

Chapter RD 1

PROCEDURE AND PRACTICE

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(Section 227.08, Wis. Stats.)

RD 1.01 Application of rules. These rules shall apply in all proceedings and hearings and before the department of resource development of Wisconsin in matters within its jurisdiction and shall apply except in cases where inconsistent with the procedure provided by statute in particular instances.

History: Cr. Register, May, 1967, No. 137, eff. 6-1-67.

RD 1.02 Definitions. (1) **AGENCY.** Agency, as used in these rules, refers to the Department of Resource Development.

(2) **DIRECTOR.** Director, as used in these rules, refers to the Director of the Department of Resource Development.

(3) **LEGAL COUNSEL.** Legal counsel, as used in these rules, refers to the chief legal officer of the agency or his agent.

(4) **SPECIAL ORDERS.** Special orders, as used in these rules, refer to orders of the agency which are not general in application.

(5) **GENERAL ORDERS.** General orders, as used in these rules, refer to orders of the agency which are general in application, and which constitute "rules" as defined in section 227.01 (2) Wis. Stats.

History: Cr. Register, May, 1967, No. 137, eff. 6-1-67.

RD 1.03 Place of hearings. Unless otherwise specifically provided by law or ordered by the agency or the director, all hearings shall be held at the offices of the Department of Resource Development, State Office Building, One West Wilson Street, Madison, Wisconsin.

History: Cr. Register, May, 1967, No. 137, eff. 6-1-67.

RD 1.04 How proceedings initiated. (1) **WHO MAY PETITION.** Any person aggrieved by a special order of the agency entered under chapter 144, Wis. Stats., may file with said agency as original and 8 copies of a verified petition setting forth specifically the modification or change desired in such order.

(2) **FORM OF PETITION; VERIFICATION.** Every such petition shall be in substantially the following form:

To the Department of Resource Development:

The undersigned hereby petitions for a review of the order of this agency dated _____, 19____, whereby it was ordered

The grounds for this petition are -----

The modification or change desired is -----

Date -----

Verification -----

(3) PROCEDURE. Upon the filing of the petition, the agency shall order a public hearing, shall fix a time for such hearing, and shall enter a decision accompanied by findings of fact and conclusions of law which shall affirm, repeal, or change the order in question. The decision of the agency shall be entered not more than 60 days after the close of the hearing.

(4) SERVICE AND FILING OF PAPERS. Unless otherwise provided by law, all orders, notices and other papers may be served by the agency by first class or registered mail addressed to the last known post office of the addresses. Papers required to be filed with the agency may be mailed to the agency at the following address:

State Office Building
One West Wilson Street
Madison, Wisconsin 53702

(5) CONDUCT OF HEARINGS; CONTINUANCES; APPEARANCES; EXAMINATION OF WITNESSES. All hearings shall be conducted on behalf of the agency by any member designated by such agency to serve for that purpose, or by the director. Continuances and adjournments may be granted by such presiding officer for cause shown. Witnesses competent to take an oath shall be sworn by the presiding officer or the legal counsel or his representative, or, with the permission of the presiding officer, by the petitioner or his attorney.

(6) SUBPOENAS. The presiding officer or other member of the agency may sign and issue subpoenas.

(7) ARGUMENTS. Except as provided in section 227.12, Wis. Stats., arguments shall be submitted to the agency in writing, unless otherwise ordered. The number of copies of such argument and the time for filing shall be fixed by the presiding officer.

(8) VARIANCES. The provisions of section 263.28, Wis. Stats., shall apply to proceedings under these rules with reference to variances between allegations in the petition and proof.

History: Cr. Register, May, 1967, No. 137, eff. 6-1-67.

RD 1.05 General orders or rules. (1) PETITION. Any interested person or persons may petition the agency in writing for the adoption, repeal or amendment of any general order or rule which is within the scope of the rule-making powers of the agency.

(2) FORM OF PETITION.

(a) *For adoption of general order or rule:*

To the Department of Resource Development:

The undersigned hereby petitions for the adoption of a rule relating to -----

Date -----

Name

Verification -----

Address

(b) *For repeal of a general order or rule:*

To the Department of Resource Development:

The undersigned hereby petitions for the repeal of rule (or regulation) number _____ which provides as follows:

The grounds for this petition are -----

Date -----

Name

Verification -----

Address

(c) *For amendment of a general order or rule:*

To the Department of Resource Development:

The undersigned hereby petitions for the amendment of rule (or regulation) number _____ which provides as follows:

The grounds for this petition are -----

The modification or change desired is -----

Date -----

Name

Verification -----

Address

(3) PETITION BY MORE THAN ONE PERSON. A petition may be for the adoption, amendment or repeal of more than one general order or rule, provided that each proposal shall be separately stated in conformity with paragraphs (a), (b), or (c) of section RD 1.05 (2). The petition may be signed by more than one natural person.

(4) SUPPORTING DATA. Whenever the adoption, repeal or amendment of any rule is sought by reason of the existence of a factual situation which the petitioner claims exists, the petition shall be accompanied by a sworn statement or affidavit of at least one of the petitioners stating what facts the petitioner claims exist justifying the agency in taking the action prayed for and stating what evidence of such facts the petitioner has in his possession and desires to present to the agency. Any petition requiring such supporting data may in the agency's discretion be summarily rejected if it does not conform to this rule.

(5) PROCEDURE. The procedure set forth in sections RD 1.04 (3), (4), (5), (6), (7), and (8) shall also apply where a petition has been made for the adoption, repeal or amendment of agency general orders or rules.

History: Cr. Register, May, 1967, No. 137, eff. 6-1-67.

RD 1.06 Declaratory rulings. (1) WHO MAY PETITION. Any person in interest or his duly authorized agent or attorney may petition the agency for a declaratory ruling with respect to the applicability to any persons, property or state of facts of any rule or statute enforced by the agency. Two or more persons similarly situated may join in a single petition and additional parties may intervene by petition.

Whenever a petitioner desires a declaratory ruling as to a prospective course of action, the petition shall allege and proof must show that the petitioner in good faith intends to pursue such course in the event of a favorable ruling. Whenever the petition or proof shows that the question presented is moot or hypothetical, or that the petitioner has no legal interest therein, the agency may serve an order dismissing the petition, stating the grounds for such action.

(2) **FORM OF PETITION; VERIFICATION.** The form of a petition to the agency for a declaratory ruling shall be filed with the agency as provided in section RD 1.04 (1) and shall be in the following form:

To the Department of Resource Development:

In the matter of the applicability of rule (or regulation or statute) _____ to the petitioner. Said rule (or regulation or statute) provides as follows: _____

The grounds for this petition are to determine the applicability of the above rule (or regulation or statute) to the petitioner because of the following state of facts: _____

Date _____

Name _____

Verification _____

Address _____

(3) **INVESTIGATION; NOTICE OF HEARING.** Upon the filing of such petition for a declaratory ruling, the agency may cause to be made an investigation of the facts alleged in the petition. If any of the allegations of the petition be untrue or should be qualified, or if material facts may not have been alleged, said agency shall prepare and mail to the petitioner or intervener a notice of hearing at which the petitioner shall be required to produce evidence. If there are no questions of fact, the notice of hearing shall state that only issues of law will be considered. Notice of hearing shall be as soon as possible after the filing of the petition.

(a) *Procedure.* The procedure set forth in section RD 1.04 (3), (4), (5), (6), (7), and (8) shall also apply to where a petition has been made for a declaratory ruling as to the applicability of any order, rule, regulation, or statute which is administered by the agency.

History: Cr. Register, May, 1967, No. 137, eff. 6-1-67.

RD 1.07 Prehearing conference. (1) In any matter pending before it the agency may direct any party or attorney for any party to appear before the agency, the director, or legal counsel who has the matter in charge to consider:

- (a) Simplification of the issues;
- (b) The necessity of desirability of amendments to the pleadings;
- (c) The possibility of obtaining admission of fact or as to documents which will avoid unnecessary proof;
- (d) Such other matters as may aid in the disposition of the matter.

(2) The agency, director, or legal counsel having the matter in charge may make an order reciting the action taken at the prehearing

conference, the amendments made to pleadings and the agreements made as to any of the matters considered, and limiting the issues to those not disposed of by admissions or agreements. Such orders shall control the subsequent course of the proceedings unless modified at the hearing to prevent manifest injustice.

History: Cr. Register, May, 1967, No. 137, eff. 6-1-67.