

**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(27) *relating to* prohibited noxious weed seeds.

*Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection*

This rule adds the two plant species, Palmer amaranth and Waterhemp, to the list of prohibited noxious weed seeds in Wis. Admin. Code § ATCP 20.01(27). These two species are able to spread widely in a growing season due to their ability to produce large volumes of seeds. Once introduced, the species are extraordinarily difficult to eradicate, as both are resistant to multiple herbicides. A cautionary tale arises from the experience of one of Wisconsin's neighbors: the state of Iowa sustained significant crop loss last year due to the inadvertent introduction of Palmer amaranth seeds into that state.

In developing the present rule prohibiting the two species, the Department has consulted with the Wisconsin Crop Improvement Association and the Wisconsin Agribusiness Association, neither of which opposes the rule.

Statutes Interpreted

Statute Interpreted: Wis. Stat. § 94.45(6)(e).

Statutory Authority

Statutory Authority: Wis. Stat. § 94.45(6)(e).

Explanation of Statutory Authority

Pursuant to Wis. Stat. § 94.45(6)(e), the Department has express authority to promulgate rules that identify noxious weeds and prohibited noxious weeds.

Related Statutes and Rules

None.

Plain Language Analysis

“Prohibited noxious weed seeds” are defined in Wis. Admin. Code § ATCP 20.01(27) as the seeds of weeds that are highly destructive and are difficult to control by means of good cultural practices and the use of herbicides. Palmer amaranth and Waterhemp meet this definition, but neither are currently listed

in the rule. Therefore, it is not currently a violation for these weed seeds to be distributed in seed mixes in Wisconsin. Adding Palmer amaranth and Waterhemp to the list of “Prohibited noxious weed seeds” in Wis. Admin. Code ch. 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. Adjacent states, including Iowa, are facing the potential loss of thousands of acres of crop land traceable to the distribution of seed mixes that inadvertently included the cited weeds. If this rule is not enacted, Wisconsin potentially faces a similar fate.

Summary of Factual Data and Analytical Methodologies

Department program staff obtained information and data related to Palmer amaranth and Waterhemp from agriculture agencies in other states, including Minnesota and Iowa, both of which are currently experiencing the adverse effects of the introduction of those weed seeds.

Analysis and Supporting Documents used to Determine Effect on Small Business

Department staff consulted licensing information on file at the Department for seed labelers in Wisconsin, as well as information from the Wisconsin Crop Improvement Association (WCIA) and the Wisconsin Agribusiness Association (WABA), in order to identify stakeholders. The Department solicited feedback on the concept of prohibiting the inclusion of the two species within packaged seed that is labeled in Wisconsin. The stakeholders who were consulted expressed no opposition to the referenced additions to the prohibited weed seed list.

Business Impact

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

Environmental Impact

Prohibiting Palmer amaranth and Waterhemp will have a positive environmental impact in Wisconsin. This rule will assist in limiting the spread of weed seeds that have caused crop devastation in other states, including Iowa.

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 the changes instituted by the present rule.

Minnesota has listed Palmer amaranth as a prohibited noxious weed seed. Iowa has made Palmer amaranth a primary noxious weed in both seed and weed laws.

DATCP Contact

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

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SECTION 1. ATCP 20.01(27) is amended to read:

(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: Amaranthus palmeri (Palmer amaranth), Amaranthus tuberculatus (waterhemp), 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).

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