



Notice of Intent to Adopt Rules

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

Revised August 2023

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		
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 regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

☐ No. ☐ 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Chapter Number:	Chapter Name:	☐ New ☐ Amended ☐ Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	☐ New ☐ Amended ☐ Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	☐ New ☐ Amended ☐ Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	☐ New ☐ Amended ☐ Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	☐ New ☐ Amended ☐ Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	☐ New ☐ Amended ☐ Repealed
Amended Chapter Name (if applicable):		

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:

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/repealed 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. ☐ The Agency has completed a takings assessment as required by 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: _____

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 26 OF THE WYOMING)
DEPARTMENT OF INSURANCE RULES)
AND REGULATIONS,) Docket No. 24-02

STATEMENT OF PRINCIPAL REASONS

FOR

THE AMENDMENT OF CHAPTER 26 OF THE WYOMING INSURANCE
DEPARTMENT REGULATIONS

The Department of Insurance proposes to amend Chapter 26 of the Insurance Department regulations. Chapter 26 of the Department's regulations was promulgated originally in 1982 and was last modified on December 9, 2016.

Since the last revision of this regulation, there has been apparent confusion regarding what constitutes obsolete roofing products. The Department is aware of some insurers using the basic category of roofing product in their determination of whether the roofing material is obsolete, instead of investigating the availability of the actual roofing product existing on the insured property at the time of the loss. For example, some insurers interpreted the definition of "obsolete" to mean basic three-tab architectural shingles that are readily available, even when the actual roofing material on the insured property was not available or had not been manufactured for quite some time. By using the mere category of roofing product in their interpretation of obsolete roofing products, insurers may have avoided the consumer protections intended by the regulation.

In addition, pursuant to Wyo. Stat. § 26-13-124, insurers are required to implement reasonable standards for prompt investigations of claims, and are required to effectuate prompt, fair and equitable settlements of those claims. The Department is aware of circumstances where insurers have used photo adjustment procedures to identify color matches for the existing roofing products on the insured property. However, the photo adjustment procedures do not consistently identify the manufacturer, warranty, and other information relevant to the quality of the existing roofing material. The Department is concerned that roofing adjustments made with photo adjustment procedures alone, without consideration of factors effecting the quality of roofing materials, does not meet the requirements of a fair and equitable settlement of claims as required in the insurance code.

The Department understands that there may be difficulty in obtaining the specific roofing products that were installed originally on a given roof, and that requiring an insurance company to match the existing roofing product to the extent possible may result in unreasonable delays and possible increases in costs for roofing repairs or partial replacements. To obviate these concerns, the Department is also revising Chapter 26 to allow consumers to consent to the use of different roofing materials, so long as the consent is in writing and given after full disclosure by the insurer of any adverse consequences that may exist if a different roofing product is used.

Finally, by promulgating the changes to Chapter 26, the Department also seeks to provide guidance regarding what constitutes a fair and equitable settlement of a roofing claim under Wyo. Stat. § 26-13-124. The Department has a long-standing policy position that depreciating the cost of labor for repairing or replacing a roof does not result in a fair and

equitable settlement of a roofing claim. The Department seeks to formalize its depreciation of labor position by including it in the revisions of Chapter 26. By promulgating these changes to Chapter 26, the Department seeks to provide necessary guidance regarding what constitutes a fair and equitable settlement of roofing claims to avoid any ambiguity in the future.

The Department previously promulgated proposed changes to this regulation on February 2, 2024, and public comments were received from multiple sources. The Department has thoroughly reviewed and considered the public comments received. As a result, the Department has made one or more additional proposed changes to this regulation based on the public comments. Since additional changes have been made, the Department is re-promulgating the regulation for further public comment. Specifically, the Department has added clarification regarding the proposed definition of “roofing product.” The proposed definition of roofing product is based on terms commonly used in the roofing industry. However, and based on the public comments received, the Department is not including the term “grit pattern” in the proposed definition because some roofing products, such as tile or metal roofing, would not have a grit pattern.

By making the above-described changes, the Department aims to clarify this regulation to remove any confusion about what is expected of insurers when investigating and adjusting roofing claims, to clarify specific considerations regarding what is a fair and equitable settlement of a roofing claim, and to fully effectuate the consumer protections intended by the regulation.

CHAPTER 26

REGULATION GOVERNING ADJUSTMENT OF DAMAGES TO DWELLING ROOFS UNDER HOMEOWNERS' POLICIES

Section 1. Authority.

These rules and regulations governing the adjustment of roof damage under Homeowners' Policies marketed in the State of Wyoming are promulgated pursuant to W.S. §§16-3-101 through 16-3-106, 26-2-110, 26-2-125, and 26-13-124.

Section 2. Definitions.

(a) “Adjustment” means the investigation and negotiation of settlements relative to insurance claims or the application of the factual circumstances of an insurance claim to the insurance policy provisions, or both, arising under property and casualty insurance contracts.

(b) "Facet" means one continuous side of a roof that has many sides.

(c) “Obsolete” means a roofing product which is no longer manufactured or available for use, and for which there is no roofing product of similar like, kind and quality currently available.

(d) “Roofing product” means the specific construction material used to cover the roof of the insured property. The roofing product on the insured property shall be identified by the manufacturer, material composition, hazard rating, installation method, color, warranty, construction style, dimension, and model number.

Section 3. Adjustment Practices.

(a) If an insured loss causes damage to all facets of the roof of a covered property, the entire roof shall be replaced.

(b) Unless consent is given pursuant to Section 4(a) of this regulation, if the roofing product existing on the insured property at the time of loss is obsolete and there is partial damage, i.e., damage to one or more-facets of the roof but not the entire roof, it shall be construed that the full roof has been damaged and adjustment shall be made on that basis.

(c) Adjustment of a roof claim shall include, but not be limited to, investigation into all usual and customary aspects of a roofing claim and shall include identification of the specific roofing product on the insured property.

(i) Investigation to determine the roofing product existing on the insured property may include photographic documentation of the roofing material, but photographic documentation of the roofing product in and of itself is insufficient to meet the requirement of a

reasonable investigation required by Wyo. Stat. 26-13-124.

(ii) No insurer shall depreciate the cost of labor associated with the installation and tear-off of roofing products when adjusting a roofing claim.

Section 4. Consent of the insured.

(a) Pursuant to Subsection 3(b) of this regulation, if the insured consents in writing in advance, and the roofing product is obsolete, a different roofing product may be used in the repair or replacement of damaged facets of the roof of an insured property to the insured's satisfaction.

(i) Consent provided pursuant to Subsection (a) of this section shall only be valid so long as the insurer who seeks repair or replacement of one or more facets, but less than replacement of the entire roof, fully disclosed any known effect of the repair or replacement on underwriting standards, on value of the property, on future insurability, and on any existing roof warranty.

(b) Any consent provided by the insured pursuant to this Section must be retained by the insurer for not less than five (5) years and be made available for inspection by the Commissioner upon request.

Section 5. Effective Date.

This regulation shall become effective upon filing with the Secretary of State.

CHAPTER 26

REGULATION GOVERNING ADJUSTMENT OF DAMAGES TO DWELLING ROOFS UNDER HOMEOWNERS' POLICIES

Section 1. Authority.

These rules and regulations governing the adjustment of roof damage under Homeowners' Policies marketed in the State of Wyoming are ~~initiated to supplement~~ promulgated pursuant to W.S. § 26-15-113. They are promulgated by authority of and pursuant to the W.S. §§16-3-101 through 16-3-115~~106~~, and W.S. §§ 26-2-110, and 26-2-125, and 26-13-124.

Section 2. Definitions.

(a) "Adjustment" means the investigation and negotiation of settlements relative to insurance claims or the application of the factual circumstances of an insurance claim to the insurance policy provisions, or both, arising under property and casualty insurance contracts.

(b) "Facet" means one continuous side of a roof that has many sides.

(c) "Obsolete" means a roofing product which is no longer manufactured or available for use, and for which there is no roofing product of similar like, kind and quality currently available.

(d) "Roofing product" means the specific construction material used to cover the roof of the insured property. The roofing product on the insured property shall be identified by the manufacturer, material composition, hazard rating, installation method, color, warranty, construction style, dimension, and model number.

Section 23. Adjustment Practices.

(a) If an insured loss causes damage to all facets of the roof of a covered property, the entire roof shall be replaced.

(b) Unless consent is given pursuant to Section 4(a) of this regulation, if If the shingles roofing product existing on the insured property at the time of loss are is obsolete and there is partial damage, i.e., a full slope of the roof damage to one or more facets of the roof but not the entire roof, it shall be construed that the full roof has been damaged and adjustment shall be made on that basis.

(c) Adjustment of a roof claim shall include, but not be limited to, investigation into all usual and customary aspects of a roofing claim and shall include identification of the specific roofing product on the insured property.

(i) Investigation to determine the roofing product existing on the insured property may include photographic documentation of the roofing material, but photographic documentation of the roofing product in and of itself is insufficient to meet the requirement of a reasonable investigation required by Wyo. Stat. 26-13-124.

(ii) No insurer shall depreciate the cost of labor associated with the installation and tear-off of roofing products when adjusting a roofing claim.

Section 4. Consent of the insured.

(a) Pursuant to Subsection 3(b) of this regulation, if the insured consents in writing in advance, and the roofing product is obsolete, a different roofing product may be used in the repair or replacement of damaged facets of the roof of an insured property to the insured's satisfaction.

(i) Consent provided pursuant to Subsection (a) of this section shall only be valid so long as the insurer who seeks repair or replacement of one or more facets, but less than replacement of the entire roof, fully disclosed any known effect of the repair or replacement on underwriting standards, on value of the property, on future insurability, and on any existing roof warranty.

(b) Any consent provided by the insured pursuant to this Section must be retained by the insurer for not less than five (5) years and be made available for inspection by the Commissioner upon request.

Section 35. Effective Date.

This regulation shall become effective upon filing with the Secretary of State.