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(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. ~~Informal Conference.~~ Petition for Rulemaking.

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

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

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

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

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

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

~~(formerly Section 2) Any interested person party may petition the Council or the Department to promulgate requesting the promulgation, amend amendment, or repeal of any rule or rules. (formerly Section 2(a)) Each petition must be submitted in duplicate to the Chairman of the Environmental Quality Council and to the Director of the Department of Environmental Quality. 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.

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

~~(formerly Section 2(c)) After filing of the petition, the Council may hold a~~

99 ~~prehearing conference to review the petition and its persuasiveness.~~

100
101 ~~(formerly Section 2(e))— Before the adoption, issuance, amendment, or repeal of any rule,~~
102 ~~or the commencement of any hearing on such proposed rule making, the Council shall cause~~
103 ~~notice to be given in accordance with the provisions of W.S. 9-4-103.~~

104
105 (b) For any petition that is directed to the Council, the Council shall, as soon as
106 practicable, either deny or redirect the petition to the Director.

107
108 (i) The Council may hold a hearing to request additional information from
109 the petitioner or members of the public before acting on a petition.

110
111 ~~formerly Section 2(d)) (ii) As soon as practicable, the Council~~
112 ~~shall deny the petition in writing (stating its reasons for the denial) or initiate rule making~~
113 ~~procedures.~~ If the Council denies the petition, the Council shall notify the petitioner in writing,
114 setting forth the reasons for denial. The Council shall provide a copy of the denial to the Director.

115
116 (iii) If the Council redirects the petition to the Director, the Council shall
117 provide a copy of that determination to the petitioner.

118
119 (c) Upon receiving a petition from a member of the public or one that is redirected
120 by the Council, the Director shall, as soon as practicable, either deny the petition in writing or
121 begin preliminary rulemaking.

122
123 (i) The Director may request additional information from the petitioner
124 before acting on the petition and may seek additional input from members of the public through
125 public meetings, hearings, or other outreach.

126
127 (ii) If the Director denies the petition, the Director shall notify the petitioner
128 in writing, setting forth the reasons for the denial.

129
130 (iii) If the Director begins preliminary rulemaking in response to a petition,
131 the Director shall notify the petitioner in writing of that determination.

132
133 (iv) If the Director begins preliminary rulemaking in response to a petition
134 and subsequently decides not to initiate rulemaking, the Director shall notify the petitioner in
135 writing of that decision, setting forth the reasons for doing so. The decision not to initiate
136 rulemaking is a denial of the rulemaking petition.

137
138 (v) The Director shall provide the Council with a copy of all notices required
139 by this subsection.

140
141 (d) A written denial of any rulemaking petition is final agency action and is not
142 subject to judicial review.

143
144 Section 4. Preliminary Rulemaking Hearings before the Advisory Boards.

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

149
150 ~~(formerly 4(b)) Prior to the adoption, amendment or repeal of any rules, other than~~
151 ~~interpretive rules or statements of general policy, the Department shall publish notice of its~~
152 ~~intended action, including the date, time and place of any hearing, in a newspaper of general~~
153 ~~circulation in the state, and afford a thirty (30) day public comment period after the last~~
154 ~~publication. In addition, the council will hold at least one public hearing on the proposed action.~~
155 ~~All information will be received by the council without regard to rules of evidence.~~

156
157 ~~(formerly 4(c)) The hearing is directed to receiving factual evidence and expert opinion~~
158 ~~testimony relative to the issues in the proceeding.~~

159
160 ~~(formerly 4(d)) The Council, upon its own motion or upon the motion of any party, to~~
161 ~~promote the orderly presentation of evidence, may adopt one or more of the provisions contained~~
162 ~~in Chapter II of these Rules governing procedures in contested cases. Such action by the Council~~
163 ~~shall not constitute an agreement that the proceeding before the Council is in the nature of a~~
164 ~~contested case.~~

165
166 ~~(formerly 4(e)) The Council or Administrator may impose time limitations upon oral~~
167 ~~presentations.~~

168
169 (a) The air, land, solid and hazardous waste management, and water divisions of the
170 Department may conduct preliminary rulemaking hearings before their related advisory boards by
171 submitting the following materials to the affected board:

172
173 (i) Strike and underscore and clean copies of the preliminary rule;

174
175 (ii) Copies of all public comments received to date and proposed responses,
176 if applicable; and

177
178 (iii) Any additional materials that the divisions believe are necessary to
179 explain the content of the preliminary rules.

180
181 (b) The Department may not initiate rulemaking and submit a proposed rule to the
182 Council for consideration without first securing a recommendation to adopt the preliminary rule
183 from the affected advisory board. At the conclusion of a preliminary rulemaking hearing, an
184 advisory board may:

185
186 (i) Schedule a special meeting or additional public hearing to further discuss
187 the preliminary rule;

188
189 (ii) Remand the preliminary rule to the division for further action, including
190 addressing questions regarding specific aspects of the preliminary rule; or

191
192 (iii) Recommend that the Department initiate rulemaking and submit the
193 preliminary rule to the Council for adoption.

194
195 (c) When preliminary rules involve more than one of the divisions of the
196 Department, the Director may call a joint meeting of the affected advisory boards. The advisory
197 boards shall select one member to preside over the joint meeting. Any formal action taken on a
198 preliminary rule discussed during a joint meeting of the advisory boards must be voted on
199 individually by each advisory board.

200
201 (d) The divisions may consult with the advisory boards through special meetings
202 after preliminary rulemaking hearings. The divisions may incorporate suggestions that arise
203 during preliminary rulemaking hearings or any subsequent special meetings without conducting
204 additional preliminary rulemaking hearings.

205
206 Section 5. ~~Witnesses~~ Promulgating Rules.

207
208 ~~(formerly Section 5(a))—The Council, designated hearing officer, or Administrator may~~
209 ~~direct that summaries to the testimony of witnesses be prepared in advance of the hearing. If so~~
210 ~~directed, copies of such summaries shall be served upon the members of the Council or~~
211 ~~Administrator or upon any other party as the designated hearing officer may direct.~~

212
213 ~~(formerly 5(b))—Witnesses will be permitted to read summaries of their testimony into~~
214 ~~the record or make other oral statements as they so desire. Witnesses shall not be available for~~
215 ~~cross-examination, but will be permitted to answer questions directed to them by members of the~~
216 ~~Council or Administrator.~~

217
218 ~~(formerly 5(c))—When necessary to prevent undue prolongation of the hearing, the~~
219 ~~presiding officer may limit the number of times any witness may testify.~~

220
221 (a) When the Department initiates rulemaking, it shall file the following with the
222 Council:

223
224 (i) Strike and underscore and clean copies of the proposed rule;

225
226 (ii) Proposed Statement of Principal Reasons for adopting the proposed rule;

227
228 (iii) Copies of all public comments received to date and proposed responses,
229 if applicable;

230
231 (iv) Record of any public hearings conducted by the Department;

232
233 (v) Statement from the Director indicating that the proposed rule was
234 recommended for adoption by the affected advisory board or boards through the affected division
235 administrator or administrators;

236
237 (vi) Recommendation from the Director that the Council adopt the proposed
238 rule; and

239
240 (vii) Any additional materials that the Department believes are necessary to
241 explain the contents of the proposed rule.
242

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

245
246 (i) The Department may update the index until the public comment period
247 on the proposed rule, as required by W.S. 16-3-103(a)(i), is closed. After the comment period is
248 closed, the Department may only update the index with responses to comments.

249
250 (ii) All indexed materials shall be open for inspection by any person at
251 reasonable times during business hours of the Department.

252
253 (c) In the case of judicial review of any rule adopted by the Council, all indexed
254 materials shall be included in the administrative record submitted to the court, together with any
255 additional materials considered by the Council during rulemaking hearings.

256
257 Section 6. ~~Comments~~ Rulemaking Hearings before the Council.

258
259 ~~(formerly Section 6 (a)) All timely comments shall be considered by the Council before~~
260 ~~final action is taken on any proposal to promulgate, amend, or repeal any rule. Late filed~~
261 ~~comments may be considered so far as possible without incurring additional expenses or delay.~~

262
263 (a) The Council chair shall assign a hearing officer from among the Council
264 members by filing a notice of appointment with the Council within thirty (30) days of the
265 Department filing the proposed rule with the Council. The appointed hearing officer shall preside
266 over all proceedings before the Council related to the proposed rule. If the assigned Council
267 member leaves the Council through resignation, expiration of membership, or otherwise, the chair
268 shall assign a hearing officer as a replacement and shall serve as the hearing officer in the interim
269 before the substitute assignment is made.

270
271 (b) Any member of the public, subject to reasonable time restrictions established by
272 the presiding officer, may address the Council at any meeting in which the Council is considering
273 proposed rules. The Council shall allow meaningful opportunity for public comment at each
274 rulemaking hearing.

275
276 (i) No person may address the Council without first being recognized by the
277 presiding officer.

278
279 (ii) The Council may provide a telephonic or internet-based method to
280 receive public comments during Council proceedings.

281
282 (iii) Members of the public may not directly address each other in
283 proceedings before the Council, and shall address any questions to the hearing officer.

284
285 (iv) Members of the public seeking recognition in proceedings before the
286 Council shall state their name and whether they are speaking on behalf of an organization. The
287 Council shall consider all comments to be made in a person's individual capacity unless an
288 affiliation is disclosed to the Council.

289
290 (v) In considering proposed rules, the Council shall consider all properly
291 submitted public comments.

292
293 (vi) Comments shall be directed to the Council as a whole and not to
294 individual Council members. If a member of the public approaches an individual Council member
295 to discuss a proposed rule, that member shall direct the person to submit a comment for full
296 consideration by the Council. If a Council member receives information through informal contact
297 with a member of the public, that member shall disclose the contact and the information received
298 to the rest of the Council in an open meeting. If the information is reduced to writing in physical
299 or electronic format, the Council member shall provide the information to the other Council
300 members and the writing shall become part of the record.

301
302 (c) The Council may make changes to proposed rules based on its independent
303 analysis of the form and substance of the proposed rules. In doing so, the Council may consider
304 testimony received during a rulemaking hearing and materials submitted to the rulemaking
305 docket.

306
307 (i) In considering potential changes to proposed rules, the Council shall
308 consider the following:

309
310 (A) Whether the contemplated change meets all procedural
311 requirements of the Wyoming Administrative Procedure Act, including whether the change is a
312 logical outgrowth of the proposed rule;

313
314 (B) Whether the opportunity for public participation was meaningful
315 and sufficient given the nature of the contemplated change to the proposed rule;

316
317 (C) Whether the contemplated change imposes an unwarranted
318 administrative burden on the Department; and

319
320 (D) Whether the contemplated change impacts the Department's
321 ability to maintain primacy over the relevant regulatory area. The Council shall allow the
322 Department to provide a primacy analysis in the context of any contemplated changes.

323
324 (ii) The Council shall not modify a proposed rule if the Council determines
325 that:

326
327 (A) The contemplated change conflicts with state or federal law;

328
329 (B) The contemplated change is not a logical outgrowth of the
330 proposed rule; or

331
332 (C) The opportunity for public participation was not meaningful or
333 sufficient given the nature of the contemplated change.

334
335 ~~Section 7. Decision.~~

336
337 ~~(a) As soon as practicable after receipt of the official transcript or as soon as~~
338 ~~practicable after the expiration of the time set for the submittal of written comments, the Council~~
339 ~~or Administrator shall render a written decision on the issues presented at the hearing.~~