

2010 SUPPORTING STATEMENT

FEDERAL SEED ACT PROGRAM

OMB NO. 0581-0026

A. JUSTIFICATION

- 1. EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY. IDENTIFY ANY LEGAL OR ADMINISTRATIVE REQUIREMENTS THAT NECESSITATE THE COLLECTION.**

The Federal Seed Act (FSA) (7 U.S.C. 1551-1611) regulates agricultural and vegetable seeds in interstate commerce. Regulation 7 CFR 201 implements the legislation as authorized in Sections 402(a) (7 U.S.C. 1592) and 403(a) (7 U.S.C. 1593) of the FSA. Agricultural and vegetable seeds shipped in interstate commerce are required to be labeled with certain quality information such as the name of the seed, the purity, the germination, and the noxious-weed seeds of the state into which the seed is being shipped. That information is determined from laboratory analyses and background information. The program is administered primarily through cooperative agreements with the 50 states. State seed regulatory agencies refer to the Agricultural Marketing Service (AMS) complaints involving seed found to be mislabeled and to have moved in interstate commerce. AMS investigates the alleged violations and if the violation is substantiated, takes regulatory action ranging from letters of warning to monetary penalties. As part of the investigation, AMS examines records to determine whether or not a verifiable violation occurred and to determine steps taken by the shipper to assure accurate labeling. Section 202 (7 U.S.C. 1572) of the FSA and Sections 201.4 through 201.7a of the Regulations require firms to keep complete records of each lot of seed and make them available for inspection by agents of the Secretary.

- 2. INDICATE HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED. EXCEPT FOR A NEW COLLECTION, INDICATE THE ACTUAL USE THE AGENCY HAS MADE OF THE INFORMATION RECEIVED FROM THE CURRENT COLLECTION.**

Information collected consists of records pertaining to interstate shipments of seed, which have been alleged to be in violation of the FSA. Although anyone may submit a complaint, most are referred by state regulatory officials because the states' ability to act against an out-of-state shipper is very limited. The shipper's records pertaining to a complaint are examined by FSA program specialists and are used to determine if a violation of the FSA occurred. The records are also used to determine the precautions taken by the shipper to assure that the seed was accurately labeled. The precautions taken by the shipper are used in part to determine the regulatory action taken against the shipper by AMS. Less serious violations may be closed with a letter of warning. A monetary penalty is sought for more serious violations. The records are also examined to determine the corrective steps that can be taken by the shipper to prevent future

violations. The FSA program would be ineffective without the ability to examine pertinent records as necessary to resolve complaints of violations.

3. DESCRIBE WHETHER, AND TO WHAT EXTENT, THE COLLECTION OF INFORMATION INVOLVES THE USE OF AUTOMATED, ELECTRONIC, MECHANICAL, OR OTHER TECHNOLOGICAL COLLECTION TECHNIQUES OR OTHER FORMS OF INFORMATION TECHNOLOGY, E.G. PERMITTING ELECTRONIC SUBMISSION OF RESPONSES, AND THE BASIS FOR THE DECISION FOR ADOPTING THIS MEANS OF COLLECTION. ALSO DESCRIBE ANY CONSIDERATION OF USING INFORMATION TECHNOLOGY TO REDUCE BURDEN.

Most shippers have computerized records reducing the burden on the shipper by making access and response faster. Records and information may be submitted via electronic mail (e-mail). Submission by e-mail is limited to firms with computerized records and access to the Internet. Records maintained electronically are acceptable because they satisfy the requirements of the FSA and the purpose of the investigation. Records are also submitted by facsimile (fax) transmissions. The AMS, Livestock and Seed Program, Seed Regulatory and Testing Branch is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION. SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN ITEM 2 ABOVE.

No duplication exists. Records pertaining to individual seed lot transactions have no relationship to other seed lots. Seed labeling records are specific for the individual seed lot under consideration. However, records maintained by most shippers in the normal conduct of business, satisfy the requirements of the FSA.

Information already available is used. The records generated and maintained by seed companies in their normal business operations usually provide the information needed for this collection.

5. IF THE COLLECTION OF INFORMATION IMPACTS SMALL BUSINESSES OR OTHER SMALL ENTITIES (ITEM 5 OF THE OMB FORM 83-1), DESCRIBE THE METHODS USED TO MINIMIZE BURDEN.

The collection impacts both small and large businesses. However, no difference in burden exists between small and large businesses. The minimum information necessary to verify shipments and the accuracy or inaccuracy of labeling with respect to a specific seed lot is the same regardless of business size. Records maintained by most shippers in the normal conduct of business satisfy the requirements of the FSA.

6. DESCRIBE THE CONSEQUENCE TO FEDERAL PROGRAM OR POLICY ACTIVITIES IF THE COLLECTION IS NOT CONDUCTED OR IS CONDUCTED LESS FREQUENTLY, AS WELL AS ANY TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.

Since information collections are only made in cases of apparent noncompliance, less frequent collections would increase the time required to bring cases to conclusion. The delay would make regulatory actions less effective. If information is not collected, it would be impossible to examine pertinent records to resolve complaints of violations.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES THAT WOULD CAUSE AN INFORMATION COLLECTION TO BE CONDUCTED IN A MANNER:

- **REQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY;**
- **REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;**

Respondents are not required to respond in fewer than 30 days. Records are requested only when a violation of the FSA has been alleged. Normally a complaint is initiated when a State seed regulatory official submits an apparent violation to AMS. AMS requests records as soon as possible after a complaint is received. More than one request will be made quarterly only if more than one complaint is received within that quarter.

- **REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;**

Respondents are not required to submit more than one copy,

- **REQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN 3 YEARS;**

The records that are required to be kept by the FSA are those that would normally be kept for good business practices and for tax purposes. The FSA requires these records to be kept for three years while most state seed law require the records to be kept for two years. Therefore, the recordkeeping burden from the FSA involves maintaining the records for an additional year.

- **IN CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;**

No information is collected for statistical surveys or use as statistical data.

- **REQUIRING THE USE OF A STATISTICAL DATA CLASSIFICATION THAT HAS NOT BEEN REVIEWED AND APPROVED BY OMB;**
- **THAT INCLUDES A PLEDGE OF CONFIDENTIALITY THAT IS NOT SUPPORTED BY AUTHORITY ESTABLISHED IN STATUTE OR REGULATION, THAT IS NOT SUPPORTED BY DISCLOSURE AND DATA SECURITY POLICIES THAT ARE CONSISTENT WITH THE PLEDGE, OR WHICH UNNECESSARILY IMPEDES SHARING OF DATA WITH OTHER AGENCIES FOR COMPATIBLE CONFIDENTIAL USE; OR**

The collection does not include a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use.

- **REQUIRING RESPONDENTS TO SUBMIT PROPRIETARY TRADE SECRET, OR OTHER CONFIDENTIAL INFORMATION UNLESS THE AGENCY CAN DEMONSTRATE THAT IT HAS INSTITUTED PROCEDURES TO PROTECT THE INFORMATION'S CONFIDENTIALITY TO THE EXTENT PERMITTED BY LAW.**

Occasionally information collected may contain trade secrets or other confidential information. The confidentiality of that information is maintained to the extent permitted by law. The Agency does not disclose information to anyone unless required to do so by the Freedom of Information Act (FOIA). Most trade secrets and financial information do not have to be released under the FOIA.

There are no other special circumstances. The collection of information is Conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

- 8. IF APPLICABLE, PROVIDE A COPY AND IDENTIFY THE DATE AND PAGE NUMBER OF PUBLICATION IN THE FEDERAL REGISTER OF THE AGENCY'S NOTICE, REQUIRED BY 5 CFR 1320.8(d), SOLICITING COMMENTS ON THE INFORMATION COLLECTION PRIOR TO SUBMISSION TO OMB. SUMMARIZE PUBLIC COMMENTS RECEIVED IN RESPONSE TO THAT NOTICE AND DESCRIBE ACTIONS TAKEN BY THE AGENCY IN RESPONSE TO THESE COMMENTS. SPECIFICALLY ADDRESS COMMENTS RECEIVED ON COST AND HOUR BURDEN.**

A 60-day notice was published in the Federal Register on December 21, 2009, Vol. 74, No. 243, page 67850 which invited comments from interested persons. One comment was received and was supportive of information collection for the purpose of Federal Seed Act enforcement while keeping the collected information confidential.

DESCRIBE EFFORTS TO CONSULT WITH PERSONS OUTSIDE THE AGENCY TO OBTAIN THEIR VIEWS ON THE AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, THE CLARITY OF INSTRUCTIONS AND RECORD KEEPING, DISCLOSURE, OR REPORTING FORMAT (IF ANY), AND ON THE DATA ELEMENTS TO BE RECORDED, DISCLOSED, OR REPORTED.

CONSULTATION WITH REPRESENTATIVES OF THOSE FROM WHOM INFORMATION IS TO BE OBTAINED OR THOSE WHO MUST COMPILE RECORDS SHOULD OCCUR AT LEAST ONCE EVERY 3 YEARS -- EVEN IF THE COLLECTION OF INFORMATION ACTIVITY IS THE SAME AS IN PRIOR PERIODS. THERE MAY BE CIRCUMSTANCES THAT MAY PRECLUDE CONSULTATION IN A SPECIFIC SITUATION. THESE CIRCUMSTANCES SHOULD BE EXPLAINED.

Ongoing contact is maintained with seed firms nationwide through record requests by mail and by telephone concerning individual seed shipments. Frequent contact is maintained with State agency cooperators and with seed trade association representatives. The information requested is information that is generated in the normal conduct of a seed business. Information is only requested to address a specific shipment for which a complaint has been received. For clarity a list and description of the records being requested is provided with each request. Information is obtained only in investigating apparent violations of the FSA, not for publication. The following were contacted in February 2010 concerning this collection:

Mr. Larry W. Nees, Seed Administrator
Office of Indiana State Chemist and Seed Commissioner
Purdue University
175 South University Street
West Lafayette, Indiana 47907-2063
(765) 494-1557

Ms. Leslie Cahill
Vice President of Government Affairs
American Seed Trade Association
225 Reinekers Lane, Suite 650
Alexandria, Virginia 22314
(703) 837-8140

Mr. Brian Hubbard
Director, Quality Control and Compliance
Pennington Seed, Inc.
P.O. Box 338
Greenfield, Missouri 65661
(417) 637-5979

Ms. Kristine L. Mantey
Sr. Regulatory Specialist
The Scotts Company LLC
1411 Scottslawn Road
Marysville, Ohio 43041
(937) 644-7544

9. EXPLAIN ANY DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS, OTHER THAN REMUNERATION OF CONTRACTORS OR GRANTEES.

No payments or gifts are made to respondents.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS AND THE BASIS FOR THE ASSURANCE IN STATUTE, REGULATION, OR AGENCY POLICY.

Hybrid pedigree information is necessary for collection in certain cases and the seed industry generally considers such information to be a "trade secret." Documents submitted by the public are considered confidential and are only used for official purposes. All public records are maintained and handled according to the provisions of the Freedom of Information Act and the Privacy Act.

There is no basis in Agency statute, regulation, or policy that provided for assurance of confidentiality of the survey responses, however, the information provided by the respondents will be kept private. Personal identifiers will not be linked to the responses.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE. THIS JUSTIFICATION SHOULD INCLUDE THE REASONS WHY THE AGENCY CONSIDERS THE QUESTIONS NECESSARY, THE SPECIFIC USES TO BE MADE OF THE INFORMATION, THE EXPLANATION TO BE GIVEN TO PERSONS FROM WHOM THE INFORMATION IS REQUESTED, AND ANY STEPS TO BE TAKEN TO OBTAIN THEIR CONSENT.

No information of a sensitive nature is requested.

12. PROVIDE ESTIMATES OF THE HOUR BURDEN OF THE COLLECTION OF INFORMATION. THE STATEMENT SHOULD:

- **INDICATE THE NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, ANNUAL HOUR BURDEN, AND AN EXPLANATION OF HOW THE BURDEN WAS ESTIMATED. UNLESS DIRECTED TO DO SO, AGENCIES SHOULD NOT CONDUCT SPECIAL SURVEYS TO**

OBTAIN INFORMATION ON WHICH TO BASE HOUR BURDEN ESTIMATES. CONSULTATION WITH A SAMPLE (FEWER THAN 10) OF POTENTIAL RESPONDENTS IS DESIRABLE. IF THE HOUR BURDEN ON RESPONDENTS IS EXPECTED TO VARY WIDELY BECAUSE OF DIFFERENCE IN ACTIVITY, SIZE, OR COMPLEXITY, SHOW THE RANGE OF ESTIMATED HOUR BURDEN, AND EXPLAIN THE REASONS FOR THE VARIANCE. GENERALLY, ESTIMATES SHOULD NOT INCLUDE BURDEN HOURS FOR CUSTOMARY AND USUAL BUSINESS PRACTICES.

- **IF THIS REQUEST FOR APPROVAL COVERS MORE THAN ONE FORM, PROVIDE SEPARATE HOUR BURDEN ESTIMATES FOR EACH FORM AND AGGREGATE THE HOUR BURDENS IN ITEM 13 OF OMB FORM 83-I.**
- **PROVIDE ESTIMATES OF ANNUALIZED COST TO RESPONDENTS FOR THE HOUR BURDENS FOR COLLECTIONS OF INFORMATION, IDENTIFYING AND USING APPROPRIATE WAGE RATE CATEGORIES. THE COST OF CONTRACTING OUT OR PAYING OUTSIDE PARTIES FOR INFORMATION COLLECTION ACTIVITIES SHOULD NOT BE INCLUDED HERE. INSTEAD, THIS COST SHOULD BE INCLUDED IN ITEM 14.**

Estimates of the burden of collection of information have been summarized on AMS Form 71 attached.

An estimated 2,870 firms are actively engaged in seed testing, labeling, and recordkeeping for interstate seed commerce and maintain records required by the FSA regulations. For testing and labeling requirements and maintaining receiving and shipping records, an "order clerk," at a cost of \$14.45 per hour per response, would be involved with the accumulation of this information.

Seed certifying agencies require the originator, developer, or owner of a seed variety to make specified information available when eligibility for certification is requested. There are approximately 70 respondents for certification eligibility per year. The Association of Official Seed Certifying Agencies (AOSCA) estimates that it takes approximately 2.5 staff-hours for each respondent. Geneticists, plant breeders, and other crop scientists would be involved with the submission of this information, at an estimated cost of \$26.21 per hour. Data for computation of these hourly wages were obtained from the U.S. Department of Labor Statistic's publication, "National Compensation Survey: Occupational Wages in the United States; June 2006," published June 2007. This publication can also be found at the following Web site: <http://www.bls.gov/ncs/ocs/sp/ncbl0910.pdf>.

- 13. PROVIDE AN ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS OR RECORD KEEPERS RESULTING FROM THE COLLECTION OF INFORMATION. (DO NOT INCLUDE THE COST OF**

ANY HOUR BURDEN SHOWN IN ITEMS 12 AND 14).

- **THE COST ESTIMATE SHOULD BE SPLIT INTO TWO COMPONENTS: (a) A TOTAL CAPITAL AND START-UP COST COMPONENT (ANNUALIZED OVER ITS EXPECTED USEFUL LIFE); AND (b) A TOTAL OPERATION AND MAINTENANCE AND PURCHASE OF SERVICES COMPONENT. THE ESTIMATES SHOULD TAKE INTO ACCOUNT COSTS ASSOCIATED WITH GENERATING, MAINTAINING, AND DISCLOSING OR PROVIDING THE INFORMATION. INCLUDE DESCRIPTIONS OF METHODS USED TO ESTIMATE MAJOR COST FACTORS INCLUDING SYSTEM AND TECHNOLOGY ACQUISITION, EXPECTED USEFUL LIFE OF CAPITAL EQUIPMENT, THE DISCOUNT RATE(S), AND THE TIME PERIOD OVER WHICH COSTS WILL BE INCURRED. CAPITAL AND START-UP COSTS INCLUDE, AMONG OTHER ITEMS, PREPARATIONS FOR COLLECTING INFORMATION SUCH AS PURCHASING COMPUTERS AND SOFTWARE; MONITORING, SAMPLING, DRILLING AND TESTING EQUIPMENT; AND RECORD STORAGE FACILITIES.**

- **IF COST ESTIMATES ARE EXPECTED TO VARY WIDELY, AGENCIES SHOULD PRESENT RANGES OF COST BURDENS AND EXPLAIN THE REASONS FOR THE VARIANCE. THE COST OF PURCHASING OR CONTRACTING OUT INFORMATION COLLECTION SERVICES SHOULD BE A PART OF THIS COST BURDEN ESTIMATE. IN DEVELOPING COST BURDEN ESTIMATES, AGENCIES MAY CONSULT WITH A SAMPLE OF RESPONDENTS (FEWER THAN 10), UTILIZE THE 60-DAY PRE-OMB SUBMISSION PUBLIC COMMENT PROCESS AND USE EXISTING ECONOMIC OR REGULATORY IMPACT ANALYSIS ASSOCIATED WITH THE RULEMAKING CONTAINING THE INFORMATION COLLECTION, AS APPROPRIATE.**

- **GENERALLY, ESTIMATES SHOULD NOT INCLUDE PURCHASES OF EQUIPMENT OR SERVICES, OR PORTIONS THEREOF, MADE: (1) PRIOR TO OCTOBER 1, 1995, (2) TO ACHIEVE REGULATORY COMPLIANCE WITH REQUIREMENTS NOT ASSOCIATED WITH THE INFORMATION COLLECTION, (3) FOR REASONS OTHER THAN TO PROVIDE INFORMATION OR KEEPING RECORDS FOR THE GOVERNMENT, OR (4) AS PART OF CUSTOMARY AND USUAL BUSINESS OR PRIVATE PRACTICES.**

There are no capital/startup or operational and maintenance costs.

- 14. PROVIDE ESTIMATES OF ANNUALIZED COST TO THE FEDERAL GOVERNMENT. ALSO, PROVIDE A DESCRIPTION OF THE METHOD USED TO ESTIMATE COST, WHICH SHOULD INCLUDE**

QUANTIFICATION OF HOURS, OPERATION EXPENSES (SUCH AS EQUIPMENT, OVERHEAD, PRINTING, AND SUPPORT STAFF), AND ANY OTHER EXPENSE THAT WOULD NOT HAVE BEEN INCURRED WITHOUT THIS COLLECTION OF INFORMATION. AGENCIES ALSO MAY AGGREGATE COST ESTIMATES FROM ITEMS 12, 13, AND 14 IN A SINGLE TABLE.

Records are furnished to AMS in response to mail requests pursuant to 7 CFR 201.4 with on-site inspections requiring travel by Federal personnel rarely needed. The Federal cost is estimated to be \$61,231.50. The estimate was calculated by using a rate of \$43 per hour for average salaries and benefits for clerical and marketing specialist staff; response time is estimated to be 5.25 hours per response; the cost per response is \$225.75. The salary and benefits cost for 242 responses is \$54,631.50. Other program costs associated with the collection such as rent, utilities, and supplies are estimated to be \$6,600.

15. EXPLAIN THE REASON FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-I.

The new burden is estimated to be 2,940 respondents for 42,906 burden hours. The current calculation takes into account that records maintained by certified seed processors for final disposition of seed would be similar to those required for other shippers of seed. Increase in responses accounts for one response per recordkeeper.

Criteria used to determine an FSA violation has remained the same over time. For clarification purposes, sections under regulations have been combined. The slight increase in recordkeepers is due to the slight increase in the number of companies trying to expand their market share by shipping seed in interstate commerce to new customers and an increase in interstate shipments.

<u>REG. NO.</u>	<u>REASON</u>	<u>PREVIOUS BURDEN</u>	<u>NEW BURDEN</u>	<u>DIFFERENCE</u>	<u>TYPE OF CHANGE</u>
201.8 through 201.38; 201.45 through 201.66; 201.73	Accounting for records maintained by interstate shippers	39,388	41,257	+ 1,869	A
201.4(a); 201.4(b); 201.68	Accounting for records for certified seed	875	1,400	+ 525	A
	Recordkeeping: Increase in respondents	245	250	+ 5	A
	A=Adjustment		Totals	+2,399	A

- 16. FOR COLLECTIONS OF INFORMATION WHOSE RESULTS WILL BE PUBLISHED, OUTLINE PLANS FOR TABULATION, AND PUBLICATION. ADDRESS ANY COMPLEX ANALYTICAL TECHNIQUES THAT WILL BE USED. PROVIDE THE TIME SCHEDULE FOR THE ENTIRE PROJECT, INCLUDING BEGINNING AND ENDING DATES OF THE COLLECTION OF INFORMATION, COMPLETION OF REPORT, PUBLICATION DATES, AND OTHER ACTIONS.**

Collections are not made to be published for statistical use.

- 17. IF SEEKING APPROVAL TO NOT DISPLAY THE EXPIRATION DATE FOR OMB APPROVAL OF THE INFORMATION COLLECTION, EXPLAIN THE REASONS THAT DISPLAY WOULD BE INAPPROPRIATE.**

We are not seeking approval to omit the expiration date for OMB approval of the information collection.

- 18. EXPLAIN EACH EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19, "CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS," OF OMB FORM 83-I.**

No exceptions are requested to the certification statement identified in Item 19 of OMB Form 83-I.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods.