# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection (DATCP)

**Rule No.:** Ch. ATCP 1, Wis. Adm. Code (Existing)

**Relating to:** Administrative Orders and Contested Cases

**1. Description of the objective of the rule:**

This proposed rule would amend chapter ATCP 1 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 Secretary's responsibility to hear any appeal of a special order under s. ATCP 1.06, Wis. Adm. Code.

**2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:**

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 final decisionmaker for any contested case is either the Secretary, or a designee appointed by the Secretary, as defined in s. ATCP 1.01(13), Wis. Adm. Code. If the Secretary, or his designee, is the only person who may issue many of the typical special orders of the Department, this precludes the Secretary from exercising appellate jurisdiction in any contested case hearing where he or she has already signed the initial order. This is a specific duty of the Secretary, which should not be abrogated by rule. On the other hand, 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 a contested case hearing, if the special order is appealed.

The one special order which 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 designee may sign the final order in these cases, which are similar to a final order in a contested case proceeding, as opposed to any other type of special order.

Policy Alternatives. If the department does not alter the current rules, there will continue to be a number of times that the Secretary is precluded from acting in the appellate capacity, authorized under ch. 227, Wis. Stats., and ch. ATCP 1, Wis. Adm. Code.

**3. Statutory authority for the rule (including the statutory citation and language):** Sections 93.07(1) and 93.18, Stats., and subch. III of ch. 227, Stats.

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

DATCP estimates that it will use approximately 0.10 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

**5. Description of all entities that may be impacted by the rule:**

Any person or entity subject to a special order, issued by a division, will have the opportunity to request a hearing on appeal, which will be considered by the Secretary or his designee, and, if granted, will have the opportunity that the Secretary may be the final decisionmaker.

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

None.

**7. Anticipated economic impact**

This rule change is anticipated to have no economic impact.

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