



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Sheila E. Harsdorf, Secretary

DATE: May 10, 2018

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Sheila Harsdorf, Secretary *Sheila Harsdorf*
Brian Kuhn, Acting Administrator, Division of Agricultural Resource
Management *Brian D. Kuhn*

SUBJECT: Industrial Hemp, Wis. Admin. Code ch. ATCP 22 (Statement of scope)

PRESENTED BY: Melody Walker, Chief, Pest Survey and Control Section, Plant Industry
Bureau, Division of Agricultural Resource Management

REQUESTED ACTION:

At the May 24, 2018 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a statement of scope for a permanent rule that will supersede the current Wis. Admin. Code ch. ATCP 22 emergency rule related to industrial hemp.

SUMMARY

Wisconsin lawmakers directed DATCP to implement an industrial hemp research and pilot program in order to allow agricultural growers and businesses in Wisconsin to participate in the development, research, processing, and growing of industrial hemp. Industrial hemp is used in products such as building materials, textiles, cordage, fiber, food, floor coverings, fuel, paint, animal feed, paper, particle board, plastics, seed meal, cosmetics, seed, oil, and yarn. At the same time, hemp can contain a certain amount of tetrahydrocannabinol, which remains a Schedule 1 Controlled Substance under federal law.

The 2014 federal Farm Bill allows states to establish agricultural pilot programs to study the growth, cultivation, or marketing of industrial hemp. Under federal law, the state must provide a clear and consistent regulatory framework for such a program. In keeping with the federal parameters, the Wisconsin legislature enacted Act 100, the Industrial Hemp statute, Wis. Stat. § 94.55. The Act passed the State Senate and the State Assembly unanimously and was strongly supported by the agricultural industry. The law requires DATCP to adopt permanent rules no later than July 1, 2020.

DATCP has promulgated an emergency rule specifying the application process for licenses to grow and process industrial hemp under Wisconsin's pilot program. The proposed permanent rule will provide the additional regulatory provisions needed to administer Wisconsin's industrial hemp research and pilot program in compliance with federal law. As directed by state statute, the permanent rule will include regulations related to planting, growing, cultivating, harvesting,

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sampling, testing, processing, transporting, transferring, taking possession of, selling, importing, and exporting industrial hemp in the state to the greatest extent allowed under federal law. The rule will also include a seed certification program. The rule must also, as necessary, ensure the quality of industrial hemp grown or processed in Wisconsin, the security of activities related to industrial hemp, and the safety of products produced from industrial hemp. DATCP must also perform any testing necessary to effectuate the above mandate. Finally, the rule must verify adherence to laws and rules governing activities related to industrial hemp and must account for the enforcement of those laws and rules.

DATCP has received over 350 applications for hemp grower and hemp processor licenses under the emergency rule.

Next Steps

If the DATCP Board approves the statement of scope, the Department will begin work on drafting the permanent rule. Approval of a statement of scope is merely the first, preliminary step within a lengthy process of fashioning a permanent rule. The DATCP Board will have at least two further opportunities to review the proposed rule. The DATCP Board must approve a hearing draft rule before the Department may hold public hearings on the rule proposal. The DATCP Board must also approve the final draft rule before the Department may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP Board, has been approved by the Governor, and has survived a legislative review process.

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.

Contact Person: Jennifer Heaton-Amrhein, 608-224-4517

I, Sheila E. Harsdorf, Secretary of the Department of Agriculture, Trade and Consumer Protection, having submitted this Statement of Scope before the Governor of the state of Wisconsin and now in receipt of his approval dated March 14, 2018, hereby approve this Statement of Scope as evidenced by my signature below.



Sheila E. Harsdorf, Secretary

5.11.18

Date