



State of Wisconsin
Governor Scott Walker

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

DATE: February 10, 2011

TO: The Honorable Mike Ellis
President, Wisconsin State Senate
Room 200 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Jeff Fitzgerald
Speaker, Wisconsin State Assembly
Room 201, West, State Capitol
PO Box 8952
Madison, WI 53708-8952

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

SUBJECT: Seed Labeling and Sales; Final Draft Rule
(Clearinghouse Rule #10-107)

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

This rule implements legislative changes enacted in 2009 Wis. Act 28. This rule is identical to a temporary emergency rule that DATCP adopted, effective January 1, 2011, pursuant to Act 28. DATCP developed this rule in consultation with an advisory group that included seed technical experts, seed industry representatives and seed purchasers.

Background

DATCP 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.

2009 Wis. Act 28 made significant changes to the seed law. Act 28 repealed many outdated standards effective January 1, 2011 and authorized DATCP to establish new standards by rule. DATCP adopted a temporary emergency rule (as contemplated by Act 28) to implement the new law, pending the adoption of this “permanent” rule. This “permanent” rule is identical to the emergency rule.

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This rule establishes standards related to seed labels, seed germination, and seed evaluation and testing. It establishes general standards for all agricultural seeds and specialized standards for certain kinds of seed. This rule is designed to protect seed purchasers, to ensure fair and accurate labeling of seed, and to ensure fair competition in the sale of seed. The standards in this rule are consistent with all of the following:

- The federal seed act (7 USC 1551 et. seq.) and the federal plant variety protection act (7 U.S.C. 2321 *et seq.*).
- Model standards contained in the *Recommended Uniform State Seed Law* (July 2007) published by the association of American seed control officials.
- Seed evaluation standards and methods prescribed in the *Rules for Seed Testing* (October 1, 2010) published by AOSA, Inc. (the association of official seed analysts).

This rule incorporates, without change, seed labeler license fees set by s. 94.43, Stats. (this rule does not increase license fees). This rule also creates a mechanism by which DATCP may, for good cause, grant individual variances from labeling requirements under this rule if the variance is consistent with the purposes of this rule and is necessary to avoid unfairness or unnecessary hardship.

Public Hearings

DATCP held 2 public hearings on this rule. DATCP held an initial hearing on October 13, 2010 in Madison and accepted written comments until November 2, 2010. Three persons attended the hearing and one person submitted written comments. All participants favored the proposed rule.

DATCP held a second public hearing on a revised draft rule (this rule) on January 11, 2011, in conjunction with a hearing on the temporary emergency rule (which is identical to this rule). DATCP also accepted written comments until January 14. One person attended the January 11 hearing and 2 persons submitted written comments. All of the participants favored the revised draft rule without change.

The following persons appeared at one or both of the public hearings, or submitted favorable written comments for the hearing record (there was no hearing opposition to this rule):

- John Petty, Executive Director of Wisconsin Agri-Service Association, supported the rule at both hearings.
- Eugene Amberson, General Manager of the Wisconsin Crop Improvement Association, supported the rule at the first hearing and submitted a letter of support in connection with the second hearing.
- Bill Isermann, CEO of Agrecol Corporation, supported the rule at the first hearing.
- Greg Ruehle, CEO of the Independent Professional Seed Association, submitted a letter of support in connection with the second hearing.

Changes from Hearing Draft

Based partly on comments from the Legislative Council Rules Clearinghouse, DATCP revised the hearing draft rule to improve its clarity and organization (the redraft did not substantially alter the substance of the rule). DATCP distributed the revised draft rule to advisory council members and other interested persons. DATCP held a second hearing on the revised final draft rule. Hearing participants unanimously favored the revised final draft (see above).

Response to Rules Clearinghouse Comments

DATCP modified the final draft rule to address all of the comments from the Legislative Council Rules Clearinghouse.

Fiscal Impact

This rule will have no fiscal impact on state or local government. This rule incorporates, without change, the seed labeler license fees established by s. 94.73, Stats. (this rule does not increase license fees). A complete *fiscal estimate* is attached.

Business Impact

This rule will promote fair competition in the seed industry, for the benefit of seed businesses and seed purchasers. It will update obsolete seed standards, and will ensure that all seed labelers use the same standards for seed labeling and analysis. It will facilitate interstate commerce by making Wisconsin standards more consistent with current standards used by the United States department of agriculture (“USDA”) and other states. This rule will not have any significant adverse impact on affected businesses. A complete *business impact analysis* is attached.

Environmental Impact

This rule will protect the environment by helping to prevent the spread of certain noxious weed seeds. Other parts of the rule will have no environmental impact.

Federal and Surrounding State Regulations

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.

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- *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

DATCP consulted with an advisory committee comprised of seed technical experts, seed industry representatives and seed purchasers.