State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: April 29, 2015

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
John Petty, Administrator, Agricultural Resource Management Division
Brian Kuhn, Director, Plant Industry Bureau

SUBJECT: **ATCP 20- Seed Labeling and Sale; Rulemaking Scope Statement**

TO BE PRESENTED BY: Greg Helmbrecht

REQUESTED ACTION:

At the May 13, 2015 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) to amend s. ATCP 20, a DATCP rule related to the labeling of agricultural seed. The proposed amendment will address the regulation of non-commercial exchanges of small quantities of seed, for example, seed exchanges hosted by public libraries or local gardening associations.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with 2011 Wisconsin Act 21 (s.227.135(2), Stats.), the Governor approved this scope statement for permanent rule changes on March 5, 2015 thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP must publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the March 16, 2015 issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

If the Board approves the scope statement, the Department will begin work to draft the permanent rule. Approval of a scope statement is just the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP Board, approved by the Governor, completed the legislative review process and adopted by the Secretary.

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule Number: Ch. ATCP 20, Wis. Adm. Code (Existing)

Relating to: Seed Labeling and Sale

1. Description of the objective of the rule:

This proposed rule would modify current seed labeling rules in order to address the non-commercial public and private exchange of small quantities of agricultural seed (as defined in s. ATCP 20.01 (1)), for example, seed exchanges hosted by public libraries or local gardening associations. This modification is specifically for such seed within the state of Wisconsin that is not sold, nor offered for sale, nor distributed for sale. This modification will address only such seed that is donated or freely exchanged. The objective of the rule change is to address and define non-commercial distribution in order to identify possible regulatory licensing exemptions or alternate labeling requirements for such activity.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background: DATCP has general authority, under s. 93.07 (1), Wis. Stats., to interpret laws under its jurisdiction. DATCP has specific authority, under s. 94.45 (6), Wis. Stats., to promulgate rules prescribing standards for the labeling, sampling, testing, distribution and sale of agricultural seed and vegetable seed.
Proposed policies: This proposed rule change would more clearly define s. ATCP 20.01 (33) "Seed Labeler" and create a policy governing the labeling of seed made publicly available at seed libraries and other venues of non-commercial seed exchange.
Policy Alternatives: If DATCP does nothing, seed libraries and non-commercial seed exchanges may be at risk of prosecution for violation of s. ATCP 20. Home gardeners, the seed industry and the environment may be at greater risk of the spread of restricted and prohibited noxious weed seed. Currently it is not clear to what standards such seed exchanges can or should be held for seed labeling. Users of such seed exchanges may not be aware of the risks of sowing donated or free seeds.

3. Statutory authority for the rule (including the statutory citation and language):

Sections 93.07 (1) and 94.45 (6), Wis. Stats.

93.07 Department duties. It shall be the duty of the department:
(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

94.45 Powers and authority of the department.

(6) The department shall promulgate rules that do all of the following:

(a) Prescribe standards for the labeling, distribution, and sale of agricultural seed and vegetable seed.

(b) Govern methods of sampling, inspecting, analyzing, testing, and examining agricultural seed and vegetable seed.

(c) Prescribe tolerances for purity and rate of germination of agricultural seed and vegetable seed.

(d) Prescribe tolerances for the occurrence of noxious weed seeds in agricultural seed and vegetable seed.

(e) Identify noxious weeds and prohibited noxious weeds.

(f) Govern the issuance of seed labeler licenses.

(g) Govern the administration and enforcement of ss. 94.38 to 94.46.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.1 FTE staff time to develop these rules. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

This rule will affect seed libraries and other venues of non-commercial seed exchange and any person using such entities as a seed source.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

The Federal Seed Act (7 USC 1511-1611) governs the labeling of agricultural seed intended for interstate commerce. This proposed rule change is intended to address the regulation of non-commercial distribution of agricultural seed within Wisconsin. It is not effected by and does not conflict with existing federal law.

7. Anticipated economic impact:

DATCP expects the proposed rule to have minimal economic impact statewide and locally.

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Ben Brancel

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Secretary

Department of Agriculture, Trade and Consumer Protection

2-13-15

Date Submitted