

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

11:28 Am.

IRRC Number: 2698

(1) Agency: *Agriculture*

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

2-157

(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 proposed 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). Additional 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 amended 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 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 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 proposed 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 proposal 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.

(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.

Regulatory Analysis Form

(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 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
<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 nonregulatory alternatives. The regulations are mandated by the Seed Act. The proposed regulations establish the seed certification 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 (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 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 proposal 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 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 (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 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, Federal Seed Act and Regulations or the Standards and Procedures of AOSCA.

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WITH THE LEGISLATIVE REFERENCE
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Copy below is hereby approved as to form and legality.
Attorney General

By: *Amy 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. 2-157

DATE OF ADOPTION 11-9-07

BY *Dunaway*

TITLE Secretary

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

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 113
General Provisions for Seed Certification**

PROPOSED RULEMAKING
DEPARTMENT OF AGRICULTURE
PART V. BUREAU OF PLANT INDUSTRY
[7 PA. CODE CH. 113.]
GENERAL PROVISIONS FOR SEED CERTIFICATION

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 113 of the regulations (relating to general provisions for seed certification). The 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 for 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 113, entitled General Provisions for Seed Certification.

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

§ 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 where no such standards exist in Pennsylvania.

§ 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 section 113.23 – 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 deleted and reserved because the mapping criteria was combined with the application provisions of section 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 Seed Act.

§ 113.34. Reinspection.

The Department revised subsection (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 regulations properly cite the current 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 113. GENERAL PROVISIONS FOR
SEED CERTIFICATION**

PRELIMINARY PROVISIONS

Sec.

113.1. Definitions.

113.2. Purpose of seed certification.

113.3. Responsibility and applicability.

113.4. Classes and sources of seed.

113.5. Exemptions.

113.6. Limitations of generations for certified seed.

ELIGIBILITY FOR CERTIFICATION

113.11. Eligibility requirements.

113.12. Current eligibility list.

113.13. Certification of new varieties.

113.14. Reserved.

APPLICATIONS

113.21. Requirements for filing applications.

113.22. Completion of application.

- 113.23. [New applications] Reserved.
- 113.24. Reserved.
- 113.25. Deadlines for filing applications.
- 113.26. Fees.

INSPECTIONS

- 113.31. Handling of crop prior to inspection.
- 113.32. Procedure for inspections.
- 113.33. Reserved.
- 113.34. Reinspection.
- 113.35. Extra inspections.
- 113.36. Inspection of equipment.

CONTAINERS, LABELS AND TAGS

- 113.41. General requirements.
- 113.42. Color code for tags.
- 113.43. Two-tag system.
- 113.44. Attachment of tags and labels.

GENERAL REQUIREMENTS

- 113.51. Handling and blending of seed—conditioner's responsibilities.
- 113.52. Transfer of bulk seed.
- 113.53. Seed testing.
- 113.54. Final approval.
- 113.55. Interagency certification.
- 113.56. Compliance with Federal or State laws.
- 113.57. Revocation of certification.

Authority

The provisions of this Chapter 113 issued under act of April 11, 1929 (P. L. 488, No. 205) (3 P. S. § § 291—297), unless otherwise noted.

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 un-cropped 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—The act of November 29, 2004, P.L. 1302; No. 164 (3 Pa.C.S.A. 7101 *et seq.*)

§ 113.3. Responsibility and applicability.

(a) The Department will act as the official seed certifying agency in this Commonwealth.

(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.

(c) This chapter applies to crops eligible for certification and constitutes the minimum seed certification requirements of the Department.

(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.

Source

The provisions of this § 113.3 amended April 6, 1990, effective April 7, 1990, 20 Pa.B. 1878. Immediately preceding text appears at serial page (23037).

§ 113.4. Classes and sources of seed.

The following classes of seed are recognized for seed certification:

- (1) Prenuclear seed potato class.
- (2) Breeder class.
- (3) Foundation class.
- (4) Registered class.

(5) Certified class.

(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 shall 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 his designee:

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

(b) 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.

(a) *General requirements.* In completing the application for inspection and certification of a seed crop other than Prenuclear seed potatoes, an identification tag or label which was attached to the containers of the planted seed, bills of sale or other documentary evidence showing class and source of the seed planted shall be included. This is required whether the grower purchases eligible planting seed from another person or uses eligible seed of his own production.

(b) *Maintaining Genetic Purity and Identity.* All applicants are responsible for maintaining genetic purity and identity of the crop at all stages of certification including seeding, harvesting, conditioning and labeling.

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

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

(1) Written propagation records, procedural manuals, verified statements or other evidence or documentation sufficient to verify that the potato plants or tubers have been propagated from tissue culture-grown plant material.

(2) Laboratory reports, test results, statements of varietal characteristics, verified statements or other evidence or documentation sufficient to verify that the tissue culture-grown plant material used in the propagation of seed potatoes has been tested annually for trueness-to-variety.

(3) Laboratory reports, test results, verified statements or other evidence or documentation sufficient to verify that the tissue culture-grown plant material used in the propagation of the seed potatoes has been tested annually for freedom from *Erwinia caratovora* pv. *caratovora*, *Erwinia caratovora* pv. *atroseptica*, *Clavibacter michiganense* subsp. *sepedonicum* (synonym: *Corynebacterium sepedonicum*), potato spindle tuber viroid, potato leafroll virus and potato viruses A, M, S, X and Y.

Authority

The provisions of this § 113.22 amended under The Pennsylvania Seed Act of 1965 (3 P. S. § § 285-1—285-11); and the act of April 11, 1929 (P. L. 488, No. 205) (3 P. S. § § 291—297).

Source

The provisions of this § 113.22 amended September 26, 1975, effective September 27, 1975, 5 Pa.B. 2522; amended April 6, 1990, effective April 7, 1990, 20 Pa.B. 1878; amended April 2, 1993, effective April 3, 1993, 23 Pa.B. 1558. Immediately preceding text appears at serial page (147332).

§ 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.]

Source

The provisions of this § 113.23 amended September 26, 1975, effective September 27, 1975, 5 Pa.B. 2522. Immediately preceding text appears at serial pages (1780) and (1781).

§ 113.26. Fees.

The applicant shall be responsible for the payment of fees as outlined in the Seed Act.

[(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:*

<i>Crop</i>	<i>Application Fee</i>	<i>Inspection Fee</i>
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)

(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:

	<i>Tag</i>	<i>Label</i>
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.]

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.
- (2) There is no guarantee that a second inspection will be made.

(3) If the reinspection is made, the grower may be charged at a rate double that ordinarily charged, depending upon the circumstances involved and the recommendation of the inspector.

CONTAINERS, LABELS AND TAGS

§ 113.42. Color code for tags.

(a) Agricultural Seed

[(a)](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.

Authority

The provisions of this § 113.42 amended under The Pennsylvania Seed Act of 1965 (3 P. S. § § 285-1—285-11); and the act of April 11, 1929 (P. L. 488, No. 205) (3 P. S. § § 291—297).

Source

The provisions of this § 113.42 amended September 26, 1975, effective September 27, 1975, 5 Pa.B. 2522; amended April 2, 1993, effective April 3, 1993, 23 Pa.B. 1558. Immediately preceding text appears at serial pages (147336) to (147337).

§ 113.43. Two-tag system.

(a) The two-tag system shall be used in this Commonwealth.

(b) Prenuclear seed potato, Foundation, Registered and Certified tags supplied by the Department imply that the lot of seed so tagged has met the requirements for the seed class for which it was intended. These tags

shall indicate seed kind and variety, other identification or other information designated by the certification office.

(c) Second, or analysis, tags shall be supplied by the grower and contain such information 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.

Authority

The provisions of this § 113.43 amended under The Pennsylvania Seed Act of 1965 (3 P. S. § § 285-1—285-11); and the act of April 11, 1929 (P. L. 488, No. 205) (3 P. S. § § 291—297).

Source

The provisions of this § 113.43 amended September 26, 1975, effective September 27, 1975, 5 Pa.B. 2522; amended April 6, 1990, effective April 7, 1990, 20 Pa.B. 1878; amended April 2, 1993, effective April 3, 1993, 23 Pa.B. 1558. Immediately preceding text appears at serial page (147337).

§ 113.44. Attachment of tags and labels.

(a) Official certification tags and labels may be purchased from the certification office and affixed to seed containers by the applicant or a representative of the Department.

(b) Tags may be sewn into the top of the bag so that all information is visible.

(c) Pressure sensitive labels may be applied near the top front of the bag.

(d) Staples may be used with prior approval.

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

Source

The provisions of this § 113.44 amended September 26, 1975, effective September 27, 1975, 5 Pa.B. 2522; amended April 6, 1990, effective April 7, 1990, 20 Pa.B. 1878. Immediately preceding text appears at serial page (48880).

GENERAL REQUIREMENTS

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

(a) Prenuclear seed potato, Foundation, Registered and Certified classes of seed shall be handled to maintain the varietal purity and lot identification.

(b) Seeding equipment, grain boxes, bins, elevating, harvesting and cleaning equipment used in handling seed shall be thoroughly cleaned before handling any variety or class of seed.

(c) —

(1) Two or more lots of seed harvested from fields of the same variety may be blended provided field inspection requirements have been met.

(2) If the blend involves more than one seed class, the requirements for the certified class shall be applied.

(3) Blends and contents shall be reported to the certification office.

(d) Records of operations relating to certification shall be complete and adequate to account for incoming seed and final disposition of seed.

(e) Conditioners shall permit inspection by the certification office of records pertaining to all classes of certified seed.

(f) Conditioners shall designate an individual who is responsible to the 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.

(a) A representative sample of the entire lot of seed, as it is to be offered for sale, will be drawn by a representative of the certification office and sent to the Department Seed Laboratory.

(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] Seed Act for the tests. In the event of unforeseen problems, samples may be sent to another laboratory approved by the Department.

(c) A copy of the analysis report will be sent to the seedsman and may be used for labeling purposes. If seed standards have been met, the report will also indicate final certification approval. Samples not meeting seed standards shall be reconditioned, after which another official sample will be drawn and the appropriate fee charged.

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 113.
General Provisions for Seed Certification
I.D. No. 2-157

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 black ink that reads "David C. Kennedy". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David C. Kennedy
Assistant Counsel

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

- 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


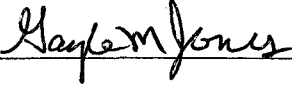
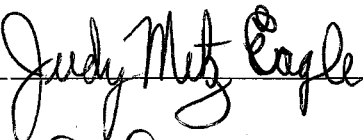
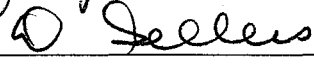

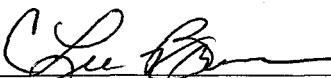
RECEIVED

MAY - 2 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

11:28 Am

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		IRB	LEGISLATIVE REFERENCE BUREAU (for Proposed only)