

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to section 227.112 of the Wisconsin Statutes, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) is hereby accepting comments on the proposed guidance document:

Sampling, Testing, Seed Varieties FAQs

LOCATION OF PROPOSED GUIDANCE

Proposed guidance document may be reviewed by accessing:

https://datcp.wi.gov/Pages/About_Us/GuidanceDocuments.aspx

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance document may be submitted by accessing:

https://datcp.wi.gov/Pages/About_Us/GuidanceDocuments.aspx

DEADLINE FOR SUBMISSION

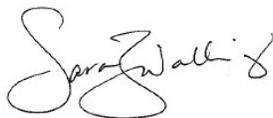
The comment period will run no fewer than 21 days after the publication of this document in the Administrative Register.

AGENCY PUBLICATION

The attached guidance document contains statements or interpretations of law under the following applicable provisions of federal law or the applicable state statutory or administrative code provisions: Wis. Stat. ch 94.55, Wis. Admin. Code, ch. 22.

CERTIFICATION

Pursuant to the authority delegated to me by the Secretary, I have reviewed the attached guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.



Sara Z. Walling
Administrator
Division of Agricultural Resource Management



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GUIDANCE DOCUMENT

Sampling, Testing, Seed Varieties FAQs

This guidance document is based on Wis. Stat. ch. 94.55 and chapter(s) ATCP 22 Wis. Admin. Code. This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed.

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Printed document that is also available on the DATCP website that is a detailed frequently asked questions document. The document has information regarding hemp sampling, testing and seed varieties.

Attached is the full document

<https://datcp.wi.gov/Documents/HempFAQSampling.pdf>

	May 13, 2020
Sara Walling - Administrator, Division of Agricultural Resource Management	DATE

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Wisconsin Hemp Pilot Research Program



Sampling, Testing, and Seed Varieties

Wisconsin's hemp pilot research program is permitted under federal ([2014 Farm Bill](#)) and state ([Wis. Stat. § 94.55](#)) laws. Below are answers to frequently asked questions about the hemp pilot research program. This information is a guide. If you have questions, contact the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) Hemp Pilot Research Program by phone (844) 449-4367 (toll-free) or email datcpindustrialhemp@wi.gov. Information is also available at <https://hemp.wi.gov>.

Sampling

1. How are regulatory samples collected?

DATCP will sample (cut) the top two inches of the hemp flowers randomly throughout one lot of hemp (one variety grown in one contiguous growing location) to get a representative sample of the lot.

If you have fewer than 15 female plants available in one lot, DATCP may not be able to get enough plant material for a sample from that lot. As a result, the hemp at that growing location may be ordered to be destroyed.

2. Can I mix my varieties in one lot, field, or growing location?

No. DATCP is required to sample each lot (each variety grown in each contiguous growing location). If you are mixing your varieties in a growing location, DATCP staff may be unable to collect a representative sample of the field and the hemp within the entire growing location may need to be destroyed. Separate each lot of hemp so that all the plants in one lot are of the same variety. Clearly mark the edges of each lot and clearly label the variety of hemp in that lot.

3. Can DATCP sample from harvested hemp?

No. The regulatory hemp sample collected by DATCP must come from a growing hemp lot. Post-harvest or processed hemp cannot be sampled for regulatory purposes. Lots that cannot be sampled as required, because they have been harvested or

processed prior to the regulatory sample being collected, will be ordered to be destroyed.

Testing

4. How do you know my crop's total delta-9 THC content?

Licensed hemp growers with a 2020 annual registration must notify DATCP's Hemp Pilot Research Program **30 days before you want to harvest**. DATCP staff will sample each lot (each variety grown in each contiguous growing location) and deliver the samples to DATCP's lab for analysis. The analysis will test for the total delta-9 tetrahydrocannabinol (total delta-9 THC) of each lot sampled. Due to the number of samples needing testing, you may not receive your regulatory test results prior to harvest.

5. Can I have my hemp privately tested?

Yes, but private tests may not substitute for DATCP's regulatory test for that lot. It is strongly recommended that growers monitor the total delta-9 THC content of their lot through private testing. Due to the number of samples needing testing, DATCP cannot guarantee that growers will receive their regulatory results prior to harvesting their lot. Private testing helps growers in making harvest decisions.

6. What is DATCP's procedure for regulatory hemp testing?

DATCP's regulatory hemp sampling and testing has remained the same in 2018, 2019, and 2020.

The hemp regulatory sample is analyzed for total delta-9 THC. The sample is analyzed using a high performance liquid chromatography (HPLC) and is calculated using the following equation: $\text{delta 9 THC} + (0.877 * \text{delta-9 THCa}) = \text{total delta 9 THC}$.

The 2018 Farm Bill and 2019 Wisconsin Act 68 require a hemp testing method that includes delta-9 tetrahydrocannabinol acid (delta-9 THCa). The 2018 Farm Bill states that the total delta-9 THC is to be tested using post-decarboxylation or other similarly reliable methods. Wis. Stat. § 94.55(1) requires that hemp contain no more than 0.3% delta-9 THC and must be tested using post-decarboxylation or other similarly reliable methods.

To meet this requirement of using post-decarboxylation, DATCP's regulatory lab uses HPLC with a calculation ($\text{total delta-9 THC} = \text{delta-9 THC} + 0.877 * \text{delta-9 THCa}$) to achieve equivalent results to heating. Delta-9 THCa is included in the assessment because delta-9 THCa is a precursor to delta-9 THC, and with heat converts to delta-9 THC. To get a true measure of potential human exposure to delta-9 THC requires the inclusion of both delta-9 THCa and delta-9 THC.

7. What if my hemp tests above 0.3% total delta-9 THC?

If your lot tests between 0.3% and 1.0% total delta-9 THC, you may request a re-sample within 10 days of service of your initial sample results. The date of service is the postmark date on your sample results. If you request a re-sample, DATCP will collect another sample and send the new sample to DATCP's lab for analysis. You will have to pay another \$250 for the re-sample and testing. If you decline re-sampling and testing, or if the lot's re-sample results are above 0.3% total delta-9 THC, you are required to destroy your crop within 10 days of service of the destruction order.

8. Is there a list of approved labs that can provide THC and cannabinoid testing?

DATCP does not currently certify or approve labs that can provide cannabis testing. However there are many private laboratories in the state that provide this service for growers. DATCP recommends using laboratories that are ISO 17025 accredited.

9. Does DATCP require post-harvest testing?

No, DATCP currently does not require post-harvest testing or product testing. Processors and

manufacturers may require testing. Regardless of DATCP hemp regulatory testing, all hemp and hemp products must meet the legal definition of hemp with a total delta-9 THC content of 0.3% or less.

10. Can I send my hemp sample to a private lab to avoid the cost of DATCP's regulatory testing?

No. The regulatory sample cannot be taken by anyone other than DATCP and the regulatory testing cannot be done by a private lab. While you are encouraged to use a private lab to monitor your crop's total delta-9 THC concentration throughout the growing season, DATCP's regulatory hemp sampling and testing is the required regulatory test at this time. Your hemp crop must be sampled by DATCP before harvest and tested by DATCP's lab before a fit for commerce certificate can be issued. You can use private labs for any additional pre- or post-harvest testing needs.

Hemp Seed, Clones, and Varieties

11. What is certified seed?

Certified seed is seed whose producer has submitted their seed to inspection/testing to prove the identity of its variety, genetic purity, and seed quality. In Wisconsin, the Wisconsin Crop Improvement Association (WCIA) is designated as the official seed certifying agency. For more information about the WCIA, visit <https://wcia.wisc.edu/seedcert.html>. DATCP's Hemp Program does not certify seed.

12. Can I plant a CBD or CBG variety of hemp?

Only licensed hemp growers with a current annual registration can grow hemp. You must request review and receive approval from DATCP for a new variety before planting any variety that is not any of the following lists:

- Health Canada approved cultivars <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/producing-selling-hemp/commercial-licence/list-approved-cultivars-cannabis-sativa.html>
- Organisation for Economic Co-operation and Development (OECD) varieties eligible for seed certification under the seed schemes <http://www.oecd.org/agriculture/seeds/documents/codes-schemes-list-of-varieties-crucifers-and-other-oil-or-fibre-species.pdf>

- DATCP's list of approved CBD and CBG varieties
<https://datcp.wi.gov/Documents/ApprovedHempCBDVarieties.pdf>

DATCP-approved CBD and CBG varieties are approved for planting in Wisconsin. Planting a variety that has not been approved could result in the revocation of your license. DATCP does not certify hemp varieties in this approval process, but rather approval verifies that the variety is documented to be capable of producing a compliant hemp crop. This is not a guarantee the variety will produce a compliant crop. Compliance is determined by the regulatory test.

13. Where can I buy hemp seed or clones?

Seeds and clones are available from multiple domestic or international sources. You can order seed or clones after you submit your annual registration form and fee and after you receive your license.

14. Can I sell seed or clones to growers in other states?

Yes, if the hemp was lawfully grown. Federal law permits interstate (state to state) commerce (buying and selling of goods) of hemp seed, grain, plant material, and hemp products. Check with other state(s) hemp regulatory programs to find out what their requirements are.

Under state law (Wis. Admin. Code § ATCP 22.13), when transporting Wisconsin grown hemp you must include a copy of the fit for commerce certificate and copy of the grower or processor license that designates the owner of the hemp.

15. Can I save seed to plant the following year?

A grower may save seed harvested from a pilot project and plant the seed unless it is prohibited by the variety owner. More information is available at https://datcp.wi.gov/Pages/Programs_Services/IHSeed.aspx.

16. Do I need a seed license to sell hemp seed in Wisconsin?

Maybe. DATCP's Seed Labeler Program licenses seed labelers. The seed labeler program is a separate program from the hemp program. Visit https://datcp.wi.gov/Pages/Programs_Services/SeedLabel.aspx or call (608) 224-4596 for more information.

17. What do I need to do to sell hemp clones in Wisconsin?

First, obtain a hemp grower license and current annual registration. You will need a regulatory sample and a fit for commerce certificate for the Wisconsin grown parent crop of hemp one growing season before the resulting clones are brought to market.

Resources

You can learn more about hemp through these resources:

- DATCP Hemp Program: <https://hemp.wi.gov>
- University of Wisconsin-Madison, Division of Extension: <https://fyi.extension.wisc.edu/hemp/>
- USDA:
 - <https://www.usda.gov/topics/hemp>
 - <https://www.farmers.gov/manage/hemp>



**Wisconsin Department of Agriculture,
Trade and Consumer Protection**
Division of Agricultural Resource
Management | Bureau of Plant Industry
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