

1 **Summary of Changes and Corrections to 1/19/17 Draft**

2 Section 2: Corrected cross reference from Section 25 to Section 26.

3 Added Rule 11 to reference list.

4 Section 14(a): Corrected spacing error.

5 Section 26: Removed color and hyperlink as this document will not load properly to SOS
6 new site if left as is.

7 (a)(i) Added Rule 11 and adoption date; renumbered remaining paragraph;

8 (b) Added March 1, 2017 adoption information and listed adopted rules at (i)
9 through (vii).

10 CHAPTER 2
11 ~~RULES OF PRACTICE AND PROCEDURE APPLICABLE TO~~
12 ~~HEARINGS IN CONTESTED CASES~~
13 CONTESTED CASE HEARINGS
14

15 Section 1. ~~Answer or appearance~~ Purpose and Scope.
16

17 (a) ~~—The Director or Applicant shall promptly file a responsive pleading to the~~
18 ~~petition directed to and served upon the opposing party and the Council, not later than~~
19 ~~five days before the hearing date.~~
20

21 These rules are promulgated with the intent to adopt as much of the uniform
22 contested case rules that the Office of Administrative Hearings adopted under W.S. 16-3-
23 102(d) as is consistent with the specific and distinct requirements of the Department and
24 the Council and applicable law. These rules shall govern all contested case proceedings
25 before the Council.
26

27 Section 2. ~~Docket~~ Applicability of the Wyoming Rules of Civil Procedure.
28

29 (formerly Section 2(a)) ~~—When a hearing is instituted, it shall be assigned a~~
30 ~~number and entered with the date of its filing on a separate page of a docket provided for~~
31 ~~such purpose. The Council shall establish a separate file for each such docketed case, in~~
32 ~~which shall be systematically placed all papers, pleadings, documents, transcripts,~~
33 ~~evidence and exhibits pertaining thereto, and all such items shall have noted thereon the~~
34 ~~docket number assigned, and the date of filing.~~
35

36 (Formerly Section 14(a)) ~~The Wyoming Rules of Civil Procedure, insofar as the~~
37 ~~same may be applicable and not inconsistent with the laws of the state and these rules~~
38 ~~shall apply to matters before the Council. The Council shall conduct all contested case~~
39 hearings with reference to the Wyoming Rules of Civil Procedure. Section 26 of this
40 chapter specifically incorporates Rules 11, 12(b)(6), 24, 45, 52, 56, and 56.1 of the
41 Wyoming Rules of Civil Procedure.
42

43 Section 3. ~~Motions~~ Informal Proceedings and Alternative Dispute Resolution.
44

45 (a) Parties to a contested case are encouraged to resolve the contested case
46 through settlement, mediation, arbitration, or other means throughout the duration of a
47 contested case. If the parties choose to engage in mediation or arbitration, they shall file a
48 joint request for continuance pending outcome of the mediation or arbitration. If the
49 parties choose to engage in informal settlement discussions, they may file a joint request
50 for continuance pending outcome of the informal settlement discussions.
51

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

55 with the procedures prescribed by the mediating hearing officer.

56
57 (c) Parties shall promptly notify the hearing officer of all settlements,
58 stipulations, agency orders, or other action eliminating the need for a contested case
59 hearing. The hearing officer shall forward such notice to the Council. Upon such notice,
60 the Council shall enter an order dismissing the case.

61
62 Section 4. ~~Order of Procedure at Hearings~~ Initiation of Contested Case.

63
64 ~~(a) As nearly as possible, hearings shall be conducted in accordance with the~~
65 ~~following order of procedure:~~

66
67 ~~(i) The presiding officer shall announce that the Council is open to~~
68 ~~transact business and call by docket number and title the case to be heard.~~

69
70 ~~(ii) The parties will each be allowed an opening statement to briefly~~
71 ~~explain their position to the Council and outline the evidence they propose to offer~~
72 ~~together with purpose thereof.~~

73
74 ~~(iii) Parties' evidence will be heard. Witnesses may be cross-examined~~
75 ~~by the opposing party or his attorney and by members of the Council and legal counsel~~
76 ~~for the Council.~~

77
78 ~~(iv) The presiding officer may offer any evidence necessary on behalf~~
79 ~~of the Council subject to cross-examination.~~

80
81 ~~(v) The presiding officer may allow, in his discretion, evidence to be~~
82 ~~offered in any order.~~

83
84 ~~(vi) The Council may allow, after service of copies on all parties of~~
85 ~~record, the direct testimony of a witness to be in writing, either narrative or question and~~
86 ~~answer form, upon the witness being sworn and identifying the written testimony. It may~~
87 ~~be received into the record as if read, in accordance with W.S. 9-4-108. The witness~~
88 ~~giving such testimony in writing shall be subject to cross-examination and such evidence~~
89 ~~shall be received into the record subject to a motion to strike. The written testimony must~~
90 ~~be served on all other parties in advance to allow a reasonable time to prepare cross-~~
91 ~~examination.~~

92
93 ~~(vii) Closing arguments of the parties will be made in the manner set~~
94 ~~by the hearing officer.~~

95 ~~(viii) Time for oral argument may be limited by the presiding officer.~~

96
97 ~~(ix) The presiding officer may recess the hearing as required.~~

98
99 ~~(x) After all interested parties have been offered the opportunity to be~~

100 ~~heard, the presiding officer shall declare the evidence closed and excuse all witnesses.~~
101 ~~The evidence may be reopened at a later date, for good cause shown, by order of the~~
102 ~~Council upon motion by a party or on the Council's own motion.~~

103
104 ~~(b) — The presiding officer may, at his discretion, require parties to tender~~
105 ~~written briefs and set the time for filing such briefs.~~

106
107 ~~(c) — The presiding officer may declare that the matter is taken under~~
108 ~~advisement and that the decision and order of the Council will be announced at a later~~
109 ~~date.~~

110
111 ~~(d) — The Council may, at its discretion, appoint a presiding officer, who will~~
112 ~~then preside during the course of such hearing.~~

113 ~~(i) — The presiding officer shall, for purposes of that hearing, have all~~
114 ~~necessary powers normally vested in the Chairman.~~

115
116 (a) All persons requesting a contested case hearing or protesting a permit shall
117 file the original written petition with the Council and serve additional copies to the
118 Director of the Department and any other parties.

119
120 (i) A person initiating a contested case shall serve the petition by
121 registered mail, return receipt requested. Thereafter, all service shall be proved in
122 accordance with the Wyoming Rules of Civil Procedure.

123
124 (ii) Where a person is objecting to a permit, service of all documents
125 shall include the permit applicant when serving the petition and all other pleadings and
126 motions.

127
128 (b) The petition for hearing shall set forth:

129
130 (i) Name, phone number, electronic mail address, and physical
131 address of the petitioner and, if applicable, the petitioner's attorney;

132
133 (ii) The action, decision, order, or permit upon which a hearing is
134 requested;

135
136 (iii) A statement in ordinary but concise language of the specific
137 allegations on which the petition is based, including references to the statute, rule, or
138 order that the petitioner alleges has been violated, and

139
140 (iv) A request for hearing before the Council.

141
142 (c) The contested case shall be deemed commenced on the date of filing the
143 petition with the Council.

144

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

147
148 Section 5. ~~Witnesses at Hearings to be Sworn~~ Filing and Service of Papers

149
150 ~~(a) All persons testifying at any hearing before the Council shall stand and be~~
151 ~~administered the following oath or affirmation by the presiding officer:~~

152
153 ~~“Do you swear (or affirm) to tell the truth, the whole truth, and nothing but the~~
154 ~~truth in the matter now before the Council, so help you God?”~~

155
156 ~~(i) No testimony will be received from a witness except under oath or~~
157 ~~affirmation.~~

158
159 (a) In all contested case proceedings, the parties shall file all original
160 documents, pleadings, and motions with the Council and serve all other parties with true
161 and correct copies of the particular document, pleading, or motion. The original and all
162 copies shall be accompanied by a certificate of service. The Council shall maintain the
163 complete original file, and all parties and the hearing officer shall be provided copies of
164 all contested case documents, pleadings, and motions contained therein.

165
166 (b) Filing and service under this rule shall be made by hand delivery, U.S.
167 mail transmittal to the last known address, or electronically uploaded to the relevant
168 docket at <http://wyomingeqc.wyo.gov/>. Where all parties have not consented to receive
169 electronic service, the party electronically filing shall otherwise serve the documents to
170 the parties who have not consented to receive electronic service. Parties may file by
171 means other than those described in this Section upon approval from the hearing officer.

172
173 Section 6. ~~Appearance~~ Referral to Office.

174
175 (a) Upon referral to the Office to conduct a contested case in accordance with
176 W.S. 35-11-112(a), the Council shall transmit to the Office copies of appropriate
177 documents reflecting the dispute and the basis thereof, including any written challenge(s)
178 initiating the contested case and a reference to applicable law.

179
180 (b) The Council shall submit a transmittal sheet, on a form provided by the
181 Office, sufficiently identifying the contested case, including:

182
183 (i) The name of the known parties and their attorneys or
184 representatives;

185
186 (ii) A concise statement of the nature of the contested case;

187
188 (iii) Notification of any time limits for the setting of a hearing or entry
189 of a decision, location requirements, and anticipated special features or unique

190 requirements; and

191
192 (iv) Certification by an authorized officer of the Council that all parties
193 have been properly served with a true and complete copy of the transmittal form.

194
195 Section 7. ~~Intervention~~ Designation and Authority of Hearing Officer;
196 Recusal.

197
198 (a) The Chair may refer, assign, or designate a hearing officer to preside over
199 any contested case unless otherwise provided by law. When appropriate under applicable
200 law and at the Council's request, the hearing officer may provide a recommended
201 decision.

202
203 (b) At any time while a contested case is pending, a hearing officer or Council
204 member may withdraw from a contested case by filing written notice of recusal or
205 entering a verbal notice of recusal into the record. As soon as the notice of recusal is
206 entered, the recused hearing officer or Council member shall not participate in the
207 contested case.

208
209 (c) Upon motion of any party, recusal of a hearing officer or Council member
210 shall be for cause. Whenever the grounds for such motion become known, any party may
211 move for recusal of a hearing officer or Council member on the ground that the hearing
212 officer or Council member:

213
214 (i) Has been engaged as counsel in the action prior to being appointed
215 as hearing officer;

216
217 (ii) Has a material interest in the outcome of the action;

218
219 (iii) Is related by consanguinity to a party;

220
221 (iv) Is a witness in the action;

222
223 (v) Is biased or prejudiced against the party or the party's attorney or
224 representative; or

225
226 (vi) Any other ground provided by law.

227
228 (d) A motion for recusal shall be supported by an affidavit or affidavits of
229 any person or persons stating sufficient facts to show the existence of grounds for the
230 motion. Prior to a hearing on the motion, any party may file counter-affidavits. The
231 motion shall be heard by the hearing officer or, at the discretion of the hearing officer, by
232 another hearing officer. If the motion is granted, the Council Chair shall immediately
233 designate another hearing officer to preside over the contested case or shall excuse the
234 Council member(s).

235
236 (e) A hearing officer appointed from outside the Council members shall not
237 be subject to a voir dire examination by any party.

238
239 (f) Subject to limitations imposed by the hearing officer, any party may be
240 permitted to conduct a voir dire examination of a Council member.

241
242 Section 8. ~~General Hearing Rules~~ Appearances and Withdrawals.

243
244 ~~(a) Every party shall be accorded the right to appear and testify in person or~~
245 ~~by counsel or other duly qualified representative. If testifying on behalf of another person~~
246 ~~or several persons, such person shall present to the hearing officer evidence he is a~~
247 ~~qualified representative thereof.~~

248
249 ~~(b) Every person testifying shall, at the Council's discretion, be qualified prior~~
250 ~~to testifying. Such qualification will include ascertaining the residency, occupation,~~
251 ~~background, education, and expertise of said person.~~

252
253 ~~(c) All parties shall have the right to respond and present evidence and~~
254 ~~argument on all issues involved.~~

255
256 ~~(d) No person shall be required to report, inspect, or perform any investigative~~
257 ~~act except as authorized by law.~~

258
259 ~~(e) All persons required to submit data or evidence shall be either entitled to~~
260 ~~retain the data or evidence or upon payment of a reasonable cost may procure a copy~~
261 ~~thereof.~~

262
263 ~~(f) All irrelevant, immaterial, or unduly repetitious evidence may be~~
264 ~~excluded.~~

265
266 ~~(g) Effect to the rules of privilege shall be given as recognized by law.~~
267 ~~Documentary evidence may be received in the form of copies of excerpts, if the original~~
268 ~~is not available. All copies are subject to being compared with the original.~~

269
270 ~~(h) The presiding officer shall:~~

271
272 ~~(i) Administer oaths and affirmations.~~

273
274 ~~(ii) Issue subpoenas.~~

275
276 ~~(iii) Rule upon offers of proof and receive relevant evidence.~~

277
278 ~~(iv) Take or cause to be taken depositions.~~

279

280 (v) — ~~Preside over the hearing and regulate its proceedings.~~
281
282 (vi) — ~~Preside over and set the time for such pre-hearing conferences as~~
283 ~~he deems necessary.~~
284
285 (vii) — ~~Dispose of procedural requests. The presiding officer may be~~
286 ~~assisted by a representative of the Attorney General's Office when such assistance is~~
287 ~~deemed necessary.~~
288
289 (viii) — ~~The presiding officer shall officially open and officially close the~~
290 ~~hearing.~~
291
292 ~~(Formerly Section 6(a)) — Appearances and representation of parties shall be~~
293 ~~made as follows:~~
294 ~~—— (Formerly 6(a)(i)) An individual may appear and be heard in his own~~
295 ~~behalf~~
296
297 ~~—— (Formerly 6(a)(ii)) — A co-partnership may appear and be represented by~~
298 ~~a co-partner.~~
299
300 ~~—— (Formerly 6(a)(iii)) — A corporation may appear and be represented by a~~
301 ~~corporate officer or a full-time employee of said corporation.~~
302
303 ~~—— (Formerly 6(a)(iv)) — A municipal corporation or its Board of Public~~
304 ~~Utilities may appear and be represented by a municipal officer, a member of said Board~~
305 ~~or a full-time employee of said municipality or Board.~~
306
307 ~~—— (Formerly 6(a)(v)) — An unincorporated association may appear and be~~
308 ~~represented by any bona fide general officer or full-time employee of such association.~~
309
310 ~~—— (Formerly 6(a)(vi)) — The Department of Environmental Quality may~~
311 ~~appear and be represented by the Director or Administrator of the relative division, or by~~
312 ~~the Attorney General or his representative.~~
313
314 ~~—— (Formerly 6(a)(vii)) — Any party to a proceeding may appear and be~~
315 ~~represented therein by an attorney at law who is duly admitted to practice in Wyoming~~
316 ~~and an active member of the Wyoming State Bar. Any attorney who is not duly licensed~~
317 ~~to practice law in Wyoming shall not be entitled to enter his appearance in, prosecute or~~
318 ~~defend any action or proceeding pending before the Council unless he shall have~~
319 ~~associated with him in such action or proceeding an active member of the Wyoming State~~
320 ~~Bar.~~
321
322 (Formerly 6(a)(i-vii)) (a) A party, whether it be an individual, corporation,
323 partnership, governmental organization, or other entity may appear through an attorney or
324 representative. An individual may represent himself/herself. An individual or entity

325 seeking to intervene in a contested case under Rule 24 of the Wyoming Rules of Civil
326 Procedure may appear through an attorney or representative prior to a ruling on the
327 motion to intervene.

329 ~~(Formerly 6(b)) — Any person appearing in a proceeding before the Council~~
330 ~~shall conform to the recognized standards of ethical conduct.~~

331
332 (b) Prior to withdrawing from a contested case, an attorney shall file a motion
333 to withdraw. The motion for an attorney's withdrawal shall include a statement
334 indicating the manner in which notification was given to the client and setting forth the
335 client's last known address and telephone number. The hearing officer shall not grant the
336 motion to withdraw unless the attorney has made reasonable efforts to give actual notice
337 to the client that:

338 _____
339 (i) The attorney wishes to withdraw;

340
341 (ii) The client has the burden of keeping the hearing officer informed
342 of the address where notices, pleadings, or other papers may be served;

343
344 (iii) The client has the obligation to prepare, or to hire another
345 attorney or representative to prepare, for the contested case and the dates of proceedings;

346
347 (iv) The client may suffer an adverse determination in the contested
348 case if the client fails or refuses to meet these burdens;

349
350 (v) The pleadings and papers in the case shall be served upon the
351 client at the client's last known address; and

352
353 (vi) The client has the right to object within fifteen (15) days of the
354 date of notice.

355
356 (c) Prior to withdrawing from a contested case, a representative shall provide
357 written notice of withdrawal to the Council.

358
359 Section 9. **Subpoenas Intervention.**

360
361 (Formerly Section 7(a)) (a) Any person interested in obtaining the relief
362 sought by a party or otherwise interested in the determination of a proceeding, ~~relating to~~
363 ~~other than surface coal mining operations pending before the Council,~~ may ~~petition for~~
364 ~~leave~~ file a motion for leave to intervene ~~in such proceeding prior to before or at the date~~
365 ~~of hearing,~~ but not thereafter except for good cause shown. The ~~petition~~ motion shall set
366 forth the grounds of the proposed intervention, the position and interest of the petitioner
367 in the proceeding, and ~~if affirmative relief is sought, the same should conform to the~~
368 ~~requirements for a formal petition.~~ Leave ~~will~~ shall not be granted unless the Council
369 ~~shall~~ determines that the party requesting to intervene movant is adversely affected by the

370 action and has a legal right to intervene, ~~has a legal right under the Environmental~~
371 ~~Quality Act or the Wyoming Administrative Procedure Act~~, under the standards set out
372 in W.R.C.P. Rule 24.

373
374 (Formerly 7(b)) (b) For proceedings related to surface coal mining operations,
375 any person may ~~petition~~ file a motion for leave to intervene as a full party or ~~;~~ ~~if desired~~
376 in a limited capacity; at any stage of a proceeding conducted by the Council. The ~~petition~~
377 motion shall include the basis for intervention and shall be granted to any person who
378 either could have initiated the proceeding or has an interest ~~which~~ that may be adversely
379 affected by the outcome of the proceeding. Regardless of these bases, intervention may
380 be granted whenever appropriate; after ~~consideration of~~ considering the nature of the
381 issues, the adequacy of the existing parties' representation of ~~petitioner's~~ movant's
382 interest, the ability of the ~~petitioner~~ movant to present relevant evidence and argument,
383 and the effect of intervention on the implementation of the Wyoming Environmental
384 Quality Act. The extent and terms of participation by an intervenor in a limited capacity
385 shall be determined by the Council.-

386
387 (Formerly 7(c)) (c) If ~~leave~~ the motion to intervene is granted, the ~~petitioner~~
388 movant becomes an intervenor and a party to the proceeding with the right to have notice,
389 appear at the taking of testimony, produce and cross-examine witnesses, and be heard on
390 the argument of the case. The party intervening shall give notice of intervention to all
391 other parties.

392
393 ~~(Formerly 7(d)) — The party intervening must give notice of such intervention~~
394 ~~to all other parties to the appeal.~~

395
396 Section 10. ~~Depositions~~ Ex Parte Communications.

397
398 ~~(a) — In all contested areas coming before the Council, the taking of depositions~~
399 ~~and discovery shall be available to the parties and to the Council on its own motion in~~
400 ~~accordance with the provisions of W.S. 9-4-107(g).~~

401
402 ~~(b) — The Council, for the purposes of allowing orderly presentation of~~
403 ~~evidence, may govern the conduct of discovery and the time limitations involved.~~

404
405 Except as authorized by law, a party or a party's attorney or representative shall
406 not communicate with any Council member in connection with any issue of fact or law
407 concerning any pending contested case, except upon notice and opportunity for all parties
408 to participate. Should ex parte communication occur, the Council member shall advise all
409 parties of the communication as soon as possible thereafter and, if requested, shall allow
410 any party an opportunity to respond prior to ruling on the issue.

411
412 Section 11. ~~Witness Fees~~ Motions and Motion Practice.

413
414 ~~(a) — Witnesses who are summoned before the Council are entitled to the same~~

415 ~~fees as are paid for like service in the District Courts of the State of Wyoming. Such fees~~
416 ~~shall be paid by the party at whose insistence the testimony was taken.~~

417
418 ~~(formerly Section 3(a))~~ (a) ~~The Council or presiding officer may, upon~~
419 ~~reasonable notice to all parties, hear orally, or otherwise, any motion filed in connection~~
420 ~~with hearings under these rules. Unless these rules or an order of the hearing officer~~
421 ~~establish time limitations other than those contained herein, all motions except motions~~
422 ~~for enlargement of time and motions made during hearing shall be served at least ten (10)~~
423 ~~days prior to the hearing on the motion. A party affected by the motion may serve a~~
424 ~~response together with affidavits, if any, at least three (3) days before the hearing on the~~
425 ~~motion or within twenty (20) days after service of the motion, whichever is earlier.~~
426 ~~Unless the hearing officer permits service at some other time, the moving party may~~
427 ~~serve a reply, if any, at least one day prior to the hearing on the motion or within fifteen~~
428 ~~(15) days after service of the response, whichever is earlier. Unless the hearing officer~~
429 ~~otherwise orders, any party may serve supplemental memoranda or rebuttal affidavits at~~
430 ~~least one day prior to the hearing on the motion.~~

431
432 (b) Unless the hearing officer otherwise orders, a request for a hearing on the
433 motion may be served by the moving party or any party affected by the motion within
434 twenty (20) days after service of the motion. The hearing officer may determine such
435 motion without a hearing.

436
437 (c) Prior to filing any non-dispositive motion, a moving party shall make
438 reasonable efforts to contact all other parties, representatives, and attorneys. Any such
439 non-dispositive motion shall include a statement concerning efforts made to confer with
440 the other party(s) and position(s) on the motion.

441
442 (d) All written motions filed with the Council shall be accompanied by a
443 proposed order.

444
445 Section 12. ~~Decision and Order~~ Setting Hearings and Other Proceedings.

446
447 ~~(a) — The Council shall make a written decision and order in all cases, which~~
448 ~~decision shall contain findings of fact and conclusions of law based exclusively on the~~
449 ~~record and include the vote on the decision. The decision and order of the Council shall~~
450 ~~be placed in the record of the case which shall be retained by the Council.~~

451
452 ~~(formerly Section 2(a))~~ (a) ~~— When a hearing is instituted, The hearing officer or~~
453 Chair of the Council, as applicable, it shall be assigned a docket number and entered with
454 the date of its filing on a separate page of a docket provided for such purpose to each
455 contested case. The Council shall establish a separate file for each such docketed case, in
456 which shall be systematically placed all papers, pleadings, documents, transcripts,
457 evidence and exhibits pertaining thereto, and all such items shall have noted thereon the
458 docket number assigned, and the date of filing. All papers, pleadings, motions, and
459 orders filed thereafter shall contain:

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(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) — The Council may, in its discretion, allow any pleadings to be amended or corrected, or any omission therein to be supplied.~~

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. ~~Applicability of Rule of Civil Procedure~~ **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

505 motion for extension of time shall be granted only upon a showing of good cause.

506
507 (c) For contested cases conducted regarding objections pursuant to W.S. 35-
508 11-406(k), a motion for continuance may not be granted if the motion would continue the
509 hearing beyond the 20-day period provided in that statute unless the parties stipulate to a
510 different period.

511
512 Section 15. Discovery.

513
514 (a) The taking of depositions and discovery shall be in accordance with
515 W.S. 16-3-107(g).

516
517 (b) Unless the hearing officer orders otherwise, parties shall not file discovery
518 requests, answers, and deposition notices with the Council.

519
520 Section 16. Subpoenas.

521
522 ~~Formerly Section 9(a)) — Subpoenas requiring the attendance of~~
523 ~~witnesses from any place in the State of Wyoming at any designated place of hearing or~~
524 ~~for the production of books, papers, or other documents may be issued by the presiding~~
525 ~~officer upon written application of any party or upon motion of the presiding officer in~~
526 ~~accordance with the Wyoming Rules of Civil Procedure and Administrative Procedure~~
527 ~~Act.~~

528
529 ~~(Formerly Section 9(a)(i)) — Items sought shall be set forth with~~
530 ~~particularity.~~

531
532 ~~(Formerly Section 9(a)(ii)) — All subpoenas shall be served by personal~~
533 ~~delivery or by certified mail return receipt required, to the party served.~~

534 ~~(Formerly Section 9(a)(iii)) Cost of the subpoenas shall be paid by the party~~
535 ~~requesting the service.~~

536
537 Any party may request the hearing officer to issue a subpoena to compel the
538 attendance of a witness or for the production of documents. Requests for a subpoena shall
539 be accompanied by a completed subpoena that conforms to Rule 45 of the Wyoming
540 Rules of Civil Procedure.

541
542 Section 17. Summary Disposition.

543
544
545 Rules 12(b)(6), 52(c), 56.1, and 56, Wyoming Rules of Civil Procedure, apply to
546 contested cases.

547
548 Section 18. Prehearing Procedures.

549

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

553
554 (i) A complete list of all witnesses who will or may testify, together
555 with information on how that witness may be contacted, and a brief description of the
556 testimony the witness is expected to give in the case. If a deposition is to be offered into
557 evidence, the original shall be filed with the Council;

558
559 (ii) A statement of the specific claims, defenses, and issues which the
560 party asserts are before the hearing officer for hearing, based on the party's initial filing;

561
562 (iii) A statement of the burden of proof to be assigned in the contested
563 case with reference to specific regulatory, statutory, constitutional, or other authority
564 established by relevant case law;

565
566 (iv) A statement of stipulated facts. If the parties are unable to stipulate
567 to facts, the parties shall indicate what efforts have been made to stipulate to facts and the
568 reasons facts cannot be stipulated;

569
570 (v) A complete list of all documents, statements, etc., which the party
571 will or may introduce into evidence; and

572
573 (vi) An approximation of the time required for the hearing.

574
575 (b) Parties shall file and serve prehearing disclosure statements on or before
576 the date established by the hearing officer.

577
578 (c) The information provided in a prehearing disclosure statement shall be
579 binding on each party throughout the course of the contested case unless modified for
580 good cause.

581
582 (d) Additional witnesses or exhibits may be added only if the need to do so
583 was not reasonably foreseeable at the time of filing of the prehearing disclosure
584 statement, it would not unfairly prejudice other parties, and good cause is shown.

585
586 (e) The hearing officer may modify the requirements of a prehearing
587 disclosure statement.

588
589 (f) Failure to file a prehearing disclosure statement may result in the hearing
590 officer's striking of witnesses, exhibits, claims and defenses, or dismissal of the contested
591 case.

592
593 (g) If a prehearing order is entered, the prehearing order shall control the
594 course of the hearing.

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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,

640 other parties shall then be allowed to present their evidence. Rebuttal and surrebuttal
641 evidence shall be allowed only at the discretion of the hearing officer.

642
643 (c) The hearing officer shall have discretion to allow opening statements and
644 closing arguments.

645
646 **Section 22. Default.**

647
648 Unless otherwise provided by law, a hearing officer may enter an order of default
649 or an order affirming agency action for a party's failure to appear at a lawfully noticed
650 hearing.

651
652 **Section 23. Expedited Hearing.**

653
654 (a) At the hearing officer's or Council's discretion and when allowed by
655 applicable law, a contested case may be heard as an expedited hearing upon the motion of
656 any party.

657
658 (b) An expedited hearing shall be decided on written arguments, evidence, and
659 stipulations submitted by the parties. A hearing officer or the Council may permit oral
660 arguments upon the request of any party.

661
662 (c) The hearing officer may require an evidentiary hearing in any case in
663 which it appears that facts material to a decision in the case cannot be properly
664 determined by an expedited hearing.

665
666 **Section 24. Recommended Decision.**

667
668 In those contested cases where the hearing officer makes a recommended
669 decision, the hearing officer shall file the recommended decision with the Council and
670 serve copies of the recommended decision on all parties to the contested case. Unless
671 otherwise ordered, parties shall have ten (10) days to file written exceptions to the
672 hearing officer's recommended decision. Written exceptions shall be filed with the
673 Council and served on all parties.

674
675 **Section 25. Final Decision.**

676
677 (a) A final decision containing findings of fact, conclusions of law, and an
678 order entered by the Council shall be in writing and served upon all parties to the
679 contested case and the hearing officer, if applicable.

680
681 (b) A final decision shall include findings of fact and conclusions of law,
682 separately stated. When the hearing officer allows the parties to submit a proposed final
683 order, the parties shall file the original with the Council and serve copies of the proposed
684 order on all other parties and the hearing officer.

685
686 (c) A hearing officer may at any time prior to judicial review correct clerical
687 errors in final decisions or other parts of the record. A party may move that clerical errors
688 or other parts of the record be corrected. During the pendency of judicial review, such
689 errors may be corrected only with leave of the court having jurisdiction.

690
691 **Section 26. Incorporation by Reference.**

692
693 (a) The code, standard, rule, or regulation below is incorporated by reference
694 and can be found at:

695
696 http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULE
697 [S_OF_CIVIL_PROCEDURE.pdf](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULE)

698
699 (i) Rule 11, Wyoming Rules of Civil Procedure, adopted by the
700 Wyoming Supreme Court and in effect on July 1, 2008;

701
702 i(i) Rule 12(b)(6), Wyoming Rules of Civil Procedure, adopted by the
703 Wyoming Supreme Court and in effect on April 11, 1995;

704
705 (iii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the
706 Wyoming Supreme Court and in effect on February 11, 1975;

707
708 (iv) Rule 45, Wyoming Rules of Civil Procedure, adopted by the
709 Wyoming Supreme Court and in effect on October 1, 2009;

710
711 (v) Rule 52, Wyoming Rules of Civil Procedure, adopted by the
712 Wyoming Supreme Court and in effect on July 1, 2000;

713
714 (vi) Rule 56, Wyoming Rules of Civil Procedure, adopted by the
715 Wyoming Supreme Court and in effect on October 11, 1964;

716
717 (vii) Rule 56.1, Wyoming Rules of Civil Procedure, adopted by the
718 Wyoming Supreme Court and in effect on July 1, 2008.

719
720 (b) After March 1, 2017, the code, standard, rule, or regulation below is
721 incorporated by reference, and after March 1, 2017 can be found at:

722
723 http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULE
724 [S_OF_CIVIL_PROCEDURE.pdf](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULE)

725
726 (i) Rule 11, Wyoming Rules of Civil Procedure, adopted by the
727 Wyoming Supreme Court and in effect on March 1, 2017;

728
729 (ii) Rule 12(b)(6), Wyoming Rules of Civil Procedure, adopted by the

730 Wyoming Supreme Court and in effect on March 1, 2017;
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732 (iii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the
733 Wyoming Supreme Court and in effect on March 1, 2017;
734
735 (iv) Rule 45, Wyoming Rules of Civil Procedure, adopted by the
736 Wyoming Supreme Court and in effect on March 1, 2017;
737
738 (v) Rule 52, Wyoming Rules of Civil Procedure, adopted by the
739 Wyoming Supreme Court and in effect on March 1, 2017;
740
741 (vi) Rule 56, Wyoming Rules of Civil Procedure, adopted by the
742 Wyoming Supreme Court and in effect on March 1, 2017;
743
744 (vii) Rule 56.1, Wyoming Rules of Civil Procedure, adopted by the
745 Wyoming Supreme Court and in effect on March 1, 2017.
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747
748 (c) These rules do not incorporate later amendments or editions of the
749 incorporated matter.
750
751 (d) All incorporated matter is available for public inspection at the
752 Department's Cheyenne office. Contact information for the Cheyenne Office may be
753 obtained at <http://deq.wyoming.gov> or from (307) 777-7937.
754