

LAWS OF DELAWARE
VOLUME 83
CHAPTER 527
151st GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 304

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO THE REGULATION OF SEEDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 15, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1501. Definitions.

As used in this chapter:

(1) ~~(16)~~ “Person” includes any individual, partnership, corporation, company, ~~society~~ society, or association.

(2) “Agricultural seed” includes the seeds of grass, forage, cereal, and fiber crops and other kinds of seeds commonly recognized within this State as agricultural seeds, lawn ~~seeds~~ seeds, and mixes of ~~such~~ these seeds, and may include noxious weed seeds when the Department determines that ~~such~~ noxious weed seed is being used as agricultural seed.

(3) ~~(27)~~ “Vegetable seeds” includes the seeds of those crops which are grown in gardens or truck farms and are generally known and sold under the name of vegetable seeds in this State.

(5) “Department” means the Department of Agriculture.

(4) ~~(6)~~ “Flower seeds” includes seeds of herbaceous plants grown for their blooms, ornamental foliage or other ornamental parts, and commonly known and sold under the name of flower seeds in this State.

(7) “Germination” means the percentage of seeds capable of producing normal seedlings under ordinarily, favorable conditions, not including seeds which produce weak, malformed, or obviously abnormal sprouts.

(8) “Hard seed” means the percentage of seeds which, because of hardness or impermeability, do not absorb moisture or germinate under prescribed tests but remain hard during the period prescribed for germination of the kind of seed concerned.

(5) ~~(23)~~ “Tree and shrub seeds” includes seeds of woody plants commonly known and sold as tree and shrub seeds in this State.

(6) ~~(28)~~ “Weed seeds” includes the seeds of all plants generally recognized as weeds within this State and includes noxious weed seeds.

(7) ~~(14)~~ “Noxious weed seeds” are ~~divided into two~~ seeds in the classes, “prohibited noxious weed seeds” and “restricted noxious weed seeds” as defined in ~~sub-subdivisions a. and b. of this subdivision:~~ this section.

(17)a. “Prohibited noxious weed seeds” are the seeds of perennial weeds ~~that not only reproduce~~ to which all of the following apply:

1. Reproduce by seed ~~but also spread seed.~~

2. Spread underground roots, ~~stems~~ stems, and other reproductive parts, ~~and which when parts.~~

3. When well established, are highly destructive and difficult to control in this State by ordinary good cultural practice.

~~Prohibited noxious weed seeds in this State~~ b. “Prohibited noxious weed seeds” are the seeds ~~of:~~ of all of the following:

1. ~~Cirsium arvense, Canada thistle;~~ Canada thistle (Cirsium arvense (L.) Scop. var. arvense).

2. ~~Agropyron repens, Quackgrass;~~ Quackgrass (Elymus repens (L.) Gould subsp. repens).

3. ~~Sorghum specie, Johnson grass, Perennial Sweet Sudan Grass, Sorghum Alnum johnsongrass, perennial sweet sudangrass, sorghum alnum and hybrids derived therefrom; and such other seeds therefrom.~~

4. Seeds or bulblets as that the Department from time to time ~~may designate~~ designates, in the public interest, as prohibited noxious seeds ~~in the public interest.~~ seeds.

(20)b. a. “Restricted noxious weed seeds” are the seeds of ~~such~~ weeds as are very to which all of the following apply:

1. Very objectionable in fields, ~~lawns~~ lawns, and gardens of this State, ~~but can~~ State.

2. Can be controlled by good cultural practices.

b. Restricted noxious weed seeds in this State “Restricted noxious weed seeds” are the seeds ~~of~~ of all of the following:

1. Cuscuta spp., Dodder; Dodder (Cuscuta campestris Yunck.).
2. Convolvulus arvensis, Bindweed; Bindweed (Convolvulus arvensis).
3. Allium spp., Wild onion, Wild garlic; Wild garlic, wild onion (Allium spp.).
4. Agrostemma githago, Corn Cockle; Corn cockle (Agrostemma githago).
5. Solanum Carolinense, Horse nettle; Horsenettle (Solanum carolinense).
6. Bromus secalinus, Cheat or Chess; Cheat, chess (Bromus secalinus).
7. Poa Annua, Annual Bluegrass; Annual bluegrass (Poa annua).
8. Setari faberi, Giant Foxtail; Giant foxtail (Setaria faberi R. A. W. Herrm.).

~~and such other seeds~~ 9. Seeds or bulblets as that the Department from time to time may designate designates, in the public interest, as restricted noxious seeds in the public interest. seeds.

~~(8) (11) “Labeling” includes means all labels, in any form, and other including written, printed printed, or graphic representations, in any form whatsoever, accompanying or pertaining to any seed that accompany or pertain to any seed, whether in bulk or bulk, in containers, and includes or as representations on invoices.~~

~~(9) (1) “Advertisement” means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of under this chapter. chapter that is offered for sale or distribution.~~

~~(10) (19) “Record” includes all information relating to the a shipment or shipments involved and a file sample of each lot of seed. For tree and shrub seed, the record will also include includes all documents supporting the statement of origin and elevation of the seed.~~

~~(11) (21) “Stop sale” means an administrative order provided by law, restraining the sale, use, disposition disposition, and movement of a definite amount of seed.~~

~~(12) “Seizure” means a legal process carried out by court order against a definite amount of seed.~~

~~(13) (10) “Kind” means 1 or more related species or subspecies which that singly or collectively is known by 1 common name, for example, such as corn, oats, alfalfa alfalfa, and timothy.~~

~~(14) (26) “Variety” means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics, by which it can be differentiated from other plants of the same kind. that is distinct, uniform, and stable, defined as follows;~~

~~a. “Distinct” means the variety can be differentiated by 1 or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge.~~

~~b. “Uniform” means the variations in essential and distinctive characteristics are describable.~~

~~c. “Stable” means the variety will remain unchanged in its essential and distinctive characteristics and remain uniform when reproduced or reconstituted.~~

~~(15) (13) “Lot” means a definite quantity of seed identified by a lot number or other mark, in which every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.~~

~~(16) (9)a. “Hybrid” first means the first generation seed of a cross produced by controlling the pollination and by combining; combining any of the following:~~

~~a.-2 1. Two or more inbred lines; lines.~~

~~b.-1 2. One inbred or a single cross with an open pollinated variety; or variety.~~

~~e.-2 3. Two varieties or species, except open pollinated varieties of corn (Zea mays).~~

~~b. The second or subsequent generation or subsequent generations from such crosses shall not be regarded as hybrids. of a seed under paragraph (9)a. of this section is not a “hybrid.”~~

~~c. Hybrid designations shall be are treated as variety means.~~

~~(17) (18) “Pure seed,” “germination,” and other seed labeling and testing terms in common usage shall be defined as in the Rules for Testing Seeds published by the Association of Official Seed Analysts, effective July 1, 1955, and as subsequently amended. seed” means seed exclusive of inert matter and other seeds, as determined by methods under regulations promulgated under this chapter.~~

(18) (25) “Type” means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(19) (22) “Treated” means that the seed has received an application of a substance, or that it has been subjected to a process for which a claim is made.

(20) A “private hearing” ~~may consist of a discussion of facts between the person charged and the enforcement officer.~~

(21) (4) “Certifying agency” ~~means:~~ means either of the following:

a. ~~an~~ An agency authorized under the laws of a state, territory, or possession to officially certify ~~seed; or seed.~~

b. ~~an~~ An agency of a foreign country determined by the ~~United States Secretary~~ U.S. Department of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under ~~sub-subdivision a. of this subdivision.~~ paragraph (4)a. of this section.

(22) (3) “Certified seed,” “registered ~~seed~~” seed”, or “foundation seed” means seed that has been produced and labeled in accordance with the procedures and in compliance with the requirements of ~~an official~~ a certifying agency.

(23) (12) “List by Predominance” ~~shall have the same meaning~~ means as defined in the rules and regulations promulgated under this chapter.

(24) (24) “Tree seed collector’s declaration” is a statement signed by a grower or person having knowledge of the place of collection for a lot of ~~seed, giving the lot number, common or scientific name of the species (and subspecies, if appropriate), origin, elevation and quantity of tree and shrub seed.~~ seed that includes all of the following about the tree or shrub seed:

a. Lot number.

b. Common or scientific name of the species, and subspecies, if appropriate.

c. Origin.

d. Elevation.

e. Quantity.

(25) (15) “Origin” for an indigenous stand of trees is the area on which the trees are growing; for a nonindigenous stand, it is the place from which the seeds as plants were originally introduced. means the state or foreign country, or the designated portion of a state or foreign country, where the seed was grown.

§ 1502. Label requirements—~~Agricultural, vegetable and flower seeds.~~ Label requirements; all agricultural, vegetable, flower, or tree and shrub seeds; treated; hermetically sealed.

(a)(1) Each container of agricultural, ~~vegetable and flower~~ vegetable, flower, or tree and shrub seeds which is sold, offered for ~~sale or sale,~~ exposed for sale, or transported within this State for sowing purposes shall must bear thereon or have attached ~~thereto~~ thereto, in a conspicuous ~~place~~ place, a plainly written or printed label or tag in the English language, giving all of the following information; information required under this chapter, which ~~statement shall~~ can not be modified or denied in the labeling or on another label attached to the ~~container.~~ container.

(2) The specific label requirements under paragraph (a)(1) of this section are as follows:

a. For agricultural seeds, under § 1502A of this title.

b. For vegetable seeds, under § 1502B of this title.

c. For flower seeds, under § 1502C of this title.

d. For tree and shrub seeds, under § 1502D of this title.

(1) ~~For all agricultural, vegetable and flower seeds treated as defined in this chapter (for which a separate label may be used):~~ (b)(1) In addition to the information required under paragraph (a)(2) of this section, if the seed has been treated, each container must provide all of the following:

a. A word or statement indicating that the seed has been ~~treated;~~ treated.

b. The commonly accepted coined, ~~chemical~~ chemical, or abbreviated chemical (generic) name of the applied substance or description of the process ~~used;~~ used.

c. If ~~the~~ a substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement that explains the nature of the harm, such as “Do not use for food, ~~feed~~ feed, or oil purposes.” The caution for mercurials and similarly toxic substances ~~shall~~ must be a poison statement or ~~symbol;~~ symbol.

d. If the seed is treated with an inoculant, the expiration date, that is the date beyond which the inoculant is not to be considered ~~effective (date of expiration).~~ effective.

(2) The information required under paragraph (b)(1) of this section may be provided in the same label as the information required under subsection (a) of this section or by using a separate label.

(c) Notwithstanding the germination test requirements under §§ 1502A through 1502D of this title, for seed in a hermetically sealed container, no more than a 36-month germination test period may apply and all of the following conditions must have been met:

(1) The container is conspicuously labeled, in not less than 8-point font with all of the following statements:

- a. The container is hermetically sealed.
- b. The seed has been preconditioned as to moisture content.
- c. The month and calendar year in which the germination test was completed.

(2) The seed was packaged within 9 months after harvest.

(3) The container used does not allow water vapor penetration (WVP) through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100 F. with a relative humidity on side of 90% and on the other side of 0% as is measured by the standards of the United States Bureau of Standards.

(4) The seed in the container does not exceed the percentage of moisture, on a wet weight basis, as follows for agricultural seeds:

- a. Beet, field, 7.5%.
- b. Beet, sugar, 7.5%.
- c. Bluegrass, Kentucky, 6.0%.
- d. Clover, crimson, 8.0%.
- e. Clover, red 8.0%.
- f. Ryegrass, annual 8.0%.
- g. Ryegrass, perennial, 8.0%.
- h. Mixtures of above paragraphs (c)(4) a. through (c)(4)g. of this section, 8.0%.
- i. Bean, garden, 7.0%.
- j. Bean, Lima, 7.0%.
- k. Beet, 7.5%.
- l. Broccoli, 5.0%.
- m. Brussels sprouts, 5.0%.
- n. Cabbage, 5.0%.
- o. Carrot, 7.0%.
- p. Cauliflower, 5.0%.
- q. Celeriac, 7.0%.
- r. Celery, 7.0%.
- s. Chard, Swiss, 7.5%.
- t. Chinese cabbage, 5.0%.
- u. Chives, 6.5%.
- v. Collards, 5.0%.
- w. Corn, sweet, 8.0%.
- x. Cucumber, 6.0%.
- y. Eggplant, 6.0%.
- z. Kale, 5.0%.
- aa. Kohlrabi, 5.0%.
- bb. Leek, 6.5%.
- cc. Lettuce, 5.5%.
- dd. Muskmelon, 6.0%.
- ee. Mustard, India, 5.0%.
- ff. Onion, 6.5%.
- gg. Onion, Welsh, 6.5%.
- hh. Parsley, 6.5%.

- ii. Parsnip, 6.0%.
- jj. Pea, 7.0%.
- kk. Pepper, 4.5%.
- ll. Pumpkin, 6.0%.
- mm. Radish, 5.0%.
- nn. Rutabaga, 5.0%.
- oo. Spinach, 8.0%.
- pp. Squash, 6.0%.
- qq. Tomato, 5.5%.
- rr. Turnip, 5.0%.
- ss. Watermelon, 6.5%.
- tt. All others, 6.0%.

§ 1502A. Label requirements; agricultural seeds.

~~(2) For~~ (a) In addition to the information required under § 1502 of this title, each container of agricultural seeds, except for grass seed mixtures as provided in subdivision (3) of this section: under subsection (b) of this section, must contain all of the following information:

a. ~~(1) The name of the kind, kind or kind and variety for each agricultural seed component present in excess of 5% of the whole and the percentage by weight of each in the order of its predominance; provided, that if predominance, as follows:~~

a. If the variety of these kinds the kind is not generally labeled as to variety as designated in the regulations is not stated, variety, the label shall show must state the name of the kind and the words, "Variety Not Stated."

b. Hybrids shall must be labeled as hybrids.

c. Where more than 1 component is required to be named, the word "mixture" or the word "mixed" shall must be shown conspicuously on the label; label.

b. d. Lot number or other lot identification; identification.

e. ~~Origin (state or foreign country); (2) Origin, if known, of alfalfa, red clover clover, and field corn (except hybrid corn); corn, except hybrid corn. If the origin is unknown, the fact shall be stated; that fact must be stated.~~

d. (3) Percentage by weight of all weed seeds; seeds.

e. ~~(4)a. The name and rate of occurrence per pound of each kind of restricted noxious weed seed present singly or collectively in any amount whatsoever; provided, however, that the amount does not exceed 160 per pound in Group 1 and 10 per pound in Group 2. Except amount.~~

b. The amount of noxious weed seed must not exceed any of the following:

1. For noxious weed seeds in Group 1 under paragraph (a)(4)c. of this section, 160 per pound.

2. For noxious weed seeds in Group 2 under paragraph (a)(4)d. of this section, 10 per pound.

3. Notwithstanding paragraphs (a)(4)b.1 and (a)(4)b.2. of this section, in lawn or turf seed, Poa Annua shall must not exceed 256 per pound.

c. Group 1: 1 includes all of the following: Agropyron spp., Agrostis spp., alfalfa, Bermuda grass, Brassica spp., orchard grass, alsike and white clover, crimson clover, ~~Dallis grass,~~ dallis grass, fescues, flax, foxtail millet, lespedezas, ~~poa~~ Poa spp., red clover, reed canary Canary grass, Rhodes grass, ~~rye grass,~~ ryegrass, sweet clover, smooth brome, timothy, and other agricultural seeds of similar size and weight, or mixtures within this group.

d. Group 2: 2 includes all of the following: Barley, buckwheat, oats, proso, rye, sorghums, ~~Sudan grass,~~ sudangrass, vetches, ~~wheat~~ wheat, and other agricultural seeds of a size and weight similar to or greater than those within this group, or any mixtures within this group.

f. (5) Percentage by weight of agricultural seed (which may be designated as "crop seeds") seed, including seed designated as "crop seeds" other than those required to be named on the label; label.

g. (6) Percentage by weight of inert matter; matter.

h. (7) For each named agricultural seed: seed, all of the following:

1. a. Percentage of germination, exclusive of hard seed; seed.

2. b. Percentage of hard seed, if present; present.

~~3. The calendar~~ c. The month and calendar year the germination test was completed to determine the percentages; percentages under paragraphs (a)(7)a. through (a)(7)b. of this section.

~~Following subparagraphs 1. and 2. of this paragraph the “total germination and hard seed” may be stated as such, if desired.~~

~~i. (8) Name and address of the person who labeled the seed, or who sells, offers offers, or exposes the seed for sale within this State; State.~~

~~(9) The statement “Sell by”, followed by a date that must be no more than 9 months from the date of the germination test, exclusive of the month of test.~~

~~(3) For (b) In addition to the requirements under § 1502 of this title, each container of seed mixtures for lawn and/or turf purposes in containers of 50 pounds or less: less must contain all of the following information:~~

~~a. (1) The word “mixed” or “mixture.”~~

~~b. List as follows: (2) All of the following for each kind or kind and variety of agricultural seed present in excess of 5% of the whole, in order of the seed’s predominance:~~

~~1. Common accepted name, in order of its predominance, of the kind, or kind and variety of each agricultural seed present in excess of 5% of the whole;~~

~~a. Common accepted name.~~

~~2. b. Percentage by weight of pure seed of each agricultural seed named; agricultural seed.~~

~~3. For each agricultural seed named under clause 1. of this sub-subdivision:~~

~~A. c. Percentage of germination, exclusive of hard seed; seed.~~

~~B. d. Percentage of hard seed, if present; present.~~

~~C. Calendar e. The month and calendar year the germination test was completed to determine the percentages; percentages under paragraphs (b)(2)c. through (b)(2)d. of this section.~~

~~e. (3) The heading “other ingredients” and thereunder all of the following, in type no larger than the heading; heading:~~

~~1. a. Percentage by weight of all weed seeds; seeds present, not to exceed 1%, by weight, of the whole.~~

~~2. b. Percentage by weight of all agricultural seeds other than those stated under subparagraph 1. of this paragraph; not identified under paragraph (b)(2) of this section.~~

~~3. c. Percentage by weight of inert matter; matter.~~

~~d. (4) Lot number or other lot identification; identification.~~

~~e. (5) Name and rate of occurrence per pound of each kind of restricted noxious weed seed present; present.~~

~~f. (6) Name and address of the person who labeled the seed or who sells, offers offers, or exposes the seed for sale within this State; State.~~

~~g. (7) Net weight.~~

~~(8) The statement “Sell by” followed by a date from the date of the germination test, exclusive of the month of the test, as follows:~~

~~a. For cool season grasses, no more than 15 months.~~

~~b. For warm season grasses, no more than 9 months.~~

~~(4) For § 1502B. Label requirements; vegetable seeds.~~

~~(a) In addition to the information required under § 1502 of this title, each container of vegetable seeds in containers of 1 pound or less: less must contain all of the following information:~~

~~a. (1) Name of kind and variety of seed; seed.~~

~~(2) Lot number or other lot identification.~~

~~b. (3) For seeds which germinate less than the standard last established by the Department under this chapter: Department, all of the following:~~

~~1. a. Percentage of germination, exclusive of hard seed; seed.~~

~~2. b. Percentage of hard seed, if present; present.~~

~~3. c. The calendar month and calendar year the germination test was completed to determine the percentages; percentages under paragraphs (a)(3)a. through (a)(3)b. of this section.~~

~~4. d. The words “below standard” in not less than 8-point type; and font.~~

~~e. Name (4) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this State; State.~~

~~(5) The statements "Sell by" and "Packed for" for the calendar year in which they are being offered for sale, followed by the applicable dates.~~

~~(5) For (b) In addition to the information required under § 1502 of this title, each container of vegetable seeds in containers of more than 1 pound: pound must contain all of the following information:~~

~~a. (1) The name of each kind and variety present in excess of 5% and the of the weight of the whole.~~

~~(2) The percentages by weight of each kind and variety under paragraph (b)(1) of this section, in order of its predominance; predominance.~~

~~b. (3) Lot number or other lot identification; identification.~~

~~e. For (4) All of the following for each named vegetable seed:~~

~~1. a. The percentage of germination, exclusive of hard seed; seed.~~

~~2. b. The percentage of hard seed, if present; present.~~

~~3. The calendar c. The month and calendar year the germination test was completed to determine the percentages: percentages under paragraphs (b)(4)a. through (b)(4)b. of this section.~~

~~Following subparagraphs 1. and 2. of this paragraph the "total germination and hard seed" may be stated as such if desired.~~

~~d. (5) Name and address of the person who labeled the seed, or who sells, offers offers, or exposes the seed for sale within this State; State.~~

~~(6) The statement "Sell by" followed by a date that is no more than 9 months from the date of the germination test, exclusive of the month of the test.~~

~~e. (7) The labeling requirements for vegetable seeds in containers of more than 1 pound shall be under this subsection (b) are deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser; purchaser.~~

~~(6) For flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mats, tapes or other planting devices:~~

~~a. For all kinds of flower seeds:~~

~~1. The name of the kind and variety or a statement of type and performance characteristics as prescribed in the rules and regulations promulgated under this chapter;~~

~~2. The calendar month and year the seed was tested or the year for which the seed was packaged; and~~

~~3. The name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this State.~~

~~b. For seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established under this chapter:~~

~~1. The percentage of germination, exclusive of hard seed, and~~

~~2. The words "below standard" in not less than 8-point type.~~

~~e. For seeds placed in a germination medium, mat, tape, diluent or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, diluent or device, a statement to indicate the minimum number of viable seeds in the container;~~

~~(7) For flower seeds in containers other than packets prepared for use in home flower gardens or household planting and other than preplanted containers, mats, tapes, or other planting devices:~~

~~a. The name of the kind and variety or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under this chapter;~~

~~b. The lot number or other lot identification;~~

~~c. The calendar month and year that the seed was tested or the year for which the seed was packaged;~~

~~d. The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this State; and~~

~~e. For those kinds of seeds for which standard testing procedures are prescribed:~~

~~1. The percentage germinated, exclusive of hard seed; and~~

~~2. The percentage of hard seed, if present.~~

§ 1502C. Label requirements; flower seeds.

(a) In addition to the information required under § 1502 of this title, each container of flower seeds must contain all of the following information:

(1) The name of the kind and variety or a statement of type and performance characteristics.

(2) On each container, lot number or other lot identification.

(3) For seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard established under this chapter, all of the following:

a. Percentage of germination, exclusive of hard seed.

b. Percentage of hard seed, if present.

c. The words “below standard”, in not less than 8-point font.

d. The month and calendar year the germination test was completed.

(b) In addition to the information required under § 1502 of this title, flower seeds in packets prepared for use in home flower gardens or household plantings or flower seeds in pre-planted containers, mats, tapes, or other planting devices, must contain all of the following information:

(1) The month and calendar year the germination test was completed.

(2) The statement “Sell by” followed by a date that is no more than 12 months from the date of the germination test, exclusive of the month of the test, or state the percentage of germination and the month and calendar year the test was completed, provided that the test must have been completed within 12 months, exclusive of the month of test.

(3) For seeds placed in a germination medium, mat, tape, or other device in such a way that makes it difficult to determine the quantity of seed without removing the seeds, a statement that indicates the minimum number of seeds in the container.

(c) In addition to the information required under § 1502 of this title, each container of flower seeds for which standard testing procedures are prescribed and that weigh more than 1 ounce in containers other than packets prepared for use in home flower gardens or household plantings and other than pre-planted containers, mats, tapes, or other planting devices, must contain all of the following information:

(1) The percentage of germination, exclusive of hard seed.

(2) The percentage of hard seed, if present.

(3) The month and calendar year the test was completed to determine the percentages under paragraphs (c)(1) through (c)(2) of this section.

Section 2. Amend § 1503, Title 3 of the Delaware Code by transferring § 1503 to § 1502D of Title 3 and then by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 1503. Same—Tree and shrub seeds.~~

§ 1502D. Label requirements; tree and shrub seeds.

(a)(1) In addition to the information required under § 1502 of this title, ~~Each~~ each container of tree and shrub seed ~~which is sold, offered for sale, or exposed for sale, or transplanted within this State for sowing purposes shall must bear thereon or have attached thereto ~~thereto~~, in a conspicuous place ~~place~~, a plainly written or printed label or tag in the English language giving must contain all of the following information ~~which statement shall be modified or denied in the labeling or on another label attached to the container—~~ except that labeling of seed under this section.~~

(2) Tree and shrub seed supplied under a contractual agreement may be labeled by an invoice accompanying the shipment or by an analysis tag attached to the ~~invoice~~ invoice, if each bag or other container is clearly identified by a lot number stenciled on the container or if the seed is in bulk. Each bag or container that is not so identified by a lot number must carry complete ~~labeling~~ labeling under this section.

(1) For all tree and shrub seeds treated as defined in this chapter (for which a separate label may be used):

a. A word or statement indicating that the seed has been treated;

b. The commonly accepted ~~coined~~, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used;

e. If the substance in the amount present with the seed is harmful to human or other vertebrate animals a caution statement such as “Do not use for food or feed or oil purposes.” The caution for mercurials and similarly toxic substances shall be a poison statement and symbol;

d. ~~(3) If the seed has been treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration).~~

~~(2) For all tree and shrub seeds subject to this chapter:~~ (b) The label for all tree and shrub seeds must provide all of the following:

a. ~~Common~~ (1) The common name of the species of seed (and subspecies, if appropriate); seed, and subspecies, if appropriate.

b. ~~(2) The scientific name of the genus and species (and subspecies if appropriate); species, and subspecies if appropriate.~~

e. ~~(3) Lot number or other lot identification;~~ identification.

d. ~~Origin;~~ (4) Origin, as follows:

1. ~~a. For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, or geographic description, or political subdivision~~ subdivision, such as state or county; county.

2. ~~b. For seed collected from other than a predominantly indigenous stand, identify the state either of the following:~~

1. The area of collection and the origin of the stand or state stand.

2. “Origin not Indigenous”; Indigenous”.

e. ~~(5) The elevation or the upper and lower limits of elevation within which the seed was collected;~~ collected.

f. ~~(6) Purity as a percentage of pure seed by weight;~~ weight.

~~g. For those~~ (7) For seeds of species for which standard germination testing procedures are prescribed by the department Department, all of the following:

1. ~~a. Percentage germination exclusive of hard seed;~~ seed.

2. ~~b. Percentage of hard seed, if present;~~ present.

3. ~~Calendar~~ c. The month and calendar year the germination test was completed to determine the percentages; percentages under paragraphs (b)(7)a. through (b)(7)b. of this section.

~~h. In lieu of subparagraphs 1., 2. and 3. of paragraph g., the seed may be labeled~~ (8) For seeds of species for which standard germination testing procedures are prescribed by the Department and the germination testing has not been completed, the following statement: “Test is in process, results will be supplied upon request”; request”.

~~i. For those~~ (9) For seeds of species for which standard germination testing procedures have not been prescribed by the Department under this chapter, the calendar year in which the seed was collected; collected.

j. (10) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this State; State.

Section 3. Amend Chapter 15, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1504. Prohibitions.

(a) No person shall can sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, flower flower, or tree and shrub seeds within this State: State if any of the following apply to the seeds:

(1) ~~If subject to the germination requirements of § 1502 of this title, unless the test to determine the percentage of germination required by § 1502 of this title shall have been completed within a 9-month period exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation;~~ Unless otherwise specified under this chapter, if the seeds are subject to germination test requirements under this chapter, the test to determine the germination may be no more than 9 months from the date of test, exclusive of the month of test.

(2) ~~Not labeled in accordance with this chapter or having false or misleading labeling;~~ labeling.

(3) ~~Pertaining to which there~~ There has been false or misleading ~~advertisement;~~ advertising.

(4) ~~Consisting of or containing~~ Contains prohibited noxious weed seeds, ~~subject to recognized tolerances;~~ in excess of tolerances established under this chapter.

(5) ~~Consisting of or containing~~ Contains restricted noxious weed seeds per pound in excess of ~~the number~~ prescribed any of the following numbers:

a. ~~Established under this chapter, or in excess of the number declared~~ chapter.

b. ~~Declared on the label attached to the container of the seed or associated with the seed subject to recognized tolerances;~~ seed.

(6) ~~Containing more than 1½% by weight of all weed seeds;~~ seeds.

(7) ~~Containing more than 20% by weight of inert matter in lawn and turf seed;~~

(8) ~~To which there is affixed the~~ The label contains names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality, or origin of the ~~seed;~~ seed.

(9) ~~If any labeling, advertising or other representation subject to this chapter represents~~ (8) A label or advertisement may not represent that the seed to be is certified seed or registered seed unless: unless all of the following apply:

a. It has been determined by a seed certifying agency that the seed was produced, processed, and packaged, and conforms to the standards of purity as to kind, ~~species (and subspecies, if appropriate),~~ species, subspecies if appropriate, or variety, and also that tree seed was found to be of the origin and elevation claimed, in compliance with the rules and regulations of ~~the agency; and~~ that agency.

b. That the seed bears an official label issued by a seed certifying agency stating that the seed is certified or registered.

(b) It is unlawful for any person within this State ~~to:~~ to do any of the following:

(1) ~~Detach, alter, deface, or destroy any label provided for in~~ required under this chapter ~~or the rules and regulations made and promulgated thereunder,~~ or to alter or substitute seed in a manner that may defeat the purposes of this ~~chapter;~~ chapter.

(2) ~~Disseminate any false or misleading advertisements concerning seeds subject to this chapter in any manner or by any means;~~ chapter.

(3) ~~Hinder or obstruct in any way, any authorized person in the~~ an authorized person's performance of his duties under this ~~chapter;~~ chapter.

(4) ~~Fail to comply with a "stop sale" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale" order or tags attached thereto, except with express permission of the enforcing officer, and for the purpose specified;~~ specified.

(5) ~~Use the word "trace" as a substitute for any statement which is~~ required; required.

(6) ~~Use the word "type" in any labeling in connection with the name of any agricultural seed variety.~~

§ 1505. Records.

(a) ~~Each person whose name appears on the label as handling agricultural or vegetable seeds subject to this chapter shall keep for a period of 2 years complete records of each lot handled; and keep for 1 year a~~ all of the following:

(1) Complete records of each lot handled, for 2 years.

(2) A file sample of each lot of seed after final disposition of the lot. lot for 1 year.

(b) ~~All such records and samples pertaining to the shipment or shipments involved shall~~ of seeds under subsection (a) of this section must be accessible for inspection by the Department or its agent during customary business hours.

§ 1506. Exemptions.

(a) ~~The provisions of §§ 1502, 1503 and Sections 1502 through 1504 of this title do not apply:~~ apply to any of the following:

(1) ~~To seed or grain not intended for sowing~~ purposes; purposes.

(2) ~~To seed in storage in, or being transported, or consigned to a cleaning or processing establishment for cleaning or processing; provided, that the invoice or labeling accompanying any shipment of the seed bears the statement "seed for processing," and~~ provided that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be is subject to this chapter; §§ 1502 through 1504 of this title.

(3) ~~To any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier; provided, that~~ carrier, if the carrier is not engaged in producing, processing processing, or marketing seeds subject to this ~~chapter;~~ chapter.

(4) To seed sold by 1 farmer to another if the seed has ~~neither~~ not been advertised for sale ~~nor~~ or delivered through a ~~carrier;~~ carrier.

(5) To grain sold by farmers for cover crop purposes and not delivered through a common carrier.

(b) No person shall be subject to the penalties of this chapter for having sold or offered for sale seeds subject to this chapter which were incorrectly labeled or represented as to kind, ~~species (and subspecies, if appropriate);~~ species, subspecies if appropriate, variety, type or origin, ~~elevation and year of collection (if required) which~~ elevation, or year of collection, if required, if the seeds cannot be identified by examination, unless ~~he has~~ the person failed to obtain an invoice, genuine grower's or tree seed collector's ~~declaration~~ declaration, or other labeling information and to take such other precautions as may be reasonable to ~~insure~~ ensure the identity to be ~~that~~ the identity stated.

(c) ~~The provisions of §§ 1503 and 1505~~ Sections 1502D and 1505 of this title do not apply to tree seed produced by the consumer.

§ 1507. Duties and authority of the Department.

(a) ~~The duty of enforcing this chapter and carrying out its provisions and requirements is vested in the Department, who may act through its authorized agents:~~ The Department shall administer and enforce this chapter and may do all of the following:

(1) ~~To sample;~~ Sample, inspect, make analysis of, and test seeds subject to this chapter that are transported, ~~sold or offered or sold,~~ offered, or exposed for sale within the State for sowing ~~purposes,~~ at purposes, as follows:

a. At such time and place and to such extent as it may deem necessary to determine whether the seeds are in compliance with this ~~chapter,~~ chapter, and to notify promptly ~~chapter~~.

b. With prompt notice to the person who sold, ~~offered~~ offered, or exposed the seed for sale and, if appropriate, to the person who labeled or transported the seed ~~of any~~ subject to a violation, stop sale order, or ~~seizure;~~ seizure.

(2) ~~To prescribe, amend, adopt and publish~~ Adopt rules and regulations under the Administrative Procedures Act, Chapter 101 of Title 29, and after public hearing following due public notice: hearing, for all of the following:

a. ~~Rules and regulations governing~~ Governing the method of sampling, inspecting, analyzing, ~~testing~~ testing, and examining seeds subject to this ~~chapter and~~ chapter, including the tolerances to be used ~~and such other rules and regulations necessary to secure efficient enforcement of this chapter;~~ used.

b. Prohibited and restricted noxious weed ~~seed deletions or additions;~~ seeds.

c. ~~Rules and regulations establishing~~ Establishing reasonable standards on germination for vegetable seeds and flower seeds; seeds.

d. ~~Rules and regulations for labeling~~ Labeling flower seeds in respect to kind and variety or type and performance characteristics as required by § 1502 and § 1502C of this title; title.

e. A Maintain a list of the kinds of flower seeds subject to the flower seed germination labeling requirements of § 1502 and § 1502C of this title;

f. A Maintain a list of the tree and shrub seed species subject to germination labeling requirements of § 1503(2) ~~g.~~ of this title; § 1502 and § 1502D of this title.

(b) ~~Further, for the purpose of carrying out this chapter, the Department, through its authorized agents, is authorized:~~

(1) ~~To enter upon~~ (3) Enter any public or private premises during regular business hours ~~in order to have access to seeds and the records connected subject to this chapter and rules and regulations thereunder, and~~ chapter, including any truck or other conveyor by land, water, or air at any time when the conveyor is ~~accessible, for the same purpose;~~ accessible.

(2) ~~To issue~~ (4) Issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of seed subject to the provisions of this chapter which that the Department finds is in violation of this ~~chapter or rules and regulations promulgated thereunder, which~~ chapter.

a. A "stop sale" order shall prohibit ~~prohibits~~ further sale, ~~processing~~ processing, and movement of ~~such~~ the seed, except on approval of the enforcing officer, and until such the enforcing officer has evidence that the law has been complied with, ~~and he~~ with and has issued a release from the "stop sale" order, ~~provided that in respect to seed which has been denied sale, processing and movement as provided in this paragraph, the~~ order.

b. The owner or custodian shall have of the seed has the right to appeal ~~from~~ the "stop sale" order to a court of competent jurisdiction in the locality in which the Superior Court in the county where the seeds are found, ~~praying for found, requesting a judgment as to the justification of the order and for the discharge of the seeds from the~~ order

prohibiting the sale, processing and movement in accordance with the findings of the court; and provided further, that this order.

c. This paragraph shall ~~may~~ not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this ~~chapter;~~ chapter.

~~(3) To establish~~ (5) Establish and maintain or make provisions for seed testing facilities, ~~to employ qualified persons, and to incur such expenses as may be necessary to comply with the provisions;~~ administer this chapter.

~~(4) To make~~ (6) Make or provide for making purity and germination tests of seed for farmers and dealers on ~~request;~~ request, prescribe rules and regulations governing ~~such testing;~~ and to these tests, and fix and collect charges for the tests made. Any fees shall be transferred to the State Treasurer and paid into the General Fund of ~~the State;~~ this State.

~~(5) To cooperate~~ (7) Cooperate with the United States Department of Agriculture and other agencies in seed law ~~enforcement;~~ enforcement.

~~(6) To publish~~ (8) Publish the results of analysis, ~~tests~~ tests, and examinations made under this chapter, together with any other information deemed ~~advisable;~~ advisable.

~~(7) To conduct~~ (9) Conduct the seed certification program for ~~the State;~~ this State, prescribe rules and regulations governing seed ~~certification;~~ certification, and fix and collect fees for inspection, ~~grading~~ grading, and certification. Any fees collected shall be transferred to the State Treasurer and credited to the special fund entitled "Department of Agriculture Inspection Fund" to aid in defraying the expenses of the seed certification ~~program;~~ and program.

~~(8) To~~ (10) Collect royalty fees on patented varieties where a royalty agreement is in force.

(c) ~~[Repealed.]~~ The Department is authorized to enforce provisions as stipulated by the Federal Seed Act, 7 U.S.C. §§ 1551 through 1611, as necessary for carrying out the purposes of this chapter.

~~(d) No bond may be required of the Department for the issuance of any injunction to restrain any violation of this chapter.~~

~~(e) Any lot of seed that is not in compliance with this chapter is subject to seizure, upon on complaint of the Department to the Superior Court in the county where the seed is located. In the event the court finds that the seed is in violation of this chapter and orders the condemnation of the seed, the seed must be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this State. However, a court may not order the disposition of the seed under this subsection (e) without first having given the claimant an opportunity to apply to the court for the release of the seed or permission to process or relabel the seed into compliance with this chapter.~~

§ 1508. Seizure.

~~Any lot of seed not in compliance with this chapter shall be subject to seizure on complaint of the Department to a court of competent jurisdiction in the locality in which the seed is located. In the event the court finds the seed to be in violation of this chapter and orders the condemnation of the seed, it shall be denatured, processed, destroyed, relabeled or otherwise disposed of in compliance with the laws of this State; provided, that in no instance shall the court order such disposition of the seed without first having given the claimant an opportunity to apply to the court for the release of the seed or permission to process or relabel it into compliance with this chapter. [Repealed.]~~

§ 1509. Injunction without bond.

~~No bond shall be required of the Department for the issuance of any injunction to restrain any violation of this chapter or any rule or regulation promulgated hereunder. [Repealed.]~~

§ 1510. Violations and prosecutions.

(a) ~~Every violation of this chapter shall be punishable by a fine not exceeding \$100 for the first offense and not exceeding \$250 for each subsequent similar offense. A person who violates this chapter is subject to a civil penalty as follows:~~

~~(1) For a first occurrence, a civil penalty in an amount that does not exceed \$100.~~

~~(2) For a subsequent occurrence, a civil penalty in an amount that does not exceed \$250.~~

~~(b) When the Department shall find that any person has violated this chapter, it or its duly authorized agent or agents may institute proceedings against such person in a court of competent jurisdiction in the locality in which the violation occurred; or the Department may offer evidence of such violation to the Attorney General with a view of prosecution; provided, however, that no prosecution under this chapter shall be instituted without the accused violator first having been given an opportunity to appear before the Department or its duly authorized agent to introduce evidence either in person or by agent or attorney at a~~

~~private hearing. If, after the hearing, or without such hearing, the accused violator, or his agent or attorney fails or refuses to appear, the Department is of the opinion that the evidence warrants prosecution, it shall proceed as provided in this section. Before imposing a penalty under subsection (a) of this section, the Secretary must send a written notice of the violation and offer the person an administrative hearing.~~

~~(c) The Attorney General shall institute proceedings at once against any person charged with a violation of this chapter, if, in his judgment, the information submitted warrants such action. chapter.~~

~~(d) After judgment by the court in any case arising under this chapter the Department shall publish any information pertinent to the issuance of the judgment by the court in such media as it may designate from time to time.~~

§ 1511. Enforcing agency.

~~(a) This chapter shall be administered by the Department of Agriculture of this State, referred to as the "Department."~~

~~(b) Jurisdiction in all matters pertaining to seed under this chapter is vested exclusively in the Department, and all acts and parts of acts inconsistent with this chapter are hereby expressly repealed. [Repealed.]~~

§ 1512. Delegation of duties.

~~All authority vested in the Department of Agriculture by virtue of this chapter may with like force and effect be executed by the employees of the Department of Agriculture as may be designated for the purpose. [Repealed.]~~

Approved November 2, 2022