

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Administrative Orders and Contested Cases
Adm. Code Reference: ATCP 1
Rules Clearinghouse #: 16-013
DATCP Docket #: 15-R-11

Rule Summary

The Department of Agriculture, Trade and Consumer Protection (“Department”) proposes a rule revision for ch. ATCP 1, Wis. Adm. Code, to allow division administrators or staff to issue most of the special orders under s. ATCP 1.03(2), Wis. Adm. Code. This will allow for clarification of the Department’s Secretary’s responsibility to hear any appeal of a special order under s. ATCP 1.06, Wis. Adm. Code. The proposed rule also amends s. ATCP 1.05(1) and (3) (f) to clarify that, if the division administrator is designated to sign a special order, then the complaint seeking the special order must be signed by a different designee within the division.

Currently, under s. ATCP 1.03(2), Wis. Adm. Code, some types of orders may be issued by the Department’s division administrators or staff, while others may only be issued by the Department’s Secretary or designee. Generally, all of these orders may be appealed under s. ATCP 1.06, Wis. Adm. Code.

The authority to grant or deny a request for hearing rests with the Secretary, under s. ATCP 1.06(3), Wis. Adm. Code. The Secretary may choose to be the decisionmaker in an informal hearing. In addition, the final decisionmaker for any contested case is either the Secretary, or a designated final decisionmaker appointed by the Secretary, as defined in s. ATCP 1.01(13), Wis. Adm. Code. If the Secretary, or other appointed final decisionmaker, is the only person who may issue an initial special order, the Secretary is precluded from exercising appellate jurisdiction which is a specific statutory duty of the Secretary. The Secretary has this appellate jurisdiction to ensure that decisions in individual cases, while conforming to the law, are consistent with similar past cases and harmonized with broader, important public policies also within the Secretary’s jurisdiction. These authorities granted to the Secretary should not be abrogated by a rule that limits, in large part, the Secretary’s roles as appellate decisionmaker harmonizing final decisions with public policies. If the rule is amended, allowing special orders to be issued by the division administrator, the Secretary may then exercise the duty to oversee any division’s action by granting and deciding an informal hearing or contested case hearing, if the special order is appealed.

The one special order that will continue to be signed by the Secretary or his designee, and not by the division, is an order determining claims in a recovery proceeding, under s. ATCP 1.08, Wis. Adm. Code. Pursuant to subch. VII of ch. 126, Wis. Stats., the Division

of Trade and Consumer Protection initiates the proceeding and drafts a proposed order. Only the Secretary or appointed final decisionmaker may sign the final order in these cases, even where a contested case hearing is not needed. These claims determination orders are always a final order of Department, as are all decisions in other contested case proceedings, and all are issued by the Secretary or final decisionmaker, pursuant to § 227.47(1), Stats.

In addition, if the division administrator may be designated to sign an initial special order, the division administrator must also designate another person to sign the complaint seeking the special order. The proposed rule makes this amendment to the rule on division complaints.

Small Businesses Affected

This rule change is anticipated to have no effect on small business. To the extent that the proposed rule allows the Secretary to fully exercise his or her appellate jurisdiction, this may have a positive impact in having the Secretary be able to review special orders in light of harmonizing, within the law, a final decision in a case involving a small business with broader public policies on issues involving small businesses.

Reporting, Bookkeeping and other Procedures

The rule would not require any additional reporting, bookkeeping or other procedures.

Professional Skills Required

The proposed rule does not require any new professional skills.

Accommodation for Small Business

This rule change is anticipated to have no effect on small business.

Conclusion

The provisions in this proposed rule will benefit those affected by a special order issued by the Department. By allowing the Secretary to fully exercise his or her appellate jurisdiction, these changes may have a positive impact in having the Secretary be able to review special orders in light of harmonizing, within the law, a final decision in a case, involving a small business, with broader public policies on issues involving small businesses.

This rule will not have a significant adverse effect on “small business” and is not subject to the delayed “small business” effective date provided in s. 227.22(2) (e), Stats.

Dated this _____ day of _____, 2016.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Karley Downing, Chief Legal Counsel
Office of the Secretary