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## A REVIEW OF VIOLATIONS OF THE FEDERAL SEED ACT

C. R. Edwards<sup>1/</sup>

It is a pleasure being with you at this session of the 1961 Short Course for Seedsmen. I have wanted to attend one of these sessions since their beginning 10 years or so ago here at Mississippi State University.

It is not surprising that the organizers of your program have included this part on seed laws, labeling, maintenance of records, etc. This subject is an integral part of the operation of a seed business. Even though you may have heard several talks on the subject before, there is always more to learn.

To make this subject more interesting to you, and to emphasize the practical importance of keeping records, blending to uniformity, assigning lot numbers, sampling and testing, labeling, and similar matters, we have reviewed a number of actual cases in which judgments have been rendered under the Federal Seed Act. We believe lessons can be learned from these cases. Identity of the persons or firms involved in these cases will not be disclosed.

As I review these cases for you, there may be questions occur to you. Please feel free to ask these questions as we go along.

When I use the word "seedsman" in this discussion, I mean the person or firm deemed liable under the Federal Seed Act.

Germination

FS 875 - A shipment of peanut seed was labeled to have a germination of 70 percent and to consist of 99.00 percent pure seed and 1.00 percent inert matter. The seed was found to have a germination of 31 percent and to consist of 93.58 percent pure seed and 6.42 percent inert matter. The seedsman purchased this seed from a supplier in another town within the same State. The seedsman sent a truck to transport the seed from the supplier's place to a customer in another State. The supplier did not know that the seed was being taken to a different State. It was construed that the transaction by the supplier was not knowingly in interstate commerce and therefore the supplier was not deemed liable under the Federal Seed Act for the labeling as to germination and purity. The seedsman actually left the labels of his supplier on the bags when the seed was shipped. He relied upon his supplier's labeling, but made no effort to determine whether the seed was correctly labeled. Although the seedsman did not test the seed nor attach the labels, he was deemed liable for the false labeling in interstate commerce.

FS 879 - A shipment of barley seed was labeled to have a germination of 92 percent and to consist of 99.44 percent pure seed and 0.56 percent inert

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matter. The seed was found to have a germination of 65 percent and to consist of 97.31 percent pure seed and 2.69 percent inert matter. Our investigation revealed that 340,000 pounds of seed were assigned one lot number. This quantity was not all processed at one time. A sample of the first portion cleaned was tested, and the report was used in labeling the portions processed at later dates. Also, the sample tested by the seedsman was not treated, but the seed shipped in this instance was treated. It appeared that the seed was overtreated, thus reducing the percentage of germination. Note that the purity of the seed shipped also varied from the labeling. What mistakes did the seedsman make? (1) The entire "lot of seed" was not of uniform quality. We doubt that anyone has facilities to blend 340,000 pounds of seed to uniformity. (2) The sample tested did not represent all the seed in this shipment. (3) The sample tested was untreated; whereas, this seed was treated.

FS 880 - A shipment of oat seed was labeled to have a germination of 90 percent. The seed was found to have a germination of 56 percent. The seedsman's file sample had a good germination, but was dissimilar in appearance to the seed shipped. When his records were inspected, he indicated this lot was purchased from one farmer. In reply to the charges, he indicated it was purchased from another farmer. It appears that he did not clearly identify the seed at all times, and ultimately attached labels to the wrong lot of seed.

FS 890 - A shipment of sorghum seed was labeled to have a germination of 80 percent; whereas, the seed was found to have a germination of 62 percent. At the time of shipment, the seed firm had in its files a report from a commercial seed laboratory indicating 64 percent germination. It alleged to have made a test itself which resulted in 82 percent germination. No record of that test was kept, however. Apparently the seedsman chose to ignore the report showing 64 percent germination made by the commercial laboratory.

FS 891 - A shipment of sorghum seed was labeled to have a germination of 85 percent. The seed was found to have a germination of 40 percent. The seedsman claimed that when he purchased the seed from the grower, the grower alleged to have submitted a sample to the State Seed Laboratory, which reported a germination of 85 percent. The seedsman did not obtain or keep a copy of the test record. Actually, the farmer had certified seed and non-certified seed. The farmer's test record pertained to the certified seed. No test of the non-certified seed was made. This may sound as if the farmer "pulled a fast one" on the seedsman, but that is not necessarily true. The seedsman may not have clearly remembered to which lot the test report pertained.

Let us digress just a moment from the facts in this case and consider something that does not occur in any of the cases being reviewed. I have in mind samples submitted by farmers, and the test reports thereof. We must recognize that the average farmer is not trained or equipped to sample seed in such a manner as to obtain a representative sample. The tendency may be for the farmer to merely grab a handful from the top of the bin, or he may even tend

to select what looks to him like the cleanest seed. High moisture content may cause heating down in the bin that does not damage the seed on the surface. Noxious-weed seeds may be unevenly distributed in the bin of seed. The bin may hold seed from two different fields and thus be of distinctly different quality. Reliance on farmers' samples for labeling seed delivered at a later date is a risky practice.

FS 901 - A shipment of tall fescue seed was labeled to have a germination of 85 percent. The seed was found to have a germination of 50 percent. The seedsman had purchased the seed on a contract specifying 85 percent germination. He did not receive a laboratory report of other labeling. This shipment was made before his test was completed. Question!! How did he know what calendar month and year to show on the label as the date of test? Did he have a complete record of the germination of this seed? Seven days after shipment, his test was completed, which indicated a germination of 60 percent. No effort was made to inform his customer of the false labeling after it became known. Had he corrected the labels or recovered the seed as soon as the mislabeling became known to him, the State seed inspector would never have discovered the error and no court action under the Federal Seed Act would have been filed.

FS 859 - A shipment of smooth brome seed was labeled to have a germination of 82 percent. The seed was found to have a germination of 55 percent. This was a blended lot. A sample of the seed was not tested by the seedsman after blending and before shipment. He relied on the computed germination of the individual lots blended together. Some of the lots blended had been tested more than six months prior to this shipment. This brings up two points for consideration (1) The Federal Seed Act provides that it shall be unlawful to ship seeds in interstate commerce unless the test to determine the percentage of germination shall have been completed within a 5-month period, exclusive of the calendar month in which the test has been completed. (2) The interstate shipper is liable for the labeling as to germination at the time the seed is shipped in interstate commerce. If the tests are made several months prior to shipment, they are not a reliable basis for labeling the seed.

FS 873 - A shipment of cotton seed was labeled to have a germination of 80 percent. The seed was found to have a germination of 45 percent with one percent hard seed remaining. The seedsman had purchased over 100 tons of cotton seed from a gin. Three tests in November, before processing, indicated 62 percent germination with 19 percent hard seeds, 51 percent germination with 34 percent hard seeds, and 59 percent germination with 19 percent hard seeds. No tests were made after processing. Shipment was made the following February. To assume that three samples from 100 tons of seed represents the quality of all the seed is assuming a considerable risk. Processing may or may not change the germination of the seed. Another mistake was to add the percentage of hard seed to the percentage of germination when labeling the seed.

The Federal Seed Act provides that the percentage of germination and the percentage of hard seeds, if any, shall be stated on the label. The sum of the germination percentage plus the hard seed percentage may be shown as "Total ---%" or "Total germination and hard seeds ---%".

#### Noxious-Weed Seeds

FS 876 - Two shipments of the same lot of timothy seed were not labeled to indicate the presence of the noxious-weed seed black-seeded plantain. Four samples of this seed were found to contain black-seeded plantain seeds at the rates of 34, 42, 40, and 30 per ounce. The seedsman's test record indicated black-seeded plantain at the rate of 31 per ounce. Apparently the seedsman's employee overlooked this indication of noxious-weed seeds when preparing the labels. The employee who prepared the labels should have checked the noxious-weed seed requirements of the State into which the shipments were being made.

FS 876 - A shipment of alsike clover seed was not labeled to indicate the presence of the noxious-weed seed buckhorn plantain. The seed was found to contain buckhorn plantain seeds at the rate of 31 per ounce. This seedsman had purchased the seed from another dealer in another State. The labels on the bags when received did not indicate the presence of buckhorn plantain seeds. Buckhorn plantain seeds are not considered noxious-weed seeds in this seedsman's State, and did not have to be shown. This seedsman relied upon his supplier's labeling when he reshipped the seed into another State where buckhorn plantain seeds are considered noxious-weed seeds. Question! What did the seedsman fail to do? The seedsman failed to determine whether this seed was labeled with respect to noxious-weed seeds in accordance with the seed law of the State into which the seed was eventually shipped.

FS 886 - A shipment of bentgrass seed was labeled to contain no noxious-weed seeds. The seed was found to contain the noxious-weed seed Klamath weed at the rate of 90 per pound. The firm's test record indicated "St. Johnswort" seeds at the rate of 360 per pound. The seedsman's employee that prepared the labels did not realize that "St. Johnswort" and "Klamath weed" are synonyms.

FS 892 - A shipment of striate lespedeza seed was labeled to contain the noxious-weed seed bracted plantain at the rate of 18 per pound. The seed was found to contain bracted plantain seeds at the rate of 387 per pound. The seedsman purchased the seed from another dealer within the same State and relied upon the supplier's labeling. After this shipment was made, the seedsman submitted a sample to a laboratory for testing. The report showed bracted plantain seeds at the rate of 342 per pound. The moral of this story is your supplier's labeling may not be reliable. The supplier in this case did not ship the seed in interstate commerce and was not liable under the Federal Seed Act.

FS 916 - A shipment of sudangrass seed was labeled to contain the

noxious-weed seed purple nightshade at the rate of 10 per pound. The seed was found to contain purple nightshade seeds at the rate of 117 per pound. The seedsman's test record indicated purple nightshade seeds at the rate of 10 per pound. It appears that his sample was not representative of the seed shipped. Maybe the lot of seed was not uniform, and the shipment in this instance happened to be a portion with more purple nightshade than the average of the lot.

FS 862 - A shipment of crested wheatgrass seed was labeled to contain no noxious-weed seeds. The seed was found to contain noxious-weed seeds at the rate of 40 per ounce. The sale was made by a firm that did not have the kind of seed in stock. The seller purchased the needed seed from another seedsman and instructed the seedsman to deliver the seed to a common carrier for shipment into another State. The firm that sold and ordered the seed shipped in interstate commerce could have been held liable in this instance. However, the seed firm that labeled and shipped the seed seemed to be the most culpable. It was in the best position to determine the quality of the seed. The seedsman did deliver the seed for transportation in interstate commerce and was subject to the act. The seed firm made a very common error. It submitted a sample to a State seed laboratory for testing. The State seed laboratory examined the seed for noxious-weed seed according to its own State law. The supplier failed to ask for a noxious-weed seed examination for the State into which the seed was to be shipped. The noxious-weed seed found was not noxious in the seedsman's own State, but it is considered noxious in the State into which this shipment was made.

#### Variety

FS 898 - Oat seed was labeled to be the Andrew variety. Trueness-to-variety tests indicated this seed was not the Andrew variety. The seedsman did not obtain and keep growers' declarations of variety, receiving records, and blending and processing records. It appeared that no precautions were taken to determine that the seed was of the variety stated.

FS 910 - A shipment of rye seed was labeled to be the Balbo variety. Trueness-to-variety tests indicated it was not the Balbo variety. The seedsman did not obtain and keep a grower's declaration of variety. He indicated that the seed was bought in good faith on the farmer's word and also that no other variety of rye had been grown in his community for 15 years.

FS 895 - A shipment of rye seed was represented to be the Abruzzi variety, to consist of 95.24 percent pure seed, 3.75 percent other crop seeds, and 0.92 percent inert matter; to contain the noxious-weed seed darnel at the rate of 42 per pound; and to be one lot of seed. A number of individual bag samples of this seed were tested. Some were the Abruzzi variety, some were mixtures of varieties, and some were not Abruzzi at all. The pure seed percentages ranged from 88.11 to 97.81. Other crop seed percentages ranged

from 1.84 to 9.77. Inert matter percentages ranged from 0.02 to 3.07. The rate of occurrence of darnel seeds ranged from none to 240 per pound. The seedsman did not obtain and keep growers' declarations of variety, or invoices or other documents indicating the seed to be the variety stated. Our investigation revealed that this shipment was made up of seed from various sources. No attempt was made to blend the seed to uniformity or determine by tests that it was all of equal quality and was therefore a "lot of seed" as that term is defined under the Federal Seed Act. An "average sample" of the entire amount was tested. Obviously, an average sample of this heterogenous mass of seed was not a reliable basis for labeling each bag.

FS 858 - A shipment of rye seed was labeled to be the Balbo variety. A trueness-to-variety test indicated it was not the Balbo variety. A grower's declaration of variety allegedly pertaining to this seed was furnished by the seedsman for our inspection. Our investigation revealed that the seed in this instance had been purchased from a grain elevator as feed rye, and was not the seed identified by the grower's declaration.

FS 854 - A shipment of sorghum seed was labeled to be the "Honey Drip" variety. The seed was a mixture of varieties and inter-crosses of sorghum. The seedsman obtained a grower's declaration of variety. However, the seed could be distinguished from Honey sorghum by characteristics of the seed. Therefore, the grower's declaration of variety did not constitute an exemption under section 203 of the act from being deemed liable.

#### Miscellaneous

FS 863 - Three shipments of mixed lawn seeds were found to be mislabeled as to the percentages of the various kinds included in the mixture. Some kinds claimed on the labels were not even present in the mixtures. Other kinds not claimed were present in excess of five percent and should have been shown. Some of the percentages for kinds present were false. No tests were made of the lots after blending. No records of blending were kept; therefore, any records of tests of the component lots the seedsman may have kept could not be identified with the seed shipped. The seedsman was deemed in violation of the Federal Seed Act not only for the false labeling but also for failure to keep a complete record.

#### Proposed Amendments to the Regulations Under the Federal Seed Act

Notice has been published in the Federal Register of a proposal to amend certain sections of the rules and regulations under the act. One hearing will be held June 19, 1961, in Washington, D. C. Another hearing will be held June 29, 1961, in Chicago, Illinois. The second hearing mentioned is scheduled to follow the convention of the American Seed Trade Association. Anyone interested in these proposed amendments may appear at the hearings and present his views orally, or comments may be submitted to the United States Department of

Agriculture, Washington, D. C. , in writing prior to July 31, 1961.

Proposals which may be of particular interest are as follows: The name "Ryegrass" would be removed from the list of names of kinds of agricultural seed, and the term "annual" would be recognized as a synonym of "Italian". This would require that ryegrass seed be labeled to show the name "perennial ryegrass" or "Italian (or annual) ryegrass," and the percentage thereof. Some freshly harvested ryegrass seed may be dormant, and the time interval between harvest in the Northwestern States and sowing in the Southeastern States will not always permit a florescence test to be made prior to shipment. It is intended that freshly harvested ryegrass seed will be recognized as indistinguishable seed during the months of July, August, and September. Grower's declarations or other documents establishing the name of the kind will be recognized as a proper precaution taken to assure the identity to be that stated. The exemption would not apply to blended lots of seed.

Section 201.34, which pertains to labeling as to kind, variety, or type, would be amended to provide that grower's declarations, invoices, and other documents would not be recognized as an exemption from liability for labeling indistinguishable seed as to kind, variety, or type if the person responsible for the labeling blended together or combined different lots of seed for which separate grower's declarations are required.

Glaucantha bluegrass, Kenya clover, hard fescue, green panicgrass, Wimmera ryegrass, beardless wheatgrass, and Siberian wheatgrass would be added to the kinds of agricultural seed subject to the act. Great burdock, tronchuda cabbage, and chives would be added to the kinds of vegetable seed subject to the act.

Rules for testing would be brought up to date and rules for sampling and tolerances would be amended to agree with rules for sampling and tolerances approved by the Association of Official Seed Analysts.

A declaration of labeling would be required to accompany the entry documents pertaining to imported seed.