

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 113]

General Provisions for Seed Certification

The Department of Agriculture (Department), under the authority conferred by 3 Pa.C.S. Chapter 71 (relating to the Seed Act) (act) and under the specific authority of sections 7111 and 7117 of the act (relating to powers and duties of secretary and department; and rules and regulations) proposes to amend Chapter 113 (relating to general provisions for seed certification). The act replaces The Pennsylvania Seed Act of 1965 (3 P. S. §§ 285-1—258-11).

Section 7111 of the act authorizes and empowers the Department to enforce the provisions of the Act and to "... prescribe, modify and enforce such reasonable rules, regulations, standards, tolerances and orders as in the judgment of the secretary shall be necessary to carry out the provisions of [the act]." See 3 Pa.C.S. § 7111(a). In addition, section 7111 of the act establishes specific powers and duties of the Department and provides for delegation of such authority. See 3 Pa.C.S. §§ 7111(b) and (c). Section 7117 of the act specifically delineates that the Department "... shall promulgate and enforce rules and regulations necessary for administration and implementation of [the act]." See 3 Pa.C.S. § 7117 Therefore, consistent with that authority and to establish regulations which are consistent with the act, the Department hereby proposes the following amendments to Chapter 113.

Background

The proposed amendments are made necessary by and are established under the authority of, and in accordance with, the act.

The major features and amendments to the proposed amendments are summarized as follows:

Summary of Major Features and Amendments

§ 113.1. Definitions.

The Department added and amended several definitions to be consistent with and clarify the provisions of the act.

§ 113.3. Responsibility and applicability.

The Department deleted the Pennsylvania Seedsman's Association from the list of cooperating entities in subsection (b) and added PennAg Industry Association's Seed Council to the list and clarified subsection (d) with regard to the Association standards to be utilized when no standards exist in this Commonwealth.

§ 113.4. Classes and sources of seed.

The Department added another class or seed source to the classes of seed recognized for seed certification. This is to assure the regulations are consistent with the act.

§ 113.6. Limitations of generations for certified seed.

The Department added a section to establish limitations on generations for certified seed. This is consistent with the act and industry standards.

§ 113.22. Completion of application.

The Department added subsections (b) and (c) to the application provisions. Subsection (b) requires applicants

to maintain genetic purity and identity of a crop at all stages of the certification process. Subsection (c) requires an applicant to furnish maps identifying the location of the fields of the crop to be inspected. This is now an ongoing process, because crops tend to be rotated. Therefore, the old provisions—in § 113.23 (relating to new applications)—requiring mapping only at the time of a new application have been deleted and this change implemented. These provisions will help assure proper enforcement of the act.

§ 113.23. New applications.

This provision was rescinded because the mapping criteria was combined with the application provisions of § 113.22.

§ 113.26. Fees.

This entire section, including the table of fees, was deleted because the fees are now set forth in the act. New language was added stating the applicant shall be responsible for payment of fees as outlined in the act.

§ 113.34. Reinspection

The Department revised paragraph (1) to allow a grower to request reinspection from the inspector "or the Certification Office."

§ 113.42. Color code for tags.

The Department amended this section by further segregating seed classes and adding tag colors for different types of registered and certified seed. These standards are more in line with National standards.

§ 113.43. Two-tag system.

The Department amended subsection (c) to reference the current act.

§ 113.44. Attachment of tags and labels.

The Department added a provision to require that tags and labels be attached in a manner which will prevent obvious removal and reattachment.

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

The Department added language to subsection (f) to make it clear that the applicant is the responsible party.

§ 113.53. Seed testing.

The Department amended language in subsection (c) to assure the regulation properly cites the current act.

Fiscal Impact

Commonwealth

The proposed amendments will not impose additional fiscal impacts upon the Commonwealth for administration and enforcement. The amendments will not require the Department to commit an additional amount of time or manpower to the enforcement of the act or regulations.

Political Subdivisions

The proposed amendments will impose no additional costs and have no fiscal impact upon political subdivisions. The proposed amendments do not impose any additional burden of enforcement or review on political subdivisions.

Private Sector

The proposed amendments will not impose additional costs on the regulated community, which is part of the private sector or any other part of the private sector. Any additional fees are set forth in the act and merely referenced in the regulations. There are no new certification or licensure requirements and any new labeling requirements are merely consistent with the act and will not impose additional costs on the regulated community.

General Public

The proposed amendments will impose no costs and have no fiscal impact on the general public.

Paperwork Requirements

The proposed amendments will not result in a substantial increase of paperwork.

Public Comment Period

Interested persons are invited to submit written comments regarding the proposed amendments within 30 days following publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of these proposed amendments on May 2, 2008, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee (Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

If the IRRC has any objections to any portion of the proposed amendments, it will notify the Department within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regular Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of objections raised.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attention: Joe Garvey, (717) 787-4843.

Effective Date

These proposed amendments will be effective upon final-form publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,
Secretary

Fiscal Note: 2-157. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 113. GENERAL PROVISIONS FOR SEED CERTIFICATION

PRELIMINARY PROVISIONS

§ 113.1. Definitions.

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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

§ 113.3. Responsibility and applicability.

* * * * *

(b) In conducting the seed certification program, the Department and the Bureau of Plant Industry will cooperate with the Pennsylvania State University, College of Agriculture, Pennsylvania Foundation Seed Coop., the [**Pennsylvania Seedsmen's Association**] **Seed Council of PennAg Industries Association** and seed growers.

* * * * *

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

§ 113.4. Classes and sources of seed.

The following classes of seed are recognized for seed certification:

* * * * *

(6) Foundation G1-Foundation G7 seed potato classes.

§ 113.6. Limitations of generations for certified seed.

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

(1) Recertification of the Certified class may be permitted when no foundation seed is being maintained.

(2) The production of an additional generation of the Certified class may be permitted on a 1-year basis only when an emergency is declared by any official seed certifying agency stating that the Foundation and Registered seed supplies are not adequate to plant the needed Certified acreage of

the variety. The additional generation of Certified seed to meet the emergency need is ineligible for recertification.

APPLICATIONS

§ 113.22. Completion of application.

* * * * *

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

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

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

* * * * *

§ 113.23. [New applications] (Reserved).

[For those persons making application for the first time, a map of the location of the farm shall be included.]

§ 113.26. Fees.

[(a) A current schedule listing application, inspection, tag and label fees shall be sent annually to each applicant.

(b) The application fee for each crop shall accompany the application. Fees shall be paid by check made payable to the "Commonwealth of Pennsylvania." Fees will not be refunded.

(c) The field inspection fee is based on the total acres inspected or, in the case of grass and legumes, the pounds of clean seed produced. An invoice stating the amount of the fee will be sent to the applicant.

(d) Acreage or plants withdrawn by the applicant prior to the actual inspection may not be included, except as provided in § 113.32(b) (relating to procedure for inspections).

(e) The fee schedule is as follows:

(1) Application and inspection fees.

<i>Crop</i>	<i>Application Fee</i>	<i>Inspection Fee</i>
Potatoes (other than Prenuclear seed potatoes)	\$25	\$10 per acre
Prenuclear seed potatoes (Greenhouse)	25	15¢ per sq. ft., assessed once per crop
Prenuclear seed potatoes (Laboratory)	25	\$50 assessed annually
Tobacco	25	50 (minimum)
Winter barley, wheat, rye	25	3 per acre
Hybrid field corn	25	7 per acre
Spring barley, oats	25	3 per acre
Soybean	25	3 per acre
Grass, legume	25	4¢ per pound production fee. Any field inspection \$3 per acre
Turfgrass sod	25	4 per acre (preplant inspection) 7 per acre (final inspection)
Trees	25	Fees based on the actual administrative costs incurred by the Department

(2) *Tag and label fees.* The Department may charge the following maximum fees for certification tags and labels. Although the Department may periodically change these fees through publication of notice in the *Pennsylvania Bulletin*, it will not charge certification tag and label fees higher than the following amounts:

	<i>Tag</i>	<i>Label</i>
Pennsylvania Certified Seed	10¢	10¢
Interagency Certified Seed	15¢	15¢
Pennsylvania Certified Sod	—	20¢
Pennsylvania Certified Seed Potatoes	10¢	—

(3) *Official interagency samples.* There shall be a \$25 per lot fee charged for each official interagency sample taken.

(4) *Shipping inspection fee.* The shipping inspection fee for potatoes is \$30 per inspection.

(5) *Laboratory testing fees.* An applicant who is responsible to pay the costs of laboratory tests conducted or performed by the Department shall pay testing fees as are established by the Department. The Department will establish the fee for a particular laboratory test by multiplying the average labor cost (salary and benefits) of the person performing the test by the average labor time which it takes to complete the test, and then adding to that product the average cost of material required for the test. The Department will maintain, and provide upon request, a schedule of the current values of the variables in this mathematical formula. The Department may establish laboratory testing fees, or may change the fees for established tests through publication in the *Pennsylvania Bulletin* of the schedule of the current values of the variables justifying the fees under the mathematical formula described in this paragraph. The fee for

a particular laboratory test will not be increased, but may be decreased, within 9 months of a prior fee increase with respect to that same laboratory test.] The applicant shall be responsible for the payment of fees as outlined in the Seed Act.

INSPECTIONS

§ 113.34. Reinspection.

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

- (1) A grower desiring reinspection shall make a request to the inspector or the Certification Office.

* * * * *

CONTAINERS, LABELS AND TAGS

§ 113.42. Color code for tags.

- (a) Agricultural seed.

(1) White tags shall designate the Foundation class of seed [and the Prenuclear seed potato class].

[(b)] (2) Lilac tags shall designate the Registered class of seed.

[(c)] (3) Blue tags shall designate the Certified class of seed.

(4) Green tags shall designate the Quality Assurance class of seed.

- (b) Seed potatoes.

(1) White tags shall designate the Prenuclear class of seed potatoes.

(2) Blue tags shall designate the Foundation class of seed potatoes.

(3) Green tags shall designate the Certified class of seed potatoes.

- (c) Tree seed.

(1) Green tags shall designate the Selected class of tree seed.

(2) Yellow tags shall designate the Source Identified class of tree seed.

§ 113.43. Two-tag system.

* * * * *

(c) Second, or analysis, tags shall be supplied by the grower and contain [such] information such as variety, lot number, purity percentage, germination percentage, date of test and other information as required by the [act of April 11, 1929 (P. L. 488, No. 205) (3 P. S. §§ 291—297)] Seed Act.

§ 113.44. Attachment of tags and labels.

* * * * *

(e) Tags and labels shall be attached in a manner which will prevent obvious removal and reattachment.

GENERAL REQUIREMENTS

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

* * * * *

(c) [—]The following apply to the blending of seeds:

* * * * *

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

§ 113.53. Seed testing.

* * * * *

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

* * * * *

[Pa.B. Doc. No. 08-919. Filed for public inspection May 16, 2008, 9:00 a.m.]

[7 PA. CODE CH. 111]

Seed Testing, Labeling and Standards

The Department of Agriculture (Department), under the authority of 3 Pa.C.S. Chapter 71 (relating to Seed Act) (act) and under the specific authority of sections 7111 and 7117 of the act (relating to powers and duties of secretary and department; and rules and regulations) proposes to amend Chapter 111 (relating to seed testing, labeling and standards). This act replaces The Pennsylvania Seed Act of 1965 (3 P. S. §§ 285-1—285-11).

Section 7111 of the act authorizes and empowers the Department to enforce the provisions of the act and to "... prescribe, modify and enforce such reasonable rules, regulations, standards, tolerances and orders as in the judgment of the secretary shall be necessary to carry out the provisions of [the act]." See 3 Pa.C.S. § 7111(a). In addition, section 7111 of the act establishes specific powers and duties of the Department and provides for delegation of such authority. See 3 Pa.C.S. § 7111(b) and (c). Section 7117 of the act specifically delineates that the Department "... shall promulgate and enforce rules and regulations necessary for administration and implementation of [the act]." See 3 Pa.C.S. § 7117. Therefore, consistent with that authority and to establish regulations which are consistent with the provisions of the act, the Department hereby proposes the following amendments to Chapter 111.

Background

The proposed amendments are made necessary by and are established under the authority of, and in accordance with, the act.

The major features and amendments of the proposal are summarized as follows:

Summary of Major Features and Amendments

§ 111.1. Sampling and testing of seeds.

The Department proposes to delete the part of the language of the last sentence of this section related to

receiving a copy of the rules which states, "A copy of the rules may be obtained from the current Secretary-Treasurer of the association (AOSA), or from: Botany and Seed Division, Bureau of Plant Industry, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110, at cost. The proposal would delete the final portion of that sentence, starting with "or from . . ."

§ 111.2. Condition of seeds for testing.

The Department proposes to delete parts of subsection (a) related to nontesting of seed samples of any kind and add language to deny testing of mixed seeds "when the percentage of analysis is not provided."

§ 111.3. Fees and schedule of charges.

The Department amended subsection (a) to allow for billing of the testing fee and amended subsection (b) in a manner that will no longer allow for cash payment of the fees. A minor and a major amendment were made to subsection (c). First, the word "all" was removed because it is implied and therefore redundant. Second, the Department deleted the chart containing the cost of purity analysis, germination testing and combined testing because that chart and those fees now appear in section 7109(b)(5) of the act (relating to unlawful seed sales).

§ 111.4. Prohibitions and requirements.

The Department deleted subsection (c), which referred to the pricing table that was deleted from § 111.3.

§ 111.11. General labeling requirements.

In subsection (a), the Department deleted old citations to the act and replaced them with the proper citations to the new act. In subsection (a)(1), language was added to clarify the names "and classification" used shall be consistent with the Rules for Seed Testing by the Association of Official Seed Analysts.

§ 111.12. Labeling of flower seeds.

The Department deleted old citations to the act and replaced them with the proper citations to the new act. In addition, the Department added paragraph (3). The new paragraph clarifies labeling requirements for vegetable and flower seeds.

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

The Department deleted subsections (a) and (b) and replaced them with language consistent with the provisions of the act related to lawn and turf grasses. See section 7104(b)(2) of the act (relating to labels and labeling).

§ 111.15. Misleading labeling.

The Department rescinded this section because the issues addressed (related to the labeling of lawn and turf grasses and mixtures) are now covered by the act and the revisions to § 111.13.

§ 111.16. Responsibility for labeling.

The Department amended the substantive provisions of the section to assure the citations to the act are correct and to add a provision relating to the expiration time period for lawn and turf grass analysis.

§ 111.17. Labeling of seeds for sprouting.

The Department amended the substantive provisions of the section to clarify what salad and culinary purposes are and to address hard seed germination when applicable.

§ 111.21. Weed seeds classified.

The Department rescinded this section classifying and regulating weed seeds. Seed classifications are covered by the AOSA's Rules for Testing Seed included in § 111.11(a).

§ 111.22. Prohibited noxious weed seeds.

The Department amended this section by adding additional species to the list of prohibited noxious weed seeds.

§ 111.23. Restricted noxious weed seeds.

The Department amended subsection (a)(1) by adding additional species to the list of noxious weed seeds and added canary grass to subsection (a)(3). In addition, the Department amended subsection (b)(1) to include a reference to "Restricted Noxious Weed Seeds."

§ 111.41. Stop sale procedures.

The Department amended the citations in this provision to assure they were consistent with the act.

Fiscal Impact

Commonwealth

The proposed amendments will not impose additional fiscal impacts upon the Commonwealth for administration and enforcement. The amendments will not require the Department to commit an additional amount of time or manpower to the enforcement of the provisions of the act or regulations.

Political Subdivisions

The proposed amendments will impose no additional costs and have no fiscal impact upon political subdivisions. The amendments do not impose any additional burden of enforcement or review on political subdivisions.

Private Sector

The proposed amendments will not impose additional costs on the regulated community, which is part of the private sector or any other part of the private sector. Any additional fees are set forth in the act and merely referenced in the regulations. There are no new certification or licensure requirements and any new labeling requirements are merely consistent with the act and will not impose additional costs on the regulated community.

General Public

The proposed amendments will impose no costs and have no fiscal impact on the general public.

Paperwork Requirements

The proposed amendments will not result in a substantial increase of paperwork.

Public Comment Period

Interested persons are invited to submit written comments regarding the proposed amendments within 30 days following publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed amendments on May 2, 2008, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee (Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a

detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

If IRRC has any objections to any portion of the proposed amendments, it will notify the Department within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final-form publication of the regulations, by the Department, the General Assembly and the Governor of objections raised.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attention: Joe Garvey, (717) 787-4843.

Effective Date

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

DENNIS WOLFF,
Secretary

Fiscal Note: 2-156. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 111. SEED TESTING, LABELING AND STANDARDS

GENERAL PROVISIONS

§ 111.1. Sampling and testing of seeds.

The terms used in seed testing and the methods of sampling, inspecting, analyzing, testing and examining

agriculture, vegetable, flower, tree and shrub seeds, and lawn and turf mixtures and the tolerance allowed thereof shall be those adopted by the Association of Official Seed Analysts (**AOSA**), effective October 1, 1981, as amended, except that tolerance will not be allowed for prohibited noxious weed seeds. A copy of the rules may be obtained from the current Secretary-Treasurer [**of the association () AOSA()**], or from: **Botany and Seed Division; Bureau of Plant Industry; Department of Agriculture; 2301 North Cameron Street; Harrisburg, Pennsylvania 17110, at cost]** or at www.aosaseed.com.

§ 111.2. Condition of seeds for testing.

(a) Dirty or uncleaned seeds[,] and mixed seed [**samples or samples sent by nonresidents of this Commonwealth]** kinds when a percentage of analysis is not provided will not be tested.

* * * * *

§ 111.3. Fees and schedule of charges.

(a) The testing fee shall accompany the sample [**and no test shall be made until the fee is paid.]** or the cost of testing will be billed at the first of every month. A fee will be considered past due when payment is not received within 30 days from day of billing.

(b) Fees shall be paid by check or money order made payable to the Commonwealth of Pennsylvania. Cash will not be accepted [**through the mails but is accepted in the laboratory]**.

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

<i>Kind of Seed</i>	[<i>Purity Analysis (including Pennsylvania State Noxious Weed Seed Examination)</i>	<i>Germination Test</i>	<i>Combined Purity Analysis and Germination Test</i>
Alfalfa	\$ 7.00	\$5.50	\$12
Barley	7.00	5.50	12
Beans, Garden	6.00	6.50	12
Beans, Lima	6.00	7.50	13
Bentgrass	14	8.00	21.50
Big bluestem	26	8.00	33.50
Birdsfoot trefoil	7.00	5.50	12
Bluegrass	15	8.00	22.50
Brome	10	7.50	17
Buckwheat	7.00	5.50	12
Clovers	7.00	5.50	12
Corn	5.00	6.50	11
Crownvetch	8.00	6.50	14
Deertongue grass	10	7.50	17
Fescues	10	7.50	17
Flatpea	6.00	7.50	13
Millets	8.50	6.50	14.50

<i>Kind of Seed</i>	<i>[Purity Analysis (including Pennsylvania State Noxious Weed Seed Examination)</i>	<i>Germination Test</i>	<i>Combined Purity Analysis and Germination Test</i>
Oats (including fluorescence test)	8.00	5.50	13
Orchardgrass	12	7.00	18.50
Peas	5.00	6.50	11
Redtop	14	8.00	21.50
Reed Canarygrass	9.00	6.50	15
Rye	7.00	5.50	12
Ryegrass	9.00	6.00	14.50
Ryegrass (including fluorescence test)	9.00	10.50	19
Sorghums	8.00	6.50	14
Soybeans	6.00	7.50	13
Sudangrass	8.00	6.50	14
Timothy	7.00	5.50	12
Tobacco	8.00	6.50	14
Vetch	8.00	6.50	14
Wheat	7.00	5.50	12
Flowers	8.00	6.50	14
Vegetables and Herbs, except beans, corn and peas	8.00	5.50	13
Tree, Forb and Shrub:			
without embryo excision	8.00	9.00	16.50
with embryo excision	8.00	20	27
with embryo excision and removal of pits	8.00	22	29
Mixtures:			
Lawn and Turf:			
Two components	22	16.00	36
Each additional component	8.00	8.00	15
Germination only			8.00 extra
Pasture, hay and conservation:			
Two components	12	14	25
Each additional component	5.00	7.00	11
Germination only		6.00 extra	
Miscellaneous charges:			
Interstate Noxious Weed Examinations:			
Lawn and turf, with purity		6.00 extra	
Lawn and turf, without purity		20	
All others, with purity		5.00 extra	
Pennsylvania Noxious Weed Seed Examination:			
Lawn and Turf Grasses and Mixtures		15	
All Others		4.00	
Cold test		10	
Varietal test		12	
Moisture test		3.00	
Tetrazolium test		12.50	
Bio-assay for seed treatment		6.00	

Kind of Seed

Phenol test:

Bluegrass, ryegrass

Cereals

Embryo excision test

Rush

Extra laboratory report

Tests not listed, special procedures, extra time, etc.

[*Purity Analysis
(including
Pennsylvania
State Noxious
Weed Seed
Examination)*

*Germination
Test*

*Combined
Purity
Analysis and
Germination
Test*

7.00

6.00

15

4.00

2.00

12 per hour]

§ 111.4. Prohibitions and requirements.

* * * * *

(c) [During the months of February to May not more than five samples per firm or corporation shall be tested, unless the number of official law enforcement samples permit a larger number. No more than one of the five samples will be a mixture as provided for in § 111.3(c)(7) (relating to fees and schedule of charges).

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

[(e)] (d) Procedures for sampling are as follows:

* * * * *

LABELING

§ 111.11. General labeling requirements.

(a) In labeling the kind of agriculture, vegetable, flower, tree or shrub seeds as required in [section 3 of The Pennsylvania Seed Act of 1965 (3 P. S. § 285-3)] 3 Pa.C.S. § 7104 (relating to labels and labeling), of the following [shall] apply:

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

* * * * *

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

* * * * *

§ 111.12. Labeling of flower seeds.

[Section 3 of The Pennsylvania Seed Act of 1965 (3 P. S. § 285-3) requires] The provisions in 3 Pa.C.S. § 7104 (relating to labels and labeling) require that flower seeds be labeled with the name of the kind and variety or a statement of type and performance characteristics as prescribed by the Department of Agriculture. This provision shall be complied with as follows:

* * * * *

(3) It is permissible to label vegetable and flower seed kinds in containers of 1 pound or less with the statement: "Packed for (YY)" and "Sell by (12/YY)"

and an identifying lot number for the calendar year in which they are being offered for sale.

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

(a) [In labeling lawn and turf seeds, the following information shall be provided:

(1) The commonly accepted name of the kind or kind and variety of each agricultural seed component in excess of 5.0% of the whole and the percentage by weight of pure seed in the order of its predominance. Where more than one component is required to be named, the word, "mixture," or the word, "mixed," shall be stated. Percentages of pure seed for mixtures shall be listed under the headings, "Pure Seed."

(2) The percentage by weight of all agricultural seed other than those required to be labeled.

(3) The percentage by weight of inert matter not to exceed 10%, except that 15% inert matter is permitted in Kentucky bluegrass labeled without a variety manner. Foreign material, other than material used for coating or pelleting to enhance the planting value, not common to grass seed may not be added.

(4) The percentage by weight of all weed seeds, not to exceed 1.0%.

(5) Noxious weed seeds shall be listed under the heading "Noxious Weed Seeds" or as otherwise specified.

(6) The percentage of germination, exclusive of hard seed; hard seed, if present, and the calendar month and year that the germination test was completed. If a single test date is used for mixtures, it shall be that of the oldest tested component.

(7) Percentages of germination for mixtures shall be listed under the headings, "Germination" or "Germ."

(b) In addition to this section, labeling of lawn and turf mixtures shall comply with the requirements of section 3 of The Pennsylvania Seed Act of 1965 (3 P. S. § 285-3).]

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

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

§ 111.15. [Misleading labeling] (Reserved).

[(a) Notwithstanding § 111.13 (relating to labeling of lawn or turf grasses and mixtures) white clover may be claimed as a component of a mixture in quantities of 1.0% or more and redtop may be claimed as a component in mixtures, other than for lawn and turf, in quantities of 3.0% or more. The germination percentage of each shall be given.

(b) Other components of less than 5.0% shall be totaled and this sum listed as "other crop seed."

(c) Labeling not complying with this section may be considered as misleading.]

§ 111.16. Responsibility for labeling.

* * * * *

(b) The person or dealer shall also be responsible for procuring a new germination test and subsequently attaching new analysis tags before the expiration date of the required [nine] 9-month period or 15 months for cool season lawn and turf grasses as provided in [section 4 of The Pennsylvania Seed Act of 1965 (3 P. S. § 285-4)] 3 Pa.C.S. § 7104 (relating to labels and labeling). Tests shall be made according to the Rules for Testing Seed published by the Association of Official Seed Analysts, and no test may be considered official unless the rules are followed.

§ 111.17. Labeling of seeds for sprouting.

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

* * * * *

(4) Percentage of germination of a pure seed component and hard seed if applicable.

* * * * *

WEED SEEDS

§ 111.21. [Weed seeds classified] (Reserved).

[The following shall be classified as weed seeds in this Commonwealth and shall be labeled as such:

- (1) Black medic (*Medicago lupulina*).
- (2) Small hop clover (*Trifolium dubium*).
- (3) Large hop clover (*Trifolium procumbens*).
- (4) Carpet grass (*Axonopus affinis*).
- (5) Annual bluegrass (*Poa annua*). When present in agricultural, vegetable and flower seeds other than those lawn and turf grasses and mixtures listed in § 111.23(b)(1) (relating to restricted noxious weed seeds).
- (6) Bulbous bluegrass (*Poa bulbosa*)]

§ 111.22. Prohibited noxious weed seeds.

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

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

§ 111.23. Restricted noxious weed seeds.

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

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

* * * * *

- (x) Bull Thistle (*Cirsium vulgare*).
- (xi) Musk Thistle (*Carduus nutans*).

* * * * *

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

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

* * * * *

MISCELLANEOUS PROVISIONS

§ 111.41. Stop sale procedures.

(a) The owner or custodian of any lot of seeds held under "stop sale" shall be allowed 90 days to correct deficiencies so that the lot conforms to the requirements of this chapter and [The Pennsylvania Seed Act of 1965 (3 P. S. § 285-1— 285-10)] 3 Pa.C.S. Chapter 71 (relating to the Seed Act).

* * * * *

(e) [**Section 2 (22) of The Pennsylvania Seed Act of 1965 (3 P. S. § 2852(22)) containing**] **The provisions in 3 Pa.C.S. § 7113 (relating to stop-sale orders) contain** further requirements for “stop sale” notice, shall be followed.

[Pa.B. Doc. No. 08-920. Filed for public inspection May 16, 2008, 9:00 a.m.]

[**7 PA. CODE CH. 115**]
Standards for Seed Certification

The Department of Agriculture (Department), under 3 Pa.C.S. Chapter 71 (act) (relating to the Seed Act) and under the specific authority of sections 7111 and 7117 of the act (relating to powers and duties of secretary and department; and rules and regulations), proposes to amend Chapter 115 (relating to standards for seed certification). The act replaces The Pennsylvania Seed Act of 1965 (3 P. S. §§ 285-1—258-11).

Section 7111 of the act authorizes and empowers the Department to enforce the provisions of the act and to “. . . prescribe, modify and enforce such reasonable rules, regulations, standards, tolerances and orders as in the judgment of the secretary shall be necessary to carry out the provisions of [the act].” See 3 Pa.C.S. § 7111(a). In addition, section 7111 of the act establishes specific powers and duties of the Department and provides for delegation of such authority. See 3 Pa.C.S. §§ 7111(b) and (c). Section 7117 of the act specifically delineates that the Department “. . . shall promulgate and enforce rules and regulations necessary of administration and implementation of [the act].” See 3 Pa.C.S. § 7117. Consistent with that authority and to establish regulations which are consistent with the provisions of the act, the Department hereby proposes the following amendments to Chapter 115.

Background

The proposed amendments are made necessary by and are established under the authority of, and in accordance with, the act.

The major features and amendments to the proposed amendments are summarized as follows:

Summary of Major Features and Amendments

§ 115.71. Definitions.

The Department amended the definition of commercial hybrid field corn, by deleting “modified single cross” as a type of commercial hybrid field corn and replacing it with “top cross.” In addition, the Department added two more types (inbred line and open-pollination) to the definition of commercial hybrid field corn.

§ 115.82. Isolation requirements.

The Department deleted the current table, in subsection (d), related to the minimum number of border rows required for fields of various sizes and replaced it with an updated table.

§ 115.211. Seed standards.

The Department added the word “restricted” to the last sentence of this section.

§ 115.271. Seed source.

The Department added language clarifying that seed potatoes will be limited to 8 generations. In accordance

with that change, the Department changed the language stating that foundation G3 was the minimum acceptable source to produce certified G4 to foundation G7 being the minimum acceptable source to produce certified G8.

§ 115.282. Diseases.

The Department reduced the tolerance allowed for diseases in Leaf Roll G4 through G8 from 2% to 1%.

§ 115.283. Varietal mixtures.

The Department added G4 through G8 to the chart related to pre-nuclear varietal mixtures.

§ 115.293. Eligibility factors for tags.

The Department expanded the generations eligible for production and tagging by deleting the language limiting the generations to generations 1—3 and adding language which makes generations 1—7 eligible for production and tagging.

§ 115.302. Treatment for diseases.

The Department rescinded this section.

§ 115.321. Preplanting.

The Department amended a grammatical error in subsection (c) by changing “is” to “are.” In addition, the Department modified the language of subsection (c)(4) to assure the citation to the act was correct.

§ 115.444. Harvesting.

The Department amended subsection (a)(5) to assure the citation to the act was correct.

Subchapter T. Interagency Turf Grass

The Department added a full subchapter to deal with interagency turf grass standards and seed certification. Turf grass requirements are set forth in section 7104(b)(2) of the act (relating to labels and labeling) but are not covered by the current regulations.

§ 115.451. Purpose.

The purpose of this section is to provide a system for maintaining the genetic and mechanical purity of certified seed when repackaged or combined in mixtures of kinds and varieties. The requirements of this subchapter apply when the Department participates with an out-of-State certification agency in the seed certification process.

§ 115.452. Definitions.

The Department established definitions which are important to clarify and understand the substantive provisions of this section.

§ 115.453. Interagency standards and procedures.

This section delineates varieties which are eligible for interagency certification, the agencies or organizations which may certify this variety of seeds and the procedures and documentation necessary for final certification.

§ 115.454. Prior approval of cooperation.

This provision delineates that prior approval is not necessary unless the original certifying agency prohibits or limits the certification by a statement on its tag.

§ 115.455. Conditioner's application and requirements.

These provisions set forth the application requirements for conditioners of seed.

§ 115.456. Conditioner's facilities.

This section establishes standards which a conditioner's facilities must meet.

§ 115.457. Conditioner's required records.

This section delineates specific recordkeeping requirements for conditioners.

§ 115.458. Inspection of conditioning operations.

These provisions set forth the Department's authority to inspect conditioning operations, their seed stocks and their records.

§ 115.459. Appointment of responsible individual.

This section requires approved conditioners to designate an individual who will be responsible for performing the duties as may be required by the Department.

§ 115.460. Sampling and testing by the Department.

The provisions of this section delineate the sampling and testing techniques and standards to be carried out by the Department.

§ 115.461. Mixing procedures for certified turfgrass.

This section sets forth the mixing procedures which must be followed and adhered to by conditioners when mixing certified turfgrasses.

§ 115.462. Minimum seed standards for interagency certification of turfgrass seed.

The provisions of this section establish specific standards for certified turfgrass seed and establish an emergency provision for use of substandard turfgrass mixtures.

§ 115.463. Interagency certification tags and tagging.

This section sets the standards for turfgrass certification tags or labels.

§ 115.464. Rejection of interagency certification components' seed lots.

These provisions delineate the specific reasons for which the Department may or shall reject any certified component seed lot for interagency certification.

§ 115.465. Fees.

This section informs the regulated community that fees for interagency certification or established in section 7109 of the act (relating to fees).

Fiscal Impact

Commonwealth

The proposed amendments will not impose additional fiscal impacts upon the Commonwealth for administration and enforcement. The amendments will not require the Department to commit an additional amount of time or manpower to the enforcement of the provisions of the act or regulations.

Political Subdivisions

The proposed amendments will impose no additional costs and have no fiscal impact upon political subdivisions. The amendments do not impose any additional burden of enforcement or review on political subdivisions.

Private Sector

The proposed amendments will not impose additional costs on the regulated community, which is part of the private sector or any other part of the private sector. Any additional fees are set forth in the act and merely referenced in the amendments. There are no new certification or licensure requirements and any new labeling requirements are merely consistent with the provisions of the act and will not impose additional costs on the regulated community.

General Public

The proposed amendments will impose no costs and have no fiscal impact on the general public.

Paperwork Requirements

The proposed amendments will not result in a substantial increase of paperwork.

Public Comment Period

Interested persons are invited to submit written comments regarding the proposed amendments within 30 days following publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed amendments on May 2, 2008, to the Independent Regulatory Review Commission (Commission) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee (Committees). In addition to submitting the proposed amendments, the Department has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed amendments, it will notify the Department within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of objections raised.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attention: Joe Garvey, (717) 787-4843.

Effective Date

These proposed amendments will be effective upon final-form publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,
Secretary

Fiscal Note: 2-158. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 115. STANDARDS FOR SEED CERTIFICATION

Subchapter D. CORN—COMMERCIAL HYBRIDS

GENERAL REQUIREMENTS

§ 115.71. Definitions.

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

Commercial hybrid field corn—Corn planted for the production of corn for food or feed purposes, or for other commercial or farm use except for seed. It may consist of any one of the following:

* * * * *

(iv) [*Modified Single Cross*—A cross in which either the male, female or both parents are sister line crosses. For example: $(A_1 \times A_2) \times B$ or $(A_1 \times A_2) \times (B_1 \times B_2)$ or $A \times (B_1 \times B_2)$] *Top Cross*—The first generation hybrid of a cross between an inbred line and an open-pollinated variety or the first generation hybrid between a single cross and an open-pollinated variety.

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

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

* * * * *

FIELD STANDARDS

§ 115.82. Isolation requirements.

* * * * *

(d) The following table indicates the minimum number of border rows required for fields of various sizes, when located at different distances from other corn:

Minimum Numbers of Male Border Rows Required

[<i>Minimum Distance From Contaminant</i>	<i>0-9 acres</i>	<i>10-19 acres</i>	<i>20-29 acres</i>	<i>30-39 acres</i>	<i>40-acres</i>
600	2	—	—	—	—
540	4	4	2	—	—
480	6	4	4	4	2
420	8	8	6	6	6
360	10	10	8	8	8
300	12	10	10	10	8
240	12	12	12	10	10
180	14	14	12	12	12]

<i>Minimum Distance From Contaminant</i>	<i>0-20 Acres</i>	<i>>20 Acres</i>
660	0	0
570	4	2
490	6	2
410	8	4
330	10	6
270	12	8
210	14	10
150	16	12
90	18	14
<90	24*	16**

*minimum of 60' including border rows.
 **minimum of 40' including border rows.

* * * * *

Subchapter G. DEERTONGUE GRASS

SEED STANDARDS—DEERTONGUE GRASS

§ 115.211. Seed standards.

The following seed standards apply:

Certified Class

Pure Seed (minimum)	97%
Other crop seed	2%
*Weed seeds	1%
Inert matter (maximum)	3%
Germination (minimum)	70%

*A maximum of nine **restricted** noxious weed seeds per pound is allowed.

* * * * *

Subchapter J. POTATO

GENERAL STANDARDS

§ 115.271. Seed source.

Seed potatoes grown in this Commonwealth will be limited to 8 generations. [**Foundation—G3**] **Foundation G7** is the minimum acceptable source to produce [**certified—G4**] **Certified G8**. When out-of-State source is used, tags shall indicate generation. Signed documentation will be accepted in lieu of tag. Plantlets and mini-tubers entered shall come from an authorized source. Inspections of plantlets shall be made at the discretion of the certification office.

FIELD STANDARDS

§ 115.282. Diseases.

(a) *Potatoes other than Prenuclear seed potatoes*. The Department will inspect fields of potatoes at least twice during the growing season. Other inspections, which may

include digging, may be made. A final inspection shall be made at shipping time for grade.

* * * * *

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

Maximum Percent Allowed

Disease	G1 & G2	G3	G4-G8
Mosaic	.25	.5	2
Leaf Roll	.25	.5	[2] 1
Spindle Tuber	.25	.5	1
Yellow Dwarf	.25	.5	1
Total Virus including Mosaic, Leaf Roll, Spindle Tuber and Yellow Dwarf	.50	1.0	3
Ring Rot	.00	.00	.00

* * * * *

§ 115.283. Varietal mixtures.

The maximum percentage of varietal mixture allowed is as follows:

Prenuclear	0%
G1	0%
G2	0%
G3	.25%
G4-G8	.25%

SEED STANDARDS

§ 115.293. Eligibility factors for tags.

(a) To be eligible to produce and tag generation 1 [, 2 and 3] through 7 for recertification, the entire farm production shall be in the Certification Program.

* * * * *

Subchapter K. SMALL GRAIN

GENERAL STANDARDS

§ 115.302. [Treatment for diseases] (Reserved).

[The seed should be treated before planting to control seed-borne diseases as recommended by the County Agricultural Extension Agent located at each county seat.]

Subchapter L. SOD

INSPECTIONS

§ 115.321. Preplanting.

* * * * *

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

* * * * *

(4) A sod seed analysis based on the rules of the Association of Official Seed Analysts, c/o Illinois State Seed Laboratory, Post Office Box 4906, 801 Sangamen Avenue, Springfield, Illinois 62706 and section [3 of The Pennsylvania Seed Act of 1965 (3 P. S. § 285.3)] 3 Pa.C.S. § 7104 (relating to labels and labeling) shall be the basis of determining seed standards.

* * * * *

Subchapter S. TREES
FIELD REQUIREMENTS

§ 115.444. Harvesting.

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

* * * * *

(5) The analysis tag shall state the weight of seed in the container in addition to information required by [The Pennsylvania Seed Act of 1965 (3 P. S. §§ 285-1—285.11)] 3 Pa.C.S. Chapter 71 (relating to the Seed Act).

* * * * *

(Editor's Note: The following new subchapter is printed in regular text to enhance readability.)

Subchapter T. INTERAGENCY TURFGRASS

Sec.

- 115.451. Purpose.
- 115.452. Definitions.
- 115.453. Interagency standards and procedures.
- 115.454. Prior approval of cooperation.
- 115.455. Conditioner's application and requirements.
- 115.456. Conditioner's facilities.
- 115.457. Conditioner's required records.
- 115.458. Inspection of conditioning operations.
- 115.459. Appointment of responsible individual.
- 115.460. Sampling and testing by the Department.
- 115.461. Mixing procedures for certified turfgrass.
- 115.462. Minimum seed standards for interagency certification of turfgrass seed.
- 115.463. Interagency certification tags and tagging.
- 115.464. Rejection of interagency certification components' seed lots.
- 115.465. Fees.

§ 115.451. Purpose.

(a) The purpose of this subchapter is to provide a system for maintaining the genetic and mechanical purity of certified seed when repackaged or combined in mixtures of kinds and varieties.

(b) The requirements of this subchapter apply when the Department participates with an out-of-State certification agency in the seed certification process.

§ 115.452. Definitions.

In addition to the definitions found in § 113.1 (relating to definitions), the following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

Component—A specific lot of a single variety that is used in a mixture.

Interagency certified mixture—Different kinds or varieties of seed certified by the state of origin that have been mixed under the Department's supervision and found by the Department to have met the specific minimum seed standards in this subchapter.

Mixing report—A form used by the Department to list each component of a specific mixture and the lots and amounts used in the mixture.

Official sample—A sample taken by a representative of the Department using sampling techniques recognized by the Association of Official Seed Certifying Agencies.

Sod quality—Seed which has met the quality standards established by the state of origin for use in cultivated sod and has been so labeled by the state of origin.

§ 115.453. Interagency standards and procedures.

(a) Varieties eligible for interagency certification shall be those approved by a member of the Association of Official Seed Certifying Agencies.

(b) Only seed certification by member agencies of the Association of Official Seed Certifying Agencies or agencies recognized by it may be used in the interagency certification program.

(c) The seed certification standards as adopted by the Department for the kinds to be certified shall be applied to interagency certified seed. These standards are found in the provisions of this subchapter which relate to the kind of seed in question. In the absence of Pennsylvania standards, the seed standards of the state in which the seed was grown and certified shall be applied.

(d) Seed will not be recognized for final certification by the Department unless it is received in containers carrying documentary evidence of its eligibility supplied by another certifying agency including:

- (1) Variety and kind.
- (2) Amount of seed.
- (3) Class of seed.

(4) Inspection or lot number traceable to the previous certifying agency's records.

§ 115.454. Prior approval of cooperation.

The Department will not require advance approval of another certifying agency to engage in interagency certification activities unless the original certifying agency prohibits or limits the certification by a statement on its tag.

§ 115.455. Conditioner's application and requirements.

(a) Conditioners desiring interagency certification of seed shall apply annually to the Department and shall meet the requirements of this subchapter.

(b) Conditioners shall notify the Department far enough in advance of the date of mixing to allow for sampling and testing of component lots by the Department.

(c) Conditioners shall be responsible for all applicable fees for application, sampling and testing according to the 3 Pa.C.S. Chapter 71 (relating to the Seed Act).

(d) The identity of the seed shall be maintained at all times.

§ 115.456. Conditioner's facilities.

(a) Facilities shall be available to perform the function requested without introducing contaminants or admixtures.

(b) Equipment used for making mixtures of turf grasses shall have all areas which come into direct contact with the seed accessible for thorough cleaning by the conditioner and inspection by the Department.

§ 115.457. Conditioner's required records.

(a) Records of all movement of seed and procedures must be adequate to account for all incoming seed and seed that has passed final certification. The following records shall be included:

- (1) Receiving records consisting of:
 - (i) Variety and kind.
 - (ii) Name and address of shipper.
 - (iii) Shipper's lot number or inspection number.
 - (iv) Date of shipment.
 - (v) Date received.
 - (vi) Weight received.
 - (vii) Receiving lot number assigned by consignee.
 - (viii) Name and address of delivering carrier.
- (2) Records of mixing or rebagging consisting of:

- (i) Variety and kind of each component.
- (ii) Lot number of each component.
- (iii) Lot number and name assigned to each mixture.
- (iv) Weight of each bag and number of bags used in each component.
- (v) Weight of each bag and number of bags in completed lot.
- (vi) Date of mixing or rebagging.
- (3) Disposition or stock records of completed lot consisting of:
 - (i) Name of mixture and lot number.
 - (ii) Weight of bags and number of bags in final lot.
 - (iii) Invoice number and weight of each shipment made from the lot.
 - (iv) Balance of lot remaining after each shipment.
- (4) Invoice or other sales records consisting of:
 - (i) Name of mixture and lot number.
 - (ii) Name and address of buyer or consignee.
 - (iii) Date sold or shipped.
 - (iv) Number of bags and weight of bags sold or shipped.

(b) Conditioners shall permit inspection by the Department of all records of all lots of the kind of seed certified, including both certified and noncertified lots.

§ 115.458. Inspection of conditioning operations and records.

The Department will make as many inspections of both seed and records as may be required to ascertain that only seed meeting the requirements of this subchapter is labeled with interagency certification tags.

§ 115.459. Appointment of responsible individual.

Approved conditioners who have met the requirements in §§ 115.456—115.458 (relating to conditioner's facilities; conditioner's required records; and inspection of conditioning operations and records) shall designate an individual who shall be responsible to the Department for performing duties that may be required.

§ 115.460. Sampling and testing by the Department.

(a) When mixing lots of seed for certification, the conditioner shall use only lots of seed preapproved by the Department. Before approving of a lot, the Department will:

- (1) Take an official sample of each component.
- (2) Perform tests necessary to verify the eligibility of each component lot.

(b) After the different components have been mixed under the supervision of the Department, the conditioner shall permit the Department to take an official sample of each mixture to retain for reference.

(c) Samples of component lots and certified mixes will be retained by the Department for 3 years.

§ 115.461. Mixing procedures for certified turfgrass.

- (a) Before mixing, the conditioner shall ensure that:
 - (1) Mixing equipment, pallets, scales and floor area adjacent to and around the mixing area are clean and free from seed and foreign material.
 - (2) Sufficient quantities of new containers are marked with the name of the mixture.

(3) Sufficient quantities of properly completed analysis tags are prepared.

(4) Analysis test reports for purity, germination and sod quality, if applicable, from the state of origin shall be supplied for the Department's records for each lot of each component used in the mixture.

(5) A mixing report shall be completed for the Department with the following information:

(i) The business name, address and phone number of the conditioner.

(ii) The lot number, state of origin and percentage of each component used.

(iii) The name, lot number and date of the mixture.

(iv) The weight of each package of the mixture and the total number of packages in the mixture.

(v) The starting and ending numbers of the certification labels used and the total number of certification labels issued.

(vi) A copy of the analysis label either printed on or attached to the report.

(vii) The signature of the designated representative of the conditioner and the signature of the Department's representative at the completion of the mixing and packaging process.

(6) Each component used is assembled in close proximity to the mixing area.

(7) Each container of each component is clean and sealed, with a certification tag attached.

(8) Damaged containers are not accepted.

(9) Sufficient personnel are available to complete the mixing process.

(b) Before mixing, a Department representative will do the following:

(1) Inspect the equipment for cleanliness.

(2) Inspect the mixing area for cleanliness.

(3) Inspect the new containers provided for the mixture to ensure that they are appropriate.

(4) Inspect the analysis tags for completeness and accuracy.

(5) Inspect each component to ensure that the correct lots are present in the proper amounts, and that all containers of seed to be used in certified mixtures bear a certification tag.

(c) A Department representative shall be present during the mixing process and supervise the loading and bagging of the mixed lot after the components have been thoroughly mixed for the appropriate length of time.

(d) A Department representative will have the sole responsibility to:

(1) Draw an official sample of the completed mixture.

(2) Determine whether the mixer should be cleaned before the next seed mixture is made.

§ 115.462. Minimum seed standards for interagency certification of turfgrass seed.

(a) Turfgrass mixtures intended for use in Pennsylvania certified sod and other states certified sod must meet the following requirements:

(1) Component lots shall be those designated as sod quality by the state of origin; the minimum seed standards found in § 115.321 (relating to preplanting); or the standards required by the state into which the mixture is to be shipped.

(2) Varieties and mixtures of varieties may be approved for use by the state in which they are to be shipped.

(3) It is the responsibility of the conditioner to inform the Department that a certain mixture is to comply with a certain states' standards.

(4) The seed analysis tag must bear the statement "Eligible for _____ Certified Sod," when appropriate.

(b) For certified mixtures made for sod growers, other than those in subsection (a), the components used shall be sod quality.

(c) The components for all other mixtures must comply with the following seed standards:

<i>Kind</i>	<i>Min. Purity</i>	<i>Max. Other Varieties</i>	<i>Min. Germ</i>	<i>Max. Other Crop*</i>	<i>Max. Weed+</i>
Kentucky Bluegrass	96%	2%	80%	.25%	.2%
Red Fescues	97%	2%	85%	.25%	.2%
Hard Fescues	97%	2%	85%	.25%	.2%
Tall Fescue	97%	2%	85%	.25%	.2%
Perennial Ryegrass	97%	2%	85%	.50%	.2%
Bentgrass**	98%	3%	85%	.25%	.2%
Rough Bluegrass	96%	2%	80%	.25%	.2%

*Up to 18 seeds per pound is the maximum amount of the following species: Annual bluegrass (*Poa annua*), Big Bluegrass (*Poa ampla*), Rough bluegrass (*Poa trivialis*), Meadow fescue (*Festuca elatior*), Tall Fescue (*F. arundinacea*—except in lots containing tall fescue), Ryegrass (*Lolium spp.*—except in lots containing ryegrass), Bentgrass (*Agrostis spp.*—except in lots containing bentgrass), Timothy (*Phleum pratense*), Smooth Brome (*Bromus inermis*), Wild oat (*Avena fatua*), Foxtail (*Setaria spp.*) Panicum spp., Nutsedge (*Cyperus spp.*), Bermudagrass (*Cynodon dactylon*), Velvetgrass (*Holcus lanatus*), Orchardgrass (*Dactylis glomerata*). Up to 90 seeds per pound is the maximum amount permitted of the following objectionable weed seeds; Dock and Sorrel (*Rumex spp.*), Plantain (*Plantago spp.*), Black medic (*Medicago lupulina*), Chickweeds (*Cerastium spp.* and *Stellaria spp.*), Field Pennycress (*Thlaspi arvense*), Wild carrot (*Daucus carota*), Speedwell (*Veronica spp.*), Spurge (*Euphorbia spp.*), Wood sorrel (*Oxalis stricta*), Yarrow (*Achillea millefolium*), Clover (*Trifolium spp.*). In addition, no noxious weed seeds are permitted.

**Bentgrass purity and germination standards may be 96% minimum pure seed and 80% germination for specific varieties as determined by the certifying agency of the state of origin.

(d) In an emergency, and at the discretion of the Department, seed lots failing to meet these standards for other than genetic reasons may be used for interagency certified mixtures. Use of those lots shall be made only when the Department determines that there is a serious shortage of seed meeting these standards.

§ 115.463. Interagency certification tags and tagging.

(a) Certification tags issued by the Department for interagency certified seed will be serially numbered and show class of seed.

(b) The analysis tags supplied by the conditioner must carry the name of the mixture and the number of the lot, show clearly the certifying agencies involved and the kinds and varieties of seed, as well as conform with 3 Pa.C.S. § 7104 (relating to labels and labeling).

§ 115.464. Rejection of interagency certification components' seed lots.

The Department will reject any certified component seed lot for interagency certification that fails to meet the seed standards as described in this subchapter or that exhibits seed damage or contamination. This damage or contamination may include:

- (1) Rodent or insect damage.
- (2) Moisture damage.
- (3) Disease.
- (4) Weed seed.
- (5) Other crop seeds.
- (6) Inert matter.

§ 115.465. Fees.

Fees for interagency certification are set forth in 3 Pa.C.S. § 7109 (relating to fees).

[Pa.B. Doc. No. 08-921. Filed for public inspection May 16, 2008, 9:00 a.m.]

[7 PA. CODE CHS. 21, 23, 25 AND 27]

Withdrawal of Dog Law Enforcement Regulations

The Department of Agriculture withdraws the notice of proposed rulemaking, which would have amended the Dog Law Enforcement regulations in 7 Pa. Code Chapters 21, 23, 25 and 27. This proposed regulation was published at 36 Pa.B. 7596 (December 16, 2008).

Further information is available by contacting Jessie Smith, Special Deputy Secretary, Bureau of Dog Law Enforcement at (717) 214-3447.

DENNIS C WOLF,
Secretary

[Pa.B. Doc. No. 08-922. Filed for public inspection May 16, 2008, 9:00 a.m.]

DEPARTMENT OF HEALTH

[4 PA. CODE CH. 255]

Solicit Comments on Changes made to the Confidentiality of Patient Records and Information

The Department of Health (Department) is publishing a notice of draft final rulemaking for the draft final-form regulation at 4 Pa. Code § 255.5 (relating to projects and coordinating bodies: disclosure of client-oriented information) to solicit comment on changes made to the proposed rulemaking, which was published at 37 Pa.B. 6529 (December 15, 2007). The changes recommended to the proposed rulemaking are based on comments received during the public comment period for the proposed rulemaking, which occurred from December 15, 2007, to January 14, 2008, and comments received from the Independent Regulatory Review Commission. The changes are also based on comments received during the April 16, 2008, meeting of the Advisory Council on Drug and Alcohol Abuse, from whom the Department has sought written advice and consultation, and the Department's review of other related information.

Contact Person, Availability of Draft Final Rulemaking and Submission of Comments

The Department is requesting specific written comments on the draft final rulemaking for 4 Pa. Code § 255.5 sent by mail, hand-delivery or facsimile. Comments will not be accepted by e-mail, telephone or voicemail. Written comments must include the commentator's name and address. Written comments must be received no later than 5 p.m. on Wednesday, July 23, 2008. Direct comments to Janice Staloski, Director, Bureau of Community Program Licensure and Certification, Department of Health, 132 Kline Plaza, Suite A, Harrisburg, PA 17104-1579, fax (717) 787-3188.

A copy of the draft final rulemaking was posted in "PDF" format on April 25, 2008, at www.health.state.pa.us/draftregs, and will remain available through the end date for comments. For ease of review, all editing markups which may have appeared in previous documents have been removed.

A Frequently Asked Questions (FAQ) document is also posted to provide some answers to questions which have been presented to the Department through comments to the proposed rulemaking and in subsequent discussions. The FAQ document may be updated if additional questions are raised and the Department believes that answers may assist commenters in the submission of comments and the development of final rulemaking. Interested persons should check this web site regularly for updates.

Individuals may also request a copy of the draft final rulemaking or FAQs by contacting the Bureau of Community Program Licensure and Certification at (717) 783-8665. Persons with a disability who wish to submit comments, suggestions or objections regarding the draft final rulemaking may do so by using the previous number or address. Speech or hearing impaired persons may use V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT). Persons who require an alternative format of this document may contact Janice Staloski so that necessary arrangements may be made.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 08-923. Filed for public inspection May 16, 2008, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 441a]
Slot Machine Licensing

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1205 and 1206 (relating to license or permit application hearing process; public input hearings; and Board minutes and records) proposes to amend Chapter 441a (relating to slot machine licenses) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking amends the provisions related to licensing hearings for applicants for slot machine licenses.

Explanation of Amendments to Chapter 441a

Section 441a.7 (relating to licensing hearings for slot machine licenses) lays out the procedures for the conduct of slot machine licensing hearings. Through this proposed rulemaking, the Board is expanding these provisions.

Specifically, the Board will require the Bureau of Investigations and Enforcement to report any information concerning an applicant that was obtained from sources in the public domain at the licensing hearing.

Additionally, the Board may request, on the record, that an applicant respond to questions that relate to confidential information at the licensing hearing. The applicant will have the option of waiving the right to confidentiality and answering the questions at the public hearing or requesting that the matter be heard in executive session. If the applicant provides sufficient reason to justify the invocation of confidentiality, the Board will hear the responses to the Board's questions in executive session.

The proposed rulemaking also makes it clear that under no circumstances will an applicant be required to waive the right to confidentiality as a condition to receiving a slot machine license.

Adoption of these new provisions will provide additional guidance to applicants for slot machine licenses on the conduct of the licensing hearings and ensure that all information permitted by law will be contained in the public record.

Affected Parties

Applicants for slot machine licenses will be affected by this regulation.

Fiscal Impact

Commonwealth

There will be no new costs or savings to the Board or other Commonwealth agencies as a result of this proposed rulemaking.

Political Subdivisions

This proposed rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Applicants for slot machine licenses will not experience any increased costs or savings as a result of this proposed rulemaking.

General Public

This proposed rulemaking will have no fiscal impact on the general public.

Paperwork requirements

There are no new paperwork or reporting requirements associated with this proposed rulemaking.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-86.

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on May 1, 2008, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (Commission) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the act, the Commission may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

MARY DIGIACOMO COLINS,
Chairperson

Fiscal Note: 125-86. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart C. SLOT MACHINE LICENSING

CHAPTER 441a. SLOT MACHINE LICENSES

* * * * *

§ 441a.7. Licensing hearings for slot machine licenses.

* * * * *

(r) Information obtained by BIE during an applicant's background investigation based upon public record or upon information otherwise in the public domain will be heard by the Board during the licensing hearing. Information submitted by an applicant under 4 Pa.C.S. § 1310(a) (relating to slot

machine license application character requirements) or obtained by the Board or BIE as part of a background investigation from any source not in the public domain is considered confidential. The Board may not require an applicant to waive any confidentiality provided for in 4 Pa.C.S. § 1310(a) as a condition for the approval of a slot machine license or any other action of the Board. The Board may request that an applicant respond to inquiries related to confidential information during a licensing hearing to promote transparency in the regulation of gaming in the Commonwealth. An applicant who does not waive the right to confidentiality shall:

(1) Request, at the licensing hearing, that the matter be heard in executive session.

(2) Provide sufficient reason on the record to justify the invocation of the confidentiality.

(s) At its discretion, the Board may terminate, recess, reconvene and continue the licensing hearing.

[(s)] (t) ***
* * * * *

[(t)] (u) ***

[(u)] (v) ***

[(v)] (w) ***

[(w)] (x) ***

[(x)] (y) ***

[(y)] (z) ***
* * * * *

[(z)] (aa) ***

[Pa.B. Doc. No. 08-924. Filed for public inspection May 16, 2008, 9:00 a.m.]

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 4]

Academic Standards and Assessment

The State Board of Education (Board) proposes to amend Chapter 4 (relating to academic standards and assessment) to read as set forth in Annex A. The Board is acting under the authority of sections 2603-B and 2604-B of the Public School Code of 1949 (24 P. S. §§ 26-2603-B and 2604-B).

Purpose

Chapter 4 sets forth requirements for State academic standards and assessments and State high school graduation requirements for this Commonwealth's public schools.

Background

Pennsylvania, like other states in the 1990s, increased its educational standards and high school graduation requirements by adopting State academic standards and establishing a Statewide accountability system designed to measure student and school performance. Yet 9 years later, these reforms have not yielded consistent results at

the high school level. One-quarter of our students do not graduate from high school on time. Nearly 40% of those who graduate—57,000 students each year—are awarded diplomas without having passed the State's reading, writing and math tests. Less than half of our high school graduates enroll in college upon graduation and only 37% make it to their sophomore year. Only one-third graduate from college on time.

These results severely limit economic opportunity for thousands of graduates to earn a living wage; they erode this Commonwealth's overall competitiveness for jobs, and reduce our future tax base thereby reducing resources available for vital government services. Every student must graduate from high school with the knowledge and skills that are essential for college and career success if this Commonwealth's economy is to fulfill its promise.

As social and economic forces have demanded a more highly educated citizenry, the Board has responded by increasing the State's high school graduation requirements over time. In 1963, the Board required students to successfully complete 13 credit units of study in grades 10—12. Over the next 3 decades, the Board increased State high school graduation requirements, eventually to require successful completion of 21 course credits in grades 9—12. Then, in 1993, the Board eliminated high school course and credit requirements and replaced them with 56 student learning outcomes—the precursor to today's State academic standards. The student learning outcomes describe what students should know and be able to do upon graduation. School districts were charged with developing the assessment systems that would determine whether students achieved the student learning outcomes. At the same time, a State assessment system was established to assess the academic performance of each school.

In 1999, the Board established the State academic standards, which provide a clear and detailed description of what students were expected to know and be able to do. The Pennsylvania System of School Assessment (PSSA) was redesigned to measure both school and individual student achievement of the State academic standards. The Board also required school district high school graduation policies to address: course completion and grades; completion of a culminating project and results of local assessments aligned with the academic standards. The policy also required students, beginning in 2002-2003, to demonstrate proficiency in reading, writing and mathematics on the PSSA or local assessments aligned with State academic standards and State assessment at the proficient level or above to graduate.

At the time, the Board believed this policy reflected a reasonable approach that honored the tenets of local control. However, as stated at the time in the *Pennsylvania Bulletin*:

Graduation requirements. The Senate Committee, members of the House Committee and staff of IRRC sought greater clarity in the graduation requirements including a determination of whether and when a proficient level on State assessments is required for graduation. Language in § 4.24(a) (relating to high school graduation requirements) was amended in the final-form version to clarify that students graduating in 2002-2003 must demonstrate the attainment of academic standards in reading, writing and mathematics at the proficient level on State assessments or local assessments aligned with the academic standards and State assessments.

* * * * *

Comparability of local assessment. Members of the House and Senate Committees and IRRC staff recommended that there be established a process for determining the comparability of local assessment. Language under § 4.24(a) was changed so that local assessments must be aligned with academic standards and State assessments. The most certain evidence of the comparability or degree of alignment between these assessments will come from repeated administrations of State assessments and local assessments. If it becomes apparent that large numbers of students not achieving at the proficient level on State assessments are deemed proficient by local assessments, regulation and administrative review will become important. Until then, the Board does not feel the extra administrative burden for schools and the Department is warranted.

29 Pa.B. 399 (January 16, 1999).

Over the past several years it has become clear that the concerns raised by the House and Senate Education Committees and IRRC as expressed in their comments to the Board were indeed valid.

To address this concern, in September 2005 Governor Rendell established a Commission on College and Career Success. The Commission was given a charge to: define “college and career ready” in mathematics, English and science; examine and make specific recommendations for better alignment of academic standards and assessments across the secondary and post-secondary educational sectors, as well as industry in Pennsylvania; encourage local school districts to adopt a core high school curriculum for all Pennsylvania students; present to the Governor a legislative and regulatory package that would address the needs outlined in their findings; and to investigate policies and programs that ensure a higher number of prepared students enter and remain in our colleges and universities.

The Commission delivered its report to the Governor in December 2006. The proposed regulations, with several modifications, implement the Commission’s recommendations. The modifications are based on input the Board received at six regional public roundtable meetings, one public hearing and five public committee meetings.

Requirements of the Proposed Rulemaking

The proposed rulemaking would amend the following items:

§ 4.3 (*relating to definitions*). The Board proposes to add definitions of the two State assessments: “Pennsylvania System of School Assessment” and “Graduation Competency Assessments” (GCA).

§ 4.4(e) (*relating to general policies*). The Board proposes to add requirements that the Department of Education (Department) provide the supports and assistance necessary for school districts and area vocational-technical school (AVTS) to assist students to attain proficiency in the State academic standards, including the development of a voluntary model curriculum; effective student tutoring, remediation and extended instructional time programs; and continuing professional education for teachers.

§ 4.24 (*relating to high school graduation requirement*). The Board proposes to continue the existing State high school graduation requirements through the 2012-2013 school year. Beginning in the 2013-2014 school year, each school district and AVTS, including charter schools, would be required to specify requirements for high school gradu-

ation in their strategic plan. At a minimum, these requirements would include: course completion and grades; culminating project; demonstration of proficiency in each of the academic standards not assessed by the State; and proficiency in reading, writing, math, science and social studies using one or any combination of the following—PSSA, GCAs, Advanced Placement/International Baccalaureate exams or validated local assessments. The Board also proposes to require school entities to provide any student who does not score proficient or above on the 11th grade PSSA or GCA administered in any grade with supplemental instructional support to assist the student to attain proficiency in the State academic standards.

The Board proposes to eliminate the Pennsylvania Certificates of Proficiency and Distinction. Since under the new high school graduation requirements every student awarded a high school diploma would meet State standards, the certificates are no longer necessary. The Board also proposes to add GCA scores and locally validated assessment scores to each student’s academic transcript. Regulations in place since 2001 have required that a student’s PSSA scores be included on the student’s transcript.

§ 4.51 (*relating to State assessment system*). To distinguish between different State assessments, the Board proposes to revise the term “State assessment” as used in subsections (b) and (d) to mean the “PSSA.” A new proposed subsection (e) would direct the Department to develop GCAs in math (3), language arts (2), social studies (3) and science (2). The new requirement would provide that GCAs be offered at least three times each year and that the scores of candidates for graduation be provided to the student’s school at least 10-calendar days prior to graduation. Proposed language also would require the GCAs to be designed as modules of sequenced, related content, so that students who do not score proficient need only retake those portions of the test in which they did not score proficient. Proposed language also would direct the Department to provide guidance to school entities regarding appropriate accommodations for students with disabilities and English language learners.

§ 4.52 (*relating to local assessment system*). The Board proposes to add language that allows schools to use GCAs in place of traditional final exams administered at the middle or high school level.

Affected Parties

The proposed rulemaking would affect the students and professional employees of the public schools of this Commonwealth.

Cost and Paperwork Estimates

Direct costs to the Commonwealth include the cost to develop the GCAs which is estimated at \$15 million over 3 years. Costs to the Commonwealth to administer, score and report the ten tests are estimated at \$40.0 million each year. The cost to the Commonwealth to develop the voluntary model curriculum in 10 subjects is estimated at \$5.9 million over 3 years.

Effective Date

The proposed rulemaking would become effective upon final publication in the *Pennsylvania Bulletin*.

Sunset Date

The Board will review the effectiveness of Chapter 4 every 4 years in accordance with the Board’s policy and practice respecting all of its regulations. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on May 2, 2008, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria that have not been met. The act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, jrbuckheit@state.pa.us. Comments must be submitted within 30 days following publication in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Jim Buckheit at (717) 787-3787 or TDD (717) 787-7367.

JIM BUCKHEIT,
Executive Director

Fiscal Note: 6-312. (1) General Fund;

	<i>PA Assessment</i>	<i>Teacher Professional Development</i>
(2) Implementing Year 2007-08 is	\$ 0	\$ 0
(3) 1st Succeeding Year 2008-09 is	\$15,000,000	\$ 4,200,000
2nd Succeeding Year 2009-10 is	\$15,000,000	\$ 1,300,000
3rd Succeeding Year 2010-11 is	\$43,000,000	\$ 417,000
4th Succeeding Year 2011-12 is	\$40,000,000	\$ 0
5th Succeeding Year 2012-13 is	\$40,000,000	\$ 0
(4) 2006-07 Program—	\$20,094,000	\$23,367,000
2005-06 Program—	\$20,356,000	\$13,867,000
2004-05 Program—	\$20,356,000	\$ 3,867,000
(7) PA Assessment and Teacher Professional Development; (8) recommends adoption.		

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

CHAPTER 4. ACADEMIC STANDARDS AND ASSESSMENT

GENERAL PROVISIONS

§ 4.3. Definitions.

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

* * * * *

GCAs—Graduation competency assessments.

* * * * *

§ 4.4. General policies.

(e) The Department will provide support to school districts and AVTSs in developing educational programs that enable students to attain academic standards under § 4.12. Department support will include:

(1) Establishment of a voluntary model curriculum aligned with State academic standards in each of the content areas assessed by the GCAs under § 4.51(c) (relating to State assessment system).

(2) Assistance in the development of effective student tutoring, remediation and extended instructional time programs.

(3) Opportunities for continuing professional education designed to improve instruction in each of the content areas assessed by the GCAs under § 4.51(e).

CURRICULUM AND INSTRUCTION

§ 4.24. High school graduation requirements.

(a) Requirements through the 2012-2013 school year: Each school district, including a charter school, shall specify requirements for graduation in the strategic plan under § 4.13 (relating to strategic plans). Requirements **through the 2012-2013 school year** must include course completion and grades, completion of a culminating project, **[and]** results of local assessments aligned with the academic standards **[. Students shall demonstrate] and a demonstration of proficiency** in reading, writing and mathematics on either the State assessments administered in grade 11 or 12 or local assessment aligned with academic standards and State assessments under § 4.52 (relating to local assessment system) at the proficient level or better to graduate. The purpose of the culminating project is to assure that students are able to apply, analyze, synthesize and evaluate information and communicate significant knowledge and understanding.

(b) [Beginning in the 2002-2003 school year, students who attain a score at the proficient level on any State assessed discipline administered in grade 10, 11 or 12 shall be granted a Pennsylvania Certificate of Proficiency for that discipline. Students with disabilities who meet the required proficiency level on State assessments with appropriate accom-

modations shall be granted a Pennsylvania Certificate of Proficiency.] *Requirements beginning in the 2013-2014 school year.*

(1) *General.* Beginning in the 2013-2014 school year, each school district and AVTS, including charter schools, shall specify requirements for high school graduation in the strategic plan under § 4.13 that, at a minimum, include:

(i) Course completion and grades.

(ii) Completion of a culminating project in one or more areas of concentrated study under the guidance and direction of the high school faculty. The purpose of the project, which may include research, writing or some other appropriate form of demonstration, is to assure that the student is able to apply, analyze, synthesize and evaluate information and communicate significant knowledge and understanding. Projects may be undertaken by individual students or groups of students.

(iii) Demonstration of proficiency, as assessed and determined by the school district or AVTS (including charter schools), in each of the State academic standards not assessed by a State assessment under § 4.51 (relating to State assessment system).

(iv) Demonstration of proficiency or above in each of the following State academic standards: reading, writing and mathematics (Appendix A); science and technology and environment and ecology (Appendix B), as assessed through any one or a combination of the following:

(A) The PSSA administered in 11th grade or 12th grade retest.

(B) The English composition and literature GCAs, any two mathematics GCAs and either science GCA.

(C) Locally administered, validated criterion referenced assessments comparable to the GCAs. The local assessments shall be independently and objectively validated by a vendor selected by the school entity from a list of approved vendors published every 5 years by the Secretary after obtaining the approval of the Board.

(D) Advanced Placement or International Baccalaureate exams that include academic content comparable to the appropriate GCA at a score established by the Secretary to be comparable to the proficient level on the appropriate GCA.

(v) Demonstration of proficiency or above in the State academic standards in civics and government or history in any one of the social studies GCAs as provided in § 4.51(e)(3), a validated local assessment under subparagraph (iv)(C), or a comparable Advanced Placement or International Baccalaureate exam.

(2) *Validation of local assessments.*

(i) In developing and selecting the list of approved vendors that may validate locally administered assessments described by paragraph (1)(iv)(C), the Secretary will employ a competitive request-for-qualifications process that includes consideration of:

(A) Organizational and staff experience in the validation of State and local assessments.

(B) Appropriate use of generally accepted psychometric statistical methods, practices and analysis.

(C) References.

(D) Cost.

(ii) With the concurrence of the Board, the Secretary may issue an additional request for qualifications prior to the end of the 5-year period prescribed by paragraph (1)(iv)(C), if the demand for validation services exceeds the capacity of approved vendors.

(iii) The school entity shall contract and pay the cost of validating each local assessment.

(iv) Each local assessment shall be validated by an approved vendor every 5 years. Except for replacement of individual test items of comparable rigor, a new validation is required for any material changes to the assessment or revision of the assessed State academic standards.

(v) Approved vendors shall include the following criteria when determining whether the local assessment is comparable to the GCAs under § 4.51(e):

(A) Assessments are internally consistent and replicable.

(B) Assessments adequately measure and are aligned with the academic content specified in the State academic standards assessed by the GCAs.

(C) Level of difficulty of assessment items is greater than or equal to those assessed on the GCAs.

(D) Proficiency level cut scores are greater than or equal to that of the GCAs.

(E) Results of local assessments correlate positively and significantly with related National and State criterion referenced assessments.

(F) Test administration, security and scoring regimes ensure that the integrity and validity of the local assessment is maintained.

(G) Policy for annually updating assessment items ensures compliance with clauses (A)—(F).

(c) [Beginning in the 2002-2003 school year, students who attain a score at the advanced level of proficiency on any State assessed discipline administered in grade 10, 11 or 12 shall be granted a Pennsylvania Certificate of Distinction for that discipline. Students with disabilities who meet the required proficiency level on State assessments with appropriate accommodations shall be granted a Pennsylvania Certificate of Distinction.] *Supplemental instruction.* A student who does not score proficient or above on a PSSA administered in 11th grade or GCA administered in any grade shall be provided supplemental instructional support by the student's school entity. The supplemental instructional support must assist the student to attain proficiency in the State academic standards.

(d) **Strategic plan.** Each school district, including a charter school, shall describe in its strategic plan under § 4.13 how its planned instruction is designed to prepare students to meet the requirements of [subsection] subsections (a) and (b).

(e) **Special education students.** Children with disabilities who satisfactorily complete a special education program developed by an Individualized Education Program team under the Individuals with Disabilities Education Act and this part shall be granted and issued a regular high school diploma by the school district of residence. This subsection applies if the special education program of a child with a disability does not otherwise meet [all] the requirements of this chapter. [Children with disabilities who meet the required proficiency level on State assessments shall be granted the appropriate Certificate of Proficiency or Distinction.]

(f) **Demonstration of proficiency.** [The Department will develop Pennsylvania Certificates of Proficiency and Distinction for each of the State assessed disciplines. The Department will distribute the certificates to each school district in sufficient quantity for the school district to issue to its students who have earned the Certificates. School districts shall enter student names on the appropriate certificate as described in subsections (b) and (c) and present the certificates to the student.] For purposes of this section, students shall be deemed proficient in the State-assessed standards whenever they demonstrate proficiency through any of the assessment options in subsection (b), regardless of the student's grade level or age.

(g) [The Department will develop, or cause to be developed, Certificates of Proficiency so as to acknowledge and recognize those students who attain a level of at least proficient in all State assessed disciplines. The certificates must be distinctive and differentiated from the certificates described in subsection (f). The certificates shall be awarded to students as appropriate in lieu of those prescribed in subsection (b).]

(h) The Department will develop, or cause to be developed, Certificates of Distinction so as to acknowledge and recognize those students who attain a score at the advanced level of proficiency in all State assessed disciplines. The certificates must be distinctive and differentiated from the certificates described in subsection (f). The certificates shall be awarded to students as appropriate in lieu of those prescribed in subsection (c).

(i) [**Transcripts.** Beginning in the 2003-[04] 2004 school year, PSSA scores in each assessed discipline, and beginning in the 2013-2014 school year, GCA or validated local assessment scores, shall be included on student transcripts and may be released only with the permission of the student and parent or guardian, or the student only if the student is 18 years of age or older.]

[(j)] (h) **Release of scores.** This section does not allow for the release of individual student PSSA or GCA scores to the Department or other Commonwealth entities in accordance with § 4.51(c) [(relating to State assessment system)].

ASSESSMENT

§ 4.51. State assessment system.

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(b) [State assessment] All PSSA instruments administered in reading, writing and mathematics in grades 5, 8 and 11 will be standards-based and criterion referenced and include essay or open-ended response items in addition to other item formats. The proportion of type of items will vary by grade level. Neither State assessments nor academic standards under § 4.12 may require students to hold or express particular attitudes, values or beliefs. The Department will make samples of assessment questions, instrument formats[,] and scoring guides available to the public after each administration of State assessments. The criteria for judging performance on State assessments are as follows:

(1) Performance on [State] PSSA reading assessments shall be demonstrated by students' responses to comprehension questions about age-appropriate reading passages and by their written responses to in-depth comprehension questions about the passages.

(2) Performance on [State] PSSA mathematics assessments shall be demonstrated by students' responses to questions about grade-appropriate content and by the quality of their responses to questions that require a written solution to a problem.

(3) Performance on [State] PSSA writing assessments shall be demonstrated by the quality of students' written compositions on a variety of topics and modes of writing.

(4) Performance on PSSA science assessments shall be demonstrated by students' responses to grade appropriate content and by the quality of their responses to questions that demonstrate knowledge of each category of the standards for science and technology and environment and ecology.

(5) Levels of proficiency shall be advanced, proficient, basic and below basic. In consultation with educators, students, parents and citizens, the Department will develop and recommend to the Board for its approval specific criteria for advanced, proficient, basic and below basic levels of performance.

(c) The Department will develop or cause to be developed [State] PSSA assessments based on academic standards in mathematics, reading [and], writing and science under § 4.12 and contained in Appendix A. In developing assessments, the Department will consult with educators, students, parents and citizens regarding the specific methods of assessment. To ensure that information regarding student performance is available to parents and teachers, State assessments developed under this section [shall] must include student names. Individual test results shall be used in planning instruction only by parents, teachers, administrators and guidance counselors with a need to know based upon local board policy on testing and in reporting academic progress. The Department or other Commonwealth entities are prohibited from collecting individual student test scores, and may only collect aggregate test scores by school and district.

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(e) Students not achieving at the proficient level in the administration of State assessments in grade 11 shall be

provided one additional opportunity in grade 12 to demonstrate a proficient level on [State] the PSSA assessments.

(f) The Department will develop or cause to be developed GCAs as follows:

(1) Three assessments aligned with the mathematics standards, contained in Appendix A, that assess the academic content traditionally included in Algebra I, Algebra II and Geometry courses.

(2) Two assessments aligned with select reading, writing, speaking and listening standards, contained in Appendix A, that assess academic content traditionally included in high school literature and composition courses.

(3) Three assessments aligned with select History and Civics and Government standards, contained in Appendix C, that assess content traditionally included in high school level American history, World history and civics and government courses.

(4) Two assessments aligned with select standards for science and technology and environment and ecology, contained in Appendix B, that assess academic content traditionally included in high school level biology and chemistry courses.

(5) GCAs shall be offered at least 3 times each year, once each in the fall, spring and summer. GCAs shall be reviewed and scored so that the

scores for candidates for graduation are provided to schools no later than 10 calendar days prior to graduation.

(6) Students shall be permitted to retake any GCA, or GCA module, in which the student did not score proficient or above at the next available testing date.

(7) Each GCA may be designed into modules that reflect distinct, related academic content that is common to the traditional progression of coursework to allow students who do not score proficient or above to retake those portions of the test in which they did not score proficient or above.

(8) The Department will provide guidance to school entities as to the appropriate accommodations school entities shall provide to students with disabilities and English language learners, when appropriate.

[(f)] (g) * * *

[(g)] (h) * * *

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[(h)] (i) * * *

[(i)] (j) * * *

[(j)] (k) * * *

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