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~~CHAPTER III 3~~
~~RULES OF PRACTICE AND PROCEDURE APPLICABLE~~
~~TO RULE MAKING HEARINGS OR HEARINGS~~
~~BY AN ADMINISTRATOR OF A DIVISION OF DEQ~~
RULEMAKING

Section 1. Authority.

~~Except as otherwise directed by the Council, the provisions of the Rules contained in this Chapter (III), (Sections 1 et seq.), shall govern:~~

~~(a) — Any hearings conducted pursuant to a petition (within the meaning of W.S. 9-4-106) for the promulgation, amendment, or repeal of any rules (as defined in W.S. 9-4-101(a)(vii)).~~

~~(b) — Any hearings conducted pursuant to W.S. 9-4-103 for the promulgation of rules and regulations recommended by the Director or Administrator.~~

~~(c) — Any hearings by the Administrator on land, air or water quality or solid waste management permits held because of significant public comment.~~

~~(d) — Any hearings by the Administrator for a variance under W.S. 35-11-601, excluding SO2 variances.~~

~~(e) — Any hearings by the Council to consider the designation of areas of unique and irreplaceable historical, archaeological, scenic or natural value pursuant to W.S. 35-11-112(a)(v).~~

~~(f) — Any informal conference held by the administrator of Land Quality on a permit application. However, a record shall be made of the conference, unless waived by all parties. Such record shall be maintained and shall be accessible to the parties until final release of the performance bond.~~

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).

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

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

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54 (d) “Proposed rule” is a rule that the Department has filed with the Council.
55

56 Section 3. ~~Informal Conference.~~ Petition for Rulemaking.

57
58 ~~(formerly Section 3(a)) Any request that the Administrator hold an informal conference~~
59 ~~on any application for a surface coal mining permit shall briefly state the issues to be discussed,~~
60 ~~whether the requester desires the conference to be held in the locality of the proposed mining~~
61 ~~operation, and whether access to the proposed permit area is desired. If requested, the~~
62 ~~Administrator may arrange with the applicant to grant parties to the conference access to the~~
63 ~~permit area for the purpose of gathering information relative to the conference. The conference~~
64 ~~shall be held in the locality of the operation or at the state capitol, at the option of the requester,~~
65 ~~within 20 days after the final date for filing objections unless a different period is stipulated to by~~
66 ~~the parties. If all parties requesting the conference reach agreement and withdraw their request,~~
67 ~~the conference need not be held.~~

68
69 (b) ~~Where a hearing is requested pursuant to Chapter I, Section 16b, the Council~~
70 ~~may, under such conditions as it may prescribe, grant such temporary relief as it deems~~
71 ~~appropriate pending final determination of the proceedings if:~~

72
73 (i) ~~All parties to the proceedings have been notified and given an~~
74 ~~opportunity to be heard on a request for temporary relief;~~

75
76 (ii) ~~The person requesting that relief shows that there is a substantial~~
77 ~~likelihood that he will prevail on the merits of the final determination of the proceeding;~~

78
79 (iii) ~~Such relief will not adversely affect the public health or safety or cause~~
80 ~~significant imminent environmental harm to land, air or water resources; and~~

81
82 (iv) ~~The relief sought is not the issuance of a permit where a permit has been~~
83 ~~denied by the Administrator.~~

84
85 (formerly Section 2) Any interested person party may petition the Council or the
86 Department to promulgate requesting the promulgation, amend amendment, or repeal of any rule
87 or rules. ~~(formerly Section 2(a)) Each petition must be submitted in duplicate to the~~
88 ~~Chairman of the Environmental Quality Council and to the Director of the Department of~~
89 ~~Environmental Quality. The Director shall be copied on any petition directed to the Council and~~
90 ~~the Chair of the Council shall be copied on any petition directed to the Department.~~

91
92 (a) Each petition shall identify the rule or rules to be promulgated, amended, or
93 repealed and shall provide support for the proposed rulemaking in the form of argument, data,
94 legal citation, or other justification, as appropriate.

95
96 ~~(formerly Section 2(b)) Except as otherwise provided by the Council, the filing of a~~
97 ~~petition under this section shall not stay the effectiveness of any rule or rules.~~

98
99 ~~(formerly Section 2(c)) After filing of the petition, the Council may hold a~~
100 ~~prehearing conference to review the petition and its persuasiveness.~~

101
102 ~~(formerly Section 2(e)) Before the adoption, issuance, amendment, or repeal of any rule,~~
103 ~~or the commencement of any hearing on such proposed rule making, the Council shall cause~~
104 ~~notice to be given in accordance with the provisions of W.S. 9-4-103.~~

105
106 (b) For any petition that is directed to the Council, the Council shall, as soon as
107 practicable, either deny or redirect the petition to the Director.

108
109 (i) The Council may hold a hearing to request additional information from
110 the petitioner or members of the public before acting on a petition.

111
112 ~~formerly Section 2(d)) (ii) As soon as practicable, the Council~~
113 ~~shall deny the petition in writing (stating its reasons for the denial) or initiate rule making~~
114 ~~procedures.~~If the Council denies the petition, the Council shall notify the petitioner in writing,
115 setting forth the reasons for denial. The Council shall provide a copy of the denial to the Director.

116
117 (iii) If the Council redirects the petition to the Director, the Council shall
118 provide a copy of that determination to the petitioner.

119
120 (c) Upon receiving a petition from a member of the public or one that is redirected
121 by the Council, the Director shall, as soon as practicable, either deny the petition in writing or
122 begin preliminary rulemaking.

123
124 (i) The Director may request additional information from the petitioner
125 before acting on the petition and may seek additional input from members of the public through
126 public meetings, hearings, or other outreach.

127
128 (ii) If the Director denies the petition, the Director shall notify the petitioner
129 in writing, setting forth the reasons for the denial.

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

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

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

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

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Section 4. Preliminary Rulemaking Hearings before the Advisory Boards.

~~(formerly Section 4(a)) The provisions of W.S. 9-4-107 through 9-4-112 (relating to the conduct of hearings for contested cases) do not apply to hearings held under this Chapter (III) of these Rules. As a fact-finding legislative proceeding, each hearing is nonadversary and there are no formal pleadings or adverse parties.~~

~~(formerly 4(b)) Prior to the adoption, amendment or repeal of any rules, other than interpretive rules or statements of general policy, the Department shall publish notice of its intended action, including the date, time and place of any hearing, in a newspaper of general circulation in the state, and afford a thirty (30) day public comment period after the last publication. In addition, the council will hold at least one public hearing on the proposed action. All information will be received by the council without regard to rules of evidence.~~

~~(formerly 4(c)) The hearing is directed to receiving factual evidence and expert opinion testimony relative to the issues in the proceeding.~~

~~(formerly 4(d)) The Council, upon its own motion or upon the motion of any party, to promote the orderly presentation of evidence, may adopt one or more of the provisions contained in Chapter II of these Rules governing procedures in contested cases. Such action by the Council shall not constitute an agreement that the proceeding before the Council is in the nature of a contested case.~~

~~(formerly 4(e)) The Council or Administrator may impose time limitations upon oral presentations.~~

(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;

192 (ii) Remand the preliminary rule to the division for further action, including
193 addressing questions regarding specific aspects of the preliminary rule; or
194

195 (iii) Recommend that the Department initiate rulemaking and submit the
196 preliminary rule to the Council for adoption.
197

198 (c) When preliminary rules involve more than one of the divisions of the
199 Department, the Director may call a joint meeting of the affected advisory boards. The advisory
200 boards shall select one member to preside over the joint meeting. Any formal action taken on a
201 preliminary rule discussed during a joint meeting of the advisory boards must be voted on
202 individually by each advisory board.
203

204 (d) The divisions may consult with the advisory boards through special meetings
205 after preliminary rulemaking hearings. The divisions may incorporate suggestions that arise
206 during preliminary rulemaking hearings or any subsequent special meetings without conducting
207 additional preliminary rulemaking hearings.
208

209 Section 5. ~~Witnesses~~ Promulgating Rules.
210

211 ~~(formerly Section 5(a)) The Council, designated hearing officer, or Administrator may~~
212 ~~direct that summaries to the testimony of witnesses be prepared in advance of the hearing. If so~~
213 ~~directed, copies of such summaries shall be served upon the members of the Council or~~
214 ~~Administrator or upon any other party as the designated hearing officer may direct.~~
215

216 ~~(formerly 5(b)) Witnesses will be permitted to read summaries of their testimony into~~
217 ~~the record or make other oral statements as they so desire. Witnesses shall not be available for~~
218 ~~crossexamination, but will be permitted to answer questions directed to them by members of the~~
219 ~~Council or Administrator.~~
220

221 ~~(formerly 5(c)) When necessary to prevent undue prolongation of the hearing, the~~
222 ~~presiding officer may limit the number of times any witness may testify.~~
223

224 (a) When the Department initiates rulemaking, it shall file the following with the
225 Council:
226

227 (i) Strike and underscore and clean copies of the proposed rule;
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229 (ii) Proposed Statement of Principal Reasons for adopting the proposed rule;
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231 (iii) Copies of all public comments received to date and proposed responses,
232 if applicable;
233

234 (iv) Record or minutes of any public hearings or meetings conducted by the
235 Department and the affected advisory board or boards;
236

237 (v) Statement from the Director indicating that the proposed rule was
238 recommended for adoption by the affected advisory board or boards through the affected division
239 administrator or administrators;
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241 (vi) Recommendation from the Director that the Council adopt the proposed
242 rule; and

243
244 (vii) Any additional materials that the Department believes are necessary to
245 explain the contents of the proposed rule.

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

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

253
254 (ii) All indexed materials shall be open for inspection by any person at
255 reasonable times during business hours of the Department.

256
257 (c) In the case of judicial review of any rule adopted by the Council, all indexed
258 materials shall be included in the administrative record submitted to the court, together with any
259 additional materials considered by the Council during rulemaking hearings.

260
261 Section 6. ~~Comments~~ Rulemaking Hearings before the Council.

262
263 ~~(formerly Section 6 (a)) All timely comments shall be considered by the Council before~~
264 ~~final action is taken on any proposal to promulgate, amend, or repeal any rule. Late filed~~
265 ~~comments may be considered so far as possible without incurring additional expenses or delay.~~

266
267 (a) The Council chair shall assign a hearing officer from among the Council
268 members by filing a notice of appointment with the Council within thirty (30) days of the
269 Department filing the proposed rule with the Council. The appointed hearing officer shall preside
270 over all proceedings before the Council related to the proposed rule. If the assigned Council
271 member leaves the Council through resignation, expiration of membership, or otherwise, the chair
272 shall assign a hearing officer as a replacement and shall serve as the hearing officer in the interim
273 before the substitute assignment is made.

274
275 (b) Any member of the public, subject to reasonable time restrictions established by
276 the presiding officer, may address the Council at any meeting in which the Council is considering
277 proposed rules. The Council shall allow meaningful opportunity for public comment at each
278 rulemaking hearing.

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

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

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286 (iii) Members of the public may not directly address each other in
287 proceedings before the Council, and shall address any questions to the hearing officer.
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289 (iv) Members of the public seeking recognition in proceedings before the
290 Council shall state their name and whether they are speaking on behalf of an organization. The
291 Council shall consider all comments to be made in a person's individual capacity unless an
292 affiliation is disclosed to the Council.

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

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

305
306 (c) The Council may make changes to proposed rules based on its independent
307 analysis of the form and substance of the proposed rules. In doing so, the Council may consider
308 testimony received during a rulemaking hearing and materials submitted to the rulemaking
309 docket.

310
311 (i) In considering potential changes to proposed rules, the Council shall
312 consider the following:

313
314 (A) Whether the contemplated change meets all procedural
315 requirements of the Wyoming Administrative Procedure Act, including whether the change is a
316 logical outgrowth of the proposed rule;

317
318 (B) Whether the opportunity for public participation was meaningful
319 and sufficient given the nature of the contemplated change to the proposed rule;

320
321 (C) Whether the contemplated change imposes an unwarranted
322 administrative burden on the Department; and

323
324 (D) Whether the contemplated change impacts the Department's
325 ability to maintain primacy over the relevant regulatory area. The Council shall allow the
326 Department to provide a primacy analysis in the context of any contemplated changes.

327
328 (ii) The Council shall not modify a proposed rule if the Council determines
329 that:

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

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

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

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~~Section 7.~~ **Decision.**

~~(a) As soon as practicable after receipt of the official transcript or as soon as practicable after the expiration of the time set for the submittal of written comments, the Council or Administrator shall render a written decision on the issues presented at the hearing.~~