

**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION**

**EMERGENCY RULE
Chapter ATCP 20**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“Department”) hereby adopts the following emergency rule *to amend* ss. ATCP 20.01(27) relating to the definition of prohibited noxious weed seeds.

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

This emergency rule adds Palmer amaranth and Waterhemp to the list of prohibited noxious weed seeds in Wis. Admin. Code ATCP 20.01(27). Under s. 94.45 (6) (e) Stats., the Department is granted specific authority to promulgate rules identifying prohibited and restricted noxious weed seeds.

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 emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature’s Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 additional days.

Statutes Interpreted

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

Statutory Authority

Statutory Authority: ss. 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.

Emergency 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

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

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this emergency rule is approved by the Governor and published in the Wisconsin State Journal.

FINDING OF EMERGENCY

(1) Palmer amaranth and Waterhemp weed seeds are not currently prohibited noxious weed seeds in Wisconsin, so there is a risk that these seeds may be distributed 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.

(2) The Department is adopting this rule as a temporary emergency rule, pending completion of a permanent rule.

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 emergency rule takes effect upon publication and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

Dated this ____ day of _____, 2018.

State of Wisconsin
Department of Agriculture, Trade and Consumer
Protection

By Sheila E. Harsdorf, Secretary