

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection

Rule No.: ATCP 22

Relating to: Industrial Hemp

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

Not Applicable

2. Detailed description of the objective of the proposed rule:

This proposed rule will create a permanent rule for the industrial hemp program.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

An emergency rule related to industrial hemp will be effective as of March 2, 2018. The permanent rule may modify provisions included in the emergency rule, and may include additional provisions, as allowed under s. 94.55 (2), Wis. Stats.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Under s. 94.55 (2), Wis. Stats., the Department is required to promulgate rules related to industrial hemp. The scope of the Department's rulemaking authority includes planting, growing, cultivating, harvesting, sampling, testing, processing, transporting, transferring, taking possession of, selling, importing, and exporting industrial hemp in this state to the greatest extent allowed under federal law.

The rules must also, as necessary, ensure the quality of industrial hemp grown or processed in this state, the security of activities related to industrial hemp, and the safety of products produced from industrial hemp, including any necessary testing; verify adherence to laws and rules governing activities related to industrial hemp; and enforce violations of those laws and rules.

The Department may also impose and include in rule an annual fee on any person whose activities related to industrial hemp are regulated by the Department under this paragraph, in an amount not to exceed an amount sufficient to cover the costs to the Department of regulating those activities.

The Department shall promulgate rules setting forth the factors to be considered when determining whether to refer a person for prosecution under s. 961.32 (3) (c), Wis. Stats.

The Department shall establish and administer a certification program, or shall designate a member of the Association of Official Seed Certifying Agencies or a successor organization to administer a certification program, for industrial hemp seed in this state and shall promulgate rules for the administration of any certification program established and administered by the Department.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

We estimate it will take the Department approximately 1 FTE over 2 years to develop this rule. This includes developing rule language, writing rule documents, meeting with stakeholders and holding public hearings.

6. List with description of all entities that may be affected by the proposed rule :

The entities that may be affected by the proposed rule include persons (including businesses) wishing to grow, cultivate, harvest, process, analyze, transport, import, or export industrial hemp for research and purposes and those wishing to manufacture consumer products from industrial hemp.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

The 2014 Farm Bill law permitted industrial hemp research programs for the first time, and as a result over thirty states have passed industrial hemp research laws. However, the program is complex because *Cannabis sativa* is still a Schedule 1 federally regulated plant under the Controlled Substances Act. Drug Enforcement Administration registrations are required to import seed and analyze samples for THC. Therefore, until additional changes are made at the federal level, states' industrial hemp programs must ensure seeds and harvested plants are below specified THC levels. There are also numerous issues related to pesticides, inspections, sampling, security, transportation, harvesting and processing that must be considered.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The rule only impacts persons (including businesses) who wish to participate in the industrial hemp research and pilot program. The rule will have an economic impact on those persons. There is an economic benefit to the rules, as it will allow growing, harvesting and processing an agricultural crop that is otherwise illegal, and will result in new consumer products. There is an economic cost to the rules, as this is a regulatory program and there will be fees charged to cover program costs, in addition to recordkeeping and reporting requirements. The program will require laboratory analytics to ensure the industrial hemp meets the required 0.3% THC or lower.

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