

## 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 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](http://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.

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