

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER J. AGRICULTURAL LIEN DISPUTES

4 TAC §§1.601 - 1.604, 1.608

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code, Title 4, Part 1, Chapter 1, Subchapter J, Agricultural Lien Disputes, §§1.601 - 1.604, and 1.608.

The Department identified the need for the proposed amendments to Chapter 1, Subchapter J during the rule review conducted pursuant to Texas Government Code §2001.039, the adoption for which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §1.601 makes nonsubstantive editorial changes.

The proposed amendment to §1.602 removes a method of submitting a dispute that is no longer utilized.

The proposed amendment to §1.603 corrects a cross reference to §1.602.

The proposed amendment to §1.604 adds the option to participate in the settlement conference virtually to provide more flexibility in settlement participation.

The proposed amendment to §1.608 updates the provision addressing per diem for food and lodging to reflect the Department's current travel policy for employees and officials and removes outdated amounts to account for changing reimbursement rates.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Government Code §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years they will be in effect, the Department has determined the following:

1. the proposed amendments will not create or eliminate a government program;

2. implementation of the proposed amendments will not require the creation or elimination of existing employee positions;

3. implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Department;

4. the proposed amendments will not require an increase or decrease in fees paid to the Department;

5. the proposed amendments do not create a new regulation;

6. the proposed amendments will not expand, limit, or repeal an existing regulation;

7. the proposed amendments will not increase or decrease the number of individuals subject to the rules; and

8. the proposed amendments will not affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Philip Wright, Administrator for Regulatory Affairs, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering them.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Mr. Wright, Administrator for Regulatory Affairs, has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be increased consumer protection through the improved readability and clarity of the rules. Mr. Wright has also determined that for each year of the first five-year period the proposed amendments are in effect, there will be no cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Ms. Liat DeVere, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email to Liat.DeVere@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication on the proposal in the *Texas Register*.

The amendments are proposed pursuant to Sections 128.012 of the Texas Agriculture Code (Code), which requires the Department by rule to establish a procedure for settling disputes between a claimant supplying agricultural chemicals or labor in

the application, delivery, or preparation of agricultural chemicals and a debtor and Section 188.012 of the Code, which requires the Department by rule to establish a procedure for settling disputes between a claimant supplying animal feed and labor and a debtor.

The code affected by the proposal is Texas Agriculture Code, Chapters 128 and 188.

§1.601. Statement of Purpose; Applicability.

(a) The Texas Agriculture Code, Chapters 128 and 188[~~], as amended by House Bill 963, 75th Legislative Session, 1997,~~] provide for the establishment of liens in favor of sellers of agricultural chemicals, agricultural seeds, or animal feed, or of a provider of labor in connection with the agricultural chemicals, agricultural seeds, or animal feed. Chapters 128 and 188 also provide for the department [~~Texas Department of Agriculture (the department)~~] to establish procedures for settlement of disputes regarding the amount owed a lien claimant for agricultural chemicals or labor (§128.012) or animal feed (§188.012). A person may not file a notice of claim of lien if a settlement of a dispute between the lien claimant and the debtor has been submitted to the department under the Texas Agriculture Code, §128.012 and §188.012, and is pending.

(b) (No change.)

§1.602. Submitting a Dispute for Settlement.

(a) - (c) (No change.)

(d) The request for setting and supporting documentation shall be sent to: Office of General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. [~~Requests may be submitted by fax at (512) 463-8170.~~]

(e) (No change.)

§1.603. Notice of Dispute; Setting of Conference.

(a) Within seven days of receipt of a request for setting in accordance with §1.602 of this chapter [~~title~~] (relating to Submitting a [Submission of] Dispute for Settlement), the department shall:

(1) - (4) (No change.)

(b) - (c) (No change.)

§1.604. Attendance; Conduct; Authority to Settle.

(a) Party representatives with authority to negotiate a settlement and all other persons necessary to negotiate a settlement must attend the settlement conference in person or virtually through video conferencing.

(b) - (c) (No change.)

§1.608. Fees.

(a) (No change.)

(b) Fees may include:

(1) - (2) (No change.)

(3) costs associated with the department facilitator's having to travel to the venue, including but not limited to, mileage, fuel, car rental, airline tickets, and a maximum per diem limited to the rates listed on the General Services Administration's (GSA) Domestic Maximum Per Diem Rates table for meals and lodging [of \$85 (\$55 for lodging and \$25 for food)]. Mileage shall be charged in the same amount as allowed for state employees traveling on state business; and

(4) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Texas Department of Agriculture

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For further information, please call: (512) 936-9360

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CHAPTER 2. LICENSING
SUBCHAPTER B. CONSOLIDATED
LICENSES

4 TAC §2.10

The Texas Department of Agriculture (Department) proposes the repeal of 4 Texas Administrative Code §2.10, concerning Definitions.

The Department identified the need for the repeal of this rule during its rule review of 4 Texas Administrative Code, Chapter 2, (Licensing), Subchapter B (Consolidated Licenses) conducted pursuant to Texas Government Code, §2001.039, the adoption for which can be found in the Review of Agency Rules section of this issue.

The repeal of §2.10 is proposed because it unnecessarily duplicates a provision of Texas Agriculture Code §12.033.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed repeal will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Government Code §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed repeal. For each year of the first five years the proposed repeal will be in effect, the Department has determined the following:

1. the proposed repeal will not create or eliminate a government program;
2. implementation of the proposed repeal will not require the creation or elimination of existing employee positions;
3. implementation of the proposed repeal will not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed repeal will not require an increase or decrease in fees paid to the Department;
5. the proposed repeal does not create a new regulation;
6. the proposed repeal will not expand, limit, or repeal an existing regulation;
7. the proposed repeal will not increase or decrease the number of individuals subject to the rules; and
8. the proposed repeal will not affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Ms. Christina Osborn, Director for Consumer Product Protection, has determined that for the first five-year period the proposed repeal is in effect, there will be no fiscal implications for the state or

local governments as a result of enforcing or administering the proposed repeal.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Ms. Osborn has determined that for each year of the first five-year period the proposed repeal is in effect, the public benefit will be increased consumer protection through the improved readability and clarity of this subchapter. Ms. Osborn has also determined that for each year of the first five-year period the proposed repeal is in effect, there will be no costs to persons who are required to comply with the proposal.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeal, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

Written comments on the proposed repeal may be submitted by mail to Morris Karam, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to morris.karam@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication in the *Texas Register*.

The repeal is proposed under Texas Agriculture Code §12.016, which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Texas Agriculture Code.

The code affected by the proposed repeal is Texas Agriculture Code, Chapter 12.

§2.10. Definitions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 2, 2022.

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Skyler Shafer

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CHAPTER 9. SEED QUALITY

The Texas Department of Agriculture (Department), proposes amendments to 4 Texas Administrative Code §9.1, concerning Definitions; §9.2, concerning Agricultural Seed; §9.3, concerning Vegetable Seed; §9.4, concerning Procedures and Tolerances; §9.5, concerning Seed Testing; §9.7, concerning Vegetable Seed; §9.9, concerning Noxious Weed Seed; §9.11, concerning Hermetically-Sealed Containers; and §9.12, concerning Seed Sampling Procedures.

The Department identified the need for the proposed amendments during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption for which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §9.1 remove an outdated reference to Chapter 61 of the Code; add a cross reference to §9.9, the rule addressing noxious weed seeds, to the definition of "noxious weed seeds" to improve that definition's clarity; and removes unnecessary definitions.

The proposed amendments to §9.2 correct grammatical errors, and make editorial changes to improve the rule's readability.

The proposed amendments to §9.3 add subsection (g), the substance of which currently appears as §9.7(h), because it concerns vegetable seed licensing matters and is more logically placed in this section, make references to "vegetable seed licenses" lower-case as used in Chapter 61 of the Code and changes "firm" to "person."

The proposed amendments to §9.4 change "Texas Department of Agriculture" to "department" where appropriate as that term is otherwise used throughout this chapter and correct grammatical and spelling errors.

The proposed amendments to §9.5 correct grammatical errors.

The proposed amendments to §9.7 remove subsection (h) as its provisions are more appropriate under §9.3, and correct spelling and grammatical errors.

The proposed amendments to §9.9 update certain scientific names in the two attached graphics and modify certain common names in them to eliminate possible confusion for non-Texas seed labs in determining what Texas considers noxious weed seeds for labeling purposes, eliminate unnecessary language, and correct a spelling error.

The proposed amendment to §9.11 changes a reference to Chapter 61 of the Texas Agriculture Code for clarity.

The proposed amendments to §9.12 removes an unnecessary reference to seed screenings and correct a grammatical error.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Randy Rivera, Director for Agricultural Commodity Programs, has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering them does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFITS: Mr. Rivera has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be increased consumer protection through improved readability of the chapter and improved clarity of seed and plant licensing and certification procedures for those who engage in or are interested in engaging in industries associated with this chapter.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL: Mr. Rivera has determined that for each year of the first five years the proposed amendments are in effect, there will be no costs to persons who are required to comply.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Government Code §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed

amendments will be in effect, the Department has determined the following:

1. the proposed amendments will not create or eliminate a government program;
2. implementation of the proposed amendments will not require the creation or elimination of existing employee positions;
3. implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed amendments will not require an increase or decrease in fees paid to the Department;
5. the proposed amendments do not create a new regulation;
6. the proposed amendments will not expand, limit, or repeal an existing regulation;
7. the proposed amendments will not increase or decrease the number of individuals subject to the rules; and
8. the proposed amendments will not affect this state's economy.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposed amendments may be submitted by mail to Mr. Morris Karam, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to Morris.Karam@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

4 TAC §9.1

The amendments are proposed pursuant to Section 61.002 of the Texas Agriculture Code, which allows the Department to adopt rules for the enforcement of Chapter 61 following a public hearing on proposed rules or amendments. Notice of the public hearing associated with these proposed rule amendments shall be published in the *Texas Register*.

The code affected by the proposal is Texas Agriculture Code, Chapter 61.

§9.1. Definitions.

In addition to the definitions in the Texas Agriculture Code, Chapter 61, [§61.001 (1981);] the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

~~[(1) Act--Texas Seed Law, Texas Agriculture Code, Chapter 61 (1981).]~~

~~[(2) Brand--A word, name, symbol, number, or design used to identify seed of one person to distinguish it from seed of another person as an indication of source, and not to indicate the genetic identity of the seed.]~~

~~[(3) Cultural practice--The control of weeds by either mechanical or chemical means or a combination of both.]~~

~~[(4) Germination--In seed laboratory practice, the emergence and development from the seed embryo of those essential~~

structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

~~[(5) Hybrid--The first generation of seed of a cross produced by controlling the pollination and by combining two or more inbred lines; one inbred or a single cross with an open pollinated variety; or two selected clones, seed lines, varieties, or species. The second generation or subsequent generations from such crosses shall not be regarded as hybrids.]~~

~~[(6) Inspection fee--A fee paid by any person who sells, offers, exposes, or otherwise distributes for sale agricultural seed for planting purposes.]~~

~~[(7) Kind--One or more related species or subspecies which singly or collectively is known by one common name (example: corn, oat, alfalfa, and timothy).]~~

~~[(8) Licenses--Includes all Texas Tested Seed Labels, Reporting Systems Permits and Vegetable Seed Licenses.]~~

~~[(9) Lot--A definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.]~~

~~[(10) Noxious weed seed--Seeds, bulblets, or tubers of certain species designated in §9.9 of this chapter (relating to Noxious Weed Seed) [by the Texas Seed Law Regulations] and considered highly objectionable and difficult to eradicate. Noxious weed seeds are divided into two classes, prohibited and restricted, and defined as follows:~~

~~(A) Prohibited noxious weed seeds are the seeds or bulblets of weeds that reproduce by seed and/or spread by underground roots, stems, and other reproductive parts, and which, when established, are highly destructive and difficult to control by ordinary good cultural practice;~~

~~(B) Restricted noxious weed seeds are the seeds of such weeds that are objectionable in fields, lawns, and gardens, but can be controlled by good cultural practices.]~~

~~[(11) Originator(s) seed--Seed directly controlled by the originating or sponsoring person(s) or the person's designee.]~~

~~[(12) Permittee--One who holds a permit issued by the department, authorizing the holder thereof to pay agricultural seed inspection fees under the reporting system.]~~

~~[(13) Person--Any individual, partnership, corporation, association, trustee, receiver, governmental subdivision, or public or private organization of any character.]~~

~~[(14) Pure seed--Shall include all seeds of each kind, or each kind and variety under consideration present in excess of 5.0% of the whole.]~~

~~[(15) Pure Live Seed [(PLS)]--The percentage of pure seeds in a seed lot that have the ability to germinate. The percentage of pure live seed [PLS] is determined by multiplying the percentage of [percent] germination (including dormant seed) by the percentage of [percent] pure seed and dividing by 100.]~~

~~[(16) Ultimate consumer--A person who purchases seed with no intention to resell the seed.]~~

~~[(17) Variety--A subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics, by which it can be differentiated from other plants of the same kind.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 936-9360



SUBCHAPTER B. CLASSIFICATION OF LICENSES

4 TAC §9.2, §9.3

The amendments are proposed pursuant to Section 61.002 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for the enforcement of Chapter 61 following a public hearing on proposed rules or amendments; Section 61.011 of the Code, which allows the Department to set inspection fees for the sale of agricultural seed, the methods of paying such fees, and the manner of showing the information on an agricultural seed label required by Section 61.004 of the Code; and Section 61.013 of the Code, which allows the Department to set and collect fees for the issuance of a vegetable seed license.

The code affected by the proposal is Texas Agriculture Code, Chapter 61.

§9.2. *Agricultural Seed.*

(a) In addition to the requirements of the Texas Agriculture Code (Code) [Act], §61.011, [~~concerning agricultural seed inspection fee and permit,~~] any person who sells, offers, exposes, or otherwise distributes for sale agricultural seed within this state for planting purposes shall pay an inspection fee thereon by purchasing Texas Tested Seed Labels or by the Reporting System Permit. A person may not use both the Texas Tested Seed Label and the Reporting System Permit during the same quarter except when the person's previously purchased supply of Texas Tested Seed Labels is exhausted and the person is changing from the Texas Tested Seed Label to the Reporting System Permit; ~~in which case the person's previously purchased supply of Texas Tested Seed Labels may be exhausted~~. Invoices must reflect if the inspection fee was paid by means of Texas Tested Seed Labels. Any change from the Reporting System Permit to the Texas Tested Seed Label or vice versa must begin on the first day of a quarter (September 1, December 1, March 1, or June 1). A person changing from the Reporting System Permit to the Texas Tested Seed Label may order such labels prior to the beginning of the quarter, provided the department is advised in writing of the person's intentions.

(b) Texas Tested Seed Label. When an inspection fee is paid by means of a Texas Tested Seed Label, the person who distributes, sells, offers for sale, or exposes for sale agricultural seed shall:

(1) (No change.)

(2) attach such label printed with all of the analysis information required under the Code [Act], §61.004, [~~concerning labeling of agricultural seed,~~] to each container of seed sold, offered for sale, or otherwise distributed for sale for planting purposes within this state; unless the seed is sold in bulk, in which case the person selling, offer-

ing, exposing, or otherwise distributing the seed for sale shall furnish the purchaser one Texas Tested Seed Label for each 100 pounds of seed or fraction thereof.

(c) Reporting system. When an inspection fee is paid by means of the reporting system, the following shall apply:

(1) - (2) (No change.)

(3) The permittee shall pay an inspection fee of \$0.45 for each 100 pounds of agricultural seed sold or otherwise distributed for sale for planting purposes within the state.

(4) Records must be kept by the permittee showing the total pounds of each lot identified as to the kind and variety (when applicable). In addition, for auditing purposes, records must be kept by the permittee showing the invoice number for each distribution of seed, identified with the name of the kind and variety (when applicable), the lot number, pounds of seed, ~~and~~ number of containers of seed, and the person to whom the seed was distributed.

(5) - (8) (No change.)

§9.3. *Vegetable Seed.*

(a) A person may not sell, offer, expose, or otherwise distribute for sale vegetable seed for planting purposes in this state unless such person first obtains a vegetable seed license [Vegetable Seed License] from the department.

(b) A person desiring a vegetable seed license [Vegetable Seed License] shall submit to the department an "Application for Vegetable Seed License" form prescribed by the department accompanied by a license fee in the amount of \$350.

(c) A vegetable seed license [Vegetable Seed License] must be obtained by each person [firm] whose name and address appears on the label of the seed.

(d) Upon approval of an application [~~for vegetable seed license]~~ and the receipt of the license fee, the department shall issue a vegetable seed license [Vegetable Seed License] to the applicant.

(e) (No change.)

(f) A vegetable seed license [Vegetable Seed License] issued under this section may be renewed by a licensee if the licensee applies for such renewal.

(g) The requirement for a vegetable seed license is waived for a person who sells vegetable seed in original containers of original sellers that bear labeling information adequately reflecting the requirements of §9.7 of this chapter (relating to Vegetable Seed).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 936-9360



SUBCHAPTER C. SEED TESTING

4 TAC §9.4, §9.5

The amendments are proposed pursuant to Section 61.002 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for the enforcement of Chapter 61 following a public hearing on proposed rules or amendments; Section 61.009 of the Code, which allows the Department to set fees for germination and purity testing of seeds; and Section 61.010 of the Code, which allows the Department to adopt rules governing the methods of sampling, inspection, analysis, and testing and the tolerances to be allowed in the administration of Chapter 61.

The code affected by the proposal is Texas Agriculture Code, Chapter 61.

§9.4. *Procedures and Tolerances.*

The department [~~Texas Department of Agriculture~~] hereby adopts by reference Rules for Testing Seeds of the Association of Official Seed Analysts, as to procedures, methods, and tolerances for seed testing, except that in enforcement, no tolerance will be allowed for balloon-vine, ~~castorbean~~ [eastor], field bindweed, hedge bindweed, itchgrass, serrated tussock, or tropical soda-apple [~~soda apple~~]. A tolerance of one will be allowed for cocklebur. A tolerance of one will be allowed for nutsedge tubers in a ~~two-pound~~ [two pound] sample. If nutsedge tubers are found in excess of ~~this~~ [the] tolerance, an additional 50 pounds will be required for testing. The tolerance of one nutsedge tuber will be allowed in ~~this 50-pound~~ [the 50 pound] sample. The tolerance allowed for pure live seed will be the same as for germination. A laboratory test used for labeling purposes must be made by the ~~department~~ [Texas Department of Agriculture], the official state seed laboratory of another state, or a Registered Seed Technologist/Society of Commercial Seed Technologist member laboratory. Information relative to obtaining copies of the material adopted by reference may be obtained by ~~contacting~~ [writing] the Texas Department of Agriculture, Seed Quality Program, P.O. Box 629, Giddings, Texas 78942. A copy is also available for public inspection at the Texas Department of Agriculture, Seed Quality Program, W. H. (Bill) Pieratt Building, Giddings, Texas.

§9.5. *Seed Testing.*

(a) At the request of a farmer or dealer, the department will provide for the testing of seed for germination and/or vigor. The department will also conduct red rice examination for rice samples submitted to the department as required in §10.15 of this title (relating to Genetic Seed Certification Standards). The following schedule of tests and charges per sample submitted shall be applicable to all ~~services~~ [service] of testing of agricultural seed and vegetable seed conducted by the department: [-]

(1) - (3) (No change.)

(4) examination 10-pound rice seed sample for presence of red rice: \$45 each; ~~and~~

(5) (No change.)

(b) - (c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 936-9360



SUBCHAPTER D. LABELING PROVISIONS

4 TAC §9.7

The amendments are proposed pursuant to Section 61.002 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for the enforcement of Chapter 61 following a public hearing on proposed rules or amendments; Section 61.005 of the Code, which allows the Department to have vegetable seed labels show expiration dates in lieu of calendar months and years of germination testing or the year for which the seed was packaged; and Section 61.009 of the Code, which allows the Department to set fees for germination and purity testing of seeds and allows the Department to set periods of time to for testing beyond the nine-month limit prior to sales.

The code affected by the proposal is Texas Agriculture Code, Chapter 61.

§9.7. *Vegetable Seed.*

(a) Vegetable seed in containers weighing less than one pound may be labeled as to the year for which the seed was packaged for sale in lieu of the actual date of test. If this procedure for labeling is used, the words "packed for" must precede the year. The year packed for will cover a period of time beginning August 1 of the current year through September 30 of the following year. No seed showing packed for the next year shall be offered for sale to the ultimate consumer:

(1) before August 1 of present year or after September 30 of the next year; ~~and~~

(2) (No change.)

(b) (No change.)

(c) The standards for germination of vegetable seed are as follows: artichoke: 60; asparagus: 70; ~~asparagus-bean~~ [asparagusbean]: 75; bean, garden: 70; bean, lima: 70; bean, runner: 75; beet: 65; broad-bean: 75; broccoli: 75; brussels sprouts: 70; burdock, great: 60; cabbage: 75; cabbage, tronchuda: 75; cabbage, Chinese: 75; cardoon: 60; carrot: 55; cauliflower: 75; celeriac: 55; celery: 55; chard, Swiss: 65; chicory: 65; chives: 50; citron: 65; collards: 80; corn, sweet: 75; cornsalad: 70; cowpea: 75; cress, garden: 75; cress, upland: 60; cress, water: 40; cucumber: 80; dandelion: 60; dill: 60; eggplant: 60; endive: 70; kale: 75; kale, Chinese: 75; kale, Siberian: 75; kohlrabi: 75; leek: 60; lettuce: 80; melon: 75; mustard, India: 75; mustard, spinach: 75; okra: 50; onion: 70; onion, Welsh: 70; pak-choi: 75; parsley: 60; parnsip: 60; pea: 80; pepper: 55; pumpkin: 75; radish: 75; rhubarb: 60; rutabaga: 75; salsify: 75; savory summer: 55; sorrel: 65; soybean: 75; spinach: 60; spinach, New Zealand: 40; squash: 75; tomato: 75; tomato, husk: 50; turnip: 80; watermelon: 70.

(d) - (f) (No change.)

(g) It shall be permissible for the seller to adopt and use the analysis furnished by the original seller; however, responsibility for any alleged deficiencies in the quality of seed made subsequent to such a sale[-] shall be with the seller.

{(h) The requirement for a Vegetable Seed License is waived for the seller if the original container bears labeling information adequately reflecting that this requirement has been met.}

(h) [(i)] The germination test period for seed sold from an opened hermetically-sealed container cannot exceed nine months from the date the container was opened. The date on which the container was opened must be designated on the container in accordance with §9.11 of this chapter (relating to Hermetically-Sealed Containers). ~~[(See §9.11 of this title (relating to Hermetically-Sealed Containers).)]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER E. SPECIAL PROVISIONS FOR LABELING

4 TAC §9.9, §9.11

The amendments are proposed pursuant to Section 61.002 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for the enforcement of Chapter 61 following a public hearing on proposed rules or amendments; Section 61.008 of the Code, which allows the Department to classify noxious weeds and set rates for the inclusion or exclusion of them in containers of seeds; and Section 61.009 of the Code, which allows the Department to set fees for germination and purity testing of seeds and allows the Department to set periods of time to for testing beyond the nine-month limit prior to sales.

The code affected by the proposal is Texas Agriculture Code, Chapter 61.

§9.9. Noxious Weed Seed.

It shall be unlawful to sell, offer for sale, or expose for sale any agricultural or vegetable seed for planting purposes ~~in Texas~~ containing noxious weed seed in excess of the following limitations per pound.

- (1) Prohibited noxious weed seeds are:

Figure: 4 TAC §9.9(1)

~~[Figure: 4 TAC §9.9(1)]~~

- (2) Restricted noxious weed seeds and limitations per pound are:

Figure: 4 TAC §9.9(2)

~~[Figure: 4 TAC §9.9(2)]~~

- (3) - (4) (No change.)

- (5) Restricted noxious weed seeds in any combination in excess of 500 per pound are prohibited from sale, provided, however, that the rate per pound of annual bluegrass, bermudagrass, giant bermudagrass, Johnsongrass and morning-glory ~~[morningglory]~~ are exempt from the total count.

§9.11. Hermetically-Sealed Containers.

For agricultural and vegetable seeds labeled and packed in a hermetically-sealed container; the nine-month limitation on testing is extended as provided herein, if the following conditions are met:

- (1) - (4) (No change.)

- (5) The container is conspicuously labeled to indicate:

- (A) - (C) (No change.)

(D) all other labeling information required by the Texas Agriculture Code, Chapter 61, [this Act] and this chapter.

- (6) - (8) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Skyler Shafer

Assistant General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 936-9360



SUBCHAPTER F. SAMPLING PROCEDURES

4 TAC §9.12

The amendments are proposed pursuant to Section 61.002 of the Texas Agriculture Code (Code), which allows the Department to adopt rules for the enforcement of Chapter 61 following a public hearing on proposed rules or amendments, and Section 61.010 of the Code, which allows the Department to adopt rules governing the methods of sampling, inspection, analysis, and testing and the tolerances to be allowed in the administration of Chapter 61.

The code affected by the proposal is Texas Agriculture Code, Chapter 61.

§9.12. Seed Sampling Procedures.

- (a) General procedure.

(1) In order to secure a representative sample, equal portions shall be taken from evenly distributed parts of the quantity of seed ~~[or screenings]~~ to be sampled. Access shall be had to all parts of that quantity. When more than one trierful of seed is drawn from a bag, different paths shall be followed. When more than one handful is taken from a bag, the handfuls shall be taken from well-separated points.

(2) For free-flowing seed in bags or bulk, a probe, or trier shall be used. For small free-flowing seed in bags, a probe or trier long enough to sample all portions of the bag should be used.

- (3) - (5) (No change.)

- (b) - (d) (No change.)

(e) Size of sample. The following are minimum sizes of samples of agricultural seed, vegetable seed, and screenings to be submitted for analysis, test, or examination:

- (1) - (3) (No change.)

(4) two pounds of cereals, vetch, sorghums, or seeds of similar or larger size; and

- (5) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 15. EGG LAW

The Texas Department of Agriculture (Department) proposes amendments to 4 Texas Administrative Code, Chapter 15, Egg Law, §15.1, Definitions; §15.2, Who Must Obtain a License; §15.3, Application Required; §15.4, Fees; §15.5, Special Fees; §15.7, Storage Requirements; §15.8, Labeling Requirements; §15.9, Reports and Records; §15.10, Inspections; §15.11, Retail Egg Replacement; §15.12, Violations; and §15.13, Penalties, and the repeal of §15.6, Standards. The proposed amendments and repeal are collectively referred to as the proposal.

The Department identified the need for the proposed amendments and repeal during its rule review conducted pursuant to Texas Government Code §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §15.1 add language to the definition for "advertisement" to account for online and similar types of advertisements; remove unnecessary definitions; add a definition for "Code" for ease of reference; replace references to "dealer/wholesaler" with "dealer-wholesaler" to conform with Texas Agriculture Code (Code), Chapter 132; clarify internal references within this chapter; and make editorial and grammatical changes.

The proposed amendments to §15.2 make grammatical changes to improve the rule's readability.

The proposed amendments to §15.3 clarify internal references within this chapter, revise a statutory reference to the Code to utilize a newly-defined term, and correct a grammatical error.

The proposed amendments to §§15.4 and 15.5 replace references to "dealer/wholesaler" with "dealer-wholesaler" to conform with Chapter 132 of the Code, clarify internal references within this chapter, and remove superfluous language concerning conflicts with Chapter 2, Subchapter B of Title 4, Part 1.

The repeal of §15.6 is proposed because the rule's provisions unnecessarily restate §132.004 of the Code.

The proposed amendments to §15.7 update a reference to the United States Food and Drug Administration (FDA), change refrigeration temperature standards to those adopted by either the United States Department of Agriculture or the FDA, clarify internal references within this chapter, and change references to "the Texas Egg Law" to "Chapter 132 of the Code."

The proposed amendments to §15.8 add a labeling requirement for commercially printed cartons to conform the rule's labeling requirements to those contained in Section 132.044 of the Code,

replace references to "dealer/wholesaler" with "dealer-wholesaler" to conform with Chapter 132 of the Code, and make editorial changes to language to improve the rule's readability.

The proposed amendments to §15.9 make references to types of licensees uniform throughout the section, replace references to "dealer/wholesalers" with "dealer-wholesalers" to conform with Chapter 132 of the Code, change references from "State of Texas" to "this state" as the term "this state" is mainly used in this chapter, clarify internal references within this chapter, correct grammatical errors, and make editorial changes to language to improve the rule's readability.

The proposed amendments to §15.10 add the availability of records to inspection requirements to account for recordkeeping requirements in Section 132.061 of the Code and make editorial changes to language improve the rule's readability.

The proposed amendments to §15.11 add the term, "containers," to egg replacement requirements to clearly describe the broad applicability of these requirements to all types of containers, add a reference to the specific labeling requirements in this chapter, and update a cross reference to the Texas Department of State Health Services' general rules for retail food establishments.

The proposed amendments to §15.12 ensure labeling requirements apply to both egg cartons and containers, clarify labeling requirements, include online and related advertisements within advertising requirements, and make grammatical and editorial changes to improve the rule's readability.

The proposed amendments to §15.13 change a reference to the Code to utilize a newly-defined term in §15.1.

LOCAL EMPLOYMENT IMPACT STATEMENT: Ms. Christina Osborn, the Director for Consumer Product Protection, has determined that the proposal will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Ms. Osborn has provided the following Government Growth Impact Statement for the proposal. For each year of the first five years the proposed amendments and repeal are in effect:

1. the proposed amendments and repeal will not create or eliminate a government program;
2. implementation of the proposed amendments and repeal will not require the creation or elimination of existing employee positions;
3. implementation of the proposed amendments and repeal will not require an increase or decrease in future legislative appropriations to the Department;
4. the proposed amendments and repeal will not require an increase or decrease in fees paid to the Department;
5. the proposed amendments and repeal do not create a new regulation;
6. the proposed amendments and repeal will not expand, limit, or repeal an existing regulation;
7. the proposed amendments and repeal will not increase or decrease the number of individuals subject to the rules; and
8. the proposed amendments and repeal will not affect this state's economy.