



Certification Page Regular and Emergency Rules

Revised August 2023

Emergency Rules (Complete Sections 1-3 and 5-6)

Regular Rules

1. General Information

a. Agency/Board Name* Office of Administrative Hearings - 0270		
b. Agency/Board Address 1800 Carey Avenue, 5th Floor	c. City Cheyenne	d. Zip Code 82002-0270
e. Name of Agency Liaison Marilyn E. Asher	f. Agency Liaison Telephone Number 307-777-6784	
g. Agency Liaison Email Address marilyn.asher@wyo.gov	h. Adoption Date 02/16/2024	
i. Program General Agency, Board or Commission Rules		
Amended Program Name (if applicable):		

* By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular (non-emergency) 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 non-emergency or regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

<input checked="" type="checkbox"/> No. <input type="checkbox"/> Yes. If the rules are new, please provide the Legislative Chapter Number and Year Enacted:	Chapter:	Year:
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3. Rule Type and Information

For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.

a. Provide the Chapter Number, Title* and Proposed Action for Each Chapter. Please use the "Additional Rule Information" form to identify additional rule chapters.

Chapter Number: 5	Chapter Name: Special Rules Relating to Workers' Compensation	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		
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 Repealed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 Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. No. Yes. N/A

b. A public hearing was held on the proposed rules. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:


5. Checklist

a. For regular rules, the Statement of Principal Reasons is attached to this Certification 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

b. For emergency rules, the Memorandum to the Governor documenting the emergency, which requires promulgation of these rules without providing notice or an opportunity for a public hearing, is attached to this Certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct. By electronically submitting the emergency or regular rules into the Wyoming Administrative Rules System, the undersigned acknowledges that the Registrar of Rules will review the rules as to form and, if approved, the electronic filing system will electronically notify the Governor's Office, Attorney General's Office, and Legislative Service Office of the approval and electronically provide them with a copy of the complete rule packet on the date approved by the Registrar of Rules. The complete rules packet includes this signed certification page; the Statement of Principal Reasons or, if emergency rules, the Memorandum to the Governor documenting the emergency; and a strike and underscore copy and clean copy of each chapter of rules.

Signature of Authorized Individual	
Printed Name of Signatory	J.C. DeMers
Signatory Title	Director
Date of Signature	02/16/2024

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	



State of Wyoming
Office of Administrative Hearings

MARK GORDON
GOVERNOR

J.C. DEMERS
DIRECTOR

1800 CAREY AVENUE, FIFTH FLOOR
CHEYENNE, WYOMING 82002-0270
(307) 777-6660
FAX (307) 777-5269

STATEMENT OF PRINCIPAL REASONS

FOR ADOPTION OF RULES

Chapter 5 – Special Rules Relating to Workers Compensation

The Wyoming Trial Lawyers Association requested that the Office of Administrative Hearings (OAH) conduct rulemaking in accordance with W.S. § 16-3-106 to amend Chapter 5, § 3 of the rules to increase the hourly rates for attorney, paralegal and legal assistant fees in Worker's Compensation cases.

The OAH awards attorney fees in Worker's Compensation cases in accordance with W.S. § 27-14-602(d). The vast majority of the awards are for the representation of injured workers. Attorney fees are also allowed for the representation of employers who prevail in defending their Worker's Compensation case. The statute provides that "fees shall be at an hourly rate established by the director of the office of administrative hearings." It is reasonably intended under the current statutory framework that attorney fees will be set at a level that allows injured workers to obtain competent legal representation in pursuit of their Worker's Compensation benefits.

Attorney fees for Worker's Compensation cases have been set at \$150.00 per hour since 2014. Upon consideration of the increases in the rate typically charged for legal services since 2014, the OAH is proposing to make a change to increase attorney fees from \$150.00 to \$180.00 per hour, to ensure that injured workers are able to continue to obtain competent legal representation.

Summary of Rule Comments and Response

There were no comments received that opposed increasing hourly attorney's fees in Worker's Compensation contested case representation to \$180.00 per hour.

There were seven comments received, including one on behalf of Wyoming Trial Lawyers Association and one on behalf of the Wyoming State Bar. The received comments are reasonably summarized as stating that the increase from \$150.00 per hour to \$180.00 per hour is inadequate based on current hourly fees generally charged by Wyoming attorneys, and that paralegal rates should also be increased to be more in accordance with what is typically charged for paralegal services in the state of Wyoming. The comments in general also expressed concern that the increase was not keeping up with inflation and a higher rate of compensation is required to ensure adequate representation of worker's compensation claimants in Wyoming.

There were comments respectively suggesting that attorney fees should be paid at the rate of \$200.00 per hour, \$225.00 per hour, and \$250.00 per hour. The Wyoming Trial Lawyers and the Wyoming State Bar both commented that attorney fees should be increased to \$225.00 per hour. There were also comments respectively suggesting that the paralegal rate should be paid at \$75.00 per hour and \$100.00 per hour.

The Office of Administrative Hearings (OAH) greatly appreciates and has carefully considered the public comments that have been received. In arriving at a fee of \$180.00 per hour, the OAH has looked at the history of attorney fees allowed in Wyoming Worker's Compensation cases and considered that as recently as May of 2008 the fees were set at \$90.00 per hour. The OAH has also attempted to consider fees ordered and allowed by governmental entities in analogous situations in determining the rate of \$180.00 per hour. Although the OAH has determined that it will adopt the current fee of \$180.00 per hour in accordance with its published Notice of Intent to Adopt Rules, the OAH will continue to monitor this matter in the future in light of the comments that were submitted.

CHAPTER 5

SPECIAL RULES RELATING TO WORKERS' COMPENSATION

Section 1. General Construction. These special rules relating to workers' compensation contested case proceedings before the Office are intended to supplement the foregoing provisions of Chapter 2. To the extent that any difference exists, the special rule takes precedence over any foregoing provision.

Section 2. Filing and Service of Papers. In all workers' compensation contested cases, the parties shall file all original documents, pleadings, and motions with the Workers' Compensation Division, with true and complete copies of the particular document, pleading, or motion properly served on all other parties or their attorneys, and this Office. Wyo. Stat. Ann. §§ 27-14-601(n) and 27-14-602.

Section 3. Appointed Attorney.

(a) The hearing examiner may appoint an attorney to represent an employee or claimant.

(b) Upon entry of a final order, an appointed attorney may request payment of reasonable fees and costs. All requests for fees and costs shall be verified and shall detail time spent and work performed. Permitted fees include:

(i) attorney's fees billed at an hourly rate of one hundred eighty dollars (\$180.00);

(ii) paralegal and legal assistant fees billed at an hourly rate of forty dollars (\$40.00). Reimbursable paralegal and legal assistant fees are those tasks requiring legal skill and knowledge. Clerical and secretarial tasks are not reimbursable and shall not be billed at a paralegal or legal assistant rate;

(iii) costs: appointed attorneys may request reimbursement of actual expenses reasonably incurred, with respective invoices/bills attached (e.g. expert witness fees, costs to obtain pertinent medical records, reasonable and customary postage costs, and subpoena costs). Copying costs shall be paid at no more than fifteen cents (15¢) per copy. If reasonably incurred, attorney's travel time shall be paid at one-half the hourly rate for attorney's fees; and

(iv) prevailing employer's attorney fees and costs billed at the rates established in this section in any contested case where the issue is the compensability of an injury.

(c) All requests for fees and costs shall be submitted to the Office within ninety (90) days of the final order. Any request for fees and costs not timely submitted shall be denied unless good cause is shown. Requests for fees and expenses of appointed attorneys shall include the attorney's certification that the fee statement is true and correct. The request shall additionally indicate the source (i.e., from the workers' compensation account, from amounts

awarded to the employee or claimant, or from the employer) from which the fees and expenses are proposed to be paid. Requests shall be properly served on all parties.

(d) No fee shall be awarded in any case in which the hearing examiner determines the claim to be frivolous or without legal or factual justification.

Section 4. Record of Proceedings. The presiding hearing officer shall assure that a record of the proceeding is kept pursuant to Wyoming Statute § 16-3-107(p). The cost of reporting the contested case evidentiary hearing shall be paid in accordance with Wyoming Statute § 27-14-602(c).

Section 5. Referral to the Medical Commission.

(a) Upon agreement of all the parties to a case, the hearing examiner may refer a medically contested case to the Medical Commission for hearing and final decision of all issues in the case.

(b) Upon agreement of all the parties to a case, the hearing examiner may refer a case to the Medical Commission for advice on specified medical issues. The hearing examiner will make the final decision on all issues in the case, and referrals for advice will be made only after the evidence in the case is closed. The parties shall have an opportunity to file written exceptions to the advice received from the Medical Commission and any exceptions, along with the advice received, shall become part of the record in the case.

Section 6. Hearing Deadline. In all workers' compensation cases, the contested case hearing shall be conducted, and the official record closed, no more than eleven (11) months after the first order setting hearing is issued. The hearing examiner shall issue final findings of fact, conclusions of law, and order no more than thirty (30) days after the record is closed.

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