

Clearinghouse Rule 12-043

DATCP Docket No. 12-R-03
Rules Clearinghouse No. _____

Hearing Draft Rule
August 10, 2012

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

2 The Wisconsin department of agriculture, trade and consumer protection proposes the following
3 rule *to repeal* s. ATCP 1.42 (2) (a), (e), (f), (g), (h) and (L); *to repeal and recreate* ATCP 1.41
4 and *to create* ATCP 1.42 (1) (c); *relating to discretion in enforcement of rule violations by*
5 *small businesses.*

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

This rule complies with the requirements of s. 227.04 (2) (b), Stats., created by 2011 Wisconsin Act 46, which requires each state agency to “establish by rule, reduced fines and alternative enforcement mechanisms for minor violations of administrative rules made by small businesses”, and which requires that the rule include a definition of “minor violation”.

Statutes Interpreted

Statutes Interpreted: ss. 227.04 (2) (b) and 895.59, Stats.

Statutory Authority

Statutory Authority: ss. 227.04 (2) (b) and 895.59 (2), Stats.

Explanation of Statutory Authority

Section 227.04 (2) (b), Stats., provides that each state agency shall “establish by rule, reduced fines and alternative enforcement mechanisms for minor violations of administrative rules made by small businesses”, and requires that the rule include a definition of “minor violation.” Section 895.59 (2), Stats., provides that “each state agency shall promulgate a rule that requires the agency to disclose in advance the discretion that the agency will follow in the enforcement of rules and guidelines against a small business.”

Related Statutes and Rules

In compliance with s. 895.59, Stats., which was created by 2003 Wisconsin Act 145, DATCP adopted ATCP Ch. 1, Subch. VII which identifies the discretion DATCP will use in enforcing rule violations against small businesses. Section 227.04, Stats. is closely related to s. 895.59, Stats. This rule making will make those changes necessary to comply with the new requirements created by s. 227.04 (2) (b), Stats., and will conform to the requirements of s. 895.59 (2), Stats.

Plain Language Analysis

Background

DATCP adopted Ch. ATCP 1, Subch. VII, in November 2006, to comply with the requirements of s. 895.59, Stats. Prior to the creation of s. 895.59, Stats., and the DATCP rules subchapter, DATCP exercised much the same discretion as is provided in the statute and rule when determining if and how to enforce regulation violations committed by small businesses. For example, DATCP has always considered the seriousness of the violation, the risk of harm to the public and the history of compliance when making enforcement determinations.

Rule Content

General

This rule does all of the following:

- Creates a definition of “minor violation” for certain violations of department rules by small businesses.
- Provides that the department may exercise the discretion to forego formal sanctions or to seek reduced sanctions when a minor violation of department rules has been committed by a small business.

Fiscal Impact

This rule will not have a significant fiscal impact on state government. DATCP enforcement practice has exercised much the same discretion as is directed by s. 227.04 (2) (b), Stats., both before and after adopting the current rule as required by s. 895.59 (2), Stats., when determining if, and how, to enforce regulation violations committed by small businesses. For example, DATCP has always considered the seriousness of the violation, the risk of harm to the public and the history of compliance when making enforcement determinations. This rule will have no fiscal effect on local governments. A complete *fiscal estimate* is attached.

Business Impact

This rule will not increase any costs for businesses. The rule may produce an economic benefit for small businesses that commit minor violations of DATCP regulations when discretion is

exercised to forego formal sanctions or to seek reduced sanctions. A complete *business impact analysis* is attached.

Economic Impact

This rule will not have an economic impact upon the state, any business sector, citizens, utility rate payers or any geographical area in the state. A complete *economic impact analysis* is attached

Environmental Impact

This rule will not have any environmental impact.

Federal and Surrounding State Programs

Federal Programs

Federal agencies exercise similar enforcement discretion.

Surrounding State Programs

Agencies in the surrounding states exercise similar enforcement discretion.

Data and Analytical Methodologies

Each DATCP division contributed to the analysis of the effect of the proposed rule.

DATCP Contact

Questions and comments related to this rule may be directed to:

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled once this rule is approved by the Board of Agriculture, Trade and Consumer Protection.

1 **SECTION 1.** ATCP 1.41 is repealed and recreated to read:

1 ATCP 1.41 **Definitions.** In this subchapter:

2 (1) “Minor violation” means a violation of a department regulation by a small business
3 that is not serious because the violation does not cause serious harm to the public and either the
4 violation is not willful, the violation is not likely to be repeated, there is a history of compliance
5 by the violator or the small business has voluntarily disclosed the violation.

6 (2) “Small business” has the meaning given in 895.59 (1) (b), Stats.

7 **SECTION 2.** ATCP 1.42 (1) (c) is created to read:

8 ATCP 1.42 (1) (c) The rule violation committed by the small business is a minor
9 violation.

10 **SECTION 3.** ATCP 1.42 (2) (a), (e), (f), (g), (h) and (L) are repealed.

11 **SECTION 4. EFFECTIVE DATE:** This rule takes effect on the first day of the month
12 following publication in the Wisconsin administrative register, as provided in s. 227.22 (2)
13 (intro.), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel Secretary