



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Sheila E. Harsdorf, Secretary

DATE: November 13, 2017

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Sheila Harsdorf, Secretary *Sheila Harsdorf*
John Petty, Administrator, Agricultural Resource Management Division *John Petty*

SUBJECT: **ATCP 20 Permanent and Emergency Scope Statement; Seed Labeling and Sale –Addition of Palmer Amaranth and Waterhemp as Listed Prohibited Noxious Weed Seeds**

TO BE PRESENTED BY: Greg Helmbrecht, Bureau of Plant Industry

REQUESTED ACTION:

At the November 16, 2017 Board meeting, the Department of Agriculture, Trade and Consumer Protection (Department) will ask the DATCP Board to approve a “Statement of Scope” (copy attached) for proposed amendments to ATCP 20.01(27) related to the Prohibited Noxious Weed Seed list. The proposed amendments would add *Amaranthus palmeri* (Palmer amaranth), and *Amaranthus tuberculatus* (Waterhemp) to the definition. This rule change is being proposed because of a push from the seed industry due to the aggressive nature and herbicide resistance being found in these weed seeds. The goal is to prevent the arrival of these weed seeds in seed sources in Wisconsin to help protect industry, farmers, and the environment. These herbicide resistant weeds are accounting for major crop yield losses and increased production costs in other states, including Iowa.

A scope statement spells out the general purpose and scope of a proposed rule. The Department 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. The Department obtained approval of the “scope statement” from the Governor’s office on September 18, 2017.

The Department must publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration, at least 10 days before the Board approves the scope statement. The Department filed the attached Statement of Scope with the Legislative Reference Bureau for publication in the October 16, 2017, issue of the Wisconsin Administrative Register. The Department also filed a copy with Department of Administration, Small Business Regulatory Review Board, and the Legislative Council Administrative Rules Clearinghouse

If the Board approves the scope statement, the Department will begin work to draft the emergency and permanent rules. The Board will have at an opportunity review the emergency rule and two opportunities to review and approve the proposed permanent rule.

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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: Addition of Palmer Amaranth and Waterhemp as listed prohibited noxious weed seeds

Rule Type: Both Permanent and Emergency

1. Finding/nature of emergency (Emergency Rule only):

The emergence of Palmer amaranth and waterhemp (types of pigweeds) in adjacent states, including Iowa and their detection at several locations in Wisconsin is detrimental to productive farmland. Data collected by Purdue University researchers shows that the herbicide resistance being found in Palmer amaranth and Waterhemp can reduce crop yields by 41% to 78%.

Both species are characterized by their season-long emergence, and if uncontrolled, early emerging Palmer amaranth and waterhemp can produce over 100,000 seeds per plant and significantly reduce crop yield or even interfere with harvest equipment. Palmer amaranth can grow 10 feet tall with a circumference as thick as a baseball bat. It can reroot itself if pulled and tossed in a field. With no surrounding crop, just one plant can produce 1 to 1.8 million seeds.

Both plants are dioecious, meaning there are male and female plants, which allows for a lot of genetic variability and that makes it easier to create biotypes that resist herbicides.

Without listing Palmer amaranth and waterhemp as prohibited noxious weed seeds, it is possible that seed containing these weed seeds may be sold in Wisconsin.

2. Detailed description of the objective of the proposed rule:

This proposed rule modification will update the current definition of Prohibited Noxious Weed Seed set forth in ATCP 20.01 (27) to include ***Amaranthus palmeri* (Palmer amaranth) AND *Amaranthus tuberculatus* (Waterhemp)**. The objective of the rule change is to address concerns by industry regarding these weed seeds.

(27) "Prohibited noxious weed seeds" means the seeds of weeds that are highly destructive and difficult to control by good cultural practices and use of herbicides. "Prohibited noxious weed seeds" includes *Convolvulus arvensis* (field bindweed), *Euphorbia esula* (leafy spurge), *Cirsium arvense* (Canada thistle), *Panicum miliaceum* (wild proso millet), *Eriochloa villosa* (woolly cupgrass), *Pueraria montana var. lobata* (kudzu), *Polygonum perfoliatum* (mile-a-minute weed), *Centaurea picris* (Russian knapweed), and *Centaurea maculos* (spotted knapweed).

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives: 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 proposed rule change would modify the definition in ATCP 20.01 (27) "Prohibited noxious weed seeds" to include *Amaranthus palmeri* (Palmer amaranth) AND *Amaranthus tuberculatus* (Waterhemp). Seed labelers are currently

subject to prohibition on the distribution of prohibited noxious weed seeds and generally have processes in place for complying with the list of prohibited noxious weed seeds. If the Department does nothing, Wisconsin's seed industry and the environment are at risk of the introduction of these weeds, including pesticide-resistant varieties which can cause financial loss to farmers and threaten native habitats.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The Department has specific authority, under s. 94.45 (6)(e), Wis. Stats., to promulgate rules "identifying noxious weeds and prohibited noxious weeds." Noxious weeds are currently listed in ATCP 20.01(27).

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

The Department estimates that it will use approximately 0.1 FTE staff time to develop this rule change. This includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

6. List with description of all entities that may be affected by the proposed rule:

This rule will affect seed labelers and producers.

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

This rule proposal would also update the Federal Seed Act (7 USC 1511-1611) which governs the labeling of agricultural seed intended for interstate commerce. The list of State Noxious-Weed Seed Requirements Recognized in the Administration of the Federal Seed Act would be updated to reflect our changes

www.ams.usda.gov/rules-regulations/fsa.

It is not affected by and does not conflict with existing federal law.

8. Anticipated economic impact of implementing the rule:

DATCP expects the proposed rule to have minimal economic impact.

Contact Person: Gregory Helmbrecht, State Seed Control Official, DATCP

Phone (608) 224-4596



Jeff Lyon
Deputy Secretary
Department of Agriculture, Trade and Consumer Protection

October 6, 2017

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

September 18, 2017

Jeff Lyon
Interim Secretary
Wisconsin Department of Agriculture, Trade, and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

RE: Scope Statement for Ch. ATCP 20 relating to seed labeling and sale: addition of Palmer Amaranth and Waterhemp as listed prohibited noxious weed seeds

Dear Secretary Lyon,

I hereby approve the statement of scope submitted on August 21, 2017 to SBO, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter ATCP 20 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

September 18, 2017

Jeff Lyon
Interim Secretary
Wisconsin Department of Agriculture, Trade, and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

RE: Scope Statement for Emergency Rule modifying Ch. ATCP 20 relating to seed labeling and sale: addition of Palmer Amaranth and Waterhemp as listed prohibited noxious weed seeds

Dear Secretary Lyon,

I hereby approve the statement of scope submitted on August 21, 2017 to SBO, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule modifying Chapter ATCP of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.24(1)(e)1d.

Sincerely,

Scott Walker
Governor