



State of Wisconsin  
Governor Scott Walker

**Department of Agriculture, Trade and Consumer Protection**  
Sheila E. Harsdorf, Secretary

**DATE:** May 9, 2018

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Sheila Harsdorf, Secretary *Sheila Harsdorf*  
Brian Kuhn, Acting Division Administrator, Division of Agricultural Resource  
Management *Brian Kuhn*

**SUBJECT:** **Noxious Weed Seeds; Final Draft Rule Amending Wis. Admin. Code ch. ATCP 20**

**TO BE PRESENTED BY:** Greg Helmbrecht, Bureau of Plant Industry

**REQUESTED ACTION:**

At the May 24, 2018 Board meeting, the Department will ask the Board to approve a final rule related to prohibited noxious weed seeds, under Wis. Admin. Code ch. ATCP 20.

**SUMMARY:**

This proposed 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). Palmer amaranth and its botanical relative, Waterhemp, constitute a grave risk to cropland and crop production. The two species are able to spread widely during 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. The importance of the present rule-making is manifest from a recent and ongoing crisis across Wisconsin's western border: Last year, Iowa experienced thousands of acres of crop loss after the inadvertent introduction of Palmer amaranth seeds into conservation seed mixes distributed and planted in that state.

"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 means of good cultural practices and the use of herbicides. Palmer amaranth and Waterhemp meet this definition but are not currently listed as species within the schedule. 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" will prohibit the distribution of either pure seed or seed mixtures that contain those weeds.

Implementation of this rule will help protect Wisconsin's cropland. If this rule is not implemented, Wisconsin would continue to be at a high risk for the introduction of Palmer amaranth and Waterhemp, with potentially calamitous consequences.

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### ***Public Hearing***

The Department held a public hearing on this rule on April 30, 2018 in Madison, Wisconsin. No one attended the hearing. Written comments were accepted until May 10, 2018, but none were received.

### ***Changes from the Hearing Draft***

No changes were made based on public comment as no comments requesting changes were received.

### ***Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations***

This rule proposal would effect an update to 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.

### ***Comparison with Rules in Adjacent States***

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.

### ***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, that show current conditions as being adversely affected by those weeds.

### ***Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis***

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.

### ***Effect on Small Business***

This rule will have no significant adverse effect on small business.

### *Next Steps*

If the Board approves this final draft rule, the Department will submit the final draft rule to the Governor's Office of Regulatory Compliance. If the Governor's office approves the final draft rule, the Department will then submit the rule to the Legislature for legislative committee review. If the Legislature has no objection to the rule, the Department secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect on the first day of the third month following publication.

**ORDER  
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION  
ADOPTING RULES**

- 1           The Wisconsin department of agriculture, trade and consumer protection proposes the  
2 following rule *to amend* ATCP 20.01(27) *relating to* prohibited noxious weed seeds.
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*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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3           **SECTION 1.** ATCP 20.01(27) is amended to read:

4           (27) “Prohibited noxious weed seeds” means the seeds of weeds that are highly  
5 destructive and difficult to control by good cultural practices and use of herbicides. “Prohibited  
6 noxious weed seeds” includes: Amaranthus palmeri (Palmer amaranth), Amaranthus tuberculatus  
7 (waterhemp), convolvulus arvensis (field bindweed), euphorbia esula (leafy spurge), cirsium  
8 arvense (Canada thistle), panicum miliaceum (wild proso millet), eriochloa villosa (woolly  
9 cupgrass), pueraria montana var. lobata (kudzu), polygonum perfoliatum (mile-a-minute weed),  
10 centaurea picris (Russian knapweed), and centaurea maculos (spotted knapweed).

11           **SECTION 2. EFFECTIVE DATE:** This rule takes effect on the first day of the month  
12 following publication in the Wisconsin administrative register, as provided in s.  
13 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

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Sheila E. Harsdorf, Secretary

# Wisconsin Department of Agriculture, Trade and Consumer Protection

## Final Regulatory Flexibility Analysis

**Rule Subject:** Prohibited Noxious Weed Seeds  
**Adm. Code Reference:** ATCP 20  
**Rules Clearinghouse #:** Not yet assigned  
**DATCP Docket #:** 17-R-09

### *Rule Summary*

This proposed 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). Both species are highly destructive and difficult to control. Palmer amaranth has been observed to spread widely during a growing season, due to its ability to produce large volumes of seeds. To date, the two species have proven extraordinarily difficult to eradicate due to their resistance to multiple herbicides. The two species accordingly pose a significant risk to cropland and crop production. Adjacent states, including Iowa, are facing crop loss caused by the emergence of these weeds.

### *Small Businesses Affected*

This rule will have a minimal impact on seed labelers in Wisconsin. Seed labelers may be small businesses. This rule adds two weeds to the list of prohibited noxious weed seeds, which a seed labeler will be required to exclude from seed packages. The Department consulted with the Wisconsin Crop Improvement Association and the Wisconsin Agribusiness Association, and neither organization objected to the proposed rule.

### *Reporting, Bookkeeping and other Procedures*

The proposed rule does not create any reporting, bookkeeping, or other requirement for small businesses.

### *Professional Skills Required*

The proposed rule does not require any new professional skills for small businesses.

### *Accommodation for Small Business*

This rule will have a minimal impact upon small business.

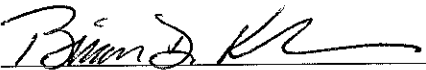


*Conclusion*

This rule will not have a significant adverse effect on small businesses; therefore, the rule is not subject to the delayed effective date applicable to small businesses as provided in Wis. Stat. § 227.22(2) (e).

Dated this 9<sup>th</sup> day of May, 2018.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
Brian Kuhn, Acting Administrator,  
Division of Agricultural Resource Management

**ADMINISTRATIVE RULES  
FISCAL ESTIMATE AND  
ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

Original     Updated     Corrected

Administrative Rule Chapter, Title and Number

Wis. Admin. Code ch. ATCP 20, SEED LABELING AND SALE

Subject

Addition of Palmer amaranth and Waterhemp to the List of Prohibited Noxious Weed Seeds

Fund Sources Affected

Chapter 20, Stats. Appropriations Affected

GPR     FED     PRO     PRS     SEG SEG-S

Fiscal Effect of Implementing the Rule

No Fiscal Effect  
 Indeterminate

Increase Existing Revenues  
 Decrease Existing Revenues

Increase Costs  
 Could Absorb Within Agency's Budget  
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes     No

Policy Problem Addressed by the Rule

Palmer amaranth and Waterhemp are weeds that spread quickly and are extremely difficult to eradicate, creating a danger to cropland and crop production. The two species 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 in connection with the inadvertent distribution of seed that included these weeds.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The current rule regulates seed labeling in Wisconsin. Many seed labelers are small businesses. However, the proposed rule will have limited economic impact on seed labelers. The rule has the potential to protect crop producers and farms from negative economic impacts that would likely result from the introduction of Palmer amaranth and Waterhemp in Wisconsin.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

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 in Wisconsin. Implementation of this rule will help protect Wisconsin's farmers and cropland by reducing the risk of an introduction of noxious seeds. If this rule is not enacted, Wisconsin will be vulnerable to an inadvertent introduction of these noxious weed seeds and possible consequent crop loss on a large scale.

Long Range Implications of Implementing the Rule

This rule will benefit the citizenry and the environment of Wisconsin, and in the long term, the businesses that label seeds and grow crops in Wisconsin.

Compare With Approaches Being Used by Federal Government

The Federal Government regulates the interstate movement of seed.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota has had Palmer amaranth on the Prohibited Seed List as ERADICATE since 2014.

Iowa has made Palmer amaranth a primary noxious weed starting July 1, 2017 in both seed and weed laws.

Name and Phone Number of Contact Person

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