



State of Wisconsin  
Governor Scott Walker

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**Department of Agriculture, Trade and Consumer Protection**  
Ben Brancel, Secretary

**DATE:** February 3, 2017

**TO:** The Honorable Roger Roth  
President, Wisconsin State Senate  
Room 220 South, State Capitol  
PO Box 7882  
Madison, WI 53707-7882

The Honorable Robin Vos  
Speaker, Wisconsin State Assembly  
Room 211, West, State Capitol  
PO Box 8952  
Madison, WI 53708-895

**FROM:** Ben Brancel, Secretary  
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: Label Requirements for Non-Commercial Seed Sharing, ch. ATCP 20; Final Draft Rule (Clearinghouse Rule #16-039)**

### *Introduction*

The Department of Agriculture, Trade and Consumer Protection (“Department”) is transmitting this rule for legislative committee review, as provided in Wis. Stat. §§ 227.19 (2) and (3). The Department will publish notice of this referral in the Wisconsin Administrative Register, as provided in Wis. Stat. § 227.19 (2).

The Department administers Wisconsin’s seed law under Wis. Stat. §§ 94.38 to 94.46. 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 will modify current seed labeling rules in order to address the non-commercial public and private exchange of small quantities of agricultural seed (as defined in s. ATCP 20.01 (1)). This rule makes Wisconsin’s seed law 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.

### *Background*

The Department has general authority, under Wis. Stat. § 93.07 (1), to interpret laws under its jurisdiction. The Department has specific authority, under Wis. Stat. § 94.45 (6), to promulgate rules prescribing standards for

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the labeling, sampling, testing, distribution, and sale of agricultural seed and vegetable seed. This rule clearly defines Wis. Admin. Code § ATCP 20.01 (33) “Seed Labeler” and creates a policy governing the labeling of seed made publicly available at seed libraries and other venues of non-commercial seed exchange.

### ***Rule Content***

#### **General**

This rule does all of the following:

- Makes Wisconsin’s seed law applicable to seed distribution for non-commercial purposes conducted by seed-sharing organizations, commonly known as seed libraries.
- Modifies Wisconsin rules governing the sale and labeling of agricultural and vegetable seed to require non-commercial seed-sharing organization to meet basic labeling requirements and to be licensed.

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

#### **Federal Programs**

There are no federal regulations related to this rule.

#### **Surrounding State Programs**

This language is being proposed on a national level in the Recommended Uniform State Seed Law (RUSSL) and will be adopted by several 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. DATCP also consulted with WCIA (Wisconsin Crop Improvement Association), AASCO (Association of American Seed Control Officials), ASTA (American Seed Trade Association), and AOSA, Inc. (the Association of Official Seed Analysts) to develop the standards in this rule.

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

The proposed rule has no direct effect on small business. This proposed rule will help to protect consumers, the seed companies Plant Variety Protected (PVP) seeds, and the environment from the potential spread of prohibited and restricted noxious weed seed.

This rule will not have any adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in Wis. Stat. § 227.22(2)(e).

### ***Small Business Regulatory Review Report***

The Small Business Regulatory Review Board did not issue a report on this rule.

#### ***Public Hearing***

Public hearing notices were published in the Wisconsin Administrative Register and hearings held in Madison on July 27, 2016. There were no attendees at the hearing, however the Department did receive letters of support for the rule from the Wisconsin Crop Improvement Association (WCIA) and from the American Seed Trade Association (ASTA). The Department did not receive any comments in opposition to the rule.

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

The Hearing Draft rule was reviewed and approved by the Department Board at the May 13, 2015, meeting. The Hearing Draft rule was delivered to the Legislative Council Rules Clearinghouse for review and their report was received. The Clearinghouse report noted minor corrections to be made relating to form, style, and punctuation and commented that the draft rule could be interpreted to regulate the sharing of seeds between two people, such as neighbors. The Department modified the proposed new ATCP 20.01 (23m) to include “through a third party or public location,” which the Department believes will address the issue raised by the Legislative Council Rules Clearinghouse. No other significant changes were made to the rule.