



State of Wisconsin
Governor Scott Walker

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

DATE: May 4, 2016

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
John Petty, Administrator, Agriculture Resource Management Division

SUBJECT: ATCP 20-Label Requirements for Non-Commercial Seed Sharing (Hearing Draft)

PRESENTED BY: Greg Helmbrecht

REQUESTED ACTION:

At the May 17, 2016, Board meeting, the Department of Agriculture, Trade and Consumer Protection ("Department") will ask the Board to authorize public hearings on a proposed rule (copy attached) related to Labeling Requirements for Non-Commercial Seed Sharing.

SUMMARY:

This rule will 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)). This rule makes Wisconsin's seed law applicable to seed distribution for non-commercial purposes conducted by seed sharing organizations, commonly known as seed libraries. The seed-sharing organizations are required to meet basic labeling requirements and are required to be licensed.

Background

The Department has general authority, under s. 93.07 (1), Wis. Stats., to interpret laws under its jurisdiction. The Department 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. This rule clearly defines s. ATCP 20.01 (33) "Seed Labeler" and creates a policy governing the labeling of seed made publicly available at seed libraries and other venues of non-commercial seed exchange.

Rule Content

General

This rule does all of the following:

- Makes Wisconsin's seed law applicable to seed distribution for non-commercial purposes conducted by seed-sharing organizations, commonly known as seed libraries.

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- Modifies Wisconsin rules governing the sale and labeling of agricultural and vegetable seed to require non-commercial seed-sharing entities to meet basic labeling requirements and to be licensed.

Fiscal Impact

This rule will not have fiscal impact on state government.

Business Impact

This rule will have no impact upon businesses as it relates only to non-commercial distribution of seed.

Environmental Impact

This rule will not have any environmental impact.

Federal and Surrounding State Programs

Federal Programs

There are no federal regulations related to this rule.

Surrounding State Programs

There are no similar programs in surrounding states.

Next Steps

If the Board authorizes public hearings on this rule, the Department will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. The Department will hold public hearings on the dates and at the locations specified in the hearing notice. The hearing dates and locations have not yet been determined.

Following the public hearings, the Department will prepare the final draft rule which will be transmitted to the Governor for his written approval and then presented for the Board's consideration. If the Board approves the final draft rule, the Department will transmit that final draft rule to the Legislature for review by appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

The Wisconsin department of agriculture, trade and consumer protection proposes the following rule *to amend* ATCP 20.01 (1), (5) and (33), 20.04 (1) (intro.), 20.06 (2) (c) 1 and (b) and 20.14 (1), (4) (intro.) and (5) (intro.) and to create 20.01 (23m) and 20.04 (6) *relating to* non-commercial distribution of seed.

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“Department”) administers Wisconsin’s seed law under ss. 94.38 to 94.46, Stats. The seed law regulates the labeling and sale of agricultural seed. The law applies to nearly all seed sold for sowing purposes, including crop seed, vegetable seed for home gardens, lawn and turf seed, flower seed and native species seed. The law does not apply to tree or shrub seeds.

This rule makes Wisconsin’s seed law applicable to seed distribution for non-commercial purposes conducted by seed-sharing organizations, commonly known as seed libraries. The seed sharing organizations are required to meet basic labeling requirements and are required to be licensed.

Statutes Interpreted

Statutes Interpreted: ss. 93.07(1), 94.38 to 94.46, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1) and 94.45(6), Stats.

Explanation of Statutory Authority

The Department has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. The Department has specific authority, under ss. 94.45(6), Stats., to promulgate rules for:

- The testing, labeling, distribution and sale of agricultural seed (including crop seed, vegetable seed for home gardens, lawn and turf seed, flower seed and native species seed).
- Seed labeler licensing.
- Seed law administration.

Related Rules or Statutes

This rule has no related rules or statutes.

Plain Language Analysis

This rule modifies Wisconsin rules governing the sale and labeling of agricultural and vegetable seed to require non-commercial seed sharing entities to meet basic labeling requirements and to be licensed.

Business Impact

This rule will have no impact upon businesses as it relates only to non-commercial distribution of seed.

Environmental Impact

This rule will have no environmental impact.

Federal and Surrounding State Programs

Federal Programs

USDA administers the following federal laws:

- *The federal seed act (7 USC 1551 et. seq.)*. Under the federal seed act, seed shipped in interstate commerce must be labeled with information that allows seed buyers to make informed choices. Label information must be truthful.
- *The federal plant variety protection act (7 U.S.C. 2321 et seq.)*. Under the plant variety protection act, a plant breeder may obtain a certificate of plant variety protection (similar to a patent) for a new plant variety that meets certain criteria.

This rule is consistent with these federal laws.

Surrounding State Programs

Most states, and all of the states surrounding Wisconsin, have adopted seed labeling and testing

standards that are similar to the standards under this rule.

Data and Analytical Methodologies

The Department consulted with WCIA (Wisconsin Crop Improvement Association), AASCO (Association of American Seed Control Officials), ASTA (American Seed Trade Association) and AOSA, Inc. (the Association of Official Seed Analysts) to develop the standards in this rule. The Department also consulted with an advisory committee that included Wisconsin seed industry representatives along with seed libraries from Wisconsin and across the nation.

DATCP Contact

The Department will hold a public hearing on this rule on a date to be determined (The Department will publish a hearing notice in the Wisconsin administrative register). Questions and comments related to this rule, including hearing comments, may be directed to:

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Madison, WI 53708-8911
Telephone (608) 224-4596
E-Mail: Greg.Helmbrecht@datcp.state.wi.us

SECTION 1. ATCP 20.01 (1) and (5) are amended to read:

ATCP 20.01 (1) "Agricultural seed" means any kind or mixture of kinds of plant seed, other than tree or shrub seed, which is sold, offered for sale or distribution, or displayed ~~or distributed~~ for distribution or sale for sowing purposes. "Agricultural seed" includes crop seed, vegetable seed, lawn or turf seed, flower seed and native species seed.

(5) "Container" means any package, packet, bag or other receptacle in which agricultural seed is sold, offered for sale or distribution, or displayed ~~or distributed~~ for distribution or sale.

SECTION 2. ATCP 20.01 (23m) is created to read:

ATCP 20.01 (23m) "Non-commercial seed sharing" means the distribution of seeds without monetary or any other form of compensation from the recipient.

SECTION 3. ATCP 20.01 (33) is amended to read:

ATCP 20.01 (33) "Seed labeler" means a person who holds a valid license under s. ATCP 20.18, and who accepts legal responsibility for the labeling that accompanies a container or lot of agricultural seed that is sold, offered for sale or distribution, or displayed ~~or distributed~~ for distribution or sale in this state.

SECTION 4. ATCP 20.04 (1) (intro.) is amended to read:

ATCP 20.04 (1) (intro.) Except as provided in subs. (3) to ~~(5)~~(6), every container or lot of agricultural seed that is sold, offered for sale or distribution, ~~or distributed~~ or exposed ~~or distributed~~ for distribution or sale in this state shall be labeled with all of the following:

SECTION 5. ATCP 20.04 (6) is created to read:

ATCP 20.04 (6) LABEL AND OTHER REQUIREMENTS FOR NON-COMMERCIAL SEED SHARING. (a) Each container of agricultural, vegetable, and flower seed distributed for sowing purposes without monetary or any other form of compensation from the recipient shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag, in the English language, containing the following information:

1. The name of the species or commonly accepted name of kind or kind and variety of each agricultural seed component present. Hybrids shall be labeled as hybrids.
2. A word or statement indicating if the seed has been treated. If the seed has been treated, the container shall be labeled in accordance with applicable state and federal law.
3. The name and address of the non-commercial seed sharing entity.
4. The seed shall be free of foreign material other than coatings or treatments, including germination medium, mulch, fertilizer, pre-planted containers, mats, tapes, or other planting devices.

5. A distributed container may not hold more than 8 ounces of agricultural seed or more than 4 ounces of vegetable or flower seed.

6. Germination and purity analysis information is not required however, if a germination or purity percentage is noted on the label, it must state whether the analysis was performed according to the AOSA rules for testing seed.

(b) At each location where non-commercial seed sharing is conducted, a legible and visible sign shall state that the seeds being distributed may not meet germination or varietal purity standards as prescribed for all other seed sold or distributed in this state.

SECTION 6. ATCP 20.06 (2) (a) 1 and (b) are amended to read:

ATCP 20.06(2) (a) 1. The label information under sub. (1) shall be based on a seed germination analysis under s. ATCP 20.02 that is completed within the 12-month period immediately preceding the month in which the seed is sold, offered for sale or distribution, or displayed ~~or distributed~~ for distribution or sale, except that for lawn or turf seed the label information may be based on a seed germination analysis under s. ATCP 20.02 that is completed within the 15-month period immediately preceding the month in which the seed is sold, offered for sale, or displayed or distributed for sale.

(b) If seed is packaged in a hermetically sealed container as provided in sub. (5), the label information under sub. (1) may be based on a germination analysis under s. ATCP 20.02 that is completed within the 36-month period immediately preceding the month in which the seed is sold, offered for sale or distribution, or displayed ~~or distributed~~ for distribution or sale. Seed on which a germination analysis under this paragraph has expired may not be sold, offered for sale, or distribution or displayed for distribution or sale unless it has been retested within the 9-month period immediately preceding month in which it is sold, offered for sale or distribution, or

displayed ~~or distributed~~ for distribution or sale, and is re-labeled with the new analysis results and extended expiration date.

SECTION 7. ATCP 20.14 (1), (4) (intro.) and (5) (intro.) are amended to read:

ATCP 20.14 (1) Sell, offer for sale or distribution, or display ~~or distribute~~ for distribution or sale in this state any agricultural seed that is not labeled according to this chapter, or that is accompanied by any false, deceptive or misleading labeling.

(4) Sell, offer for sale or distribution, or display ~~or distribute~~ for distribution or sale in this state any agricultural seed that contains any of the following:

(5) Add any foreign material, other than the following materials, to any agricultural seed that is sold, offered for sale or distribution, or displayed ~~or distributed~~ for distribution or sale in this state:

SECTION 8. EFFECTIVE DATE: This rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2016.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Label and Other Requirements for Non-Commercial Seed Sharing
Adm. Code Reference: ATCP 20
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 15-R-05

Rule Summary

This rule makes Wisconsin's seed law applicable to non-commercial seed-sharing organizations commonly known as seed libraries.

General

This rule modifies Wisconsin rules governing the distribution, sale and labeling of agricultural and vegetable seed to require non-commercial seed-sharing organizations to meet minimal labeling requirements and to be licensed.

Small Business Affected

This rule will have no affect on small business.

Reporting, Bookkeeping and other Procedures

The proposed rule does not regulate any small businesses and thus there are no reporting, bookkeeping, or other procedures in the proposed rule for small businesses.

Professional Skills Required

The proposed rule does not regulate any small businesses and thus there is no profession skill required for small businesses.

Accommodation for Small Business

The proposed rule does not regulate any small businesses and thus there are no accommodations necessary.

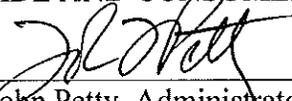
Conclusion

The proposed rule has no direct effect on small business This proposed rule will help to protect consumers, the seed companies Plant Variety Protected (PVP) seeds, and the environment from the potential spread of prohibited and restricted noxious weed seed.

This rule will not have any adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

Dated this 27th day of April, 20 16

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
John Petty, Administrator
Division of Agricultural Resource Management

**ADMINISTRATIVE RULES
FISCAL ESTIMATE AND
ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

Ch. ATCP 20, SEED LABELING AND SALE

Subject

Non-commercial seed distribution

Fund Sources Affected

Chapter 20, Stats. Appropriations Affected

GPR FED PRO PRS SEG SEG-S

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy

Specific Businesses/Sectors

Local Government Units

Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the Rule

The Department of Agriculture, Trade and Consumer Protection ("Department") administers Wisconsin's seed law under ss. 94.38 to 94.46, Stats. The seed law regulates the labeling and sale of agricultural seed. The law applies to nearly all seed sold for sowing purposes, including crop seed, vegetable seed for home gardens, lawn and turf seed, flower seed, and native species seed. The law does not apply to tree or shrub seeds.

This rule will apply essential parts of the licensing and labeling regulation to non-commercial distributors of seed.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This rule will not affect businesses (small or large).

- This rule will only affect the nonprofit organizations involved in seed exchanges or seed libraries. It will allow for the noncommercial distribution of seed with minimum labeling and licensing.

Local Governments

- This rule will not impact local governments. Local governments will not have any implementation or compliance costs.

Utility Rate Payers

- The rule will have no effect on utility rate payers.

Department Bureau of Plant Industry

- The Bureau of Plant Industry will be able to absorb costs related to inspections and compliance work in its current budget, based on the small number of nonprofit seed distributors that are expected to be affected.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Implementation of this rule will help protect Wisconsin's seed industry by applying minimum labeling requirements to all seed being distributed at a non-commercial level. Organizations distributing seed at a seed exchange will be educated on the Federal Plant Variety Protection (PVP) Act.

This rule will assist in stopping the spread of restricted and prohibited noxious weed seeds.

If this rule is not enacted, Wisconsin's seed industry could suffer losses due to PVP seed being sold without permission. The environment and public could also suffer from the spread of restricted and prohibited noxious weed seeds.

Long Range Implications of Implementing the Rule

In the long-term, implementation of this rule will benefit the environment, the citizenry, and businesses that purchase and plant seed in Wisconsin. By creating minimum restrictions regarding the noncommercial distribution of seed, the potential for spreading restricted and prohibited noxious weed seeds is reduced and PVP seeds are better protected. The public is also made aware of what they are receiving which can also protect them.

Compare With Approaches Being Used by Federal Government

The Federal Government regulates the interstate movement of seed and does not currently regulate local noncommercial seed sharing.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

This rule has been created in part via cooperation of a national effort to streamline seed laws through the Recommended Uniform State Seed Law (RUSSEL) developed by Association of American Seed Control Officials (AASCO). RUSSEL was developed and is maintained by AASCO as a "model" law for states and federal programs. RUSSEL is intended to help states develop their laws and to provide consistency among state seed law to ease interstate movement of seed.

Comments Received in Response to the Public's Economic Impact and DATCP Response

No comments were received in response either to the posting on the Department external website or the statewide administrative rules website.

Greg Helmbrecht
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