



State of Wisconsin  
Governor Tony Evers

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**Department of Agriculture, Trade and Consumer Protection**  
Secretary Randy Romanski

**DATE:** May 12, 2022

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Randy Romanski, Secretary  
Fratney Miller, General Counsel

**SUBJECT:** Wis. Admin. Code Ch. **ATCP 1 (Administrative Orders and Contested Cases)**

**PRESENTED BY:** Julie Schmidt, Administrative Rules Coordinator, Office of the Secretary

**REQUESTED ACTION:**

At the meeting of the Board on May 12, 2022, the Department will request approval of the attached scope statement, regarding Wis. Admin. Code Ch. ATCP 1 relating to Administrative Orders and Contested Cases.

**SUMMARY:**

Presently, ATCP 1.06 (3) (a) requires the Secretary to grant or deny a contested case hearing request within 30 days after a complete request is filed. Wis. Stats. Section 227.42 (2) 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. The objective of the proposed rule is to repeal or modify the code in order to align with statute.

The Governor approved the scope statement on March 17, 2022. The Department is requesting approval of the Scope Statement in order to begin drafting rule revisions.

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# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection

Rule No.: ATCP 1

Relating to: Administrative Orders and Contested Cases

Rule Type: Permanent

**1. Finding/nature of emergency (Emergency Rule only):** N/A

**2. Detailed description of the objective of the proposed rule:**

The objective of the proposed rule is to repeal or modify provisions of the rule identified in the Department of Agriculture, Trade and Consumer Protection's (Department) report to the Joint Committee for Review of Administrative Rules (JCRAR) pursuant to s. 227.29, Stats., submitted on March 29, 2019.

**3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

The Department identified the following rule as duplicative, superseded or conflicting in the report filed with JCRAR pursuant to s. 227.29, Stats.:

ATCP 1.06 (3) (a) conflicts with s. 227.42 (2), Stats., as it requires the 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.

Policy Alternatives: If the Department does not repeal or modify the proposed rule, there will continue to be confusion and a conflicting process will remain with current statute.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. 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.

227.42 Right to hearing.

(1) In addition to any other right provided by law, any person filing a written request with an agency for hearing shall have the right to a hearing which shall be treated as a contested case if:

- (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
- (b) There is no evidence of legislative intent that the interest is not to be protected;
- (c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and
- (d) There is a dispute of material fact.

(2) 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.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

75 hours

**6. List with description of all entities that may be affected by the proposed rule:**

Any person or entity subjected to a contested case hearing request.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

None

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The Department anticipated that the proposed rule will have no to minimal economic impact. It is not likely to have a significant economic impact on small businesses.

**Contact Person:** Julie Schmidt, Administrative Rules Coordinator, (608) 224-5029



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Randy Romanski, Secretary  
Department of Agriculture, Trade and Consumer Protection

February 14, 2022  
Date Submitted

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