

**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) (a) 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 rule 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

There are no federal regulations related to this rule.

Surrounding State Programs

There are no similar programs in surrounding states.

Data and Analytical Methodologies

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

DATCP Contact

Questions and comments related to this rule, including hearing comments, may be directed to:

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

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

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

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

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10 ATCP 20.01 (23m) “Non-commercial seed sharing” means the distribution of seeds
11 through a third party or public location without monetary or any other form of compensation
12 from the recipient.

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

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

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

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

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

23 ATCP 20.04 (6) LABEL AND OTHER REQUIREMENTS FOR NON-COMMERCIAL

24 SEED SHARING. (a) Each container of agricultural, vegetable, or flower seed distributed for
25 sowing purposes without monetary or any other form of compensation from the recipient shall
26 bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or
27 tag, in the English language, containing the following information:

28 1. The name of the species or commonly accepted name of kind or kind and variety of each
29 agricultural seed component present. Hybrids shall be labeled as hybrids.

30 2. A word or statement indicating if the seed has been treated. If the seed has been treated, the
31 container shall be labeled in accordance with applicable state and federal law.

32 3. The name and address of the non-commercial seed sharing entity.

33 4. Germination and purity analysis information is not required; however, if a germination or
34 purity percentage is noted on the label, it must state whether the analysis was performed
35 according to the Association of Official Seed Analysts for testing seed.

36 (b). The seed shall be free of foreign material other than coatings or treatments, including
37 germination medium, mulch, fertilizer, pre-planted containers, mats, tapes, or other planting
38 devices.

39 (c). A distributed container may not hold more than 8 ounces of agricultural seed or more than 4
40 ounces of vegetable or flower seed.

41 (d) At each location where non-commercial seed sharing is conducted, a legible and visible sign

42 shall state that the seeds being distributed may not meet germination or varietal purity standards
43 as prescribed for all other seed sold or distributed in this state.

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

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

52 (b) If seed is packaged in a hermetically sealed container as provided in sub. (5), the
53 label information under sub. (1) may be based on a germination analysis under s. ATCP 20.02
54 that is completed within the 36-month period immediately preceding the month in which the seed
55 is sold, offered for sale or distribution, or displayed ~~or distributed~~ for sale or distribution. Seed
56 on which a germination analysis under this paragraph has expired may not be sold, offered for
57 sale, or distribution or displayed ~~or distributed~~ for sale or distribution unless it has been retested
58 within the 9-month period immediately preceding month in which it is sold, offered for sale or
59 distribution, or displayed ~~or distributed~~ for sale or distribution, and is re-labeled with the new
60 analysis results and extended expiration date.

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

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

65 (4) Sell, offer for sale or distribution, or displayed ~~or distributed~~ for sale or distribution
66 in this state any agricultural seed that contains any of the following:

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

70 **SECTION 8. EFFECTIVE DATE:** This rule takes effect on the first day of the
71 month following publication in the Wisconsin administrative register, as provided in s.
72 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2016.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

