

Environmental Quality, Dept. of Practice and Procedure

Chapter 1: General Rules

Effective Date: 04/24/2017 to Current

Rule Type: Current Rules & Regulations

Reference Number: 020.0008.1.04242017

CHAPTER 1 GENERAL RULES

Section 1. Authority.

(a) These rules are promulgated as authorized by the Wyoming Administrative Procedure Act, W.S. 16-3-101 through 16-3-115, and the Wyoming Environmental Quality Act, as defined by W.S. 35-11-103(a)(xiii). These rules shall apply in all proceedings before the Department of Environmental Quality and the Environmental Quality Council.

(b) In case of conflict between these rules and the provisions of the Wyoming Administrative Procedure Act or the Wyoming Environmental Quality Act, those acts shall govern. In case of conflict between the Wyoming Administrative Procedure Act and the Wyoming Environmental Quality Act, the Wyoming Environmental Quality Act shall govern.

(c) All hearings before the Council shall be held pursuant to these rules, the provisions of the Wyoming Environmental Quality Act, and, to the extent they do not conflict, the Wyoming Administrative Procedure Act.

Section 2. Definitions.

The following definitions are intended to supplement the definitions set forth and contained in the Wyoming Administrative Procedure Act and the Wyoming Environmental Quality Act:

(a) “Attorney” means an attorney licensed to practice law in the State of Wyoming or an attorney who is licensed to practice law in another state and who is associated with an attorney licensed to practice law in the State of Wyoming;

(b) “Contested case” means a proceeding in which legal rights, duties, or privileges of a party are required by law to be determined by the Council after an opportunity for hearing;

(c) “Council” means the Environmental Quality Council;

(d) “Hearing officer” means a person designated by the Chair of the Council to conduct contested case and rulemaking hearings;

(e) “Office” means the Office of Administrative Hearings;

(f) “Petition” means a written request for relief, submitted to the Council, in accordance with the Wyoming Environmental Quality Act;

(g) “Petitioner” means a person who submits a written request for relief to the Council in accordance with the Wyoming Environmental Quality Act;

(h) “Representative” means an individual other than an attorney who is authorized to

function in a representative capacity on behalf of a party to a contested case;

Section 3. Computation of Time.

(a) In computing any period of time prescribed or allowed by these rules, by order or by any applicable statutes or regulations, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have made agency offices inaccessible, in which event the period runs until the end of the following day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

(b) Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party by mail or by delivery to the agency for service, three (3) days shall be added to the prescribed period. The three-day provision does not apply to rulemaking deadlines.

Section 4. Notice of Hearing.

(a) The Council or its designee shall provide notice of any hearing, which shall include:

- (i) The time, place, and nature of the hearing;
- (ii) The legal authority and jurisdiction under which the hearing is to be held;
- (iii) The particular sections of the statutes and rules involved; and

(iv) A short and plain statement of the matters asserted. If the Council is unable to state the matters in detail at the time the notice is provided, the initial notice may be limited to a statement of the issues involved, and upon a party's request, a more definite and detailed statement shall be furnished.

(b) The Council may provide notice by posting through its website, where allowed by the Wyoming Administrative Procedure Act.

Section 5. Record of Proceedings.

The Council or Department shall make appropriate arrangements to assure that a record of the proceeding is kept pursuant to W.S. 16-3-107(o) and (p), as appropriate. Copies of the transcript taken at any hearing may be obtained by any party, interested person, or entity from the court reporter taking the testimony at such fee as the reporter may charge.

Section 6. Contested Surface Water Discharge Permit Hearings.

Members of the Council shall recuse themselves from contested case proceedings involving the review of surface water discharge permits if they receive, or have during the previous 2 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit, as required by the Clean Water Act, Section 304(i)(D), 33 U.S.C. § 1314(i)(D), and 40 C.F.R. § 123.25(c).

Section 7. Air Quality Division, State Implementation Plan.

(a) The following are the only requirements in these procedural rules that are part of the Air Quality Division's State Implementation Plan:

(i) The Council shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to Air Quality permits or enforcement orders, as required by the Clean Air Act, Section 128(a)(1), 42 U.S.C. § 7428(a)(1);

(ii) Members of the Council shall disclose any potential conflicts of interest in a public meeting of the Council, as required by the Clean Air Act, Section 128(a)(2), 42 U.S.C. § 7428(a)(2).

(b) All other requirements of these procedural rules, except those described in Section 7, are reserved to the authority of the State and are not part of the Air Quality Division's State Implementation Plan.

Section 8. Appeals to Council.

(a) Where authorized by the Wyoming Environmental Quality Act, appeals to the Council from final actions of the Administrators or Director shall be made within thirty (30) days of notification of such action.

(b) Within thirty (30) days after notification of the Director's decision following an informal conference governed by Chapter 9, Section 2 of these rules, the applicant or any person with an interest that is or may be adversely affected may appeal the decision to the Council for a hearing in accordance with Chapters 1 and 2 of these rules. The Director shall notify all persons who submitted timely public comments on the underlying application. The Council shall start the hearing within thirty (30) days of the request for a hearing. The Council shall make a final written decision within thirty (30) days after the hearing and furnish the decision to the applicant and all parties to the hearing.

(c) Where a hearing is requested under subsection (b) of this section, the Council may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(i) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(ii) The persons requesting that relief show that there is a substantial likelihood that they will prevail on the merits of the final determination of the proceeding;

(iii) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources; and

(iv) The relief sought is not the issuance of a permit where a permit has been denied by the Director, except that continuation under an existing permit may be allowed where the operation has a valid permit issued under W.S. § 35-11-406.

Section 9. Appeals from Final Council Action.

Any party to an action before the Council may seek judicial review of the Council's final decision, in accordance with applicable law and court rules.

Section 10. Incorporation by Reference.

(a) These rules incorporate by reference the following statutes, rules, and regulations, as in effect of July 1, 2016:

(i) Section 128(a) of the Clean Air Act, 42 U.S.C. § 7428(a), available at: <https://www.gpo.gov/fdsys/>;

(ii) Section 304(i)(d) of the Clean Water Act, 33 U.S.C. § 1314(i)(d), available at: <https://www.gpo.gov/fdsys/>; and

(iii) 40 C.F.R. § 123.25(c), available at: <http://www.ecfr.gov>.

(b) These rules do not incorporate later amendments or editions of the incorporated matter.

(c) All incorporated matter is available for public inspection at the Department's Cheyenne office or at the Council's Cheyenne office. Contact information for the Department's Cheyenne office may be obtained at <http://deq.wyoming.gov/> or from (307) 777-7937. Contact information for the Council's Cheyenne office may be obtained at <http://wyomingeqc.wyo.gov/> or from (307) 777-7170.

Environmental Quality, Dept. of Practice and Procedure

Chapter 2: Contested Case Hearings

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CHAPTER 2 CONTESTED CASE HEARINGS

Section 1. Purpose and Scope.

These rules are promulgated with the intent to adopt as much of the Chapter 2 Rules for Contested Case Practice and Procedure before the Office of Administrative Hearings (OAH Rules) adopted under W.S. 16-3-102(d) as is consistent with the specific and distinct requirements of the Department and the Council and applicable law. These rules shall govern all contested case proceedings before the Council.

Section 2. Applicability of the Wyoming Rules of Civil Procedure.

The Council shall conduct all contested case hearings with reference to the Wyoming Rules of Civil Procedure. Section 26 of this chapter specifically incorporates Rules 11, 12(b)(6), 24, 45, 52, 56, and 56.1 of the Wyoming Rules of Civil Procedure.

Section 3. Informal Proceedings and Alternative Dispute Resolution.

(a) Parties to a contested case are encouraged to resolve the contested case through settlement, mediation, arbitration, or other means throughout the duration of a contested case. If the parties choose to engage in mediation or arbitration, they shall file a joint request for continuance pending outcome of the mediation or arbitration. If the parties choose to engage in informal settlement discussions, they may file a joint request for continuance pending outcome of the informal settlement discussions.

(b) With the consent of all parties, the hearing officer may assign a contested case to a mediating hearing officer on limited assignment for the purpose of nonbinding alternative dispute resolution methods. Such methods shall be conducted in accordance with the procedures prescribed by the mediating hearing officer.

(c) Parties shall promptly notify the hearing officer of all settlements, stipulations, agency orders, or other action eliminating the need for a contested case hearing. The hearing officer shall forward such notice to the Council. Upon such notice, the Council shall enter an order dismissing the case.

Section 4. Initiation of Contested Case.

(a) All persons requesting a contested case hearing or protesting a permit shall file the original written petition with the Council and serve additional copies to the Director of the Department and any other parties.

(i) A person initiating a contested case shall serve the petition by registered mail, return receipt requested. Thereafter, all service shall be proved in accordance with the Wyoming Rules of Civil Procedure.

(ii) Where a person is objecting to a permit, service of all documents shall include the permit applicant when serving the petition and all other pleadings and motions.

(b) The petition for hearing shall set forth:

(i) Name, phone number, electronic mail address, and physical address of the petitioner and, if applicable, the petitioner's attorney;

(ii) The action, decision, order, or permit upon which a hearing is requested;

(iii) A statement in ordinary but concise language of the specific allegations on which the petition is based, including references to the statute, rule, or order that the petitioner alleges has been violated, and

(iv) A request for hearing before the Council.

(c) The contested case shall be deemed commenced on the date of filing the petition with the Council.

(d) No responsive pleadings are mandatory prior to the prehearing scheduling conference.

Section 5. Filing and Service of Papers

(a) In all contested case proceedings, the parties shall file all original documents, pleadings, and motions with the Council and serve all other parties with true and correct copies of the particular document, pleading, or motion. The original and all copies shall be accompanied by a certificate of service. The Council shall maintain the complete original file, and all parties and the hearing officer shall be provided copies of all contested case documents, pleadings, and motions contained therein.

(b) Filing and service under this rule shall be made by hand delivery, U.S. mail transmittal to the last known address, or electronically uploaded to the relevant docket at <http://wyomingeqc.wyo.gov/>. Where all parties have not consented to receive electronic service, the party electronically filing shall otherwise serve the documents to the parties who have not consented to receive electronic service. Parties may file by means other than those described in this Section upon approval from the hearing officer.

Section 6. Referral to Office.

(a) Upon referral to the Office to conduct a contested case in accordance with W.S. 35-11-112(a), the Council shall transmit to the Office copies of appropriate documents reflecting the dispute and the basis thereof, including any written challenge(s) initiating the contested case and a reference to applicable law.

(b) The Council shall submit a transmittal sheet, on a form provided by the

Office, sufficiently identifying the contested case, including:

- (i) The name of the known parties and their attorneys or representatives;
- (ii) A concise statement of the nature of the contested case;
- (iii) Notification of any time limits for the setting of a hearing or entry of a decision, location requirements, and anticipated special features or unique requirements; and
- (iv) Certification by an authorized officer of the Council that all parties have been properly served with a true and complete copy of the transmittal form.

Section 7. Designation and Authority of Hearing Officer; Recusal.

(a) The Chair may refer, assign, or designate a hearing officer to preside over any contested case unless otherwise provided by law. When appropriate under applicable law and at the Council's request, the hearing officer may provide a recommended decision.

(b) At any time while a contested case is pending, a hearing officer or Council member may withdraw from a contested case by filing written notice of recusal or entering a verbal notice of recusal into the record. As soon as the notice of recusal is entered, the recused hearing officer or Council member shall not participate in the contested case.

(c) Upon motion of any party, recusal of a hearing officer or Council member shall be for cause. Whenever the grounds for such motion become known, any party may move for recusal of a hearing officer or Council member on the ground that the hearing officer or Council member:

- (i) Has been engaged as counsel in the action prior to being appointed as hearing officer;
- (ii) Has a material interest in the outcome of the action;
- (iii) Is related by consanguinity to a party;
- (iv) Is a witness in the action;
- (v) Is biased or prejudiced against the party or the party's attorney or representative; or
- (vi) Any other ground provided by law.

(d) A motion for recusal shall be supported by an affidavit or affidavits of any person or persons stating sufficient facts to show the existence of grounds for the motion. Prior to a hearing on the motion, any party may file counter-affidavits. The motion shall be heard by the hearing officer or, at the discretion of the hearing officer, by another hearing officer. If

the motion is granted, the Council Chair shall immediately designate another hearing officer to preside over the contested case or shall excuse the Council member(s).

(e) A hearing officer appointed from outside the Council members shall not be subject to a voir dire examination by any party.

(f) Subject to limitations imposed by the hearing officer, any party may be permitted to conduct a voir dire examination of a Council member.

Section 8. Appearances and Withdrawals.

(a) A party, whether it be an individual, corporation, partnership, governmental organization, or other entity may appear through an attorney or representative. An individual may represent himself/herself. An individual or entity seeking to intervene in a contested case under Rule 24 of the Wyoming Rules of Civil Procedure may appear through an attorney or representative prior to a ruling on the motion to intervene.

(b) Prior to withdrawing from a contested case, an attorney shall file a motion to withdraw. The motion for an attorney's withdrawal shall include a statement indicating the manner in which notification was given to the client and setting forth the client's last known address and telephone number. The hearing officer shall not grant the motion to withdraw unless the attorney has made reasonable efforts to give actual notice to the client that:

(i) The attorney wishes to withdraw;

(ii) The client has the burden of keeping the hearing officer informed of the address where notices, pleadings, or other papers may be served;

(iii) The client has the obligation to prepare, or to hire another attorney or representative to prepare, for the contested case and the dates of proceedings;

(iv) The client may suffer an adverse determination in the contested case if the client fails or refuses to meet these burdens;

(v) The pleadings and papers in the case shall be served upon the client at the client's last known address; and

(vi) The client has the right to object within fifteen (15) days of the date of notice.

(c) Prior to withdrawing from a contested case, a representative shall provide written notice of withdrawal to the Council.

Section 9. Intervention.

(a) Any person interested in obtaining the relief sought by a party or otherwise

interested in the determination of a proceeding, other than surface coal mining operations pending before the Council, may file a motion to intervene before or at the hearing, but not thereafter except for good cause shown. The motion shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and affirmative relief sought. Leave shall not be granted unless the Council determines that the movant is adversely affected by the action and has a legal right to intervene, under the standards set out in W.R.C.P. Rule 24.

(b) For proceedings related to surface coal mining operations, any person may file a motion for leave to intervene as a full party or in a limited capacity at any stage of a proceeding conducted by the Council. The motion shall include the basis for intervention and shall be granted to any person who either could have initiated the proceeding or has an interest that may be adversely affected by the outcome of the proceeding. Regardless of these bases, intervention may be granted whenever appropriate after considering the nature of the issues, the adequacy of the existing parties' representation of movant's interest, the ability of the movant to present relevant evidence and argument, and the effect of intervention on the implementation of the Wyoming Environmental Quality Act. The extent and terms of participation by an intervenor in a limited capacity shall be determined by the Council.

(c) If the motion to intervene is granted, the movant becomes an intervenor and a party to the proceeding with the right to have notice, appear at the taking of testimony, produce and cross-examine witnesses, and be heard on the argument of the case. The party intervening shall give notice of intervention to all other parties.

Section 10. Ex Parte Communications.

Except as authorized by law, a party or a party's attorney or representative shall not communicate with any Council member in connection with any issue of fact or law concerning any pending contested case, except upon notice and opportunity for all parties to participate. Should ex parte communication occur, the Council member shall advise all parties of the communication as soon as possible thereafter and, if requested, shall allow any party an opportunity to respond prior to ruling on the issue.

Section 11. Motions and Motion Practice.

(a) Unless these rules or an order of the hearing officer establish time limitations other than those contained herein, all motions except motions for enlargement of time and motions made during hearing shall be served at least ten (10) days prior to the hearing on the motion. A party affected by the motion may serve a response together with affidavits, if any, at least three (3) days before the hearing on the motion or within twenty (20) days after service of the motion, whichever is earlier. Unless the hearing officer permits service at some other time, the moving party may serve a reply, if any, at least one day prior to the hearing on the motion or within fifteen (15) days after service of the response, whichever is earlier. Unless the hearing officer otherwise orders, any party may serve supplemental memoranda or rebuttal affidavits at least one day prior to the hearing on the motion.

(b) Unless the hearing officer otherwise orders, a request for a hearing on the motion may be served by the moving party or any party affected by the motion within twenty (20) days after service of the motion. The hearing officer may determine such motion without a hearing.

(c) Prior to filing any non-dispositive motion, a moving party shall make reasonable efforts to contact all other parties, representatives, and attorneys. Any such non-dispositive motion shall include a statement concerning efforts made to confer with the other party(s) and position(s) on the motion.

(d) All written motions filed with the Council shall be accompanied by a proposed order.

Section 12. Setting Hearings and Other Proceedings.

(a) The hearing officer or Chair of the Council, as applicable, shall assign a docket number to each contested case. All papers, pleadings, motions, and orders filed thereafter shall contain:

(i) A conspicuous reference to the assigned docket number;

(ii) A caption setting forth the title of the contested case and a brief designation describing the document filed; and

(iii) The name, address, telephone number, and signature of the person who prepared the document.

(b) The hearing officer shall set the course of proceedings through the issuance of a scheduling order. This may include, but is not limited to, pre-hearing conferences, confidentiality issues, summary disposition deadlines, motion practice, settlement conferences, and the evidentiary hearing.

(c) Prehearing conferences may be held at the discretion of the hearing officer. Any party may request a prehearing conference to address issues such as discovery, motion deadlines, scheduling orders, or case status.

(d) At the hearing officer's discretion and unless otherwise provided by the Council, telephone or videoconference calls may be used to conduct any proceeding. At the discretion of the hearing officer, parties or their witnesses may be allowed to participate in any hearing by telephone or videoconference.

Section 13. Consolidation.

A party may seek consolidation of two or more contested cases by filing a motion to consolidate in each case sought to be consolidated. If consolidation is ordered and unless otherwise ordered by the hearing officer, all subsequent filings shall be in the case first filed,

and all previous filings related to the consolidated cases shall be placed together under that docket number. Consolidation may be ordered on a hearing officer's own motion.

Section 14. Continuances and Extensions of Time.

(a) A motion for a continuance of any scheduled hearing shall be in writing, state the reasons for the motion, and be filed and served on all parties and the hearing officer. A motion for a continuance shall be granted only upon a showing of good cause.

(b) A motion for an extension of time for performing any act prescribed or allowed by these rules or by order of the hearing officer shall be filed and served on all parties and the hearing officer prior to the expiration of the applicable time period. A motion for extension of time shall be granted only upon a showing of good cause.

(c) For contested cases conducted regarding objections pursuant to W.S. 35-11-406(k), a motion for continuance may not be granted if the motion would continue the hearing beyond the 20-day period provided in that statute unless the parties stipulate to a different period.

Section 15. Discovery.

(a) The taking of depositions and discovery shall be in accordance with W.S. 16-3-107(g).

(b) Unless the hearing officer orders otherwise, parties shall not file discovery requests, answers, and deposition notices with the Council.

Section 16. Subpoenas.

Any party may request the hearing officer to issue a subpoena to compel the attendance of a witness or for the production of documents. Requests for a subpoena shall be accompanied by a completed subpoena that conforms to Rule 45 of the Wyoming Rules of Civil Procedure.

Section 17. Summary Disposition.

Rules 12(b)(6), 52(c), 56.1, and 56, Wyoming Rules of Civil Procedure, apply to contested cases.

Section 18. Prehearing Procedures.

(a) Unless otherwise ordered by the hearing officer, each party to a contested case shall file and serve on all other parties and the hearing officer a prehearing disclosure statement setting forth:

(i) A complete list of all witnesses who will or may testify, together with

information on how that witness may be contacted, and a brief description of the testimony the witness is expected to give in the case. If a deposition is to be offered into evidence, the original shall be filed with the Council;

(ii) A statement of the specific claims, defenses, and issues which the party asserts are before the hearing officer for hearing, based on the party's initial filing;

(iii) A statement of the burden of proof to be assigned in the contested case with reference to specific regulatory, statutory, constitutional, or other authority established by relevant case law;

(iv) A statement of stipulated facts. If the parties are unable to stipulate to facts, the parties shall indicate what efforts have been made to stipulate to facts and the reasons facts cannot be stipulated;

(v) A complete list of all documents, statements, etc., which the party will or may introduce into evidence; and

(vi) An approximation of the time required for the hearing.

(b) Parties shall file and serve prehearing disclosure statements on or before the date established by the hearing officer.

(c) The information provided in a prehearing disclosure statement shall be binding on each party throughout the course of the contested case unless modified for good cause.

(d) Additional witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing of the prehearing disclosure statement, it would not unfairly prejudice other parties, and good cause is shown.

(e) The hearing officer may modify the requirements of a prehearing disclosure statement.

(f) Failure to file a prehearing disclosure statement may result in the hearing officer's striking of witnesses, exhibits, claims and defenses, or dismissal of the contested case.

(g) If a prehearing order is entered, the prehearing order shall control the course of the hearing.

Section 19. Burden of Proof.

The hearing officer shall assign the burden of proof in accordance with applicable law.

Section 20. Evidence.

(a) The hearing officer shall rule on the admissibility of evidence in accordance with the following:

(i) Evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(ii) Evidence may be offered through witness testimony or in documentary form;

(iii) Testimony shall be given under oath administered by the hearing officer. Deposition testimony and other pre-filed testimony may be submitted as evidence, provided the testimony is given under oath administered by an appropriate authority, and is subject to cross-examination by all parties;

(iv) The rules of privilege recognized by Wyoming law shall be given effect; and

(v) A hearing officer may take administrative notice of judicially cognizable facts, provided the parties are properly notified of any material facts noticed.

(b) Each party shall have the opportunity to cross-examine witnesses. The hearing officer may allow cross-examination on matters not covered on direct examination. Each party shall have the opportunity to perform re-direct examination of witnesses on matters covered during cross-examination.

(c) The hearing officer or Council member, when applicable, may ask questions of any party or witness.

Section 21. Contested Case Hearing Procedure.

(a) The hearing officer shall conduct the contested case and shall have discretion to direct the order of the proceedings.

(b) Unless otherwise provided by law, and at the hearing officer's discretion, the party with the burden of proof shall be the first to present evidence. All other parties shall be allowed to cross-examine witnesses in an orderly fashion. When that party rests, other parties shall then be allowed to present their evidence. Rebuttal and surrebuttal evidence shall be allowed only at the discretion of the hearing officer.

(c) The hearing officer shall have discretion to allow opening statements and closing arguments.

Section 22. Default.

Unless otherwise provided by law, a hearing officer may enter an order of default or

an order affirming agency action for a party's failure to appear at a lawfully noticed hearing.

Section 22. Expedited Hearing.

(a) At the hearing officer's or Council's discretion and when allowed by applicable law, a contested case may be heard as an expedited hearing upon the motion of any party.

(b) An expedited hearing shall be decided on written arguments, evidence, and stipulations submitted by the parties. A hearing officer or the Council may permit oral arguments upon the request of any party.

(c) The hearing officer may require an evidentiary hearing in any case in which it appears that facts material to a decision in the case cannot be properly determined by an expedited hearing.

Section 24. Recommended Decision.

In those contested cases where the hearing officer makes a recommended decision, the hearing officer shall file the recommended decision with the Council and serve copies of the recommended decision on all parties to the contested case. Unless otherwise ordered, parties shall have ten (10) days to file written exceptions to the hearing officer's recommended decision. Written exceptions shall be filed with the Council and served on all parties.

Section 25. Final Decision.

(a) A final decision containing findings of fact, conclusions of law, and an order entered by the Council shall be in writing and served upon all parties to the contested case and the hearing officer, if applicable.

(b) A final decision shall include findings of fact and conclusions of law, separately stated. When the hearing officer allows the parties to submit a proposed final order, the parties shall file the original with the Council and serve copies of the proposed order on all other parties and the hearing officer.

(c) A hearing officer may at any time prior to judicial review correct clerical errors in final decisions or other parts of the record. A party may move that clerical errors or other parts of the record be corrected. During the pendency of judicial review, such errors may be corrected only with leave of the court having jurisdiction.

Section 26. Incorporation by Reference.

(a) The code, standard, rule, or regulation below is incorporated by reference and can be found at:

http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULES_OF_CIVIL_PROCEDURE.pdf

(i) Rule 11, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on March 1, 2017;

(ii) Rule 12(b)(6), Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on March 1, 2017;

(iii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on March 1, 2017;

(iv) Rule 45, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on March 1, 2017;

(v) Rule 52, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on March 1, 2017;

(vi) Rule 56, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on March 1, 2017;

(vii) Rule 56.1, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on March 1, 2017.

(b) These rules do not incorporate later amendments or editions of the incorporated matter.

(c) All incorporated matter is available for public inspection at the Department's Cheyenne office or at the Council's Cheyenne office. Contact information for the Department's Cheyenne office may be obtained at <http://deq.wyoming.gov/> or from (307) 777-7937. Contact information for the Council's Cheyenne office may be obtained at <http://wyomingeqc.wyo.gov/> or from (307) 777-7170.

Environmental Quality, Dept. of Practice and Procedure

Chapter 3: Rulemaking

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CHAPTER 3 RULEMAKING

Section 1. Authority.

The Council may promulgate rules necessary for the administration of the Wyoming Environmental Quality Act after receiving a recommendation to adopt a proposed rule or rules from the Director under W.S. 35-11-112(a)(i). The Department may begin preliminary rulemaking on its own, in response to a suggestion from the Council or advisory boards, or in response to a petition for rulemaking.

Section 2. Definitions.

The following definitions supplement the definitions found in the Wyoming Administrative Procedure Act and the Wyoming Environmental Quality Act.

(a) “Initiate rulemaking” means to submit notice of the intent to adopt, amend, or repeal any rule, other than an interpretive rule or statement of general policy, to the Secretary of State’s Office, the Legislative Service Office, and the Attorney General’s Office, as required by W.S. 16-3-103(a)(i).

(b) “Preliminary rulemaking” is the rule development process that occurs at the Department prior to initiating rulemaking.

(c) “Preliminary rule” is a rule that the Department has not filed with the Council.

(d) “Proposed rule” is a rule that the Department has filed with the Council.

Section 3. Petition for Rulemaking.

Any interested person may petition the Council or the Department requesting the promulgation, amendment, or repeal of any rule. The Director shall be copied on any petition directed to the Council and the Chair of the Council shall be copied on any petition directed to the Department.

(a) Each petition shall identify the rule or rules to be promulgated, amended, or repealed and shall provide support for the proposed rulemaking in the form of argument, data, legal citation, or other justification, as appropriate.

(b) For any petition that is directed to the Council, the Council shall, as soon as practicable, either deny or redirect the petition to the Director.

(i) The Council may hold a hearing to request additional information from the petitioner or members of the public before acting on a petition.

(ii) If the Council denies the petition, the Council shall notify the petitioner in writing, setting forth the reasons for denial. The Council shall provide a copy of the denial to the Director.

(iii) If the Council redirects the petition to the Director, the Council shall provide a copy of that determination to the petitioner.

(c) Upon receiving a petition from a member of the public or one that is redirected by the Council, the Director shall, as soon as practicable, either deny the petition in writing or begin preliminary rulemaking.

(i) The Director may request additional information from the petitioner before acting on the petition and may seek additional input from members of the public through public meetings, hearings, or other outreach.

(ii) If the Director denies the petition, the Director shall notify the petitioner in writing, setting forth the reasons for the denial.

(iii) If the Director begins preliminary rulemaking in response to a petition, the Director shall notify the petitioner in writing of that determination.

(iv) If the Director begins preliminary rulemaking in response to a petition and subsequently decides not to initiate rulemaking, the Director shall notify the petitioner in writing of that decision, setting forth the reasons for doing so. The decision not to initiate rulemaking is a denial of the rulemaking petition.

(v) The Director shall provide the Council with a copy of all notices required by this subsection.

(d) A written denial of any rulemaking petition is final agency action and is not subject to judicial review.

Section 4. Preliminary Rulemaking Hearings before the Advisory Boards.

(a) The air, land, solid and hazardous waste management, and water divisions of the Department may conduct preliminary rulemaking hearings before their related advisory boards by submitting the following materials to the affected board:

(i) Strike and underscore and clean copies of the preliminary rule;

(ii) Copies of all public comments received to date and proposed responses, if applicable; and

(iii) Any additional materials that the divisions and advisory boards believe are necessary to explain the content of the preliminary rules.

(b) The Department may not initiate rulemaking and submit a proposed rule to the Council for consideration without first securing a recommendation to adopt the preliminary rule from the affected advisory board. At the conclusion of a preliminary rulemaking hearing, an advisory board may:

(i) Choose to continue discussion of the preliminary rule at the next regularly scheduled meeting or schedule a special meeting specifically to discuss the proposed rule, retaining the ability in either situation, to also re-open and extend the public comment period for the proposed rule;

(ii) Remand the preliminary rule to the division for further action, including addressing questions regarding specific aspects of the preliminary rule; or

(iii) Recommend that the Department initiate rulemaking and submit the preliminary rule to the Council for adoption.

(c) When preliminary rules involve more than one of the divisions of the Department, the Director may call a joint meeting of the affected advisory boards. The advisory boards shall select one member to preside over the joint meeting. Any formal action taken on a preliminary rule discussed during a joint meeting of the advisory boards must be voted on individually by each advisory board.

(d) The divisions may consult with the advisory boards through special meetings after preliminary rulemaking hearings. The divisions may incorporate suggestions that arise during preliminary rulemaking hearings or any subsequent special meetings without conducting additional preliminary rulemaking hearings.

Section 5. Promulgating Rules.

(a) When the Department initiates rulemaking, it shall file the following with the Council:

(i) Strike and underscore and clean copies of the proposed rule;

(ii) Proposed Statement of Principal Reasons for adopting the proposed rule;

(iii) Copies of all public comments received to date and proposed responses, if applicable;

(iv) Record or minutes of any public hearings or meetings conducted by the Department and the affected advisory board or boards;

(v) Statement from the Director indicating that the proposed rule was recommended for adoption by the affected advisory board or boards through the affected division administrator or administrators;

(vi) Recommendation from the Director that the Council adopt the proposed rule; and

(vii) Any additional materials that the Department believes are necessary to explain the contents of the proposed rule.

(b) When initiating rulemaking, the Department shall provide the Council with an index of materials relied upon to develop the proposed rule.

(i) The Department may update the index until the public comment period on the proposed rule, as required by W.S. 16-3-103(a)(i), is closed. After the comment period is closed, the Department may only update the index with responses to comments.

(ii) All indexed materials shall be open for inspection by any person at reasonable times during business hours of the Department.

(c) In the case of judicial review of any rule adopted by the Council, all indexed materials shall be included in the administrative record submitted to the court, together with any additional materials considered by the Council during rulemaking hearings.

Section 6. Rulemaking Hearings before the Council.

(a) The Council chair shall assign a hearing officer from among the Council members within thirty (30) days of the Department filing the proposed rule with the Council. The appointed hearing officer shall preside over all proceedings before the Council related to the proposed rule. If the assigned Council member leaves the Council through resignation, expiration of membership, or otherwise, the chair shall assign a hearing officer as a replacement and shall serve as the hearing officer in the interim before the substitute assignment is made.

(b) Any member of the public, subject to reasonable time restrictions established by the presiding officer, may address the Council at any meeting in which the Council is considering proposed rules. The Council shall allow meaningful opportunity for public comment at each rulemaking hearing.

(i) No person may address the Council without first being recognized by the presiding officer.

(ii) The Council may provide a telephonic or internet-based method to receive public comments during Council proceedings.

(iii) Members of the public may not directly address each other in proceedings before the Council, and shall address any questions to the hearing officer.

(iv) Members of the public seeking recognition in proceedings before the Council shall state their name and whether they are speaking on behalf of an organization. The Council shall consider all comments to be made in a person's individual capacity unless an affiliation is disclosed to the Council.

(v) In considering proposed rules, the Council shall consider all properly submitted public comments.

(vi) Comments shall be directed to the Council as a whole and not to individual Council members. If a member of the public approaches an individual Council member to discuss a proposed rule, that member shall direct the person to submit a comment for full consideration by the Council. If a Council member receives information through informal contact with a member of the public, that member shall disclose the contact and the information received to the rest of the Council in an open meeting. If the information is reduced to writing in physical or electronic format, the Council member shall provide the information to the other Council members and the writing shall become part of the record.

(c) The Council may make changes to proposed rules based on its independent analysis of the form and substance of the proposed rules. In doing so, the Council may consider testimony received during a rulemaking hearing and materials submitted to the rulemaking docket.

(i) In considering potential changes to proposed rules, the Council shall consider the following:

(A) Whether the contemplated change meets all procedural requirements of the Wyoming Administrative Procedure Act, including whether the change is a logical outgrowth of the proposed rule;

(B) Whether the opportunity for public participation was meaningful and sufficient given the nature of the contemplated change to the proposed rule;

(C) Whether the contemplated change imposes an unwarranted administrative burden on the Department; and

(D) Whether the contemplated change impacts the Department's ability to maintain primacy over the relevant regulatory area. The Council shall allow the Department to provide a primacy analysis in the context of any contemplated changes.

(ii) The Council shall not modify a proposed rule if the Council determines that:

(A) The contemplated change conflicts with state or federal law;

proposed rule; or (B) The contemplated change is not a logical outgrowth of the

(C) The opportunity for public participation was not meaningful or sufficient given the nature of the contemplated change.

Environmental Quality, Dept. of

Practice and Procedure

Chapter 5: Petitions for Award of Costs & Expenses

Effective Date: 04/24/2017 to Current

Rule Type: Current Rules & Regulations

Reference Number: 020.0008.5.04242017

CHAPTER 5
PETITIONS FOR AWARD OF COSTS AND EXPENSES UNDER W.S. 35-11-437(f)

Section 1. Petition and Answer.

(a) As described in W.S. 35-11-437(f), a petition for award of costs and expenses must be filed with the Council within forty-five (45) days of receipt of a final order from the Council, in accordance with Chapter 2, Section 5 of these rules. Any person served with a copy of the petition shall have thirty (30) days from service within which to file an answer to the petition. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(b) The petition shall contain the petitioner's name and a detailed accounting, including receipts, of all costs and expenses authorized under W.S. 35-11-437(f). Where attorneys' fees are claimed, the petition shall include evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual(s) performing the services.

(c) Any proceeding to award costs under W.S. 35-11-437(f) shall follow the contested case procedures outlined in Chapter 2 of these rules.

Section 2. Who May Receive an Award.

(a) Appropriate costs and expenses including attorneys' fees may be awarded:

(i) To a permittee from any person, but only if the Council finds that:

(A) The person initiated or participated in enforcement action in bad faith for the purpose of harassing or embarrassing the permittee.

(ii) To a permittee from the Department, but only if the Council finds that:

(A) The Department issued an order of cessation, a notice of violation, or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee.

(iii) To any person from the permittee, but only if the Council finds that:

(A) The person initiated or participated in an administrative proceeding reviewing enforcement actions;

(B) A violation of the Wyoming Environmental Quality Act, regulations, or permit has occurred, or that an imminent hazard existed; and

(C) The person substantially contributed to a full and fair determination of the issues.

(iv) To any person, other than a permittee or its representative, from the Department, but only if the Council finds that:

(A) The person initiated or participated in a contested case proceeding under the Wyoming Environmental Quality Act as it provides for regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87;

(B) The person prevailed in whole or part, achieving at least some degree of success on the merits;

(C) The person substantially contributed to a full and fair determination of the issues.

(v) To the Department from a person, but only if the Council finds that:

(A) The Department has demonstrated that a person initiated or participated in reviewing of any enforcement action in bad faith for the purpose of harassing or embarrassing the Department.

Section 3. Awards.

(a) An award under this chapter may include:

(i) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the Wyoming Environmental Quality Act as it provides for regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87.

(ii) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before the council.

Environmental Quality, Dept. of

Practice and Procedure

Chapter 9: Director Review of Actions Involving Surface Coal Mining Operations and All Hearings Before The Department

Effective Date: 04/24/2017 to Current

Rule Type: Current Rules & Regulations

Reference Number: 020.0008.9.04242017

CHAPTER 9
DIRECTOR REVIEW OF ACTIONS INVOLVING SURFACE COAL MINING
OPERATIONS AND ALL HEARINGS BEFORE THE DEPARTMENT

Section 1. Scope.

This Chapter shall apply to any hearings, informal conferences, or review before the Department, the Director, an Administrator, or any combination thereof. This Chapter does not apply to rulemaking hearings, contested case hearings, or other hearings before the Council.

Section 2. Requests for Informal Conferences Involving Surface Coal Mining Operations.

(a) Unless otherwise specified in the Wyoming Environmental Quality Act, and in accordance with W.S. 35-11-406, a request for an informal conference shall be in writing and, at a minimum, contain:

(i) The name(s) and contact information of the person requesting the informal conference;

(ii) A brief statement identifying the purpose of the request;

(iii) A brief statement of the issues to be discussed or details supporting the written objection to the application for the surface coal mining operation;

(iv) A brief statement on whether the person desires the informal conference to be held in the locality of the proposed mining operation; and

(v) A brief statement on whether the person desires access to the proposed permit area.

(b) The Director shall inform the applicant, the person requesting the informal conference, and all persons who submitted timely public comments on the underlying application, whether the request is granted or denied.

(c) If requested, the Director may arrange with the applicant to grant parties to the informal conference access to the permit area for the purpose of gathering information relevant to the informal conference.

(d) The informal conference shall be held in accordance with W.S. 35-11-406(k) in the locality of the proposed mining operation or in Cheyenne, at the option of the requesting person.

(e) The procedure for the informal conference shall be informal. The Director may accept oral or written statements and any other relevant information from any party to the informal conference. An electronic or stenographic record shall be made of the informal

conference, unless waived by all parties. The record shall be maintained and shall be accessible to the parties until final release of the performance bond.

(f) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be cancelled.

Section 3. Requests for Informal Disposition Conferences and Conferences to Review Notices for Abatement and Cessation Orders Involving Surface Coal Mining Operations.

(a) Unless otherwise specified in the Wyoming Environmental Quality Act, and in accordance with W.S. 35-11-437, a request for the Director or his authorized representative to review and affirm, modify, vacate, or terminate a notice for abatement or cessation order shall be in writing and, at a minimum, contain:

- (i) The name(s) and contact information of the person requesting the affirmation, modification, vacation, or termination of the notice for abatement or cessation order;
- (ii) If applicable, the permit number;
- (iii) A copy of the notice for abatement or cessation order; and
- (iv) A brief statement identifying whether the person is requesting affirmation, modification, vacation, or termination of the notice or order, the facts on which that request is based, the reasoning for the request, and reference to any applicable statutes, rules, or orders supporting the request.

(b) Unless otherwise specified in the Wyoming Environmental Quality Act, and in accordance with W.S. 35-11-902, a request for an informal disposition conference shall be in writing and, at a minimum, contain:

- (i) The name(s) and contact information of the person requesting the informal disposition conference;
- (ii) If applicable, the permit number;
- (iii) A copy of the notice for abatement or cessation order;
- (iv) A copy of the notice of assessment of the penalty;
- (v) A brief statement identifying whether the dispute is over the amount of the penalty or the occurrence of the violation; and
- (vi) A brief statement describing why the violation or the amount of the penalty is unwarranted.

(c) A request for a conference to review a notice for abatement or cessation order shall be filed within thirty (30) days. A request for an informal disposition conference shall be filed within the time period provided under W.S. 35-11-902(d).

(d) If the Director grants a request under subsections (a) or (b) of this section, the Director shall inform the requesting person. If the Director denies a request under subsections (a) or (b) of this section, the denial shall be in writing.

(e) If an informal disposition conference or a conference to review a notice for abatement or cessation order is held, any person has the right to attend and participate in the conference. The procedure for the conference shall be informal with no pre-hearing conference, discovery, or cross-examination. The Director may record the conference by audio recording or court reporter and shall make any such recording available to all participants.

(f) The Director shall provide the participants:

(i) A written statement of any action taken or decisions rendered as a result of the conference; and

(ii) A notice of any available appeal to the Council.

(g) The terms of subsections (d), (e), and (f) of this section shall also apply to decisions made, or proceedings held, by the Director's authorized representative.

(h) At formal review proceedings before the Council that may follow an informal disposition conference or conference to review a notice for abatement or cessation order, no evidence as to statements made or evidence produced by one participant at the conference or review shall be introduced as evidence by another participant.

Section 4. Requests for Hearings Before the Department.

(a) Requests for hearings in accordance with Section 1 of this chapter before the Department, the Director, an Administrator, or any combination thereof provided for under the Wyoming Environmental Quality Act shall be in writing and contain:

(i) The name(s) and contact information of the person(s) requesting the hearing;

(ii) A brief statement identifying the purpose of the request; and

(iii) A brief statement of the issues to be discussed.

(b) Within thirty (30) days of the request, the Department shall grant or deny the request. If the Department grants the request, it shall schedule the hearing and notify the requesting party in writing. If the Department denies the request, it shall provide the requesting party a brief statement in writing of the reasons for denial.

Section 5. General Procedures for Hearings Before the Department.

(a) The Department shall designate a presiding officer for the hearing. The presiding officer shall adopt whatever procedures are reasonable and necessary for the conduct of the hearing.

(b) Unless otherwise stated in statute, such hearings are non-adversarial in nature and require no pleadings. Any interested persons shall be given the opportunity to appear and make their views known to the Department. Oral and written statements may be presented without regard to the rules of evidence.

(c) No cross-examination is permitted, but persons appearing to make statements or present information may answer questions from or through the presiding officer. Questions for the person appearing to make statements or present information may be submitted to the presiding officer orally or in writing, and the presiding officer may direct appropriate questions to the person presenting. The presiding officer may limit the questioning and length of oral statements in the interest of conducting the hearing in an efficient and orderly manner.

(d) The Department may record the meeting by audio recording or court reporter and shall make any such recording available to all participants.

(e) The Department shall designate a location for any hearing before the Department and may provide an opportunity for interested persons to attend a hearing remotely.

(f) At the conclusion of the hearing, the Department shall issue:

(i) A written statement of any action taken or decisions rendered as a result of the hearing, if applicable; and

(ii) A notice of any available appeal to the Director or to the Council.

Section 6. Hearing Notice.

(a) Unless otherwise specified in the Wyoming Environmental Quality Act, the Department shall provide written notice by email or regular mail to the person requesting the hearing and shall post a notice of the hearing on its website.

(b) The notice shall include:

(i) The name(s) of the person(s) requesting the hearing, if any;

(ii) A brief statement identifying the purpose of the hearing;

(iii) A brief statement of the issues to be discussed;

- (iv) The date, time, and location of the hearing;
- (v) The method for remote attendance, if applicable; and
- (vi) A copy of the request for a hearing. The Department shall redact personal contact information such as the requesting person's address and phone number.

Section 7. Variance Hearings Before the Department.

- (a) The Department shall hold variance hearings pursuant to W.S. 35-11-601.
- (b) Following the hearing, the relevant Administrator(s) shall consider the views of the persons who may be affected by the grant of the variance and approve or deny the variance with the Director's approval.

TITLE 16
CITY, COUNTY, STATE AND LOCAL POWERS

CHAPTER 3
ADMINISTRATIVE PROCEDURE

16-3-101. Short title; definitions.

(a) This act may be cited as the "Wyoming Administrative Procedure Act".

(b) As used in this act:

(i) "Agency" means any authority, bureau, board, commission, department, division, officer or employee of the state, a county, city or town or other political subdivision of the state, except the governing body of a city or town, the state legislature, the University of Wyoming, the judiciary and the consensus revenue estimating group as defined in W.S. 9-2-1002;

Note: Effective 7/1/2018 this paragraph will read as:

"Agency" means any authority, bureau, board, commission, department, division, officer or employee of the state, a county, city or town or other political subdivision of the state, except the governing body of a city or town, the state legislature, the University of Wyoming, the judiciary, the consensus revenue estimating group as defined in W.S. 9-2-1002 and the investment funds committee created by W.S. 9-4-720;

(ii) "Contested case" means a proceeding including but not restricted to ratemaking, price fixing and licensing, in which legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing but excludes designations under W.S. 9-2-1022(h)(i);

(iii) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes;

(iv) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license;

(v) "Local agency" means any agency with responsibilities limited to less than statewide jurisdiction, except the governing body of a city or town;

(vi) "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party;

(vii) "Person" means any individual, partnership, corporation, association, municipality, governmental subdivision or public or private organization of any character other than an agency;

(viii) "Registrar of rules" for state agency rules means the secretary of state. "Registrar of rules" for local agency rules means the county clerk of the county in which the rule is to be effective;

(ix) "Rule" means each agency statement of general applicability that implements, interprets and prescribes law, policy or ordinances of cities and towns, or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(A) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(B) Rulings issued pursuant to W.S. 16-3-106; or

(C) Intraagency memoranda; or

(D) Agency decisions and findings in contested cases; or

(E) Rules concerning the use of public roads or facilities which are indicated to the public by means of signs and signals; or

(F) Ordinances of cities and towns; or

(G) Designations under W.S. 9-2-1022(h)(i); or

(H) A general permit.

(x) "State agency" means any agency with statewide responsibilities;

(xi) "General permit" means a permit issued by the department of environmental quality which authorizes a category or categories of discharges or emissions;

(xii) "Internet" means as defined in W.S. 9-2-1035(a) (iii);

(xiii) "This act" means W.S. 16-3-101 through 16-3-115.

16-3-102. General rulemaking requirements; assistance and authority of attorney general.

(a) In addition to other rulemaking requirements imposed by law, each agency shall:

(i) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available in connection with contested cases;

(ii) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions;

(iii) Make available for public inspection all final orders, decisions and opinions.

(b) No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been filed with the registrar of rules and made available for public inspection as required by this act. This subsection does not apply to orders or decisions in favor of any person or party with actual knowledge of the rule, order or decision.

(c) In formulating rules of practice as required by this section, each agency may request the assistance of the attorney general and upon request the attorney general shall assist the agency or agencies in the preparation of rules of practice.

(d) The office of administrative hearings shall adopt uniform rules for the use of state agencies setting forth the

nature and requirements of all formal and informal procedures available in connection with contested cases.

(e) The attorney general may repeal administrative rules of a state agency in accordance with this act if the rules have become obsolete and no other existing agency has authority to repeal the rules.

16-3-103. Adoption, amendment and repeal of rules; notice; hearing; emergency rules; proceedings to contest; review and approval by governor.

(a) Prior to an agency's adoption, amendment or repeal of all rules other than interpretative rules or statements of general policy, the agency shall:

(i) Give at least forty-five (45) days notice of its intended action. Notice shall be mailed to all persons making timely requests of the agency for advanced notice of its rulemaking proceedings and to the attorney general, the secretary of state's office as registrar of rules, and the legislative service office if a state agency. The agency shall submit a copy of the proposed rules, in a format conforming to any requirements prescribed pursuant to subsection (f) of this section, with the notice given to the legislative service office. The notice shall include:

(A) The time when, the place where and the manner in which interested persons may present their views on the intended action;

(B) A statement of the terms and substance of the proposed rule or a description of the subjects and issues involved;

(C) If an amendment or a repeal, the citation to the agency rule to be amended or repealed;

(D) If new rules, a statement that they are new rules and a citation of the statute which authorizes adoption of the rules;

(E) The place where an interested person may obtain a copy of the proposed rules in a format conforming to any requirements prescribed pursuant to subsection (f) of this section;

(F) If the agency asserts that all or a portion of a rule is proposed to be adopted, amended or repealed in order for the state to comply with federal law or regulatory requirements:

(I) A statement that the adoption, amendment or repeal of the rule is required by federal law or regulation together with citations to the applicable federal law or regulation; and

(II) A statement whether the proposed rule change meets minimum federal requirements or whether the proposed rule change exceeds minimum federal requirements.

(G) A statement whether the proposed rule change meets minimum substantive state statutory requirements or whether the proposed rule change exceeds minimum substantive state statutory requirements. If the rule change exceeds minimum substantive state statutory requirements, the agency shall include a statement explaining the reason why the rule exceeds minimum substantive statutory requirements;

(H) A statement that the agency has complied with the requirements of W.S. 9-5-304 and the location where an interested person may obtain a copy of the assessment used to evaluate the proposed rule pursuant to W.S. 9-5-304;

(J) A concise statement of the principal reasons for adoption of the rule. In compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), the statement shall include a brief explanation of the substance or terms of the rule and the basis and purpose of the rule;

(K) If a state agency is proposing a rule that differs from the uniform rules listed in subsection (j) of this section, a statement of the reasons for varying from the uniform rules.

(ii) Afford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing, provided this period shall consist of at least forty-five (45) days from the later of the dates specified under subparagraph (A) of this paragraph, and provided:

(A) In the case of substantive rules, opportunity for oral hearing shall be granted if requested by

twenty-five (25) persons, or by a governmental subdivision, or by an association having not less than twenty-five (25) members. No hearing under this subparagraph shall be conducted until at least forty-five (45) days after the later of:

(I) The date notice of intended action is given under paragraph (i) of this subsection; or

(II) The date notice is published if publication is required by subsection (e) of this section.

(B) The agency shall consider fully all written and oral submissions respecting the proposed rule;

(C) If prior to final adoption any person objects to the accuracy of a statement made by the agency pursuant to W.S. 16-3-103(a)(i)(F)(I) or (II), the agency shall:

(I) Provide the objecting person with a written response explaining and substantiating the agency's position by reference to federal law or regulations; and

(II) Include with the final rules submitted for review to the governor and legislative service office a concise statement of the objection and the agency's response.

(D) Upon adoption of the rule, the agency, if requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for overruling the consideration urged against its adoption.

(iii) Comply with the requirements of W.S. 9-5-304.

(b) When an agency finds that an emergency requires the agency to proceed without notice or opportunity for hearing required by subsection (a) of this section, it may adopt emergency rules. An emergency rule is effective when filed. A state agency emergency rule shall bear the endorsement of the governor's concurrence on the finding of emergency before the registrar of rules accepts the rule for filing. The rule so adopted shall be effective for no longer than one hundred twenty (120) days but the adoption of an identical rule under W.S. 16-3-103(a) or of an emergency rule under this subsection is not precluded. In no case shall identical or substantially similar emergency rules be effective for a total period of more than two hundred forty (240) days. A local agency may proceed with the

emergency rule when notice of the emergency is filed with the local registrar of rules.

(c) No rule is valid unless submitted, filed and adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two (2) years from the effective date of the rule.

(d) No state agency rule or any amendment, repeal, modification or revision of the rule may be filed with the registrar of rules unless the rule has been submitted to the governor for review and the governor has approved and signed the rule. Except in the case of emergency rules and rules adopted by the game and fish commission fixing general hunting or fishing regulations, season or bag limits or establishing hunting areas, the governor shall not approve any rule until the date of receipt of the legislative management council's recommendation under W.S. 28-9-106(a) or until forty (40) days after the rule is filed with the legislative service office pursuant to W.S. 28-9-103(b), whichever is sooner. During the process of approving rules, the governor may disapprove any portion of a rule not conforming to paragraphs (d)(i), (ii) or (iii) of this section by clearly indicating the portion of the rule disapproved and the basis for the disapproval. Only those portions of a rule approved by the governor shall be filed with the registrar of rules as provided by W.S. 16-3-104(a). Any portion of a rule disapproved by the governor shall be returned to the agency and shall be null and void and shall not be filed, implemented or enforced. The governor shall report his disapproval of any rule or portion thereof to the management council within fifteen (15) days. The governor shall not approve any rule or any amendment, repeal, modification or revision of the rule unless it:

(i) Is within the scope of the statutory authority delegated to the adopting agency;

(ii) Appears to be within the scope of the legislative purpose of the statutory authority; and

(iii) Has been adopted in compliance with the procedural requirements of this act. For the purposes of this subsection, an "agency" means any authority, bureau, board, commission, department, division, officer or employee of the state, excluding the state legislature and the judiciary.

(e) If a state agency created as a licensing or regulatory board or commission for any profession or occupation regulated under title 33 regularly publishes a newsletter, memorandum or other written or electronic communication which serves as a medium to provide information to members of the regulated profession or occupation, then in addition to the notice requirements of subsection (a) of this section, the agency shall publish within that medium the proposed rules in a format conforming to any requirements prescribed pursuant to subsection (f) of this section. If the agency determines publication in such manner is not practicable, it shall publish within the chosen medium at least once prior to taking final action to adopt, amend or repeal any rule notice of its intended rulemaking proceedings and make available the full text of all proposed changes in the format conforming to any requirements prescribed pursuant to subsection (f) of this section. This subsection shall not apply to emergency rules adopted pursuant to subsection (b) of this section.

(f) The state registrar of rules shall prescribe a format for state agencies to follow in preparing proposed amendments to existing rules which shall ensure that additions to and deletions from existing language are clearly indicated.

(g) Upon receipt of a notice of intended action from a state agency under paragraph (a)(i) of this section, the secretary of state's office shall maintain a file of these notices and make them available for public inspection during regular business hours. A notice shall remain in the file until the rules are adopted or until the agency determines not to take action to adopt the proposed rules. To the extent that resources enable the office to do so, the secretary of state's office shall make these notices available to the public electronically. The secretary of state may promulgate rules specifying the format of notices submitted by state agencies under this subsection. Compliance with this subsection shall not affect the validity of rules promulgated by state agencies.

(h) An agency may incorporate, by reference in its rules and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation that has been adopted by an agency of the United States or of this state, another state or by a nationally recognized organization or association, provided:

(i) The agency determines that incorporation of the full text in agency rules would be cumbersome or inefficient given the length or nature of the rules;

(ii) The reference in the rules of the incorporating agency fully identifies the incorporated matter by location, date and otherwise, and states that the rule does not include any later amendments or editions of the incorporated matter;

(iii) The agency, organization or association originally issuing the incorporated matter makes copies of it readily available to the public;

(iv) The incorporating agency maintains and makes available for public inspection a copy of the incorporated matter at cost from the agency and the rules of the incorporating agency state where the incorporated matter is available on the internet as defined in W.S. 9-2-1035(a)(iii); and

(v) The incorporating agency otherwise complies with all procedural requirements under this act and the rules of the registrar of state agency rules governing the promulgation and filing of agency rules.

(j) Each state agency shall adopt as much of the uniform rules promulgated pursuant to the following provisions as is consistent with the specific and distinct requirements of the agency and state or federal law governing or applicable to the agency:

(i) W.S. 16-3-102(d);

(ii) W.S. 16-4-204(e).

16-3-104. Filing of copies of rules; permanent register; effective dates; manner of preparation; advice and assistance of attorney general.

(a) Each agency shall file in the office of the registrar of rules a certified copy of each rule adopted by it as approved by the governor. State agencies shall file each rule within seventy-five (75) days of the date of agency action adopting the rule or it is not effective. There shall be noted upon the rule a citation of the authority by which it or any part of it was adopted. The registrar of rules shall keep a permanent register of the rules open to public inspection. Not more than ten (10)

days after a state agency files a copy of a rule in the office of the registrar of rules, the agency shall mail a notice that the rule has been filed to each person who was sent a notice under W.S. 16-3-103(a)(i). The notice shall contain a citation to the rule and the date it was filed. Failure to send the notice required under this subsection does not affect the effectiveness of the rule.

(b) Each rule and any amendment or repeal adopted after June 1, 1982 is effective after filing in accordance with subsection (a) of this section and W.S. 28-9-108 except:

(i) If a later date is required by statute or specified in the rule, the later date is the effective date;

(ii) Where the agency finds that an emergency exists and the finding is concurred in by the governor, a rule or amendment or repeal may be effective immediately upon filing with the registrar of rules and if a state agency, also with the legislative service office. Existing rules remain in effect unless amended or repealed, subject to this section or W.S. 28-9-105 or 28-9-106.

(c) Rules shall be prepared in the manner and form prescribed by the state registrar of rules. The registrar of rules may refuse to accept for filing any rule that does not conform to the prescribed form.

(d) The attorney general shall furnish advice and assistance to all state agencies in the preparation of their regulations, and in revising, codifying and editing existing or new regulations.

16-3-105. Compilation and indexing of administrative code; charges for copies; authentication by registrar.

(a) The registrar of state agency rules shall compile, index and publish a Wyoming administrative code. The code shall:

(i) Contain each rule adopted by a state agency, but shall not contain emergency rules;

(ii) Be compiled, numbered and indexed in a unified manner that permits the code to be easily amended and affords ease of use and accessibility to the public, including strong and effective word search capabilities;

(iii) Be available to the public at no charge through the Internet;

(iv) Be updated on the Internet as soon as practicable after the effective date of newly filed or amended rules.

(b) The registrar of state agency rules may make a reasonable charge for any rules published except those furnished to state officers, agencies, members of the legislature or the legislative service office and others in the employment of the state and its political subdivisions requiring the rules in the performance of their duties. The registrar of local agency rules may make a reasonable charge for copies of any rule on file.

(c) The registrar's authenticated file stamp on a rule or publication of a rule shall raise a rebuttable presumption that the rule was adopted and filed in compliance with all requirements necessary to make it effective.

(d) The registrar of state agency rules shall maintain and publish a current index of all state agency rules filed with the registrar. The index shall list the effective date of each set of rules or the effective date of each set of amendments to an agency's rules. Copies of the index shall be distributed as provided by W.S. 16-3-105(b).

16-3-106. Petition for promulgation, amendment or repeal of rules.

Any interested person may petition an agency requesting the promulgation, amendment or repeal of any rule and may accompany his petition with relevant data, views and arguments. Each agency may prescribe by rule the form of the petition and the procedure for its submission, consideration and disposition. Upon submission of a petition, the agency as soon as practicable either shall deny the petition in writing (stating its reasons for the denials) or initiate rulemaking proceedings in accordance with W.S. 16-3-103. The action of the agency in denying a petition is final and not subject to review.

16-3-107. Contested cases; general procedure.

(a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice served personally or by mail. Where the indispensable and necessary parties are composed of a large class, the notice shall be

served upon a reasonable number thereof as representatives of the class or by giving notice by publication in the manner specified by the rules or an order of the agency.

(b) The notice shall include a statement of:

(i) The time, place and nature of the hearing;

(ii) The legal authority and jurisdiction under which the hearing is to be held;

(iii) The particular sections of the statutes and rules involved;

(iv) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a more definite and detailed statement shall be furnished.

(c) In all contested cases, depositions and discovery relating thereto, agencies shall have the authority to administer oaths and affirmations, subpoena witnesses and require the production of any books, papers or other documents relevant or material to the inquiry. In case of refusal to obey a subpoena issued by the agency in a contested case, deposition or discovery relating thereto, to any person, the district court for the district in which the hearing or deposition or other proceeding is being conducted, or for the district where the person may be served, may upon application by the agency issue to the person refusing to obey the subpoena an order requiring the person to show cause for the refusal or to appear before the agency or other person designated by it there to produce documentary evidence if so ordered or there to give evidence touching the matter in question. Any failure to show cause or obey the order of court may be punished by the court as a contempt thereof.

(d) In all contested cases the agency shall as part of its rules of practice provide that the agency or one (1) of its presiding officers designated by it upon application of any party shall issue a subpoena requiring the appearance of witnesses for the purpose of taking evidence or requiring the production of any books, papers or other documents relevant or material to the inquiry.

(e) The agency upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive, or in the event issued pursuant to subsection (g) of this section may condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things.

(f) If a subpoena issued pursuant to this section is disobeyed and if the agency fails to apply pursuant to subsection (c) of this section for enforcement any party may apply to the district court for the district having venue under subsection (c) of this section for enforcement pursuant to subsection (c) of this section.

(g) In all contested cases the taking of depositions and discovery shall be available to the parties in accordance with the provisions of Rules 26, 28 through 37 (excepting Rule 37(b)(1) and 37(b)(2)(D) therefrom) of the Wyoming Rules of Civil Procedure in effect on the date of the enactment of this act and any subsequent rule amendments thereto. All references therein to the "court" shall be deemed to refer to the appropriate "agency"; all references to the use of the subpoena power shall be references to subsection (c) of this section; all references to "trial" shall be deemed references to "hearing"; all references to "plaintiff" shall be deemed references to "a party". If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the agency in which the action is pending, the refusal to obey the agency order shall be enforced in the same manner as is provided in subsection (c) of this section.

(h) Any agency which is a party to the contested case is subject to the discovery provisions of this section but neither the agency, nor any member, officer or employee shall be required to disclose information which is confidential or privileged under the law and no member of the presiding agency shall be compelled to testify or give a deposition in a contested case. Discovery sought from the agency initially shall be by written application. If the agency refuses to allow discovery in whole or in part the aggrieved party may apply to the presiding officer for an order compelling discovery. If the presiding officer fails or refuses to compel discovery, the aggrieved party may apply to the district court for the district in which the hearing, deposition or other proceeding is being or is to be conducted for an order directed to the agency

compelling discovery. The presiding officer or district court shall enter such order as may be appropriate.

(j) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by counsel or, if permitted by the agency, by other qualified representative.

(k) Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding in accordance with such rules as the agency prescribes and the pertinent rules of the supreme court of Wyoming. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment or determination of any issue, request or controversy in any proceeding (interlocutory, summary or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Any person representing an agency at a hearing in a contested case in which the agency is a party shall not in the same case serve as presiding officer or provide ex parte advice regarding the case to the presiding officer or to the body or any member of the body comprising the decision makers.

(m) No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy of a transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(n) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(o) The record in a contested case must include:

(i) All formal or informal notices, pleadings, motions and intermediate rulings;

(ii) Evidence received or considered including matters officially noticed;

(iii) Questions and offers of proof, objections and rulings thereon;

(iv) Any proposed findings and exceptions thereto;

(v) Any opinion, findings, decision or order of the agency and any report by the officer presiding at the hearing.

(p) In all contested cases the proceeding including all testimony shall be reported verbatim stenographically or by any other appropriate means determined by the agency or the officer presiding at the hearing.

(q) Oral proceedings or any part thereof shall be transcribed on request of any party upon payment of the cost thereof.

(r) Findings of fact shall be based exclusively on the evidence and matters officially noticed.

16-3-108. Contested cases; admissible evidence; cross-examination; judicial notice.

(a) In contested cases irrelevant, immaterial or unduly repetitious evidence shall be excluded and no sanction shall be imposed or order issued except upon consideration of the whole record or such portion thereof as may be cited by any party and unless supported by the type of evidence commonly relied upon by reasonably prudent men in the conduct of their serious affairs. Agencies shall give effect to the rules of privilege recognized by law. Subject to these requirements and agency rule if the interests of the parties will not be prejudiced substantially testimony may be received in written form subject to the right of cross-examination as provided in subsection (c) of this section.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given opportunity to compare the copy with the original.

(c) A party may conduct cross-examinations required for a full and true disclosure of the facts and a party is entitled to confront all opposing witnesses.

(d) Notice may be taken of judicially cognizable facts. In addition notice may be taken of technical or scientific facts within the agency's specialized knowledge or of information, data and material included within the agency's files. The parties shall be notified either before or during the hearing or after the hearing but before the agency decision of material facts noticed, and they shall be afforded an opportunity to contest the facts noticed.

16-3-109. Contested cases; consideration of record; exceptions to decision; briefs and oral argument.

The agency shall consider the whole record or any portion stipulated to by the parties. In the event a recommended decision is rendered all parties shall be afforded a reasonable opportunity to file exceptions thereto which shall be deemed a part of the record. All parties as a matter of right shall be permitted to file a brief with the agency and oral argument shall be allowed in the discretion of the agency.

16-3-110. Contested cases; final decision; contents; notification.

A final decision or order adverse to a party in a contested case shall be in writing or dictated into the record. The final decision shall include findings of fact and conclusions of law separately stated. Findings of fact if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail of any decision or order. A copy of the decision and order shall be delivered or mailed forthwith to each party or to his attorney of record.

16-3-111. Contested cases; limitations on consultations and participations.

Unless required for the disposition of ex parte matters authorized by law, members of the agency, employees presiding at a hearing in a contested case and employees assisting the foregoing persons in compiling, evaluating and analyzing the record in a contested case or in writing a decision in a contested case shall not directly or indirectly in connection

with any issue in the case consult with any person other than an agency member, officer, contract consultant or employee or other state or federal employee, any party other than the agency or with any agency employee, contract consultant or other state or federal employee who was engaged in the investigation, preparation, presentation or prosecution of the case except upon notice and opportunity for all parties to participate. Nothing herein contained precludes any agency member from consulting with other members of the agency. No officer, employee, contract consultant, federal employee or agent who has participated in the investigation, preparation, presentation or prosecution of a contested case shall be in that or a factually related case participate or advise in the decision, recommended decision or agency review of the decision, or be consulted in connection therewith except as witness or counsel in public proceedings. A staff member is not disqualified from participating or advising in the decision, recommended decision or agency review because he has participated in the presentation of the case in the event the staff member does not assert or have an adversary position.

16-3-112. Contested cases; presiding officers; qualifications; powers; outside personnel; hearing officers.

(a) If not otherwise authorized by law there shall preside at the taking of evidence in all contested cases the statutory agency, one (1) or more members of the body which comprises the agency, or an employee of the agency or an employee of another agency designated by the agency to act as presiding officer. The functions of all those presiding in contested cases shall be conducted in an impartial manner. Any officer shall at any time withdraw if he deems himself disqualified provided there are other qualified presiding officers available to act.

(b) Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its power to:

- (i) Administer oaths and affirmations;
- (ii) Issue subpoenas;
- (iii) Rule upon offers of proof and receive relevant evidence;
- (iv) Take or cause depositions to be taken in accordance with the provisions of this act and the rules of the agency;

(v) Regulate the course of the hearing;

(vi) Hold conferences for the settlement or simplification of the issues;

(vii) Dispose of procedural requests or similar matters;

(viii) Make recommended decisions when directed to do so by the agency; and

(ix) Take any other action authorized by agency rules consistent with this act.

(c) In all contested cases to the extent that it is necessary in order to obtain compliance with W.S. 16-3-111 the agency (excepting county and municipal agencies and political subdivisions on the county and local level) may request the office of the attorney general to furnish to the agency such personnel as may be necessary in order for the agency to properly investigate, prepare, present and prosecute the contested case before the agency. The attorney general upon the receipt of the request shall promptly comply with same with no charge being made against the requesting agency's appropriation other than for travel and per diem expenses.

(d) To the extent an agency utilizes an employee of another agency (other than the staff of the attorney general) to preside at a hearing or otherwise the salary of the employee during the period of the employment and the expenses incurred by the employee shall be charged against the appropriation of the using agency.

(e) When required by law an agency shall adopt rules and regulations providing a procedure for the use and the selection of an administrative hearing officer. An agency shall not delegate the authority to make final decisions to an independent administrative hearing officer unless required by law.

16-3-113. License hearings.

(a) When the grant, denial, suspension or renewal of a license is required by law to be preceded by notice and an opportunity for hearing the provisions of this act concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. A cancellation of a driver's license pursuant to W.S. 31-7-121(c) shall not be valid until the department of transportation gives notice by mail to the licensee of the facts which warrant the intended action and provides the licensee with an opportunity to provide additional evidence or information with respect to the condition at issue within fifteen (15) days of the mailing of the notice. These proceedings shall be promptly instituted and determined.

16-3-114. Judicial review of agency actions; district courts.

(a) Subject to the requirement that administrative remedies be exhausted and in the absence of any statutory or common-law provision precluding or limiting judicial review, any person aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or by other agency action or inaction, or any person affected in fact by a rule adopted by an agency, is entitled to judicial review in the district court for the county in which the administrative action or inaction was taken, or in which any real property affected by the administrative action or inaction is located, or if no real property is involved, in the district court for the county in which the party aggrieved or adversely affected by the administrative action or inaction resides or has its principal place of business. The procedure to be followed in the proceeding before the district court shall be in accordance with

rules heretofore or hereinafter adopted by the Wyoming supreme court.

(b) The supreme court's authority to adopt rules governing review from agencies to the district courts shall include authority to determine the content of the record upon review, the pleadings to be filed, the time and manner for filing the pleadings, records and other documents and the extent to which supplemental testimony and evidence may be taken or considered by the district court. The rules adopted by the supreme court under this provision may supersede existing statutory provisions.

(c) To the extent necessary to make a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. In making the following determinations, the court shall review the whole record or those parts of it cited by a party and due account shall be taken of the rule of prejudicial error. The reviewing court shall:

(i) Compel agency action unlawfully withheld or unreasonably delayed; and

(ii) Hold unlawful and set aside agency action, findings and conclusions found to be:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;

(B) Contrary to constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;

(D) Without observance of procedure required by law; or

(E) Unsupported by substantial evidence in a case reviewed on the record of an agency hearing provided by statute.

16-3-115. Judicial review of agency actions; supreme court.

An aggrieved party may obtain a review of any final judgment of the district court under this act by appeal to the supreme court. The appeal shall be taken as in other civil cases.

CHAPTER 4
UNIFORM MUNICIPAL FISCAL PROCEDURES; PUBLIC
RECORDS, DOCUMENTS AND MEETINGS

ARTICLE 2
PUBLIC RECORDS

16-4-201. Definitions.

(a) As used in this act:

(i) "Custodian" means the official custodian or any authorized person having personal custody and control of the public records in question;

(ii) "Official custodian" means any officer or employee of the state or any agency, institution or political subdivision thereof, who is responsible for the maintenance, care and keeping of public records, regardless of whether the records are in his actual personal custody and control;

(iii) "Person in interest" means the person who is the subject of a record or any representative designated by the person, except if the subject of the record is under legal disability or is the dependent high school student of his parents, "person in interest" means the parent or duly appointed legal representative;

(iv) "Political subdivision" means every county, city and county, city, incorporated and unincorporated town, school district and special district within the state;

(v) "Public records" when not otherwise specified includes any information in a physical form created, accepted, or obtained by the state or any agency, institution or political subdivision of the state in furtherance of its official function and transaction of public business which is not privileged or confidential by law. Without limiting the foregoing, the term "public records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by the state or any agency, institution or political subdivision of the state in furtherance of the

transaction of public business of the state or agency, institution or political subdivision of the state, whether at a meeting or outside a meeting. Electronic communications solely between students attending a school in Wyoming and electronic communications solely between students attending a school in Wyoming and a sender or recipient using a nonschool user address are not a public record of that school. As used in this paragraph, a "school in Wyoming" means the University of Wyoming, any community college and any public school within a school district in the state;

(vi) Public records shall be classified as follows:

(A) "Official public records" includes all original vouchers, receipts and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state or any agency or subdivision thereof is a party; all fidelity, surety and performance bonds; all claims filed against the state or any agency or subdivision thereof; all records or documents required by law to be filed with or kept by any agency or the state of Wyoming; and all other documents or records determined by the records committee to be official public records;

(B) "Office files and memoranda" includes all records, correspondence, exhibits, books, booklets, drawings, maps, blank forms, or documents not defined and classified in subparagraph (A) of this subsection as official public records; all duplicate copies of official public records filed with any agency of the state or subdivision thereof; all documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with the office; and all other documents or records, determined by the records committee to be office files and memoranda.

(vii) Repealed By Laws 2012, Ch. 74, § 2.

(viii) "This act" means W.S. 16-4-201 through 16-4-205;

(ix) "Application" means a written request for a public record. However, a custodian may in his discretion deem a verbal request to be an application;

(x) "Information" means opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic or other physical form;

(xi) "Peace officer recording" means any audio or video data recorded by a peace officer, as defined in W.S. 6-1-104(a)(vi), on a camera or other device which is:

(A) Provided to or used by the peace officer in the course of the officer performing official business; and

(B) Designed to be worn on the peace officer's body or attached to a vehicle, as defined in W.S. 6-1-104(a)(xi), used by the officer.

16-4-202. Right of inspection; rules and regulations; unavailability.

(a) All public records shall be open for inspection by any person at reasonable times, during business hours of the state entity or political subdivision, except as provided in this act or as otherwise provided by law, but the official custodian of any public records may make rules and regulations with reference to the inspection of the records as is reasonably necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(b) If the public records requested are not in the custody or control of the person to whom application is made, the custodian or authorized person having personal custody and control of the public records shall notify the applicant within seven (7) business days from the date of acknowledged receipt of the request of the unavailability of the records sought, unless good cause exists preventing a response within such time period. In the event the applicant is not satisfied that good cause exists, the applicant may petition the district court for a determination as to whether the custodian has demonstrated good cause existed.

(c) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage, and therefore not available at the time an applicant asks to examine them, the custodian or authorized person having personal custody and control of the public records shall notify the applicant of this situation

within seven (7) business days from the date of acknowledged receipt of the request, unless good cause exists preventing a response within such time period. In the event the applicant is not satisfied that good cause exists, the applicant may petition the district court for a determination as to whether the custodian has demonstrated good cause existed. If a public record is readily available, it shall be released immediately to the applicant so long as the release does not impair or impede the agency's ability to discharge its other duties.

(d) If a public record exists primarily or solely in an electronic format, the custodian of the record shall so inform the requester. Electronic record inspection and copying shall be subject to the following:

(i) The reasonable costs of producing a copy of the public record shall be borne by the party making the request. The costs may include the cost of producing a copy of the public record and the cost of constructing the record, including the cost of programming and computer services;

(ii) An agency shall provide an electronic record in alternative formats unless doing so is impractical or impossible;

(iii) An agency shall not be required to compile data, extract data or create a new document to comply with an electronic record request if doing so would impair the agency's ability to discharge its duties;

(iv) An agency shall not be required to allow inspection or copying of a record in its electronic format if doing so would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained;

(v) Nothing in this section shall prohibit the director of the office of homeland security from enacting any rules pursuant to his authority under W.S. 19-13-104(d)(v).

16-4-203. Right of inspection; grounds for denial; access of news media; order permitting or restricting disclosure; exceptions.

(a) The custodian of any public records shall allow any person the right of inspection of the records or any portion

thereof except on one (1) or more of the following grounds or as provided in subsection (b) or (d) of this section:

(i) The inspection would be contrary to any state statute;

(ii) The inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or

(iii) The inspection is prohibited by rules promulgated by the supreme court or by the order of any court of record.

(b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the attorney general, the state auditor, police department or any investigatory files compiled for any other law enforcement or prosecution purposes;

(ii) Test questions, scoring keys and other examination data pertaining to administration of a licensing examination and examination for employment or academic examination. Written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the examination has been conducted and graded;

(iii) The specific details of bona fide research projects being conducted by a state institution;

(iv) Except as otherwise provided by Wyoming statutes or for the owner of the property, the contents of real estate appraisals made for the state or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the state or political subdivision. The contents of the appraisal shall be available to the owner of the property or property interest at any time;

(v) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the agency;

(vi) To the extent that the inspection would jeopardize the security of any structure owned, leased or operated by the state or any of its political subdivisions, facilitate the planning of a terrorist attack or endanger the life or physical safety of an individual, including:

(A) Vulnerability assessments, specific tactics, emergency procedures or security procedures contained in plans or procedures designed to prevent or respond to terrorist attacks or other security threats;

(B) Building plans, blueprints, schematic drawings, diagrams, operational manuals or other records that reveal the building's or structure's internal layout, specific location, life and safety and support systems, structural elements, surveillance techniques, alarms, security systems or technologies, operational and transportation plans or protocols, personnel deployments for airports and other mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are stored, arenas, stadiums and waste and water systems;

(C) Records of any other building or structure owned, leased or operated by the state or any of its political subdivisions that reveal the building's or structure's life and safety systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols or personnel deployments; and

(D) Records prepared to prevent or respond to terrorist attacks or other security threats identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities or laboratories established, maintained, or regulated by the state or any of its political subdivisions.

(vii) An application for the position of president of an institution of higher education, letters of recommendation or references concerning the applicant and records or information relating to the process of searching for and selecting the president of an institution of higher education, if the records or information could be used to identify a candidate for the

position. As used in this paragraph "institution of higher education" means the University of Wyoming and any community college in this state.

(c) If the right of inspection of any record falling within any of the classifications listed in this section is allowed to any officer or employee of any newspaper, radio station, television station or other person or agency in the business of public dissemination of news or current events, it may be allowed to all news media.

(d) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

(i) Medical, psychological and sociological data on individual persons, exclusive of coroners' verdicts and written dockets as provided in W.S. 7-4-105(a);

(ii) Adoption records or welfare records on individual persons;

(iii) Personnel files except those files shall be available to the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work. Employment contracts, working agreements or other documents setting forth the terms and conditions of employment of public officials and employees are not considered part of a personnel file and shall be available for public inspection;

(iv) Letters of reference;

(v) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person;

(vi) Library, archives and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of the contributions;

(vii) Hospital records relating to medical administration, medical staff, personnel, medical care and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him;

(ix) Library patron transaction and registration records except as required for administration of the library or except as requested by a custodial parent or guardian to inspect the records of his minor child;

(x) Information obtained through a 911 emergency telephone system or through a verification system for motor vehicle insurance or bond as provided under W.S. 31-4-103(e) except to law enforcement personnel or public agencies for the purpose of conducting official business, to the person in interest, or pursuant to a court order;

(xi) Records or information compiled solely for purposes of investigating violations of, and enforcing, internal personnel rules or personnel policies the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(xii) Information regarding the design, elements and components, and location of state information technology security systems and physical security systems;

(xiii) Records or information relating to individual diagnoses of contagious, infectious, communicable, toxic and genetic diseases maintained or collected by the Wyoming state veterinary laboratory as provided in W.S. 21-17-308(e);

(xiv) Information concerning an agricultural operation, farming or conservation practice, or the land itself, if the information was provided by an agricultural producer or owner of agricultural land in order to participate in a program of the state or any agency, institution or political subdivision of the state. The custodian shall also deny the right of inspection to geospatial information maintained about the agricultural land or operations. Provided, however, that if otherwise permitted by law, the inspection of the information described in this paragraph shall be allowed in accordance with the following:

(A) The custodian may allow the right of inspection when responding to a disease or pest threat to

agricultural operations, if the custodian determines that a threat to agricultural operations exists and the disclosure of information is necessary to assist in responding to the disease or pest threat as authorized by law;

(B) The custodian shall allow the right of inspection of payment information under a program of the state or of any agency, institution or political subdivision of the state, including the names and addresses of recipients of payments;

(C) The custodian shall allow the right of inspection if the information has been transformed into a statistical or aggregate form without naming:

(I) Any individual owner, operator or producer; or

(II) A specific data gathering site.

(D) The custodian shall allow the right of inspection if the disclosure of information is pursuant to the consent of the agricultural producer or owner of the agricultural land;

(E) As used in this paragraph:

(I) "Agricultural operation" means the production and marketing of agricultural products or livestock;

(II) "Agricultural producer" means any producer of livestock, crops or dairy products from an agricultural operation.

(xv) Within any record held by an agency, any income tax return or any individual information derived by the agency from an income tax return, however information derived from these documents may be released if sufficiently aggregated or redacted so that the persons or entities involved cannot be identified individually;

(xvi) Except as required in a contested case hearing, any individual records involved in any workers' compensation claim, however information derived from these documents may be released if sufficiently aggregated or redacted so that the persons or entities involved cannot be identified individually;

(xvii) Any records of the consensus revenue estimating group as defined in W.S. 9-2-1002, that discloses information considered by, or deliberations or tentative decisions of, the group;

(xviii) Information obtained through a peace officer recording provided that:

(A) The custodian shall allow the right of inspection to law enforcement personnel or public agencies for the purpose of conducting official business or pursuant to a court order;

(B) The custodian may allow the right of inspection:

(I) To the person in interest;

(II) If the information involves an incident of deadly force or serious bodily injury as defined in W.S. 6-1-104(a)(x);

(III) In response to a complaint against a law enforcement personnel and the custodian of the information determines inspection is not contrary to the public interest;

(IV) In the interest of public safety.

(xix) Any records of the investment funds committee, created by W.S. 9-4-720, that disclose information considered by the committee, committee deliberations or tentative decisions of the committee. [NOTE: This paragraph will be effective 7/1/2018.]

(e) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial. The statement shall cite the law or regulation under which access is denied and shall be furnished to the applicant.

(f) Any person denied the right to inspect any record covered by this act may apply to the district court of the district wherein the record is found for an order directing the custodian of the record to show cause why he should not permit the inspection of the record.

(g) If, in the opinion of the official custodian of any public record, disclosure of the contents of the record would do

substantial injury to the public interest, notwithstanding the fact that the record might otherwise be available to public inspection, he may apply to the district court of the district in which the record is located for an order permitting him to restrict disclosure. After hearing, the court may issue an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of the hearing served upon him in the manner provided for service of process by the Wyoming Rules of Civil Procedure and has the right to appear and be heard.

(h) Notwithstanding any other provision of this section, the following applies to the Wyoming natural diversity database located at the University of Wyoming and any report prepared by the custodian from that database:

(i) The custodian may charge a reasonable fee for searching the database and preparing a report from that database information. The interpretation of the database in a report shall not contain recommendations for restrictions on any public or private land use;

(ii) The custodian shall allow the inspection of all records in the database at a level of spatial precision equal to the township, but at no more precise level;

(iii) Research reports prepared by the custodian funded completely from nonstate sources are subject to paragraph (b)(iii) of this section;

(iv) Any record contained in the database pertaining to private land shall not be released by the University of Wyoming without the prior written consent of the landowner. Nothing in this paragraph prohibits the release of any information which would otherwise be available from any other information source available to the public if the original source is cited.

16-4-204. Right of inspection; copies, printouts or photographs; fees.

(a) In all cases in which a person has the right to inspect and copy any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts or photographs of the record are specifically prescribed by law, the specific fees shall

apply. Nothing in this section shall be construed as authorizing a fee to be charged as a condition of making a public record available for inspection.

(b) If the custodian does not have the facilities for making copies, printouts or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the records are in the possession, custody and control of the custodian thereof and are subject to the supervision of the custodian. When practical the copy work shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout or photograph of the records. The official custodian may establish a reasonable schedule of time for making copies, printouts or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printing out or photographing as he may charge for furnishing copies under this section.

(c) After July 1, 2003, any fees or charges assessed by a custodian of a public record shall first be authorized by duly enacted or adopted statute, rule, resolution, ordinance, executive order or other like authority.

(d) All state agencies may adopt rules and regulations pursuant to the Wyoming Administrative Procedure Act establishing reasonable fees and charges that may be assessed for the costs and services set forth in this section.

(e) The department of administration and information shall adopt uniform rules for the use of state agencies establishing procedures, fees, costs and charges for inspection, copies and production of public records under W.S. 16-4-202(d) (i), 16-4-203(h) (i) and 16-4-204.

16-4-205. Civil penalty.

Any person who knowingly or intentionally violates the provisions of this act is liable for a penalty not to exceed seven hundred fifty dollars (\$750.00). The penalty may be recovered in a civil action and damages shall be assessed by the court. Any action pursuant to this section shall be initiated by the attorney general or the appropriate county attorney.

ARTICLE 4
PUBLIC MEETINGS

16-4-401. Statement of purpose.

The agencies of Wyoming exist to conduct public business. Certain deliberations and actions shall be taken openly as provided in this act.

16-4-402. Definitions.

(a) As used in this act:

(i) "Action" means the transaction of official business of an agency including a collective decision, a collective commitment or promise to make a positive or negative decision, or an actual vote upon a motion, proposal, resolution, regulation, rule, order or ordinance at a meeting;

(ii) "Agency" means any authority, bureau, board, commission, committee, or subagency of the state, a county, a municipality or other political subdivision which is created by or pursuant to the Wyoming constitution, statute or ordinance, other than the state legislature, the judiciary and the consensus revenue estimating group as defined in W.S. 9-2-1002;

Note: Effective 7/1/2018 this paragraph will read as:

"Agency" means any authority, bureau, board, commission, committee, or subagency of the state, a county, a municipality or other political subdivision which is created by or pursuant to the Wyoming constitution, statute or ordinance, other than the state legislature, the judiciary, the consensus revenue estimating group as defined in W.S. 9-2-1002 and the investment funds committee created by W.S. 9-4-720;

(iii) "Meeting" means an assembly of at least a quorum of the governing body of an agency which has been called by proper authority of the agency for the expressed purpose of discussion, deliberation, presentation of information or taking action regarding public business;

(iv) "Assembly" means communicating in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously;

(v) "This act" means W.S. 16-4-401 through 16-4-408.

16-4-403. Meetings to be open; participation by public; minutes.

(a) All meetings of the governing body of an agency are public meetings, open to the public at all times, except as otherwise provided. No action of a governing body of an agency shall be taken except during a public meeting following notice of the meeting in accordance with this act. Action taken at a meeting not in conformity with this act is null and void and not merely voidable.

(b) A member of the public is not required as a condition of attendance at any meeting to register his name, to supply information, to complete a questionnaire, or fulfill any other condition precedent to his attendance. A person seeking recognition at the meeting may be required to give his name and affiliation.

(c) Minutes of a meeting:

(i) Are required to be recorded but not published from meetings when no action is taken by the governing body;

(ii) Are not required to be recorded or published for day-to-day administrative activities of an agency or its officers or employees.

(d) No meeting shall be conducted by electronic means or any other form of communication that does not permit the public to hear, read or otherwise discern meeting discussion contemporaneously. Communications outside a meeting, including, but not limited to, sequential communications among members of an agency, shall not be used to circumvent the purpose of this act.

16-4-404. Types of meetings; notice; recess.

(a) In the absence of a statutory requirement, the governing body of an agency shall provide by ordinance, resolution, bylaws or rule for holding regular meetings unless the agency's normal business does not require regular meetings in which case the agency shall provide notice of its next meeting to any person who requests notice. A request for notice may be made for future meetings of an agency. The request shall be in writing and renewed annually to the agency.

(b) Special meetings may be called by the presiding officer of a governing body by giving verbal, electronic or written notice of the meeting to each member of the governing body and to each newspaper of general circulation, radio or television station requesting the notice. The notice shall specify the time and place of the special meeting and the business to be transacted and shall be issued at least eight (8) hours prior to the commencement of the meeting. No other business shall be considered at a special meeting. Proof of delivery of verbal notice to the newspaper of general circulation, radio or television station may be made by affidavit of the clerk or other employee or officer of the agency charged or responsible for distribution of the notice of the meeting.

(c) The governing body of an agency may recess any regular, special, or recessed regular or special meeting to a place and at a time specified in an order of recess. A copy of the order of recess shall be conspicuously posted on or near the door of the place where the meeting or recessed meeting was held.

(d) The governing body of an agency may hold an emergency meeting on matters of serious immediate concern to take temporary action without notice. Reasonable effort shall be made to offer public notice. All action taken at an emergency meeting is of a temporary nature and in order to become permanent shall be reconsidered and acted upon at an open public meeting within forty-eight (48) hours, excluding weekends and holidays, unless the event constituting the emergency continues to exist after forty-eight (48) hours. In such case the governing body may reconsider and act upon the temporary action at the next regularly scheduled meeting of the agency, but in no event later than thirty (30) days from the date of the emergency action.

(e) Day-to-day administrative activities of an agency, its officers and its employees shall not be subject to the notice requirements of this section.

16-4-405. Executive sessions.

(a) A governing body of an agency may hold executive sessions not open to the public:

(i) With the attorney general, county attorney, district attorney, city attorney, sheriff, chief of police or

their respective deputies, or other officers of the law, on matters posing a threat to the security of public or private property, or a threat to the public's right of access;

(ii) To consider the appointment, employment, right to practice or dismissal of a public officer, professional person or employee, or to hear complaints or charges brought against an employee, professional person or officer, unless the employee, professional person or officer requests a public hearing. The governing body may exclude from any public or private hearing during the examination of a witness, any or all other witnesses in the matter being investigated. Following the hearing or executive session, the governing body may deliberate on its decision in executive sessions;

(iii) On matters concerning litigation to which the governing body is a party or proposed litigation to which the governing body may be a party;

(iv) On matters of national security;

(v) When the agency is a licensing agency while preparing, administering or grading examinations;

(vi) When considering and acting upon the determination of the term, parole or release of an individual from a correctional or penal institution;

(vii) To consider the selection of a site or the purchase of real estate when the publicity regarding the consideration would cause a likelihood of an increase in price;

(viii) To consider acceptance of gifts, donations and bequests which the donor has requested in writing be kept confidential;

(ix) To consider or receive any information classified as confidential by law;

(x) To consider accepting or tendering offers concerning wages, salaries, benefits and terms of employment during all negotiations;

(xi) To consider suspensions, expulsions or other disciplinary action in connection with any student as provided by law.

(b) Minutes shall be maintained of any executive session. Except for those parts of minutes of an executive session reflecting a members' objection to the executive session as being in violation of this act, minutes and proceedings of executive sessions shall be confidential and produced only in response to a valid court order.

(c) Unless a different procedure or vote is otherwise specified by law, an executive session may be held only pursuant to a motion that is duly seconded and carried by majority vote of the members of the governing body in attendance when the motion is made. A motion to hold an executive session which specifies any of the reasons set forth in paragraphs (a) (i) through (xi) of this section shall be sufficient notice of the issue to be considered in an executive session.

16-4-406. Disruption of public meetings.

If any public meeting is willfully disrupted by a person or group of persons so as to render the orderly conduct of the meeting unfeasible, and order cannot be restored by the removal of the person or persons who are willfully interrupting the meeting, the governing body of an agency may order the removal of the person or group from the meeting room and continue in session, or may recess the meeting and reconvene at another location. Only matters appearing on the agenda may be acted upon in a meeting recessed to another location. A governing body of an agency shall establish procedures for readmitting an individual or individuals not responsible for disturbing the conduct of a meeting. Duly accredited members of the press or other news media except those who participated in a disturbance shall be allowed to attend any meeting permitted by this section.

16-4-407. Conflict of law.

If the provisions of this act conflict with any other statute, the provisions of this act shall control.

16-4-408. Penalty.

(a) Any member or members of an agency who knowingly or intentionally violate the provisions of this act shall be liable for a civil penalty not to exceed seven hundred fifty dollars (\$750.00) except as provided in this subsection. Any member of the governing body of an agency who attends or remains at a meeting knowing the meeting is in violation of this act shall be

liable under this subsection unless minutes were taken during the meeting and the parts thereof recording the member's objections are made public or at the next regular public meeting the member objects to the meeting where the violation occurred and asks that the objection be recorded in the minutes.

(b) If any action is prohibited both by this act and any provision of title 6, the provisions of this act shall not apply and the provisions of title 6 shall apply.

TITLE 35
PUBLIC HEALTH AND SAFETY

CHAPTER 11
ENVIRONMENTAL QUALITY

ARTICLE 1
GENERAL PROVISIONS

ARTICLE 3
WATER QUALITY

35-11-313. Carbon sequestration; permit requirements.

(a) The geologic sequestration of carbon dioxide is prohibited unless authorized by a permit issued by the department.

(b) The injection of carbon dioxide for purposes of a project for enhanced recovery of oil or other minerals approved by the Wyoming oil and gas conservation commission shall not be subject to the provisions of this chapter.

(c) If an oil and gas operator converts to geologic sequestration upon the cessation of oil and gas recovery operations, or injects carbon dioxide for the primary purpose of long term storage that results in an increased risk to an underground source of drinking water as compared to enhanced oil recovery operations, then regulation of the geologic sequestration facility and the geologic sequestration site shall be transferred to the department. If the oil and gas operator does not convert to geologic sequestration, the wells shall be plugged and abandoned according to the rules of the Wyoming oil and gas conservation commission. When determining whether an oil and gas recovery operation is injecting carbon dioxide for the primary purpose of long term storage that results in an increased risk to an underground source of drinking water as compared to enhanced oil recovery operations, the director shall consider the findings and recommendations of the supervisor of the Wyoming oil and gas conservation commission. The supervisor shall make his determination following a hearing of the oil and gas conservation commission examiners held under the commission's rules and regulations promulgated under Title 30, Chapter 5 of the Wyoming statutes. The supervisor shall provide the operator and director with notice of the supervisor's

findings and recommendations under this subsection and an opportunity for a public hearing before the Wyoming oil and gas conservation commission. Within fifteen (15) days of receiving notice as provided in this subsection, the operator may request a hearing before the Wyoming oil and gas conservation commission. If both a change in primary purpose to long term storage and an increased risk to an underground source of drinking water as compared to enhanced oil recovery operations are found to have occurred, the commission shall recommend transfer of regulation of the operation to the department.

(d) Temporary time limited permits for pilot scale testing of technologies for geologic sequestration shall be issued by the department based upon current rules and regulations.

(e) Permit requirements for geologic sequestration of carbon dioxide shall be as defined by department rules.

(f) The administrator of the water quality division of the department of environmental quality, after receiving public comment and after consultation with the state geologist, the Wyoming oil and gas conservation commission and the advisory board created under this act, shall recommend to the director rules, regulations and standards for:

(i) The creation of subclasses of wells within the existing Underground Injection Control (UIC) program administered by the United States Environmental Protection Agency under Part C of the Safe Drinking Water Act to protect human health, safety and the environment and allow for the permitting of the geologic sequestration of carbon dioxide;

(ii) Requirements for the content of applications for geologic sequestration permits. Such applications shall include:

(A) A description of the general geology of the area to be affected by the injection of carbon dioxide including geochemistry, structure and faulting, fracturing and seals, stratigraphy and lithology including petrophysical attributes;

(B) A characterization of the injection zone and aquifers above and below the injection zone which may be affected including applicable pressure and fluid chemistry data to describe the projected effects of injection activities;

(C) The identification of all other drill holes and operating wells that exist within and adjacent to the proposed sequestration site;

(D) An assessment of the impact to fluid resources, on subsurface structures and the surface of lands that may reasonably be expected to be impacted and the measures required to mitigate such impacts;

(E) Plans and procedures for environmental surveillance and excursion detection, prevention and control programs. For purposes of this section, "excursion" shall mean the detection of migrating carbon dioxide at or beyond the boundary of the geologic sequestration site;

(F) A site and facilities description, including a description of the proposed geologic sequestration facilities and documentation sufficient to demonstrate that the applicant has all legal rights, including but not limited to the right to surface use, necessary to sequester carbon dioxide and associated constituents into the proposed geologic sequestration site. The department may issue a draft permit contingent on obtaining a unitization order pursuant to W.S. 35-11-314 through 35-11-317;

(G) Proof that the proposed injection wells are designed at a minimum to the construction standards set forth by the department and the Wyoming oil and gas conservation commission;

(H) A plan for periodic mechanical integrity testing of all wells;

(J) A monitoring plan to assess the migration of the injected carbon dioxide and to insure the retention of the carbon dioxide in the geologic sequestration site;

(K) Proof of bonding or financial assurance to ensure that geologic sequestration sites and facilities will be constructed, operated and closed in accordance with the purposes and provisions of this act and the rules and regulations promulgated pursuant to this act;

(M) A detailed plan for post-closure monitoring, verification, maintenance and mitigation;

(N) Proof of notice to surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests as to the contents of such notice. Notice requirements shall at a minimum require:

(I) The publishing of notice of the application in a newspaper of general circulation in each county of the proposed operation at weekly intervals for four (4) consecutive weeks;

(II) A copy of the notice shall also be mailed to all surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests which are located within one (1) mile of the proposed boundary of the geologic sequestration site.

(O) A certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the geologic sequestration operations for which the permit is sought, or evidence that the applicant has satisfied other state or federal self insurance requirements. The policy shall provide for personal injury and property damage protection in an amount and for a duration as established by regulations.

(iii) Requirements for the operator to provide immediate verbal notice to the department of any excursion after the excursion is discovered, followed by written notice to all surface owners, mineral claimants, mineral owners, lessees and other owners of record of subsurface interests within thirty (30) days of when the excursion is discovered;

(iv) Procedures for the termination or modification of any applicable Underground Injection Control (UIC) permit issued under Part C of the Safe Drinking Water Act if an excursion cannot be controlled or mitigated;

(v) Such other conditions and requirements as necessary to carry out this section;

(vi) Requirements for bonding and financial assurance for geologic sequestration facilities and geologic sequestration sites including:

(A) Procedures to establish the type and amount of the bond or financial assurance instrument to assure that the operator faithfully performs all requirements of this chapter,

complies with all rules and regulations and provides adequate financial resources to pay for mitigation or reclamation costs that the state may incur as a result of any default by the permit holder, provided that, any insurance instruments submitted for financial assurance purposes shall include the state of Wyoming as an additional insured, which inclusion shall not be deemed a waiver of sovereign immunity;

(B) Annual or other periodic reporting by the permittee during geologic sequestration and reclamation activities to allow the administrator to confirm or adjust the amount or type of the bond or other financial assurance requirements consistent with the site, facility and operation specific risks and conditions;

(C) Procedures to require proof of compliance from any permittee ordered by the administrator to adjust a bond or other financial assurance, including procedures for permit suspension or termination procedures following notice and an opportunity for a hearing if adequate bonding or financial assurance cannot be demonstrated;

(D) Procedures for replacement of a bond or financial assurance instrument if notice of cancellation is provided or notice that the license to do business in Wyoming of the surety or insurance company issuing a bond or other financial assurance pursuant to this chapter is suspended or revoked;

(E) Procedures for the director to forfeit the bond or to make a claim against any insurance instrument providing financial assurance, including the right of the attorney general to bring suit to recover costs if the bond or financial assurance is inadequate, to pay for closure, mitigation, reclamation, measurement, monitoring, verification and pollution control, where recovery is deemed possible;

(F) Procedures, including public notice and a public hearing if requested, for the release of bonds or the termination of insurance instruments not less than ten (10) years after the date when all wells excluding monitoring wells have been appropriately plugged and abandoned, all subsurface operations and activities have ceased and all surface equipment and improvements have been removed or appropriately abandoned, or so long thereafter as necessary to obtain a completion and release certificate from the administrator certifying that plume stabilization as defined by rule has been achieved without the

use of control equipment based on a minimum of three (3) consecutive years of monitoring data, and that the operator has completed site reclamation and all required monitoring and remediation sufficient to show that the carbon dioxide injected into the geologic sequestration site will not harm or present a risk to human health, safety or the environment, including drinking water supplies, consistent with the purposes of this chapter and the rules and regulations adopted by the council;

(G) Requirements for the operator to record an affidavit in the office of the county clerk of the county or counties in which a geologic sequestration site is located, which affidavit shall be reasonably calculated to alert a person researching the title of a particular tract that such tract is underlain by a site permitted for geologic sequestration.

(vii) Requirements for fees to be paid by all permittees of geologic sequestration sites and facilities, which may include a per ton injection fee or a closure fee, during the period of injection of carbon dioxide and associated constituents into subsurface geologic formations in Wyoming, which fees shall be deposited in the geologic sequestration special revenue account created by W.S. 35-11-318 for use as provided therein.

(g) Repealed By Laws 2010, Ch. 52, § 3.

(h) At the time a permit application is filed, an applicant shall pay a fee to be determined by the director based upon the estimated costs of reviewing, evaluating, processing, serving notice of an application and holding any hearings. The fee shall be credited to a separate account and shall be used by the division as required to complete the tasks necessary to process, publish and reach a decision on the permit application. Unused fees shall be returned to the applicant.

(j) The director shall recommend to the council any changes that may be required to provide consistency and equivalency between the rules or regulations promulgated under this section and any promulgated for the regulation of carbon dioxide sequestration by the United States environmental protection agency.

(k) The Wyoming oil and gas conservation commission shall have jurisdiction over any subsequent extraction of sequestered carbon dioxide that is intended for commercial or industrial purposes.

(m) Nothing in this section shall be construed to create any liability by the state for failure to comply with this section.

35-11-314. Unitization of geologic sequestration sites; purposes; definitions.

(a) The purpose of W.S. 35-11-314 through 35-11-317 is declared by the Wyoming legislature to be the protection of corresponding rights, compliance with environmental requirements and to facilitate the use and production of Wyoming energy resources.

(b) Except when context otherwise requires or when otherwise defined in this subsection, the terms used or defined in W.S. 35-11-103, shall have the same meaning when used in W.S. 35-11-314 through 35-11-317. When used in W.S. 35-11-314 through 35-11-317:

(i) "Corresponding rights" means the right of all pore space owners in a unit area who will be affected by unit operations, either now or in the future, to concurrently share in the economic benefits generated by using the pore space in the unit area.

35-11-315. Unitization of geologic sequestration sites; agreements; application for permit; contents.

(a) Any interested person may file an application with the Wyoming oil and gas conservation commission requesting an order providing for the operation and organization of a unit of one (1) or more parts as a geologic sequestration site and for the pooling of interests in pore space in the proposed unit area for the purpose of conducting the unit operation. The application shall contain:

(i) A copy of any permit or draft permit issued by the department allowing geologic sequestration or any application for such permit;

(ii) A description of the pore space and surface lands proposed to be so operated, termed the "unit area";

(iii) The names, as disclosed by the conveyance records of the county or counties in which the proposed unit

area is situated, and the status records of the district office of the bureau of land management of:

(A) All persons owning or having an interest in the surface estate and pore space in the unit area including mortgages and the owners of other liens or encumbrances; and

(B) All owners of the surface estate and pore space not included within but which immediately adjoins the proposed unit area or a corner thereof.

(iv) The addresses of all persons and owners identified in subparagraphs (iii)(A) and (B) of this subsection, if known. If the name or address of any person or owner is unknown, the application shall so indicate;

(v) A statement of the type of operations contemplated in order to effectuate the purposes specified in W.S. 35-11-314 to comply with environmental requirements and to facilitate the use and production of Wyoming energy resources;

(vi) A proposed plan of unitization applicable to the proposed unit area which the applicant considers fair, reasonable and equitable and which shall include provisions for determining the pore space to be used within the area, the appointment of a unit operator and the time when the plan is to become effective;

(vii) A proposed plan for determining the quantity of pore space storage capacity to be assigned to each separately owned tract within the unit and the formula or method by which pore space will be allocated the economic benefits generated by use of pore space in the unit area;

(viii) A proposed plan for generating economic benefits for the use of pore space within the unit area;

(ix) A proposed operating plan providing the manner in which the unit area will be supervised and managed and, if applicable, costs allocated and paid, unless all owners within the proposed unit area have joined in executing an operating agreement or plan providing for such supervision, management and allocation and, if applicable, payment of costs. All operating plans shall comply with all applicable environmental requirements.

35-11-316. Unitization of geologic sequestration sites; hearings on application, order; modifications.

(a) Upon receipt of an application under W.S. 35-11-315, the Wyoming oil and gas conservation commission shall promptly set the matter for hearing, and in addition to any notice otherwise required by law or the commission's rules, shall cause the applicant to give notice of the hearing, specifying the time and place of hearing, and describing briefly its purpose and the land and pore space affected, to be mailed by certified mail at least thirty (30) days prior to the hearing to all persons whose names and addresses are required to be listed in the application.

(b) After considering the application and hearing the evidence offered in connection therewith, the Wyoming oil and gas conservation commission shall enter an order setting forth the following findings and approving the proposed plan of unitization and proposed operating plan, if any, if the commission finds that:

(i) The material allegations of the application are substantially true;

(ii) The purposes specified in W.S. 35-11-314 will be served by granting the application;

(iii) The application outlines operations that will comply with environmental requirements;

(iv) Granting the application will facilitate the use and production of Wyoming energy resources;

(v) The quantity of pore space storage capacity, and method used to determine the quantity of pore space storage capacity allocated to each separately owned tract within the unit area represents, so far as can be practically determined, each tract's actual share of the pore space to be used in the sequestration activity;

(vi) The method by which the allocation of economic benefits generated from use of pore space within the unit area between pore space owners; and between pore space owners and the unit operator or others is fair and reasonable, taking into consideration the costs required to capture, transport and sequester the carbon dioxide;

(vii) The method of generating economic benefits from the use of pore space in the unit area is fair and equitable and is reasonably designed to maximize the value of such use;

(viii) Other requirements specified by rules or regulations adopted by the oil and gas conservation commission have been met.

(c) No order of the Wyoming oil and gas conservation commission authorizing the commencement of unit operations shall become effective until the plan of unitization has been signed or in writing ratified or approved by those persons who own at least eighty percent (80%) of the pore space storage capacity within the unit area. If such consent has not been obtained at the time the commissioner's order is made, the commission shall, upon application, hold supplemental hearings and make findings as may be required to determine when and if the consent will be obtained. The commission shall require the applicant to give notice of a supplemental hearing by regular mail at least thirty (30) days prior to the hearing to each person owning interests in the pore space in the proposed unit area whose name and address was required by W.S. 35-11-315(a) to be listed in the application for the unit operations. If the required percentages of consent have not been obtained within a period of six (6) months from and after the date on which the order of approval is made, the order shall be ineffective and revoked by the commission, unless, for good cause shown, the commission extends that time. Any interested person may file an application with the Wyoming oil and gas conservation commission requesting an order applicable only to the proposed unit area described in the application which shall provide for the percentage of approval or ratification to be reduced from eighty percent (80%) to seventy-five percent (75%). The application shall contain the information required by W.S. 35-11-315(a) and any order of the commission entered pursuant to the application shall comply with subsection (b) of this section. Notice of the hearing on the application shall be given in the same manner and to the same persons as required by subsection (a) of this section. If the commission finds that negotiations were being conducted since July 1, 2009, or have been conducted for a period of at least nine (9) months prior to the filing of the application, that the applicant has participated in the negotiations diligently and in good faith, and that the percentage of approval or ratification required by this subsection cannot be obtained, the commission may reduce any percentage of approval or ratification required by this section from eighty percent (80%) to seventy-five percent (75%). The order shall affect only the unit area

described in the application and shall operate only to approve the proposed plan of unitization and proposed operating plan and to reduce the required percentage of approval or ratification thereof and shall not change any other requirement contained in this section.

(d) From and after the effective date of an order of the Wyoming oil and gas conservation commission entered under the provisions of this section, the operation of the unit area defined in the order by persons other than the unit operator or persons acting under the unit operator's authority, or except in the manner and to the extent provided in the plan of unitization approved by the order, shall be unlawful and is hereby prohibited.

(e) Unless otherwise provided in this section, an order entered by the Wyoming oil and gas conservation commission under this section may be amended in the same manner and subject to the same conditions as an original order or previous agreement: provided, no amendatory order shall change the assignments of pore space storage capacity between existing pore space owners in the unit area as established by the original order or previous agreement, except with the written consent of those persons who own at least eighty percent (80%) of the pore space storage capacity in the unit area, nor change any allocation of costs as established by the original order or previous agreement, except with the written consent of those persons who own at least eighty percent (80%) of the unit pore space storage capacity. If consent has not been obtained at the time the commission order is made, the commission shall, upon application, hold supplemental hearings and make findings as may be required to determine when and if such consent will be obtained. The commission shall require the applicant to give notice of a supplemental hearing by regular mail at least thirty (30) days prior to the hearing to each person owning interests in the unit area whose name and address was required by the provisions of W.S. 35-11-315(a)(iii) to be listed in the application for the unit operations. If the required percentages of consent have not been obtained within a period of six (6) months from and after the date on which the order of approval is made, the order shall be ineffective and revoked by the commission, unless, for good cause shown, the commission extends that time. Any interested person may file an application with the Wyoming oil and gas conservation commission requesting an order applicable only to the unit area described in the application which shall provide for the percentage of approval or ratification to be reduced from eighty percent (80%)

to seventy-five percent (75%). The application shall contain the information required by W.S. 35-11-315(a) and any order of the commission entered pursuant to the application shall comply with subsection (b) of this section. Notice of the hearing on the application shall be given in the same manner and to the same persons as required by subsection (a) of this section. If the commission finds that negotiations were being conducted since July 1, 2009 or have been conducted for a period of at least nine (9) months prior to the filing of the application, that the applicant has participated in the negotiations diligently and in good faith, and that the percentage of approval or ratification required by this subsection cannot be obtained, the commission may reduce any percentage of approval or ratification required by this section from eighty percent (80%) to seventy-five percent (75%). The order shall affect only the unit area described in the application and operate only to reduce the required percentage of approval or ratification necessary for amending the assignment of pore space and shall not change any other requirement contained in this section.

(f) The Wyoming oil and gas conservation commission, upon its own motion or upon application, and with notice and hearing, may modify its order regarding the operation, size or other characteristic of the unit area in order to prevent or assist in preventing a substantial inequity resulting from operation of the unit, provided that no such modification may amend any permit issued under W.S. 35-11-313.

(g) Any owner of pore space within a geologic sequestration site who has not been included within a unitization application or order authorizing a unit under this section, may petition for inclusion in the unit area. The petition shall be filed with the Wyoming oil and gas conservation commission and shall describe the petitioner's legal entitlement to the pore space, the location of the pore space, whether the pore space is included within any permitting area applicable to the unit area and the bases for inclusion in the unit area. The petition shall be accompanied by a deposit of money sufficient to pay all costs of the inclusion proceedings. The commission shall require the petitioner to publish a notice of filing of the petition which notice shall state the filing of the petition, the name of the petitioner, the location of the pore space and the prayer of the petitioner. The notice shall notify all interested persons to appear at a specified time and place and to show cause, in writing, if any they have, why the petition should not be granted. The commission at the time and place mentioned in the notice shall

proceed to hear the petition and all objections thereto and shall thereafter grant or deny the petition. The filing of the petition shall be deemed and taken as an assent by each and all petitioners to the inclusion in the unit of the pore space mentioned in the petition or any part thereof. If the petition is granted, the petitioner shall be considered to have been a member of the unit since its inception and, upon the payment of any costs paid by unit members, shall be entitled to all economic benefits received by unit members since the inception of the unit provided that no unit modification affects any permit issued under W.S. 35-11-313. The oil and gas conservation commission shall adopt rules providing for the fair and equitable determination of pore space storage capacity for each successful petitioner and the means by which successful petitioners shall be paid the economic benefits to which they are entitled under this subsection, including, if necessary, a reallocation of economic benefits among unit members.

(h) A certified copy of any order of the Wyoming oil and gas conservation commission entered under the provisions of this section shall be entitled to be recorded in the land records of the county clerk for the counties where all or any portion of the unit area is located, and the recordation shall constitute notice thereof to all persons.

(j) No provision of W.S. 35-11-314 through 35-11-317 shall be construed to confer on any person the right of eminent domain and no order for unitization issued under this section shall act so as to grant to any person the right of eminent domain.

(k) No order for unitization issued under this section shall act so as to grant any person a right of use or access to a surface estate if that person would not otherwise have such a right.

35-11-317. Unitization of geologic sequestration sites; economic benefits; liens.

(a) No order of the Wyoming oil and gas conservation commission or other contract relating to a separately owned tract within the unit area shall be terminated by the order providing for unit operations, but shall remain in force and apply to that tract, its benefits, burdens and obligations, until terminated in accordance with the provisions thereof.

(b) Except to the extent that the parties affected agree, no order providing for unit operations shall be construed to

result in a transfer of all or any part of the title to pore space or other rights in any tract in the unit area and no agreement or order shall operate to violate the terms and requirements of any permit applicable to pore space within the unit area.

35-11-318. Geologic sequestration special revenue account.

(a) There is created the Wyoming geologic sequestration special revenue account. The account shall be administered by the director and all funds in the account shall be transmitted to the state treasurer for credit to the account and shall be invested by the state treasurer as authorized under W.S. 9-4-715(a), (d) and (e) in a manner to obtain the highest return possible consistent with the preservation of the corpus. Any interest earned on the investment or deposit of monies into the fund shall remain in the fund and shall not be credited to the general fund. All funds in the account are continuously appropriated for use by the director consistent with this section.

(b) The account shall consist of all monies collected by the department to measure, monitor and verify Wyoming geologic sequestration sites following site closure certification, release of all financial assurance instruments and termination of the permit. The department shall promulgate rules necessary to collect monies in an amount reasonably calculated to pay the costs of measuring, monitoring and verifying the sites.

(c) Funds in the account shall be used only for the measurement, monitoring and verification of geologic sequestration sites following site closure certification, release of all financial assurance instruments and termination of the permit.

(d) The existence, management and expenditure of funds from this account shall not constitute a waiver by the state of Wyoming of its immunity from suit, nor does it constitute an assumption of any liability by the state for geologic sequestration sites or the carbon dioxide and associated constituents injected into those sites.