

CHAPTER 4.1-53 SEED COMMISSION

4.1-53-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Agricultural seed" means:
 - a. The seed of cereal, fiber, forage, grass, or oil crops;
 - b. Irish potato seed tubers;
 - c. Lawn seed;
 - d. Any other seed designated by the seed commissioner as agricultural seed; and
 - e. Any mixture of seeds referenced in this subsection.
2. "Blend" means seed that consists of more than one variety, provided each variety consists of more than five percent of the whole, by weight.
3. "Brand" means a design, name, number, symbol, or word used to identify the seed of one person and distinguish the seed from that of another person.
4. "Certification" means a process that:
 - a. Is designed to maintain the genetic purity and varietal identity of crop cultivars; and
 - b. Requires a variety of components, including:
 - (1) An examination of records provided by the producer;
 - (2) An inspection of the field in which the plants producing seed for certification are growing; and
 - (3) The testing and grading of a representative sample.
5. "Certified" means a designation that the seed department has authorized a labeler to use on seed that met the requirements for certification.
6. "Conditioning" means any process to remove unwanted seeds or other matter from a seed lot in order to produce a uniform product.
7. "Flower seed" means the seed of a herbaceous plant grown for its bloom, ornamental foliage, or other ornamental part.
8. "Germination" means the physiological process of development and the emergence from the seed embryo of essential structures that are indicative of the ability to produce a normal plant under favorable conditions.
9. "Hard seed" means a seed that has an impermeable seed coat and has not absorbed water by the end of the prescribed test period.
10. "Inert matter" means anything other than unbroken seeds.
11. "Kind" means one or more related species or subspecies known singly or collectively by a common name.
12. "Label" means a device or tag attached to a seed container, printed or stamped information on a seed container, or written information accompanying a lot of bulk seed.
13. "Labeler" means the person identified by name and address on the label.
14. "Lot" means an identifiable quantity of seed that is uniform within permitted tolerances for the factors that appear on its label.
15. "Mixture" means seed consisting of more than one kind, each in excess of five percent of the whole, by weight.
16. "Official seed-certifying agency" means:
 - a. An agency that is authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of any seed it certifies; or
 - b. An agency of a foreign country if the United States secretary of agriculture has determined that the agency adheres to seed certification procedures and standards that are comparable to those generally adhered to by a seed-certifying agency meeting the criteria set forth in subdivision a.
17. "Prohibited weed seed" means:

- a. The seed or propagule of any weed designated as noxious by the agriculture commissioner in accordance with section 4.1-47-05; or
 - b. The seed or propagule of any weed determined by the seed commissioner to be highly destructive and difficult to control by good cultural practices or by the use of herbicides.
18. "Pure seed" means a quantity of seed that belongs to a particular kind or variety and which does not contain either inert matter or seeds of another kind or variety.
 19. "Record" includes all information relating to origin or source, variety, lot identification, quantity, inspection, processing, testing, labeling, distribution, and file samples of the seed.
 20. "Restricted weed seed" means a seed that is determined by the seed commissioner to be:
 - a. Objectionable in agricultural seed, lawn or turf seed, vegetable seed, and flower seed; and
 - b. Controllable by good cultural practices or the use of herbicides.
 21. "Selection" means a subgroup of a variety and includes clones, lines, and strains.
 22. "Treated" means a seed has received an application of a substance intended to enhance the performance of the seed or alter a physiological process of the plant.
 23. "Unbroken seed" means a seed that is more than fifty percent intact.
 24. "Variety" means a subdivision of a kind that:
 - a. Can be differentiated by one or more identifiable morphological, physiological, or other characteristics from other varieties of the same kind;
 - b. Has describable variations in essential and distinct characteristics; and
 - c. Will remain unchanged in its essential and distinct characteristics and uniformity when reproduced or reconstituted, as required by the different categories of varieties.

4.1-53-02. Seed department - Location.

The North Dakota seed department is the official seed-certifying agency of the state. The seed department must be located on the campus of North Dakota state university of agriculture and applied science.

4.1-53-03. Official seal.

The seed department shall have and use an official departmental seal that has been recorded in the office of the secretary of state.

4.1-53-04. Seed commission - Membership.

The seed commission is the governing board of the seed department. The seed commission consists of the following nine members:

1. An individual appointed by the North Dakota crop improvement association;
2. An individual appointed by the North Dakota certified seed potato growers association;
3. An individual appointed by the North Dakota dry edible bean seed growers association;
4. An individual appointed by the North Dakota agricultural association;
5. An individual appointed by the North Dakota potato council;
6. A resident of this state appointed by the northern plains potato growers association;
7. An individual who operates a seed-conditioning plant approved by the seed department, appointed by the North Dakota grain dealers association;
8. The director of the agricultural experiment station or the director's designee; and
9. The agriculture commissioner or the agriculture commissioner's designee.

4.1-53-05. Seed commission - Chairman - Meetings.

1. The agriculture commissioner shall serve as the chairman of the seed commission.

2. The chairman shall call all regular meetings of the seed commission and shall call a special meeting within seven days if petitioned to do so by two members of the seed commission.
3. The seed commission shall hold at least two regular meetings each year.

4.1-53-06. Seed commission - Appointment of proxy.

If a member of the seed commission is unable to attend a meeting of the commission, the member may appoint a proxy. The appointment must be in writing and must be presented to the chairman. The vote of the proxy is final.

4.1-53-07. Seed commission - Members - Compensation.

Each member of the seed commission, except the agriculture commissioner and the director of the agricultural experiment station, is entitled to receive compensation at the rate of one hundred thirty-five dollars per day and reimbursement for expenses, as provided by law for state officers, if the member is attending a commission meeting or performing duties directed by the commission.

4.1-53-08. Seed commission - Powers.

The seed commission may:

1. Establish branch offices and laboratories at locations in this state, other than the campus of North Dakota state university of agriculture and applied science, if the seed commissioner determines that they are necessary to carry out the duties of the seed commission, the seed commissioner, or the seed department;
2. Dismiss the seed commissioner for cause; and
3. Appoint an acting seed commissioner if the position becomes vacant.

4.1-53-09. Seed commission - Duties.

The seed commission shall:

1. Appoint a seed commissioner;
2. Compensate the seed commissioner; and
3. Review the appointment of a seed commissioner, annually.

4.1-53-10. Seed commissioner - Powers.

The seed commissioner may:

1. Contract with North Dakota state university of agriculture and applied science for the use of facilities and equipment;
2. Contract with any person for any lawful purpose;
3. Enter upon real property and access any structure and personal property, at any time, to:
 - a. Inspect, sample, and test seed for compliance with this chapter; and
 - b. Inspect records for compliance with this chapter;
4. Collect royalty, research, and patent fees; and
5. Issue phytosanitary certificates if authorized to do so by the United States department of agriculture animal and plant health inspection service or the agriculture commissioner.

4.1-53-11. Seed commissioner - Duties.

The seed commissioner shall:

1. Manage the seed department;
2. Provide, equip, and maintain offices, laboratories, and any other facilities necessary to carry out this chapter, subject to the approval of the seed commission;
3. Employ and compensate necessary personnel;
4. Permit North Dakota state university of agriculture and applied science to use the seed department facilities and the services of the seed department laboratories at convenient times;

5. Determine the nature and size of any seed and plant samples required by the seed department in order to conduct official tests or make official determinations and shall prescribe the manner in which the seed and plant samples are to be obtained and delivered to the seed department;
6. Provide commodity inspection services upon request;
7. Establish and charge fees for services, subject to the approval of the seed commission;
8. Provide periodic reports to the seed commission regarding the management and operation of the seed department;
9. Recommend to the seed commission the biennial budget and annual salary schedules for the seed department;
10. Submit the seed department's biennial budget, as approved by the seed commission, to the office of management and budget;
11. Do all things necessary to enforce this chapter and rules implementing this chapter; and
12. Perform any other duties as directed by the seed commission.

4.1-53-12. Agricultural seed - Label requirements.

1. Agricultural seed offered for sale or sold in this state, for planting purposes, must be labeled.
2.
 - a. If the agricultural seed is offered for sale or sold in a container, the label must be plainly printed in English and conspicuously placed on or attached to the container.
 - b. If the agricultural seed is offered for sale or sold in bulk, the label must be plainly printed in English and provided to the purchaser at or before the time of delivery.

4.1-53-13. Agricultural seed - Label - Content.

A label required by section 4.1-53-12 must include:

1. The lot number or other lot identification;
2.
 - a. The state or foreign country in which the seed was grown; or
 - b. A statement indicating that the origin of the seed is unknown;
3. The percentage by weight of all weed seed;
4. The name of each restricted weed seed present and its rate of occurrence per pound [453.59 grams], if:
 - a. In seeds of grasses and small seeded legumes, the rate of occurrence exceeds thirteen seeds per pound [453.59 grams]; or
 - b. In any other agricultural seeds, the rate of occurrence exceeds five seeds per pound [453.59 grams];
5. The percentage by weight of any other agricultural seeds present;
6. The percentage by weight of inert matter;
7.
 - a. The percentage of germination, exclusive of hard seed;
 - b. The percentage of hard seed, if applicable; and
 - c. The month and year in which the percentages were determined; and
8. The full name and address of the labeler.

4.1-53-14. Agricultural seed - Label requirements - Treated seed.

1. In addition to any other requirements set forth in this chapter, if the seed has been treated, the label must indicate that the treatment has occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of the substance used in the treatment.
 - a. If the substance with which the seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.

- b. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
 - c. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective for use on that particular seed.
- 2. The information required by this section may be placed on a separate label.

4.1-53-15. Agricultural seed - Label requirement - Hermetically sealed containers.

In addition to any other label requirements set forth in this chapter, if agricultural seed that is offered for sale or sold is in a container that has been hermetically sealed, the label must so indicate.

4.1-53-16. Agricultural seed - Additional label requirements - Limited applicability.

- 1. In addition to any other label requirements set forth in this chapter, the label on each container of barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat seed offered for sale or sold in this state for planting purposes must include:
 - a. The kind of each agricultural seed;
 - b. The variety of each agricultural seed component constituting more than five percent of the whole; and
 - c. The percentage by weight of each agricultural seed component constituting more than five percent of the whole.
- 2. In addition to any other requirements set forth in this chapter, the label on each container of agricultural seed other than barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat seed offered for sale in this state for planting purposes:
 - a. Must include the kind of each agricultural seed;
 - b. May include the variety of each agricultural seed component constituting more than five percent of the whole; and
 - c. Must include the percentage by weight of each agricultural seed component constituting more than five percent of the whole.

4.1-53-17. Agricultural seed - Selling by brand - Label requirement.

The seed of barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat may be sold by brand, provided the true variety name or number is clearly stated on the label.

4.1-53-18. Canola seed - Additional label requirements.

In addition to any other requirements set forth in this chapter, if the agricultural seed is canola, the seed must:

- 1. Have been certified by the seed commissioner as meeting the standards of this state; or
- 2. Have been certified by the appropriate agency of another state or country having canola certification standards that are determined by the seed commissioner to meet or exceed the standards of this state.

4.1-53-19. Agricultural seed components - Label requirements - Mixture or blend - Designation.

If more than ten percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding five percent of the whole, the label must include each component in excess of one percent of the whole named together with the percentage by weight of each. Each component must be listed in the order of its predominance. If more than one component is named, the word "mixture" or "blend" must be stated appropriately with the name of the mixture or blend.

4.1-53-20. Agricultural seed - Sale of small quantities - Container label requirements.

If agricultural seed is sold in quantities of five pounds [2.26796 kilograms] or less, the container into which the seed is placed is exempt from the labeling requirements of this chapter provided:

1. The container from which the seed is taken is in compliance with the labeling requirements of this chapter; and
2. The seed is removed from the container referenced in subsection 1 and weighed, in the presence of the purchaser.

4.1-53-21. Vegetable seed - Label requirements.

1. Each container of vegetable seed offered for sale or sold in this state, for planting purposes, must be labeled.
2. The label must be plainly printed in English and placed conspicuously on or attached to the container.

4.1-53-22. Vegetable seed - Label - Content.

The label for vegetable seed packed in units of one pound or less and the label for vegetable seed on prepared mats, tapes, or in preplanted containers must include:

1. The kind and variety of seed;
2. The lot number or other lot identification;
3. The full name and address of the labeler;
4. The month and year in which the germination test was completed; and
5.
 - a. The percentage of germination; or
 - b. The date by which the seed must be sold, as established in section 4.1-53-52.

4.1-53-23. Vegetable seed - Additional label requirements.

If the germination test referenced in section 4.1-53-22 results in a finding that the seed does not meet the standards for germination, as established by the commissioner, the label must include:

1. The percentage of germination, exclusive of hard seed;
2. The percentage of hard seed, if present; and
3. The words "below standard" in at least eight-point type.

4.1-53-24. Vegetable seed - Larger units - Label requirements - Exception.

1. The label for any vegetable seed other than that referenced in section 4.1-53-22 must include:
 - a. The lot number or other lot identification;
 - b.
 - (1) The kind and variety of vegetable seed present in excess of five percent by weight;
 - (2) The percentage by weight of each seed referenced in paragraph 1, in order of its predominance;
 - (3) The percentage of germination for each seed referenced in paragraph 1, exclusive of hard seed;
 - (4) The percentage of hard seed, if present; and
 - (5) The month and year that the percentages were determined; and
 - c. The full name and address of that labeler.
2. If vegetable seed is sold in quantities of five pounds [2.26796 kilograms] or less, the container into which the seed is placed is exempt from the labeling requirements of this chapter provided:
 - a. The container from which the seed is taken is in compliance with the labeling requirements of this chapter; and
 - b. The seed is removed from the container referenced in subsection 1 and weighed, in the presence of the purchaser.

4.1-53-25. Vegetable seed - Quantity - Label requirement.

If the vegetable seeds are on a mat, on tape, or in some other germination medium, and the quantity of seed cannot be readily determined, the label must include the minimum number of seeds per definable unit.

4.1-53-26. Vegetable seed - Label requirements - Treated seed.

1. In addition to any other requirements set forth in this chapter, if the vegetable seed has been treated, the label must indicate that the treatment has occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of any substance used in the treatment.
2. If the substance with which the seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.
3. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
4. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective on that particular seed.
5. The information required by this section may be placed on a separate label.

4.1-53-27. Vegetable seed - Label requirement - Hermetically sealed containers.

In addition to any other label requirements set forth in this chapter, if vegetable seed that is offered for sale or sold is in a container that has been hermetically sealed, the label must so indicate.

4.1-53-28. Flower seed - Label requirements.

1. Each container of flower seed offered for sale or sold in this state, for planting purposes, must be labeled.
2. The label must be plainly printed in English and conspicuously placed on or attached to the container.

4.1-53-29. Flower seed - Label - Content.

1. The label for flower seed must include:
 - a. (1) The kind and variety; or
(2) The information required by rule with respect to type and performance characteristics;
 - b. (1) The month and year in which the seed was tested; or
(2) The year for which the seed was packaged; and
 - c. The full name and address of the labeler.
2. If the flower seed is packed in units of more than one pound [453.59 grams], the label must also include the lot number or other lot identification, unless the flower seed is on prepared mats, on tapes, or in preplanted containers.
3. If the flower seed is of a kind for which standard testing procedures are prescribed by the association of official seed analysts, the label must also include:
 - a. The percentage of germination exclusive of hard seed; and
 - b. The percentage of hard seed, if present.
4. If the flower seed is of a kind for which standard testing procedures are prescribed by the association of official seed analysts and if the seed does not meet the standard for germination required by rule, the label must also include the percentage of germination exclusive of hard seeds and the words "below standard" in at least eight-point type.

4.1-53-30. Flower seed - Quantity - Label requirement.

If the flower seeds are on a mat, on tape, or in some other germination medium and the quantity of seed cannot be readily determined, the label must include the minimum number of seeds per definable unit.

4.1-53-31. Flower seed - Label requirements - Treated seed.

1. In addition to any other requirements set forth in this chapter, if the flower seed has been treated, the label must indicate that the treatment has occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of the substance used in the treatment.
 - a. If the substance with which the flower seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.
 - b. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
 - c. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective on that particular seed.
2. The information required by this section may be placed on a separate label.

4.1-53-32. Tree seed and shrub seed - Label requirements.

1.
 - a. Each container of tree seed or shrub seed offered for sale or sold in this state, for planting purposes, must be labeled.
 - b. The label must be plainly printed in English and conspicuously placed on or attached to the container.
2. If seed is supplied in fulfillment of a contract for the collection and gathering of the seed, the label requirements of this section may be met by an analysis tag attached to the invoice if each container is clearly identified by a lot number stenciled on the container or if the seed is in bulk.
3. If the seed is offered for sale or sold in bulk, the label must be provided to the purchaser at or before the time of delivery.

4.1-53-33. Tree seed and shrub seed - Label - Content.

A label required by this section must include:

1. The common name of the tree or shrub species and, if appropriate, the name of the subspecies;
2. The scientific name of the genus, the species, and, if appropriate, the name of the subspecies;
3. The lot number or other lot identification;
4. The elevation at which or the upper and lower elevations within which the seed was collected;
5. The percentage of pure seed by weight; and
6. The full name and address of the labeler.

4.1-53-34. Tree seed and shrub seed - Label - Statement of origin.

In addition to any other label requirements set forth in section 4.1-53-33, the label of tree seed or shrub seed must identify the location from which the seeds were collected by:

1. Latitude and longitude; or
2. County or township.

4.1-53-35. Tree seed and shrub seed - Label requirements - Percentage of germination.

1. If the tree seed or shrub seed belongs to a species for which standard germination testing procedures are prescribed by the association of official seed analysts, the label must include:
 - a. (1) The percentage of germination, exclusive of hard seed;
 - (2) The percentage of hard seed; and
 - (3) The month and year in which the percentage of germination was determined; or
 - b. A statement indicating that the test to determine the percentage of germination is not yet completed and that the results will be supplied upon request.
2. If the tree seed or shrub seed belongs to a species for which standard germination testing procedures are not prescribed, the label must include the year in which the seed was collected.

4.1-53-36. Tree seed and shrub seed - Label requirements - Treated seed.

1. In addition to any other requirements set forth in this chapter, if the tree seed or shrub seed has been treated, the label must indicate that the treatment has occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of any substance used in the treatment.
2. If the substance with which the seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.
3. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
4. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective for use on that particular seed.

4.1-53-37. Tolerances.

1. In order to determine correctness and accuracy in labeling seed as required by this chapter, the seed commissioner shall:
 - a. Apply the tolerances established by the Federal Seed Act of August 9, 1939 [53 Stat. 1275; 7 U.S.C. 1551 et seq.], as amended through June 30, 2011; or
 - b. Establish stricter tolerances by rule.
2. Notwithstanding subsection 1, the tolerance for yellow starthistle is zero.

4.1-53-38. Seed labeling permit - Reports - Fees - Civil penalty.

1. Before a person in this state may label agricultural, vegetable, flower, or tree or shrub seed and before a person may label agricultural, vegetable, flower, or tree or shrub seed for delivery into this state, the person shall obtain a seed labeling permit from the seed commissioner.
2. Each person issued a seed labeling permit under this section shall:
 - a. Record all seeds sold by that person in this state;
 - b. Report all seeds sold by that person in this state to the seed commissioner at the time and in the manner determined by the seed commissioner; and
 - c. Submit at the time and in the manner determined by the seed commissioner, fees in the amount set by the seed commissioner and applicable to all seeds that the person sells in this state.
3. If a person issued a seed labeling permit under this section fails to submit the reports or fees required by this section within thirty days of the date determined by the seed commissioner, the seed commissioner may assess a penalty equal to five percent of the amount due or ten dollars, whichever is greater.

4.1-53-39. Invoice and records.

A labeler shall:

1. Retain a record of each lot of seed handled for three years after final disposition of the lot;
2. Retain a file sample of each lot of seed handled for one year after final disposition of the lot; and
3. Make the records and file samples required by this section available to the seed commissioner upon request.

4.1-53-40. Shipments from out of state - Label requirements.

The purchaser, vendor, or any other person receiving seed shipped into this state must have the seed labeled:

1. In accordance with this chapter; or
2. If permitted by the seed commissioner, in accordance with requirements applicable in other jurisdictions.

4.1-53-41. Nonresident seed dealer's license.

1. A person that is not a resident of this state may not offer for sale or sell any agricultural, vegetable, flower, or tree or shrub seed in this state directly to a consumer unless the person first obtains a nonresident seed dealer's license. In order to obtain the license, a person must submit to the seed commissioner an application for a license, together with the required fee.
2. A license issued under this section covers all employees and agents of the applicant, provided their names are included with the application.
3. A license issued under this section expires on December thirty-first.

4.1-53-42. Certified seed - Establishment of certification system.

1. The seed commissioner shall establish a seed certification system for this state.
2. The seed certification system must include standards of quality for any lot or stock of seed that may be or may become eligible for field inspection or for final certification.
3. The seed commissioner shall make the requirements for seed certification readily available in electronic and printed formats.

4.1-53-43. Requests for certification - Required submissions.

1. Any person may submit kinds, varieties, selections, and names of seed stock and request that the seed commissioner consider the submission for certification.
2. In order to pursue certification, a person shall provide to the seed commissioner:
 - a. The name of the variety;
 - b. A statement regarding the variety's origin and the breeding procedure used in its development;
 - c. A description of the morphological, physiological, or other characteristics that distinguish the variety from other varieties;
 - d. Evidence supporting the identity of the variety;
 - e. A statement regarding the geographic area of adaptation;
 - f. A statement regarding plans and procedures for the maintenance of seed classes, including the number of generations through which the variety may be multiplied;
 - g. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified;
 - h. Any additional restrictions on the variety specified by the breeder; and
 - i. A sample of seed that is representative of the variety as marketed.

4.1-53-44. Certified seed - Specific label requirements.

The seed commissioner shall prescribe the labels, seals, certificates, and statements that must be used for, or in relation to, any seed, or the various kinds and qualities grown, handled,

stored, offered for sale, or sold in this state as "breeders", "foundation", "registered", or "certified" seed, and shall specify the words and information required to be on the labels, seals, certificates, and seed containers.

4.1-53-45. Certified seed - Use of certain terms - Required authorization.

A person may not use the terms "breeders", "foundation", "registered", or "certified", and may not use substantially equivalent terms, in the labeling or in the advertising, characterization, or representation of seed that is offered for sale or sold in this state, unless authorized to do so by the seed commissioner. The prohibition of this section applies to oral and written forms of advertising, characterizations, and representations.

4.1-53-46. Seed conditioning facilities - Other facilities - Standards.

The seed commissioner may establish standards for:

1. Seed conditioning facilities and any other facilities that handle seed eligible for certification; and
2. Facilities that handle and market "breeders", "foundation", "registered", or "certified" seed.

4.1-53-47. Seed for certification purposes - Increase in foundation seed stocks.

The seed commissioner may participate with any public or private entity in the selection, testing, and production of seed for certification purposes and in efforts to increase foundation seed stocks suitable for the production of certified seed.

4.1-53-48. Plant Variety Protection Act - Requirements for certification.

1. If a certificate of plant variety protection issued under the Plant Variety Protection Act [7 U.S.C. 2121 et seq.], as amended through July 31, 2011, specifies that the variety may be sold only as a class of certified seed, that seed must be certified by an official seed-certifying agency before it can be advertised for sale, offered for sale, or sold.
2. Seed from a certified lot may be used in a blend or mixture by or with the approval of the owner of the variety.

4.1-53-49. Identity-preserved seed and crops - Determination of genetic traits.

1. The seed commissioner may inspect and analyze seed or crops grown, sold, or otherwise present in this state to determine and verify the genetic traits of the seed or the crops.
2. For purposes of conducting the inspection, analysis, or verification, the seed commissioner may:
 - a. Accept samples of seed or crops grown in this state, sold in this state, or otherwise present in this state from any person that owns the seed or crops; and
 - b. Upon request of the owner, obtain samples of the seed or crops.

4.1-53-50. Identity-preserved seed and crops - Verification and certification services.

The seed commissioner may establish programs and procedures to provide producers with customized verification and certification services pertaining to identity-preserved seed and crops.

4.1-53-51. Sale of seed - Prohibitions.

A person may not offer for sale or sell any seed that:

1. Is not labeled in accordance with the requirements of this chapter;
2. Is labeled with information the person knows is false or misleading;
3. Is designated, represented, or advertised as having a variety name other than that by which the seed was originally known;
4. Contains restricted weed seeds in excess of twenty-five seeds per pound [453.59 grams];
5. Exceeds the stated tolerances for noxious weed seeds; or

6. Contains weed seeds in excess of one percent by weight.

4.1-53-52. Germination test - Requirement for sale.

1. a. Except as provided in subsection 4, a person may not offer for sale or sell any agricultural seed unless:
 - (1) The seed has been tested to determine the percentage of germination; and
 - (2) The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed nine months.
- b. Subdivision a is not applicable to lawn and turf grasses.
2. a. Except as provided in subsection 4, a person may not offer for sale or sell any flower, vegetable, grass, or forb seed unless:
 - (1) The seed has been tested to determine the percentage of germination; and
 - (2) The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed twelve months.
- b. Subdivision a is not applicable to lawn and turf grasses.
3. Except as provided in subsection 4, a person may not offer for sale or sell any lawn and turf grass seed, or any blends or mixtures of lawn and turf grass seed, unless:
 - a. The seed has been tested to determine the percentage of germination; and
 - b. The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed fifteen months.
4. A person may not offer for sale or sell any agricultural, flower, vegetable, or tree or shrub seed in hermetically sealed packages unless:
 - a. The seed has been tested to determine the percentage of germination; and
 - b. The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed thirty-six months.

4.1-53-53. Prohibited activities.

A person may not:

1. Detach, alter, deface, or destroy any label provided for in this chapter;
2. Alter or substitute seed with the intent to defeat the purpose of this chapter;
3. Engage in false or misleading advertising regarding seeds;
4. Use the name of the seed department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the seed department or the official laboratory, except in the case of certified seed;
5. Fail to comply with a stop-sale order issued by the seed commissioner;
6. Use the words "type" or "trace" on a label in connection with the name and description of any seed;
7. Disclaim in any manner or form a vendor's responsibility for any label content required by law; or
8. Sell or transfer a protected variety to another producer for the purpose of planting without obtaining the approval of the variety owner or developer.

4.1-53-54. Stop-sale order - Issuance - Enforcement - Appeal.

1. The seed commissioner may issue a written stop-sale order to the owner or custodian of any lot of seed that the seed commissioner finds to be in violation of this chapter.
2. The seed commissioner may attach terms and conditions that must be fulfilled before the order will be lifted.
3. The stop-sale order shall remain in effect until the seed commissioner is satisfied that the violation no longer exists. Upon making that determination, the seed commissioner shall lift the stop-sale order.

4. The seed commissioner shall do all things necessary and proper to enforce a stop-sale order issued under this section.
5. Any person subject to a stop-sale order under this section may appeal the order to a court of competent jurisdiction.

4.1-53-55. Seizure and injunction - Action.

1. If the seed commissioner determines that any lot of seed is not in compliance with this chapter, the seed commissioner may petition a court of competent jurisdiction for seizure of the seed. If the court orders the condemnation of the seed, it must be denatured, processed, destroyed, relabeled, or otherwise disposed of in accordance with the laws of this state.
2. A court may not order disposition of the seed without first having given the owner an opportunity to apply to the court for release of the seed, or for permission to process or relabel the seed in compliance with this chapter.
3. Any violation of this chapter may be enjoined in a court of competent jurisdiction without bringing any other civil or criminal action.

4.1-53-56. Prosecution for violations - Duty of attorney general and state's attorney.

Repealed by S.L. 2011, ch. 70, § 23.

4.1-53-57. Penalty - Criminal - Civil - Exemption.

1. Any person willfully violating this chapter or the rules implementing this chapter is guilty of a class A misdemeanor.
2. When construing and enforcing this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must be deemed to be the act, omission, or failure of such person as well as that of the person employed.
3. Any person found guilty of violating this chapter or the rules implementing this chapter is subject to a civil penalty in an amount not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the seed commissioner.
4. A person is not subject to the penalties of this chapter for having offered for sale or sold any seed that was incorrectly represented as to kind, variety, or origin and which could not be identified through examination, unless the person failed to:
 - a. Obtain an invoice or grower's declaration stating the required information; or
 - b. Take other actions necessary to ensure that the seed was properly identified.

4.1-53-58. Certificates and reports - Publication.

If the seed commissioner signs a document relating to the findings and determinations made in a laboratory by seed department personnel, a court shall accept the document as prima facie evidence of the statements contained in the document. The seed commissioner is subject to court order for a review of the findings and determinations set forth in the document.

4.1-53-59. Liability of seed commission, seed department, seed commissioner, and certified or noncertified agricultural seed producers.

A warranty of any kind, either expressed or implied, including a warranty of merchantability, fitness for a particular purpose, or absence of disease, is not made by the seed commission, the seed department, the seed commissioner, or certified or noncertified seed producers as to the quantity or quality of the crop produced from the seeds or as to other produce, which is inspected and certified, except as provided in this section. The sole warranty made is that the seeds were inspected under the rules of the seed department or the United States department of agriculture. The seed commissioner functions and serves only in an official regulatory manner.

4.1-53-60. Seed department records - Exemption.

The following records of the seed department are exempt from section 44-04-18:

1. Records of any plant or seed analysis, testing, and variety or disease determination conducted by the seed department on a fee-for-service basis for private persons; and
2. Information that is received by the seed department under this chapter from a private person and which the private person determines is proprietary information or a trade secret.

4.1-53-61. Applicability of chapter.

This chapter does not apply to:

1. Seed that is not intended for planting purposes; and
2. Seed grown by a producer and sold by that producer without advertising and without using a third party as an agent or broker to effect the sale, provided this exemption is not applicable if the seed is a variety protected by the Plant Variety Protection Act [7 U.S.C. 2321 et seq.], as amended through July 31, 2011.

4.1-53-62. Seed department fund - Continuing appropriation.

1. The seed commissioner shall forward all moneys received under this chapter to the state treasurer for deposit in a special fund known as the seed department fund. All moneys in the seed department fund are appropriated on a continuing basis to the seed department to carry out this chapter.
2. The seed commissioner shall approve all expenditures made pursuant to this chapter and shall document the expenditures at the time and in the manner required by the office of management and budget.
3. The seed commissioner shall provide a report to the house and senate appropriations committees, at the time and in the manner directed by the chairmen of the committees. The report must contain a summary of the department's activities during the current biennium and a statement of revenues and expenditures for the ensuing biennium.
4. At the direction of the seed commission, the state treasurer shall invest all available moneys in the seed department fund. The state treasurer shall credit twenty percent of the investment income to the general fund and the remaining eighty percent of the investment income to the seed department fund.