

Wisconsin Department of Agriculture, Trade and Consumer Protection

Regulatory Flexibility Analysis

Rule Subject: Hemp
Adm. Code Reference: ATCP 22
DATCP Docket #: 20-R-1

Rule Summary

This emergency rule continues the hemp pilot program created under s. 94.55 Stats., by 2017 Act 100 as modified by 2019 Act 68. Under ss. 94.55 (3) and (3w) Stats., the Department of Agriculture, Trade and Consumer Protection (Department) is required to promulgate rules establishing a state hemp research pilot program (Pilot Program).

This emergency rule specifies the application process for obtaining a license to grow and a license to process hemp for research purposes under the Pilot Program administered by the Department.

Pursuant to 2019 Act 68, Section 38, the Department is not required to provide a finding of emergency or prepare a statement of scope of the rules. The Department is also not required to submit the final draft to the Governor for approval.

This rule repeals and replaces emergency rule EmR1807, which was published and effective on March 2, 2018, and emergency rule EmR1808, which was published and effective on March 5, 2018. The repeal and replacement was necessary as the emergency rules expire July 1, 2020. This emergency rule takes effect upon publication and remains in effect until the expiration of the Pilot Program pursuant to Section 7605 (b) of the Agricultural Improvement Act of 2018, or the date on which emergency rules implementing an USDA-approved state plan, promulgated pursuant to 2019 Act 68, section 38, take effect, whichever is sooner.

Small Business Affected

This emergency rule continues the existing Pilot Program with no added fees or costs and therefore will not negatively impact small business as this rule does not make significant modifications to the regulation of the hemp industry. This rule continues the Pilot Program as it existed under the previous emergency rules with minor changes to ensure consistency with state and federal law. The fee-based requirements include a one-time license fee which is valid until the Pilot Program expires on October 31, 2020 or unless the license is revoked. In addition, licensees who plan to grow or process hemp will be charged an annual registration fee. Registered growers who plan to harvest hemp will be charged sampling and testing fees for the collection and analysis of the regulatory samples. The impacts of this rule to the regulated industry do not include changes to the required fees to participate in the program, but do update regulations to meet the current state and federal law. The regulated industry is required to be compliant with the updated regulations.

Reporting, Bookkeeping and other Procedures

This rule will impose fees, recordkeeping, and reporting requirements. This rule will require participants to prepare a research plan and require growers to submit a research agreement. All hemp must meet defined analytical standards before it can be transported from the growing location. This rule provides criteria for pilot participants to obtain and maintain a license. The rule explains the criteria for suspending, revoking, or denying licensure. A hemp grower who successfully plants, grows and plans to harvest hemp must have the hemp sampled by the Department before the hemp can be harvested. A Fit for Commerce Certificate must accompany hemp that is transported from the growing location. The Fit for Commerce Certificate is the documentation that verifies that the hemp it accompanies is legally hemp. Sampling and testing must be completed before a Fit for Commerce Certificate can be issued. A Fit for Commerce Certificate will be issued for each lot that tests at or below 0.3 percent THC. A lot is a contiguous area of one variety or strain of hemp growing indoors or outdoors. A grower may have more than one lot and each lot must be sampled separately. The fee for sampling and testing of one lot is \$250 per sample.

Professional Skills Required

The proposed rule does not impose regulations that will require professional skills for small businesses.

Accommodation for Small Business

Many of the license applicants may be small businesses. This rule does not make special exceptions for small businesses.

Conclusion

This rule will have no adverse effect on businesses, including small businesses. Therefore, this emergency rule is not subject to the delayed small business effective date provided in s. 227.22 (2) (e), Stats.

Dated this _____ day of June, 2020.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sara Walling, Administrator
Division of Agricultural Resource Management