

UNIFORM RULES FOR CONTESTED CASE PRACTICE AND PROCEDURE

~~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.~~

Chapter 1, Section 1. Authority.

(a) These rules are promulgated as authorized by the Wyoming Administrative Procedure Act, W.S. 16-3-301 through 16-3-115, and the Wyoming Environmental Quality Act, as defined by W.S. 35-11-103(xiii). These rules shall apply in all proceedings before the Department of Environmental Quality and the Environmental Quality Council.

(b) In case of conflict between these rules and the provisions of the Wyoming Administrative Procedure Act or the Wyoming Environmental Quality Act, those acts shall govern.

(c) All hearings before the Council shall be held pursuant to these rules, the provisions of the Wyoming Environmental Quality Act, and the Wyoming Administrative Procedure Act.

Chapter 2, Section 1. Purpose and Scope.

These rules are promulgated with the intent to utilize as much as practicable of the uniform contested case rules that the Office of Administrative Hearings adopted under W.S. 16-3-102(d). These rules shall govern all contested case proceedings before the Council.

~~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;~~

Commented [A1]: This section explains why the Office of Administrative Hearings promulgated the uniform rules and how other agencies must use them.

Commented [A2]: Chapter 1, section 1, explains the authority and scope of the Rules of Practice and Procedure in their entirety.

Commented [A3]: Chapter 1, section 1, explains the authority and scope of the Rules of Practice and Procedure in their entirety.

~~(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.~~

Chapter 1, Section 10. Incorporation by Reference.

(a) These rules incorporate by reference the following statutes, rules, and regulations, as in effect of July 1, 2016:

(i) Section 128(a) of the Clean Air Act, 42 U.S.C. § 7428(a), available at: <https://www.gpo.gov/fdsys/>;

(ii) Section 304(i)(d) of the Clean Water Act, 33 U.S.C. § 1314(i)(d), available at: <https://www.gpo.gov/fdsys/>; and

(iii) 40 C.F.R. § 123.25(c), available at: <http://www.ecfr.gov>.

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

(c) All incorporated matter is available for public inspection at the Department's Cheyenne office. Contact information for the Cheyenne Office may be obtained at <http://deq.wyoming.gov> or from (307) 777-7937.

Chapter 2, Section 25. Incorporation by Reference.

(a) These rules incorporate by reference Rules 4, 12(b)(6), 24, 45, 52, 56, and 56.1 of the Wyoming Rules of Civil Procedure, as in effect on July 1, 2016, available at <http://www.courts.state.wy.us/WSC/CourtRule?RuleNumber=48>;

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

(c) All incorporated matter is available for public inspection at the Department's Cheyenne office. Contact information for the Cheyenne Office may be obtained at <http://deq.wyoming.gov> or from (307) 777-7937.

Commented [A4]: Chapter 1, section 25 of the proposed rules incorporate the same rules of civil procedure incorporated through the uniform rules, in addition to Rule 4, which deals with service of process.

Chapter 1, section 10 incorporates specific provisions of the Clean Air Act and Clean Water Act that describe certain requirements for the Council when it sits as an adjudicatory body under those Acts.

Using the language from the uniform rules would create inconsistencies with how the Department incorporates matter by reference through other rules. However, it is not a statutory requirement that all IBR sections be internally consistent, so chapter 1, section 25 may be replaced with chapter 1, section 2 of the uniform rules, with the appropriate link correction identified in Comment 31.

Section 3. **Definitions.** Language placed into Chapter 1, Section 2

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.~~

~~(a)~~ “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~~ allowed by the Wyoming State Bar to practice law in the State of Wyoming.

~~(b)~~ “Contested case” means a proceeding in which legal rights, duties, or privileges of a party are required by law to be determined by the Council ~~an agency~~ after an opportunity for hearing.

~~(d)~~ “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~~ a person designated by the Chair of the Council to conduct contested cases and rulemaking hearings.

~~(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.~~

~~(e)~~ “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.~~

~~(h)~~ “Representative” means an ~~individual~~ officer or employee other than an attorney who is authorized to function in a representative capacity on behalf of a corporate 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.**
Language placed into Chapter 2, section 3.

~~(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.~~

Commented [A5]: The general definitions from the uniform rules are unnecessary because it is more precise to refer specifically to the Council or the Department, as appropriate.

Commented [A6]: This language enhances the clarity of the definition of “attorney” because it refers to the agency governing the practice of law and not to specific directions from that agency.

We do not recommend making this change because the language from the uniform rules is not inconsistent with the WEQA.

Commented [A7]: This is a more precise definition for how the Council conducts contested case hearings.

Commented [A8]: This definition was deleted because it is not applicable to the Council.

Commented [A9]: The general definition from the uniform rules is unnecessary because it is more precise to refer specifically to the Council.

Commented [A10]: These changes to the uniform rules language are necessary to clarify how small businesses can self-represent before the Council.

Commented [A11]: Chapter 1, section 1 of the proposed rules refers to the WAPA and the WEQA and their location in the Wyoming Statutes.

Deleting the additional definition of the WAPA from the uniform rules complies with the Governor’s directive to streamline rules.

Commented [A12]: This language from the uniform rules was removed because it may conflict with the more specific rules related to informal hearings before the Department in Chapter 9.

(a) 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 file a joint request for continuance pending outcome of the mediation or arbitration ~~they shall request mediation at least 30 days prior to hearing.~~

Commented [A13]: The uniform rules language was removed because an “informal conference” has specific meaning under the Surface Mining Control and Reclamation Act and the Wyoming Environmental Quality Act and using the phrase in certain sections with the specialized, statutory meaning and in other sections with a general meaning would create conflict.

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

Commented [A14]: The uniform rules language was removed because the inclusion of a thirty-day deadline creates problems for 20 day hearings, under W.S. 35-11-406(k). Also, this timeline for mediation conflicts with the WEQA in that it limits the Department’s ability to settle contested case hearings by negotiating compliance from alleged violators of the WEQA.

Section 5 **Commencement of Initiation of Contested Case Proceedings.**
Language placed into Chapter 2, Section 4

Commented [A15]: References in the uniform rules to “settlement conferences” were removed because of the potential conflict with the term “informal conference” under SMCRA.

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

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

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

Commented [A16]: These additions and deletions result in a more precise description of how contested cases are initiated before the Council.

(b) The petition for hearing shall set forth:

(i) Name, phone number, electronic mail address, and physical address of the petitioner and, if applicable, the petitioner’s attorney.

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

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

(iv) A request for hearing before the Council.

Commented [A17]: This addition to the uniform rules language is necessary to avoid inconsistencies with the WEQA and ensure that the Council receives petitions with sufficient information.

(c) The contested case shall be deemed commenced on the date of filing the petition with the Council, as long as the petition is served on each defendant within sixty (60) days of filing.

If service is not made within sixty (60) days of filing, then the contested case shall be deemed commenced on the date when service is made.

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

Language placed into Chapter 1, section 4:

(a) ~~At the commencement of every contested case, an agency or hearing officer~~ The Council or its designee shall ~~issue a~~ provide notice of any hearing, which shall include ~~including a statement of:~~

- (i) ~~T~~he time, place, and nature of the hearing;
- (ii) ~~T~~he legal authority and jurisdiction under which the hearing is to be held;
- (iii) ~~T~~he particular sections of the statutes and rules involved; and

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

(b) The Council may provide notice by posting through its website.

Section 6. Referral to Office.

Language placed into Chapter 2, section 6

(a) Upon referral to the Office to conduct a contested case ~~in accordance with W.S. 35-11-112(a),~~ the Council ~~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 Council ~~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) ~~T~~he names of the known parties and their attorneys or representatives;
- (iii) ~~A~~a concise statement of the nature of the contested case;

(iv) ~~N~~otification 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) ~~C~~ertification by an authorized officer of the Council ~~referring agency~~ that

Commented [A18]: This additional language, from the Wyoming Rules of Civil Procedure Rule 3 provides necessary clarity.

Section 4(c) is not recommended.

Commented [A19]: This addition to the uniform rules reflects practice before the Council.

Commented [A20]: This alteration of the uniform rules reflects practice before the Council.

Commented [A21]: This change removes ambiguity as to whether notice must be served in accordance with the Wyoming Civil Rules of Procedure.

Commented [A22]: Remove ambiguity as to who may trigger the Council's obligation to provide a more definite and detailed statement.

Commented [A23]: This addition to the uniform rules is necessary to accommodate hearings held by the Council that are not subject to the WAPA. This section will go into chapter 1, which are generally applicable rules, and describes notice provided by the Council for rulemaking hearings as well as contested case hearings.

Suggest adding "where allowed by the WAPA" at the end of (b).

Commented [A24]: Precise reference to language in the Wyoming Environmental Quality Act that states, "...At the council's request the office of administrative hearings may provide a hearing officer for any rulemaking or contested case hearing before the council, and the hearing officer may provide recommendations on procedural matters when requested by the council..."

Commented [A25]: Uniform language was removed because matters can come before the Council that are not related to agency action or inaction and to which the Department is not a party.

Commented [A26]: The word 'agency' was removed to avoid ambiguity.

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.~~

Commented [A27]: This section is not applicable to the Council because the Council may only refer contested cases to the Office of Administrative Hearings.

Section 8 Designation and Authority of Hearing Officer; Recusal.
Language placed into Chapter 2, section 7

(a) ~~The Chair~~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 and ~~or~~ at the ~~Council~~referring agency's request, the hearing officer may provide ~~either~~ a recommended ~~or final~~ decision.

Commented [A28]: Under the WEQA, a hearing officer from the Office of Administrative Hearings may only provide a recommended decision to the Council, not a 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.~~

Commented [A29]: This section from the uniform rules is inconsistent with the Council's statutory framework because the Council must make the final decision.

~~(be)~~ At any time while a contested case is pending, a hearing officer or ~~Council~~ hearing panel member may withdraw from a contested case by filing written notice of recusal ~~or entering a verbal notice of recusal into the record. From and after the date the written notice of recusal~~ As soon as the notice of recusal is entered, the recused hearing officer or ~~hearing panel~~ Council member shall not participate in the contested case.

Commented [A30]: The uniform rules language is inconsistent with the statutory framework applicable to the Council, which is a citizen board, not a full-time adjudicative body. It is more appropriate for a citizen board member to have the ability to withdraw from a matter by providing a verbal notice of recusal.

~~(cd)~~ Upon motion of ~~A~~any party, ~~may move for~~ recusal of a hearing officer or ~~hearing panel~~ Council 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~~ Grounds for recusal include that the hearing officer or Council member:

Commented [A31]: Alteration of language in the uniform rules to make them more clear for non-attorney citizen parties who appear before the Council.

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

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

(iii) ~~is related by consanguinity to a party; Is a spouse, child, grandchild, parent, grandparent, or other relative or person who maintains a close familial relationship with a party;~~

Commented [A32]: This preferred definition was recommended by the Council.

Do not recommend adopting this change.

Commented [A33]: Removes the ambiguity as to whether a particular witness is "material" to the contested case.

Do not recommend adopting this change because of risk of allowing parties to call Council members as witnesses for the sole purpose of being able to move to recuse them. Though the term "material" is ambiguous, there is sufficient case law and reasoning on its meaning that the Council should be able to determine when a particular Council member is a material witness.

(iv) ~~I~~is a ~~material~~ witness in the action;

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

(vi) ~~A~~any other grounds provided by law.

(~~d~~e) A motion for recusal shall be supported by an affidavit or affidavits of any person or persons, stating sufficient facts and law to show the ~~existence of grounds for the~~ motion should be granted. 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 appointed for the limited purpose of resolving the motion. If the motion is granted, the ~~hearing officer~~ Council Chair shall immediately designate another hearing officer to preside over the contested case or shall excuse the hearing panel member(s).

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

(~~f~~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.**

Language placed into Chapter 2, section 8:

(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) ~~T~~he attorney wishes to withdraw;

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

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

(v) ~~T~~he pleadings and papers in the case shall be served upon the client at the client's last known address; and

Commented [A34]: This addition to the uniform rules is necessary because, although they may be assumed to be common knowledge for attorneys, many citizens are self-represented before the Council and benefit from explicit requirements.

Commented [A35]: Remove superfluous reference and repetitive language, in accordance with the Governor's directive to streamline rules.

(vi) ~~T~~he 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 Council ~~hearing officer and the agency~~.

Section 10. Ex Parte Communications.

Language placed into Chapter 2, section 10:

Except as authorized by law, a party or a party's attorney or representative shall not communicate with any Council ~~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 Council ~~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.

Language placed into Chapter 2, section 5:

(a) In all proceedings ~~contested cases~~, the parties shall file all original documents, pleadings, and motions with the Council ~~referring agency or adjudicative agency, as applicable, and serve all other parties~~ 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 Council ~~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.

Commented [A36]: Made alterations to language in the uniform rules to make them more clear for non-attorney citizen parties who appear before the Council.

(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, or electronically uploaded to the relevant docket at <http://www.wyomingec.wyo.gov/>. ~~Where all parties have not consented to receive electronic service, the party electronically filing shall otherwise serve the documents to the parties who have not consented to receive electronic service. 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.

Commented [A37]: Revised to allow for electronic service. This change to the uniform rules is necessary to be consistent with practice before the Council, which utilizes an electronic docket management system. The uniform rules language is generally applicable, whereas the revised language provides specific information about how to access the Council's electronic docket management system.

Section 12. Computation of Time.

Language placed into Chapter 1, section 3:

(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 resulted in official agency office closures ~~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

Commented [A38]: Removes ambiguity as to what conditions or weather make agency offices inaccessible, and to whom they make them inaccessible.

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. The three-day provision does not apply to rulemaking deadlines.

Commented [A39]: Eliminate redundant language in the uniform rules to make them more clear for non-attorney citizen parties who appear before the Council.

Section 13. Motions and Motion Practice.
Language placed into Chapter 2, section 11:

(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 ~~before~~ 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 servicing ~~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.

Commented [A40]: To streamline the rules, this section was placed into chapter 1, general rules applicable to contested case hearings as well as rulemaking hearings. The additional language is necessary to clarify that this section of the uniform rules for contested case hearings is not applicable to rulemaking hearings.

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

(c) Prior to filing any non-dispositive motion, a party shall make reasonable efforts to contact all other parties, representatives, and attorneys. Any such non-dispositive motion shall include a statement concerning the party’s efforts to confer with the other parties and positions on the motion.

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

Commented [A41]: These additions to the uniform rules are necessary because, although they may be assumed to be common knowledge for attorneys, many parties are self-represented before the Council and benefit from explicit requirements.

Section 14. Setting Hearings, Other Proceedings, and Location of Hearings.
Language placed into Chapter 2, section 12:

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

Section 13(c) was moved from section 16 of the uniform rules in order to be broadly applicable to all non-dispositive motions, not only motions for continuance.

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

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

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

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

Language placed into Chapter 2, section 13:

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,~~ ~~the cases shall be consolidated into the first case filed.~~ ~~All~~ subsequent filings shall be in the case first filed, and all previous filings related to the consolidated cases shall be placed together under that ~~docket case~~ number. Consolidation may be ordered on a hearing officer's own motion.

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

Language placed into Chapter 2, section 14:

(a) A motion for a continuance of any scheduled hearing shall be in writing, ~~and~~ state the reasons for the motion, ~~and be filed and served on all parties and the hearing officer.~~ A ~~request motion~~ 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) For contested cases conducted regarding objections pursuant W.S. 35-11-406(k), a~~

Commented [A42]: This additional language reflects how the Council handles setting the course of proceedings and is consistent with practice before the Council.

The uniform rules language conflicts with the statutory frameworks because the phrase "informal conference" has a specialized meaning under SMCR and the Act.

Commented [A43]: The language from the uniform rules is inconsistent with how the Council arranges locations for hearing. Under W.S. 35-11-112(d), the Department provides the Council with meeting facilities, including assistance in scheduling locations for hearings.

Commented [A44]: Eliminate redundant language in the uniform rules to make them more clear for non-attorney citizen parties who appear before the Council.

Commented [A45]: This alteration to the uniform rules is necessary to provide clarity to non-attorney parties who appear before the Council and would benefit from explicit language that the motion for continuance is a formal motion.

Commented [A46]: The inclusion of a five-day timeline in the uniform rules may conflict with timelines associated with twenty-day hearings.

motion for continuance may not be granted if the motion would continue the hearing beyond the 20-day period provided in that statute unless the parties stipulate to a different period.

Commented [A47]: This addition is necessary to avoid conflict with the WEQA.

~~(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.~~

Commented [A48]: This language is move to section 13(c) to allow it to be generally applicable to all non-dispositive motions, not just motions for continuance.

~~(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.~~

Commented [A49]: The deadline in the uniform rules would conflict with the statutory framework for twenty-day hearings and may be inappropriate for other hearings, particularly when one or more of the parties is a self-represented citizen.

Section 17. **Discovery.**

Language placed into Chapter 2, section 15:

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

Commented [A50]: In accordance with the Governor's initiative to streamline rules and the Department's paperless initiative, the rule will not be set out in its entirety in an Appendix when it is easily available in print and electronic format.

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

Section 18. **Subpoenas.**

Language placed into Chapter 2, section 16:

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.~~

Commented [A51]: In accordance with the Governor's initiative to streamline rules and the Department's paperless initiative, the rule will not be set out in its entirety in an Appendix because it is easily available in print and electronic format.

~~Section 19. **Summary Disposition.**~~

~~Rules 12(b)(6), 52(e), 56.1, and 56, Wyoming Rules of Civil Procedure, which are set forth in their entirety in Appendix A, apply to contested cases.~~

Commented [A52]: These rules are incorporated in chapter 2, section 25, so it is unnecessary to provide an additional discussion in a separate section.

Section 20. **Prehearing Procedures.**

Language placed into Chapter 2, section 17:

(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:

Recommend not deleting this section. It would provide clarity requested by Comment 27.

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

~~to the hearing officer or adjudicative agency;~~

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

(iii) ~~A~~ statement of the burden of proof to be assigned in the contested case, ~~with referring~~ ~~ence~~ 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 ~~evidence that a documents, statements, etc., which the~~ party will or may introduce into evidence and copies of all documentary evidence that the party will or may introduce; and;

(vii) An approximation of the time required for the hearing.

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

(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~~ excluding witnesses, exhibits, claims and defenses, or dismissing ~~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.

Language placed into Chapter 2, section 18:

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

Section 22. Evidence.

Language placed into Chapter 2, section 19:

Commented [A53]: These additions to the uniform rules are necessary because, although they may be assumed to be common knowledge for attorneys, many citizens are self-represented before the Council and benefit from explicit requirements.

Commented [A54]: This additional language insures that the Council receives sufficient information in an initial petition and does not receive additional, substantive information through a prehearing disclosure statement. The uniform rules language could create conflict with the WEQA by allowing petitioners to amend petitions through prehearing statements.

Commented [A55]: These changes to the uniform rules are necessary to accommodate the Council's electronic docketing system.

Commented [A56]: The addition to the uniform rules is necessary to ensure that the Council receives sufficient information to work with the Department, under 35-11-112(d), to appropriately schedule meeting facilities.

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

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

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

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

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

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

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

(c) The hearing officer or Council member, 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.

Commented [A57]: These additions to the uniform rules are necessary because, although they may be assumed to be common knowledge for attorneys, many parties are self-represented before the Council and benefit from explicit requirements.

Commented [A58]: More precise language to reflect practice before the Council

Section 23. Contested Case Hearing Procedure.
Language placed into Chapter 2, section 20:

(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.

Language placed into Chapter 2, section 21:

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. Where a contested case has due process implications, a hearing officer may not enter judgment before the agency presents a prima facie case.

Commented [A59]: The uniform rules language conflicts with the WEQA because of the due process implications of taking certain actions with implications for mineral rights through a default judgment procedure. This additional language is necessary to ensure that the Council does not inadvertently violate the due process right of a party who does not appear at a hearing.

Section 25. Settlements.

Language placed into Chapter 2, section 3(c):

Parties shall promptly notify the hearing officer of all settlements, stipulations, agency orders, or any other action eliminating the need for a contested case hearing. The hearing officer shall forward such notice to the Council. Upon such notice, When the contested case has settled, the Council shall ~~referring agency may enter issue~~ an order, ~~on its own motion~~, dismissing the case.

Commented [A60]: These changes more accurately represent practice before the Council and ensure that the Council receives timely notification of settlements to efficiently manage their dockets.

Section 26. Expedited Hearing.

Language placed into Chapter 2, section 22:

(a) At the hearing officer's or Council hearing panel's discretion and when allowed by applicable law, 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.~~

Commented [A61]: The language from the uniform rules was removed because the Council does not preside over cases involving summary suspensions.

(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.

Language placed into Chapter 2, section 23:

In those contested cases where the hearing officer makes a recommended decision, the hearing officer shall file the recommended decision with the Council~~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~~ must file written exceptions to the hearing officer's recommended decision within 10 (10) days of the recommended decision being filed. Written exceptions shall be filed with the Council ~~referring agency~~ and served on all parties.

Section 28. Final Decision.

Language placed into Chapter 2, section 24:

(a) A final decision containing findings of fact, conclusions of law, and an order entered by the Council ~~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 and the hearing officer, if applicable. ~~A final decision entered by the referring agency or adjudicative agency shall be served upon all parties and the hearing officer.~~

Commented [A62]: These additions to the uniform rules are necessary because, although they may be assumed to be common knowledge for attorneys, many citizens are self-represented before the Council and benefit from explicit requirements.

(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~~ file the original with the Council 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 a~~ At any time prior to judicial review, a hearing officer may 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 reviewing court ~~court having jurisdiction.~~

Commented [A63]: Clarifying language in the uniform rules to make them more clear for non-attorney parties who appear before the Council.

Section 29. Record of Proceeding.

Language placed into Chapter 1, section 5:

~~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 may charge.~~

(a) All proceedings shall be recorded verbatim stenographically or by another appropriate means determined by the Council.

(b) The compensation of any court reporter shall be paid as required by law and as ordered by the Council. The Council may direct any party or parties to assume the cost of the transcript.

(c) Certified copies of the transcript may be obtained by any party or interested person from the court reporter taking the testimony at such fee as the court reporter may charge.

(d) The Council shall make appropriate arrangements to assure that a record of the proceeding is kept pursuant to W.S. 16-3-107(o) and (p).

Commented [A64]: In lieu of placing this portion of the WAPA into the rules, we chose to provide clear direction on how to record proceedings, based on past practice before the Council.

Recommend using the uniform language instead.