

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 April 15, 2021
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 checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input 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 (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$480,380	
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 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. This emergency rule takes effect upon publication and remains in effect until the date on which rules promulgated pursuant to Wis. Stat. s. 94.55 (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)	

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This 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), sampling and testing (\$250 per lot), processor license fee (\$150), and annual processor registration (\$100; waived in the first year the processor obtains a license). These program fees generate the program revenue that supports the program. This rule creates 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 creates a new \$200 fee for the option to retest where a resample is not required. Remediating and retesting are voluntary under this rule, and therefore growers are not required to pay these fees unless they choose to remediate or retest.

Hemp Program Participants

This rule will impact persons who wish to grow and process hemp as part of the Hemp Program. Anyone wishing to grow or process hemp must participate in the program unless the participant is operating under a USDA-approved tribal hemp plan. This rule does not change existing fees, recordkeeping, and reporting requirements. With this rule, licensees will now be given the option of remediation, resampling, and retesting if their hemp is non-compliant (i.e., if it tests above 0.3 percent THC.) For the past two years, approximately 10 percent of samples have tested above 0.3 percent THC. In CY2021, the Department expects to initially test 1,030 samples of hemp, meaning 103 of those samples could fail and have the option to remediate, resample, and retest. The option of remediation is a new addition to the hemp program and was incorporated to give growers a greater chance of having a compliant and marketable crop. 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 (i.e. at or below 0.3 percent THC). 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 testing a remediation sample is \$300. The new fee for a retest where a new sample is not required is \$200.

The sampling and testing fee, or resampling and testing fee, for remediated non-compliant hemp lots will be \$300 per sample. This fee is higher than the initial pre-harvest sampling and testing fee. The entire lot must be remediated (shredded or ground into a uniform state, a homogenous biomass). The sampling process is expected to take longer than an initial pre-harvest sample to obtain a representative composite sample of the lot. In addition, lab processing will take longer and require more staff time to grind the remediated sample into a uniform consistency needed for lab testing. Based on a failure rate of approximately 10 percent of samples and an estimated 1,030 samples in CY2021, there could be 103 samples annually which may be eligible to be remediated. The Department does not anticipate that all growers with failed samples will seek to remediate but does estimate approximately 50 percent will do so. In that event, the fiscal impact of the new \$300 fee would total \$15,600 (52 x \$300).

Another new fee will allow for testing where a new sample is not collected. If a sample fails the initial pre-harvest sample testing, a portion of the collected sample may be held at the lab for future testing. The Department estimates there

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would be approximately 25 samples retested and the fiscal impact of the new \$200 fee would therefore be \$5,000 (25 x \$200). These new fees are charged only if a grower chooses to seek remediation or retesting.

The estimated economic impact on hemp program participants of compliance with this rule is approximately \$20,600 (\$15,600 + \$5,000).

Local Governments

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

Utility Rate Payers

The rule will have no impact on utility rate payers.

General Public

This 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.

The Department

This rule will have a continued fiscal impact on the Department's operations. Department staff must review each application and all supporting information and perform a fingerprint-based background check on each new license applicant. This regulatory program requires a high degree of compliance assistance and education. Department staff are also responsible for inspections, sampling, laboratory analysis, and compliance activities. The changes to this rule will increase workload for Department hemp program operations. The option of remediating non-compliant hemp may increase the amount of resampling, retesting, and laboratory analysis by Department staff.

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.

16. Long Range Implications of Implementing the Rule

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This rule allows for the Hemp Program to continue until expiration of authority for operation under the 2014 Farm Bill, currently December 31, 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 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. This program extension gave states more time to develop a USDA-approved State Plan. States' authority to operate hemp research programs was extended a second time on December 27, 2020 through Section 782 of the Consolidated Appropriations Act. This Act extends the 2014 Farm Bill expiration date to December 31, 2021. This change allows states to avoid switching program authority during the growing season. To continue primary jurisdiction over hemp programs, states and tribes now must have a plan approved by USDA by December 31, 2021.

17. Compare With Approaches Being Used by Federal Government

The Department currently operates the Hemp Program, a hemp research program authorized by the 2014 Farm Bill. The Hemp 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 implements some of the changes outlined in the Final Rule, and thus provides growers with the greatest opportunity to produce hemp in Wisconsin as pursuant to Wis. Stat. s. 94.55 (2). Adopting these changes from the USDA Final Rule allows growers to operate under a less restrictive framework.

The 2018 Farm Bill sunsetted the 2014 Farm Bill's authorization of states to operate hemp research programs, effective one year after the USDA established an approval process of state and tribal plans to produce hemp. The USDA issued IFR, 7 C.F.R. Part 990, effective October 31, 2019, and thus all state hemp research programs were set to expire, pursuant to Section 7605 (b) of the 2018 Farm Bill on October 31, 2020.

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. This program extension gave states more time to develop a USDA-approved State Plan. States' authority to operate hemp research programs was extended a second time on December 27, 2020 through Section 782 of the Consolidated Appropriations Act. This Act extends the 2014 Farm Bill expiration date to December 31, 2021. This change allows states to avoid switching program authority during the growing season. To continue primary jurisdiction over hemp programs, states and tribes now must have a plan approved by USDA by December 31, 2021.

The Department retains authority to operate a hemp program under Wis. Stat. s. 94.55 (2). Subsection (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 782 of the Consolidation Appropriations Act requires the USDA to approve the continuation of state hemp research programs through December 31, 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.

USDA published the completed hemp Final Rule on January 19, 2021. The Final Rule replaces the IFR effective March 22, 2021 and outlines new flexibilities and program requirements. This emergency rule incorporates parts of the Final Rule to give growers the greatest opportunity to produce hemp. These adopted aspects are outlined below.

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The Final Rule, or 7 C.F.R. 990, gives licensed growers the option to remediate, resample, and retest non-compliant hemp. As defined in this rule, remediation is the process of a licensed grower rendering part of the cannabis crop unusable by destroying the flower material. A large portion of the delta-9 THC found in cannabis plants is stored within the plant's floral material; by allowing growers to destroy this part of the cannabis plant, they are more likely to have a compliant crop. A second permitted form of remediation is for the grower to shred or grind the entire lot into a homogeneous biomass. Growers may only remediate after their hemp has been tested and is found to be non-compliant by the Department. The option of remediation is a new addition to the hemp program, and was incorporated to give growers a greater chance of having a compliant and marketable crop.

The emergency rule includes clarifying language on negligent enforcement and violations for licensed participants. This rule outlines when a grower or processor would have a license denied, suspended, or revoked. For example, a licensee may be denied a license if they apply while their current license is suspended, apply in place of another licensee, violate this rule or Wis. Stat. s. 94.55, or doesn't follow a written order from the Department. This rule also provides more detail on corrective action plans for when a licensee negligently violates this rule. These changes are reflective of current program procedures.

This emergency rule was promulgated because the Final Rule was published on January 19, 2021 and effective March 22, 2021. The Department will incorporate certain provisions of the Final Rule into their program through this emergency rule while continuing to operate under the 2014 Farm Bill. The updated rule repeals and replaces Emergency Rule 2039 and incorporates minor changes to the program.

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

Minnesota's pilot program began in 2016 under the 2014 Farm Bill. The USDA approved Minnesota's State Hemp Production Plan on July 14, 2020. Minnesota operated 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.

Minnesota is in the process of updating their State Plan because they are operating under the 2018 Farm Bill. The updated State Plan adopts all necessary regulatory changes to comply with the federal Final Rule. This includes adopting the new process of remediation and disposal, enforcement procedures, and sampling guidelines.

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.

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 approved in October 2020. Illinois is currently operating as a pilot program under the 2014 Farm Bill and will continue to operate under that program until December 31, 2021. Illinois will not incorporate Final Rule changes into their program before the end of the year. Instead, their State Plan will be rewritten in compliance with the Final Rule by January 1, 2022.

Illinois allows licensing periods of one, two, or three years at \$375, \$700, or \$1,000, respectively.

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Michigan

The Michigan hemp pilot program began in 2019 under the 2014 Farm Bill. Michigan’s state plan has been approved by USDA, and they are currently operating under the 2018 Farm Bill. On March 25, 2021, Michigan Senate Bill 0816 was signed into law; this bill updates Michigan’s Industrial Hemp Growers Act and ensures compliance with the USDA Final Rule. Some of the revisions made to the Act include timing of sample collection, disposal and remediation of non-compliant plants, negligent violations, grower registration cycle, hemp sampling, and testing using DEA laboratories starting in 2023.

Michigan has a grower license application fee of \$1,250, a site modification fee of \$50, and a processor, handler, broker fee of \$1,350. A \$250 late fee applies to both licenses. Michigan sets its sampling fee at \$150 and testing fee at \$125.

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. Because Iowa operates their program under the 2018 Farm Bill, they are currently in the process of updating their State Plan to be compliant with the Final Rule. Therefore, Iowa is adapting all changes made in the federal Final Rule including remediation, performance-based sampling, negligent violations, and extending the time period between sampling and harvesting from 15 to 30 days.

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

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)

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

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:

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

5. Describe the Rule's Enforcement Provisions

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

- Yes No
-