

Report From Agency

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Agricultural and Vegetable Seed
Adm. Code Reference: ATCP 20
Rules Clearinghouse #: 10-107
DATCP Docket #: 10-R-08

Rule Summary

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's seed law under ss. 94.38 to 94.46, Stats. 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.

The 2009 biennial budget act (2009 Wis. Act 28) made significant changes to the seed law. Act 28 repealed many outdated standards effective January 1, 2011 and authorized DATCP to establish new standards by rule. DATCP adopted a temporary emergency rule to implement the new law, pending the adoption of this "permanent" rule. This "permanent" rule is identical to the emergency rule.

This rule establishes standards related to seed labels, seed germination, and seed evaluation and testing. It establishes general standards for all agricultural seeds and specialized standards for certain kinds of seed. This rule is designed to protect seed purchasers, to ensure fair and accurate labeling of seed, and to ensure fair competition in the sale of seed. The standards in this rule are consistent with all of the following:

- The *federal seed act* (7 USC 1551 et. seq.) and the *federal plant variety protection act* (7 U.S.C. 2321 et seq.).
- Model standards contained in the *Recommended Uniform State Seed Law* (July 2007) published by the association of American seed control officials.
- Seed evaluation standards and methods prescribed in the *Rules for Seed Testing* (October 1, 2010) published by AOSA, Inc. (the association of official seed analysts).

¹ This analysis includes, but is not limited to, a small business analysis ("regulatory flexibility analysis") under ss. 227.114 and 227.19(3)(e), Stats.

This rule incorporates, without change, seed labeler license fees set by s. 94.43, Stats. (this rule does not increase license fees). This rule also creates a mechanism by which DATCP may, for good cause, grant individual variances from labeling requirements under this rule if the variance is consistent with the purposes of this rule and is necessary to avoid unfairness or unnecessary hardship.

This rule was developed in consultation with an advisory council that included seed experts, seed industry representatives and seed purchasers. This rule has been endorsed by seed industry trade associations representing affected seed businesses.

Business Impact

This rule will promote fair competition in the seed industry, for the benefit of seed businesses and seed purchasers. It will update obsolete seed standards, and will ensure that all seed labelers use the same standards for seed labeling and analysis. It will facilitate interstate commerce by making Wisconsin standards more consistent with current standards used by the United States department of agriculture (“USDA”) and other states. This rule will not have any significant adverse impact on affected businesses.

Accommodation for Small Business

Many of the businesses affected by this rule are small businesses. This rule ensures a fair marketplace for all businesses, including small businesses, by requiring all agricultural and vegetable seed sold in Wisconsin to meet certain standards. DATCP estimates that small businesses will incur minimal or no additional compliance costs to meet these updated standards. Although this rule will affect some small businesses, it will have a positive, rather than adverse, impact on them.

This rule also creates a mechanism by which DATCP may, for good cause, grant individual variances from labeling requirements under this rule if the variance is consistent with the purposes of this rule and is necessary to avoid unfairness or unnecessary hardship.

Conclusion

This rule will benefit Wisconsin seed businesses, and will have no significant adverse impact on small businesses or other businesses.

Dated this _____ day of _____, 2011

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
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Division of Agricultural Resource Management