

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 Wyoming Statute (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(a) Each petition shall identify the rule or rules to be promulgated, amended, or repealed and shall provide support for the proposed rulemaking in the form of argument, data, legal citation, or other justification, as appropriate.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~~ consulting with and receiving the advice of the affected advisory board on the preliminary rule from the affected advisory board. At the conclusion of the preliminary rulemaking hearing, an advisory board may advise the Department to:

- (i) ~~Choose to~~ Continue discussion of the preliminary rule at ~~the~~ its next regularly scheduled meeting, ~~or~~ schedule a special meeting specifically to discuss the proposed rule, ~~retaining the ability in either situation, to also~~ or reopen and extend the public comment period;
- (ii) ~~Remand~~ Return 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; or
- (iv) Take such other action as the advisory board deems appropriate.

(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.

(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 Department consulted with~~ the affected advisory board or boards and the affected division administrator or administrators on the proposed rule;

(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;

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

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