

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 converts the existing hemp pilot program (Pilot Program) created under Wis. Stat. s. 94.55 (3), by 2017 Act 100 as modified by 2019 Act 68, to a hemp research program (Hemp Program) created under Wis. Stat. s. 94.55 (2). Under Wis. Stat. ss. 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 EmR2016, which was published and effective on June 27, 2020. The repeal and replacement was necessary as the previous Pilot Program was operated pursuant to Wis. Stat. s. 94.55 (3). The Department's authority to operate the pilot program is repealed by 2019 Act 68, Section 87, one year after the U.S. Department of Agriculture (USDA) established an approval process of state and tribal plans to produce hemp. After the repeal of Wis. Stat. s. 94.55 (3), the Department retains authority to operate a hemp program under 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 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. ss. 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 the Pilot Program, a hemp pilot research program authorized by the 2014 Farm Bill. The Pilot 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 converts the Pilot Program to the Hemp Program, consistent with the parameters of the Pilot Program, and thus provides the necessary regulatory framework to continue to allow Wisconsin's hemp growers to plant, grow, and process hemp pursuant to the Section 7606 of the Agricultural Act of 2014 (2014 Farm Bill) and Wis. Stat. s. 94.55 (2), instead of transitioning to the more restrictive framework established by the Agricultural Improvement Act of 2018 (2018 Farm Bill).

The 2018 Farm Bill sunsetted the 2014 Farm Bill's authorization of states to operate hemp pilot 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.

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. In order to continue primary jurisdiction over hemp programs after that date, states and tribes now must have a plan approved by USDA by September 30, 2021.

The Department's Pilot Program currently operates under the state authority of Wis. Stat. s. 94.55 (3); this authority is repealed by 2019 Wis. Act 68, Section 87, one year after the USDA published 7 C.F.R. 990. After the repeal of Wis. Stat. s. 94.55 (3), the Department retains authority to operate a hemp program under s. 94.55 (2). Sub. (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 122 of the Act requires the USDA to approve the continuation of state hemp research programs through September 30, 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.

For example, the 2014 Farm Bill allows participants and the Department to schedule sampling and testing at times most efficient for both parties while ensuring lawful production of hemp. In contrast, the 2018 Farm Bill contains strict timelines on the collection of samples and harvesting of crops. Under a 2018 Farm Bill program, regulatory sampling must be completed within 15 days of anticipated harvest. Participants may not have received regulatory test results by the anticipated harvest date and may face the expense of harvesting a crop that they are subsequently required to destroy if it exceeds the acceptable THC content.

In addition, the 2018 Farm Bill requires testing laboratories to calculate and apply a stringent measurement of uncertainty (MU) for THC content testing methodologies. The USDA provides guidance and resources to states to develop and establish an MU. In contrast, the 2014 Farm Bill allows the state to develop its own method to account for testing variabilities. The Department currently rounds down from 0.399 percent to account for laboratory variability. Consequently, the 2018 Farm Bill results in a narrower range in which a participant can produce hemp with acceptable THC content.

Because the current emergency rule was promulgated pursuant to expiring statutory authority, continuing to operate a program after that date requires the Department to repeal and replace emergency rule EmR2016. The updated rule converts the program and incorporates minor changes to reflect updated statutory authority.

This emergency rule also incorporates the felony conviction standard disqualifying persons from participating in the program to reflect the standards required for a program operated under Wis. Stat. s. 94.55 (2) versus a program operated under Wis. Stat. s. 94.55 (3). As a result, new participants in the program will not be issued a license if in the 10 years preceding, the person was convicted of a felony relating to a controlled substance under state or federal law. Wis. Stat. s. 94.55 (2p). Conversely, in a program operated under Wis. Stat. s. 94.55 (3), participants were not issued a license if the applicant has “ever been convicted of a criminal violation of the federal Controlled Substances Act under 21 USC 801 to 971, the Uniform Controlled Substances Act under ch. 961, or any controlled substances law of another state, as indicated in the information obtained from the criminal history search.”

State law requires applicants to a program operated under Wis. Stat. s. 94.55 (2) to submit to a fingerprint-based background check conducted on behalf of the Department by the Wisconsin Department of Justice utilizing criminal history information from the Federal Bureau of Investigation. Therefore, the emergency rule adds a requirement that applicants shall bear all 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. These costs are a \$7.75 payment to the entity responsible for capturing fingerprint impressions and a \$21.25 fee to the Department which is then paid to the Wisconsin Department of Justice to conduct the applicant’s background check.

The rule restructures the applicable fees for processor licenses and registrations as state law requires a \$150 initial fee for program participants. The Pilot Program previously had a no-fee processor license, but required the payment of a \$100 annual registration. The Hemp Program implements the statutorily required \$150 initial fee, but eliminates the processor annual registration

fee during the annual registration year the processor first obtains a license to reduce the impact of the one-time initial fee.

The emergency rule includes language clarifying notification processes for licensees voluntarily destroying hemp. The rule provides more detail on the required submission of a destruction notification form and Department approval of voluntary destruction of hemp by licensees, and updates the associated definitions for harvest and destruction, to reflect current program practices.

Similarly, the rule updates the process for obtaining Department approval of hemp varieties to allow participants to grow hemp varieties that have already been approved by the Department. Licensees are still required to pre-notify the Department of the variety the licensee intends to grow, consistent with statutory requirements. The process of obtaining approval of hemp varieties not currently approved by the Department and the associated fit for commerce certificate definition have been clarified to reflect current program practices.

The rule also contains a clarification on the required documentation for transportation of harvested unprocessed hemp from a growing location by a licensee or a person contracted by a licensee. The rule language is slightly edited to clarify that lawfully produced out-of-state hemp may be transported by a licensee, as evidenced by the accompaniment of a fit for commerce certificate issued by the jurisdiction of origin.

In addition, the rule includes updates to the enforcement section. The rule clarifies that Department orders enforcing this rule are subject to appeal pursuant to the long-established Department-appeal process. Also, as required by statute, the rule establishes factors to be considered by the Department when determining whether to refer a person producing hemp in violation of Wis. Stat. s. 94.55 or this rule for prosecution under the Wisconsin Uniform Controlled Substances Act or applicable local Marijuana possession ordinance by a local prosecuting authority or the Wisconsin Department of Justice. Pursuant to Wis. Stat. s. 961.32 (3) (c), a person may not be prosecuted unless they are referred for prosecution by the Department. The Department will consider the following factors: where voluntary compliance cannot be achieved, reliance on progressive enforcement to gain permanent compliance; and for willful or dangerous violations, refer for prosecution to protect citizens and law abiding competitors.

Finally, the emergency rule converts the current Pilot Program licenses and registrations to licenses and registrations under this Hemp Program. This no-fee conversion will occur automatically without any action necessary by licensees. If a licensee currently holds a valid license or registration under the Pilot Program, the licensee will hold a valid license or registration under the new Hemp Program created by this rule. If a licensee does not currently hold a valid registration, the licensee will need to obtain a registration under the new Hemp Program in order to participate in the program. Consistent with the operations of the Pilot Program, the licenses will not expire unless the licenses are revoked, but registrations will expire on December 31, 2020.

### ***Fiscal Impact***

This emergency 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), and annual processor registration (\$100). This emergency rule adds the statutorily required processor

license fee (\$150), but waives the annual processor registration (\$100) during the annual registration year the processor first obtains a license.

These program fees generate the program revenue that supports the implementation of the program. The Pilot Program began operations in 2018. The number of participants in the Pilot Program was similar in 2019 and 2020. In 2019, there were 1,251 licensed and registered growers with total fees of \$626,000 (average \$500 per grower), 560 licensed and registered processors with total fees of \$56,000 (\$100 per processor), and 2,200 samples collected and tested generating total fees of \$550,000 (\$250 per sample). Total fees for 2019 were approximately \$1,232,000.

This rule's economic and fiscal impact was developed assuming an eleven-month duration, because this emergency rule is expected to be in effect for approximately eleven months—from publication through at least September 30, 2021. For the eleven months of fiscal year 2020, excluding October, license and acreage fees (\$150 - \$1,000) and annual registration fees totaled \$571,395 for 1,244 growers. Processor registration fees totaled \$60,800 for 608 processors. A total of 1,966 samples were tested at the cost of \$491,528 (\$250 per sample). Additional fees included licence amendment and late fees in the amount of \$5,795. The grand total of all fees for this time period was \$1,129,518.

Based on program participation in 2019 and 2020, it is estimated that there will be approximately 1,852 licensees in the program in 2021 and that half of those licensees will be new licensees. The anticipated time period of this rule is approximately eleven months, ending September 30, 2021, assuming no additional extension of the 2014 Farm Bill programs on the federal level. Of the assumed 1,244 growers and 608 processors, 622 new growers and 304 new processors would pay the background check fees (\$29 per applicant). All new license applicants are required to have a fingerprint-based background check and pay \$7.75 to the entity responsible for capturing fingerprint impressions and a \$21.25 fee paid to the Department, which is then paid to the Wisconsin Department of Justice to conduct the applicant's background check. In addition, the new processors would pay \$150 for the license fee. All other costs would remain the same. The estimated costs would be: \$26,854 in background check fees for 926 new applicants (\$29 each); \$571,395 for 1,244 grower license and acreage fees (\$150 - \$1,000 each) and annual registration fees; \$76,000 for processor licenses and registrations (\$150 each per first year license for 304 new processors and \$100 each for the 304 annual processor registrations for each existing processor); \$491,528 for 1,966 samples tested at \$250 per test; and additional license amendment and late fees of \$5,795.

Therefore the estimated economic impact of the implementation and compliance with this rule, as identified in the Fiscal Estimate & Economic Impact Analysis, is \$1,171,572. This number is a total cost of background checks for new applicants, estimates of the number of licenses and registrations, expected number of samples collected and analyzed, and additional fees that may be incurred during the approximately eleven-month time that this rule is in effect.

#### Hemp Program Participants

This rule will impact persons who wish to grow and process hemp as part of the Hemp Program. Participation in the program is voluntary, although anyone wishing to grow or process hemp must participate, unless the person is operating under a USDA-approved tribal hemp plan. This rule will impose fees, recordkeeping, and reporting requirements. Participants must pay an initial license fee and an annual registration fee each year the licensee plans to operate. However, licensed

processors do not pay an annual registration fee in the annual registration year in which they first obtain a processor license. This rule will require participants to prepare a research plan and submit a research agreement. 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. 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 fingerprint-based background check on each new license 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 activities. Quantitative data is collected from licensees on an annual basis for trend analysis by Department staff.

This rule makes necessary and statutorily required changes to fees. The rule adds a fee increase of \$29 for new license applicants to account for the increased cost of conducting a fingerprint-based background check utilizing the Federal Bureau of Investigation. This is a new cost for the program, as 2019 Act 68 created a requirement for this type of background check. It is anticipated that up to 600 new licensees would pay this fee during the eleven-month period covered by this fiscal estimate, resulting in \$17,400 in revenue. The rule restructures the processor fees to offset the statutorily required initial fee of \$150 for new processor licensees by eliminating the \$100 annual registration fee for processor licensees in the annual registration year the licensee first obtains a processor license. It is anticipated that during the eleven-month period covered by this fiscal estimate, approximately 300 new licensees would pay this additional \$50 resulting in total fees of approximately \$15,000.

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 \$1,232,000. Consistent with the increased revenue is a corresponding increase in program expenditures to provide the services to the larger group of program participants. In fiscal year (FY) 2020, there were 1,852 licensed and registered participants and a total revenue of \$1,171,742.

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. For FY2020, program revenue was \$1.171M and program expenditures were \$1.186M, reflecting a program operating deficit of \$14,326. 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, one Project Plant Pest and Disease Specialist, one Project License Permit Program Associate and one Project Chemist. In addition, there are three Limited Term Employee (LTE) Licensing Staff and up to 14 LTE inspectors to collect hemp samples and deliver the samples to the Bureau of Laboratory Services Laboratory (BLS Lab). Hiring LTEs for this short-term (approximately three months), high volume field sampling work is most cost effective for program operation and can be adjusted annually based on program participation. Additional departmental resources provided to the program include legal, managerial, and accounting services.

Based on sample volumes from the previous seasons, the BLS Lab expects to utilize 10-12 full time permanent staff members as well as 6-10 LTE staff members to process and test the volume of hemp samples collected each year. Duties will range from sample log in and preparation, to performing tests, to reviewing data, oversight, and quality assurance activities. Staff will include lab technicians, chemists of varying levels, supervisors, and management. The 10-12 permanent BLS Lab staff members will be reassigned from their regular testing duties, based on program determined priorities, for conducting hemp testing. The 6-10 LTEs will be hired annually for support of the Hemp Program in June of each year. Sampling and testing is required to determine whether the THC content of hemp sampled that meets the definition of lawfully produced hemp; 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, there were 1,852 licensed and registered participants in the program. Total program revenue for FY2020 was \$1.171M and program expenditures were \$1.186M, resulting in a \$14,326 operating deficit. However when factoring in the cash balance carryover from FY2019, the program ended FY2020 with a cash balance of \$292,680.

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

Because this rule continues the existing regulatory framework of the 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 rule continues the regulatory framework of the Pilot 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. Therefore, the rule will not negatively impact small business as this rule does not make significant modifications to the regulation of the hemp industry as it currently exists.

The regulated industry is required to comply with the updated regulations. The Hemp Program is a voluntary program, so no business is compelled to participate. If a business chooses to participate, it is a fee-for-service program where the Department charges fees to cover the cost of program operations. Thus, while there are statutorily driven fees and fee increases for a few items in this rule, the fees are limited to the costs necessary to cover program operations related to the services provided.

Consistent with the Pilot Program, new licensees to the Hemp Program will be required to pay a one-time license fee. This rule adds a statutorily required initial license fee for new processor licensees, whereas previously only new grower licensees were required to pay the initial license fee. The rule adds fees for costs necessary to conduct statutorily required background checks of new licensees. These new fees are necessary to comply with the statutorily required components of the program, and thus less-stringent standards cannot be created. Licensees who plan to operate during the calendar year will continue to be charged an annual registration fee. To offset the impact of the new statutorily required initial license fee for new processor licensees, there is no fee for processors to register in the annual registration year in which they first obtain a processor license. Because this rule converts licenses and annual registrations issued under the Pilot Program to licenses and annual registrations issued under this Hemp Program, current licensees will not have to pay any additional license or background check fees. Annual registrations will expire December 31, 2020.

There are some costs of compliance associated with program participation such as sampling, testing, and recordkeeping. However, because hemp is regulated at the federal level, these costs are unavoidable in order to allow Wisconsinites the opportunity to participate in hemp activities. By continuing to operate the Hemp Program pursuant to the 2014 Farm Bill, instead of transitioning to the 2018 Farm Bill, this rule allows participation while reducing required costs of compliance to the greatest extent possible.

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



The current Pilot 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 Hemp Program implemented by this emergency rule continues the regulatory framework established by the Pilot Program, and operates under the authority of Section 7606 of the 2014 Farm Bill, 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 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 IFR, 7 C.F.R. Part 990, published on October 31, 2019. Currently, 38 tribes and 25 states have USDA-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 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 pilot research programs, effective one year after the USDA established an approval process of state and tribal plans to produce hemp. USDA issued Interim Final Rule (IFR), 7 C.F.R. Part 990, effective October 31, 2019, and thus all hemp pilot research programs were set to expire pursuant to Section 7605 (b) of the 2018 Farm Bill.

However, Section 122 of the Continuing Appropriations Act, 2021 and Other Extensions Act extended the authority of states to operate hemp pilot research programs under the 2014 Farm Bill until September 30, 2021. In order to continue primary jurisdiction over hemp programs after that date, states and tribes now must have a plan approved by USDA by September 30, 2021. Wisconsin, along with 16 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. With the 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*

With the exception of Iowa, which did not have a 2014 Farm Bill pilot research program, the surrounding states are continuing to operate pre-established 2014 Farm Bill hemp pilot research programs. Like Wisconsin, these states are taking advantage of the flexibilities of a program operated pursuant to the 2014 Farm Bill, versus a program operated under the stricter 2018 Farm Bill and IFR. Some states have chosen to continue operating under the 2014 Farm Bill only until the end of the current growing season (license year). However, Wisconsin is operating under the 2014 Farm Bill as it provides Wisconsin participants the greatest opportunity to engage in hemp activities.

### Minnesota

Minnesota's pilot program began in 2016 under the 2014 Farm Bill. USDA approved the Minnesota State Hemp Production Plan on July 14, 2020. Minnesota will continue to operate 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.

Operationally, the Minnesota 2014 Farm Bill hemp program is very similar to the Wisconsin Pilot Program and Hemp 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 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.

Minnesota's 2018 Farm Bill hemp program adopts all necessary regulatory changes to comply with the IFR and 2018 Farm Bill. This includes adopting the new definition of acceptable hemp THC levels. Under the new hemp program, Minnesota will estimate and report the MU with all test results. This will result in a narrower range in which a participant can produce hemp with acceptable THC content than in Wisconsin.

### 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 recently approved. Illinois is currently operating as a pilot program under the 2014 Farm Bill and will continue to operate that program. They have not determined how long they will continue to operate under the pilot research program based on the extension of the authority to operate a 2014 Farm Bill program, before transitioning to a 2018 Farm Bill hemp program.

Components of the Illinois 2014 Farm Bill 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 percent for an initial test, and a retest is allowed if the initial test is between 0.3 percent and 0.7 percent THC. If the retest exceeds 0.3 percent THC, the crop must be destroyed. Illinois allows licensing periods of one, two, or three years at \$375, \$700, or \$1000 respectively.

Illinois's approved 2018 Farm Bill state plan does not have regulations that go beyond the IFR; the state plan has similar language and regulations to the IFR and other state plans implementing the IFR. This includes the addition of a MU and the requirement to harvest within fifteen days of the collection of the regulatory sample. While Illinois has not decided when to transition from the pilot program to a program operated pursuant to the 2018 Farm Bill, growers will face stricter regulations after the transition.

### Michigan

The Michigan hemp pilot program began in 2019 under the 2014 Farm Bill. Michigan's 2018 Farm Bill state plan has been resubmitted to USDA and is under review as of October 15, 2020. However, they plan to continue to operate under a 2014 Farm Bill research program until the end

of their 2020 licensing year on November 30, 2020, then transition to a federally approved state hemp program operated pursuant to the 2018 Farm Bill and the IFR.

The Michigan 2014 Farm Bill 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.

Under the 2014 Farm Bill, Michigan allowed hemp growers to sample their own crops and transport that sample to the state laboratory for testing. When Michigan's 2018 Farm Bill Program is federally approved pursuant to the 2018 Farm Bill, its state hemp program must comply with the IFR and growers will no longer be allowed to sample their own hemp. When implemented, Michigan's new 2018 Farm Bill hemp program will have stricter regulations than its pilot program.

#### 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. 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. Section 94.55 (3w), Stats., 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 ss. 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) “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.

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

(5) “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.

(6) “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.

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

(8) “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.

(9) “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.

(10) “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.

(11) “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 destruction of hemp.

(12) “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.

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

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

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

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

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

(18) “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.

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

(20) “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.

(21) “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.

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

(a) 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.

(b) Fails the state and federal criminal background check required under sub. (5), as determined by the department.

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

1. Fails to submit a complete final production or processing report by December 15 of each year.

2. Fails to pay invoiced fees or the registration fee.

3. Possesses harvested hemp without a fit for commerce certificate as required by s. ATCP 22.13 or harvested hemp not sampled as required by s. ATCP 22.09.

(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.
- (11) REVOKING A LICENSE.** The department may revoke a grower license or processor license if a grower licensee or processor licensee does any of the following:
  - (a) Is convicted of any felony relating to a controlled substance under state or federal law.
  - (b) Engages in any activities prohibited under this chapter, s. 94.55 Stats., or a research agreement.
  - (c) Makes any false statement related to the licensee's participation in the hemp program to the department or its representative.
  - (d) Fails to comply with any requirement of this chapter, s. 94.55 Stats., or a research agreement.
  - (e) 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.
  - (f) Possesses harvested hemp without a fit for commerce certificate as required by s. ATCP 22.13 or harvested hemp not sampled as required by s. ATCP 22.09.

**(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 of 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](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.** Each registered lot shall be sampled by the department to verify THC level compliance. All lots shall be sampled prior to harvest. 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.

**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 entire lot shall be destroyed by the licensed grower within 10 days of service of the destruction order, unless the licensed grower files a written request with the division for a re-test pursuant to sub. (4) prior to the expiration of the 10 days.

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

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

(6) LOT DESTRUCTION. The department shall verify that the lot was destroyed as required under subs. (3), (4), or (5). If the lot has not been destroyed, the department may destroy the lot and invoice the licensed grower 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 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.

(f) Total acreage subject to destruction.

(g) Description of the destruction method.

(h) Date of completion of destruction.

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

(j) 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 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 hemp found in Wisconsin without a fit for commerce certificate required by this chapter or harvested hemp not sampled as required by s. ATCP 22.09 is subject to seizure by the department. 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 hemp from a growing location until the licensee obtains a department-issued fit for commerce certificate. A licensed grower or licensed processor transporting hemp shall have all of the following in its possession:

- (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 of the following in its possession:

- (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.** (1) DEPARTMENT ENFORCEMENT. (a) 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.

(b) 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.

(2) 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.

**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 October, 2020.

State of Wisconsin  
Department of Agriculture, Trade and  
Consumer Protection

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By Randy Romanski, Secretary-designee