



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection

DATE: April 10, 2020

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Acting Secretary
Lara Sutherlin, Administrator, Division of Trade and Consumer Protection

SUBJECT: ATCP 106: Price Gouging During an Emergency; Request that the Board Approve a Notice of Preliminary Public Hearing and Comment Period on a Rulemaking Scope Statement (Period of Abnormal Economic Disruption and Emergency Certified by Executive Order #72)

TO BE PRESENTED BY: David Woldseth

REQUESTED ACTION:

At the April 10, 2020 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a Notice of a Preliminary Public Hearing and Comment Period on the Statement of Scope for proposed emergency amendments to ATCP 106, the DATCP rule related to price gouging during an emergency.

DATCP asks the Board to approve the public hearing notice because Executive Order #72 declared the state is in “a period of abnormal economic disruption” under Wis. Stat. § 100.305 and directed DATCP “to enforce prohibitions against price gouging during an emergency, as authorized under Section 100.305 of the Wisconsin Statutes and Chapter ATCP 106 of the Wisconsin Administrative Code.” To ensure optimal implementation of the Wis. Stat. § 100.305 (2) prohibition on selling, or offering to sell, consumer goods or services “at unreasonably excessive prices” during a period of abnormal economic disruption, DATCP would like to evaluate whether emergency amendments to ATCP 106 are required in order to better protect the health, safety, and welfare of Wisconsin’s citizens during this period of abnormal economic disruption.

If the notice is approved, DATCP will hold a preliminary public hearing on the scope statement before asking the board to approve the scope statement. A scope statement explains the general purpose and scope of potential rule changes. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for potential rule changes and, subsequent to such approval, the DATCP Board also approves the scope statement.

In accordance with Wis. Stat. § 227.135 (2), the Governor approved this scope statement for potential emergency rule changes, thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board. Before seeking the board’s approval, DATCP wants to hold a preliminary public hearing on the scope statement.

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Under Wis. Stat. § 227.136 (2), an agency may, at its own initiative, schedule a preliminary public hearing on a scope statement before asking its board to approve the scope statement. Rather than wait up to ten days for the Joint Committee for the Review of Administrative Rules to order such a preliminary public hearing (*See* Wis. Stat. § 227.136 (1)), the Department, in the spirit of good public policy, wants to schedule such a hearing in order to expedite the process of responding to this emergency.

DATCP will formally publish this draft scope statement in the April 13, 2020 *Wisconsin Administrative Register* and has filed a copy with the Department of Administration (DOA). If the DATCP board approves the Notice of a Preliminary Public Hearing and Comment Period, DATCP will then hold that **preliminary public hearing on Friday, April 17, 2020, at 1 p.m.** Public comments will be **due Monday, April 20.**

If the Board approves the notice of preliminary public hearing, the Department will consider public comments before requesting the board's formal approval of the scope statement at a later date.

**State of Wisconsin
Department of Agriculture, Trade and Consumer Protection**

NOTICE OF PUBLIC HEARING AND COMMENT PERIOD FOR SS 0XX-20

Emergency Rule Regarding Price Gouging During an Emergency

The Wisconsin Department of Agriculture, Trade and Consumer Protection (Department) announces that, pursuant to Wis. Stat. § 227.136 (2), the Department will, on its own initiative, hold a preliminary public hearing and comment period on its proposed statement of scope pertaining to Wis. Admin. Code ch. ATCP 106 regarding price gouging during an emergency.

The Department will hold the public hearing at the time shown below via teleconference due to the restrictions adopted during the COVID-19 emergency. The Department invites the public to participate in the public hearing on the proposed statement of scope or to comment on the scope no later than Monday, April 20, 2020. Written public comments may be sent to David A. Woldseth, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911 or by e-mail to DavidA.Woldseth@wisconsin.gov.

Hearing Date and Location:

Friday, April 17, 2020

Commencing at 1:00 PM

Teleconference Line: 1-888-327-8914 (Toll free) or 1-847-944-7654; Passcode: 9548 531 #

You may obtain a copy of the Statement of Scope for this proposed rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Office of the Secretary, 2811 Agriculture Drive, P.O. Box 8911, Madison, Wisconsin 53708. You may also obtain a copy by contacting the division policy analyst, David A. Woldseth, at DavidA.Woldseth@wisconsin.gov or by calling (608) 224-5164. To view the statement of scope online, go to: <https://docs.legis.wisconsin.gov/code/register/2020> and select the Register for 4/13/2020.

Hearing-impaired persons may request accommodation for this hearing. Please make reservations by April 15, 2020, by writing, calling, or emailing the analyst, David A. Woldseth.

Dated this ____ day of April, 2020

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____

Randy Romanski, Acting Secretary