

Chapter NR 2

PROCEDURE AND PRACTICE

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Note: Chapter WCD 2 as it existed on March 31, 1973 was repealed, and a new chapter NR 2 was created, Register, March, 1973, No. 207, effective April 1, 1973.

NR 2.01 Application of rules. These rules shall apply in all proceedings and hearings before the department of natural resources except as specifically provided otherwise.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73.

NR 2.02 Definitions for this chapter. (1) **DEPARTMENT.** Department means the department of natural resources.

(2) **SECRETARY.** Secretary means the secretary of the department of natural resources.

(3) **CONTESTED CASE.** Contested case means a proceeding before the department in which after hearing required by law, the legal rights, duties or privileges of any party thereto are to be determined or directly affected by a decision or order therein and in which the assertion of any such right, duty or privilege is denied or controverted by another party thereto.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73.

NR 2.03 Service on the department. All petitions for hearings, petitions for rules, petitions for declaratory rulings, answers and complaints required by any statute or rule shall be served on the secretary, either by delivery to the office of the secretary, or by mailing to the secretary by certified mail, at the following address: P. O. Box 7921, Madison, Wisconsin 53707.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. Register, March, 1978, No. 267, eff. 4-1-78.

NR 2.04 Service of pleadings. After a matter has been set for hearing, all further pleadings shall be served by delivery to the Bureau of Legal Services, Department of Natural Resources or by mail addressed at P. O. Box 7921, Madison, Wisconsin 53707.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. Register, March, 1978, No. 267, eff. 4-1-78.

NR 2.05 Forms of petitions. Petitions shall conform with the applicable statute as to form, content, number of signatories and verifications. Appropriate forms of petitions in various proceedings shall be as follows:

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(1) REVIEW OF SPECIAL ORDERS ISSUED PURSUANT TO SECTIONS 144.025 (2) (d) 1, 144.025 (2) (r) AND 144.35, Wis. Stats.

To the Department of Natural Resources:
The undersigned hereby petitions for a review of the department order dated -----, 19 ----, whereby it was ordered ----- . The grounds for this petition are ----- . The modification or change desired is -----
Date -----
Signature -----
Verification -----

(2) ADOPTION, REPEAL OR AMENDMENT OF RULES OR GENERAL ORDERS OF THE DEPARTMENT (section 227.015, Wis. Stats.)

(a) For adoption of general order or rule:
To the Department of Natural Resources:
The undersigned hereby petitions for the adoption of a rule relating to:-----
The grounds for this petition are-----
The petitioners' interest in the request is -----
The authority of the department to act is -----
Date -----
Signatures (5 needed unless petitioner is a municipality or corporation) -----
Verification -----

(b) For amendment of a general order or rule:
To the Department of Natural Resources:
The undersigned hereby petitions for the amendment of rule number ----- which provides as follows:-----
The grounds for this petition are-----
The modification or change desired is-----
The petitioners' interest in the request is -----
Date -----
Signatures (5 needed if the petitioner is not a municipality or a corporation) -----
Verification -----

(3) DECLARATORY RULINGS (section 227.06, Wis. Stats.)
To the Department of Natural Resources:
In the matter of the applicability of rule ----- (or regulation or statute) to the petitioner (s) -----
Said rule provides as follows: -----

4. The decision to deny or to grant the request in whole or in part.

(b) A preliminary decision to assign confidential status must be made pursuant to one of the following:

1. Section 144.33, Stats., or

2. Section 147.08 (2) (c), Stats., or

3. Upon a finding consistent with the ruling in *State ex rel. Youmans v. Owens* (1965), 28 Wis.2d 672, that confidential treatment of the information is in the public interest, or

4. Other specific statutory or common law right to confidential treatment of information.

(c) A preliminary decision made pursuant to s. 147.08 (2) (c), Stats., or *Youmans* shall also include answers to the following questions:

1. How many people have knowledge of the supposedly "secret" information? Will disclosure increase that number to a significant degree?

2. Does the contested information have any value to the possessor? To a competitor? Is that value substantial?

3. What damage, if any, would the possessor of the secret suffer from its disclosure? What advantages would its competitors reap from disclosure?

4. What benefits are likely to flow from disclosure? To whom? Are they significant? In this connection, what is the public "need" for disclosure? Can it be satisfied in any other way?

(d) The definition of "trade secret" in s. 943.205 (2), Stats., is adopted to apply to determinations made pursuant to s. 147.08 (2) (c), Stats.

(e) A preliminary decision to approve the request in whole or in part shall be published by the department as a class 1 notice in the official state newspaper, and such other notice as the department deems appropriate shall be provided. The applicant or any interested member of the public may obtain an adjudicatory hearing on the preliminary decision to grant the request in whole or in part by petitioning the department for such a hearing within 10 days of receipt of notice. If the preliminary decision is to deny the request, the applicant shall be notified in writing of the decision by the department, and shall have 10 days after receipt of the decision to petition the department for an adjudicatory hearing on the preliminary decision.

(6) HEARING ON THE PRELIMINARY DECISION. (a) If a timely request is received, the department shall provide a hearing at which the applicant, the department and any other interested party may appear and present evidence or testimony supporting its position. A class 1 notice of the hearing shall be published by the department in the official state newspaper, and such other notice as the department deems appropriate shall be provided.

(b) The hearing shall be before a hearing examiner and testimony shall be under oath and subject to cross-examination. The burden of establishing the confidential status shall be with the applicant.

(c) The hearing examiner shall exercise discretion to determine which individuals may have access to information alleged to be confidential and shall exercise the authority provided by law to impose protective measures and conditions for inspection necessary to safeguard confidentiality of the information during and after the hearing.

(7) **FINAL DECISION.** If no hearing is requested within the time provided, the preliminary decision shall become final. If a hearing is requested, the decision of the hearing examiner shall be the final decision of the department, but may be reviewed in the manner prescribed by NR 2.20. The decision of the hearing examiner shall be in writing, shall include findings of fact and conclusions of law, and shall be provided to all parties to the hearing.

(8) **INTERIM CONFIDENTIAL STATUS.** No information for which confidential status was requested shall be open to public scrutiny until 40 days after issuance of the final decision. Additional information supplied by the applicant to support the request for confidentiality shall be treated as confidential. Unless judicial review is requested, this additional information shall be returned to the applicant following the 30-day period for filing a petition for judicial review.

(9) In any contested case hearing the hearing examiner, in determining the merits of a request for trade secret protection or confidential treatment of information which arises during the course of the hearing, shall render a ruling on the request only after receiving answers to the questions appearing in NR 2.19 (5) (c) 1., 2., 3. and 4.

History: Emerg. cr. eff. 1-1-75; Cr. Register, May, 1975, No. 233, eff. 6-1-75; r. and rec. Register, July, 1978, No. 271, eff. 8-1-78.

NR 2.195 Public records and information. (1) It is vital that the public receive factual information on the affairs of state government through all forms of communication. Whether such information is requested by media representatives or individual citizens, department employees should assist in securing facts necessary to allow understanding of and participation in government and government agencies.

(2) **Authorization to provide information.** (a) All department employees are authorized to answer questions within their competency, whether these are asked by the public or by representatives of the news media. Employees, in turn, are responsible for the factual accuracy of the information they provide.

(b) The following are the only exceptions to this "freedom-of-information" policy. Employees will not release information within the 6 stated exceptions without prior approval from the bureau of legal services. The exceptions are:

1. Law enforcement, auditing or other investigational information that might prejudice later court cases or quasi-judicial hearings;
2. Comment on a case before, during or after court or quasi-judicial hearings prior to a decision (except as a witness);
3. Financial, medical, social or personal histories and disciplinary data which may unduly damage reputations;
4. Discussions of personalities in personnel actions or in training sessions for state employees;

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5. Information of a confidential nature that might inhibit private competitive rights, the investment of state funds or the state's bargaining power in acquisition and disposal of land and facilities;

6. Information specifically excluded from public inspection by law. (See section NR 2.19, Wis. Adm. Code).

(3) In cases where the district or bureau director are concerned that the public interest in withholding inspection outweighs the public interest in permitting it, the file or requested information shall be provided to the secretary, deputy secretary or division administrator for review with the bureau of legal services and for determination.

(4) District directors are designated as custodians of department district records and files and are delegated the responsibility for them as well as the authority to provide copies or inspection as provided herein.

(5) Request for copies. (a) Requests for copies of records and files must be complied with unless the records fall within the aforementioned categories. The requestor shall pay the copying charge for 10 or more pages. For 9 or less pages, there will be no charge. Copies shall be provided to the requestor within a reasonable period of time, but as soon as possible taking into consideration other duties and assignments.

(b) When a request concerns a large amount of copy work (i.e., more than 100 pages), the file and request may be sent to the copying facility at GEF #2. In such cases, the requestor must make an advance payment of the copying charge and be informed that there will be a 10-day to 2-week processing period. The payment must accompany the copying request to the central office facility.

(6) Meetings and information activities. (a) All formal meetings of state agencies and bodies, including advisory councils, will be open to the communication media and to the public, except where the matters under discussion fall in the categories listed in s. 19.85, Stats.

(b) Department employes are authorized and encouraged to participate in information activities contributing to a better understanding of the functions of state government, including radio and television programs, speeches, group contacts and magazine articles.

History: Cr. Register, April, 1980, No. 292, eff. 5-1-80.

NR 2.20 Review of contested case decision. (1) **FILING.** Any party to a contested case who is adversely affected by a final decision of the department rendered after a public hearing on the matter, may within 10 days after entry of the decision, file a written petition for review by the secretary. Said petition shall specify in detail the grounds for the review, the relief which petitioner seeks and citation to supporting authorities which petitioner feels aids petitioner's case. The secretary shall not delegate the review to anyone who has had prior involvement in either the hearing or decision-making process.

(2) **SERVICE.** Said petition for review shall be served either personally or by registered or certified mail upon the secretary and upon all other parties to the action.

(3) **DECISION.** Within 14 days of the receipt of the petition, the secretary shall decide whether or not to grant the requested review. If the secretary decides to grant the review, the secretary may order the filing

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of briefs, presentation of oral argument, or a rehearing of all or part of the evidence presented at the original public hearing (or any combination thereof).

(4) **APPEAL.** A petition for review pursuant to this section shall not be a prerequisite for appeal or review under ss. 227.15 to 227.16, Stats.

(5) **SUSPENSION OF ORDERS.** The filing of a petition for review shall not suspend or delay the effective date of an order, and the order shall take effect on the date fixed by the department and shall continue in effect unless provisions of the order are specifically suspended or delayed by the secretary in writing. Petition for such suspension of the effective date of an order shall be clearly specified in the petition for review.

History: Cr. Register, February, 1976, No. 242, eff. 3-1-76.