

Wisconsin Department of Agriculture, Trade and Consumer Protection

Regulatory Flexibility Analysis

Rule Subject: Hemp
Adm. Code Reference: ATCP 22
DATCP Docket #: 20-R-09

Rule Summary

This emergency rule converts the existing hemp pilot program (Pilot Program) created under Wis. Stat. s. 94.55 (3), by 2017 Act 100 as modified by 2019 Act 68, to a hemp research program (Hemp Program) created under Wis. Stat. s. 94.55 (2). Under Wis. Stat. ss. 94.55 (2) and (3w), the Department of Agriculture, Trade and Consumer Protection (Department) is required to promulgate rules regulating hemp activities.

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

Pursuant to Wis. Stat. s. 94.55 (3w), 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 EmR2016, which was published and effective on June 27, 2020. The repeal and replacement was necessary as the previous Pilot Program was operated pursuant to Wis. Stat. s. 94.55 (3). The Department's authority to operate the Pilot Program is repealed by 2019 Act 68, Section 87, one year after the U.S. Department of Agriculture (USDA) established an approval process of state and tribal plans to produce hemp. After the repeal of Wis. Stat. s. 94.55 (3), the Department retains authority to operate a hemp program under s. 94.55 (2). Wis. Stat. s. 94.55 (2) (b) 2. requires the Department to regulate hemp production only to the extent required under federal law and in a manner that allows "...the greatest possible opportunity to engage in those activities." Operating under a 2014 Farm Bill research program provides Wisconsin hemp growers the greatest opportunity to produce hemp.

Small Business Affected

This rule continues the regulatory framework of the Pilot Program as it existed under the previous emergency rules with minor changes to ensure consistency with state law and to clarify rule language to reflect program practice. Therefore, the rule will not negatively impact small business as this rule does not make significant modifications to the regulation of the hemp industry as it currently exists.

The regulated industry is required to comply with the updated regulations. The Hemp Program is a voluntary program, so no business is compelled to participate. If a business chooses to

participate, it is a fee-for-service program where the Department charges fees to cover the cost of program operations. Thus, while there are statutorily driven fees and fee increases for a few items in this rule, the fees are limited to the costs necessary to cover program operations related to the services provided.

Consistent with the Pilot Program, new licensees to the Hemp Program will be required to pay a one-time license fee. This rule adds a statutorily required initial license fee for new processor licensees, whereas previously only new grower licensees were required to pay the initial license fee. The rule adds fees for costs necessary to conduct statutorily required background checks of new licensees. These new fees are necessary to comply with the statutorily required components of the program, and thus less-stringent standards cannot be created. Licensees who plan to operate during the calendar year will continue to be charged an annual registration fee. To offset the impact of the new statutorily required initial license fee for new processor licensees, there is no fee for processors to register in the annual registration year in which they first obtain a processor license. Because this rule converts licenses and annual registrations issued under the Pilot Program to licenses and annual registrations issued under this Hemp Program, current licensees will not have to pay any additional license or background check fees. Annual registrations will expire December 31, 2020.

There are some costs of compliance associated with program participation such as sampling, testing, and recordkeeping. However, because hemp is regulated at the federal level, these costs are unavoidable in order to allow Wisconsinites the opportunity to participate in hemp activities. By continuing to operate the Hemp Program pursuant to the 2014 Farm Bill, instead of transitioning to the 2018 Farm Bill, this rule allows participation while reducing required costs of compliance to the greatest extent possible.

Reporting, Bookkeeping and other Procedures

This rule will impact persons who wish to grow and process hemp as part of the Hemp Program. Participation in the program is voluntary, although anyone wishing to grow or process hemp must participate, unless the person is operating under a USDA-approved tribal hemp plan. This rule will impose fees, recordkeeping, and reporting requirements. Participants must pay an initial license fee and an annual registration fee each year the licensee plans to operate. However, licensed processors do not pay an annual registration fee in the annual registration year in which they first obtain a processor license. This rule will require participants to prepare a research plan and submit a research agreement. All hemp must meet defined analytical standards before the Department will issue a fit for commerce certificate and the hemp can be transported from the growing location. This rule provides criteria for 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 required by law 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

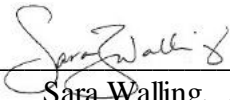
Many of the license applicants may be small businesses. This rule does not make special exceptions for small businesses.

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 16th day of October, 2020.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By  _____
Sara Walling, Administrator
Division of Agricultural Resource Management