



Nathan J. Zolik
608.284.2634
nzolik@gklaw.com



Ned Witte
414.287.9518
nwitte@gklaw.com

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Wisconsin industrial hemp and CBD: 2019 licensing update

Nearly through its first full year, Wisconsin's industrial hemp program was enacted into law in November 2017, taking advantage of a federal Farm Law exemption to the Controlled Substances Act.¹ The program authorizes growing and processing industrial hemp, provided it is done pursuant to a state industrial hemp pilot program. Forty states, including Wisconsin, currently allow the growth and processing of industrial hemp. The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has promulgated emergency rules for the program and permanent rules are scheduled to take effect in July 2020.

During the 2018 growing season, 135 licensed growers reported planting hemp crops.² Plantings totaled roughly 1,850 field acres and an additional 23 acres were used for greenhouse growing.

DATCP also issued 99 processor licenses. Hemp processors are allowed to "store, handle and convert industrial hemp into a marketable form under Wisconsin law."³ The Wisconsin Attorney General has stated that licensed processors may use industrial hemp to produce cannabidiol (CBD) and that CBD produced as part of the pilot program, or another state's pilot program, may be legally sold at retail in Wisconsin.⁴

Industrial hemp licensing for 2019

- Industrial hemp license applications for the 2019 growing season are now being accepted by DATCP, and the filing deadline is Dec. 31, 2018.⁵
- Current license holders do not need to reapply, but they do need to register with DATCP if they plan to grow or process hemp during 2019.
- All industrial hemp license applicants are required to pass a criminal background check, and no grower or processor licenses will be issued to anyone with a state or federal drug conviction.⁶

¹ See 2017 Wisconsin Act 100; see also [Wisconsin's Industrial Hemp Pilot Program – CBD Processing](#)

² There were a total of 245 hemp grower permits issued.

³ Wisconsin Admin. Code ER § ATCP 22.03(3).

⁴ Statement of the Wisconsin Attorney General, *AG Schimel and Stakeholders Resolve Questions Surrounding DATCP Industrial Hemp Research Pilot Program*, May 10, 2018.

⁵ See [here](#) for complete information about licensing requirements and required fees.

⁶ Wisconsin Admin. Code ER § ATCP 22.03(5) and (8).

- Growers may not harvest hemp until it has been tested by DATCP. For hemp to be certified as “fit for commerce,” its THC concentration must be 0.3 percent or less on a dry weight basis.⁷
- Processors may only acquire hemp that has been issued a “fit for commerce” certificate by DATCP or that is from a grower in another state with an industrial hemp pilot program provided that the hemp is accompanied by documentation demonstrating that it tested at or below 0.3 percent THC.⁸
- Growers are required to submit a planting report to DATCP by July 1 of each year or within 30 days of planting, whichever is earlier. Final production reports are due by Dec. 15 of each crop year.⁹
- Processors also are required to submit a report to DATCP by Dec. 15 of each year, and it must specify the quantity of hemp received and the processor’s intended markets for all hemp received and processed.¹⁰

Processing hemp to produce CBD

- While CBD is illegal to possess and distribute in many instances under state and federal law, the Wisconsin Attorney General has advised state and local law enforcement that CBD produced from industrial hemp grown through a state industrial hemp pilot program is allowed and should not be prosecuted.¹¹
- The Wisconsin Attorney General also has stated that it is permissible for retailers to sell CBD that is certified to be in compliance with a state industrial hemp program and the federal Farm Bill exemptions to the Controlled Substances Act.¹²
- The DATCP emergency rules require THC testing of hemp plants, but do not specify whether testing standards apply after hemp is processed. The rules allow processors to “convert industrial hemp into a marketable form under Wisconsin law,” but do not clarify what a “marketable form” may include.

What Wisconsin retailers need to know

Wisconsin law currently does not allow the retail sale of CBD to consumers unless either of the following circumstances is present:

- The CBD was produced from industrial hemp that was certified by DATCP as “fit for commerce” or from industrial hemp in another state if it was certified to be in compliance with that state’s industrial hemp pilot program.¹³
- The CBD is being sold pursuant to an investigational drug permit issued by the federal Food and Drug Administration, and subject to approval by the Wisconsin Controlled Substances Board.¹⁴

These exceptions reflect the Wisconsin Attorney General’s current interpretation of state and federal law and the guidance that has been issued to state and local law enforcement.

⁷ Wisconsin Admin. Code ER § ATCP 22.12.

⁸ Wisconsin Admin. Code ER § ATCP 22.12(2); DATCP FAQs on Industrial Hemp, see [here](#).

⁹ Wisconsin Admin. Code ER § ATCP 22.05.

¹⁰ *Id.*

¹¹ Statement of the Wisconsin Attorney General, *AG Schimel and Stakeholders Resolve Questions Surrounding DATCP Industrial Hemp Research Pilot Program*, May 10, 2018.

¹² *Id.*

¹³ Statement of the Wisconsin Attorney General, *AG Schimel and Stakeholders Resolve Questions Surrounding DATCP Industrial Hemp Research Pilot Program*, May 10, 2018.

¹⁴ Wisconsin Department of Justice Memorandum to the Public, *Distribution and Possession of Cannabidiol (CBD) in Wisconsin*, January 5, 2018.

Conclusion

In sum:

- The deadline for new industrial hemp growers and processors to apply for 2019 licenses is Dec. 31, 2018. Current licensees do not need to reapply, but do need to register with DATCP for 2019.
- Wisconsin program rules require applicant background checks, regular licensee reporting, and plant testing for allowable THC concentration pre-harvest.
- Only industrial hemp that passes DATCP testing standards may be certified as “fit for commerce” and enter the processing stream.
- Processing industrial hemp into CBD is currently allowed in Wisconsin, but licensees should carefully monitor ongoing legal developments and any relevant changes to Wisconsin regulations or law enforcement practices.
- The retail sale of CBD is allowed only under specific legal exceptions, and additional statements from the Wisconsin Department of Justice should be watched closely.

Please contact us with any further questions regarding the Wisconsin industrial hemp program and issues relating to the production and sale of CBD.