

- 9. Section 51.1565 is amended by:
- A. Amending the introductory text by removing the reference “Table IV”, and by adding the reference “Table VII”, in its place; and
- B. Amending Table VII by removing the column heading “Damage maximum allowed” and adding the column heading “Damage Maximum Allowed” in its place, and by removing the column heading “Serious damage maximum allowed”, and by adding the column heading “Serious Damage Maximum Allowed” in its place.

Dated: May 24, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 201

[Doc. No. AMS–LS–08–0002]

RIN 0581–AC74

#### Federal Seed Act Regulations

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

**ACTION:** Final rule.

**SUMMARY:** AMS is revising the Federal Seed Act (FSA) regulations. The rule amends the list of prohibited noxious-weed seeds to reflect the recent addition of four species, deletion of two species, and changes in the nomenclature of four species listed in the Federal Noxious Weed Act (FNWA). The rule updates the seed labeling regulations, noxious-weed seed tolerances, seed testing regulations, and seed certification regulations. The rule also revises the nomenclature of kinds regulated under the FSA and corrects several minor errors. The list of

noxious-weed seeds is amended to help prevent the spread of these highly destructive weeds. The labeling regulations and noxious-weed seed tolerances are amended to prevent potential conflicts with State regulations, reflect currently used terms, and reflect current industry practices. The seed testing and seed certification regulations are amended to incorporate the latest in seed testing and seed certification knowledge and to prevent potential conflicts with State regulations.

**DATES:** Effective July 5, 2011.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This final rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

##### Executive Order 12988

The final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to judicial challenge to the provision of this rule.

#### Regulatory Flexibility Act and Paperwork Reduction Act

AMS has certified that this action will not have a significant impact on a

substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). Many small entities ship seed in interstate commerce. There are about 3,095 interstate shippers. Small agricultural service firms, which include interstate shippers, are defined by the Small Business Administration as those whose annual receipts are less than \$7,000,000 (13 CFR 121.201). We estimate that about 90 percent of the interstate shippers are small entities.

Shippers, including small entities, usually test and subsequently package and label seed to comply with both the FSA and State seed laws. This is possible because the testing requirements of the State laws are similar or the same as those of the FSA. Therefore, a single test provides information necessary to comply with both State seed laws and the FSA. Changing the seed testing and seed certification regulations will reconcile State and Federal seed testing and seed certification procedures. Moreover, using similar or the same testing procedures will reduce the burden on small entities shipping seed in interstate commerce because a test used for interstate commerce could also be used in intrastate commerce.

Adding four species to the list of seeds that are noxious in seed shipped in interstate commerce will not significantly impact small entities by adding additional costs for seed testing, because all seed must currently be examined for 93 noxious-weed seeds listed in the FSA regulations and those listed in the State laws to be compliant with the FSA. (The FSA requires that seed shipped in interstate commerce comply with the noxious-weed seed requirements of that State into which the seed is shipped.) Therefore, any examination for the weed seeds being added will be in conjunction with examinations that already occur for State noxious-weed seeds. Updating the noxious-weed seed tolerances to be uniform with those required by State

laws will make FSA and State regulatory action uniform and will not increase the burden on small entities shipping seed in interstate commerce.

Removing the exemption in the FSA regulations for labeling freshly harvested Kentucky bluegrass seed and sugar beet seed shipped in interstate commerce during July, August, and September for germination will not add additional costs for seed testing because this testing and subsequent labeling is required by State seed laws and regulations. Also, much of the seed handled by small entities is already tested by their suppliers. There will be no effect on the competitive position of small entities in relation to larger entities since both will have to comply with the same regulations.

This rule will not impose any additional reporting or recordkeeping requirements. Such requirements are currently approved by OMB under Control No. 0581-0026.

#### Executive Order 13132

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. USDA has determined that this rule conforms to the Federalism principles set forth in the Executive Order, and that this rule does not have Federalism implications.

#### Background

The FSA, Title II (7 U.S.C. 1571–1575) regulates agricultural and vegetable planting seeds in interstate commerce. Agricultural and vegetable seeds shipped in interstate commerce must be labeled with certain quality information. The labeling information and any advertisements pertaining to the seed must be truthful.

#### Comments

A notice of proposed rulemaking was published in the **Federal Register** (75 FR 78932) on December 17, 2010. Interested parties were invited to submit written comments until February 15, 2011. USDA received no comments. A hearing on the proposed rule was held in Gastonia, NC, on January 21, 2011, to discuss the revisions. No one attended the hearing.

#### Terms Defined

AMS proposed to revise and update the nomenclature of many of the kinds of agricultural and vegetable seeds listed in §§ 201.2(h) and 201.2(i) to conform to current usage on the International Code of Botanical Nomenclature. AMS also proposed to add “bunching onion” and “radicchio” as acceptable synonyms for “Welch onion” and “chicory,”

respectively, in § 201.2(i). “Bunching onion” and “radicchio” are commonly used and accepted kind names by companies selling and labeling seed. USDA received no comments. The changes to these sections, as published in the proposed rule, are incorporated in the final rule.

#### Noxious-Weed Seeds

Under the Federal Noxious Weed Act (FNWA) of 1974 (7 U.S.C. 2801–2814) the Secretary has identified certain noxious weeds that are prohibited movement into or through the United States. AMS proposed to amend § 201.16(b) of the FSA regulations to designate seeds of four additional species of noxious weeds listed under the FNWA as noxious in agricultural and vegetable seed shipped in interstate commerce under the FSA. In addition, AMS proposed to amend the FSA regulations to remove two species no longer cited in the FNWA and revise the nomenclature of four species to be consistent with the nomenclature in the FNWA. The USDA, Animal and Plant Health Inspection Service (APHIS) enforces both the FNWA and Title III, the Foreign Commerce provisions of the FSA. However, the FNWA does not apply to seeds for planting which are subject to the FSA and does not apply to any noxious weed seeds that may contaminate seed subject to the provisions of the FSA. Thus, AMS cannot currently take regulatory action when seeds of the four species classified as noxious under the FNWA are found in planting seed. Therefore, by recognizing them as noxious weeds under the FSA, AMS will act in an orderly way to prevent their spread on those rare occasions that they are found in planting seeds. Noxious weeds that are not listed under the FSA may still be restricted under the FSA in some cases. Each State has a list of weed seeds that are noxious in planting seed. Weed seeds that are designated noxious by each State are also noxious under the FSA when present in seed shipped into that State. USDA received no comments. The changes to these sections, as published in the proposed rule, are incorporated in the final rule.

#### Seed Testing

AMS proposed to update the FSA seed testing regulations to include testing to reflect improvements in seed testing technology and the current standards of usage within the industry as outlined below. The Association of Official Seed Analysts (AOSA) has already adopted these changes in their “Rules for Testing Seed,” the testing rules used by most State and

commercial seed analysts. Including these changes in the FSA regulations will eliminate potential conflicts between the testing rules used in interstate commerce and those used by the States. This will eliminate the need to do separate tests to ensure that seed labeling complies with both Federal and State laws. It will also facilitate seed trade and reduce cost to the seed industry and to seed buyers.

AMS proposed that §§ 201.48(g) and 201.51(b) specify a change in the FSA regulations for determining pure seed and inert matter for 18 grass seed kinds. The change will require pure seed of these 18 kinds to have a caryopsis at least one-third the length of the palea. The change will also require seeds of these 18 grass kinds to be classified as inert matter if the caryopsis development is less than one-third the length of the palea. Currently, all seeds of these 18 grass kinds are considered pure seed if the caryopsis has some degree of endosperm development. USDA received no comments. The changes to these sections, as published in the proposed rule, are incorporated in the final rule.

#### Noxious-Weed Seed Tolerances

AMS proposed to update the FSA seed testing regulations to reflect improvements in the noxious-weed seed tolerances using modern statistical applications. The AOSA has already adopted these changes in their “Rules for Testing Seed,” the rules used by most State and commercial seed analysts. Including these changes will eliminate potential conflicts between FSA and State regulatory action. USDA received no comments. The changes to this section, as published in the proposed rule, are incorporated in the final rule.

#### Seed Certification

AMS proposed to update the certified seed regulations. Sections 201.74 and 201.75 will be amended to permit the option of printing the lot number, kind, and variety name (if certified to variety) on the seed container in a position to be viewed in conjunction with the official certification label. A sentence in §§ 201.74 and 201.75, pertaining to small containers of seed, will be deleted because these containers are covered in the amendment. The Association of Official Seed Certifying Agencies (AOSCA), the organization that develops rules for use by its members to certify seed for varietal purity, has already amended its rules to allow the option of printing certain required labeling information on seed containers outside the confines of the certification

label. This will reflect that change in the AOSCA rules and current industry practices. In addition, this option will allow seed companies to realize a financial savings by purchasing seed bags with preprinted certification labels in large quantities and add the required information pertinent to each seed lot. USDA received no comments. The changes to these sections, as published in the proposed rule, are incorporated in the final rule.

### Seed Labeling

AMS proposed to add the term “(Environmental Protection Agency Toxicity Category I)” after references to “mercurials and similarly toxic substances” in § 201.31a(c)(1), 201.31a(c)(2), and 201.31a(d).

The current FSA regulations refer to the most toxic class of chemical seed treatments as “mercurials and similarly toxic substances.” However, mercury-based compounds are no longer used by the seed industry for treating seeds. Further, the current classification by the Environmental Protection Agency (EPA) of the most toxic chemical compounds used as seed treatments is “Toxicity Category I.” Chemicals of this toxicity, sold in bulk for treating seed, are required by EPA to be labeled as Toxicity Category I compounds. Therefore, adding the term “(Environmental Protection Agency Toxicity Category I)” to the FSA regulations will clarify the labeling requirements for seed treated with the most toxic class of chemical compounds used by the seed industry, reduce the possibility of mislabeling chemically treated seed shipped in interstate commerce, and provide consistency with classification terms used by EPA.

AMS proposed to update § 201.20 by removing the exemption from labeling freshly harvested Kentucky bluegrass and sugar beet seed sold in July, August, and September for germination. Germination labeling is required for all other kinds of seeds regulated by the FSA. This exemption is no longer needed because current industry practice is to label all kinds of seed for germination prior to shipment and sale. Since State seed laws require labeling of all seed for germination, removing this exemption will eliminate conflict between the FSA regulations and State seed labeling requirements. USDA received no comments. The changes to these sections, as published in the proposed rule, are incorporated in the final rule.

### List of Subjects in 7 CFR Part 201

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

For reasons set forth in the preamble, 7 CFR part 201 is amended as follows:

### PART 201—FEDERAL SEED ACT REGULATIONS

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

Authority: 7 U.S.C. 1592.

#### § 201.2 [Amended]

■ 2. Section 201.2 is amended by:

■ A. Removing the words “§§ 201.1 through 201.159” and adding in their place the words “this part” in the introductory text.

■ B. Removing the word “act” and adding in its place the word “Act”, and by removing the words “§§ 201.1 through 201.159” and adding in their place the words “this part” in paragraph (f).

■ C. In paragraph (h):

■ i. Removing the terms “Agrotricum—*Agrotricum* Ciferri and Giacom.”, “Alfalfa—*Medicago sativa* L.”, “Alfilaria—*Erodium cicutarium* (L.) L’Her.”, “Bahia grass—*Paspalum notatum* Fluegge”, “Barley—*Hordeum vulgare* L.”, “Bean, adzuki—*Vigna angularis* (Willd.) Ohwi and Ohashi”, “Bean, field—*Phaseolus vulgaris* L.”, “Bean, mung—*Vigna radiata* (L.) Wilczek”, “Bentgrass, creeping—*Agrostis stolonifera* L. var. *palustris* (Huds.) Farw.”, “Bermudagrass, giant—*Cynodon dactylon* (L.) Pers. var. *Aridus* Harlan and de Wet”, “Bluegrass, Nevada—*Poa secunda* J.S. Presl”, “Bluestem, big—*Andropogon gerardii* Vitm. var. *gerardii*”, “Bluestem, yellow—*Bothriochloa ischaemum* (L.) Keng”, “Brome, meadow—*Bromus biebersteinii* Roem. and Schult.”, “Brome, smooth—*Bromus inermis* Leyss.”, “Corn, field—*Zea mays* L.”, “Corn, pop—*Zea mays* L.”, “Crambe—*Crambe abyssinica* R.E. Fries”, “Crotalaria, slenderleaf—*Crotalaria brevidens* Benth. var. *intermedia* (Kotschy) Polh.”, “Crotalaria, striped or smooth—*Crotalaria pallida* Ait.”, “Crownvetch—*Coronilla varia* L.”, “Dichondra—*Dichondra repens* Forst. and Forst. f.”, “Emmer—*Triticum dicoccon* Schrank”, “Fescue, chewings—*Festuca rubra* L. subsp. *commutata* Gaud.”, “Fescue, hair—*Festuca tenuifolia* Sibth.”, “Fescue, hard—*Festuca brevipila* Tracey”, “Fescue, sheep—*Festuca ovina* L. var. *ovina*”, “Grama, blue—*Bouteloua gracilis* (Kunth) Steud.”, “Hardinggrass—*Phalaris stenoptera* Hack.”, “Hemp—

*Cannabis sativa* L.”, “Kudzu—*Pueraria montana* (Lour.) Merr. var. *lobata* (Willd.) Maesen and S. Almeida”, “Lentil—*Lens culinaris* Medik.”, “Lespedeza, sericea or Chinese—*Lespedeza cuneata* (Dum.-Cours.) G. Don”, “Lespedeza, striate—*Kummerowia striata* (Thunb.) Schindler”, “Lovegrass, sand—*Eragrostis trichodes* (Nutt.) Wood”, “Millet, foxtail—*Setaria italica* (L.) P. Beauv.”, “Millet, Japanese—*Echinochloa frumentacea* Link”, “Millet, proso—*Panicum miliaceum* L.”, “Molassesgrass—*Melinis minutiflora* Beauv.”, “Mustard, black—*Brassica nigra* (L.) Koch”, “Mustard, India—*Brassica juncea* (L.) Czernj. and Coss.”, “Mustard, white—*Sinapis alba* L.”, “Oat—*Avena byzantina* C. Koch, A. *sativa* L., A. *nuda* L.”, “Oatgrass, tall—*Arrhenatherum elatius* (L.) J.S. Presl and K.B. Presl”, “Panicgrass, green—*Panicum maximum* Jacq. var. *trichoglume* Robyns”, “Pea, field—*Pisum sativum* L.”, “Rape, annual—*Brassica napus* L. var. *annua* Koch”, “Rape, bird—*Brassica rapa* L. subsp. *rapa*”, “Rape, turnip—*Brassica rapa* L. subsp. *silvestris* (Lam.) Janchen”, “Rape, winter—*Brassica napus* L. var. *biennis* (Schubl. and Mart.) Reichb.”, “Rescuegrass—*Bromus catharticus* Vahl”, “Ricegrass, Indian—*Oryzopsis hymenoides* (Roem. and Schult.) Ricker”, “Rye—*Secale cereale* L.”, “Rye, mountain—*Secale strictum* (K.B. Presl) K.B. Presl subsp. *strictum*”, “Ryegrass, Wimmera—*Lolium rigidum* Gaud.”, “Sorghum-sudangrass—*Sorghum × drummondii* (Steud.) Millsp. and Chase”, “Spelt—*Triticum spelta* L.”, “Sudangrass—*Sorghum × drummondii* (Steud.) Millsp. and Chase”, “Timothy, turf—*Phleum bertolonii* DC.”, “Trefoil, big—*Lotus uliginosus* Schk.”, “Triticale—*× Triticosecale* Wittm. (*Secale × Triticum*)”, “Veldtgrass—*Ehrharta calycina* J.E. Smith”, “Wheat, common—*Triticum aestivum* L.”, “Wheat, club—*Triticum compactum* Host”, “Wheat, durum—*Triticum durum* Desf.”, “Wheat, Polish—*Triticum polonicum* L.”, “Wheat, poulard—*Triticum turgidum* L.”, “Wheatgrass, beardless—*Pseudoroegneria spicata* (Pursh) A. Love”, “Wheatgrass, intermediate—*Elytrigia intermedia* (Host) Nevski subsp. *intermedia*”, “Wheatgrass, pubescent—*Elytrigia intermedia* (Host) Nevski subsp. *intermedia*”, “Wheatgrass, Siberian—*Agropyron fragile* (Roth) Candargy subsp. *sibiricum* (Willd.) Meld.”, “Wheatgrass, slender—*Elymus trachycaulis* (Link) Shinn.”, “Wheatgrass, streambank—*Elymus lanceolatus* (Scribn. and J.G. Smith) Gould subsp. *lanceolatus*.”,

“Wheatgrass, tall—*Elytrigia elongata* (Host) Nevski”, “Wheatgrass, western—*Pascopyrum smithii* (Rydb.) A. Love”, and “Wildrye, basin—*Leymus cinereus* (Scribn. & Merr.) A. Love”.

■ ii. Adding the terms “Agrotricum—*Agrotricum* Cif. & Giacom.”, “Alfalfa—*Medicago sativa* L. subsp. *sativa*”, “Alfilaria—*Erodium cicutarium* (L.) L’Hér.”, “Bahia grass—*Paspalum notatum* Flügge”, “Barley—*Hordeum vulgare* L. subsp. *vulgare*”, “Bean, adzuki—*Vigna angularis* (Willd.) Ohwi & H. Ohashi var. *angularis*”, “Bean, field—*Phaseolus vulgaris* L. var. *vulgaris*”, “Bean, mung—*Vigna radiata* (L.) R. Wilczek var. *radiata*”, “Bentgrass, creeping—*Agrostis stolonifera* L.”, “Bermudagrass, giant—*Cynodon dactylon* (L.) Pers. var. *aridus* J.R. Harlan & de Wet”, “Bluegrass, Nevada—*Poa secunda* J. Presl”, “Bluestem, big—*Andropogon gerardii* Vitman”, “Bluestem, yellow—*Bothriochloa ischaemum* (L.) Keng var. *ischaemum*”, “Brome, meadow—*Bromus biebersteinii* Roem. & Schult.”, “Brome, smooth—*Bromus inermis* Leyss. subsp. *inermis*”, “Corn, field—*Zea mays* L. subsp. *mays*”, “Corn, pop—*Zea mays* L. subsp. *mays*”, “Crambe—*Crambe abyssinica* R.E. Fr.”, “Crotalaria, slenderleaf—*Crotalaria brevidens* Benth. var. *intermedia* (Kotschy) Polhill”, “Crotalaria, striped or smooth—*Crotalaria pallida* Aiton”, “Crownvetch—*Securigera varia* (L.) Lassen”, “Dichondra—*Dichondra repens* J.R. Forst. & G. Forst.”, “Emmer—*Triticum turgidum* L. subsp. *dicoccon* (Schränk) Thell.”, “Fescue, Chewing’s—*Festuca rubra* L. subsp. *commutata* Gaudin”, “Fescue, hair—*Festuca filiformis* Pourr.”, “Fescue, hard—*Festuca trachyphylla* (Hack.) Krajina”, “Fescue, sheep—*Festuca ovina* L.”, “Grama, blue—*Bouteloua gracilis* (Kunth) Griffiths”, “Hardinggrass—*Phalaris aquatica* L.”, “Hemp—*Cannabis sativa* L. subsp. *sativa*”, “Kudzu—*Pueraria montana* (Lour.) Merr. var. *lobata* (Willd.) Sanjappa & Predeep”, “Lentil—*Lens culinaris* Medik. subsp. *culinaris*”, “Lespedeza, sericea or Chinese—*Lespedeza cuneata* (Dum. Cours.) G. Don”, “Lespedeza, striate—*Kummerowia striata* (Thunb.) Schindl.”, “Lovegrass, sand—*Eragrostis trichodes* (Nutt.) Alph. Wood”, “Millet, foxtail—*Setaria italica* (L.) P. Beauv. subsp. *italica*”, “Millet, Japanese—*Echinochloa esculenta* (A. Braun) H. Scholz”, “Millet, proso—*Panicum miliaceum* L. subsp. *miliaceum*”, “Molassesgrass—*Melinis minutiflora* P. Beauv.”, “Mustard, black—*Brassica nigra* (L.) W.D.J. Koch”, “Mustard, India—*Brassica juncea* (L.) Czern. var. *juncea*”, “Mustard, white—*Sinapis alba*

L. subsp. *alba*”, “Oat—*Avena byzantina* K. Koch, A. *sativa* L., A. *nuda* L.”, “Oatgrass, tall—*Arrhenatherum elatius* (L.) J. Presl & C. Presl subsp. *elatius*”, “Panicgrass, green—*Panicum maximum* Jacq.”, “Pea, field—*Pisum sativum* L. var. *arvense* (L.) Poir.”, “Rape, annual—*Brassica napus* L. var. *napus*”, “Rape, bird—*Brassica rapa* L. subsp. *campestris* (L.) A.R. Clapham”, “Rape, turnip—*Brassica rapa* L. subsp. *campestris* (L.) A.R. Clapham and subsp. *oleifera* (DC.) Metzg.”, “Rape, winter—*Brassica napus* L. var. *napus*”, “Rescuegrass—*Bromus catharticus* Vahl var. *catharticus*”, “Ricegrass, Indian—*Achnatherum hymenoides* (Roem. & Schult.) Barkworth”, “Rye—*Secale cereale* L. subsp. *cereale*”, “Rye, mountain—*Secale strictum* (C. Presl) C. Presl subsp. *strictum*”, “Ryegrass, Wimmera—*Lolium rigidum* Gaudin”, “Sorghum-sudangrass—*Sorghum × drummondii* (Steud.) Millsp. & Chase”, “Spelt—*Triticum aestivum* L. subsp. *spelta* (L.) Thell.”, “Sudangrass—*Sorghum × drummondii* (Steud.) Millsp. & Chase”, “Timothy, turf—*Phleum nodosum* L.”, “Trefoil, big—*Lotus uliginosus* Schkuhr”, “Triticale—*× Triticosecale* A. Camus (*Secale × Triticum*)”, “Veldtgrass—*Ehrharta calycina* Sm.”, “Wheat, common—*Triticum aestivum* L. subsp. *aestivum*”, “Wheat, club—*Triticum aestivum* L. subsp. *compactum* (Host) Mackey”, “Wheat, durum—*Triticum turgidum* L. subsp. *durum* (Desf.) Husn.”, “Wheat, Polish—*Triticum turgidum* L. subsp. *polonicum* (L.) Thell.”, “Wheat, poulard—*Triticum turgidum* L. subsp. *turgidum*”, “Wheatgrass, beardless—*Pseudoroegneria spicata* (Pursh) Á. Löve”, “Wheatgrass, intermediate—*Thinopyrum intermedium* (Host) Barkworth & D.R. Dewey subsp. *intermedium*”, “Wheatgrass, pubescent—*Thinopyrum intermedium* (Host) Barkworth & D.R. Dewey subsp. *barbulatum* (Schur) Barkworth & D.R. Dewey”, “Wheatgrass, Siberian—*Agropyron fragile* (Roth) P. Candargy”, “Wheatgrass, slender—*Elymus trachycaulus* (Link) Shinners subsp. *trachycaulus*”, “Wheatgrass, streambank—*Elymus lanceolatus* (Scribn. & J.G. Sm.) Gould subsp. *riparius* (Scribn. & J.G. Sm.) Barkworth”, “Wheatgrass, tall—*Thinopyrum elongatum* (Host) D.R. Dewey”, “Wheatgrass, western—*Pascopyrum smithii* (Rydb.) Barkworth & D.R. Dewey”, and “Wildrye, basin—*Leymus cinereus* (Scribn. & Merr.) Á. Löve”.

■ D. In paragraph (i):

■ i. Removing the terms “Artichoke—*Cynara cardunculus* L. subsp. *cardunculus*”, “Asparagus—*Asparagus officinalis* Baker”, “Bean, garden—

*Phaseolus vulgaris* L.”, “Bean, lima—*Phaseolus lunatus* L.”, “Broadbean—*Vicia faba* L.”, “Broccoli—*Brassica oleracea* L. var. *botrytis* L.”, “Brussels sprouts—*Brassica oleracea* L. var. *gemmifera* DC.”, “Cardoon—*Cynara cardunculus* L. subsp. *cardunculus*”, “Celeriac—*Apium graveolens* L. var. *rapaceum* (Mill.) Gaud.”, “Chard, Swiss—*Beta vulgaris* L. subsp. *cicla* (L.) Koch”, “Citron—*Citrullus lanatus* (Thunb.) Matsum. and Nakai var. *citroides* (Bailey) Mansf.”, “Collards—*Brassica oleracea* L. var. *acephala* DC.”, “Corn, sweet—*Zea mays* L.”, “Corn salad—*Valerianella locusta* (L.) Laterrade”, “Cress, water—*Rorippa nasturtium-aquaticum* (L.) Hayek”, “Dandelion—*Taraxacum officinale* Wigg.”, “Endive—*Cichorium endivia* L.”, “Gherkin, West India—*Cucumis anguria* L.”, “Kale—*Brassica oleracea* L. var. *acephala* DC.”, “Kale, Chinese—*Brassica oleracea* L. var. *alboglabra* (Bailey) Musil”, “Kale, Siberian—*Brassica napus* L. var. *pabularia* (DC.) Reichb.”, “Melon—*Cucumis melo* L.”, “Mustard, India—*Brassica juncea* (L.) Czernj. and Coss.”, “Mustard, spinach—*Brassica perviridis* (Bailey) Bailey”, “Onion—*Allium cepa* L.”, “Parsnip—*Pastinaca sativa* L.”, “Pea—*Pisum sativum* L.”, “Pumpkin—*Cucurbita pepo* L., C. *moschata* (Duchesne) Poir., and C. *maxima* Duchesne”, “Rhubarb—*Rheum rhabarbarum* L.”, “Rutabaga—*Brassica napus* L. var. *napobrassica* (L.) Reichb.”, “Spinach, New Zealand—*Tetragonia tetragonoides* (Pall.) Ktze.”, “Squash—*Cucurbita pepo* L., C. *moschata* (Duchesne) Poir., and C. *maxima* Duchesne”, and “Watermelon—*Citrullus lanatus* (Thunb.) Matsum. and Nakai var. *lanatus*”.

■ ii. Adding the terms “Artichoke—*Cynara cardunculus* L.”, “Asparagus—*Asparagus officinalis* L.”, “Bean, garden—*Phaseolus vulgaris* L. var. *vulgaris*”, “Bean, Lima—*Phaseolus lunatus* L.”, “Broadbean—*Vicia faba* L. var. *faba*”, “Broccoli—*Brassica oleracea* L. var. *italica* Plenck”, “Brussels sprouts—*Brassica oleracea* L. var. *gemmifera* Zenker”, “Cardoon—*Cynara cardunculus* L.”, “Celeriac—*Apium graveolens* L. var. *rapaceum* (Mill.) Gaudin”, “Chard, Swiss—*Beta vulgaris* L. subsp. *vulgaris*”, “Citron melon—*Citrullus lanatus* (Thunb.) Matsum. & Nakai var. *citroides* (L.H. Bailey) Mansf.”, “Collards—*Brassica oleracea* L. var. *viridis* L.”, “Corn, sweet—*Zea mays* L. subsp. *mays*”, “Corn salad—*Valerianella locusta* (L.) Laterr.”, “Cress, water—*Nasturtium officinale* R. Br.”, “Dandelion—*Taraxacum officinale* F.H. Wigg.”, “Endive—*Cichorium endivia* L. subsp. *endivia*”, “Gherkin, West India—

*Cucumis anguria* L. var. *anguria*”, “Kale—*Brassica oleracea* L. var. *viridis* L.”, “Kale, Chinese—*Brassica oleracea* L. var. *alboglabra* (L.H. Bailey) Musil”, “Kale, Siberian—*Brassica napus* L. var. *pabularia* (DC.) Rchb.”, “Melon—*Cucumis melo* L. subsp. *melo*”, “Mustard, India—*Brassica juncea* (L.) Czern.”, “Mustard, spinach—*Brassica rapa* var. *perviridis* L.H. Bailey”, “Onion—*Allium cepa* L. var. *cepa*”, “Onion, bunching (see Onion, Welsh)”, “Parsnip—*Pastinaca sativa* L. subsp. *sativa*”, “Pea—*Pisum sativum* L. subsp. *sativum*”, “Pumpkin—*Cucurbita pepo* L., *C. moschata* Duchesne, and *C. maxima* Duchesne”, “Radicchio (see Chicory)”, “Rhubarb—*Rheum* × *hybridum* Murray”, “Rutabaga—*Brassica napus* L. var. *napobrassica* (L.) Rchb.”, “Spinach, New Zealand—*Tetragonia tetragonoides* (Pall.) Kuntze”, “Squash—*Cucurbita pepo* L., *C. moschata* Duchesne, and *C. maxima* Duchesne”, and “Watermelon—*Citrullus lanatus* (Thunb.) Matsum. & Nakai var. *lanatus*”.

■ E. In paragraph (w), removing the words “noxious weed” and adding in their place the words “noxious-weeds” in their place wherever they appear.

■ F. Amending paragraph (z) by removing the heading “Processing” and adding in its place the heading “Conditioning”, and removing in the first sentence the word “processing” and adding in its place the word “conditioning”.

#### § 201.16 [Amended]

■ 3. Section 201.16 in paragraph (b) is amended by removing the terms “*Borreria alata* (Aubl.) DC.”, “*Carthamus oxyacanthus* M. Bieb.”, “*Digitaria abyssinica* Stapf. (= *D. scalarum* (Schweinf.)”, “*Ipomoea triloba* L.”, “*Orobancha* spp.”, “*Rottboellia cochinchinensis* (Lour.) Clayton (= *R. exaltata* (L.) L.f.)” and adding in alphabetical order the terms “*Carthamus oxyacantha* M. Bieb.”, “*Digitaria*

*scalarum* (Schweinfurth) Chiovenda”, “*Homeria* spp.”, “*Rottboellia cochinchinensis* (Lour.) Clayton”, “*Senecio inaequidens* DC.”, “*Senecio madagascariensis* Poir.”, “*Solanum tampicense* Dunal” and “*Spermacoce alata* (Aublet) de Candolle”.

■ 4. Section 201.20 is revised to read as follows:

#### § 201.20 Germination.

The label shall show the percentage of germination for each kind or kind and variety or kind and type of kind and hybrid of agricultural seed present in excess of 5 percent or shown in the labeling to be present in a proportion of 5 percent or less.

#### § 201.31a [Amended]

■ 5. Section 201.31a is amended by adding the words “(Environmental Protection Agency Toxicity Category I)” after the word “substance” in paragraph (c)(1) and after the word “substances” in paragraph (c)(2) introductory text.

#### § 201.41 [Amended]

■ 6. In § 201.41, paragraph (a), the word “less” is removed and the word “fewer” is added in its place.

■ 7. In § 201.48, paragraph (g) introductory text is amended by adding a new second sentence to read as follows:

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

(g) \* \* \* Seed units of smooth brome, fairway crested wheatgrass, standard crested wheatgrass, tall wheatgrass, intermediate wheatgrass, pubescent wheatgrass, western wheatgrass, fescues (*Festuca* spp.), and ryegrasses (*Lolium* spp.) if the caryopses are at least one-third the length of the palea; the caryopsis is measured from the base of the rachilla. \* \* \*

\* \* \* \* \*

■ 8. Section 201.51 is amended by adding paragraph (a)(9) to read as follows:

#### § 201.51 Inert matter.

\* \* \* \* \*

(a) \* \* \*

(9) Immature florets of smooth brome, fairway crested wheatgrass, standard crested wheatgrass, tall wheatgrass, intermediate wheatgrass, pubescent wheatgrass, western wheatgrass, fescues (*Festuca* spp.), and ryegrasses (*Lolium* spp.) in which the caryopses are less than one-third the length of the palea; the caryopsis is measured from the base of the rachilla.

\* \* \* \* \*

■ 9. Section 201.65 is revised to read as follows:

#### § 201.65 Noxious-weed seeds in interstate commerce.

Tolerances for rates of occurrence of noxious-weed seeds shall be recognized and shall be applied to the number of noxious-weed seeds found by analysis in the quantity of seed specified for noxious-weed seed determinations in § 201.46, except as provided in § 201.16(b). Rates per pound or ounce must be converted to the equivalent number of seeds found in § 201.46, Table 1, Minimum weight for noxious-weed seed examination (grams). Some tolerances are listed in the following table. The number found as represented by the label or test (Column X) will be considered within tolerance if not more than the corresponding numbers in Column Y are found by analysis in the administration of the Act. For numbers of seed greater than those in the table, a tolerance based on a degree of certainty of 5 percent ( $P=0.05$ ) can be calculated by the formula,  $Y=X+1.65\sqrt{X}+0.03$ , where X is the number of seeds represented by the label or test and Y is the maximum number within tolerance.

Number represented by label or test	Maximum number within tolerances	Number represented by label or test	Maximum number within tolerances	Number represented by label or test	Maximum number within tolerances
(X)	(Y)	(X)	(Y)	(X)	(Y)
0 .....	2	34 .....	43	68 .....	81
1 .....	2	35 .....	44	69 .....	82
2 .....	4	36 .....	45	70 .....	83
3 .....	5	37 .....	46	71 .....	84
4 .....	7	38 .....	47	72 .....	85
5 .....	8	39 .....	49	73 .....	86
6 .....	9	40 .....	50	74 .....	87
7 .....	11	41 .....	51	75 .....	89
8 .....	12	42 .....	52	76 .....	90
9 .....	13	43 .....	53	77 .....	91
10 .....	14	44 .....	54	78 .....	92
11 .....	16	45 .....	55	79 .....	93
12 .....	17	46 .....	56	80 .....	94
13 .....	18	47 .....	58	81 .....	95

Number represented by label or test	Maximum number within tolerances	Number represented by label or test	Maximum number within tolerances	Number represented by label or test	Maximum number within tolerances
(X)	(Y)	(X)	(Y)	(X)	(Y)
14 .....	19	48 .....	59	82 .....	96
15 .....	21	49 .....	60	83 .....	97
16 .....	22	50 .....	61	84 .....	98
17 .....	23	51 .....	62	85 .....	99
18 .....	24	52 .....	63	86 .....	101
19 .....	25	53 .....	64	87 .....	102
20 .....	27	54 .....	65	88 .....	103
21 .....	28	55 .....	67	89 .....	104
22 .....	29	56 .....	68	90 .....	105
23 .....	30	57 .....	69	91 .....	106
24 .....	31	58 .....	70	92 .....	107
25 .....	32	59 .....	71	93 .....	108
26 .....	34	60 .....	72	94 .....	109
27 .....	35	61 .....	73	95 .....	110
28 .....	36	62 .....	74	96 .....	111
29 .....	37	63 .....	75	97 .....	112
30 .....	38	64 .....	76	98 .....	114
31 .....	39	65 .....	78	99 .....	115
32 .....	41	66 .....	79	100 .....	116
33 .....	42	67 .....	80		

■ 10. In Section 201.74, paragraph (a) is amended by removing the last sentence, and paragraph (c) is amended by adding a sentence at the end of the paragraph to read as follows:

**§ 201.74 Labeling of all classes of certified seed.**

\* \* \* \*

(c) \* \* \* The seed lot number or other identification number, the kind, and variety name (if certified to variety) shall appear on the official label and/or directly on the container in a position to be viewed in conjunction with the official certification label.

\* \* \* \*

■ 11. In § 201.75, paragraph (c), the last sentence is revised to read as follows:

**§ 201.75 Interagency certification.**

\* \* \* \*

(c) \* \* \* The seed lot number or other identification number, the kind, and variety name (if certified to variety) shall appear on the official label and/or directly on the container in a position to be viewed in conjunction with the official certification label.

Dated: May 24, 2011.

**Rayne Pegg,**  
Administrator.

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## DEPARTMENT OF ENERGY

### 10 CFR Part 431

[Docket No. EERE-2008-BT-TP-0014]

RIN 1904-AB85

#### Energy Conservation Program: Energy Conservation Standards for Walk-In Coolers and Freezers; Correction

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** This document makes a correction to the regulations pertaining to the test procedure for walk-in coolers and freezers. The correction addresses an erroneous temperature condition for walk-in freezers.

**DATES:** *Effective Date:* June 2, 2011.

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**SUPPLEMENTARY INFORMATION:**

## I. Background

The Energy Policy and Conservation Act (EPCA), as amended by section 312(c) of the Energy Independence and Security Act (EISA 2007), requires the Department of Energy (DOE) to prescribe a test procedure to measure the energy use of walk-in coolers and freezers (collectively, walk-ins). See 42 U.S.C. 6314(a). DOE recently satisfied this requirement by issuing a final rule establishing a test procedure for manufacturers to use when measuring the energy use of a walk-in unit. See 76 FR 21580 (April 15, 2011).

Since the publication of that rulemaking, it was recently discovered that an error is present in Appendix A of the regulatory text, which governs, among other things, the test conditions for walk-in coolers and freezers. That text, within the context of assessing the long-term thermal resistance of the insulating foam contained in the panel components used to construct a walk-in freezer container, uses, incorrectly and inconsistently with the statute, a prescribed test temperature of 35 °F ± 1 °F for freezers. The temperature that should have been inserted in that provision is 20 °F ± 1 °F. Periods should also have been included after that provision and the one following it that sets the temperature test condition for panels used in coolers. This document corrects these errors.

## II. Need for Correction

As published, the current provisions of 10 CFR part 431, Subpart R, Appendix A, include the incorrect testing temperature for manufacturers to