

# Weeding Out Bad Seeds: How New York State's Seed Law Protects Hemp Growers from Unscrupulous Seed Vendors

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New York State's hemp industry is booming thanks to the State's Industrial Hemp Agricultural Research Program and the State's newly enacted hemp legislation, which encourage the growth, production and distribution of hemp and hemp products. In addition to cementing the State as a major player in the burgeoning hemp industry market, the Research Program is also reinvigorating family farms and revitalizing the economic viability of rural New York State. The new law is expected to encourage these developments further.

The growth of the hemp market has seen a corresponding influx of seed vendors in the State. Consumers should be cautious when purchasing from these vendors, who oftentimes mislabel their seeds with inaccurate germination rates and other misinformation. Hemp growers can avoid the dangers of mislabeled seeds by seeking the protections of New York State's Seed Law, a regulatory mechanism that authorizes the State to sample, identify and remove mislabeled seeds from commerce.



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In addition, a regulatory sample may only be collected from an unopened package immediately upon delivery to a hemp grower. Growers cannot request that a regulatory sample be taken several days, or weeks, after accepting seed. The strict time-frame for collection is intended to protect the chain of custody and ensure that the seeds have not been tampered with. Once seed is sold and a package is opened, the vendor no longer has control over how it is stored. Seed viability may be altered if a grower does not store it correctly.

Given the small window of time during which a regulatory sample can be collected, growers should immediately contact the Division of Plant Industry after ordering seed to arrange for the collection of a regulatory sample upon delivery. Although growers will have to provide approximately 400 to 800 seeds for a sample, the long-term benefits of having the seed tested overwhelmingly outweigh the short-term cost. Indeed, identifying mislabeled seeds prior to planting will help growers avoid increased labor costs, the decimation of their crops, and costly and time-consuming

litigation to recover damages for their losses.

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## New York State's Seed Law

The Seed Law requires that each container of seed sold, offered for sale or transported in New York State for planting purposes has attached to it a label containing certain information, including the germination rate of the seed. Vendors are responsible for accurately labeling the seed and are prohibited from affixing false or misleading labeling to their seed.

The Seed Law does not create a private right of action for growers. Rather, it grants the State's Department of Agriculture broad enforcement powers to regulate the seed sold within its borders. Among other things, the Department can order vendors to destroy seeds determined not to be in compliance with the provisions of the State Law. It can also issue stop sale orders and recover monetary penalties against vendors.

## Activating the State's Enforcement Powers

Before the Department can initiate an enforcement action, it must collect a "regulatory sample" of the vendor's seed for analysis at the New York State Seed Testing Laboratory. A regulatory sample is collected by a horticultural inspector with the Department's Division of Plant Industry and sent directly to the Laboratory in accordance with the guidelines developed by the Association of American Seed Control Officials Handbook on Seed Sampling. Samples voluntarily submitted to the Laboratory by growers are not deemed regulatory samples and, thus, cannot form the basis for any enforcement action, regardless of the test results.