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Chapter ATCP 1

ADMINISTRATIVE ORDERS AND CONTESTED CASES

Subchapter I — Definitions
ATCP 1.01 Definitions.

Subchapter II — Orders
ATCP 1.03 Special orders.
ATCP 1.04 Final orders in contested cases.

Subchapter III — Initiating a Contested Case
ATCP 1.05 Complaint requesting special order.
ATCP 1.06 Request for hearing on department action.
ATCP 1.07 Request for declaratory ruling.
ATCP 1.08 Request for financial default proceeding.

Subchapter IV — General Provisions
ATCP 1.10 Administrative law judge's authority and duties.
ATCP 1.11 Failure to appear, answer or comply with examiner's order.
ATCP 1.12 Party may appear by representative.
ATCP 1.13 Documents; filing, identification and service.
ATCP 1.14 Motions.
ATCP 1.15 Subpoenas.
ATCP 1.16 Record of oral proceedings; transcripts.

Subchapter V — Contested Case Proceedings
ATCP 1.20 Hearing notice.
ATCP 1.21 Answers; required pleadings.
ATCP 1.22 Prehearing conference.
ATCP 1.23 Discovery.
ATCP 1.24 Settlement.
ATCP 1.25 Hearing.
ATCP 1.26 Briefs.

Subchapter VI — Decisions and Judicial Review
ATCP 1.30 Proposed decision.
ATCP 1.31 Final decision.
ATCP 1.32 Award of costs and attorneys fees.
ATCP 1.33 Judicial review; certifying record to court.

Note: Chapter Ag 1 as it existed on May 31, 1992 was repealed and new ch.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) "Administrative law judge" means the secretary or an examiner whom the secretary appoints in writing, under s. 227.46 (1), Stats., to preside over a contested case proceeding.

(2) "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.

Note: 2001 Wis. Act 16 repealed ss. 100.03 and 100.06, Stats., and ch. 127, Stats.

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

Note: 2001 Wis. Act 16 repealed ss. 100.03 and 100.06, Stats., and ch. 127, Stats.

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

Note: 2001 Wis. Act 16 repealed ss. 100.03 and 100.06, Stats., and ch. 127, Stats.

(5) "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.

(6) "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.

(7) "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.

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

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

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

(11) "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.

(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 administrative law judge, if the filing pertains to a matter which is pending before the administrative law judge.

(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
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708−8911

(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 administrative law judge 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 dairy plant operator, or a grain warehousekeeper or grain dealer.

Note: 2001 Wis. Act 16 repealed ss. 100.03 and 100.06, Stats., and ch. 127, Stats.

(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, Stats., 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).

Note: 2001 Wis. Act 16 repealed ch. 127, Stats.

(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; renum. (1) to (10) to be (2) to (11) and renum. (11) to be (1) and am., am. (12) (c) and (13), Register, June, 1999, No. 522, eff. 7–1–99.

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. 88.11 (7), 94.645 (4), 94.71 (3) (c), 97.12 (3) (a), 100.19 (3), 100.20 (3), 100.201 (9) (b), 100.21 (4), 100.22 (4) (a), or 100.30 (5) (a), 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.

10. A corrective action order under s. 94.73 (2), Stats.

11. Animal health import requirements that the state veterinarian imposes on an import permit holder under s. ATCP 11.03 (1) (b), unless the department has adopted those import requirements by rule.

12. A temporary animal hold order issued under s. ATCP 10.705 or 11.705.

(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 administrative law judge 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., 11. and 12.

Note: Special orders under sub. (1) (a) 5. to 8., 11. and 12. 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 administrative law judge 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

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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; cr. (1) (a) 10., Register, August, 1994, No. 464, eff. 9−1−94; am. (1) (a) 2., Register, June 1995, No. 474, eff. 7−1−95; am. (1) (b) 6. and (3) (d), Register, June, 1999, No. 522, eff. 7−1−99; cr. (1) (a) 11. and 12., am. (2) (b) 2., Register, November, 2000, No. 539, eff. 12−1−00; **correction in (1) (a) 2. made under s. 13.93 (2m) (b) 7., Stats**.

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
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708−8911

(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 Application of Acme 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 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 (3) (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
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708−8911

(2) REQUEST FORM AND CONTENTS. Except for an oral request under s. ATCP 1.03 (3) (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.

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; am. (1), correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1996, No. 482, eff. 3−1−96.

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 appli-

cability 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
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708−8911

(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 DECLARATORY RULING

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:

Note: 2001 Wis. Act 16 repealed ss. 100.03 and 100.06, Stats., and ch. 127, Stats.

(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.

Note: 2001 Wis. Act 16 repealed ss. 100.03 and 100.06, Stats., and ch. 127, Stats.

(c) A proposed claim filing order.

(2) CLAIM FILING ORDER. Upon receiving documents from the trade and consumer protection division under sub. (1), the secretary may initiate a financial default proceeding by issuing a claim filing order. If the secretary issues a claim filing order, the department shall publish the claim filing order as required by s. 100.03 (9) (b), 100.06 (4) (a), or 127.14 (1) (a) and (b), Stats.

Note: 2001 Wis. Act 16 repealed ss. 100.03 and 100.06, Stats., and ch. 127, Stats.

Example: A claim filing order in a dairy plant default proceeding may be captioned as follows:

STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

In the Matter of the Claims of Producers for Milk Sold to Acme Dairy, Inc. Respondent	Docket No. _____ CLAIM FILING ORDER

(3) AUDITING CLAIMS; PROPOSED DECISION. The trade and consumer protection division shall audit claims filed in response to the claim filing order. Based on its audit, the trade and consumer protection division shall file with the secretary a proposed decision determining claims. The proposed decision shall include proposed findings of fact, proposed conclusions of law and a proposed order determining claims.

(4) NOTICE AND HEARING. (a) After the trade and consumer protection division files its proposed decision with the secretary under sub. (3), the department shall hold a class 2 contested case hearing on the proposed decision. To initiate the contested case proceeding, the secretary shall issue a hearing notice under s. ATCP 1.20.

(b) The notice under par. (a) shall include a copy of the proposed decision under sub. (3). The notice shall invite affected parties to present their objections, if any, at the contested case hearing. The notice may require affected parties to file their objections in writing before the hearing, by a specified date.

(c) The notice under par. (a) shall be issued to all of the following parties:

1. The respondent who is alleged to have defaulted on payment obligations to producers.

2. Any trustee or surety who may be obligated as a result of the default.

3. Each producer claimant who has filed a timely claim with the department.

(d) If any party files a timely objection to the division's proposed decision under sub. (3), the examiner shall hear that objection in the contested case hearing under par. (a).

(e) If, upon hearing under par. (a), there is no objection to the division's proposed decision and order under sub. (3), the department may adopt that proposed decision and order as the department's final decision and order in the proceeding, without further notice to the parties.

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

Subchapter IV — General Provisions

ATCP 1.10 Administrative law judge's authority and duties. (1) AUTHORITY. An administrative law judge may, on behalf of the department, preside over a contested case proceeding and issue orders regulating the conduct of the proceeding. In a contested case proceeding, unless otherwise provided by the secretary, the administrative law judge may do all of the following:

(a) Require the parties to submit supplementary pleadings in order to clarify positions or issues.

(b) Consolidate proceedings and order the joinder of parties, as appropriate.

(c) Admit intervenors as parties to a proceeding.

(d) Make procedural rulings and issue scheduling orders.

(e) Adjourn or postpone proceedings.

(f) Grant continuances or extensions of time.

(g) Administer oaths and affirmations.

(h) Issue subpoenas to compel the attendance of witnesses and the production of evidence.

(i) Make evidentiary rulings and receive relevant evidence.

(j) Regulate discovery proceedings, and issue orders to compel or limit discovery.

(k) Hold prehearing conferences.

(L) Preside over hearings and regulate the course of hearings.

(m) Require or permit the parties to file written briefs and arguments.

(n) Supervise the creation of the contested case record.

(o) If necessary, order that a written transcript of oral proceedings be prepared, and supervise preparation of the transcript.

(p) Issue proposed decisions.

(q) Advise the final decisionmaker on final decisions and orders.

(r) Impose or recommend sanctions for disobedient parties under s. ATCP 1.11.

(s) Issue final decisions and orders if appointed as final decisionmaker by the secretary.

(t) Certify the contested case record to a circuit court, if necessary for a judicial review proceeding.

(2) LIMITS ON AUTHORITY. The administrative law judge may not exercise any authority which is reserved to the secretary or final decisionmaker under this chapter, unless the secretary appoints the administrative law judge as final decisionmaker or delegates the secretary's authority to the administrative law judge in writing.

(3) IMPARTIALITY. (a) An administrative law judge shall withdraw from a contested case if the administrative law judge deter-

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mines that there is a conflict of interest or other circumstance which prevents the administrative law judge from acting impartially, or which creates an undue appearance of bias.

(b) No person who participates in the investigation or advocacy of a case, or in the decision to initiate an enforcement action in that case, may act as administrative law judge in the case.

(c) An administrative law judge is not disqualified solely because of the administrative law judge's employment with the department, or solely because the administrative law judge has presided over cases involving the same parties, facts or issues in the past.

(4) EX PARTE COMMUNICATIONS. If an administrative law judge receives an ex parte communication which violates s. 227.50 (1), Stats., the administrative law judge shall deal with the ex parte communication as provided under s. 227.50 (2), Stats.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. (1) (intro.) and (2) to (4), Register, June, 1999, No. 522, eff. 7−1−99.

ATCP 1.11 Failure to appear, answer or comply with examiner's order. (1) SANCTIONS AGAINST DISOBEDIENT PARTY. If a party, without reasonable excuse, fails to file an answer or pleading as required by s. ATCP 1.21, fails to make a required appearance in a proceeding, fails to disclose witnesses or evidence under s. ATCP 1.23 (3), fails to comply with a subpoena or order issued by the administrative law judge, or fails to comply with the provisions of this chapter, the administrative law judge may take any of the following actions which the administrative law judge considers just in relation to the disobedient party's failure:

(a) Accept an opposing party's allegations as true, and issue a decision and order in the case based on those allegations.

(b) By order, disqualify the disobedient party from further participation in the proceedings.

(c) By order, stay further proceedings until the disobedient party cures the failure.

(d) By order, prohibit the disobedient party from arguing designated issues or introducing designated matters in evidence.

(e) By order, dismiss the proceeding, or any part of the proceeding, if the proceeding was initiated at the request of the disobedient party.

Note: A person who, in willful violation of a department subpoena or order, fails to appear as a witness or fails to produce evidence in a contested case proceeding, may be coerced as provided in ss. 93.14 (3) and 885.12, Stats., or may be subject to criminal penalties as provided under s. 93.21 (4), Stats.

(2) NOTICE; OPPORTUNITY TO CONTEST. (a) Before issuing an order under sub. (1), the administrative law judge shall mail a copy of the proposed order to the disobedient party, and shall give the disobedient party not less than 10 days to show cause why the proposed order should not be issued. This paragraph does not apply to proposed orders issued under par. (b).

(b) If the administrative law judge is not the final decisionmaker, and if an order under sub. (1) would constitute a final order in the contested case, the administrative law judge shall issue the order as a proposed order under s. ATCP 1.30. The final decisionmaker shall issue any final order under s. ATCP 1.31 after the final decisionmaker considers objections to the proposed order under s. ATCP 1.30 (2). An order dismissing any party, proceeding or cause of action is a final order under this paragraph.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. (1) (intro.) and (2) (a) and (b), Register, June, 1999, No. 522, eff. 7−1−99.

ATCP 1.12 Party may appear by representative. (1) GENERAL. In any contested case, a party may be represented by an attorney or other authorized representative. If a party's representative is not an attorney, the represented party shall file a written authorization for the record stating that the representative has full authority to act on the party's behalf in the contested case.

(2) ACTIONS BINDING. Actions and omissions by an authorized representative are binding on the authorizing party, as if the authorizing party had taken or omitted those actions directly.

(3) SERVICE OF DOCUMENTS. If a party appears by a representative, a document is deemed to be served on that party if it is served on the party's representative.

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

ATCP 1.13 Documents; filing, identification and service. (1) DOCKET FILE. The department shall create a docket file for every contested case. The docket file shall be captioned with the docket number and title of the case, "In the matter of ..... ". The docket file shall include the record of the case and any other material filed in connection with the case, subject to the direction of the administrative law judge or final decisionmaker.

(2) DOCUMENTS CAPTIONED. Pleadings, notices, motions, briefs, stipulations, decisions, orders and other documents filed in a contested case shall, to the extent practicable, be captioned with all of the following:

(a) The name of the department.

(b) The title of the contested case.

(c) The docket file number assigned to the contested case.

(d) The name of the document.

(3) FILING DEADLINES. If a party is required to file a document on or before a specified date, the party complies with the filing deadline if the party mails the document on or before the deadline date.

(4) DOCUMENTS FILED BY PARTIES; SERVICE ON OTHER PARTIES. (a) Except as provided under par. (d), whenever a party files a document in a contested case, that party shall mail or deliver a copy of the document to every other party in the case.

(b) By filing a document in a contested case, the filing party certifies that he or she has mailed or delivered a copy of the filed document to every other party as required by par. (a). No other affidavit of mailing or service is required.

(c) If any party claims not to have received a copy of any document filed under par. (a), an affidavit of mailing constitutes presumptive proof of service.

(d) Paragraphs (a) to (c) do not apply to a complaint, request for hearing, or other document filed under subch. III to initiate a contested case.

Note: When the department initiates a contested case in response to a complaint, request for hearing, or other document filed under subch. III, the department provides notice to the other parties in conjunction with the department's hearing notice under s. ATCP 1.20. Accordingly, the party filing the complaint or request for hearing need not serve a copy on the other parties at the time of filing.

(5) DOCUMENTS ISSUED BY SECRETARY, FINAL DECISIONMAKER OR ADMINISTRATIVE LAW JUDGE. Whenever the secretary, final decisionmaker or administrative law judge issues a hearing notice, order, subpoena or other process in a contested case, a copy of that document shall be mailed or delivered to each party in the case. Service by mail may be proved by a signed return receipt. Proof of mailing does not constitute presumptive proof of service.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. (1) and (5), Register, June, 1999, No. 522, eff. 7−1−99.

ATCP 1.14 Motions. (1) GENERAL. Except as provided under subch. III, a person requesting an order from the administrative law judge or final decisionmaker shall make that request in the form of a motion. A motion shall clearly describe the order sought, and the grounds for granting that order. A person may move the administrative law judge or final decisionmaker for any substantive or procedural order authorized by law, including either of the following:

(a) An order dismissing a party or case for lack of personal or subject matter jurisdiction. A motion to dismiss for lack of jurisdiction may be made at any point in the proceeding, but should be made as soon as the basis for the motion becomes apparent to the moving party.

(b) An order dismissing a case, prior to hearing, for failure to state a claim on which relief can be granted.

(2) FORM OF MOTION. Every motion, except the following, shall be submitted in writing:

(a) A motion made orally at a prehearing conference or hearing, unless the administrative law judge requires that the motion be submitted in writing.

(b) An oral motion for an extension of time, if the administrative law judge agrees to hear that oral motion.

(3) WRITTEN MOTIONS. A person filing a written motion shall comply with s. ATCP 1.13 (2) and (4). If the moving person offers any affidavit, brief or other document in support of a motion, the moving person shall include a copy of that document with the motion.

(4) MOTION HEARING; NOTICE. (a) Except as provided under par. (b) or (c), the administrative law judge or final decisionmaker shall give all parties an opportunity to argue a motion before the administrative law judge or final decisionmaker rules on the motion. The administrative law judge shall notify every party of any scheduled motion hearing.

(b) Paragraph (a) does not prohibit a final decisionmaker from issuing a summary special order which is authorized by law.

(c) An administrative law judge or final decisionmaker may, on an ex parte basis, rule on a motion for extension of time.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. (1) (intro.), (2) (a), (b), (4) (a) and (c), Register, June, 1999, No. 522, eff. 7−1−99.

ATCP 1.15 Subpoenas. (1) GENERAL. The final decisionmaker, administrative law judge, or a party's attorney of record may issue a subpoena in a contested case to compel the attendance of any witness or the production of relevant evidence.

(2) REQUEST FOR SUBPOENA. A party may request the administrative law judge or final decisionmaker to issue a subpoena on behalf of that party. The requesting party shall submit the proposed subpoena for signature by the administrative law judge or final decisionmaker. The administrative law judge or final decisionmaker shall not sign a subpoena in blank. The requesting party is responsible for serving the subpoena, and for paying any service, witness or travel fees.

Note: A person may request form subpoenas from the administrative law judge which may be used in preparing subpoenas under this section. If a person fails to comply with a department subpoena, that person may be compelled as provided under s. 885.12, Stats., or may be subject to penalties under s. 93.21 (4), Stats.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. Register, June, 1999, No. 522, eff. 7−1−99.

ATCP 1.16 Record of oral proceedings; transcripts. (1) RECORD OF ORAL PROCEEDINGS. The department shall make a stenographic or electronically recorded record of oral proceedings in a contested case. Proceedings shall be electronically recorded unless the administrative law judge determines that a stenographic record is necessary.

(2) ELECTRONIC RECORDING; COPIES. If the department makes an electronic recording of oral proceedings in a contested case, the department shall furnish a copy of the recording, at cost, to any person who requests a copy. The fee for an audio cassette recording is $5.00 per cassette or any part of a cassette.

(3) WRITTEN TRANSCRIPT. Upon request by any person, the department shall provide the requester with a written transcript of oral proceedings in a contested case. The written transcript may be made from an electronic recording of the oral proceedings. The department shall charge a fee for the written transcript as provided under sub. (4). If the department provides a written transcript of a contested case proceeding to any requester, the department shall inform every party to that case that the written transcript is available.

(4) TRANSCRIPT FEES. If the department provides a written transcript to a requester under sub. (3), the department shall charge a fee as follows:

(a) Except as provided under par. (b) or (c), the department shall charge the requester a transcription fee of $1.75 per page and a copying fee of $.25 per page. If 2 or more persons request a written transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcription fee equitably among the requesters.

(b) If the department prepares a written transcript for its own purposes, or at the request of any party for purposes of a judicial review proceeding under s. 227.53, Stats., the department shall assume the costs of transcription. Any person may obtain a copy of the transcript for a copying fee of $.25 per page.

(c) The department may provide a written transcript free of charge to a requesting party if the requesting party demonstrates, to the department's satisfaction, that the requesting party is impecunious and has a legal need for the transcript.

(5) INFORMATION PROTECTED FROM DISCLOSURE. This section does not require the department to disclose information in violation of an order under s. ATCP 1.25 (2) (b).

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. (1), Register, June, 1999, No. 522, eff. 7−1−99.

Subchapter V — Contested Case Proceedings

ATCP 1.20 Hearing notice. To initiate a contested case proceeding, the secretary shall issue a hearing notice to each of the parties. The hearing notice shall be signed and dated by the secretary, and shall be captioned as provided in s. ATCP 1.13 (2). The hearing notice shall include all of the following:

(1) NATURE OF THE PROCEEDING. A statement of the general nature of the proceeding, including whether the proceeding is a class 1, class 2, or class 3 proceeding under s. 227.01 (3), Stats.

(2) LEGAL AUTHORITY. A statement of the department's legal authority to conduct the contested case proceeding.

(3) ADMINISTRATIVE LAW JUDGE. The name of the administrative law judge who is appointed to preside over the contested case, unless the secretary intends to preside in person.

(4) FINAL DECISIONMAKER. The name and position of the final decisionmaker who is appointed to issue a final decision in the case, unless the secretary intends to issue the final decision.

(5) HEARING. Except as provided under sub. (6), the date, time and location at which a hearing will be held in the proceeding. Except in emergency, or by agreement of all parties, the hearing date shall be not less than 10 days after the hearing notice is issued. If any party is required to file an answer or other pleading under s. ATCP 1.21, the hearing date shall not precede the last date for filing the answer or other pleading.

(6) PREHEARING CONFERENCE. Instead of scheduling a hearing, the hearing notice may schedule a prehearing conference under s. ATCP 1.14. The hearing notice may specify that the prehearing conference is to be conducted by telephone, or it may authorize the parties to request a telephone prehearing conference.

Note: If the hearing notice schedules a prehearing conference, rather than a hearing, the administrative law judge will schedule the hearing after consulting the parties.

(7) MATTERS ASSERTED. A short and plain statement of the matters asserted. This statement may incorporate, by reference, the complaint or pleading filed by the initiating party under subchapter III. If the contested case is initiated in response to a complaint under s. ATCP 1.05, a copy of the complaint shall be included with the hearing notice.

(8) REQUIRED ANSWER OR PLEADING. A notice to affected parties that they are required to file an answer or responsive pleading, if such is the case. If a proceeding is initiated in response to a complaint under s. ATCP 1.05, the notice shall inform each respondent named in the complaint that he or she must file an answer to the complaint under s. ATCP 1.21 (1).

File inserted into Admin. Code 9−1−2002. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

(9) CONSEQUENCES OF FAILING TO APPEAR OR FILE ANSWER. A statement that, if a party fails to appear or file an answer or pleading as required, the department may issue a decision and order against that party without further notice or hearing.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. (3), Register, June, 1999, No. 522, eff. 7−1−99.

ATCP 1.21 Answers; required pleadings. (1) ANSWER. (a) If a respondent is named in a complaint under s. ATCP 1.05, and is served with a copy of the complaint and the hearing notice issued under s. ATCP 1.20, the respondent shall file a written answer to the complaint. The respondent shall file the answer within 20 days after the complaint and hearing notice are served on the respondent. Upon request by a respondent, the administrative law judge may grant the respondent an extension of time to file an answer.

(b) An answer under par. (a) shall be in writing, and shall be captioned as provided in s. ATCP 1.13 (2). The answer shall be signed by the respondent or the respondent's representative, and shall briefly state the respondent's position with respect to each allegation in the complaint.

(2) OTHER PLEADINGS. In a hearing notice under s. ATCP 1.20, the secretary may require the parties to file written pleadings in order to identify the positions of the parties and the matters at issue in the proceeding. The administrative law judge may require the parties to file any supplementary pleadings which the administrative law judge considers necessary.

(3) AMENDMENTS. A party may, with leave from the administrative law judge, amend an answer or pleading at any point in a contested case proceeding. The administrative law judge may withhold leave if the amendment 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; am. (1) (a), (2) and (3), Register, June, 1999, No. 522, eff. 7−1−99.

ATCP 1.22 Prehearing conference. (1) GENERAL. The hearing notice under s. ATCP 1.20 may require the parties to appear at a prehearing conference. The administrative law judge may also require the parties to attend one or more prehearing conferences.

Note: A prehearing conference is normally held in every contested case proceeding unless the administrative law judge determines that a prehearing conference is unnecessary. Prehearing conferences are electronically recorded.

(2) PURPOSES. A prehearing conference may be held to consider any of the following:

(a) Possibilities for settling the case.

(b) The clarification of issues.

(c) The necessity or desirability of amending the pleadings.

(d) The possibility of obtaining stipulations of facts, law or evidence that will avoid unnecessary arguments or offers of proof.

(e) The identification of witnesses and evidence for hearing.

(f) Prehearing motions and discovery requests.

(g) The scheduling of proceedings in the contested case, including the date, time and location of hearing.

(h) Other matters which may aid the orderly consideration and disposition of the contested case.

(3) MEMORANDUM. At the conclusion of a prehearing conference, the administrative law judge shall prepare a memorandum for the record under s. 227.44 (4) (b), Stats., which summarizes the action taken and the agreements reached at the conference. The administrative law judge may, in conjunction with the memorandum, issue any procedural orders which may be necessary to implement the actions taken at the prehearing conference. Copies of the memorandum shall be mailed or delivered to all parties.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. (1) and (3), Register, June, 1999, No. 522, eff. 7−1−99.

ATCP 1.23 Discovery. (1) CLASS 2 CONTESTED CASES. In a class 2 contested case, every party is entitled to discovery as provided in s. 227.45 (7) and ch. 804, Stats.

(2) OTHER CONTESTED CASES. In a class 1 or class 3 contested case, the administrative law judge may by order authorize discovery by any party under s. 227.45 (7) and ch. 804, Stats. Except as provided in s. 227.45 (7) (a) to (d), Stats., the decision to grant or deny a discovery request in a class 1 or class 3 contested case is subject to the administrative law judge's discretion. The administrative law judge may issue a discovery order in response to a motion by any party, and may impose such limits on discovery as the administrative law judge considers appropriate.

(3) EXCHANGE OF EVIDENCE AND WITNESS LISTS. (a) Except as provided under par. (b), and unless the administrative law judge directs otherwise, every party in a contested case shall provide every other party with all of the following at least 7 days prior to hearing:

1. The name and address of every person whom the party intends to call as a witness in the proceeding. Proposed expert witnesses shall be identified as such.

2. A copy of every document which the party intends to offer as evidence in the proceeding.

3. A description of every item of physical evidence which the party intends to offer as evidence in the proceeding. Upon request by any other party, the party offering the physical evidence shall permit the requesting party to make reasonable inspection of the physical evidence prior to hearing.

(b) Paragraph (a) does not apply to witnesses or evidence used solely to impeach witness testimony.

(4) PROTECTIVE ORDERS. Upon motion by any party, and for good cause shown, the administrative law judge may issue a protective order under s. 804.01 (3), Stats., limiting discovery. The administrative law judge may issue a protective order in any contested case, including a class 2 contested case.

(5) ORDER COMPELLING DISCOVERY. If a person fails to respond to a discovery request under this section, the party seeking discovery may move the administrative law judge for an order compelling discovery. Upon motion by any party, the administrative law judge may issue an order compelling discovery under s. 804.12, Stats.

Note: If a party fails to comply with sub. (3), or with an administrative law judge's order under sub. (2), (4) or (5), the party is subject to possible sanctions under s. ATCP 1.11. If any person willfully fails to testify or provide evidence in compliance with an administrative law judge's order under sub. (5), that person may be coerced under ss. 93.14 (3) and 885.12, Stats., or may be subject to criminal penalties as provided under s. 93.21 (3) or (4), Stats.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. (2), (3) (a), (4) and (5), Register, June, 1999, No. 522, eff. 7−1−99.

ATCP 1.24 Settlement. (1) GENERAL. At any point in a contested case proceeding, the parties may agree to settle the case. Parties wishing to settle a case shall file both of the following:

(a) A written stipulation, signed by the parties or their representatives, setting forth the agreed terms of settlement.

(b) A proposed order disposing of the case, for signature by the final decisionmaker.

(2) APPROVAL. A proposed settlement under sub. (1) is subject to approval by the final decisionmaker. The final decisionmaker signifies approval by signing the proposed order submitted by the parties.

(3) SETTLEMENT PRIOR TO COMPLAINT FILING. (a) A respondent, as part of a stipulation under sub. (1), may waive the filing of a complaint under s. ATCP 1.05, and may consent to the entry of a proposed special order without further notice or hearing.

(b) The secretary may sign a proposed special order, without the filing of a complaint under s. ATCP 1.05, if each respondent named in the order agrees to waive the filing of a complaint. The

waiver shall be included as part of the stipulation accompanying the proposed order under sub. (1).

(c) Before filing a stipulation and proposed special order under s. 100.20, Stats., the department of justice shall provide a copy of the stipulation and proposed order to the trade and consumer protection division.

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

ATCP 1.25 Hearing. (1) HEARING TIME AND LOCATION. (a) A contested case hearing shall be held at a time and location specified in the hearing notice under s. ATCP 1.20, or at a time and location specified by the administrative law judge. In determining the hearing time and location, the administrative law judge shall consider all of the following:

1. The location and convenience of the parties.

2. The location and convenience of department personnel involved in the proceeding.

3. The location and convenience of witnesses involved in the proceeding.

4. Public interest and convenience in attending the proceeding.

(b) A hearing, or any portion of a hearing, may be held by telephone if the administrative law judge determines that the telephone hearing is justified for the convenience of any party or witness, and that no party is unfairly prejudiced by the telephone hearing.

(c) The administrative law judge may adjourn, recess or postpone a hearing as the administrative law judge deems appropriate.

(2) HEARINGS OPEN TO PUBLIC. (a) Except as ordered by the administrative law judge, every contested case hearing is open to attendance by the public.

(b) Upon motion by any party, the administrative law judge may do either of the following:

1. By order, prohibit the disclosure of information or restrict attendance at any portion of a proceeding if the administrative law judge determines that the order is necessary to prevent disclosure of a trade secret or other information which is protected by law from public disclosure.

2. By order, exclude prospective witnesses from attending portions of a proceeding if the administrative law judge determines that the order will promote the interests of justice. Exclusionary orders shall conform to s. 906.15, Stats.

(c) The administrative law judge may, by order, prohibit any person from further attendance at a proceeding if that person engages in disruptive behavior which inhibits the orderly conduct of the proceeding.

(3) OPENING STATEMENTS AND CLOSING ARGUMENTS. Opening statements and closing arguments are optional, and do not constitute evidence. The administrative law judge may limit opening and closing arguments as the administrative law judge deems necessary.

(4) ORDER OF HEARING. (a) Except as provided under par. (b) or (c) or other applicable law, the party requesting a contested case hearing has the initial burden of going forward with proof at the hearing.

(b) If the propriety of a division's order is at issue in a contested case, the administrative law judge may require the division to go forward with proof that the order was proper.

(c) The administrative law judge may determine the order of proof in a contested case, in order to promote an orderly consideration of the case.

(5) EVIDENCE. The receipt of testimony and other evidence in contested cases is subject to s. 227.45, Stats. The administrative law judge shall admit evidence which has reasonable probative value, but shall exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which lacks reasonable probative value.

(6) WITNESSES. (a) All witness testimony shall be given under oath or affirmation. The administrative law judge shall administer the oath or affirmation to each witness.

(b) At the discretion of the administrative law judge under sub. (1) (b), a witness may testify by telephone rather than in person.

(c) Cross−examination is not limited to matters covered on direct examination. The administrative law judge may limit cross−examination, as necessary, to avoid needless waste of time or undue harrassment of witnesses.

(d) Leading questions may not ordinarily be used in the direct examination of witnesses, but may be used in the cross−examination of witnesses. A party may use leading questions in the direct examination of either of the following:

1. An opposing party, or an employee or agent of an opposing party.

2. A witness who is hostile, unwilling, adverse or evasive, if the administrative law judge permits the examining party to use leading questions in the examination of that witness.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. (1) (a) (intro.), (b) and (c), (2), (3), (4) (b) and (c), (5), (6) (a) to (c) and (d) 2., Register, June, 1999, No. 522, eff. 7−1−99.

ATCP 1.26 Briefs. The administrative law judge may require or permit the parties to file arguments in the form of written briefs, or in the form of a proposed decision. The administrative law judge may establish deadlines for the filing of briefs, and may refuse to consider any brief which is not filed on a timely basis.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. Register, June, 1999, No. 522, eff. 7−1−99.

Subchapter VI — Decisions and Judicial Review

ATCP 1.30 Proposed decision. (1) ISSUED BY ADMINISTRATIVE LAW JUDGE. If the administrative law judge is not the final decisionmaker in a contested case, the administrative law judge shall prepare a proposed decision for consideration by the final decisionmaker. The proposed decision shall include proposed findings of fact, proposed conclusions of law, a proposed final order, and the administrative law judge's signed opinion explaining the proposed decision. A copy of the proposed decision shall be mailed or delivered to every party to the contested case.

(2) OBJECTIONS BY PARTIES. (a) Any party may file written objections to the administrative law judge's proposed decision under sub. (1). Unless the final decisionmaker specifies a different time period, an objecting party shall file objections within a time period specified by the administrative law judge. The objecting party shall identify the legal or factual grounds for each objection, and may file a written brief or argument in support of the objections.

(b) A final decisionmaker may do either of the following:

1. Extend or limit the time for filing objections.

2. Permit the parties to make further oral or written arguments to the final decisionmaker.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. (1) and (2) (a), Register, June, 1999, No. 522, eff. 7−1−99.

ATCP 1.31 Final decision. (1) GENERAL. The final decisionmaker, after considering any proposed decision and objections under s. ATCP 1.30, shall issue the final decision in a contested case. The final decision shall include findings of fact, conclusions of law and an order.

(2) ADMINISTRATIVE LAW JUDGE AS FINAL DECISIONMAKER. If the administrative law judge is also the final decisionmaker, the administrative law judge may do either of the following:

(a) Issue a proposed decision under s. ATCP 1.30 before issuing a final decision under sub. (1).

(b) Issue a final decision under sub. (1) without first issuing a proposed decision under s. ATCP 1.30.

File inserted into Admin. Code 9−1−2002. May not be current beginning 1 month after insert date. For current adm. code see:
http://docs.legis.wisconsin.gov/code/admin_code

(3) IDENTIFICATION OF PARTIES; SERVICE ON PARTIES. The department shall mail or deliver a copy of the final decision to every party in a contested case. The name and address of every party shall be included with the final decision.

(4) VARIANCE FROM PROPOSED DECISION. If the final decision varies from the administrative law judge's proposed decision, the final decision shall explain the reasons for the variation.

(5) PETITION FOR REHEARING OR JUDICIAL REVIEW; NOTICE OF RIGHTS. The following statement, or its equivalent, shall be included with the final decision pursuant to s. 227.48, Stats.:

"A party adversely affected by this final decision may file a written petition for rehearing under s. 227.49, Stats., within 20 days after he or she is served with the decision under s. 227.48. A petition for rehearing, if any, shall specify in detail the grounds for rehearing.

A party adversely affected by this final decision may also seek judicial review under ss. 227.52 and 227.53, Stats., by filing a petition for judicial review within 30 days after he or she is served with the decision under s. 227.48. In any petition for judicial review, the Wisconsin Department of Agriculture, Trade and Consumer Protection shall be named as the respondent."

(6) MOTION FOR COSTS AND ATTORNEYS FEES; NOTICE OF RIGHTS. If a prevailing party in a contested case may be entitled to costs and attorneys fees under s. 227.485, Stats., the final decision shall include notice of the procedure for requesting an award of costs and attorneys fees under s. ATCP 1.32.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. (2) and (4), Register, June, 1999, No. 522, eff. 7−1−99; **CR 01−028: r. and recr. (2), Register September 2001 No. 549, eff. 10−1−01.**

ATCP 1.32 Award of costs and attorneys fees. **(1)** MOTION; ITEMIZED STATEMENT. If an individual, small non−profit corporation or small business is a prevailing party in a contested case, that prevailing party may submit a motion for costs and attorneys fees under s. 227.485, Stats. A prevailing party shall submit the motion within 30 days after the administrative law judge issues a proposed decision under s. ATCP 1.30 (1) or s. ATCP 1.31 (2) (a) or, if the administrative law judge issues a final decision under s. ATCP 1.31 (2) (b) without issuing a proposed decision, within 30 days after the administrative law judge issues that final decision.

(2) REPLY. A division or state agency which is a party to the contested case, and whose action gave rise to the motion for costs and attorneys fees under sub. (1), may file a written response to that motion. The response shall be filed within 15 days after the prevailing party's motion is filed under sub. (1).

(3) DECISION. (a) The administrative law judge shall issue a decision granting or denying a motion for costs and attorneys fees under sub. (1). The administrative law judge may make a partial award of costs and attorneys fees, as provided under s. 227.485 (4), Stats. The administrative law judge's decision shall include findings of fact, conclusions of law, and an order granting or denying an award. Except as provided under par. (b), the administrative law judge's decision is final and shall comply with s. ATCP 1.31 (1) to (5).

(b) If the administrative law judge is not the final decisionmaker in a contested case, the administrative law judge's decision under par. (a) shall be issued as a proposed decision. Within 15 days after the administrative law judge issues a proposed decision under this paragraph, the parties may file written objections to the proposed decision. After considering the written objections, the final decisionmaker shall issue a final decision granting or denying an award of costs and attorneys fees. The final decision shall comply with s. ATCP 1.31 (1) to (5).

(c) A final decision under this subsection is subject to judicial review under s. 227.52, Stats. A party may seek judicial review of a final decision granting or denying an award of costs and attorneys fees, regardless of whether the party petitions for judicial review of the department's final decision on the merits of the contested case.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. (3) (a) and (b), Register, June, 1999, No. 522, eff. 7−1−99; **CR 01−028: am. (1), Register September 2001 No. 549, eff. 10−1−01.**

ATCP 1.33 Judicial review; certifying record to court. If a party seeks judicial review of a contested case decision under s. 227.52, Stats., the department shall certify the record of the contested case proceeding to the reviewing court as provided in s. 227.55, Stats. The administrative law judge shall, on behalf of the department, certify the contested case record to the court.

History: Cr. Register, May, 1992, No. 437, eff. 6−1−92; am. Register, June, 1999, No. 522, eff. 7−1−99.