

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 201

[No. LS-94-012]

RIN 0581-AB55

Amendments to Regulations Under the Federal Seed Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and notice of hearing.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to revise the Federal Seed Act (FSA) regulations. The changes would designate seeds of species listed in the Federal Noxious Weed Act (FNWA) as noxious and prohibit the shipment of agricultural and vegetable seeds containing them, add two kinds to the list of those subject to the FSA, update the seed testing regulations, update the seed certification regulations, and correct several minor errors. The noxious-weed seeds are being added to help prevent the spread of these highly destructive weeds. Adding two kinds, creeping foxtail and flatpea, make them subject to the same truthful labeling requirements as other seeds moving in interstate commerce. Updating the seed testing and seed certification regulations would incorporate the latest in seed testing and seed certification knowledge and prevent potential conflicts with State regulations.

DATES: Comments must be received by December 21, 1998 to be assured of consideration. Public Hearing December 2, 1998, 10:00 a.m., Room 2096 South Agriculture Building, 14th and Independence, Washington, D.C.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Send comments to James P. Triplitt, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC-

E., Beltsville, Maryland 20705-2325. Comments will be available for public inspection during regular business hours in Room 209, Building 306, BARC-E., Beltsville, Maryland. The public hearing will be held on December 2, 1998, at 10:00 a.m. in Room 2096, South Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

James P. Triplitt, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, Room 209, Building 306, BARC-E., Beltsville, Maryland 20705-2325 Telephone (301) 504-9430, FAX (301) 504-5454.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed 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.

Executive Order 12988

The proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The rule would 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

The Administrator, AMS, has certified that this action would not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. Many small entities ship seed in interstate commerce. There are about 3,000 interstate shippers. We estimate that about ninety percent of the interstate shippers are small entities. However, all shippers including small entities, usually package and label seed to comply with both the FSA and State seed laws. The testing requirements of the State laws are similar to those of the FSA. Therefore, a single test can give information to comply with both State seed laws and the FSA. Changes to the seed testing and seed certification regulations would reconcile State and

Federal seed testing and seed certification procedures. Using similar testing procedures reduces 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 a list of seeds that are noxious in seed shipped in interstate commerce would add some costs for seed testing. We estimate that the total cost to the industry for testing and labeling would be approximately \$12,000. ((Assuming a \$40.40 service testing fee (7 CFR part 75) and 285 hours in connection with testing and labeling.)) The added cost will be small because all seed must be examined for noxious-weed seed to comply with other sections of the FSA as well as state laws. 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 species being added will be done when the seed is examined for State noxious-weed seeds.

Also, much of the seed handled by small entities is already tested by their suppliers. There would be no effect on the competitive position of small entities in relation to larger entities since both would have to comply with the same regulations.

Paperwork Reduction Act

We estimate a small increase to the previously approved information collection requirements of the FSA regulations. Some seed will be tested to determine the presence or absence of the FNWA species designated as noxious. Not all shipments will be examined specifically for these added noxious-weed seeds because they are so rarely present in seed. Also, many interstate shipments will not be tested because they involve seed that has already been tested and shipped in interstate or intrastate commerce and is subsequently reshipped to another interstate location without being retested. When seed is tested, the test made for the added noxious-weed seeds will be made concurrently with the test to determine compliance with the FSA requirement that seed is labeled to comply with the noxious-weed seed laws and regulations of the state into which the seed is being shipped. We estimate that the additional time

required for testing will average no more than five minutes per test and that about one fourth of all shipments will be tested. Therefore, the time for testing and labeling seed previously estimated at 2.5 hours per response will be 2.52 hours per response increasing the total burden by 285 hours.

Title: Federal Seed Act Program.

OMB Number: 0581-0026.

Expiration Date of Approval: July 30, 2001.

Type of Request: Revision of currently approved information collection.

Abstract: This information collection is necessary for the conduct of the FSA program with respect to certain testing, labeling, and recordkeeping requirements of agricultural and vegetable seeds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.08 hours per response.

Respondents: Interstate shippers of seed.

Estimated Number of Respondents: 3,208.

Estimated Number of Responses per Respondent: 5.56.

Estimated Total Annual Burden on Respondents: 37,078.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to James P. Triplitt, Chief, Seed Regulatory and Testing Branch, LS, AMS, USDA, Room 209, Building 306, BARC-E., Beltsville, Maryland 20705-2325. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Background

The FSA, Title II (7 U.S.C. 1571-1575) regulates agricultural and vegetable planting seed 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. Also, the FSA prohibits the shipment of agricultural seeds containing noxious-weed seeds that are not labeled according to, or exceed the allowable rate established by state law.

Noxious-Weed Seeds

Under the Federal Noxious Weed Act (FNWA) of 1974 (7 U.S.C. 2801 *et. seq*) the Secretary has identified certain noxious weeds that are prohibited movement into or through the United States. We are proposing to amend the FSA regulations to designate seeds of noxious weeds listed under the FNWA as noxious in agricultural and vegetable seed shipped in interstate commerce under the FSA. The Animal and Plant Health Inspection Service (APHIS) enforces both the FNWA and Title III, the Foreign Commerce provisions of the FSA. However, APHIS may not restrict the movement of the noxious weeds listed under the FNWA if found in seed subject to the provisions of the FSA.

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. Currently, neither AMS nor a State can take regulatory action when seeds classified as noxious under the FNWA are found in planting seed unless the seeds are recognized by the State law, rules, and regulations. Not all Federally identified noxious weeds have been recognized as noxious by states because the noxious weeds are not present in the contiguous United States. Therefore, we are proposing to recognize for purposes of FSA, Title II, that seeds of Federally listed noxious weeds under the FNWA are noxious weeds for the purpose of interstate shipments of seed under the FSA. By recognizing the Federally listed noxious weeds under the FNWA as noxious under the FSA, both the States and AMS can take action to prevent their spread on those rare occasions that they are found in planting seeds. Costly control and eradication of noxious weeds would not be required if infestations could be prevented.

When an interstate seed shipment is inspected for regulatory purposes and found by official test to deviate from the labeled claim, the FSA regulations provide that a tolerance is applied to compensate for random error in sampling and testing seed. The tolerance is applicable to noxious-weed

seeds, including those prohibited by states. Noxious-weed seed tolerances are given in § 201.65 of the FSA regulations. The tolerance allows shipment of seed found by an official inspection to contain up to two prohibited noxious-weed seeds. The seed industry is accustomed to tolerances being applied to seed that is shipped interstate and inspected by regulatory officials.

Because these noxious-weeds are highly destructive and the objective is to prevent their introduction and spread, we believe that except for *Cuscuta* spp. (dodders), the tolerance should not be applied to seeds of noxious weeds listed under the FNWA. Many species of dodder are contained in this proposal. Many other dodder species are already established in the United States. Seeds of most of the *Cuscuta* species are indistinguishable. Therefore, we believe the tolerance as given in § 201.65 is appropriate for *Cuscuta* spp. This proposal would also update the scientific names for noxious-weed seeds for the District of Columbia to those names currently recognized by the scientific community.

Additional Kinds, Names

Creeping foxtail and flatpea are added to the list of agricultural seeds subject to the FSA in § 201.2(h). These kinds are being marketed in interstate commerce and testing procedures have been established and validated for them. Adding creeping foxtail and flatpea will require that changes be made in § 201.46 and § 201.58 to incorporate testing procedures for each kind. Also "southernpea" is added as an acceptable synonym for "cowpea" when cowpea is sold as a vegetable seed. "Southernpea" is already an acceptable synonym for the agricultural seed "cowpea." "Cowpea" is a kind that is sold both as an agricultural seed and a vegetable seed.

Additional changes to § 201.2(h) define "Canola" and allow the use of "Canola" as a synonym for kinds of seed, primarily rape seeds, when the seed is low in erucic acid and glucosinolates. We are proposing the change because kinds of rape seed low in erucic acid and glucosinolates are commonly referred to in the trade and by farmers as "Canola."

Seed Testing

We are also updating the FSA seed testing regulations to include testing procedure for creeping foxtail and flatpea and to reflect improvements in seed testing technology and the current standards of usage within the industry. The Association of Official Seed Analysts (AOSA) has already adopted

most of these changes in their "Rules for Testing Seed," the testing rules used by most State and commercial seed analysts. Including these changes will eliminate potential conflicts between the testing rules used in interstate commerce and those used by the states. This would eliminate the need to do separate tests to assure that seed labeling complies with both Federal and State laws. It would also facilitate seed trade and reduce cost to the seed industry and to seed buyers.

Changes to § 201.46 clarify how to calculate the weight of the purity working sample for mixtures of coated seed and to add testing procedures for creeping foxtail and flatpea. Procedures for rounding purity percentages are described in § 201.47(c). These procedures specify the mathematical conventions to be followed for rounding figures to two decimal places and provide for adjustment of the percentage for the largest component in cases where the total percentage would not otherwise add up to 100.00. Amending § 201.50 and § 201.51 make the purity separation of capsules of *Juncus* spp. consistent with other weed species requiring that all seeds in a capsule be weighed separately from the capsule. Currently the capsule of *Juncus* spp. is weighed as a unit. Changes to § 201.55 eliminate germination results based on three replicates of 100 seeds each. The table column with the heading "3 replicates" is removed and the Explanatory Note revised to omit the reference to results based on three replicates. These changes would result in a test being invalid and require a retest if the variation between four replicates of a test exceeds the allowable variation. Germination tests are normally conducted on four replicates of 100 seeds each. Under the existing regulation a test can be based on three replicates when variation between the four replicates exceeds permitted variation. Comparative tests show that retest results based on four replicates are more accurate than results based on three replicates.

Additional instructions for germinating flatpea are given in Section 201.57.

Amendments to § 201.58 define soil as an artificial planting mix of shredded peat moss, vermiculite, and perlite. Defining soil as artificial planting mix will standardize the media used for soil germination tests conducted in the enforcement of the FSA. In Table 1, germination test procedures are added for creeping foxtail and flat pea. Also, the germination final count for buffalograss (*Buchloe dactyloides*) is reduced to 14 days (from 28 days) and

the prechill time reduced to 14 days (from six weeks). Crambe (*Crambe abyssinica*) will have "B" (between blotters) added as a substrate, 20°C added as a temperature, and KNO₃ added for testing fresh and dormant seed. "TB" (top of blotters) is added as a choice of substrata for Crownvetch (*Coronilla varia*). For Sunflower (*Helianthus annuus*) the germination temperature is changed to 20°C (from 20–30°C) and the first count changed to four days (from three days).

Changing "meadow foxtail" to "foxtails" in § 201.60 makes chaffy seed tolerances applicable to both "foxtails," (meadow foxtail and creeping foxtail).

Amending § 201.65 will clarify that "X" is the number of seeds found as represented by the label and not the number per unit weight labeled. This change is in response to the confusing wording of this section.

Seed Certification

The proposed rule will also update the Certified Seed regulations. Sections 201.74 and 201.75 provide that the name of each kind and variety would not have to be shown on the certification label of mixtures and seeds in small containers provided the information is given elsewhere on the container. This change is necessary because of limited space on the certification label and the limited space on small packages of vegetable seed. Mixtures often contain several kinds and varieties making it difficult to show all kinds and varieties in the limited space available. This information would be given in the analysis information. Also, the label must comply with the requirements of § 201 of the FSA that requires the detailed labeling.

Also, § 201.76, Table 5 will be amended to include genetic standards for chemically assisted hybrid cotton. These standards were established based on the best scientific information available and have been used successfully.

These changes are consistent with the standards and procedures recently adopted by an association made up primarily of State certifying agencies, the Association of Official Seed Certifying Agencies (AOSCA). These changes will remove potential conflicts between the FSA regulations and States' standards and procedures.

Corrections

Also, this proposal would correct several punctuation and other errors in the regulations such as correcting punctuation of several scientific names in § 201.2. The spelling of "hypogaeal" is corrected in § 201.56–5, punctuation is

corrected in § 201.56–6, and in § 201.76 "contamination" is changed to "contaminating" and "of" changed to "or".

List of Subjects in 7 CFR Part 201

Advertising, Agricultural commodities, Imports, Labeling, Reporting and recordkeeping requirements, Seeds, Vegetables.

For reason set forth in the preamble, it is proposed that 7 CFR Part 201 be amended as follows:

PART 201—REGULATIONS UNDER THE FEDERAL SEED ACT

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

Authority: 7 U.S.C. 1592.

2. In § 201.2, paragraph (i) is amended by adding the new terms "Southernpea (see cowpea)" and "Favabean (see Broadbean)" and paragraph (h) is amended by:

(A) Removing the period (.) at the end of the term "Bluestem, yellow—*Bothriolchloa ischaemum* (L.) Keng",

(B) Removing the term "Meadow foxtail—*Alopecurus pratensis* L.",

(C) By adding a period (.) at the end of the term "Smilo—*Piptatherum miliaceum* (L.) Coss", and

(D) Adding new terms in alphabetical order as follows:

§ 201.2 Terms defined.

* * * * *

(h) * * *

Canola—varieties of *Brassica* spp. that produce oil with less than 2 percent erucic acid and meal with less than 30 micro moles per gram of glucosinolates. (See annual rape, bird rape, turnip rape, and winter rape);

* * * * *

Flatpea—*Lathyrus sylvestris* L.

* * * * *

Foxtail, creeping—*Alopecurus arundinaceus* Poir.

Foxtail, meadow—*Alopecurus pratensis* L.

* * * * *

3. Section 201.16 is revised to read as follows:

§ 201.16 Noxious-weed seeds.

(a) Except for those kinds of noxious-weed seeds shown in paragraph (b) of this section, the names of the kinds of noxious-weed seeds and the rate of occurrence of each shall be expressed in the label in accordance with, and the rate of occurrence 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 the noxious-weed seed content, if necessary to conform to the laws and regulations of the State into which the seed is diverted.

(b) Seeds or bulblets of the following plants in paragraph (b)(1) shall be considered noxious-weed seeds in agricultural and vegetable seeds transported or delivered for transportation in interstate commerce (including Puerto Rico, Guam, and the District of Columbia). Agricultural or vegetable seed containing seeds or bulblets of these kinds shall not be transported or delivered for transportation in interstate commerce.

(1) Noxious-weed seeds include the following species on which no tolerance will be applied:

Aeginetia spp.
Ageratina adenophora (Spreng.) King and H.E. Robins.
Alectra spp.
Alternanthera sessilis (L.) DC.
Asphodelus fistulosus L.
Avena sterilis L. (including *Avena ludoviciana* Dur.)
Azolla pinnata R. Br.
Borreria alata (Aubl.) DC.
Carthamus oxyacantha M. Bieb.
Chrysopogon aciculatus (Retz.) Trin.
Commelina benghalensis L.
Crupina vulgaris Cass.
Digitaria abyssinica Stapf. (= *D. scalarum* (Schweinf.) Chiov.)
Digitaria velutina (Forsk.) Beauv.
Drymaria arenarioides Roem. and Schult.
Eichornia azurea (Sw.) Kunth
Emex australis Steinh.
Emex spinosa (L.) Campd.
Galega officinalis L.
Heracleum mantegazzianum Sommier & Levier
Hydrilla verticillata (L. f.) Royle
Hygrophila polysperma T. Anders.
Imperata brasiliensis Trin.
Imperata cylindrica (L.) Raeusch.
Ipomoea aquatica Forsk.
Ipomoea triloba L.
Ischaemum rugosum Salisb.
Lagarosiphon major (Ridley) Moss
Leptochloa chinensis (L.) Nees
Limnophila sessiliflora (Vahl) Blume
Lycium ferocissimum Miers
Melaleuca quinquenervia (Cav.) Blake
Melastoma malabathricum L.
Mikania cordata (Burm. f.) B.L. Robins.
Mikania micrantha H.B.K.
Mimosa invisa Mart.
Mimosa pigra L. var. *pigra*
Monochoria hastata (L.) Sloms-Laub.

Monochoria vaginalis (Burm. f.) K.B. Presl
Nassella trichotoma (Nees) Arechavaleta
Opuntia aurantiaca Lindl.
Orobancha spp.
Oryza longistaminata A. Cheval. and Roehr.
Oryza punctata Steud.
Oryza rufipogon Griff.
Ottelia alismoides (L.) Pers.
Paspalum scrobiculatum L.
Pennisetum clandestinum Chiov.
Pennisetum macrourum Trin.
Pennisetum pedicellatum Trin.
Pennisetum polystachion (L.) Schult.
Prosopis alapataco R.A. Philippi
Prosopis argentina Burkart
Prosopis articulata S. Watson
Prosopis burkartii Munoz
Prosopis caldenia Burkart
Prosopis calingastana Burkart
Prosopis campestris Griseb.
Prosopis castellanensis Burkart
Prosopis denudans Benth.
Prosopis elata (Burkart) Burkart
Prosopis farcta (Russell) Macbride
Prosopis ferox Griseb.
Prosopis fiebrigii Harms
Prosopis hassleri Harms
Prosopis humilis Hook. and Arn.
Prosopis kuntzei Harms
Prosopis pallida (Willd.) H.B.K.
Prosopis palmeri S. Watson
Prosopis reptans Benth. var. *reptans*
Prosopis rojasiana Burkart
Prosopis ruizlealii Burkart
Prosopis ruscifolia Griseb.
Prosopis sericantha Hook. and Arn.
Prosopis strombulifera (Lam.) Benth.
Prosopis torquata (Lagasca) DC.
Rottboellia cochinchinensis (Lour.) Clayton (= *R. exaltata* (L.) L.f.)
Rubus fruticosus L. (complex)
Rubus moluccanus L.
Saccharum spontaneum L.
Sagittaria sagittifolia L.
Salsola vermiculata L.
Salvinia auriculata Aubl.
Salvinia biloba Raddi
Salvinia herzogii de la Sota
Salvinia molesta D.S. Mitchell
Setaria pallide-fusca (Schumach.) Stapf and Hubb.
Solanum torvum Sw.
Solanum viarum Dunal
Sparaganium erectum L.
Striga spp.
Tridax procumbens L.
Urochloa panicoides Beauv.

(2) Noxious-weed seeds include the following species on which the tolerance in paragraph (c) of this section will be applied:

Cuscuta americana L.
Cuscuta applanata Engelm.
Cuscuta approximata Bab.
Cuscuta attenuata Waterfall
Cuscuta boldinghii Urban

Cuscuta brachycalyx (Yuncker) Yuncker
Cuscuta californica Hook. and Arn.
Cuscuta campestris Yuncker
Cuscuta cassyoides Engelm.
Cuscuta ceanothii Behr
Cuscuta cephalanthii Engelm.
Cuscuta compacta Juss.
Cuscuta corylii Engelm.
Cuscuta cuspidata Engelm.
Cuscuta decipiens Yuncker
Cuscuta dentatasquamata Yuncker
Cuscuta denticulata Engelm.
Cuscuta epilinum Weihe
Cuscuta epithymum (L.) L.
Cuscuta erosa Yuncker
Cuscuta europaea L.
Cuscuta exaltata Engelm.
Cuscuta fasciculata Yuncker
Cuscuta glabrior (Engelm.) Yuncker
Cuscuta globulosa Benth.
Cuscuta glomerata Choisy
Cuscuta gronovii Willd.
Cuscuta harperi Small
Cuscuta howelliana Rubtsoff
Cuscuta indecora Choisy
Cuscuta jepsonii Yuncker
Cuscuta leptantha Engelm.
Cuscuta mitriformis Engelm.
Cuscuta nevadensis I.M. Johnston
Cuscuta obtusiflora H.B.K.
Cuscuta occidentalis Mill. and Nutt.
Cuscuta odontolepis Engelm.
Cuscuta pentagona Engelm.
Cuscuta planiflora Ten.
Cuscuta plattensis A. Nels.
Cuscuta polygonorum Engelm.
Cuscuta rostrata Engelm.
Cuscuta runyonii Yuncker
Cuscuta salina Engelm.
Cuscuta sandwichiana Choisy
Cuscuta squamata Engelm.
Cuscuta suaveolens Ser.
Cuscuta suksdorfii Yuncker
Cuscuta tuberculata Brandeg.
Cuscuta umbellata H.B.K.
Cuscuta umbrosa Hook.
Cuscuta vetchii Brandeg.
Cuscuta warneri Yuncker

(c) The tolerance applicable to the prohibition of the noxious-weed seeds in paragraph (b)(1) of this section shall be zero (0.) For those kinds listed in paragraph (b)(2) of this section the tolerance shall be two seeds in the minimum amount required to be examined as shown in § 201.46, Table 1.

4. Section 201.17 is revised to read as follows:

§ 201.17 Noxious-weed seeds in the District of Columbia.

(a) Noxious-weed seeds in the District of Columbia are: Quackgrass (*Elytrigia repens*), Canada thistle (*Cirsium arvense*), field bindweed (*Convolvulus arvensis*), bermudagrass (*Cynodon dactylon*), giant bermudagrass (*Cynodon dactylon* var. *aridus*), annual bluegrass (*Poa annua*), and wild garlic or wild

onion (*Allium canadense* or *Allium vineale*). The name and number per pound of each kind of such noxious-weed seeds present shall be stated on the label.

(b) [Reserved]

5. In § 201.46, paragraph (d)(2)(iii) is revised and Table 1 is amended by removing the term "Meadow foxtail"

and all that follows on that line, and adding new terms "Flatpea", "Foxtail, creeping", and "Foxtail, meadow" to read as follows:

§ 201.46 Weight of working sample.

* * * * *

(d) * * *

(2) * * *

(iii) The weight of the working sample shall be the product of the weight calculated in paragraph (d)(2)(i) of this section multiplied by 100 percent, divided by 100 percent minus the percentage of coating material calculated in paragraph (d)(2)(ii) of this section.

TABLE 1.—WEIGHT OF WORKING SAMPLE

Name of seed	Minimum weight for purity analysis (grams)	Minimum weight for noxious-weed seed examination (grams)	Approximate number of seeds per gram
Agricultural Seed:			
* * * * *			
Flatpea	100	500	25
* * * * *			
Foxtail, creeping	1.5	15	1,736
Foxtail, meadow	3	30	893
* * * * *			

6. In § 201.47, paragraphs (c)(3) and (c)(4) are added to read as follows:

§ 201.47 Separation.

* * * * *

(c) * * *

(3) When rounding off the calculated percentages of each component to the second decimal place, round down if the third decimal place is 4 or less and round up if the third decimal place is 5 or more, except that if any component is determined to be present in any amount calculated to be less than 0.015 percent, then that component shall be reported as 0.01 percent. If any component is not found in the purity analysis, then that component shall be reported as 0.00 percent.

(4) The total percentage of all components shall be 100.00 percent. If the total does not equal 100.00 percent (e.g. 99.99 percent or 100.01 percent), then add to or subtract from the component with the largest value (usually the pure seed component).

§ 201.47a [Amended]

7. Section 201.47a, paragraph (b)(4)(ii) is amended by adding the word "in" following the word "internodes".

8. In § 201.50, paragraph (b) is removed and paragraph (c) is redesignated as paragraph (b) and paragraph (a) is revised to read as follows:

§ 201.50 Weed seed.

* * * * *

(a) The individual seeds are to be removed from fruiting structures such as pods and heads. The seeds are classified as weed seed and the remaining fruiting structures classified as inert matter.

* * * * *

§ 201.51 [Amended]

9. In § 201.51, paragraph (b)(9) is removed.

10. In § 201.55, the table in paragraph (a) and the Explanatory Note immediately following paragraph (e) are revised to read as follows:

§ 201.55 Retests.

* * * * *

(a) * * *

TABLE OF MAXIMUM TOLERATED RANGES BETWEEN 100-SEED REPLICATES FOR USE IN CONNECTION WITH § 201.55(A)
Average percent germinations

Maximum allowed between replicates			
		4 replicates	2 replicates
99	2	5	.....
98	3	6	.....
97	4	7	6
96	5	8	6
95	6	9	7
94	7	10	8
93	8	10	8
92	9	11	9
91	10	11	9
90	11	12	9
89	12	12	10
88	13	13	10
87	14	13	11
86	15	14	11

TABLE OF MAXIMUM TOLERATED RANGES BETWEEN 100-SEED REPLICATES FOR USE IN CONNECTION WITH § 201.55(A)—
Continued

Average percent germinations

Maximum allowed between replicates		4 replicates	2 replicates
85	16	14	11
84	17	14	11
83	18	15	12
82	19	15	12
81	20	15	12
80	21	16	13
79	22	16	13
78	23	16	13
77	24	17	13
76	25	17	13
75	26	17	14
74	27	17	14
73	28	17	14
72	29	18	14
71	30	18	14
70	31	18	14
69	32	18	14
68	33	18	15
67	34	18	15
66	35	19	15
65	36	19	15
64	37	19	15
63	38	19	15
62	38	19	15
61	40	19	15
60	41	19	15
59	42	19	15
58	43	19	15
57	44	19	15
56	45	19	15
55	46	20	15
54	47	20	16
53	48	20	16
52	48	20	16
51	50	20	16

* * * * *

(e) * * *

Note to § 201.55. To find the maximum tolerated range, compute the average percentage of all 100 seed replicates of a given test, rounding off the result to the nearest whole number. The germination is found in the first two columns of the table. When the differences between highest and lowest replicates do not exceed the corresponding values found in the "4 replicates" column, no additional testing is required. However, if the differences exceed the values in the "4 replicates" column, retesting is necessary.

§ 201.56–5 [Amended]

11. In § 201.56–5, paragraph (e)(1)(i) is revised by removing "hypegeal" and adding "hypogeal" in its place.

§ 201.56–6 [Amended]

12. In § 201.56–6, paragraph (c)(2)(i) the period following the word "Cotyledons" is removed and a colon is added in its place, paragraph (c)(2)(ii) is amended by removing the period following "Epicotyl" and adding a colon in its place, and paragraph (d)(2)(iii)(B) is amended by adding a closing parenthesis at the end of the last sentence.

13. In § 201.57, a sentence is added at the end of the section to read as follows:

§ 201.57 Hard seeds.

* * * For flatpea, continue the swollen seed in test for 14 days when germinating at 15–25°C or for 10 days when germinating at 20°C.

14. Section 201.58 is amended as follows:

A. In paragraph (a)(7), immediately following the words "S= sand or soil" the words "where soil is an antificial planting mix of shredded peat moss, vermiculite, and perlite" are added; and

B. In Table 2, the entry "Meadow foxtail" and all that follows on that line are removed, and the entries for "Buffalograss", "Crambe", "Crownvetch", and "Sunflower" and adding "Flatpea", "Foxtail, creeping", and "Foxtail, meadow" are revised to read as follows:

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

* * * * *

Table 2.—Germination Requirements for Indicated Kinds

* * * * *

Name of seed	Substrata	Temp. °C	First count days	Final count days	Additional directions	
					Specific requirements	Fresh and dormant seed
AGRICULTURAL SEED						
* Buffalograss (Burs)	* P,TB,TS	* 20–35	* 7	14	* Light; KNO ₃	* Prechill at 5 °C for 2 weeks; see § 201.57a.
(Caryopses)	P	20–35	5	14	Light; KNO ₃ .	
* Crambe	* T,B	* 20; 25	* 4	7	*	* KNO ₃
Crownvetch	B,T,TB,S	20	7	¹ 14		
Flatpea	T	15–25; 20	14	¹ 28		
Foxtail, creeping	P	15–30	7	21	Light; KNO ₃ .	
Foxtail, meadow	P	20–30	7	14	Light.	
Sunflower	T, B	20	4	7		

¹ Hard seeds may be present. (See § 201.57)

§ 201.60 [Amended]

15. Section 201.60 is amended by removing the words “meadow foxtail” and adding in their place the word “foxtails”.

16. Section 201.65 is amended by:

A. Revising the heading in the first column of the table to read “Number represented by the label or test ¹”,

B. Adding a footnote immediately following the table to read:

¹ 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).'', and

C. Revising the introductory text 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 number of noxious-weed seeds found by analysis in the quantity of seed specified for noxious-weed seed determination in § 201.46, except as provided in § 201.16(c). Applicable tolerances are calculated by the formula, $Y = X + 1 + 1.96\sqrt{X}$, where X is the number of seeds represented by the label or test and Y is the maximum number within tolerance. Some tolerances are listed

below. The number found as represented by the label or test (Column X) will be considered within tolerance if not more than the corresponding number in Column Y are found by analysis in the administration of the Act. For numbers of seeds greater than those in the table and in case of additional or more extensive analyses, a tolerance based on a degree of certainty of 5 percent ($P=0.05$) will be recognized.

* * * * *

17. In § 201.74, paragraph (a) is revised to read as follows:

§ 201.74 Labeling all classes of seed.

(a) All classes of certified seed when offered for sale shall have an official certification label affixed to each container clearly identifying the certifying agency, the lot number or other identification, the variety name (if certified as to variety), and the kind and class of seed. Except that for seed mixtures and seed in containers of 5 pounds or less, the certification labels need not bear the name of the kind or kind and variety of each component, provided the name of each kind or kind and variety is shown on the analysis label.

* * * * *

18. In § 201.75, paragraph (c) is revised to read as follows:

§ 201.75 Interagency certification.

* * * * *

(c) Each label used in interagency certification shall be serially numbered or carry the certification identity number and clearly identify the certifying agencies involved, the variety (if certified as to variety), and the kind and class of seed. Except that for seed mixtures and seed in containers of 5 pounds or less, the certification labels need not bear the name of the kind or kind and variety of each component, provided the name of each kind or kind and variety is shown on the analysis label.

19. In §201.76, the introductory text is amended by removing the word “contamination” and adding in its place the word “contaminating”, removing the word “of” immediately following the word “varieties” and adding in its place the word “or”, and amending Table 5 under the entry “corn” by adding the word “Foundation” before the words “Back cross” and adding the entry “Hybrid—chemically assisted” following the entry “Cotton”, to read as follows:

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

* * * * *

TABLE 5

	Foundation				Registered				Certified			
	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed
Cotton * * *	*	*	*		*		*		*		*	
Hybrid—Chemically Assisted	0	190	10,000	0.03	.....	.....	.....	.....	0	2,640 (⁵⁹ 804.66m) ...	1,320	0.1
	*	*	*		*		*		*		*	

Dated: October 6, 1998.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 98-27590 Filed 10-19-98; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ANM-20]

Proposed Revision of Class E Airspace; Buena Vista, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would amend the Class E airspace at Buena Vista, CO, to provide additional controlled airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at the Buena Vista Municipal Airport. This new SIAP requires modification of airspace in order to contain Instrument Flight Rules (IFR) procedures.

DATES: Comments must be received on or before December 4, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM-520, Federal Aviation Administration, Docket No. 98-ANM-20, 1601 Lind Avenue SW, Renton, Washington 98055-4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM-520.6, Federal Aviation Administration, Docket No. 98-ANM-20, 1601 Lind Avenue SW, Renton, Washington 98055-4056; telephone number: (425) 227-2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98-ANM-20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM-520, 1601 Lind Avenue SW, Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to revise Class E airspace at Buena Vista, CO. This amendment would provide additional airspace necessary to fully encompass the GPS Runway 33 SIAP to the Buena Vista Municipal Airport, Buena Vista, CO. This amendment proposes to add Class E airspace additions in order to accommodate the holding pattern and missed approach area for the SIAP. The FAA establishes Class E airspace extending upward from 700 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to

promote safe flight operations under IFR at the Buena Vista Municipal Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective