The Federal Seed Act: Regulation of Feed Sales and Remedies Available to the See Purchaser

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Originally published in SOUTH DAKOTA LAW REVIEW
27 S. D. L. REV. 453 (1982)

THE FEDERAL SEED ACT: REGULATION OF SEED SALES AND REMEDIES AVAILABLE TO THE SEED PURCHASER*

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INTRODUCTION

The sale of seed is of particular interest to the farmer. If the farmer receives the wrong seed, or defective seed, the farmer may not discover the error until it is too late to replant. If this occurs, the loss to the farmer includes, in addition to the cost of the seed, the value of the lost crop. Similarly, if the farmer plants seed that is contaminated with undesirable weed seeds, it may take years and countless dollars to eventually rid the farm of the infestation.

To protect the farmer, the federal government and state legislatures have adopted statutes regulating the sale and shipment of seeds.[1] This arti-

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1. Most states have adopted seed regulations that are often substantially and conceptually the same as the Federal Seed Act, though do not specifically focus on the interstate sale or shipment of seed. *See, e.g.*, ARIZ. REV. STAT. ANN. §§ 3-231-242 (1956); ARK. STAT. ANN. §§ 77-301-322 (1981); CAL. FOOD & AGRIC. CODE § 52251-52511 (West 1968 & Supp. 1982); ME. REV. STAT. ANN. tit. 7 §§ 1041-1048 (1964); MINN. STAT. ANN. §§ 21.47-.58 (West 1981); MO. ANN. STAT. §§ 266.021-.140 (Vernon 1963 & Supp. 1982); MONT. CODE ANN. §§ 80-5-101-204 (1982); N. MEX. STAT. ANN. § 76-10-12 (1978); S.C. CODE ANN. §§ 46-21-10 to 46-21-660 (Law Co-op. 1976); S.D.C.L. ch. 38-12 (1981); TENN. CODE ANN. §§ 43-1123-1126 (Supp. 1979); TEX. CIV. CODE ANN. Art. 93b (Vernon 1969); UTAH CODE ANN. § 4-16-1-12 (Supp. 1981); VA. CODE §§ 3.1-262 to 3.1-284 (1973); WASH. REV. CODE ANN. ch. 15.49 (1971); VA. CODE ch. 19-16 (1975); WISC. STAT. ANN. §§ 94.38-46 (West 1972 & Supp. 1981); WYO. STAT. §§ 11-12 (1977).

cle explores the Federal Seed Act and the protection it affords the farmer who purchases seed. This examination will consider the specific requirements imposed upon the seed producer/distributor with a view toward understanding the remedies that are available to the farmer in the event the seed is unacceptable.

NATURE AND SCOPE OF THE FEDERAL SEED ACT

Since 1939 purchasers of agricultural seeds have been protected by federal legislation known as the "Federal Seed Act".[2] This Act and similar state statutes are designed to protect buyers against purchasing contaminated or defective seed.[3] The purpose of the Act is to inform the seed purchaser of what he is buying and to protect the seed purchaser against any alteration of that seed.[4] As a result, the Act imposes specific obligations upon the producer/distributor which require the disclosure of certain information regarding the seed.[5] These labeling and disclosure requirements apply to seeds "used for seeding purposes in the United States"[6] which are transported or delivered for transportation in interstate commerce.[7] The Secretary of the United States Department of Agriculture is authorized to identify the particular seeds to which the Act applies. Accordingly, regulations provide that the grass, forage and field crop seeds to which the Act applies includes alfalfa, barley, beans, bluegrass, clover, corn, peanuts, soybeans, sunflowers and wheat.[8] Similarly, lawn grass[9] and vegetables such as

2. Act of Aug. 9, 1939, ch. 615, 53 Stat. 1257 (*codified as amended* at 7 U.S.C. §§ 1551-1611 (1976)).

3. Agricultural Serv. Ass'n, Inc. v. Ferry-Morse Seed Co., 551 F.2d 1057, 1068 (6th Cir. 1977).

4. E.K. Hardison Seed Co. v. Jones, 149 F.2d 252, 256 (6th Cir. 1945).

5. *Id.* For discussion of these obligations, see *supra* notes 14-30 (labeling), notes 31-41 (advertising), and notes 96-134 (disclaimers and warranties).

6. 7 U.S.C. § 1561(7)(A) (1976).

7. 7 U.S.C. § 1571. *See also* C.P. Wren v. Kirkland Distrib. Co., — S.C. —, 156 S.E.2d 865 (1967). It is important to note that because of the similarity between state and federal approaches to the problem, unless the interstate aspects of the transaction are not at issue, the action will most likely be brought primarily under the relevant state laws rather than as an action involving the federal act. Further, if the issue is the liability of the distributor to the purchaser, the federal act will also not likely be directly involved since that act is primarily authority for action taken by the Secretary of Agriculture but probably does not create a private right of action against the seed supplier.

8. 7 C.F.R. § 201.2(h) (1980) provides that the following agricultural seeds are within the scope of the Federal Seed Act: Agrotricum-X Agrotriticum Ciferri and Giacom; Alfalfa-Medicago sativa L; Alfileria-Erodium cicutarium (L.) L'her; Alyceclover-Alysicarpus vaginalis (L.) DC; Bahiagrass-Paspalum notatum Fluegge; Barrel-clover-Medicago truncatula Gaertn; Barley-Hordeum vulgare L; Bean, adzuki Vigna angularis (Willd.) Ohivi and Ohashi; Bean, adzuki-Phaseolus angularis Willd.; Bean, field-Phaseolus vulgaris L; Bean, mung-Vigna radiata (L.) Wilczek; Bean-(See Velvetbean); Beet, field-Beta vulgaris L; Beet, sugar-Beta vulgaris L; Beggarweed-Desmodium tortuosum (Sev.) DC; Bentgrass, colonial-Agrostis tenuis Sibth; Bentgrass, creeping-Agrostis stolonifera var. palustris (Huds.) Farw; Bentgrass, velvet-Agrostis canina L; Bermudagrass-Cynodon dactylon (L.) Pers. var. dactylon; Bermudagrass, giant-Cynodon sp. var. aridus. Harlan et de Wit.; Bluegrass, bulbous-Poa bulbosa L.; Bluegrass, Canada-Poa compressa L.; Bluegrass, glaucantha-Poa glaucantha Gaud.; Bluegrass, Kentucky-Poa Pratensis L.; Bluegrass, Nevada-Poa nevadensis Vasey; Bluegrass, rough-Poa trivialis L.; Bluegrass, Texas-Poa arachnifera Torr.; Bluegrass, wood-Poa nemoralis L.; Bluestem, big-Andropogon gerardi Vitm (A. Gerardi Vitman); Bluestem, little Schizachyrium scoparium (Michx.) Nash (Andropogon scoparius

Michx.); Bluestem, sand-Andropogon haillii Hack; Bluestem, yellow-Bothriochloa ischaemum (L.) Keng.; Brome, field-Broums arvensis L.; Brome, meadow-Bromus biebersteinii Roem and Schult.; Brome, mountain-Bromus marginatus Nees.; Brome, smooth-Bromus inermis Leyss.; Broomcorn-Sorghum bicolor (L.) Moench.; Buckwheat-Fagopyrum esculentum Moench (F. vulgare Hill.); Buffalograss-Buchloe dactyloides (Nutt.) Engl.; Buffelgrass-Cenchrus cillaris L. (Pennise tum (L.) Link.); Bur-clover, California-Medicago poly-morpha L.; Bur-clover, spotted-Medicago arabica (L.) DC.; Burnet, little-Sanguisorba minor Scop.; Buttonclover-Medicago orbicularis (L.) All.; Canarygrass-Phalaris canariensis L.; Canarygrass, reed-Phalaris arundinacea L.; Carpetgrass-Axonopus affinis Chase.; Castorbean-Ricinum communis (L.); Chess, soft-Bromus mollis L.; Chickpea-Cicer arietinum L.; Clover, alsike-Trifolium hybridum L.; Clover, arrowleaf-Trifolium vesiculosum Savi.; Clover, berseem-Trifolium alexandrinum L.; Clover, cluster-Trifolium glomeratum L.; Clover, crimson-Trifolium incarnatum L.; Clover, Kenya-Trifolium semipilosum Fresh.; Clover, ladino-Trifolium repens L.; Clover, lappa-Trifolium lappaceum L.; Clover, large hop-Trifolium campestre Schreb.; Clover, Persian-Trifolium resupinatum L.; Clover, red or Red clover, mammoth-Trifolium pratense L.; Red clover, medium-Trifolium pratense L.; Clover, rose-Trifolium hirtum All.; Clover, small hop (suckling)-Trifolium dubium Sibth.; Clover, strawberry-Trifolium fragiferum L.; Clover, sub (subterranean)-Trifolium subterraneum L.; Clover, white-Trifolium repens L. (also see Clover, ladino); Clover, (also see Alyceclover, Bur-clover, Button-clover, Sourclover, Sweetclover); Corn, field-Zea mays L; Corn, pop-Zea mays L; Cotton-Gossypium spp; Cowpea-Vigna sinensis (Torner) Savi; Crambe-Crambe abyssinica Hockst. ex R.E. Fries; Crested dogtail-Cynosurus cristatus L; Crotalaria, lance-Crotalaria lanceolata E. Mey; Crotolaria, showy-Crotalaria spectabilis Roth; Crotalaria, slender-leaf-Crotolaria brevidens Benth; Crotalaria, striped-Crotolaria pallida Ait; Crotalaria, Sunn-Crotalaria juncea L; Crownvetch-Coronilla varia L; Dallisgrass-Paspalum dilatatum Poir; Dichondra-Dichrondra repens Forst; Drop-seed, sand-Sporobolus cryptandrus (Torr.) A. Gray; Emmer-Triticum dicoccum Schrank; Fescue, Chewings-Festuca rubra var. commutata Gaud; Fescue, hair-Festuca tenuifolia Sibth; Fescue, hard-Festuca longifolia Thuill; Fescue, meadow-Festuca pratensis Huds; Fescue, red-Festuca rubra L. subsp. rubra; Fescue, sheep-Festuca ovina L. var. ovina; Fescue, tall-Festuca arundinacea Shred; Flax-Linum usitatissimum L; Grama, blue-Bouteloua gracilis (H.B.K.) Lag; Grama, side-oats-Bouteloua curtipendula (Michx.) Torr; Guar—Cyamopsis tetragonoloba (L.) Taub; Guineagrass—Panicum maximum Jacq; Hardinggrass—Phalaris stenoptera Hack; Hemp—Cannabis sativa L; Indiangrass, yellow—Sorghastrum nutans (L.) Nash; Indigo, hairy—Indigofera hirsuta L; Japanese lawngrass—Zoysia Japonica Steud; Johnsongrass—Sorghum halepense (L.) Pers; Kudzu—Pueraria lobata (Willd.) Ohwi; Lentil—Lens culinaris Medic; Lespedeza, Korean—Lespedeza stipulacea Maxim; Lespedeza, sericea or Chinese—Lespedeza cuneata (Dumont) D; Don [L. sericea (Thunb.) Miq.] Lespedeza, Siberian—Lespedeza juncea (L.f.) Pers; Lespedeza, straite—Lespedeza striata (Thunb.) Hood and Am; Lovegrass, sand—Eragrostis trichodes (Nutt.) Wood; Lovegrass, weeping—Eragrostis curvula (Schrad.) Nees; Lupine, blue—Lupinus angustifolius L; Lupine, white—Lupinus albus L; Lupine, yellow—Lupinus luteus L; Manila-grass—Zoysia matrella (L) Merr; Meadow foxtail—Alopecurus pratensis L; Medick, black—Medicago lupulina L; Milkvetch—Astragalus cicer L; Millet, browntop—Brachiarai ramosa (L.) Stapf; Millet, foxtail—Setaria italica (L.) Beauv; Millet, Japanese—Echninochloa crusgalli var. frumentacea Roxb.) Wight; Millet, pearl—Pennisetum americanum (L.) K. Schum; Millet, proso—Panicum miliaceum L; Molasses-grass—Melinis minutiflora Beauv; Mustard, India—Brassica juncea (L.) Coss; Mustard, black—Brassica nigra Koch; Mustard, white—Sinapsis alba L; Napiergrass—Pennisetum purpureum Schumach; Oat—Avenua byzantina C. Koch., A. sativa L., A. nuda L; Oatgrass, tall—Arrhenatherum elatius (L.) Mert. and Koch; Orchardgrass—Dactylis glomerata L; Panicgrass, blue—Panicum antidotale Retz; Panicgrass, green—Panicum maximum var. trichoglume Eyes; Peanut—Arachis hypogaea L; Pea, field—Pisum sativum var, arvense (L.) Poir; Poa trivialis—(see Bluegrass, rough); Rape, annual—Brassica napus var annua Koch; Rape, bird—Brassica campestris L; Rape, winter—Brassica napus var biennis (Schubl. and Mart.) Reichb; Redtop—Agrostis gigantea Roth; Rescuegrass—Bromus unioloides Kunth; Rhodesgrass—Chloris gayana Kunth; Rice—Oryza sativa L; Ricegrass, Indian—Oryzopsis hymenoides (Roem. and Schult.) Ricker; Roughpea—Lathyrus hirsutis L; Rye-Secale cereale L; Ryegrass, Annual or Italian—Lolium multiflorum Lam; Ryegrass, perennial—Lolium perenne L; Ryegrass, Wimmera—Lolium rigidum Gaud; Safflower—Carthamus tinctorius L; Saltbush, fourwing—Atriplex canescens (Pursh.) Nutt; Sainfoin—Onobrychis viciaefolia Scop; Sesame—Sesamum indicum L; Sesbania—Sesbania exaltata (Raf.) Torr; Smilo—Oryzopsis milacea (L.) Benth and Hook; Sorghum almum—Sorghum almum Parodi; Sorghum—Sorghum bicolor (L.) Moench; Sorghum—Sudangrass Sorghum bicolor x S. sudanense; Sorgrass—Rhizomatous derivatives of a Johnsongrass x sorghum cross or a Johnsongrass x Sudangrass cross; Sour-clover—Melilotus indica (L.) All; Soybean—Glycine max (L.) Merrill [Soja max (L.) Piper]; Spelt—Triticum spelta L; Sudangrass—Sorghum vulgare var sudanenses (Piper) Hitchc; Sunflower—Helianthus annuus L; Sweetclover, white—Melilotus alba Desr; Sweetclover, yellow—Melilotus

beans, carrots, mustard, onion, spinach, squash and tomatoes[10] are also subject to the Act requirements.

Although the Act authorizes the Secretary of the Department of Agriculture to take action against seed distributors who may be in violation of the Act,[11] the Act offers only limited direct protection to the injured seed purchaser. The seed purchaser, however, can bring a private action under

officinalis (L.) Lam; Sweet vernalgrass—Anthoxanthum odoratum L; Switchgrass—Panicum virgatum L; Timothy—Phleum pratense L; Timothy, turf—Phleum nodosum (L.) Huds; Tobacco—Nicotiana tobacum L; Trefoil, big—Lotus uliginosus Schduhr; Trefoil, birdsfoot—Lotus corniculatus L; Triticale—x Triticosecale (Secale x Trilicum); Vasey-grass—Paspalum urvillei Steud; Veldtgrass—Ehrharta calycina J.E. Smith; Velvetbean—Mucuna deeringisna (port.) Merr; Velvetgrass—Holcus lanatus L; Vetch, common—Vicia sativa L. subsp. sativa; Vetch, hairy—Vicia villosa Roth; Vetch, Hungarian—Vicia pannonica Grantz; Vetch, monantha—Vicia articulata Hornem. (V. monantha Desf.); Vetch, narrowleaf—Vicia sativa subsp. nigr (L.) Ehrh; Vetch, purple—Vicia benghalensis L; Vetch, woollypod—Vicia villosa subsp. varia (Host) Corb; Wheat, common—Tritcum aestivum L. (T. vulgare Vill.); Wheat, club—Triticum compactum Host; Wheat, durum—Triticum durum Desf; Wheat, Polish—Triticum polonicum L; Wheat, poulard—Triticum trugidum L; Wheat X Agroticum—Triticum X Agrotriticum; Wheatgrass, beardless—Agropyron inerme (Schribn. & Smith) Rydb; Wheatgrass, created or fairway crested—Agropyron cris-tatum (L.) Gaertn; Wheatgrass, crested or standard crested—Agropyron desertorium (Fisch.) Schult; Wheatgrass, intermediate—Agropyron intermedium (Host) Beauv; Wheatgrass, pubescent—Agropyron trichophorum (Link) Richt; Wheatgrass, Siberian—Agropyron sibiricum (Willd.) Beauv; Wheatgrass, slender—Agropyron trachycaulum (Lipk.) Malte, ex H.F. Lewis; Wheatgrass, streambank—Agropyron riparium Scribn. and Smith; Wheatgrass, tall—Agropyron elongatum (Host) Beauv; Wheatgrass, western—Agropyron smithii Rydb; Wild-rye, Canada—Elymus canadensis L; Wild-rye, Russian)—Elymus junceus Fisch; Zoysia japonica—(see Japanese lawngrass); Zoysia matrella—(see Manila grass).

9. 7 U.S.C. § 1571(j) (1976).

10. The following are identified as vegetable seeds under the act and its rules and regulations, 7 C.F.R. 201.2(i) (1980): Artichoke—Cynara scolymus L; Asparagus—Asparagus officinalis L. Asparagusbean—Vigna ungiuculta (L.) Walp. subsp. sesquipedalis (L.) Verde; Bean, garden—Phaseolus vulgaris L; Bean, lima—Phaeolus lunatus (L.); Bean, runner—Phaseolus coccineus L; Beet—Beta vulgaris L. var. vulgaris; Broadbean—Vicia faba L; Broccoli—Brassica oleracea var. botrytis L; Brussels sprouts—Brassica oleraccea var. gemmifera Zenker; Burdock, great—Arctium lappa L; Cabbage—Brassica oleracea var. capitata L; Cabbage, tronchuda—Brassica oleracea var. tronchuda Bailey; Cantaloupe—(see muskmelon); Cardoon—Cynara cardunculus L; Carrot—Daucus carota L; Cauliflower—Brassica oleracea var. botrytis L; Celeriac—Apium graveolens var. rapaceum DC; Celery—Apium graveolens var. dulce (Mill.) Pers.; Chard, Swiss—Beta vulgaris var. cicla L; Chicory—Chichorium intybus L; Chinese cabbage—Brassica pekinensis (Lour.) Rupr; Chives—Allium schoenophrasum L; Citron—Citrullus lanatus (Thunb.) Matsum. and Nokai var. citroides (Bailey) Mansf; Collards—Brassica oleracea var. acephala DC; Corn, sweet—Zea mays L; Cornsalad—Valerianella locusta (L.) Laterade; Cowpea—Vigna sinensis (Torner) Savi; Cress, garden—Lepidium sativum L; Cress, upland—Barbarea verna (Mill) Aschers; Cress, water—Nasturtium officinale R. Br; Cucumber—Cucumis sativus L; Dandelion—Taraxacum officinale Weber; Eggplant—Solanum melongena (L.); Endive—Cichorium endivia L; Gherkin, West India—Cucumis anguria L; Kale—Brassica oleracea var. acephala DC; Kale, Chinese—Brassica oleracea var. alboglabra (Bailey) Musil; Kale, Siberian—Brassica napus var. pabularia (DC) Relchb; Kohlrabi—Brassica oleracea var. gongylodes L; Leek—Allium ampeloprasum L; Lettuce—Lactuca sativa L; Muskemelon—Cucumis melo L; Mustard, India—Brassica juncea (L.) Coss; Mustard, spinach—Brassica perviridis Bailey; Okra—Abelmoschas escalentus (L.) Moench; Onion—Allium cepa L; Onion, Welsh—Allium fistulosum L; Pak-choi—Brassica chinensis L; Parsley—Petroselinum crispum (Mill.) A.W. Hill; Parsnip—Pastinaca sativa L; Pea—Pisum sativum L; Pepper—Capsicum spp; Pumpkin—Cucurbita pepo L., C. moschata Duchesne and C. maxima Duchesne; Radish—Raphanus sativus L; Rhubarb—Rheum rhaponticum L; Rutabaga—Brassica napus var. napobrassica (L.) Reichb; Salsify—Tragopogon porrifolius L; Sorrel—Rumex acetosa L; Soybean—Glycine max (L.) Merrill [Soja max (L.) Piper]; Spinach—Spinacia oleracea L; Spinach, New Zealand—Tetragonia tetrogoniodes (Pall.) Ktze; Squash—Cucurbita Pepo L., C. moschata Duchesne and C. Maxima Duchesne; Tomato—Lycopersicon esculentum Mill; Tomato, husk—Physalis pubescens L; Turnip—Brassica rapa L; Watermelon—Citrullus lanatus (Thunb.) Matsum, and Nakai.

11. For example, the Administrator of the Agricultural Marketing Service can issue cease and

state law to redress the injury because the same activities which offend federal law will generally violate the state laws as well. On the other hand, indirect protection is substantial. Private actions based upon contract or tort may involve federal act requirements to establish the basic elements of the case. Thus, where seed companies distributed seeds in violation of this Act, courts have held that the seed companies committed acts which were negligent *per se*, and were liable to the purchasers of the seed for resultant damages.[12] Similarly, seed purchasers can rely on the label information required by the federal Act to create warranties which may be asserted as the basis for the relief sought.[13]

RESTRICTIONS ON SEED PRODUCERS AND DISTRIBUTORS

Labeling Requirements

The Federal Seed Act prohibits any person to transport or deliver for transportation in interstate commerce certain types of seeds which are not properly labeled.[14] The specific labeling requirements vary depending upon the type of seed.

Agricultural seeds[15] or any mixture of agricultural seeds for seeding purposes must be identified on the label by name and kind[16] or variety[17] and by the percentage which each represents of the total weight of the container.[18] If the seed is a hybrid, that designation must also be present.

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desist orders preventing the distribution of seeds which do not conform to the requirements of 7 U.S.C. § 1599 (1976). *See also* E.K. Hardison v. Jones, 149 F.2d 252 (6th Cir. 1945).

12. Agricultural Serv. Ass'n, Inc. v. Ferry-Morse Seed Co., 551 F.2d 1057 (6th Cir. 1977).

13. *See infra* text accompanying notes 86-124.

14. 7 U.S.C. § 1571 (1976).

15. Agricultural seeds are defined as grass, forage and field crop seeds. 7 U.S.C. § 1561(7)(A) (1976).

16. "Kind" means one or more species or subspecies which singly or collectively is known by one common name, such as soybeans, carrots or radishes. 7 U.S.C. § 1561(11) (1976).

17. "Variety" means a subdivision of a kind which can be differentiated from other sorts of the same kind, such as Flat Dutch cabbage. 7 U.S.C. § 1561(12) (1976).

18. 7 U.S.C. § 1571(a)(1)-(10) (1976) requires that the label contain the following information:

(1) The name of the kind or kind and variety for each agricultural seed component present in excess of 5 per centum of the whole and the percentage by weight of each: *Provided*, that if any such component is one which the Secretary of Agriculture has determined, in rules and regulations prescribed under section 1592 of this title, is generally labeled as to variety, the label shall bear, in addition to the name of the kind, either the name of such variety or the statement "Variety Not Stated": *And provided, further*, That in the case of any such component which is a hybrid seed it shall, in addition to the above requirements, be designated as hybrid on the label;

(2) Lot number or other identification;

(3) Origin, stated in accordance with paragraph (a)(1) of this section, of each agricultural seed present which has been designated by the Secretary of Agriculture as one on which a knowledge of the origin is important from the standpoint of crop production, if the origin is known, and if each such seed is present in excess of 5 per centum. If the origin of such agricultural seed or seeds is unknown, that fact shall be stated;

(4) Percentage by weight of weed seeds, including noxious-weed seeds;

(5) Kinds of noxious-weed seeds and the rate of occurrence of each, which rate shall be expressed in accordance with and shall not exceed the rate allowed for shipment, movement, or sale of such noxious-weed seeds by the law and regulations of the State into which the seed is offered for transportation or transported or in accord-

Additionally, the label must disclose the lot number, the origin of the seed, the percentage by weight of weed seeds, the kind and rate of occurrence of noxious weed seeds, the percentage of germination and date of test for each variety or kind, and the date after which any innoculant shown on the label is not claimed to be effective. Similar labeling requirements must be followed for vegetable seeds.[19] Specific requirements vary depending on whether the germination rate is less or greater than the standard established by the Secretary of the Department of Agriculture and whether the quantity is less or greater than one pound.[20]

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ance with the rules and regulations of the Secretary of Agriculture, when under the provisions of section 1561(a)(9)(A)(iii) of this title he shall determine that weeds other than those designated by State requirements are noxious;

(6) Percentage by weight of agricultural seeds other than those included under paragraph (a)(1) of this section;

(7) Percentage by weight of inert matter;

(8) For each agricultural seed, in excess of 5 per centum of the whole, stated in accordance with paragraph (a)(1) of this section, and each kind or variety or type of agricultural seed shown in the labeling to be present in a proportion of 5 per centum or less of the whole, (A) percentage of germination, exclusive of hard seed, (B) percentage of hard seed, if present, and (C) the calendar month and year the test was completed to determine such percentages;

(9) Name and address of (A) the person who transports, or delivers for transportation, said seed in interstate commerce, or (B) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture under rules and regulations prescribed under section 1592 of this title, indicating the person who transports or delivers for transportation said seed in interstate commerce;

(10) The year and month beyond which an inoculant, if shown in the labeling, is no longer claimed to be effective.

19. 7 U.S.C. § 1571(b)(3) (1976).

20. For containers of vegetable seeds of one pound or less, in which the germination rate is equal to or above that required by standards established by the Secretary of Agriculture, 7 U.S.C. § 1571(b)(1)(A) (1976) requires that the label must contain the following information:

(A) The name of each kind and variety of seed, and if two or more kinds or varieties are present, the percentage of each, and further, that in the case of any such component which is a hybrid seed, it shall be designated as hybrid on the label; and

(B) Name and address of

(i) the person who transports, or delivers for transportation, said seed in interstate commerce; or

(ii) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture under rules and regulations prescribed under section 1592 of this title, indicating the person who transports or delivers for transportation said seed in interstate commerce.

For containers of vegetable seeds of one pound or less, for which the germination rate is less than the standard established by the Secretary of Agriculture, 7 U.S.C. § 1571(b)(2) (1976) requires that the label contain the following information:

(A) The name of each kind and variety of seed, and if two or more kinds or varieties are present, the percentage of each, and further, that in the case of any such component which is a hybrid seed, it shall be designated as hybrid on the label; and

(B) For each named kind and variety of seed—

(i) the percentage of germination, exclusive of hard seed;

(ii) the percentage of hard seed, if present;

(iii) the calendar month and year the test was completed to determine such percentages;

(iv) the words "Below Standard"; and

(C) Name and address of—

(i) the person who transports, or delivers for transportation, said seed in interstate commerce; or

(ii) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture under rules and regula-

Under the Act, any interstate or foreign shipment of agricultural seed mixtures intended for lawn and turf seed purposes in containers of fifty pounds or less must bear a label giving specific information on any grass or turf seed in excess of 5% of the total weight.[21] This information must characterize the grass as to fine or coarse texture and identify the percentage by weight of each kind, identify the grass by kind or variety, list the germination and hard seed percentages and the germination test date, and identify by percentage by weight as "other ingredients," any weed seeds or agricultural seeds included in the container.[22] The label contents will be deemed to create express warranties as to the facts so stated[23] and may create implied warranties under state uniform commercial codes.[24] The buyer of labeled seed may properly reject seeds that do not conform to label statements provided he does so within a reasonable period of time.[25]

In addition to prohibiting the interstate commerce of improperly labeled seeds, the Act also proscribes commerce involving seeds that are falsely labeled.[26] Under the Act, any labeling, advertisement, or other representation that a seed is certified seed will be deemed to be false unless a seed certifying agency determines that the seed involved conforms to genetic standards of purity and identity as to kind or variety, and complies with the rules and regulations of that agency pertaining to the particular seed.[27] In addition, the seed must bear an official label issued for that seed by a seed certifying agency, certifying that the seed is of a specified class and a speci-

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tions prescribed under section 1592 of this title, indicating the person who transports or delivers for transportation said seed in interstate commerce.

For containers of vegetable seeds of more than one pound, 7 U.S.C. § 1571(b)(3) (1976) requires that the label include the following information:

(A) The name of each kind and variety of seed, and if two or more kinds or varieties are present, the percentage of each and, further, that in the case of any such component which is a hybrid seed, it shall be designated as hybrid on the label;
(B) Lot number or other lot identification;
(C) For each named kind and variety of seed—
  (i) the percentage of germination, exclusive of hard seed;
  (ii) the percentage of hard seed, if present;
  (iii) the calendar month and year the test was completed to determine such percentages; and
(D) Name and address of—
  (i) the person who transports, or delivers for transportation, said seed in interstate commerce; or
  (ii) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture under rules and regulations prescribed under section 1592 of this title, indicating the person who transports or delivers for transportation said seed in interstate commerce.

21. 7 U.S.C. § 1571(j) (1976).

22. *Id.*

23. Agricultural Serv. Ass'n, Inc. v. Ferry-Morse Seed Co., Inc., 551 F.2d 1057 (6th Cir. 1977); Gauthier v. Bogard Seed Co., 377 So. 2d 1290 (La. Ct. App. 1979); Williams v. Ring Around Products, Inc., 344 So. 2d 1125 (La. Ct. App. 1977).

24. Gibson v. Worley Mills, Inc., 614 F.2d 464 (5th Cir. 1980).

25. Jacob Hartz Seed Co., Inc. v. E.R. Coleman, — Ark. —, 612 S.W.2d 91 (1981).

26. 7 U.S.C. § 1571(d) (1976).

27. 7 U.S.C. § 1562 (1976). The requirements which must be met to qualify as an official certifying agency are set forth in 7 C.F.R. §§ 201.67-78 (1980).

fied kind or variety.[28] It has been held that a seed company which is required to clearly certify on a shipping tag the contents of seed containers, may not immunize itself from negligence nor limit its liability to the amount of the seed's purchase price in situations where it sends the wrong seed.[29] Additionally, at least one court has held the seed distributor liable on a negligence *per se* theory where the seed contained noxious weed seeds contrary to label information.[30]

Advertising

The Act declares that it is unlawful for any person to disseminate, or cause to be disseminated, any false advertisement concerning seed.[31] This prohibition applies to all types of advertising which involve the use of the United States mail or interstate or foreign commerce.[32] Where the advertisement is made by a person, advertising agency, or other disseminator of advertising on behalf of someone else, liability can be avoided by furnishing to the Secretary of the Department of Agriculture, on request, the name and post office address of the person, or advertising agency, who causes, directly or indirectly, the dissemination of the advertisement.[33] Thus, the primary purpose of this provision is to insure that those who are ultimately responsible for the advertising bear the responsibility for its content.

The Federal Seed Act defines "advertisement" very broadly to include all representations, other than those on the label, relating to the seed covered by the Act. As a result, advertisements such as those often found on billboards and on television would be covered by the Act. The protection offered the farmer, however, is somewhat limited. Unlike label information which may create implied warranties of merchantability or of fitness for a particular purpose,[34] the advertisement restrictions apparently protect the farmer only against misrepresentations as to plant variety and not as to seed performance.

The regulations promulgated under the Act suggest that the primary factor to be used in making the determination of whether the advertisement is false is the representation in the advertisement as to the kind and variety of seed involved.[35] As a result, the regulations prohibit the use of kind and variety names which might create a misleading impression as to the history or characteristics of the seed.[36] Seed sellers may use terms descriptive as to color, shape, size, habit of growth, disease-resistance, or other characteristics of the kind or variety in advertisements provided the use clearly indicates

28. 7 U.S.C. § 1562 (1976).
29. Dessert Seed Co. v. Drew Farmers Supply, Inc., 248 Ark. 858, 454 S.W.2d 307 (1970).
30. Gibson v. Worley Mills, Inc., 614 F.2d 464 (5th Cir. 1980).
31. 7 U.S.C. § 1575 (1976). *See also* United States v. Dunn, 55 F. Supp. 535 (S.D.N.Y. 1944).
32. 7 U.S.C. § 1575 (1976).
33. 7 U.S.C. § 1575 (1976).
34. Agricultural Serv. Ass'n, Inc. v. Ferry-Morse Seed Co., Inc., 551 F.2d 1057 (6th Cir. 1977).
35. 7 C.F.R. § 201.36b (1980).
36. 7 C.F.R. § 201.36b(a) (1980).

that the descriptive term is not part of the name of the kind or variety.[37] Likewise, sellers may use terms descriptive of quality or origin and terms descriptive of the basis for representations so long as the terms are clearly identified as being other than part of the name of the kind or variety.[38] Finally, advertisements may use terms descriptive of the manner or method of production or processing,[39] and brand names and terms taken from trademarks provided the use of such terms is not misleading.[40] Thus, seed may not be advertised under a trademark or brand name in any manner which could create the impression that the trademark or brand name is the variety name.[41] Similarly prohibited is the advertising of seed under a brand name or trademark which, in fact, is a mixture of varieties without a statement to that effect since it may create the impression that the seed is of a single variety and thus be misleading.[42]

RESTRICTIONS ON IMPORTATION AND STAINING OF SEEDS

Importation and Staining of Seeds

The Federal Seed Act imposes a number of restrictions upon the importation of seeds. First, it is unlawful under the Act to import agricultural or vegetable seeds which are adulterated or unfit for seeding purposes, or which are required to be stained and are not so stained, or which are falsely labeled or misleading in any respect.[43] Seed is generally considered adulterated under the Act if it contains more than 5% by weight of seed or seeds of another kind or kinds of similar appearance.[44] Similarly, seed is generally considered unfit for seeding purposes if (a) any such seed contains noxious-weed seeds, (b) such seed contains more than 2% by weight of weed seeds, or (c) such seed contains less than 75% of pure-live seed.[45]

Additionally, it is unlawful under the Act to import: screenings of any seed;[46] any seed containing 10% or more of the seeds of alfalfa or red clover which has not been properly stained;[47] and seed containing 10% or more of any agricultural or vegetable seed that is not properly identified as to lot, kind, and variety;[48] or any agricultural or vegetable seeds or any mixtures

37. 7 C.F.R. § 201.36b(b) (1980).
38. 7 C.F.R. § 201.36b(c) (1980).
39. *E.g.*, certified, registered, delinted, scarified, treated or hulled.
40. 7 C.F.R. § 201.36b(d) (1980).
41. 7 C.F.R. § 201.36b(e) (1980).
42. *Id.*
43. 7 U.S.C. § 1581(a)(1) (1976).
44. 7 U.S.C. § 1583 (1976). An exception is provided for certain types of clover where the Secretary of Agriculture determines that the presence of such seed mixtures is not detrimental to the user of the seed. *See* 7 C.F.R. § 201.109 (1980).
45. 7 U.S.C. § 1584 (1976).
46. 7 U.S.C. § 1581(a)(2) (1976). Screenings generally refer to chaff, sterile florlets, immature seed, weed seed or other inert materials. 7 U.S.C. § 1561(a)(22) (1976); 7 C.F.R. § 201.203 (1980). The importation restrictions do not apply to screenings of wheat, oats, rye, barley, buck wheat, field corn, sorghum, broom corn, flax, millet, proso, soybeans, cowpeas, field peas or field beans which are not imported for seeding purposes. 7 U.S.C. § 1581(a)(2) (1976).
47. 7 U.S.C. § 1581(a)(3) (1976). *See infra* text accompanying notes 50-58.
48. 7 U.S.C. § 1581(a)(4) (1976).

thereof which have been treated but which are not properly labeled as to their treatment.[49]

The administration of importation regulations relating to seeds are jointly administered by the Secretary of Treasury and the Secretary of Agriculture.[50] The Federal Seed Act prohibits any person to transport or deliver for transportation in interstate commerce seed which is required to be stained under the provisions of the Act and is not so stained,[51] and seed which has been stained to resemble seed stained in accordance with the provisions of the Act.[52] Further, the Act prohibits transporting in interstate commerce, seed which is a mixture of seeds which are required to be stained or which are stained with different colors under the provisions of this Act,[53] and seed which is a mixture of any seed required to be stained with seed of the same kind produced in the United States.[54] Apparently, the basic purpose behind the staining requirement is to identify alfalfa and red clover seed produced outside of the United States.[55]

Staining of seed is done so that a designated portion of the seed will be completely and distinctly stained the prescribed color.[56] This seed is then blended with the unstained seed in accordance with instructions issued by the Department of Agriculture.[57] The particular color used for the staining will vary, depending upon the country of origin of the seed. For example, alfalfa or red clover seed grown in any foreign country other than the countries of South America and the Dominion of Canada must be stained red.[58] Seed grown in the countries of South America must be stained orange-red.[59]

Certified Seed

"Certified" seed generally means seed which an official certifying agency has determined to conform to standards of genetic purity and iden-

49. 7 U.S.C. § 1581(a)(5) (1976). The treatment label must contain the following information:
(A) A word or statement indicating that the seeds have been treated;
(B) The commonly accepted coined, chemical (generic), or abbreviated chemical name of any substance used in such treatment;
(C) If the substance used in such treatment in the amount remaining with the seeds is harmful to humans or other vertebrate animals, an appropriate caution statement approved by the Secretary of Agriculture as adequate for the protection of the public, such as "Do not use for food or feed or oil purposes"; *provided*, That the caution statement for mercurials and similarly toxic substances, as defined in said rules and regulations, shall be a reprepresentation of a skull and crossbones and a statement such as "This seed has been treated with POISON", in red letters on a background of distinctly contrasting color; and
(D) A description, approved by the Secretary of Agriculture as adequate for the protection of the public, of any process used in such treatment.
50. 7 U.S.C. §§ 1582, 1592 (1976).
51. 7 U.S.C. § 1571(e) (1976).
52. 7 U.S.C. § 1571(f) (1976).
53. 7 U.S.C. § 1571(g) (1976).
54. 7 U.S.C. § 1571(g) (1976).
55. 7 U.S.C. § 1585 (1976).
56. 7 C.F.R. §§ 201.104, 201.105 (1980).
57. 7 C.F.R. § 201.105 (1980).
58. 7 C.F.R. § 201.104(a) (1980).
59. 7 C.F.R. § 201.104(b) (1980).

tity as to variety.[60] As used in the Federal Seed Act, however, "certified" seed is also a separate, identifiable category of seed and, apparently, represents the culmination of the seed development process.[61] As such, the concept of "certified" seed relates more to the development of genetically pure varieties of seeds than it does to the actual composition of the individual seed lot purchased. Thus, a designation on a seed package label that the seed is certified indicates only that the variety to be produced by the seed is genetically pure; the designation does not indicate that the seed packet itself contains only seeds of that variety.

The Act does make it unlawful to sell by variety, name seed not certified by an official certifying agency, when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act[62] specifies sale only as a class of "certified" seed.[63]

Treated Seed

The Federal Seed Act prohibits the transporting or delivery for transportation in interstate commerce agricultural seeds, vegetable seeds, or any mixtures thereof, for seeding purposes, which have been "treated" unless each container bears a label with specific information as to the treated nature of the seeds.[64] This label must indicate that the seeds have been treated and identify, by commonly accepted coined, chemical (generic) or abbreviated chemical name, the substance used in the treatment.[65] In addition, if that substance is harmful to humans or other vertebrate animals, the label must contain an appropriate caution statement approved by the Secretary of the Department of Agriculture, such as "Do not use for food or feed or oil purposes."[66] If the chemical is a mercurial or other similarly toxic substance, the label must contain a skull and crossbones and a statement such as "This seed has been treated with POISON" in red letters on a background of distinctly contrasting color.[67] Finally, the label must disclose the process used in the treatment.[68]

In the case of *First National Bank in Albuquerque v. United States*,[69] the court held the United States was not liable under the discretionary function

60. 7 C.F.R. § 180.1(b)(9) (1980).
61. 7 C.F.R. §§ 201.3(ee), 201.67-74 (1980). Classes of certified seed are identified as follows: Breeder seed—seed controlled by the originating or sponsoring plant breeding institution and is the source for the production of seed of other classes of certified seed. 7 C.F.R. § 201.2(bb) (1980). Foundation seed—which is the progeny of Breeder or Foundation seed and is used for producing the foundation class of seed, used for hybridization. 7 C.F.R. § 201.2(cc) (1980). Registered seed—produced from Breeder seed or Foundation seed and certified seed produced from Breeder, Foundation or Registered seed. 7 C.F.R. § 201.2(dd) (1980).
62. 7 U.S.C. §§ 2321-2583 (1976).
63. 7 U.S.C. § 1611 (1976).
64. 7 U.S.C. § 1571 (1976).
65. 7 U.S.C. § 1571(i)(1), (2) (1976).
66. 7 U.S.C. § 1571(i)(3).
67. 7 U.S.C. § 1571(i)(3).
68. 7 U.S.C. § 1571(i)(4) (1976).
69. 552 F.2d 370 (10th Cir. 1977).

exception to the Tort Claims Act for injuries resulting from harm due to eating meat from a hog which had been fed seed treated with a mercury fungicide. In this case, the label properly identified the seed as having been treated with a poison and, therefore, the seed distributor had complied with his responsibilities under the Federal Seed Act. The plaintiff argued that the United States was liable because of its failure to adequately protect against the harm under provisions of the Federal Insecticide, Fungicide and Rodenticide Act (F.I.F.R.A.).[70] The court, however, concluded that the treated seed was not an economic poison within the meaning of F.I.F.R.A.

Wilson Grain Co. v. Resso,[71] presented a similar situation. There, the defendant had purchased seed with knowledge that it had been treated with a substance which rendered it unfit for human consumption. As a matter of fact, the defendant had contractually agreed with the seller not to put the seed into regular channels of commerce when it might be used for feed, food or oil purposes. Nevertheless, the defendant sold the corn to the plaintiff after he had misrepresented that the seed had not been treated. When the seed was condemned by the federal government, the defendant was sued for the loss of the seed and other expenses incurred as a result of the misrepresentation. The court suggests that the seed was properly seized under the Federal Food, Drug and Cosmetic Act,[72] and the Federal Seed Act, and awarded full damages to the plaintiff.

These cases suggest that one who fails to properly disclose the presence of the chemical used to treat the seed or improperly disposes of the seed in commerce without adequate notice of the treatment may be exposed to liability for the damage that results. In the *Wilson Grain Co*. case, the court suggested that the primary ground for liability would be negligence though language in the case also suggests that breach of warranty and strict liability considerations may have influenced the decision as well.[73]

The regulations promulgated under the Act require that each person transporting or delivering for transportation in interstate commerce treated agricultural or vegetable seeds must maintain a complete record for any lot consisting of or containing treated seed.[74] This record must include all information necessary to disclose the name of any substance used in the treatment of the seed, and a representative sample of the treated seed.[75]

Record Keeping

The Federal Seed Act imposes specific record keeping requirements upon all persons transporting agricultural seeds in interstate commerce.[76] These records must be kept for a period of three years and include a com-

70. 7 U.S.C. § 135 (1976).
71. 179 Neb. 676, 140 N.W.2d 18 (1966).
72. 21 U.S.C. § 301 (1976).
73. Wilson Grain Co. v. Resso, 179 Neb. 676, 140 N.W.2d 18 (1966).
74. 7 C.F.R. §§ 201.4, 201.7a (1980).
75. 7 C.F.R. § 201.7a (1980).
76. 7 U.S.C. § 1572 (1976).

plete record of the origin, treatment, germination, and purity of each lot of agricultural seeds, and a complete record of the treatment, germination and variety of vegetable seeds.[77] These records must be available for inspection by the Secretary of the Department of Agriculture or his authorized agents for any purpose associated with the effective administration of the Act.[78] According to the regulations promulgated under the Act, a seed sample must be retained as part of the record.[79] This sample, however, need not be retained for the entire three year period but may be discarded one year after the entire lot represented by the sample has been disposed.[80] The size of the sample retained must consist of at least 400 seeds and equal in weight to the sample required for noxious-weed seed examination.[81]

These records must permit comparison with records on the same lot of seeds kept by other persons so that the origin of agricultural seed and the treatment, germination and variety of vegetable seed may be traced from the grower to the ultimate consumer, and so that the seed may be correctly labeled.[82]

REGULATION OF WEED SEEDS

Agricultural seeds shipped in interstate commerce must contain a notation on the label indicating the percentage by weight of weed seeds, including noxious-weed seeds.[83] Further, the kind of noxious-weed seeds permitted and the concentration of such seeds in the container may not exceed the rate allowed by the laws and regulations of the state into which the seed is transported.[84] In the course of such transportation, if the seed is diverted to another state of destination, the person or persons responsible for the diversion must relabel the seed with respect to noxious-weed seed content to conform to the laws and regulations of the state to which the seed is diverted.[85] As a result, the determination of which seeds are considered noxious-weed seeds necessarily requires an examination of relevant state law, and variations from state to state must be anticipated.[86]

77. 7 U.S.C. § 1572 (1976).
78. 7 U.S.C. § 1572 (1976).
79. 7 C.F.R. § 201.4(a) (1980).
80. 7 C.F.R. § 201.4(a) (1980).
81. 7 C.F.R. § 201.4(b). *See* 7 C.F.R. § 201.46 (1980).
82. 7 C.F.R. § 201.4(b) (1980).
83. 7 U.S.C. § 1571(a)(4) (1976).
84. 7 U.S.C. § 1571(a)(5) (1976).
85. 7 C.F.R. § 201.16 (1980).
86. 7 C.F.R. § 201.16 (1980). For example, under the regulations, 7 C.F.R. § 201.17 (1980) the following seeds are considered to be noxious-weeds in the District of Columbia: Quackgrass (Agropyron repens), Canada thistle (Cirsium arvense), field bindweed (Convolvulus arvensis), bermuda grass (Cynodon dactylon), giant bermuda grass (Cynodon dactylon variaridus), annual blue grass (Poa annua), and wild garlic or wild onion (Allium canadense or Allium vineale).

By way of contrast, for example, under the law of the State of Kansas, KAN. STAT. ANN. § 2-1314 (1975), the following are considered to be noxious-weeds: "Field bindweed (*Convolvulus arvensis*), Russian knapweed (*Centaurea picris*), hoary cress (*Lepidium draba*), Canada thistle (*Cirsium rvense*), quackgrass (*Agropyron repens*), leafy spurge (*Euphorbia esual*), burragweed (*Franseria tometosa and discolor*), pignut (*Hoffmannseggia densiflora*), musk (*nodding*), thistle (*Carduus nutans L.*), and Johnson grass (*Sorghum halepense*)."

The regulations identify certain seeds which will be treated as weeds unless they are specifically declared as agricultural or vegetable seeds in the entry papers where those seeds are imported.[87] Similarly, the regulations also identify those seeds which are to be treated as noxious weeds for purposes of seed importation.[88]

In determining whether the percentage of noxious-weed seeds exceeds the quantity permitted under relevant law, the regulations provide that badly injured weed seeds and undeveloped, seedlike structures, including those of noxious-weed seeds are considered inert matter and not weed seeds.[89] As a result, seeds, bulblets, sporocarps, or tubers of plants recognized as weeds by applicable laws or general usage will be considered weed seeds.[90]

Although state law determines which seeds are to be treated as weed seeds, including noxious-weed seeds, for purposes of interstate shipments, state law has little relevance to the determination of what constitutes weed seeds in importations under the Act. In the case of imported seeds, the regulations promulgated under the Act identify the plants that will be treated as weeds, generally,[91] and as noxious-weeds, specifically.[92] Thus, imported seeds or bulblets of plants belonging to certain plant families will be treated as weed seeds, unless federal regulations list the seeds as agricultural or vegetable seeds, or recognized as seeds of ornamentals.[93]

From the seed purchaser's point of view, weeds are deemed undesirable because of the harm they do to the land or farming operation itself. Many weed seeds produce plants which are poisonous to livestock. Others produce plants which rapidly choke out the desirable plants or overrun the planting area. Still other weed seeds actually adversely affect the land itself. An example of this type is bindweed which has deep roots and is most difficult to

87. 7 C.F.R. § 201.107(b) (1980) identifies the following as seeds to be treated as weeds unless declared as agricultural or vegetable seeds in the entry papers for importation:

> Alfileria—Erodium cicutarium (L.) L'Her; Beggarweed—Desmodium tortuosum (Sev.) D.C.; Bermuda-grass, giang—Cynodon dactylon var. aridus. Harlan et de Wit.; Brome, field—Bromus arvensis L.; Burdock, great Arctium lappa; Burnett, little—Sanguisorba minor Scop.; Chess, soft—Bromus mollis L.; Chicory—Chicorium intybus L.; Cress, upland—Barbarea verna (Mill.) Aschers; Crown-vetch—Coronilla varia L.; Dandelion—Taraxacum officinale Weber; Dichondra—Dichondra repens Forst; Grass, Bermuda—Cynodon dactylon (L.) Pers.; Grass, velvet—Holcus lanatus L.; Mustard, India—Brassica juncea (L.) Goss.; Mustard, black—Brassica nigra Koch.; Rape, annul—Brassica napus var. annus Koch.; Rape, bird—Brassica campestris L.; Rape, turnip—Brassica campestris vars. L.; Sesbania—Sesbania exaltata (Raf.) Torr.; Sorghum almum—Sorghum almum Parodi; Sorrel—Rumex acetosa L.; Sweet vernalgrass—Anthoxanthum odoratum L.

88. 7 C.F.R. § 201.108 (1980) identifies the following as noxious weeds for purposes of imported seeds: Lepidium draba L. lepidium repens (Schrenk), Hymenophysa pubescens C.A. Mey.—Whitetop; Cirsium arvense (L.)—Canada thistle; Cuscuta spp.—Dodder; Agropyron repens (L.) Beau.—Quack grass; Sorghum halepense (L.) Pers.—Johnson grass; Convolvulus arvensis L.—Bindweed; Centaurea picris Pall.—Russian knapweed; Sonchus arvensis L.—Perennial sow thistle; Euphorbia esula L.—Leafy spurge.

89. 7 C.F.R. § 201.50 (1980).

90. 7 C.F.R. § 201.50 (1980).

91. 7 C.F.R. § 201.107 (1980).

92. 7 C.F.R. § 201.108 (1980).

93. 7 C.F.R. § 201.107(a) (1980).

eradicate. In the case of *Gibson v. Worley Mills, Inc.*,[94] the court addressed a situation in which bindweed was mixed in with rye and barley seed. The court reversed a lower court judgment in favor of the defendant and awarded the plaintiff the cost of eradicating the bindweed. The court held that since both state law and the Federal Seed Act forbade the sale of seed containing bindweed, the sale of seed was negligence as a matter of law. On the issue of causation, the court concluded:

> proscriptions against the sale of agricultural seed containing bindweed seed are not imposed because bindweed seed is dangerous when ingested, or because it will injure persons who handle it, or because it will produce a plant poisonous to livestock, but because bindweed adversely affects the land. The harm that occurred to Gibson is clearly the foreseeable result which the statutes were designed to prevent. Thus there was proximate cause as a matter of law.[95]

Under the Federal Seed Act, where the government seizes seed for containing too many weed seeds, the government has the clear burden of showing that the seed that resulted in the seizure was validly sampled.[96]

DISCLAIMERS AND WARRANTIES

The farmer, who purchases seed, risks more than the cost of the seed. If defective seed is planted, the loss can be overwhelming. Nevertheless, seed producers and distributors are often given considerable protection in the Federal Seed Act and elsewhere against claims for losses in excess of the price of the seed.[97] In fact, arguably the seed purchaser is unfairly treated by the provisions of state uniform commercial codes which allow seed dealers to disclaim liability for the non-productiveness of the seed that they sell.[98]

The primary protection afforded the seed purchaser by the Act should come from the purchaser's ability to rely on the information disclosed on the label. If the label information is incorrect and harm results, a remedy should be available to the seed purchaser. Although the Act itself does not provide a remedy, protection may be possible under state law, depending on the legal effect accorded the federally required labels.[99] For this reason, the legal effect of the label as an express warranty of the label contents is of

94. 614 F.2d 464 (5th Cir. 1980).

95. *Id.* at 466-67.

96. Coweta Warehouse & Gin Co., v. United States, 380 F.2d 6 (5th Cir. 1967).

97. For example, the Magnuson Moss Act relating to consumer product warranties, 15 U.S.C. § 2311(a)(2) (1976), expressly provides that nothing in that act shall be construed to repeal, invalidate or supercede the Federal Seed Act nor shall anything in that act apply to seed for planting. Similarly, the Fair Packaging and Labeling Act, 15 U.S.C. § 1459(a)(5) (1976) does not apply to seeds.

98. *See* Comment, *The Effect of Warranties on Seed Sales With an Eye Toward the U.C.C., Unconscionability and the California Agricultural Code*, 11 U.C.D. L. Rev. 335 (1978).

99. Indeed, since state and federal label requirements are often identical, a state law may be violated in addition to the violation of the Federal Seed Act. *See, e.g.*, Agricultural Serv. Ass'n Inc. v. Ferry-Morse Seed Co., Inc., 551 F.2d 1057 (6th Cir. 1977). It may be that because of how the state law problem is handled, the issue of federal law may not properly be before the court anyway. *See*, C.P. Wren v. Kirkland Distrib. Co., — S.C. —, 156 S.E.2d 865 (1967).

tremendous importance. Case law[100] and provisions of most state uniform commercial codes recognize that the label itself expressly warrants such matters as seed variety, germination, absence of weed seeds, etc.[101] In addition, provisions of state uniform commercial codes will create implied warranties that the seed is merchantable and fit for intended purposes.[102] These express and implied warranties create specific rights that may be asserted by the seed purchaser to protect himself against harm that may result from mislabeled, contaminated or defective seed. A major problem has been that the Federal Seed Act does not prohibit the use of disclaimers, limited warranties or non-warranty clauses in invoices, advertising or labeling.[103] The Act does provide, however, that the use of such disclaimers, limited warranties, or non-warranty clauses will not constitute a defense in any prosecution or other proceeding brought under the provisions of the Act.[104] Since the Act does not preclude the use of disclaimers, limited warranties or non-warranty clauses as a defense in any proceeding *not* brought under the Act,[105] seed sellers have frequently used disclaimers in order to limit their liability upon breach of an expressed warranty to the purchase price of the seed. Such a disclaimer and limited liability provision will typically include the following language:

> Notice to buyer: We warrant that seeds sold have been labeled as required under State and Federal seed laws and that they conform to label description. We make no other or further warranty expressed or implied.
>
> No liability hereunder shall be asserted unless the buyer or user reports to the warrantor within a reasonable period after discovery (not to exceed 30 days) any conditions that might lead to a complaint. Our liability on this warranty is limited in amount to the purchase price of the seed.[106]

The effect these disclaimers may have on warranties that may be created by information in the label is largely regulated by the particular states' uniform commercial code.[107] As a general rule, express warranties (such as

100. *See, e.g.*, Gauthier v. Bogard Seed Co., 377 So. 2d 1290 (La. Ct. App. 1980).
101. *See, e.g.*, KAN. STAT. ANN. § 84-2-313 (1975). *See generally* Comment, *supra* note 98.
102. *See, e.g.*, KAN. STAT. ANN. §§ 84-2-314, -315 (1975).
103. *See* 7 U.S.C. § 1574 (1976).
104. 7 U.S.C. § 1574 (1976).
105. 7 U.S.C. § 1574 (1976).
106. Agricultural Serv. Ass'n v. Ferry-Morse Seed Co., 551 F.2d 1057, 1062-63 (6th Cir. 1977).
107. U.C.C. disclaimers provisions apply to warranties made by merchants. However, as a general rule, the seed purchaser will not be the one making the warranty and therefore it is largely irrelevant whether the farmer is a merchant or not for this purpose. Some states, including Kansas, have, however, adopted specific provisions relating to warranties (or the absence of warranties) in specific situations—such as the sale of livestock. *See* KAN. STAT. ANN. § 84-2-316(3)(d) (1975). *See also* Musil v. Hendrich, 6 Kan. App. 2d 196, 627 P.2d 367 (1981). For a further discussion of the general farmer merchant problem see, Comment, *The Farmer in the Sales Article of the U.C.C.: "Merchant" or "Tiller of the Soil?"* 1976 SO. ILL. U.L.J. 237 (1976); Note, *Farmer as Merchant Under the U.C.C.* 53 N.D.L. REV. 587 (1977); Note, *Uniform Commercial Code—Is the farmer a "Merchant?"* 28 BAYLOR L. REV. 715 (1976); Note, *Farmer Held Merchant Under Texas U.C.C.: Nelson v. Union Equity Co-operative Exchange*, 31 S.W.L.J. 1150 (1977); Annot., 95 A.L.R.3d 484 (1979).

those created by the labels) are not subject to exclusion in the same manner as implied warranties.[108] In most cases, an attempted negation or limitation should be inoperative against express warranties simply because once a seller made an affirmative representation it could appear to be inconsistent to their talk of removing or disclaiming the very thing said. Where an attempted disclaimer of an express warranty is found, the uniform commercial code clearly requires that the express warranty and the disclaimer be construed as consistent with each other.[109] If the two cannot reasonably be construed as consistent, then the disclaimer would be considered ineffective and the express warranty would remain in effect. Apparently, this is the case even if the express warranty is oral rather than written.[110]

Although such disclaimers of express warranties have been upheld,[111] some courts have refused to allow seed sellers to successfully disclaim expressed warranties or to limit the buyer's remedy to purchase price of the seed.[112] The courts have used two theories to avoid these disclaimers: (1) that sellers may not exempt themselves from liability resulting from their own negligence or intentional violation of the law, and (2) that if a law requires a description of the seed, the description itself creates an expressed warranty which is not subject to the disclaimers and limited liability provisions.[113]

In the case of *Gibson v. Worley Mills, Inc.*,[114] for example, a New Mexico company was accused of selling bindweed, contaminated rye and barley seed, negligently and in breach of an implied warranty of fitness. The lower court apparently held in favor of the defendant on the implied warranty grounds, largely as a result of jury responses to special interrogatories dealing with that issue. The court of appeals, however, reversed and held that because both state and federal law prohibit the sale of agricultural seed containing bindweed,[115] the sale was negligence as a matter of law. Therefore, the court held that the lower court should not have submitted the warranty

108. Young & Cooper, Inc. v. Vestring, 214 Kan. 311, 521 P.2d 281 (1974).

109. U.C.C. § 2-316(1) (1978), which provides:
Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (Section 2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

110. *See, e.g.*, Adrian v. Elmer, 178 Kan. 242, 284 P.2d 599 (1955).

111. *See, e.g.*, Herrera v. Johnston, 295 P.2d 963 (3rd Dist. Cal. 1956); Hoover v. Utah Nursery Co., — Utah —, 7 P.2d 270 (1932).

112. *See, e.g.*, Agricultural Serv. Ass'n v. Ferry-Morse Seed Co., 551 F.2d 1057 (6th Cir. 1977); Walcott & Steele, Inc. v. Carpenter, 246 Ark. 93, 436 S.W.2d 820 (1969); Mallery v. Northfield Seed Co., 196 Minn. 129, 264 N.W. 573 (1936). *See also* Dessert Seed Co. v. Drew Farmers Supply, Inc., 248 Ark. 858, 454 S.W.2d 307 (1970).

113. *See, e.g.*, Walcott & Steele, Inc. v. Carpenter, 436 S.W.2d 820 (1969); Mallery v. Northfield Seed Co., 264 N.W. 573 (1936).

114. 614 F.2d 464 (5th Cir. 1980). *See also* Agricultural Serv. Ass'n Inc. v. Ferry-Morse Seed Co., 551 F.2d 1057 (6th Cir. 1977); Klein v. Asgrow Seed Co., 246 Cal. App. 2d 87, 54 Cal. Rptr. 609 (3rd Dist. 1966).

115. 7 U.S.C. §§ 1561, 1571 (1976); TEX. CIV. STAT. ANN. Art 93b (Vernon Supp. 1978); N. MEX. STAT. ANN. § 76-10-12 (1978).

interrogatories to the jury since they were not necessary to the decision of the case.[116] In this case, the court held the plaintiff was a member of the class of persons the prohibitions were designed to protect and was not contributorily negligent in failing to inspect the seed.

A similar result was reached in the cases of *Klein v. Asgrow Seed Co.*[117] and in *Agricultural Services Association v. Ferry-Morse Seed Co.*[118] There the respective courts held that a contract could not exempt a seed seller from liability arising from a violation of law. In those cases, the law violated was the California Seed Law[119] which made the sale of falsely labeled seed illegal. Apparently, these courts have taken the approach that where liability is imposed by statute, a statement of limitation of liability is void as against public policy.

In contrast, in *Walcott & Steele, Inc. v. Carpenter*,[120] the seed dealer defended an action for breach of an express warranty that a certain percentage of the seed would germinate. The express warranty arose from the seed label, required by Arkansas law and the Federal Seed Act, which set forth the percentage of germination of the seed. The Uniform Commercial Code (U.C.C.) provides that "[a]ny description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description."[121] Thus, by requiring the label, the law made the germination information the basis of the bargain.[122] The court treated the attempted disclaimer as being inconsistent with the express warranty and to that extent unreasonable under U.C.C. section 2-316(1).[123]

Both the negligence approach and the U.C.C. express warranty approach would appear to give the purchaser protection against disclaimers. Both seem, however, to require that the condition or quality of the seed be contrary to that required by law or at least warranted on the label. Where no violation of the statute occurs, the seed dealer would possibly be able to disclaim liability beyond the purchase price of the seed.[124] Further, the rationale of the express warranty cases does not seem to expand the limited protection the purchaser has against disclaimers of implied warranties of merchantability and of fitness.

In addition, the use of disclaimers and limited liability provisions for express warranties, such as those arising from lable requirements, is contrary to the requirements of U.C.C. sections 2-718 and 2-719.[125] Further, arguably disclaimers and limited liability provisions may be treated as unconscionable limitations on the buyer's rights of recovery for consequential

116. Gibson v. Worley Mills, Inc., 614 F.2d 464, 467 (5th Cir. 1980).
117. 246 Cal. App. 2d 87, 54 Cal. Rptr. 609 (3rd Dist. 1966).
118. 551 F.2d 1057 (6th Cir. 1977).
119. CAL. FOOD & AGRIC. CODE §§ 52251-52511 (West 1968 & Supp. 1982).
120. — Ark. —, 436 S.W.2d 820 (1969).
121. U.C.C. § 2-313(b) (1978).
122. Walcott & Steele, Inc. v. Carpenter, — Ark. —, —, 436 S.W.2d 820, 822-23 (1969).
123. *Id.*
124. *See, e.g.*, Gauthier v. Bogard Seed Co., 377 So. 2d 1290 (La. Ct. App. 1979).
125. Comment, *supra* note 98, at 342-43.

damages under section 2-719(3) of the U.C.C.[126] Thus, notwithstanding the use of disclaimers and limitations on liability by seed sellers, a buyer should perhaps be entitled to recover the full amount of loss resulting from the delivery of mislabeled or defective seed. This apparently is the suggestion of *Dessert Seed Co. v. Drew Farmers Supply, Inc.*[127] where the court held that a seed company could not limit its liability to the amount of the purchase price of the seed, where the seed company sent the wrong seed.

Disclaimers of implied warranties are also possible and perhaps more problematic for the seed purchaser. As a general rule, a merchant can disclaim implied warranties of fitness and merchantability according to the restrictions imposed by the U.C.C. Section 2-316(2) of the U.C.C. provides:

> (2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."[128]

Thus, the merchant can partially or totally exclude implied warranties of merchantability so long as the word "merchantability" is actually used and, if the exclusion is written, the writing is conspicuous.[129] The implied warranty of merchantability may be disclaimed orally. Similarly, the implied warranty of fitness may be disclaimed in a conspicuous writing.[130] In either case, the disclaimer must appear early in the transaction to become part of the contract between the parties.[131]

If the implied warranties are not disclaimed, it is possible to assert the implied warranties as the basis for liability of the seed company. In the case of *Gauthier v. Bogard Seed Co.*,[132] the court recognized the basis for the claim but considered the evidence insufficient to support the farmer's contention that the seller breached an implied warranty of fitness by supplying seed which was incapable of producing healthy soybean plants. There, the court suggested that if the seed truly was incapable of producing healthy plants, the seed would not be fit for its intended use. Nevertheless, the evidence suggested that the deficiencies were not attributable to defects in the

126. *Id.* at 343.

127. 248 Ark. 858, 454 S.W.2d 307 (1970).

128. U.C.C. § 2-316(2) (1978).

129. U.C.C. § 2-316(2) (1978). *See also* Jackson v. H. Frank Olds, Inc., 65 Ill. App. 3d 571, 382 N.E.2d 550 (1978); Zicari v. Joseph Harris Co., Inc., 33 A.D.2d 17, 304 N.Y.S.2d 918 (1969). Whether a disclaimer is conspicuous has generated considerable litigation and fine print has often been held not to be conspicuous. *See, e.g.*, Belger Cartage Service, Inc. v. Holland Construction Co., 224 Kan. 320, 582 P.2d 1111 (1978); Geo. C. Christopher & Son, Inc. v. Kansas Paint & Color Co., Inc., 215 Kan. 185, 523 P.2d 709, *modified*, 215 Kan. 510, 525 P.2d 626 (1974).

130. U.C.C. § 2-316(2) (1978).

131. *See* Geo. C. Christopher & Son, Inc. v. Kansas Paint & Color Co., Inc., 215 Kan. 185, 523 P.2d 709, *modified*, 215 Kan. 510, 525 P.2d 626 (1974).

132. 377 So. 2d 1290 (La. Ct. App. 1980).

seed but due to other factors, such as storage practices after the seed had been purchased, cropping practices and so forth.

In contrast, in the case of *Agricultural Services Association, Inc. v. Ferry-Morse Seed Co., Inc.*,[133] the court recognized a breach of both the implied warranty of fitness and of merchantability where the supplier knew of the purchaser's intended use but supplied a mislabeled and incorrect variety. The breach occurred as a result of the shipment of the wrong kind of seed and not as a result of the mislabeling. In this case, however, language on the seed bags limited liability to the purchase price of the seed. Although the court gave effect to the disclaimer as to the implied warranties, it held the disclaimer would have no such effect on the express warranties created by the label.[134]

Under the U.C.C., such warranties can be disclaimed in certain other, less formal ways.[135] Indeed, in *Agricultural Services Association* case, the disclaimer resulted largely from the past dealings of the parties, and course of performance and trade usage considerations.

ENFORCEMENT OF THE FEDERAL SEED ACT

Under the Federal Seed Act, the government is empowered to seize seeds sold, delivered for transporation in interstate commerce, or transported in interstate or foreign commerce in violation of the act.[136] This seizure results from a condemnation proceeding brought in any United States district court within the jurisdiction where the seed is found.[137] If seed is condemned by a decree of the court as being in violation of the provisions of the Act, the seed may be sold, destroyed, or delivered to the owner upon proper assurance that the seed will not be disposed of in any jurisdiction contrary to the provisions of the Act.[138]

In addition to the use of seizure as an enforcement device, criminal and civil penalties may be imposed for certain types of violations of the Act.[139] Criminal penalties, in an amount not more than $1,000 for the first offense and not more than $2,000 for each subsequent offense, may be imposed upon conviction of anyone who knowingly, or as a result either of gross negligence or of a failure to make a reasonable effort to inform himself of the pertinent facts, violates any provision of the Act.[140] Civil penalties, in the amount of not less than $25 nor more than $500 for each violation, may be imposed for any violation of the Act or rules and regulations promul-

133. 551 F.2d 1057 (6th Cir. 1977).
134. *Id.* at 1065-67.
135. *See, e.g.*, U.C.C. § 2-316(3) (1978).
136. 7 U.S.C. § 1595 (1976).
137. 7 U.S.C. § 1595(a) (1976).
138. The procedure in such cases will conform, as nearly as may be possible, to libel proceedings in admiralty except that in this case either party may demand a jury trial for any issues of fact. 7 U.S.C. § 1595(d) (1976).
139. 7 U.S.C. § 1596 (1976).
140. 7 U.S.C. § 1596(a) (1976).

gated thereunder.[141] Civil penalties are recoverable in a civil suit brought in the name of the United States.[142]

The Secretary of the Department of Agriculture is empowered, under the Act, to bring cease and desist proceedings against anyone who has violated or is violating any of the provisions of the Act.[143] Such proceedings may be commenced whenever the Secretary of the Department of Agriculture has reason to believe that a violation has occurred or is occurring. In such a case, the Secretary will cause a complaint in writing to be served upon the person, stating his charges in that respect, and requiring the person to attend and testify at a hearing at a time and place designated in the complaint.[144] At that hearing, the procedural rules and regulations afford the accused a reasonable opportunity to be informed of the evidence against him, the right of cross-examination, and the right to be heard in person or represented by counsel and through witnesses.[145] Any order resulting from this cease and desist proceeding may be treated as final within thirty days after the service of such an order, and appeals may be taken from the order to the court of appeals for the circuit in which the person to whom the order is directed resides or has his principal place of business.[146] The court considers the record generated at the hearing as the evidence in the case and may upon examination of the record, affirm, modify or set aside the order of the Secretary.[147] If the court determines that a just and proper disposition of the case requires the taking of additional evidence, the court may order the hearing to be reopened in the manner and upon such terms and conditions as the court may deem proper.[148] If the court of appeals affirms or modifies the order of the Secretary, his decree will operate as an injunction to restrain the person and his officers, directors, agents or employees from violating the provisions of the order as issued or as modified.[149] These cease and desist orders may be enforced by either the Secretary of the Department of Agriculture or the Attorney General of the United States in appropriate proceedings.[150]

In any action against a seed distributor or producer, the government has the burden to show that the seed or the activity is in violation of the law. This includes showing that the seed seized, for example, for too many weed seeds, was validly sampled.[151] In such matters, however, the Act plainly contemplates the use of state agencies in the administration of the Act. As a

141. 7 U.S.C. § 1596(b) (1976).
142. 7 U.S.C. § 1596(b) (1976).
143. 7 U.S.C. § 1599 (1976).
144. 7 U.S.C. § 1599(a) (1976).
145. 7 U.S.C. § 1599(a) (1976). These rules and regulations are found at 7 C.F.R. §§ 202.1-202.44 (1980).
146. 7 U.S.C. § 1600 (1976).
147. 7 U.S.C. § 1600 (1976).
148. 7 U.S.C. § 1600 (1976).
149. 7 U.S.C. § 1600 (1976).
150. 7 U.S.C. § 1601 (1976).
151. Coweta Warehouse & Gin Co. v. United States, 380 F.2d 6 (5th Cir. 1967).

result, with respect to questions of competency of evidence, records of laboratories of federal and state governments are on an equal footing.[152]

An unresolved question is the extent to which the federal government seizures of seeds under the Federal Seed Act are subject to fourth and fifth amendment considerations. In a recent case involving the seizure of children's sleepwear under the Federal Hazardous Substances Act, *United States v. Articles of Hazardous Substances*,[153] the court invalidated the seizures as fundamentally defective under both the fourth and fifth amendments. In the course of the opinion, however, the court appears to recognize that admiralty rules, as required by the Federal Seed Act, may validly permit a seizure where a warrant may otherwise be required.[154] Since this case, there has been considerable concern that the admiralty procedure may need to be revised to insure adequate fourth amendment protection.

The court in *Articles of Hazardous Substances* also noted that in contrast to the procedural safeguards of the Hazardous Substances Act, the seizable items under the Federal Seed Act or other goods which are readily identifiable as within the meaning of the Act are contraband; the Act itself has a much more circumscribed scope.[155] This suggests that a seizure under the Federal Seed Act may not require the same level of judicial scrutiny in order to insure due process.

REMEDIES AVAILABLE TO THE SEED PURCHASER

As noted above, the Federal Seed Act imposes both civil and criminal penalties upon violators of the Act but does not directly create a private remedy for the seed purchaser who may be harmed by a violation of the Act. As a result, the injured purchaser must seek redress under general or tort or contract law for an injury. Although these specific remedies are not discussed in detail, the Federal Seed Act does have an important impact in this regard. Significantly, the label requirements of the Act create express warranties. When the seed delivered varies from the information set forth on the required label, clearly an action for breach of that express warranty may be brought.[156] Similarly, if the seed is contaminated or otherwise defective, contrary to label requirements, an action in negligence may be an acceptable choice, particularly where the statutory violation can be characterized as negligence as a matter of law,[157] or where as a matter of law, the injury is caused by the violation.[158] Where the contamination results from the undis-

152. E.K. Hardison Seed Co. v. Jones, 149 F.2d 252 (6th Cir. 1945).

153. 444 F. Supp. 1260 (M.C.N.C. 1978).

154. *Id.* at 1265 (quoting Judge Skelly Wright in the case of Founding Church of Scientology v. United States, 133 U.S. App. D.C. 229, 409 F.2d 1146 (1969)).

155. United States v. Articles of Hazardous Substances, 444 F. Supp. 1260, 1268 (M.C.N.C. 1978).

156. *See, e.g.*, Agricultural Serv. Ass'n, Inc. v. Ferry-Morse Seed Co., Inc., 551 F.2d 1057 (6th Cir. 1977); Gauthier v. Bogard Seed Co., 377 So. 2d 1290 (La. Ct. App. 1980).

157. *See, e.g.*, Gibson v. Worley Mills, Inc., 614 F.2d 464 (5th Cir. 1980).

158. *Id.*

closed or mislabeled chemical treatment of the seed, at least one court has alluded to the application of strict liability principles.[159] In addition, the label information may be considered part of the contract itself and the basis for the bargain, resulting in a breach of contract claim.[160] Finally, where the seeds do not conform to the label information, the purchaser may possibly reject the seeds as non-conforming goods.[161]

CONCLUSION

The Federal Seed Act plays a major role in protecting a farmer from the effects of purchases of defective, mislabeled or contaminated seed. This protection is largely indirect in that the focus of the Act is to impose specific restrictions upon seed distributors who market their seed in interstate commerce. While these restrictions may be enforced by the Secretary of the Department of Agriculture through direct action against violators of the Act, the Act itself does little to expressly or directly create specific remedies for the seed purchaser. Because the information required by the Federal Seed Act to be disclosed in a seed label operates as a warranty, the seed purchaser's remedies under state law or based on common law tort or contract principles can be very effective.

159. *See, e.g.*, Wilson Grain Co. v. Resso, 179 Neb. 676, 684, 140 N.W.2d 18, 22 (1966).

160. *See, e.g.*, Agricultural Serv. Ass'n, Inc. v. Ferry-Morse Seed Co., Inc., 551 F.2d 1057 (6th Cir. 1977).

161. *See, e.g.*, Jacob Hartz Seed Co., Inc. v. E.R. Coleman, — Ark. —, 612 S.W.2d 91 (1981).