

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 577

*An Act to amend and reenact §§ 3.1-22.5, 3.1-263 through 3.1-275.1 and 9-6.14:4.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 3.1-271.1 and 3.1-275.2 through 3.1-275.7, relating to the Virginia seed law.*

[H 1139]

Approved April 9, 1994

### **Be it enacted by the General Assembly of Virginia:**

1. That §§ 3.1-22.5, 3.1-263 through 3.1-275.1 and 9-6.14:4.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 3.1-271.1 and 3.1-275.2 through 3.1-275.7 as follows:

#### **§ 3.1-22.5. Virginia Agricultural Foundation Fund.**

There is hereby established in the state treasury a special fund to be designated as the "Virginia Agricultural Foundation Fund" which shall consist of transfers made to it under §§ 3.1-81.1, 3.1-126.5, 3.1-275.7, 3.1-814, 58.1-2111 and 58.1-2146 of the Code of Virginia, of other moneys appropriated thereto, gifts and grants, and interest accruing thereon. The fund shall be expended in accordance with the directions of the Virginia Agricultural Council and drawn from the state treasury in the manner provided by law. No part of such fund shall revert to the general fund of the state treasury.

#### **§ 3.1-263. Definitions.**

As used in this article, unless the context clearly requires otherwise:

(1) The term "person" includes any individual, partnership, corporation, company, society or association.

(2) The term "Commissioner" means the Commissioner of Agriculture and Consumer Services of Virginia.

(3) The term "agricultural seeds" means the seeds of grass, forage, cereal and fiber crops, and any other kinds of seeds commonly recognized within this Commonwealth as agricultural seeds, lawn seeds and mixtures of such seeds, and may include noxious-weed seeds, all of which shall be specified by rules and regulations promulgated pursuant to the provisions of this article.

(4) The term "vegetable seeds" includes seeds of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable seed in this Commonwealth, and which from time to time shall be specified by rules and regulations promulgated pursuant to the provisions of this article.

(5) The term "kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, wheat, oats, vetch, sweet clover, cabbage, cauliflower, and so forth.

(6) The term "variety" means a subdivision of a kind characterized by growth, plant, fruit, seed, or other characters by which it can be differentiated from other plants of the same kind, for example, Fulgrain Oats, Flat Dutch Cabbage, Ogden Soybeans, U.S. 262 (hybrid corn) and so forth.

(7) The term "mixture" means seeds consisting of more than one kind or variety, when claimed or present in excess of five per centum of the whole.

(8) The term "weed seeds" includes the seeds, bulblets or tubers of all plants generally recognized as weeds within this Commonwealth and includes noxious-weed seeds.

(9) "Noxious-weed seeds" are divided into two classes:

(a) "Prohibited noxious-weed seeds" are the seeds of weeds which, when established, are highly destructive and are not controlled in this Commonwealth by cultural practices commonly used. Such weeds are to be specified by rules and regulations promulgated pursuant to the provisions of this article.

(b) "Restricted noxious-weed seeds" are the seeds of weeds which are very objectionable in fields, lawns and gardens in this Commonwealth and are difficult to control by cultural practices commonly used. Such seeds are to be specified by rules and regulations promulgated pursuant to the provisions of this article.

(10) The term "origin" means the state, Puerto Rico, or possession of the United States, or the foreign country, or designated portion thereof, where the seed was grown.

(11) The term "labeling" includes all labels, and other written, printed, or graphic representations, in any form whatsoever, accompanying or pertaining to any seed whether in bulk or in containers, and includes representations on invoices.

(12) The term "advertisement" means all representations, other than those required on the label, disseminated in any manner or by any means relating to seed within the scope of this article.

(13) The term "processing" means cleaning, scarifying, treating, or blending to obtain uniform quality, and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging,

labeling, blending together of uniform lots of the same kind or variety without cleaning, or the preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

(14) The term "screenings" includes seed, inert matter and other materials removed from agricultural or vegetable seed by cleaning or processing.

(15) The term "hybrid" means the first generation seed of a cross produced by controlling the pollination or by use of sterile lines and combining (a) two, three, or four inbred lines, or (b) one inbred line or a single cross with an open-pollinated variety, or (c) two varieties or species, except open-pollinated varieties of corn. The second generation or subsequent generation seed from such crosses shall not be regarded as hybrids.

(16) The term "inbred line" is a relatively stable and pure breeding strain resulting from not less than four successive generations of controlled self-pollination or four successive generations of backcrossing in the case of male sterile lines.

(17) The term "controlled conditions" means those minimum standards for genetic purity of seed stocks, isolation, planting ratio, detasseling, roguing, harvesting, and other factors necessary for the production of hybrid seed; such standards to be established by rules and regulations promulgated pursuant to the provisions of this article.

(18) The terms "recognized variety name" and "recognized hybrid designation" mean the name or designation (which may be symbols, letters or numbers) which was first assigned the variety of hybrid by the person who developed it and first introduced it for production or sale. Such terms shall be used only to designate the varieties or hybrids to which they are first assigned.

(19) The term "noncoded pedigree" means the usual designated combination of two or more symbols of letters or numbers, or letters and numbers, identifying the inbred lines or varieties combined to make a hybrid.

(20) The term "lot" means a definite quantity of seed, identified by a lot number or other identification, which is uniform throughout for the factors which appear on the label.

(21) The term "bulk lot" or "in bulk" refers to loose seed in bins, or other containers, and not to seed in bags or packets.

(22) The term "pure seed" means agricultural or vegetable seeds exclusive of inert matter, weed seeds and all other seeds distinguishable from the kind or kind and variety being considered, determined by methods prescribed by rules and regulations promulgated pursuant to the provisions of this article.

(23) The term "inert matter" means all matter not seeds, and includes broken seeds, sterile florets, chaff, fungus bodies, and stones, determined by methods prescribed by rules and regulations promulgated pursuant to the provisions of this article.

(24) The term "germination" means the percentage by count of seeds under consideration, which are capable of producing normal seedlings in a given period of time and under conditions specified by rules and regulations promulgated pursuant to the provisions of this article.

(25) The term "hard seeds" means seeds which, because of hardness or impermeability, do not absorb moisture and germinate but remain hard during the period prescribed for germination by rules and regulations promulgated pursuant to the provisions of this article.

(26) The term "certified seed," "registered seed" or "foundation seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the requirements of an official certifying agency.

(27) The term "official certifying agency" means an agency recognized and designated as a certifying agency by the laws of a state, the United States, a province of Canada, or the government of a foreign country wherein said seed were produced.

(28) The term "treated" means that the seed has received an effective application of a generally approved substance or process designed to control, or repel certain disease organisms, insects or other pests attacking such seeds or seedlings grown therefrom, or has received some other treatment to improve its planting value.

(29) The term "code designation" means a code designation not generally known to the public, assigned at the discretion of the Commissioner, to any person engaged in the seed business, which, under conditions prescribed by rules and regulations promulgated pursuant to the provisions of this article, may be used to identify the person responsible for labeling seed in intrastate commerce.

(30) The term "sale" means the transfer of ownership of seed, evidenced by exchange of payment and/or seed, in whole, or in part.

(31) The term "tolerance" means the allowable deviation from any figure used on a label to designate the percentage of any fraction, or rate of occurrence in the lot in question and is based on the law of normal variation from a mean.

(32) The term "flower seeds" includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts commonly known and sold under the name of flower seeds in this Commonwealth, and which from time to time shall be specified by rules and regulations promulgated pursuant to the provisions of this article.

(33) The term "tree and shrub seeds" includes seeds of woody plants commonly known and sold as

tree and shrub seeds in this Commonwealth, and which from time to time shall be specified by rules and regulations promulgated pursuant to the provisions of this article.

(34) The term "lawn or turf seed mixture" shall include two or more kinds of agricultural seeds when combined and sold for lawns, recreational areas and other areas where turf is grown for beautification or erosion control; kinds used in such mixtures may be generally classed as fine-textured kinds and/or coarse kinds which shall be specified from time to time by rules and regulations promulgated pursuant to the provisions of this article.

(35) The term "brand" means the name, term, design or trademark under which any person offers seed for sale.

(36) The term "name of mixture" means the name or term used to designate a particular specification of a lawn or turf seed mixture.

(37) The term "registrant" means the person registering seed or lawn or turf seed mixture pursuant to the provisions of this article.

(38) The term "Board" means the Board of Agriculture and Consumer Services of Virginia.

"Advertisement" means all representations, other than those required on the label, disseminated in any manner, or by any means, relating to seed within the scope of this article.

"Agricultural seeds" means seed which includes, but is not limited to, the seeds of grass, forage, cereal and fiber crops, and any other kinds of seed commonly recognized within the Commonwealth as agricultural seed, lawn and turf seed and mixtures of such seed, and includes noxious-weed seeds, if present.

"Bag" or "packet" means a container in the form of a sack or pouch usually made from a flexible material.

"Blend" means a mechanical combination of varieties of the same kind, identified by a blend designation, which combination is always present in the same percentages in each lot so designated.

"Board" means the Board of Agriculture and Consumer Services of Virginia.

"Brand" means the name, term, design or trademark under which any person offers seed for sale.

"Bulk lot" or "in bulk" means loose seed in bins, or other containers. The term does not refer to seed in bags or packets.

"Certified seed," "registered seed" or "foundation seed" means seed that has been produced and labeled in accordance with the procedures, and in compliance with the requirements, of an official certifying agency.

"Code designation" means a code designation not generally known to the public, assigned at the discretion of the Commissioner, to any person engaged in the seed business, which, under conditions prescribed by regulations promulgated pursuant to the provisions of this article, may be used to identify the person responsible for labeling seed in interstate commerce.

"Commissioner" means the Commissioner of the Department.

"Conditioning" means cleaning, scarifying, treating, or blending, to obtain uniform quality, and other operations which would change the purity or germination of the seed, and therefore require retesting to determine the quality of the seed. The term does not include processes after which retesting would not be required to determine the quality of the seed; including, by way of example but not by way of limitation, packaging, labeling, blending together of uniform lots of the same kind or variety without cleaning, and the preparation of a mixture without cleaning.

"Controlled conditions" means those minimum standards for genetic purity of seed stocks, isolation, planting ratio, detasseling, roguing, harvesting, and other factors necessary for the production of hybrid seed; such standards to be established by regulations promulgated pursuant to the provisions of this article.

"Department" means the Department of Agriculture and Consumer Services.

"Distribute" means to import, consign, produce, mix, blend or condition seeds, or to offer for sale, sell, barter, warehouse or otherwise supply seeds in the Commonwealth.

"Distributor warehouse business" means a company owned, contracted, or operated business from which the company's seed is distributed to a wholesaler or retailer who usually makes payment directly to the company.

"Dormant seed" means viable seeds, other than hard seed, which fail to germinate when provided the specified germination conditions for the kind of seed in question.

"Flower seeds" means by way of example, but not by way of limitation, seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts commonly known and sold under the name of flower seeds in the Commonwealth, and which from time to time shall be specified by regulations promulgated pursuant to the provisions of this article.

"Germination" means the percentage by count of seeds under consideration which are capable of producing normal seedlings in a given period of time, and under conditions specified by regulations promulgated pursuant to the provisions of this article.

"Guarantor" means the person whose name appears on the label.

"Hard seeds" means seeds which, because of hardness or impermeability, do not absorb moisture, and germinate but remain hard during the period prescribed for germination by regulations

*promulgated pursuant to the provisions of this article.*

*"Hybrid" means the first generation seed of a cross, produced by controlling the pollination, or by use of sterile lines, and combining (a) two, three, or four inbred lines, or (b) one inbred line, or a single cross, with an open-pollinated variety, or (c) two varieties or species, except open-pollinated varieties of corn.*

*"Inbred line" means a relatively stable and pure breeding strain, resulting from not less than four successive generations of controlled self-pollination; or four successive generations of backcrossing, in the case of male sterile lines.*

*"Inert matter" means all matter not seeds, and includes, but is not limited to, broken seeds, sterile florets, chaff, fungus bodies, and stones, determined by methods prescribed by regulations promulgated pursuant to the provisions of this article.*

*"Kind" means one or more related species or subspecies which singly or collectively are known by one common name, including, but not limited to, wheat, oats, hairy vetch, white sweetclover, cabbage, and cauliflower.*

*"Labeling" means all labels, and other written, printed, or graphic statements or representations, in any form whatsoever, accompanying or pertaining to any seed whether in bulk or in containers, and includes representations on invoices.*

*"Lawn and turf seeds" means the seeds of grasses commonly recognized and sold for lawns, recreational and utilitarian areas where turf is grown for beautification or erosion control.*

*"Lawn or turf seed mixture" means two or more kinds of agricultural seeds when combined and sold for lawns, recreational areas, and other areas where turf is grown for beautification or erosion control.*

*"Lot" means a definite quantity of seed, identified by a lot number or other identification, which is uniform throughout for the factors which appear on the label.*

*"Mixture" means seeds consisting of more than one kind or variety, when claimed or present, in excess of five percent of the whole.*

*"Name of mixture" means the name or term used to designate a particular specification of a lawn or turf seed mixture.*

*"Noncoded pedigree" means the usual designated combination of two or more symbols of letters or numbers, or letters and numbers, identifying the inbred lines or varieties combined to make a hybrid.*

*"Noxious-weed seeds" means "prohibited noxious-weed seeds" and "restricted noxious weed seeds," as such terms are defined below:*

*(a) "prohibited noxious-weed seeds" are the seeds of weeds which, when established, are highly destructive, and are not controlled in the Commonwealth by cultural practices commonly used.*

*(b) "restricted noxious-weed seeds" are the seeds of weeds which are very objectionable in fields, lawns and gardens in the Commonwealth and are difficult to control by cultural practices commonly used.*

*"Official certifying agency" means an agency recognized and designated as a certifying agency, by the laws of a state, the United States, a province of Canada, or the government of a foreign country wherein said seed were produced.*

*"Origin" means the state, Puerto Rico, or possession of the United States, or the foreign country, or designated portion thereof, where the seed was grown.*

*"Pack" means to condition and put into containers in order to preserve, transport or distribute.*

*"Pure seed" means agricultural or vegetable seeds, exclusive of inert matter, weed seeds, and all other seeds distinguishable from the kind, or kind and variety, being considered. Pure seed is to be determined by methods prescribed by regulations promulgated pursuant to the provisions of this article.*

*"Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of measurement of a commodity.*

*"Recognized variety name" and "recognized hybrid designation" mean the name or designation, (which may be symbols, letters or numbers), which was first assigned the variety or hybrid by the person who developed it, and first introduced it for production or sale.*

*"Registrant" means the person registering a lawn or turf seed mixture pursuant to the provisions of this article.*

*"Retailer" means a person who sells any seed or mixture defined in this article to a consumer.*

*"Sale" means the transfer of ownership of seed, evidenced by exchange of payment, or seed, or payment and seed, in whole, or in part.*

*"Screenings" means, by way of example but not by way of limitation, seed, inert matter and other materials removed from agricultural or vegetable seed by cleaning or conditioning.*

*"Stop sale, use, removal, or seizure order" means an order which prohibits the distributor from selling, relocating, using, or disposing of a lot of seed, or portion thereof, in any manner, until the Commissioner or his agent, or the court gives written permission to sell, relocate, use or dispose of the lot of seed or portion thereof.*

*"Tolerance" means the allowable deviation from any figure, used on a label to designate the percentage of any fraction, or rate of occurrence, in the lot in question, and is based on the law of normal variation from a mean.*

*"Transgenic" means any plant material, or seed produced from such plants, that has undergone the transfer of a gene from one genera to another.*

*"Treated" means that the seed has received an effective application of (i) a generally approved substance; or (ii) a process, such substance or process having been designed to control, or repel, certain disease organisms, insects or other pests, which attack such seeds or seedlings grown therefrom; or (iii) has received some other treatment to improve its planting value.*

*"Tree and shrub seeds" means by way of example, but not by way of limitation, seeds of woody plants commonly known and sold as tree and shrub seeds in the Commonwealth, and which from time to time shall be specified by regulations promulgated pursuant to the provisions of this article.*

*"Variety" means a subdivision of a kind characterized by growth, plant, fruit, seed, or other characters by which it can be differentiated from other plants of the same kind.*

*"Vegetable seeds" means by way of example, but not by way of limitation, seeds of those crops which are grown in gardens and on truck farms, and are generally known and sold under the name of vegetable seed in the Commonwealth, and which from time to time shall be specified by regulations promulgated pursuant to the provisions of this article.*

*"Weed seeds" means by way of example, but not by way of limitation, the seeds, bulblets or tubers of all plants generally recognized as weeds within the Commonwealth, and includes noxious-weed seeds.*

*"Wholesaler" means any person engaged in the business of selling seed to a retailer or jobber.*

§ 3.1-264. Labeling and advertising requirements.

All seed defined under § 3.1-263 of this article which are sold, exposed for sale, transported, or advertised within this Commonwealth for sowing purposes, or screenings for any purpose whatsoever, shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving information as herein specified, which statement ~~shall~~ may not be modified or denied in the labeling or advertisement pertaining to such seed or screenings.

(A) For all seed named and treated as defined in this article (for which a separate label may be used) *for seed within this subsection the information shall include:*

- (1) a word or statement indicating that the seed has been treated;
- (2) the commonly accepted, coined, chemical or abbreviated chemical (generic) name of the applied substance or treatment; and

(3) ~~If any substance in the amount present with the seed is harmful to human or other vertebrate animals,~~ a caution statement such as "Do not use for food or feed or oil purposes;" ~~if any substance in the amount present is harmful to human or other vertebrate animals.~~ The caution for mercurials and similar toxic substances shall be a poison statement or symbol.

(B) For agricultural seeds *the information shall include:*

(1) the recognized name of each kind, or kind and variety *if that kind has been adopted by the Board through regulation as a kind that shall be labeled as to variety in accordance with § 3.1-271 (6),* of each agricultural seed component in excess of five ~~per centum~~ percent of the whole, and the percentage by weight of each in order of its predominance as specified by ~~rules and~~ regulations; *except mixtures may be sold by kind name, and agricultural seed may be sold by kind name provided such sale is not for the production of an agricultural crop and the label clearly indicates "NOT FOR AGRICULTURAL PRODUCTION";*

(2) ~~When more than one agricultural seed component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label. Whenever any provision of this article or regulation adopted thereto requires the guarantor to name more than one agricultural seed component, the guarantor shall cause the word "mixture" or "mixed" to appear conspicuously on the label;~~

- (3) ~~the lot number or other lot identification;~~
- (4) ~~the origin, if known; if not known, that fact shall be stated;~~
- (5) ~~the percentage by weight of all weed seeds;~~
- (6) the name and number per ounce or pound, *or metric equivalent* of each kind of restricted noxious-weed seed present, subject to subdivision I (A) (5) of § 3.1-265;

(7) the percentage by weight of agricultural seeds and of vegetable seeds other than the kind or kind and variety named on the label. Such information may be designated as "other crop seed," ~~and/or as~~ "other variety," *or as both* as the case may be;

- (8) ~~the percentage by weight of inert matter;~~
- (9) for each named agricultural seed:
  - (a) ~~the percentage of germination, exclusive of hard or dormant seed;~~
  - (b) ~~the percentage of hard or dormant seed, if present;~~
  - (c) the calendar month and year the test was completed to determine such percentages; and
  - (d) ~~Following (a) and (b)~~ the "total germination" and "hard seed" may be stated as such, if desired, *following the information required by items (a) and (b) of this subdivision. The guarantor shall state separately on the label the percent of dormant seed.*
- (10) the recognized hybrid designation, for all hybrids;
- (11) ~~Net weight.~~ *the quantity statement;* and
- (12) the name and address of (a) the person who sells or who labels, offers or exposes said seed for

sale within this Commonwealth or (b) the person to whom the seed is sold or shipped for resale, ~~together with~~ *and in either case* a code designation approved by the Board under ~~rules and~~ regulations authorized by § 3.1-271, indicating the person who transports or delivers for transportation said seed in ~~intrastate~~ *interstate* commerce.

(C) For vegetable seeds in containers of ~~two pounds~~ *one half pound* or less ~~the information shall include:~~

- (1) ~~the~~ *the* name of kind and variety of seed;
- (2) the year for which packeted or put up, provided that the words "packed for" shall precede the year, or the percentage of germination and the month and year the test was completed to determine such percentage;
- (3) ~~Net weight~~ *the quantity statement*, except as provided by appropriate ~~rules and~~ regulations;
- (4) for seeds which germinate less than the standard last established by ~~rules and~~ regulations promulgated pursuant to the provisions of this article:
  - (a) ~~the~~ *the* percentage of germination, exclusive of hard *or dormant* seed;
  - (b) ~~the~~ *the* percentage of hard *or dormant* seed, if present;
  - (c) the calendar month and year the test was completed to determine ~~such~~ *the percentages in items (a) and (b) of this subdivision*;
  - (d) Following (a) and (b) the "total germination" and "hard seed" may be stated as such, if desired, *following the information in items (a) and (b) of this subdivision. The guarantor shall state separately on the label the percentage of dormant seed*;
  - (e) the words "below standard" in not less than eight-point type; *and*
- (5) ~~the~~ *the* name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this Commonwealth.

(D) For vegetable seeds in bulk or in containers of more than ~~two pounds~~ *one half pound*, ~~the information shall include:~~

- (1) the name of each kind and variety present in excess of five per centum of the whole and the percentage by weight of each in order of its predominance;
- (2) the lot number or other lot identification;
- (3) for each named kind and variety:
  - (a) the percentage of germination exclusive of hard *or dormant* seed;
  - (b) the percentage of hard *or dormant* seed, if present;
  - (c) the calendar month and year the test was completed to determine ~~such~~ *the percentages in items (a) and (b) of this subdivision*; *and*
  - (d) following (a) and (b) the "total germination" and "hard seed" may be stated as such, if desired. *The guarantor shall state separately on the label the percent of dormant seed.*
- (4) ~~Net weight~~ *the quantity statement*, except when in bulk;
- (5) the name and address of the person who sells, or who labels, offers, or exposes for sale, such seed within this Commonwealth; *and*
- (6) the labeling requirements *of items (1) through (5) of this subsection* for vegetable seeds sold from open containers shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

(E) For screenings; ~~the information shall include:~~

Seeds or screenings which contain more than two ~~per centum~~ *percent* by weight weed seeds, prohibited noxious-weed seeds or restricted noxious-weed seeds in excess of the amounts prescribed by ~~rules and~~ regulations promulgated under this article when offered for sale or distribution in this Commonwealth must be plainly labeled in such a way as to ~~unmistakably~~ indicate to the purchaser that such seeds or screenings are not for seeding purposes.

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

- (1) for all kinds of flower seeds:
  - (a) the name of the kind and variety or a statement of type and performance characteristics, as prescribed in the ~~rules and~~ regulations promulgated pursuant to the provisions of this article;
  - (b) the calendar month and year seed was tested or the year for which the seed was packaged;
  - (c) ~~Net weight~~ *the quantity statement*, except as *otherwise* provided by appropriate ~~rules and~~ regulations;
  - (d) the name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this Commonwealth; *and*
  - (e) *other special labeling requirements as determined by the Board.*
- (2) for seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established by ~~rules and~~ regulations promulgated pursuant to the provisions of this article:
  - (a) the percentage of germination exclusive of hard seed; *and*
  - (b) the words "below standard" in not less than eight-point type.
  - (3) for seeds placed in a germination medium, mat, tape, or other device in such a way as to make it

difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

(G) For flower seeds in containers other than packets prepared for use in home flower gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices *the information shall include:*

(1) the name of the kind and variety or a statement of type and performance characteristics as prescribed in rules and regulations promulgated pursuant to the provisions of this article;;

(2) the lot number or other lot identification;;

(3) the calendar month and year that the seed was tested, or the year for which the seed was packaged;;

(4) ~~Net weight~~ *the quantity statement*, except as provided by appropriate ~~rules and~~ regulations;;

(5) the name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this Commonwealth; *and*

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

(a) the percentage of germination exclusive of hard seed; *and*

(b) the percentage of hard *or dormant* seed, if present.

(H) For tree and shrub seeds *the information shall include:*

(1) *the* commonly accepted common and Latin name of species;;

(2) *the* variety (if applicable);;

(3) ~~Net weight~~ *the quantity statement*;

(4) ~~Lot~~ *the* number;;

(5) the calendar year in which seed was collected;;

(6) *the* origin: The specific locality (state and county, or Virginia zone, in the United States or nearest equivalent political unit in case of foreign countries) in which seed was collected;;

(7) *the* date of test (month and year);;

(8) *the* percentage by weight of pure seed;;

(9) *the* percentage by weight of inert matter;;

(10) *the* percentage by weight of other crop seeds ;

(11) *the* percentage of germination exclusive of hard *or dormant* seed; ;

(12) *the* percentage of hard seeds, if present; ;

(13) *the* speed of germination, as *expressed in terms of the number of days the seeds will take to reach ninety per centum of total*; ;

(14) *the* pregermination treatment used in test; ;

(15) *the* total number of seed per pound; ;

(16) *the* moisture content; *and*

(17) *the* name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this Commonwealth.

(I) For lawn or turf seed mixtures in prepacked containers of ~~five~~ *one hundred* pounds or less *the information shall include:*

(1) the recognized name of each kind, or kind and variety, of each agricultural seed component in excess of five ~~per centum~~ *percent* of the whole, and the percentage by weight of each in order of its predominance ~~or the common accepted name of the kind or kind and variety of each agricultural seed present in excess of five per centum of the whole, indicating the class of each ingredient to be "fine-texture grass" or a "coarse kind" in accordance with rules and regulations promulgated pursuant to the provisions of this article;~~

(2) the registered name of the mixture;;

(3) *the* lot number or other lot identification;;

(4) *the* percentage by weight of all weed seeds;;

(5) the name and number per ounce or per pound of each kind of restricted noxious-weed seeds present, subject to subdivision I (A) (5) of § 3.1-265;;

(6) the percentage by weight of other agricultural seeds not claimed in the formula;;

(7) *the* percentage by weight of inert matter;;

(8) for each named agricultural seed:

(a) *the* percentage of germination, exclusive of hard seed;;

(b) *the* percentage of hard seed, if present;;

(c) the calendar month and year the test was completed to determine ~~such~~ *the percentages in items (a) and (b) of this subdivision*; provided, however, the date of the first test of the components may be given for the entire mixture.

(9) ~~Net weight~~ *the quantity statement*; *and*

(10) the name and address of (a) the person who sells or who labels, offers, or exposes said seed for sale within this Commonwealth or (b) person to whom the seed is sold or shipped for resale, together with the code designation approved by the Board under ~~rules and~~ regulations authorized by § 3.1-271, indicating the person who transports or delivers for transportation said seed.

§ 3.1-265. Prohibitions.

It shall be unlawful for any person:

I. To transport, to offer for transportation, to sell, offer for sale or expose for sale, within this Commonwealth:

(A) Seed or seed mixtures subject to this article:

(1) unless the germination test to determine the percentage of germination required by § 3.1-264 shall have been completed within a ~~twelve-month~~ *nine-month* period, exclusive of the calendar month in which the test was completed, prior to sale, exposure for sale, or offering for sale or transportation;

(2) not labeled in accordance with or otherwise meeting the provisions of this article, not registered or falsely stated to be registered under § 3.1-275.1, or having a false or misleading labeling or claim;

(3) pertaining to which there has been a false or misleading advertisement;

(4) consisting of, or containing prohibited noxious-weed seeds in any amount whatsoever (tolerance not permitted);

(5) containing restricted noxious-weed seeds, except as prescribed by ~~rules and~~ regulations promulgated under this article;

(6) containing weed seeds in excess of one ~~per centum~~ *percent* by weight, except as prescribed by ~~rules and~~ regulations promulgated under this article;

(7) that have been treated and not labeled as required;

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

(9) represented to be certified, registered, or foundation seed, unless it has been produced, processed and labeled in accordance with the procedures and in compliance with rules and regulations of an officially recognized certifying agency;

(10) represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this article except *those kinds named in regulations promulgated by the Board as having agronomic value and flower seed generally termed defined as hybrids* prior to the enactment of § 3.1-264 (F) and (G) *on July 1, 1966, as determined by regulations promulgated by the Board;*

(11) hybrid seed from a crop which has been inspected in the field by a duly authorized inspector and rejected because of failure to conform to the controlled conditions as specified by ~~rules and~~ regulations promulgated pursuant to the provisions of this article;

(12) unless it conforms to the definition of a "lot"; and

(13) *unless the variety or hybrid name or designation is the first variety or hybrid name or designation assigned to it by the owner of the variety or hybrid.*

(B) Screenings; unless labeled as provided in § 3.1-264 (E) of this article.

II. To detach, alter, deface, or destroy any label provided for in this article or the ~~rules and~~ regulations promulgated thereunder, or to alter or substitute seed, in any manner that may defeat the purpose of the provisions of this article.

III. To disseminate false or misleading advertisement in any manner concerning agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, or screenings.

IV. To hinder or obstruct in any manner an authorized agent of the Commissioner in the performance of his duties.

V. To fail to comply with, or to supply inaccurate information in reply to, a stop sale order, or to remove tags attached to, or to dispose of seed or screenings held under such order except as specified by the ~~enforcement officer~~ *Commissioner or his agent*.

VI. To use the name of the Department of Agriculture or the results of tests and inspections made by the Department for advertising purposes.

VII. To use the words "type" or "trace" in lieu of information required by this article.

VIII. To label and offer for sale seed under the scope of this article without keeping complete records as specified in § 3.1-266.

*IX. To fail or refuse to obtain a license in accordance with § 3.1-275.2.*

*X. To fail or refuse to register a lawn and turf seed mixture in accordance with § 3.1-275.1.*

*XI. To fail or refuse to pay inspection fees in accordance with § 3.1-275.3.*

*XII. To sell, or expose for sale, or advertise as noncertified, a variety for which a certificate of plant variety protection has been issued, under the Plant Variety Protection Act, specifying sale only as a class of certified seed; provided, that the guarantor may label seed from a certified lot by variety name when the guarantor uses the seed in a mixture, if the guarantor is the owner of the variety or the owner of the variety gives the guarantor approval to use the variety name.*

§ 3.1-266. Records.

~~All persons transporting or delivering~~ Any person who sells, exposes for sale, transports or delivers for transportation intrastate agricultural or vegetable seeds shall keep for a period of ~~two~~ *three* years a complete record of sale, origin, germination, purity, variety, noxious-weed seeds and treatment of each lot of agricultural or vegetable seed offered, and the Commissioner or his ~~duly authorized agents~~ *agent* shall have the right to inspect such records *to determine if the person has paid the appropriate inspection or license fee, and for the purpose of the effective administration of this article.*

§ 3.1-267. Exemptions.



(A) The provisions of §§ 3.1-264 ~~and~~, 3.1-265 *and* 3.1-271 (6) do not apply:

(1) to seed or grain sold or represented to be sold for purposes other than for seeding, except as required by § 3.1-264 (E);;

(2) to seed for ~~processing~~ *conditioning* when consigned to, being transported to, or stored in a processing establishment; provided, that the invoice or labeling accompanying said seed bears the statement "Seed for ~~processing~~ *conditioning*," and provided further that *any* other labeling or representation which may be made with respect to the uncleaned or ~~unprocessed~~ *unconditioned* seed shall be subject to this article;;

(3) to any carrier in respect to any seed or screenings transported or delivered for transportation in the ordinary course of its business as a carrier; provided, that such carrier is not engaged in producing, ~~processing~~ *conditioning* or marketing agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, or screenings subject to this article; *and*

(4) to untested seed sold on his own premises by a grower who ~~sells only~~ *collected gross receipts for selling seeds in the Commonwealth of \$1,000 or less during the calendar year immediately preceding the current calendar year, which seed was produced by him, which provided that such seed, when sold or delivered, shall bear the label on each package or bag as follows: "These seeds have not been tested."* Provided, however, that any labeling or representation which may be made in respect to such seed shall be subject to this article.

(B) No person shall be subject to the penalties of this article for having sold, offered or exposed for sale in this Commonwealth agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, or screenings, which were incorrectly labeled or represented as to kind, variety, or origin, which seed cannot be identified by examination thereof *by the Commissioner or his agent*, unless he has failed to obtain an invoice or grower's declaration or other labeling information ~~and or unless he has failed~~ to take such other precautions as may be reasonable to insure the identity ~~to be~~ *is* that stated.

(C) No person shall be subject to the penalties of this article for having sold or offered or exposed for sale tree or shrub seeds which were incorrectly labeled or represented as to subspecies, locality of collection, or year of collection, unless he has failed to obtain an invoice, grower's declaration, or other labeling information ~~and or unless he has failed~~ to take such other precautions as may be reasonable to insure the accuracy of these statements as presented on the label.

(D) No person shall be subject to the provisions of § 3.1-275.1 or the penalties of this article for having sold, offered or exposed for sale any lawn and turf seed mixture not registered as provided in said section provided he has acted in good faith and has in his possession a statement showing that such lawn and turf seed mixture has been previously registered and approved for sale in this Commonwealth.

§ 3.1-268. Disclaimers, nonwarranties and limited warranties.

A disclaimer, nonwarranty, or limited warranty used in any invoice, advertising, labeling, or written, printed or graphic matter pertaining to any seed ~~shall~~ *may* not directly or indirectly deny or modify any information required by this article or the rules and regulations promulgated thereunder.

§ 3.1-269. Tolerances to be established and used in enforcement.

Due to recognized variations which occur between two analyses or tests and likewise between label statements and the results of subsequent analyses and tests, tolerances which are to be established by appropriate ~~rules and~~ regulations shall be employed in the enforcement of the provisions of this article.

§ 3.1-270. Duties and authority of Commissioner; review of "stop-sale" order.

(A) The duty of enforcing this article and carrying out its provisions and requirements is vested in the Commissioner. ~~It is the duty of such officer, who may act through his authorized agents: The Commissioner may appoint agents to assist in carrying out the provisions of this article and the regulations adopted and established pursuant thereto.~~

To sample, inspect, analyze, and test agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, and mixtures of such seeds transported, sold, offered or exposed for sale within this Commonwealth for sowing purposes and screenings for any purpose whatsoever, at such time and place and to such extent as he may deem necessary to determine whether such seeds, mixtures of such seeds and screenings, are in compliance with the provisions of this article, and if such seeds, mixtures of such seeds, or screenings are found not to be in compliance with the provisions of this article, to notify promptly the person who transported, sold, offered or exposed the seed for sale, or who otherwise violated this article.

(B) Further, for the purpose of carrying out the provisions of this article the Commissioner through his ~~authorized~~ agents, is authorized:

(1) To enter upon public premises or private premises during business hours in order to have access to seeds, mixtures of such seeds, "screenings," and the records connected therewith subject to this article and the rules and regulations thereunder; and *to enter upon* any truck or other conveyor by land, by water, or by air at any time when such conveyor is accessible, for the same purpose;

(2) To issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural, vegetable, flower, tree and shrub, lawn and turf seed, mixtures of such seeds, or "screenings," the Commissioner *or his agent* finds is in violation of any of the provisions of this article which order shall prohibit further sale of such seeds, mixtures of seeds, or "screenings" until the

Commissioner *or his agent* has evidence that the law has been complied with. In respect to seeds, mixtures, or "screenings," which have been denied sale as provided in this subdivision, the owner or custodian of such seeds, mixtures, or "screenings," shall have the right to judicial review of such order in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). The provisions of this subdivision ~~shall may~~ not be construed as limiting the right of the ~~enforcement officer~~ Commissioner *or his agent* to proceed as otherwise authorized by the provisions of this article;

(3) To establish and maintain or make provisions for seed-testing facilities, to employ qualified persons, and to incur such expenses, including those incurred in the purchase of seed, as may be necessary;

(4) ~~To make or provide for making purity and germination tests of seed for farmers and dealers on request subject to such quotas set by the Commissioner under rules and regulations governing such testing; and if he deems it advisable or necessary, to fix and collect charges for the tests made, paying into the treasury of Virginia all fees so collected into a special fund account, which funds are hereby appropriated to be used at the discretion of the Commissioner for such part or parts of the costs of the testing as he may deem advisable; To fix and collect fees for testing seeds for farmers and dealers who have requested the tests;~~

(5) To establish and maintain facilities for checking trueness to variety, and to employ experts in order that seeds collected under the provisions of this article may be tested for trueness to kind and variety, and to cooperate with federal and state agencies ~~relative with respect~~ to variety testing in the laboratory, greenhouse and field;

(6) To publish the results of analyses, tests, examinations, studies, and investigations made as authorized by this article, together with any other information he may deem advisable;

(7) To cooperate with the United States Department of Agriculture in seed law enforcement;

(8) To require at his discretion the registration of any variety or hybrid which is to be offered for sale under the provisions of this article and rules and regulations promulgated thereunder, furnishing: (a) the recognized variety name or recognized hybrid designation of such variety or hybrid, (b) a one thousand viable seed sample of such seed, and (c) the history of its development and the name of the person who developed such variety or hybrid and first introduced it for production and sale; *and*

(9) To require the registration annually of all fields planted for the production of hybrid seed on or before June 20 and to provide for inspection of such fields at his discretion.

(C) The Commissioner may appoint a ~~lawn and turf grass~~ seed advisory committee to advise with him on provisions of this article as it ~~pertains to the registration and labeling of lawn and turf grass seed mixtures.~~

#### § 3.1-271. Authority of Board.

The Board ~~is authorized~~ *may adopt regulations for the administration and enforcement of this article including, but not limited to:*

(1) ~~To prescribe and adopt rules and regulations governing (a) methods of sampling, (b) methods of inspection, (c) methods of testing (in the laboratory and in the field), agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, mixtures of such seeds and screenings, (d) the establishment of standards, (e) the establishment of code designations, and (f) the establishment of tolerances to be followed in the administration of this article, which in respect to agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, mixtures of such seeds and screening. Such regulations shall be in general accord with officially prescribed practice in interstate commerce, and such other rules and regulations as may be necessary to secure the enforcement of this article;:~~

(2) ~~To prescribe and establish, add to or subtract therefrom by rules and regulations prohibited and restricted noxious-weed seed lists;:~~

(3) ~~To prescribe and adopt rules and regulations for the labeling of flower seeds in respect to kind and variety or type and performance characteristics as required by § 3.1-264 of this article;:~~

(4) ~~To prepare and publish a list of the kinds of tree and shrub seeds which are subject to the tree and shrub seed purity and germination labeling requirements of § 3.1-264 (H) of this article;:~~

(5) For the purpose of protecting the rights of hybrid breeders, the Board may provide by ~~rules and~~ regulations for the registration of the pedigree of any hybrid produced or sold in Virginia;:

(6) *prescribing and establishing, adding to or subtracting from by regulation, a list of those kinds of seed that a person shall sell, offer for sale, expose for sale within the Commonwealth, only by variety name;*

(7) *prescribing and establish special labeling requirements in addition to the requirements of § 3.1-264, for selling, offering to sell or distributing in the Commonwealth, seeds produced from transgenic plant material;*

(8) *prescribing and establishing, adding to or subtracting from by regulations, a list of those kinds having second generation hybrids recognized as having agronomic value that may be sold in the Commonwealth as a hybrid; and*

(9) *prescribing and establishing, adding to or subtracting from by regulation, a list of those kinds specified as lawn and turf seeds.*

§ 3.1-271.1 Rules for Testing; noxious-weed seed regulations; Commissioner to promulgate; Board to

revise.

A. In order to accomplish the objective stated in § 3.1-271 (1) (c), the Commissioner may adopt as a regulation the Rules for Testing Seeds adopted by the Association of Official Seed Analysts; and in order to accomplish the objective stated in § 3.1-271 (1) (d), the Commissioner may amend the standards for seed; and in order to accomplish the objectives stated in § 3.1-271 (2), the Commissioner may amend the prohibited noxious-weed seed list and amend the restricted noxious-weed seed list. Such regulation adopted by the Commissioner shall be effective upon filing with the Registrar of Regulations, who shall publish the regulations as a final regulation in the Virginia Register of Regulations.

The regulation shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation.

B. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as final regulation in the Virginia Register of Regulations. Neither the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or revision of any regulation adopted pursuant to this section.

#### § 3.1-272. Seizure; disposition of seeds.

Any lot of agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, mixtures of such seeds, or "screenings" being sold, exposed for sale, offered for sale, or held with intent to sell in this Commonwealth contrary to the provisions of this article shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the county or city in which the seeds, mixtures of such seeds, or "screenings" are located. In the event the court finds the seeds, mixtures of such seeds, or "screenings" to be in violation of the provisions of this article and orders the condemnation thereof, such seeds, mixtures of such seeds, or "screenings" shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this Commonwealth; provided, that in no instance shall such disposition of the seeds, mixtures of such seeds, or "screenings," be ordered by the court without first having given the claimant an opportunity to apply to the court for the release of the seeds, mixtures of such seeds, or "screenings," or permission to process condition or relabel to bring them into compliance with the provisions of this article.

#### § 3.1-273. Penalty; assessment for variance from guarantee.

A. Every violation of the provisions of this article shall be deemed a Class 3 misdemeanor punishable by a fine not exceeding \$100 for the first offense, and not exceeding \$250 for each subsequent offense.

B. Any person who sells any seed subject to the provisions of this article is subject to an assessment for variance from guarantee whenever the Commissioner or his agent determines such seed: (i) is not within testing tolerance of the labeled analysis; (ii) contains restricted noxious-weed seeds in excess of the amount claimed on the label; (iii) is not labeled; or (iv) is not labeled in accordance with the provisions of this article.

The Commissioner or his agent shall make an assessment for variance from guarantee upon the person whose name appears on the label. The Commissioner or his agent shall make an assessment for variance from guarantee equivalent to one percent of the amount of money the person from whom the sample was taken receives from the sale of the seed or \$100 (whichever is greater), upon each lot of seed or portion thereof the Commissioner or his agent sampled and found in violation, except as provided in § 3.1-273 (c). The Commissioner or his agent shall make the assessment for variance from guarantee only on the lot or portion thereof that the person sold after the Commissioner or his agent sampled the lot or portion thereof.

C. The Commissioner or his agent shall make an assessment for variance from guarantee upon the guarantor of three times the amount the Commissioner or his agent calculates pursuant to § 3.1-273 (b) whenever the Commissioner or his agent finds: (i) that the seed contains prohibited noxious weed seeds; (ii) that the seed contains restricted noxious weed seeds in a prohibited amount; (iii) the guarantor has mislabeled such seed as to variety including a component of a mixture; (iv) the person who sold such seed does not have the records required in § 3.1-266 available for inspection; or (v) the person who sold such seed does not have a laboratory analysis available for inspection to substantiate the labeling.

The guarantor on whom the assessment for variance from guarantee is made shall pay the assessment to the Commissioner within sixty days from the date the Commissioner or his agent issues the assessment to the guarantor. Any person who fails to pay the assessment within sixty days shall pay a late fee of ten percent of the assessment to the Commissioner in addition to the assessment. The Commissioner shall revoke the license of any person who fails to pay an assessment.

#### § 3.1-274. Notice of violations; review; warning.

It shall be the duty of the Commissioner or his agent to give notice of every violation of the provisions of this article with respect to agricultural, vegetable, flower, tree and shrub, lawn and turf seed, mixtures of such seeds or "screenings" to the person in whose hands possession such seed or "screenings" are found, and to send. The Commissioner or his agent shall forward a copy of such notice

to the person whose "analysis tag or label" is attached to the container of such seed or "screenings," designating a time and place for hearing "screenings." If, after hearing, or without such hearing in the event the person fails or refuses to appear, the Commissioner is of the opinion that the evidence warrants prosecution, he may prosecute under § 3.1-273, or, if he believes the public interest will be adequately served thereby, he may direct to the alleged violator a suitable written notice or warning.

*Nothing in this article shall be construed as requiring the Commissioner to report for prosecution, or for the institution of seizure proceedings, where the Commissioner considers the violation of the law to be minor. In such cases, the Commissioner or his agent may serve a suitable notice of warning in writing, when he believes that the public interest will be best served by so doing.*

§ 3.1-275. Guaranty of farm or garden seed; seller bound by written or printed statements.

~~All seedsmen and others~~ Any person who ~~sells~~ farm or garden seeds to be used in producing crops for sale or for family use where such crops are used other than for sale shall be bound as guarantors guarantor that such seeds are true to kind and variety as represented at the-time of sale, whether such seeds were raised by the seller or by another; and if such seeds are sold by an agent the principal shall be bound by the representations of the agent ~~in~~ with regard to the kind and variety of the seed so sold.

If any paper or package containing seed sold in this Commonwealth for planting or seeding has printed or written thereon the kind, variety, or quality of the seeds therein the seller shall be bound in the courts of this Commonwealth by the same written or printed statement unless it be affirmatively proved by the seller that there was some other agreement between the parties in respect thereto.

§ 3.1-275.1. Registration of lawn and turf seed mixture; change in labeling or specifications.

(A) Each and every lawn and turf seed mixture bearing a distinguishing name or trademark in prepackaged containers of ~~fifty one hundred~~ pounds or less ~~must~~ shall be registered annually by the person packing or distributing the mixture with the Commissioner or his authorized agent giving the following information:

- (1) The brand name of the lawn and turf seed mixture;
- (2) A statement indicating the specifications of the lawn and turf seed mixture indicating within five per centum percent the percentage by weight of each kind of lawn and turf seed in the mixture;
- (3) A complete copy of all labeling that is to appear on the container;
- (4) An example of the analysis statement that is to appear on each container of a mixture; and
- (5) The name and address of the registrant and the name and address of the person whose name will appear on the label.

(B) All registrations of lawn and turf seed mixtures shall expire on the thirty-first day of December of the year for which they were registered, unless cancelled by the Commissioner for violation of any of the provisions of this article. Every registration shall expire on December 31 of the calendar year for which it was issued; provided that every registration is valid through January 31 of the next ensuing calendar year or until issuance of the renewal registration, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner or his agent on or before December 31 of the year for which the Commissioner or his agent issued the current registration.

(C) Within the discretion of the Commissioner or his authorized representative agent, a change in the labeling or specifications of a lawn or turf grass seed mixture subject to this section may be made within a current registration period without requiring new registration of the product provided the name of the lawn and turf seed mixture and the specifications for the primary ingredients of the mixture are not changed.

(D) Upon registration or renewal of registration, and prior to the distribution of any lawn and turf seed mixture in prepacked containers of fifty pounds or less, the registrant shall pay an annual registration fee of ten dollars for each named mixture registered for sale in this Commonwealth. The registrant shall pay to the Commissioner an annual registration fee of fifty dollars for each named lawn and turf seed mixture in prepacked containers of 100 pounds or less prior to its distribution in the Commonwealth.

(E) If it appears to the Commissioner or his authorized agent that the components of the lawn and turf seed mixture are such as to warrant the proposed labeling and other claims for it and if the labeling and other material required to be submitted appear to comply with the requirements of this article, he shall register the lawn and turf seed mixture.

(F) If it appears to the Commissioner or his authorized agent that the lawn and turf seed mixture does not warrant the proposed claims for it made in respect of it or if the mixture and its labeling required to be submitted do not comply with the provisions of this article, he shall notify the registrant of the manner in which the labeling or other material required to be submitted fail to comply with this article so as to afford the registrant an opportunity to make the necessary corrections. Should the registrant desire to be heard on any decision of the Commissioner or his duly authorized agent under this section, he may request the same in writing, thereafter the Commissioner or his duly authorized agent may grant such a hearing.

(G) If the Commissioner or his agent identifies any unregistered lawn and turf seed mixture in commerce in the Commonwealth during the registration year, the Commissioner or his agent shall notify

the guarantor and grant a grace period of fifteen working days from issuance of notification for the guarantor to register the lawn and turf seed mixture and pay the registration fee without penalty. Any person required to register a lawn and turf seed mixture who fails to register within the fifteen working day grace period shall pay to the Commissioner a fifty dollar late fee in addition to the registration fee. The Commissioner or his agent may issue a stop sale, use, removal, or seizure order upon the lawn and turf seed mixture until its registration is complete.

*§ 3.1-275.2. License required to market seed.*

A. Any person whose name appears on the label of seed shall, before distributing, selling, or offering or exposing for sale, seed in the Commonwealth, obtain a license from the Commissioner or his agent.

B. Any person who is required to obtain a license under subsection A of this section shall apply for the license on a form furnished or approved by the Commissioner and shall pay a license fee of fifty dollars, which license fee shall accompany the license application.

C. Any person governed by subsection A of this section who has not obtained a license from the Commissioner or his agent prior to distributing, selling, or offering or exposing for sale, seed in the Commonwealth shall be given a grace period of fifteen working days from issuance of notification within which to obtain a license without penalty. Any person who fails to obtain a license by the fifteenth day of the grace period shall pay to the Commissioner a late fee of fifty dollars which shall be in addition to the license fee amount. The assessment of this late fee may not prohibit the Commissioner or his agent from taking other action as provided for in this article.

D. Every license shall expire on December 31 of the calendar year for which it is issued. Every such license is valid through January 31 of the next ensuing calendar year or until issuance of the renewal license, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner or his agent on or before December 31 of the year for which the Commissioner or his agent issued the current license.

E. The Commissioner shall refuse to issue the license to any person not in compliance with the provisions of this article, and shall revoke any license subsequently found not to be in compliance with any provision of this article.

*§ 3.1-275.3. Inspection fee.*

A. Any person who first introduces lawn and turf seed for sale in the Commonwealth shall pay annually to the Commissioner by January 31 following the calendar year in which the sale occurred, an inspection fee of three-tenths of one percent of the gross sales receipts for lawn and turf seed sold by that person in the Commonwealth during that calendar year. The minimum inspection fee shall be thirty-five dollars per person per calendar year; provided that for the period July 1, 1994, through December 31, 1994, the minimum inspection fee shall be seventeen dollars and fifty cents per person.

B. The Commissioner or his agent shall notify any person governed by subsection A of this section who has not paid to the Commissioner the required inspection fee by the date specified in subsection A of this section and grant a grace period of fifteen working days from issuance of notification for the person to pay the inspection fee without penalty. If the person fails to pay the inspection fee by the fifteenth day of the grace period, the person shall pay a late fee of ten percent of the inspection fee due or fifty dollars, whichever is greater. The late fee amount shall be in addition to the inspection fee amount. The Commissioner or his agent may take other action as provided for in this article in addition to the assessment of the late fee.

C. Any person required to pay an inspection fee under subsection A of this section shall use generally accepted accounting principles that indicate accurately in his records the gross sales receipts for seed sold by him in the Commonwealth. The Commissioner or his agent may inspect the sales records of the person required to pay the inspection fee.

*§ 3.1-275.4. Sale of transgenetic seed.*

In addition to the requirements of § 3.1-264, the guarantor shall label all seed produced from transgenetic plant material according to the regulations promulgated by the Board pursuant to the provisions of this article.

*§ 3.1-275.5. Sale of second generation as a hybrid.*

The Board shall name in the regulations each kind of seed that is a second generation hybrid recognized as having agronomic value which may be sold as a hybrid.

*§ 3.1-275.6. Duty of attorney for Commonwealth.*

It shall be the duty of every attorney for the Commonwealth to whom the Commissioner shall report any violation of this article to cause proceedings to be prosecuted without delay.

*§ 3.1-275.7. Disposition of fees and assessments.*

All fees and assessments under this article, received by the Commissioner, shall be paid into a dedicated special fund, which is hereby created and shall be known as the "seed fund" in the State Treasury to the credit of the Department, to be used in carrying out the purpose and provisions of this article, to include inspecting, sampling, laboratory testing and other expenses; except that the Commissioner shall deposit fifty percent of the inspection fee, to the credit of the Virginia Agricultural Foundation Fund. The Virginia Agricultural Council shall administer all funds received by them from this section for the exclusive funding of lawn and turf research.

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.
  2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.
  3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife.
  4. The Virginia Housing Development Authority.
  5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities, except for those created under Chapter 27 (§ 15.1-1228 et seq.) of Title 15.1.
  6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.
  7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.
  8. The Virginia Resources Authority.
  9. Agencies expressly exempted by any other provision of this Code.
  10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.
  11. The Council on Information Management.
  12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.
  13. [Repealed.]
  14. [Repealed.]
  15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.
  16. The Commissioner of the Department of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.
  17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to § 3.1-271.1 and subsection A of § 3.1-884.21:1.
  18. The Board of Medicine when specifying therapeutic pharmaceutical agents for the treatment of certain conditions of the human eye and its adnexa by certified optometrists pursuant to § 54.1-2957.2.
  19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.
  20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.
  21. The Virginia War Memorial Foundation.
  22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.
- B. Agency action relating to the following subjects is exempted from the provisions of this chapter:
1. Money or damage claims against the Commonwealth or agencies thereof.
  2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
  3. The location, design, specifications or construction of public buildings or other facilities.
  4. Grants of state or federal funds or property.
  5. The chartering of corporations.
  6. Customary military, naval or police functions.
  7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
  8. The conduct of elections or eligibility to vote.
  9. Inmates of prisons or other such facilities or parolees therefrom.
  10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
  11. Traffic signs, markers or control devices.
  12. Instructions for application or renewal of a license, certificate, or registration required by law.
  13. Content of, or rules for the conduct of, any examination required by law.
  14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter

14 of Title 2.1.

15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.

16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, Title 28.2.

C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:

1. Agency orders or regulations fixing rates or prices.  
2. Regulations which establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations which consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations which:

(a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;

(b) Are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

(c) Are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing; notice of the proposed adoption of these regulations and the Registrar's above determination shall be published in the Virginia Register not less than thirty days prior to the effective date thereof.

5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law requires that a regulation shall be effective in 280 days or less from enactment of the law or the appropriation act, and the regulation is not exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt such regulations with the prior approval of the Governor. Such regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be published within sixty days of the effective date of the emergency regulation, and the proposed replacement regulation shall be published within 180 days after the effective date of the emergency regulation.

6. [Repealed.]

7. Preliminary program permit fees of the Department of Air Pollution Control assessed pursuant to subsection C of § 10.1-1322.2.

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in § 9-6.14:9 A.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties under the tax laws.  
2. The award or denial of claims for workers' compensation.  
3. The grant or denial of public assistance.  
4. Temporary injunctive or summary orders authorized by law.  
5. The determination of claims for unemployment compensation or special unemployment.  
6. The award or denial of individual student loans by the Virginia Education Loan Authority.  
7. The determination of applications for guaranty of individual student loans or the determination of default claims by the State Education Assistance Authority.

E. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subsection C of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for activity undertaken pursuant to Title 62.1 by the Marine Resources Commission shall be in accordance

with the provisions of this chapter.

F. A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

G. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

H. Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 ( § 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.