

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date October 16, 2020
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Ch. ATCP 22, Hemp	
4. Subject Hemp	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.115 (7) (gc)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input checked="" type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). <b>\$1,171,572</b>	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule 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 under sub. (3) is repealed by 2019 Act 68, Section 87, one year after the U.S. Department of Agriculture (USDA) established an approval process of state and tribal plans to produce hemp.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.  This emergency rule takes effect upon publication and remains in effect until the date on which rules promulgated pursuant to Wis. Stat. ss. 94.55 (2) and (3w) take effect.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. NA	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. NA	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) This emergency rule continues the regulatory structure related to growing hemp, and applies to those who wish to participate in the Hemp Program. Currently, individuals or businesses choosing to grow or process hemp must pay all applicable program fees—one-time grower license and acreage (\$150-\$1,000), annual grower registration (\$350),	

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sampling and testing (\$250 per lot), and annual processor registration (\$100). This emergency rule adds the statutorily required processor license fee (\$150), but waives the annual processor registration (\$100) during the annual registration year the processor first obtains a license.

These program fees generate the program revenue that supports the implementation of the program. The Pilot Program began operations in 2018. The number of participants in the Pilot Program was similar in 2019 and 2020. In 2019, there were 1,251 licensed and registered growers with total fees of \$626,000 (average \$500 per grower), 560 licensed and registered processors with total fees of \$56,000 (\$100 per processor), and 2,200 samples collected and tested generating total fees of \$550,000 (\$250 per sample). Total fees for 2019 were \$1,232,000.

This rule's economic and fiscal impact was developed assuming an eleven-month duration, because this emergency rule is expected to be in effect for approximately eleven months--from publication through at least September 30, 2021. For the eleven months of fiscal year 2020, excluding October, license and acreage fees (\$150 - \$1,000) and annual registration fees totaled \$571,395 for 1,244 growers. Processor registration fees totaled \$60,800 for 608 processors. A total of 1,966 samples were tested at the cost of \$491,528 (\$250 per sample). Additional fees included licence amendment and late fees in the amount of \$5,795. The grand total of all fees for this time period was \$1,129,518.

Based on program participation in 2019 and 2020, it is estimated that there will be approximately 1,852 licensees in the program in 2021 and that half of those licensees will be new licensees. The anticipated time period of this rule is approximately eleven months, ending September 30, 2021, assuming no additional extension of the 2014 Farm Bill programs on the federal level. Of the assumed 1,244 growers and 608 processors, 622 new growers and 304 new processors would pay the background check fees (\$29 per applicant). All new license applicants are required to have a fingerprint-based background check and pay \$7.75 to the entity responsible for capturing fingerprint impressions and a \$21.25 fee paid to the Department, which is then paid to the Wisconsin Department of Justice to conduct the applicant's background check. In addition, the new processors would pay \$150 for the license fee. All other costs would remain the same. The estimated costs would be: \$26,854 in background check fees for 926 new applicants (\$29 each); \$571,395 for 1,244 grower license and acreage fees (\$150 - \$1,000 each) and annual registration fees; \$76,000 for processor licenses and registrations (\$150 each per first year license for 304 new processors and \$100 each for the 304 annual registrations for each existing processor); \$491,528 for 1,966 samples tested at \$250 per test, and additional license amendment and late fees of \$5,795.

Therefore the estimated economic impact of the implementation and compliance with this rule, as identified in the Fiscal Estimate & Economic Impact Analysis, is \$1,171,572. This number is a total cost of background checks for new applicants, estimates of the number of licenses and registrations, expected number of samples collected and analyzed, and additional fees that may be incurred during the approximately eleven-month time that this rule is in effect.

#### **Hemp Program Participants**

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

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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.

#### Local Governments

This rule will not impact local governments. Local governments will not have any major implementation or compliance costs.

#### Utility Rate Payers

The emergency rule will have no impact on utility rate payers.

#### General Public

This emergency rule will have no compliance costs to the public as a whole, although there may be some broad economic impact as new business opportunities emerge.

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#### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The rule will benefit growers and processors who wish to participate in the Hemp Program.

#### Hemp Growers

Hemp growers will benefit from this emergency rule as it provides the required framework for participating in the Hemp Program. Hemp growers who meet the requirements in the emergency rule will qualify as research participants with a new crop that is legal for harvesting and selling to processors and that can help identify markets.

#### Hemp Processors

The emergency rule will ensure processors receive hemp that meets the legal definition under Wisconsin law and the 2014 Farm Bill and 2018 Farm Bill. Processors will be able to create existing and new consumer products from hemp.

#### General Public

The general public will benefit from this rule as new and existing products made from hemp will be available in Wisconsin and made in Wisconsin. The additional economic impact from hemp crops has the potential to benefit both rural and urban communities across Wisconsin.

#### Alternatives

This emergency rule is required under state law. There are no alternatives to the emergency rule.

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#### 16. Long Range Implications of Implementing the Rule

This rule allows for the Hemp Program to continue until expiration of authority for operation under the 2014 Farm Bill, currently September 30, 2021. The 2018 Farm Bill sunsetted the 2014 Farm Bill's authorization of states to operate hemp research pilot programs, effective one year after the USDA established an approval process of state and tribal plans to produce hemp. The USDA

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issued Interim Final Rule (IFR), 7 C.F.R. Part 990, effective October 31, 2019, and thus all state hemp pilot research programs were set to expire, pursuant to Section 7605 (b) of the 2018 Farm Bill.

However, on October 1, 2020, Section 122 of the Continuing Appropriations Act, 2021 and Other Extensions Act extended the authority of states to operate hemp pilot research programs until September 30, 2021. In order to continue primary jurisdiction over hemp programs after that date, states and tribes now must have a plan approved by USDA by September 30, 2021.

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#### **17. Compare With Approaches Being Used by Federal Government**

The Department currently operates the Pilot Program, a hemp pilot research program authorized by the 2014 Farm Bill. The Pilot Program is designed to study the growth, cultivation, and marketing of hemp in Wisconsin. Growers and processors provide information to the Department related to hemp production. This rule converts the Pilot Program to the Hemp Program, consistent with the parameters of the Pilot Program, and thus provides the necessary regulatory framework to continue to allow Wisconsin's hemp growers to plant, grow, and process hemp pursuant to the Section 7606 of the Agricultural Act of 2014 (2014 Farm Bill) and Wis. Stat. s. 94.55 (2), instead of transitioning to the more restrictive framework established by the Agricultural Improvement Act of 2018 (2018 Farm Bill).

The 2018 Farm Bill sunsetted the 2014 Farm Bill's authorization of states to operate hemp pilot research programs, effective one year after the USDA established an approval process of state and tribal plans to produce hemp. The USDA issued Interim Final Rule (IFR), 7 C.F.R. Part 990, effective October 31, 2019, and thus all state hemp pilot research programs were set to expire, pursuant to Section 7605 (b) of the 2018 Farm Bill.

However, on October 1, 2020, Section 122 of the Continuing Appropriations Act, 2021 and Other Extensions Act extended the authority of states to operate hemp pilot research programs until September 30, 2021. In order to continue primary jurisdiction over hemp programs after that date, states and tribes now must have a plan approved by USDA by September 30, 2021.

The Department's Pilot Program currently operates under the state authority of Wis. Stat. s. 94.55 (3); this authority is repealed by 2019 Wis. Act 68, Section 87, one year after the U.S one year after the USDA published 7 C.F.R. 990. After the repeal of Wis. Stat. s. 94.55 (3), the Department retains authority to operate a hemp program under s. 94.55 (2). Sub. (2) (am) allows the Department to operate a hemp program if federal law requires hemp licenses, and if USDA approves the state's program. Section 7606 of the 2014 Farm Bill requires licensed hemp production. Section 122 of the Act requires the USDA to approve the continuation of state hemp research programs through September 30, 2021. 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."

Continuing to operate under a 2014 Farm Bill research program provides participants the greatest opportunity to produce hemp. For example, the 2014 Farm Bill allows participants and the Department to schedule sampling and testing at times most efficient for both parties while ensuring lawful production of hemp. In contrast, the 2018 Farm Bill contains strict timelines on the collection of samples and harvesting of crops. Under a 2018 Farm Bill program, regulatory sampling must be completed within 15 days of anticipated harvest. Participants may not have received regulatory test results by the anticipated harvest date and may face the expense of harvesting a crop that they are subsequently required to destroy if it exceeds the acceptable THC content.

In addition, the 2018 Farm Bill requires testing laboratories to calculate and apply a stringent measurement of uncertainty (MU) for THC content testing methodologies. The USDA provides guidance and resources to states to develop and establish an MU. In contrast, the 2014 Farm Bill allows the state to develop its own method to account for testing variabilities. The Department currently rounds down from 0.399 percent to account for laboratory variability. Consequently, the 2018 Farm Bill results in a narrower range in which a participant can produce hemp with acceptable THC content.

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#### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

With the exception of Iowa, which did not have a 2014 Farm Bill pilot research program, the surrounding states are continuing to operate pre-established 2014 Farm Bill hemp pilot research programs. Like Wisconsin, these states are taking advantage of the flexibilities of a program operated pursuant to the 2014 Farm Bill, versus a program operated under the stricter 2018 Farm Bill and IFR. Some states have chosen to continue operating under the 2014 Farm Bill only until the end of the current growing season (license year). However, Wisconsin is operating under the 2014 Farm Bill as it provides Wisconsin participants the greatest opportunity to engage in hemp activities.

#### Minnesota

Minnesota's pilot program began in 2016 under the 2014 Farm Bill. USDA approved the Minnesota State Hemp Production Plan on July 14, 2020. Minnesota will continue to operate a 2014 Farm Bill research program until December 31, 2020, before transitioning to their federally approved state 2018 Farm Bill hemp program. This date was chosen to coincide with the beginning of Minnesota's licensing period, and eliminates the need for a transitional license between the two programs.

Operationally, the Minnesota 2014 Farm Bill hemp program is very similar to the Wisconsin Pilot Program and Hemp Program with the primary difference in laboratory testing. Prior to 2019, testing was done in a private lab for delta-9 THC, and it did not include THC-A. In 2019, Minnesota switched over to testing for the post-decarboxylation concentration of THC which includes THC-A, and began transitioning to using a Minnesota state regulatory lab. The fee structure includes a grower license fee of \$150 with a growing location fee of \$250, a processor license fee of \$250, a license change fee of \$50, an additional inspection fee for sampling of \$250, and an additional testing fee of \$125.

Minnesota's 2018 Farm Bill hemp program adopts all necessary regulatory changes to comply with the IFR and 2018 Farm Bill. This includes adopting the new definition of acceptable hemp THC levels. Under the new hemp program, Minnesota will estimate and report the MU with all test results. This will result in a narrower range in which a participant can produce hemp with acceptable THC content than in Wisconsin.

#### Illinois

The Industrial Hemp Act was passed in Illinois in 2018, at which time the pilot program became available to commercial hemp growers. Illinois submitted a 2018 Farm Bill state plan to the USDA, which was recently approved. Illinois is currently operating as a pilot program under the 2014 Farm Bill and will continue to operate that program. They have not determined how long they will continue to operate under the pilot research program based on the extension of the authority to operate a 2014 Farm Bill program, before transitioning to a 2018 Farm Bill hemp program.

Components of the Illinois 2014 Farm Bill program that differ from the Wisconsin program include specifications for laboratories to be approved for regulatory testing, a minimum growing area of ¼ acres for outdoor hemp crops and 500 square feet for indoor crops, destruction of hemp with a post-decarboxylation THC content of equal to or greater than 0.7 percent for an initial test, and a retest is allowed if the initial test is between 0.3 percent and 0.7 percent THC. If the retest exceeds 0.3 percent THC, the crop must be destroyed. Illinois allows licensing periods of one, two, or three years at \$375, \$700, or \$1000 respectively.

Illinois's approved 2018 Farm Bill state plan does not have regulations that go beyond the IFR; the state plan has similar language and regulations to the IFR and other state plans implementing the IFR. This includes the addition of a MU and the requirement to harvest within fifteen days of the collection of the regulatory sample. While Illinois has not decided when to transition from the pilot program to a program operated pursuant to the 2018 Farm Bill, growers will face stricter regulations after the transition.

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#### **Michigan**

The Michigan hemp pilot program began in 2019 under the 2014 Farm Bill. Michigan’s 2018 Farm Bill state plan has been resubmitted to USDA and is under review as of October 15, 2020. However, they plan to continue to operate under a 2014 Farm Bill research program until the end of their 2020 licensing year on November 30, 2020, then transition to a federally approved state hemp program operated pursuant to the 2018 Farm Bill and the IFR.

The Michigan 2014 Farm Bill program tests for post-decarboxylation THC concentration. In the event of a failed initial regulatory test, the Michigan pilot program allows up to two resamples and tests, while the Wisconsin program allows one resample and test. The Michigan program is distinctly different in their use of testing facilities licensed under the Michigan Medical Marihuana Facilities Licensing Act, which allows certain licenses to test industrial hemp, or allows a testing facility approved by the department. In addition, growers must post signage at each boundary line of a grow location with state-specified language. Growers must also enter into a seed-to-sale tracking system established under the Marihuana Tracking Act. Michigan has a grower license fee of \$100, a site modification fee of \$50, and a processor, handler, broker fee of \$1350. A \$250 late fee applies to both licenses. Michigan continues in 2020 under the authority of the 2014 Farm Bill.

Under the 2014 Farm Bill, Michigan allowed hemp growers to sample their own crops and transport that sample to the state laboratory for testing. When Michigan’s 2018 Farm Bill Program is federally approved pursuant to the 2018 Farm Bill, its state hemp program must comply with the IFR and growers will no longer be allowed to sample their own hemp. When implemented, Michigan’s new 2018 Farm Bill hemp program will have stricter regulations than its pilot program.

#### **Iowa**

Iowa Senate Bill 599 was signed into law in May 2019, which authorized the production of hemp pursuant to the 2018 Farm Bill and the IFR. Iowa began accepting applications for its hemp program on April 1, 2020. As of October 15, 2020, Iowa had 85 licensed growers. Iowa charges licensing fees of \$500 plus \$5/acre (0-5 acres), \$750 plus \$5/acre (5.1-10 acres), and \$1,000 plus \$5/acre (10.1 – 40 acres). Iowa has a maximum 40-acre limit per license. Each license applies to one location only.

19. Contact Name Melody Walker	20. Contact Phone Number 608 224 4586
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**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
-