

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 111]

Seed Testing, Labeling and Standards

The Department of Agriculture (Department) amends Chapter 111 (relating to seed testing, labeling and standards) to read as set forth in Annex A.

Statutory Authority

The Department, under the authority of 3 Pa.C.S. Chapter 71 (relating to the Seed Act) (act) and under the specific authority of sections 7111 and 7117 of the act (relating to powers and duties of secretary and department; and rules and regulations) amends Chapter 111. 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. Consistent with that authority and to establish regulations which are consistent with the provisions of the act, the Department is amending Chapter 111.

Purpose of the Final-Form Regulation

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

The regulation establishes seed testing, labeling and standards criteria for seed producers and distributors. The regulations define seed testing requirements, labeling terminology and requirements and procedures for seed distributors consistent with the requirements of the act. The regulations were developed to ensure that the public health, safety and environment of the citizens of this Commonwealth are not negatively impacted by the marketing and use of untested or adulterated seed.

The more uniform method of seed labeling set forth in this regulation will allow for a more understandable seed label for the purchaser of seed products. Farmers, seeds distributors and home gardeners will benefit from the changes implemented by this regulation.

Comment and Responses

Interested persons were invited to submit written comments regarding the proposed regulations within 30 days following publication at 38 Pa.B. 2256 (May 17, 2008). The Department received only one comment on the proposed regulations. The comment was from PennAg Industry Association (PennAg Industry) and set forth its

approval and support of the proposed amendments to Chapter 111. The Department sent a letter to PennAg Industry informing it of the right to receive a copy of the final-form regulations. The Department received no comments from the Independent Regulatory Review Commission (IRRC). Because the comment received was positive and requested no changes to the proposed regulations, the Department has made no changes from the proposed regulations to the final-form rulemaking.

The Comment and Response 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 web site at www.agriculture.state.pa.us. Individuals who would like to request a hard copy of the Annex A or Preamble may call Joe Garvey in the Department of Agriculture, Bureau of Plant Industry at (717) 787-4894.

Comment

PennAg Industries 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 regulations. No changes were made to the proposed regulation.

Fiscal Impact

Commonwealth

The final-form regulations will not impose additional fiscal impact upon the Commonwealth. The fee schedule and all associated fees are now established in the 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 act. There will be no costs 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 regulations. Therefore, the final-form regulations will impose no additional work or

costs and have no fiscal impact upon any political subdivision. The regulations 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 act.

General Public

The final-form regulations will impose no direct costs and have no fiscal impact on the general public. Farmers, seed distributors and home gardeners will benefit from the changes to these regulations. These changes will eliminate redundancies that have occurred with the amendment of the act. A more uniform method of seed labeling will allow for a more understandable seed label for the purchaser of seed products.

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

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 at (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 Pa.B. 2256 on May 2, 2008, to IRRC and to the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees (Committees) for review and comment.

In compliance with section 5(b) of the Regulatory Review Act, 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.

These final-form regulations were deemed approved by the Committees on April 1, 2009. Under section 5(g) of the Regulatory Review Act, the final-form regulations were deemed approved by IRRC effective April 1, 2009.

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 (relating to notice of proposed rulemaking required; and adoption of regulations).

(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 Pa.B. 2256.

(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 regulations of the Department, 7 Pa. Code Chapter 111, are amended by amending §§ 111.1—111.4, 111.11—111.13, 111.16, 111.17, 111.22, 111.23 and 111.41; and by deleting §§ 111.15 and 111.21 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 June 22, 2009.

DENNIS C WOLFF,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 2064 (April 18, 2009).)

Fiscal Note: Fiscal Note 2-156 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 111. SEED TESTING, LABELING AND STANDARDS

GENERAL PROVISIONS

§ 111.1. Sampling and testing of seeds.

The terms used in seed testing and the methods of sampling, inspecting, analyzing, testing and examining agriculture, vegetable, flower, tree and shrub seeds, and lawn and turf mixtures and the tolerance allowed thereof shall be those adopted by the Association of Official Seed Analysts (AOSA), effective October 1, 1981, as amended, except that tolerance will not be allowed for prohibited noxious weed seeds. A copy of the rules may be obtained from the current Secretary-Treasurer AOSA or at www.aosaseed.com.

§ 111.2. Condition of seeds for testing.

(a) Dirty or uncleaned seeds and mixed seed kinds when a percentage of analysis is not provided will not be tested.

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

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

§ 111.3. Fees and schedule of charges.

(a) The testing fee shall accompany the sample or the cost of testing will be billed at the first of every month. A fee will be considered past due when payment is not received within 30 days from day of billing.

(b) Fees shall be paid by check or money order made payable to the Commonwealth of Pennsylvania. Cash will not be accepted.

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

§ 111.4. Prohibitions and requirements.

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

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

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

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

(d) Procedures for sampling are as follows:

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

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

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

LABELING

§ 111.11. General labeling requirements.

(a) In labeling the kind of agriculture, vegetable, flower, tree or shrub seeds as required in 3 Pa.C.S. § 7104 (relating to labels and labeling), the following apply:

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

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

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

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

- (i) Alfalfa
- (ii) Bahiagrass
- (iii) Barley
- (iv) Bean, field
- (v) Beet, field
- (vi) Brome, smooth
- (vii) Broomcorn
- (viii) Clover, crimson
- (ix) Clover, red
- (x) Clover, white
- (xi) Corn, field
- (xii) Corn, pop
- (xiii) Cowpea
- (xiv) Fescue, tall

- (xv) Flax
- (xvi) Lespedeza, striata
- (xvii) Millet, foxtail
- (xviii) Millet, pearl
- (xix) Oats
- (xx) Pea, field
- (xxi) Peanut
- (xxii) Rice
- (xxiii) Rye
- (xxiv) Safflower
- (xxv) Sorghum
- (xxvi) Sorghum sudangrass hybrid
- (xxvii) Soybean
- (xxviii) Sudangrass
- (xxix) Sunflower
- (xxx) Tobacco
- (xxxi) Trefoil, birdsfoot
- (xxxii) Wheat, common
- (xxxiii) Wheat, durum

(b) When variety or strain names are stated, they shall be used in connection with the full kind name, such as "Alta Tall Fescue," "Merion Kentucky Bluegrass," and "Michihli Chinese Cabbage."

§ 111.12. Labeling of flower seeds.

The provisions in 3 Pa.C.S. § 7104 (relating to labels and labeling) require that flower seeds be labeled with the name of the kind and variety or a statement of type and performance characteristics as prescribed by the Department of Agriculture. This provision shall be complied with as follows:

(1) For seeds of plants grown primarily for their blooms:

(i) If the seeds are of a single named variety, the kind and variety shall be stated, such as: "Marigold Butterball."

(ii) If the seeds are of a single type and color for which there is no specific variety name, the type of plant, if significant, and the type and color of bloom shall be indicated, such as: "Scabiosa Tall, Large-Flowered, Double, Pink."

(iii) If the seeds consist of an assortment or mixture of colors or varieties of a single kind, the kind name, the type of plant, if significant, and the type or types of bloom shall be indicated. It shall be clearly indicated that the seed is mixed or assorted, such as: "Marigold, Dwarf Double French, Mixed Colors."

(iv) If the seeds consist of an assortment or mixture of kinds and varieties, it shall be clearly indicated that the seed is assorted or mixed and specific use of the assortment or mixture shall be indicated, such as: "Cut Flower Mixture," or "Rock Garden Mixture." Statements such as "General Purpose Mixture," "Wonder Mixture" or another statement which fails to indicate the specific use of the seed may not be considered as meeting the requirements of this section unless the specific use of the mixture is also stated. Containers over 3 grams shall list the kind or kind and variety names in excess of 5.0% in the order of their predominance giving the percentage by weight of each. Components of less than 5.0% shall be listed but

need not be in order of predominance. A single percentage by weight shall be given for these components. Containers of 3 grams or less shall list the components without giving percentage by weight and need not be in order of predominance.

(v) Flower seed mixtures shall be considered misleading if the kinds or kinds and varieties found by analysis differs by 20% or more of those listed on the label.

(2) For seeds of plants grown for ornamental purposes other than their blooms, the kind and variety shall be stated or the kind shall be stated together with a descriptive statement concerning the ornamental part of the plant, such as: "Ornamental Gourds," "Small Fruited," "Mixed."

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

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

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

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

§ 111.15. (Reserved).

§ 111.16. Responsibility for labeling.

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

(b) The person or dealer shall also be responsible for procuring a new germination test and subsequently attaching new analysis tags before the expiration date of the required 9-month period or 15 months for cool season lawn and turf grasses as provided in 3 Pa.C.S. § 7104 (relating to labels and labeling). Tests shall be made according to the Rules for Testing Seed published by the Association of Official Seed Analysts, and no test may be considered official unless the rules are followed.

§ 111.17. Labeling of seeds for sprouting.

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

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

WEED SEEDS

§ 111.21. (Reserved).

§ 111.22. Prohibited noxious weed seeds.

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

- (1) Bindweed, field (*Convolvulus arvensis*).
- (2) Bindweed, hedge (*Calystegia sepium*).
- (3) Quackgrass (*Elytrigia repens*).
- (4) Canada thistle (*Cirsium arvense*).
- (5) Multiflora rose (*Rosa multiflora*).
- (6) Johnsongrass (*Sorghum halepense*), its crosses with other grasses which produce seed which are not readily distinguishable from Johnsongrass.
- (7) Shattercane (*Sorghum bicolor*).
- (8) Marijuana (*Cannabis sativa*).
- (9) Mile-a-minute (*Polygonum perfoliatum*).
- (10) Kudzu-vine (*Pueraria lobata*).
- (11) Purple Loosestrife and cultivars (*Lythrum salicaria*).
- (12) Giant Hogweed (*Heracleum mantegazzianum*).
- (13) Goatsrue (*Galega officinalis*).
- (14) Jimsonweed (*Datura stramonium*).

§ 111.23. Restricted noxious weed seeds.

(a) The presence of restricted noxious weed seeds in agricultural, vegetable and flower seed, other than lawn and turf grasses, and mixtures thereof listed in subsection (b)(1) shall be governed by the following:

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

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

(2) *Other states.* Seeds designated as noxious weed seeds in other states shall be listed under the heading "Noxious Weed Seeds" if included on the tag or label.

(3) *Rate of occurrence in small size seeds.* The seeds of *Agrostis spp.*, Bermuda grass, timothy, orchardgrass, fescues, alsike and white clover, Reed canary grass, ryegrass, foxtail millet, alfalfa, red clover, sweet clovers, lespedezas, smooth brome, tall oat grass, crimson clover, *Brassica spp.*, flax, *Agropyron spp.*, and other agricultural, vegetable and flower seeds of similar size and weight or mixtures thereof shall not contain more than one seed or bulblet, single or collectively, of restricted noxious weed seeds per 5 grams of seed-equivalent to 90

weed seeds per pound-except that not more than five seeds of buckhorn plantain per 5 grams of agricultural seed may be permitted equivalent to 450 weed seeds per pound.

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

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

(1) Except as provided in paragraph (3), the seeds of the following plants shall be restricted noxious weed seeds and shall be listed on the tag or label under the heading "Undesirable Grass Seeds" or "Restricted Noxious Weed Seeds" by name and number per pound when present in bentgrass, Kentucky bluegrass, chewings fescue, hard fescue, red fescue, varieties of named turf type tall fescue, varieties of perennial ryegrass or mixtures containing these grasses:

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

(2) Restricted noxious weed seeds set forth in paragraph (1) may not exceed 0.50% by weight.

(3) The restricted noxious weed seeds set forth in paragraph (1) may not apply:

(i) To grasses or mixtures clearly labeled for pasture, forage, hay, conservation or spoil bank reclamation usages.

(ii) When the seeds are present in excess of 5.0% of the whole and the label contains the information required by § 111.13(a)(1) (relating to labeling of lawn or turf grasses and mixtures).

MISCELLANEOUS PROVISIONS

§ 111.41. Stop sale procedures.

(a) The owner or custodian of any lot of seeds held under "stop sale" shall be allowed 90 days to correct deficiencies so that the lot conforms to the requirements of this chapter and 3 Pa.C.S. Chapter 71 (relating to the Seed Act).

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

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

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

(e) The provisions in 3 Pa.C.S. § 7113 (relating to stop-sale orders) containing further requirements for "stop sale" notice, shall be followed.

[Pa.B. Doc. No. 09-923. Filed for public inspection May 22, 2009, 9:00 a.m.]

DEPARTMENT OF AGRICULTURE
[7 PA. CODE CH. 115]
Standards for Seed Certification

The Department of Agriculture (Department) amends Chapter 115 (relating to standards for seed certification) to read as set forth in Annex A.

Statutory Authority

The Department, under the authority of 3 Pa.C.S. Chapter 71 (relating to the Seed Act) (act) and under the specific authority of sections 7111 and 7117 of the act (relating to powers and duties of secretary and department; and rules and regulations) amends Chapter 115. 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. Consistent with that authority and to institute regulations which are consistent with the provisions of the act, the Department is amending Chapter 115.

Purpose of the Final-Form Regulation

The regulations are required to establish regulations which are consistent with the act. The promulgation and implementation of these amended regulations is necessary to comply with the act. The amended regulations will be in compliance with the new act and will eliminate incompatibility and redundancy that occurs with the act and the current regulations. In addition, changes in the regulation are proposed 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 this Commonwealth are not negatively impacted by the marketing and use of certified seed. These regulations

ensure 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 ensure good quality, clean seed with integrity of variety.

Comment and Responses

Interested persons were invited to submit written comments regarding the proposed regulations within 30 days following publication at 38 Pa.B. 2256 (May 17, 2008). The Department received only one comment on the proposed regulations. The comment was from PennAg Industry and set forth its approval and support of the proposed amendments to the regulations at Chapter 115. The Department sent a letter to PennAg Industry informing it of the right to receive a copy of the final-form regulations. The Department received no comments from the Independent Regulatory Review Commission (IRRC). Because the comment received was positive and requested no changes to the proposed regulations, the Department has made no changes from the proposed regulations to the final-form regulation.

The Comment and Response 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 web site at www.agriculture.state.pa.us. Individuals who would like to request a hard copy of the Annex A or Preamble may call Joe Garvey in the Department of Agriculture, Bureau of Plant Industry at (717) 787-4894.

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Response

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

Fiscal Impact

Commonwealth

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ate uniformity and consistency with the act. There will be no costs 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 these regulations. Therefore, the final-form regulations will impose no additional work or costs and have no fiscal impact upon any political subdivision. The regulations 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 regulations 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 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

Compliance with the rulemaking is required 30 days after publication of these 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 at (717) 787-4894.

Regulatory Review

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In compliance with section 5(b) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received. In preparing these final-form regulations, the Department has considered all comments received from the Commission, the Committees and the public.

These final-form regulations were deemed approved by the Committees on April 1, 2009. Under section 5(g) of the Regulatory Review Act, the final-form regulations were deemed approved by IRRC effective April 1, 2009.

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 (relating to notice of proposed rulemaking required; and adoption of regulations).

(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 Pa.B. 2256.

(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 regulations of the Department, 7 Pa. Code Chapter 115 are amended by amending §§ 115.71, 115.82, 115.211, 115.271, 115.282, 115.283, 115.293, 115.321 and 115.444; by deleting § 115.302; and by adding §§ 115.451—115.465 to read as set for in Annex A, with ellipses referring to the existing text of the regulations.

(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 June 22, 2009.

DENNIS C WOLFF,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 2064 (April 18, 2009).)

Fiscal Note: Fiscal Note 2-158 remains valid for the final adoption of the subject regulation.

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:

(i) *Double-Cross*—The first generation of a cross between two single crosses.

(ii) *Three-way or Line Cross*—The first generation of a cross between a single cross and an inbred line.

(iii) *Single-Cross*—A first generation cross between two inbred lines to be used for commercial production and not for the production of double, three-way and line crosses.

(iv) *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.

Pollen-shedding tassels—Tassels on main plants, portions of tassels or sucker tassels when 2 inches or more of the exposed central stem, side branches or a combination of the two have the anthers extended from the glumes.

Receptive silk—Any fresh turgid silk.

FIELD STANDARDS

§ 115.82. Isolation requirements.

(a) Fields in which commercial hybrid field corn are being produced shall be so located that the female, or seed parent is not less than 660 feet from other corn of a different kernel color or type (field, sweet, pop, flint, white or red) in all directions, including the diagonal.

(b) Small areas (not larger than 1% of the area of the seed producing field) of corn, closer than 660 feet to the seed producing field will not be considered contaminating, if the pollen is controlled. Failure to properly control pollen shedding of the small areas shall be cause for rejection.

(c) Large areas (greater than 1% of the area of the seed producing field) of corn, closer than 660 feet to the seed producing field will be cut to the ground before the seed parent has 3% receptive silks. Where the contaminating corn is of the same type, then this distance may be modified by the size of the crossing field, and by the planting of border rows of pollen or male parent.

(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:

<i>Minimum Distance From Contaminant</i>	<i>Minimum Numbers of Male Border Rows Required</i>	
	<i>0-20 Acres</i>	<i>>20 Acres</i>
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.

(e) The requirements for outside male rows shall apply to all sides of the crossing-field exposed to contamination from other corn, except that a requirement for only two male rows may be disregarded where it would necessitate planting across the row-ends of the crossing-field.

(f) Border rows of male shall be adjacent to and not separated from the female rows.

(g) Sufficient seed of male should be obtained to plant the maximum number of outside male rows that would be required by any possible rearrangement of plantings by

neighbors, or by the grower himself in planting nearby fields of corn. The plot should be insured against any changes.

Subchapter G. DEERTONGUE GRASS

SEED STANDARDS—DEERTONGUE GRASS

§ 115.211. Seed standards.

The following seed standards apply:

	<i>Certified Class</i>
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 G7 is the minimum acceptable source to produce 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.

(1) First field inspection will be made as early as possible to make accurate identification of diseases.

(2) Second or later inspections will take place at blossom time and before the vines are killed.

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

<i>Disease</i>	<i>Maximum Percent Allowed</i>		
	<i>G1 & G2</i>	<i>G3</i>	<i>G4-G8</i>
Mosaic	.25	.5	2
Leaf Roll	.25	.5	1
Spindle Tuber	.25	.5	1
Yellow Dwarf	.25	.5	1
Total Virus including Mosaic, Leaf Roll, Spindle Tuber and Yellow Dwarf	.50	1.0	3
Ring Rot	.00	.00	.00

(4) Maximum percentages allowed for diseases other than those listed in paragraph (3) will be determined by the certification office after identification.

(5) Ring rot, also referred to as *Clavibacter michiganense* subsp. *sepedonicum* (synonym: *Corynebacterium sepedonicum*), found at any time in bin or graded stock will be cause for rejection.

(b) *Prenuclear seed potatoes.* If *Erwinia caratovora* pv. *caratovora*, or *Erwinia caratovora* pv. *atroseptica*, or *Clavibacter michiganense* subsp. *sepedonicum* (synonym: *Corynebacterium sepedonicum*), or potato spindle tuber viroid, or potato leafroll virus, or potato virus A, M, S, X or Y is detected in a seed lot for which Prenuclear certification is sought, that particular seed lot will be rejected. Detection of virus vectors in a seed lot for which Prenuclear certification is sought will be grounds for rejection of the entire lot.

§ 115.283. Varietal mixtures.

The maximum percentage of varietal mixture allowed is as follows:

<i>Prenuclear</i>	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 through 7 for recertification, the entire farm production shall be in the Certification Program.

(b) If the disease reading is too high for generation being produced, seed may be tagged the generation to match reading.

(c) Certification tags will be issued at shipping time. Tubers, including Prenuclear class tubers, shall meet Pennsylvania Certified Grade which is comparable to U. S. Grade No. 1 Seed Potatoes. Title 7 of the Code of Federal Regulations 51.3000—51.3006 (relating to United States Standards for Seed Potatoes) describes the applicable criteria which shall be met for tubers to be eligible for a Blue or White Tag. Exception will be made for tubers less than 1 1/2 inch in diameter (known as "B" 's) if size is noted on Blue or White Tag. Tubers, other than Prenuclear class tubers, that meet all certification requirements except grade or size, or both, are eligible for a Green Tag, subject to a Buyer-Seller agreement. Green tagged seed is not eligible for recertification.

**Subchapter K. SMALL GRAIN
GENERAL STANDARDS**

§ 115.302. (Reserved).

**Subchapter L. SOD
INSPECTIONS**

§ 115.321. Preplanting.

(a) Certified sod shall be the vegetative increase of certified seed.

(b) Samples of seed shall be obtained by the certification office and checked before planting. Field boundaries shall be designated at the time of the preplanting inspection.

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

<i>Kind</i>	<i>Maximum</i>			
	<i>Minimum Purity</i>	<i>Minimum Germination</i>	<i>Other Crop</i>	<i>Maximum Weed</i>
Kentucky Bluegrass	97%	80%	.1%	.02%

Kind	Minimum Purity	Minimum Germination	Maximum Other Crop	Maximum Weed
Red Fescue*	98%	90%	.1%	.02%
Chewings Fescue*	98%	90%	.1%	.02%
Hard fescue*	98%	90%	.1%	.02%
Turf-type perennial ryegrass	98%	90%	.1%	.02%
Turf-type tall fescue	98%	90%	.1%	.02%

* Hereafter referred to as fine fescue

(1) Kinds of grasses shall be free of big bluegrass, Canada bluegrass, smooth brome, reed canary grass and clover. A maximum of .02% Canada bluegrass is permitted in Kentucky bluegrass.

(2) A maximum of 2.0% other Kentucky bluegrass varieties is permitted in a named Kentucky bluegrass variety.

(3) Samples shall be free of prohibited noxious weed seeds and undesirable grass seeds.

(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 Pa.C.S. § 7104 (relating to labels and labeling) shall be the basis of determining seed standards.

(5) A maximum of 27 ryegrass seeds per pound will be permitted in tall fescue. Ryegrass seeds are not permitted in other kinds.

(d) To be eligible for certification, a turfgrass shall be planted on sites approved by the certification agency.

(e) On land recently inspected for a certified sod crop, the preplant inspection may be waived and no fee charged.

**Subchapter S. TREES
FIELD REQUIREMENTS**

§ 115.444. Harvesting.

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

(1) Certified or selected tree seed or fruit shall be collected directly from producing trees.

(2) Each container of seed or fruit shall be labeled with the name of the variety at all times.

(3) There shall be adequate safeguards against mixed identities at all times throughout processing and storage.

(4) Storage conditions shall maintain viability of the seed, according to requirements of the species.

(5) The analysis tag shall state the weight of seed in the container in addition to information required by 3 Pa.C.S. Chapter 71 (relating to the Seed Act).

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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 and records.
- 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 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 this Commonwealth, 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:

<i>Kind</i>	<i>Min. Purity</i>	<i>Max. Other Varieties</i>	<i>Min. Germ</i>	<i>Max. Other Crop*</i>	<i>Max. Weed+</i>
Kentucky Bluegrass	96%	2%	80%	.25%	.2%
Red Fescues	97%	2%	85%	.25%	.2%
Hard Fescues	97%	2%	85%	.25%	.2%
Tall Fescue Perennial	97%	2%	85%	.25%	.2%
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. 09-924. Filed for public inspection May 22, 2009, 9:00 a.m.]

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 113]

General Provisions for Seed Certification

The Department of Agriculture (Department) amends Chapter 113 (relating to general provisions for seed certification) to read as set forth in Annex A.

Statutory Authority

The Department, under the authority of 3 Pa.C.S. Chapter 71 (relating to the Seed Act) (act) and under the specific authority of sections 7111 and 7117 of the act (relating to powers and duties of secretary and department; and rules and regulations) amends Chapter 113. 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. Consistent with that authority and to institute regulations which are consistent with the provisions of the act, the Department is amending Chapter 113.

Purpose of the Final-Form Regulation

The regulations are required to establish regulations which are consistent with the act. The promulgation and implementation of these amended regulations are necessary to comply with the statute. The amended regulations will be in compliance with the new statute and will eliminate incompatibility and redundancy that occurs with the statute and the current regulations. In addition, changes in the regulation are proposed 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 this Commonwealth are not negatively impacted by the marketing and use of certified seed. These regulations ensure 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 ensure good quality, clean seed with integrity of variety.

Comment and Responses

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

The Comment and Response 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 rulemaking, including this Preamble and the Annex A available for review on the Department's web site at www.agriculture.state.pa.us. Individuals who would like to request a hardcopy of the Annex A or Preamble may call Joe Garvey in the Department of Agriculture, Bureau of Plant Industry at (717) 787-4894.

Comment

PennAg Industries Association (PennAg) submitted a comment letter for these regulations in which PennAg expressed its support of the proposed rulemakings. Penn Ag 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 rulemaking 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 rulemaking 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 regulations. No changes were made to the proposed rulemaking.

Fiscal Impact

Commonwealth

The final-form regulations will not impose additional fiscal impact upon the Commonwealth. The fee schedule and all associated fees are now established in the 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 act. There will be no costs 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 regulations. Therefore, the final-form regulations will impose no additional work or costs and have no fiscal impact upon any political subdivision. The regulations 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 act.

General Public

The final-form regulations 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 rulemakings 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 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

Compliance with the rulemaking is required 30 days after 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 at (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 Pa.B. 2256 (May 2, 2008), to IRRC and to the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees (Committees) for review and comment.

In compliance with section 5(b) of the Regulatory Review Act, the Department also provided the Commission and IRRC 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.

These regulations were deemed approved by the Committees on April 1, 2009. Under section 5(g) of the Regulatory Review Act, the final-form rulemakings were deemed approved by IRRC effective April 1, 2009.

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 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments received were considered.

(3) No modifications to these regulations 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 Pa. B. 2256.

(4) The adoption of these regulations 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 regulations of the Department, 7 Pa. Code Chapter 113, are amended by amending §§ 113.1, 113.3, 113.4, 113.22, 113.26, 113.34, 113.42—113.44, 113.51 and 113.53; by adding § 113.6; and by deleting § 113.23 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 June 22, 2009.

DENNIS C WOLFF,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 2064 (April 18, 2009).)

Fiscal Note: Fiscal Note 2-157 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 113. GENERAL PROVISIONS FOR SEED CERTIFICATION

PRELIMINARY PROVISIONS

§ 113.1. Definitions.

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

Applicant—An individual, partnership, association, cooperative or corporation applying for certification of a seed crop under this chapter.

Breeder class seed—Seed which is directly controlled by the originating or sponsoring plant breeder or institution, and which provides the source for the initial and recurring increase of Foundation seed.

Certification office—A unit of the Bureau of Plant Industry authorized by the Department to act as its representative in carrying out this chapter.

Certified—Seed classes, including Prenuclear seed potato, Breeder, Foundation, Registered and Certified which meet the required standard of quality.

Certified class seed—Seed which is the progeny of Foundation or Registered seed and is handled so that satisfactory genetic identity and purity for growing the desired product is maintained.

Conditioner—A processor or handler of seed after harvest.

Department—The Department of Agriculture of the Commonwealth.

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

Foundation class seed—Seed which is the progeny of Breeder seed and is handled so that specific genetic identity and purity as designated by the originating or sponsoring plant breeder or experiment station is maintained. Foundation seed may be used to produce Foundation seed only with the approval of the originating or sponsoring plant breeder or experiment station.

Grower—The person directly involved in growing or cultivating the seed crop entered into the certification program.

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

Norm—The official description of the characteristics of a variety.

Off-type—A plant which can be identified as not conforming to the official norm of a variety.

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

Prenuclear seed potato—Potato plants or potato tubers which are:

- (i) Produced in a laboratory or greenhouse.
- (ii) Propagated directly from tissue culture-grown plant material.

Registered class seed—Seed which is the progeny of Foundation seed and is handled so that genetic identity and purity suitable for the production of certified seed is maintained.

Rogue—An undesirable plant in a crop such as, off-type, other kind, other variety or weed.

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

Seed lot or lot of seed—A definite quantity of seed identified by a lot number or other identification mark or label. With respect to Prenuclear seed potatoes, the term consists of plants derived from a single disease and variety-tested source and grown in a laboratory, or on one greenhouse bench or on some other discrete physical unit within a greenhouse to exclude mixing of soil, water or plant tissues between lots.

Tissue culture—The axenic growth of plant tissues in a synthetic medium under controlled environmental conditions.

§ 113.3. Responsibility and applicability.

- (a) The Department will act as the official seed certifying agency in this Commonwealth.
- (b) In conducting the seed certification program, the Department and the Bureau of Plant Industry will cooperate with the Pennsylvania State University, College of

Agriculture, Pennsylvania Foundation Seed Coop., the Seed Council of PennAg Industries Association and seed growers.

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

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

§ 113.4. Classes and sources of seed.

The following classes of seed are recognized for seed certification:

- (1) Prenuclear seed potato class.
- (2) Breeder class.
- (3) Foundation class.
- (4) Registered class.
- (5) Certified class.
- (6) Foundation G1-Foundation G7 seed potato classes.

§ 113.6. Limitations of generations for certified seed.

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

- (1) Recertification of the Certified class may be permitted when no foundation seed is being maintained.
- (2) The production of an additional generation of the Certified class may be permitted on a 1-year basis only when an emergency is declared by any official seed certifying agency stating that the Foundation and Registered seed supplies are not adequate to plant the needed Certified acreage of the variety. The additional generation of Certified seed to meet the emergency need is ineligible for recertification.

APPLICATIONS

§ 113.22. Completion of application.

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

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

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

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

- (1) Written propagation records, procedural manuals, verified statements or other evidence or documentation

sufficient to verify that the potato plants or tubers have been propagated from tissue culture-grown plant material.

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

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

§ 113.23. (Reserved).

§ 113.26. Fees.

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

INSPECTIONS

§ 113.34. Reinspection.

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

- (1) A grower desiring reinspection shall make a request to the inspector or the Certification Office.
- (2) There is no guarantee that a second inspection will be made.
- (3) If the reinspection is made, the grower may be charged at a rate double that ordinarily charged, depending upon the circumstances involved and the recommendation of the inspector.

CONTAINERS, LABELS AND TAGS

§ 113.42. Color code for tags.

- (a) *Agricultural seed.*
 - (1) White tags shall designate the Foundation class of seed.
 - (2) Lilac tags shall designate the Registered class of seed.
 - (3) Blue tags shall designate the Certified class of seed.
 - (4) Green tags shall designate the Quality Assurance class of seed.
- (b) *Seed potatoes.*
 - (1) White tags shall designate the Prenuclear class of seed potatoes.
 - (2) Blue tags shall designate the Foundation class of seed potatoes.
 - (3) Green tags shall designate the Certified class of seed potatoes.
- (c) *Tree seed.*
 - (1) Green tags shall designate the Selected class of tree seed.
 - (2) Yellow tags shall designate the Source Identified class of tree seed.

§ 113.43. Two-tag system.

- (a) The two-tag system shall be used in this Commonwealth.
- (b) Prenuclear seed potato, Foundation, Registered and Certified tags supplied by the Department imply that the lot of seed so tagged has met the requirements for the seed class for which it was intended. These tags shall indicate seed kind and variety, other identification or other information designated by the certification office.

(c) Second, or analysis, tags shall be supplied by the grower and contain information such as variety, lot number, purity percentage, germination percentage, date of test and other information as required by the Seed Act.

§ 113.44. Attachment of tags and labels.

- (a) Official certification tags and labels may be purchased from the certification office and affixed to seed containers by the applicant or a representative of the Department.
- (b) Tags may be sewn into the top of the bag so that all information is visible.
- (c) Pressure sensitive labels may be applied near the top front of the bag.
- (d) Staples may be used with prior approval.
- (e) Tags and labels shall be attached in a manner which will prevent obvious removal and reattachment.

GENERAL REQUIREMENTS

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

- (a) Prenuclear seed potato, Foundation, Registered and Certified classes of seed shall be handled to maintain the varietal purity and lot identification.
- (b) Seeding equipment, grain boxes, bins, elevating, harvesting and cleaning equipment used in handling seed shall be thoroughly cleaned before handling any variety or class of seed.
- (c) The following apply to the blending of seeds:
 - (1) Two or more lots of seed harvested from fields of the same variety may be blended provided field inspection requirements have been met.
 - (2) If the blend involves more than one seed class, the requirements for the certified class shall be applied.
 - (3) Blends and contents shall be reported to the certification office.
 - (4) Records of operations relating to certification shall be complete and adequate to account for incoming seed and final disposition of seed.
 - (5) Conditioners shall permit inspection by the certification office of records pertaining to all classes of certified seed.

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

§ 113.53. Seed testing.

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

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

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

[Pa.B. Doc. No. 09-925. Filed for public inspection May 22, 2009, 9:00 a.m.]

are located either on or directly accessible from and adjacent to the gaming floor or the restricted areas servicing slot operations.

(ii) The term does not encompass areas or amenities exclusive to pari-mutuel activities, hotel activities including hotel rooms, catering or room service operations serving a hotel, convention, meeting and multipurpose facilities, retail facilities, food and beverage outlets and other amenities and activities not located on or adjacent to the gaming floor, or related to slot machine gaming operations.

* * * * *

[Pa.B. Doc. No. 09-926. Filed for public inspection May 22, 2009, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 401a]

Corrective Amendment to 58 Pa. Code Chapter 401a

The Pennsylvania Gaming Control Board (Board) has discovered a discrepancy between the agency text of 58 Pa. Code § 401a.3 (relating to definitions), as deposited with the Legislative Reference Bureau and published at 39 Pa.B. 235 (January 10, 2009) and the official text currently appearing in the *Pennsylvania Code*. The codification of the amendment set forth at 39 Pa.B. 235 was inadvertently omitted from the *Pennsylvania Code Reporter* (Master Transmittal Sheet 412, March 2009).

Therefore, under 45 Pa.C.S. § 901: The Board has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code § 401a.3. The corrective amendment to 58 Pa. Code § 401a.3 is effective as of March 7, 2009, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 58 Pa. Code § 401a.3 appears in Annex A, with ellipses referring to the existing text of the section.

TROY BEAVERSON,
Pennsylvania Gaming Control Board

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

* * * * *

Licensed facility—

(i) The physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines including the gaming floor, all restricted areas servicing slot operations, and food, beverage and retail outlets and other areas serving the gaming floor which

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 431a, 435a, 437a,
451a AND 465a]

Suppliers' Principal Place of Business; Temporary Credentials and Recordkeeping

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1311, 1311.1, 1311.2, 1317 and 1322, amends Chapters 431a, 435a, 437a, 451a and 465a to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

This final-form rulemaking sets forth requirements for suppliers' principal place of business; extends, from 120 days to 180 days, the time period for which a temporary credential issued to an applicant for a principal or key employee license is valid; corrects wording in § 437a.8 (relating to approved vendors list; prohibited vendors) and limits the requirement that records be maintained in this Commonwealth to suppliers and slot machine licenses.

Explanation of Amendments to Chapters 431a, 435a, 437a, 451a and 465a

Section 1317(b)(1.2) of the act (relating to supplier licenses) requires each supplier to establish and maintain a principal place of business in this Commonwealth. There has been some confusion on the part of suppliers as to what constitutes a principal place of business. To eliminate that confusion, the Board has amended § 431a.4 (relating to responsibilities of a supplier) to establish minimum requirements that must be met by a supplier when it establishes its principal place of business in this Commonwealth.

Under § 435a.8 (relating to temporary credentials for principals and key employees), applicants for a principal or key employee license whose presence is necessary at a licensed facility may be issued a temporary credential. These temporary credentials were valid for 120 days and could be extended if the Board determines that additional time was needed to complete the investigation of the applicant. While many investigations are completed in 120 days, a significant number are not. This has resulted in the Board having to issue a large number of extensions, which requires the issuance of a new temporary credential.

To reduce the need to issue a large number of new temporary credentials, the Board amended § 435a.8 to

extend the time period for which a temporary credential for an applicant for a principal or key employee license will be valid from 120 days to 180 days.

In § 437a.8(b), the Board replaced the word “vendor” with “vendors” to make the usage consistent with the rest of this section.

In § 451a.1 (relating to recordkeeping generally), amendments have been made which eliminate the requirement that records be maintained in this Commonwealth for all entities regulated by the Board, except suppliers and slot machine licensees.

In § 465a.6 (relating to retention, storage and destruction of books, records and documents) a cross-reference to § 451a.1 has been added.

Comment and Response Summary

Notice of proposed rulemaking was published at 38 Pa.B. 6496 (November 29, 2008).

The Board received comments from International Game Technology (IGT) during the public comment period. On January 28, 2009, the Independent Regulatory Review Commission (IRRC) also filed comments on the proposed rulemaking. All of these comments were reviewed by the Board and are discussed in detail as follows.

In its comments, IGT stated that it supports the Board's efforts to provide a process for out-of-State companies to request approval for alternate locations to store their records.

The Board appreciates IGT's expression of support.

IRRC noted that § 431a.4(a)(2) requires supplier licensees to keep all agreements, contracts and records at their principal place of business in this Commonwealth. In contrast, § 451a.1(c) allows licensees, including suppliers, to file a request for a waiver that would allow the licensee to store its records outside of this Commonwealth. To resolve this apparent conflict, IRRC recommended that language be added to § 431a.4(a)(2) that would allow a supplier to file a waiver request under § 451a.1(c).

The Board has not adopted this recommendation. Section 1317 requires each supplier to establish a principal place of business in this Commonwealth. Given this specific statutory requirement, the Board believes that it is also appropriate to require that suppliers maintain their records at this location.

Additional Revisions

Under the revisions contained in the proposed rulemaking, the Board was delegating the authority to review requests for maintaining records outside of this Commonwealth to the Bureau of Licensing. Based on further review and evaluation of the need for the Board to access records for audit and other purposes, the Board no longer believes that it is necessary for most entities regulated by the Board to maintain these records in this Commonwealth.

Under Chapters 441a and 465a (relating to slot machine licenses; and accounting and internal controls), slot machine licensees are required to keep extensive financial and operational records and copies of all agreements and contacts at the site of the licensed facility. The availability of these records and the reports that slot machine licensees are required to file with the Board should provide the Board with access to any information that it may need. Accordingly, the Board is deleting the existing and proposed provisions in Chapter 451a that require most entities regulated by the Board to maintain records in this Commonwealth and the provisions related to

requests to maintain records outside of this Commonwealth. It should be noted, however, that if the Board does need records from a regulated entity that does not maintain their records in this Commonwealth, the entity will still be required to make them available to the Board upon request.

The Board is also deleting the references to supplier and slot machine licensees in § 451a.1(a). As stated previously, since suppliers are required by statute to have a principal place of business in the Commonwealth, the Board does not believe it is unreasonable to require that suppliers keep their records at that location. Because Chapter 451a (relating to recordkeeping requirements) will no longer require that records be maintained in this Commonwealth and because recordkeeping requirements for slot machine licensees are addressed in Chapter 465a, there is no need to reference slot machine licensees in Chapter 451a.

Finally, to insure that slot machine licensees maintain all of the records that they have been required to maintain under § 451a.1 a cross-reference to that section has been added to § 465a.6.

Affected Parties

This final-form rulemaking will affect suppliers, applicants for a principal or key employee license and all regulated entities required to keep records and the Board.

Fiscal Impact

Commonwealth

Under this final-form rulemaking, the Board will have to issue fewer temporary credentials. While this will result in some reduction of costs for the Board, the amount is not anticipated to be significant. The Board issued approximately 300 temporary credentials to principal and key employee applicants last fiscal year. The Board will also no longer have to review requests to approval alternate record retention locations. However, because such requests are rare, this change is not expected to have a significant cost impact on the Board.

Political Subdivisions

This final-form rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Suppliers will have to meet the minimum standards for their principal place of business in this Commonwealth. Since these requirements are minimal, the Board does not anticipate that they will impose any new significant costs on the four currently licensed suppliers. A few entities may experience some savings from the elimination of the requirement that they must store their records.

General Public

This final-form rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

As stated previously, the Board will be less likely to need to issue a second temporary credential and entities will not have to file a request to store their records outside of this Commonwealth.

Effective Date

This final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

The contact person for questions about this final-form rulemaking is Richard Sandusky, Director of Regulatory Review at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 14, 2008, the Board submitted a copy of this proposed rulemaking, published at 38 Pa.B. 6496 (November 29, 2008) and a copy of the Regulatory Analysis Form to IRRC and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee (Committees).

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the Committees on April 1, 2009. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)) IRRC met on April 2, 2009 and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of intention to adopt these amendments was 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 the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapters 431a, 435a, 437a, 451a and 465a, are amended by amending §§ 431a.4, 435a.8 and 437a.8 to read as set forth at 38 Pa.B. 6496; and by amending §§ 451a.1 and 465a.6 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall certify this order, 38 Pa.B. 6496 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

MARY DIGIACOMO COLINS,
Chairperson

(Editor's Note: The amendment of § 465a.6 was not included in the proposal at 38 Pa.B. 6496 (November 29, 2008).)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 2064 (April 18, 2009).)

Fiscal Note: Fiscal Note 125-95 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 58. RECREATION****PART VII. GAMING CONTROL BOARD****Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION****CHAPTER 451a. RECORDKEEPING REQUIREMENTS****§ 451a.1. Recordkeeping generally.**

(a) All manufacturer, junket enterprise, and management company licensees and all registered and certified vendors shall maintain adequate records of business operations which shall be made available to the Board upon request. These records include:

(1) Correspondence with the Board and other local, Commonwealth and Federal governmental agencies.

(2) Correspondence concerning gaming equipment with a manufacturer, supplier, management company or slot machine licensee.

(3) Copies of all promotional material and advertising.

(4) A personnel file on each current and former employee.

(5) Financial records of all transactions concerning slot machines and associated equipment with a manufacturer, supplier, management company or slot machine licensee.

(6) Copies of all tax returns, reports and other tax documents filed with a taxing entity of the Federal government, the Commonwealth or local taxing entity within this Commonwealth for 7 years or a longer period as prescribed by the taxing entity.

(7) Copies of all general accounting records.

(b) Except as provided in subsection (a)(6) regarding tax documents, the records listed in subsection (a) shall be maintained for at least 5 years.

(c) The records required to be maintained under subsection (a) shall be kept in a location secure from theft, loss or destruction.

Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT**CHAPTER 465a. ACCOUNTING AND INTERNAL CONTROLS****§ 465a.6. Retention, storage and destruction of books, records and documents.**

(a) For the purposes of this section, "books, records and documents" means any book, record or document pertaining to, prepared in or generated by the operation of the licensed facility including all forms, reports, accounting records, ledgers, subsidiary records, computer generated data, internal audit records, correspondence and personnel records required to be generated and maintained under § 451a.1 (relating to recordkeeping generally) or this part. This definition applies without regard to the medium through which the record is generated or maintained, for example, paper, magnetic media or encoded disk.

* * * * *

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