

Regulatory Analysis Form

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INDEPENDENT REGULATORY
BOARD COMMISSION

IRRC Number: 2699

(1) Agency: *Agriculture*

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

2-158

(3) Short Title

Standards for Seed Certification

(4) PA Code Cite

7 Pa. Code, Chapter 115

(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 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 were 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 final-form regulation is mandated under the 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 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.

(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.

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 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 this regulation.

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 this regulation.

(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 final-form 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.

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(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 these regulations 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 115.

(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.

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(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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INDEPENDENT REGULATORY
REVIEW COMMISSION

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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. 2-158

DATE OF ADOPTION 10-31-08

BY D. Curran

TITLE Secretary

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY: _____

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 115
Standards for Seed Certification**

FINAL RULEMAKING
DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 115]

Standards for Seed Certification

The Department of Agriculture (Department) hereby amends the current regulation at 7 Pa. Code Chapter 115 (relating to standards 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 115 (relating to standards 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 115.

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 115. 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 (RUSSL). Along with RUSSL, 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 115 (relating to standards 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 115. STANDARDS FOR SEED CERTIFICATION

Subchapter D. CORN--COMMERCIAL HYBRIDS

GENERAL REQUIREMENTS

§ 115.71. Definitions.

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

Commercial hybrid field corn--Corn planted for the production of corn for food or feed purposes, or for other commercial or farm use except for seed. It may consist of any one of the following:

* * * * *

(iv) [*Modified Single Cross*--A cross in which either the male, female or both parents are sister line crosses. For example: $(A_1 \times A_2) \times B$ or $(A_1 \times A_2) \times (B_1 \times B_2)$ or

$A \times (B_1 \times B_2)$] *Top Cross*--The first generation hybrid of a cross between an inbred line and an open-pollinated variety or the first generation hybrid between a single cross and an open-pollinated variety.

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

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

* * * * *

FIELD STANDARDS

§ 115.82. Isolation requirements.

* * * * *

(d) The following table indicates the minimum number of border rows required for fields of various sizes, when located at different distances from other corn:

Minimum Numbers of Male Border Rows Required						
[Minimum Distance From Contaminant	0-9 acres	10-19 acres	20-29 acres	30-39 acres	40-acres	
600	2	--	--	--	--	
540	4	4	2	--	--	
480	6	4	4	4	2	
420	8	8	6	6	6	
360	10	10	8	8	8	
300	12	10	10	10	8	
240	12	12	12	10	10	
180	14	14	12	12	12]	

Minimum Distance From Contaminant	0-20 Acres	>20 Acres
<u>660</u>	<u>0</u>	<u>0</u>
<u>570</u>	<u>4</u>	<u>2</u>
<u>490</u>	<u>6</u>	<u>2</u>
<u>410</u>	<u>8</u>	<u>4</u>

<u>330</u>	<u>10</u>	<u>6</u>
<u>270</u>	<u>12</u>	<u>8</u>
<u>210</u>	<u>14</u>	<u>10</u>
<u>150</u>	<u>16</u>	<u>12</u>
<u>90</u>	<u>18</u>	<u>14</u>
<u><90</u>	<u>24*</u>	<u>16**</u>

*minimum of 60' including border rows.

**minimum of 40' including border rows.

* * * * *

Subchapter G. DEERTONGUE GRASS

SEED STANDARDS--DEERTONGUE GRASS

§ 115.211. Seed standards.

The following seed standards apply:

	Certified Class
Pure Seed (minimum)	97%
Other crop seed	2%
*Weed seeds	1%
Inert matter (maximum)	3%
Germination (minimum)	70%

*A maximum of nine restricted noxious weed seeds per pound is allowed.

* * * * *

Subchapter J. POTATO

GENERAL STANDARDS

§ 115.271. Seed source.

Seed potatoes grown in this Commonwealth will be limited to 8 generations.

[Foundation--G3] Foundation G7 is the minimum acceptable source to produce

[certified--G4] Certified G8. When out-of-State source is used, tags shall indicate

generation. Signed documentation will be accepted in lieu of tag. Plantlets and mini-tubers entered shall come from an authorized source. Inspections of plantlets shall be made at the discretion of the certification office.

FIELD STANDARDS

§ 115.282. Diseases.

(a) *Potatoes other than Prenuclear seed potatoes.* The Department will inspect fields of potatoes at least twice during the growing season. Other inspections, which may include digging, may be made. A final inspection shall be made at shipping time for grade.

* * * * *

(3) Seed lots will be rejected if found to contain more than the following diseases:

Maximum Percent Allowed

Disease	G1 & G2	G3	G4-G8
Mosaic	.25	.5	2
Leaf Roll	.25	.5	[2] 1
Spindle Tuber	.25	.5	1
Yellow Dwarf	.25	.5	1
Total Virus including	.50	1.0	3
Mosaic, Leaf Roll, Spindle Tuber and Yellow Dwarf	.00	.00	.00
Ring Rot			

* * * * *

§ 115.283. Varietal mixtures.

The maximum percentage of varietal mixture allowed is as follows:

Prenuclear	0%
G1	0%
G2	0%
G3	.25%
<u>G4-G8</u>	.25%

SEED STANDARDS

§ 115.293. Eligibility factors for tags.

(a) To be eligible to produce and tag generation 1[, 2 and 3] through 7 for recertification, the entire farm production shall be in the Certification Program.

* * * * *

Subchapter K. SMALL GRAIN

GENERAL STANDARDS

§ 115.302. [Treatment for diseases] (Reserved).

[The seed should be treated before planting to control seed-borne diseases as recommended by the County Agricultural Extension Agent located at each county seat.]

Subchapter L. SOD

INSPECTIONS

§ 115.321. Preplanting.

* * * * *

(c) The seed standards for sod quality grass seed [is] are as follows:

* * * * *

(4) A sod seed analysis based on the rules of the Association of Official Seed Analysts, c/o Illinois State Seed Laboratory, Post Office Box 4906, 801 Sangamen Avenue, Springfield, Illinois 62706 and section [3 of The Pennsylvania Seed Act of 1965 (3 P. S. § 285.3)] 3 Pa.C.S. § 7104 (relating to labels and labeling) shall be the basis of determining seed standards.

* * * * *

Subchapter S. TREES

FIELD REQUIREMENTS

§ 115.444. Harvesting.

(a) The following requirements apply to harvesting seed material:

* * * * *

(5) The analysis tag shall state the weight of seed in the container in addition to information required by [The Pennsylvania Seed Act of 1965 (3 P. S. §§ 285-1--285.11)] 3 Pa.C.S. Chapter 71 (relating to the Seed Act).

* * * * *

(Editor's Note: The following new subchapter is printed in regular text to enhance readability.)

Subchapter T. INTERAGENCY TURFGRASS

Sec.

115.451. Purpose.

115.452. Definitions.

115.453. Interagency standards and procedures.

- 115.454. Prior approval of cooperation.
- 115.455. Conditioner's application and requirements.
- 115.456. Conditioner's facilities.
- 115.457. Conditioner's required records.
- 115.458. Inspection of conditioning operations.
- 115.459. Appointment of responsible individual.
- 115.460. Sampling and testing by the Department.
- 115.461. Mixing procedures for certified turfgrass.
- 115.462. Minimum seed standards for interagency certification of turfgrass seed.
- 115.463. Interagency certification tags and tagging.
- 115.464. Rejection of interagency certification components' seed lots.
- 115.465. Fees.

§ 115.451. Purpose.

(a) The purpose of this subchapter is to provide a system for maintaining the genetic and mechanical purity of certified seed when repackaged or combined in mixtures of kinds and varieties.

(b) The requirements of this subchapter apply when the Department participates with an out-of-State certification agency in the seed certification process.

§ 115.452. Definitions.

In addition to the definitions found in § 113.1 (relating to definitions), the following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

Component--A specific lot of a single variety that is used in a mixture.

Interagency certified mixture--Different kinds or varieties of seed certified by the state of origin that have been mixed under the Department's supervision and found by the Department to have met the specific minimum seed standards in this subchapter.

Mixing report--A form used by the Department to list each component of a specific mixture and the lots and amounts used in the mixture.

Official sample--A sample taken by a representative of the Department using sampling techniques recognized by the Association of Official Seed Certifying Agencies.

Sod quality--Seed which has met the quality standards established by the state of origin for use in cultivated sod and has been so labeled by the state of origin.

§ 115.453. Interagency standards and procedures.

(a) Varieties eligible for interagency certification shall be those approved by a member of the Association of Official Seed Certifying Agencies.

(b) Only seed certification by member agencies of the Association of Official Seed Certifying Agencies or agencies recognized by it may be used in the interagency certification program.

(c) The seed certification standards as adopted by the Department for the kinds to be certified shall be applied to interagency certified seed. These standards are found in the provisions of this subchapter which relate to the kind of seed in question. In the absence of Pennsylvania standards, the seed standards of the state in which the seed was grown and certified shall be applied.

(d) Seed will not be recognized for final certification by the Department unless it is received in containers carrying documentary evidence of its eligibility supplied by another certifying agency including:

(1) Variety and kind.

(2) Amount of seed.

(3) Class of seed.

(4) Inspection or lot number traceable to the previous certifying agency's records.

§ 115.454. Prior approval of cooperation.

The Department will not require advance approval of another certifying agency to engage in interagency certification activities unless the original certifying agency prohibits or limits the certification by a statement on its tag.

§ 115.455. Conditioner's application and requirements.

(a) Conditioners desiring interagency certification of seed shall apply annually to the Department and shall meet the requirements of this subchapter.

(b) Conditioners shall notify the Department far enough in advance of the date of mixing to allow for sampling and testing of component lots by the Department.

(c) Conditioners shall be responsible for all applicable fees for application, sampling and testing according to the 3 Pa.C.S. Chapter 71 (relating to the Seed Act).

(d) The identity of the seed shall be maintained at all times.

§ 115.456. Conditioner's facilities.

(a) Facilities shall be available to perform the function requested without introducing contaminants or admixtures.

(b) Equipment used for making mixtures of turf grasses shall have all areas which come into direct contact with the seed accessible for thorough cleaning by the conditioner and inspection by the Department.

§ 115.457. Conditioner's required records.

(a) Records of all movement of seed and procedures must be adequate to account for all incoming seed and seed that has passed final certification. The following records shall be included:

(1) Receiving records consisting of:

(i) Variety and kind.

(ii) Name and address of shipper.

(iii) Shipper's lot number or inspection number.

(iv) Date of shipment.

(v) Date received.

(vi) Weight received.

(vii) Receiving lot number assigned by consignee.

(viii) Name and address of delivering carrier.

(2) Records of mixing or rebagging consisting of:

(i) Variety and kind of each component.

(ii) Lot number of each component.

(iii) Lot number and name assigned to each mixture.

(iv) Weight of each bag and number of bags used in each component.

(v) Weight of each bag and number of bags in completed lot.

(vi) Date of mixing or rebagging.

(3) Disposition or stock records of completed lot consisting of:

(i) Name of mixture and lot number.

(ii) Weight of bags and number of bags in final lot.

(iii) Invoice number and weight of each shipment made from the lot.

(iv) Balance of lot remaining after each shipment.

(4) Invoice or other sales records consisting of:

(i) Name of mixture and lot number.

(ii) Name and address of buyer or consignee.

(iii) Date sold or shipped.

(iv) Number of bags and weight of bags sold or shipped.

(b) Conditioners shall permit inspection by the Department of all records of all lots of the kind of seed certified, including both certified and noncertified lots.

§ 115.458. Inspection of conditioning operations and records.

The Department will make as many inspections of both seed and records as may be required to ascertain that only seed meeting the requirements of this subchapter is labeled with interagency certification tags.

§ 115.459. Appointment of responsible individual.

Approved conditioners who have met the requirements in §§ 115.456--115.458 (relating to conditioner's facilities; conditioner's required records; and inspection of conditioning operations and records) shall designate an individual who shall be responsible to the Department for performing duties that may be required.

§ 115.460. Sampling and testing by the Department.

(a) When mixing lots of seed for certification, the conditioner shall use only lots of seed preapproved by the Department. Before approving of a lot, the Department will:

(1) Take an official sample of each component.

(2) Perform tests necessary to verify the eligibility of each component lot.

(b) After the different components have been mixed under the supervision of the Department, the conditioner shall permit the Department to take an official sample of each mixture to retain for reference.

(c) Samples of component lots and certified mixes will be retained by the Department for 3 years.

§ 115.461. Mixing procedures for certified turfgrass.

(a) Before mixing, the conditioner shall ensure that:

(1) Mixing equipment, pallets, scales and floor area adjacent to and around the mixing area are clean and free from seed and foreign material.

(2) Sufficient quantities of new containers are marked with the name of the mixture.

(3) Sufficient quantities of properly completed analysis tags are prepared.

(4) Analysis test reports for purity, germination and sod quality, if applicable, from the state of origin shall be supplied for the Department's records for each lot of each component used in the mixture.

(5) A mixing report shall be completed for the Department with the following information:

- (i) The business name, address and phone number of the conditioner.
- (ii) The lot number, state of origin and percentage of each component used.
- (iii) The name, lot number and date of the mixture.
- (iv) The weight of each package of the mixture and the total number of packages in the mixture.
- (v) The starting and ending numbers of the certification labels used and the total number of certification labels issued.
- (vi) A copy of the analysis label either printed on or attached to the report.
- (vii) The signature of the designated representative of the conditioner and the signature of the Department's representative at the completion of the mixing and packaging process.
- (6) Each component used is assembled in close proximity to the mixing area.
- (7) Each container of each component is clean and sealed, with a certification tag attached.
- (8) Damaged containers are not accepted.
- (9) Sufficient personnel are available to complete the mixing process.
- (b) Before mixing, a Department representative will do the following:

- (1) Inspect the equipment for cleanliness.
- (2) Inspect the mixing area for cleanliness.
- (3) Inspect the new containers provided for the mixture to ensure that they are appropriate.
- (4) Inspect the analysis tags for completeness and accuracy.
- (5) Inspect each component to ensure that the correct lots are present in the proper amounts, and that all containers of seed to be used in certified mixtures bear a certification tag.
- (c) A Department representative shall be present during the mixing process and supervise the loading and bagging of the mixed lot after the components have been thoroughly mixed for the appropriate length of time.
- (d) A Department representative will have the sole responsibility to:
 - (1) Draw an official sample of the completed mixture.
 - (2) Determine whether the mixer should be cleaned before the next seed mixture is made.

§ 115.462. Minimum seed standards for interagency certification of turfgrass seed.

(a) Turfgrass mixtures intended for use in Pennsylvania certified sod and other states certified sod must meet the following requirements:

(1) Component lots shall be those designated as sod quality by the state of origin; the minimum seed standards found in § 115.321 (relating to preplanting); or the standards required by the state into which the mixture is to be shipped.

(2) Varieties and mixtures of varieties may be approved for use by the state in which they are to be shipped.

(3) It is the responsibility of the conditioner to inform the Department that a certain mixture is to comply with a certain states' standards.

(4) The seed analysis tag must bear the statement "Eligible for Certified Sod," when appropriate.

(b) For certified mixtures made for sod growers, other than those in subsection (a), the components used shall be sod quality.

(c) The components for all other mixtures must comply with the following seed standards:

<u>Kind</u>	<u>Min. Purity</u>	<u>Max. Other Varieties</u>	<u>Min. Germ</u>	<u>Max. Other Crop*</u>	<u>Max. Weed+</u>
<u>Kentucky</u>	<u>96%</u>	<u>2%</u>	<u>80%</u>	<u>.25%</u>	<u>.2%</u>

Bluegrass

<u>Red Fescues</u>	<u>97%</u>	<u>2%</u>	<u>85%</u>	<u>.25%</u>	<u>.2%</u>
<u>Hard Fescues</u>	<u>97%</u>	<u>2%</u>	<u>85%</u>	<u>.25%</u>	<u>.2%</u>
<u>Tall Fescue</u>	<u>97%</u>	<u>2%</u>	<u>85%</u>	<u>.25%</u>	<u>.2%</u>
<u>Perennial Ryegrass</u>	<u>97%</u>	<u>2%</u>	<u>85%</u>	<u>.50%</u>	<u>.2%</u>
<u>Bentgrass**</u>	<u>98%</u>	<u>3%</u>	<u>85%</u>	<u>.25%</u>	<u>.2%</u>
<u>Rough Bluegrass</u>	<u>96%</u>	<u>2%</u>	<u>80%</u>	<u>.25%</u>	<u>.2%</u>

*Up to 18 seeds per pound is the maximum amount of the following species:

Annual bluegrass (*Poa annua*), Big Bluegrass (*Poa ampla*), Rough bluegrass (*Poa trivialis*), Meadow fescue (*Festuca elatior*), Tall Fescue (*F. arundinacea*--except in lots containing tall fescue), Ryegrass (*Lolium spp.*--except in lots containing ryegrass), Bentgrass (*Agrostis spp.*--except in lots containing bentgrass), Timothy (*Phleum pratense*), Smooth Brome (*Bromus inermis*), Wild oat (*Avena fatua*), Foxtail (*Setaria spp.*) Panicum spp., Nutsedge (*Cyperus spp.*), Bermudagrass (*Cynodon dactylon*), Velvetgrass (*Holcus lanatus*), Orchardgrass (*Dactylis glomerata*). Up to 90 seeds per pound is the maximum amount permitted of the following objectionable weed seeds: Dock and Sorrel (*Rumex spp.*), Plantain (*Plantago spp.*), Black medic (*Medicago lupulina*), Chickweeds (*Cerastium spp.* and *Stellaria spp.*), Field Pennycress (*Thlaspi arvense*), Wild carrot (*Daucus carota*), Speedwell (*Veronica spp.*), Spurge (*Euphorbia spp.*), Wood sorrel (*Oxalis stricta*), Yarrow (*Achillea millefolium*), Clover (*Trifolium spp.*). In addition, no noxious weed seeds are permitted.

**Bentgrass purity and germination standards may be 96% minimum pure seed and 80% germination for specific varieties as determined by the certifying agency of the state of origin.

(d) In an emergency, and at the discretion of the Department, seed lots failing to meet these standards for other than genetic reasons may be used for interagency certified mixtures. Use of those lots shall be made only when the Department determines that there is a serious shortage of seed meeting these standards.

§ 115.463. Interagency certification tags and tagging.

(a) Certification tags issued by the Department for interagency certified seed will be serially numbered and show class of seed.

(b) The analysis tags supplied by the conditioner must carry the name of the mixture and the number of the lot, show clearly the certifying agencies involved and the kinds and varieties of seed, as well as conform with 3 Pa.C.S. § 7104 (relating to labels and labeling).

§ 115.464. Rejection of interagency certification components' seed lots.

The Department will reject any certified component seed lot for interagency certification that fails to meet the seed standards as described in this subchapter or that exhibits seed damage or contamination. This damage or contamination may include:

(1) Rodent or insect damage.

(2) Moisture damage.

(3) Disease.

(4) Weed seed.

(5) Other crop seeds.

(6) Inert matter.

§ 115.465. Fees.

Fees for interagency certification are set forth in 3 Pa.C.S. § 7109 (relating to fees).

PROPOSED RULEMAKING

[7 PA. CODE CH. 115]

Standards for Seed Certification

[38 Pa.B. 2262]

[Saturday, May 17, 2008]

The Department of Agriculture (Department), under 3 Pa.C.S. Chapter 71 (act) (relating to the Seed 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 115 (relating to standards 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 of administration and implementation of [the act]." See 3 Pa.C.S. § 7117. Consistent with that authority and to establish regulations which are consistent with the provisions of the act, the Department hereby proposes the following amendments to Chapter 115.

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

§ 115.71. Definitions.

The Department amended the definition of commercial hybrid field corn, by deleting "modified single cross" as a type of commercial hybrid field corn and replacing it with "top cross." In addition, the Department added two more types (inbred line and open-pollination) to the definition of commercial hybrid field corn.

§ 115.82. *Isolation requirements.*

The Department deleted the current table, in subsection (d), related to the minimum number of border rows required for fields of various sizes and replaced it with an updated table.

§ 115.211. *Seed standards.*

The Department added the word "restricted" to the last sentence of this section.

§ 115.271. *Seed source.*

The Department added language clarifying that seed potatoes will be limited to 8 generations. In accordance with that change, the Department changed the language stating that foundation G3 was the minimum acceptable source to produce certified G4 to foundation G7 being the minimum acceptable source to produce certified G8.

§ 115.282. *Diseases.*

The Department reduced the tolerance allowed for diseases in Leaf Roll G4 through G8 from 2% to 1%.

§ 115.283. *Varietal mixtures.*

The Department added G4 through G8 to the chart related to prenuclear varietal mixtures.

§ 115.293. *Eligibility factors for tags.*

The Department expanded the generations eligible for production and tagging by deleting the language limiting the generations to generations 1--3 and adding language which makes generations 1--7 eligible for production and tagging.

§ 115.302. *Treatment for diseases.*

The Department rescinded this section.

§ 115.321. *Preplanting.*

The Department amended a grammatical error in subsection (c) by changing "is" to "are." In addition, the Department modified the language of subsection (c)(4) to assure the citation to the act was correct.

§ 115.444. *Harvesting.*

The Department amended subsection (a)(5) to assure the citation to the act was correct.

Subchapter T. Interagency Turf Grass

The Department added a full subchapter to deal with interagency turf grass standards and

seed certification. Turf grass requirements are set forth in section 7104(b)(2) of the act (relating to labels and labeling) but are not covered by the current regulations.

§ 115.451. Purpose.

The purpose of this section is to provide a system for maintaining the genetic and mechanical purity of certified seed when repackaged or combined in mixtures of kinds and varieties. The requirements of this subchapter apply when the Department participates with an out-of-State certification agency in the seed certification process.

§ 115.452. Definitions.

The Department established definitions which are important to clarify and understand the substantive provisions of this section.

§ 115.453. Interagency standards and procedures.

This section delineates varieties which are eligible for interagency certification, the agencies or organizations which may certify this variety of seeds and the procedures and documentation necessary for final certification.

§ 115.454. Prior approval of cooperation.

This provision delineates that prior approval is not necessary unless the original certifying agency prohibits or limits the certification by a statement on its tag.

§ 115.455. Conditioner's application and requirements.

These provisions set forth the application requirements for conditioners of seed.

§ 115.456. Conditioner's facilities.

This section establishes standards which a conditioner's facilities must meet.

§ 115.457. Conditioner's required records.

This section delineates specific recordkeeping requirements for conditioners.

§ 115.458. Inspection of conditioning operations.

These provisions set forth the Department's authority to inspect conditioning operations, their seed stocks and their records.

§ 115.459. Appointment of responsible individual.

This section requires approved conditioners to designate an individual who will be responsible for performing the duties as may be required by the Department.

§ 115.460. Sampling and testing by the Department.

The provisions of this section delineate the sampling and testing techniques and standards to be carried out by the Department.

§ 115.461. Mixing procedures for certified turfgrass.

This section sets forth the mixing procedures which must be followed and adhered to by conditioners when mixing certified turfgrasses.

§ 115.462. Minimum seed standards for interagency certification of turfgrass seed.

The provisions of this section establish specific standards for certified turfgrass seed and establish an emergency provision for use of substandard turfgrass mixtures.

§ 115.463. Interagency certification tags and tagging.

This section sets the standards for turfgrass certification tags or labels.

§ 115.464. Rejection of interagency certification components' seed lots.

These provisions delineate the specific reasons for which the Department may or shall reject any certified component seed lot for interagency certification.

§ 115.465. Fees.

This section informs the regulated community that fees for interagency certification or established in section 7109 of the act (relating to fees).

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 provisions of the act or regulations.

Political Subdivisions

The proposed amendments will impose no additional costs and have no fiscal impact upon political subdivisions. The 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 amendments. 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 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 (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 amendments, 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 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 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; 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: 2-158. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 7. AGRICULTURE**

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 115. STANDARDS FOR SEED CERTIFICATION

Subchapter D. CORN--COMMERCIAL HYBRIDS

GENERAL REQUIREMENTS

§ 115.71. Definitions.

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

Commercial hybrid field corn--Corn planted for the production of corn for food or feed purposes, or for other commercial or farm use except for seed. It may consist of any one of the following:

* * * * *

(iv) [*Modified Single Cross*--A cross in which either the male, female or both parents are sister line crosses. For example: $(A_1 \times A_2) \times B$ or $(A_1 \times A_2) \times (B_1 \times B_2)$ or $A \times (B_1 \times B_2)$] *Top Cross*--The first generation hybrid of a cross between an inbred line and an open-pollinated variety or the first generation hybrid between a single cross and an open-pollinated variety.

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

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

* * * * *

FIELD STANDARDS

§ 115.82. Isolation requirements.

* * * * *

(d) The following table indicates the minimum number of border rows required for fields of various sizes, when located at different distances from other corn:

	Minimum Numbers of Male Border Rows Required				
<i>[Minimum Distance From</i>	0-9 acres	10-19 acres	20-29 acres	30-39 acres	40-acres

Contaminant

600	2	--	--	--	--
540	4	4	2	--	--
480	6	4	4	4	2
420	8	8	6	6	6
360	10	10	8	8	8
300	12	10	10	10	8
240	12	12	12	10	10
180	14	14	12	12	12]

Minimum Distance

From Contaminant 0-20 Acres >20 Acres

660	0	0
570	4	2
490	6	2
410	8	4
330	10	6
270	12	8
210	14	10
150	16	12
90	18	14
<90	24*	16**

*minimum of 60' including border rows.

**minimum of 40' including border rows.

* * * * *

Subchapter G. DEERTONGUE GRASS

SEED STANDARDS--DEERTONGUE GRASS

§ 115.211. Seed standards.

The following seed standards apply:

	Certified Class
Pure Seed (minimum)	97%
Other crop seed	2%
*Weed seeds	1%
Inert matter (maximum)	3%
Germination (minimum)	70%

*A maximum of nine **restricted** noxious weed seeds per pound is allowed.

* * * * *

Subchapter J. POTATO

GENERAL STANDARDS

§ 115.271. Seed source.

Seed potatoes grown in this Commonwealth will be limited to 8 generations. [Foundation--G3] Foundation G7 is the minimum acceptable source to produce [certified--G4] Certified G8. When out-of-State source is used, tags shall indicate generation. Signed documentation will be accepted in lieu of tag. Plantlets and mini-tubers entered shall come from an authorized source. Inspections of plantlets shall be made at the discretion of the certification office.

FIELD STANDARDS

§ 115.282. Diseases.

(a) *Potatoes other than Prenuclear seed potatoes.* The Department will inspect fields of potatoes at least twice during the growing season. Other inspections, which may include digging, may be made. A final inspection shall be made at shipping time for grade.

* * * * *

(3) Seed lots will be rejected if found to contain more than the following diseases:

Maximum Percent Allowed

Disease	G1 & G2	G3	G4-G8
Mosaic	.25	.5	2
Leaf Roll	.25	.5	[2] 1
Spindle Tuber	.25	.5	1
Yellow Dwarf	.25	.5	1
Total Virus including	.50	1.0	3
Mosaic, Leaf Roll, Spindle Tuber and Yellow Dwarf	.00	.00	.00
Ring Rot			

* * * * *

§ 115.283. Varietal mixtures.

The maximum percentage of varietal mixture allowed is as follows:

Prenuclear	0%
G1	0%
G2	0%
G3	.25%
G4-G8	.25%

SEED STANDARDS

§ 115.293. Eligibility factors for tags.

(a) To be eligible to produce and tag generation 1[, 2 and 3] through 7 for recertification, the entire farm production shall be in the Certification Program.

* * * * *

Subchapter K. SMALL GRAIN

GENERAL STANDARDS

§ 115.302. [Treatment for diseases] (Reserved).

[The seed should be treated before planting to control seed-borne diseases as recommended by the County Agricultural Extension Agent located at each county seat.]

Subchapter L. SOD

INSPECTIONS

§ 115.321. Preplanting.

* * * * *

(c) The seed standards for sod quality grass seed [is] are as follows:

* * * * *

(4) A sod seed analysis based on the rules of the Association of Official Seed Analysts, c/o Illinois State Seed Laboratory, Post Office Box 4906, 801 Sangamen Avenue, Springfield, Illinois 62706 and section [3 of The Pennsylvania Seed Act of 1965 (3 P. S. § 285.3)] 3 Pa.C.S. § 7104 (relating to labels and labeling) shall be the basis of determining seed standards.

* * * * *

Subchapter S. TREES

FIELD REQUIREMENTS

§ 115.444. Harvesting.

(a) The following requirements apply to harvesting seed material:

* * * * *

(5) The analysis tag shall state the weight of seed in the container in addition to information required by [The Pennsylvania Seed Act of 1965 (3 P. S. §§ 285-1--285.11)] 3 Pa.C.S. Chapter 71 (relating to the Seed Act).

* * * * *

(Editor's Note: The following new subchapter is printed in regular text to enhance readability.)

Subchapter T. INTERAGENCY TURFGRASS

Sec.

115.451. Purpose.

115.452. Definitions.

115.453. Interagency standards and procedures.

115.454. Prior approval of cooperation.

115.455. Conditioner's application and requirements.

115.456. Conditioner's facilities.

115.457. Conditioner's required records.

115.458. Inspection of conditioning operations.

115.459. Appointment of responsible individual.

115.460. Sampling and testing by the Department.

115.461. Mixing procedures for certified turfgrass.

115.462. Minimum seed standards for interagency certification of turfgrass seed.

115.463. Interagency certification tags and tagging.

115.464. Rejection of interagency certification components' seed lots.

115.465. Fees.

§ 115.451. Purpose.

(a) The purpose of this subchapter is to provide a system for maintaining the genetic and mechanical purity of certified seed when repackaged or combined in mixtures of kinds and varieties.

(b) The requirements of this subchapter apply when the Department participates with an out-of-State certification agency in the seed certification process.

§ 115.452. Definitions.

In addition to the definitions found in § 113.1 (relating to definitions), the following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

Component--A specific lot of a single variety that is used in a mixture.

Interagency certified mixture--Different kinds or varieties of seed certified by the state of origin that have been mixed under the Department's supervision and found by the Department to have met the specific minimum seed standards in this subchapter.

Mixing report--A form used by the Department to list each component of a specific mixture and the lots and amounts used in the mixture.

Official sample--A sample taken by a representative of the Department using sampling techniques recognized by the Association of Official Seed Certifying Agencies.

Sod quality--Seed which has met the quality standards established by the state of origin for use in cultivated sod and has been so labeled by the state of origin.

§ 115.453. Interagency standards and procedures.

(a) Varieties eligible for interagency certification shall be those approved by a member of the Association of Official Seed Certifying Agencies.

(b) Only seed certification by member agencies of the Association of Official Seed Certifying Agencies or agencies recognized by it may be used in the interagency certification program.

(c) The seed certification standards as adopted by the Department for the kinds to be certified shall be applied to interagency certified seed. These standards are found in the provisions of this subchapter which relate to the kind of seed in question. In the absence of Pennsylvania standards, the seed standards of the state in which the seed was grown and certified shall be applied.

(d) Seed will not be recognized for final certification by the Department unless it is received in containers carrying documentary evidence of its eligibility supplied by another certifying agency including:

- (1) Variety and kind.
- (2) Amount of seed.
- (3) Class of seed.
- (4) Inspection or lot number traceable to the previous certifying agency's records.

§ 115.454. Prior approval of cooperation.

The Department will not require advance approval of another certifying agency to engage in interagency certification activities unless the original certifying agency prohibits or limits the certification by a statement on its tag.

§ 115.455. Conditioner's application and requirements.

- (a) Conditioners desiring interagency certification of seed shall apply annually to the Department and shall meet the requirements of this subchapter.
- (b) Conditioners shall notify the Department far enough in advance of the date of mixing to allow for sampling and testing of component lots by the Department.
- (c) Conditioners shall be responsible for all applicable fees for application, sampling and testing according to the 3 Pa.C.S. Chapter 71 (relating to the Seed Act).
- (d) The identity of the seed shall be maintained at all times.

§ 115.456. Conditioner's facilities.

- (a) Facilities shall be available to perform the function requested without introducing contaminants or admixtures.
- (b) Equipment used for making mixtures of turf grasses shall have all areas which come into direct contact with the seed accessible for thorough cleaning by the conditioner and inspection by the Department.

§ 115.457. Conditioner's required records.

- (a) Records of all movement of seed and procedures must be adequate to account for all incoming seed and seed that has passed final certification. The following records shall be included:
 - (1) Receiving records consisting of:
 - (i) Variety and kind.
 - (ii) Name and address of shipper.
 - (iii) Shipper's lot number or inspection number.
 - (iv) Date of shipment.
 - (v) Date received.
 - (vi) Weight received.
 - (vii) Receiving lot number assigned by consignee.
 - (viii) Name and address of delivering carrier.

(2) Records of mixing or rebagging consisting of:

(i) Variety and kind of each component.

(ii) Lot number of each component.

(iii) Lot number and name assigned to each mixture.

(iv) Weight of each bag and number of bags used in each component.

(v) Weight of each bag and number of bags in completed lot.

(vi) Date of mixing or rebagging.

(3) Disposition or stock records of completed lot consisting of:

(i) Name of mixture and lot number.

(ii) Weight of bags and number of bags in final lot.

(iii) Invoice number and weight of each shipment made from the lot.

(iv) Balance of lot remaining after each shipment.

(4) Invoice or other sales records consisting of:

(i) Name of mixture and lot number.

(ii) Name and address of buyer or consignee.

(iii) Date sold or shipped.

(iv) Number of bags and weight of bags sold or shipped.

(b) Conditioners shall permit inspection by the Department of all records of all lots of the kind of seed certified, including both certified and noncertified lots.

§ 115.458. Inspection of conditioning operations and records.

The Department will make as many inspections of both seed and records as may be required to ascertain that only seed meeting the requirements of this subchapter is labeled with interagency certification tags.

§ 115.459. Appointment of responsible individual.

Approved conditioners who have met the requirements in §§ 115.456--115.458 (relating to conditioner's facilities; conditioner's required records; and inspection of conditioning operations and records) shall designate an individual who shall be responsible to the Department for performing duties that may be required.

§ 115.460. Sampling and testing by the Department.

(a) When mixing lots of seed for certification, the conditioner shall use only lots of seed preapproved by the Department. Before approving of a lot, the Department will:

- (1) Take an official sample of each component.
- (2) Perform tests necessary to verify the eligibility of each component lot.

(b) After the different components have been mixed under the supervision of the Department, the conditioner shall permit the Department to take an official sample of each mixture to retain for reference.

(c) Samples of component lots and certified mixes will be retained by the Department for 3 years.

§ 115.461. Mixing procedures for certified turfgrass.

(a) Before mixing, the conditioner shall ensure that:

(1) Mixing equipment, pallets, scales and floor area adjacent to and around the mixing area are clean and free from seed and foreign material.

(2) Sufficient quantities of new containers are marked with the name of the mixture.

(3) Sufficient quantities of properly completed analysis tags are prepared.

(4) Analysis test reports for purity, germination and sod quality, if applicable, from the state of origin shall be supplied for the Department's records for each lot of each component used in the mixture.

(5) A mixing report shall be completed for the Department with the following information:

(i) The business name, address and phone number of the conditioner.

(ii) The lot number, state of origin and percentage of each component used.

(iii) The name, lot number and date of the mixture.

(iv) The weight of each package of the mixture and the total number of packages in the mixture.

(v) The starting and ending numbers of the certification labels used and the total number of certification labels issued.

(vi) A copy of the analysis label either printed on or attached to the report.

(vii) The signature of the designated representative of the conditioner and the signature of

the Department's representative at the completion of the mixing and packaging process.

(6) Each component used is assembled in close proximity to the mixing area.

(7) Each container of each component is clean and sealed, with a certification tag attached.

(8) Damaged containers are not accepted.

(9) Sufficient personnel are available to complete the mixing process.

(b) Before mixing, a Department representative will do the following:

(1) Inspect the equipment for cleanliness.

(2) Inspect the mixing area for cleanliness.

(3) Inspect the new containers provided for the mixture to ensure that they are appropriate.

(4) Inspect the analysis tags for completeness and accuracy.

(5) Inspect each component to ensure that the correct lots are present in the proper amounts, and that all containers of seed to be used in certified mixtures bear a certification tag.

(c) A Department representative shall be present during the mixing process and supervise the loading and bagging of the mixed lot after the components have been thoroughly mixed for the appropriate length of time.

(d) A Department representative will have the sole responsibility to:

(1) Draw an official sample of the completed mixture.

(2) Determine whether the mixer should be cleaned before the next seed mixture is made.

§ 115.462. Minimum seed standards for interagency certification of turfgrass seed.

(a) Turfgrass mixtures intended for use in Pennsylvania certified sod and other states certified sod must meet the following requirements:

(1) Component lots shall be those designated as sod quality by the state of origin; the minimum seed standards found in § 115.321 (relating to preplanting); or the standards required by the state into which the mixture is to be shipped.

(2) Varieties and mixtures of varieties may be approved for use by the state in which they are to be shipped.

(3) It is the responsibility of the conditioner to inform the Department that a certain mixture is to comply with a certain states' standards.

(4) The seed analysis tag must bear the statement "Eligible for _____ Certified Sod," when appropriate.

(b) For certified mixtures made for sod growers, other than those in subsection (a), the components used shall be sod quality.

(c) The components for all other mixtures must comply with the following seed standards:

Kind	Min. Purity	Max. Other Varieties	Min. Germ	Max. Other Crop*	Max. Weed+
Kentucky Bluegrass	96%	2%	80%	.25%	.2%
Red Fescues	97%	2%	85%	.25%	.2%
Hard Fescues	97%	2%	85%	.25%	.2%
Tall Fescue	97%	2%	85%	.25%	.2%
Perennial Ryegrass	97%	2%	85%	.50%	.2%
Bentgrass**	98%	3%	85%	.25%	.2%
Rough Bluegrass	96%	2%	80%	.25%	.2%

*Up to 18 seeds per pound is the maximum amount of the following species:

Annual bluegrass (*Poa annua*), Big Bluegrass (*Poa ampla*), Rough bluegrass (*Poa trivialis*), Meadow fescue (*Festuca elatior*), Tall Fescue (*F. arundinacea*--except in lots containing tall fescue), Ryegrass (*Lolium spp.*--except in lots containing ryegrass), Bentgrass (*Agrostis spp.*--except in lots containing bentgrass), Timothy (*Phleum pratense*), Smooth Brome (*Bromus inermis*), Wild oat (*Avena fatua*), Foxtail (*Setaria spp.*) Panicum spp., Nutsedge (*Cyperus spp.*), Bermudagrass (*Cynodon dactylon*), Velvetgrass (*Holcus lanatus*), Orchardgrass (*Dactylis glomerata*). Up to 90 seeds per pound is the maximum amount permitted of the following objectionable weed seeds; Dock and Sorrel (*Rumex spp.*), Plantain (*Plantago spp.*), Black medic (*Medicago lupulina*), Chickweeds (*Cerastium spp.* and *Stellaria spp.*), Field Pennycress (*Thlaspi arvense*), Wild carrot (*Daucus carota*), Speedwell (*Veronica spp.*), Spurge (*Euphorbia spp.*), Wood sorrel (*Oxalis stricta*), Yarrow (*Achillea millefolium*), Clover (*Trifolium spp.*). In addition, no noxious weed seeds are permitted.

**Bentgrass purity and germination standards may be 96% minimum pure seed and 80% germination for specific varieties as determined by the certifying agency of the state of origin.

(d) In an emergency, and at the discretion of the Department, seed lots failing to meet these standards for other than genetic reasons may be used for interagency certified mixtures. Use of those lots shall be made only when the Department determines that there is a serious shortage of seed meeting these standards.

§ 115.463. Interagency certification tags and tagging.

(a) Certification tags issued by the Department for interagency certified seed will be

serially numbered and show class of seed.

(b) The analysis tags supplied by the conditioner must carry the name of the mixture and the number of the lot, show clearly the certifying agencies involved and the kinds and varieties of seed, as well as conform with 3 Pa.C.S. § 7104 (relating to labels and labeling).

§ 115.464. Rejection of interagency certification components' seed lots.

The Department will reject any certified component seed lot for interagency certification that fails to meet the seed standards as described in this subchapter or that exhibits seed damage or contamination. This damage or contamination may include:

- (1) Rodent or insect damage.
- (2) Moisture damage.
- (3) Disease.
- (4) Weed seed.
- (5) Other crop seeds.
- (6) Inert matter.

§ 115.465. Fees.

Fees for interagency certification are set forth in 3 Pa.C.S. § 7109 (relating to fees).

[Pa.B. Doc. No. 08-921. Filed for public inspection May 16, 2008, 9:00 a.m.]

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webmaster@PaBulletin.com

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 115
Standards for Seed Certification
I.D. No. 2-158
Proposed Rulemaking: 38 Pennsylvania Bulletin 2262 (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**

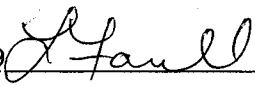

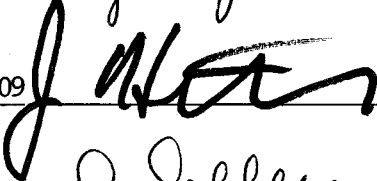
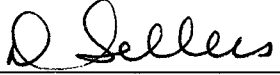
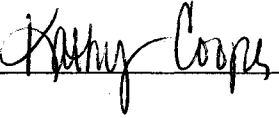
I.D. NUMBER: 2-158
 SUBJECT: STANDARDS FOR SEED CERTIFICATION
 AGENCY: DEPARTMENT OF AGRICULTURE

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		ROHRER	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
2-19-09		HANNA	MAJORITY CHAIRMAN <u>HANNA</u>
2-19-09		O'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)