insects or other pests which attack seeds or seedlings growing therefrom. Any agricultural or vegetable seed, for seeding purposes, that has been treated must be labeled according to the provisions of 7 C.F.R. Part 201.

Records. The Federal Seed Act requires all persons transporting or delivering for transportation, in interstate commerce, agricultural seeds to keep a complete record for three years of the origin, treatment, germination, and purity of each lot of seeds. All persons transporting, or delivering for transportation, in interstate commerce, vegetable seeds must keep for three years a complete record of treatment, germination and variety of such vegetable seeds. USDA officials have the authority to inspect these records in the enforcement and administration of the Act.[6]

The complete record for any lot consisting of or containing treated seed must include: (1) records necessary to disclose the name of any substance or substances used in the treatment of such seed, (including a label or invoice or other document received from any person establishing the name of any substance or substances used in the treatment to be as stated), and (2) a representative sample of the treated seed.[7]

FDA Regulations for Treated Seed

Despite the Federal Seed Act requirements for adequate labeling and record-keeping for treated seed, surplus stocks of treated seed have occasionally been mixed with untreated seed destined for use in human or animal food - often with disastrous results. Perhaps the best known case is First National Bank v. Nor-Am Agricultural Products, Inc.[8] There, a farmer buying seed for hogs from a distributor asked for and was given without charge a quantity of surplus seed that had been treated with a highly toxic mercuric fungicide. The mercury accumulated in the body of the hog which was then slaughtered and eaten by family members resulting in serious permanent injuries to four children. Although the tag and label indicated that the seed had been treated, the court held that the warning statement did not reasonably communicate the extent or seriousness of the harm that could result from feeding the seed to livestock. The court also held that means used to communicate the warning (i.e., the tag and label) were inadequate. The manuafacturer was held liable for the injuries.

In response to such accidents, the Food and Drug Administration (FDA) issued regulations bringing certain food seeds under the control of the Federal Food, Drug and Cosmetic Act.[9] Regulations issued under this Act and under FIFRA[10] specify tolerances for certain pesticide residues on food and agricultural commodities.[11] Any food not meeting the pesticide tolerances or any other standards established by the Federal Food, Drug and Cosmetic Act constitutes an "adulterated food".[12] Interstate transportation of adulterated food is a violation of the Food, Drug and Cosmetic Act and may result in civil and criminal penalties as well as seizure of the food itself through civil proceedings.

The FDA regulations addressing treated seed governs food seeds such as wheat, corn, oats, rye, barley, and sorghum that have been treated with any poisonous substance in excess of the tolerances recognized in 40 C.F.R. Part 180 or a treatment for which no tolerance or exemption from tolerance is recognized. Seeds so treated must be stained or otherwise colored so as to make them readily apparent if they are mixed with untreated seeds. A suitable color for staining is one that is not easily removed[13] and is in sufficient contrast to the natural color of the food seed so as to make the treated seeds readily distinguishable from untreated seeds.

Any interstate shipment of treated seeds not stained as required by these provisions constitutes adulterated food and subjects the persons responsible to the penalties of the Food, Drug and Cosmetic Act. The regulations also note that treated seeds packaged for household use require additional labeling precautions as provided by the Hazardous Substances Act.[14]