

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

EMERGENCY RULE
Chapter ATCP 22

The Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule *to repeal and recreate* ch. ATCP 22 *relating to* hemp and affecting small businesses.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This emergency rule updates the existing hemp research program (Hemp Program) created under Wis. Stat. s. 94.55 (2), to allow the people of this state the greatest possible opportunity to engage in hemp production. Under Wis. Stat. s. 94.55 (2) and (3w), the Department of Agriculture, Trade and Consumer Protection (Department) is required to promulgate rules regulating hemp activities.

This emergency rule specifies the application process for obtaining a license to grow and a license to process hemp for research purposes under the Hemp Program administered by the Department.

Pursuant to Wis. Stat. s. 94.55 (3w), the Department is not required to provide a finding of emergency or prepare a statement of scope of the rules. The Department is also not required to submit the final draft to the Governor for approval.

This rule repeals and replaces emergency rule EmR2039, which was published and effective on October 29, 2020. The repeal and replacement was necessary as the United States Department of Agriculture (USDA) published 7 C.F.R. 990 (Final Rule) on January 19, 2021 with an effective date of March 22, 2021, which offers more flexibilities for the Hemp Program. This new rule will operate under the authority of the 2014 Farm Bill for the 2021 growing season by taking advantage of the program extensions offered in Section 122 of the Continuing Appropriations Act and Section 782 of the Consolidated Appropriations Act. These Acts extended the 2014 Farm Bill until September 30, 2021 and then through December 31, 2021, respectively. The Department retains authority to operate a hemp program under Wis. Stat. s. 94.55 (2). Wis. Stat. s. 94.55 (2) (b) 2. requires the Department to regulate hemp production only to the extent required under federal law and in a manner that allows "...the greatest possible opportunity to engage in those activities." Operating under a 2014 Farm Bill research program while incorporating certain flexibilities offered in the Final Rule provides Wisconsin hemp growers the greatest opportunity to produce hemp.

This emergency rule takes effect upon publication and remains in effect until the date on which rules promulgated pursuant to Wis. Stat. s. 94.55 (3w) take effect.

Statutes Interpreted

Wis. Stat. s. 94.55

Statutory Authority

Wis. Stat. s. 94.55 (2) and (3w)

Explanation of Statutory Authority

Wis. Stat. s. 94.55 (2) requires the Department to promulgate administrative rules to regulate hemp activities. Wis. Stat. s. 94.55 (2) (b) 2. requires the Department to regulate hemp activities only to the extent required under federal law and in a manner that allows "...the greatest possible opportunity to engage in those activities." Pursuant to Wis. Stat. s. 94.55 (3w), the Department may use the emergency rulemaking procedures under Wis. Stat. s. 227.24 to promulgate rules under Wis. Stat. s. 94.55.

Related Rules or Statutes

Wis. Stat. s. 961.32 (3) relates to the Hemp Program as it creates authorized possession of hemp within the Wisconsin Controlled Substances Act and details when referrals from the Department are necessary for criminal prosecution in relation to the Hemp Program.

Plain Language Analysis

The Department currently operates under the Hemp Program, a hemp research program authorized by the 2014 Farm Bill. The Hemp Program is designed to study the growth, cultivation, and marketing of hemp in Wisconsin. Growers and processors provide information to the Department related to hemp production. This rule implements some of the changes outlined in the Final Rule, and thus provides growers with the greatest opportunity to produce hemp in Wisconsin as pursuant to Wis. Stat. s. 94.55 (2). Adopting these changes from the USDA Final Rule allows growers to operate under a less restrictive framework.

The 2018 Farm Bill sunsetted the 2014 Farm Bill's authorization of states to operate hemp research programs, effective one year after the USDA established an approval process of state and tribal plans to produce hemp. The USDA issued Interim Final Rule (IFR), 7 C.F.R. Part 990, effective October 31, 2019, and thus all state hemp pilot research programs were set to expire pursuant to Section 7605 (b) of the 2018 Farm Bill on October 31, 2020.

However, on October 1, 2020, Section 122 of the Continuing Appropriations Act, 2021 and Other Extensions Act extended the authority of states to operate hemp pilot research programs until September 30, 2021. This program extension gave states' more time to develop a USDA-approved State Plan. States' authority to operate hemp research programs was extended a second time on December 27, 2020 through Section 782 of the Consolidated Appropriations Act. This Act extends the 2014 Farm Bill expiration date to December 31, 2021, this change allows states to avoid switching program authority during the growing season. To continue primary jurisdiction over

hemp programs, states and tribes now must have a plan approved by USDA by December 31, 2021.

The Department retains authority to operate a hemp program under Wis. Stat. s. 94.55 (2). Subsection (2) (am) allows the Department to operate a hemp program if federal law requires hemp licenses, and if USDA approves the state's program. Section 7606 of the 2014 Farm Bill requires licensed hemp production. Section 782 of the Consolidated Appropriations Act requires the USDA to approve the continuation of state hemp research programs through December 31, 2021.

Wis. Stat. s. 94.55 (2) (b) 2. requires the Department to regulate hemp production only to the extent required under federal law and in a manner that allows "...the greatest possible opportunity to engage in those activities." Continuing to operate under a 2014 Farm Bill research program provides participants the greatest opportunity to produce hemp.

USDA published the completed hemp Final Rule on January 19, 2021, with an effective date of March 22, 2021. The Final Rule replaces the IFR effective March 22, 2021 and outlines new flexibilities and program requirements. This emergency rule incorporates parts of the Final Rule to give growers the greatest opportunity to produce hemp. These adapted aspects are outlined below.

The Final Rule, or 7 C.F.R. 990, gives licensed growers the option to remediate, resample, and retest non-compliant hemp. As defined in this rule, remediation is the process of a licensed grower rendering part of the cannabis crop unusable by destroying the flower material. A large portion of the delta-9 THC found in cannabis plants is stored within the plant's floral material; by allowing growers to destroy this part of the cannabis plant, they are more likely to have a compliant crop. A second permitted form of remediation is for the grower to shred or grind the entire lot into a homogeneous biomass. Growers may only remediate after their hemp has been tested and is found to be non-compliant by the Department. Remediated hemp must be sampled and pass regulatory testing. The option of remediation is a new addition to the hemp program and was incorporated to give growers a greater chance of having a compliant and marketable crop.

The emergency rule includes clarifying language on negligent enforcement and violations for licensed participants. This rule outlines when a grower or processor would have a license denied, suspended, or revoked. For example, a licensee may be denied a license if they apply while their current license is suspended, apply in place of another licensee, violate this rule or Wis. Stat. s. 94.55, or doesn't follow a written order from the Department. This rule also provides more detail on corrective action plans for when a licensee negligently violates this rule. These changes are reflective of current program procedures.

This emergency rule was promulgated because the federal Final Rule was published on January 19, 2021, with an effective date of March 22, 2021. The Department will incorporate certain provisions of the Final Rule into their program through this emergency rule while continuing to operate under the 2014 Farm Bill. The updated rule repeals and replaces Emergency Rule 2039 and incorporates minor changes to the program.

Fiscal Impact

This rule continues the regulatory structure related to growing hemp and applies to those who wish to participate in the Hemp Program. Currently, individuals or businesses choosing to grow or

process hemp must pay all applicable program fees—one-time grower license and acreage (\$150-\$1,000), annual grower registration (\$350), sampling and testing (\$250 per lot), processor license fee (\$150), and annual processor registration (\$100; waived in the first year the processor obtains a license). These program fees generate the program revenue that supports the program. This rule creates a new \$300 fee for the option to sample and test remediated, non-compliant hemp lots, or resample and test remediated, non-compliant hemp lots. This rule also creates a new \$200 fee for the option to retest where a resample is not required. Remediating and retesting are voluntary under this rule, and therefore growers are not required to pay these fees unless they choose to remediate or retest.

Hemp Program Participants

This rule will impact persons who wish to grow and process hemp as part of the Hemp Program. Anyone wishing to grow or process hemp must participate in the program unless the participant is operating under a USDA-approved tribal hemp plan. This rule does not change existing fees, recordkeeping, and reporting requirements. With this rule, licensees will now be given the option of remediation, resampling, and retesting if their hemp is non-compliant. For the past two years, approximately 10 percent of samples have tested above 0.3 percent THC. In CY2021, the Department expects to initially test 1,030 samples of hemp, meaning 103 of those samples could fail and have the option to remediate, resample, and retest. The option of remediation is a new addition to the hemp program and was incorporated to give growers a greater chance of having a compliant and marketable crop. All hemp must meet defined analytical standards before the Department will issue a fit for commerce certificate and the hemp can be transported from the growing location. This rule provides criteria for participants to obtain and maintain a license. The rule explains the criteria for suspending, revoking, or denying licensure.

A hemp grower who successfully plants, grows, and plans to harvest hemp must have the hemp sampled by the Department before the hemp can be harvested. A fit for commerce certificate must accompany hemp that is transported from the growing location. The fit for commerce certificate is the documentation required by law that verifies that the hemp it accompanies is legally hemp (i.e. at or below 0.3 percent THC). Sampling and testing must be completed before a fit for commerce certificate can be issued. A fit for commerce certificate will be issued for each lot that tests at or below 0.3 percent THC. A lot is a contiguous area of one variety or strain of hemp growing indoors or outdoors. A grower may have more than one lot and each lot must be sampled separately. The existing fee for sampling and testing of one lot is \$250 per sample. The new fee for testing a remediation sample is \$300. The new fee for a retest where a new sample is not required is \$200.

The sampling and testing fee, or resampling and testing fee, for remediated non-compliant hemp lots will be \$300 per sample. This fee is higher than the initial pre-harvest sampling and testing fee. The entire lot must be remediated (shredded or ground into a uniform state, a homogenous biomass). The sampling process is expected to take longer than an initial pre-harvest sample to obtain a representative composite sample of the lot. In addition, lab processing will take longer and require more staff time to grind the remediated sample into a uniform consistency needed for lab testing. Based on a failure rate of approximately 10 percent of samples and an estimated 1,030 samples in CY2021, there could be 103 samples annually which may be eligible to be remediated. The Department does not anticipate all growers with failed samples will seek to remediate but does estimate that approximately 50 percent will do so. In that event, the fiscal impact of the new \$300 fee would total \$15,600 (52 x \$300).

Another new fee will allow for testing where a new sample is not collected. If a sample fails the initial pre-harvest sample testing, a portion of the collected sample may be held at the lab for future testing. The Department estimates there would be approximately 25 samples retested and the fiscal impact of the new \$200 fee would be \$5,000 (25 x \$200). These new fees are not required to participate in the Hemp Program. Remediation, and testing where taking a sample is not required are options for growers whose lots have failed the THC testing and are not required to participate in the program.

The estimated economic impact of compliance with this rule is approximately \$20,600 (\$15,600 + \$5,000) for participants.

Local Governments

This rule will not impact local governments. Local governments will not have any major implementation or compliance costs.

Utility Rate Payers

The rule will have no impact on utility rate payers.

General Public

This rule will have no compliance costs to the public as a whole, although there may be some broad economic impact as new business opportunities emerge.

The Department

This rule will have a continued fiscal impact on the Department's operations. Department staff must review each application and all supporting information and perform a fingerprint-based background check on each new license applicant. This regulatory program requires a high degree of compliance assistance and education. Department staff are also responsible for inspections, sampling, laboratory analysis, and compliance activities. The changes to this rule will increase workload for Department hemp program operations. The option of remediating non-compliant hemp may increase the amount of resampling, retesting, and laboratory analysis by Department staff.

Analysis of Supporting Documents used to Determine Effect on Small Business

Because this rule continues the existing regulatory framework of the Hemp Program, with minor changes to meet current state and federal law, the impact on small business remains relatively the same, and thus no substantial analysis was required to determine the effect on small business. New fees included in this rule are all optional fees for service and are not required to be paid unless a licensee requests the service. The Department reviewed annual and planting reports filed by licensees with the Department from past growing seasons as well as growers' test results.

Business Impact

This rule continues the regulatory framework of the Hemp Program as it existed under the previous emergency rules with minor changes to ensure consistency with state law and to clarify rule language to reflect program practice. The rule provides an option for licensed growers to remediate

their hemp if it exceeds the regulatory level of 0.3 percent total delta-9 THC. This should benefit small businesses, as it provides an alternative to destroying the crop. Therefore, the rule will not negatively impact small business as this rule does not make significant modifications to the regulation of the hemp industry.

This rule adds a new \$300 fee for the option to sample and test remediated, non-compliant hemp lots, or resample and test remediated, non-compliant hemp lots. This rule also adds a new \$200 fee for the option to retest where a resample is not required. These are fees for new services and growers are not required to remediate or retest and pay these fees unless they request the additional services. The impacts of this rule to the regulated industry do not include changes to existing license fees to participate in the program.

This rule maintains the existing costs of compliance associated with program participation such as licensing, registration, sampling, testing, and recordkeeping in accordance with the requirements of Wis. Stat. s. 94.55 (2) (b) 4.

Federal and Surrounding State Programs

The current Hemp Program operates under the authority of Section 7606 of the 2014 Farm Bill, 2017 Wisconsin Act 100, 2019 Wisconsin Act 68, and Section 7605 (b) of the 2018 Farm Bill.

The 2014 Farm Bill authorizes states and institutions of higher education to grow, process, and market hemp for research purposes. States with hemp laws that allow hemp to be grown within their states may operate pilot research programs. Hemp varieties that test above 0.3 percent total delta-9 THC on a dry weight basis are not legally defined as hemp.

The 2018 Farm Bill authorizes the USDA to establish a nation-wide hemp production program. This program requires participating states and tribal nations to submit a state or tribal plan for approval that meets the requirements outlined in the Final Rule, 7 C.F.R. Part 990, published on January 19, 2021 and with an effective date of March 22, 2021. Currently, 41 tribes and 23 states have USDA-approved plans under the IFR. So far, one tribe in Wisconsin, Lac Courte Oreilles, has a USDA-approved plan. The program also establishes a federal plan for producers in states or territories of Indian tribes that choose not to administer a state or tribe-specific plan, provided also that the state or tribe does not ban hemp production.

The 2018 Farm Bill also authorizes states to continue to operate a research program established under the 2014 Farm Bill, until the program expires, at which time states must have a USDA-approved state plan in place to continue administering a state-operated hemp program. The USDA-approved state plan must be compliant with the 2018 Farm Bill and the IFR. The 2018 Farm Bill sunsetted the 2014 Farm Bill's authorization of states to operate hemp research programs, effective one year after the USDA established an approval process of state and tribal plans to produce hemp. USDA issued the IFR, effective October 31, 2019, and thus all hemp research programs were set to expire pursuant to Section 7605 (b) of the 2018 Farm Bill.

Section 122 of the Continuing Appropriations Act, 2021 and Other Extensions Act extended the authority of states to operate hemp research programs under the 2014 Farm Bill until September 30, 2021. Wisconsin, along with 20 other states, notified the USDA that for the 2020 growing season, it would continue to operate a pilot research program under the 2014 Farm Bill.

On December 27, 2020, states' authority to operate hemp research programs was extended a second time through Section 782 of the Consolidated Appropriations Act. To continue primary jurisdiction over hemp programs, states and tribes now must have a plan approved by USDA by December 31, 2021. With the second extension of the expiration date of the 2014 Farm Bill, Wisconsin will continue to operate a program under the 2014 Farm Bill.

Surrounding State Comparison

Minnesota

Minnesota's pilot program began in 2016 under the 2014 Farm Bill. The USDA approved Minnesota's State Hemp Production Plan on July 14, 2020. Minnesota operated a 2014 Farm Bill research program until December 31, 2020, before transitioning to their federally approved state 2018 Farm Bill hemp program. This date was chosen to coincide with the beginning of Minnesota's licensing period and eliminates the need for a transitional license between the two programs.

Minnesota is in the process of updating their State Plan because they are operating under the 2018 Farm Bill. The updated State Plan adopts all necessary regulatory changes to comply with the federal Final Rule. This includes adopting the new process of remediation and disposal, enforcement procedures, and sampling guidelines. The fee structure includes a grower license fee of \$150 with a growing location fee of \$250, a processor license fee of \$250, a license change fee of \$50, an additional inspection fee for sampling of \$250, and an additional testing fee of \$125.

Illinois

The Industrial Hemp Act was passed in Illinois in 2018, at which time the pilot program became available to commercial hemp growers. Illinois submitted a 2018 Farm Bill state plan to the USDA, which was approved in October 2020. Illinois is currently operating as a pilot program under the 2014 Farm Bill and will continue to operate under that program until December 31, 2021. Illinois will not incorporate Final Rule changes into their program before the end of the year. Instead, their State Plan will be rewritten in compliance with the Final Rule by January 1, 2022. Illinois allows licensing periods of one, two, or three years at \$375, \$700, or \$1,000, respectively.

Michigan

The Michigan hemp pilot program began in 2019 under the 2014 Farm Bill. Michigan's state plan has been approved by USDA, and they are currently operating under the 2018 Farm Bill. On March 25, 2021, Michigan Senate Bill 0816 was signed into law; this bill updates Michigan's Industrial Hemp Growers Act and ensures compliance with the USDA Final Rule. Some of the revisions made to the Act include timing of sample collection, disposal and remediation of non-compliant plants, negligent violations, grower registration cycle, hemp sampling, and testing using DEA laboratories starting in 2023.

Michigan has a grower license application fee of \$1,250, a site modification fee of \$50, and a processor, handler, broker fee of \$1,350. A \$250 late fee applies to both licenses. Michigan sets its sampling fee at \$150 and testing fee at \$125.

Iowa

Iowa Senate Bill 599 was signed into law in May 2019, which authorized the production of hemp pursuant to the 2018 Farm Bill and the IFR. Iowa began accepting applications for its hemp program on April 1, 2020. Because Iowa operates their program under the 2018 Farm Bill, they are currently in the process of updating their State Plan to be compliant with the Final Rule.

Therefore, Iowa is adapting all changes made in the federal Final Rule including remediation, performance-based sampling, negligent violations, and extending the time between sampling and harvesting from 15 to 30 days.

As of October 15, 2020, Iowa had 85 licensed growers. Iowa charges licensing fees of \$500 plus \$5/acre (0-5 acres), \$750 plus \$5/acre (5.1-10 acres), and \$1,000 plus \$5/acre (10.1 – 40 acres). Iowa has a maximum 40-acre limit per license. Each license applies to one location only.

Data and Analytical Methodologies

The Department gathered information from several states and the federal government, related to regulations, sampling and testing protocols, compliance, importation, and other related subject areas. Staff at the Department reviewed this information and the Department's legal authority, in drafting this emergency rule. The Department also reviewed the operation of the program over the prior growing seasons conducted under the previous emergency rules.

Department Contact

Questions and comments related to this rule may be directed to:

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FINDING OF EMERGENCY

A finding of emergency is not required. Wis. Stat. s. 94.55 (3w), provides that the Department of Agriculture, Trade and Consumer Protection is not required to provide a finding of emergency for a rule promulgated under this section.

SECTION 1: Chapter ATCP 22 repealed and recreated to read:

EMERGENCY RULE Chapter ATCP 22 Hemp

ATCP 22.01 Purpose. This chapter implements a hemp research program as authorized under s. 94.55 (2) and (3w), Stats.

ATCP 22.02 Definitions. As used in this chapter:

(1) “Applicant” means a person who has submitted a license application for a grower license or processor license.

(2) “Certified seed source” means hemp seed that is certified according to Wisconsin Crop Improvement Association standards.

(3) “Corrective action plan” means a plan proposed by a licensee for correcting a negligent violation of s. 94.55, Stats., or this chapter, approved by the department, and implemented pursuant to s. ATCP 22.16.

(4) “Culling” means to remove male plants, diseased or infested plants and injured or underperforming plants. Culling does not include removal of plants due to a THC level that exceeds the acceptable hemp THC level.

(5) “Decarboxylated” means the completion of the chemical reaction that converts tetrahydrocannabinolic acid (THC-A) into delta-9 tetrahydrocannabinol (THC), the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9 THC and 87.7 percent of THC-A.

(6) “Department” means the state of Wisconsin department of agriculture, trade and consumer protection.

(7) “Destroy” or “destruction” means incinerate, till under the soil, compost, or dispose of hemp in another manner approved by the department in such a way as the plants cannot be further handled, processed, or enter the stream of commerce.

(8) “Distribute” means to sell, offer to sell, exchange, barter, or solicit orders for the sale of hemp or otherwise supply or furnish hemp to purchasers of hemp in this state, whether or not the transactions are made wholly or partially in this state or another state.

(9) “Division” means the division of agricultural resource management.

(10) “Fit for commerce certificate” means a document issued by the department or another state, Indian tribe, or the United States department of agriculture, or an entity approved by another state, Indian tribe, or the United States department of agriculture to issue such a document, attesting that the hemp has been lawfully produced in compliance with this chapter or another state, tribal, or United States department of agriculture hemp program under Section 7606 of the Agricultural Act of 2014 or Section 10113 of the Agricultural Improvement Act of 2018. “Fit for commerce certificate” includes a valid document issued by an entity approved by another state, Indian tribe, or the United States department of agriculture to issue such a document, that attests that the hemp contains an acceptable hemp THC level.

(11) “Grower license” means the document that is issued by the department to a person after a successful grower application and review process and submission of all licensing fees.

(12) “Growing location” means a physical premises where a licensee operates as a hemp grower. A growing location may consist of multiple facilities, fields, greenhouses, or lots.

(13) “Harvest” means to remove from the growing substrate or to remove any part from the plant while in the growing substrate including seeds, flowers, buds, cuttings (plant sections originating from stems, leaves, or roots and capable of developing into new plants), leaves, or any other part of the plant for purposes of propagation, distribution, sale, or further use. Harvest does not include culling plants or plant parts if the plants or plant parts are subsequently destroyed. Harvest does not include remediation or destruction of hemp.

(14) “Hemp” means the plant *Cannabis sativa* L., and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis or the maximum concentration allowed under federal law up to 1 percent, whichever is greater, as tested using post-decarboxylation or other similarly reliable methods. “Hemp” does not include a prescription drug product that has been approved by the U.S. food and drug administration.

(15) “Hemp program” means the department’s hemp research program established under s. 94.55 (2), Stats., and this chapter.

(16) “Homogenous biomass” means plant material shredded or ground into a uniform state from which a composite representative sample may be taken. “Homogenous biomass” does not include any plant material with intact plants or whole flowers remaining.

(17) “Licensee” means a person possessing a grower license or processor license.

(18) “Lot” means a contiguous area in a field, greenhouse, facility, or growing structure containing the same variety or strain of hemp throughout the area.

(19) “Person” means an individual, corporation, partnership, limited liability company, government or governmental subdivision, or other legal entity.

(20) “Processor license” means a document that is issued to a person after a successful processor application and receipt of all fees.

(21) “Registration” means the annual submission by a licensee of a registration form provided by the department, registration fees, and research agreement or other information as required by the department.

(22) “Registration fee” means the applicable amount that shall be paid by a licensee annually to plant, grow, cultivate, or operate.

(23) “Remediation” means the process of a licensed grower rendering an entire lot of non-compliant cannabis, compliant by removing and destroying pursuant to s. ATCP 22.12 flower material, while retaining stalk, stems, leaf material, and seeds or by shredding or grinding the plant material into a homogenous biomass. “Remediation” only includes non-compliant cannabis determined non-compliant pursuant to s. ATCP 22.10 (3), (7) or (8).

(24) “Research agreement” means a contract between the department and the licensee, detailing the rules of the hemp program. This is a legally binding agreement between the state of Wisconsin and the applicant. Failure to adhere to the research agreement may result in removal from the hemp program.

(25) “THC” means total delta-9 tetrahydrocannabinol, or total delta-9 THC. Delta-9 THC is the primary psychoactive component of cannabis. Delta-9 THC and THC are interchangeable.

(26) “Variety” means a form of a plant created through plant breeding and cultivation. Cultivar, variety, and strain are interchangeable.

ATCP 22.03 Hemp program license.

(1) GROWER LICENSE REQUIRED. (a) No person may operate as a hemp grower without a grower license from the department. A grower license issued under this chapter does not expire unless the hemp program expires or the license is revoked, but an annual registration shall be completed. A grower license may not be transferred to another person. The grower license allows a person to plant, possess, cultivate, grow, and harvest hemp under Wisconsin law. A grower license allows a person to store, handle, and convert into a marketable form under Wisconsin law the hemp cultivated, grown, and harvested under this grower license.

(b) A valid department-issued grower license is converted to a grower license issued pursuant to this Chapter on the effective date of this Chapter.

(2) GROWER LICENSE APPLICATION. A person applying for a grower license shall apply on a form provided by the department. An applicant shall provide all the following to the department:

(a) The applicant’s legal name and address and any other name under which the applicant does business. If the applicant is a business entity, the full name of the business, the principal Wisconsin business location address, the full name of the individual who is authorized to sign on behalf of the business entity, phone number, and email address.

(b) If the applicant is a business entity, the name, title, and email address of the individual who will be primarily responsible for the hemp operations of the business entity and who will be the subject of the federal and state criminal background check.

(c) Informed consent form authorizing the department to conduct a federal and state criminal background check pursuant to sub. (5).

(d) The global positioning system coordinates for the center of each growing location where hemp will be planted, grown, cultivated, or harvested.

(e) Maps depicting each growing location where hemp will be planted, grown, cultivated, harvested, or processed with appropriate designation for entrances, boundaries, lots, and specific locations corresponding to the global positioning system coordinates and street address.

(f) Number of acres or square footage to be planted. The number of acres or square footage should be the maximum the applicant intends to plant, grow, cultivate, or harvest. Any increase in acres or square footage requires a license amendment and associated additional fees pursuant to sub. (8).

(g) A description of the research being conducted under the registration.

(h) A signed research agreement.

(i) Other information reasonably required by the department.

(3) PROCESSOR LICENSE REQUIRED. (a) No person may operate as a hemp processor without a processor license from the department. A processor license does not expire, unless the hemp program expires or the license is revoked, but an annual registration shall be completed. A processor license may not be transferred to another person. The processor license allows a person to store, handle, and convert hemp into a marketable form under Wisconsin law.

(b) A valid department-issued processor license is converted to a processor license issued pursuant to this Chapter on the effective date of this Chapter.

(4) PROCESSOR LICENSE APPLICATION. A person applying for a hemp processor license shall apply on a form provided by the department. An applicant shall provide all the following:

(a) The applicant’s legal name and any name under which the applicant does business, address, phone number, and email address. If the applicant is a business entity, the full name of the business, the principal Wisconsin business location address, the full name of the individual who is authorized to sign on behalf of the business entity, phone number, and email address.

(b) If the applicant is a business entity, the name, title, phone number, and email address of the individual who will be primarily responsible for the hemp operations of the business entity and who will be the subject of the federal and state criminal background check.

(c) Informed consent form authorizing the department to conduct a federal and state criminal background check pursuant to sub. (5).

(d) Maps and the street address and global positioning system coordinates for each building or site where hemp will be processed, handled, or stored.

(e) A description of the research being conducted under the registration.

(f) Planned source of hemp.

(g) A signed research agreement.

(h) Other information reasonably required by the department.

(5) BACKGROUND CHECK REQUIRED. (a) Each applicant for a grower license or processor license shall submit to a background check conducted by the department as a condition of licensure. The applicant shall pay the department a fee of \$21.25 and bear the costs associated with the criminal background check as determined by the department of justice, the federal bureau of investigation, and by any agency with authority to charge a fee for fingerprint impressions.

(b) No grower license or processor license may be issued to an applicant for 10 years following any felony conviction relating to a controlled substance under state or federal law unless the person held a valid license, registration, or other authorization to produce hemp under a pilot program of any state authorized by section 7606 of the federal agricultural act of 2014 on December 20, 2018, and the felony conviction occurred prior to that date.

(6) GROWER LICENSE FEES. A grower license application under sub. (2), shall include a nonrefundable license fee of \$150 or, for a license covering 31 or more acres, \$5 multiplied by the number of acres on which the person will plant, grow, cultivate, or harvest hemp, not to exceed \$1,000.

(7) PROCESSOR LICENSE FEES. A processor license application under sub. (4), shall include a nonrefundable license fee of \$150.

(8) AMENDING A LICENSE. (a) If any of the information included in the licensee's application changes, the licensee shall submit a request to amend the grower license or processor license on a form provided by the department and pay a fee of \$50 for each amendment form submitted.

(b) A licensee seeking to grow additional acres beyond what the grower license authorizes is not required to pay an amendment fee if the change is made during the annual registration process.

(c) A licensee seeking to grow additional acres beyond what the grower license authorizes shall pay \$5 per additional acre, not to exceed a maximum of \$850.

(d) A licensee may not utilize growing locations or additional acreage or square footage prior to the department accepting the request to amend the license.

(e) If a licensee that is a business entity changes the individual who will be primarily responsible for participation in the hemp program, the licensee shall pay the actual cost for a background check for the new contact.

(9) DENYING A LICENSE. The department may deny a license or impose conditions on a license as provided under s. 93.06 (7) and (8), Stats.

(a) The department shall deny a grower license or processor license to any applicant if the applicant does any of the following:

1. Fails to provide all required information or the initial application fee. A license may be issued at the department's discretion if the applicant provides the required information and fees.
2. Fails the state and federal criminal background check required under sub. (5), as determined by the department.

3. Materially falsifies any information in an application to produce hemp.
4. Negligently violates s. 94.55, Stats. or this chapter three times in any five-year period, for a period of five years beginning on the date of the third negligent violation.

(b) The department may deny a grower license or processor to any applicant if the applicant does any of the following:

1. Applies while the applicant's current license is suspended.
2. Applies as a stand-in for a person whose license has been suspended, revoked, or is otherwise ineligible to participate.
3. Engages in conduct, either an act or omission, violating a provision of s. 94.55, Stats. or this chapter, except for negligent violations as defined by s. 94.55 (2g) (a), Stats.
4. Fails to comply with a written order from the department.

(10) SUSPENDING A GROWER LICENSE OR A PROCESSOR LICENSE. The department may suspend a license or impose conditions on a license as provided under s. 93.06 (7) and (8), Stats.

(a) The department may suspend a grower license or processor license if the licensee does any of the following:

1. Engages in conduct, either an act or omission, violating a provision of s. 94.55, Stats., or this chapter, except for negligent violations as defined by s. 94.55 (2g) (a), Stats.
2. Fails to comply with a written order from the department.

(b) A person whose grower license or processor license is suspended may not plant, grow, cultivate, harvest, sample, test, process, transport, transfer, sell, import, export or otherwise remove hemp or other cannabis from the premises where it was located at the time the department issued the notice of suspension, except as authorized in writing by the department.

(c) A suspended grower license or processor license may be restored at the department's discretion.

(d) A licensee whose license has been suspended may be required to complete a corrective action plan to fully restore the license.

(11) REVOKING A LICENSE. The department may revoke a license or impose conditions on a license as provided under s. 93.06 (7) and (8), Stats.

(a) The department shall revoke a grower license or processor license if a grower licensee or processor licensee does any of the following:

1. Pleads guilty or is convicted of any felony relating to a controlled substance under state, federal law, or the law of any other state.
2. Makes any false statement related to the licensee's participation in the hemp program to the department or its representative.
3. Produces cannabis with a THC concentration level on a dry weight basis exceeding 0.3 percent with a culpable mental state greater than negligence, or negligently violates this chapter three times in five years.

(b) The department may revoke a grower license or processor license if a licensee does any of the following:

1. Engages in any activities prohibited under s. 94.55, Stats., this chapter, or a research agreement except for negligent violations as defined by s. 94.55 (2g) (a), Stats.
2. Fails to comply with any requirement of this chapter or s. 94.55, Stats., except for negligent violations as defined by s. 94.55 (2g) (a), Stats.
3. Fails to comply with any instruction or order related to the licensee's participation in the hemp program from the department or any law enforcement officer.

(12) OPERATING WITHOUT A GROWER LICENSE OR PROCESSOR LICENSE. Notwithstanding s. ATCP 22.16, any hemp grown or processed by a person without a hemp grower license or

processor license may be destroyed and may result in enforcement and penalties under s. 94.55 (2m), Stats.

ATCP 22.04. Annual registration

(1) (a) Licensed growers shall register with the department each year the licensed grower plans to plant, grow, and cultivate hemp. A registration expires on December 31 annually. Licensed growers shall pay an annual registration fee of \$350.

(b) A valid department-issued grower registration is converted to a grower registration issued pursuant to this Chapter on the effective date of this Chapter.

(2) (a) Licensed processors shall register with the department each year the licensed processor plans to operate. A registration expires on December 31 annually. Licensed processors shall pay an annual registration fee of \$100, except the annual registration fee is \$0 in the annual registration year in which the processor first obtains a license.

(b) A valid department-issued processor registration is converted to a processor registration issued pursuant to this Chapter on the effective date of this Chapter.

ATCP 22.05. Reporting and records

(1) REPORTING REQUIREMENTS. (a) A licensed grower shall submit the following reports on forms provided by the department or in a manner specified by the department, by the due date specified by the department:

1. A planting report shall be submitted to the department by July 1 of each year and within 30 days of planting. A planting report shall include:
 - a. Address of each growing location.
 - b. Name of each variety planted at each lot.
 - c. Global positioning system coordinates of each lot.
 - d. Maps depicting each growing location including each lot, lot entrances, lot boundaries, and other lot-specific information.
 - e. Number of acres or greenhouse square footage planted at each lot.
 - f. A statement that no planting has occurred if the grower has not planted, grown, or cultivated hemp.
2. A final production report shall be submitted by December 15 of each year. A final production report shall include:
 - a. Total acres or square footage of hemp harvested.
 - b. Total acres or square footage of hemp destroyed.
 - c. Total weight or volume of hemp harvested.
 - d. Name of variety planted at each lot.
 - e. Percentage of total harvest sold.
 - f. Final disposition and destination of hemp, including any hemp destroyed.
3. Any other reports requested by the department.

(b) A licensed processor shall submit to the department by December 15 of each year, a final processing report that includes the quantity of hemp received from licensed growers and the licensed processor's intended markets for all hemp received. A final processing report shall include:

1. Total weight or volume of hemp received.
2. Total weight or volume of hemp processed.
3. Methods of hemp processing.
4. Grower name, license number, and quantity of all hemp received.

(c) All reports required under sub. (1), shall be derived from the records required in sub. (2).

(2) RECORDS. (a) All licensed growers and licensed processors shall complete and maintain required records and reports for a period of three years from December 15 of each year.

(b) All licensed growers shall maintain records for each lot of all the following:

1. Total acres or square footage of hemp.
2. Hemp source.
3. Hemp variety.
4. Final disposition and destination.
 - a. Quantity harvested, including weight or volume.
 - b. Total acres or square footage destroyed.
 - c. Quantity sold.
 - d. Name and address of processor or processors where hemp was sent for processing.
 - e. If the hemp was not processed, a description of the process that was used to destroy or dispose of the hemp.
5. Copy of fit for commerce certificate for each lot.

(c) All licensed processors shall maintain the following records:

1. Sources of hemp including license numbers and quantities purchased.
2. Names and addresses of recipients of processed hemp, and quantities sold.

ATCP 22.06 Handling. A licensee shall ensure that all equipment used in the growing or processing of hemp is cleaned to avoid inadvertent dissemination of hemp. All hemp seed shall be secured during transport to avoid inadvertent dissemination of hemp.

ATCP 22.07 Hemp seed and clones and seed certification.

(1) HEMP SEED VARIETIES. Licensees shall submit a variety approval form to the department at least 30 days prior to planting notifying the department of the variety of hemp the licensee intends to grow at each lot. No licensee may grow hemp unless the variety of hemp is certified under sub. (2) or the department has approved the growth of that variety of hemp pursuant to sub. (3).

(2) HEMP SEED CERTIFICATION. The Wisconsin Crop Improvement Association, in cooperation with the University of Wisconsin-Madison College of Agricultural and Life Sciences and the department, shall be the certifying agency for the certification of hemp seed in the state. The standards and procedures established by the Wisconsin Crop Improvement Association pursuant to s. 94.40 (3), Stats., shall apply to certification of hemp seed.

(3) HEMP SEED VARIETY APPROVAL. (a) Except as authorized under par. (b), all hemp seed varieties grown must be seed varieties found on the current Health Canada List of Approved Varieties, the current Organization for Economic Cooperation and Development (OECD) List of Varieties Eligible for Seed Certification: Crucifers and Other Oil or Fibre Species, or the DATCP Approved Varieties List.

NOTE: Copies of the lists may be obtained by writing DATCP-ARM-Hemp, PO Box 8911, Madison, WI 53708-8911, by calling 1 (844) 449-4367, by email to DATCPIndustrialHemp@wisconsin.gov, or online at https://datcp.wi.gov/Pages/Programs_Services/IHSeed.aspx.

(b) Requests to grow hemp varieties not covered in par. (a) shall be made on the licensee's variety approval form submitted pursuant to sub. (1). The licensee may not plant before obtaining written department approval. The licensee shall include with the variety approval form the following records regarding the hemp seed varieties not covered in par. (a):

1. Variety name.
2. Name and license number of the source.
3. Address of the source.

4. Type of planting material.
 5. Any applicable seed certification.
 6. Copy of a fit for commerce certificate.
- (c) This subsection does not apply to hemp seed certified pursuant to sub. (2).
- (4) HEMP CLONES. All hemp clones shall originate from hemp seed varieties in sub. (1).

ATCP 22.08 Inspections. The department may at any time and without notice conduct inspections of growing locations, facilities, fields, greenhouses, lots, processing facilities, storage locations, and any other premises associated with hemp activities.

ATCP 22.09 Sampling.

(1) GENERAL REQUIREMENTS. Each lot shall be sampled by the department to verify THC level compliance. All lots shall be sampled prior to harvest, except for lots remediated pursuant to s. ATCP 22.10 (6), or unless specifically authorized in writing by the department.

(2) SAMPLE COLLECTION. Each licensed grower shall submit a completed current harvest notification form to the department at least 30 days before the date the licensed grower intends to begin harvesting. Sampling and testing shall take place at times and on dates determined by the department.

(3) SAMPLE COMPOSITION. The sample shall be of a size sufficient to allow one test and one retest pursuant to s. ATCP 22.10 (4) unless the licensed grower submits in advance a sample size modification request form and the request is approved by the department. The sample shall be representative of the entire lot.

ATCP 22.10 Testing.

(1) METHOD. All plant samples shall be analyzed for THC levels, using post-decarboxylation or other similarly reliable methods that considers the potential conversion of THC-A in hemp into delta-9 THC, or the test result measures total available THC derived from the sum of the delta-9 THC and THC-A content.

(2) INITIAL TEST. Hemp shall be tested in a department or contracted laboratory as determined by the department using testing methods approved by the department. A written laboratory analysis of each test shall be provided to the licensed grower by the department.

(3) FAILED INITIAL TEST. If the laboratory analysis of the official plant sample results in a THC concentration above 0.3 percent, it is a failed test. The department shall promptly order the licensee to destroy the entire lot pursuant to (8), unless the licensee files a written request with the division for a retest, resample, or remediation pursuant to subs. (4)-(6). Only one retest, resample, or remediation per lot is permitted.

(4) RETEST. Except as provided in s. ATCP 22.09 (3), in the event of a failed initial test with a THC concentration above 0.3 percent under sub. (3), the licensee may request that a retest of the initial sample be performed following the procedures of paragraphs (1) and (2). All retesting is at the expense of the licensee pursuant to s. ATCP 22.11. Only one retest per lot is permitted. A request for a retest shall be filed with the division within 10 days of service of the initial destruction order issued pursuant to sub. (3).

(5) RESAMPLE. In the event of a failed initial test with a THC concentration above 0.3 percent under subs. (3), the licensee may request that a new sample be taken of the lot following the procedures of s. ATCP 22.09 and tested pursuant to the procedures of this section. All resampling and testing is at the expense of the licensee pursuant to s. ATCP 22.11. Only one resample per lot is permitted. A request for a resample shall be filed with the division within 10 days of service of the initial destruction order issued pursuant to sub. (3).

(6) REMEDIATION. In the event of a failed initial test with a THC concentration above 0.3 percent under sub. (3), the licensee may request to remediate the lot. The entire lot shall be

promptly remediated. No remediation may occur without department written approval. A sample of the remediated lot shall be taken following the procedures of s. ATCP 22.09 and tested pursuant to the procedures of this section. All sampling and testing of the remediated lot is at the expense of the licensee pursuant to s. ATCP 22.11. Only one remediation per lot is permitted. A request for a remediation shall be filed with the division within 10 days of service of the initial destruction order issued pursuant to sub. (3).

(7) **FAILED RETEST.** If the retest of the original sample under sub. (4) results in a laboratory analysis of a THC concentration level on a dry weight basis higher than 0.3 percent, it is a failed retest. The department shall promptly order the entire lot to be destroyed by the licensee pursuant to (8), unless the lot has not already been remediated pursuant to sub. (6) and the licensee files a written request with the division for remediation pursuant to sub. (6). Only one remediation per failed retested lot is permitted.

(8) **FAILED RESAMPLE.** If the laboratory analysis of the lot resample results in a THC concentration level on a dry weight basis higher than 0.3 percent, it is a failed resample. The department shall promptly order the entire lot to be destroyed by the licensee pursuant to sub. (8), unless the lot has not already been remediated pursuant to sub. (6) and the licensee files a written request with the division for remediation pursuant to sub. (6). Only one remediation per failed resampled lot is permitted.

(9) **FAILED REMEDIATION.** If the laboratory analysis of the lot remediated results in a THC concentration level on a dry weight basis higher than 0.3 percent, it is a failed remediation. The department shall promptly order the entire lot to be destroyed by the licensee pursuant to sub. (10) unless the licensee files a written request with the division for a retest or a resample pursuant to subs. (4)-(5). Only one retest or resample of the failed remediated lot is permitted.

(10) **LOT DESTRUCTION.** (a) A department test resulting in a laboratory analysis of a THC concentration level on a dry weight basis higher than 0.3 percent shall be conclusive evidence that the lot represented by the sample is not in compliance with this chapter. Department tests include:

1. An initial test of a lot not retested or resampled.
2. A retest of an original sample.
3. A test of a resample of a lot.
4. A test of a remediated lot not retested or resampled.
5. A retest of a remediated lot.
6. A test of a resample of a remediated lot.
7. Another department test, as approved by the department.

(b) Such lots tested and not certified by the department with a THC concentration level on a dry weight basis at or below 0.3 percent may not be further handled, processed, or enter the stream of commerce except as required to comply with s. ATCP 22.12. The department shall promptly order such lots destroyed and the licensee shall destroy the lot within 15 days of service of the destruction order, pursuant to s. ATCP 22.12, unless specifically authorized in writing by the department. The department shall promptly verify that the lot was destroyed. If the lot has not been destroyed, the department may destroy the lot and invoice the licensee for all costs associated with destruction.

ATCP 22.11 Sampling and testing costs. The department shall invoice the licensed grower \$250 for each sample collected under s. ATCP 22.09 and tested under s. ATCP 22.10 to cover the actual costs of sampling and testing. The department shall invoice the licensed grower \$300 for each remediation sample collected pursuant to s. ATCP 22.10 (6) to cover the actual costs of remediation sampling and testing. The department shall invoice the licensed grower \$200 for each retest conducted under s. ATCP 22.10 (4), where a new sample is not required, to cover the actual costs of retesting. The licensed grower shall pay all invoices within 30 days. Any licensed

grower with an unpaid invoice beyond 30 days may not register under s. ATCP 22.04 and may have its license suspended by the department until payment is received.

ATCP 22.12 Destruction. (1) DESTRUCTION NOTIFICATION AND APPROVAL. (a) If a licensee intends to destroy hemp by the licensee's own determination and independent of a requirement set by the department, the licensee shall promptly submit a destruction notification form to the department. The notification form shall include the reason for the destruction. A destruction notification form is not required for culling of individual plants.

(b) No destruction may occur without written department approval.

(2) METHODS OF DESTRUCTION. Hemp destroyed pursuant to this chapter shall be destroyed in methods that render the hemp non-retrievable and unfit to enter the stream of commerce. Destruction shall occur on-site unless otherwise approved by the department. Acceptable destruction methods include:

(a) Plowing or disking the hemp under.

(b) Cutting down the hemp, chipping it, and mixing it into compost.

(c) Mowing the hemp down with a brush mower or brush hog.

(d) Burning the hemp, if allowed; licensee is responsible for investigating and attaining any applicable permission to conduct a burn.

(e) Another method as approved by the department.

(3) INSPECTIONS. The department may conduct an inspection to sample and test, and witness or verify destruction.

(4) DESTRUCTION REPORT. Licensees must verify destruction by submitting required documentation in the form of a destruction report to the department. The report shall contain the following information:

(a) Name and address of the licensee.

(b) Licensee's license number.

(c) Global positioning system coordinates for the center of each growing location.

(d) Name of variety subject to destruction at each lot.

(e) Total acreage subject to destruction.

(f) Description of the destruction method.

(g) Date of completion of destruction.

(h) Signed certification statement by the licensee stating the licensee has completed the destruction in compliance with this section.

(i) Any other information required by the department.

(5) DEPARTMENT DESTRUCTION. If a licensee fails to destroy hemp or uses a destruction method that does not comply with sub. (2), the department may destroy the hemp in accordance with this section and invoice the licensee for all costs associated with the destruction.

ATCP 22.13 Fit for commerce certification. (1) All lots shall be sampled prior to harvest. All licensed growers shall obtain a fit for commerce certificate from the department for each lot prior to the hemp being transported from the growing location. The department shall issue a fit for commerce certificate following its successful test showing the THC concentration is at 0.3 percent or below.

(2) No licensed processor may acquire or process harvested unprocessed hemp without acquiring a legible copy of all fit for commerce certificates issued to the grower with whom the processor conducts business and specific to the hemp purchased.

(3) Hemp plants, pieces, or parts from different lots may not be combined until a fit for commerce certificate for each lot is issued.

(4) Any harvested unprocessed hemp found in Wisconsin without a fit for commerce certificate required by this chapter or harvested unprocessed hemp not sampled as required by s.

ATCP 22.09 is subject to seizure by the department pursuant to s. ATCP 22.16 (2). Any such material is subject to destruction at the licensee's expense, and may result in suspension or revocation of the license.

ATCP 22.14 Transporting.

(1) A licensee may not transport harvested unprocessed hemp from a growing location until the licensee obtains a department-issued fit for commerce certificate. A licensed grower or licensed processor transporting harvested unprocessed hemp shall have all the following in its possession for each lot being transported:

- (a) A copy of its grower license or processor license.
- (b) A fit for commerce certificate for each lot transported.

(2) A person contracted by a licensed grower or a licensed processor to transport harvested unprocessed hemp shall have all the following in its possession for each lot being transported:

- (a) A copy of the license or license that designates the owner of the hemp being transported.
- (b) A fit for commerce certificate for each lot transported.

ATCP 22.15 Compliance with other laws. All licensees shall comply with all applicable federal, state, and local laws. It is the responsibility of the licensee to understand and comply with all federal and state regulations.

ATCP 22.16 Enforcement and penalties. A person who violates this chapter is subject to enforcement action under this chapter and s. 94.55, Stats., and penalties under s. 94.55 (4), Stats.

(1) LICENSE ACTIONS. Violations of s. 94.55, Stats., and this chapter, except for negligent violations as defined by s. 94.55 (2g), Stats., may subject the violator to the denial, suspension, or revocation of a license under s. 93.06 (7), Stats., or the imposition of license conditions under s. 93.06 (8), Stats.

(2) HEMP SEIZURE AND DESTRUCTION. The department, or a district attorney or the department of justice at the request of the department, may ask a court to seize and destroy hemp produced in violation of s. 94.55, Stats., and this chapter as provided in ss. 94.55 (2) (b) 3. and 961.55 (9).

(3) NEGLIGENT VIOLATIONS. (a) A licensee who negligently violates this chapter or s. 94.55, Stats., as defined by s. 94.55 (2g), Stats., shall comply with a corrective action plan approved by the department. A corrective action plan shall include the following terms:

1. A reasonable date by which the licensee shall correct the violation, steps to correct each negligent violation, and a description of the procedures to demonstrate compliance.
2. A requirement that the licensee report to the division regarding the licensee's compliance with the requirements of 94.55, Stats., this chapter, and the corrective action plan for not less than two years from the date of the negligent violation.

(b) A licensee that negligently violates this chapter shall not as a result of that violation be subject to any criminal enforcement action.

(c) If a subsequent negligent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(d) A licensee that negligently violates this chapter three times in a five-year period shall be ineligible to produce hemp for a period of five years beginning on the date of the third violation.

(e) The division shall conduct an inspection to determine if the corrective action plan has been implemented.

(f) Total Licensees shall not receive more than one negligent violation per calendar year.

(4) GREATER VIOLATIONS. A licensee who violates this chapter with a culpable mental state greater than negligence shall be reported to the U.S. attorney general and the department of justice as provided in s. 94.55 (2m), Stats.

(5) REFERRALS FOR PROSECUTION. As provided in s. 94.55 (2) (b) 6., Stats., the department shall consider the following factors when determining whether to refer a person for prosecution under s. 961.32 (3) (c), Stats.:

(a) Whether voluntary compliance can be achieved.

(b) Where voluntary compliance cannot be achieved, reliance on progressive enforcement to gain permanent compliance.

(c) For willful or dangerous violations, refer for prosecution to protect citizens and law-abiding competitors.

ATCP 22.17 Appeals. A person may appeal an order of the department issued pursuant to this chapter as provided by ch. ATCP 1. An order issued pursuant to this chapter is a special order for purposes of s. ATCP 1.03.

SECTION 2: EFFECTIVE DATE: This emergency rule takes effect upon publication and remains in effect until the date on which rules promulgated pursuant to s. 94.55 (3w), Stats., take effect.

Dated this _____ day of April, 2021.

State of Wisconsin
Department of Agriculture, Trade and
Consumer Protection

By Randy Romanski, Secretary-designee