

STATE OF NEW YORK

5309--B

2017-2018 Regular Sessions

IN SENATE

March 20, 2017

Introduced by Sen. RITCHIE -- (at request of the Department of Agriculture and Markets) -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Agriculture in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the agriculture and markets law, in relation to the inspection and sale of seeds, agricultural liming materials and commercial fertilizer

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 2 and 7 of section 136 of the agriculture and markets law, subdivision 2 as added by chapter 631 of the laws of 1955 and subdivision 7 as amended by chapter 592 of the laws of 2003, are amended to read as follows:

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

7. The term "noxious weed seeds" [~~includes seeds of bindweed (*Convolvulus arvensis*), quackgrass (*Elytrigia repens*), Canada thistle (*Cirsium arvense*), bedstraw (*Galium* spp.), dodder (*Cuscuta* spp.), horse nettle (*Solanum carolinense*), wild onion (*Allium canadense* and *A. vineale*), corn cockle (*Agrostemma githago*), and Russian knapweed (*Acroptilon repens*)] are those noxious weed seeds which are objectionable in agriculture crops, lawns, and gardens of this state and which can be controlled by good agricultural practices or the use of herbicides.
Noxious weeds and the number of such noxious weed seeds allowable per~~

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

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

§ 2. Section 136 of the agriculture and markets law is amended by adding two new subdivisions 22 and 23 to read as follows:

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

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

§ 3. Paragraph 2 of subdivision C of section 137 of the agriculture and markets law, as amended by chapter 160 of the laws of 1983, is amended to read as follows:

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

§ 4. Paragraph 1 of subdivision D of section 137 of the agriculture and markets law, as added by chapter 631 of the laws of 1955 and clause 3 of subparagraph (b) as amended by chapter 592 of the laws of 2003, is amended to read as follows:

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

(a) Name of kind and variety of seed;

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

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

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

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

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

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

(2) Percentage of hard seed, if present;

(3) The calendar month and year the test was completed and the statement "Sell by _____," which may be [~~not~~] not more than twelve months from the date of test, exclusive of the month of test, or the percentage germination and the calendar month and year the test was completed to determine such percentage, provided that the germination test must have been completed within twelve months, exclusive of the month of test[~~;~~];

and

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

§ 5. Subparagraph (c) of paragraph 1 of subdivision E of section 137 of the agriculture and markets law is relettered subparagraph (d) and a new subparagraph (c) is added to read as follows:

1 (c) The calendar month and year the germination test was completed and
2 the statement "Sell by _____", which may be no more than 12 months from
3 the date of test, exclusive of the month of test; or
4 the year for which the seed was packaged for sale as "Packed for
5 _____ " and the statement "Sell by _____", which shall be for a calendar
6 year; or

7 the percentage germination and the calendar month and year the test
8 was completed to determine such percentage, provided that the germina-
9 tion test must have been completed within 12 months exclusive of the
10 month of test.

11 § 6. Section 137 of the agriculture and markets law is amended by
12 adding a new subdivision I to read as follows:

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

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

23 § 7. Subdivision B of section 138 of the agriculture and markets law
24 is amended by adding a new paragraph 10 to read as follows:

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

28 § 8. The second undesignated paragraph of section 142 of the agricul-
29 ture and markets law, as added by chapter 631 of the laws of 1955, is
30 amended to read as follows:

31 The commissioner may, through promulgation of regulations, add to, or
32 subtract ~~[from, the list of]~~ noxious weed seeds ~~[set forth in]~~ from
33 definition seven, section one hundred thirty-six of this article, when-
34 ever he finds, after public hearing, that such addition or subtraction
35 is in the best interests of the agriculture of this state.

36 § 9. The agriculture and markets law is amended by adding a new
37 section 142-a to read as follows:

38 § 142-a. Stop sale orders. The commissioner may issue and enforce a
39 written or printed "stop sale, use or removal" order to the owner or
40 custodian of any lot of seed when the commissioner finds that seed is
41 being offered or exposed for sale in violation of any of the provisions
42 of this article, and require the owner or custodian to hold the seeds at
43 a designated place until either: (1) the law has been complied with and
44 said seed is released by the commissioner in writing; or (2) said
45 violation has been otherwise legally disposed of by written authority.
46 The commissioner shall release the seed so withdrawn when the require-
47 ments of the provisions of this article have been complied with.

48 § 10. Subdivisions 1 and 3 of section 142-gg of the agriculture and
49 markets law, as amended by chapter 251 of the laws of 1999, are amended
50 to read as follows:

51 1. It shall be the duty of the commissioner or his or her duly author-
52 ized agent to sample and analyze each different brand of agricultural
53 liming material distributed within the state, to such an extent as he or
54 she may deem necessary to determine compliance with the provisions of
55 this article.

~~[A sample to be designated official shall be one taken in the presence of the supplier or a person responsible to the supplier. Such sample shall, in the presence of the witness, be divided into two representative samples, each sealed, and one of such sealed samples shall be tendered, and if accepted, delivered to the witness; the other sealed sample the commissioner shall analyze or cause to be analyzed.]~~

The methods of sampling and analysis shall be those the commissioner may require by regulation and be based on methods adopted by an agricultural and food analytical standards association.

3. The commissioner shall ~~[publish or cause to be published at least annually]~~ maintain an annual record of, and make available upon request, the results of all analyses ~~[indicating]~~ with respect to the information required to be shown on labels and statements pursuant to section one hundred forty-two-cc of this article and such other information as the commissioner shall deem advisable.

§ 11. Subdivision b of section 143 of the agriculture and markets law, as added by chapter 695 of the laws of 1974, is amended to read as follows:

b. The term "specialty fertilizer" shall mean a commercial fertilizer distributed primarily for non-farm use, ~~[such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and such other use]~~ as the commissioner may define by regulation.

§ 12. Section 143 of the agriculture and markets law is amended by adding a new subdivision t to read as follows:

t. The term "agricultural and food analytical standards association" shall mean an independent, third-party, not-for-profit association that develops voluntary, globally accepted, consensus analytical standards and methods for ensuring quality measurements to address the purity and safety of agricultural materials and food and promotes global trade and public health and shall be further defined in regulations by the commissioner.

§ 13. Subdivision (c) of section 146 of the agriculture and markets law, as amended by chapter 251 of the laws of 1999, is amended to read as follows:

(c) The licensee shall inform the ~~[director]~~ commissioner in writing of additional distribution points established during the period of the license.

§ 14. Section 146-a of the agriculture and markets law, as added by chapter 695 of the laws of 1974, is amended to read as follows:

§ 146-a. Inspection, sampling, analysis. a. It shall be the duty of the commissioner, who may act through his authorized agent, to sample, inspect, and analyze commercial fertilizers distributed within this state at such time and place and to the extent he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this ~~[act]~~ article. ~~[A sample to be designated an official sample shall be divided into two representative samples, each sealed, and one of such sealed samples shall be tendered, and if accepted, delivered to the custodian of the product; the other sample the commissioner shall analyze or cause to be analyzed.]~~ The methods of sampling and analysis shall be those the commissioner may require by regulation and ~~[which may]~~ be based on methods ~~[recommended in publications such as that of the association of official analytical chemists]~~ adopted by an agricultural and food analytical standards association, as further defined in regulations by the commissioner.

1 b. The results of the analysis of such sample shall be reported to the
2 licensee within ninety days of the date of sampling and the commissioner
3 shall publish or cause to be published at least annually a summary of
4 all analyses made, together with such additional information as circum-
5 stances advise.

6 § 15. Subdivision (b) of section 146-b of the agriculture and markets
7 law, as added by chapter 695 of the laws of 1974, is amended to read as
8 follows:

9 (b) A commercial fertilizer shall be deemed to be adulterated:

10 (1) if it contains any deleterious or harmful ingredient in sufficient
11 amount to render it injurious to beneficial plant life, animals, humans,
12 aquatic life, soil, or water when applied in accordance with directions
13 for use on the label, or if adequate warning statements or directions
14 for use, which may be necessary to protect plant life, animals, humans,
15 aquatic life, soil, or water are not shown upon the label;

16 (2) if its composition falls below or differs from that which it is
17 purported to possess by its labelling; ~~[or]~~

18 (3) if it contains unwanted crop seed or weed seed; or

19 (4) if it contains metals in amounts greater than those levels the
20 commissioner may establish by regulation, based upon the consensus
21 research-based recommendations of an organization of state, territorial
22 and international fertilizer control officials who administer fertilizer
23 laws and regulations.

24 § 16. This act shall take effect on the one hundred twentieth day
25 after it shall have become a law, provided that any rule or regulation
26 necessary for the timely implementation of this act on its effective
27 date may be promulgated on or before such date, provided however that
28 retailers shall have ninety days from the effective date of this act to
29 sell through product subject to paragraph 1 of subdivision D of section
30 137, subparagraph (c) of paragraph 1 of subdivision E of section 137 and
31 paragraph 10 of subdivision B of section 138 of the agriculture and
32 markets law as amended by sections four, five and seven of this act
33 which is held in inventory on the effective date of this act.