

§ 201.34

7 CFR Ch. I (1-1-13 Edition)

the time of transportation to such establishment, except that if it is covered by a declaration of origin and/or variety it will be sufficient if the lot designation appearing in the declaration is placed on the invoice if the seed is in bulk, or on a label if the seed is in containers, regardless of the quantity.

[24 FR 3953, May 15, 1959]

§ 201.34 Kind, variety, and type; treatment substances; designation as hybrid.

(a) *Indistinguishable seed and treatment substances.* Reasonable precautions to insure that the kind, variety, or type of indistinguishable agricultural or vegetable seeds and names of any treatment substance are properly stated shall include the maintaining of the records described in § 201.7 or § 201.7a. The examination of the seed and any pertinent facts may be taken into consideration in determining whether reasonable precautions have been taken to insure the kind, variety, or type of seed or any treatment substance on the seed is that which is shown. Reasonable precautions in labeling ryegrass seed as to kind shall include making or obtaining the results of a fluorescence test unless (1) the shortness of the time interval between receipt of the seed lot and the shipment of the seed in interstate commerce, or (2) dormancy of the seeds in the lot, or (3) other circumstances beyond the control of the shipper prevent such action before the shipment is made. Reasonable precautions in labeling ryegrass seed as to kind shall also include keeping separate each lot labeled on the basis of a separate grower's declaration, invoice, or other documents.

(b) *Name of kind.* The name of each kind of agricultural or vegetable seed is the name listed in § 201.2 (h) or (i), respectively, except that a name which has become synonymous through broad general usage may be substituted therefor, provided the name does not apply to more than one kind and is not misleading.

(c) *Hybrid designation.* Seed shall not be designated in labeling as "hybrid" seed unless it comes within the definition of "hybrid" in § 201.2(y).

(d) *Name of variety.* The name of each variety of agricultural or vegetable seed is the name determined in accordance with the following considerations:

(1) The variety name shall represent a subdivision of a kind, which is characterized by growth, plant, fruit, seed, or other characters by which it can be differentiated from other sorts of the same kind.

(2) Except as otherwise provided in this section, the name of a new variety shall be the name given by the originator or discoverer of the variety, except that in the event the originator or discoverer of a new unnamed variety, at the time seed of the variety is first introduced into channels of commerce of the United States for sale to the public, cannot or chooses not to name the variety, the name of the variety shall be the first name under which the seed is introduced into such commerce. However, if the variety name so provided is in a language not using the Roman alphabet, the variety shall be given a name by the person authorized under this paragraph to name the variety, in a language using the Roman alphabet.

(3) The variety name shall not be misleading. The same variety name shall not be assigned to more than one variety of the same kind of seed.

(4) The status under the Federal Seed Act of a variety name is not modified by the registration of such name as a trademark.

(5) Names of varieties which through broad general usage prior to July 28, 1956 were recognized variety names, except for hybrid seed corn, shall be considered variety names without regard to the principles stated in paragraph (d)(2) of this section.

(6) The variety name for any variety of hybrid seed corn first introduced into commercial channels in the United States for sale prior to October 20, 1951, shall be any name used for such variety in such channels prior to that date. The variety name for any variety of hybrid seed corn first introduced into commercial channels in the United States for sale on or after October 20, 1951, shall be the name assigned in accordance with paragraphs (d)(1) through (4) of this section.

Agricultural Marketing Service, USDA

§ 201.36c

(e) [Reserved]

[20 FR 7928, Oct. 21, 1955]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 201.34, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 201.35 Blank spaces.

Blank spaces on the label shall be deemed to imply the word "None," when such interpretation is reasonable.

[5 FR 32, Jan. 4, 1940]

§ 201.36 The words "free" and "none."

The words "free" and "none" shall be construed to mean that none were found in a test complying with the methods set forth in §§ 201.45–201.52.

[5 FR 32, Jan. 4, 1940]

MODIFYING STATEMENTS

§ 201.36a Disclaimers and nonwarranties.

A disclaimer, nonwarranty, or limited warranty used in any invoice or other labeling, or advertisement shall not directly or indirectly deny or modify any information required by the act or the regulations in this part.

[15 FR 2394, Apr. 28, 1950]

ADVERTISING

§ 201.36b Name of kind and variety; designation as hybrid.

(a) The representation of the name of a kind or kind and variety of seed in any advertisement subject to the act shall be confined to the name of the kind or kind and variety determined in accordance with § 201.34. The name shall not have associated therewith words or terms that create a misleading impression as to the history or characteristics of the kind or kind and variety. Descriptive terms and firm names may be used in kind or variety names provided the descriptive terms or firm names are a part of the name or variety of seed; for example, Stringless Green Pod, Detroit Dark Red, Black Seeded Simpson and Henderson Bush Lima. Seed shall not be designated as hybrid seed in any advertisement subject to the act unless it comes within the definition of "hybrid" in § 201.2(y).

(b) Terms descriptive as to color, shape, size, habit of growth, disease-resistance, or other characteristics of the kind or variety may be associated with the name of the kind or variety provided it is done in a manner which clearly indicates the descriptive term is not a part of the name of the kind or variety; for example, Oshkosh pepper (yellow), Copenhagen Market (round head) cabbage, and Kentucky Wonder (pole) garden bean.

(c) Terms descriptive of quality or origin and terms descriptive of the basis for representations made may be associated with the name of the kind or variety: *Provided*, That the terms are clearly identified as being other than part of the name of the kind or variety; for example, Fancy quality redtop, Idaho origin alfalfa, and Grower's affidavit of variety Atlas sorghum.

(d) Terms descriptive of the manner or method of production or processing the seed (for example, certified, registered, delinted, scarified, treated, and hulled), may be associated with the name of the kind or variety of seed, providing such terms are not misleading.

(e) Brand names and terms taken from trademarks may be associated with the name of the kind or variety of seed as an indication of source: *Provided*, That the terms are clearly identified as being other than a part of the name of the kind or variety; for example, Ox Brand Golden Cross sweet corn. Seed shall not be advertised under a trademark or brand name in any manner that may create the impression that the trademark or brand name is a variety name. If seed advertised under a trademark or brand name is a mixture of varieties and if the variety names are not stated in the advertising, a description similar to a varietal description or a comparison with a named variety shall not be used if it creates the impression that the seed is of a single variety.

[21 FR 4652, June 27, 1956, as amended at 32 FR 12780, Sept. 6, 1967; 59 FR 64491, Dec. 14, 1994]

§ 201.36c Hermetically-sealed containers.

The 5-month limitation on the date of test in §§ 201.22 and 201.30a shall not