

**ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING AND REPEALING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection adopts the
2 following order to repeal ATCP 92.01(1), (6) to (9) and (12), and 92.04; to amend ATCP
3 1.32(1), 29.56(1)(e)4., 30.30(17), 57(title), 91.06(note), 98.08(1)(b), 98.08(3)(c), 98.22(2)(a),
4 101(title), 109(title), 110(title), 110.02(3)(d), 110.02(7)(c), 110.05(2)(intro.), 111(title),
5 116.01(10), 118.02(2)(b) and 121.02; to renumber ATCP 92.01(2) to (5), (10), (11), (11m) and
6 (13) to (15); and to repeal and recreate ATCP 1.31(2) and 82.04(3); relating to minor remedial
7 drafting changes to department rules.

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

Statutory Authority: 93.07(1), 94.69, 97.42(4), 98.03(2), 100.03(15) and (17), 100.20(2)
and 227.11, Stats.

Statutes Interpreted: 94.67 to 94.71, 97.42, 98.03, 98.12, 98.146, 100.03, 100.20, and
subch. III of ch. 227, Stats.

This rule makes the following minor remedial drafting changes to current DATCP rules:

- Modifies ch. ATCP 1 (administrative orders and contested cases) to be consistent with s. 227.485, Stats., and the Wisconsin Court of Appeals decision in *Gordon v. State Medical Examining Board*, 225 Wis. 2d 552(Ct. App. 1999). This rule clarifies that a prevailing party filing a motion for costs and attorneys fees in an administrative contested case must file that motion within 30 days after the department issues its proposed (not final) decision in the case. If the department issues its final decision without first issuing a proposed decision, the prevailing party may file the motion within 30 days after the department issues its final decision. Under current law, the administrative law judge who hears the case must issue a proposed decision if the administrative law judge is not the final decisionmaker. This rule clarifies (per current law) that if the administrative law judge is the final decisionmaker, the administrative law judge may issue a final decision without first issuing a proposed decision.

- Clarifies the license expiration dates for bulk milk weigher and sampler licenses. This rule clarifies (per current law) that the license is a 2-year, not a 3-year license. A license normally expires on September 30. But if the department issues an original license prior to September 30 of any year, based on an application received after August 15 of that year, the license expires on the 3rd September 30 after the department issues the license.
- Clarifies current rules related to home improvement contracts. Under current rules (ch. ATCP 110), some home improvement contracts must be in writing. A home improvement contract must contain certain disclosures if (1) current rules require a written contract or (2) *the contract is prepared on the seller's "pre-printed contract form."* This rule clarifies the second condition, which has been somewhat difficult to interpret. Under this rule, a home improvement contract must contain certain disclosures if (1) current rules require a written contract or (2) *the buyer signs a written contract.* This rule makes parallel modifications to other rule provisions dealing with contract changes.
- Repeals obsolete rule provisions related to motor fuel price posting, including provisions authorizing the temporary use of so-called "pennywheel conversion devices." These temporary provisions had a stated "sunset" date of December 31, 1998, and are no longer in effect.
- Clarifies current prohibitions related to "referral selling plans" (ATCP 121). Under current rules, a "referral selling plan" means "any method of sale where the seller or lessor, as an inducement for a consumer sale, offers compensation to a prospective buyer or lessee either for (a) names of other prospective buyers or lessees, or (b) otherwise aiding the seller or lessor in making consumer sales." A referral selling plan operates like a pyramid scheme or lottery. Each buyer purchases in reliance upon promised future payments that *may* result if the buyer refers other sales prospects who purchase in turn. But the payments may never occur, and the "chain" of prospects inevitably breaks. In 1968, the department prohibited referral selling plans unless the seller compensates the buyer *before* making any sale to *that* buyer (thus eliminating the element of "chance"). This rule clarifies but does not change the current prohibition.
- Eliminates obsolete references to statutes or rule provisions that no longer exist, and corrects obsolete references to statutes or rule provisions that have been changed.
- Amends several rule titles, to shorten or clarify those titles.
- Corrects a number of erroneous cross-references in current rules.
- Makes non-substantive drafting and organizational changes.

1

SECTION 1. ATCP 1.31(2) is repealed and recreated to read:

1 ATCP 1.31(2) ADMINISTRATIVE LAW JUDGE AS FINAL DECISIONMAKER. If the
2 administrative law judge is also the final decisionmaker, the administrative law judge may do
3 either of the following:

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

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

8 **SECTION 2.** ATCP 1.32(1) is amended to read:

9 ATCP 1.32(1) MOTION; ITEMIZED STATEMENT. If an individual, small non-profit
10 corporation or small business is a prevailing party in a contested case, that prevailing party may
11 submit a motion for costs and attorneys fees under s. 227.485, Stats. A prevailing party shall
12 submit the motion, ~~if any,~~ within 30 days after the ~~final decisionmaker issues the final decision~~
13 ~~and order under sub. (1)~~ administrative law judge issues a proposed decision under s. ATCP
14 1.30(1) or s. ATCP 1.31(2)(a) or, if the administrative law judge issues a final decision under s.
15 ATCP 1.31(2)(b) without issuing a proposed decision, within 30 days after the administrative
16 law judge issues that final decision.

17 **SECTION 3.** ATCP 29.56(1)(e)4. is amended to read:

18 ATCP 29.56(1)(e)4. Pesticide applications made by the department or its agent pursuant
19 to s. 94.01 or 94.02, Stats., or ch. ATCP 21.

20 **SECTION 4.** ATCP 30.30(17) is amended to read:

21 ATCP 30.30(17) “Prohibition area” means an area in which any atrazine product is
22 prohibited under ~~subch. III~~ this subchapter.

23 **SECTION 5.** Chapter ATCP 57(title) is amended to read:

1 Chapter ATCP 57(title) ~~PROCESSING, IDENTIFICATION AND~~
2 ~~TRANSPORTATION OF INEDIBLE MEAT AND POULTRY PRODUCTS~~

3 **SECTION 6.** ATCP 82.04(3) is repealed and recreated to read:

4 ATCP 82.04(3) LICENSE EXPIRATION. (a) Except as provided in par. (b), a bulk milk
5 weigher and sampler license expires on the second September 30 following the date on which the
6 department issues or renews the license.

7 (b) If the department issues or renews a license before September 30 of any year in
8 response to an application filed after August 15 of that year, the license expires on the third
9 September 30 following the date on which the department issues or renews the license.

10 **SECTION 7.** ATCP 91.06(note) is amended to read:

11 **NOTE:** ~~Section~~ According to s. 98.12, Stats., requires that ice cream, ice milk, water ices
12 and other frozen desserts packaged prior to sale may must be sold only by fluid
13 measure in containers with capacities of one half liquid pint, one liquid pint, one
14 liquid quart or a multiple of one liquid quart unless they are packaged at the time
15 of retail sale or sold in quantities of less than one-half pint.
16

17 **SECTION 8.** ATCP 92.01(1), (6) to (9) and (12) are repealed.

18 **SECTION 9.** ATCP 92.01(2) to (5), (10), (11), (11m), and (13) to (15) are renumbered
19 ATCP 92.01(1) to (10).

20 **SECTION 10.** ATCP 92.04 is repealed.

21 **SECTION 11.** ATCP 98.08(1)(b) is amended to read:

22 ATCP 98.08(1)(b) If a contractor rejects vegetables tendered under the contract, or
23 declines for any reason to harvest vegetables grown under the contract, the contractor shall pay
24 the producer the full amount, if any, which the contractor owes under the contract for the
25 rejected ~~fruits or~~ vegetables or the unharvested acreage. Unless the parties agree on an earlier
26 payment date, the contractor shall pay the producer by the 15th day of the month immediately

1 following the month in which the producer tenders the vegetables, or in which the contractor
2 notifies the producer that the acreage will not be harvested.

3 **SECTION 12.** ATCP 98.08(3)(c) is amended to read:

4 ATCP 98.08(3)(c) If a producer tenders or delivers vegetables to a contractor after
5 December 31 of any registration year, the contractor shall pay the producer the full amount owed
6 for those vegetables by the 15th day of the month following the month in which the ~~fruits or~~
7 vegetables were tendered or delivered, or by the 30th day after tender or delivery, which occurs
8 later.

9 **SECTION 13.** ATCP 98.22(2)(a) is amended to read:

10 ATCP 98.22(2)(a) Every notice under sub. (1) shall contain the following verbatim
11 statement conspicuously printed under the title:

12 “Under Wisconsin law, if a contractor procures vegetables from producers for use in
13 processing, the contractor must be registered with the Wisconsin Department of
14 Agriculture, Trade and Consumer Protection, and must demonstrate a reasonable degree
15 of financial responsibility. The law does not guarantee that contractors will pay
16 producers for their vegetables. Every producer has some responsibility for determining
17 the credit worthiness of the contractor for whom the producer grows vegetables. To
18 qualify for registration, a contractor must do at least one of the following: (1) pay cash
19 on delivery for all vegetables; (2) file financial statements with the department showing
20 that the contractor meets certain minimum financial standards; (3) file security with the
21 department equal to at least 75% of the contractor’s anticipated maximum liability to
22 producers. ~~(Some contractors may file only 25% security for the registration year~~
23 ~~beginning February 1, 1997, and 50% security for the registration year beginning~~
24 ~~February 1, 1998.)”~~

25
26 **SECTION 14.** Chapter ATCP 101(title) is amended to read:

27 Chapter ATCP 101(title) **VEGETABLE PROCUREMENT ~~TRADE PRACTICES~~**

28 **SECTION 15.** Chapter ATCP 109(title) is amended to read:

29 Chapter ATCP 109(title) **FREEZER MEAT AND FOOD SERVICE ~~PLAN TRADE~~**
30 **PRACTICES PLANS**

31 **SECTION 16.** Chapter ATCP 110(title) is amended to read:

1 Chapter ATCP 110(title) **HOME IMPROVEMENT TRADE PRACTICES**

2 **SECTION 17.** ATCP 110.02(3)(d) is amended to read:

3 ATCP 110.02(3)(d) Substitute products or materials for those specified in the home
4 improvement contract, or for those which the seller represented would be used in the home
5 improvement, without the prior consent of the buyer. If a written home improvement contract is
6 required under s. ATCP 110.05(1) or the ~~seller uses a pre-printed home improvement contract~~
7 ~~form~~ buyer signs a written contract, the buyer's consent under this paragraph shall also be in
8 writing.

9 **SECTION 18.** ATCP 110.02(7)(c) is amended to read:

10 ATCP 110.02(7)(c) Fail to give the buyer timely notice of any impending delay in
11 contract performance, if performance will be delayed beyond a deadline specified in the contract.
12 The notice shall specify the reasons for the delay, and shall specify new proposed deadlines by
13 which the seller will begin and complete the work. If a written home improvement contract is
14 required under s. ATCP 110.05(1) or the ~~seller uses a pre-printed home improvement contract~~
15 ~~form~~ buyer signs a written contract, no change in performance deadlines is effective unless the
16 buyer agrees in writing to the change.

17 **SECTION 19.** ATCP 110.05(2)(intro.) is amended to read:

18 ATCP 110.05(2)(intro.) If sub. (1) requires a written home improvement contract ~~is~~
19 ~~required under sub. (1), or if~~ or the buyer signs a written ~~home improvement contract is prepared~~
20 ~~using the seller's pre-printed contract form~~, the written contract shall be signed by all parties and
21 shall clearly, accurately and legibly set forth all material terms and conditions of the contract,
22 including:

23 **SECTION 20.** Chapter ATCP 111(title) is amended to read:

1 Chapter ATCP 111(title) **BASEMENT WATERPROOFING UNFAIR TRADE**

2 **PRACTICES**

3 **SECTION 21.** ATCP 116.01(10) is amended to read:

4 ATCP 116.01(10) “Work advertisement” means any solicitation or representation, other
5 than a face-to-face statement, in which a recruiter invites one or more individuals to apply for
6 work or accept a work offer.

7 **SECTION 22.** The notice set forth in ATCP 118.02(2)(b) is amended, at the appropriate
8 place, as follows:

9 **COMPLAINTS**

10
11 If you have any complaints about our attempt to hold you liable for damages or would
12 like a copy of the state law that fully sets forth your rights and obligations, contact:

13
14 Wisconsin Consumer Protection Bureau
15 P.O. Box 8911, Madison, WI ~~53718~~ 53708-8911
16 608-224-4960 (Madison area) or toll-free 1-800-422-7128

17
18 Date: _____ Renter’s Signature _____
19
20

21 **SECTION 23.** ATCP 121.02 is amended to read:

22 **ATCP 121.02 Prohibition.** No seller or lessor ~~shall~~ may use any referral selling plan to
23 make a consumer sale unless the compensation is given or paid prior to the sale ~~seller or lessor~~
24 first gives the buyer or lessee the full amount of potential compensation offered to that buyer or
25 lessee under that plan.

26 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first day
27 of the month following publication in the Wisconsin administrative register, as provided under s.
28 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2001.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____

James E. Harsdorf,
Secretary