

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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(1) Agency: *Agriculture*

(2) I.D. Number (Governor's Office Use)

2-156

IRRC Number:

2697

(3) Short Title

Seed Testing, Labeling and Standards

(4) PA Code Cite

7 Pa. Code, Chapter 111

(5) Agency Contacts & Telephone Numbers

Primary Contact: *Joe Garvey, Bureau of Plant Industry,*
(717) 787-4894

Secondary Contact: *John Breitsman, Bureau of Plant*
Industry, (717) 772-5215

(6) Type of Rulemaking (check one)

Proposed Rulemaking

X

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification
Attached?

No X

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

The proposed regulations are provided to establish seed testing, labeling and standards criteria for seed producers and distributors. The proposed regulation defines seed testing requirements, labeling terminology and requirements and procedures for seed distributors consistent with the requirements of the Seed Act (Act of November 29, 2004, P.L. 1302 (No.164))(3 Pa.C.S.A. §§ 7101-7122).

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Seed Act (Act of November 29, 2004, P.L. 1302 (No.164)) (3 Pa.C.S.A. §§ 7101-7122).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. This amended regulation is mandated under the Seed Act (Act of November 29, 2004, P.L. 1302 (No.164)) (3 Pa.C.S.A. §§ 7101-7122). Section 7111(a) (relating to duty and responsibility of the department) sets forth the specific duties and the authority of the Department and mandates that the Department promulgate these regulations.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The promulgation and implementation of these amended regulations is necessary to comply with the statute. The amended regulations will be in compliance with the new statute and will eliminate incompatibility and redundancy that occurs with the statute and the current regulations.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

The proposed regulations are developed to ensure that the public health, safety and environment of the citizens of the Commonwealth of Pennsylvania are not negatively impacted by the marketing and use of untested or adulterated seed.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Farmers, seeds distributors and home gardeners will benefit from the changes to these regulations. These changes will eliminate redundancies that have occurred with the amending of the Seed Act. A more uniform method of seed labeling will allow for a more understandable seed label for the purchaser of seed products.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The proposed regulations will have no adverse effects.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

This proposal affects an estimated 325 licensed seed distributors. Licensed seed distributors are required to follow new labeling requirements established in the Seed Act.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Industry representatives affected by these regulations were invited to provide input into the development of the regulations. The industry provided important guidance to the Department regarding the structure and duties of seed distributors. Representatives from PennAg Industry's Seed Council, Atlantic Seed Association and American Seed Trade Association reviewed and provided input to the Department during the drafting process.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures, which may be required.

The fee schedule and all associated fees are now established in the Seed Act. There are no new costs associated with these regulations.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures, which may be required.

There will be no costs and/or savings to local government. Local government is not associated with the implementation of the proposed regulations.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures, which may be required.

There will be no costs and/or savings to state government. There are no additional state government staff resources necessary to implement these regulations.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year (2006-07)	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Savings	NA	NA	NA	NA	NA	NA
COSTS:						
Regulated	NA	NA	NA	NA	NA	NA
Local Government	0	0	0	0	0	0
State Government	NA	NA	NA	NA	NA	NA
Total Costs	NA	NA	NA	NA	NA	NA
REVENUE LOSSES:						
Regulated	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Revenue Losses	NA	NA	NA	NA	NA	NA

(20a) Explain how the cost estimates listed above were derived.

There will be no savings or increased costs with these proposed regulations.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
NA	NA	NA	NA	NA

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no adverse affects and costs associated with amending the regulations. The amended regulations create uniformity and consistency with the Seed Act. All fees associated with the Seed Program are established in the Seed Act.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no nonregulatory alternatives. These regulations are mandated by the Seed Act. The proposed regulations establish the seed testing, labeling and standards criteria key to the program. The proposed regulations are necessary to insure an adequate program and maintain conformity with the Seed Act (Act of November 29, 2004, P.L. 1302 (No.164)) (3 Pa.C.S.A. §§ 7101-7122).

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no nonregulatory alternatives to leave the current regulations in place. The current regulations are in conflict with the Seed Act and the Association of Official Seed Analysts (AOSA) Rules For Testing Seed.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

The current and amended regulations are more stringent than the Federal Seed Act. The Federal Seed Act does not cover labeling and testing requirements for flower, tree and shrub seeds. The Pennsylvania Seed Act provides additional consumer protection by requiring all seeds that are sold in the Commonwealth to be properly tested and labeled.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

These regulations compare favorably with surrounding states. Therefore, the criteria of this proposal will not put the Commonwealth of Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes. This proposal will amend an existing regulation of the Seed Act (Act of November 29, 2004, P.L. 1302 (No.164)) (3 Pa.C.S.A. §§ 7101-7122). The changes amend 7 Pa. Code, Chapter 111.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Department held a public meeting with interested parties on December 12, 2006 in the Agriculture Building.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

No. There will be no changes.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

There are none.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations will become effective upon publication in the Pennsylvania Bulletin. The Department projects this will occur by June 2008. Compliance with the regulation is required within 30 days of publication of the regulations.

(31) Provide the schedule for continual review of the regulation.

The Department will continually assess this regulation and make revisions when needed to address valid administrative concerns, changes in technology and changes or revisions to the Seed Act.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
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Copy below is hereby approved as to form and legality.
Attorney General

By: *Angela M. Elliott*
(Deputy Attorney General)
APR 28 2008

DATE OF APPROVAL

! Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

Department of Agriculture

DOCUMENT/FISCAL NOTE NO. 2-156

DATE OF ADOPTION 11-9-07

BY

TITLE Secretary

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY:

Andrew C. Clark

MAR 31 2008

DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel - Independent Agency~~)
(Strike inapplicable title)

! Check if applicable. No Attorney General Approval or
objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

**Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 111
Seed Testing, Labeling and Standards**

PROPOSED RULEMAKING
DEPARTMENT OF AGRICULTURE
PART V. BUREAU OF PLANT INDUSTRY
[7 PA. CODE CH. 111.]
SEED TESTING, LABELING AND STANDARDS

The Department of Agriculture (Department), under the authority conferred by the act of November 29, 2004, P.L. 1302 (No. 164), effective January 28, 2005, known as the Seed Act (Act)(3 Pa.C.S.A. §§ 7101-7122) and under the specific authority of sections 11 and 17 of the act (3 Pa.C.S.A. §§ 7111 and 7117), regarding regulation and enforcement of the act, proposes to amend Chapter 111 of the regulations (relating to seed testing, labeling and standards). This act replaces the act of August 17, 1965, P.L. 354, known as “The Pennsylvania Seed Act of 1965”, and all amendments thereto.

Section 7111 of the act authorizes and empowers the Department to enforce the provisions of the act and to “...prescribe, modify and enforce such reasonable rules, regulations, standards, tolerances and orders as in the judgment of the secretary shall be necessary to carry out the provisions of [the act].” (3 Pa.C.S.A. § 7111(a)) In addition, section 7111 establishes specific powers and duties of the Department and provides for delegation of such authority. (3 Pa.C.S.A. §§ 7111(b) and (c)) Section 7117 of the act specifically delineates that the Department “...shall promulgate and enforce rules and regulations necessary of administration and implementation of [the act].” (3 Pa.C.S.A. § 7117) Therefore, consistent with that authority and in order to establish regulations

which are consistent with the provisions of the Act, the Department hereby proposes the following amendments to 7 *Pennsylvania Code*, Chapter 111, entitled Seed testing, labeling and standards.

BACKGROUND

The proposed amendments to the regulations are made necessary by and are established under the authority of, and in accordance with, the act.

The major features and amendments to the proposed regulations are summarized as follows:

SUMMARY OF MAJOR FEATURES AND AMENDMENTS

§ 111.1. Sampling and testing of seeds.

The Department proposes to delete the part of the language of the last sentence of this section related to receiving a copy of the rules which states, "A copy of the rules may be obtained from the current Secretary-Treasurer of the association (AOSA), or from: Botany and Seed Division; Bureau of Plant Industry; Department of Agriculture; 2301 North Cameron Street; Harrisburg, Pennsylvania 17110, at cost. The proposed regulations would delete the final portion of that sentence, starting with "or from..."

§ 111.2. Condition of seeds for testing.

The Department proposes to delete parts of subsection (a) related to non-testing of seed samples of any kind and add language to deny testing of mixed seeds "when the percentage of analysis is not provided."

§ 111.3. Fees and schedule of charges.

The Department amended subsection (a) to allow for billing of the testing fee and amended subsection (b) in a manner that will no longer allow for cash payment of such fees. A minor and a major amendment were made to subsection (c). First, the word “all” was removed because it is implied and therefore redundant. Second, the Department deleted the chart containing the cost of purity analysis, germination testing and combined testing because that chart and those fees now appear at section 7109(b)(5) of the act. (3 Pa.C.S.A. § 7109(b)(5))

§ 111.4. Prohibitions and requirements.

The Department deleted subsection (c), which referred to the pricing table that was deleted from subsection 111.3 of the regulations. Subsequent subsections were renumbered as a result of the deletion.

§ 111.11. General labeling requirements.

In subsection (a) the Department deleted old citations to the act and replaced them with the proper citations to the new act. In subsection (a)(1) language was added to clarify the names “and classification” used shall be consistent with the Rules for Seed Testing by the Association of Official Seed Analysts, “as amended.”

§ 111.12. Labeling of flower seeds.

The Department deleted old citations to the act and replaced them the proper citations to the new act. In addition, the Department added a subsection to section 111.12 (7 Pa.Code § 111.12(3)). The new subsection clarifies labeling requirements for vegetable and flower seeds.

§ 111.13. Labeling of lawn or turf grasses and mixtures.

The Department deleted subsections (a) and (b) of this provision and replaced them with language consistent with the provisions of the act related to lawn and turf grasses.

(3 Pa.C.S.A. § 7104(b)(2))

§ 111.15. Misleading labeling.

The Department deleted this provision of the regulations because the issues addressed (related to the labeling of lawn and turf grasses and mixtures) are now covered by the act and the revisions to section 111.13 of the amended regulations.

§ 111.16. Responsibility for labeling.

The Department amended the substantive provisions of the section to assure the citations to the act are correct and to add a provision relating to the expiration time period for lawn and turf grass analysis.

§ 111.17 Labeling of seeds for sprouting.

The Department amended the substantive provisions of the section to clarify what salad and culinary purposes are and to address hard seed germination where applicable.

§ 111.21. Weed seeds classified.

The Department deleted this section classifying and regulating weed seeds. Seed classifications are covered by the AOSA's *Rules For Testing Seed* included in 111.11 (a) as amended.

§ 111.22. Prohibited noxious weed seeds.

The Department amended this section by adding additional species to the list of prohibited noxious weed seeds.

§ 111.23. Restricted noxious weed seeds.

The Department amended subsection (a)(1) by adding additional species to the list of noxious weed seeds and added canary grass to subsection (a)(3). In addition, the Department amended subsection (b)(1) to include a reference to “Restricted Noxious Weed Seeds.”

§ 111.41. Stop sale procedures.

The Department amended the citations set forth in this provision to assure they were consistent with the act.

FISCAL IMPACT

Commonwealth

The proposed regulations will not impose additional fiscal impacts upon the Commonwealth for administration and enforcement. The regulations will not require the Department to commit an additional amount of time or manpower to the enforcement of the provisions of the act or regulations.

Political subdivisions

The proposed regulations will impose no additional costs and have no fiscal impact upon political subdivisions. The regulations do not impose any additional burden of enforcement or review on political subdivisions.

Private Sector

The proposed regulations will not impose additional costs on the regulated community, which is part of the private sector or any other part of the private sector. Any additional fees are set forth in the act and merely referenced in the regulations. There are no new certification or licensure requirements and any new labeling requirements are merely consistent with the provisions of the act and will not impose additional costs on the regulated community.

General public

The proposed regulations will impose no costs and have no fiscal impact on the general public.

PAPERWORK REQUIREMENTS

The proposed regulations will not result in a substantial increase of paperwork.

PUBLIC COMMENT PERIOD

Interested persons are invited to submit written comments regarding the proposed regulations within 30 days following publication in the *Pennsylvania Bulletin*.

REGULATORY REVIEW

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19), (71 P.S. §§ 745.1 – 745.15), as amended by Act 24 of June 25, 1997 (P.L. 252, No. 24), the Department submitted a copy of this proposed regulation on

May 2, 2008 to the Independent Regulatory Review Commission (Commission) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee (Committees). In addition to submitting the proposed regulation, the Department has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed regulation, it will notify the Department within 30 days after the close of the public comment period. Such notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of objections raised.

CONTACT PERSON

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Joe Garvey (717) 787-4843.

EFFECTIVE DATE

This proposed regulation will be effective upon final-form publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,

Secretary

CHAPTER 111. SEED TESTING, LABELING AND STANDARDS

GENERAL PROVISIONS

LABELING

111.11. General labeling requirements.

111.12. Labeling of flower seeds.

111.13. Labeling of lawn or turf grasses and mixtures.

111.14. Labeling of treated seeds.

[111.15. Misleading labeling.]

111.1[6] 5. Responsibility for labeling.

111.1[7] 6. Labeling of seeds for sprouting.

WEED SEEDS

[111.21. Weed seeds classified.]

111.22. Prohibited noxious weed seeds.

111.23. Restricted noxious weed seeds.

GENERAL PROVISIONS

§ 111.1. Sampling and testing of seeds.

The terms used in seed testing and the methods of sampling, inspecting, analyzing, testing and examining agriculture, vegetable, flower, tree and shrub seeds, and lawn and turf mixtures and the tolerance allowed thereof shall be those adopted by the Association of Official Seed Analysts, effective October 1, 1981, as amended, except that tolerance will not be allowed for prohibited noxious weed seeds. A copy of the rules may be obtained from the current Secretary-Treasurer of the association (AOSA) or at www.aosaseed.com [,or from: Botany and Seed Division; Bureau of Plant Industry; Department of Agriculture; 2301 North Cameron Street; Harrisburg, Pennsylvania 17110, at cost].

Source

The provisions of this § 111.1 amended through April 12, 1985, effective July 1, 1985, 15 Pa.B.1354. Immediately preceding text appears at serial page (48863).

§ 111.2. Condition of seeds for testing.

(a) Dirty or uncleaned seeds[,] and mixed seed [samples] kinds when a percentage of analysis is not provided [or samples sent by nonresidents of this Commonwealth] will not be tested.

(b) Seed samples treated with a material will not be tested unless the name of the substance is plainly marked on the container in accordance with this chapter.

(c) The year of harvest, if known, shall be marked on the container.

Source

The provisions of this § 111.2 amended November 7, 1986, effective November 8, 1986, 16 Pa.B.4383. Immediately preceding text appears at serial page (98518).

§ 111.3. Fees and schedule of charges.

(a) The testing fee shall accompany the sample or the cost of testing will be billed at the first of every month. [and no test shall be made until the fee is paid.] All fees will be considered past due when payment is not received within 30 days from day of billing.

(b) Fees shall be paid by check or money order made payable to the Commonwealth of Pennsylvania. Cash will not be accepted. [through the mails but is accepted in the laboratory.]

(c) A Pennsylvania Noxious Weed Seed Examination shall be included with [all] purity analyses.

Kind of Seed	[Purity Analysis (including Pennsylvania State Noxious Weed Seed Examination)	Germination Test	Combined Purity Analysis and Germination Test
Alfalfa	\$ 7.00	\$ 5.50	\$12
Barley	7.00	5.50	12
Beans, Garden	6.00	6.50	12
Beans, Lima	6.00	7.50	13
Bentgrass	14.00	8.00	21.50
Big bluestem	26.00	8.00	33.50
Birdsfoot trefoil	7.00	5.50	12
Bluegrass	15.00	8.00	22.50
Brome	10.00	7.50	17
Buckwheat	7.00	5.50	12
Corn	5.00	6.50	11
Crownvetch	8.00	6.50	14
Deertongue grass	10.00	7.50	17
Fescues	10.00	7.50	17
Flatpea	6.00	7.50	13
Millet	8.50	6.50	14.50
Oats (including fluorescence test)	8.00	5.50	13
Orchardgrass	12.00	7.00	18.50
Peas	5.00	6.50	11
Redtop	14.00	8.00	21.50
Reed Canarygrass	9.00	6.50	15
Reed Canarygrass	9.00	6.50	15
Rye	7.00	5.50	12
Ryegrass	9.00	6.00	14.50
Ryegrass (including fluorescence test)	9.00	10.50	19
Soybeans	6.00	7.50	13
Sudangrass	8.00	6.50	14
Timothy	7.00	5.50	12
Tobacco	8.00	6.50	14
Vetch	8.00	6.50	14
Big bluestem	26.00	8.00	33.50
Birdsfoot trefoil	7.00	5.50	12.00
Bluegrass	15.00	8.00	22.50

Brome	10.00	7.50	17.00
Buckwheat	7.00	5.50	12.00
Corn	5.00	6.50	11.00
Crownvetch	8.00	6.50	14.00
Deertongue grass	10.00	7.50	17.00
Fescues	10.00	7.50	17.00
Flatpea	6.00	7.50	13.00
Millets	8.50	6.50	14.50
Oats (including fluorescence test)	8.00	5.50	13.00
Orchardgrass	12.00	7.00	18.50
Peas	5.00	6.50	11.00
Redtop	14.00	8.00	21.50
Reed Canarygrass	9.00	6.50	15.00
Reed Canarygrass	9.00	6.50	15.00
Rye	7.00	5.50	12.00
Ryegrass	9.00	6.00	14.50
Ryegrass (including fluorescence test)	9.00	10.50	19.00
Soybeans	6.00	7.50	13.00
Sudangrass	8.00	6.50	14.00
Timothy	7.00	5.50	12.00
Tobacco	8.00	6.50	14.00
Vetch	8.00	6.50	14.00
Wheat	7.00	5.50	12.00
Flowers	8.00	6.50	14.00
Vegetables & Herbs, except beans, corn & peas	8.00	5.50	13.00
Tree, Forb and Shrub:			
without embryo excision	8.00	9.00	16.50
with embryo excision	8.00	20.00	27.00
with embryo excision & removal of pits	8.00	22.00	29.00
Mixtures:			
Lawn and Turf:			
Two components	22.00	16.00	36.00
Each additional component	8.00	8.00	15.00
Germination only			8.00 extra
Pasture, hay and conservation:			
Two components	12.00	14.00	25.00
Each additional component	5.00	7.00	11.00
Germination only		6.00 extra	
Miscellaneous charges:			
Interstate Noxious Weed Examinations:			
Lawn and turf, with purity		6.00 extra	
Lawn and turf, without purity		20.00	
All others, with purity		5.00 extra	
Pennsylvania Noxious Weed			

Seed Examination:	
Lawn and Turf Grasses & Mixtures	15.00
All Others	4.00
Cold test	10.00
Varietal test	12.00
Moisture test	3.00
Tetrazolium test	12.50
Bio-assay for seed treatment	6.00
Phenol test:	
Bluegrass, ryegrass	7.00
Cereals	6.00
Embryo excision test	15.00
Rush	4.00
Extra laboratory report	2.00
Tests not listed, special procedures, extra time, etc.	12.00 per hour

1

Source

The provisions of this § 111.3 amended through November 7, 1986, effective November 8, 1986, 16 Pa.B. 4383. Immediately preceding text appears at serial pages (98518) and (98520).

Cross References

This section cited in 7 Pa. Code § 111.4 (relating to prohibitions and requirements).

§ 111.4. Prohibitions and requirements.

(a) Seeds of which the analysis is already known will not be sent for testing unless:

- (1) There is suspicion that the law is being violated.
- (2) Verification of the analysis is required, in which case a copy of the

analysis given by the dealer shall accompany the sample.

(b) The analysis and test may be used for labeling purposes but the name of the Bureau of Plant Industry shall in no way be used for advertising purposes.

[(c) During the months of February to May not more than five samples per firm or corporation shall be tested, unless the number of official law enforcement samples permit a larger number. No more than one of the five samples will be a mixture as provided for in § 111.3(c)(7) (relating to fees and schedule of charges).]

[(d)] (c) Samples to be tested shall be sent to the Bureau of Plant Industry at least 30 days before the seeds are to be planted or sold.

[(e)] (d)

(1) Samples shall be analyzed in the order in which they are received and reports shall be made as promptly as the work permits.

(2) The time required for germination tests of seeds shall be between 6 and 28 days, depending on the kind of seed.

(3) The time required for germination tests of tree seeds varies greatly.

Source

The provisions of this § 111.4 amended February 29, 1980, effective March 1, 1980, 10 Pa.B. 910. Immediately preceding text appears at serial page (38164).

LABELING

§ 111.11. General labeling requirements.

(a) In labeling the kind of agriculture, vegetable, flower, tree or shrub seeds as required in section [3] 7104 of [The Pennsylvania] the Seed Act [of 1965 (3 P. S. § 285-3),] (3 Pa.C.S.A. § 7104) the following shall apply:

(1) Names and classifications (that is “crop” or “weed”) used shall be those specified in the Rules for Seed Testing by the Association of Official Seed Analysts, as amended.

(2) Variety names shall be confined to the recognized names for the kind and may not include names or terms which create a misleading impression as to the history or quality of the seeds.

(3) Abbreviations of names of the kind and variety of seed may not be permitted.

(4) The following kinds of agricultural seed are generally labeled as to variety and shall be labeled to show either the variety name or the words “Variety Not Stated”[.]or “VNS”:

- (i) Alfalfa
- (ii) Bahiagrass
- (iii) Barley
- (iv) Bean, field
- (v) Beet, field

- (vi) Brome, smooth
- (vii) Broomcorn
- (viii) Clover, crimson
- (ix) Clover, red
- (x) Clover, white
- (xi) Corn, field
- (xii) Corn, pop
- (xiii) Cowpea
- (xiv) Fescue, tall
- (xv) Flax
- (xvi) Lespedeza, striata
- (xvii) Millet, foxtail
- (xviii) Millet, pearl
- (xix) Oats
- (xx) Pea, field
- (xxi) Peanut
- (xxii) Rice
- (xxiii) Rye
- (xxiv) Safflower
- (xxv) Sorghum
- (xxvi) Sorghum sudangrass hybrid
- (xxvii) Soybean
- (xxviii) Sudangrass

(xxix) Sunflower

(xxx) Tobacco

(xxxi) Trefoil, birdsfoot

(xxxii) Wheat, common

(xxxiii) Wheat, durum

§ 111.12. Labeling of flower seeds.

Section [3] 7104 of [The Pennsylvania Seed Act of 1965 (3 P. S. § 285-3)] the Seed Act requires that flower seeds be labeled with the name of the kind and variety or a statement of type and performance characteristics as prescribed by the Department of Agriculture. This provision shall be complied with as follows:

(3) It is permissible to label vegetable and flower seed kinds in containers of one(1) pound or less with the statement: "Packed for (YY)" and "Sell by (12/YY)" and an identifying lot number for the calendar year in which they are being offered for sale.

§ 111.13. Labeling of lawn or turf grasses and mixtures.

[(a) In labeling lawn and turf seeds, the following information shall be provided:

(1) The commonly accepted name of the kind or kind and variety of each agricultural seed component in excess of 5.0% of the whole and the percentage

by weight of pure seed in the order of its predominance. Where more than one component is required to be named, the word, "mixture," or the word, "mixed," shall be stated. Percentages of pure seed for mixtures shall be listed under the headings, "Pure Seed."

(2) The percentage by weight of all agricultural seed other than those required to be labeled.

(3) The percentage by weight of inert matter not to exceed 10%, except that 15% inert matter is permitted in Kentucky bluegrass labeled without a variety manner. Foreign material, other than material used for coating or pelleting to enhance the planting value, not common to grass seed may not be added.

(4) The percentage by weight of all weed seeds, not to exceed 1.0%.

(5) Noxious weed seeds shall be listed under the heading "Noxious Weed Seeds" or as otherwise specified.

(6) The percentage of germination, exclusive of hard seed; hard seed, if present, and the calendar month and year that the germination test was completed. If a single test date is used for mixtures, it shall be that of the oldest tested component.

(7) Percentages of germination for mixtures shall be listed under the headings, "Germination" or "Germ."

(b) In addition to this section, labeling of lawn and turf mixtures shall comply with the requirements of section 3 of The Pennsylvania Seed Act of 1965 (3 P. S. § 285-3).]

(a) It is permissible to label cool season lawn and turf grass mixtures that include less than 5% white or ladino clover with a "Sell By Date" and 15 month germination period not including the month of test.

(b) Unless otherwise stated as to use, all those kinds listed under cool season lawn and turf grasses and their mixes must have a "Sell by MM/YY" which may be no more than 15 months from the date of test, exclusive of month of test. Those labeled as: "For Forage Use" or "For Pasture Use" or "For Conservation Use" or some type of qualifying statement indicating that the mixture is not for lawn or turf purposes will require a 9 month date of test not including the month of test and no "Sell By MM/YY" is required.

§ 111.15. [Misleading labeling] Reserved.

[(a) Notwithstanding § 111.13 (relating to labeling of lawn or turf grasses and mixtures) white clover may be claimed as a component of a mixture in quantities of 1.0% or more and redtop may be claimed as a component in mixtures, other than for lawn and turf, in quantities of 3.0% or more. The germination percentage of each shall be given.

(b) Other components of less than 5.0% shall be totaled and this sum listed as "other crop seed."

(c) Labeling not complying with this section may be considered as misleading.]

§ 111.16. Responsibility for labeling.

(a) The person or dealer upon whose premises seeds are located and are exposed or offered for sale shall be responsible for labeling of the seeds.

(b) The person or dealer shall also be responsible for procuring a new germination test and subsequently attaching new analysis tags before the expiration date of the required nine-month period or 15 months for cool season lawn and turf grasses as provided in section 7104 of [The Pennsylvania] the Seed Act [of 1965 (3 P. S. § 285-4)] (3 Pa.C.S.A. § 7104). Tests shall be made according to the Rules for Testing Seed published by the Association of Official Seed Analysts, and no test may be considered official unless the rules are followed.

§ 111.17. Labeling of seeds for sprouting.

The following information shall be indicated on labels of seeds sold for sprouting for salad or culinary purposes (otherwise known as health food):

- (1) Commonly accepted name of kind, or kinds.
- (2) Lot number.
- (3) Percentage by weight of a pure seed component in excess of 5.0% of the whole, other crop seed, inert matter and weed seeds if occurring.
- (4) Percentage of germination of a pure seed component and hard seed if applicable.
- (5) The calendar month and year the test was completed to determine the percentages.

Source

The provisions of this § 111.17 adopted March 1, 1974, 4 Pa.B. 361; amended April 12, 1985, effective July 1, 1985, 15 Pa.B. 1354. Immediately preceding text appears at serial page (14721).

WEED SEEDS

§ 111.21. [Weed seeds classified] Reserved.

[The following shall be classified as weed seeds in this Commonwealth and shall be labeled as such:

- (1) Black medic (*Medicago lupulina*).
- (2) Small hop clover (*Trifolium dubium*).
- (3) Large hop clover (*Trifolium procumbens*).
- (4) Carpet grass (*Axonopus affinis*).
- (5) Annual bluegrass (*Poa annua*). When present in agricultural, vegetable and flower seeds other than those lawn and turf grasses and mixtures listed in § 111.23(b)(1) (relating to restricted noxious weed seeds).
- (6) Bulbous bluegrass (*Poa bulbosa*)]

Source

The provisions of this § 111.21 amended April 12, 1985, effective July 1, 1985, 15 Pa.B. 1354. Immediately preceding text appears at serial page (14721).

§ 111.22. Prohibited noxious weed seeds.

It shall be unlawful to sell or offer for sale seeds that contain the following prohibited weed seeds:

(1) Bindweed, field (*Convolvulus [spp]* *arvensis*).

(2) Bindweed, hedge (*Calystegia sepium*)

[(2)][(3)] Quackgrass (*[Agropyron]* *Elytrigia repens*).

[(3)][(4)] Canada thistle (*Cirsium arvense*).

[(4)][(5)] Multiflora rose (*Rosa multiflora*).

[(5)][(6)] Johnsongrass (*Sorghum halepense*), its crosses with other grasses [and other grasses] which produce seed which are not readily distinguishable from Johnsongrass.

(7) Shattercane (*Sorghum bicolor*).

(8) Marijuana (*Cannabis sativa*).

(9) Mile-a-minute (*Polygonum perfoliatum*).

(10) Kudzu-vine (*Pueraria lobata*).

(11) Purple Loosestrife and cultivars (*Lythrum salicaria*).

(12) Giant Hogweed (*Heracleum mantegazzianum*).

(13) Goatsrue (*Galega officinalis*).

(14) Jimsonweed (*Datura stramonium*).

Source

The provisions of this § 111.22 amended April 12, 1985, effective July 1, 1985, 15 Pa.B.

1354. Immediately preceding text appears at serial pages (14721) to (14722).

§ 111.23. Restricted noxious weed seeds.

(a) Presence of restricted noxious weed seeds in agricultural, vegetable and flower seed, other than lawn and turf grasses, and mixtures thereof listed in subsection

(b)(1) shall be governed by the following:

(1) *List.* The seeds of the following plants shall be restricted noxious weed seeds and shall be listed on the tag or label under the heading “Noxious Weed Seeds” by name and number per pound:

- (i) Bedstraw (*Galium spp.*).
- (ii) Buckhorn plantain (*Plantago lanceolata*).
- (iii) Corncockle (*Agrostemma githago*).
- (iv) Dodder (*Cuscuta spp.*).
- (v) Horsenettle (*Solanum carolinense*).
- (vi) Perennial sow thistle (*Sonchus arvensis*).
- (vii) Wild garlic (*Allium vineale*).
- (viii) Wild onion (*Allium canadense*).
- (ix) Wild mustard (*Brassica juncea*, *B. Kaber*, and *B. nigra*).
- (x) Bull Thistle (*Cirsium vulgare*).
- (xi) Musk Thistle (*Carduus nutans*).

(3) *Rate of occurrence in small size seeds.* The seeds of *Agrostis spp.*, Bermudagrass, timothy, orchardgrass, fescues, alsike and white clover, Reed canarygrass, ryegrass, foxtail millet, alfalfa, red clover, sweet clovers, lespedezas, smooth brome, tall oatgrass, crimson clover, *Brassica spp.*, flax, *Agropyron spp.*, and other agricultural, vegetable and flower seeds of similar size and weight or mixtures thereof shall not contain more than one seed or bulblet, single or collectively, of restricted noxious weed seeds per 5 grams of seed—equivalent to 90 weed seeds per pound—except that not more than five seeds of buckhorn plantain per 5 grams of agricultural seed may be permitted equivalent to 450 weed seeds per pound.

(4) *Rate of occurrence in large size seeds.* The seeds of wheat, Sudangrass, oats, rye, barley, buckwheat, sorghums, vetches and other agricultural, vegetable and flower seeds of similar or greater size and weight or mixtures thereof may not contain more than one seed of restricted noxious weed seeds per 100 grams of seed—equivalent to five seeds per pound—except that not more than five seeds of buckhorn plantain per 100 grams of agricultural seeds may be permitted—equivalent to 25 weed seeds per pound, and seed wheat is not permitted to contain bulblets of wild garlic or wild onion—equivalent to zero bulblets per pound.

(b) Presence of restricted noxious weed seeds in lawn and turf grasses and mixtures thereof shall be governed by the following:

(1) Except as provided in paragraph (3) the seeds of the following plants

shall be restricted noxious weed seeds and shall be listed on the tag or label under the heading “Undesirable Grass Seeds” or “Restricted Noxious Weed Seeds” by name and number per pound when present in bentgrass, Kentucky bluegrass, chewings fescue, hard fescue, red fescue, varieties of named turf type tall fescue, varieties of perennial ryegrass or mixtures containing these grasses:

- (i) Bermudagrass. (*Cynodon spp.*).
- (ii) Annual bluegrass. (*Poa annua*).
- (iii) Rough bluegrass. (*Poa trivialis*).
- (iv) Bentgrass (creeping, colonial, velvet), (*Agrostis spp.*).
- (v) Meadow fescue (*Festuca pratensis*).
- (vi) Tall fescue (*Festuca arundinaceae*).
- (vii) Orchardgrass (*Dactylis glomerata*).
- (viii) Timothy (*Phleum pratense*).
- (ix) Velvetgrass (*Holcus lanatus*).
- (x) Redtop (*Agrostis gigantea*).

GERMINATION STANDARDS

MISCELLANEOUS PROVISIONS

§ 111.41. Stop sale procedures.

(a) The owner or custodian of any lot of seeds held under “stop sale” shall be allowed 90 days to correct deficiencies so that the lot conforms to the requirements of this chapter and [The Pennsylvania] the Seed Act [of 1965 (3 P. S. § 285-1—285-10)] (3 Pa.C.S.A. § 7101 *et seq.*).

(b) If subsection (a) has not been complied with, the seed shall be condemned as unfit for seeding purposes, unless the owner or custodian can show cause why the seed should not be condemned.

(c) Seed under a “stop sale” may not be moved from the premises of the owner or custodian without written release from the inspector.

(d) When requirements of subsection (a) have been met, a copy of the corrected label shall be sent to the address specified by the seed inspector for a written release.

(e) Section [2 (22)] 7113, of [The Pennsylvania] the Seed Act [of 1965 (3 P. S. § 285-2(22))] (3 Pa.C.S.A. § 7113), containing further requirements for “stop sale” notice, shall be followed.

Source

The provisions of this § 111.41 amended November 7, 1986, effective November 8, 1986, 16 Pa.B. 4383. Immediately preceding text appears at serial page (98536).

COMMONWEALTH OF PENNSYLVANIA



GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF AGRICULTURE
2301 N. Cameron Street • Room 201
Harrisburg, Pennsylvania 17110-9408

OFFICE OF CHIEF COUNSEL

Tel: 717-787-8744
Fax: 717-787-1270

May 2, 2008

Independent Regulatory Review Commission
333 Market Street, 14TH Floor
Harrisburg, PA 17120

RE: NOTICE OF PROPOSED RULEMAKING
Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 111.
Seed Testing, Labeling and Standards
I.D. No. 2-156

Dear Sir or Madam:

Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above proposed regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committees and to the Legislative Reference Bureau on this date.

The proposed regulation will be published in the May 17, 2008 edition of the *Pennsylvania Bulletin*. If I may be of further information, please advise.

Sincerely,

A handwritten signature in cursive script, reading "David C. Kennedy".

David C. Kennedy
Assistant Counsel

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 2-156
SUBJECT: SEED TESTING, LABELING AND STANDARDS
AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION	
X	Proposed Regulation
	Final Regulation
	Final Regulation with Notice of Proposed Rulemaking Omitted
	120-day Emergency Certification of the Attorney General
	120-day Emergency Certification of the Governor
	Delivery of Tolled Regulation
a.	With Revisions
b.	Without Revisions

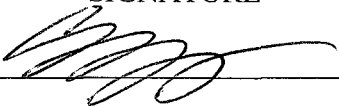
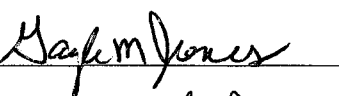
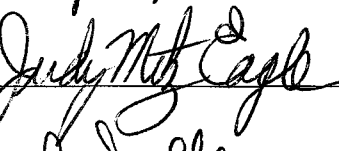
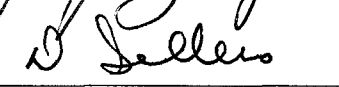
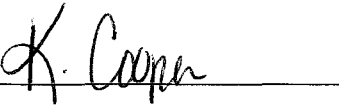
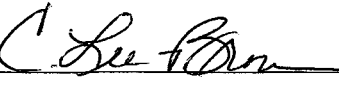
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INDEPENDENT REGULATORY
REVIEW COMMISSION

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FILING OF REGULATION

DATE	SIGNATURE		DESIGNATION
5-2-08		HERSHEY	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
5-2-08		HANNA	MAJORITY CHAIRMAN <u>HANNA</u>
5-2-08		O'PAKE	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
5-2-08		BRUBAKER	MAJORITY CHAIRMAN <u>BRUBAKER</u>
5-2-08		IIRC	INDEPENDENT REGULATORY REVIEW COMMISSION
			ATTORNEY GENERAL (for Final Omitted only)
5-2-08		LRB	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

April 29, 2008