

[59 FR 64516, Dec. 14, 1994]

ADDITIONAL REQUIREMENTS FOR THE  
CERTIFICATION OF PLANT MATERIALS  
OF CERTAIN CROPS

**§201.77 Length of stand requirements.**

(a) *Alfalfa*. Limitations on the age of stand and certified seed classes through which a given variety may be multiplied both inside and outside its region of adaptation shall be specified by the originator or his designee. Certified seed production outside the region of adaptation shall not exceed 6 years if not otherwise specified by the originator, or his designee.

(b) *Red clover*. Only two seed crops are permitted of all certified seed classes.

(c) *White and alsike clover*. Only two successive seed crops are permitted following the year of establishment for Foundation and Registered classes, but 2 additional years are permitted if the field is reclassified to the next lower class. Four successive seed crops following seeding are permitted if the first and succeeding crops are of the Certified class, provided the stand of perennial plants is maintained.

(d) *Sainfoin*. All certified seed classes are eligible to produce five successive seed crops following seeding.

[38 FR 25664, Sept. 14, 1973]

**§201.78 Pollen control for hybrids.**

(a) *Wheat and barley*. Shedders in the seed parent, at any one inspection, are limited to 1:200 heads for Foundation A Line and 1:100 heads for Registered A Line, except that when the A Line is increased outside the area of the anticipated A x R production in order to utilize self-fertility produced by environmental effects, only isolation and genetic purity standards will be in effect. (An A Line is a cytoplasmic male sterile female line used to produce hybrid seed. An R Line is a pollinator line used to pollinate an A Line and to restore fertility in the resulting hybrid seed.)

(b) *Corn*. When 5 percent or more of the seed parent plants have receptive silks, shedding tassels in the seed parent plants shall be limited to 1 percent at any one inspection, or a total of 2

percent at any three inspections on different dates. Shedding tassels are those which have 2 inches or more of the central stem or branches, or any combination thereof, shedding pollen.

(c) *Sorghum*. Shedders in the seed parent, at any one inspection, are limited to 1:3,000 plants for Foundation class and 1:1,500 plants for Certified class.

(d) *Sunflowers*. Seed parents flowering and shedding pollen before the male parents are shedding pollen must be removed. At least 50 percent of the male plants must be producing pollen when the seed parent is in full bloom.

(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. The maximum PPI allowed is 14 for the Foundation class, and 6 for 95 percent hybrid seed, and 42 for 75 percent hybrid seed of the Certified class.

[38 FR 25664, Sept. 14, 1973, as amended at 41 FR 20158, May 17, 1976]

**PART 202—FEDERAL SEED ACT  
RULES OF PRACTICE**

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

SOURCE: 36 FR 1314, Jan. 27, 1971, unless otherwise noted.

### Subpart A—General

#### § 202.1 Meaning of words.

As used in this part, words in the singular form shall be deemed to import the plural, and vice versa, as the case may require.

#### § 202.2 Definitions.

For the purposes of this part, the following terms shall be construed, respectively, to mean:

- (a) The term *Act* means the Federal Seed Act, approved August 9, 1939 (53 Stat. 1275, 7 U.S.C. 1551 *et seq.*) and any legislation amendatory thereof.
- (b) *Complaint* means any formal complaint and notice of hearing or other document by virtue of which a proceeding under the Act is instituted.
- (c) *Complainant* means the party upon whose complaint the proceeding is instituted.
- (d) *Decision and Order* includes the Secretary's findings, conclusions, order, and rulings on motions, exceptions, statements of objections, and proposed findings, conclusions and orders submitted by the parties not theretofore ruled upon.
- (e) *Director* means the Director of the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, or any officer or employee of the Department to whom authority is delegated to act in his stead.
- (f) *Administrative Law Judge* means an Administrative Law Judge in the Office of Administrative Law Judge, U.S. Department of Agriculture.
- (g) *Administrative Law Judge Recommended Decision* means the Adminis-

trative Law Judge's report to the Secretary consisting of the proposed: (1) Findings of facts and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis for conclusions and (2) order.

(h) The term *hearing* means that part of a proceeding which involves the submission of evidence and means either an oral or written hearing.

(i) *Hearing Clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250.

(j) The term *person* includes any individual, partnership, corporation, company, society, association, receiver, or trustee.

(k) The term *regulations* means the regulations promulgated pursuant to the Act (7 CFR part 201).

(l) *Respondent* means the party proceeded against.

(m) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead, including the Judicial Officer.

#### § 202.3 Institution of proceedings.

Any person having information of any violation of the Act or of any of the regulations promulgated thereunder may file with the Director an application requesting the institution of such proceedings as may be authorized under the Act. Such application shall be in writing, signed by or on behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation and the name and address of the applicant and the party complained of. If, after investigation of the matters complained of in the application or after investigation made on his own motion, the Director has reason to believe that any person has violated or is violating any of the provisions of the Act or the regulations made and promulgated thereunder, he may institute such proceedings as may be authorized by the Act.

#### § 202.4 Status of applicant.

The person filing an application shall not be a party to any proceeding which

may be instituted under the Act, unless he be permitted by the Secretary or by the Administrative Law Judge to intervene therein. The Director shall not be required to divulge the name of the applicant and such person will have no legal status in the proceeding which may be instituted, except where allowed to intervene or as such person may be called as a witness. At any time after the institution of the proceeding, and before it has been submitted to the Secretary for final consideration, the Secretary or the Administrator, may upon petition in writing and upon good cause shown, permit any person to intervene.

#### Subpart B [Reserved]

#### Subpart C—Rules Applicable to Other Proceedings

##### **§ 202.40 Proceedings prior to reporting for criminal prosecution.**

The Director shall, before any violation of this act is reported to any U.S. attorney for institution of a criminal proceeding, notify the person against whom such proceeding is contemplated that action is contemplated, inform him regarding the facts involved, and afford him an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding. Notice shall be served upon such person in the manner provided in § 202.27 of this part. If the person desires to explain the transaction or otherwise to present his views, he shall file with the Director, within 20 days after the service of the notice, an answer, in duplicate, signed by him or by his attorney, or shall request, within the 20 days, an opportunity to express his views orally. The request shall be embodied in a writing signed by the person or by his attorney or agent. Such opportunity to present his views orally shall be afforded at a time and place to be designated by the Director and it shall be given within a time not to exceed 10 days after the date of the filing of the request therefor.

##### **§ 202.41 Notice and hearing prior to promulgation of rules and regulations.**

Prior to the promulgation of any rule or regulation contemplated by section 402 of the Act (7 U.S.C. 1592), notice shall be given by publication in the FEDERAL REGISTER of intention to promulgate such rule or regulation and of the time and place of a public hearing to be held with reference thereto. Such hearings shall be conducted by the Director or by such employee or employees of the Department of Agriculture as may be designated to preside thereat, except that hearings with respect to rules or regulations contemplated by section 402(b) of the Act relating to title III of the Act (Foreign Commerce), shall be conducted by the Secretary of the Treasury and the Secretary of Agriculture, acting jointly or separately, or by such employee or employees of the Department of Agriculture or the Department of the Treasury as may be designated to preside thereat. The presiding officer shall conduct the hearing in an orderly and informal manner, according to such procedure as he may announce at the commencement of the hearing. Any rule or regulation promulgated under section 402 of the Act shall become effective on the date fixed in the promulgation, which date shall be not less than 30 days after publication in the FEDERAL REGISTER. Any rule or regulation may be amended or revoked in the same manner as is provided for its promulgation.

##### **§ 202.42 Publication of judgments, settlements, and orders.**

After judgment or settlement, or the issuance of a cease and desist order, in any case or proceeding arising under this Act, notice thereof containing any information pertinent to the judgment or settlement or the issuance of the cease and desist order, shall be given by issuing a press release or by such other media as the Administrator of the Agricultural Marketing Service may designate from time to time.

**§202.43 Proceedings under section 302(a) to show cause why seed or screenings should be admitted into the United States.**

When seed or screenings have been refused admission into the United States under the Act or the joint regulations promulgated thereunder, the owner or consignee of such seed or screenings may submit a request to the Director for a hearing in which he may show cause, if any he have, why such seed or screenings should be admitted. Request for such hearing shall be embodied in a writing signed by the owner or consignee or by his attorney or agent. The Director shall thereupon fix, and notify the owner or consignee of, the time when and place at which the hearing will be held. The hearing shall be conducted in an orderly and informal manner by the Director or by a presiding officer duly designated by him, and it shall be governed by such rules of procedure as the presiding officer shall announce at the opening of the hearing. The determination as to whether the seed or screenings may be admitted into the United States shall be made by the Administrator of the Agricultural Marketing Service, within a reasonable time after the close of the hearing, and the owner or consignee of the seed or screenings who requested the hearing and the Secretary of the

Treasury shall be duly notified as to such determination.

**§202.44 Proceedings under section 305(b) to determine whether foreign alfalfa or red clover seed is not adapted for general agricultural use in the United States.**

The public hearings which shall be held from time to time for the purpose of determining whether seed of alfalfa or red clover from any foreign country or region is not adapted for general agricultural use in the United States shall be conducted by the Director, or by a presiding officer duly designated by him. Such hearings shall be conducted in an orderly and informal manner in accordance with such procedure as the presiding officer shall announce at the opening of each hearing. The Administrator of the Agricultural Marketing Service shall, within a reasonable time after the close of the public hearing, make and publish his determination as to whether the said seed is adapted for general agricultural use in the United States. Publication of the determination shall be made in the FEDERAL REGISTER, and through such other media as the said Administrator may deem appropriate.

PARTS 203—209 [RESERVED]