

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

EMERGENCY RULE  
Chapter ATCP 22

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

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

This emergency rule implements the hemp pilot program created under Wis. Stat. s. 94.55, by 2017 Act 100 as modified by 2019 Act 68. Under Wis. Stat. ss. 94.55 (3) and (3w), the Department of Agriculture, Trade and Consumer Protection (Department) is required to promulgate rules establishing a state hemp research pilot program (Pilot Program).

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

Pursuant to 2019 Act 68, Section 38, 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 EmR1807, which was published and effective on March 2, 2018, and emergency rule EmR1808, which was published and effective on March 5, 2018. The repeal and replacement was necessary as the emergency rules expire July 1, 2020. This emergency rule takes effect upon publication and remains in effect until the expiration of the Pilot Program pursuant to Section 7605 (b) of the Agricultural Improvement Act of 2018, or the date on which emergency rules implementing an U.S. Department of Agriculture (USDA) approved state plan, promulgated pursuant to 2019 Act 68, section 38, take effect, whichever is sooner.

***Statutes Interpreted***

Wis. Stat. s. 94.55

***Statutory Authority***

Wis. Stat. ss. 94.55 (3) and (3w)

***Explanation of Statutory Authority***

Wis. Stat. s. 94.55 (3) creates the Pilot Program for the state of Wisconsin. The Department is required under Wis. Stat. ss. 94.55 (3) and (3w), to promulgate rules to create and implement a Pilot Program.

### ***Related Rules or Statutes***

Wis. Stat. s. 961.32 (3) relates to the Pilot 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 Pilot Program.

### ***Plain Language Analysis***

The Pilot Program is designed to study the growth, cultivation, and marketing of hemp in Wisconsin. Growers and Processors will provide information to the Department related to hemp production. This was the intent of the original emergency rule and continues to be the foundation of this revised rule.

This rule provides the necessary regulatory framework to continue to allow Wisconsin's hemp growers to plant, grow, and process hemp under the Pilot Program with minimal but necessary changes to align the rule with 2019 Wisconsin Act 68 and the Agricultural Improvement Act of 2018 (2018 Farm Bill). The 2018 Farm Bill extended the authority provided in Section 7606 of the Agricultural Act of 2014 (2014 Farm Bill) for states to engage in hemp research as a pilot program. However, this is a temporary authorization as USDA has issued an Interim Final Rule (IFR) 7 C.F.R. Part 990 which outlines provisions for USDA to approve plans submitted by states and tribes to produce hemp. The IFR became effective on October 31, 2019. All hemp pilot programs will expire on October 31, 2020, pursuant to Section 7605 (b) of the 2018 Farm Bill. States and tribes who want to have authority over a hemp program in their state or territory must have a plan approved by USDA by October 31, 2020.

This rule is necessary to maintain the Pilot Program from the expiration of the current rule on July 1, 2020, until the expiration of the Department's authority to operate the Pilot Program. As such this rule maintains the existing Pilot Program, updates terms and provisions to be consistent with changes in state and federal law, provides more detail to reflect current program practices, and updates references regarding the expiration of licenses to address the end date of the Department's authority to operate the Pilot Program.

To meet current state and federal law, the definition of hemp is expanded to include all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers. Also required by state and federal law and consistent with the testing requirements of EmR1807 and EmR1808, the updated definition of hemp clarifies that tetrahydrocannabinol (THC) content is tested using post-decarboxylation or similarly reliable methods. THC is clearly defined to include tetrahydrocannabinolic acid (THC-A), and the testing methodology requires the analysis of hemp samples to include THC-A in the regulatory test results.

This rule also clarifies the circumstances for revoking or suspending a license, actions the Department may take for persons operating without a license, and enforcement penalties for violations that reflect a negligent or culpable mental state.

Language to reflect current practice clarifies the required annual registration time period and what activities the licensee may perform once the licensee is registered. Reporting and recordkeeping are similarly updated.

Furthermore, language has been updated to accurately distinguish between a growing location, a lot, and a crop. In addition, this rule clearly explains the Department's authority to inspect elements of growing locations. The Department's inspection authority is not changed by this rule.

Regulatory sampling must occur prior to harvest but the testing does not have to be completed before harvest. If the initial regulatory test fails, the grower must destroy the lot within 10 days after service of the order or request a new sample to be taken before the end of the 10-day period. The updated provisions and new language in this rule do not make substantial changes to the implementation of the program for the 2020 growing season and the regulated industry will not experience significant change. The functionality of this rule remains consistent with the current rule.

### *Fiscal Impact*

This emergency rule creates rules related to growing hemp, and applies to those who wish to participate in the Pilot Program. Individuals or businesses choosing to grow or process hemp must pay all applicable program fees—one-time grower license and acreage (\$150-\$1000), annual registration (\$350), sampling and testing (\$250 per lot), and processor license (\$100). These program fees generate the program revenue that supports the implementation of the program. The Pilot Program began operations in 2018. Numbers of participants have been similar in 2019 and 2020. In 2019, there were 1251 licensed and registered growers with total fees of \$626,000 (\$500 per grower) and 560 licensed processors with total fees of \$56,000 (\$100 per processor). In 2020, as of June 2, there are 1189 licensed and registered growers with total fees of \$594,500 (\$500 per grower) and 564 licensed processors with total fees of \$56,400. In 2019, an estimated 2200 samples were collected and tested at a cost of \$250 per sample, generating total fees of \$550,000. Based on these grower numbers and samples previously collected, an estimate of 2000 samples collected and tested at \$250 for a total of \$500,000 in fees may be expected during the time that this rule is in effect. Therefore the estimated economic impact of the implementation and compliance with this rule, as identified in the Fiscal Estimate & Economic Impact Analysis, is \$1,150,900. This number is a total cost of licenses and registrations issued to date, and an estimate of expected samples that may be collected and tested during the time that this rule is in effect.

### Hemp Growers

This rule will impact persons who wish to grow hemp as part of the Pilot Program. Participation in the program is voluntary, although anyone wishing to grow hemp must participate. This rule will impose fees, recordkeeping, and reporting requirements. This rule will require participants to prepare a research plan and require growers to submit a research agreement. All hemp must meet defined analytical standards before it can be transported from the growing location. This rule provides criteria for pilot 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. 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 fee for sampling and testing of one lot is \$250 per sample.

## Local Governments

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

## Utility Rate Payers

The emergency rule will have no impact on utility rate payers.

## General Public

This emergency 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 emergency 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 background check on each applicant. This regulatory program requires a high degree of customer support and education. Department staff will also be responsible for inspections, sampling, laboratory analysis and compliance. Quantitative data is collected from licensees on an annual basis for trend analysis by Department staff.

This rule does not change fees required by the current rule, which has been in place since program inception in 2018. Since this is still a young program, program revenue and expenses have fluctuated annually based on the number of participants in the program. In 2018, the first growing season, there were approximately 258 licensed and registered participants and the program had a total revenue of \$114,666. In 2019, there was a substantial increase in program participation with 1,811 licensed and registered participants and a total revenue of \$775,917. Consistent with the increased revenue is a corresponding increase in program expenditures to provide the services to the larger group of program participants. Fiscal year (FY) 2019 showed a \$361,149 increase in program expenditures over FY2019.

The hemp growing season overlaps state fiscal years. The majority of license and registration revenues are collected during the traditional licensing and registration period from November 1 to March 1, in one fiscal year. Planting and growing of the crop occurs during the spring and early summer and no significant revenue is collected again until the following fiscal year, when hemp lot sampling and testing activities begin in late July and culminate with fall harvest. As growers pay for sampling and testing of their crop for harvest, additional revenue are paid to the Department and the Department incurs additional costs for sample collection and laboratory work to process tests. To date, program revenue and expenditures have been relatively well balanced. Coming to the end of FY2020, the estimated program revenue of \$1.130M is fairly well balanced with the estimated program expenditures of \$1.182M. It is also worth noting that indoor growing operations operate year-round.

The program is managed within the Department's Division of Agricultural Resource Management. Currently, this program includes one Program Manager, one Regulatory Specialist (both Full Time Employees (FTE)), one Project and three Limited Term Employee (LTE) Licensing Staff, and one Project Plant Pest and Disease Specialist. Additional departmental resources provided to the program include legal, managerial, and accounting services.

In addition, up to 20 LTE inspectors will collect hemp samples and deliver the samples to the Bureau of Laboratory Services Laboratory (BLS Lab). Hiring LTEs for this short-term (three months), high volume field sampling work is most cost effective for program operation and can be adjusted annually based on program participation. The BLS Lab will have 10-12 full time staff with the addition of six LTE Chemists and five LTE Lab Technicians to provide service on testing, record keeping, and open record reviews. Laboratory staff are added and removed from performing hemp analysis as the hemp season's sampling expands and contracts. When not analyzing hemp samples, staff are shifted to one of the many other programs to which the BLS Lab provides service. Management staff will provide oversight, review, and additional support. Sampling and testing is required, therefore these costs cannot be avoided.

For the fiscal analysis, FY2019 and FY2020 were used, as there was a significant increase in program participation in FY2019 that was sustained in FY2020. In FY2019, total program revenue was \$775,917 and program expenditures were \$472,362, resulting in a cash balance of \$307,008. In FY2020, year to date, we have 1,753 licensed and registered participants in the program. Estimated total program revenue for FY2020 is \$1.130M and estimated program expenditures are \$1.182M, resulting in an estimated \$52,137 operating deficit. However when factoring in the cash balance carryover from FY2019, the program will end FY2020 with an estimated cash balance of \$254,871.

### ***Analysis of Supporting Documents used to Determine Effect on Small Business***

Because this rule continues the existing Pilot Program, with minor changes to ensure consistency with 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. 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 emergency rule continues the existing Pilot Program with no added fees or costs and therefore will not negatively impact small business as this rule does not make significant modifications to the regulation of the hemp industry. This rule continues the Pilot Program as it existed under the previous emergency rules with minor changes to ensure consistency with state and federal law. The fee-based requirements include a one-time license fee which is valid until the Pilot Program expires on October 31, 2020, or unless the license is revoked. In addition, licensees who plan to grow hemp will be charged an annual registration fee. Registered growers who plan to harvest hemp will be charged sampling and testing fees for the collection and analysis of the regulatory samples. The impacts of this rule to the regulated industry do not include changes to the required fees to participate in the program, but do update regulations to meet to current state and federal law. The regulated industry is required to be compliant with the updated regulations.

### ***Federal and Surrounding State Programs***

Currently, the Pilot Program is operating 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 programs. Hemp varieties that test above 0.3% 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/tribal plan for approval that meets the requirements outlined in the IFR, 7 C.F.R. Part 990, published on October 31, 2019. Currently, 29 tribes and 18 states have approved plans under the IFR. 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 pilot program established under the 2014 Farm Bill, until the program is discontinued on October 31, 2020, at which time Wisconsin must have a USDA-approved state plan in place to continue administering a state-operated hemp program in Wisconsin. The USDA-approved state plan must be compliant with the 2018 Farm Bill and the IFR. In addition, certain provisions of the 2018 Farm Bill apply to all states whether they are still operating a pilot program or are operating under the IFR. These include the expanded definition of hemp, the free market movement of hemp across all state boundaries whether or not a state has a hemp program, and the inclusion of hemp crops in farm credit banking loan programs and federal farm insurance programs.

Wisconsin, along with 16 other states, notified the USDA that for the 2020 growing season, it would continue to operate a pilot program under the 2014 Farm Bill. The Wisconsin Pilot Program has been in operation since 2018, and will continue for the 2020 growing season (ending October 31, 2020). The IFR was published one day before the Department's program began accepting licenses for the 2020 growing season. The Department chose to continue with the pilot program in order to finish the pilot at the end of the 2020 season and begin with a new program at the beginning of the 2021 season.

### *Surrounding State Comparison*

#### Minnesota

Minnesota's pilot program began in 2016 under the 2014 Farm Bill and will continue to operate a pilot program until October 31, 2020. Operationally, the Minnesota program is very similar to the Wisconsin program with the primary difference in laboratory testing. Prior to 2019, testing was done in a private lab for delta-9 THC, and it did not include THC-A. In 2019, Minnesota switched over to testing for the post-decarboxylation concentration of THC which includes THC-A, and began transitioning to using a Minnesota state regulatory lab. The fee structure includes a grower license fee \$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. As of March 30, 2020, Illinois has submitted a state plan to the USDA, and that plan is currently under review. Illinois is currently operating as a pilot program under the 2014 Farm Bill. Components of the Illinois program that differ from the Wisconsin program include specifications for laboratories to be approved for regulatory testing, a minimum growing area of ¼ acres for outdoor hemp crops and 500 square feet for indoor crops, destruction of hemp with a post-decarboxylation THC content of equal to or greater than 0.7% for

an initial test, and a retest is allowed if the initial test is between 0.3% and 0.7% THC. If the retest exceeds 0.3% THC, the crop must be destroyed. Illinois allows licensing periods of one, two, or three years at \$375, \$700, or \$1000 respectively.

### Michigan

The Michigan hemp pilot program began in 2019 under the 2014 Farm Bill. The Michigan program tests for post-decarboxylation THC concentration. In the event of a failed initial regulatory test, the Michigan pilot program allows up to two resamples and tests, while the Wisconsin program allows one resample and test. The Michigan program is distinctly different in their use of testing facilities licensed under the Michigan Medical Marijuana Facilities Licensing Act, which allows certain licenses to test industrial hemp, or allows a testing facility approved by the department. In addition, growers must post signage at each boundary line of a grow location with state-specified language. Growers must also enter into a seed-to-sale tracking system established under the Marijuana Tracking Act. Michigan has a grower license fee of \$100, a site modification fee of \$50, and a processor, handler, broker fee of \$1350. A \$250 late fee applies to both licenses. Michigan continues in 2020 under the authority of the 2014 Farm Bill.

### Iowa

Iowa Senate Bill 599 was signed into law in May 2019 and the Iowa hemp program became effective under the IFR. Iowa began accepting applications for its hemp program on April 1, 2020. As of April 28, 2020, Iowa had 18 licensed growers and six additional applications were under review. Iowa charges licensing fees of \$500 plus \$5/acre (0-5 acres), \$750 plus \$5/acre (5.1-10 acres), and \$1000 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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4 **FINDING OF EMERGENCY**

5 A finding of emergency is not required. Section 38 of 2019 Act 68 provides that the Department  
6 of Agriculture, Trade and Consumer Protection is not required to provide a finding of emergency  
7 for a rule promulgated under this section.

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

9 **EMERGENCY RULE**

10 **Chapter ATCP 22**

11 **Hemp**

12 **ATCP 22.01 Purpose.** This chapter implements the hemp program created under s. 94.55 (3),  
13 Stats.

14 **ATCP 22.02 Definitions.** As used in this chapter:

15 (1) "Applicant" means a person who has submitted a license application for a grower  
16 license or processor license.

17 (2) "Certified seed source" means hemp seed that is certified according to Wisconsin Crop  
18 Improvement Association standards.

19 (3) "Decarboxylated" means the completion of the chemical reaction that converts  
20 tetrahydrocannabinolic acid (THC-A) into delta-9 tetrahydrocannabinol (THC), the intoxicating  
21 component of cannabis. The decarboxylated value is also calculated using a conversion formula  
22 that sums delta-9 THC and eighty seven and seven tenths (87.7) percent of THC-A.

23 (4) "Department" means the state of Wisconsin department of agriculture, trade and  
24 consumer protection.

25 (5) "Destroy" means incinerate, till under the soil, compost, or dispose of in another manner  
26 approved by the department.

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

30 (7) "Division" means the division of agricultural resource management.

31 (8) "Fit for commerce certificate" means a document issued by the department or another  
32 state, Indian tribe, or the United States department of agriculture attesting that the hemp has been  
33 lawfully produced in compliance with this chapter or another state, tribal, or United States  
34 department of agriculture hemp program under Section 7606 of the Agricultural Act of 2014 or  
35 Section 10113 of the Agricultural Improvement Act of 2018.

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

38 (10) "Growing location" means a physical premises where a licensee operates as a hemp  
39 grower. A growing location may consist of multiple facilities, fields, greenhouses, or lots.

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



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

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

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

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

57 (16) “Pilot program” means the department’s hemp research pilot program established  
58 under s. 94.55 (3), Stats., and this chapter.

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

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

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

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

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

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

#### 74 **ATCP 22.03 Pilot program license.**

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

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

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

- 89 (b) If the applicant is a business entity, the name, title, and email address of the individual  
90 who will be primarily responsible for the hemp operations of the business entity and  
91 who will be the subject of the federal and state criminal background check.  
92 (c) Informed consent form authorizing the department to conduct a federal and state  
93 criminal background check.  
94 (d) The global positioning system coordinates for the center of each growing location  
95 where hemp will be planted, grown, cultivated, or harvested.  
96 (e) Maps depicting each growing location where hemp will be planted, grown, cultivated,  
97 harvested, or processed with appropriate designation for entrances, boundaries, lots,  
98 and specific locations corresponding to the global positioning system coordinates and  
99 street address.  
100 (f) Number of acres or square footage to be planted. The number of acres or square  
101 footage should be the maximum the applicant intends to plant, grow, cultivate, or  
102 harvest. Any increase in acres or square footage requires a license amendment and  
103 associated additional fees pursuant to s. 22.03 (7), Stats.  
104 (g) A description of the research being conducted under the registration.  
105 (h) A signed research agreement.  
106 (i) Other information reasonably required by the department.

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

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

- 114 (a) The applicant's legal name and any name under which the applicant does business,  
115 address, phone number, and email address. If the applicant is a business entity, the  
116 full name of the business, the principal Wisconsin business location address, the full  
117 name of the individual who is authorized to sign on behalf of the business entity,  
118 phone number, and email address.  
119 (b) If the applicant is a business entity, the name, title, phone number, and email address  
120 of the individual who will be primarily responsible for the hemp operations of the  
121 business entity and who will be the subject of the federal and state criminal  
122 background check.  
123 (c) Informed consent form authorizing the department to conduct a federal and state  
124 criminal background check.  
125 (d) Maps and the street address and global positioning system coordinates for each  
126 building or site where hemp will be processed, handled, or stored.  
127 (e) A description of the research being conducted under the registration.  
128 (f) Planned source of hemp.  
129 (g) A signed research agreement.  
130 (h) Other information reasonably required by the department.

131 **(5) BACKGROUND CHECK REQUIRED.** Each applicant for a grower license or processor  
132 license shall submit to a background check conducted by the department as a condition of  
133 licensure. No grower license or processor license may be issued to an applicant who has ever been  
134 convicted of a criminal violation of the federal Controlled Substances Act under 21 USC 801 to  
135 971, the Uniform Controlled Substances Act under ch. 961, Stats., or any controlled substances  
136 law of another state, as indicated in the information obtained from the criminal history search.

137 **(6) GROWER LICENSE FEES.** A grower license application under sub. (2), shall include a  
138 nonrefundable license fee of \$150 or, for a license covering 31 or more acres, \$5 multiplied by the

139 number of acres on which the person will plant, grow, cultivate, or harvest hemp, not to exceed  
140 \$1,000.

141 **(7) AMENDING A LICENSE.**

- 142 (a) If any of the information included in the licensee's application changes, the licensee  
143 shall submit a request to amend the grower license or processor license on a form  
144 provided by the department and pay a fee of \$50 for each amendment form submitted.  
145 (b) A licensee seeking to grow additional acres beyond what the grower license  
146 authorizes is not required to pay an amendment fee if the change is made during the  
147 annual registration process.  
148 (c) A licensee seeking to grow additional acres beyond what the grower license  
149 authorizes shall pay \$5 per additional acre, not to exceed a maximum of \$850.  
150 (d) A licensee may not utilize growing locations or additional acreage or square footage  
151 prior to the department accepting the request to amend the license.  
152 (e) If a licensee that is a business entity changes the individual who will be primarily  
153 responsible for participation in the pilot program, the licensee shall pay the actual  
154 cost for a background check for the new contact.

155 **(8) DENYING A LICENSE.** The department shall deny a grower license or processor license  
156 to any applicant if the applicant does any of the following:

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

162 **(9) SUSPENDING A GROWER LICENSE OR A PROCESSOR LICENSE.** (a) The department may  
163 suspend a grower license or processor license if the licensee does any of the following:

- 164 1. Fails to submit a complete final production report by December 15 of each year.  
165 2. Fails to pay invoiced fees or the registration fee.  
166 3. Possesses harvested hemp without a fit for commerce certificate as required by  
167 s. ATCP 22.12 or harvested hemp not sampled as required by s. ATCP 22.09.  
168 (b) A person whose grower license or processor license is suspended may not plant,  
169 grow, cultivate, harvest, sample, test, process, transport, transfer, sell, import, export  
170 or otherwise remove hemp or other cannabis from the premises where it was located  
171 at the time the department issued the notice of suspension, except as authorized in  
172 writing by the department.  
173 (c) A suspended grower license or processor license may be restored at the department's  
174 discretion.

175 **(10) REVOKING A LICENSE.** The department may revoke a grower license or processor  
176 license if a grower licensee or processor licensee does any of the following:

- 177 (a) Is convicted of a criminal violation of the federal Controlled Substances Act under  
178 21 USC 801 to 971, ch. 961, Stats., or any controlled substances law of another state.  
179 (b) Engages in any activities prohibited under this chapter, s. 94.55 Stats., or a research  
180 agreement.  
181 (c) Makes any false statement related to the licensee's participation in the pilot program  
182 to the department or its representative.  
183 (d) Fails to comply with any requirement of this chapter, s. 94.55 Stats., or a research  
184 agreement.  
185 (e) Fails to comply with any instruction or order related to the licensee's participation in  
186 the pilot program from the department or any law enforcement officer.  
187 (f) Possesses harvested hemp without a fit for commerce certificate as required by s.  
188 ATCP 22.12 or harvested hemp not sampled as required by s. ATCP 22.09.

189 (11) OPERATING WITHOUT A GROWER LICENSE OR PROCESSOR LICENSE. Notwithstanding s.  
190 ATCP 22.15, any hemp grown or processed by a person without a hemp grower license or  
191 processor license may be destroyed and may result in enforcement and penalties under s. 94.55  
192 (2m), Stats.

#### 193 **ATCP 22.04. Annual registration**

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

197 (2) Licensed processors shall register with the department each year the licensed processor  
198 plans to operate. A registration expires on December 31 annually. Licensed processors shall pay  
199 an annual registration fee of \$100.

#### 200 **ATCP 22.05. Reporting and records**

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

- 204 1. A planting report shall be submitted to the department by July 1 of each year  
205 and within 30 days of planting. A planting report shall include:
  - 206 a. Address of each growing location.
  - 207 b. Name of each variety planted at each lot.
  - 208 c. Global positioning system coordinates of each lot.
  - 209 d. Maps depicting each growing location including each lot, lot entrances, lot  
210 boundaries, and other lot-specific information.
  - 211 e. Number of acres or greenhouse square footage planted at each lot.
  - 212 f. A statement that no planting has occurred if the grower has not planted,  
213 grown, or cultivated hemp.
- 214 2. A final production report shall be submitted by October 31, 2020. A final  
215 production report shall include:
  - 216 a. Total acres or square footage of hemp harvested.
  - 217 b. Total acres or square footage of hemp destroyed.
  - 218 c. Total weight or volume of hemp harvested.
  - 219 d. Name of variety planted at each lot.
  - 220 e. Percentage of total harvest sold.
  - 221 f. Final disposition and destination of hemp, including any hemp destroyed.
- 222 3. Any other reports requested by the department.

223 (b) A licensed processor shall submit to the department by October 31, 2020, a final  
224 processing report that includes the quantity of hemp received from licensed growers  
225 and the licensed processor's intended markets for all hemp received.

- 226 1. Total weight or volume of hemp received
  - 227 2. Total weight or volume of hemp processed.
  - 228 3. Methods of hemp processing.
  - 229 4. Grower name, license number, and quantity of all hemp received.
- 230 (c) All reports required under sub. 1, shall be derived from the records required in sub.  
231 2.

232 (2) RECORDS. (a) All licensed growers and licensed processors shall complete and maintain  
233 required records and reports for a period of three years from October 31, 2020.

- 234 (b) All licensed growers shall maintain records for each lot of all of the following:
- 235 1. Total acres or square footage of hemp.
  - 236 2. Hemp source.

- 237 3. Hemp variety.  
238 4. Final disposition and destination.  
239 a. Quantity harvested, including weight or volume.  
240 b. Total acres or square footage destroyed.  
241 c. Quantity sold.  
242 d. Name and address of processor or processors where hemp was sent for  
243 processing.  
244 e. If the hemp was not processed, a description of the process that was used to  
245 destroy or dispose of the hemp.  
246 5. Copy of fit for commerce certificate for each lot.  
247 (c) All licensed processors shall maintain the following records:  
248 1. Sources of hemp including license numbers and quantities purchased.  
249 2. Names and addresses of recipients of processed hemp, and quantities sold.

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

253 **ATCP 22.07 Hemp seed and clones and seed certification.**

254 (1) HEMP SEED VARIETIES. Except as authorized under sub. (4), no licensee may grow hemp  
255 unless the licensee has notified the department in writing of the variety of hemp the licensee intends  
256 to grow and the department has approved in advance in writing the growth of that variety of hemp  
257 or the variety of hemp is certified under (3).

258 (2) HEMP CLONES. All hemp clones shall originate from hemp seed varieties in sub. (1).

(3) HEMP SEED CERTIFICATION. (a) 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.

259 (4) EXCEPTIONS. Requests to plant, grow, or cultivate hemp clones or hemp seed varieties  
260 not covered in sub. (3) shall be authorized in advance of planting by the department. Requests shall  
261 be submitted in writing to the department.

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

265 **ATCP 22.09 Sampling.** Each registered lot shall be sampled by the department to verify THC  
266 level compliance. All lots shall be sampled prior to harvest. Each licensed grower shall notify the  
267 department at least 30 days before the date the licensed grower intends to begin harvesting.  
268 Sampling and testing shall take place at times and on dates determined by the department.

269 **ATCP 22.10 Testing.**

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

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

277 (3) FAILED INITIAL TEST. If the laboratory analysis of the official plant sample results in a  
278 THC concentration above 0.3 percent, it is a failed test. The entire lot shall be destroyed by the  
279 licensed grower within 10 days of service of the destruction order, unless the licensed grower files  
280 a written request with the division for a re-test pursuant to sub. (4) prior to the expiration of the 10  
281 days.

282 (4) RE-TEST. In the event of a failed initial test with a THC concentration between 0.3  
283 percent and up to 1 percent under sub. (3), the licensed grower may request that a new sample be  
284 taken following the procedures of s. ATCP 22.09. All re-test sampling and testing is at the expense  
285 of the licensee. Only one re-test per lot is permitted. A request for a re-test shall be filed with the  
286 division within 10 days of service of the initial destruction order issued pursuant to sub. (3).

287 (5) FAILED RE-TEST. If a final lab analysis of a THC level finds the concentration of THC  
288 on a dry weight basis exceeds 0.3 percent the entire lot shall be destroyed by the licensed grower  
289 within 10 days of service of the destruction order.

290 (6) LOT DESTRUCTION. The department shall verify that the lot was destroyed as required  
291 under subs. (3), (4), or (5). If the lot has not been destroyed, the department may destroy the lot  
292 and invoice the licensed grower for all costs associated with destruction.

293 **ATCP 22.11 Sampling and testing costs.** The department shall invoice the licensed grower \$250  
294 for each sample collected under s. ATCP 22.09 and tested under s. ATCP 22.10 to cover the actual  
295 costs of sampling and testing. The licensed grower shall pay all invoices within 30 days. Any  
296 licensed grower with an unpaid invoice beyond 30 days may not register under s. ATCP 22.04 and  
297 may have its license suspended by the department until payment is received.

298 **ATCP 22.12 Fit for commerce certification.** (1) All lots shall be sampled prior to harvest. All  
299 licensed growers shall obtain a fit for commerce certificate for each lot prior to the hemp being  
300 transported from the growing location. The department shall issue a fit for commerce certificate  
301 following its successful test showing the THC concentration is at 0.3 percent or below.

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

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

307 (4) Any harvested hemp found in Wisconsin without a fit for commerce certificate required  
308 by this chapter or harvested hemp not sampled as required by s. ATCP 22.09 is subject to seizure  
309 by the department. Any such material is subject to destruction at the licensee's expense, and may  
310 result in suspension or revocation of the license.

### 311 **ATCP 22.13 Transporting.**

312 (1) A licensee may not transport hemp from a growing location until the licensee obtains a  
313 fit for commerce certificate. A licensed grower or licensed processor transporting hemp shall have  
314 all of the following in its possession:

315 (a) A copy of its grower license or processor license.

316 (b) A fit for commerce certificate as required under s. ATCP 22.12.

317 (2) A person contracted by a licensed grower or a licensed processor to transport harvested  
318 unprocessed hemp shall have all of the following in its possession:

319 (a) A copy of the grower license or processor license that designates the owner of the hemp  
320 being transported.

321 (b) A fit for commerce certificate as required under s. ATCP 22.12.

322 **ATCP 22.14 Compliance with other laws.** All licensees shall comply with all applicable federal,  
323 state, and local laws. It is the responsibility of the licensee to understand and comply with all  
324 federal and state regulations.

325 **ATCP 22.15 Enforcement and penalties.** A person who violates this chapter is subject to  
326 enforcement action under this chapter and s. 94.55, Stats., and penalties under s. 94.55 (4), Stats.

327 **SECTION 2: EFFECTIVE DATE:** This emergency rule takes effect upon publication and  
328 remains in effect until the expiration of the pilot program pursuant to Section 7605 (b) of the  
329 Agricultural Improvement Act of 2018, or the date on which emergency rules implementing an  
330 USDA-approved state plan, promulgated pursuant to 2019 Act 68, section 38, take effect,  
331 whichever is sooner.

Dated this \_\_\_\_\_ day of June, 2020.

State of Wisconsin  
Department of Agriculture, Trade and  
Consumer Protection

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By Randy Romanski, Secretary-designee

