



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: November 17, 2022

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary
Fratney Miller, General Counsel

SUBJECT: Wis. Admin. Code Ch. **ATCP 1 (Administrative Orders and Contested Cases)**

PRESENTED BY: Julie Schmidt, Administrative Rules Coordinator, Office of the Secretary

REQUESTED ACTION:

At the meeting of the Board on November 17, 2022, the Department will request approval of the final rule draft, regarding Wis. Admin. Code Ch. ATCP 1 relating to Administrative Orders and Contested Cases, in order for the Department to submit the final rule package to the Governor and Legislature.

SUMMARY:

Section ATCP 1.06 (3) (a) currently requires the Secretary to grant or deny a contested case hearing request within 30 days after a complete request is filed. Wis. Stats. s. 227.42 (2) deems a request denied if an agency does not enter an order disposing of the request for hearing within 20 days from the date of filing. The objective of the proposed rule is to amend the code in order to align with statute.

The Department held a public hearing on the hearing rule draft on Wednesday, October 19, 2022. No members of the public attended the hearing, and no written comments were submitted that pertain to this rule. The Department also received no recommended changes from the Legislative Council Rules Clearinghouse.

The Department is requesting Board approval to submit the proposed final rule to the Governor and Legislature.

Wisconsin - America's Dairyland

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov

An equal opportunity employer

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
PROPOSED ORDER OF THE DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION ADOPTING RULES

PROPOSED ORDER

- 1 An order of the department of agriculture, trade and consumer protection *to amend* ATCP 1.06
 - 2 (3) (a) *relating to* administrative orders and contested cases.
-

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

Statutes Interpreted: ss. 227.29 and 227.42, Stats.

Statutory Authority: ss. 93.07 and 227.42, Stats.

Explanation of Agency Authority

Department duties. It shall be the duty of the department to make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law. [s. 93.07, Stats.]

Right to hearing. Any denial of a request for a hearing shall be in writing, shall state the reasons for denial, and is an order reviewable under this chapter. If the agency does not enter an order disposing of the request for hearing within 20 days from the date of filing, the request shall be deemed denied as of the end of the 20-day period. [s. 227.42 (2), Stats.]

Related Statutes and Rules

Wis. Admin. Code ch. ATCP 1.

Plain Language Analysis

The Department of Agriculture, Trade and Consumer Protection (department) identified s. ATCP 1.06 (3) (a) as duplicative, superseded or conflicting in our report filed with the Joint Committee for Review of Administrative Rules pursuant to s. 227.29, Stats.

Section ATCP 1.06 (3) (a) conflicts with s. 227.42 (2), Stats., as it requires the department Secretary to grant or deny a contested case hearing request within 30 days after a complete request is filed. Section 227.42 (2), Stats., deems a request denied if an agency does not enter an order disposing of the request for hearing within 20 days from the date of filing; therefore, this rule section is in conflict with statute. This proposed rule amends the conflicting section of s. ATCP 1.06 (3) (a) with s. 227.42 (2), Stats.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

There are a variety of federal regulations that govern procedures in federal “contested cases.” However, none of those regulations have a direct bearing on this rule.

If Held, Summary of Public Comments Received on Statement of Scope and a Description of How and To What Extent Those Comments and Feedback Were Taken Into Account in Drafting the Proposed Rule

The Joint Committee for Review of Administrative Rules did not request a preliminary hearing on the scope; thus, the department did not hold a preliminary hearing on the scope.

Comparison with Rules in Adjacent States

Illinois: Ill. Admin. Code tit 8, s. 1.15 governs practices and procedures applicable to formal administrative proceedings conducted by the Department of Agriculture in hearing contested cases under the laws administered by the Department. In Ill. Admin. Code tit 8 s. 1.45 (a) the director or the administrative law judge shall set the date, time, and place of all formal administrative proceedings, and in sub. (c), the department shall give written notice to affected parties not later than 10 days prior to the date on which the formal administrative proceeding is scheduled, unless the specific statute or rules under which the alleged violation occurred state otherwise.

Iowa: Iowa Code Section 17A (159), states that any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question. If no time is specified in the agency action and there is no applicable rule or statute, then the written request for a contested case proceeding shall be filed in writing within 30 calendar days of the action or notice of the intended action the person wishes to contest.

Michigan: Under the Michigan Administrative Procedures Act of 1969, s. 24.271 (1), the parties in a contested case shall be given an opportunity for a hearing without undue delay.

Minnesota: In any contested case all parties shall be afforded an opportunity for a hearing after reasonable notice under, Minn. Stats. s. 14.58, and a contested case is commenced, subsequent to the assignment of a judge, by the service of a notice of and order for hearing by the agency, Minn. R. 1400.5600, subp. 1.

Summary of Factual Data and Analytical Methodologies

The department reviewed ch. ATCP 1 and identified s. ATCP 1.06 (3) (a) as a duplicative, superseded or conflicting rule in a report filed with the Joint Committee for Review of Administrative Rules pursuant to s. 227.29, Stats. This proposed order modifies provisions in the rule to align with statute.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis

The proposed rule was posted on the department's website for economic comments for 14 days and none were received. This proposed order aligns s. ATCP 1.06 (3) (a) with s. 227.42 (2), Stats., and therefore, does not have an effect on small businesses.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

This proposed rule does not have an economic impact on small business, as defined in s. 227.114 (1), Stats.

The Department's Regulatory Review Coordinator may be contacted by:
Email at Bradford.Steinel@wisconsin.gov
Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

Department Contact Person

Julie Schmidt, Administrative Rules Coordinator
Office of the Secretary
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
(608) 224-5029
julies.schmidt@wisconsin.gov

TEXT OF RULE

- 1 SECTION 1. ATCP 1.06 (3) (a) is amended to read.
- 2 (3) GRANTING OR DENYING REQUEST.

3 (a) The Secretary shall grant or deny a contested case hearing request under sub. (1) within
4 ~~30~~20 days after a complete request is filed, unless the requester agrees to an extension or time.
5 The secretary may grant a contested case hearing request if, upon preliminary review, it appears
6 that the department has jurisdiction over the matter and that a contested case proceeding is
7 warranted under s. 227.42, Stats., or other applicable law.
8 SECTION 2. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day
9 of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22
10 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated this 31 day of October, 2022

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION


By: Randy Romanski, Secretary

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date August 3, 2022
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) ATCP 1.06 (3) (a)	
4. Subject Administrative Orders and Contested Cases	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0.00	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule Section ATCP 1.06 (3) (a) conflicts with s. 227.42 (2), Stats., as it requires the department Secretary to grant or deny a contested case hearing request within 30 days after a complete request is filed. Section 227.42 (2), Stats., deems a request denied if an agency does not enter an order disposing of the request for hearing within 20 days from the date of filing; therefore this rule section is in conflict with statute. This proposed rule amends the conflicting section of s. ATCP 1.06 (3) (a) with s. 227.42 (2), Stats.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. This rule was posted on the Department website for 14 days to obtain economic impact comments.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) This rule does not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the State's Economy as a Whole.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is to remove a conflicting provision. The alternative is to retain the rule which creates conflict with statute.	
16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is statutory compliance.	
17. Compare With Approaches Being Used by Federal Government There are a variety of federal regulations that govern procedures in federal "contested cases." However, none of those regulations have a direct bearing on this rule.	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: Ill. Admin. Code tit 8, s. 1.15 governs practices and procedures applicable to formal administrative proceedings conducted by the Department of Agriculture in hearing contested cases under the laws administered by the Department. In Ill. Admin. Code tit 8 s. 1.45 (a) the director or the administrative law judge shall set the date, time, and place of all formal administrative proceedings, and in sub. (c), the department shall give written notice to affected parties not later than 10 days prior to the date on which the formal administrative proceeding is scheduled, unless the specific statute or rules under which the alleged violation occurred state otherwise.

Iowa: Iowa Code Section 17A (159), states that any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question. If no time is specified in the agency action and there is no applicable rule or statute, then the written request for a contested case proceeding shall be filed in writing within 30 calendar days of the action or notice of the intended action the person wishes to contest.

Michigan: Under the Michigan Administrative Procedures Act of 1969, s. 24.271 (1), the parties in a contested case shall be given an opportunity for a hearing without undue delay.

Minnesota: In any contested case all parties shall be afforded an opportunity for a hearing after reasonable notice under, Minn. Stats. s. 14.58, and a contested case is commenced, subsequent to the assignment of a judge, by the service of a notice of and order for hearing by the agency, Minn. R. 1400.5600, subp. 1.

19. Contact Name

Julie Schmidt

20. Contact Phone Number

(608) 224-5029

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-

Wisconsin Department of Agriculture, Trade and Consumer Protection

Regulatory Flexibility Analysis

Rule Subject: Administrative Orders and Contested Cases
Admin. Code Reference: ATCP 1.06 (3) (a)
Rules Clearinghouse #:
DATCP Docket #: 21-R-14

Rule Summary

The Department of Agriculture, Trade and Consumer Protection (department) identified s. ATCP 1.06 (3) (a) as duplicative, superseded or conflicting in our report filed with the Joint Committee for Review of Administrative Rules pursuant to s. 227.29, Stats.

Section ATCP 1.06 (3) (a) conflicts with s. 227.42 (2), Stats., as it requires the department Secretary to grant or deny a contested case hearing request within 30 days after a complete request is filed. Section 227.42 (2), Stats., deems a request denied if an agency does not enter an order disposing of the request for hearing within 20 days from the date of filing, therefore this rule section is in conflict with statute. This proposed rule amends the conflicting section of s. ATCP 1.06 (3) (a) with s. 227.42 (2), Stats.

Small Business Affected

This proposed rule does not have an economic impact on small business, as defined in s. 227.114 (1), Stats.

Proposed Reporting, Bookkeeping, and Other Procedures Required for Compliance

The proposed rule does not create any new reporting, bookkeeping, or other procedural requirements for compliance with the rule.

Professional Skills Necessary for Compliance

The proposed rule does not create any new professional skill requirements for compliance with the rule.

Accommodation for Small Business

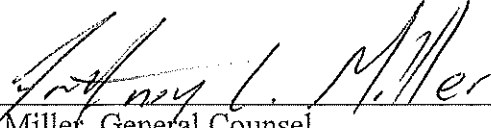
No accommodations for small business will be necessary for the proposed rule.

Conclusion

This proposed rule does not have an economic impact on small business, as defined in s. 227.114 (1), Stats.

Dated this 13 day of September, 2022

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION



Anthony L. Miller, General Counsel
Office of the Secretary