

Wisconsin Department of Agriculture, Trade and Consumer Protection

Regulatory Flexibility Analysis

Rule Subject: Hemp
Adm. Code Reference: ATCP 22
DATCP Docket #: 21-R-07

Rule Summary

This emergency rule updates the existing hemp research program (Hemp Program) created under Wis. Stat. s. 94.55 (2), to allow the people of this state the greatest possible opportunity to engage in hemp production. Under Wis. Stat. s. 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 EmR2039, which was published and effective on October 29, 2020. The repeal and replacement was necessary as the United States Department of Agriculture (USDA) published 7 C.F.R. 990 (Final Rule) on January 19, 2021, with an effective date of March 22, 2021, which offers more flexibilities for the Hemp Program. This new rule will operate under the authority of the 2014 Farm Bill for the 2021 growing season by taking advantage of the program extensions offered in Section 122 of the Continuing Appropriations Act and Section 782 of the Consolidated Appropriations Act. These Acts extended the 2014 Farm Bill until September 30, 2021 and then through December 31, 2021, respectively. The Department retains authority to operate a hemp program under Wis. Stat. 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 while incorporating certain flexibilities offered in the Final Rule provides Wisconsin hemp growers the greatest opportunity to produce hemp.

Small Business Affected

This rule continues the regulatory framework of the Hemp 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. The rule provides an option for licensed growers to remediate their hemp if it exceeds the regulatory level of 0.3 percent total delta-9 THC. This benefits small businesses as it provides an alternative to destroying the crop. Therefore, the rule will not

negatively impact small business as this rule does not make significant modifications to the regulation of the hemp industry.

This rule adds a new \$300 fee for the option to sample and test remediated, non-compliant hemp lots, or resample and test remediated, non-compliant hemp lots. This rule also adds a new \$200 fee for the option to retest where a resample is not required. These are fees for new services and growers are not required to remediate or retest and pay these fees unless they request the additional services. The impacts of this rule to the regulated industry do not include changes to existing license fees to participate in the program.

This rule maintains the existing costs of compliance associated with program participation such as licensing, registration, sampling, testing, and recordkeeping, in accordance with the requirements of Wis. Stat. s. 94.55 (2) (b) 4.

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 maintains the existing fees, recordkeeping, and reporting requirements. Participants must continue to 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 maintains the requirement for participants to prepare a research plan and submit a research agreement. Licensees will now be given the option of remediation, resampling, and retesting if their hemp is non-compliant. For the past two years, there has been a failure rate of approximately 10 percent of samples. In 2021, there is expected to be 1,030 samples of hemp, meaning 103 of those samples could fail and have the option to remediate, resample, and retest. 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 existing fee for sampling and testing of one lot is \$250 per sample. The new fee for a remediation sample is \$300. The new fee for a retest where a new sample is not required is \$200.

Professional Skills Required

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

Accommodation for Small Business

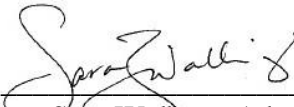
Many of the license applicants may be small businesses. This rule does not make special exceptions for small businesses.

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 Wis. Stat. s. 227.22 (2) (e).

Dated this 15th day of April, 2021.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By  _____
Sara Walling, Administrator
Division of Agricultural Resource Management