

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16

**CHAPTER 2**  
**~~RULES OF PRACTICE AND PROCEDURE APPLICABLE TO~~**  
**~~HEARINGS IN CONTESTED CASES~~**  
**CONTESTED CASE HEARINGS**

17  
18

**Section 1. ~~Answer or appearance~~ Purpose and Scope.**

19  
20  
21  
22  
23  
24  
25

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

26  
27  
28  
29  
30  
31

These rules are promulgated with the intent to adopt as much of the uniform contested case rules that the Office of Administrative Hearings 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.

32  
33

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

34  
35  
36  
37  
38  
39  
40

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

41  
42  
43  
44  
45  
46

~~(Formerly Section 14(a)) The Wyoming Rules of Civil Procedure, insofar as the same may be applicable and not inconsistent with the laws of the state and these rules shall apply to matters before the Council. 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. ~~Motions~~ 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,

47 agency orders, or other action eliminating the need for a contested case hearing. The hearing  
48 officer shall forward such notice to the Council. Upon such notice, the Council shall enter an  
49 order dismissing the case.

50  
51 **Section 4. ~~Order of Procedure at Hearings~~ Initiation of Contested Case.**

52  
53 ~~(a) — As nearly as possible, hearings shall be conducted in accordance with the~~  
54 ~~following order of procedure:~~

55  
56 ~~(i) — The presiding officer shall announce that the Council is open to transact~~  
57 ~~business and call by docket number and title the case to be heard.~~

58  
59 ~~(ii) — The parties will each be allowed an opening statement to briefly explain~~  
60 ~~their position to the Council and outline the evidence they propose to offer together with purpose~~  
61 ~~thereof.~~

62  
63 ~~(iii) — Parties' evidence will be heard. Witnesses may be cross-examined by the~~  
64 ~~opposing party or his attorney and by members of the Council and legal counsel for the Council.~~

65  
66 ~~(iv) — The presiding officer may offer any evidence necessary on behalf of the~~  
67 ~~Council subject to cross-examination.~~

68  
69 ~~(v) — The presiding officer may allow, in his discretion, evidence to be offered~~  
70 ~~in any order.~~

71  
72 ~~(vi) — The Council may allow, after service of copies on all parties of record, the~~  
73 ~~direct testimony of a witness to be in writing, either narrative or question and answer form, upon~~  
74 ~~the witness being sworn and identifying the written testimony. It may be received into the record~~  
75 ~~as if read, in accordance with W.S. 9-4-108. The witness giving such testimony in writing shall~~  
76 ~~be subject to cross-examination and such evidence shall be received into the record subject to a~~  
77 ~~motion to strike. The written testimony must be served on all other parties in advance to allow a~~  
78 ~~reasonable time to prepare cross-examination.~~

79  
80 ~~(vii) — Closing arguments of the parties will be made in the manner set by the~~  
81 ~~hearing officer.~~

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

83  
84 ~~(ix) — The presiding officer may recess the hearing as required.~~

85  
86 ~~(x) — After all interested parties have been offered the opportunity to be heard,~~  
87 ~~the presiding officer shall declare the evidence closed and excuse all witnesses. The evidence~~  
88 ~~may be reopened at a later date, for good cause shown, by order of the Council upon motion by a~~  
89 ~~party or on the Council's own motion.~~

90  
91 ~~(b) — The presiding officer may, at his discretion, require parties to tender written~~  
92 ~~briefs and set the time for filing such briefs.~~

93  
94 ~~(c) The presiding officer may declare that the matter is taken under advisement and~~  
95 ~~that the decision and order of the Council will be announced at a later date.~~

96  
97 ~~(d) The Council may, at its discretion, appoint a presiding officer, who will then~~  
98 ~~preside during the course of such hearing.~~

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

101  
102 (a) All persons requesting a contested case hearing or protesting a permit shall file  
103 the original written petition with the Council and serve additional copies to the Director of the  
104 Department and any other parties.

105  
106 (i) A person initiating a contested case shall serve the petition by registered  
107 mail, return receipt requested. Thereafter, all service shall be proved in accordance with the  
108 Wyoming Rules of Civil Procedure.

109  
110 (ii) Where a person is objecting to a permit, service of all documents shall  
111 include the permit applicant when serving the petition and all other pleadings and motions.

112  
113 (b) The petition for hearing shall set forth:

114  
115 (i) Name, phone number, electronic mail address, and physical address of the  
116 petitioner and, if applicable, the petitioner's attorney;

117  
118 (ii) The action, decision, order, or permit upon which a hearing is requested;

119  
120 (iii) A statement in ordinary but concise language of the specific allegations on  
121 which the petition is based, including references to the statute, rule, or order that the petitioner  
122 alleges has been violated, and

123  
124 (iv) A request for hearing before the Council.

125  
126 (c) The contested case shall be deemed commenced on the date of filing the petition  
127 with the Council.

128  
129 (d) No responsive pleadings are mandatory prior to the prehearing scheduling  
130 conference.

131  
132 **Section 5. ~~Witnesses at Hearings to be Sworn~~ Filing and Service of Papers**

133  
134 ~~(a) All persons testifying at any hearing before the Council shall stand and be~~  
135 ~~administered the following oath or affirmation by the presiding officer:~~

136  
137 ~~"Do you swear (or affirm) to tell the truth, the whole truth, and nothing but the truth in~~  
138 ~~the matter now before the Council, so help you God?"~~

139  
140 ~~(i) No testimony will be received from a witness except under oath or affirmation.~~  
141

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

148  
149 (b) Filing and service under this rule shall be made by hand delivery, U.S. mail  
150 transmittal to the last known address, or electronically uploaded to the relevant docket at  
151 http://wyomingeqc.wyo.gov/. Where all parties have not consented to receive electronic service,  
152 the party electronically filing shall otherwise serve the documents to the parties who have not  
153 consented to receive electronic service. Parties may file by means other than those described in  
154 this Section upon approval from the hearing officer.

155  
156 **Section 6. ~~Appearance~~ Referral to Office.**

157  
158 (a) Upon referral to the Office to conduct a contested case in accordance with W.S.  
159 35-11-112(a), the Council shall transmit to the Office copies of appropriate documents reflecting  
160 the dispute and the basis thereof, including any written challenge(s) initiating the contested case  
161 and a reference to applicable law.

162  
163 (b) The Council shall submit a transmittal sheet, on a form provided by the  
164 Office, sufficiently identifying the contested case, including:

165  
166 (i) The name of the known parties and their attorneys or representatives;

167  
168 (ii) A concise statement of the nature of the contested case;

169  
170 (iii) Notification of any time limits for the setting of a hearing or entry of a  
171 decision, location requirements, and anticipated special features or unique requirements; and

172  
173 (iv) Certification by an authorized officer of the Council that all parties have  
174 been properly served with a true and complete copy of the transmittal form.

175  
176 **Section 7. ~~Intervention~~ Designation and Authority of Hearing Officer; Recusal.**

177  
178 (a) The Chair may refer, assign, or designate a hearing officer to preside over any  
179 contested case unless otherwise provided by law. When appropriate under applicable law and at  
180 the Council's request, the hearing officer may provide a recommended decision.

181  
182 (b) At any time while a contested case is pending, a hearing officer or Council  
183 member may withdraw from a contested case by filing written notice of recusal or entering a  
184 verbal notice of recusal into the record. As soon as the notice of recusal is entered, the recused

185 hearing officer or Council member shall not participate in the contested case.

186  
187 (c) Upon motion of any party, recusal of a hearing officer or Council member shall be  
188 for cause. Whenever the grounds for such motion become known, any party may move for  
189 recusal of a hearing officer or Council member on the ground that the hearing officer or Council  
190 member:

191  
192 (i) Has been engaged as counsel in the action prior to being appointed as  
193 hearing officer;

194  
195 (ii) Has a material interest in the outcome of the action;

196  
197 (iii) Is related by consanguinity to a party;

198  
199 (iv) Is a witness in the action;

200  
201 (v) Is biased or prejudiced against the party or the party’s attorney or  
202 representative; or

203  
204 (vi) Any other ground provided by law.

205  
206 (d) A motion for recusal shall be supported by an affidavit or affidavits of any person  
207 or persons stating sufficient facts to show the existence of grounds for the motion. Prior to a  
208 hearing on the motion, any party may file counter-affidavits. The motion shall be heard by the  
209 hearing officer or, at the discretion of the hearing officer, by another hearing officer. If the  
210 motion is granted, the Council Chair shall immediately designate another hearing officer to  
211 preside over the contested case or shall excuse the Council member(s).

212  
213 (e) A hearing officer appointed from outside the Council members shall not be  
214 subject to a voir dire examination by any party.

215  
216 (f) Subject to limitations imposed by the hearing officer, any party may be permitted  
217 to conduct a voir dire examination of a Council member.

218  
219 **Section 8. ~~General Hearing Rules~~ Appearances and Withdrawals.**

220  
221 ~~(a) — Every party shall be accorded the right to appear and testify in person or by~~  
222 ~~counsel or other duly qualified representative. If testifying on behalf of another person or several~~  
223 ~~persons, such person shall present to the hearing officer evidence he is a qualified representative~~  
224 ~~thereof.~~

225  
226 ~~(b) — Every person testifying shall, at the Council’s discretion, be qualified prior to~~  
227 ~~testifying. Such qualification will include ascertaining the residency, occupation, background,~~  
228 ~~education, and expertise of said person.~~

229  
230 ~~(c) — All parties shall have the right to respond and present evidence and argument on-~~

231 ~~all issues involved.~~

232

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

235

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

238

239 ~~(f) — All irrelevant, immaterial, or unduly repetitious evidence may be excluded.~~

240

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

244

245 ~~(h) — The presiding officer shall:~~

246

247 ~~(i) Administer oaths and affirmations.~~

248

249 ~~(ii) — Issue subpoenas.~~

250

251 ~~(iii) — Rule upon offers of proof and receive relevant evidence.~~

252

253 ~~(iv) — Take or cause to be taken depositions.~~

254

255 ~~(v) — Preside over the hearing and regulate its proceedings.~~

256

257 ~~(vi) — Preside over and set the time for such pre-hearing conferences as he deems~~  
258 ~~necessary.~~

259

260 ~~(vii) — Dispose of procedural requests. The presiding officer may be assisted by a~~  
261 ~~representative of the Attorney General's Office when such assistance is deemed necessary.~~

262

263 ~~(viii) — The presiding officer shall officially open and officially close the hearing.~~

264

265 ~~(Formerly Section 6(a)) — Appearances and representation of parties shall be made as~~  
266 ~~follows:~~

267 ~~—— (Formerly 6(a)(i)) — An individual may appear and be heard in his own behalf~~

268

269 ~~—— (Formerly 6(a)(ii)) — A co-partnership may appear and be represented by a co-~~  
270 ~~partner.~~

271

272 ~~—— (Formerly 6(a)(iii)) — A corporation may appear and be represented by a~~  
273 ~~corporate officer or a full-time employee of said corporation.~~

274

275 ~~—— (Formerly 6(a)(iv)) — A municipal corporation or its Board of Public Utilities~~  
276 ~~may appear and be represented by a municipal officer, a member of said Board or a full-time~~

277 ~~employee of said municipality or Board.~~

278

279 ~~——(Formerly 6(a)(v))—— An unincorporated association may appear and be~~  
280 ~~represented by any bona fide general officer or full time employee of such association.~~

281

282 ~~——(Formerly 6(a)(vi))—— The Department of Environmental Quality may appear and~~  
283 ~~be represented by the Director or Administrator of the relative division, or by the Attorney~~  
284 ~~General or his representative.~~

285

286 ~~——(Formerly 6(a)(vii))—— Any party to a proceeding may appear and be represented~~  
287 ~~therein by an attorney at law who is duly admitted to practice in Wyoming and an active member~~  
288 ~~of the Wyoming State Bar. Any attorney who is not duly licensed to practice law in Wyoming~~  
289 ~~shall not be entitled to enter his appearance in, prosecute or defend any action or proceeding~~  
290 ~~pending before the Council unless he shall have associated with him in such action or proceeding~~  
291 ~~an active member of the Wyoming State Bar.~~

292

293 (Formerly 6(a)(i-vii)) (a) A party, whether it be an individual, corporation,  
294 partnership, governmental organization, or other entity may appear through an attorney or  
295 representative. An individual may represent himself/herself. An individual or entity seeking to  
296 intervene in a contested case under Rule 24 of the Wyoming Rules of Civil Procedure may  
297 appear through an attorney or representative prior to a ruling on the motion to intervene.

298

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

301

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

307

308 (i) The attorney wishes to withdraw;

309

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

312

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

315

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

318

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

321

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

323 notice.

324  
325 (c) Prior to withdrawing from a contested case, a representative shall provide written  
326 notice of withdrawal to the Council.

327  
328 **Section 9. ~~Subpoenas~~ Intervention.**

329  
330 (Formerly Section 7(a)) (a) Any person interested in obtaining the relief sought by a  
331 party or otherwise interested in the determination of a proceeding, ~~relating to~~ other than surface  
332 coal mining operations pending before the Council, may ~~petition for leave~~ file a motion for leave  
333 to intervene ~~in such proceeding prior to before or at~~ the ~~date of~~ hearing, but not thereafter except  
334 for good cause shown. The ~~petition~~ motion shall set forth the grounds of the proposed  
335 intervention, the position and interest of the petitioner in the proceeding, and ~~if~~ affirmative relief  
336 ~~is~~ sought, ~~the same should conform to the requirements for a formal petition.~~ Leave ~~will~~ shall not  
337 be granted unless the Council ~~shall~~ determines that the ~~party requesting to intervene~~ movant is  
338 adversely affected by the action and has a legal right to intervene, ~~has a legal right under the~~  
339 ~~Environmental Quality Act or the Wyoming Administrative Procedure Act~~ , under the standards  
340 set out in W.R.C.P. Rule 24.

341  
342 (Formerly 7(b)) (b) For proceedings related to surface coal mining operations, any  
343 person may ~~petition~~ file a motion for leave to intervene as a full party or ~~, if desired~~ in a limited  
344 capacity; at any stage of a proceeding conducted by the Council. The ~~petition~~ motion shall  
345 include the basis for intervention and shall be granted to any person who either could have  
346 initiated the proceeding or has an interest ~~which~~ that may be adversely affected by the outcome  
347 of the proceeding. Regardless of these bases, intervention may be granted whenever appropriate;  
348 after ~~consideration of~~ considering the nature of the issues, the adequacy of the existing parties'  
349 representation of ~~petitioner's~~ movant's interest, the ability of the ~~petitioner~~ movant to present  
350 relevant evidence and argument, and the effect of intervention on the implementation of the  
351 Wyoming Environmental Quality Act. The extent and terms of participation by an intervenor in a  
352 limited capacity shall be determined by the Council.-

353  
354 (Formerly 7(c)) (c) If ~~leave~~ the motion to intervene is granted, the ~~petitioner~~ movant  
355 becomes an intervenor and a party to the proceeding with the right to have notice, appear at the  
356 taking of testimony, produce and cross-examine witnesses, and be heard on the argument of the  
357 case. The party intervening shall give notice of intervention to all other parties.

358  
359 ~~(Formerly 7(d)) — The party intervening must give notice of such intervention to all~~  
360 ~~other parties to the appeal.~~

361  
362 **Section 10. ~~Depositions~~ Ex Parte Communications.**

363  
364 ~~(a) — In all contested areas coming before the Council, the taking of depositions and~~  
365 ~~discovery shall be available to the parties and to the Council on its own motion in accordance~~  
366 ~~with the provisions of W.S. 9-4-107(g).~~

367  
368 ~~(b) — The Council, for the purposes of allowing orderly presentation of evidence, may~~



369 ~~govern the conduct of discovery and the time limitations involved.~~

370  
371 Except as authorized by law, a party or a party's attorney or representative shall not  
372 communicate with any Council member in connection with any issue of fact or law concerning  
373 any pending contested case, except upon notice and opportunity for all parties to participate.  
374 Should ex parte communication occur, the Council member shall advise all parties of the  
375 communication as soon as possible thereafter and, if requested, shall allow any party an  
376 opportunity to respond prior to ruling on the issue.

377  
378 **Section 11. ~~Witness Fees~~ Motions and Motion Practice.**

379  
380 ~~(a) — Witnesses who are summoned before the Council are entitled to the same fees as~~  
381 ~~are paid for like service in the District Courts of the State of Wyoming. Such fees shall be paid~~  
382 ~~by the party at whose insistence the testimony was taken.~~

383  
384 ~~(formerly Section 3(a))~~ (a) ~~The Council or presiding officer may, upon reasonable~~  
385 ~~notice to all parties, hear orally, or otherwise, any motion filed in connection with hearings under~~  
386 ~~these rules.~~ Unless these rules or an order of the hearing officer establish time limitations other  
387 than those contained herein, all motions except motions for enlargement of time and motions  
388 made during hearing shall be served at least ten (10) days prior to the hearing on the motion. A  
389 party affected by the motion may serve a response together with affidavits, if any, at least three  
390 (3) days before the hearing on the motion or within twenty (20) days after service of the motion,  
391 whichever is earlier. Unless the hearing officer permits service at some other time, the moving  
392 party may serve a reply, if any, at least one day prior to the hearing on the motion or within  
393 fifteen (15) days after service of the response, whichever is earlier. Unless the hearing officer  
394 otherwise orders, any party may serve supplemental memoranda or rebuttal affidavits at least one  
395 day prior to the hearing on the motion.

396  
397 (b) Unless the hearing officer otherwise orders, a request for a hearing on the motion  
398 may be served by the moving party or any party affected by the motion within twenty (20) days  
399 after service of the motion. The hearing officer may determine such motion without a hearing.

400  
401 (c) Prior to filing any non-dispositive motion, a moving party shall make reasonable  
402 efforts to contact all other parties, representatives, and attorneys. Any such non- dispositive  
403 motion shall include a statement concerning efforts made to confer with the other party(s) and  
404 position(s) on the motion.

405  
406 (d) All written motions filed with the Council shall be accompanied by a proposed  
407 order.

408  
409 **Section 12. ~~Decision and Order~~ Setting Hearings and Other Proceedings.**

410  
411 ~~(a) — The Council shall make a written decision and order in all cases, which decision~~  
412 ~~shall contain findings of fact and conclusions of law based exclusively on the record and include~~  
413 ~~the vote on the decision. The decision and order of the Council shall be placed in the record of~~  
414 ~~the case which shall be retained by the Council.~~

415  
416 ~~(formerly Section 2(a))~~ (a) ~~When a hearing is instituted, The hearing officer or Chair~~  
417 ~~of the Council, as applicable, it shall be assigned a docket number and entered with the date of its~~  
418 ~~filing on a separate page of a docket provided for such purpose to each contested case. The~~  
419 ~~Council shall establish a separate file for each such docketed case, in which shall be~~  
420 ~~systematically placed all papers, pleadings, documents, transcripts, evidence and exhibits~~  
421 ~~pertaining thereto, and all such items shall have noted thereon the docket number assigned, and~~  
422 ~~the date of filing. All papers, pleadings, motions, and orders filed thereafter shall contain:~~

423  
424 (i) A conspicuous reference to the assigned docket number;

425  
426 (ii) A caption setting forth the title of the contested case and a brief  
427 designation describing the document filed; and

428  
429 (iii) The name, address, telephone number, and signature of the person who  
430 prepared the document.

431  
432 (b) The hearing officer shall set the course of proceedings through the issuance of a  
433 scheduling order. This may include, but is not limited to, pre-hearing conferences, confidentiality  
434 issues, summary disposition deadlines, motion practice,  
435 settlement conferences, and the evidentiary hearing.

436  
437 (c) Prehearing conferences may be held at the discretion of the hearing officer. Any  
438 party may request a prehearing conference to address issues such as discovery, motion deadlines,  
439 scheduling orders, or case status.

440  
441 (d) At the hearing officer's discretion and unless otherwise provided by the Council,  
442 telephone or videoconference calls may be used to conduct any proceeding. At the discretion of  
443 the hearing officer, parties or their witnesses may be allowed to participate in any hearing by  
444 telephone or videoconference.

445  
446 **Section 13. Consolidation.**

447  
448 ~~(a) The Council may, in its discretion, allow any pleadings to be amended or~~  
449 ~~corrected, or any omission therein to be supplied.~~

450  
451 A party may seek consolidation of two or more contested cases by filing a motion to  
452 consolidate in each case sought to be consolidated. If consolidation is ordered and unless  
453 otherwise ordered by the hearing officer, all subsequent filings shall be in the case first filed, and  
454 all previous filings related to the consolidated cases shall be placed together under that docket  
455 number. Consolidation may be ordered on a hearing officer's own motion.

456  
457 **Section 14. ~~Applicability of Rule of Civil Procedure~~ Continuances and Extensions of**  
458 **Time.**

459  
460 (a) A motion for a continuance of any scheduled hearing shall be in writing, state the

461 reasons for the motion, and be filed and served on all parties and the hearing officer. A motion  
462 for a continuance shall be granted only upon a showing of good cause.

463  
464 (b) A motion for an extension of time for performing any act prescribed or allowed  
465 by these rules or by order of the hearing officer shall be filed and served on all parties and the  
466 hearing officer prior to the expiration of the applicable time period. A motion for extension of  
467 time shall be granted only upon a showing of good cause.

468  
469 (c) For contested cases conducted regarding objections pursuant to W.S. 35-11-  
470 406(k), a motion for continuance may not be granted if the motion would continue the hearing  
471 beyond the 20-day period provided in that statute unless the parties stipulate to a different period.

### 472 Section 15. Discovery.

473  
474  
475 (a) The taking of depositions and discovery shall be in accordance with  
476 W.S. 16-3-107(g).

477  
478 (b) Unless the hearing officer orders otherwise, parties shall not file discovery  
479 requests, answers, and deposition notices with the Council.

### 480 Section 16. Subpoenas.

481  
482  
483 ~~Formerly Section 9(a) — Subpoenas requiring the attendance of witnesses~~  
484 ~~from any place in the State of Wyoming at any designated place of hearing or for the production~~  
485 ~~of books, papers, or other documents may be issued by the presiding officer upon written~~  
486 ~~application of any party or upon motion of the presiding officer in accordance with the Wyoming~~  
487 ~~Rules of Civil Procedure and Administrative Procedure Act.~~

488  
489 ~~(Formerly Section 9(a)(i)) — Items sought shall be set forth with particularity.~~

490  
491 ~~(Formerly Section 9(a)(ii)) — All subpoenas shall be served by personal delivery~~  
492 ~~or by certified mail return receipt required, to the party served.~~

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

495  
496 Any party may request the hearing officer to issue a subpoena to compel the attendance  
497 of a witness or for the production of documents. Requests for a subpoena shall be accompanied  
498 by a completed subpoena that conforms to Rule 45 of the Wyoming Rules of Civil Procedure.

### 499 Section 17. Summary Disposition.

500  
501  
502  
503 Rules 12(b)(6), 52(c), 56.1, and 56, Wyoming Rules of Civil Procedure, apply to  
504 contested cases.

### 505 Section 18. Prehearing Procedures.

507  
508 (a) Unless otherwise ordered by the hearing officer, each party to a contested case  
509 shall file and serve on all other parties and the hearing officer a prehearing disclosure statement  
510 setting forth:

511  
512 (i) A complete list of all witnesses who will or may testify, together with  
513 information on how that witness may be contacted, and a brief description of the testimony the  
514 witness is expected to give in the case. If a deposition is to be offered into evidence, the original  
515 shall be filed with the Council;

516  
517 (ii) A statement of the specific claims, defenses, and issues which the party  
518 asserts are before the hearing officer for hearing, based on the party's initial filing;

519  
520 (iii) A statement of the burden of proof to be assigned in the contested case  
521 with reference to specific regulatory, statutory, constitutional, or other authority established by  
522 relevant case law;

523  
524 (iv) A statement of stipulated facts. If the parties are unable to stipulate to  
525 facts, the parties shall indicate what efforts have been made to stipulate to facts and the reasons  
526 facts cannot be stipulated;

527  
528 (v) A complete list of all documents, statements, etc., which the party will or  
529 may introduce into evidence; and

530  
531 (vi) An approximation of the time required for the hearing.

532  
533 (b) Parties shall file and serve prehearing disclosure statements on or before the date  
534 established by the hearing officer.

535  
536 (c) The information provided in a prehearing disclosure statement shall be binding on  
537 each party throughout the course of the contested case unless modified for good cause.

538  
539 (d) Additional witnesses or exhibits may be added only if the need to do so was not  
540 reasonably foreseeable at the time of filing of the prehearing disclosure statement, it would not  
541 unfairly prejudice other parties, and good cause is shown.

542  
543 (e) The hearing officer may modify the requirements of a prehearing disclosure  
544 statement.

545  
546 (f) Failure to file a prehearing disclosure statement may result in the hearing  
547 officer's striking of witnesses, exhibits, claims and defenses, or dismissal of the contested case.

548  
549 (g) If a prehearing order is entered, the prehearing order shall control the course of  
550 the hearing.

551  
552

553 **Section 19. Burden of Proof.**

554  
555 The hearing officer shall assign the burden of proof in accordance with applicable law.

556  
557 **Section 20. Evidence.**

558  
559 (a) The hearing officer shall rule on the admissibility of evidence in accordance with  
560 the following:

561  
562 (i) Evidence of the type commonly relied upon by reasonably prudent persons  
563 in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial, or unduly  
564 repetitious evidence shall be excluded.

565  
566 (ii) Evidence may be offered through witness testimony or in documentary  
567 form;

568  
569 (iii) Testimony shall be given under oath administered by the hearing officer.  
570 Deposition testimony and other pre-filed testimony may be submitted as evidence, provided the  
571 testimony is given under oath administered by an appropriate authority, and is subject to cross-  
572 examination by all parties;

573  
574 (iv) The rules of privilege recognized by Wyoming law shall be given effect;  
575 and

576  
577 (v) A hearing officer may take administrative notice of judicially cognizable  
578 facts, provided the parties are properly notified of any material facts noticed.

579  
580 (b) Each party shall have the opportunity to cross-examine witnesses. The hearing  
581 officer may allow cross-examination on matters not covered on direct examination. Each party  
582 shall have the opportunity to perform re-direct examination of witnesses on matters covered  
583 during cross-examination.

584  
585 (c) The hearing officer or Council member, when applicable, may ask questions of  
586 any party or witness.

587  
588 **Section 21. Contested Case Hearing Procedure.**

589  
590 (a) The hearing officer shall conduct the contested case and shall have discretion to  
591 direct the order of the proceedings.

592  
593 (b) Unless otherwise provided by law, and at the hearing officer's discretion, the  
594 party with the burden of proof shall be the first to present evidence. All other parties shall be  
595 allowed to cross-examine witnesses in an orderly fashion. When that party rests, other parties  
596 shall then be allowed to present their evidence. Rebuttal and surrebuttal evidence shall be  
597 allowed only at the discretion of the hearing officer.

598

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

601  
602 **Section 22. Default.**

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

605  
606  
607 **Section 23. Expedited Hearing.**

608  
609 (a) At the hearing officer's or Council's discretion and when allowed by applicable  
610 law, a contested case may be heard as an expedited hearing upon the motion of any party.

611  
612 (b) An expedited hearing shall be decided on written arguments, evidence, and  
613 stipulations submitted by the parties. A hearing officer or the Council may permit oral arguments  
614 upon the request of any party.

615  
616 (c) The hearing officer may require an evidentiary hearing in any case in which it  
617 appears that facts material to a decision in the case cannot be properly determined by an  
618 expedited hearing.

619  
620 **Section 24. Recommended Decision.**

621  
622 In those contested cases where the hearing officer makes a recommended  
623 decision, the hearing officer shall file the recommended decision with the Council and serve  
624 copies of the recommended decision on all parties to the contested case. Unless otherwise  
625 ordered, parties shall have ten (10) days to file written exceptions to the hearing officer's  
626 recommended decision. Written exceptions shall be filed with the Council and served on all  
627 parties.

628  
629 **Section 25. Final Decision.**

630  
631 (a) A final decision containing findings of fact, conclusions of law, and an order  
632 entered by the Council shall be in writing and served upon all parties to the contested case and  
633 the hearing officer, if applicable.

634  
635 (b) A final decision shall include findings of fact and conclusions of law, separately  
636 stated. When the hearing officer allows the parties to submit a proposed final order, the parties  
637 shall file the original with the Council and serve copies of the proposed order on all other parties  
638 and the hearing officer.

639  
640 (c) A hearing officer may at any time prior to judicial review correct clerical errors in  
641 final decisions or other parts of the record. A party may move that clerical errors or other parts of  
642 the record be corrected. During the pendency of judicial review, such errors may be corrected  
643 only with leave of the court having jurisdiction.

644

645 **Section 26. Incorporation by Reference.**

646  
647 (a) The code, standard, rule, or regulation below is incorporated by reference and can  
648 be found at:

649 [http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING\\_RULES\\_OF](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULES_OF)  
651 [CIVIL\\_PROCEDURE.pdf](http://www.courts.state.wy.us/Documents/CourtRules/Rules/WYOMING_RULES_OF)

652  
653 (i) Rule 11, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
654 Supreme Court and in effect on March 1, 2017;

655  
656 (ii) Rule 12(b)(6), Wyoming Rules of Civil Procedure, adopted by the  
657 Wyoming Supreme Court and in effect on March 1, 2017;

658  
659 (iii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
660 Supreme Court and in effect on March 1, 2017;

661  
662 (iv) Rule 45, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
663 Supreme Court and in effect on March 1, 2017;

664  
665 (v) Rule 52, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
666 Supreme Court and in effect on March 1, 2017;

667  
668 (vi) Rule 56, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
669 Supreme Court and in effect on March 1, 2017;

670  
671 (vii) Rule 56.1, Wyoming Rules of Civil Procedure, adopted by the Wyoming  
672 Supreme Court and in effect on March 1, 2017.

673  
674 (b) These rules do not incorporate later amendments or editions of the incorporated  
675 matter.

676  
677 (c) All incorporated matter is available for public inspection at the Department's  
678 Cheyenne office or at the Council's Cheyenne office. Contact information for the Department's  
679 Cheyenne office may be obtained at <http://deq.wyoming.gov/> or from (307) 777-7937. Contact  
680 information for the Council's Cheyenne office may be obtained at <http://wyomingeqc.wyo.gov/>  
681 or from (307) 777-7170.