

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

EMERGENCY RULE
Chapter ATCP 22

The Wisconsin Department of Agriculture, Trade and Consumer protection hereby adopts the following emergency rule to create ch. ATCP 22 relating to industrial hemp and affecting small businesses.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This emergency rule implements the industrial hemp pilot program created under s. 94.55 Stats., by 2017 Act 100. Under s. 94.55 Stats., the Department of Agriculture, Trade and Consumer Protection (Department) is required to promulgate rules establishing a state industrial hemp research pilot program (Pilot Program).

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

Pursuant to 2017 Act 100, Section 15 (2), the Department was not required to provide a finding of emergency or prepare a statement of scope of the rules. The Department was also not required to submit the final draft to the Governor for approval.

This rule republishes the text of emergency rule, EmR1807, which was published and effective on March 2, 2018, and is published for the sole purpose of correcting the effective date of the rule as stated in EmR1807 to correspond to the provisions of 2017 Wisconsin Act 100, section 15 (2) that provide that the rule takes effect upon publication and remains in effect until July 1, 2020.

Statutes Interpreted

s. 94.55, Stats.

Statutory Authority

s. 94.55, Stats.

Explanation of Statutory Authority

Wis. Stat. s. 94.55 creates the Industrial Hemp Pilot Program for the state of Wisconsin. The Department is required under s. 94.55, Stats., to promulgate rules to create and implement a Pilot Program.

Related Rules or Statutes

There are no directly related rules or statutes, other than those cited above.

Plain Language Analysis

The Pilot Program is designed to study the development industrial hemp in Wisconsin. Growers and Processors will provide information to the Department related to hemp production. As part of the Pilot Program, the Department is also establishing a voluntary seed certification program for industrial hemp.

Fiscal Impact

This emergency rule will have a fiscal impact on the Department's operations. Under this emergency rule, the Department must issue licenses to persons planning to plant, grow, cultivate, harvest, handle, or process industrial hemp in Wisconsin. Department staff must review each application and all supporting information, and perform a background check on each applicant. Department staff will also be responsible for field inspections, sampling, and compliance. Research collected from each grower will be analyzed by Department staff annually.

Program administration will occupy at least 2 FTE staff in the Department's Division of Agricultural Resource Management (this does not include legal, managerial, the Department's central accounting, or other indirect staff support). The cost for the 2 FTE staff will be \$200,000 per year, including salary, fringe benefits, and support costs.

Analysis of Supporting Documents used to Determine Effect on Small Business

Because this program is voluntary for all participants, no substantial analysis was required to determine the effect on small business.

Business Impact

This emergency rule will have no adverse effect on small business. The Pilot Program is voluntary and thus imposes no cost on businesses. By offering licenses to persons electing to grow industrial hemp under the Pilot Program, agricultural producers and businesses may benefit from this new opportunity to produce industrial hemp in the state. Applicants will be required to pay a non-refundable license fees. Licensees will be charged an annual fee to include actual costs incurred by the Department.

Surrounding State Programs

Minnesota currently operates an industrial hemp program. Additionally, many other states are in various stages of implementation of industrial hemp program (ex. Kentucky, New York, and North Dakota).

Data and Analytical Methodologies

The Department gathered information from several states and the federal government, related to regulations, sampling and testing protocols, compliance, importation, etc. Staff at the Department reviewed this information and the Department's legal authority, in drafting this emergency rule.

Department Contact

Questions and comments related to this rule may be directed to:

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FINDING OF EMERGENCY

A finding of emergency is not required. Section 15 of 2017 Act 100 provides that the Department is not required to provide a finding of emergency for a rule promulgated under this section.

EMERGENCY RULE

Chapter ATCP 22

Industrial Hemp

ATCP 22.01 Purpose. This chapter implements the industrial hemp program created under s. 94.55, Stats.

ATCP 22.02 Definitions. As used in this chapter:

(1) “Applicant” means a person who has submitted a license application for a grower license or processor license.

(2) “Certified seed source” means hemp seed that is certified according to Association of Official Seed Certifying Agencies standards or other certification standards approved by the department.

(3) “DEA” means the United States Department of Justice’s Drug Enforcement Administration.

(4) “Department” means the state of Wisconsin department of agriculture, trade and consumer protection.

(5) “Destroyed” means incinerated, tilled under the soil, made into compost, or disposed of in another manner approved by the department.

(6) “Distribute” means to sell, offer to sell, exchange, barter, or solicit orders for the sale of industrial hemp or otherwise supply or furnish industrial hemp to purchasers of industrial hemp in this state, whether or not the transactions are made wholly or partially in this state or another state.

(7) “Facility” means a space for handling, storing or processing industrial hemp.

(8) “Field” means a contiguous land area or greenhouse, registered with the department, on or in which a licensee plans to grow industrial hemp.

(9) “Fit for commerce certificate” means a document issued by the department or another state attesting that the industrial hemp has been tested for THC concentration and is in compliance with this chapter or another state’s industrial hemp pilot program under Section 7606 of the Agricultural Act of 2014.

(10) “Grower license” means the document that is issued by the department to a person after a successful application and review process and following departmental receipt of a signed licensing agreement and submission of all licensing fees.

(11) “Industrial hemp” means the plant *Cannabis sativa*, or any part of the plant including the seeds, having a delta-9-tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis or the maximum concentration allowed under federal law up to 1 percent, whichever is greater. “Industrial hemp” includes a substance, materials, or product only if it is designated as a controlled substance under the federal Controlled Substances Act under 21 USC 801 to 971 or the Uniform Controlled Substances Act under ch. 961 or both.

(12) “Industrial hemp research program” means the department’s “agricultural pilot program” established under s. 94.55, Stats., and this chapter.

(13) “Licensee” means a person possessing a grower license or processor license.

(14) “Person” means an individual, corporation, partnership, limited liability company, government or governmental subdivision, or other legal entity.

(15) “Processor license” means a document that is issued to a person after a successful application and receipt of all fees.

(16) “Registration” means the annual submission by a licensee of a registration form provided by the department, registration fees, and research agreement or other information as required by the department.

(17) “Registration fee” means the applicable amount that shall be paid by a licensee annually in order to maintain its license.

(18) “Research agreement” means a contract between the department and the licensee, detailing the rules of the industrial hemp research program. This is a legally binding agreement between the state of Wisconsin and the applicant. Failure to adhere to the research agreement may result in removal from the pilot program.

(19) “THC” means delta-9 tetrahydrocannabinol, or delta-9-THC.

ATCP 22.03 Pilot program license.

(1) GROWER LICENSE REQUIRED. No person may operate as an industrial hemp grower without a grower license from the department. A grower license does not expire, but an annual registration must be completed by December 31 each year. A grower license may not be transferred to another person. The grower license allows a person to possess, cultivate, grow and harvest industrial hemp under Wisconsin law.

(2) GROWER LICENSE APPLICATION. A person applying for a grower license shall apply on a form provided by the department. An applicant shall provide all of the following to the department:

- (a) The applicant's legal name and address and any other name under which the applicant does business. If the applicant is a business entity, the full name of the business, the principal Wisconsin business location address, the full name of the individual who is authorized to sign on behalf of the business entity, phone number and email address.
- (b) If the applicant is a business entity, the name, title and email address of the individual who will be primarily responsible for the industrial hemp operations of the business entity and who will be the subject of the federal and state criminal background check.
- (c) Informed consent form authorizing the department to conduct a federal and state criminal background check.
- (d) The global positioning system coordinates for each field, greenhouse, building, or site where industrial hemp will be planted, grown or cultivated.
- (e) Maps depicting each field and facility where industrial hemp will be grown or processed with appropriate designation for entrances, field boundaries, and specific locations corresponding to the global positioning system coordinates or street address.
- (f) Number of acres or greenhouse square footage to be planted. The number of acres or square footage should be the maximum the applicant intends to plant. Any increase in acres or square footage requires a change to the license and additional fees.
- (g) A description of the research being conducted under the registration.
- (h) A signed research agreement.
- (i) Other information reasonably required by the department.

(3) PROCESSOR LICENSE REQUIRED. No person may operate as an industrial hemp processor without a processor license from the department. A processor license does not expire, but an annual registration must be completed by December 31 each year. A processor license may not be transferred to another person. The processor license allows a person to store, handle and convert industrial hemp into a marketable form under Wisconsin law.

(4) PROCESSOR LICENSE APPLICATION. A person applying for an industrial hemp processor license shall apply on a form provided by the department. An applicant shall provide all of the following:

- (a) The applicant's legal name and address and any name under which the applicant does business. If the applicant is a business entity, the full name of the business, the principal Wisconsin business location address, the full name of the individual who is authorized to sign on behalf of the business entity, phone number and email address.
- (b) If the applicant is a business entity, the name, title and email address of the individual who will be primarily responsible for the industrial hemp operations of the business entity and who will be the subject of the federal and state criminal background check.
- (c) Informed consent form authorizing the department to conduct a federal and state criminal background check.
- (d) Maps and the street address and global positioning system coordinates for each building or site where industrial hemp will be processed, handled, or stored.
- (e) A description of the research being conducted under the registration.
- (f) Planned source of industrial hemp.
- (g) A signed research agreement
- (h) Other information reasonably required by the department for licensing purposes.

(5) BACKGROUND CHECK REQUIRED. Each applicant for a grower license or processor license must submit to a background check conducted by the department as a condition of licensure. No grower license or processor will be issued to an applicant who has ever been convicted of a criminal violation of the federal Controlled Substances Act under 21 USC 801 to 971, the Uniform Controlled Substances Act under ch. 961, Stats., or any controlled substances law of another states, as indicated in the information obtained from the criminal history search.

(6) GROWER LICENSE FEES. A grower license application under sub. (2), shall include a nonrefundable license fee of \$150 or, for a license covering 31 or more acres, \$5 multiplied by the number of acres on which the person will plant, grow or cultivate industrial hemp, not to exceed \$1,000.

(7) AMENDING A LICENSE. (a) If any of the information included in the licensee's application changes, the licensee must submit a request to amend the grower license or processor license on a form provided by the department and pay a fee of \$50 for each amendment form submitted.

(b) A licensee seeking to grow additional acres beyond what the grower license authorizes is not required to pay an amendment fee if the change is made during the annual registration process.

(c) A licensee seeking to grow additional acres beyond what the grower license authorizes will pay \$5 per acre, not to exceed a maximum of \$850.

(d) A licensee shall not utilize field locations or additional acreage prior to receiving an amended license.

(e) If a licensee that is a business entity changes the individual who will be primarily responsible for participation in the pilot program, the licensee must pay the actual cost for a background check for the new contact.

(8) DENYING A LICENSE. The department shall deny a grower license or processor license to any applicant if the applicant does any of the following:

- (a) Fails to provide all required information or the initial application fee. A license may be issued at the department's discretion if the applicant provides the required information and fees.
- (b) Fails the state and federal criminal background check required under sub. (5), as determined by the department.

(9) SUSPENDING A GROWER LICENSE OR A PROCESSOR LICENSE. (a) The department may suspend a grower license or processor license if the licensee does any of the following:

1. Fails to submit a complete final production report by December 15 of each year.
 2. Fails to pay invoiced fees for the current growing year or the registration fee for the following growing year by December 31.
- (b) A person whose grower license or processor license is suspended shall not grow, process, or remove industrial hemp or other cannabis from the premises where it was located at the time the department issued the notice of suspension, except as authorized in writing by the department.
 - (c) A suspended grower license or processor license can be restored at the department's discretion.

(10) REVOKING A LICENSE. The department may revoke a grower license or processor license if a grower license or processor license holder does any of the following:

- (a) Is convicted of a criminal violation of the federal Controlled Substances Act under 21 USC 801 to 971, ch. 961, Stats., or any controlled substances law of another state.
- (b) Engages in any activities prohibited under this chapter, s. 94.55 Stats., or a research agreement.
- (c) Makes any false statement related to the licensee's participation in the industrial hemp pilot program to the department or its representative.
- (d) Fails to comply with any requirement of this chapter, s. 94.55 Stats., or a research agreement.
- (e) Fails to comply with any instruction or order related to the licensee's participation in the industrial hemp pilot program from the department or any law enforcement officer.

(11) OPERATING WITHOUT A GROWER LICENSE OR PROCESSOR LICENSE. Any person found to be growing or processing industrial hemp without an industrial hemp grower license or processor license shall be prohibited from obtaining a license during that growing year and the crop shall be destroyed. A person may also be subject to enforcement and penalties under s. 94.55 Stats.

ATCP 22.04. Annual registration

(1) Licensed growers shall pay a registration fee of \$350 to the department by December 31 of the year prior to each year in which the licensed grower plans to plant, grow, and cultivate industrial hemp. For the 2018 growing season, applicants shall pay the registration fee by May 1, 2018.

(2) Licensed processors shall pay a registration fee of \$100 to the department by December 31 prior to each year in which the licensed processor plans to operate. For the 2018 growing season, applicants shall pay the registration fee by May 1, 2018.

ATCP 22.05. Reporting and records

(1) REPORTING REQUIREMENTS. (a) A licensed grower shall submit the following reports on forms provided by the department or in a manner specified by the department, by the due date specified by the department:

1. A planting report shall be submitted to the department by July 1 of each year or within 30 days of planting, whichever is earlier.
 2. A final production report shall be submitted by December 15 of each crop year.
 3. Any other reports requested by the department.
- (b) A licensed processor shall submit to the department by December 15 of each year a report that includes the quantity of industrial hemp received from licensed growers and the licensed processor's intended markets for all industrial hemp received.

- (c) All reports required under sub. 1, shall be derived from the records required in sub. 2.

(2) RECORDS. (a) All licensed growers and licensed processors shall complete and maintain required records and reports for a period of 3 years from the conclusion of the growing season.

(b) All licensed growers shall maintain records of all of the following:

1. Seed source
2. Seed variety
3. Agronomic and production information related to soils, planting, crop development, weeds, weather, pesticide and fertilizer applications, and harvest.
4. Copy of fit for commerce certificate for each field and variety.
5. Name and address of processor or processors where industrial hemp was sent for processing.
6. If the industrial hemp was not processed, a description of the process that was used to destroy or dispose of the industrial hemp.

(c) All licensed processors shall maintain the following records:

1. Sources of industrial hemp including license numbers and quantities purchased.
2. Names and addresses of recipients of processed industrial hemp, and quantities sold.

ATCP 22.06. Handling. A licensee shall ensure that all equipment used in the growing or processing of industrial hemp is cleaned to avoid inadvertent dissemination of industrial hemp. All hemp seed shall be secured during transport to avoid inadvertent dissemination of industrial hemp.

ATCP 22.07 Hemp seed and clones and seed certification.

(1) HEMP SEED VARIETIES. Except as authorized under subs. (4) and (5), all hemp seed varieties grown in the industrial hemp research and pilot program must be seed varieties found on either the current Health Canada List of Approved Varieties or the current Organization for Economic Cooperation and Development (OECD) List of Varieties Eligible for Seed Certification: Crucifers and Other Oil or Fibre Species. The most recent version of each list can be found at www.canada.ca/en/health-canada.html and www.oecd.org/tad/code/seeds.htm.

(2) HEMP CLONES. All hemp clones must originate from hemp seed varieties in (1).

(3) HEMP SEED CERTIFICATION. Grower licensees can cultivate foundation, registered, or certified hemp seed for certified seed production in Wisconsin if they have the written consent of the variety owner, and are officially registered with the Wisconsin Crop Improvement Association (WCIA) and working under its guidance.

(4) SEED VARIETY BREEDING AUTHORIZATION. Research proposals to develop a new seed variety not authorized in sub. (1) must receive approval from the department. Research proposals can be submitted in writing to the department at DATCPIndustrialHemp@Wisconsin.gov.

(5) EXCEPTIONS. Requests to plant, grow or cultivate hemp clones or hemp seed varieties not covered in sub. (1) must be authorized in advance of planting by the department. Requests should be submitted in writing to the department at DATCPIndustrialHemp@Wisconsin.gov

ATCP 22.08 Inspections. The department may at any time and without notice conduct inspections of growing sites, fields, processing facilities, conditioning plants, storage locations and any other location associated with industrial hemp activities.

ATCP 22.09 Sampling. Each registered field and plant variety shall be sampled by the department to verify delta-9-THC level compliance. Each licensed grower shall notify the department at least 30 days before the date the licensed grower intends to begin harvesting. Sampling and testing will take place at times and on dates determined by the department.

ATCP 22.10 Testing.

(1) METHOD. All plant samples will be analyzed for delta-9-THC levels, as a percentage of dry weight, by high performance liquid chromatography test. Delta-9-THC concentration is reported to approximately 0.002 percent reporting limit by weight (dependent on the exact mass of the testing sub-sample) prior to harvest. The department will round all test results down to the nearest tenth of a percent for the final determination.

(2) INITIAL TEST. Industrial hemp will be tested in a department or contracted laboratory as determined by the department using testing methods approved by the department. A written laboratory analysis of each test will be provided to the licensed grower by the department.

(3) FAILED INITIAL TEST. If the laboratory analysis of the official plant sample results in a delta-9-THC concentration above 0.3 percent, it is a failed test.

(4) RE-TEST. In the event of a failed initial test with a delta-9-THC concentration between 0.3 percent and 1 percent, the licensed grower may request a re-test of the original sample or that a new sample be taken. All re-test sampling and testing is at the expense of the licensee. Only 1 re-test per field or variety is permitted.

(5) FAILED RE-TEST. If a final lab analysis of a delta-9-THC level finds the concentration of delta-9-THC on a dry weight basis exceeds 0.3 percent the entire crop on the field where the sample was collected shall be destroyed by the licensed grower within 10 days.

(6) FIELD DESTRUCTION. The department will conduct an inspection to verify that the crop was destroyed as required under sub. (5). If the crop has not been destroyed, the department may destroy the crop and invoice the licensed grower for all costs associated with destruction.

ATCP 22.11 Sampling and testing costs. The department shall invoice the licensed grower \$250 for each sample collected under s. ATCP 22.09 and tested under s. ATCP 22.10 to cover the actual costs of sampling and testing. The licensed grower shall pay all invoices within 30 days. Any grower with an unpaid invoice beyond 30 days may have its license suspended by the department until payment is received.

ATCP 22.12 Fit for commerce certification.

(1) All industrial hemp fields and varieties must be sampled and tested prior to harvest. All licensed growers shall obtain a fit for commerce certificate for each field and variety of industrial hemp prior to the industrial hemp being transported off the field or facility to a licensed processor. The department will issue a fit for commerce certificate following a successful test showing the delta-9-THC concentration is at 0.3 percent or below.

(2) No licensed processor may acquire or process industrial hemp without acquiring a legible copy of all fit for commerce certificates issued to the licensed grower with whom the processor conducts business and specific to the industrial hemp purchased.

(3) Industrial hemp plants, pieces or parts from different fields or registered land areas may not be combined into one lot until a fit for commerce certificate for each field or registered land area is issued.

(4) Any harvested industrial hemp found in Wisconsin without a fit for commerce certificate is subject to seizure by the department. Any such material is subject to destruction at the licensee's expense, and may result in suspension or revocation of the license.

ATCP 22.13 Transporting.

(1) A licensee may not transport industrial hemp from a field or facility until the licensee obtains a fit for commerce certificate. A licensed grower or licensed processor transporting industrial hemp must have all of the following in its possession:

- (a) A copy of its grower license or processor license.
- (b) A fit for commerce certificate as required under s. ATCP 22.12.

(2) A person contracted to transport industrial hemp from a licensed grower or a licensed contractor must have all of the following in its possession:

- (a) A copy of the grower license or processor license that designates the owner of the industrial hemp being transported.
- (b) A fit for commerce certificate as required under s. ATCP 22.12.

ATCP 22.14 Compliance with other laws. All licensees must comply with all applicable federal, state, and local laws. It is the responsibility of the licensee to understand and comply with all federal and state regulations.

ATCP 22.15 Enforcement and penalties. A person who violates this chapter is subject enforcement action under this chapter and s. 94.55, Stats., and penalties under s. 94.55(4), Stats.

EFFECTIVE DATE: This emergency rule takes effect upon publication and remains in effect until July 1, 2020, or the date on which permanent rules take effect, whichever is sooner as provided in 2017 Wisconsin Act 100, section 15 (2).

Dated this 5th day of March, 2018.

State of Wisconsin
Department of Agriculture, Trade and
Consumer Protection

By Sheila E. Harsdorf, Secretary