

# Wisconsin's Hemp Research Pilot Program Sampling, Testing, and Variety Frequently Asked Questions:

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## How do you know my crop's THC content?

Licensed hemp growers with a 2020 annual registration must notify the DATCP hemp program 30 days before they want to harvest. A DATCP hemp inspector will sample each field and variety grown and deliver the samples to our laboratory for analysis.

## Can I mix my varieties in one field or growing location?

No. DATCP hemp inspectors are required to sample each variety as it grows at each location. If you are mixing your varieties in a field, you could end up with many more or fewer Fit for Commerce Certificates than you anticipated. Separate each plot of hemp so that all the plants in one plot are of the same variety. In the plot (one variety at one growing location), clearly mark the edges of each plot and clearly label the variety of hemp in that plot.

## Explanation of DATCP regulatory hemp sampling

DATCP hemp inspectors will sample the top 2" of the flower randomly throughout the crop at one plot (one variety at one location) to get a sample that represents all of your crop at that plot. The number of plants we will sample from at each crop at each plot is based on the Hypergeometric Table for Random Sampling. If you have fewer than 15 female plants available at the time of sampling, the inspector will not be able to get enough plant material from your crop for a sample. If you have about 20 female plants, we will sample from a minimum of 16 plants. If you have about 100 female plants, we will sample from a minimum of about 25-30 plants. The numbers are estimates, and the inspector is tasked with taking a representative sample from your crop, and sampling from more plants might be required.

## Explanation of DATCP regulatory hemp testing

Wis. Stats. § 94.55(1) requires that hemp contains no more than 0.3% delta-9 THC; the statute does not prescribe a testing method.

DATCP's lab uses high performance liquid chromatography (HPLC) with a calculation (Total THC = delta-9 THC + 0.877\*THCa) to achieve equivalent results to heating. THCa is included in the assessment because THCa is a precursor to delta-9 THC, and with heat converts to delta-9 THC. To get a true picture of potential human exposure to delta-9 THC requires looking at both THCa and delta-9 THC. As stated above, when heated, the precursor THCa converts to delta-9 THC.

DATCP's testing process is on a sound technical foundation, compliant with state statute, consistent with other states, and will not need to be changed to comply with the hemp program authorized under the 2018 Farm Bill. Laboratories either use HPLC with the calculation listed above, or use Gas Chromatography (GC) to determine THC content of hemp. States that use GC are determining delta-9 THC concentrations using heat and by this method THCa has been converted to delta-9 THC. Laboratories using HPLC use a calculation (delta-9 THC = delta-9 THC + 0.877\*THCa) to achieve equivalent results. As stated above, Wisconsin has used the HPLC

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method with the calculation for both the 2018 and 2019 growing seasons. Colorado and Kentucky use GC and Wisconsin worked closely with those leading hemp states on laboratory protocols.

The active hemp states meet regularly to discuss laboratory methods and program standards. Wisconsin is in alignment with many other states and with state and federal laws. Under the 2018 Farm Bill all states will need to use a method that includes THCa.

## **What if my crop test above 0.3% total delta-9 THC?**

If your crop test above 0.3% but at or below 1.0%, you may request a retest within 10 days of receiving your sample results. We would collect another sample and send it to the laboratory again for HPLC analysis. You will have to pay another \$250 for the re-sample and re-testing. If you decline re-sampling and re-testing, or if the hemp samples test high again, you are required to destroy your crop within 10 days. Wisconsin state law provides protection from criminal penalties to compliant growers whose plants test no more than 1 percent -- up to 0.7 percentage points above the 0.3 percent THC limit.

## **What is my crop tests above 1.0% total delta-9 THC?**

If your crop test above 1.0% total delta-9 THC, your crop is not eligible for a retest and must be destroyed. At this level, the licensee is not provided with protection from criminal penalties. If DATCP has to seize and/or destroy the crop, you will be invoiced for additional fees.

## **What is certified seed?**

Certified seed is seed whose producer has submitted their seed to inspection/ testing to prove its variety purity and its sound mechanical quality. In Wisconsin, the Wisconsin Crop Improvement Association (WCIA) is designated as the official seed certifying agency in Wisconsin. The Wisconsin Crop Improvement Association states on their website <https://wcia.wisc.edu/seedcert.html>

“WCIA cooperates with the University of Wisconsin-Madison College of Agricultural and Life Sciences and the Wisconsin Department of Agriculture, Trade and Consumer Protection in its certification activities. WCIA conducts third party, field, seed and facility inspections under four Association of Official Seed Certifying Agencies (AOSCA) programs and the North American Invasive Species Management Association (NAISMA) program.

The Certification Label is valid only when attached to a seed/grain container or to a forage/mulch bale of the specified variety/kind and lot number. WCIA provides certification labels to growers based upon field inspection and seed laboratory testing of representative seed/grain samples submitted by growers/conditioners for analysis. The labeler, by attaching the certification label to a particular lot of seed/grain or forage/mulch bale, is representing to both WCIA and the buyer, that the product has been produced, conditioned and inspected in accordance with the standards and procedures established by the WCIA and that the product described on the label meets certification and state and federal law requirements.”

## **Explanation of certified hemp seed and protection from criminal penalties**

Licensed hemp growers with a current annual registration who plant certified seed from two specific lists (the Health Canada list of Approved Cultivars or the OECD list of varieties eligible for seed certification under the

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OECD Seed Schemes) are protected by from criminal penalties regardless of THC level. There are currently no certified CBD varieties on either Health Canada list of Approved Cultivars or the OECD list.

Link to Health Canada list of Approved Cultivars: <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/producing-selling-hemp/commercial-licence/list-approved-cultivars-cannabis-sativa.html>

Link to OECD list of varieties eligible for seed certification under the OECD Seed Schemes: <http://www.oecd.org/agriculture/seeds/documents/codes-schemes-list-of-varieties-crucifers-and-other-oil-or-fibre-species.pdf>

## **DATCP Approved CBD Varieties**

The DATCP Approved Hemp CBD Varieties are approved to be planted in Wisconsin. Those who plant these approved CBD varieties are not provided with protection from criminal penalties if their crop were to test at above 1% Total delta-9 THC. Even if your CBD variety is on the list of CBD varieties approved by DATCP, there is no guarantee that your crop will pass the regulatory THC test.

## **Does DATCP have a list of approved laboratories that can provide THC and cannabinoid testing?**

DATCP does not currently certify or approve laboratories that can provide cannabis testing.

## **Can I send my hemp sample to a private laboratory to avoid the cost of the DATCP testing?**

No. Growers must have their hemp crop sampled by DATCP hemp inspection staff and tested by the DATCP's regulatory lab before harvest. Growers and processors can use private laboratories for additional pre- or post-harvest testing needs. The regulatory sample cannot be taken by anyone other than the DATCP hemp inspection staff and the regulatory testing cannot be done by a private lab.

## **Do you require post-harvest testing?**

DATCP currently does not require post-harvest testing or product testing. Processors and manufacturers may require testing. Regardless of testing, all hemp and hemp products must meet the legal definition of hemp.

## **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 receive your license and submit your annual registration form and fee. You must transport and store seeds or clones in a secure manner. We recommend purchasing certified seed for grain and fiber varieties as the best option for quality germination rates and best protection against high THC levels. Please note that the DATCP Approved Hemp CBD Varieties are approved to be planted in Wisconsin. Those who plant these approved CBD varieties are not provided with protection from criminal prosecution if their crop were to test at above 1% Total delta-9 THC. Even if your CBD variety is on the list of CBD varieties approved by DATCP, there is no guarantee that your crop will pass the regulatory THC test.

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## **Does DATCP have a DEA registration to help growers import seed internationally?**

DATCP does have a DEA seed importer registration, but this registration is no longer required. USDA's Animal and Plant Health Inspection Service (APHIS) regulates the importation of all plants and seeds for planting to ensure safe agricultural trade. For questions or requests for information regarding importing hemp plants or seeds, please contact USDA APHIS Plant Protection and Quarantine (PPQ)'s Permit Services by phone at 877-770-5990 (Toll-Free) or by email: [plantproducts.permits@usda.gov](mailto:plantproducts.permits@usda.gov). Please note that there is a risk that a shipment of hemp seed or hemp plants could be seized because it could be difficult to differentiate hemp from marijuana in these circumstances.

## **Can I sell seed or clones to growers in other states?**

Federal law fully permits interstate commerce of hemp seed, grain, plant material, and hemp products. Please note that there is a risk that a shipment of hemp seed or hemp plants could be seized because it could be difficult to differentiate hemp from marijuana in these circumstances. Licensed hemp growers and processors with a current annual registration must transport hemp crop with a copy of its Fit for Commerce Certificate.

## **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. Please see more information in the seed section of DATCP's Hemp Research Pilot Program web site. Usually, seed cannot be saved and sold for propagation, except under the Wisconsin Crop Improvement Association's seed certification program. Most seed distributors will not allow purchasers to save seed and sell it to other users.

## **Do I need a seed license to sell hemp seed or clones in Wisconsin?**

The Department of Agriculture, Trade and Consumer Protection licenses seed labelers. The labeling requirement helps assure that consumers receive good quality seed that germinates and does not contain weed seeds.

A seed labeler is any business or person whose name appears on a seed label, or who opens containers of agricultural, lawn or vegetable seed to sell all or part of it. Labels must include information about the percentages of different kinds of seeds in the package, germination, and treatment, inoculation or coating. Complete labeling requirements are listed in Wis. Admin. Code ch. ATCP 20.

You do not need a seed label license if you sell:

- Seed grown and sold on your own farm
- Seed in unopened bags or containers labeled by a licensed seed labeler
- Clones

Please visit the Wisconsin Seed Program at [https://datcp.wi.gov/Pages/Programs\\_Services/SeedLabel.aspx](https://datcp.wi.gov/Pages/Programs_Services/SeedLabel.aspx) or call 608-224-4596 for more information.

## **What do I need to do to sell hemp clones in Wisconsin?**

If are a licensed hemp grower with a current annual registration, and you have grown the parent crop for these clones in Wisconsin, 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.

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## **Can I breed a new variety of hemp for Wisconsin?**

Hemp Research Pilot Program participants wishing to breed a new hemp variety must apply for a research authorization from DATCP. Contact hemp program staff to ask how to apply for this authorization. Breeding is typically done by breeders or plant geneticists in an academic setting, and may have additional legal requirements. Currently, if you are licensed hemp grower with a 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 seeds, seedlings, or clones are brought to market.