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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 201

[Docket No. LS-02-12]

Enforcement of the Varietal Labeling Provisions of the Federal Seed Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Policy statement.

SUMMARY: The purpose of this policy statement is to make clear that the Agricultural Marketing Service (AMS) has a comprehensive compliance program in place that monitors and tests seed shipped in interstate commerce for truthful varietal labeling.

FOR FURTHER INFORMATION CONTACT:

Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC-East, Beltsville, Maryland 20705-2325; Telephone: (301) 504-9237; Fax: (301) 504-8098; E-mail: Richard.Payne2@usda.gov.

SUPPLEMENTARY INFORMATION:

Occasionally issues or questions relating to Federal Seed Act (FSA) enforcement have been raised by the public. Recently, numerous interested parties, including officials of the National Cattlemen's Beef Association and Mississippi State University, have expressed concern that with the expiration of the Plant Variety Protection Certificate issued under the Plant Variety Protection Act for the Marshall variety of annual ryegrass, inferior seed of other varieties may be marketed as Marshall annual ryegrass. The purpose of this policy statement is to make clear that AMS views the varietal mislabeling of seed as a serious violation of the FSA. AMS has a comprehensive program in place that

consists of monitoring and testing seed lots to determine if they have the correct varietal labeling. A range of options are available that AMS will use to enforce the varietal labeling provisions of the FSA. Persons with knowledge of labeling violations of seed shipped in interstate commerce are invited to report them to AMS.

Federal Seed Act Policy: The Federal Seed Act (FSA) (7 U.S.C. 1551-1611) is a truth-in-labeling law that regulates the labeling of seed in interstate commerce. The FSA is enforced with the aid of State seed control programs as authorized under cooperative agreements between State Departments of Agriculture and USDA's AMS. Qualified seed inspectors, authorized by AMS' Seed Regulatory and Testing Branch (SRTB), draw official seed samples. A portion of the official sample is tested by the State seed laboratory. If the test results are out of tolerance with labeled information, a portion of the official sample, sampling documentation, test results, and a copy of the seed label are sent to the SRTB. If a subsequent test of the official sample by the SRTB confirms the State's test results, an investigation of the seed shipment is undertaken.

Many State seed control laboratories, as well as the SRTB, also conduct laboratory tests to determine if seed shipments are labeled with the correct variety name. Official instructions for conducting these tests are contained in the FSA regulations (7 CFR 201.58a).

Each year the SRTB conducts true-to-variety (TTV) field tests to determine the accuracy of variety labeling of seed lots shipped in interstate commerce. Varietal identification may be based on seedling, growing plant, or mature plant characteristics (7 CFR 201.58a). The authority for making tests and applying tolerances to determine the accuracy of labeling is contained in section 403 of the FSA (7 U.S.C. 1593). The officially drawn samples, submitted by state seed control programs, are grouped and planted by variety along with an authentic sample of the variety in question by a university or State Department of Agriculture agronomist by contractual arrangement. In addition, the agronomist assists the SRTB staff in evaluating the samples for correct varietal labeling. Approximately 2,000 samples are evaluated annually in the

TTV field testing program. The kinds of seed tested include field crops, vegetables, forages, and turf grasses. Shipments of mislabeled seed are investigated as potential FSA violations.

Interstate seed shippers are required to keep receiving and shipping records that include the variety name for each lot of seed they ship in interstate commerce (7 CFR 201.7). These records are routinely examined during investigations of other FSA violations to determine if the variety shipped was correctly labeled.

AMS considers violations of the FSA labeling provisions as serious violations of law and is committed to vigorous enforcement of the FSA through the full range of available enforcement authorities.

Enforcement actions typically involve the assessment of a monetary penalty against seed companies that ship mislabeled seed in violation of the FSA. The amount of the monetary penalty depends on the severity of the violation and the number of violations the company has had in the past. If the violation is considered minor, and the company has had no other violations in the past five years, a letter of warning will be sent to the company. If the violation is considered a major violation or the company has a history of violations, the company will be notified of the violations and given an opportunity to respond. If, after considering the company's response, AMS continues to believe that a violation of the FSA has occurred, monetary penalties as provided by section 406 of the FSA (7 U.S.C. 1596) will be assessed. The amount of the penalty for each violation depends upon a violator's compliance history and the seriousness of the violation.

In addition to monetary penalty actions, the FSA provides additional enforcement authorities which AMS will consider in appropriate cases. Section 405 of the FSA (7 U.S.C. 1595) authorizes the Department of Agriculture to bring a proceeding in Federal district court to seize any seed sold or transported in interstate commerce in violation of the FSA. If the court finds in favor of the USDA, the seed can be sold, destroyed, or returned to the owner after payment of all costs and the execution of a bond ensuring that seed will not be sold in violation of the provisions of the FSA.

Section 409 of the FSA (7 U.S.C. 1599) authorizes the USDA to initiate an administrative proceeding against anyone who violates any FSA provision or regulation, and to issue an order to cease and desist from continuing such violation. In the event the violator does not cease and desist, the order may be enforced in the Federal courts pursuant to section 411 of the FSA (7 U.S.C. 1601).

If a violation is knowingly committed, sections 406(a) (7 U.S.C. 1596(a)) and 407 of the FSA (7 U.S.C. 1957) allow the USDA to initiate criminal charges against such violators. This criminal provision also applies to violations which are the result of gross negligence or the result of the violator's failure to make a reasonable effort to be informed of the pertinent facts. Violators of this provision may be punished by a fine of \$1,000 for the first offense, and \$2,000 for each subsequent offense. In addition, civil settlements described in section 406(b) of the FSA (7 U.S.C. 1596(b)) apply to violations that are not deemed to be due to gross negligence. Violators of this provision shall forfeit not less than \$25 or more than \$500 for each violation.

AMS is committed to enforcement of the labeling provisions of the FSA through its ongoing program of testing and monitoring, and encourages persons with knowledge of FSA violations to report them to: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC-East, Beltsville, Maryland 20705-2325; Telephone: (301) 504-9237; Fax: (301) 504-8098; E-mail: Richard.Payne2@usda.gov.

Dated: September 17, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 771

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1941

RIN 0560-AG69

Boll Weevil Eradication Loan Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This action is being taken to finalize provisions of the interim regulations published May 16, 1997, that implemented the Boll Weevil Eradication Loan Program. This rule also implements changes intended to continue to assist in the eradication of the boll weevil, and promote cooperation between the United States Department of Agriculture (USDA) and State chartered organizations with regard to boll weevil eradication.

DATES: This rule is effective September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Richard W. Sharp, Senior Loan Officer, Funds Management/Direct Loans Branch, Farm Service Agency (FSA). Telephone: 202-690-0651; facsimile: 202-690-1117; e-mail: Richard_SSharp@wdc.usda.gov

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities. This program applies only to chartered organizations whose primary mission is the eradication of the boll weevil. These loans cannot be made to small entities or individuals. Thus, a Regulatory Flexibility Analysis is not required.

Environmental Impact Statement

A Finding Of No Significant Impact was published for the interim rule on April 21, 1997. There is no significant change in this final rule. Therefore, no

further environmental assessments are required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. All State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule. This rule will not affect agreements entered into prior to the effective date of the rule. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before bringing any action for judicial review.

Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments as well as in the private sector. This rule contains no Federal mandates, under the regulatory provisions of title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

FSA has reviewed this rule to determine the applicability of the Paperwork Reduction Act of 1995. In accordance with 5 CFR 1320.3(c)(4), there are fewer than 10 persons or organizations from which the collection of information can reasonably be expected within a 12-month period. The information requirements of this program do not impact a substantial majority of the industry, nor do the requirements meet the rule of general applicability. Therefore, the provisions of 5 CFR part 1320 do not apply to this rule.

New CFR Part

This rule will relocate the Boll Weevil Eradication Loan Program from 7 CFR part 1941, subpart C, to 7 CFR part 771. This will better organize the regulation and incorporate it with the other FSA regulations.