

# Agriculture and Markets

## ARTICLE 9 INSPECTION AND SALE OF SEEDS

- Section 136. Definitions.  
137. Label requirements of all seeds, including lawn-seeding mixtures.  
137-a. Responsibility for labeling.  
138. Prohibitions.  
139. Exemptions.  
139-a. Tolerances.  
140. Samples; publication of results of tests.  
140-a. Provision for seed tests.  
141. Certification.  
142. Implementation.  
142-a. Stop sale orders.

§ 136. Definitions. As used in this article unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

1. The term "person" shall include any individual, partnership, corporation, company, society, or association.

\* 2. The term "seed" means botanical structures used for planting purposes and commonly referred to as "seed" within this state. This includes tubers of the Irish potato when such tubers are represented as being suitable for planting purposes.

\* NB Effective until December 22, 2018

\* 2. The term "seed" means botanical structures used for planting purposes and commonly referred to as "seed" within this state. This includes potato tubers when such tubers are represented as being suitable for planting purposes.

\* NB Effective December 22, 2018

3. The terms "agricultural seeds" and "crop seeds" include the seeds of grass, forage, cereal, field beans, and fiber crops, including "industrial hemp" as defined in section five hundred five of this chapter, or any other kinds of seeds commonly recognized within this state as agricultural seeds, lawn seeds, and mixtures of such seeds.

4. The term "vegetable seeds" includes seeds of those food crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

5. The term "flower seeds" includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and commonly known and sold under the name of flower seeds in this state.

6. The term "tree and shrub seeds" includes seeds of woody plants commonly known and sold as tree or shrub seeds in this state.

\* 7. The term "noxious weed seeds" includes seeds of bindweed (*Convolvulus arvensis*), quackgrass (*Elytrigia repens*), Canada thistle (*Cirsium arvense*), bedstraw (*Galium* spp.), dodder (*Cuscuta* spp.), horse nettle (*Solanum carolinense*), wild onion (*Allium canadense* and *A. vineale*), corn cockle (*Agrostemma githago*), and Russian knapweed (*Acroptilon repens*).

\* NB Effective until December 22, 2018

\* 7. The term "noxious weed seeds" are those noxious weed seeds which are objectionable in agriculture crops, lawns, and gardens of this state and which can be controlled by good agricultural practices or the use of herbicides. Noxious weeds and the number of such noxious weed seeds

allowable per pound of seed shall be established in regulation by the commissioner in consultation with experts in seed certification including, but not limited to, programs at the college of agriculture and life sciences at Cornell university.

\* NB Effective December 22, 2018

8. The term "labeling" refers to statements written or imprinted on the seed container itself or on a tag or label securely attached to it as specified in the label requirements of this law.

9. The term "advertising" means all representations, other than the required label statements made in any manner or by any means relating to seed within the scope of this act.

10. The term "stop-sale" means an administrative order provided by law, restraining the sale, use, disposition, and movement of a definite amount of seed.

11. The term "seizure" means a legal process carried out by court order against a definite amount of seed.

12. The term "kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.

13. The term "variety" means a subdivision of a kind characterized by growth, yield, disease resistance, plant, flower, fruit, seed or other characteristics by which it may be differentiated under certain conditions from other plants of the same kind.

14. The term "lot" means a definite quantity of seed which is identified by a lot number or other mark, and which has been so handled that each portion or container is representative of the whole quantity.

15. The term "hybrid" means the first generation of a cross produced under controlled pollination. The parents must be sufficiently uniform to permit repeated production of the hybrid without change in performance. Hybrid designations shall be treated as variety names.

16. "Pure seed" means agricultural, vegetable, flower, tree, or shrub seeds exclusive of inert matter, weed seeds, and all other seeds distinguishable from the kinds, or kinds and varieties being considered.

17. The term "percentage of germination" means the percentage of seeds, other than hard seeds, which are capable of producing normal seedlings under favorable conditions.

18. The term "percentage of hard seed" means the percentage of seeds which are incapable of sprouting promptly because their outer structures are impermeable to water.

19. The term "treated" means that the seed has received an effective application of an approved substance or method designed to control or repel plant disease organisms, insects, or other pests; or has received some other treatment to improve its planting value.

20. "Certified", "registered", "foundation", "phyto-inspected", or any other terms conveying similar meaning, when referring to seed, means seed which has been produced or collected, processed, and labeled in accordance with the procedures and in compliance with the rules and regulations of an officially recognized certification agency or agencies.

21. "Officially recognized" means recognized and designated by the laws or regulations of any state, the United States, any province of Canada, or the government of any foreign country wherein said seeds were produced, except that if said seeds are produced in New York state, section one hundred forty-one shall govern.

\* 22. "Mulch" means a protective covering of any suitable substance placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth and aid in the

prevention of the evaporation of soil moisture, the control of weeds, and the prevention of erosion.

\* NB Effective December 22, 2018

\* 23. "Mixture," "mix," or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.

\* NB Effective December 22, 2018

§ 137. Label requirements of all seeds, including lawn-seeding mixtures. Each container of seed which is sold, offered or exposed for sale, or transported in this state for planting purposes, shall bear thereon or have attached thereto in a conspicuous place, a plainly written or printed label or tag in the English language, giving the following information:

A. All seeds except seed potatoes:

1. The name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within this state.

2. If seed has been treated as defined in this article, the commonly accepted or trade name and/or the purpose of the treatment.

3. If seed has received an application of a substance harmful to humans or other vertebrates in the quantities used, a warning adequate to protect the public.

B. All seeds, except tree or shrub seeds and seed potatoes where percentage of germination, exclusive of hard seed and/or percentage of hard seed are required to be indicated, the terms "total" or "total germination and hard seed" may be used, but the term "total germination" alone may not be used.

C. Agricultural seeds, including lawn-seeding mixtures:

1. In order of their predominance, the name of the kind or kind and variety, of each agricultural seed component in excess of five per cent of the whole, and the percentage by weight of each, except that where more than ten per cent of the whole consists of an aggregate of agricultural seed components each present in an amount not exceeding five per cent of the whole, each component in excess of one per cent of the whole shall be named together with the percentage by weight of each.

\* 2. Where more than one agricultural seed component is named, the word mixture or the word mixed shall be shown conspicuously on the label.

\* NB Effective until December 22, 2018

\* 2. Where more than one agricultural seed component is named, the word mixture, mix, or mixed shall be shown conspicuously on the label.

\* NB Effective December 22, 2018

3. Lot number or other lot identification.

4. Percentage by weight of all weed seeds.

5. The name and number of seeds per pound of each kind of noxious weed seed present.

6. Percentage by weight of agricultural seeds or crop seeds other than those labeled as components and in addition the commissioner may by regulation designate certain crop seeds as undesirable lawn seeds and when present in lawn seed or lawn seeding mixtures, the manner in which they must be identified on the labeling.

7. The name and number of seeds per pound of rye and hairy vetch (*vicia villosa*) seeds when present in seeds of wheat, oats and barley.

8. Percentage by weight of inert matter.

9. For each agricultural seed component:

(a) Percentage of germination, exclusive of hard seed.

(b) Percentage of hard seed, if present.

(c) Calendar month and year test was completed to determine such percentages.

10. For cool season lawn and turf grasses including Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, colonial bentgrass, creeping bentgrass and mixtures thereof:

(a) Calendar month and year the test was completed to determine such percentages. Oldest test date shall be used.

(b) The statement "Sell by \_\_\_\_\_" which may be no more than fifteen months from the date of test exclusive of the month of test.

11. For agricultural seeds that are coated:

(a) Percentage by weight of pure seeds with coating material removed.

(b) Percentage by weight of coating material.

(c) Percentage by weight of inert material exclusive of coating material.

(d) Percentage by germination is to be determined on four hundred pellets with or without seeds.

D. Vegetable seeds:

\* 1. For peas, beans, and sweet corn in containers of one pound or less, and other kinds of vegetable seeds in containers of one-quarter pound or less

(a) Name of kind and variety of seed;

(b) For seeds which germinate less than the standard last established by the commissioner under this article;

(1) Percentage of germination, exclusive of hard seed;

(2) Percentage of hard seed, if present;

(3) The calendar month and year the test was completed and the statement "Sell by \_\_\_\_\_," which may be no more than twelve months from the date of test exclusive of the month of test or the percentage germination and the calendar month and year the test was completed to determine such percentage, provided that the germination test must have been completed within twelve months exclusive of the month of test.

(4) The words "below standard" in not less than eight-point type.

\* NB Effective until December 22, 2018

\* 1. For vegetable seeds in packets for use in home gardens or household plantings or vegetable seeds in pre-planted containers, mats, tapes, or other planting devices and for peas, beans, and sweet corn in containers of one pound or less, and other kinds of vegetable seeds in containers of one-quarter pound or less

(a) Name of kind and variety of seed;

(b) Lot identification, such as by lot number or other means;

(c) The calendar month and year the germination test was completed and the statement "Sell by \_\_\_\_\_", which may be no more than 12 months from the date of test, exclusive of the month of test; or

the year for which the seed was packaged for sale as "Packed for \_\_\_\_\_" and the statement "Sell by \_\_\_\_\_", which shall be for a calendar year; or

the percentage germination and the calendar month and year the test was completed to determine such percentage provided that the germination test must have been completed within 12 months, exclusive of the month of test;

(d) For seeds which germinate less than the standard last established by the commissioner under this article;

(1) Percentage of germination, exclusive of hard seed;

(2) Percentage of hard seed, if present;

(3) The calendar month and year the test was completed and the

statement "Sell by \_\_\_\_\_," which may be not more than twelve months from the date of test, exclusive of the month of test, or the percentage germination and the calendar month and year the test was completed to determine such percentage, provided that the germination test must have been completed within twelve months, exclusive of the month of test; and

(4) The words "below standard" in not less than eight-point type.

\* NB Effective December 22, 2018

2. For peas, beans, and sweet corn in containers of more than one pound and other kinds of vegetable seeds in containers of more than one-quarter pounds.

(a) Name of kind and variety.

(b) Lot number or other lot identification.

(c) Percentage germination exclusive of hard seeds.

(d) Percentage of hard seed if present.

(e) The calendar month and year test was completed to determine such percentage; or the year for which the seed was packaged or tested.

E. Flower seeds:

1. For flower seeds in packets prepared for use in home flower gardens:

(a) For those kinds of flower seeds where there are annual and/or biennial and/or perennial sorts, a statement in a conspicuous location on the seed container to indicate whether the seed is of the annual, biennial, or perennial sort.

(b) Name of the kind and variety or a statement of type and performance characteristics as prescribed by the commissioner.

\* (c) For those kinds of seeds for which standard testing procedures shall have been adopted, and for which the commissioner shall have promulgated minimum germination standards as hereinafter specified, and which germinate less than the standard last established by the commissioner:

(1) Percentage germination exclusive of hard seed.

(2) The calendar month and year the test was completed to determine such percentage, or the year for which the seed was packaged or tested.

(3) The words "below standard" in not less than eight-point type.

\* NB Effective until December 22, 2018

\* (c) The calendar month and year the germination test was completed and the statement "Sell by \_\_\_\_\_", which may be no more than 12 months from the date of test, exclusive of the month of test; or

the year for which the seed was packaged for sale as "Packed for \_\_\_\_\_" and the statement "Sell by \_\_\_\_\_", which shall be for a calendar year; or

the percentage germination and the calendar month and year the test was completed to determine such percentage, provided that the germination test must have been completed within 12 months exclusive of the month of test.

\* NB Effective December 22, 2018

\* (d) For those kinds of seeds for which standard testing procedures shall have been adopted, and for which the commissioner shall have promulgated minimum germination standards as hereinafter specified, and which germinate less than the standard last established by the commissioner:

(1) Percentage germination exclusive of hard seed.

(2) The calendar month and year the test was completed to determine such percentage, or the year for which the seed was packaged or tested.

(3) The words "below standard" in not less than eight-point type.

\* NB Effective December 22, 2018

2. For flower seeds in containers other than packets prepared for use

in home flower gardens.

(a) Name of kind and variety or a statement of type and performance characteristics as prescribed by the commissioner.

(b) Lot number or other lot identification.

(c) For kinds of seeds for which standard testing procedures shall have been adopted:

(1) Percentage germination exclusive of hard seed.

(2) Percentage of hard seed if present.

(3) The calendar month and year that test was completed and the statement "Sell by \_\_\_\_\_," which may be no more than twelve months from the date of test exclusive of the month of test or the percentage germination and the calendar month and year the test was completed to determine such percentage, provided that the germination test must have been completed within twelve months exclusive of the month of test.

F. Tree and shrub seeds:

(1) The kind of seed and the variety.

(2) The percentage by weight of pure seed.

(3) The percentage of germination.

(4) The year of collection of such seed.

(5) The specific locality (state and county in the United States or nearest equivalent political unit in the case of foreign countries) in which the seed was collected.

G. Seed potatoes:

1. Name of variety.

2. U. S. grade or New York state grade of contents.

3. Name and address (or in case of certified seed, the code designation) of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this state.

H. For combination mulch, seed and fertilizer products. The word "combination" followed by the words "mulch-seed-fertilizer (if appropriate)" must appear on the upper thirty percent of the principal display panel. The word "combination" must be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "mulch-seed-fertilizer" shall be no smaller than one-half the size of the word "combination" and in close proximity to the word "combination". These products shall contain a minimum of seventy percent mulch.

\* I. For combination seed and fertilizer products. 1. The word "combination" followed by the words "seed-fertilizer" must appear on the upper thirty percent of the principal display panel. The word "combination" must be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "seed-fertilizer" shall be no smaller than one-half the size of the word "combination" and in close proximity to the word "combination".

2. On the analysis label, the percentage by weight of the fertilizer in the container shall be listed on a separate line as a component of the inert matter.

\* NB Effective December 22, 2018

§ 137-a. Responsibility for labeling. The immediate vendor of any lot of seed which is sold, offered or exposed for sale shall be responsible for the presence of the labels required to be attached to said lot of seed. The immediate vendor shall be responsible for all labels attached to broken lots of seed whether he is offering for sale or selling seed which bears labels of a previous vendor with or without endorsement, or

bears his own label.

The immediate vendor of any unbroken lot of seed shall be responsible for all labels attached to said lot of seed, at the time he sells or offers for sale such lot of seed.

§ 138. Prohibitions. A. It shall be unlawful for any person to sell, offer for sale, expose for sale, or to transport for planting purposes any seed within this state:

1. Unless the test to determine the percentage of germination as required by section one hundred thirty-seven of this article, shall have been made for the calendar year in which the seed is sold, offered, or exposed for sale.

2. Not labeled in accordance with the provisions of this article or having false or misleading labeling.

3. Pertaining to which there has been false or misleading advertising.

4. Containing more than one per cent by weight of all weed seeds except as hereafter specified by the commissioner.

5. So weak or so low in germination as to be unfit for seeding purposes.

6. Represented to be "certified seed", "registered seed", "foundation seed", "phyto-inspected seed", or designated by any other term conveying similar meaning, unless such seed has been produced or collected, processed and labeled in accordance with the procedures and in compliance with the rules and regulations of an officially recognized certification agency or agencies and bears an official tag or label of such an agency.

7. Represented to be hybrid seed unless such seed conforms to the definition of hybrid presented in section one hundred thirty-six of this article; provided that this prohibition shall not apply to variety names in common trade usage at the time this law becomes effective.

8. If lawn seeds, containing more than twenty per cent inert matter which is neither a micro-organism, a nutrient, a pest control substance, a material to modify the size, shape and weight of the seed, nor other beneficial inert matter applied as a coating to such seeds for purposes of improving seed placement, or the yield or vigor of resulting seedlings.

B. It is unlawful for any person within this state:

(1) To detach, alter, deface, or destroy any label provided for in this article or the rules and regulations promulgated thereunder, or to alter or substitute seed, in a manner that may defeat the purpose of this article.

(2) To disseminate any false or misleading advertising concerning seed in any manner or by any means.

(3) To hinder or obstruct in any way, any authorized person in the performance of his duties under this article.

(4) To fail to comply with a "stop-sale" order.

(5) To use the word "type" in any labeling in connection with the name of any seed.

(6) To move or otherwise handle or dispose of any lot of seed held under a "stop-sale" order or tags attached thereto, except with the written permission of the enforcing officer, and for the purpose specified therein.

(7) To sell, offer or expose for sale any color mixture of a single kind of flower seed representing four or more colors or shades, in which any one color or shade occurs in sixty per cent or more of the plants

which the mixture is capable of producing, unless colors or shades and approximate percentage of each are indicated on the label.

(8) To sell, offer, or expose for sale a mixture of flower seed kinds in which any one kind is present in excess, of twenty-five per cent by seed count unless the kinds present and the approximate percentage of each are indicated on the label.

(9) To use relabeling stickers without having both the calendar month and year the germination test was completed, the sell by date and the lot number that matches the existing, original lot number. A relabeling may not occur more than one time.

\* (10) To sell, offer, or expose for sale agricultural seed more than nine months from the date of the germination test, exclusive of the month of the test.

\* NB Effective December 22, 2018

§ 139. Exemptions. The provisions of this article do not apply

1. To seed not intended for planting purposes.

2. To seed sold by the grower thereof on his own premises and delivered to the vendee or his agent or representative personally on such premises unless such seed has been advertised as being for sale.

3. To seed in storage in, or consigned to, a seed cleaning or processing establishment for cleaning or processing: Provided, that any labeling or other representation which may be made with respect to the uncleaned and unprocessed seed shall be subject to this article.

4. To any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier, provided, that such carrier is not engaged in producing, processing, or marketing seed subject to the provisions of this article.

§ 139-a. Tolerances. On account of the unavoidable variations which occur between two analyses or tests and likewise between label statements and the results of subsequent analyses and tests, recognized tolerances shall be employed in the enforcement of the provisions of this article.

§ 140. Samples; publication of results of tests. 1. The commissioner or his or her duly authorized representatives shall take samples of seeds for examination, analysis, and testing by the department. The commissioner may contract with a qualified laboratory to perform such examination, analysis, and testing. When the analysis of an official sample indicates that seed is mislabeled, the results of such analysis shall be provided to the person responsible for the labeling of the seed and, upon that person's request, made within fifteen days of his or her receipt of said results, the commissioner or his or her authorized agent shall furnish such person with a portion of the sample taken.

2. From time to time the department of agriculture and markets, shall make public the results of examinations, analyses, trials, and tests of any sample or samples so procured, together with such additional information as circumstances advise. These published results shall be the property of the state of New York and shall not be used for advertising or regulatory purposes by any person or agency, governmental or otherwise without requested and granted permission of the commissioner.

§ 140-a. Provision for seed tests. Any citizen of this state shall have the privilege of submitting to the department samples of seeds for testing and analysis subject to payment of a fee to the commissioner that shall, at a minimum, cover the full costs of the services provided. All monies received by the commissioner pursuant to this section shall be deposited in an account within the miscellaneous special receive fund and shall be used to defray the expenses incidental to carrying out the services authorized by this section.

§ 141. Certification. 1. Certification in this state shall be by the state college of agriculture, or by the department of agriculture and markets, or by such other agency as the commissioner of agriculture and markets may designate. This designated agency may cooperate with other officially recognized certification agencies in the certification of seeds.

2. The commissioner, after consultation with the dean of the state college of agriculture, or, in the case of tree seeds with the president of the state university of New York college of environmental science and forestry, shall adopt and promulgate appropriate standards for the certification of seed.

§ 142. Implementation. The commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary. The commissioner or his authorized agents may remove from further sale or prohibit from sale any unlabeled seed or any seeds which are found to be so unclean as to be unfit for seeding purposes until they have been properly recleaned and may prohibit further sale or may destroy seeds which are found to be so weak or low in germination as to be unfit for seeding purposes.

\* The commissioner may, through promulgation of regulations, add to, or subtract from, the list of noxious weed seeds set forth in definition seven, section one hundred thirty-six of this article, whenever he finds, after public hearing, that such addition or subtraction is in the best interests of the agriculture of this state.

\* NB Effective until December 22, 2018

\* The commissioner may, through promulgation of regulations, add to, or subtract noxious weed seeds from definition seven, section one hundred thirty-six of this article, whenever he finds, after public hearing, that such addition or subtraction is in the best interests of the agriculture of this state.

\* NB Effective December 22, 2018

In promulgating the initial germination standard for each kind of flower, tree and shrub seed, the commissioner shall publish the proposed standard at least three years previous to its effective date and shall arrange a public hearing for consideration of the proposed standard prior to its final adoption. The commissioner may, at his discretion, temporarily suspend any flower seed germination standard thus promulgated.

\* § 142-a. Stop sale orders. The commissioner may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of seed when the commissioner finds that seed is being offered or exposed for sale in violation of any of the provisions

of this article, and require the owner or custodian to hold the seeds at a designated place until either: (1) the law has been complied with and said seed is released by the commissioner in writing; or (2) said violation has been otherwise legally disposed of by written authority. The commissioner shall release the seed so withdrawn when the requirements of the provisions of this article have been complied with.

\* NB Effective December 22, 2018