



## Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised September 2016

### 1. General Information

a. Agency/Board Name		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Agency Liaison		f. Agency Liaison Telephone Number
g. Agency Liaison Email Address		
h. Date of Public Notice		i. Comment Period End Date
j. Public Comment URL or Email Address:		
k. Program		

### 2. Legislative Enactment For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No.  Yes. Please provide the Enrolled Act Numbers and Years Enacted:

### 3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.  
*Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.*

Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed

**4. Public Comments and Hearing Information**

a. A public hearing on the proposed rules has been scheduled.  No.  Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons 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 Agency Liaison listed in Section 1 above.

**5. Federal Law Requirements**

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements.  No.  Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
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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: \_\_\_\_\_

**6. 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 attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):

The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate 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: \_\_\_\_\_

Not Applicable.

**7. Additional APA Provisions**

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

\_\_\_\_\_ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

\_\_\_\_\_ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: 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 (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

**8. 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>	

DEPARTMENT OF INSURANCE

STATE OF WYOMING

IN THE MATTER OF THE AMENDMENT )  
OF CHAPTER 32 OF THE WYOMING )  
DEPARTMENT OF INSURANCE RULES )  
AND REGULATIONS, ) Docket No. 16-18

STATEMENT OF PRINCIPAL REASONS

FOR

The Amendment of Chapter 32 of the Wyoming Insurance Department Regulations

The Department of Insurance (DOI) originally promulgated Chapter 32 of its Rules and Regulations in 1966. This regulation has been revised on at least two occasions, with the last substantive revision being completed in 1997.

On or about November 25, 2013, Governor Mead required all State Agencies to reduce their Rules both in number and in length. In addition, the Wyoming Office of Administrative Hearings promulgated its Chapter 2 Uniform Rules for Contested Case Practice and Procedure (Uniform Regulation) effective October 17, 2014. All Wyoming agencies have been encouraged to adopt the Uniform Regulation.

The DOI has reviewed Chapter 32 to determine the extent to which the Uniform Regulation could be adopted. Certain statutes contained in Title 26 (“the Insurance Code”) require specific procedural requirements that are different from other agencies. For example, W.S. § 26-2-125(e) requires a contested hearing be held within thirty (30) days from the date the request for a hearing is made by either party. This statutory timeframe is considerably different than the timeframe for administrative hearings for other agencies. This statutory

requirement, among others, prevents the DOI from adopting the entirety of the Uniform Regulation as currently written. In addition, the DOI's existing Chapter 32 contains certain procedures that are helpful in a contested case that are not addressed in the Uniform Regulation. For example, Chapter 32, Section 17, addresses the payment for a court reporter in the event a transcript of the contested case proceeding is necessary. Compensation for a court reporter is not addressed in the Uniform Regulation. For these reasons, the DOI has adopted significant portions of the Uniform Regulation, but has retained portions of its current Chapter 32 that are statutorily required or not addressed in the Uniform Regulation.

In revising Chapter 32, and in light of the Governor's mandate to reduce the length of the regulation, the DOI considered adopting by reference the relevant portions of the Uniform Regulation. By doing so, the DOI could have substantially reduced the number of words in its amended Chapter 32. However, the majority of the litigants appearing before the DOI in contested cases are *pro se*. Because of this circumstance, and the fact that the DOI is retaining certain portions of its existing Chapter 32, the DOI elected to restate the applicable sections of the Uniform Regulation in its amended Chapter 32, rather than incorporating those sections by reference. This was done in an attempt to reduce the need for *pro se* litigants to reference two agency regulations to determine the proper procedure before the Department.

Unfortunately, given the above circumstances, the goal of a 30% reduction in the length of Chapter 32 has not been met. In fact, the amended Chapter 32 contains almost twice as many words as the prior version. Although the goal of a 30% reduction in length has not been met, the changes to Chapter 32 have resulted in increased procedural

consistency among Wyoming agencies. This increase in procedural consistency has been accomplished while still maintaining the statutory procedural requirements contained in the Insurance Code, as well as certain procedures that are not addressed in the Uniform Regulation.

## Chapter 32

### RULES OF PRACTICE AND PROCEDURE FOR CONTESTED CASES

#### **Section 1. Authority and Applicability.**

These rules apply to contested cases and other proceedings before the as appropriate, and are promulgated pursuant to W.S. §§ 26-2-108 through 26-2-111, and 16-3-101 *et seq.*

#### **Section 2. Incorporation by Reference.**

(a) The rules below, adopted on December 7, 2016 and effective March 1, 2017, are incorporated by reference and can be found at:  
<http://www.courts.state.wy.us/Supreme/CourtRules>.

- (i) Rule 26, Wyoming Rules of Civil Procedure.
- (ii) Rule 28 through 36, Wyoming Rules of Civil Procedure.
- (iii) Rule 37, except 37(b)(1) and 37(b)(2), Wyoming Rules of Civil Procedure.

#### **Section 3. Definitions.**

The following definitions are applicable to this Chapter. Terms not defined herein shall use the definitions set forth and contained in the Wyoming Insurance Code and the Administrative Procedure Act.

(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 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 an agency after an opportunity for hearing.

(c) “Department” or “agency” means the Wyoming Department of Insurance.

(d) "Hearing" means any proceeding in which the Petitioner and Respondent have the opportunity to present arguments to a Hearing Officer regarding a contested case brought pursuant to W.S. §§ 26-2-108 to 26-2-111, or W.S. §§ 16-3-107 to 16-3-113. The term “hearing” does not apply to informal appearances before the commissioner or his designee, including those matters arising under W.S. §§ 16-3-102 to 16-3-106.

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

(f) “Office” means the Office of Administrative Hearings.

(g) "Petitioner" means the person or entity seeking relief through the contested case proceeding.

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

(i) "Respondent" means the person or entity against whom relief is being sought through the contested case proceeding.

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

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

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

(b) Parties to a contested case are encouraged to resolve the contested case through settlement, informal conference, mediation, arbitration, or other means throughout the duration of a contested case.

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

#### **Section 5. Commencement of Hearings.**

The following procedures shall be followed for contested cases before the Department:

(a) All contested case hearings shall commence by filing a written petition, complaint, notice, order, or notice to show cause.

(b) The petition, complaint, order, notice, or notice to show cause shall contain all



information required by Section 14(a), and set forth, in ordinary and concise language, a statement of the nature of the contested case.

(i) Unless otherwise provided for in the notice, order, complaint, or petition the Respondent(s) shall be allowed twenty (20) days from the date of the certificate of service to file an answer or responsive pleading with the Department.

(ii) If any Respondent fails to answer or otherwise appear within the time allowed, and provided that all rules of service have been followed, the Respondent(s), shall be in default. Any allegations of the complaint, petition, or order, or notice to show cause may be taken as true and an order of the commissioner entered accordingly.

(c) All other matters brought to hearing pursuant to the Wyoming Insurance Code, any other lawful rule, regulation, or order of the commissioner, shall be commenced by filing a Notice of Hearing setting forth the reasons and authority of said hearing and indicating the date, time, and place of said hearing.

#### **Section 6. Referral to Office.**

(a) Upon referral to the Office to conduct a contested case, the 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 agency shall submit a transmittal sheet, on a form provided by the Office, sufficiently identifying the contested case, including:

- (i) the name of the agency;
- (ii) the names of the known parties and their attorneys or representatives;
- (iii) a concise statement of the nature of the contested case;
- (iv) notification of any time limits for the setting of a hearing or entry of a decision, location requirements, and anticipated special features or unique requirements; and
- (v) certification by an authorized officer of the agency that all parties have been properly served with a true and complete copy of the transmittal form.

#### **Section 7. Referral to Hearing Officer Other than the Office.**

When the agency refers a contested case to a hearing officer other than the Office, or when the agency retains a contested case, the agency shall comply with any referral requirements of that hearing officer.

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

(a) The Department may refer, assign, or designate a hearing officer to preside over any contested case, unless otherwise provided by law. When appropriate under applicable law or at the Department's request, the hearing officer may provide a recommended decision.

(b) Upon referral for contested case by the 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 agency for entry of a final decision.

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

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

- (i) has been engaged as counsel in the action prior to being appointed as hearing officer;
- (ii) has an interest in the outcome of the action;
- (iii) is related by consanguinity to a party;
- (iv) is a material witness in the action;
- (v) is biased or prejudiced against the party or the party's attorney or representative; or
- (vi) any other grounds provided by law.

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

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

## **Section 9. Appearances and Withdrawals.**

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

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

(i) the attorney wishes to withdraw;

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

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

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

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

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

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

(d) The filing of an answer or other appearance by an attorney constitutes his appearance for the party for whom the pleading is filed. Any person appearing before the commissioner, or hearing officer, at a hearing in a representative capacity shall be precluded from examining or cross-examining any witness unless such representative is a Wyoming licensed attorney, or a non-resident attorney granted pro hac vice status or a representative of the Department designated by the commissioner. This rule shall not be construed to prohibit any person from representing himself. Any person appearing must abide by the Wyoming Rules of Civil Procedure and the Wyoming Rules of Evidence so far as they are applicable under these rules and the Wyoming Administrative Procedure Act.

#### **Section 10. Ex Parte Communications.**

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

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

(a) In all contested cases, the parties shall file all original documents, pleadings, and motions with the Department, as applicable, with true and correct copies of the particular document, pleading, or motion properly served on all other parties and the hearing officer, accompanied by a certificate of service. The Department shall maintain the complete original file, and all parties and the hearing officer shall be provided copies of all contested case documents, pleadings, and motions contained therein.

(b) Filing and service under this rule shall be made either by hand delivery or by U.S. mail transmittal to the last address of record. The Department permits filing and service by e-mail or facsimile. Parties wishing to file by means other than those described in this Section shall obtain preapproval from the hearing officer.

(c) Service by mail shall be deemed to have been served as stated in W.S. 26-2-126(c).

#### **Section 12. Computation of Time.**

In computing any period of time prescribed or allowed by these rules, by order or by any applicable statutes or regulations, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have made agency offices inaccessible, in which event the period runs until the end of the following day which is not one of the aforementioned days.

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

The hearing officer shall establish all filing deadlines in the Notice of Hearing, Pretrial Order or in accordance with W.S. Title 26 and the applicable Wyoming Rules of Civil Procedure.

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

- (a) The hearing officer or the agency, as applicable, shall assign a docket number to each contested case. All papers, pleadings, motions, and orders filed thereafter shall contain:
- (i) a conspicuous reference to the assigned docket number;
  - (ii) a caption setting forth the title of the contested case and a brief designation describing the document filed;
  - (iii) the name, address, telephone number, and signature of the person who prepared the document; and
  - (iv) an e-mail address and/or fax number to allow for electronic service, unless otherwise ordered.
- (b) The hearing officer shall set the course of proceedings, which may include, but is not limited to, scheduling informal conferences, confidentiality issues, summary disposition deadlines, motion practice, settlement conferences, and the evidentiary hearing.
- (c) Prehearing conferences may be held at the discretion of the hearing officer. Any party may request a prehearing conference to address issues such as discovery, motion deadlines, scheduling orders, or status conferences.
- (d) At the hearing officer's discretion, and unless otherwise provided by the agency, telephone or videoconference calls may be used to conduct any proceeding. At the discretion of the hearing officer, parties or their witnesses may be allowed to participate in any hearing by telephone or videoconference.
- (e) The hearing officer shall determine the location for proceedings.

**Section 15. Consolidation.**

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

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

- (a) A motion for a continuance of any scheduled hearing shall be in writing, state the reasons for the motion, and be filed and served on all parties and the hearing officer. A request

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

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

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

### **Section 17. Discovery.**

(a) The taking of depositions and discovery shall be in accordance with the Notice of Hearing, Pretrial Order or in accordance with W.S. Title 26.

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

### **Section 18. Subpoenas.**

(a) 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.

(b) Witnesses who are summoned to appear at a hearing are entitled to the same fees as are paid for witnesses in the district courts of the State of Wyoming. Costs may be awarded to the prevailing party at the discretion of the Hearing Officer; but costs against the State of Wyoming, its officers or agencies, shall be imposed only to the extent permitted by law.

### **Section 19. Summary Disposition.**

Wyoming Rules of Civil Procedure, Rules 12(b)(6), 52(c), 56.1, and 56, apply to contested cases.

### **Section 20. Prehearing Procedures.**

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

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

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

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

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

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

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

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

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

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

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

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

## **Section 21. Burden of Proof.**

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

## **Section 22. Evidence.**

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

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

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

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

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

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

(b) Each party shall have the opportunity to cross-examine witnesses, in accordance with Section 9(d). The hearing officer may allow cross-examination on matters not covered on direct examination.

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

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

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

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

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



(d) Hearings shall be conducted in accordance with the following order of procedure unless otherwise modified by the Hearing Officer after notice to the parties:

(i) The Hearing Officer shall announce that the hearing is convened upon the call of the docket number, title of the matter and case to be heard, and shall note for the record all subpoenas issued and all appearances of record, including counsels of record.

(ii) The Petitioner shall then proceed to present his evidence. Witnesses may be cross-examined by the Respondent or Respondents. All exhibits offered by and on behalf of the Petitioner shall be marked by letters of the alphabet beginning with "A".

(iii) The Respondent or Respondents shall, in the order of answers or appearances made, be heard in the same manner as the Petitioner's evidence, witnesses and exhibits have been heard and presented. Each Respondent's exhibits shall be marked separately so as to identify the respective Respondents and numbered commencing with the number "1".

(iv) All persons testifying at any hearing before the Hearing Officer shall be administered the following by the Hearing Officer:

(A) "Do you swear (or affirm) to tell the truth, the whole truth and nothing but the truth?"

(e) Disrespectful, disorderly or contemptuous conduct, refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct, at any pre-hearing or hearing, shall constitute grounds for immediate exclusion from the hearing or pre-hearing.

(f) In all matters before the commissioner, or his designee, the commissioner may request the Attorney General of the State of Wyoming, or a representative of his staff, to be present to assist and advise the commissioner, his designee, or the Department.

(g) After all proceedings have been concluded, the Hearing Officer shall dismiss and excuse all witnesses and declare the hearing closed. Either party who wishes to file written briefs of law and proposed findings of fact and conclusions of law and order may do so.

#### **Section 24. Default.**

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

#### **Section 25. Settlements.**

Parties shall promptly notify the hearing officer of all settlements, stipulations, agency orders, or any other action eliminating the need for a hearing. When the contested case has

settled, the agency may enter an order, on its own motion, dismissing the case.

**Section 26. Expedited Hearing.**

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

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

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

**Section 27. Recommended Decision.**

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

**Section 28. Final Decision.**

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

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

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

(d) If the Hearing Officer is not the commissioner, the Hearing Officer shall, immediately following the full and complete hearing, prepare and forward to the commissioner recommended findings of fact and conclusions of law.

(i) If upon reviewing the recommended findings of fact and conclusions of law the commissioner finds them to be sufficient to meet the requirements of the law, the commissioner shall enter a decision and order adopting the same which shall then be distributed in accordance with this Section.

(ii) If upon reviewing the recommended findings of fact and conclusions of law the commissioner determines they are not sufficient to meet the requirements of the law, he may remand the matter for additional or more complete findings of fact and conclusions of law.

### **Section 29. Record of Proceeding.**

(a) Hearings in all contested cases or as otherwise required by law, including all testimony, shall be reported or preserved, verbatim by any appropriate means determined by the Hearing Officer. The compensation of a reporter shall be paid by the party or parties requesting such reporter. If a transcript of testimony is required by the Hearing Officer, the cost thereof shall be paid by the Department, or as otherwise provided by law. The Hearing Officer may direct any party or parties to assume the cost of the transcript if transcribed at his or their request. This rule shall not be construed to prohibit any party in any public hearing from providing for a reporting or preservation of the proceedings thereof, provided the same is produced at his expense.

(b) Compensation of Reporter.

(i) The reporter shall be paid by the party or parties requesting such reporter.

(A) If a transcript of testimony is required by the Hearing Officer, the cost thereof shall be paid by the Department, or as otherwise provided by law.

(B) The Hearing Officer may direct any party or parties to assume the cost of the transcript if transcribed at his or their request.

(c) This rule shall not be construed to prohibit any party in any public hearing from providing for a reporting or preservation of the proceedings thereof, provided the same is produced at his expense.

(d) Transcript in the event of appeal:

(i) In case of an appeal to the district court, the party appealing shall obtain and file a transcript of the testimony and all other evidence offered at the hearing.

(ii) The transcript must be verified by the oath of the person who transcribed the testimony as a true and correct transcript of the testimony and other evidence in the case.

(iii) The compensation for the person preparing the transcript and all other

costs involved in the appeal shall be paid by the party filing the appeal.

**Section 30. Effective Date.**

These regulations shall become effective upon filing with the Secretary of State.

Chapter 32  
RULES OF PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT  
OF INSURANCE, STATE OF WYOMING (Amended)  
FOR CONTESTED CASES

**Section 1. Authority and Applicability.**

(i) ~~These rules apply to contested cases and other proceedings before the commissioner as appropriate, and are promulgated by authority of the Wyoming Insurance Code (particularly pursuant to W.S. §§ 26-2-108 through 26-2-111, W.S. 1977) and provisions of the Wyoming Administrative Procedure Act (and 16-3-101 et seq., W.S. 1977). These rules shall apply to contested cases as defined in the Administrative Procedure Act and to other formal proceedings before the Commissioner or as the Commissioner deems appropriate.~~

**Section 2. Incorporation by Reference.**

(a) The rules below, adopted on December 7, 2016 and effective March 1, 2017, are incorporated by reference and can be found at: <http://www.courts.state.wy.us/Supreme/CourtRules>.

- (i) Rule 26, Wyoming Rules of Civil Procedure.
- (ii) Rule 28 through 36, Wyoming Rules of Civil Procedure.
- (iii) Rule 37, except 37(b)(1) and 37(b)(2), Wyoming Rules of Civil Procedure.

**Section 3. Definitions.**

~~By reference, all of The following definitions are applicable to this Chapter. Terms not defined herein shall use the definitions set forth and contained in the Wyoming Insurance Code and the Administrative Procedure Act, are incorporated herein. For the purpose of hearings to be held here under, the following definitions shall prevail:~~

- (a) ~~"Department". Department means the Wyoming Department of Insurance.~~
- (b) ~~"Commissioner". Means the Wyoming Insurance Commissioner.~~
- (c) ~~"Applicant". The applicant shall be the person, persons, firms, companies, partnerships, associations or corporations, as well as the Commissioner or Department, seeking relief before the Commissioner. The term "applicant" may otherwise be styled "petitioner" or "complainant".~~
- (d) ~~"Respondent". The person, persons, firms, companies, partnerships, associations or corporations, including the Commissioner and the Department, against whom any proceeding or application for relief is brought.~~

(e) ~~"Hearing".— Any "contested case" as defined in the Wyoming Administrative Procedure Act (16-3-101 et seq., W.S. 1977) or any formal proceeding before the Commissioner brought pursuant to any law of the State of Wyoming or rule or regulation of the Department, whether or not the same is adversary in nature.~~

(f) ~~"Hearing Officer".— Means the Wyoming Insurance Commissioner or any qualified person designated or appointed by the Commissioner to hear a particular case or matter coming before the commissioner.~~

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

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

(i) "Department" or "agency" means the Wyoming Department of Insurance.

(j) "Hearing" means any proceeding in which the Petitioner and Respondent have the opportunity to present arguments to a Hearing Officer regarding a contested case brought pursuant to W.S. §§ 26-2-108 to 26-2-111, or W.S. §§ 16-3-107 to 16-3-113. The term "hearing" does not apply to informal appearances before the commissioner or his designee, including those matters arising under W.S. §§ 16-3-102 to 16-3-106.

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

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

(m) "Petitioner" means the person or entity seeking relief through the contested case proceeding.

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

(o) "Respondent" means the person or entity against whom relief is being sought through the contested case proceeding.

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

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

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

(b) Parties to a contested case are encouraged to resolve the contested case through settlement, informal conference, mediation, arbitration, or other means throughout the duration of a contested case.

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

#### **Section 5. Commencement of Hearings.**

The following procedures shall be followed for contested cases before the Department:

(a) ~~All contested case hearings shall be commenced commence by filing a written petition, complaint, notice, or order or notice to show cause, wherein shall be alleged the acts or omissions of acts claimed in violation of the laws and statutes, or any of the lawful rules, regulations or order promulgated by the Commissioner thereunder and by authority thereof, or the notice to show cause pursuant to Section 26-2-126, W.S. 1977. All other matters which are to be brought to hearing pursuant to the Wyoming Insurance Code, any other lawful rule, regulation, or order promulgated by the Commissioner thereunder and by authority thereof, shall be commenced by filing a Notice of Hearing setting forth the reasons and authority of said hearing and indicating the date, time, and place of said hearing.~~

(b) The petition, complaint, order, notice, or notice to show cause shall contain all information required by Section 14(a), and set forth, in ordinary and concise language, a statement of the nature of the contested case.

(i) Unless otherwise provided for in the notice, order, complaint, or petition the Respondent(s) shall be allowed twenty (20) days from the date of the certificate of service to file an answer or responsive pleading with the Department.

(ii) If any Respondent fails to answer or otherwise appear within the time allowed, and provided that all rules of service have been followed, the Respondent(s), shall be in default. Any allegations of the complaint, petition, or order, or notice to show cause may be taken as true and an order of the commissioner entered accordingly.

(c) All other matters brought to hearing pursuant to the Wyoming Insurance Code, any other lawful rule, regulation, or order of the commissioner, shall be commenced by filing a Notice of Hearing setting forth the reasons and authority of said hearing and indicating the date, time, and place of said hearing.

#### **Section 6. Referral to Office.**

(a) Upon referral to the Office to conduct a contested case, the 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 agency shall submit a transmittal sheet, on a form provided by the Office, sufficiently identifying the contested case, including:

(i) the name of the agency;

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

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

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

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

#### **Section 7. Referral to Hearing Officer Other than the Office.**

When the agency refers a contested case to a hearing officer other than the Office, or when the agency retains a contested case, the agency shall comply with any referral requirements of that hearing officer.

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

(a) The Department may refer, assign, or designate a hearing officer to preside over any contested case, unless otherwise provided by law. When appropriate under applicable law or at the Department's request, the hearing officer may provide a recommended decision.

(b) Upon referral for contested case by the 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 agency for entry of a final decision.



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

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

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

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

(iii) is related by consanguinity to a party;

(iv) is a material witness in the action;

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

(vi) any other grounds provided by law.

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

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

### **Section 9. Appearances and Withdrawals.**

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

(b) Prior to withdrawing from a contested case, an attorney shall file a motion to withdraw. The motion for an attorney's withdrawal shall include a statement indicating the manner in which notification was given to the client and setting forth the client's last known

address and telephone number. The hearing officer shall not grant the motion to withdraw unless the attorney has made reasonable efforts to give actual notice to the client that:

- (i) the attorney wishes to withdraw;
  - (ii) the client has the burden of keeping the hearing officer informed of the address where notices, pleadings, or other papers may be served;
  - (iii) the client has the obligation to prepare, or to hire another attorney or representative to prepare, for the contested case and the dates of proceedings;
  - (iv) the client may suffer an adverse determination in the contested case if the client fails or refuses to meet these burdens;
  - (v) the pleadings and papers in the case shall be served upon the client at the client's last known address; and
  - (vi) the client has the right to object within 15 days of the date of notice.
- (c) Prior to withdrawing from a contested case, a representative shall provide written notice of withdrawal to the hearing officer and the agency.
- (d) The filing of an answer or other appearance by an attorney constitutes his appearance for the party for whom the pleading is filed. Any person appearing before the commissioner, or hearing officer, at a hearing in a representative capacity shall be precluded from examining or cross-examining any witness unless such representative is a Wyoming licensed attorney, or a non-resident attorney granted pro hac vice status or a representative of the Department designated by the commissioner. This rule shall not be construed to prohibit any person from representing himself. Any person appearing must abide by the Wyoming Rules of Civil Procedure and the Wyoming Rules of Evidence so far as they are applicable under these rules and the Wyoming Administrative Procedure Act.

#### **Section 10. Ex Parte Communications.**

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

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

- (a) In all contested cases, the parties shall file all original documents, pleadings, and

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

(b) Filing and service under this rule shall be made either by hand delivery or by U.S. mail transmittal to the last address of record. The Department permits filing and service by e-mail or facsimile. Parties wishing to file by means other than those described in this Section shall obtain preapproval from the hearing officer.

(c) Service by mail shall be deemed to have been served as stated in W.S. 26-2-126(c).

### **Section 12. Computation of Time.**

In computing any period of time prescribed or allowed by these rules, by order or by any applicable statutes or regulations, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have made agency offices inaccessible, in which event the period runs until the end of the following day which is not one of the aforementioned days.

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

The hearing officer shall establish all filing deadlines in the Notice of Hearing, Pretrial Order or in accordance with W.S. Title 26 and the applicable Wyoming Rules of Civil Procedure.

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

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

- (i) a conspicuous reference to the assigned docket number;
- (ii) a caption setting forth the title of the contested case and a brief designation describing the document filed;
- (iii) the name, address, telephone number, and signature of the person who prepared the document; and

(iv) an e-mail address and/or fax number to allow for electronic service, unless otherwise ordered.

(v) The hearing officer shall set the course of proceedings, which may include, but is not limited to, scheduling informal conferences, confidentiality issues, summary disposition deadlines, motion practice, settlement conferences, and the evidentiary hearing.

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

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

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

#### **Section 15. Consolidation.**

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

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

(a) A motion for a continuance of any scheduled hearing shall be in writing, state the reasons for the motion, and be filed and served on all parties and the hearing officer. A request for a continuance filed less than five days before a scheduled hearing shall be granted only upon a showing of good cause.

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

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

#### **Section 17. Discovery.**

(a) The taking of depositions and discovery shall be in accordance with the Notice of Hearing, Pretrial Order or in accordance with W.S. Title 26.

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

#### **Section 18. Subpoenas.**

(a) 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.

(b) Witnesses who are summoned to appear at a hearing are entitled to the same fees as are paid for witnesses in the district courts of the State of Wyoming. Costs may be awarded to the prevailing party at the discretion of the Hearing Officer; but costs against the State of Wyoming, its officers or agencies, shall be imposed only to the extent permitted by law.

#### **Section 19. Summary Disposition.**

(a) Wyoming Rules of Civil Procedure, Rules 12(b)(6), 52(c), 56.1, and 56, apply to contested cases.

#### **Section 20. Prehearing Procedures.**

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

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

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

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

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

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

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

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

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

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

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

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

#### **Section 21. Burden of Proof.**

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

#### **Section 22. Evidence.**

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

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

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

(iii) testimony shall be given under oath administered by the hearing officer. Deposition testimony and other prefiled testimony may be submitted as evidence, provided the

testimony is given under oath administered by an appropriate authority, and is subject to cross-examination by all parties;

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

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

(b) Each party shall have the opportunity to cross-examine witnesses, in accordance with Section 9(d). The hearing officer may allow cross-examination on matters not covered on direct examination.

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

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

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

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

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

(d) Hearings shall be conducted in accordance with the following order of procedure unless otherwise modified by the Hearing Officer after notice to the parties:

(i) The Hearing Officer shall announce that the hearing is convened upon the call of the docket number, title of the matter and case to be heard, and shall note for the record all subpoenas issued and all appearances of record, including counsels of record.

(ii) The Petitioner shall then proceed to present his evidence. Witnesses may be cross-examined by the Respondent or Respondents. All exhibits offered by and on behalf of the Petitioner shall be marked by letters of the alphabet beginning with "A".

(iii) The Respondent or Respondents shall, in the order of answers or appearances made, be heard in the same manner as the Petitioner's evidence, witnesses and exhibits have been heard and presented. Each Respondent's exhibits shall be marked separately so as to identify the respective Respondents and numbered commencing with the number "1".

(iv) All persons testifying at any hearing before the Hearing Officer shall be administered the following by the Hearing Officer:

(A) "Do you swear (or affirm) to tell the truth, the whole truth and nothing but the truth?"

(e) Disrespectful, disorderly or contemptuous conduct, refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct, at any pre-hearing or hearing, shall constitute grounds for immediate exclusion from the hearing or pre-hearing.

(f) In all matters before the commissioner, or his designee, the commissioner may request the Attorney General of the State of Wyoming, or a representative of his staff, to be present to assist and advise the commissioner, his designee, or the Department.

(g) After all proceedings have been concluded, the Hearing Officer shall dismiss and excuse all witnesses and declare the hearing closed. Either party who wishes to file written briefs of law and proposed findings of fact and conclusions of law and order may do so.

#### **Section 24. Default.**

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

#### **Section 25. Settlements.**

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

#### **Section 26. Expedited Hearing.**

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

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

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



**Section 27. Recommended Decision.**

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

**Section 28. Final Decision.**

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

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

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

(d) If the Hearing Officer is not the commissioner, the Hearing Officer shall, immediately following the full and complete hearing, prepare and forward to the commissioner recommended findings of fact and conclusions of law.

(i) If upon reviewing the recommended findings of fact and conclusions of law the commissioner finds them to be sufficient to meet the requirements of the law, the commissioner shall enter a decision and order adopting the same which shall then be distributed in accordance with this Section.

(ii) If upon reviewing the recommended findings of fact and conclusions of law the commissioner determines they are not sufficient to meet the requirements of the law, he may remand the matter for additional or more complete findings of fact and conclusions of law.

**Section 29. Record of Proceeding.**

(a) Hearings in all contested cases or as otherwise required by law, including all testimony, shall be reported or preserved, verbatim by any appropriate means determined by the Hearing Officer. The compensation of a reporter shall be paid by the party or parties requesting such reporter. If a transcript of testimony is required by the Hearing Officer, the cost thereof

shall be paid by the Department, or as otherwise provided by law. The Hearing Officer may direct any party or parties to assume the cost of the transcript if transcribed at his or their request. This rule shall not be construed to prohibit any party in any public hearing from providing for a reporting or preservation of the proceedings thereof, provided the same is produced at his expense.

(b) Compensation of Reporter.

(i) The reporter shall be paid by the party or parties requesting such reporter.

(A) If a transcript of testimony is required by the Hearing Officer, the cost thereof shall be paid by the Department, or as otherwise provided by law.

(B) The Hearing Officer may direct any party or parties to assume the cost of the transcript if transcribed at his or their request.

(c) This rule shall not be construed to prohibit any party in any public hearing from providing for a reporting or preservation of the proceedings thereof, provided the same is produced at his expense.

(d) Transcript in the event of appeal:

(i) In case of an appeal to the district court, the party appealing shall obtain and file a transcript of the testimony and all other evidence offered at the hearing.

(ii) The transcript must be verified by the oath of the person who transcribed the testimony as a true and correct transcript of the testimony and other evidence in the case.

(iii) The compensation for the person preparing the transcript and all other costs involved in the appeal shall be paid by the party filing the appeal.

**Section 30. Effective Date.**

These regulations shall become effective upon filing with the Secretary of State.

~~Section 4. —~~ **Petitions, Complaints, Orders or Notices**

~~The applicant desiring, or required by law, to institute a hearing shall prepare and file with the Department a petition, complaint, order, notice or notice to show cause setting forth:~~

~~(a) — The name and address of each respondent.~~

~~(b) — A statement, in ordinary and concise language of the facts upon which the petition, complaint, order or notice to show cause is based, including, whenever applicable,~~

~~particular reference to the statute or statutes, or rules, regulations and orders that the applicant alleges have been violated.~~

~~Section 5. — **Notice of Filing**~~

~~Upon filing of a petition, complaint, order or notice the Department shall provide notice of the filing in conformity with the provisions of the Wyoming Administrative Procedure Act.~~

~~Section 6. — **Service of Notice**~~

~~Notice may be served personally or by mail as provided by the Wyoming Administrative Procedure Act (16-3-107(a), W.S. 1977). Service by mail shall be deemed complete at the date of mailing.~~

~~In addition to the notice above provided, the Hearing Officer may, in his discretion, require additional notice to be given in such manner as he shall direct.~~

~~Section 7. — **Answer or Appearance**~~

~~Unless otherwise provided for in the notice, order, complaint or petition, the respondent or respondents shall be allowed twenty (20) days from the date of such service of notice upon him or them in which time to file in the office of the Department an answer.~~

~~Section 8. — **Docket**~~

~~When a hearing is instituted, it shall be assigned a number and entered with the date of its filing on a separate page of a docket provided for such purpose. The Department shall establish a separate file for each such docketed case in which shall be systematically placed all papers, pleadings, documents, transcripts, evidence and exhibits pertaining thereto, and all such items shall have noted thereon the docket number assigned and the date of filing.~~

~~Section 9. — **Default in Answering or Appearing**~~

~~In the event of failure of any respondent to answer or otherwise appear within the time allowed, and provided that the foregoing rules as to service have been complied with, the respondent or respondents so failing to answer or otherwise plead or to appear, shall be deemed to be in default, and the allegations or statements of the complaint, petition, or order or notice to show cause may be taken as true and the Order of the Commissioner entered accordingly.~~

~~Section 10. — **Subpoenas**~~

~~As authorized by Wyoming's Administrative Procedure Act and Insurance Code (16-3-107 and 26-2-123, W.S. 1977), subpoenas for appearance and to produce books, papers, documents or exhibits will be issued by the Hearing Officer upon written request of any party.~~

### **Section 11. — Hearing**

~~At the date, time and place of hearing as having been set down by the Hearing Officer, and in accordance with the notice given, the Hearing Officer shall hear all matters presented. All issues and matters enumerated and described in the pleadings given shall be presented by the applicant. Parties may be represented personally or by counsel, provided that such counsel be duly authorized to practice law in the State of Wyoming or is otherwise associated at the hearing with one or more attorneys authorized to practice law in this State.~~

### **Section 12. — Order of Procedure at Hearing**

~~Hearings shall be conducted in accordance with the following order of procedure unless otherwise modified by the Hearing Officer after notice to the parties:~~

~~(a) — The Hearing Officer shall announce that the hearing is convened upon the call of the docket number and title of the matter and case to be heard and shall note for the record all subpoenas issued and all appearances of record, including counsels of record.~~

~~(b) — The applicant shall thereupon proceed to present his evidence. Witnesses may be cross-examined by the respondent or respondents. All exhibits offered by and on behalf of the applicant shall be marked by letters of the alphabet beginning with "A".~~

~~(c) — The respondent or respondents shall, in the order of answers or appearances made, be heard in the same manner as the applicant's evidence, witnesses and exhibits have been heard and presented. Each respondent's exhibits shall be marked separately so as to identify the respective respondents and numbered commencing with the number "1".~~

~~(d) — Opening statements may be permitted and rebuttal evidence presented at the discretion and order of the Hearing Officer.~~

~~(e) — Closing statements, at the conclusion of the presentation of evidence, may be made by the applicant and by each respondent. The time for oral argument may be limited by the Hearing Officer.~~

~~(f) — After all proceedings have been concluded, the Hearing Officer shall dismiss and excuse all witnesses and declare the hearing closed. Any party who may wish or desire to tender written briefs of law and proposed findings of fact and conclusions of law and order to the Hearing Officer may do so.~~

### **Section 13. — Witnesses to Be Sworn**

~~All persons testifying at any hearing before the Hearing Officer shall stand and be administered the following by the Hearing Officer:~~

~~"Do you swear (or affirm) to tell the truth, the whole truth and nothing but the truth in this hearing? So help you God."~~

~~Pursuant to 1-2-103 W.S. 1977, persons conscientiously opposed to swearing or to taking any oath may affirm, and are subject to the penalties of perjury as in the case of swearing an oath.~~

#### ~~Section 14. — **Applicable Rules of Civil Procedure to Apply**~~

~~The rules of practice and procedure contained in the Wyoming Rules of Civil Procedure, insofar as the same may be applicable and not inconsistent with these rules, lawful Department regulations, and the laws of the State of Wyoming, including the Wyoming Administrative Procedure Act, shall apply and be followed in hearings before the Hearing Officer.~~

#### ~~Section 15. — **Attorneys**~~

~~The filing of an answer or other appearance by an attorney constitutes his appearance for the party for whom the pleadings is filed. Any person appearing before the Commissioner, or his designee, at a hearing in a representative capacity shall be precluded from examining or cross-examining any witness unless such representative shall be an attorney licensed to practice law in the State of Wyoming, or a non-resident attorney associated with a Wyoming attorney qualified to practice law in the State of Wyoming or a representative of the Department designated by the Commissioner. This rule shall not be construed to prohibit any person from representing himself in any hearing before the Commissioner, or his designee, but any such person appearing personally must abide by the Rules of Civil Procedure and the Rules of Evidence under the laws of the State of Wyoming so far as they are applicable under these rules and under the Wyoming Administrative Procedure Act, W.S. 16-3-101 et seq.~~

#### ~~Section 16. — **Presence of Attorney General**~~

~~In all matters before the Commissioner, or his designee, the Commissioner may request the Attorney General of the State of Wyoming, or a representative of his staff, to be present to assist and advise the Commissioner, his designee, or the Department.~~

#### ~~Section 17. — **Record of Proceedings -- Reporter**~~

~~Hearings in all contested cases or as otherwise required by law, including all testimony, shall be reported or preserved, verbatim by any appropriate means determined by the Hearing Officer. The compensation of a reporter shall be paid by the party or parties requesting such reporter. If a transcript of testimony is required by the Hearing Officer, the cost thereof shall be paid by the Department, or as otherwise provided by law. The Hearing Officer may direct any party or parties to assume the cost of the transcript if transcribed at his or their request. This rule shall not be construed to prohibit any party in any public hearing from providing for a~~

reporting or preservation of the proceedings thereof, provided the same is produced at his expense.

**Section 18. — Depositions**

In all contested cases coming before the Commissioner, the taking of depositions and discovery shall be available to the parties pursuant to 16-3-107 W.S. 1977.

**Section 19. — Decision, Findings of Fact and Conclusions of Law, and Order**

The Commissioner shall, following the full and complete hearing, make and enter a written decision and order containing Findings of Fact and Conclusions of Law. Such decision and order shall be filed with the Department and will, without further action, become the decision and order of the Commissioner. Forthwith upon entry and filing, the Department shall send a copy by prepaid mail to each party, or their attorneys of record.

(a) — Should the Hearing Officer be other than the Commissioner, said Hearing Officer shall, immediately following the full and complete hearing, prepare and forward to the Commissioner recommended findings of fact and conclusions of law. If upon reviewing the recommended findings of fact and conclusions of law the Commissioner finds them to be sufficient to meet the requirements of the law, the Commissioner shall enter a decision and order adopting the same which shall then be distributed in accordance with this Section. If upon reviewing the recommended findings of fact and conclusions of law the Commissioner determines they are not sufficient to meet the requirements of the law, he may remand the matter for additional or more complete findings of fact and conclusions of law or for the purpose of additional hearing and taking of evidence.

**Section 20. — Appeals to District Court**

Appeals to the district court from decisions of the Commissioner are governed by the Wyoming Administrative Procedure Act (16-3-114 and 16-3-115, W.S. 1977) and Rule 12 of the Wyoming Rules of Appellate Procedure.

**Section 21. — Transcript in Case of Appeal**

In case of an appeal to the district court as above provided, the party appealing shall secure and file a transcript of the testimony and all other evidence offered at the hearing, which transcript must be verified by the oath of the person who transcribed the testimony as a true and correct transcript of the testimony and other evidence in the case. The compensation of said person for making the transcript of the testimony and all other costs involved in such appeal shall be borne by the party prosecuting such appeal.

**Section 22. — Exclusions**

Nothing in these rules shall be construed to prohibit the Commissioner from holding informal meetings or proceedings for the purpose of aiding the Commissioner in ascertaining and

determining facts necessary for the performance of his duties.

**Section 23. — Ethical Standards**

~~Disrespectful, disorderly or contemptuous conduct, refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct, at any pre-hearing or hearing, shall constitute grounds for immediate exclusion from the hearing or pre-hearing.~~

**Section 24. — Pre-Hearing Conference**

~~At any time on or before the day of any hearing, the Hearing Officer may direct the parties to appear before the Hearing Officer to consider:~~

- ~~(a) — The simplification of the issues.~~
- ~~(b) — The necessity or desirability of amending the pleadings.~~
- ~~(c) — The possibility of obtaining admissions of fact and of documents to avoid unnecessary proof.~~
- ~~(d) — Formulating procedures to govern the hearing.~~
- ~~(e) — Such other matters as may aid in the disposition of the case.~~

~~Such conferences shall be conducted informally. An order will be prepared which recites the actions taken at the conference, amendments allowed, agreements of the parties and limitation of the issues to those undisposed of by admissions or agreements of counsel and the parties. The pre-hearing order will control the course of the hearing unless modified by the Hearing Officer to prevent manifest injustice.~~

~~If a party determines an order does not fully cover the issues presented, or is unclear, he may petition for a further ruling within ten days after receipt of the order.~~

**Section 25. — Witness Fees**

~~Witnesses who are summoned before the Commissioner, or his appointed designee, are entitled to the same fees as are paid for like service in the district courts of the State of Wyoming. Costs shall be allowed as of course to the prevailing party unless the Hearing Officer otherwise directs; but costs against the State of Wyoming, its officers or agencies, shall be imposed only to the extent permitted by law.~~