



Notice of Intent to Adopt Rules

1. General Information

a. Agency/Board Name: <i>See attached list for references</i>		
b. Agency/Board Address	c. Agency/Board City	d. Agency/Board Zip Code
e. Name of Contact Person	f. Contact Telephone Number	
g. Contact Email Address		
h. Date of Public Notice:		i. Comment Period Ends:
j. Program(s) <i>See attached list for references</i>		

2. Rule Type and Information

a. Choose all that apply: New Rules* Amended Rules Repealed Rules
** "New" rules means the first set of regular rules to be promulgated by the Agency after the Legislature adopted a new statutory provision or significantly amended an existing statute.*

If "New," provide the Enrolled Act number and year enacted:

b. Provide the Chapter Number, and Short Title of Each Chapter being Created/Amended/Repealed (*if more than 5 chapters are being created/amended/repealed, please use the Additional Rule Information form and attach it to this certification*)

Chapter Number:	Short Title:
Chapter Number:	Short Title:
Chapter Number:	Short Title:
Chapter Number:	Short Title:
Chapter Number:	Short Title:

c. The Statement of Reasons is attached to this certification.

d. N/A In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Section 5 of the Rules on Rules).

e. A copy of the proposed rules* may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

* If Item "d" above is not checked, the proposed rules shall be in strike and underscore format.

3. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. Yes No

	If "Yes:"	Date:	Time:	City:	Location:

b. What is the manner in which interested person may present their views on the rulemaking action?
 By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.
 At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members.
Requests for a public hearing may be submitted:
 To the Agency at the physical and/or email address listed in Section 1 above.
 At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days, after adoption of the rule, addressed to the Agency and Contact Person listed in Section 1 above.

4. Federal Law Requirements

a. These rules are created/amended/repealed to comply with federal law or regulatory requirements. Yes No

	If "Yes:"	Applicable Federal Law or Regulation Citation:

Indicate one (1):
 The proposed rules meet, but do not exceed, minimum federal requirements.
 The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:
 To the Agency at the physical and/or email address listed in Section 1 above.
 At the following URL: _____

5. State Statutory Requirements

a. Indicate one (1):
 The proposed rule change *MEETS* minimum substantive statutory requirements.
 The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please provide a statement explaining the reason the rules exceeds the requirements:

6. Authorization

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

Distribution List:

- Attorney General and LSO: Hard copy of Notice of Intent; Statement of Reasons; Clean copy of the rules; and Strike-through and underline version of rules (if applicable).
- Secretary of State: Electronic version of Notice of Intent sent to rules@state.wy.us

STATEMENT OF REASONS

WYOMING GAME AND FISH COMMISSION

CHAPTER 1

REGULATION GOVERNING ACCESS TO RECORDS

W.S. §23-1-302 directs and empowers the Commission to promulgate such orders as the Commission deems necessary to carry out the intent of this regulation.

W.S. §16-4-202 through §16-4-204 empowers the official custodian of any public records to make reasonable rules and regulations governing the inspection of records for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office. The statute allows for reasonable costs of producing a copy of the public record be borne by the party making the request.

Changes made by the Sixty-First Legislature of the State of Wyoming 2012 Budget Session to W.S. §16-4-202 have been addressed throughout the proposed Chapter 1 regulation change.

In Section 2 the terms “Department” and “Commission” have been further clarified.

In Section 3, and other sections where the term “records” is used, the word “public” has been added to match statutory language. Edits have been incorporated to clarify various current definitions. The terms “Custodian”, “Official Custodian”, “Public Records” and “Sportsmen’s List Request” have been added. The terms “Limited Time and Emergency Situations”, “Non-fee Requests”, “Records” and “Special Requests” have been removed. The cost of providing non-Department facilities for records examinations has been addressed in Section 6. Wording has been added to clarify that patented or copyrighted material may not be used for commercial purposes, without permission.

In Section 4, the requirement that records requests for which the Department is a Secondary Custodian must come from the Official Custodian of the record has been removed. To better facilitate workloads and schedules, language has been added allowing examination of public records to be at a time designated by the custodian. As Department computers may contain information beyond a specific public records request, language has been added to restrict public access to Department computers.

In Section 5, language concerning copyrighted and patented documents has been deleted as those items may be available for public inspection.

In Section 6, the fee schedule has been updated to better reflect current market/state agency fees. Documents that are created to be used in a public forum (public meetings, etc.) has

been added to provide the public one copy free of charge, mainly to address public records requests from those not in attendance. “Electronic Mining” has been furthered clarified, with a one hour minimum fee added. The fee for employee time has been standardized, removing “clerical” and “professional” distinctions. Language has been added that allows the Department to utilize non-Department facilities for photocopying, with the costs paid by the requester. This will be useful in public records requests that require large number of copies, binding, etc. “Media Items” has been added to address records requests for still images and video recordings. An off-sight records examination viewing fee has been added to address situations where a non-Department viewing room is used and a fee is required. The “Alternate Enterprise” term has been deleted in favor of the more descriptive “Product Sales” terminology. Language has been added that allows the Commission to waive fees at their discretion, allowing for some flexibility in dealing with special circumstances where a fee may not be appropriate. Clarifying language has been added for costs of employee time in compiling a records examination. Language has been added allowing for employee oversight of records examinations.

In Section 7, language has been added to have public records requests be submitted to the Official Custodian. Having a single point of contact to coordinate public records requests will decrease the chance of duplicating efforts and allow the Office of the Director to remain informed on requests received from the public. This will also help ensure the requests are completed, with no privileged or confidential information being released. “Routine” or “Sportsmen’s List” requests need not be directed to the Official Custodian, as those requests, by definition, contain no privileged or confidential information.

In Section 8, language has been deleted that required the Department to respond to records requests within 10 working days. Public record requests require review by the Department’s Attorney General Representative (excluding “Routine” or “Sportsmen’s List” requests) who may not be readily available. W.S. §16-4-202 allows for the custodian to notify the requester, within 7 business days, that the records are not readily available. This statute change, and the corresponding proposed rule change, will allow the Department to better manage the increased workload which is inherent in public records requests. Edits have been made to clarify that records may be confidential, and shall be referred to the Official Custodian.

Other grammatical and formatting edits have been incorporated to provide additional clarity but do not change the intent of the regulation.

DRAFT 1-7-13.5

WYOMING GAME AND FISH COMMISSION

CHAPTER 1

REGULATION GOVERNING ACCESS TO RECORDS

Section 1. Authority. This regulation is promulgated by authority of W.S. §23-1-302, W.S. §23-1-303 and W.S. **§16-4-202 through §16-4-204.**

Section 2. Regulation. The **Wyoming Game and Fish Commission** (Commission) hereby adopts the following regulation to provide ~~guidelines and~~ provisions for adequate and reasonable access to records maintained by the Commission and **the Wyoming Game and Fish Department** (Department). This regulation shall remain in effect until modified or repealed by the Commission.

Section 3. Definitions. For the purpose of this regulation, definitions shall be as set forth in Title 16 (Public Records Act) and Title 23, Wyoming Statutes, and the Commission also adopts the following definitions:

(a) "Access" means the ability for the public to obtain **public** records during established Department business hours.

(b) "Copies of Previously Issued Licenses" means copies of licenses, tags or permits **issued through manual book license sales that** ~~which~~ have expired or are no longer valid. "Copies of Previously Issued Licenses" do not include "Duplicate Licenses" or "Replacement Licenses" as defined in Chapter 44, Section 3-~~(h)~~ and ~~(yy)~~.

(c) "Custodian" means the official custodian or any authorized person having personal custody and control of the public records in question.

~~(de)~~ "Examination of Records" means inspection by the public, during established Department business hours, of those **public** records in the physical custody ~~(except as a secondary custodian)~~ of the Department or Commission. ~~If examination requires facilities other than the offices of the Department, the person making the request shall be charged the cost of providing the facilities and the Department shall charge a fee as set forth in Section 6 (h).~~

~~(d) "Limited Time and Emergency Situations" means a request for records, which requires a turn-around time of forty eight (48) hours or less. The Department will make every attempt to accommodate limited time and emergency situations, but if higher priority obligations exist, the Department may refuse to provide the records in less than forty eight (48) hours.~~

~~(e) "Non fee Requests" means those requests which do not include Privileged and Confidential records and which require minimal preparation. These include requests, as determined by the Department, for general information of five (5) pages or less. Non fee Requests may include, but are not necessarily limited to: regulations; information brochures; previously published reports routinely provided at no cost and intended for mass distribution; electronic data (including mined data searches taking less than thirty (30) minutes); and information covered under an MOU, contract or reciprocal relationship. These requests are limited to no more than five (5) pamphlets, five (5) brochures or five (5) items, which qualify as "non-fee requests." If the request exceeds this amount, then a fee shall be charged for the additional information~~

requests as set forth in Section 6 (h). Non fee requests do not include requests for “Copies of Previously Issued Licenses.”

(e) “Official Custodian” means an employee of the Department who is responsible for the maintenance, care and keeping of public records, regardless of whether the records are in their actual personal custody and control.

(f) “Privileged and Confidential Records” means those records **recognized in Wyoming law as privileged and confidential.** set forth in W.S. §16-4-203 (a), (b) and (d) and may also include (g).—~~Privileged and Confidential Records do not include any photographs, art prints or other artistic productions which are copyrighted or protected by patent. Copyrighted or patented material, whose rights are owned by the Department or Commission, shall be released at the discretion of the Department or Commission. Any copyrighted or patented material obtained by an inspection shall not be resold without the express written permission of the Department or Commission.~~

(g) “Records” means, in addition to the definitions in the Public Records Act, those office files and memoranda, including all correspondence, exhibits, books, booklets, drawings, maps, forms, documents, information, lists, writings, video or electronic records routinely created by the Department or Commission in the normal course of business, or considered public documents under Wyoming Governor’s Executive Order 1999-4 and which does not include any later amendments or editions of the incorporated matter. A copy of Wyoming Governor’s Executive Order 1999-4 can be viewed at the Human Resources Office of the Department in Cheyenne. The Department shall inform any requester that a public record exists primarily or solely in an electronic format. The Department shall charge a fee for an electronic record as set forth in Section 6 (h).—**“Public Records” when not otherwise specified, means any information in a physical form created, accepted or obtained by the state or any agency, institution or political subdivision of the state in furtherance of its official function and transaction of public business which is not privileged or confidential by law. Without limiting the foregoing, the term “public records” includes any written communication or other information, whether in paper, electronic or other physical form, received by the state or any agency, institution or political subdivision of the state in furtherance of the transaction of public business of the state or agency, institution or political subdivision of the state, whether at a meeting or outside a meeting.**

(h) ~~“Information~~**Public Records Request**” means a request for **public records or information** that ~~is created by~~**are in the custody of** the Department or Commission in the normal course of business ~~which is not readily available to the public.~~

(i) “Special Requests” means any request whereby the information requested includes either a compilation of data or records which are not routinely compiled or kept at the same level of detail or format as requested by the Department in the normal course of business. Rather, requested information is contained in the data or records which are electronically mined pursuant to the special request and require additional preparation and expense. **“Routine Request” means any request for public records in final form created for the express purpose of public distribution routinely provided at no cost and intended for mass distribution, including, but not necessarily limited to, Commission Regulations, Commission Policies, seasonal hunting, fishing and other informational brochures, and information that the Department has presented in a public forum.**

(j) “Secondary Custodian” means division, agency officer or employee of the Department or Commission that provides for only the processing or storage of a state agency public record for which the Department or Commission is not the owner.

(j) “Sportsmen’s List Request” means any request for public records created by the Department for distribution through the Product Sales section. The Sportsmen’s List includes

records from the Single License Draw (SLD) database, the Over the Counter (OTC) database or the Boats Management database.

Section 4. Disclosure. Information requests for **Public** records produced by the Department or Commission shall be available for ~~examination~~ **inspection** during established **Department** business hours of the Department **at a time designated by the custodian. The public shall not be allowed access to Department computers, unless authorized by the Official Custodian.** All requests for access to, or examination of, records for copying or other lawful purposes, which the Department or Commission is a secondary custodian, shall come from the official custodian of the public record as defined in W.S. §16-4-201(a)(ii). Any other person seeking information held by the Department or Commission as a secondary custodian shall be directed to make such request to the official custodian of that specific public record.

Section 5. Exception to Disclosure. Those documents classified by law as Privileged and Confidential **Records** and copyrighted or patented shall not be available to public inspection, ~~except at the discretion of the Department or Commission.~~ **Documents listed in W.S. § 16-4-203 may not be available for inspection.**

Section 6. Fees and Payments for Records Requests. This section is promulgated by authority of W.S. §16-4-204.

(~~ha~~) The following fee schedule ~~has been adopted by the Commission for~~ **shall be used by the** Department ~~use in processing~~ **Public Records requests** ~~Requests:~~

Certified Copies.....	\$ 2.00 \$3.00 per page is to be added to the Photocopy Charges. (i.e., \$2.50 \$3.50 per page for the first 10 pages and \$2.15 \$3.25 for each additional page.)
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Copies of Previously Issued Licenses..	\$10.00 per copy, per license.
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Documents Created for Distribution in a Public Forum.....

No charge for the 1st copy of a document; below listed photocopy charges for any additional copies.

Electronic Mining Format.....	Costs of producing a copy, costs of constructing the record, including costs of programming and data mining to construct an electronic record , computer service assessed at \$31.00 \$40.00 /hour; 1 hour minimum charge. If the request requires Wyoming State Mainframe use to retrieve or compile information, the requester shall, also pay the direct costs billed to Game & Fish by the Department of A & I for use of the State's Mainframe.
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Employee Time.....	The actual cost for employee time shall be assessed at \$14.00/hour for clerical time and \$24.00/hour for professional time. <u>\$25.00/hour.</u>
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Excessive ~~Non-Fee~~ **Routine** Requests... Cost of providing pamphlets, information, brochures and other items in excess of five **(5) of each type of item requested** shall be the actual cost incurred by the Department in purchasing or producing the material.

Media Items
(One-Time Reproduction Rights)
Still Images in Digital Format.....
Video.....

\$150.00/image.
\$65.00/second.

National Wetland Inventory Maps...

Mylar ~~\$2.48~~ **\$5.00**/map, paper ~~\$0.28~~ **\$2.50**/map.

Off-Sight Records Examination.....

Non-Departmental office/viewing room fee, if any.

Photocopy Charges.....

First five (5) copies are free; for pages 6-16 shall be \$.50 per page **for the first ten (10) pages;** and \$.25 per page for each additional page **thereafter. The Department may, at its discretion, utilize non-Departmental facilities for photocopying; any such costs shall be paid by the requestor.**

Postage and Handling.....

Postage and handling fees (if necessary) **will shall** be assessed at the cost of the postage and mail cartons or packages.

Limited Time/Emergency Requests...

In limited time/emergency situations, personnel time fees will be doubled.

Big Game Seasonal Range Maps.....

Mylar \$4.65/map, paper \$0.52/map

(b) The following fee schedule shall be used by the Department in processing Sportsmen's Lists Requests:

————(aj) Main sources of special request records are the Single License Draw database (SLD), the Over The Counter database (OTC), and the Boat Owner database (Boats).—A rate of \$.005 per record shall be charged for the entire list. ~~Special requests~~ **Requests** for modified lists not equal to the total record count of the main source shall be segmented by species for the SLD, license type or permit type for the OTC, if not species specific, and by registration status for **the Boats Management Database.** A minimum rate of \$.01 per record shall be charged and shall increase based on the percentage decrease from the record count of the segmented list source.

(~~ii~~) Minimum charge for special requests of records \$25.00; Less than **one hundred** (100) records, \$1.00 per record.

(~~iii~~) Special requests for a modified list:

<u>% of Segmented List</u>	<u>Cost per Record</u>
100	\$0.01
70-90	\$0.015

50-69	\$0.0155
40-49	\$0.02
30-39	\$0.025
20-29	\$0.03
10-19	\$0.05
5-9	\$0.06
2-4	\$0.10
.05-1.99	\$0.15

(iii) The included fields are: First name, Last name, Mailing Address, City, State and Zip Code. Additional fields will be charged at a rate of \$5.00 per field, per 1,000 records, with a minimum charge of \$5.00 per field.

(iv) ~~Special~~ **Sportsmen's List** requests shall be referred to ~~Alternative Enterprises~~ **Product Sales**, Wyoming Game and Fish Department, 5400 Bishop Blvd., Cheyenne, Wyoming 82006, 307-777-4570. A record of all ~~special~~ **Sportsmen's List** requests shall be recorded and maintained by ~~Alternative Enterprises~~ **Product Sales** for inspection by the public.

~~(b) Fees for processing requests which require copies of records shall be as set out in subsection (h) herein. Information requests shall be submitted in writing to the Office of the Director, Wyoming Game & Fish Department, 5400 Bishop Blvd., Cheyenne, WY 82006.~~

~~(c) Non fee requests need not be submitted in writing, nor to the Office of the Director, but shall be directed to appropriate Department personnel.~~

~~(d) Fees for examination of records whereby the examination will require facilities other than the offices of the Department shall be as set forth in subsection (h) herein.~~

(e) A retainer shall be required in advance of processing a **Public Records Request** ~~record request~~ whereby, in the estimation of the record custodian, the total cost of processing the record request will exceed ten dollars (\$10.00). The ~~record~~ custodian shall determine the estimated cost of processing the records request and require the requesting person or entity submit that amount as a retainer. After the request has been processed, if the actual cost of processing the request was greater than the amount received as a retainer, the ~~record~~ custodian shall contact the requestor and require they submit the difference before releasing the ~~information~~ **public records**. If the actual cost of processing the request was less than the amount received as a retainer, the ~~record~~ custodian shall refund the difference. No copies of records shall be released without receipt of payment in full.

(f) ~~Postage and handling~~ may be added to any requests for copies mailed or delivered.

~~(g) The Department shall respond to records requests within ten (10) working days if the record or other information is readily retrievable by the Department or Commission. If the records requested are not readily retrievable, the applicant shall be notified that additional time will be needed to respond to the request.~~

~~_____ (i) All requests for information regarding either pending or possible litigation is confidential and should be immediately referred to the appropriate Division Administration.~~

(je) All **Public Records Requests** which require payment ~~should~~ **shall** be recorded using an invoice. All payments shall be transmitted to the Fiscal Division for deposit with the State Treasurer. Once the work has been completed, a copy of the invoice and the payment ~~should~~ **shall** be sent to the Office of the Director in the Cheyenne office.

~~_____ (k) Nothing herein shall be interpreted as requiring any fee be paid for mere examination of records.~~

~~_____ **Section 7. (f) Requests from Governmental Entities.** Requests from the Federal Government, its agencies, other states and their agencies, other Wyoming State Agencies, Wyoming Counties, municipalities, power districts, conservation districts, the Wyoming Legislature, Legislative Service Office, libraries and requests from individual legislators, in their legislative capacity, for records shall be furnished free of charge; **any fee waivers not included in this subsection shall be at the discretion of the Commission.**~~

(g) Nothing herein shall be interpreted as requiring any fee be paid for mere examination of public records; excepting costs of electronic mining and costs of employee time to compile the records request. If examination requires non-Department owned facilities, the person making the request shall be charged the cost of providing the facilities. A Department employee shall oversee the records examination if personnel from the non-Department facility are not present. A fee for the employee's time shall be charged.

Section 7. Request Procedures.

(a) Public Records Requests shall be submitted in writing to the Official Custodian, Office of the Director, Wyoming Game and Fish Department, 5400 Bishop Blvd., Cheyenne, WY 82006.

(b) Routine or Sportsmen's List requests need not be submitted in writing, nor directed to the Official Custodian.

Section 8. Inspection Notification and Release of Records

(a) A record may contain privileged and confidential information or information exempt from disclosure. Consequently, Public Records Requests may require review by the Department's Attorney General Representative, and therefore may not be readily available. The Official Custodian shall notify the requestor within seven (7) business days if the records are not readily available.

(b) If a routine record or Sportsmen's List is readily available, the custodian shall release the record immediately to the requestor, unless the release will impair or impede the Department's ability to discharge its other duties or a fee is required.

(c) If a routine record or Sportsmen's List is not readily available, the custodian shall notify the requestor within seven (7) business days that the records are not readily available.

Section 99. Disclaimer. The Commission and Department assume no responsibility for the illegal or fraudulent use of any information provided by this regulation.

Section 10. Savings Clause. If any provision of this regulation shall be held to be illegal or unconstitutional, such a ruling shall not affect other provisions of this regulation which can be given effect without the illegal or unconstitutional provision; and, to this end, the provisions of this regulation shall be severable.

WYOMING GAME AND FISH COMMISSION

By: _____
~~Bill Williams, DVM~~ **Aaron Clark**, President

Dated: ~~July 20, 2007~~ **March 20, 2013**