

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date June 12, 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 (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). \$1,150,900	
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 the emergency rule EmR 1807, which was published and effective on March 2, 2018, and emergency rule EmR 1808, which was published and effective on March 5, 2018. This emergency rule implements the hemp pilot program created under Wis. Stat. s. 94.55, by 2017 Act 100 as modified by 2019 Act 68. Under Wis. Stat. 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).	
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 creates rules related to growing hemp, and applies to those who wish to participate in the Pilot Program. Individuals or businesses choosing to grow or process hemp must pay all applicable program fees—one-time grower license and acreage (\$150 - \$1000), annual registration (\$350), sampling and testing (\$250 per lot), and processor license (\$100). These program fees generate the program revenue that supports the implementation of the program. The Pilot Program began operations in 2018. Numbers of participants have been similar in 2019 and 2020. In 2019, there were 1251 licensed and registered growers with total fees of \$626,000 (\$500 per grower) and 560 licensed processors with total fees of \$56,000 (\$100 per processor). In 2020, as of June 2, there are 1189 licensed and registered growers with total fees of \$594,500 (\$500 per grower) and 564 licensed processors with total fees of \$56,400. In 2019, an	

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estimated 2200 samples were collected and tested at a cost of \$250 per sample, generating total fees of \$550,000. Based on these grower numbers and samples previously collected, an estimate of 2000 samples collected and tested at \$250 for a total of \$500,000 in fees may be expected during the time that this rule is in effect. Therefore the estimated economic impact of the implementation and compliance with this rule, as identified in item 9. of the Fiscal Estimate & Economic Impact Analysis is \$1,150,900. This number is a total cost of licenses and registrations issued to date, and an estimate of expected samples that may be collected and tested during the time that this rule is in effect.

Hemp Growers

This rule will impact persons who wish to grow hemp as part of the Pilot Program. Participation in the program is voluntary, although anyone wishing to grow hemp must participate. 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.

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.

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 Pilot Program.

Hemp Growers

Hemp growers will benefit from this emergency rule as it provides the required framework for participating in the Pilot 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 provide a new income stream.

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.

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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. The emergency rule will be followed by an emergency rule implementing a USDA-approved state plan.

16. Long Range Implications of Implementing the Rule

This rule allows for the Pilot Program to continue until October 31, 2020. As of November 1, 2020, there will be a new program operating under a new framework as mandated by USDA under the 2018 Farm Bill and the Interim Final Rule (IFR).

17. Compare With Approaches Being Used by Federal Government

Currently, the Pilot Program is operating under the authority of Section 7606 of the 2014 Farm Bill, 2017 Wisconsin Act 100, 2019 Wisconsin Act 68, and Section 7605 (b) of the 2018 Farm Bill.

The 2014 Farm Bill authorizes states and institutions of higher education to grow, process, and market hemp for research purposes. States with hemp laws that allow hemp to be grown within their states may operate pilot programs. Hemp grown, processed and marketed under the 2014 Farm Bill is for research purposes only. Hemp varieties that test above 0.3% THC on a dry weight basis are not legally defined as hemp.

The 2018 Farm Bill authorizes the U.S. Department of Agriculture (USDA) to establish a nation-wide hemp production program. This program requires participating states and tribal nations to submit a state/tribal plan for approval that meets the requirements outlined in the USDA-issued Interim Final Rule (IFR), 7 C.F.R. Part 990, published on October 31, 2019. Currently, 29 tribes and 18 states have approved plans under the IFR. The program also establishes a federal plan for producers in states or territories of Indian tribes that choose not to administer a state or tribe-specific plan, provided also that the state or tribe does not ban hemp production.

The 2018 Farm Bill also authorizes states to continue to operate a pilot program established under the 2014 Farm Bill, until the program is discontinued on October 31, 2020, at which time Wisconsin must have a USDA-approved state plan in place to continue administering a state-operated hemp program in Wisconsin. The USDA-approved state plan must be compliant with the 2018 Farm Bill and the IFR. In addition, certain provisions of the 2018 Farm Bill apply to all states whether they are still operating a pilot program or are operating under the IFR. These include the expanded definition of hemp, the free market movement of hemp across all state boundaries whether or not a state has a hemp program, and the inclusion of hemp crops in farm credit banking loan programs and federal farm insurance programs.

Wisconsin, along with 16 other states, notified the USDA that for the 2020 growing season, it would continue to operate a pilot program under the 2014 Farm Bill. The Wisconsin Pilot Program has been in operation since 2018, and will continue for the 2020 growing season (ending October 31, 2020). The IFR was published one day before the Department's program began accepting licenses for the 2020 growing season. The Department chose to continue with the pilot program in order to finish the pilot at the end of the 2020 season and begin with a new program at the beginning of the 2021 season.

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

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Minnesota

Minnesota's pilot program began in 2016 under the 2014 Farm Bill and will continue to operate a pilot program until October 31, 2020. Operationally, the Minnesota program is very similar to the Wisconsin 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 \$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. As of March 30, 2020, Illinois has submitted a state plan to the USDA, and that plan is currently under review. Illinois is currently operating as a pilot program under the 2014 Farm Bill. Components of the Illinois 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% for an initial test, and a retest is allowed if the initial test is between 0.3% and 0.7% THC. If the retest exceeds 0.3% THC, the crop must be destroyed. Illinois allows licensing periods of one, two or three years at \$375, \$700, or \$1000 respectively.

Michigan

The Michigan hemp pilot program began in 2019 under the 2014 Farm Bill. The Michigan 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 Marijuana 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 Marijuana 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.

Iowa

Iowa Senate Bill 599 was signed into law in May 2019 and the Iowa hemp program became effective under the IFR. Iowa began accepting applications for its hemp program on April 1, 2020. As of April 28, 2020, Iowa had 18 licensed growers and six additional applications were under review. Iowa charges licensing fees of \$500 plus \$5/acre (0-5 acres), \$750 plus \$5/acre (5.1-10 acres), and \$1000 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
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