



State of Wisconsin
Governor Scott Walker

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

DATE: February 14, 2018

TO: Board of Agriculture, Trade and Consumer Protection

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

SUBJECT: ATCP 20 Seed Labeling and Sale – Addition of Palmer Amaranth and Waterhemp as Listed Prohibited Noxious Weed Seeds

REQUESTED ACTION:

At the February 27, 2018 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize public hearings on a proposed rule (copy attached) related to the addition of Palmer Amaranth and Waterhemp to the Prohibited Noxious Weed Seeds list in ATCP 20.

Explanation of Statutory Authority

The Department has express authority, under s. 94.45(6)(e), Stats. to promulgate rules that identify noxious weeds and prohibited noxious weeds in Administrative Rule Chapter ATCP 20

Background

“Prohibited noxious weed seeds” are defined in Wis. Admin. Code ATCP 20.01(27) as the seeds of weeds that are highly destructive and difficult to control by good cultural practices and use of herbicides.

Palmer amaranth and Waterhemp are both very destructive and difficult to control and are not currently listed as prohibited noxious weed seeds in Wisconsin. This means it is currently not a violation for these weed seeds to be distributed in seed mixes in Wisconsin. Adjacent states, including Iowa, are facing the emergence of these herbicide-resistant weeds due to the distribution of seed that included these weeds. These weeds spread quickly and are extremely difficult to eradicate, risking cropland and crop production.

Rule Content

Adding Palmer amaranth and Waterhemp to the list of “Prohibited noxious weed seeds” in ATCP 20 will prohibit the distribution of these weed seeds as part of pure seed or seed mixtures in Wisconsin. Implementation of this rule will help protect Wisconsin’s cropland by prohibiting the introduction of noxious weed seeds, Palmer amaranth and Waterhemp.

If this rule is not enacted, Wisconsin will continue to be vulnerable to an inadvertent introduction of these noxious weed seeds, as experienced by Iowa with the introduction of Palmer amaranth, which damaged thousands of acres of cropland this year.

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Business Impact

The Department expects the proposed rule to have minimal economic impact.

Environmental Impact

This rule will assist in limiting the spread of noxious weed seeds in Wisconsin. Palmer amaranth and Waterhemp have caused significant crop loss in other states, including in the adjacent state of Iowa. Prohibiting these noxious weed seeds in Wisconsin will have a positive environmental impact.

Federal and Surrounding State Programs

This rule proposal would 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.

Next Steps

If the Board authorizes public hearings on this rule, DATCP will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. DATCP 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, DATCP 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, DATCP 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.

DATCP Contact

Questions and comments related to this rule may be directed to:

Greg Helmbrecht
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4596
E-Mail: Greg.Helmbrecht@wisconsin.gov

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

- 1 The Wisconsin department of agriculture, trade and consumer protection proposes the
2 following rule *to amend* ATCP 20.01(27) *relating to* prohibited noxious weed seeds.
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**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

The Department is taking proactive steps in response to significant crop loss in the neighboring state of Iowa due to the inadvertent introduction of Palmer amaranth seeds in conservation seed mixes distributed and planted in Iowa. The Department also consulted with the Wisconsin Crop Improvement Association and the Wisconsin Agribusiness Association in determining the effect on small business. If this rule were not to be implemented, Wisconsin will continue to be at a higher risk for the introduction of Palmer amaranth and Waterhemp, which is able to spread widely in a growing season due to its ability to produce large volumes of seeds and to date is extraordinarily difficult to eradicate due to it being resistant to multiple herbicides. This rule adds Palmer amaranth and Waterhemp to the list of prohibited noxious weed seeds in Wis. Admin. Code ATCP 20.01(27).

Statutes Interpreted

Statute Interpreted: s. 94.45(6)(e), Stats.

Statutory Authority

Statutory Authority: s. 94.45(6)(e), Stats.

Explanation of Statutory Authority

The Department has express authority, under s. 94.45(6)(e), Stats., to promulgate rules that identify noxious weeds and prohibited noxious weeds.

Background

“Prohibited noxious weed seeds” are defined in Wis. Admin. Code ATCP 20.01(27) as the seeds of weeds that are highly destructive and difficult to control by good cultural practices and use of herbicides.

Palmer amaranth and Waterhemp are both very destructive and difficult to control and are not currently listed as prohibited noxious weed seeds in Wisconsin. This means it is currently not a violation for these weed seeds to be distributed in seed mixes in Wisconsin. Adjacent states, including Iowa, are facing the emergence of these herbicide-resistant weeds due to the distribution of seed mixes that included these weeds. These weeds spread quickly and are extremely difficult to eradicate, risking cropland and crop production.

Rule Content

Adding Palmer amaranth and Waterhemp to the list of “Prohibited noxious weed seeds” in ATCP 20 will prohibit the distribution of these weed seeds as part of pure seed or seed mixtures in Wisconsin. Implementation of this rule will help protect Wisconsin’s cropland by prohibiting the introduction of noxious weed seeds, Palmer amaranth and Waterhemp.

If this rule is not enacted, Wisconsin will be continue to be vulnerable to an inadvertent introduction of these noxious weed seeds, as experienced by Iowa with the introduction of palmer amaranth, which damaged thousands of acres of cropland this year.

Summary of Factual Data and Analytical Methodologies

Data related to Palmer amaranth and Waterhemp was obtained by the Department from other states’ agriculture agencies currently being negatively impacted by these noxious weed seeds, including Minnesota and Iowa, through communication and observations by Department program staff.

Analysis and Supporting Documents used to Determine Effect on Small Business

Department staff utilized current licensing information for seed labelers in Wisconsin, as well as the Wisconsin Crop Improvement Association (WCIA) and the Wisconsin Agribusiness Association (WABA) to solicit feedback on the concept of prohibiting these weed seeds in seed labeled in Wisconsin. There was no opposition to these additions to the prohibited weed seed list.

Business Impact

The Department expects the proposed rule to have minimal economic impact.

Environmental Impact

This rule will assist in limiting the spread of noxious weed seeds in Wisconsin. Palmer amaranth and Waterhemp have caused crop devastation in other states, including in the adjacent state of

Iowa. Prohibiting these noxious weed seeds in Wisconsin will have a positive environmental impact.

Federal and Surrounding State Programs

This rule proposal would 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.

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:

Greg Helmbrecht
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4596
E-Mail: Greg.Helmbrecht@wisconsin.gov

3 **SECTION 1.** ATCP 20.01(27) is amended to read:
4 (27) "Prohibited noxious weed seeds" means the seeds of weeds that are highly
5 destructive and difficult to control by good cultural practices and use of herbicides. "Prohibited
6 noxious weed seeds" includes: Amaranthus palmeri (Palmer amaranth), Amaranthus tuberculatus
7 (Waterhemp), convolvulus arvensis (field bindweed), euphorbia esula (leafy spurge), cirsium
8 arvense (Canada thistle), panicum miliaceum (wild proso millet), eriochloa villosa (woolly
9 cupgrass), pueraria montana var. lobata (kudzu), polygonum perfoliatum (mile-a-minute weed),
10 centaurea picris (Russian knapweed), and centaurea maculos (spotted knapweed).

11 **SECTION 2. EFFECTIVE DATE:** This rule takes effect on the first day of the month
12 following publication in the Wisconsin administrative register, as provided in s.
13 227.22(2)(intro.), Stats.

Dated this ____ day of _____, 2018.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By Sheila E. Harsdorf, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Prohibited Noxious Weed Seeds
Adm. Code Reference: ATCP 20
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 17-R-09

Rule Summary

This rule adds Palmer amaranth and Waterhemp to the list of prohibited noxious weed seeds in Wis. Admin. Code ATCP 20.01(27). "Prohibited noxious weed seeds" are defined in Wis. Admin. Code ATCP 20.01(27) as the seeds of weeds that are highly destructive and difficult to control by good cultural practices and use of herbicides.

Palmer amaranth and Waterhemp are both very destructive and difficult to control and are not currently listed as prohibited noxious weed seeds in Wisconsin. This means it is currently not a violation for these weed seeds to be distributed in seed mixes in Wisconsin. Adjacent states, including Iowa, are facing the emergence of these herbicide-resistant weeds due to the distribution of seed mixes that included these weeds. These weeds spread quickly and are extremely difficult to eradicate, risking cropland and crop production.

The Department is taking proactive steps in response to significant crop loss in the neighboring state of Iowa due to the inadvertent introduction of Palmer amaranth seeds in conservation seed mixes distributed and planted in Iowa. The Department also consulted with the Wisconsin Crop Improvement Association and the Wisconsin Agribusiness Association in determining the effect on small business. If this rule were not to be implemented, Wisconsin will continue to be at a higher risk for the introduction of Palmer amaranth and Waterhemp, which is able to spread widely in a growing season due to its ability to produce large volumes of seeds and to date is extraordinarily difficult to eradicate due to it being resistant to multiple herbicides.

Small Business Affected

This rule will have a minimal impact on seed labelers in Wisconsin. Seed labelers may be small businesses. This rule adds two weeds to the list of prohibited noxious weed seeds, which a seed labeler will be required to exclude from seed packages.

Reporting, Bookkeeping and other Procedures

The proposed rule does not create any reporting, bookkeeping, or other requirement for small businesses.

Professional Skills Required

The proposed rule does not require any new professional skills for small businesses.

Accommodation for Small Business

This rule will have a minimal impact upon small business.

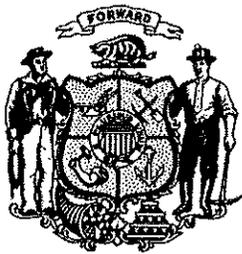
Conclusion

This rule will have not have a significant 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 9th day of February, 2018.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Keeley Moll
Keeley Moll, Deputy Secretary



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

February 9, 2018

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

**RE: Emergency Rule modifying ATCP 20 relating to the definition of prohibited
noxious weed seeds**

Dear Secretary Harsdorf,

I hereby approve the proposed rule modifying Chapter ATCP 20 of the Wisconsin Administrative Code submitted on January 16, 2018 to SBO pursuant to Wisconsin Statutes § 227.24(1)(e)1g. You may proceed with publication in accordance with Wisconsin Statutes § 227.24(1)(c).

Scott Walker
Governor