

## Chapter 128: Section 84 Definitions

Section 84. The following words, as used in sections eighty-four to one hundred and one, inclusive, unless the context otherwise requires, shall have the following meanings:--

""Advertisement", all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of said sections eighty-four to one hundred and one, inclusive.

""Agricultural seeds", seeds of grass, forage, cereal, mangel beets, and fiber crops and any other kinds of seeds commonly recognized as agricultural, lawn or field seeds, and mixtures of such seeds, including seed potatoes.

""Certified", ""Registered", ""Foundation", or any other terms conveying similar meaning when referring to seed, seed which has been produced, processed and labeled in accordance with the procedures and in compliance with the rules and regulations of an officially recognized certification agency.

""Director", the director of the Massachusetts agricultural experiment station.

""Flower seeds", seeds of herbaceous plants grown for their blooms, ornamental foliage or other ornamental parts and commonly known and sold under the name of flower seeds.

""Hybrid", the first generation seed of a cross produced under controlled pollination, the parents of which are each sufficiently uniform to permit repeated production of the hybrid without change in performance.

""Kind", one or more related species or subspecies which, singly or collectively, is known by one common name, for example, corn, oats, alfalfa or timothy.

""Labeling", all labels including invoices, or other written, printed or graphic representations, in any form, accompanying and pertaining to any seed whether in bulk or in containers.

""Lot", a definite quantity of seed which is identified by the same lot number or other mark, each portion or container of which is representative of the whole quantity.

""Noxious-weed seeds", shall include ""Prohibited noxious-weed seeds" and ""Restricted noxious-weed seeds", as hereinafter defined; provided that the commissioner may add to or subtract from the list of seeds included under either definition whenever he finds, after public hearing, that such addition or subtractions are or are not within the respective definitions.

""Officially recognized", recognized and designated by the laws or regulations of the United States or any state, any province of Canada, or the government of any foreign country in which said seeds were produced.

""Prohibited noxious-weed seeds", seeds or perennial weeds which not only reproduce by seed, but also spread by underground roots or stems and other reproductive parts and which, when established, are highly destructive and difficult to control by ordinary good cultural practice, including the seed of Canada thistle (*Cirsium arvense*), field bindweed (*Convolvulus arvensis*), and quack grass (*Agropyron repens*).

""Restricted noxious-weed seeds", seeds of such weeds as are very objectionable in fields, lawns or gardens, but which can be controlled by good cultural practice; including the seeds of

dodder (*Cuscuta* spp.), horsenettle (*Solanum carolinense*), wild mustards (*Brassica* spp.), limited to India mustard (*B. juncea*), charlock or wild mustard *B. Kaber* (*B. arvensis*), and black mustard (*B. nigra*), wild garlic and wild onion (*Allium* spp.), perennial sowthistle (*Sonchus arvensis*), corncockle (*Agrostemma githago*), buckhorn plantain (*Plantago lanceolata*), wild radish (*Raphanus raphanistrum*), bedstraw (*Galium* spp.) and annual bluegrass (*Poa annua*).

""Seed potatoes", Irish potato and parts thereof grown for propagation purposes.

""Seizure", a legal process carried out by court order against a definite amount of seed.

""Stop sale", an administrative order provided by law, restraining the sale, use, disposition and movement of a definite amount of seed.

""Treated", seed that has received an effective process or application of a substance designed to reduce, control or repel certain disease organisms, insects or other pests attacking such seeds or seedlings growing therefrom, or for which a claim is made.

""Tree and shrub seeds", seeds of woody plants commonly known and sold as tree or shrub seeds.

""Variety (Cultivar)", a subdivision of a kind characterized by growth, yield, disease resistance, plant, flower, fruit, seed or other characteristics by which it can be differentiated under certain conditions from other plants of the same kind, including hybrid designations.

""Type", a group of varieties (cultivars) so nearly similar that the individual varieties (cultivars) can not be clearly differentiated except under special conditions.

""Vegetable seeds", seeds of those food crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds.

""Weed seeds", the seeds of all plants generally recognized as weeds, including noxious-weed seeds.

The terms ""pure seed", ""germination", and other seed labeling and testing terms in common usage shall be defined as in the ""Rules for Testing Seeds" published by the Association of Official Seed Analysts, effective October first, nineteen hundred and seventy, and as subsequently amended.

#### **Chapter 128: Section 85 Sale of seeds; labeling or tagging containers; required information**

Section 85. Except as otherwise provided in section ninety-two, each container of agricultural, vegetable, flower or tree and shrub seed which is sold, offered for sale or exposed for sale within the commonwealth for sowing purposes shall bear thereon, or have attached thereto in a conspicuous place on one side of a plainly written or printed label or tag, in the English language, the name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within the commonwealth. If said seed has been treated, a separate label may be used, which shall bear thereon a word or statement indicating that the seed has been treated, the commonly accepted coined, chemical or abbreviated chemical name of the applied substance, and, if the substance in the amount present with the seed is harmful to humans or other vertebrate animals, a statement advising caution such as ""Do not use for food, feed or oil purposes". If said seed contains mercurials or similarly toxic substances, a statement or symbol

shall indicate that it is poisonous. It shall contain the name and number of each kind of "Restricted Noxious-Weed Seed" per pound when present.

#### **Chapter 128: Section 86 Sale of seeds; labeling or tagging containers; variety or cultivar designation**

Section 86. Each container of agricultural seeds, including lawn seeding mixtures, shall also bear the commonly accepted name of the kind and variety or cultivar of those kinds which are usually named as to variety or cultivar, as prescribed by rules and regulations, of each seed component in excess of five per cent of the whole and the percentage by weight of each in the order of its predominance. When the variety or cultivar thereof is unknown, the label or tag shall have printed thereon the words "variety unknown". When more than one component is required to be named, the word "mixture" or "mixed" shall be shown conspicuously on the label. The lot number or other lot identification, the origin, if known, of alfalfa, red clover, white clover, and field corn, except hybrid corn, shall also be shown on such label. If the origin is unknown, that fact shall be stated. The container shall bear thereon the percentage by weight of all weed seeds, the percentage by weight of agricultural seeds other than those required to be named on the label, which shall be designated as "other crop seed", and the percentage by weight of inert matter. For each agricultural seed named there shall appear, the percentage of germination, exclusive of hard seed, the percentage of hard seed, if present and the calendar month and year the test was completed to determine such percentages.

#### **Chapter 128: Section 87 Vegetable seeds; labeling or tagging containers; required information**

Section 87. Containers of one pound or less for peas, beans and sweet corn and containers of one-quarter pound or less for all other kinds of vegetable seeds shall also bear, thereon, the date of test or calendar year for which seed is packaged, and the kind and variety or cultivar of seed. For seed that germinates less than the standard last adopted by the director, there shall appear on the containers the percentage of germination, exclusive of hard seed, the percentage of hard seed, if present, the calendar month and year the test was completed to determine such percentages, and the words "Below Standard" in not less than eight point type.

Containers of more than one pound for peas, beans and sweet corn and containers of more than one quarter pound for all other kinds of vegetable seeds shall bear the kind and variety of seed, the lot number or other lot identification, the percentage of germination, exclusive of hard seeds the percentage of hard seeds, if present, and the calendar month and year the test was completed to determine such percentages and for seeds germinating less than the standard, the words "Below Standard" in not less than eight point type.

#### **Chapter 128: Section 88 Flower seeds; labeling containers; required information**

Section 88. For flower seeds the label shall include the name of the kind and variety or cultivar, if any, or a statement of type and performance characteristics as prescribed in regulations. For those having annual, biennial and perennial sorts, or any two of such sorts, a statement shall appear in a conspicuous location on the seed container to indicate whether the seed is of the annual, biennial or perennial sort.

If flower seeds are in packets of the size for use in home flower gardens the label shall contain the date of test or calendar year for which seed is packaged.

For seeds so packaged for which standard testing procedures shall have been adopted, and which germinate less than the standard last adopted by the director and approved by the commissioner under section ninety-eight the label shall contain the percentage of germination,

exclusive of hard seed, the percentage of hard seed, if present, and the calendar month and year the test was completed to determine such percentages and the words "Below Standard" in not less than eight point type.

For flower seeds in containers other than packets of the size prepared for use in home flower gardens there shall appear the lot number or other lot identification.

Seeds so packaged for which standard testing procedures shall have been adopted shall contain the percentage of germination, exclusive of hard seed, the percentage of hard seed, if present, and the calendar month and year the test was completed to determine such percentages. For seeds germinating less than the standard, there shall appear the words "Below Standard" in not less than eight point type.

#### **Chapter 128: Section 89 Tree and shrub seeds; labeling containers; required information**

Section 89. For tree and shrub seeds packaged in containers of one quarter pound or more, the label shall contain the kind of seed and variety or cultivar, the percentage by weight of pure seed, the percentage of germination of those kinds for which standard testing procedures have been adopted, the year of harvesting, the date of test or calendar year for which seed is packaged and the origin or specific locality, state and county in the United States or nearest equivalent political unit in the case of foreign countries in which the seed was harvested. If origin is unknown, that fact shall be stated.

#### **Chapter 128: Section 90 Sale of seeds; percentage of germination; labeling; false advertisements; noxious weed seeds**

Section 90. No person shall sell, offer for sale or expose for sale any agricultural, vegetable, flower or tree and shrub seed within the commonwealth unless the test to determine the percentage of germination required by sections eighty-six to eighty-nine, inclusive was completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale or offering for sale or transportation. The records of such tests shall be available to the commissioner or his duly authorized assistants for a period of at least one year from date of test. The director may by rules and regulations designate a shorter period for kinds of seed which he finds under ordinary conditions of handling will not maintain during the aforesaid nine-month period, a germination within the established limits of tolerance, or a longer period for any kind of seed which is packaged in such container materials and under conditions such as provided for by hermetically sealed containers, prescribed by the director as he finds will, during such longer period, maintain the viability of said seed under ordinary conditions of handling.

Neither shall seed be sold which is not labeled in accordance with the provisions of sections eighty-four to one hundred and one, inclusive; nor which bears false or misleading labeling; nor pertaining to which there has been a false or misleading advertisement; nor consisting of or containing, "Prohibited noxious weed seeds" nor consisting of or containing "Restricted noxious weed seeds" at a rate per pound in excess of the number declared on the label attached to the container of the seed or associated with the seed, subject to tolerances; nor containing more than one per cent of all weed seeds; nor labeled to use the word "trace" as a substitute for any statement as to quality or percentage which is required; nor shall seed be sold which is so weak or low in germination according to standards adopted by rules and regulations prescribed by the director under the provisions of section ninety-eight as to be unfit for seeding purposes; nor which is represented to be "certified seed", "registered seed" or "foundation seed" or designated by any other term conveying similar meanings, unless such seed has been produced, processed and labeled in accordance with the procedures and in compliance with the rules and regulations of an officially recognized certification agency or agencies and bears an official tag or label of

such an agency, or which is represented as hybrid seed unless such seed conforms to the definition of hybrid in section eighty-four, except that this provision shall not apply to variety names in common trade usage.

#### **Chapter 128: Section 91 Defacing or destroying labels; false advertising; prohibited sales**

Section 91. No person within the commonwealth shall detach, alter, deface or destroy any label provided for in said sections eighty-four to one hundred and one, inclusive, or the regulations promulgated thereunder; nor alter or substitute seed, in a manner that may defeat the purpose of said sections; nor disseminate any false or misleading advertisement concerning agricultural, vegetable, flower or tree and shrub seed; nor hinder or obstruct any authorized person in the performance of his duties under said sections eighty-four to one hundred and one, inclusive; nor fail to comply with an official order to withhold from sale certain seeds as provided in section ninety-five; nor move or otherwise handle or dispose of any lot of seed held under a "stop-sale" order or tags attached thereto, except with the written permission of the enforcing officer, and for the purpose specified therein.

No person shall sell, offer or expose for sale any color mixture of a single kind of flower seed representing four or more colors or shades, in which any one color or shade occurs in sixty per cent or more of the plants which the mixture is capable of producing, unless colors or shades and approximate percentage of each is indicated on the label, or sell, offer or expose for sale a mixture of flower seed kinds in which any one kind is present in excess of twenty-five per cent by seed count unless the kinds present and the approximate percentage of each are indicated on the label.

#### **Chapter 128: Section 92 Application of sections 85 to 91**

Section 92. Sections eighty-five to ninety-one, inclusive, shall neither apply to seed or grain not intended for sowing purposes, nor to seed for sowing purposes in storage in, or consigned to, a seed cleaning or processing establishment for cleaning or processing; provided, that the invoice or labeling accompanying any shipment of seed bears the statement "seeds for processing", and provided that any labeling or other representation made with respect to the uncleaned or unprocessed seed shall be subject to sections eighty-four to one hundred, inclusive.

#### **Chapter 128: Section 93 Exemption from penalty of section 100; limitations**

Section 93. No person shall be subject to the penalties of section one hundred for having sold or offered or exposed for sale in the commonwealth any agricultural, vegetable, flower or tree and shrub seeds which were incorrectly labeled or represented as to kind, variety (cultivar) or origin, which seeds cannot be identified by examination thereof, unless he has failed to obtain an invoice or grower's declaration or other labeling information giving kind, variety or origin, if required, and to take such other precautions as may be necessary to insure the identity to be that stated.

The labeling requirements for all vegetable and agricultural seeds, including mixtures, flower and tree or shrub seeds shall be considered to have been met if the seed is taken from a properly labeled container in the presence of the purchaser.

#### **Chapter 128: Section 94 Enforcement; prosecutions**

Section 94. The commissioner and his duly authorized assistants shall have authority to enforce sections eighty-four to one hundred and one, inclusive, and to prosecute all violations thereof. Before any prosecution is begun by said commissioner or any of his duly authorized assistants, the parties concerned shall be given an opportunity to be heard before said commissioner or a person designated by him for such purpose. The parties concerned shall be given reasonable

notice of the hearing, specifying the day, hour and place thereof, and accompanied by a description of the alleged violation.

**Chapter 128: Section 95 Access for inspection; taking samples for tests and analyses; cooperation with United States Department of Agriculture; withholding seeds from sale**

Section 95. The commissioner, either in person or his assistants, shall have free access at all reasonable hours to each building or other place where agricultural seeds or mixtures thereof, vegetable seeds, flower seeds or tree and shrub seeds are stored, sold or offered or exposed for sale, for the purpose of inspection of such seeds, and, upon tendering the market price, may take samples of such agricultural, vegetable, flower or tree and shrub seeds or mixtures thereof for tests and analyses.

Such samples shall be thoroughly mixed and two official samples taken therefrom; each official sample shall be securely sealed. Such official samples shall be submitted by said commissioner or his duly authorized assistants to the director for testing and analyzing. One of such samples shall be held by the director or his duly authorized assistant at the disposal of the person named on the label as the vendor of the seed samples for six months after the results of the analysis have been reported, as provided in section ninety-seven, and the other sample retained by the director or such assistant for analysis.

The commissioner shall co-operate with the United States department of agriculture in seed law enforcement.

The commissioner may order that any agricultural seeds or mixtures thereof, vegetable seeds, flower seeds or tree and shrub seeds, the containers of which he finds are not tagged or labeled as provided in section eighty-five or which do not conform to the statements on the tags or labels attached to the containers thereof, be withheld from sale until properly tagged or labeled or until made to conform to the statements on the tags or labels attached to the containers thereof. Any person aggrieved by such an order may, within ten days after the entry thereof, appeal therefrom by petition to the superior court in the county where he resides or has his usual place of business or in the county of Suffolk. The court shall hear such petition speedily in accordance with the usual course of procedure in equity, and may affirm, modify or revoke such order. Such order shall remain in force until so modified or revoked.

**Chapter 128: Section 96 Seizure and condemnation; court proceedings**

Section 96. Any lot of agricultural, vegetable, flower or tree and shrub seed not in compliance with the provisions of sections eighty-four to one hundred, inclusive, shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which the seed is located. If the court finds the seed to be in violation of said sections, and orders the condemnation of such seed, it shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of the commonwealth; provided, that the court shall not order such disposition of such seed without first having given the claimant an opportunity to apply to the court for release of such seed or permission to process or relabel it to bring it into compliance with said sections.

**Chapter 128: Section 97 Tests and analyses; reports; publication of results**

Section 97. The director shall cause such tests and analyses as he may specify to be made of samples collected under section ninety-five in order to determine the quality of the seeds contained in such samples. The results of all such analyses shall be reported to the commissioner. To enable the director to determine the trueness to type or variety of vegetable, flower and other seeds, he shall provide that field tests be made of such samples of seeds as he

may designate, and may publish the results of all such tests and analyses as are in accordance with the provisions of this section.

**Chapter 128: Section 98 Seed germination standards; enforcement**

Section 98. The director, with the approval of the commissioner, shall, subject to the provisions of chapter thirty A, adopt vegetable seed and flower seed germination standards, prescribe rules and regulations from time-to-time, and in like manner, modify or amend rules and regulations governing the methods of sampling, inspecting, analyzing, testing and examining agricultural, vegetable, flower or tree and shrub seed and the tolerances to be followed in the administration of sections eighty-four to one hundred, inclusive, which 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 efficient enforcement of said sections.

**Chapter 128: Section 99 Purity and germination tests; fees; disposition**

Section 99. Any person residing or doing business in the commonwealth may submit to the director samples of seeds for purity and germination tests subject to such rules and regulations as may be adopted by the director including a reasonable charge or fee for such tests. Receipts under this section shall be paid into the state treasury.

**Chapter 128: Section 100 Penalty**

Section 100. Whoever sells, offers or exposes for sale any lot of agricultural seeds or mixtures thereof, vegetable seeds, flower seeds or tree and shrub seeds without complying with the requirements of sections eighty-four to ninety-nine, inclusive, applicable thereto or in violation of any order, under section ninety-five of the commissioner or of the superior court if an appeal is taken, or whoever falsely marks or labels any such seed or mixture, or impedes, obstructs or hinders the commissioner or any of his duly authorized agents, or the director or any of his duly authorized assistants, in the discharge of the authority or duties conferred or imposed by any provision of said sections, shall be punished by a fine of not more than five hundred dollars.

**Chapter 128: Section 101 Sale of seed potatoes restricted; waiver; penalty**

Section 101. No person shall sell, offer to sell or expose for sale seed potatoes that do not conform to the standards and allowable tolerances set forth in the rules and regulations established by the division of markets in the department. The director of the division of markets may when disease free stock is not available waive the provisions of this section for such periods of time as he may deem necessary. Whoever violates the provisions of this section shall be punished by a fine of not more than five hundred dollars.