

Regulatory Analysis Form

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(1) Agency: *Agriculture*

INDEPENDENT REGULATORY
REVIEW COMMISSION

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

2-157

IRRC Number: *2698*

(3) Short Title

General Provisions for Seed Certification

(4) PA Code Cite

7 Pa. Code, Chapter 113

(5) Agency Contacts & Telephone Numbers

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

Secondary Contact: *Charles Boettinger, Bureau of Plant Industry, (717) 787-4894*

(6) Type of Rulemaking (check one)

Proposed Rulemaking

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

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

No

Yes: By the Attorney General

Yes: By the Governor

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

The regulations are provided to establish general provisions for seed certification. The proposed regulation defines seed certification standards consistent with the requirements of the Seed Act (Act of November 29, 2004, P.L. 1302 (164))(3 Pa.C.S.A. §§ 7101-7122). The changes in the regulations are proposed in order to conform to changes in the Federal Seed Act and Regulations Part 201.67 – 201.78, the Crop Standards and Procedures of the Association of Official Seed Certifying Agencies (AOSCA), and the new USDA State National Harmonization Program For Seed Potatoes.

(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 (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 regulation is mandated under Seed Act (Act of November 29, 2004, P.L. 1302 (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. In addition, provisions for seed certification are mandated under the Federal Seed Act Regulations Part 201.67 through 201.78.

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

These regulations insure that certified seed that farmers are purchasing and planting are true to their identity and meet established standards.

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

The 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 certified 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 and seed distributors buying, planting and selling certified seed will benefit from these regulations which will insure good quality, clean seed with integrity of variety.

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(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 regulations will have no adverse affect.

(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 regulation will affect the 36 seed growers who are involved in certified seed production.

(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. A possible result is that only one public comment, a positive response from PennAg Industry, was receive during the public comment period for the proposed regulation.

(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	NA	NA	NA	NA	NA	NA
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 regulations.

Regulatory Analysis Form

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

Program	FY -3	FY -2	FY -1	Current FY
<i>NA</i>	<i>NA</i>	<i>NA</i>	<i>NA</i>	<i>NA</i>

(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 non-regulatory alternatives. The regulations are mandated by the Seed Act. The regulations establish the seed certification criteria key to the program. The regulations are necessary to insure an adequate program and maintain conformity with the Seed Act (Act of November 29, 2004, P.L. 1302 (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 non-regulatory alternatives to leave the current regulations in place. The current regulations are in conflict with the Federal Seed Act and Regulations.

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.

There are no provisions of this regulation that are more stringent than federal standards.

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

Each state and private certifying agency is expected to be in compliance with the Federal Seed Act and the AOSCA Standards and Procedures. Therefore the criteria of this regulation 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 final-form regulation will amend an existing regulation of the Seed Act (Act of November 29, 2004, P.L. 1302 (164)) (3 Pa.C.S.A. §§ 7101-7122). The changes amend 7 PA. Code, Chapter 113.

(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 as a final form regulation. The Department projects this will occur by January 2009. 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, Federal Seed Act and Regulations or the Standards and Procedures of AOSCA.

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Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

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. 2-157

DATE OF ADOPTION 10-31-08

BY D. W. [Signature]

TITLE Secretary

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY: [Signature]
Andrew C. Clark

NOV 26 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 FINAL RULEMAKING

**Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 113
General Provisions for Seed Certification**

FINAL RULEMAKING
DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 113]

General Provisions for Seed Certification

The Department of Agriculture (Department) hereby amends the current regulation at 7 Pa. Code Chapter 113 (relating to general provisions for seed certification) to read as set forth in Annex A.

Statutory Authority

The Department of Agriculture (Department), under the authority of 3 Pa.C.S. Chapter 71 (relating to Seed Act) (act) and under the specific authority of sections 7111 and 7117 of the act (relating to powers and duties of secretary and department; and rules and regulations) hereby amends Chapter 113 (relating to general provisions for seed certification). The act replaces The Pennsylvania Seed Act of 1965 (3 P. S. §§ 285-1--285-11).

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]." See 3 Pa.C.S. § 7111(a). In addition, section 7111 of the act establishes specific powers and duties of the Department and provides for delegation of such authority. See 3 Pa.C.S. § 7111(b) and (c). Section 7117

of the act specifically delineates that the Department "... shall promulgate and enforce rules and regulations necessary for administration and implementation of [the act]." See 3 Pa.C.S. § 7117. Therefore, consistent with that authority and to institute regulations which are consistent with the provisions of the act, the Department hereby establishes the following amendments to Chapter 113.

Purpose of the Final-Form Regulation

The regulations are required to establish regulations which are consistent with the provisions of the act. The promulgation and implementation of these amended regulations are necessary to comply with the statute. The amended regulation will be in compliance with the new statute and will eliminate incompatibility and redundancy that occurs with the statute and the current regulations. In addition, changes in the regulation are proposed in order to conform to changes in the Federal Seed Act and Regulations Part 201.67 – 201.78, the Crop Standards and Procedures of the Association of Official Seed Certifying Agencies (AOSCA), and the new USDA State National Harmonization Program For Seed Potatoes.

The regulations were 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 certified seed. These regulations insure that certified seed that farmers are purchasing and planting are true to their identity and meet established standards. Farmers and seed distributors buying, planting and selling certified seed will benefit from these regulations which will insure good quality, clean seed with integrity of variety.

Comment and Responses

Interested persons were invited to submit written comments regarding the proposed regulation within 30 days following publication in the *Pennsylvania Bulletin* (38 *Pennsylvania Bulletin* 2256 (May 17, 2008)). The Department received only one comment on the proposed regulation. The comment was from PennAg Industry and set forth their approval and support of the proposed amendments to the regulations at Chapter 113. The Department sent a letter to PennAg Industry informing them of the right to receive a copy of the final-form regulation. The Department received no comments from the Independent Regulatory Review Commission. Because the comment received was positive and requested no changes to the proposed regulation, the Department has made no changes from the Proposed regulation to the Final-Form regulation.

The Comment and Response is set forth herein and will be published in the *Pennsylvania Bulletin* as part of this final-form Preamble and along with the Annex A. The Department will also make the regulation, including this Preamble and the Annex A available for review on the Department's website at www.agriculture.state.pa.us. If you would like to request a hard copy of the Annex A or Preamble, please call the Department of Agriculture, Bureau of Plant Industry, contact person Joe Garvey (717) 787-4894.

Comment

PennAg Industries Association (PennAg) submitted a comment letter for this regulation in which PennAg expressed its support of the proposed regulations. PennAg appreciated the acknowledgement the Department gave the PennAg Seed Council in the

regulations. PennAg stated that the regulations would continue to provide more uniformity within the seed industry, therefore benefiting the seed producers and marketers and consumers purchasing and using the products. PennAg also mentioned that the provisions in this chapter are part of a national seed industry initiative working toward the adoption of Recommended Uniform State Seed Laws (RUSSEL). Along with RUSSEL, the proposed regulations would allow for compliance and continuity with federal seed regulation, the United States Department of Agriculture's Animal and Plant Health Inspection Service national harmonization program and certification standards of the Association of Official Seed Certifying Agencies. The proposed regulations would allow Pennsylvania's seed industry to remain part of the competitive seed market.

Response

The Department acknowledged PennAg's comment in writing. The Department appreciates PennAg's support of the regulation. No changes were made to the proposed regulation.

Fiscal Impact

Commonwealth

The final-form regulations will not impose any additional fiscal impacts upon the Commonwealth. The fee schedule and all associated fees are now established in the Seed Act. There are no new costs associated with these regulations. There are no adverse affects or costs associated with amending the regulations. The amended regulations create uniformity and consistency with the Seed Act. There will be no costs and/or

savings to state government. There are no additional state government staff resources necessary to implement these regulations.

Political Subdivisions

Local government is not associated with the implementation or enforcement of the regulation. Therefore, the final-form regulation will impose no additional work or costs and have no fiscal impact upon any political subdivision. The regulation will impose no additional burden of enforcement on political subdivisions.

Private Sector

The final-form regulations will impose no additional costs on the private sector. The fee schedule and all associated fees are now established in the Seed Act.

General Public

The final-form regulation will impose no direct costs and have no fiscal impact on the general public. Farmers and seed distributors buying, planting and selling certified seed will benefit from these regulations which will insure good quality, clean seed with integrity of variety, as well as, consistency with the requirements of the Act and the Federal Seed Act and Regulations Part 201.67 – 201.78, the Crop Standards and Procedures of the Association of Official Seed Certifying Agencies (AOSCA), and the new USDA State National Harmonization Program For Seed Potatoes.

Paperwork Requirements

The final-form regulations will not result in any increase in paperwork. Review and administrative procedures will be very similar to the existing system overseen by the Department.

Effective date

The final-form regulation will be effective upon final-form publication in the *Pennsylvania Bulletin*. The Department projects this will occur by January 2009. Compliance with the regulation is required within 30 days of publication of the regulations.

Additional Information

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) 787-4894

Regulatory review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the Notice of Proposed Rulemaking published at (38 *Pennsylvania Bulletin* 2256 (May 17, 2008)) on May 2, 2008 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees (Committees) for review and comment.

In compliance with § 5(b), the Department also provided the Commission and the Committees with copies of all comments received. In preparing this final-form regulation, the Department has considered all comments received from the Commission, the Committees and the public.

This final-form regulation was deemed approved by the House Agriculture and Rural Affairs Government Committee on _____; was deemed approved by the Senate Agriculture and Rural Affairs Committee on _____ and was approved by IRRC on _____.

Findings

The Department finds that:

- (1) Public notice of intention to adopt this final-form regulation has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments received were considered.
- (3) No modifications to this regulation in response to comments received were necessary or made and therefore there is no enlargement of the purpose of the proposed regulation published at 38 *Pennsylvania Bulletin* 2256 (May 17, 2008).
- (4) The adoption of the regulation in the manner provided in this Order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders the following:

- (1) The Department of Agriculture amends the regulation at 7 Pa. Code Chapter 113 (relating to general provisions for seed certification) to read as set for in Annex A.
- (2) The Secretary of Agriculture shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as required by law.
- (3) The Secretary of Agriculture shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.
- (4) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,

Secretary

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 113. GENERAL PROVISIONS FOR
SEED CERTIFICATION

PRELIMINARY PROVISIONS

§ 113.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Field--An individual area of land for the crop under inspection, which is clearly defined by distinct lines of demarcation, such as fences, roads, natural barriers, other crops, mowed or an uncropped area. A field is the basic unit of certification.

* * * * *

Inbred line--A relatively true-breeding strain resulting from at least five successive generations of controlled self-fertilization or of back-crossing to a recurrent parent with selection, or its equivalent, for specific characteristics.

* * * * *

Open-pollination--Pollination that occurs naturally as opposed to controlled pollination, such as by detasseling, cytoplasmic male sterility, self-incompatibility or similar processes.

* * * * *

Seed Act--3 Pa.C.S. Chapter 71 (relating to the Seed Act).

* * * * *

§ 113.3. Responsibility and applicability.

* * * * *

(b) In conducting the seed certification program, the Department and the Bureau of Plant Industry will cooperate with the Pennsylvania State University, College of Agriculture, Pennsylvania Foundation Seed Coop., the [Pennsylvania Seedsman's Association] Seed Council of PennAg Industries Association and seed growers.

* * * * *

(d) In cases where there are no crop standards in this Commonwealth, the standards being used by a member of the [official seed certifying agencies] Association of Official Seed Certifying Agencies will be used.

§ 113.4. Classes and sources of seed.

The following classes of seed are recognized for seed certification:

* * * * *

(6) Foundation G1-Foundation G7 seed potato classes.

§ 113.6. Limitations of generations for certified seed.

The number of generations through which a variety may be multiplied shall be limited to that specified by the originating breeder or owner and may not exceed two generations beyond the Foundation seed class with the following exceptions which may be made with the permission of the originating plant breeder, institution or a designee:

(1) Recertification of the Certified class may be permitted when no foundation seed is being maintained.

(2) The production of an additional generation of the Certified class may be permitted on a 1-year basis only when an emergency is declared by any official seed certifying agency stating that the Foundation and Registered seed supplies are not adequate to plant the needed Certified acreage of the variety. The additional generation of Certified seed to meet the emergency need is ineligible for recertification.

APPLICATIONS

§ 113.22. Completion of application.

* * * * *

(b) *Maintaining genetic purity and identity.* An applicant is responsible for maintaining genetic purity and identity of the crop at all stages of certification including seeding, harvesting, conditioning and labeling.

(c) *Field maps.* Applications shall be accompanied by maps showing the location of the fields and the boundaries of the crop to be inspected.

(d) *Requirements for Prenuclear seed potato certification.* An applicant for certification of Prenuclear seed potatoes shall file the following:

* * * * *

§ 113.23. [New applications] (Reserved).

[For those persons making application for the first time, a map of the location of the farm shall be included.]

§ 113.26. Fees.

(a) A current schedule listing application, inspection, tag and label fees shall be sent annually to each applicant.

(b) The application fee for each crop shall accompany the application. Fees shall be paid by check made payable to the "Commonwealth of Pennsylvania." Fees will not be refunded.

(c) The field inspection fee is based on the total acres inspected or, in the case of grass and legumes, the pounds of clean seed produced. An invoice stating the amount of the fee will be sent to the applicant.

(d) Acreage or plants withdrawn by the applicant prior to the actual inspection may not be included, except as provided in § 113.32(b) (relating to procedure for inspections).

(e) The fee schedule is as follows:

(1) *Application and inspection fees:*

Crop	Application Fee	Inspection Fee
Potatoes (other than Prenuclear seed potatoes)	\$25	\$10 per acre
Prenuclear seed potatoes (Greenhouse)	25	15¢ per sq. ft., assessed once per crop
Prenuclear seed potatoes (Laboratory)	25	\$50 assessed annually
Tobacco	25	50 (minimum)
Winter barley, wheat, rye	25	3 per acre

Hybrid field corn	25	7 per acre
Spring barley, oats	25	3 per acre
Soybean	25	3 per acre
Grass, legume	25	4¢ per pound production fee. Any field inspection \$3 per acre
Turfgrass sod	25	4 per acre (preplant inspection) 7 per acre (final inspection)
Trees	25	Fees based on the actual administrative costs incurred by the Department

(2) *Tag and label fees.* The Department may charge the following maximum fees for certification tags and labels. Although the Department may periodically change these fees through publication of notice in the *Pennsylvania Bulletin*, it will not charge certification tag and label fees higher than the following amounts:

	Tag	Label
Pennsylvania Certified Seed	10¢	10¢
Interagency Certified Seed	15¢	15¢
Pennsylvania Certified Sod	--	20¢
Pennsylvania Certified Seed Potatoes	10¢	--

(3) *Official interagency samples.* There shall be a \$25 per lot fee charged for each official interagency sample taken.

(4) *Shipping inspection fee.* The shipping inspection fee for potatoes is \$30 per inspection.

(5) *Laboratory testing fees.* An applicant who is responsible to pay the costs of laboratory tests conducted or performed by the Department shall pay testing fees as are established by the Department. The Department will establish the fee for a particular laboratory test by multiplying the average labor cost (salary and benefits) of the person

performing the test by the average labor time which it takes to complete the test, and then adding to that product the average cost of material required for the test. The Department will maintain, and provide upon request, a schedule of the current values of the variables in this mathematical formula. The Department may establish laboratory testing fees, or may change the fees for established tests through publication in the *Pennsylvania Bulletin* of the schedule of the current values of the variables justifying the fees under the mathematical formula described in this paragraph. The fee for a particular laboratory test will not be increased, but may be decreased, within 9 months of a prior fee increase with respect to that same laboratory test.] The applicant shall be responsible for the payment of fees as outlined in the Seed Act.

INSPECTIONS

§ 113.34. Reinspection.

A crop not meeting the appropriate field, greenhouse or laboratory inspection requirements in certain respects at the time of the initial inspection may be reinspected in accordance with the following:

- (1) A grower desiring reinspection shall make a request to the inspector or the Certification Office.

* * * * *

CONTAINERS, LABELS AND TAGS

§ 113.42. Color code for tags.

- (a) Agricultural seed.

(1) White tags shall designate the Foundation class of seed [and the Prenuclear seed potato class].

[(b)] (2) Lilac tags shall designate the Registered class of seed.

[(c)] (3) Blue tags shall designate the Certified class of seed.

(4) Green tags shall designate the Quality Assurance class of seed.

(b) Seed potatoes.

(1) White tags shall designate the Prenuclear class of seed potatoes.

(2) Blue tags shall designate the Foundation class of seed potatoes.

(3) Green tags shall designate the Certified class of seed potatoes.

(c) Tree seed.

(1) Green tags shall designate the Selected class of tree seed.

(2) Yellow tags shall designate the Source Identified class of tree seed.

§ 113.43. Two-tag system.

* * * * *

(c) Second, or analysis, tags shall be supplied by the grower and contain [such] information such as variety, lot number, purity percentage, germination percentage, date of test and other information as required by the [act of April 11, 1929 (P. L. 488, No. 205) (3 P. S. §§ 291--297)] Seed Act.

§ 113.44. Attachment of tags and labels.

* * * * *

(e) Tags and labels shall be attached in a manner which will prevent obvious removal and reattachment.

GENERAL REQUIREMENTS

§ 113.51. Handling and blending of seed--conditioner's responsibilities.

* * * * *

(c) ~~[-]~~The following apply to the blending of seeds:

* * * * *

(f) Conditioners shall designate an individual who is responsible to the [certification office] Certification Office for performing the duties required by the office. In the absence of any other designated individual, the applicant shall be the responsible individual.

§ 113.53. Seed testing.

* * * * *

(b) Seed samples will be drawn, tested and analyzed in accordance with Chapter 111 (relating to seed testing, labeling and standards). The applicant will be charged the fee established in [Chapter 111] the Seed Act for the tests. In the event of unforeseen problems, samples may be sent to another laboratory approved by the Department.

* * * * *

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 113]

General Provisions for Seed Certification

[38 Pa.B. 2253]

[Saturday, May 17, 2008]

The Department of Agriculture (Department), under the authority conferred by 3 Pa.C.S. Chapter 71 (relating to the Seed Act) (act) and under the specific authority of sections 7111 and 7117 of the act (relating to powers and duties of secretary and department; and rules and regulations) proposes to amend Chapter 113 (relating to general provisions for seed certification). The act replaces The Pennsylvania Seed Act of 1965 (3 P. S. §§ 285-1--258-11).

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]." See 3 Pa.C.S. § 7111(a). In addition, section 7111 of the act establishes specific powers and duties of the Department and provides for delegation of such authority. See 3 Pa.C.S. §§ 7111(b) and (c). Section 7117 of the act specifically delineates that the Department ". . . shall promulgate and enforce rules and regulations necessary for administration and implementation of [the act]." See 3 Pa.C.S. § 7117. Therefore, consistent with that authority and to establish regulations which are consistent with the act, the Department hereby proposes the following amendments to Chapter 113.

Background

The proposed amendments 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 amendments are summarized as follows:

Summary of Major Features and Amendments

§ 113.1. Definitions.

The Department added and amended several definitions to be consistent with and clarify the provisions of the act.

§ 113.3. Responsibility and applicability.

The Department deleted the Pennsylvania Seedsman's Association from the list of cooperating entities in subsection (b) and added PennAg Industry Association's Seed Council to the list and clarified subsection (d) with regard to the Association standards to be utilized when no standards exist in this Commonwealth.

§ 113.4. Classes and sources of seed.

The Department added another class or seed source to the classes of seed recognized for seed certification. This is to assure the regulations are consistent with the act.

§ 113.6. Limitations of generations for certified seed.

The Department added a section to establish limitations on generations for certified seed. This is consistent with the act and industry standards.

§ 113.22. Completion of application.

The Department added subsections (b) and (c) to the application provisions. Subsection (b) requires applicants to maintain genetic purity and identity of a crop at all stages of the certification process. Subsection (c) requires an applicant to furnish maps identifying the location of the fields of the crop to be inspected. This is now an ongoing process, because crops tend to be rotated. Therefore, the old provisions--in § 113.23 (relating to new applications)--requiring mapping only at the time of a new application have been deleted and this change implemented. These provisions will help assure proper enforcement of the act.

§ 113.23. New applications.

This provision was rescinded because the mapping criteria was combined with the application provisions of § 113.22.

§ 113.26. Fees.

This entire section, including the table of fees, was deleted because the fees are now set forth in the act. New language was added stating the applicant shall be responsible for payment of fees as outlined in the act.

§ 113.34. Reinspection

The Department revised paragraph (1) to allow a grower to request reinspection from the inspector "or the Certification Office."

§ 113.42. Color code for tags.

The Department amended this section by further segregating seed classes and adding tag colors for different types of registered and certified seed. These standards are more in line with National standards.

§ 113.43. Two-tag system.

The Department amended subsection (c) to reference the current act.

§ 113.44. Attachment of tags and labels.

The Department added a provision to require that tags and labels be attached in a manner which will prevent obvious removal and reattachment.

§ 113.51. Handling and blending of seed--conditioner's responsibilities.

The Department added language to subsection (f) to make it clear that the applicant is the responsible party.

§ 113.53. Seed testing.

The Department amended language in subsection (c) to assure the regulation properly cites the current act.

Fiscal Impact

Commonwealth

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

Political Subdivisions

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

Private Sector

The proposed amendments 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 act and will not impose additional costs on the regulated community.

General Public

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

Paperwork Requirements

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

Public Comment Period

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed amendments on May 2, 2008, to the Independent Regulatory Review Commission (IRRC) 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 amendments, the Department has provided IRRC 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 IRRC has any objections to any portion of the proposed amendments, it will notify the Department within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regular Review Act specifies detailed procedures for review, prior to final publication of the regulations, 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; Attention: Joe Garvey, (717) 787-4843.

Effective Date

These proposed amendments will be effective upon final-form publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,
Secretary

Fiscal Note: 2-157. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 7. AGRICULTURE****PART V. BUREAU OF PLANT INDUSTRY****CHAPTER 113. GENERAL PROVISIONS FOR
SEED CERTIFICATION****PRELIMINARY PROVISIONS**

§ 113.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Field--An individual area of land for the crop under inspection, which is clearly defined by distinct lines of demarcation, such as fences, roads, natural barriers, other crops, mowed or an uncropped area. **A field is the basic unit of certification.**

* * * * *

Inbred line--A relatively true-breeding strain resulting from at least five successive generations of controlled self-fertilization or of back-crossing to a recurrent parent with selection, or its equivalent, for specific characteristics.

* * * * *

Open-pollination--Pollination that occurs naturally as opposed to controlled pollination, such as by detasseling, cytoplasmic male sterility, self-incompatibility or similar processes.

* * * * *

Seed Act--3 Pa.C.S. Chapter 71 (relating to the Seed Act).

* * * * *

§ 113.3. Responsibility and applicability.

* * * * *

(b) In conducting the seed certification program, the Department and the Bureau of Plant Industry will cooperate with the Pennsylvania State University, College of Agriculture, Pennsylvania Foundation Seed Coop., the [Pennsylvania Seedsman's Association] Seed Council of PennAg Industries Association and seed growers.

* * * * *

(d) In cases where there are no crop standards in this Commonwealth, the standards being used by a member of the [official seed certifying agencies] Association of Official Seed Certifying Agencies will be used.

§ 113.4. Classes and sources of seed.

The following classes of seed are recognized for seed certification:

* * * * *

(6) Foundation G1-Foundation G7 seed potato classes.**§ 113.6. Limitations of generations for certified seed.**

The number of generations through which a variety may be multiplied shall be limited to that specified by the originating breeder or owner and may not exceed two generations beyond the Foundation seed class with the following exceptions which may be made with the permission of the originating plant breeder, institution or a designee:

(1) Recertification of the Certified class may be permitted when no foundation seed is being maintained.

(2) The production of an additional generation of the Certified class may be permitted on a 1-year basis only when an emergency is declared by any official seed certifying agency stating that the Foundation and Registered seed supplies are not adequate to plant the needed Certified acreage of the variety. The additional generation of Certified seed to meet the emergency need is ineligible for recertification.

APPLICATIONS**§ 113.22. Completion of application.**

* * * * *

(b) *Maintaining genetic purity and identity.* An applicant is responsible for maintaining genetic purity and identity of the crop at all stages of certification including seeding, harvesting, conditioning and labeling.

(c) *Field maps.* Applications shall be accompanied by maps showing the location of the fields and the boundaries of the crop to be inspected.

(d) *Requirements for Prenuclear seed potato certification.* An applicant for certification of Prenuclear seed potatoes shall file the following:

* * * * *

§ 113.23. [New applications] (Reserved).

[For those persons making application for the first time, a map of the location of the farm shall be included.]

§ 113.26. Fees.

(a) A current schedule listing application, inspection, tag and label fees shall be sent annually to each applicant.

(b) The application fee for each crop shall accompany the application. Fees shall be paid by check made payable to the "Commonwealth of Pennsylvania." Fees will not be

refunded.

(c) The field inspection fee is based on the total acres inspected or, in the case of grass and legumes, the pounds of clean seed produced. An invoice stating the amount of the fee will be sent to the applicant.

(d) Acreage or plants withdrawn by the applicant prior to the actual inspection may not be included, except as provided in § 113.32(b) (relating to procedure for inspections).

(e) The fee schedule is as follows:

(1) *Application and inspection fees:*

Crop	Application Fee	Inspection Fee
Potatoes (other than Prenuclear seed potatoes)	\$25	\$10 per acre
Prenuclear seed potatoes (Greenhouse)	25	15¢ per sq. ft., assessed once per crop
Prenuclear seed potatoes (Laboratory)	25	\$50 assessed annually
Tobacco	25	50 (minimum)
Winter barley, wheat, rye	25	3 per acre
Hybrid field corn	25	7 per acre
Spring barley, oats	25	3 per acre
Soybean	25	3 per acre
Grass, legume	25	4¢ per pound production fee. Any field inspection \$3 per acre
Turfgrass sod	25	4 per acre (preplant inspection) 7 per acre (final inspection)
Trees	25	Fees based on the actual administrative costs incurred by the Department

(2) *Tag and label fees.* The Department may charge the following maximum fees for certification tags and labels. Although the Department may periodically change these fees through publication of notice in the *Pennsylvania Bulletin*, it will not charge certification tag and label fees higher than the following amounts:

	Tag	Label
Pennsylvania Certified Seed	10¢	10¢
Interagency Certified Seed	15¢	15¢
Pennsylvania Certified Sod	--	20¢
Pennsylvania Certified Seed Potatoes	10¢	--

(3) **Official interagency samples.** There shall be a \$25 per lot fee charged for each official interagency sample taken.

(4) **Shipping inspection fee.** The shipping inspection fee for potatoes is \$30 per inspection.

(5) **Laboratory testing fees.** An applicant who is responsible to pay the costs of laboratory tests conducted or performed by the Department shall pay testing fees as are established by the Department. The Department will establish the fee for a particular laboratory test by multiplying the average labor cost (salary and benefits) of the person performing the test by the average labor time which it takes to complete the test, and then adding to that product the average cost of material required for the test. The Department will maintain, and provide upon request, a schedule of the current values of the variables in this mathematical formula. The Department may establish laboratory testing fees, or may change the fees for established tests through publication in the *Pennsylvania Bulletin* of the schedule of the current values of the variables justifying the fees under the mathematical formula described in this paragraph. The fee for a particular laboratory test will not be increased, but may be decreased, within 9 months of a prior fee increase with respect to that same laboratory test.] The applicant shall be responsible for the payment of fees as outlined in the Seed Act.

INSPECTIONS

§ 113.34. Reinspection.

A crop not meeting the appropriate field, greenhouse or laboratory inspection requirements in certain respects at the time of the initial inspection may be reinspected in accordance with the following:

(1) A grower desiring reinspection shall make a request to the inspector or the Certification Office.

* * * * *

CONTAINERS, LABELS AND TAGS

§ 113.42. Color code for tags.

(a) **Agricultural seed.**

(1) White tags shall designate the Foundation class of seed [and the Prenuclear seed potato class].

[(b)] (2) Lilac tags shall designate the Registered class of seed.

[(c)] (3) Blue tags shall designate the Certified class of seed.

(4) Green tags shall designate the Quality Assurance class of seed.

(b) *Seed potatoes.*

(1) White tags shall designate the Prenuclear class of seed potatoes.

(2) Blue tags shall designate the Foundation class of seed potatoes.

(3) Green tags shall designate the Certified class of seed potatoes.

(c) *Tree seed.*

(1) Green tags shall designate the Selected class of tree seed.

(2) Yellow tags shall designate the Source Identified class of tree seed.

§ 113.43. Two-tag system.

* * * * *

(c) Second, or analysis, tags shall be supplied by the grower and contain [such] information such as variety, lot number, purity percentage, germination percentage, date of test and other information as required by the [act of April 11, 1929 (P. L. 488, No. 205) (3 P. S. §§ 291--297)] Seed Act.

§ 113.44. Attachment of tags and labels.

* * * * *

(e) Tags and labels shall be attached in a manner which will prevent obvious removal and reattachment.

GENERAL REQUIREMENTS

§ 113.51. Handling and blending of seed--conditioner's responsibilities.

* * * * *

(c) [--]The following apply to the blending of seeds:

* * * * *

(f) Conditioners shall designate an individual who is responsible to the [certification office] Certification Office for performing the duties required by the office. In the absence of any other designated individual, the applicant shall be the responsible individual.

§ 113.53. Seed testing.

* * * * *

(b) Seed samples will be drawn, tested and analyzed in accordance with Chapter 111 (relating to seed testing, labeling and standards). The applicant will be charged the fee established in **[Chapter 111] the Seed Act** for the tests. In the event of unforeseen problems, samples may be sent to another laboratory approved by the Department.

* * * * *

[Pa.B. Doc. No. 08-919. Filed for public inspection May 16, 2008, 9:00 a.m.]

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LIST OF COMMENTATORS

NAME OF COMMENTATOR

ADDRESS

Amy M. Bradford
PennAg Industries Association

Northwood Office Center
2215 Forest Hills Drive
Suite 39
Harrisburg, PA 17112



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

February 19, 2008

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

RE: NOTICE OF FINAL REGULATION
Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 113
General Provisions for Seed Certification
I.D. No. 2-157
Proposed Rulemaking: 38 Pennsylvania Bulletin 2253 (May 17, 2008)
Approved by Office of General Counsel: November 26, 2008

Dear Sir or Madam:

Please find enclosed a copy of the above-referenced final-form regulation (Preamble and Annex "A"). Copies of the Regulatory Analysis Form and Notice of Proposed Rulemaking are also enclosed. This material is submitted to you in accordance with the Regulatory Review Act (at 71 P.S. § 745.5a(a)).

The Department's response to the comment received with respect to the proposed version of this regulation is set forth in the Preamble of the final-form regulation. Enclosed is a document containing the name and address of the commentator for this regulation. Please be aware that the Department, on this same date, sent a copy of the final-form regulation to the commentator pursuant to 71 P.S. § 745.5a(b). Copies of the final-form regulation have been delivered to the appropriate Legislative Committees (the House & Senate Agricultural and Rural Affairs Committees) on this date.

I respectfully request the Commission's approval of this final-form regulation. The Department will provide any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your consideration of this document.

Sincerely,

David C. Kennedy, Assistant Counsel
Office of Chief Counsel
Department of Agriculture

Enclosures

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

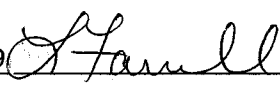
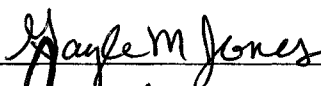
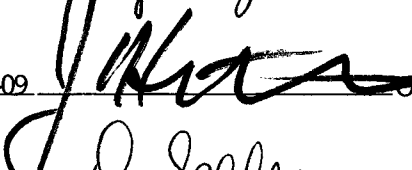
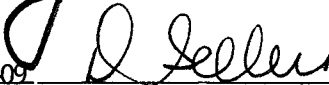

I.D. NUMBER: 2-157
 SUBJECT: GENERAL PROVISIONS FOR SEED CERTIFICATION
 AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

- Proposed Regulation
- X 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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FILING OF REGULATION

DATE	SIGNATURE		DESIGNATION
2-19-09		FOHRER	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
2-19-09		HANNA	MAJORITY CHAIRMAN <u>HANNA</u>
2-19-09		PAKE	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
2-19-09		BRUBAKER	MAJORITY CHAIRMAN <u>BRUBAKER</u>
2-19-09		IRRC	INDEPENDENT REGULATORY REVIEW COMMISSION
			ATTORNEY GENERAL (for Final Omitted only)
			LEGISLATIVE REFERENCE BUREAU (for Proposed only)