



**Program:** Hemp Program  
**To:** Licensed hemp growers and processors

## Hemp Emergency Rule Effective October 29, 2020

### What is the emergency rule?

Effective October 29, 2020, this rule converts the Wisconsin Hemp Pilot Research Program to the Hemp Program. The Hemp Program is consistent with the pilot program and allows Wisconsin’s hemp growers to plant, grow, and process hemp. The Hemp Program continues to operate under the 2014 Farm Bill research program.

### Why was an emergency rule needed?

The previous pilot program operated under the authority of Wis. Stat. s. 94.55(3), which is repealed by 2019 Act 68, Section 87, on October 31, 2020. In order to continue to operate a hemp program after that date, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) needed to repeal and replace EmR2016 with a new emergency rule promulgated under the authority of Wis. Stat. ss. 94.55(2) and (3w). The updated rule converts the program and incorporates minor changes to reflect updated statutory authority.

### Why is Wisconsin’s hemp program continuing under the 2014 Farm Bill?

On October 1, 2020, Congressional action extended the authority of states to operate hemp pilot research programs until September 30, 2021. As a result, DATCP extended the current hemp program operated under the authority of the 2014 Farm Bill to September 30, 2021. Under federal rules, the hemp pilot research program was scheduled to end on October 31, 2020.

Under state law, DATCP must consider what provides the Wisconsin hemp industry with the greatest opportunity to “plant, grow, cultivate, harvest, produce, sample, test, process, transport, transfer, take possession of, sell, import, and export hemp in this state to the greatest extent allowed under federal law.” DATCP has determined that the hemp research program currently provides the Wisconsin hemp industry the greatest opportunity at this time and has made the decision to continue implementing the state hemp program under the authority of the 2014 Farm Bill.

### What are the benefits of continuing under the 2014 Farm Bill?

The table below outlines the key benefits to hemp growers for the 2014 Farm Bill compared to the 2018 Farm Bill.

	2014 Farm Bill	2018 Farm Bill
<b>Sampling and Testing</b>	Allows participants and DATCP to schedule sampling and testing at times most efficient for both parties while ensuring lawful production of hemp.	Contains strict timelines on the collection of samples and harvesting of crops.
<b>Lab Testing Variables</b>	Allows the state to develop its own method to account for testing variabilities. DATCP currently rounds down from 0.399% to account for laboratory variability.	Requires testing laboratories to calculate and apply a stringent measurement of uncertainty for THC content testing methodologies. This results in a narrower range in which a participant can produce hemp with acceptable THC content.

### Does the emergency rule include new program rules?

Yes. The emergency rule includes the following new program rules:

- **License conversion:** Converts pilot program licenses and registrations to licenses and registrations under the Hemp Program. This no-fee conversion will occur automatically without any action necessary by licensees. Annual registrations

will expire on December 31, 2020, and licensees will need to renew their registration for 2021.

- **Felony conviction:** New participants in the program will not be issued a license if in the 10 years prior, the person was convicted of a felony relating to a controlled substance under state or federal law. Previously, participants were not issued a license if the applicant had ever been convicted of a criminal violation relating to a controlled substance under state or federal law.
- **Fingerprint-based federal background check:** New applicants must submit to a fingerprint-based background check. These will be conducted by the Wisconsin Department of Justice who will use criminal history information from the Federal Bureau of Investigation. Applicants will pay for the costs associated with the criminal background check.
- **Hemp processor fees:** Hemp processors must now pay an initial \$150 license fee, required by statute. Processors will not need to pay the annual registration in the same annual registration year as the payment of the initial processor license fee. Previously, hemp processors did not have a licensing fee, but a required \$100 annual registration.
- **Voluntary destruction process:** Clarifies requirements for submitting a destruction notification form and DATCP approval of voluntary hemp destruction by licensees.
- **Variety pre-approval:** Updates the process for obtaining DATCP approval of hemp varieties to allow participants to grow hemp varieties that have already been DATCP approved. Licensees must still pre-notify DATCP of the variety they intend to grow, as is required by statute. The process of obtaining approval of hemp varieties not currently approved by DATCP and the associated fit for commerce certificate definition have been clarified to reflect current program practices.
- **Transporting hemp:** Clarifies the required documentation for transportation of harvested unprocessed hemp from a growing location by a licensee or a person contracted by a licensee.
- **Enforcement:** Establishes factors DATCP will consider when determining whether to refer a person producing hemp in violation of program rules (Wis. Stat. s. 94.55 or this rule) for prosecution under the Wisconsin Uniform Controlled Substances Act or applicable local possession of marijuana ordinance. Clarifies that orders enforcing this rule are subject to appeal pursuant to the appeal process.

## Legal References

Federal:

- Section 7606 of the Agricultural Act of 2014 (2014 Farm Bill)
- Section 122 of the Continuing Appropriations Act, 2021 and Other Extensions Act
- Agricultural Improvement Act of 2018 (2018 Farm Bill)

State:

- Wis. Stat. § 94.55
- Wis. Admin. Code ch. ATCP 22

This update is a source of program policy information administered by the Division of Agricultural Resource Management at the Wisconsin Department of Agriculture, Trade and Consumer Protection.

For questions, contact:

**Wisconsin Hemp Program**

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Additional resources are available at  
<https://hemp.wi.gov>