

APR 05 2001



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-028

AN ORDER to repeal ATCP 92.01 (1), (6) to (9) and (12) and 92.04; to amend ATCP 1.32 (1), 29.56 (1) (e) 4., 30.30 (17), chapter ATCP 57 (title), 91.06 Note, 98.08 (1) (b) and (3) (c), 98.22 (2) (a), chapters ATCP 101 (title), 109 (title) and 110 (title), 110.02 (3) (d) and (7) (c), 110.05 (2) (intro.), chapter ATCP 111 (title), 116.01 (10) and 121.02; to renumber ATCP 92.01 (2) to (5), (10), (11), (11m) and (13) to (15); and to repeal and recreate ATCP 1.31 (2) and 82.04 (3), relating to minor remedial drafting changes to department rules.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

03-06-01 RECEIVED BY LEGISLATIVE COUNCIL.

04-03-01 REPORT SENT TO AGENCY.

RNS:NZ:jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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CLEARINGHOUSE RULE 01-028

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section ATPC 82.04 (3) should be reviewed for consistency with s. 98.146 (2), Stats. The statute provides that licenses "... expire biennially on September 30 of the 2nd year commencing after the date of issuance or renewal." For example, if a license is issued on February 1, 2000, the second year commencing after that is 2002, and the license would expire on September 30, 2002. Section ATPC 82.04 (3) (a) would have it expire on September 30, 2001.

2. Form, Style and Placement in Administrative Code

In the analysis section, there should be a reference to the statutes the rules interpret, and to the statutes that confer rule-making authority. [See s. 1.02 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

Section ATPC 1.32 (1) mentions only two scenarios: an administrative law judge issuing a proposed decision when the judge is not the final decision-maker, and an administrative law judge who is the final decision-maker issuing a final judgment without previously issuing a proposed decision. However, s. ATPC 1.31 (2) authorizes an administrative law judge who is the final decision-maker to issue a proposed decision before issuing a final decision. What happens if the administrative law judge issues a proposed decision under s. ATPC 1.31 (2) (a),

and then issues a final decision under s. ATCP 1.31 (1)? Presumably, the 30-day period would begin to run after the proposed decision was issued; however, s. ATCP 1.32 (1) does not address this scenario. A solution might be to change “. . . under s. ATCP 1.30 (1), or, if the administrative law judge . . .” to “. . . under s. ATCP 1.30 (1) or s. ATCP 1.31 (2) (a), or, if the administrative law judge . . .”

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

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

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
3 may do either of the following:

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

6 (b) Issue a final decision under sub. (1) without first issuing a proposed decision
7 under s. 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
11 party may submit a motion for costs and attorneys fees under s. 227.485, Stats. A
12 prevailing party shall submit the motion, ~~if any,~~ within 30 days after the ~~final~~
13 ~~decisionmaker issues the final decision and order under sub. (1)~~ administrative law judge
14 issues a proposed decision under s. ATCP 1.30(1) or, if the administrative law judge
15 issues a final decision under s. ATCP 1.31(2)(b) without issuing a proposed decision,
16 within 30 days after the administrative 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
19 pursuant 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
22 is 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
5 milk weigher and sampler license expires on the second September 30 following the date
6 on which the department issues or renews the license.

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

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

12 NOTE: Section According to s. 98.12, Stats., requires that ice cream, ice milk,
13 water ices and other frozen desserts packaged prior to sale may must be
14 sold only by fluid measure in containers with capacities of one half liquid
15 pint, one liquid pint, one liquid quart or a multiple of one liquid quart
16 unless they are packaged at the time of retail sale or sold in quantities of
17 less than one-half pint.
18

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

20 SECTION 9. ATCP 92.01(2) to (5), ~~(10)~~, (11), (11m), and (13) to (15) are
21 renumbered ATCP 92.01(1) to (10).

22 SECTION 10. ATCP 92.04 is repealed. *back*

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

24 ATCP 98.08(1)(b) If a contractor rejects vegetables tendered under the contract,
25 or declines for any reason to harvest vegetables grown under the contract, the contractor
26 shall pay the producer the full amount, if any, which the contractor owes under the
27 contract for the rejected ~~fruits or~~ vegetables or the unharvested acreage. Unless the

1 parties agree on an earlier payment date, the contractor shall pay the producer by the 15th
2 day of the month immediately following the month in which the producer tenders the
3 vegetables, or in which the contractor notifies the producer that the acreage will not be
4 harvested.

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

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

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

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

14 "Under Wisconsin law, if a contractor procures vegetables from producers for use
15 in processing, the contractor must be registered with the Wisconsin Department of
16 Agriculture, Trade and Consumer Protection, and must demonstrate a reasonable
17 degree of financial responsibility. The law does not guarantee that contractors
18 will pay producers for their vegetables. Every producer has some responsibility
19 for determining the credit worthiness of the contractor for whom the producer
20 grows vegetables. To qualify for registration, a contractor must do at least one of
21 the following: (1) pay cash on delivery for all vegetables; (2) file financial
22 statements with the department showing that the contractor meets certain
23 minimum financial standards; (3) file security with the department equal to at
24 least 75% of the contractor's anticipated maximum liability to producers. ~~(Some~~
25 ~~contractors may file only 25% security for the registration year beginning~~
26 ~~February 1, 1997, and 50% security for the registration year beginning February~~
27 ~~1, 1998.)"~~

28
29 **SECTION 14.** Chapter ATCP 101(title) is amended to read:

30 Chapter ATCP 101(title) **VEGETABLE PROCUREMENT TRADE**

31 **PRACTICES**

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

2 Chapter ATCP 109(title) **FREEZER MEAT AND FOOD SERVICE PLAN**
3 **TRADE PRACTICES PLANS**

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

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

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

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

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

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

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

22 ATCP 110.05(2)(intro.) If sub. (1) requires a written home improvement contract
23 ~~is required under sub. (1), or if~~ or the buyer signs a written home improvement contract is

1 ~~prepared using the seller's pre-printed contract form~~, the written contract shall be signed
2 by all parties and shall clearly, accurately and legibly set forth all material terms and
3 conditions of the contract, including:

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

5 Chapter ATCP 111(title) **BASEMENT WATERPROOFING ~~UNFAIR~~**
6 **~~TRADE PRACTICES~~**

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

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

11 **SECTION 22.** ATCP 121.02 is amended to read:

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

16

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

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____

Ben Brancel, Secretary

MAR 02 2001

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF HEARING

RULES RELATED TO MINOR REMEDIAL DRAFTING CHANGES TO DEPARTMENT
RULES

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rules relating to minor remedial drafting changes to department rules. The hearing will be held at the time and place shown below. The public is invited to attend the hearing and make comments on the proposed rules. Following the public hearing, the hearing record will remain open until April 30, 2001, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Legal Counsel, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-5023. Copies will also be available at the hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **April 18, 2001**, by writing to Roxy Capelle, Division of Legal Counsel, P.O. Box 8911, Madison WI 53708-8911, telephone (608) 224-5023. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

One hearing is scheduled:

Wednesday, April 25, 2001, 1:30 p.m. until 3:30 p.m.
Wisconsin Department of Agriculture, Trade and Consumer Protection
Board Room
2811 Agriculture Drive
Madison, WI 53704
Handicapped accessible

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

Statutory Authority: ss.93.07(1), Stats.

Statute Interpreted: s. 93.07(10), 95.20 and 95.25, 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.

Fiscal Estimate

This rule will have no fiscal effect on the department or local units of government. A fiscal estimate is attached.

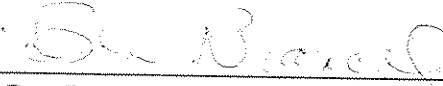
Initial Regulatory Flexibility Analysis

This rule makes minor remedial drafting changes to a variety of DATCP rules. This rule merely clarifies rule provisions, conforms current rule provisions to current law, or makes non-substantive organizational or drafting changes.

Dated this 28 day of February, 2001.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By



Ben Brancel
Secretary



State of Wisconsin
Scott McCallum, Governor

JUN 12 2001

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

PUBLIC NOTICE

FINAL DRAFT RULE TO LEGISLATURE

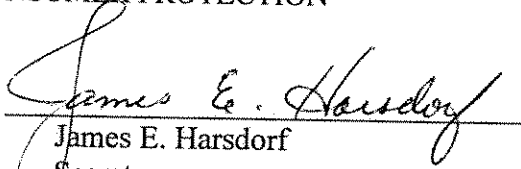
The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: 01-028
SUBJECT: Minor Remedial Changes To Department Rules
ADM. CODE REFERENCE: ATCP 1, 29, 30, 57, 91, 92, 98, 101, 109, 110, 111, 116, and 121.
DATCP DOCKET #: 00-R-3

Dated this 12th day of June, 2001.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By


James E. Harsdorf
Secretary



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection

James E. Harsdorf, Secretary

DATE: June 7, 2001

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
P.O. Box 7882
Madison 53707-7882

The Honorable Scott R. Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison 53708-8952

FROM: James E. Harsdorf, Secretary *James E. Harsdorf*
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Minor Remedial Changes To Department Rules; Final Draft Rule
(Clearinghouse Rule #01-028)**

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

Background

This rule makes the following changes to current rules:

- It 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.

- It clarifies (per current law) that the bulk milk weigher and sampler license under s. 98.146, Stats., 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, this rule clarifies that the license expires on the 3rd September 30 after the department issues the license.
- It clarifies current consumer protection 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 changes to written contracts.
- It 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.
- It 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.
- It 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.
- It amends several rule titles, to shorten or clarify those titles.
- It corrects a number of erroneous cross-references in current rules.
- It makes non-substantive drafting and organizational changes.

Rule Changes After Public Hearing

The department held one public hearing on this rule in Madison, on April 25, 2001. There were no public appearances at the hearing. Following the public hearing, the department made the following changes in the final draft rule:

- It made minor editorial changes in response to comments from the Legislative Council Rules Clearinghouse.
- It corrected a postal zip code reference in a current rule, in response to comments from department staff.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made minor comments on this rule. The department modified the final draft rule in response to the Rules Clearinghouse comments. In response to Clearinghouse comment 1, the department believes that proposed s. ATCP 82.04(3) is consistent with current law under s. 98.146, Stats., which provides for a *biennial* license. The rule merely codifies existing practice, which is understood and accepted by the regulated industry.

Fiscal Estimate

This rule will have no fiscal effect on the department or local units of government. A fiscal estimate is attached.

Small Business Analysis

This rule will have no significant effect on small business. This rule merely clarifies current rule provisions, or conforms those provisions to current law.

**PROPOSED 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
2 proposes the following order to repeal ATCP 92.01(1), (6) to (9) and (12), and 92.04; to
3 amend ATCP 1.32(1), 29.56(1)(e)4., 30.30(17), 57(title), 91.06(note), 98.08(1)(b),
4 98.08(3)(c), 98.22(2)(a), 101(title), 109(title), 110(title), 110.02(3)(d), 110.02(7)(c),
5 110.05(2)(intro.), 111(title), 116.01(10), 118.02(2)(b) and 121.02; to renumber ATCP
6 92.01(2) to (5), (10), (11), (11m) and (13) to (15); and to repeal and recreate ATCP
7 1.31(2) and 82.04(3); relating to minor remedial 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
3 may do either of the following:

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

6 (b) Issue a final decision under sub. (1) without first issuing a proposed decision
7 under s. 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
11 party may submit a motion for costs and attorneys fees under s. 227.485, Stats. A
12 prevailing party shall submit the motion, if any, within 30 days after the final
13 decisionmaker issues the final decision and order under sub. (1) administrative law judge
14 issues a proposed decision under s. ATCP 1.30(1) or s. ATCP 1.31(2)(a) or, if the
15 administrative law judge issues a final decision under s. ATCP 1.31(2)(b) without issuing
16 a proposed decision, within 30 days after the administrative law judge issues that final
17 decision.

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

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

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

22 ATCP 30.30(17) "Prohibition area" means an area in which any atrazine product
23 is prohibited under subch. III this subchapter.

24 **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
5 milk weigher and sampler license expires on the second September 30 following the date
6 on which the department issues or renews the license.

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

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

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

18
19 **SECTION 8.** ATCP 92.01(1), (6) to (9) and (12) are repealed.

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

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

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

24 ATCP 98.08(1)(b) If a contractor rejects vegetables tendered under the contract,
25 or declines for any reason to harvest vegetables grown under the contract, the contractor
26 shall pay the producer the full amount, if any, which the contractor owes under the
27 contract for the rejected fruits or vegetables or the unharvested acreage. Unless the

1 parties agree on an earlier payment date, the contractor shall pay the producer by the 15th
2 day of the month immediately following the month in which the producer tenders the
3 vegetables, or in which the contractor notifies the producer that the acreage will not be
4 harvested.

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

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

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

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

14 "Under Wisconsin law, if a contractor procures vegetables from producers for use
15 in processing, the contractor must be registered with the Wisconsin Department of
16 Agriculture, Trade and Consumer Protection, and must demonstrate a reasonable
17 degree of financial responsibility. The law does not guarantee that contractors
18 will pay producers for their vegetables. Every producer has some responsibility
19 for determining the credit worthiness of the contractor for whom the producer
20 grows vegetables. To qualify for registration, a contractor must do at least one of
21 the following: (1) pay cash on delivery for all vegetables; (2) file financial
22 statements with the department showing that the contractor meets certain
23 minimum financial standards; (3) file security with the department equal to at
24 least 75% of the contractor's anticipated maximum liability to producers. (Some
25 contractors may file only 25% security for the registration year beginning
26 February 1, 1997, and 50% security for the registration year beginning February
27 1, 1998.)"

28
29 **SECTION 14.** Chapter ATCP 101(title) is amended to read:

30 Chapter ATCP 101(title) **VEGETABLE PROCUREMENT TRADE**

31 **PRACTICES**

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

2 Chapter ATCP 109(title) **FREEZER MEAT AND FOOD SERVICE PLAN**

3 **TRADE PRACTICES PLANS**

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

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

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

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

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

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

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

22 ATCP 110.05(2)(intro.) If sub. (1) requires a written home improvement contract
23 is required under sub. (1), or if or the buyer signs a written home improvement contract is
24 prepared using the seller's pre-printed contract form, the written contract shall be signed

1 by all parties and shall clearly, accurately and legibly set forth all material terms and
2 conditions of the contract, including:

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

4 Chapter ATCP 111(title) **BASEMENT WATERPROOFING UNFAIR**
5 **TRADE PRACTICES**

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

7 ATCP 116.01(10) "Work advertisement" means any solicitation or
8 representation, other than a face-to-face statement, in which a recruiter invites one or
9 more individuals to apply for work or accept a work offer.

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

12 **COMPLAINTS**

13
14 If you have any complaints about our attempt to hold you liable for damages or
15 would like a copy of the state law that fully sets forth your rights and obligations,
16 contact:

17
18 Wisconsin Consumer Protection Bureau
19 P.O. Box 8911, Madison, WI 53718 53708-8911
20 608-224-4960 (Madison area) or toll-free 1-800-422-7128

21
22 Date: _____ Renter's Signature _____
23

24
25 **SECTION 23.** ATCP 121.02 is amended to read:

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

1 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the
2 first day of the month following publication in the Wisconsin administrative register, as
3 provided under s. 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

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number ATCP (various chapters)

Subject
 DATCP Technical Rule Changes

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.
 Yes No

Decrease Costs

Local: No Local Government Costs

- | | |
|--|---|
| 1. <input type="checkbox"/> Increase Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This rule makes minor remedial drafting changes to a variety of DATCP rules. This rule merely clarifies current rule provisions, conforms current rule provisions to current law, or makes non-substantive organizational or drafting changes. This rule will have no fiscal effect on the department or local units of government.

Long-Range Fiscal Implications

None

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Authorized Signature <i>Barbara Knapp</i>	Telephone No. 224-4746	Date (mm/dd/ccyy) 21/01/ 1-29-01