

Chapter Ag 1

PROCEDURE AND PRACTICE
IN CONTESTED CASES

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History: Chapter Ag 1 as it existed on September 30, 1971 was repealed and a new chapter Ag 1 was created, Register, October, 1971, No. 19 0, effective November 1, 1971.

Ag 1.01 Definitions. (1) "Person" is as defined in s. 990.01 (26), Stats.

(2) "Department" means the state of Wisconsin department of agriculture.

(3) "Secretary" means the secretary of the department and includes his deputy.

(4) "Examiner" means the secretary or individual designated by him to preside at a hearing.

(5) "Proceeding" means the course of administrative procedure and actions taken in the conduct of a contested case, and includes a hearing.

(6) "Subpoena" includes a subpoena duces tecum.

(7) "Hearing" means a procedure in which the parties may publicly be heard and present evidence prior to a decision in a contested case.

(8) "Respondent" means the person named as a party in any contested case and against whom a department order may be issued in that proceeding.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71; cr. (8), Register, December, 1972, No. 204, eff. 1-1-73.

Ag 1.02 Notice of hearing and complaint. Notices of hearing shall be issued by the department and shall specify the time and place of a hearing and the time for filing an answer to the complaint. The notice shall be signed by the secretary. Complaints shall clearly and concisely state matters complained of in writing, and except for complaints filed under s. 100.201 (9) (f), Stats., or by the department of justice under s. 100.20 (4), Stats., shall be subscribed by either the administrator of the division of the department initiating the complaint or the secretary.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71.

Ag 1.03 Answers. The time for making answer to the complaint shall be as specified in the notice of hearing, but not less than 10 days after

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service of the notice of hearing and complaint. The answer need not be in any particular form but shall be in writing subscribed by the respondent or his agent or attorney, and shall state respondent's position regarding the allegations of the complaint. The answer may be filed by personal delivery or mailing to the department. The examiner may for cause shown grant extensions of time to answer.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71.

Ag 1.04 Defaults. When respondent fails to file a written answer within the time provided in the notice of hearing or any extension thereof, or respondent files a written answer within such time but fails to appear at the hearing, respondent is in default, the allegations of the complaint may be taken as true, and a special order issued without further notice or hearing.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71.

Ag 1.05 Hearings; pre-hearing conferences. (1) At any hearing the examiner shall preside. In the presentation of evidence, the department shall be represented by its counsel or other representative authorized by the secretary. An examiner shall disqualify himself if by reason of personal interest in or knowledge of the matter to be heard he is unable to act fairly or impartially. No person who has directly participated in the investigation of the matter to be heard shall be designated or serve as examiner.

(2) The examiner, at any time prior to the commencement of a hearing, may require the parties or their counsel to appear at a pre-hearing conference for the simplification of issues or consideration of other matters which may expedite or aid in the disposition of the proceeding, and issue such orders as necessary to carry out the aforesaid purposes. All stipulations made at such conference shall be made a matter of record and control subsequent proceedings.

(3) If any original document in a proceeding is lost or withheld by any person, or is otherwise unavailable, the examiner may authorize the filing or use of a copy in place of the original. The examiner may authorize the substitution of a copy of any original document received in evidence as an exhibit and return the original to the owner.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71; am. (2) and (3), Register, December, 1972, No. 204, eff. 1-1-73.

Ag 1.06 Service. Service of complaint, notice, order, subpoena or other process of the department shall be made according to s. 93.18, Stats. When a party shall have appeared by attorney in any proceeding, service of papers shall be made upon the attorney.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71.

Ag 1.07 Subpoenas. Any party may request the examiner to issue subpoenas to compel the attendance of witnesses (s. 93.18 (2), Stats.).

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71; am. Register, December, 1972, No. 204, eff. 1-1-73.

Ag 1.08 Continuances. Continuances, postponements, adjournments, recesses, and extensions of time may be granted or directed by the examiner. Hearings may be recessed or adjourned at the request of any party adversely affected by the introduction of evidence constituting a continuance. Register, July, 1981, No. 307

ing undue surprise to afford such party a fair and reasonable opportunity to examine and study such evidence.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71.

Ag 1.09 Briefs. The examiner may require briefs and shall indicate the date on or before which they shall be submitted.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71.

Ag 1.10 Style of pleadings. All pleadings, notices, orders and other papers filed in connection with any matter or proceeding before the department shall be captioned "STATE OF WISCONSIN, DEPARTMENT OF AGRICULTURE" and entitled "In the Matter of _____ (here state the nature of the proceeding) of _____ (here state the name of the party complained against, if any), Respondent." Docket numbers shall be included when assigned by the department.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71.

Ag 1.11 Adverse witnesses. (1) Any party or any of his agents, officers or employees with knowledge of material facts relevant to the matter being heard may be examined by any other party adverse in interest at a hearing as if under cross examination without making such person his own witness. The testimony taken shall not be binding on or conclude the examining party and may be rebutted or impeached.

(2) Any witness who is hostile, unwilling, adverse or evasive may with permission of the examiner be interrogated by leading questions and impeached by the party calling him.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71.

Ag 1.12 Amendments and variances; parties. (1) The examiner may at any stage of a proceeding direct or permit the amendment or correction of any process, pleading or other defect in the proceedings of a non-prejudicial nature on such terms as may be fair and just. Any person who is a necessary party to the determination of the issues in any proceeding may be made a party as the examiner may authorize or direct.

(2) Subject to the approval of the examiner, proof at any hearing may depart from the allegations of the complaint or answer and the complaint or answer may be amended to conform to such proof. Continuances shall be granted, on request, if undue surprise results. Introduction of evidence which tends to prove conduct, acts or omissions of the same type, character or nature alleged in the complaint or answer, shall not constitute undue surprise.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71.

Ag 1.13 Revocation and amendment of special orders. Any person against whom a special order is issued may petition the department in writing for revocation or amendment of a special order. The petition shall be served on all parties to the proceeding which gave rise to such order, and shall state the grounds upon which it is based and the relief sought. The department may require the filing of supporting affidavits. Upon receipt of a petition the department shall notify all parties of record appearing in a proceeding of the filing of the petition or require the petitioner to serve such notices. Parties of record may file a state-

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ment of position within 20 days after receipt of the notice. The department may grant or deny the petition in writing or bring the matter on for hearing.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71.

Ag 1.14 Motions and procedural orders. (1) Motions other than those made orally at a hearing shall be in writing and scheduled for hearing on notice by the examiner or order to show cause.

(2) The examiner may refuse to hear any motion which is frivolous or made solely for the purpose of delay. Motions for extension of time may be ruled on *ex parte*.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71.

Ag 1.15 Consent orders and stipulations. The parties may stipulate to the issuance of a consent order at any time before testimony begins at a hearing on the merits of the complaint. Stipulations not made on the record at a hearing shall be in writing subscribed by the parties.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71.

Ag 1.16 Depositions and discovery. (1) The examiner on application of any party may by issuance of a subpoena or other appropriate order authorize the taking of a deposition of a party or any other person for discovery or other purposes, in such manner and upon such terms and conditions as he may prescribe. Such subpoenas or orders may require the production of documents or physical evidence. Depositions may be taken orally or in writing, or upon written interrogatories. Depositions may be authorized only for the purpose of obtaining information or evidence not otherwise readily available without the taking of a deposition, or which is reasonably calculated to lead to the discovery of admissible evidence. The taking of a deposition may be denied if it will result in undue delay of the proceedings. Upon motion of any party, or at any time the examiner determines, a proponent of procedures authorized in this section may be required to show good cause that such procedures are not being used for purposes of delay or are not otherwise unnecessary or duplicative.

(2) On application of any party, the examiner may require any other party to disclose the names and addresses of witnesses who will testify at the hearing and to produce for inspection or copying any documentary or physical evidence to be used as evidence at the hearing.

(3) Depositions may be taken before any person having power to administer oaths. Examinations shall be conducted as on direct examination, except that adverse parties or hostile witnesses may be examined as under cross examination.

(4) Depositions under this section may be used as evidence if otherwise admissible under the same circumstances in which they may be admitted in civil actions in courts of law.

(5) If any part of a deposition is put in evidence, any party may require the production of the remainder, or any other portion of the deposition. Depositions under this section may be used for impeachment purposes.

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(6) Copies of all written interrogatories and cross interrogatories shall be submitted to the examiner. Each interrogatory shall be fully and completely answered in writing and under oath. Answers, including objections, if any, shall be submitted to the requesting party, with a copy to the examiner, within 10 days after service of the interrogatory, or such other period as the examiner may specify. The requesting party may move for an order overruling objections which are without merit and compelling an answer within such period of time as may be designated by the examiner.

(7) In lieu of or in addition to procedures under sub. (6), any party may serve upon any other party, with a copy to the examiner, a demand to admit or deny the genuineness of relevant documents or the existence or truthfulness of relevant facts. If the party upon whom demand is made fails or refuses to comply with the demand or file objections setting forth grounds for such objections within 10 days after service of the demand, the facts included in the demand shall be taken as true. Answers or objections shall be under oath. The party making the demand may move for an order overruling objections which are without merit, and compelling an admission or denial in accordance with the demand.

(8) Upon failure of the party served to answer as required under subs. (6) and (7), the examiner may, upon motion of the requesting party, enter such order as may be fair and just, including:

(a) An order that designated facts and documents shall be taken to be established in accordance with the claim of the party serving the demand to admit or deny

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

(c) An order striking out pleadings or parts thereof.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71; am. (1) and (2), cr. (6), (7) and (8), Register, December, 1972, No. 204, eff. 1-1-73.

Ag 1.17 Transcripts. (1) **RECORD.** A stenographic, electronic or other record of oral proceedings shall be made by the department in all contested cases. A written transcript of the record shall be prepared only as deemed necessary by the department, and unless otherwise prepared by the department for its own use, shall not be prepared at the specific request of any person unless needed by such person for appeal or court review purposes, or other valid reasons.

(2) **COPIES OF TRANSCRIPT; COST.** If a transcript has been prepared by the department for its own use, copies may be furnished to all interested parties upon payment of a fee of 10 cents for each page. If no transcript of the record has been prepared by the department and a specific request for a transcript is made, the party making the request shall be responsible for all reasonable costs incurred by the department in transcribing the record and in preparation of the transcript. Any party who on basis of a verified petition can establish to the satisfaction of the department the need for a transcript and financial inability to pay for a copy thereof, may be furnished a copy free of cost.

History: Cr. Register, July, 1977, No. 269, eff. 8-1-77.

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Ag 1.18 Applicability. This chapter shall, to the extent applicable, govern all proceedings in contested cases before the department, whether or not initiated by complaint or petition. In adversary proceedings other than those based on a petition or complaint, the examiner may require the filing of such pleadings or statements of position as may be necessary to a determination of all issues.

History: Cr. Register, October, 1971, No. 190, eff. 11-1-71; renum. from Ag 1.17, Register, July, 1977, No. 269, eff. 8-1-77.

Ag 1.19 Enforcement. Violations of these rules or orders of the examiner issued thereunder requiring the production of evidence, or the testimony of witnesses or parties orally or in writing, or the performance of any other act in aid of the proceedings may, in addition to other available remedies, be punishable under s. 93.21 (3) or (4), Stats., as applicable.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; renum. from Ag 1.18, Register, July, 1977, No. 269, eff. 8-1-77.