

Clearinghouse Rule 98-154

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF AGRICULTURE,)
TRADE & CONSUMER PROTECTION)

Clearinghouse Rule
No. 98-154
Docket No. 97-R-15

CERTIFICATION:

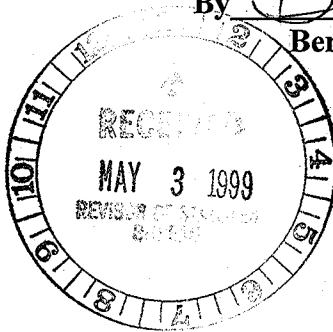
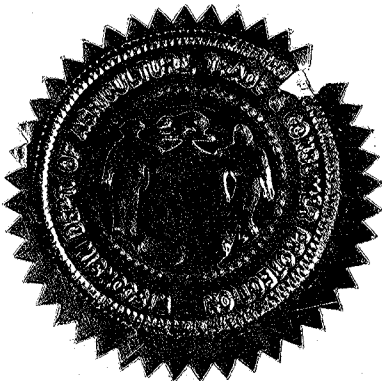
I, Ben Brancel, Secretary of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, hereby certify that the attached rulemaking order relating to technical and remedial rule changes pertaining to farm mediation and arbitration, sustainable agriculture, agricultural development and diversification, commercial feed, soil and water resource management, LP gas meters, freezer meat and food service plans, referral selling plans and car rental notices was signed and adopted by the department on May 3, 1999.

I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 3rd day of May, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary



7-1-99

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING OR REPEALING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection adopts the
2 following order to repeal ch. ATCP 45, ATCP 50.62(7)(e)6., 50.79(5)(a)7. and 50.96(6)(c)1.;
3 to renumber ATCP 1.01(1) to (10), ch. ATCP 2, ATCP 50.96(6)(c)4., JUS 2.01(title), (1),
4 (2)(title), (intro.), (a) to (c) and (e) to (h), and (3), JUS 2.02(title), (intro.), (1) and (2)(intro.)
5 and (a), and JUS 2.04; to renumber and amend ATCP 1.01(11) 50.96(6)(c)2. and 3., JUS
6 2(title), JUS 2.01(2)(d), JUS 2.02(2)(b), and JUS 2.03; to amend ATCP 1.01(12)(c) and (13),
7 1.03(1)(b)6. and (3)(d), 1.10(title), (1)(intro.) and (2) to (4), 1.11(1)(intro.), and (2)(a) and
8 (b), 1.13(1) and (5), 1.14(1)(intro.), (2)(a) and (b), and (4)(a) and (c), 1.15(1), (2) and
9 (2)(note), 1.16(1), 1.20(3) and (6)(note), 1.21(1)(a), (2) and (3), 1.22(1), (1)(note) and (3),
10 1.23(2) to (5) and (5)(note), 1.25(1)(a)(intro.), (b) and (c), (2)(a) to (c), (3), (4)(b) and (c),
11 (5), and (6)(a) to (c) and (d)2., 1.26, 1.30(1) and (2)(a), 1.31(2) and (4), 1.32(3)(a) and (b),
12 1.33, 40.02(1), (2), (2)(note), (3), (3)(note) and (4)(a) and (b), 40.04(5)(c), 42.06(3),
13 42.16(1)(b), 42.32(2)(b), 42.40(4)(b), 42.44(6)(a), 42.54(1)(a), 50.01(15), 50.62(7)(e)2. and
14 3., 50.79(5)(a)4. and 5., 50.82(5)(a) and (note), 50.84(4)(b)4., 50.90(4)(a)1., 50.94(3)(a),
15 109.03(4), 121.01(4) and 161.01; to repeal and recreate Appendix A to ch. ATCP 50, and
16 ATCP 92.05(4); and to create ATCP 50.54((1)(zd), 50.64(1)(w), 50.665, 50.76(3)(a)(8).,
17 50.95(2)(ze) and (zf), 100.93(title), 161.02(4) and (note) and 161.03(2)(i); relating to technical
18 and remedial rule changes pertaining to contested case procedures, farm mediation and
19 arbitration, sustainable agriculture, agricultural development and diversification, commercial

1 feed, soil and water resource management, LP gas meters, freezer meat and food service
2 plans, referral selling plans and car rental notices.

3

4 **Analysis Prepared By the Department of**
5 **Agriculture, Trade and Consumer Protection**
6

7 Statutory Authority: ss. 92.05(3)(c), 93.07(1), 93.47(2), 93.50(2)(f), 94.64(9),
8 94.65(9), 98.245(7)(a)1., 227.11 and 344.576(3)(c), Stats.

9
10 Statutes Interpreted: ch. 92, ss. 93.46, 93.47, 93.50, 94.64, 94.65, 98.245(7)(a),
11 subch. III of ch. 227, and s. 344.576(3), Stats.

12
13 This rule makes the following organizational and drafting changes to rules currently
14 administered by the Department of Agriculture, Trade and Consumer Protection (DATCP):

- 15 • It changes references to the “hearing examiner” or “examiner” in ch. ATCP 1
16 (Administrative Orders and Contested Cases) to “administrative law judge.” This
17 conforms the department’s terminology to the terminology currently used by other state
18 agencies. There is no substantive change in DATCP rules related to contested cases.
19
- 20 • It renumbers ch. ATCP 2 (Farm Mediation and Arbitration Program) to ATCP 162. This
21 reflects an organizational change in which the farm mediation and arbitration program was
22 transferred from the secretary's office to the marketing division in DATCP.
23
- 24 • It repeals ch. ATCP 45 (Sustainable Agriculture Program), and incorporates the
25 sustainable agriculture program as part of the agricultural development and diversification
26 (ADD) grant program under ch. ATCP 161. This reflects an organizational change in
27 which the sustainable agriculture program was transferred from the agricultural resource
28 management division to the marketing division in DATCP. It also reflects budget
29 legislation contained in 1997 Wis. Act 27, which merged the sustainable agriculture
30 program with the ADD grant program.
31
- 32 • It updates technical standards currently incorporated by reference in ch. ATCP 40
33 (Fertilizer and Related Products), ATCP 42 (Commercial Feed) and ATCP 50 (Soil and
34 Water Resource Management). It also expands some ATCP 50 technical standards for
35 cost-shared conservation projects, to reflect new USDA technical standards. The
36 department has requested permission from the Attorney General and Revisor of Statutes to

1 incorporate the updated technical standards by reference, as required under s. 227.21,
2 Stats.

- 3
- 4 • It implements s. 98.245(7), Stats., which requires owners of liquid LP gas meters to
5 register those meters with the department. The statute requires a one-time registration fee
6 of \$25. This rule incorporates the statutory fee without change.
- 7
- 8 • It implements s. 98.245(4), Stats., which requires temperature compensation in all liquid
9 measurement of LP gas deliveries. 1995 Wis. Act 183 eliminated an exemption for
10 deliveries of less than 100 gallons made directly to mobile fuel tanks. This rule modifies
11 current DATCP rules accordingly.
- 12
- 13 • It updates obsolete addresses and cross-references in ch. ATCP 109 (Freezer Meat and
14 Food Service Plans) and ATCP 121 (Referral Selling Plans).
- 15
- 16 • It renumbers and retitles ch. JUS 2 (Notice of Renter Liability; Rental of Passenger
17 Vehicles) to ATCP 118 (Car Rentals; Notice of Renter Liability), and makes
18 nonsubstantive drafting changes. The Legislature transferred responsibility for the car
19 rental notice law under subch. V of ch. 344, Stats., from the Department of Justice to
20 DATCP. This rule change reflects that transfer of responsibility.
- 21
- 22 • It makes other non-substantive editorial changes to correct and clarify current rules.
- 23
- 24

25 **SECTION 1.** ATCP 1.01(1) to (10) are renumbered (2) to (11).

26 **SECTION 2.** ATCP 1.01(11) is renumbered (1) and amended to read:

27 ATCP 1.01(11) ~~“Examiner”~~ “Administrative law judge” means the secretary, ~~or a~~
28 ~~person~~ or an examiner whom the secretary appoints, in writing, under s. 227.46(1), Stats., to
29 preside over a contested case proceeding.

30 **SECTION 3.** ATCP 1.01(12)(c) and (13) are amended to read:

1 ATCP 1.01(12)(c) The ~~examiner~~ administrative law judge, if the filing pertains to a
2 matter which is pending before the ~~examiner~~ administrative law judge.

3 (13) “Final decisionmaker” means the secretary, or a person whom the secretary
4 appoints, in writing, to issue a final decision in a contested case. “Final decisionmaker” may
5 include an ~~examiner~~ administrative law judge whom the secretary appoints as final
6 decisionmaker.

7 **SECTION 4.** ATCP 1.03(1)(b)6. and (3)(d) are amended to read:

8 ATCP 1.03(1)(b)6. An order issued by an ~~examiner~~ administrative law judge or final
9 decisionmaker in a contested case, other than an order identified under par. (a).

10 (3)(d) The informal hearing under par. (b) shall be conducted by a person who was not
11 involved in the investigation of the case, or in the decision to issue the summary special order.
12 The person conducting the informal hearing need not be the ~~examiner~~ administrative law judge
13 who presides over the class 2 contested case hearing. The person conducting the informal
14 hearing may stay or modify the summary special order or, if the summary special order was
15 issued by the secretary, recommend a stay or modification to the secretary or final
16 decisionmaker.

17 **SECTION 5.** ATCP 1.10(title), (1)(intro.), and (2) to (4) are amended to read:

1 ATCP 1.10(title) ~~Hearing examiner's~~ Administrative law judge's authority and

2 **duties.** (1) **AUTHORITY.** An ~~examiner~~ administrative law judge may, on behalf of the
3 department, preside over a contested case proceeding and issue orders regulating the conduct
4 of the proceeding. In a contested case proceeding, unless otherwise provided by the secretary,
5 the ~~examiner~~ administrative law judge may do all of the following:

6 (2) **LIMITS ON AUTHORITY.** The ~~examiner~~ administrative law judge may not
7 exercise any authority which is reserved to the secretary or final decisionmaker under this
8 chapter, unless the secretary appoints the ~~examiner~~ administrative law judge as final
9 decisionmaker or delegates the secretary's authority to the ~~examiner~~ administrative law judge
10 in writing.

11 (3) **IMPARTIALITY.** (a) An ~~examiner~~ administrative law judge shall withdraw from
12 a contested case if the ~~examiner~~ administrative law judge determines that there is a conflict of
13 interest or other circumstance which prevents the ~~examiner~~ administrative law judge from
14 acting impartially, or which creates an undue appearance of bias.

15 (b) No person who participates in the investigation or advocacy of a case, or in the
16 decision to initiate an enforcement action in that case, may act as ~~examiner~~ administrative law
17 judge in the case.

18 (c) An ~~examiner~~ administrative law judge is not disqualified solely because of the
19 ~~examiner's~~ administrative law judge's employment with the department, or solely because the

1 ~~examiner~~ administrative law judge has presided over cases involving the same parties, facts or
2 issues in the past.

3 (4) EX PARTE COMMUNICATIONS. If an ~~examiner~~ administrative law judge
4 receives an ex parte communication which violates s. 227.50(1), Stats., the ~~examiner~~
5 administrative law judge shall deal with the ex parte communication as provided under s.
6 227.50(2), Stats.

7 **SECTION 6.** ATCP 1.11(1)(intro.) and (2)(a) and (b) are amended to read:

8 ATCP 1.11(1) SANCTIONS AGAINST DISOBEDIENT PARTY. If a party, without
9 reasonable excuse, fails to file an answer or pleading as required by s. ATCP 1.21, fails to
10 make a required appearance in a proceeding, fails to disclose witnesses or evidence under s.
11 ATCP 1.23(3), fails to comply with a subpoena or order issued by the ~~examiner~~ administrative
12 law judge, or fails to comply with the provisions of this chapter, the ~~examiner~~ administrative
13 law judge may take any of the following actions which the ~~examiner~~ administrative law judge
14 considers just in relation to the disobedient party's failure:

15 (2)(a) Before issuing an order under sub. (1), the ~~examiner~~ administrative law judge
16 shall mail a copy of the proposed order to the disobedient party, and shall give the disobedient
17 party not less than 10 days to show cause why the proposed order should not be issued. This
18 paragraph does not apply to proposed orders issued under par. (b).

1 (2)(b) If the ~~examiner~~ administrative law judge is not the final decisionmaker, and if
2 an order under sub. (1) would constitute a final order in the contested case, the ~~examiner~~
3 administrative law judge shall issue the order as a proposed order under s. ATCP 1.30. The
4 final decisionmaker shall issue any final order under s. ATCP 1.31 after the final
5 decisionmaker considers objections to the proposed order under s. ATCP 1.30(2). An order
6 dismissing any party, proceeding or cause of action is a final order under this paragraph.

7 **SECTION 7.** ATCP 1.13(1) and (5) are amended to read:

8 ATCP 1.13(1) **DOCKET FILE.** The department shall create a docket file for every
9 contested case. The docket file shall be captioned with the docket number and title of the case,
10 “In the matter of” The docket file shall include the record of the case and any other
11 material filed in connection with the case, subject to the direction of the ~~examiner~~
12 administrative law judge or final decisionmaker.

13 (5) **DOCUMENTS ISSUED BY SECRETARY, FINAL DECISIONMAKER OR**
14 ~~EXAMINER~~ ADMINISTRATIVE LAW JUDGE. Whenever the secretary, final
15 decisionmaker or ~~examiner~~ administrative law judge issues a hearing notice, order, subpoena
16 or other process in a contested case, a copy of that document shall be mailed or delivered to
17 each party in the case. Service by mail may be proved by a signed return receipt. Proof of
18 mailing does not constitute presumptive proof of service.

1 **SECTION 8.** ATCP 1.14(1)(intro.), (2)(a) and (b), and (4)(a) and (c) are amended to
2 read:

3 ATCP 1.14(1) **GENERAL.** Except as provided under subch. III, a person requesting
4 an order from the ~~examiner~~ administrative law judge or final decisionmaker shall make that
5 request in the form of a motion. A motion shall clearly describe the order sought, and the
6 grounds for granting that order. A person may move the ~~examiner~~ administrative law judge or
7 final decisionmaker for any substantive or procedural order authorized by law, including either
8 of the following:

9 (2)(a) A motion made orally at a prehearing conference or hearing, unless the
10 ~~examiner~~ administrative law judge requires that the motion be submitted in writing.

11 (2)(b) An oral motion for an extension of time, if the ~~examiner~~ administrative law
12 judge agrees to hear that oral motion.

13 (4)(a) Except as provided under par. (b) or (c), the ~~examiner~~ administrative law judge
14 or final decisionmaker shall give all parties an opportunity to argue a motion before the
15 ~~examiner~~ administrative law judge or final decisionmaker rules on the motion. The ~~examiner~~
16 administrative law judge shall notify every party of any scheduled motion hearing.

17 (4)(c) An ~~examiner~~ administrative law judge or final decisionmaker may, on an ex
18 parte basis, rule on a motion for extension of time.

1 **SECTION 9.** ATCP 1.15(1), (2) and (2)(note) are amended to read:

2 ATCP 1.15(1) **GENERAL.** The final decisionmaker, ~~examiner~~ administrative law
3 judge, or a party's attorney of record may issue a subpoena in a contested case to compel the
4 attendance of any witness or the production of relevant evidence.

5 (2) **REQUEST FOR SUBPOENA.** A party may request the ~~examiner~~ administrative
6 law judge or final decisionmaker to issue a subpoena on behalf of that party. The requesting
7 party shall submit the proposed subpoena for signature by the ~~examiner~~ administrative law
8 judge or final decisionmaker. The ~~examiner~~ administrative law judge or final decisionmaker
9 shall not sign a subpoena in blank. The requesting party is responsible for serving the
10 subpoena, and for paying any service, witness or travel fees.

11 **NOTE:** A person may request form subpoenas from the ~~examiner~~ administrative law
12 judge which may be used in preparing subpoenas under this section. If a person
13 fails to comply with a department subpoena, that person may be compelled as
14 provided under s. 885.12, Stats., or may be subject to penalties under s.
15 93.21(4), Stats.

16 **SECTION 10.** ATCP 1.16(1) is amended to read.

17 ATCP 1.16(1) **RECORD OF ORAL PROCEEDINGS.** The department shall make a
18 stenographic or electronically recorded record of oral proceedings in a contested case.
19 Proceedings shall be electronically recorded unless the ~~examiner~~ administrative law judge
20 determines that a stenographic record is necessary.

1 **SECTION 11.** ATCP 1.20(3) is amended to read:

2 ATCP 1.20(3) ~~HEARING EXAMINER~~ ADMINISTRATIVE LAW JUDGE. The
3 name of the ~~examiner~~ administrative law judge who is appointed to preside over the contested
4 case, unless the secretary intends to preside in person.

5 **SECTION 12.** ATCP 1.20(6)(note) is amended to read:

6 NOTE: If the hearing notice schedules a prehearing conference, rather than a
7 hearing, the ~~examiner~~ administrative law judge will schedule the hearing after
8 consulting the parties.

9 **SECTION 13.** ATCP 1.21(1)(a), (2) and (3) are amended to read:

10 ATCP 1.21(1)(a) If a respondent is named in a complaint under s. ATCP 1.05, and is
11 served with a copy of the complaint and the hearing notice issued under s. ATCP 1.20, the
12 respondent shall file a written answer to the complaint. The respondent shall file the answer
13 within 20 days after the complaint and hearing notice are served on the respondent. Upon
14 request by a respondent, the ~~examiner~~ administrative law judge may grant the respondent an
15 extension of time to file an answer.

16 (2) OTHER PLEADINGS. In a hearing notice under s. ATCP 1.20, the secretary
17 may require the parties to file written pleadings in order to identify the positions of the parties
18 and the matters at issue in the proceeding. The ~~examiner~~ administrative law judge may require

1 the parties to file any supplementary pleadings which the ~~examiner~~ administrative law judge
2 considers necessary.

3 (3) AMENDMENTS. A party may, with leave from the ~~examiner~~ administrative law
4 judge, amend an answer or pleading at any point in a contested case proceeding. The
5 ~~examiner~~ administrative law judge may withhold leave if the amendment would unduly delay
6 or disrupt the proceeding, or would work a significant injustice against any party.

7 **SECTION 14.** ATCP 1.22(1), (1)(note) and (3) are amended to read:

8 ATCP 1.22(1) GENERAL. The hearing notice under s. ATCP 1.20 may require the
9 parties to appear at a prehearing conference. The ~~examiner~~ administrative law judge may also
10 require the parties to attend one or more prehearing conferences.

11 NOTE: A prehearing conference is normally held in every contested case proceeding
12 unless the ~~examiner~~ administrative law judge determines that a prehearing
13 conference is unnecessary. Prehearing conferences are electronically recorded.

14 (3) MEMORANDUM. At the conclusion of a prehearing conference, the ~~examiner~~
15 administrative law judge shall prepare a memorandum for the record under s. 227.44(4)(b),
16 Stats., which summarizes the action taken and the agreements reached at the conference. The
17 ~~examiner~~ administrative law judge may, in conjunction with the memorandum, issue any
18 procedural orders which may be necessary to implement the actions taken at the prehearing
19 conference. Copies of the memorandum shall be mailed or delivered to all parties.

1 **SECTION 15.** ATCP 1.23(2), (3)(a), (4), (5) and (5)(note) are amended to read:

2 ATCP 1.23(2) **OTHER CONTESTED CASES.** In a class 1 or class 3 contested case,
3 the ~~examiner~~ administrative law judge may by order authorize discovery by any party under s.
4 227.45(7) and ch. 804, Stats. Except as provided in s. 227.45(7)(a) to (d), Stats., the decision
5 to grant or deny a discovery request in a class 1 or class 3 contested case is subject to the
6 ~~examiner's~~ administrative law judge's discretion. The ~~examiner~~ administrative law judge may
7 issue a discovery order in response to a motion by any party, and may impose such limits on
8 discovery as the ~~examiner~~ administrative law judge considers appropriate.

9 (3)(a) Except as provided under par. (b), and unless the ~~examiner~~ administrative law
10 judge directs otherwise, every party in a contested case shall provide every other party with all
11 of the following at least 7 days prior to hearing:

12 (4) **PROTECTIVE ORDERS.** Upon motion by any party, and for good cause shown,
13 the ~~examiner~~ administrative law judge may issue a protective order under s. 804.01(3), Stats.,
14 limiting discovery. The ~~examiner~~ administrative law judge may issue a protective order in any
15 contested case, including a class 2 contested case.

16 (5) **ORDER COMPELLING DISCOVERY.** If a person fails to respond to a
17 discovery request under this section, the party seeking discovery may move the ~~examiner~~
18 administrative law judge for an order compelling discovery. Upon motion by any party, the

1 ~~examiner~~ administrative law judge may issue an order compelling discovery under s. 804.12,
2 Stats.

3 NOTE: If a party fails to comply with sub. (3), or with an ~~examiner's~~ order under
4 sub. (2), (4) or (5), the party is subject to possible sanctions under s. ATCP
5 1.11. If any person willfully fails to testify or provide evidence in compliance
6 with an ~~examiner's~~ administrative law judge's order under sub. (5), that person
7 may be coerced under ss. 93.14(3) and 885.12, Stats., or may be subject to
8 criminal penalties as provided under s. 93.21(3) or (4), Stats.

9 SECTION 16. ATCP 1.25(1)(a)(intro.), (b) and (c), (2)(a) to (c), (3), (4)(b) and (c),
10 (5), and (6)(a) to (c) and (d)2. are amended to read:

11 ATCP 1.25(1)(a) A contested case hearing shall be held at a time and location
12 specified in the hearing notice under s. ATCP 1.20, or at a time and location specified by the
13 ~~examiner~~ administrative law judge. In determining the hearing time and location, the
14 ~~examiner~~ administrative law judge shall consider all of the following:

15 (1)(b) A hearing, or any portion of a hearing, may be held by telephone if the
16 ~~examiner~~ administrative law judge determines that the telephone hearing is justified for the
17 convenience of any party or witness, and that no party is unfairly prejudiced by the telephone
18 hearing.

19 (1)(c) The ~~examiner~~ administrative law judge may adjourn, recess or postpone a
20 hearing as the ~~examiner~~ administrative law judge deems appropriate.

1 (2)(a) Except as ordered by the ~~examiner~~ administrative law judge, every contested
2 case hearing is open to attendance by the public.

3 (2)(b) Upon motion by any party, the ~~examiner~~ administrative law judge may do either
4 of the following:

5 1. By order, prohibit the disclosure of information or restrict attendance at any portion
6 of a proceeding if the ~~examiner~~ administrative law judge determines that the order is necessary
7 to prevent disclosure of a trade secret or other information which is protected by law from
8 public disclosure.

9 2. By order, exclude prospective witnesses from attending portions of a proceeding if
10 the ~~examiner~~ administrative law judge determines that the order will promote the interests of
11 justice. Exclusionary orders shall conform to s. 906.15, Stats.

12 (2)(c) The ~~examiner~~ administrative law judge may, by order, prohibit any person from
13 further attendance at a proceeding if that person engages in disruptive behavior which inhibits
14 the orderly conduct of the proceeding.

15 (3) OPENING STATEMENTS AND CLOSING ARGUMENTS. Opening statements
16 and closing arguments are optional, and do not constitute evidence. The ~~examiner~~
17 administrative law judge may limit opening and closing arguments as the ~~examiner~~
18 administrative law judge deems necessary.

1 (4)(b) If the propriety of a division's order is at issue in a contested case, the ~~examiner~~
2 administrative law judge may require the division to go forward with proof that the order was
3 proper.

4 (4)(c) The ~~examiner~~ administrative law judge may determine the order of proof in a
5 contested case, in order to promote an orderly consideration of the case.

6 (5) EVIDENCE. The receipt of testimony and other evidence in contested cases is
7 subject to s. 227.45, Stats. The ~~examiner~~ administrative law judge shall admit evidence which
8 has reasonable probative value, but shall exclude evidence which is immaterial, irrelevant, or
9 unduly repetitious, or which lacks reasonable probative value.

10 (6)(a) Witness testimony shall be given under oath or affirmation. The ~~examiner~~
11 administrative law judge shall administer the oath or affirmation to each witness.

12 (6)(b) At the discretion of the ~~examiner~~ administrative law judge under sub. (1)(b), a
13 witness may testify by telephone rather than in person.

14 (6)(c) Cross-examination is not limited to matters covered in direct examination. The
15 ~~examiner~~ administrative law judge may limit cross-examination, as necessary, to avoid
16 needless waste of time or undue harassment of witnesses.

1 (6)(d)2. A witness who is hostile, unwilling, adverse or evasive, if the ~~examiner~~
2 administrative law judge permits the examining party to use leading questions in the
3 examination of that witness.

4 **SECTION 17.** ATCP 1.26 is amended to read:

5 **ATCP 1.26 Briefs.** The ~~examiner~~ administrative law judge may require or permit the
6 parties to file arguments in the form of written briefs, or in the form of a proposed decision.
7 The ~~examiner~~ administrative law judge may establish deadlines for the filing of briefs, and
8 may refuse to consider any brief which is not filed on a timely basis.

9 **SECTION 18.** ATCP 1.30(1) and (2)(a) are amended to read:

10 ATCP 1.30(1)(title) ISSUED BY ~~EXAMINER~~ ADMINISTRATIVE LAW JUDGE.

11 If the ~~examiner~~ administrative law judge is not the final decisionmaker in a contested case, the
12 ~~examiner~~ administrative law judge shall prepare a proposed decision for consideration by the
13 final decisionmaker. The proposed decision shall include proposed findings of fact, proposed
14 conclusions of law, a proposed final order, and the ~~examiner's~~ administrative law judge's
15 signed opinion explaining the proposed decision. A copy of the proposed decision shall be
16 mailed or delivered to every party to the contested case.

17 (2)(a) Any party may file written objections to the ~~examiner's~~ administrative law
18 judge's decision under sub. (1). Unless the final decisionmaker specifies a different time

1 period, an objecting party shall file objections within a time period specified by the ~~examiner~~
2 administrative law judge. The objecting party shall identify the legal or factual grounds for
3 each objection, and may file a written brief or argument in support of ~~his or her~~ the
4 objections.

5 **SECTION 19.** ATCP 1.31(2) and (4) are amended to read:

6 ATCP 1.31(2)(title) ~~EXAMINER~~ ADMINISTRATIVE LAW JUDGE AS FINAL
7 DECISIONMAKER. If the ~~examiner~~ administrative law judge is also the final decisionmaker,
8 the ~~examiner~~ administrative law judge may issue a final decision under sub. (1) without first
9 issuing a proposed decision under s. ATCP 1.30.

10 (4) **VARIANCE FROM PROPOSED DECISION.** If the final decision varies from the
11 ~~examiner's~~ administrative law judge's proposed decision, the final decision shall explain the
12 reasons for the variance.

13 **SECTION 20.** ATCP 1.32(3)(a) and (b) are amended to read:

14 ATCP 1.32(3)(a) The ~~examiner~~ administrative law judge shall issue a decision
15 granting or denying a motion for costs and attorneys fees under sub. (1). The ~~examiner~~
16 administrative law judge may make a partial award of costs and attorneys fees, as provided
17 under s. 227.485(4), Stats. The ~~examiner's~~ administrative law judge's decision shall include
18 findings of fact, conclusions of law, and an order granting or denying an award. Except as

1 provided under par. (b), the ~~examiner's~~ administrative law judge's decision is final and shall
2 comply with s. ATCP 1.31(1) to (5).

3 (b) If the ~~examiner~~ administrative law judge is not the final decisionmaker in a
4 contested case, the ~~examiner's~~ administrative law judge's decision under par. (a) shall be
5 issued as a proposed decision. Within 15 days after the ~~examiner~~ administrative law judge
6 issues a proposed decision under this paragraph, the parties may file written objections to the
7 proposed decision. After considering the written objections, the final decisionmaker shall issue
8 a final decision granting or denying an award of costs and attorneys fees. The final decision
9 shall comply with s. ATCP 1.31(1) to (5).

10 **SECTION 21.** ATCP 1.33 is amended to read:

11 **ATCP 1.33 Judicial review; certifying record to court.** If a party seeks judicial
12 review of a contested case decision under s. 227.52, Stats., the department shall certify the
13 record of the contested case proceeding to the reviewing court as provided in s. 227.55, Stats.
14 The ~~examiner~~ administrative law judge shall, on behalf of the department, certify the contested
15 case record to the court.

16 **SECTION 22.** ATCP 2 is renumbered ATCP 162.

17 **SECTION 23.** ATCP 40.02(1), (2), (2)(note), (3), (3)(note) and (4)(a) and (b) are
18 amended to read:

1 ATCP 40.02(1) Names and definitions for fertilizer, fertilizer materials or soil or plant
2 additives are those adopted by the Association of American Plant Food Officials and published
3 in the Official Publication of the Association of American Plant Food Control Officials, No.
4 ~~40, 1987~~ 51, 1998.

5 (2) The methods of taking official fertilizer samples shall be the methods adopted by
6 the Association of American Plant Food Control Officials and published in the Inspectors
7 Manual of the Association of American Plant Food Control Officials, ~~Fourth Edition, 1984~~
8 sixth edition, 1998.

9 NOTE: Copies of the Official Publications noted in subs. (1) and (2) may be obtained
10 from the treasurer of the Association of American Plant Food Control Officials,
11 P.O. Box 1163, 1100 Bank St., Room 412, Richmond, VA 23209 North
12 Carolina Department of Agriculture, 4000 Reedy Creek Rd., Raleigh, NC
13 27607-6468. Copies are also on file at the Madison offices of the Department
14 of Agriculture, Trade and Consumer Protection, the Secretary of State and the
15 Revisor of Statutes.

16
17 (3) The methods of analysis for fertilizers shall be the methods adopted by ~~the~~
18 ~~Association of Official Analytical Chemists~~ AOAC International and contained in the ~~1984~~
19 ~~Official Methods of Analysis, Fourteenth Edition, the methods found in the Association of~~
20 ~~Official Analytical Chemists Journals, Volumes 67 and 68, published by the Association of~~
21 ~~Official Analytical Chemists, and the 1984 modified comprehensive nitrogen method adopted~~
22 ~~by the department of agriculture, trade and consumer protection~~ 4th revision, 1998, of the
23 16th edition of the "Official Methods of Analysis of AOAC International," volume I.

24 NOTE: Copies of the ~~Association of Official Analytical Chemists~~ AOAC methods may
25 be obtained from ~~the association at 1111 N. 19th St., Suite 210, Arlington VA~~

1 22209 AOAC International at 481 N. Frederick Ave., Suite 500, Gaithersburg,
2 MD 20877-2417.

3
4 (4)(a) Methods adopted by the Association of American Plant Food Control Officials
5 and published in the Inspectors Manual of the American Plant Food Control Officials, ~~Fourth~~
6 ~~Edition, 1984~~ sixth edition, 1998.

7 (4)(b) Methods adopted by ~~the Association of Official Analytical Chemists~~ AOAC
8 International and contained in the ~~1984 Official Methods of Analysis or in the Association of~~
9 ~~Official Analytical Chemists Journals, Volumes 67 and 68~~ 4th revision, 1998, of the 16th
10 edition of the "Official Methods of Analysis of AOAC International," volume I.

11 **SECTION 24.** ATCP 40.04(5)(c) is amended to read:

12 ATCP 40.04(5)(c) Except for microbiological products, each active or inert
13 ingredient's common name, if any, and chemical name, as listed in The Merck Index, ~~Tenth~~
14 ~~Edition, 1983~~ 12th edition, 1996, published by Merck & Co., Inc., shall be stated.

15 **SECTION 25.** ATCP 42.06(3), 42.16(1)(b), 42.32(2)(b), 42.40(4)(b), 42.44(6)(a) and
16 42.54(1)(a) are amended to read:

17 ATCP 42.06(3) SINGLE-INGREDIENT FEEDS. Product names for single-
18 ingredient feeds shall be consistent with the feed ingredient definitions specified in the ~~1996~~
19 1998 official publication of the association of American feed control officials.

20 ATCP 42.16(1)(b) Paragraph (a) does not apply to a commercial feed which is defined
21 as a single ingredient feed product by the ~~1996~~ 1998 official publication of the association of
22 American feed control officials.

1 ATCP 42.32(2)(b) The official name of that ingredient as stated in the ~~1996~~ 1998
2 official publication of the association of American feed control officials.

3 ATCP 42.40(4)(b) By a testing procedure published in the ~~1996~~ 1998 official
4 publication of the association of American feed control officials.

5 ATCP 42.44(6)(a) The dog or cat food, when fed in recommended amounts, meets all
6 nutrient requirements established in applicable pet nutrient profiles specified in the ~~1996~~ 1998
7 official publication of the association of American feed control officials.

8 ATCP 42.54(1)(a) The non-protein nitrogen ingredients are identified in the ~~1996~~ 1998
9 official publication of the association of American feed control officials.

10 **SECTION 26.** Chapter ATCP 45 is repealed.

11 **SECTION 27.** ATCP 50.01(15) is amended to read:

12 ATCP 50.01(15) "Technical guide" means the natural resources conservation service
13 field office technical guide, published by the natural resources conservation service of the
14 United States department of agriculture, that is in effect on ~~December 1, 1996~~ [revisor inserts
15 **effective date of this section**].

16 **SECTION 28.** ATCP 50.54(1)(zd) is created to read:

17 ATCP 50.54(1)(zd) Animal trails and walkways 70

18 **SECTION 29.** ATCP 50.62(7)(e)2. and 3. are amended to read:

19 ATCP 50.62(7)(e)2. Technical guide waste storage ~~structure~~ facility standard 313.

20 (e)3. Technical guide ~~waste~~ manure transfer standard ~~358~~ 634.

1 **SECTION 30.** ATCP 50.62(7)(e)6. is repealed.

2 **SECTION 31.** ATCP 50.64(1)(w) is created to read:

3 ATCP 50.64(1)(w) Animal trails and walkways under s. ATCP 50.665.

4 **SECTION 32.** ATCP 50.665 is created to read:

5 **ATCP 50.665 ANIMAL TRAILS AND WALKWAYS.** (1) **DEFINITION.** In this

6 section, "animal trail or walkway" means a travel lane to facilitate movement of livestock.

7 (2) **ELIGIBLE COSTS.** A cost-share grant may reimburse the cost of establishing an
8 animal trail or walkway when necessary to meet resource protection goals.

9 (3) **DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS.** A cost-
10 share grant may not reimburse the cost of establishing an animal trail or walkway unless all of
11 the following conditions are met:

12 (a) The animal trail or walkway complies with all of the following that apply:

13 1. Technical guide animal trails and walkways standard 575.

14 2. Technical guide streambank and shoreline protection standard 580.

15 3. Technical guide fencing standard 382.

16 (b) The grant recipient agrees to maintain the animal trail or walkway for 10 years
17 unless farming operations on the affected land are discontinued.

18 **SECTION 33.** ATCP 50.76(3)(a)8. is created to read:

19 ATCP 50.76(3)(a)8. Technical guide animal trails and walkways standard 575.

20 **SECTION 34.** ATCP 50.79(5)(a)4. and 5. are amended to read:

1 ATCP 50.79(5)(a)4. Technical guide waste storage ~~structure~~ facility standard 313.

2 (a)5. Technical guide ~~waste~~ manure transfer standard ~~358~~ 634.

3 **SECTION 35.** ATCP 50.79(5)(a)7. is repealed.

4 **SECTION 36.** ATCP 50.82(5)(a) and (note) are amended to read:

5 ATCP 50.82(5)(a) The roof complies with the american society of agricultural
6 engineers engineering practice number ~~288.4~~ 288.5, December 1992 edition.

7 NOTE: Copies of ASAE EP ~~288.4~~ 288.5 are on file with the department, the secretary
8 of state and the revisor of statutes. Copies can be obtained from the
9 department.

10
11 **SECTION 37.** ATCP 50.84(4)(b)4. is amended to read:

12 ATCP 50.84(4)(b)4. Technical guide ~~waste~~ manure transfer standard ~~358~~ 634.

13 **SECTION 38.** ATCP 50.90(4)(a)1. is amended to read:

14 ATCP 50.90(4)(a)1. Technical guide ~~waste-~~ manure transfer standard ~~358~~ 634.

15 **SECTION 39.** ATCP 50.94(3)(a) is amended to read:

16 ATCP 50.94(3)(a) The wetland development or restoration complies with technical
17 guide ~~wetlands development or wetland~~ restoration standard ~~690~~ 657.

18 **SECTION 40.** ATCP 50.95(2)(ze) and (zf) are created to read:

19 ATCP 50.95(2)(ze) Animal trails and walkways.

20 (2)(zf) Crevice and sinkhole treatment.

21 **SECTION 41.** ATCP 50.96(6)(c)1. is repealed.

1 **SECTION 42.** ATCP 50.96(6)(c)2. and 3. are renumbered ATCP 50.96(6)(c)1. and

2 2. and amended to read:

3 ATCP 50.96(6)(c)1. Technical guide waste storage ~~structure~~ facility standard 313, if

4 desired.

5 (c)2. Technical guide ~~waste~~ manure transfer standard ~~358~~ 634, if desired.

6 **SECTION 43.** ATCP 50.96(6)(c)4. is renumbered ATCP 50.96(6)(c)3.

7 **SECTION 44.** Appendix A to chapter ATCP 50 is repealed and recreated to read:

1 **SECTION 45.** ATCP 92.05(4) is repealed and recreated to read:

2 ATCP 92.05(4) **REGISTERING METERS.** The owner of a meter used to determine
3 the liquid measure of liquified petroleum gas sold or delivered to consumers by liquid measure
4 shall register that meter with the department, and shall pay to the department a one-time
5 registration fee of \$25. The owner shall register each meter and pay the fee for that meter
6 within 60 days after the effective date of this subsection [...revisor inserts date...], or within
7 60 days after the owner acquires that meter, whichever occurs later. A registration is not
8 transferable between owners.

9 **SECTION 46.** ATCP 100.93(title) is created to read:

10 **ATCP 100.93(title) Trust Account.**

11 **SECTION 47.** ATCP 109.03(4) is amended to read:

12 ATCP 109.03(4) Every contract executed in connection with an initial sales transaction
13 shall bear separately on its face the following statement:

14 "This contract is governed by ~~Wis. Adm. Code Chapter~~ ch. ATCP 109, Wis. Adm.
15 Code, administered by the Wis. Department of Agriculture, Trade and Consumer
16 Protection, ~~801 W. Badger Rd., Madison 53713~~. Every holder takes subject to claims
17 and defenses of the maker or obligor."
18

19 **SECTION 48.** ATCP 121.01(4) is amended to read:

20 ATCP 121.01(4) "Seller" or "lessor" means individuals, corporations, partnerships, or
21 any other organization, but does not include banks, savings and loan associations, insurance
22 companies ~~and~~ or public utilities to the extent exempted from department regulation under s.
23 ~~93.01(13)~~ 93.01(1m), Stats.

1 **SECTION 49.** ATCP 134.01(7) is amended to read:

2 ATCP 134.01(7) ~~Owned~~ A dwelling unit owned and operated by government, or a
3 subdivision or agency of government.

4 **SECTION 50.** ATCP 161.01 is amended to read:

5 **ATCP 161.01 Purpose.** This subchapter establishes procedural requirements for
6 administration of the agricultural diversification and development grant program under s.
7 93.46, Stats., and the sustainable agriculture program under s. 93.47, Stats.

8 **SECTION 51.** ATCP 161.02(4) and (note) are created to read:

9 ATCP 161.02(4) "Sustainable agriculture" means agricultural methods, practices or
10 systems that promote the long term viability of agriculture by conserving available resources,
11 minimizing the use of nonrenewable resources, or providing viable alternative uses of
12 available resources.

13 NOTE: "Sustainable agriculture," as defined in sub. (4), includes but is not limited to
14 sustainable agriculture as defined in s. 93.47, Stats.

15
16 **SECTION 52.** ATCP 161.03(2)(i) is created to read:

17 ATCP 161.03(2)(i) Fund demonstration projects that will encourage the use of
18 sustainable agriculture.

19 **SECTION 53.** JUS 2 (title) is renumbered ATCP 118(title) and amended to read:

20 ATCP 118(title) **CAR RENTALS; NOTICE OF RENTER LIABILITY**

21 **SECTION 54.** JUS 2.01(title) and (1) are renumbered ATCP 118.01(title) and (1).

1 **SECTION 55.** JUS 2.01(2)(title), (intro.), and (a) to (c) are renumbered ATCP
2 118.01(2)(title), (intro.) and (a) to (c).

3 **SECTION 56.** JUS 2.01(2)(d) is renumbered ATCP 118.01(2)(d) and amended to
4 read:

5 ATCP 118.01(2)(d) "Department" means the state of Wisconsin department of ~~justice~~
6 agriculture, trade and consumer protection.

7 **SECTION 57.** JUS 2.01(2)(e) to (h) and (3) are renumbered ATCP 118.01(2)(e) to (h)
8 and (3).

9 **SECTION 58.** JUS 2.02(title), (intro.), (1), and (2)(intro.) and (a) are renumbered
10 ATCP 118.02(title), (intro.), (1), and (2)(intro.) and (a).

11 **SECTION 59.** JUS 2.02(2)(b) is renumbered ATCP 118.02(2)(b) and amended to
12 read:

13 ATCP 118.02(2)(b) ~~Appear in the format as follows~~ Contain the following information
14 in the following format:

15 **NOTICE ABOUT LIABILITY FOR DAMAGE TO THE RENTAL CAR**

16 The State of Wisconsin requires us to provide the following information about your
17 liability for damage to a rental car and the purchase of a damage waiver.

18 **LIABILITY FOR DAMAGE TO THE RENTAL CAR**

19 The rental agreement makes you and any authorized driver liable for any damage to the
20 rental car caused by an accident or intentional, reckless or wanton misconduct. Total
21 liability for any damage is limited to:
22

- 23 1) reasonable repair costs, less discounts available to us, or the fair market value
24 of the car, whichever is less, and
25
26

- 1
2) actual and reasonable towing and up to two days storage costs.

3
4 **INSURANCE OR CREDIT CARD COVERAGE**

5
6 Liability for any damage may be covered by your personal insurance policy or credit
7 card agreement. Check your insurance policy or credit card agreement about coverage.

8
9 **DAMAGE WAIVER COVERAGE**

10
11 A damage waiver is **not** insurance coverage. If you purchase a damage waiver for
12 _____ per day, we will waive our right to hold you or any authorized driver
13 liable for damage. Even if you buy a damage waiver, you and any authorized driver
14 will remain liable for damage if any of the following apply:

- 15
16 1) The damage is caused by you, or any authorized driver, intentionally or by
17 reckless or wanton misconduct;
18
19 2) ~~the~~ The damage occurs while you, or any authorized driver, operates the car in
20 this state while under the influence of an intoxicant or other drug, as described
21 by the laws of this state.
22
23 3) ~~the~~ The damage occurs while you, or any authorized driver, operates the car in
24 another state while under the influence of an intoxicant or other drug, as
25 described by the laws of that state.
26
27 4) ~~the~~ The damage occurs while you, or any authorized driver, is engaged in a
28 race, speed or endurance contest.
29
30 5) ~~the~~ The damage occurs while you or any authorized driver is using, or has
31 directed another to use, the car in the commission of a misdemeanor, or a
32 felony, as defined by s. 939.60, Stats.
33
34 6) ~~the~~ The damage occurs while you, or any authorized driver, use the car to carry
35 persons or property for hire.
36
37 7) ~~the~~ The damage occurs while you or any authorized driver is using the car
38 outside the United States and Canada, unless use outside of these countries is
39 permitted under the rental agreement.
40

1 8) ~~the~~ The damage occurs while the car is operated on a surface not intended for
2 use by private passenger vehicles.

3
4 9) ~~you~~ You provide us misleading or false information in order to rent the car,
5 which causes us to rent you the car when we would not otherwise have done so,
6 or on terms to which we would not otherwise have agreed; ~~or~~.

7
8 10) ~~you~~ You, or an authorized driver who was operating the car when an accident
9 occurred, fail to promptly report, to us and the police, the accident resulting in
10 damage to the car.

11
12 **NOTICE OF RIGHT TO INSPECT DAMAGE**

13
14 If the car is damaged, we may not collect any amount for the damage unless you, or an
15 authorized driver against whom we claim liability, have been promptly notified of your
16 and your insurer's right to inspect the unrepaired car within two working days after we
17 were notified of the damage. If you request, we must also give you copies of two
18 estimates we have obtained from repair shops regarding any damage claim.

19
20 **COMPLAINTS**

21
22 If you have any complaints about our attempt to hold you liable for damages or would
23 like a copy of the state law that fully sets forth your rights and obligations, contact:

24
25 ~~Wisconsin Office of Consumer Protection and Citizen Advocacy~~
26 ~~P.O. Box 7856, Madison, WI 53707-7856~~
27 ~~608-266-1852 (Madison area) or toll free 1-800-362-8189~~

28
29 Wisconsin Consumer Protection Bureau
30 P.O. Box 8911, Madison, WI 53718-8911
31 608-224-4960 (Madison area) or toll free 1-800-422-7128

32
33 Date: _____ Renter's Signature _____

34
35 **SECTION 60.** JUS 2.03 is renumbered ATCP 118.03 and amended to read:

36 **ATCP 118.03 MODIFICATION OF NOTICE.** In the event a rental agreement is
37 otherwise in full compliance with the provisions of ss. 344.57 to 344.579, Stats., and that

1 agreement contractually limits or eliminates the liability of a renter or authorized driver for
2 one or more of the acts or circumstances itemized in s. 344.576(2)(a) to (j), Stats., a rental
3 company may modify the required notice provided in connection with that agreement. The
4 modification may be made only to items listed under the "Damage Waiver Coverage" portion
5 of the notice and shall be at least as favorable to the renter as required under the notice
6 specified in ~~s. Jus 2.02~~ s. ATCP 118.02. Any modification made under this section shall
7 differ from the required notice only to the extent necessary to delete items of liability not
8 exempted under a damage waiver purchased in connection with the rental agreement or to
9 explain a contractually granted limitation on any item.

10 **SECTION 61.** JUS 2.04 is renumbered ATCP 118.04.

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

14
15 Dated this 3 day of May, 1999.

17 STATE OF WISCONSIN
18 DEPARTMENT OF AGRICULTURE,
19 TRADE AND CONSUMER PROTECTION

20
21 By Ben Brancel
22 Ben Brancel, Secretary
23
24
25



State of Wisconsin
Tommy G. Thompson, Governor



Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: May 3, 1999

TO: Gary Poulson - Revisor of Statutes Office
131 W. Wilson Street, Suite 800

FROM: Ben Brancel, Secretary *Ben Brancel*

SUBJECT: **Clearinghouse Rule No. 98-154**
Relating to technical and remedial rule changes pertaining to farm mediation and arbitration, sustainable agriculture, agricultural development and diversification, commercial feed, soil and water resource management, LP gas meters, freezer meat and food service plans, referral selling plans and car rental notices

The Department of Agriculture, Trade and Consumer Protection hereby submits the following information for filing with the above rule.

Final Regulatory Flexibility Analysis

This rule will have no effect on small business.

Comments from Legislative Committees

On March 11, 1999, this department transmitted the above rule for legislative committee review. On March 16, the rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance. On March 18, the rule was referred to the Assembly Committee on Agriculture. The department received no comments or request for hearing from either committee.

