

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

AGENCY: Department of Environmental Management
DIVISION: Agriculture
RULE IDENTIFIER: 250-RICR-40-20-8, ERLID #: 994
REGULATION TITLE: Rules and Regulations under the Rhode Island State Seed Law
RULEMAKING ACTION: Direct Final

Direct Final: If no formal objection is received on or before November 20, 2017, Department of Environmental Management will file the amendment without opportunity for public comment.

TYPE OF FILING: Amendment

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public Notice: October 20, 2017

End of Comment Period Date: November 20, 2017.

SUMMARY OF PROPOSED RULE: The purpose of these regulations is to govern the method of sampling, inspecting, analyzing, testing, and examining agricultural and vegetable seed and the tolerances to be followed.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by November 20, 2017, to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address: Peter Susi
Department of Environmental Management
Division of Agriculture
235 Promenade Street
Providence, RI 02908
Email Address: peter.susi@dem.ri.gov

WHERE COMMENTS AND PROPOSED REGULATION MAY BE INSPECTED:

Mailing Address: Department of Environmental Management

Office of Customer and Technical Assistance, 2nd Floor
235 Promenade Street
Providence, RI 02908
(401) 222-6822

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation: N/A

Authority for This Rulemaking: R.I. Gen. Laws § 2-6-7

Regulatory Findings:

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment: The purpose of this amendment is to reformat the regulation in accordance with the RICR and to add an Incorporated Materials section.

Department of Environmental Management proposes to amend 250-RICR-40-20-8. Electronic copies of the proposed rulemaking are available at the Secretary of State and DEM's website at the following web addresses:

<http://sos.ri.gov/ProposedRules/>

<http://www.dem.ri.gov/documents/regulations/index.php>

250-RICR-40-20-8

TITLE 250-DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 40-AGRICULTURE

SUBCHAPTER 20

PART 8 - ~~RULES~~ Rules ~~AND~~ ~~and~~ ~~REGULATIONS~~ Regulations ~~UNDER~~ ~~under~~ ~~THE~~ ~~the~~ RHODE Rhode Island SLAND State TATE Seed EED LAW Law

8.1 Authority

These regulations are promulgated pursuant to R.I. Gen. Laws § 2-6-7 and Chapter 42-17.1, and in accordance with the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

~~Pursuant to due publication and notice of opportunity for public hearing, the director has adopted the following regulations~~

8.2 Incorporated Materials

- A. These regulations hereby adopt and incorporate 7 C.F.R. § 201 (2017) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.
- B. These regulations hereby adopt and incorporate the 2017 Variety Fluorescence Levels (VFL) Report, AOSCA Grass Variety Review Board, March 8, 2017 by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.
- C. These regulations hereby adopt and incorporate 7 C.F.R. § 201.36c (1994) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

8.32 Methods of Sampling, Inspecting, Analyzing, Testing and Examining Agricultural and Vegetable Seeds and Tolerances to be Followed in the Administration of These Rules and Regulations is Law

The terms used in seed testing and the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seeds and the tolerances to be followed in the administration of these rules and regulations is law shall be those adopted effective July 1, 1955, and as subsequently amended by the Association of Official Seed Analysts.

8.43 Prohibited Noxious Weed Seeds

- A. The following list of prohibited noxious weed seeds is established effective January 1, 1979:

Bindweed, <i>Convolvulus arvensis</i>
Nutgrass, <i>Cyperus spp.</i>
Quackgrass, <i>Agropyron repens</i>
Thistle, Canada, <i>Cirsium arvense</i>

- B. The sale of agricultural, vegetable or lawn seed containing any prohibited noxious weed seeds is prohibited.

8.54 Restricted Noxious Weed Seeds

- A. The following list of restricted noxious weed seeds is established effective January 1, 1979:

Corncockle, <i>Agrostemma githago</i>
Dodder, <i>Cuscuta spp.</i>
Garlic, Wild, <i>Allium vineale</i>
Horsenettle, <i>Solanum carolinense</i>
Mustard, Wild, <i>Brassica spp.</i>
Onion, Wild, <i>Allium canadense</i>
Plantain, Buckhorn, <i>Plantago lanceolata</i>
Radish, Wild, <i>Raphanus raphanistrum</i>
Sowthistle, Perennial, <i>Sonchus arvensis</i>

- B. The label shall show the name and approximate number of each kind of restricted noxious weed seed:

1. Per ounce in *Agrostis spp.*, *Poa spp.*, timothy, orchardgrass, fescues, alsike and white clover, reed canarygrass, ryegrass, foxtail millet, alfalfa, red clover, sweetclovers, lespedezas, smooth brome, crimson clover, and other agricultural seeds of a size and weight similar to or greater than those within this group, or any mixtures within this group; and,

2. Per pound in sudangrass, wheat, oats, rye, barley, buckwheat, sorghums, vetches, and other agricultural seeds of a size and weight similar to or greater than those within this group or any mixtures within this group.

8.65 Germination Standards for Vegetable Seeds

The standards for the germination of vegetable seeds shall be those promulgated by the U.S. Department of Agriculture as set forth in the Federal Seed Act Regulations, 7 C.F.R. § 201 (See [7 C.F.R. § 201.31](#) Germination Standards for Vegetable Seeds in Interstate Commerce), incorporated above at § 8.2 of this Part.

8.76 White Sweetclover

Sweetclover seed containing more than 5 percent of yellow sweetclover seed (more than 1.25 percent) mottled seeds must not be labeled white sweetclover. Such seed must be labeled sweetclover or as a mixture.

8.87 Grower's Declaration

A grower's declaration is a statement signed by the grower giving, for any lot of seed the lot number, the kind, variety, origin and weight.

8.98 Labeling of Seed Distributed to Wholesalers

After seed has been processed it must be labeled before distribution to any person including a wholesaler. Each bag or bulk lot must be completely labeled when supplied to a retailer or consumer. Labeling of seed supplied to a wholesaler, one whose predominant business is to supply seed to other distributors rather than to consumers of seed, may by invoice if each bag or other container is clearly identified by a lot number stenciled on the container or if the seed is in bulk. Each bag or container that is not so identified must carry complete labeling.

8.109 "~~Fine-Textured Grasses~~" and "~~Coarse Kinds~~" Grass Variety Fluorescence Levels" (VFL)

- A. For purposes of labeling under R.I. Gen. Laws § 2-6-3(3)(ii)(A), "Grass Variety Fluorescence Levels~~Fine-Textured Grasses~~" shall include those kinds or varieties approved as "~~Fine-Textured Grasses~~" by the Association of Official Seed Certifying Agencies~~Association of American Seed Control Officials~~ at the Biennial Conference of said Association in 1961 and as subsequently amended by said Association after approval of the Joint Legislative Committee of AASCO, ASTA, AOSA, and AOSCA. All k, as set forth in the 2017 Variety Fluorescence Levels (VFL) Report, AOSCA Grass Variety Review Board, Marcy 8, 2017, incorporated above at § 8.2(B) of this Part.

inds or varieties not so designated as "Fine-Textured Grasses" must be listed under the heading of "Coarse Kinds".

B. The following is the present list of "Fine-Textured Grasses" and "Coarse Kinds" adopted by the Association of American Seed Control Officials:

1. Fine-Textured Grasses:

a. Bentgrasses:

Agrostis canina, Velvet Bentgrass

Agrostis palustris, Creeping Bentgrass

Agrostis tenuis, Colonial Bentgrass

b. Bluegrasses:

Poa compressa, Canada Bluegrass

Poa nemoralis, Wood Bluegrass

Poa pratensis, Kentucky Bluegrass

Poa trivialis, Rough Bluegrass

c. Fescues:

Festuca ovina, Sheep Fescue

Festuca ovina var. *duriuscula*, Hard Fescue

Festuca rubra, Red Fescue

Festuca rubra var. *commutata*, Chewings Fescue

d. Bermudagrass:

Cynodon dactylon, Bermudagrass

e. Ryegrasses:

Lamora, Manhattan, NK-100, Norlea, Barenza, Caprice, Citation, Combi, Compos, Derby, Diplomat, Endura, Ensporta, Eton, Game, Loretta, NJ-200, Pennfine, Servo, Splendor, Sprinter, Sportina, Yorktown, Yorktown II and Pele varieties of *Lolium perenne*, Perennial Ryegrass

~~2. Coarse kinds (including legumes and ground covers) shall be all kinds not named above and shall be all varieties of *Lolium perenne* not named above.~~

8.110 Hermetically-Sealed Seed

- A. The following standards, requirements and conditions must be met before seed is considered to be hermetically-sealed under the provisions of [these rules and regulations](#)~~this law~~.
1. The seed was packaged within 9 months after harvest.
 2. The container used does not allow water vapor penetration through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100°F with a relative humidity on one side of 90 percent and on the other side of 0 percent. Water vapor penetration or WVP is measured by the standards of the U.S. Bureau of Standards as: gm.H₂O/24 hr./100 sq. in./100°F/90% RH V.0% RH, [as set forth in 7 C.F.R. § 201.36c \(1994\)](#), ~~incorporated above at § 8.2(C) of this Part.~~
 3. The seed in the container does not exceed the percentage of moisture, on a wet weight basis, as listed below:

a. Agricultural Seeds:

Agricultural Seeds	Percent
Beet, Field	7.5
Beet, Sugar	7.5
Bluegrass, Kentucky	6.0
Clover, Crimson	8.0
Fescue, Red	8.0
Ryegrass, Annual	8.0
Ryegrass, Perennial	8.0
All others	6.0
Mixture of above	8.0

b. Vegetable Seeds:

Vegetable Seeds	Percent
Bean, Garden	7.0
Bean, Lima	7.0
Beet	7.5
Broccoli	5.0
Brussel Sprouts	5.0
Cabbage	5.0
Carrot	7.0
Cauliflower	5.0
Celeriac	7.0
Celery	7.0
Chard, Swiss	7.5
Chinese Cabbage	5.0
Chives	6.5
Collards	5.0
Corn, Sweet	8.0
Cucumber	6.0
Eggplant	6.0
Kale	5.0
Kohlrabi	5.0
Leek	6.5
Lettuce	5.5
Muskmelon	6.0
Mustard, India	5.0

Onion	6.5
Onion, Welsh	6.5
Parsley	6.5
Parsnip	6.0
Pea	7.0
Pepper	4.5
Pumpkin	6.0
Radish	5.0
Rutabaga	5.0
Spinach	8.0
Squash	6.0
Tomato	5.5
Turnip	5.0
Watermelon	6.5
All Others	6.0

4. The container is conspicuously labeled in not less than 8 point type to indicate:
 - a. That the container is hermetically sealed,
 - b. That the seed has been preconditioned as to moisture content, and,
 - c. The calendar month and year in which the germination test was completed.

5. The percentage of germination of seed at the time of packaging was equal to or above the standards specified elsewhere in [the aise rules and regulations-law](#).