UNIFORM RULES FOR CONTESTED CASE PRACTICE AND PROCEDURE

Chapter 2

Section 1. **Authority and Scope**. These rules are promulgated by authority of Wyoming Statute § 16-3-102(d). These rules shall govern all contested case proceedings before all agencies to the extent they are adopted, and shall be relied upon by hearing officers, adjudicative agencies, and parties in all contested cases before any agency. Agencies may develop forms not inconsistent with these rules.

Section 2. **Incorporation by Reference.**

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

http://www.courts.state.wy.us/WSC/CourtRule?RuleNumber=48

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

(ii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on February 11, 1971;

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

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

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

(vi) Rule 56.1, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on July 1, 2008;

(b) No later amendments to a code, standard, rule, or regulation listed in subsection (a) of this Section are incorporated by reference.

Section 3. **Definitions.** The following definitions shall apply to this Chapter:

(a) "Adjudicative agency" means an agency authorized to conduct and preside over its own contested cases.

(b) "Agency" means any authority, bureau, board, commission, department, division of the state, or other entities that are statutorily authorized to refer cases to the Office.

(c) "Attorney" means an attorney licensed to practice law in the State of Wyoming or, an attorney who is licensed to practice law in another state and who is associated with an attorney licensed to practice law in the State of Wyoming.

(d) "Contested case" means a proceeding in which legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(e) "Hearing officer" means a hearing examiner from the Office, a presiding officer of any agency, an attorney who has been retained by an agency to preside over a contested case, an officer of any agency who has been designated to preside over a contested case, or any other person who is statutorily authorized to preside over a contested case.

(f) "Hearing panel" means those members of an agency or adjudicative agency who are designated and authorized to make a final decision in a contested case.

(g) "Office" means the Office of Administrative Hearings.

(h) "Referring agency" means any agency which has referred a contested case for hearing before the Office or before another hearing officer.

(i) "Representative" means an individual other than an attorney who is authorized to function in a representative capacity on behalf of a party to a contested case.

(j) "Wyoming Administrative Procedure Act" means Wyoming Statute §§ 16-3-101 through -115.

Section 4. **Informal Proceedings and Alternative Dispute Resolution.**

(a) Nothing in these rules shall be construed so as to prevent any agency from establishing informal procedures for resolving a contested case or from establishing procedures which are intended to occur prior to an agency's referral for or the initiation of a contested case.

(b) Parties to a contested case are encouraged to resolve the contested case through settlement, informal conference, mediation, arbitration, or other means throughout the duration of a contested case. If the parties choose to engage in mediation, they shall request mediation at least 30 days prior to hearing.

(c) With the consent of all parties, the hearing officer may assign a contested case to another hearing officer on limited assignment for the purpose of nonbinding alternative dispute resolution methods, including settlement conference and mediation. Such settlement conference or mediation shall be conducted in accordance with the procedures prescribed by the hearing officer conducting the settlement conference or mediation.

Section 5. **Commencement of Contested Case Proceedings.**

(a) A contested case shall be commenced by filing a timely request for a hearing of any agency action or inaction, or the filing of an application, petition, complaint or other document which, as a matter of law, entitles the petitioner, applicant, complainant, or respondent an opportunity to be heard.

(b) At the commencement of every contested case, an agency or hearing officer shall issue a notice of hearing including a statement of:

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

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

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

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

Section 6. **Referral to Office.**

(a) Upon referral to the Office to conduct a contested case, the referring agency shall transmit to the Office copies of appropriate agency documents reflecting the disputed agency action or inaction and the basis thereof, including any written challenge(s) initiating the contested case and a reference to applicable law.

(b) The referring agency shall submit a transmittal sheet, on a form provided by the Office, sufficiently identifying the contested case, including:

(i) the name of the referring agency;

(ii) the names of the known parties and their attorneys or representatives;

(iii) a concise statement of the nature of the contested case;

(iv) notification of any time limits for the setting of a hearing or entry of a decision, location requirements, and anticipated special features or unique requirements; and

(v) certification by an authorized officer of the referring agency that all parties have been properly served with a true and complete copy of the transmittal form.

Section 7. **Referral to Hearing Officer Other Than the Office.** When an agency refers a contested case to a hearing officer other than the Office or when an adjudicative agency retains a contested case, the agency shall comply with any referral requirements of that hearing officer or adjudicative agency.

Section 8. **Designation and Authority of Hearing Officer; Recusal.**

(a) Any agency may refer, assign, or designate a hearing officer to preside over any contested case, unless otherwise provided by law. When appropriate under applicable law or at

the referring agency's request, the hearing officer may provide either a recommended or final decision.

(b) Upon referral for contested case by a referring agency that will not be present for the hearing, a hearing officer shall conduct a contested case and may enter proposed findings of fact and conclusions of law or may provide a complete record of the contested case to the referring agency for entry of a final decision.

(c) At any time while a contested case is pending, a hearing officer or hearing panel member may withdraw from a contested case by filing written notice of recusal. From and after the date the written notice of recusal is entered, the recused hearing officer or hearing panel member shall not participate in the contested case.

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

(i) has been engaged as counsel in the action prior to being appointed as hearing officer or hearing panel member;

(ii) has an interest in the outcome of the action;

(iii) is related by consanguinity to a party;

(iv) is a material witness in the action;

(v) is biased or prejudiced against the party or the party's attorney or representative; or

(vi) any other grounds provided by law.

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

(f) A hearing officer shall not be subject to a voir dire examination by any party.

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

Section 9. **Appearances and Withdrawals.**

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

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

(i) the attorney wishes to withdraw;

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

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

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

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

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

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

Section 10. **Ex Parte Communications.** Except as authorized by law, a party or a party's attorney or representative shall not communicate with the hearing officer or hearing panel member in connection with any issue of fact or law concerning any pending contested case, except upon notice and opportunity for all parties to participate. Should ex parte communication occur, the hearing officer or hearing panel member shall advise all parties of the communication as soon as possible thereafter and, if requested, shall allow any party an opportunity to respond prior to ruling on the issue.

Section 11. **Filing and Service of Papers.**

(a) In all contested cases, the parties shall file all original documents, pleadings, and motions with the referring agency or adjudicative agency, as applicable, with true and correct

copies of the particular document, pleading, or motion properly served on all other parties and the hearing officer, accompanied by a certificate of service. The referring agency or adjudicative agency shall maintain the complete original file, and all parties and the hearing officer shall be provided copies of all contested case documents, pleadings, and motions contained therein.

(b) Filing and service under this rule shall be made either by hand delivery or by U.S. mail transmittal to the last known address. If the referring agency or adjudicative agency permits filing and service by any electronic method, filing and service may be accomplished accordingly. Parties wishing to file by means other than those described in this Section shall obtain preapproval from the hearing officer.

Section 12. **Computation of Time.**

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

(b) Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party by mail or by delivery to the agency for service, three days shall be added to the prescribed period.

Section 13. **Motions and Motion Practice.**

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

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

Section 14. **Setting Hearings, Other Proceedings, and Location of Hearings.**

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

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

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

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

(b) The hearing officer shall set the course of proceedings, which may include, but is not limited to, scheduling informal 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 status conferences.

(d) At the hearing officer's discretion, and unless otherwise provided by the referring agency, 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.

(e) The hearing officer shall determine the location for proceedings.

Section 15. **Consolidation.** A party may seek consolidation of two or more contested cases by filing a motion to consolidate in each case sought to be consolidated. If consolidation is ordered, and unless otherwise ordered by the hearing officer, all subsequent filings shall be in the case first filed, and all previous filings related to the consolidated cases shall be placed together under that case number. Consolidation may be ordered on a hearing officer's own motion.

Section 16. **Continuances, Extensions of Time, and Duty to Confer.**

(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 request for a continuance filed less than five days before a scheduled hearing shall be granted only upon a showing of good cause.

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

(c) A moving party shall make reasonable efforts to contact all parties, representatives, and attorneys before filing a motion for continuance or extension of time. A motion for continuance or extension of time shall include a statement concerning efforts made to confer with the other party(s) and position(s) on the motion.

(d) Continuances relating to mediation shall be made no later than 30 days prior to the date of the hearing, as referenced in Section 4(b) of this Chapter.

Section 17. **Discovery.**

(a) The taking of depositions and discovery shall be in accordance with Wyoming Statute § 16-3-107(g), which is set forth in its entirety in Appendix A.

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

Section 18. **Subpoenas.** Any party may request the hearing officer to issue a subpoena to compel the attendance of a witness or for the production of documents. Requests for the issuance of a subpoena shall be accompanied by a completed subpoena, which shall conform to Rule 45 of the Wyoming Rules of Civil Procedure, which is set forth in its entirety in Appendix A. Parties may utilize the form subpoena at Appendix B to these Rules.

Section 19. **Summary Disposition.** Rules 12(b)(6), 52(c), 56.1, and 56, Wyoming Rules of Civil Procedure, which are set forth in their entirety in Appendix A, apply to contested cases.

Section 20. **Prehearing Procedures.**

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

(i) a complete list of all witnesses who will or may testify, together with information on how that witness may be contacted and a brief description of the testimony the witness is expected to give in the case. If a deposition is to be offered into evidence, the original shall be filed with the referring agency, with a copy provided to the hearing officer or adjudicative agency;

(ii) a statement of the specific claims, defenses, and issues which the party asserts are before the hearing officer for hearing;

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

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

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

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

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

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

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

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

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

Section 21. **Burden of Proof.** The hearing officer shall assign the burden of proof in accordance with applicable law.

Section 22. **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 prefiled 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.

(c) The hearing officer, the hearing panel, agency staff, or other persons delegated to do so by the hearing officer or hearing panel, when applicable, may ask questions of any party or witness.

Section 23. **Contested Case Hearing Procedure.**

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

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

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

Section 24. **Default.** Unless otherwise provided by law, a hearing officer may enter an order of default or an order affirming agency action for a party's failure to appear at a lawfully noticed hearing.

Section 25. **Settlements.** Parties shall promptly notify the hearing officer of all settlements, stipulations, agency orders, or any other action eliminating the need for a hearing. When the contested case has settled, the referring agency may enter an order, on its own motion, dismissing the case.

Section 26. **Expedited Hearing.**

(a) At the hearing officer's or hearing panel's discretion, a contested case may be heard as an expedited hearing upon the motion of any party. Expedited hearings may include summary suspensions under Wyoming Statute § 16-3-113(c), which is set forth in its entirety in Appendix A, and other emergency proceedings authorized by law.

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

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

Section 27. **Recommended Decision.** In those contested cases where the hearing officer makes a recommended decision, the hearing officer shall file the recommended decision with the referring agency and serve copies of the recommended decision on all parties to the contested case. Unless otherwise ordered, parties shall have ten days to file written exceptions to the hearing officer's recommended decision. Written exceptions shall be filed with the referring agency and served on all parties.

Section 28. **Final Decision.**

(a) A final decision entered by a hearing officer or adjudicative agency shall be in writing, filed with the referring agency, and served upon all parties to the contested case. A final decision entered by the referring agency or adjudicative agency shall be served upon all parties and the hearing officer.

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

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

Section 29. **Record of Proceeding.** The referring agency or adjudicative agency shall make appropriate arrangements to assure that a record of the proceeding is kept pursuant to Wyoming Statute § 16-3-107(o) and (p), which are set forth in their entirety in Appendix A. Copies of the transcript taken at any hearing may be obtained by any party, interested person, or entity from the court reporter taking the testimony at such fee as the reporter my charge.