

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

PROPOSED ORDER

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

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

Statutes Interpreted: ss. 227.29 and 227.42, Stats.

Statutory Authority: ss. 93.07 and 227.42, Stats.

Explanation of Agency Authority

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

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

Related Statutes and Rules

Wis. Admin. Code ch. ATCP 1.

Plain Language Analysis

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Department of Agriculture, Trade and Consumer Protection (department) identified s. ATCP 1.06 (3) (a) as duplicative, superseded or conflicting in our report filed with the Joint Committee for Review of Administrative Rules pursuant to s. 227.29, Stats.

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

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

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

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

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

Comparison with Rules in Adjacent States

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

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

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

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

Summary of Factual Data and Analytical Methodologies

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

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

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

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

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

The Department's Regulatory Review Coordinator may be contacted by:
Email at Bradford.Steine1@wisconsin.gov
Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

Department Contact Person

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Place Where Comments are to Be Submitted and Deadline for Submission:

Comments must be received on or before October 26, 2022 to be included in the record of rule-making proceedings. Submit comments:

Julie Schmidt, Administrative Rules Coordinator

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TEXT OF RULE

1 SECTION 1. ATCP 1.06 (3) (a) is amended to read.

2 **(3) GRANTING OR DENYING REQUEST.**

3 (a) The Secretary shall grant or deny a contested case hearing request under sub. (1) within
4 ~~30~~20 days after a complete request is filed, unless the requester agrees to an extension or time.
5 The secretary may grant a contested case hearing request if, upon preliminary review, it appears
6 that the department has jurisdiction over the matter and that a contested case proceeding is
7 warranted under s. 227.42, Stats., or other applicable law.

8 SECTION 2. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day
9 of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22
10 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated this ____ day of August, 2022

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski, Secretary