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Report From Agency

DATCP Docket No. 10-R-7
Rules Clearinghouse No. 10-107

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

- 2 The Wisconsin department of agriculture, trade and consumer protection adopts the
3 following rule *to repeal and recreate* ch. ATCP 20; *relating to* seed labeling and sales.

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

The Wisconsin 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 Act 28 repealed many outdated standards effective January 1, 2011 and authorized DATCP to establish new standards by rule.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 updates Wisconsin’s seed standards to make them more consistent with federal law, current generally-accepted business practices, the model state seed law published by the association of American seed control officials, and seed testing standards published by AOSA, Inc. (the association of official seed analysts). 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.

Statutes Interpreted

Statutes Interpreted: ss. 93.07(1), 94.38 to 94.46, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1) and 94.45(6), Stats. The emergency rule was also adopted pursuant to 2009 Wis. Act 28, section 9103(3).

Explanation of Statutory Authority

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has specific authority, under ss. 94.45(6), Stats., to promulgate rules for:

- The testing, labeling, distribution and sale of agricultural seed (including crop seed, vegetable seed for home gardens, lawn and turf seed, flower seed and native species seed).
- Seed labeler licensing.
- Seed law administration.

2009 Wis. Act 28 repealed outdated seed standards effective January 1, 2011, and authorized DATCP to adopt new standards by rule. A non-statutory provision, contained in section 9103(3) of Act 28, authorized DATCP to adopt interim rules by the emergency rulemaking procedure under s. 227.24, Stats., without a finding of emergency (DATCP adopted a temporary emergency rule effective January 1, 2011). Under that non-statutory provision, the interim rules remain in effect until July 1, 2011 or until the effective date of this “permanent” rule, whichever date is earlier.

Related Rules or Statutes

The department of natural resources (“DNR”) administers rules under ch. NR 40 related to the classification and control of invasive species, including invasive plant species. DATCP administers pesticide rules under chs. ATCP 29 and 30 (including pesticides used on treated seed).

Plain Language Analysis

This rule modifies Wisconsin rules governing the sale and labeling of agricultural and vegetable seed. 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. The standards in this rule are generally 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).

This rule incorporates seed labeler license fees set by s. 94.43, Stats. (this rule does not change the statutory 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.

Fiscal Impact

This rule will have no fiscal impact on state or local government. This rule incorporates, without change, seed labeler license fees set by s. 94.43, Stats.

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.

Environmental Impact

This rule will protect the environment by helping to prevent the spread of certain noxious weed seeds. Other parts of the rule will have no environmental impact.

Federal and Surrounding State Programs

Federal Programs

USDA administers the following federal laws:

- *The federal seed act (7 USC 1551 et. seq.)*. Under the federal seed act, seed shipped in interstate commerce must be labeled with information that allows seed buyers to make informed choices. Label information must be truthful.
- *The federal plant variety protection act (7 U.S.C. 2321 et seq.)*. Under the plant variety protection act, a plant breeder may obtain a certificate of plant variety protection (similar to a patent) for a new plant variety that meets certain criteria.

This rule is consistent with these federal laws.

Surrounding State Programs

Most states, and all of the states surrounding Wisconsin, have adopted seed labeling and testing standards that are similar to the standards under this rule.

1 distribution.

2 (3) “Coated seed” means agricultural seed that is covered with any substance that
3 changes the size, shape or weight of the seed.

4 (4) “Combination seed and non-seed product” means a product, other than treated
5 seed, inoculated seed or coated seed, that contains agricultural seed in combination with
6 mulch, growth media, fertilizer or other materials that are directly or implicitly purported to
7 enhance the germination, erosion resistance, ease of application or other performance
8 characteristics of the agricultural seed.

9 (5) “Container” means any package, packet, bag or other receptacle in which
10 agricultural seed is sold, offered for sale, or displayed or distributed for sale.

11 (6) “Department” means the Wisconsin department of agriculture, trade and
12 consumer protection.

13 (7) “Dormant seed” means viable agricultural seed, other than hard seed, which fails
14 to germinate in a germination analysis conducted according to this chapter.

15 (8) “Dormant seed percentage” means, for a particular kind or variety of agricultural
16 seed, the percentage of seeds in a container or lot that are dormant seeds, as estimated by a
17 germination analysis conducted according to this chapter.

18 (9) “Flower seed” means seed of herbaceous plants grown for their blooms,
19 ornamental foliage, or other ornamental parts and commonly known and sold under the name
20 of flower seed in this state. “Flower seed” does not include native species seed that is
21 labeled as native species seed.

22 (10) “Germination” means the emergence and development from the seed embryo of
23 those essential structures which, for the kind of seed, are indicative of the ability to produce a

1 normal plant under favorable conditions.

2 (11) “Germination percentage” means, for a particular kind or variety of agricultural
3 seed, the percentage of seeds in a container or lot that germinate under favorable germination
4 conditions, as estimated by a germination analysis under this chapter.

5 (12) “Hard seed” means agricultural seed that would remain hard throughout a
6 germination analysis conducted according to this chapter because the seed would not absorb
7 water due to an impermeable seed coat.

8 (13) “Hard seed percentage” means, for a particular kind or variety of agricultural
9 seed, the percentage of seeds in a container or lot that are hard seeds, as estimated by a
10 germination analysis conducted according to this chapter.

11 (14) “Hybrid seed” means the first generation seed of a cross produced by
12 controlling the pollination and by combining two or more inbred lines, one inbred or a single
13 cross with an open pollinated variety or two varieties or species, except open-pollinated
14 varieties of *zea mays* (corn). “Hybrid seed” does not include the second or subsequent
15 generation of seed produced from a cross described in this subsection.

16 **NOTE:** A hybrid version of a named seed variety is considered a separate seed
17 variety.

18
19 (15) “Indigenous” species means a species that is indigenous to the state of
20 Wisconsin, as determined by the Wisconsin department of natural resources in Wisconsin
21 department of natural resources technical bulletin number 192, *Checklist of Vascular Plants*
22 *of Wisconsin (2001)*.

23 **NOTE:** Copies of the DNR technical bulletin number 192, *Checklist of Vascular*
24 *Plants of Wisconsin (2001)*, can be obtained at
25 <http://digital.library.wisc.edu/1711.dl/EcoNatRes.DNRBull192>,
26 or by contacting the Wisconsin department of agriculture, trade and consumer
27 protection (seed program) at P.O. Box 8911, Madison, WI 53708-891,

1 (608)224-4500 or <http://datcp.state.wi.us> .

2 (16) “Inert matter” means all matter that is not intact seed. “Inert matter” includes
3 broken seeds, sterile florets, chaff, fungus bodies and stones.

4 (17) “Inoculated seed” means legume seed that has received an application of a
5 bacteria culture that will effectively inoculate the legume to produce root nodulation, plant
6 growth and nitrogen accumulation.

7 (18) “Kind” means seed of a particular plant species or subspecies, or 2 or more
8 related plant species or sub-species, which are singly or collectively known by one common
9 name such as corn, oats, alfalfa or timothy. “Kind” includes an indigenous species or
10 subspecies.

11 (19) “Lawn or turf seed” means the seed of grasses, clovers or other agricultural
12 seeds or seed mixtures that are commonly used or sold for seeding lawns, parks or turf areas
13 in this state. “Lawn or turf seed” does not include native species seed that is labeled as
14 native species seed.

15 (20) “Lot” means a specific bulk quantity of agricultural seed, or a specific
16 aggregation of agricultural seed containers, whose seed contents are uniform throughout.

17 (21) “Lot code” means a number or mark that uniquely identifies a lot.

18 (22) “Mixture” means agricultural seed consisting of more than one kind or variety,
19 where each kind or declared variety represents more than 5% by weight of the whole
20 mixture.

21 (23) “Native species seed” means agricultural seed derived from indigenous
22 herbaceous species.

23 (24) “Noxious weed seeds” include prohibited noxious weed seeds and restricted

1 noxious weed seeds.

2 (25) “Person” means an individual, corporation, partnership, limited liability
3 company, trust or other legal entity.

4 (26) “Pesticide” has the meaning given in s. 94.67(25), Stats.

5 (27) “Prohibited noxious weed seeds” means the seeds of weeds that are highly
6 destructive and difficult to control by good cultural practices and use of herbicides.

7 “Prohibited noxious weed seeds” includes *convolvulus arvensis* (field bindweed), *euphorbia*
8 *esula* (leafy spurge), *cirsium arvense* (canada thistle), *panicum miliaceum* (wild proso
9 millet), *eriochloa villosa* (woolly cupgrass), *pueraria montana var. lobata* (kudzu),
10 *polygonum perfoliatum* (mile-a-minute weed), *centaurea picris* (Russian knapweed), and
11 *centaurea maculos* (spotted knapweed).

12 (28) “Pure live seed percentage” means, for a particular kind or variety of native
13 species seed, the sum of the following multiplied by the pure seed percentage:

- 14 1. The germination percentage.
- 15 2. The hard seed percentage or dormant seed percentage, as appropriate based on the
16 applicable seed evaluation method this chapter.

17 (29) “Pure seed percentage” means, for a particular kind or variety of agricultural
18 seed, the percentage by weight of the container or lot contents that is comprised of seed of
19 that kind or variety exclusive of inert matter and other seeds.

20 (30) “Restricted noxious weed seeds” means seeds of species that are objectionable,
21 but that can be controlled by good cultural practices or use of herbicides. “Restricted
22 noxious weed seeds” include *raphanus raphanistrum* (wild radish), *plantago lanceolata*
23 (buckhorn), *silene alba* (white cockle), *cuscuta spp.* (dodder), *berteroa incana* (hoary

1 alyssum), *avena fatua* (wild oat), *sinapis arvensis* (wild mustard), *agropyron repens*
2 (quackgrass), *sonchus arvensis* (perennial sowthistle), *ambrosia trifida* (giant ragweed), and
3 *abutilon theophrasti* (velvetleaf).

4 (31) “Seed evaluation” means evaluation of agricultural seed to determine seed
5 composition, purity, germination percentage, hard seed percentage, dormant seed percentage,
6 weed seed content, inert matter content, or other characteristics for purposes of seed labeling,
7 regulatory compliance or enforcement under this chapter. “Seed evaluation” includes seed
8 sampling, inspection, analysis, testing and examination. “Seed evaluation” includes
9 evaluation by seed labelers and by the department.

10 (32) “Seed evaluation terminology” means the nomenclature used in seed evaluation
11 and related seed labeling, and includes relevant connotations, conditions, limitations and
12 tolerances related to the declaration of seed evaluation results on seed labels.

13 (33) “Seed labeler” means a person who holds a valid license under s. ATCP 20.18,
14 and who accepts legal responsibility for the labeling that accompanies a container or lot of
15 agricultural seed that is sold, offered for sale, or displayed or distributed for sale in this state.

16 (34) “Treated seed” means agricultural seed that is treated with a pesticide, or that is
17 treated with another substance or process for which the seed advertising or labeling makes a
18 performance claim.

19 (35) “Type” as applied to flower seed means a group of different varieties of the
20 same kind of flower seed, where the different varieties are so nearly similar that they cannot
21 be clearly distinguished except under special conditions or analysis.

22 (36) “Uniform” means consistent in composition and characteristics that are relevant
23 to labeling requirements under this chapter, within tolerances prescribed by the relevant seed

1 evaluation method under this chapter for each relevant characteristic.

2 (37) "Variety" means a subdivision of a kind, where the subdivision is all of the
3 following:

4 (a) Distinct in the sense that it can be differentiated from all other known varieties of
5 the kind by one or more identifiable morphological, physiological or other characteristics.

6 (b) Uniform in the sense that variations in essential and distinctive characteristics,
7 within the variety, are describable.

8 (c) Stable in the sense that the variety will remain unchanged in its essential and
9 distinctive characteristics and in its uniformity when reproduced or reconstituted as required
10 for different categories of varieties.

11 **NOTE:** Under the federal seed law (7 USC 1551 et. seq.), plant breeders may assign
12 names to new plant varieties that they create. Variety names once established
13 may not be changed. Plant breeders are not required to register variety names,
14 but must refrain from duplicating existing variety names (the United States
15 department agriculture offers a name searching service to determine whether a
16 proposed name is already in use). A company or trade name may not be used
17 as a substitute for an established variety name. Under the federal plant variety
18 protection act (7 U.S.C. 2321 et seq.), a plant breeder may obtain a certificate
19 of plant variety protection (similar to a patent) for a new plant variety that
20 meets certain criteria.

21 (38) "Vegetable seed" means agricultural seed that is commonly used to produce
22 vegetables or herbs in home gardens, and is generally known and sold under the name of
23 vegetable or herb seed in this state.

24 (39) "Weed" means a plant that is generally recognized as objectionable within the
25 intended crop or planting in this state.

26 (40) "Wild type" means a native species that is not a named variety.

27

28 **ATCP 20.02 Seed evaluation and related terminology. (1)** Except as otherwise

1 provided in this chapter, agricultural seed evaluation methods and seed evaluation
2 terminology used in agricultural seed labeling shall be consistent with applicable *Rules for*
3 *Seed Testing (October 1, 2010 edition)* published by AOSA, Inc.

4 **NOTE:** AOSA, Inc. is also known as the Association of Official Seed Analysts.
5 Copies of the *Rules for Seed Testing (October 1, 2010 edition)*, published by
6 AOSA, Inc., are on file with the department and the legislative reference
7 bureau. Copies may be obtained by contacting AOSA, Inc. at
8 <http://www.aosaseed.com>.

9 (2) An agricultural seed sample collected by the department shall be accompanied by
10 the label for that seed. At the request of the department, a seed labeler shall provide a copy
11 of the agricultural seed label to accompany each seed sample collected by the department.

12 **ATCP 20.04 Seed labeling; general. (1) LABEL CONTENTS; GENERAL.** Except as
13 provided in subs. (3) to (5), every container or lot of agricultural seed that is sold, offered for
14 sale, or exposed or distributed for sale in this state shall be labeled with all of the following:

15 (a) The name and address of the seed labeler.

16 (b) A net quantity declaration that complies with ss. 98.08 and 98.07, Stats. If the
17 seed is sold in packaged form, the net quantity declaration shall comply with s. ATCP
18 90.08(12).

19 **NOTE:** The net quantity declaration under par. (b) is normally expressed as the total
20 net weight of the labeled container or lot.

21 (c) A lot code identifying the labeled lot or, in the case of a labeled container, the
22 source lot from which the container originates.

23 (d) The area of origin of the seed if the area of origin is known or if the seed is
24 represented as native species seed. If the seed is a mixture of kinds or varieties from
25 different areas of origin, the label shall identify the area of origin for each kind or variety
26 declared under par. (e). The area of origin, if located in this state, may be identified by a

1 geographic description or by the name of a political subdivision such as a county. If the
2 seed originates from another state or country, the label shall identify that state or country.

3 (e) All of the following information related to the composition of the agricultural
4 seed:

5 1. The name and pure seed percentage of each kind of agricultural seed that
6 constitutes more than 5% by weight of the net contents of the container or lot. Kinds and
7 corresponding pure seed percentages shall be listed in order of predominance based on pure
8 seed percentage.

9 2. The name and pure seed percentage of each variety of agricultural seed that is
10 declared on the seed label. If the label declares any variety of a kind, it shall declare every
11 variety of that kind that has a pure seed percentage of more than 5%. Varieties protected by
12 a certificate of protection under the federal plant variety protection act shall be declared.
13 Declared varieties and corresponding pure seed percentages shall be listed in order of
14 predominance under the kinds to which they pertain. If a container or lot includes 2 or more
15 undeclared varieties of any kind, each of which has an undisclosed pure seed percentage of
16 more than 5%, the label shall identify the seed of that kind as a mixture, blend or assortment
17 and shall include the conspicuous statement **“Variety Not Stated.”**

18 (f) The combined total amount of all weed seeds in the container or lot, expressed as
19 a percentage by weight of the total net contents of the container or lot. If any of the weed
20 seeds are noxious weed seeds, the label shall also identify each component kind of noxious
21 weed seed and its percentage by weight of the container or lot contents.

22 (g) The combined total amount, in the container or lot, of all agricultural seeds of
23 kinds not declared under par. (e)1. This amount shall be expressed as a percentage by weight

1 of the total net contents of the container or lot. The label need not identify these seeds by
2 kind, but may describe them collectively as “other crop seeds” to distinguish them from
3 kinds declared under par. (e)1.

4 (h) The combined total amount of all inert matter in the container or lot, expressed as
5 a percentage by weight of the total net contents of the container or lot.

6 (i) The summation of the component percentages declared under pars. (e)1., (f), (g)
7 and (h), which shall yield a total of 100%.

8 (j) The germination information described in s. ATCP 20.06(1), and the month and
9 year in which the germination analysis used to determine that information was completed.

10 (k) Applicable information required under s. ATCP 20.08 if any of the seed is
11 treated, inoculated or coated seed, or if the seed is part of a combination seed and non-seed
12 product.

13 (L) Applicable information required under s. ATCP 20.10 if the label identifies any
14 of the seed as hybrid seed.

15 (m) Other label information required by this chapter.

16 **(2) FORM OF LABELING.** The label information required under this section shall be
17 attached to each container of agricultural seed, except that:

18 (a) The information may be provided in an invoice or other labeling document that
19 accompanies a wholesale lot or unpackaged bulk lot of agricultural seed identified in the
20 invoice or labeling document. If a wholesale lot includes more than one unlabeled container
21 of agricultural seed, the wholesale lot code shall be marked on each container and the seed in
22 each container shall conform to the labeling that accompanies the wholesale lot.

23 (b) If the agricultural seed is weighed and sold at retail from an open display

1 container in the presence of the retail purchaser:

2 1. Label information required under this section may be disclosed on a label that is
3 attached to the display container, provided that copies of that label are also available for
4 purchasers to take.

5 2. If the seed labeler is the retail seller, the seed labeler's name and address may be
6 disclosed on a scale ticket, sales slip or invoice provided to the retail purchaser.

7 3. The net content declaration under sub. (1)(b) may be disclosed on a scale ticket,
8 sales slip or invoice provided to the retail purchaser.

9 **(3) VEGETABLE SEED IN SMALL QUANTITIES FOR HOME USE.** (a) If vegetable seed that
10 complies with s. ATCP 20.06(3) is packaged for home use in a container with net contents of
11 less than one pound, or in a pre-planted container, mat, tape or other planting device with net
12 contents of less than one pound, the container or device may be labeled with one of the
13 following in lieu of all the information required under s. ATCP 20.04(1)(f) to (j):

14 1. The month and year in which a germination analysis under s. ATCP 20.02 was
15 completed on the source lot identified under sub. (1)(c).

16 2. The statement "Sell by [*seed labeler inserts date*]." The stated date may be no
17 more than 12 months after the end of the month in which a germination analysis was
18 completed on the source lot identified under sub. (1)(c).

19 3. A statement indicating the calendar year in which the seed is to be used. The
20 beginning of the year may be no more than 12 months after the end of the month in which a
21 germination analysis was completed on the source lot identified under sub. (1)(c).

22 (b) If the vegetable seed is packaged in a pre-planted container, or in a mat, tape or
23 other planting device, the guaranteed minimum quantity of pure vegetable seed included in

1 that container or planting device if that quantity cannot be readily ascertained by a
2 prospective buyer.

3 (4) FLOWER SEED IN SMALL QUANTITIES FOR HOME USE. If flower seed that complies
4 with s. ATCP 20.06(4) is packaged for home use in a container with net contents of less than
5 one pound, or in a pre-planted container, mat, tape or other planting device with net contents
6 of less than one pound, the container or device may be labeled with all of the following
7 information in lieu of all the information required under s. ATCP 20.04(1)(e) to (j):

8 (a) Applicable information under s. ATCP 20.12 describing the composition of the
9 flower seed.

10 (b) One of the following:

11 1. The month and year in which a germination analysis under s. ATCP 20.02 was
12 completed on the source lot identified under sub. (1)(c).

13 2. The statement "Sell by [*seed labeler inserts date*]." The stated date may be no
14 more than 12 months after the end of the month in which a germination analysis was
15 completed on the source lot identified under sub. (1)(c).

16 3. A statement indicating the calendar year in which the seed is to be used. The
17 beginning of the year may be no more than 12 months after the end of the month in which a
18 germination analysis was completed on the source lot identified under sub. (1)(c).

19 (c) If the flower seed is packaged in a pre-planted container, or in a mat, tape or other
20 planting device, the guaranteed minimum quantity of pure flower seed included in that
21 container or planting device if that quantity cannot be readily ascertained by a prospective
22 buyer.

23 (5) NATIVE SPECIES SEED. (a) Seed may not be represented as native species seed

1 unless it is derived from indigenous herbaceous species.

2 **NOTE:** See definitions of “indigenous” and “native species seed” in s. ATCP
3 20.01(15) and (23).

4
5 (b) A container or lot of native species seed shall be labeled with the scientific
6 species or subspecies name corresponding to each kind or variety of native species seed
7 declared under sub. (1)(e).

8 (c) A native species seed label may, for each declared kind and each declared variety
9 of native species seed, state the pure live seed percentage in lieu of the germination
10 information under s. ATCP 20.06(1).

11 (d) Native species seed germination analysis shall be performed by means of a
12 procedure prescribed under s. ATCP 20.02 or by means of tetrazolium analysis. If
13 tetrazolium analysis is used, germination information on the seed label shall be accompanied
14 by the word “Untested.”

15 (e) If native species seed is packaged for home use in a container with net contents of
16 less than one pound, or in a pre-planted container, mat, tape or other planting device with net
17 contents of less than one pound, the container or device may be labeled with one of the
18 following in lieu of all the information required under s. ATCP 20.04(1)(f) to (j):

19 1. The month and year in which a germination analysis under par. (c) was completed
20 on the source lot identified under sub. (1)(c).

21 2. The statement “Sell by [*seed labeler inserts date*].” The stated date may be no
22 more than 12 months after the end of the month in which a germination analysis under par.
23 (c) was completed on the source lot identified under sub. (1)(c).

24 3. A statement indicating the calendar year in which the seed is to be used. The
25 beginning of the year may be no more than 12 months after the end of the month in which a

1 germination analysis under par. (c) was completed on the source lot identified under sub.
2 (1)(c).

3 (f) If the native species seed is packaged in a pre-planted container, or in a mat, tape
4 or other planting device, the guaranteed minimum quantity of pure native species seed
5 included in that container or planting device if that quantity cannot be readily ascertained by
6 a prospective buyer.

7 **ATCP 20.06 Seed germination; labeling, analysis and standards. (1) LABEL**
8 **INFORMATION.** A seed label that is required to include germination information under s.
9 ATCP 20.04(1)(j) shall state the following percentages for each declared kind and each
10 declared variety of seed:

11 (a) The germination percentage.

12 (b) The hard seed percentage or dormant seed percentage, as appropriate based on
13 the applicable test method under s. ATCP 20.02.

14 **(2) GERMINATION ANALYSIS; EXPIRATION.** (a) Except as provided in par. (b):

15 1. The label information under sub. (1) shall be based on a seed germination analysis
16 under s. ATCP 20.02 that is completed within the 12-month period immediately preceding
17 the month in which the seed is sold, offered for sale, or displayed or distributed for sale,
18 except that for lawn or turf seed the label information may be based on a seed germination
19 analysis under s. ATCP 20.02 that is completed within the 15-month period immediately
20 preceding the month in which the seed is sold, offered for sale, or displayed or distributed for
21 sale.

22 2. Seed on which a germination analysis under subd. 1 has expired may be relabeled
23 with the results of a new germination analysis that complies with subd. 1.

1 (b) If seed is packaged in a hermetically sealed container as provided in sub. (5), the
2 label information under sub. (1) may be based on a germination analysis under s. ATCP
3 20.02 that is completed within the 36-month period immediately preceding the month in
4 which the seed is sold, offered for sale, or displayed or distributed for sale. Seed on which a
5 germination analysis under this paragraph has expired may not be sold, offered for sale, or
6 displayed or distributed for sale unless it has been retested within the 9-month period
7 immediately preceding month in which it is sold, offered for sale, or displayed or distributed
8 for sale, and is re-labeled with the new analysis results and extended expiration date.

9 (c) A person holding seed on which the germination analysis is no longer valid under
10 this subsection shall withdraw the seed from sale and shall identify it as expired seed until it
11 has been re-analyzed and relabeled by the seed labeler identified on the new label.

12 (3) GERMINATION STANDARDS FOR VEGETABLE SEED. (a) Except as provided in par.
13 (b), the germination percentage for each kind of vegetable seed shall be at least equal to the
14 applicable percentage specified in Table 1.

15 (b) If the germination percentage for any kind of vegetable seed is less than the
16 applicable percentage specified in Table 1, the vegetable seed shall be labeled with the actual
17 germination percentage and the conspicuous words “**Below Standard**” in not less than 8-
18 point type.

Table 1
GERMINATION STANDARDS FOR VEGETABLE SEED

Seed Kind	Percent
Anise	50
Artichoke	60
Asparagus	70
<u>Asparagusbean</u>	75
Basil, Sweet	70

Bean, Garden	70
Bean, Lima	70
Bean, Runner	75
Beet	65
Broadbean	75
Broccoli	75
Brussel Sprouts	70
Burdock, Great	60
Cabbage	75
Cabbage, Tronchuda	70
Cantaloupe	75
Caraway	55
Cardoon	60
Carrot	55
Cauliflower	75
Celeraic	55
Celery	55
Chard, Swiss	65
Chervil, Salad	65
Chicory	65
Chinese Cabbage	75
Chives	50
Citron	65
Collards	80
Coriander	70
Corn, Pop	75
Corn, Sweet	75
Cornsalad	70
Cowpea	75
Cress, Garden	75
Cress, Upland	60
Cress, Water	40
Cucumber	80
Dandelion	60
Eggplant	60
Endive	70
Fennel, Florence	60
Fennel, Sweet	50
Kale	75
Kale, Chinese	75
Kale, Siberian	75
Kohlrabi	75
Leek	60
Lettuce	80
Muskmelon	75

Marjoram, Sweet	50
Mustard	75
Mustard, Spinach	75
Okra	50
Onion	70
Onion, Welsh	70
Oregano	60
Pak-Choi	75
Parsley	60
Parsnip	60
Pea	80
Peanut	60
Pepper	55
Pumpkin	75
Radish	75
Rhubarb	60
Roquette	60
Rosemary	30
Rutabaga	75
Sage	60
Salsify	75
Savory, Summer	55
Sorrel	65
Soybean	75
Spinach	60
Spinach, New Zealand	40
Squash	75
Thyme	50
Tomato	75
Tomato, Husk	50
Turnip	80
Watermelon	70
All Other Kinds	50

1 **(4) GERMINATION STANDARDS FOR FLOWER SEED.** (a) Except as provided in par. (b)
2 or (c), the germination percentage for each kind of flower seed, as determined by an analysis
3 under s. ATCP 20.02, shall be at least equal to the applicable percentage specified in Table 2.
4 When calculating the germination percentage for a kind of flower seed marked with an
5 asterisk in Table 2, hard seeds may be counted as if they were germinated seeds.

1 (b) Except as provided in par. (c), if the germination percentage for any kind of
 2 flower seed is less than the applicable minimum percentage specified in Table 1, the flower
 3 seed shall be labeled with the actual germination percentage and the conspicuous words
 4 **“Below Standard”** in not less than 8-point type.

5 (c) If flower seed is of a kind that is not specifically identified in Table 1, and is of a
 6 kind for which no standard germination analysis is prescribed under s. ATCP 20.02, the
 7 flower seed may be labeled with the year of collection and the word **“Untested.”**

Table 2
GERMINATION STANDARDS FOR FLOWER SEED

Seed Kind	Percent
Archillea (The Pearl) - <i>Achillea ptarmica</i>	50
African Daisy - <i>Dimorphotheca aurantiaca</i>	55
African Violet – <i>Saintpaulia spp</i>	30
Ageratum - <i>Ageratum mexicanum</i>	60
Agrostemma (rose campion) - <i>Agrostemma coronaria</i>	65
Alyssum - <i>Alyssum compactum</i> , <i>A. maritimum</i> , <i>A. procumbens</i> , <i>A. saxatile</i>	60
Amaranthus - <i>Amaranthus spp</i>	65
Anagalis (primpernel) - <i>Anagalis arvensis</i> , <i>Anagalis coerulea</i> , <i>Anagalis grandiflora</i>	60
Anemone - <i>Anemone coronaria</i> , <i>A. pulsatilla</i>	55
Angel's Trumpet - <i>Datura arborea</i>	60
Arabis - <i>Arabis alpine</i>	60
Arctotis (African lilac daisy) - <i>Arctotis grandis</i>	45
Armeria - <i>Armeria Formosa</i>	55
Asparagus, fern - <i>Asparagus plumosus</i>	50
Asparagus, sprenger, <i>Asparagus sprengeri</i>	55
Aster, China - <i>Callistephus chinensis</i> ; except Pompon, Powderpuff, and Princess types	55
Aster, China - <i>Callistephus chinensis</i> ; Pompon, Powderpuff and Princess types	50
Aubretia - <i>Aubretia deltoids</i>	45
Baby Smilax - <i>Aparagus asparagoides</i>	25
Balsam - <i>Impatiens balsamina</i>	70
Begonia - (<i>Begonia fibrous rooted</i>)	60
Begonia - (<i>Begonia tuberous rooted</i>)	50
Bells of Ireland - <i>Molucella laevis</i>	60
Brachycome (swan river daisy) - <i>Brachycome iberidifolia</i>	60
Browallia - <i>Browallia elata</i> and <i>B. speciosa</i>	65
Bupthalum (sunwheel) - <i>Bupthalum salicifolium</i>	60

Calceolaria - Calceolaria spp	60
Calendula - Calendula officinalis	65
California Poppy - Eschscholtzia californica	60
Calliopsis - Coreopsis bicolor, C. drummondii, C. elegans	65
Campanula:	
Canterbury Bells - Campanula medium	60
Cup and Saucer Bellflower - Campanula medium calycanthea.	60
Carpathian Bellflower - Campanula carpatica	50
Peach Bellflower - Campanula persicifolia	50
Candytuft, Annual - Iberis amara, I. umbellata	65
Candytuft, Perennial - Iberis gibraltarica, I. sempervirens	55
Castor Bean - Ricinus communis	60
Cathedral Bells - Cobaea scandens	65
Celosia - Celosia argentea	65
Centaurea: Basket Flower - Centaurea americana, Cornflower - C. cyanus, Dusty Miller - C. candidissima, Royal Centaurea - C. imperialis Sweet Sultan - C. moschata, Velvet Centaurea - C. gymnocarpa	60
Cerasium (snow-in-summer) Cerastium biebersteini and C. tomentosum	65
Chinese Forget-me-not - Cynoglossum amabile	55
Chrysanthemum, Annual - Chrysanthemum carinatum, C. coronarium, C. segetum	50
Cineraria - Senecio cruentus	60
Clarkia - Clarkia elegans	65
Cleome - Cleome gigantea	65
Coleus - Coleus blumei	65
Columbine - Aquilegia spp.	50
Coral Bells - Heuchera sanguinea	55
Coreopsis, Perennial - Coreopsis lanceolata	40
Corn, ornamental - Zea mays	75
Cosmos: Sensation, Mammoth and Crested types - Cosmos bipinnatus; Klondyke type - C. sulphurea	65
Crossandra - (Crossandra infundibuliformis)	50
Dahlia - Dahlia spp	55
Daylily - Hemerocallis spp	45
Delphinium, Perennial- Belladonna and Bellamosum types; Cardinal Larkspur - Delphinium cardinale; Chinensis types; Pacific Giant, Gold Medal and other hybrids of D. elatum	55
Dianthus:	
Carnation - Dianthus caryophyllus	60
China Pinks - Dianthus chinensis, heddewigi, heddensis	70
Grass Pinks - Dianthus plumarius	60
Maiden Pinks - Dianthus deltoids	60
Sweet William - Dianthus barbatus	70
Sweet Wivelsfield - Dianthus allwoodii	60
Didiscus - (blue lace flower) - Didiscus coerulea	65
Doronicum (leopard's bane) - Doronicum caucasicum	60

Dracaena - <i>Dracaena indivisa</i>	55
Dragon Tree - <i>Dracaena draco</i>	40
English Daisy - <i>Bellis perennis</i>	55
Flowering Maple - <i>Abutilon</i> spp	35
Flax - Golden flax (<i>Linum flavum</i>); Flowering flax <i>L. randiflorum</i> ; Perennial flax, <i>L. perenne</i>	60
Foxglove - <i>Digitalis</i> spp	60
Gaillardia, Annual - <i>Gaillardia pulchella</i> ; <i>G. picta</i> ; Perennial - <i>G. grandiflora</i>	45
Gerbera (transvaal daisy) - <i>Gerbera jamesoni</i>	60
Geum - <i>Geum</i> spp	55
Gilia - <i>Gilia</i> spp	65
Gloriosa daisy (rudbeckia) - <i>Echinacea purpurea</i> and <i>Rudbeckia hirta</i>	60
Gloxinia - (<i>Simningia speciosa</i>)	40
Godetia - <i>Godetia amoena</i> , <i>G. grandiflora</i>	65
Gourds: Yellow Flowered - <i>Cucurbita pepo</i> ; White Flowered – <i>Lagenaria sisceraria</i> ; Dishcloth - <i>Luffa cylindrical</i>	70
Gypsophila: Annual Baby's Breath - <i>Gypsophilla elegans</i> ; Perennial Baby's Breath - <i>G. paniculata</i> , <i>G. pacifica</i> <i>G. repens</i>	70
Helenium - <i>Helenium autumnale</i>	40
Helichrysum - <i>Helichrysum monstrosum</i>	60
Heliopsis - <i>Heliopsis scabra</i>	55
Heliotrope - <i>Heliotropium</i> spp.	35
Helipterum (<i>Acroclinium</i>) <i>Helipterum roseum</i>	60
Hesperis (sweet rocket) - <i>Hesperis matronalis</i>	65
*Hollyhock - <i>Althea rosea</i>	65
Hunnemania (mexican tulip poppy) - <i>Hunnemania fumariaefolia</i>	60
Hyacinh bean - <i>Dolichos lablab</i>	70
Impatiens - <i>Impatiens hostii</i> , <i>I. sultani</i>	55
*Ipomea - Cypress Vine - <i>Ipomea quamoclit</i> ; Moonflower – <i>I. noctiflora</i> ; Morning Glories, Cardinal Climber, Hearts and Honey Vine - <i>Ipomea</i> spp	75
Jerusalem cross (maltese cross) - <i>Lychnis chalconica</i>	70
Job's Tears - <i>Coix lacrymajobi</i>	70
Kochia - <i>Kochia childsi</i>	55
Larkspur, Annual - <i>Delphinium ajacis</i>	60
Lantana - <i>Lantana camara</i> , <i>L. hybrid</i>	35
Lilium (regal lily) - <i>Lilium regale</i>	50
Linaria - <i>Linaria</i> spp	65
Lobelia, Annual - <i>Lobelia erinus</i>	65
Lunaria, Annual - <i>Lunaria annua</i>	65
*Lupine - <i>Lupinus</i> spp	65
Marigold - <i>Tagetes</i> spp	65
Marvel of Peru - <i>Mirabilis jalapa</i>	60
Matricaria (feverfew) - <i>Matricaria</i> spp	60
Mignonette - <i>Reseda odorata</i>	55
Myosotis - <i>Myosotis alpestris</i> , <i>M. oblongata</i> , <i>M. palustris</i>	50

Nasturtium - Tropaeolum spp	60
Nemesia - Nemesia spp	65
Nemophila - Nemophila insignis	70
Nemophila, spotted - Nemophila maculate	60
Nicotiana - Nicotiana affinis, N. sanderae, N. sylvestris	65
Nierembergia - Nierembergia spp	55
Nigella - Nigella damascene	55
Pansy - Viola tricolor	60
Penstemon - Penstemon barbatus, P. grandiflorus, P. laevigatus, P. pubescens.	60
Petunia - Petunia spp	45
Phacelia - Phacelia campanularia, P. minor, P. tanacetifolia	65
Phox, Annual - Phlox drummondii all types and varieties	55
Physalis - Physalis spp	60
Platycodon (balloon flower) - Platycodon grandiflorum	60
Plumbago, cape - Plumbago capensis	50
Ponytail - Beaucarnea recurvata	40
Poppy: Shirley Poppy - Papaver rhoeas; Iceland Poppy - P. nudicaule; Oriental Poppy - P. orientale; Tulip Poppy - P. glaucum	60
Portulace - Portulaca grandiflora	55
Primula (primrose) - Primula spp	50
Pyrethrum (painted daisy) - Pyrethrum coccineum	60
Salpiglossis - Salpiglossis gloxinaeflora, S. sinuate	60
Salvia - Scarlet Sage - Salvia splendens; Mealycup Sage (blue bedder) – Salvia farinacea	50
Saponaria - Saponaria ocymoides, S. vaccaria	60
Scabiosa, Annual - Scabiosa atropurpurea	50
Scabiosa, Perennial - Scabiosa caucasica	40
Schizanthus - Schizanthus spp	60
*Sensitive pant (mimosa) - Mimosa pudica	65
Shasta Daisy - Chrysanthemum maximum C. leucanthemum	65
Silk Oak - Grevillea robusta	25
Snapdragon - Antirrhinum spp	55
Solanum - Solanum spp	60
Statice - Statice sinuata, S. suworonii (flower heads)	50
Stocks: Common - Mathiola incana; Evening Scented - Mathiola bicornis	65
Sunflower - Helianthus spp	70
Sunrose - Helianthemum spp	30
*Sweet Pea, Annual and Perennial other than dwarf bush - Lathyrus odoratus, L latifolius	75
*Sweet Pea, dwarf bush - Lathyrus odoratus	65
Tahoka daisy - Machaeanthera tanacetifolia	60
Thunbergia - Thunbergia alata	60
Torch Flower - Tithonia speciosa	70
Torenia (wishbone flower) - Torenia fournieri	70
Tritoma Kniphofia spp	65

Verbena, Annual - Verbena hybrid	35
Vinca - Vinca rosea	60
Viola - Viola cornuta	55
Virginian stocks - Malcolmia maritime	65
Wallflower - Cheiranthus allioni	65
Yucca (Adam's needle) - Yucca filamentosa	50
Zinna (except Linearis and Creeping) - Zinnia angustifolia, Z. elegans, Z. grandiflora, Z. gracillima, Z. haegeana, Z. multiflora, Z. pumila	65
Zinnia, Linearis and Creeping - Zinnia linearis, Sanvitalia procumbens	50
All Other Kinds	50

1 (5) SEED PACKAGED IN HERMETICALLY SEALED CONTAINERS. Seed is deemed to be
2 packaged in a hermetically sealed container for purposes of sub. (2)(b) if all of the following
3 apply:

4 (a) The seed was subjected to a germination analysis under s. ATCP 20.02 and
5 packaged within 9 months after harvest.

6 (b) The seed is packaged in a sealed container that does not allow water vapor
7 penetration, through any wall or seal, greater than 0.05 grams of water per 24 hours per 100
8 square inches of surface at 100 degrees Fahrenheit with a relative humidity on one side of
9 90% and on the other side of 0%.

10 (c) The container under par. (b) is conspicuously labeled to indicate all of the
11 following:

- 12 1. The container is hermetically sealed.
- 13 2. The seed in the container has been preconditioned as to moisture content.

14 (d) The moisture content of the seed, as packaged in the container under par. (b),
15 does not exceed the applicable percentage by weight of moisture specified for that seed in
16 Table 3.

Table 3
PERCENT MOISTURE OF SEED PACKED
IN HERMETICALLY SEALED CONTAINER

Non-Vegetable Seed	% Moisture
Beet, field	7.5%
Beet, sugar	7.5%
Bluegrass, Kentucky	6.0%
Fescue, red	8.0%
Ryegrass, annual	8.0%
Ryegrass, perennial	8.0%
Other non-vegetable	6.0%
Vegetable Seed	% Moisture
Bean, garden	7.0%
Bean, lima	7.0%
Beet	7.5%
Broccoli	5.0%
Brussel Sprouts	5.0%
Cabbage	5.0%
Carrot	5.0%
Cauliflower	5.0%
Celeraic	7.0%
Celery	7.0%
Chard, Swiss	7.5%
Chinese cabbage	5.0%
Chives	6.5%
Collards	5.0%
Corn, sweet	8.0%
Cucumber	6.0%
Eggplant	6.0%
Kale	5.0%
Kohlrabi	5.0%
Leek	6.5%
Lettuce	5.5%
Muskmelon	6.0%
Mustard, India	5.0%
Onion	6.5%
Onion, Welsh	6.5%
Parsley	6.5%
Parsnip	6.0%
Pea	7.0%
Pepper	4.5%
Pumpkin	6.0%
Radish	5.0%
Rutabaga	5.0%
Spinach	8.0%
Squash	6.0%
Tomato	5.5%

Turnip	5.0%
Watermelon	6.5%
All other vegetable	6.0%

1 **ATCP 20.08 Treated seed, inoculated seed, coated seed and combination**

2 **products; labeling. (1) TREATED SEED.** A container or lot of treated agricultural seed shall
3 be labeled with all of the following, in addition to any other label information required under
4 this chapter:

5 (a) A conspicuous disclosure that the seed has been treated.

6 (b) The name of the substance used to treat the seed, or a description of the treatment
7 used. The label may use the commonly-accepted name, chemical name, or abbreviated
8 chemical (generic) name of the substance used to treat the seed.

9 (c) If the seed is treated with a pesticide, all signal words and precautionary
10 statements required for that pesticide under 40 CFR 156.72.

11 **(2) INOCULATED SEED.** A container or lot of inoculated agricultural seed shall be
12 labeled with, in addition to any other label information required under this chapter, the date
13 beyond which the inoculant is no longer warranted to be effective.

14 **(3) COATED SEED.** (a) A container or lot of coated seed shall be labeled with all of
15 the following information, in addition to any other information required under this chapter:

16 1. The percentage by weight of the container or lot content that is pure seed,
17 exclusive of coating material.

18 2. The percentage by weight of the container or lot content that is coating material.

19 3. The percentage by weight of the container or lot content that is inert material
20 other than coating material.

21 (b) For coated seed, the information under s. ATCP 20.06(1) shall be based on a

1 germination analysis of at least 400 coated pellets that may contain seeds, regardless of
2 whether those pellets actually contain seeds.

3 (4) COMBINATION SEED AND NON-SEED PRODUCTS; LABELING. Each container or lot
4 of combination seed and non-seed product shall be conspicuously labeled to disclose, in
5 addition to any other labeling required under this chapter, the nature and composition of the
6 product. The label shall describe each type of non-seed material included in the product, and
7 shall disclose the respective percentages by weight of seed and non-seed materials. The
8 product label may not be deceptive or misleading, and may not contain any false information
9 or unsubstantiated performance claims.

10 **ATCP 20.10 Hybrid seed labeling. (1) SEED LABELED AS HYBRID SEED.** If, in any
11 container or lot of agricultural seed, at least 75% of the seeds of any kind or variety declared
12 on the seed label are hybrid seeds, the label shall identify that kind or variety as hybrid seed.
13 If less than 75% of the seeds of a declared kind or variety are hybrid seeds, the label may not
14 identify that kind or variety as hybrid seed.

15 (2) HYBRID PERCENTAGE DECLARED. If a seed label identifies a declared kind or
16 variety of agricultural seed as hybrid seed, but less than 95% of the seeds of that kind or
17 variety in the container or lot are hybrid seeds, the label shall declare the actual percentage of
18 hybrid seeds. The label shall declare that percentage in parenthesis following the name of
19 the kind or variety.

20 (3) HYBRID CONSIDERED SEPARATE VARIETY. A hybrid version of a named seed
21 variety is, for purposes of this chapter, a separate seed variety that shall be identified by a
22 distinct variety name.

23 **ATCP 20.12 Flower seed in small containers; composition.** The flower seed label

1 information required under s. ATCP 20.04(4)(a) shall include all of the following as
2 applicable:

3 (1) PLANTS GROWN FOR BLOOMS. Flower seed used to grow plants primarily for their
4 blooms shall be labeled as follows:

5 (a) If the seed is for a single variety of plant, the label shall declare both the plant
6 kind and the variety.

7 *NOTE:* A declaration under par. (a) might say, for example, “Marigold, Butterball.”

8

9 (b) If the seed is for plants of a single type and bloom color, the label shall declare
10 the kind, type and bloom color.

11 *NOTE:* A declaration under par. (b) might say, for example, “Scabiosa, Tall, Large
12 Flowered, Double, Pink.”

13

14 (c) If the seed is for assorted colors or types of a single kind of plant, the label shall
15 declare the kind, colors and types, and shall disclose that the seed is mixed or assorted.

16 *NOTE:* A declaration under par. (c) might say, for example, “Marigold, Dwarf
17 Double French, Mixed Colors.”

18 (d) If the seed is for a mixture or assortment of kinds or varieties, the label shall
19 indicate that the seed is a mixture or assortment, and shall identify a specific intended use of
20 the mixture or assortment.

21 *NOTE:* A declaration under par. (d) might say, for example, “Cut Flower Mixture,”
22 or “Rock Garden Assortment.” Statements such as “General Purpose
23 Assortment” or “Wonder Mixture” that fail to indicate a specific intended use
24 do not comply with par. (d).

25 (e) The composition of a seed mixture or assortment under par. (d) shall be declared
26 as follows, if the seed mixture or assortment is packaged in a container that has net contents
27 of more than 3 grams:

28 1. The label shall list the name and pure seed percentage of each component kind and

1 each component variety of seed that has a pure seed percentage of more than 5%. Kinds and
2 corresponding pure seed percentages shall be listed in order of predominance by pure seed
3 percentage. Varieties and corresponding pure seed percentages shall be listed in order of
4 predominance under the kind to which they pertain.

5 2. The label shall identify component kinds and varieties that have pure seed
6 percentages of 5% or less, but need not declare their individual pure seed percentages or list
7 them in order of predominance. The label shall declare the sum of the pure seed percentages
8 of these component kinds and varieties except that, if no component kind or variety in the
9 container has a pure seed percentage of more than 5%, the label may include the statement
10 **“No component in excess of 5%”** in lieu of the sum of the pure seed percentages.

11 (f) If a seed mixture or assortment under par. (d) is packaged in a container with net
12 contents of 3 grams or less, the label shall identify all of the component kinds and varieties
13 but need not identify their pure seed percentages or list them in order of predominance.

14 **(2) PLANTS GROWN FOR ORNAMENTAL FEATURES OTHER THAN BLOOMS.** (a) Except
15 as provided in par. (b), flower seed used to grow plants primarily for ornamental features
16 other than blooms shall be labeled with the name and pure seed percentage of each kind and
17 each variety of flower seed that comprises more than 5% by weight of the seed container
18 contents.

19 (b) If a container includes assorted varieties of a kind, the container need not declare
20 the individual varieties if it does all of the following:

- 21 1. Identifies the kind.
- 22 2. Identifies the declared kind as being a mixture, blend or assortment.
- 23 3. Describes the common ornamental feature of the varieties comprising the mixture,

1 blend or assortment.

2 *NOTE:* For example, a label under par. (b) might describe a mixture of ornamental
3 gourd seeds (seed kind) as “Ornamental Gourds, Small Fruited, Mixed.”

4 **ATCP 20.14 Prohibited practices.** No seed labeler or seller of agricultural seed
5 may so any of the following:

6 (1) Sell, offer for sale, or display or distribute for sale in this state any agricultural
7 seed that is not labeled according to this chapter, or that is accompanied by any false,
8 deceptive or misleading labeling.

9 (2) Make any unsubstantiated content or performance claim for agricultural seed.

10 (3) Make any representation in connection with the advertising, promotion, offering
11 for sale, or sale of any agricultural seed that is false, deceptive or misleading.

12 (4) Sell, offer for sale, or display or distribute for sale in this state any agricultural
13 seed that contains any of the following:

14 (a) Any prohibited noxious weed seeds.

15 (b) Weeds seeds that collectively constitute more than 0.50% of the seed container
16 contents by weight.

17 (5) Add any foreign material, other than the following materials, to any agricultural
18 seed that is sold, offered for sale, or displayed or distributed for sale in this state:

19 (a) Treatment materials used to produce treated seed that is properly labeled under s.
20 ATCP 20.08(1).

21 (b) Inoculents used to produce inoculated seed that is properly labeled under s.
22 ATCP 20.08(2).

23 (c) Coating materials used to produce coated seed that is properly labeled under s.
24 ATCP 20.08(3).

1 (d) Mulch, growth media, fertilizer or other materials used to produce combination
2 seed and non-seed products that are properly labeled under s. ATCP 20.08(4).

3 **ATCP 20.16 Labeling variances.** The department may grant a variance from a
4 labeling requirement under this chapter if the department finds that the variance is consistent
5 with the purposes of this chapter, is consistent with other state and federal law, and is
6 necessary to avoid unfairness or unnecessary hardship. A variance shall be issued in writing.
7 The variance shall clearly describe the terms and conditions of the variance, and shall explain
8 the department's reasons for granting the variance.

9 **ATCP 20.18 Seed labeler license. (1) REQUIREMENT.** No person may act as a seed
10 labeler unless that person holds a valid annual license from the department under s. 94.43,
11 Stats. An annual license expires on December 31. A license is not transferable.

12 **(2) LICENSE APPLICATION.** A person shall apply for a license under sub. (1) on a
13 form provided by the department. The application shall include all of the following:

14 (a) The correct legal name of the applicant, as it will appear on seed labels.

15 (b) The applicant's principal business address.

16 (c) The applicant's gross sales of seed in this state, if any, under the applicant's label
17 in the 12 months immediately preceding the date of application.

18 (d) Other information reasonably required by the department for licensing purpose.

19 (e) The license fee required under sub. (3).

20 **(3) LICENSE FEE.** A license application under sub. (2) shall include the following fee
21 based on the gross sales reported under sub. (2)(c) or, if no sales are reported under sub.

22 (2)(c), a fee of \$25:

23 (a) \$25 for gross sales of less than \$10,000.

- 1 (b) \$50 for gross sales of at least \$10,000 but less than \$50,000.
- 2 (c) \$100 for gross sales of at least \$50,000 but less than \$100,000.
- 3 (d) \$300 for gross sales of at least \$100,000 but less than \$250,000.
- 4 (e) \$500 for gross sales of at least \$250,000 but less than \$500,000.
- 5 (f) \$750 for gross sales of at least \$500,000 but less than \$1 million.
- 6 (g) \$1,000 for gross sales of at least \$1 million but less than \$10 million.
- 7 (h) \$1,500 for gross sales of at least \$10 million but less than \$100 million.
- 8 (i) \$2,500 for gross sales of at least \$100 million.

9 **NOTE:** License application forms may be obtained by contacting the Seed Program
10 at the Department of Agriculture, Trade and Consumer Protection, P.O. Box
11 8911, Madison, WI 53708-8911 or at (608)224-4500 or at
12 www.datcp.state.wi.us.

13 **SECTION 2. EFFECTIVE DATE:** This rule takes effect on the first day of the month
14 following publication in the Wisconsin administrative register, as provided in s.
15 227.22(2)(intro.), Stats.

Dated this _____ day of May, 2011.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary