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CHAPTER 3 RULEMAKING

Section 1. **Authority.**

The Council may promulgate rules necessary for the administration of the Wyoming Environmental Quality Act after receiving a recommendation to adopt a proposed rule or rules from the Director. The Department may begin preliminary rulemaking on its own, in response to a suggestion from the Council or advisory boards, or in response to a petition for rulemaking.

Section 2. **Definitions.**

The following definitions supplement the definitions found in the Wyoming Administrative Procedure Act and the Wyoming Environmental Quality Act.

(a) “Initiate rulemaking” means to submit notice of the intent to adopt, amend, or repeal any rule, other than an interpretive rule or statement of general policy, to the Secretary of State’s Office, the Legislative Service Office, and the Attorney General’s Office, as required by W.S. 16-3-103(a)(i).

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

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

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

Section 3. **Petition for Rulemaking.**

Any interested person may petition the Council or the Department requesting the promulgation, amendment, or repeal of any rule. The Director shall be copied on any petition directed to the Council and the Chair of the Council shall be copied on any petition directed to the Department.

(a) Each petition shall identify the rule or rules to be promulgated, amended, or repealed and shall provide support for the proposed rulemaking in the form of argument, data, legal citation, or other justification, as appropriate.

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

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

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47 (ii) If the Council denies the petition, the Council shall notify the
48 petitioner in writing, setting forth the reasons for denial. The Council shall provide a copy
49 of the denial to the Director.

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

53
54 (c) Upon receiving a petition from a member of the public or one that is
55 redirected by the Council, the Director shall, as soon as practicable, either deny the
56 petition in writing or begin preliminary rulemaking.

57
58 (i) The Director may request additional information from the
59 petitioner before acting on the petition and may seek additional input from members of
60 the public through public meetings, hearings, or other outreach.

61
62 (ii) If the Director denies the petition, the Director shall notify the
63 petitioner in writing, setting forth the reasons for the denial.

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

67
68 (iv) If the Director begins preliminary rulemaking in response to a
69 petition and subsequently decides not to initiate rulemaking, the Director shall notify the
70 petitioner in writing of that decision, setting forth the reasons for doing so. The decision
71 not to initiate rulemaking is a denial of the rulemaking petition.

72
73 (v) The Director shall provide the Council with a copy of all notices
74 required by this subsection.

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

78
79 **Section 4. Preliminary Rulemaking Hearings before the Advisory Boards.**

80
81 (a) The air, land, solid and hazardous waste management, and water divisions
82 of the Department may conduct preliminary rulemaking hearings before their related
83 advisory boards by submitting the following materials to the affected board:

84
85 (i) Strike and underscore and clean copies of the preliminary rule;

86
87 (ii) Copies of all public comments received to date and proposed
88 responses, if applicable; and

89
90 (iii) Any additional materials that the divisions believe are necessary to
91 explain the content of the preliminary rules.

92
93 (b) The Department may not initiate rulemaking and submit a proposed rule to
94 the Council for consideration without first securing a recommendation to adopt the
95 preliminary rule from the affected advisory board. At the conclusion of a preliminary
96 rulemaking hearing, an advisory board may:

97
98 (i) Schedule a special meeting or additional public hearing to further
99 discuss the preliminary rule;

100
101 (ii) Remand the preliminary rule to the division for further action,
102 including addressing questions regarding specific aspects of the preliminary rule; or

103
104 (iii) Recommend that the Department initiate rulemaking and submit
105 the preliminary rule to the Council for adoption.

106
107 (c) When preliminary rules involve more than one of the divisions of the
108 Department, the Director may call a joint meeting of the affected advisory boards. The
109 advisory boards shall select one member to preside over the joint meeting. Any formal
110 action taken on a preliminary rule discussed during a joint meeting of the advisory boards
111 must be voted on individually by each advisory board.

112
113 (d) The divisions may consult with the advisory boards through special
114 meetings after preliminary rulemaking hearings. The divisions may incorporate
115 suggestions that arise during preliminary rulemaking hearings or any subsequent special
116 meetings without conducting additional preliminary rulemaking hearings.

117
118 **Section 5. Promulgating Rules.**

119
120 (a) When the Department initiates rulemaking, it shall file the following with
121 the Council:

122
123 (i) Strike and underscore and clean copies of the proposed rule;

124
125 (ii) Proposed Statement of Principal Reasons for adopting the
126 proposed rule;

127
128 (iii) Copies of all public comments received to date and proposed
129 responses, if applicable;

130
131 (iv) Record of any public hearings conducted by the Department;

132

133 (v) Statement from the Director indicating that the proposed rule was
134 recommended for adoption by the affected advisory board or boards through the affected
135 division administrator or administrators;

136
137 (vi) Recommendation from the Director that the Council adopt the
138 proposed rule; and

139
140 (vii) Any additional materials that the Department believes are
141 necessary to explain the contents of the proposed rule.

142
143 (b) When initiating rulemaking, the Department shall provide the Council
144 with an index of materials relied upon to develop the proposed rule.

145
146 (i) The Department may update the index until the public comment
147 period on the proposed rule, as required by W.S. 16-3-103(a)(i), is closed. After the
148 comment period is closed, the Department may only update the index with responses to
149 comments.

150
151 (ii) All indexed materials shall be open for inspection by any person at
152 reasonable times during business hours of the Department.

153
154 (c) In the case of judicial review of any rule adopted by the Council, all
155 indexed materials shall be included in the administrative record submitted to the court,
156 together with any additional materials considered by the Council during rulemaking
157 hearings.

158
159 **Section 6. Rulemaking Hearings before the Council.**

160
161 (a) The Council chair shall assign a hearing officer from among the Council
162 members by filing a notice of appointment with the Council within thirty (30) days of the
163 Department filing the proposed rule with the Council. The appointed hearing officer shall
164 preside over all proceedings before the Council related to the proposed rule. If the
165 assigned Council member leaves the Council through resignation, expiration of
166 membership, or otherwise, the chair shall assign a hearing officer as a replacement and
167 shall serve as the hearing officer in the interim before the substitute assignment is made.

168
169 (b) Any member of the public, subject to reasonable time restrictions
170 established by the presiding officer, may address the Council at any meeting in which the
171 Council is considering proposed rules. The Council shall allow meaningful opportunity
172 for public comment at each rulemaking hearing.

173
174 (i) No person may address the Council without first being recognized
175 by the presiding officer.

176

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

179
180 (iii) Members of the public may not directly address each other in
181 proceedings before the Council, and shall address any questions to the hearing officer.

182
183 (iv) Members of the public seeking recognition in proceedings before
184 the Council shall state their name and whether they are speaking on behalf of an
185 organization. The Council shall consider all comments to be made in a person's
186 individual capacity unless an affiliation is disclosed to the Council.

187
188 (v) In considering proposed rules, the Council shall consider all
189 properly submitted public comments.

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191 (vi) Comments shall be directed to the Council as a whole and not to
192 individual Council members. If a member of the public approaches an individual Council
193 member to discuss a proposed rule, that member shall direct the person to submit a
194 comment for full consideration by the Council. If a Council member receives information
195 through informal contact with a member of the public, that member shall disclose the
196 contact and the information received to the rest of the Council in an open meeting. If the
197 information is reduced to writing in physical or electronic format, the Council member
198 shall provide the information to the other Council members and the writing shall become
199 part of the record.

200
201 (c) The Council may make changes to proposed rules based on its
202 independent analysis of the form and substance of the proposed rules. In doing so, the
203 Council may consider testimony received during a rulemaking hearing and materials
204 submitted to the rulemaking docket.

205
206 (i) In considering potential changes to proposed rules, the Council
207 shall consider the following:

208
209 (A) Whether the contemplated change meets all procedural
210 requirements of the Wyoming Administrative Procedure Act, including whether the
211 change is a logical outgrowth of the proposed rule;

212
213 (B) Whether the opportunity for public participation was
214 meaningful and sufficient given the nature of the contemplated change to the proposed
215 rule;

216
217 (C) Whether the contemplated change imposes an unwarranted
218 administrative burden on the Department; and

219
220 (D) Whether the contemplated change impacts the
221 Department's ability to maintain primacy over the relevant regulatory area. The Council

222 shall allow the Department to provide a primacy analysis in the context of any
223 contemplated changes.

224

225 (ii) The Council shall not modify a proposed rule if the Council
226 determines that:

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

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

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