DATCP Docket No. 15-R-05
Rules Clearinghouse No.

Hearing Draft Rule
March 31, 2016

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 statues.

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 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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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 <u>or distribution</u>, or displayed ~~or distributed~~ for <u>distribution or</u> 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 <u>or distribution</u>, or displayed ~~or distributed~~ for <u>distribution or</u> 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