WEST VIRGINIA CODE CHAPTER 19 ARTICLE 16

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§19-16-1. Definitions.

“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 this article.

“Agricultural seed” includes forage seeds (grasses and legumes), tobacco, soybeans, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn and turf seeds, and combinations of those seeds, and may include noxious weed seeds when the commissioner determines that the seed is being used as agricultural seed.

“Blend” means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.

“Brand” means word/words, name, symbol, number, mark, design, unique design, or any combination which identifies seed of one entity from seed of another.

“Bulk” means seed when loose in vehicles of transportation or in storage, or in retail displays and not in seed bags or other containers.

“Certifying agency” means: (1) An agency authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified; or (2) an agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subdivision (1) of this subsection.

“Coated” means a seed unit covered with any substance which changes the size, shape, or weight of original seed. Seeds coated with ingredients such as, but not limited to, rhizobia, dyes, and pesticides are not considered coated seeds.

“Commissioner” refers to the Commissioner of Agriculture of the State of West Virginia or a duly authorized employee.

“Complete record” means any and all information which relates to the origin, treatment, germination, purity, kind, and variety of each lot of agricultural seed sold in this state, or which relates to the treatment, germination, kind, and variety of each lot of vegetable, or tree and shrub seed sold in this state. The information shall include seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations.

“Conditioning” means drying, cleaning, scarifying, and other operations which may change the purity or germination of the seed and require the seed lot to be retested to determine the label information.

“Dealer” means any person who exclusively sells, exposes for sale, offers for sale, exchanges,

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or barters seed for sowing purposes within this state to the ultimate consumer.

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

“Distribute” means to offer for sale, sell, expose for sale, exchange, or barter seed for sowing purposes within the state.

“Distributor” means any person who sells, exposes for sale, offers for sale, exchanges, barters, gives, parcels out, allots, shares, or dispenses a seed for sowing purposes within the state.

“Dormant” means viable seed, excluding hard seed, which fails to germinate when provided the specified germination conditions for the kind of seed in question.

“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 or wildflower seeds in this state.

“Genuine growers declaration” means a statement signed by the grower which gives for each lot of seed the lot number, kind, variety (if known), origin, weight, year of production, date of shipment, and to whom the shipment was made.

“Germination” means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

“Hard seeds” means seeds which remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

“Hermetically sealed” means a container that is designed and intended to be secure against the entry of microorganisms and thereby to maintain the commercial sterility of its contents after processing.

“Hybrid” means the first generation seed of a cross produced by controlling the pollination and by combining: (1) Two or more inbred lines; (2) one inbred or a single cross with an open-pollinated variety; or (3) two varieties or species, except open-pollinated varieties of corn (Zea mays). The second generation of subsequent generations from the crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

“Inert matter” means all matter not seed, which includes, but is not limited to, broken seeds, sterile florets, chaff, fungus bodies, and stones, as determined by methods defined by rule.

“Introduced wildflower” means kinds, or the types and varieties derived from those kinds that are not indigenous to North America.

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“Kind” means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.

“Labeling” includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by this act, and it may include any other information relating to the labeled seed.

“Lot” means a definite quantity of seed identified by a lot number, code number, or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear on the label.

“Mixture”, “mix”, or “mixed” means seed consisting of more than one kind or variety, each present in excess of five percent by weight of the whole. A mixture of varieties of a single kind may be labeled as a blend.

“Mulch” means a protective covering of any suitable substance placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth, and aid in the prevention of the evaporation of soil moisture, the control of weeds, and the prevention of erosion.

“Native wildflower” means kinds or the types and varieties derived from those kinds that are indigenous to North America.

“Noxious weed seeds” includes prohibited noxious weed seeds, restricted noxious weed seeds, and undesirable grass seed.

“Off type” means any seed or plant not a part of the variety in that it deviates in one or more characteristics from the variety as described and may include: A seed or plant of another variety; a seed or plant not necessarily any variety; a seed or plant resulting from cross-pollination by another kind or variety; a seed or plant resulting from uncontrolled self-pollination during production of hybrid seed; or segregates from any of the off types set forth in this subsection.

“Official sample” means any sample of seed taken by the commissioner in accordance with the provisions of this article and rules promulgated under this article.

“Origin”, for an indigenous stand of trees, means the area on which the trees are growing; for a nonindigenous stand, it is the place from which the seeds or plants were originally introduced.

“Other crop seed” means seed of plants grown as crops (other than the kind or variety included in the pure seed) as determined by methods defined by rule.

“Person” means an individual, partnership, corporation, company, association, receiver, trustee, agent, fiduciary, firm, or any group of organized persons, whether incorporated or

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not.

“Prohibited noxious weed seeds” means those weed seeds which are prohibited from being present in agricultural, vegetable, or tree and shrub seed, and are the seeds of weeds which are highly destructive and difficult to control by good cultural practices and the use of herbicides.

“Pure live seed” means the product of the percent of germination, plus hard or dormant seed, multiplied by the percent of pure seed divided by 100, where the result is expressed as a whole number.

“Pure seed” means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by rule.

“Purity” means the name or names of the kind, type, or variety and the percentage or percentages thereof; the percentage of other agricultural seed or crop seed; the percentage of weed seeds, including noxious weed seeds; the percentage of inert matter; and the names of the noxious weed seeds and the rate of occurrence of each.

“Registrant” means any person who registers as a seedsman in order to distribute seed for sowing purposes within the state.

“Restricted noxious weed seeds” means those weed seeds which are objectionable in agricultural crops, lawns, and gardens of this state, but which can be controlled by good cultural practices or the use of herbicides.

“Seed potato” refers to vegetatively propagated tubers used or intended to be used for potato production which must grade equal to or better than the minimum requirements of U.S. No. 1, from the standpoint of physical defects, size, or disease, and must be certified by an official certifying agency.

“Sell-by date” means the last date that the seed may legally be sold in the state.

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

“Stable” means that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

“Stop sale or embargo” means an administrative order, provided by this article, restraining the sale, use, disposition, and movement of a definite amount of seed.

“Test date” means the month and year in which the germination test was completed.

“Total viable” means the sum of percentage germination plus dormant plus hard seeds.

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"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. For label, shall be the commonly accepted coined, chemical (generic), biological, or abbreviated chemical name.

"Tree and shrub seeds" includes seeds of woody plants commonly known and sold as tree and shrub seeds in this state.

"Tree seed collector's declaration" means a statement, signed by a grower or person having knowledge of the place of collection, giving, for a lot of seed, the lot number, common or scientific name of the species (and subspecies, if appropriate), origin, elevation, and quantity of tree and shrub seed.

"Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated, except under special conditions.

"Undesirable grass seeds" means seeds of grass species declared to be restricted noxious weed seed when found in lawn and turf seed.

"Uniform" means that the variations in essential and distinctive characteristics are describable.

"Variant" means any seed or plant which: (1) Is distinct within the variety but occurs naturally in the variety; (2) is stable and predictable with a degree of reliability comparable to other varieties of the same kind, within recognized tolerances, when the variety is reproduced or reconstituted; and (3) was originally a part of the variety as released. A variant is not an off-type.

"Variety" means a subdivision of a kind which is distinct, uniform, and stable.

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

"Weed seed" means the seeds of all plants generally recognized as weeds within this state, as determined by methods defined by rule, and includes the categories of prohibited noxious weed seeds and restricted noxious weed seeds.

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§19-16-2. Label requirements for agricultural crops, lawn and turf, vegetable, tree and shrub, flower seeds, and seed potatoes.

(a) Each container of agricultural, vegetable, or flower seeds which is distributed or transported within this state for sowing purposes shall bear on the container, or have attached to the container in a conspicuous place, a plainly written or printed label or tag in the English language.

(b) For all treated agricultural, vegetable, or flower seeds (for which a separate label may be used) the label shall include the following:

(1) A word or statement indicating that the seed has been treated;

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

(3) A caution statement, such as “do not use for food, feed, or oil purposes”, if the substance in the amount present with the seed is harmful to humans or other vertebrate animals. The caution for toxic substances shall be a poison statement or symbol, or both a poison statement and symbol; and

(4) The date beyond which the inoculant is not to be considered effective (date of expiration), if the seed is treated with an inoculant.

(c) For agricultural seeds, except for grass seed mixtures, seed sold on a pure live seed basis, or for hybrids which contain less than 95 percent hybrid seed, the label shall include the following:

(1) The commonly accepted name of the kind and variety for each agricultural seed component present in excess of five percent of the whole and the percentage by weight of each in order of its predominance. Hybrids shall be labeled as hybrids;

(2) The lot number or other lot identification;

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

(4) The percentage by weight of all weed seeds;

(5) The name and rate of occurrence per pound or ounce of each kind of restricted noxious weed seed or undesirable grass seed present. The name and approximate number of each kind of noxious weed seed: (A) Per ounce in Agrostis spp., Poa spp., Rhodes grass, Bermuda grass, timothy, orchard grass, fescues, alsike and white clover, reed canary grass, Dallas grass, ryegrass, foxtail millet, alfalfa, red clover, sweet clovers, lespedezas, smooth brome, crimson clover, Brassica spp., flax, Agropyron spp., and other agricultural seeds of similar size and weight, or mixtures within this group; and (B) per pound in Sudan grass, wheat,

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oats, rye, barley, buckwheat, sorghums, vetches, and other agricultural seeds of a size and weight similar to or greater than those within this group, or any mixtures within this group;

(6) The percentage by weight of agricultural seeds (which may be designated as "crop seeds") other than those required to be named on the label;

(7) The percentage by weight of inert matter;

(8) For each named agricultural seed:

(A) The percentage of germination, exclusive of hard seed;

(B) The percentage of hard seed, if present;

(C) The calendar month and year the test was completed to determine the percentages; and

(D) If the registrant chooses, the "total germination and hard seed";

(9) The name and address of the person who labeled the seed, or who distributes the seed within this state; and

(10) The total of subdivisions (1), (4), (6), and (7) of this subsection must equal 100 percent.

(d) For grass seed mixtures for lawn or turf purposes the label shall include the following:

(1) The word "mixed", "mixture", or "blend" with the name of the mixture or blend;

(2) The heading "Pure Seed" and "Germination", or "Germ" in the proper places;

(3) The commonly accepted name of kind, or kind and variety of each agricultural seed component in excess of five percent of the whole, and the percentage by weight of pure seed in order of its predominance and in columnar form;

(4) The percentage by weight of agricultural seed other than those required to be named on the label (which shall be designated as "crop seed");

(5) The percentage by weight of inert matter not to exceed 10 percent by weight, except that 15 percent inert matter is permitted in Kentucky Bluegrass labeled without a variety name. Except for coating material, fertilizer, and mulch, as provided by subdivision three, subsection (e) of this section, foreign material not common to grass seed shall not be added;

(6) The percentage by weight of all weed seeds. Maximum weed seed content may not exceed one half of one percent by weight;

(7) Noxious weed seeds and undesirable grass seed that are required to be labeled by rule and listed under the heading "Noxious Weed Seeds" or "Undesirable Grass Seed". Undesirable grass seed may not exceed 0.5 percent by weight;

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(8) For each agricultural seed named under subdivision (3) of this subsection:

(A) The percentage of germination, exclusive of hard seed;

(B) The percentage of hard seed, if present;

(C) The calendar month and year the test was completed to determine the percentages. The most recent available chronological test date shall be used; and

(D) When only one test date is listed for the entire mixture, the listed test date shall be the oldest chronological test date of the components;

(9) The name and address of the person who labeled the seed, or who distributes the seed within the state.

(10) The total of subdivisions (3), (4), (5), and (6) of this subsection must total 100 percent.

(e) For agricultural seeds that are coated, the label shall include the following:

(1) The percentage by weight of pure seeds with coating material removed;

(2) The percentage by weight of coating material;

(3) The percentage by weight of inert material exclusive of coating material;

(4) Percentage of germination, to be determined on 400 pellets with or without seeds; and

(5) In addition to the provisions of this subsection, the labeling of coated seed shall comply with the requirements of subsections (b), (c), and (d) of this section.

(f) For vegetable seeds in packets as prepared for use in home gardens or household plantings; or in preplanted containers, mats, tapes, or other planting devices, the label shall include the following:

(1) The name of kind and variety of seed;

(2) The lot number or other lot identification;

(3) One of the following:

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

(B) The year for which the seed was packed for sale, noted by the statement "Packed for" or "Sell by" which blank shall be filled by the calendar year; or

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

(4) The name and address of the person who labeled the seed or who distributes the seed for sale within this state.

(g) For seeds which germinate less than the standard as established by rule promulgated under this article, the label shall include the following:

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

(2) The percentage of hard seed, if present; and

(3) The words "Germination Below Standard" in not less than eight-point type.

(h) For seeds placed in a germination medium, mat, tape, 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, or device, a statement to include the minimum number of seeds in the container.

(i) For vegetable seeds in containers other than packets prepared for use in home gardens or household plantings, and other than preplanted containers, mats, tapes, or other planting devices, the label shall include the following:

(1) The name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance;

(2) The lot number or other lot identification;

(3) For each named vegetable seed:

(A) The percentage germination exclusive of hard seed;

(B) The percentage of hard seed, if present;

(C) The calendar month and year the test was completed to determine the percentages; and

(D) If the registrant chooses, the "total germination and hard seed";

(4) The name and address of the person who labeled the seed, or who distributes the seed within this state.

(j) 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:

(1) For all kinds of flower seeds:

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(A) The name of the kind and variety, or a statement of type and performance characteristics as prescribed in the rules and regulations promulgated under the provisions of this article;

(B) One of the following:

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

(ii) The year for which the seed was packed for sale, noted by the statement "Packed for" or "Sell by", which blank shall be filled by the calendar year; or

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

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

(2) For seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established under the provisions of this article:

(A) The percentage of germination exclusive of hard seeds;

(B) The percentage of hard or dormant seed, if present; and

(C) The words "Below Standard", in not less than eight-point type.

(3) For seeds placed in a germination medium, mat, tape, 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, or device, a statement to indicate the minimum number of seeds in the container.

(k) For flower seeds in containers other than those contained in subsection (j) of this section:

(1) The name of the kind and variety or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under the provisions of this article, and for wildflowers, the genus, species, and subspecies, if appropriate.

(2) The lot number or other lot identification.

(3) For wildflower seed only with a pure seed percentage of less than 90 percent:

(A) The percentage by weight of each component listed in order of their predominance;

(B) The percentage by weight of weed seed, if present; and

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(C) The percentage by weight of inert matter.

(4) For those kinds of seed for which standard testing procedures are prescribed:

(A) The percentage germination exclusive of hard or dormant seed;

(B) The percentage of hard or dormant seed, if present; and

(C) The calendar month and year that the test was completed to determine such percentages.

(5) For those kinds of seed for which standard testing procedures are not available, the year of production or collection.

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

(l) For agricultural seeds sold on a pure live seed basis in accordance with the rules promulgated pursuant to this article, each container must bear a label containing the information required by subsection (c) of this section, except that:

(1) The label need not show:

(A) The percentage by weight of each agricultural seed component, as required by subdivision (1), subsection (c) of this section; or

(B) The percentage by weight of inert matter, as required by subdivision (7), subsection (c) of this section; and

(2) The label must show for each named agricultural seed, instead of the information required by subdivision (8), section (c) of this section:

(A) The percentage of pure live seed determined in accordance with rules; and

(B) The calendar month and year in which the test determining the percentage of live seed was completed.

(m) For agricultural and vegetable hybrid seed which contain less than 95 percent hybrid seed, the label shall include the following:

(1) The kind or variety which must be labeled as “hybrid”;

(2) The percent which is hybrid, labeled parenthetically in direct association following named variety, such as, Comet (85 percent Hybrid); and

(3) Varieties in which the pure seed contain less than 75 percent hybrid seed which shall not be labeled as hybrids.

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(n) For combination mulch, seed, and fertilizer products the label shall include the following:

(1) The word “combination” followed by the words “mulch — seed — fertilizer (if appropriate)” on the upper 30 percent of the principal display panel. The word “combination” must be the largest and most conspicuous type on the container, equal to or larger than the product name. The words “mulch — seed — fertilizer” shall be no smaller than one-half the size of the word “combination” and in close proximity to the word “combination”. These products shall contain a minimum of 70 percent mulch; and

(2) For agricultural, lawn, and turf seeds placed in a germination medium, mat, tape, or other device or mixed with mulch:

(A) The product name;

(B) The lot number;

(C) The percentage by weight of pure seed of each kind and variety named which may be less than five percent of the whole;

(D) The percentage by weight of other crop seeds;

(E) The percentage by weight of inert matter which shall not be less than 70 percent;

(F) The percentage by weight of weed seeds;

(G) The name and number of noxious weed seeds per pound or ounce, if present;

(H) The percentage of germination (and hard seed if appropriate) of each kind or kind and variety named and date of test;

(I) The name and address of the person who labeled the seed, or who distributes the seed within this state; and

(J) The totals of paragraphs (C), (D), (E), and (F) of this subdivision must total 100 percent.

(o) The labeling requirements for agricultural, vegetable, and flower seeds shall be considered to have been met if the seed is weighed from a properly labeled bulk container in the presence of the purchaser.

(p) Once a dealer has broken the seal on a container of seed for any reason, the dealer is fully responsible for its contents, including the guarantees for purity, germination rate, and anything else pertaining to the integrity of the opened seed container.

(q) For combination products containing seed and granular fertilizer:

(1) The word “combination” followed by the words “seed-fertilizer” must appear on the upper 30 percent of the principal display panel. The word “combination” must be the largest

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and most conspicuous type on the container, equal to or larger than the product name. The word “seed-fertilizer” shall be no smaller than one-half the size of the word “combination” and in close proximity to the word “combination”.

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

(r) Label requirements for tree and shrub seeds:

Each container of tree and shrub seed which is distributed or transported within this state for sowing purposes shall bear on the container or have attached on the container in a conspicuous place a plainly written or printed statement on the label or tag in the English language, giving the information required under this subsection. The statement may not be modified or denied in the labeling or on another label attached to the container — except that labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to the 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 identified shall carry complete labeling.

(1) For all treated tree and shrub seeds as defined in this article (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, biological, or abbreviated chemical (generic) name of the applied substance or description of the process used;

(C) A caution statement, such as “Do not use for food, feed or oil purposes”, if the substance in the amount present with the seed may be harmful to humans or other vertebrate animals. The caution for mercurials and similarly toxic substances shall be a poison statement and symbol; and

(D) The date beyond which the inoculant is not to be considered effective (date of expiration), if the seed has been treated with an inoculant;

(2) For all tree and shrub seeds subject to the article:

(A) The common name of the species of seed (and subspecies, if appropriate);

(B) The scientific name of the genus and species (and subspecies, if appropriate);

(C) The lot number or other lot identification; and

(D) Their origin:

(i) For seed collected from a predominantly indigenous stand, the area of collection given by

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latitude and longitude, or geographic description, or political subdivision such as state or county;

(ii) For seed collected from other than a predominantly indigenous stand, the area of collection and the origin of the stand or the statement "Origin not Indigenous";

(E) The elevation or the upper and lower limits of elevations within which the seed was collected;

(F) The purity as a percentage of pure seed by weight;

(G) For those species for which standard germination testing procedures are prescribed by the commissioner, the following:

(i) Percentage germination exclusive of hard seed;

(ii) Percentage of hard seed, if present;

(iii) The calendar month and year test was completed to determine such percentages; or

(iv) In lieu of subparagraphs (i), (ii), and (iii) of this paragraph, the seed may be labeled "Test is in process, results will be supplied upon request";

(H) For those species for which standard germination testing procedures have not been prescribed by the commissioner, the calendar year in which the seed was collected;

(I) The name and address of the person who labeled the seed or who distributes the seed within this state.

(s) Label requirements for seed potatoes:

The following information shall appear on each label attached to a bag or container of certified seed potato:

(A) The name of the person or agency certifying such seed potato;

(B) The name of the official state or governmental agency making the inspection upon which the certification is made; and

(C) The name and address or identification number of the grower of such seed potatoes.

(t) *Required labeling for interstate shipping.* – The full name and address of the interstate shipper shall appear upon the label. If the name and address of the interstate shipper are not shown upon the label, an AMS number identifying the interstate shipper shall be shown, along with the full name and address of the consignee.

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§19-16-3. Certificate of registration; seed fees; payment of fees; disposition of funds.

(a) No person may distribute any agricultural, vegetable, tree and shrub, or flower seeds, or seed potatoes without a valid certificate of registration issued by the commissioner. Application forms shall be provided by the commissioner and the application fee shall be set forth in a legislative rule. Each certificate of registration expires on December 31 following the next date of issue. A dealer may not be required to register, if he or she can prove that the person he or she is obtaining the seed from has a valid certificate of registration.

(b) A person shall apply for a certificate of registration at least 15 days prior to the expiration of the current registration; or at least 15 days prior to the date that the person intends to engage in business in this state. Each application shall be accompanied by the required application fee. The commissioner shall add a penalty to the fee for each registration, as set forth in legislative rules, that is not applied for or renewed within the time limit.

(c) Certificates of registration are not transferable with respect to persons or locations.

(d) The commissioner may refuse to grant, or may suspend or revoke, a certificate of registration when it is determined that the applicant or registrant has violated the provisions of this article or any rule promulgated under this article: *Provided*, That the applicant or registrant may request a hearing prior to the denial of the application or suspension or revocation of the registration.

(e) Each person who holds a valid certificate of registration is required to pay a tonnage fee on seed sold in this state and shall report to the commissioner the net pounds or kilograms of seeds distributed and sold by kind or variety, except for seed potatoes, on a quarterly basis. Each report shall be filed under oath and is due before the last day of January, April, July, and October of each year for the preceding three-month period. He or she shall pay the tonnage fee according to the fee schedule for agriculture, vegetable, tree and shrub, and flower seeds as set by legislative rules. The commissioner may add a penalty, as set forth in legislative rules, to the tonnage fee for each tonnage report that is not filed on time.

(f) Persons distributing vegetable and flower seeds packaged in containers of eight ounces or 226.8 grams or less and sold from display units are exempt from reporting poundage and paying a poundage fee: *Provided*, That a seed stamp be purchased from the commissioner, at the rate set by legislative rules, and placed in a conspicuous place on each display unit.

(g) Persons first distributing seed potatoes into West Virginia trade channels shall report to the commissioner the net pounds or kilograms of seed potatoes distributed monthly in arrears: *Provided*, That payments for the previous month shall be made not later than the 15th day of the following month, as set by legislative rules.

(h) A person who holds a valid certificate of registration shall keep accurate records, as may

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be necessary or required by the commissioner, to indicate the pounds of agricultural, vegetable, tree and shrub, or flower seeds, or seed potatoes distributed in this state.

(i) All fees and penalties collected under the provisions of this article shall be deposited with the State Treasurer in a special revenue account. These moneys shall be expended by the Commissioner of Agriculture for inspection, sampling, analysis, and other expenses necessary for the administration of this article.

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§19-16-3a. Industrial hemp seed certification program; requirements; fees; rulemaking.

(a) The commissioner may create and administer an industrial hemp seed certification program to obtain and develop varieties of seeds which meet the purposes and provisions of §19-12E-1 et seq. of this code. The program shall be consistent with this article and applicable federal law. This program may include West Virginia landrace cannabis seed varieties. For the purposes of this article, "West Virginia landrace cannabis seed" means seed from the plant cannabis sativa that possesses characteristics of a unique and specialized cannabis seed variety that is present in West Virginia or has been recognized as produced in West Virginia.

(b) Persons or entities, licensed pursuant to §19-12E-1 et seq. of this code, may obtain a license for the development of industrial hemp varieties for certification. The commissioner may assess a fee, consistent with the provisions of §19-12E-7 of this code, to operate and administer the seed certification program. The fees shall be deposited in the Agricultural Fees Fund established by §19-1-4c of this code.

(c) The commissioner may promulgate emergency rules and shall propose rules for legislative approval pursuant to §29A-3-1 et seq. of this code for the purpose of implementing the provisions of this section.

WV Legislature

§19-16-3b. Records.

Each person whose name appears on the label as handling agricultural, vegetable, tree and shrub, or flower seeds subject to this article shall keep, for a period of two years, complete records of each lot of agricultural, vegetable, tree and shrub, or flower seeds handled, and shall keep for one year a file sample of each lot of seed after final disposition of said lot. All such records and samples shall be accessible for inspection by the commissioner during customary business hours.

WV Legislature

§19-16-4. Prohibitions.

(a) It is unlawful for any person to distribute or transport for sale any agricultural, vegetable, tree and shrub, or flower seeds, or seed potatoes within this state:

(1) Which have not been tested to determine germination rates as required under §19-16-2 of this code;

(2) Which is not labeled in accordance with the provisions of this article or has false or misleading labeling;

(3) Which has been the subject of false or misleading advertisement;

(4) Which consists of or contains prohibited noxious weed seeds, subject to tolerances and methods of determination as prescribed by rules promulgated under this article;

(5) Which consists of or contains restricted noxious weed seeds per pound or ounce in excess of the number prescribed by rules promulgated under this article, or in excess of the number declared on the label attached to the container of the seed or associated with seed;

(6) Which contains more than two and one-half percent by weight of all weed seeds;

(7) If any labeling, advertising, or other representation subject to this article represents the seed to be certified seed or any class thereof unless:

(A) It has been determined by a seed certifying agency that the seed conformed to standards of purity and identity as to kind, species (and 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 of that agency pertaining to the seed; and

(B) That the seed bears an official label issued for that seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate), or variety;

(8) Labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which a U. S. certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: *Provided*, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(b) It is unlawful for any person within this state:

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

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(2) To use relabeling stickers without having both the calendar month and year the germination test was completed, the sell-by date, and the lot number that matches the existing, original lot number: *Provided*, That relabeling may not occur more than one time;

(3) To disseminate any false or misleading advertisement concerning seeds subject to this article in any manner or by any means;

(4) To interfere with the commissioner's official duties;

(5) To fail to comply with a "stop sale or embargo" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale or embargo" order or tags attached to the lot of seed, unless released by the commissioner, and for the purpose specified by the commissioner;

(6) To use the word "trace" or the phrase "contains < 0.01 percent" as a substitute for any statement which is required;

(7) To use the word "type" in any labeling in connection with the name of any agricultural seed variety;

(8) To distribute or knowingly use any agricultural, vegetable, tree and shrub, or flower seed that is misbranded;

(9) To misbrand any agricultural, vegetable, tree and shrub, or flower seed or seed potato. An agricultural, vegetable, flower, or tree and shrub seed, or seed potato is misbranded:

(A) If its label or labeling is false or misleading;

(B) If it is not labeled as required by this article;

(C) If any word, statement or other information required by this article to appear on the label is not prominently and conspicuously placed so that it can be read and understood by the ordinary individual under customary conditions of purchase and use; and

(D) If any damage or inferiority has been concealed;

(10) To distribute or knowingly use any agricultural, vegetable, or tree and shrub seed or seed potato that has not had an accurate statement of poundage reported to the commissioner in the previous reporting period;

(11) To use or imply the name West Virginia Department of Agriculture, or reference any inspection or sample findings made by the West Virginia Department of Agriculture on labels or labeling of agricultural, vegetable, flower, or tree and shrub seed, or seed potatoes; or

(12) To falsify any laboratory reports regarding seed distributed within this state.

WV Legislature

§19-16-4a. Local laws prohibited.

(a) No political subdivision may regulate the registration, packaging, labeling, sale, storage, distribution, transportation or any other use of seeds.

(b) No political subdivision may adopt or continue in effect any local laws, ordinances or regulations relating to the regulating, registration, packaging, labeling, sale, storage, distribution, transportation or any other use of seeds.

(c) Local laws, ordinances or regulations in violation of this section are void and unenforceable.

WV Legislature

§19-16-5. Exemptions.

(a) The provisions of §19-16-2, §19-16-3, §19-16-4, and §19-16-8 of this code do not apply:

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

(2) To seed in storage, or seed being transported or consigned to a cleaning or conditioning establishment for cleaning or conditioning: *Provided*, That the invoice, label or labeling accompanying any shipment of the seed bears the statement “seeds for conditioning”; and that any label or labeling or other representation which may be made with respect to the uncleaned or unconditioned seed is subject to this article; or

(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 the carrier is not engaged in producing, conditioning, or marketing seeds subject to the provisions of this article.

(b) No person is subject to the penalties of this article for having sold or offered for sale seeds subject to provisions of this article which were incorrectly labeled or represented as to kind, species (and subspecies, if appropriate), variety, type, or origin, elevation, and year of collection (if required), which cannot be identified by examination, unless he or she has failed to obtain an invoice, genuine grower’s or tree seed collector’s declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity to be that which is stated. A genuine grower’s declaration of variety shall affirm that the grower holds records of proof concerning parent seed, such as invoice and labels.

(c) The provisions of §19-16-2 and §19-16-3 of this code do not apply to tree seed produced by the consumer.

WV Legislature

§19-16-5a. Label, signage, and other requirements for noncommercial seed sharing.

(a) Each container of agricultural, vegetable, and flower seeds distributed for sowing purposes in a noncommercial setting shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, conveying the following information:

(1) The name of the species or commonly accepted name of kind, or kind and variety of each agricultural seed component present. Hybrids shall be labeled as hybrids;

(2) A word or statement indicating if the seed has been treated and, if treated, must be labeled in accordance with applicable state and federal laws;

(3) Some form of reference identification that provides traceability. Retention of posterity file samples are not required;

(4) Name and city or address of the noncommercial seed sharing entity; and

(5) The calendar month and year the seed was donated.

(b) The seed shall be free of foreign material, other than coatings or treatments, including germination medium, mulch, fertilizer, preplanted containers, mats, tapes, or other planting devices.

(c) No distributed container shall hold more than eight ounces of agricultural seed or four ounces of vegetable or flower seed.

(d) Germination and purity analysis is not required, however if a germination or purity percentage is noted on the label, it must be noted whether or not the analysis was performed according to the AOSA rules for testing seed.

(e) At each location involved with noncommercial seed sharing a legible and visible sign shall state that the seeds being distributed may not meet germination or varietal purity standards prescribed by the state seed law. The sign must also state that patented seed or varieties protected by the Plant Variety Protection Act will not be accepted or distributed without permission of the certificate holder.

WV Legislature

§19-16-6. Duties and authority of Commissioner of Agriculture.

The commissioner may:

(a) Establish by legislative rule germination standards for agricultural, vegetable, tree and shrub, or flower seeds;

(b) Enter and inspect, during reasonable hours, any location where agricultural, vegetable, tree and shrub, or flower seeds, or seed potatoes for sowing purposes are manufactured, distributed, transported, or used, and where records relating to the manufacture, distribution, shipment, labeling, or sale of seed are kept. This inspection shall include, but is not limited to, examining, photographing, verifying, copying, and auditing records as is necessary to determine compliance with this article, labels, consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing, and sale of agricultural, vegetable, tree and shrub seeds, or seed potatoes;

(c) Open, examine, sample, and test agricultural, vegetable, tree and shrub, or flower seed, or seed potatoes, equipment, containers, transport containers, and packages used or intended to be used in the manufacture and distribution of seeds used for sowing purposes;

(d) Issue certificates of registration pursuant to this article;

(e) Refuse applications for registration, or suspend or revoke registrations as provided in this article;

(f) Issue “stop sale or embargo” orders as provided in this article;

(g) Condemn and confiscate any agricultural, vegetable, tree and shrub, or flower seed, or seed potato that is not brought into compliance with this article;

(h) Collect fees and penalties and expend moneys under the terms of this article;

(i) Conduct sampling in accordance with the official methods as established by the Association of American Seed Control Officials, the United States Department of Agriculture, or the Association of Official Seed Analysts;

(j) Conduct hearings as provided by this article;

(k) Assess civil penalties and refer violations to a court of competent jurisdiction;

(l) Obtain court orders directing any person refusing to submit to inspection, sampling, and auditing to submit;

(m) Establish and maintain seed testing facilities, establish reasonable fees for the tests, incur expenses, and conduct tests in accordance with the Association of Official Seed Analysts;

WV Legislature

(n) Be guided by the analytical results of the official sample when determining whether the agricultural, vegetable, tree and shrub, or flower seed is deficient in any component;

(o) Report the analytical results on all official deficient samples to the registrant, dealer, purchaser if known, and or the distributor;

(p) Upon request made within 30 days from the date the official sample results are reported, furnish a portion of the official sample to the registrant;

(q) Cooperate with and enter into agreements with governmental agencies of this state and other states, agencies of the federal government and foreign governments, and private associations in order to carry out the purpose and provisions of this article;

(r) Establish fees by legislative rule;

(s) Propose rules for promulgation, in accordance with §29A-3-1 *et seq*. of this code;

(t) Promulgate emergency rules within 90 days of the passage of this bill into law; and

(u) Inspect and approve seed conditioning facilities in the state, issue permits, and establish fees.

WV Legislature

§19-16-7. Stop sale orders or embargo; seizure.

(a) Stop sale orders or embargos: When the commissioner has reasonable cause to believe any lot of seed or seed potato is being distributed or used in this State in violation of the provisions of this article or any rule promulgated under this article, then he or she may issue and enforce a written stop sale order or embargo, warning the custodian of the seed not to distribute, use, remove or dispose of the seed in any manner until the stop sale order or embargo is released by the commissioner or by court order:

(1) When the stop sale or embargo order is issued, the commissioner shall affix a tag or other marking to the seed warning that the seed is under a stop sale order and notify the custodian that he or she has a right to request an immediate hearing.

(2) The commissioner shall release the stop sale or embargo order when the seed has been brought into compliance with this article and its rules.

(3) The commissioner has the authority to issue a stop sale or embargo order against a perishable product, even if the result is the involuntary disposal of the product.

(4) The commissioner may take action to seize any seed not brought into compliance with this article and the rules issued under this article, within ninety days of the notice to the custodian.

(b) Seizure: Any lot of seed or seed potato not in compliance with the provisions of this article is subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the locality in which the seed or seed potato is located. In the event the court finds the seed to be in violation of this article and orders the condemnation of the seed or seed potato, it shall be denatured, processed, destroyed, relabeled or otherwise disposed of in compliance with the laws of this State: Provided, That in no instance may the court order the disposition of the seed without first having given the registrant an opportunity to apply to the court for the release of the seed or seed potato or permission to process or relabel it into compliance with this article.

WV Legislature

§19-16-8. Penalties and prosecutions.

(a) Criminal penalties. — Any person violating any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for each subsequent offense, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Civil penalties. —

(1) Any person violating any of the provisions of this article or the rules adopted under this article may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person; the seriousness of the violation, including any irreparable harm to the environment, and the demonstrated good faith of any person charged in attempting to achieve compliance with this article after written notification of the violation.

(2) The commissioner may assess a penalty of not more than five hundred dollars for the first offense or nonserious violation, as determined by the commissioner in accordance with the rules promulgated in accordance with the provisions of article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, and not more than one thousand dollars for a serious, repeat or intentional violation, as determined by the commissioner in accordance with the promulgated rules.

(3) The civil penalty is payable to the State of West Virginia and is collectible in any manner now or hereafter provided for collection of a debt. Any person liable to pay the civil penalty and neglecting or refusing to pay the civil penalty, shall be assessed interest at ten percent per annum from the date the penalty was assessed. The penalty and interest constitute a lien in favor of the State of West Virginia and shall attach on the person’s property when the lien is properly recorded in the county where the property is located. There may be no cost as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may propose for promulgation and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of a violation of the provisions of this article.

(d) Nothing in this article may be construed as to require the commissioner to report minor violations of this article when the commissioner believes that the public interest will be best served by a written notice.

(e) No state court may allow the recovery of damages for administrative action taken if the court finds that there was probable cause for the action.

WV Legislature

§19-16-9. Deficiencies.

(a) If the analysis of a sample shows a deviation from the permitted analytical variation, the registrant or other responsible person shall be penalized according to legislative rule. Penalties for multiple deficiencies within a sample shall be incremental: *Provided,* That in no case shall the penalty exceed the retail value of the product.

(b) The penalty shall be assessed and collected from the person responsible for the labeling requirements of the seed. If seed is sampled in the hands of a consumer who purchased to plant and not to sell, the penalty shall be assessed to the seedsman or distributor, whichever is applicable. In no case shall the penalty assessed exceed the fair market value of the seed. The total amount of seed in each lot at the time of sampling shall be used to determine the penalty.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of regulated product represented by the sample analyzed. If the consumer cannot be found or is unknown, the amount of the penalty shall be paid to the commissioner and deposited in the Department of Agriculture’s fees account.

WV Legislature