

**Chapter ATCP 1**

**ADMINISTRATIVE ORDERS AND CONTESTED CASES**

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Note: Chapter Ag 1 as it existed on May 31, 1992 was repealed and new ch. Ag 1 was created effective June 1, 1992; Chapter Ag 1 was renumbered ch. ATCP 1 under s. 13.93 (2m) (b) 1, Stats., Register, April, 1993, No. 448.

**Subchapter I — Definitions**

**ATCP 1.01 Definitions.** In this chapter:

(1) "Claim filing order" means an order directing producers to file claims under s. 100.03 (9) (b), 100.06 (4) (a) or 127.14 (1) (a), Stats.

(2) "Claim" means a producer claim under s. 100.03 (9), 100.06 (4) or 127.14, Stats.

(3) "Claimant" means a producer claimant under s. 100.03 (9), 100.06 (4) or 127.14, Stats.

(4) "Class 1 contested case," "class 2 contested case" or "class 3 contested case," means a class 1, class 2 or class 3 proceeding, respectively, as defined in s. 227.01 (3), Stats.

(5) "Complainant" means any of the following persons or entities that file a complaint with the secretary under this chapter:

(a) A division.

(b) A person or agency authorized to file a complaint under s. 100.20 (4) or 100.201 (9) (f), Stats.

(6) "Complaint" means a written complaint, filed with the secretary under s. ATCP 1.05, asking the department to issue a special order against a person or persons identified in the complaint.

(7) "Contested case" has the meaning given under s. 227.01 (3), Stats.

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

(9) "Division" means a principal subunit of the department which is headed by a division administrator. "Division" includes authorized division staff.

(10) "Division administrator" means a division head whose position is authorized under s. 230.08 (2) (e) 2, Stats. "Division administrator" includes an acting division administrator appointed by the secretary, or a person designated by a division administrator to act on the administrator's behalf in the administrator's absence.

(11) "Examiner" means the secretary, or a person whom the secretary appoints, in writing, under s. 227.46 (1), Stats., to preside over a contested case proceeding.

(12) "File" means deliver in writing to any of the following:

(a) The office of the secretary.

(b) The final decisionmaker, if the filing pertains to a matter which is pending before the final decisionmaker.

(c) The examiner, if the filing pertains to a matter which is pending before the examiner.

(d) A recipient designated by the department to receive filed documents.

Note: Documents intended for filing with the secretary's office may be sent to the following address:

Secretary  
Wisconsin Department of Agriculture, Trade and Consumer  
Protection  
801 West Badger Rd.  
P.O. Box 8911  
Madison, WI 53708

(13) "Final decisionmaker" means the secretary, or a person whom the secretary appoints, in writing, to issue a final decision in a contested case. "Final decisionmaker" may include an examiner whom the secretary appoints as final decisionmaker.

(14) "Financial default proceeding" means a proceeding initiated by the department under s. 100.03 (9), 100.06 (4) or 127.14, Stats., to determine the amount of allowable producer claims against a fruit or vegetable contractor, a

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dairy plant operator, or a grain warehousekeeper or grain dealer.

(15) "Hearing" means a contested case hearing under ch. 227, Stats., except as otherwise provided in this chapter.

(16) "Intervenor" means an interested or affected person who files a request to be admitted, and who is admitted as a party in a contested case. "Intervenor" does not include a complainant, respondent, petitioner or claimant.

(17) "License" has the meaning specified under s. 227.01 (5), Stats.

(18) "Order determining claims" means an order allowing or disallowing producer claims in a financial default proceeding.

(19) "Party" means any of the following persons or entities, unless that person or entity is dismissed as a party:

(a) A division which appears or is named as a party.

(b) A complainant.

(c) A respondent who has been served with a complaint or notice from the department identifying him or her as a respondent.

(d) A petitioner.

(e) A claimant.

(f) An intervenor.

(20) "Person" includes a natural person, corporation, partnership, association, trust, division of the department, or other government or business entity.

(21) "Petitioner" means a person who files a request for a hearing or declaratory ruling under this chapter.

(22) "Proceeding" means a contested case proceeding before the department under ch. 227, Stats.

(23) "Representative" means an attorney or other person authorized by a party to represent that party in a contested case.

(24) "Respondent" means either of the following:

(a) A person against whom a complaint is filed.

(b) A person, other than a complainant, petitioner, claimant or intervenor, who is named as a party to a proceeding.

(25) "Secretary" means the secretary of the department. "Secretary" includes both of the following:

(a) The deputy secretary of the department.

(b) A department official whom the secretary has specifically authorized to act on the secretary's behalf.

(26) "Special order" means an enforceable or purportedly enforceable administrative order which the department issues against a named or identified person under chs. 91 to 100 or ch. 127, Stats., or other laws administered by the department. "Special order" includes special orders identified under s. ATCP 1.03 (1) (a). "Special order" does not include any of the actions listed under s. ATCP 1.03 (1) (b).

(27) "Subpoena" means a command to give testimony or provide evidence.

(28) "Summary special order" means a special order which the department issues without prior notice to the order recipient, or without a prior opportunity for the order recipient to appear or contest the order.

(29) "Trade and consumer protection division" means the trade and consumer protection division of the department.

History: Cr. Register, May, 1992, No. 437, eff. 6-1-92.

## Subchapter II — Orders

**ATCP 1.03 Special orders. (1) ORDERS INCLUDED.** (a) A "special order," as defined in s. ATCP 1.01 (26), includes all of the following:

1. An order suspending, revoking or imposing conditions on a license.

2. An administrative injunction, including any order issued under s. 94.645 (4), 94.71 (3) (c), 97.12 (3) (a), 100.03 (18), 100.19 (3), 100.20 (3), 100.201 (9) (b), 100.21 (4), 100.22 (4) (a), 100.30 (5) (a), or 127.17 (1), Stats.

3. An order banning or restricting the sale of a hazardous consumer product or household substance, including any order issued under s. 100.37 (2) (e), 100.41 (5), 100.42 (3) or 100.43 (4) (b), Stats.

4. An order determining claims in a financial default proceeding.

5. A temporary holding order or stop sale order, including any order issued under s. 94.10 (2) (b), 94.46, 94.64 (11), 94.65 (10), 94.71 (2), 94.72 (13), 95.72 (4) (d), 97.12 (2), 97.42 (9) (b) 1 or 100.37 (5), Stats.

6. An order for the quarantine, control, destruction or disposal of plants, plant pests or animals, including any order issued under s. 94.01, 94.02, 94.10 (2) (b), 94.76 (1), 95.20, 95.23 or 95.31, Stats.

7. An order condemning unwholesome or adulterated animal carcasses, meat or food, including any order issued under s. 95.72 (4) (d), 97.12 (2) or 97.42 (9) (b) 2, Stats.

8. An order prohibiting the use of specified equipment or facilities, including any order issued under s. 95.72 (6) (c), 97.42 (9) or 98.05, Stats.

9. A subpoena or formal investigative demand, except as provided under par. (b) 4 or 5.

(b) The term "special order," as defined in s. ATCP 1.01 (26), does not include any of the following:

1. A rule.

2. A warning notice.

3. A division's denial of an initial license application.

4. A division's nonrenewal of a license if the license holder fails to file a required renewal application or pay a required fee.

5. A subpoena or discovery demand issued in a contested case proceeding by a party or the party's representative.

6. An order issued by an examiner or final decisionmaker in a contested case, other than an order identified under par. (a).

(2) WHO MAY ISSUE A SPECIAL ORDER. (a) Except as provided under par. (b) or by department rule, no person other than the secretary or final decisionmaker may issue a special order on behalf of the department.

(b) Paragraph (a) does not apply to any of the following:

1. A special order, issued by a division, which imposes conditions on an initial license when that initial license is first issued.

2. Special orders identified under sub. (1) (a) 5 to 9.

Note: Special orders under sub. (1) (a) 5 to 8 are normally issued by the responsible divisions. Subpoenas and investigative demands under sub. (1) (a) 9 are normally issued by department attorneys or other authorized officials of the department.

(3) SUMMARY SPECIAL ORDER; RIGHT TO HEARING. (a) If the department issues a summary special order against any person, that person may request a hearing on the summary special order. The request may be made to the secretary or, if the summary special order is issued by a division, the request may be made to the division that issued the summary special order. A request may be made orally, but the department may require the requester to confirm the request in writing. A written request, if required, shall comply with s. ATCP 1.06 (2). A request for hearing does not stay or modify a summary special order.

(b) A person who requests a hearing on a summary special order under par. (a) is entitled to a class 2 contested case hearing. Pending completion of the class 2 contested case hearing, the requester is also entitled to a prompt informal hearing.

(c) The informal hearing under par. (b) shall be held as soon as reasonably possible, but not more than 10 days after the department first receives an oral or written hearing request under par. (a). The informal hearing may be held in person or by telephone. The requester may waive the informal hearing, or may agree to an extension of time for the informal hearing.

(d) The informal hearing under par. (b) shall be conducted by a person who was not involved in the investigation of the case, or in the decision to issue the summary special order. The person conducting the informal hearing need not be the examiner who presides over the class 2 contested case hearing. The person conducting the informal hearing may stay or modify the summary special order or, if the summary special order was issued by the secretary, recommend a stay or modification to the secretary or final decisionmaker.

(4) SPECIAL ORDER AGAINST OUT-OF-STATE PERSON. Unless limited by statute, the department's jurisdiction to issue a special order against an out-of-state person is commensurate with the jurisdiction of a court under s. 801.05, Stats.

History: Cr. Register, May, 1992, No. 437, eff. 6-1-92.

ATCP 1.04 Final orders in contested cases. The final decisionmaker shall, on behalf of the department, issue every final decision and final order in a contested case, as

provided under s. ATCP 1.31. An order dismissing any party, proceeding or cause of action is a final order under this section.

History: Cr. Register, May, 1992, No. 437, eff. 6-1-92.

Subchapter III — Initiating a Contested Case

ATCP 1.05 Complaint requesting special order. (1) DIVISION COMPLAINTS. To obtain a special order from the secretary or final decisionmaker, other than in a financial default proceeding, a division shall file a written complaint with the secretary. The complaint shall be signed by the division administrator and shall comply with sub. (3).

(2) OTHER COMPLAINTS. (a) To obtain a special order under s. 100.20 (4) or 100.201 (9) (b), Stats., a complainant authorized under s. 100.20 (4) or 100.201 (9) (f), Stats., shall file a written complaint with the secretary. The complaint shall be signed by the complainant and shall comply with sub. (3).

Note: A complaint may be filed with the secretary at the following address:

Secretary  
Wisconsin Department of Agriculture, Trade and Consumer Protection  
801 West Badger Rd.  
P.O. Box 8911  
Madison, WI 53708

(b) Before filing a complaint with the secretary under s. 100.20 (4), Stats., the department of justice shall provide a copy of the complaint to the trade and consumer protection division.

(3) COMPLAINT FORM AND CONTENTS. A complaint shall be captioned as provided under s. ATCP 1.13 (2), and shall include all of the following:

(a) The identity of the complainant.

(b) The statutory authority under which the complaint is filed.

(c) The identity and address of each respondent against whom the complaint is filed.

(d) An identification of the statutes, rules or orders, if any, which each respondent allegedly violated.

(e) A concise statement of facts constituting the alleged violations, or forming the basis for the complaint.

(f) A concise statement describing the order requested of the secretary or final decisionmaker, and the department's authority to issue that order.

(g) If the complainant seeks a summary special order, the additional material required under sub. (5) (b).

Example: If a division seeks a special order suspending a retail food establishment license, the division's complaint may be captioned as follows:

STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION	
In the Matter of the Retail Food Establishment License of Acme, Inc. d/b/a Acme Fine Foods,  Respondent	Docket No. _____ COMPLAINT

(4) PROCEEDINGS INITIATED IN RESPONSE TO COMPLAINT. In response to a complaint under sub. (1) or (2), the secretary shall initiate a contested case proceeding by issuing a

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hearing notice under s. ATCP 1.20. The department shall mail or deliver a copy of the notice, together with a copy of the complaint, to the complainant and to each respondent identified in the complaint.

(5) **REQUEST FOR SUMMARY SPECIAL ORDER.** (a) In addition to or in lieu of other relief, a complainant may ask the secretary or final decisionmaker to issue a summary special order which is authorized by law. A complainant may request a summary special order as part of a complaint under sub. (1) or (2), or may file the request in the form of a motion at any time after a complaint is filed.

(b) A request for a summary special order shall include all of the following:

1. A statement of the department's authority to issue the summary special order.
2. A statement indicating why the summary special order is necessary and justified.
3. An affidavit setting forth the facts which justify the summary special order.
4. A copy of the proposed summary special order.

(6) **AMENDING OR WITHDRAWING A COMPLAINT.** A complainant may, with leave from the examiner, amend or withdraw a complaint at any point in a contested case proceeding. The examiner may withhold leave if the amendment or withdrawal would unduly delay or disrupt the proceeding, or would work a significant injustice against any party.

History: Cr. Register, May, 1992, No. 437, eff. 6-1-92.

**ATCP 1.06 Request for hearing on department action. (1) WHO MAY REQUEST.** A person adversely affected by a department action may request a hearing on that action. Except as provided under s. ATCP 1.03 (4) (a), a request for hearing shall be filed with the secretary and shall comply with sub. (2). A request for hearing on a department action does not stay or modify that action.

Note: See s. 227.42, Stats., and ATCP 1.03 (4). A request for hearing may be filed with the Secretary at the following address:

Secretary  
Wisconsin Department of Agriculture, Trade and Consumer  
Protection 801 W. Badger Rd.  
P.O. Box 8911  
Madison, WI 53708

(2) **REQUEST FORM AND CONTENTS.** Except for an oral request under s. ATCP 1.03 (4) (a), a hearing request under sub. (1) shall be in writing, but need not be in any particular form. The request shall identify the action on which a hearing is sought, the grounds for the hearing request, and the relief sought. The secretary may require the requester to file additional clarifying information before deciding whether to grant or deny the hearing request.

(3) **NOTICE GRANTING OR DENYING REQUEST.** (a) Except as provided under s. ATCP 1.03 (4), the secretary shall grant or deny a hearing request under sub. (1) within 20 days after a complete request is filed, unless the requester agrees to an extension of time.

(b) If the secretary grants a hearing request under sub. (1), the secretary shall initiate a contested case proceeding by issuing a hearing notice under s. ATCP 1.20.

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Example: Acme Foods, Inc. requests a hearing on the denial of a retail food establishment license for which Acme has applied. A hearing notice granting the request may be captioned as follows:

STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION	
In the Matter of the Retail Food Establishment License Application of Acme Foods, Inc.,  Petitioner	Docket No. _____ HEARING NOTICE

(c) If the secretary denies a hearing request under sub. (1), the secretary shall issue a written denial notice to the person who requested the hearing. The denial notice shall comply with the provisions of s. ATCP 1.31. The denial is subject to judicial review, to the extent provided under ss. 227.42 (2) and 227.52, Stats.

History: Cr. Register, May, 1992, No. 437, eff. 6-1-92.

**ATCP 1.07 Request for declaratory ruling. (1) FILING A PETITION.** An interested person may petition the secretary for a declaratory ruling under s. 227.41, Stats., to determine the applicability to that person of any statute or rule enforced by the department. The petition shall comply with s. 227.41 (2), Stats., and shall be filed with the secretary.

Note: A petition for declaratory ruling may be filed with the Secretary at the following address:

Secretary  
Wisconsin Department of Agriculture, Trade and Consumer  
Protection  
801 W. Badger Rd.  
P.O. Box 8911  
Madison, WI 53708

(2) **RESPONSE TO PETITION.** Within 20 days after a petition is filed under sub. (1), the secretary shall issue a written notice granting or denying the petition. If the petition is granted, the secretary shall initiate a contested case proceeding under s. 227.41 (1), Stats., by issuing a hearing notice under s. ATCP 1.20. If the petition is denied, the denial notice shall specify the reasons for the denial.

Example: A notice denying a petition for declaratory ruling may be captioned as follows:

STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION	
In the Matter of John Doe,  Petitioner	Docket No. _____ NOTICE DENYING PETITION FOR DE- CLARATORY RUL- ING

History: Cr. Register, May, 1992, No. 437, eff. 6-1-92.

**ATCP 1.08 Request for financial default proceeding. (1) DIVISION FILING.** To initiate a financial default proceeding under s. 100.03 (9), 100.06 (4) or 127.14, Stats., the trade and consumer protection division shall file all of the following with the secretary:

(a) A written request, signed by the division administrator, asking that a financial default proceeding be initiated.

(b) Copies of one or more producer claims alleging a financial default, or other evidence of default under s. 100.03 (9) (a), 100.06 (4) (a) or 127.14 (1) (a), Stats.

(c) A proposed claim filing order.