



**Certification Page  
Regular and Emergency Rules  
Revised May 2014**

Emergency Rules *(After completing all of Sections 1 and 2, proceed to Section 5 below)*

Regular Rules

<b>1. General Information</b>		
a. Agency/Board Name <b>Administrative Hearings, Office of</b>		
b. Agency/Board Address 2020 Carey Avenue, 5th Floor	c. City Cheyenne	d. Zip Code 82002
e. Name of Contact Person Deborah Baumer	f. Contact Telephone Number 307-777-6660	
g. Contact Email Address deborah.baumer@wyo.gov	h. Adoption Date 9/4/14	
i. Program General Agency, Board or Commission Rules		
<b>2. Rule Type and Information:</b> For each chapter listed, indicate if the rule is New, Amended, or Repealed.		
If "New," provide the Enrolled Act numbers and years enacted: <b>Senate Enrolled Act 47 (2014)</b>		
c. Provide the Chapter Number, Short Title, and Rule Type of Each Chapter being Created/Amended/Repealed <i>(Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification)</i>		
Chapter Number: <b>1</b>	Chapter Name: <b>General Provisions and Definitions</b>	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: <b>2</b>	Chapter Name: <b>Contested Case Proceedings</b>	<input checked="" type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: <b>3</b>	Chapter Name: <b>Evidentiary Hearing and Decision</b>	<input type="checkbox"/> New <input type="checkbox"/> Amended <input checked="" type="checkbox"/> Repealed
Chapter Number: <b>4</b>	Chapter Name: <b>Judicial Review</b>	<input type="checkbox"/> New <input type="checkbox"/> Amended <input checked="" type="checkbox"/> Repealed
Chapter Number: <b>5</b>	Chapter Name: <b>Special Rules Relating to Workers' Compensation</b>	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: <b>6</b>	Chapter Name: <b>Special Rules Relating to Drivers' Licenses</b>	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: <b>7</b>	Chapter Name: <b>Special Rules Relating to Settlement or Alternative Dispute Resolution Services</b>	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: <b>Appendix A</b>	Chapter Name: <b>Statutory and Regulatory References</b>	<input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: <b>Appendix B</b>	Chapter Name: <b>Subpoena</b>	<input checked="" 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
d. <input checked="" type="checkbox"/> The Statement of Reasons is attached to this certification.		
e. If applicable, describe the emergency which requires promulgation of these rules without providing notice or an opportunity for a public hearing:		

**3. State Government Notice of Intended Rulemaking**

a. Date on which the Notice of Intent containing all of the information required by W.S. 16-3-103(a) was filed with the Secretary of State: **July 3, 2014**  
b. Date on which the Notice of Intent and proposed rules in strike and underscore format and a clean copy were provided to the Legislative Service Office: **July 3, 2014**  
c. Date on which the Notice of Intent and proposed rules in strike and underscore format and a clean copy were provided to the Attorney General: **July 3, 2014**

**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.  Yes  No  N/A  
b. A public hearing was held on the proposed rules.  Yes  No

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

**5. Final Filing of Rules**

a. Date on which the Certification Page with original signatures and final rules were sent to the Attorney General's Office for the Governor's signature: **9/4/14**  
b. Date on which final rules were sent to the Legislative Service Office: **9/4/14**  
c. Date on which a PDF of the final rules was electronically sent to the Secretary of State: **9/4/14**

**6. Agency/Board Certification**

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual <i>(Blue ink as per Rules on Rules, Section 7)</i>	
Printed Name of Signatory	Deborah Baumer
Signatory Title	Director
Date of Signature	9/4/14

**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	

**Attorney General:** 1. Statement of Reasons; 2. Original Certification Page; 3. Summary of Comments (regular rules); 4. Hard copy of rules: clean and strike/underscore; and 5. Memo to Governor documenting emergency (for emergency rules only).

**LSO:** 1. Statement of Reasons; 2. Copy of Certification Page; 3. Summary of Comments (regular rules); 4. Hard copy of rules: clean and strike/underscore; 5. Electronic copy of rules (PDFs) emailed to [Criss.Carison@wvleg.gov](mailto:Criss.Carison@wvleg.gov); clean and strike/underscore; and 6. Memo to Governor documenting emergency (for emergency rules only).

**SQS:** 1. PDF of clean copy of rules; and 2. Hard copy of Certification Page as delivered by the AG.



## *State of Wyoming* *Office of Administrative Hearings*

MATTHEW H. MEAD  
GOVERNOR

DEBORAH BAUMER  
DIRECTOR

Handwritten initials "DB" in black ink.

2020 CAREY AVENUE, FIFTH FLOOR  
CHEYENNE, WYOMING 82002-0270  
(307) 777-6660  
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### **STATEMENT OF PRINCIPAL REASONS**

The Wyoming Office of Administrative Hearings (OAH) is submitting proposed changes to all chapters of its Rules. These proposed changes have been made to streamline and reduce the Rules in accordance with Governor Mead's directive; to clarify the Rules and make them easier for attorneys and non-attorneys to use; and to comply with the Wyoming legislature's directives in Senate Enrolled Act 47 (2014).

Chapter 1, General Provisions, is significantly shortened. Sections 7(a) and (b) have been incorporated into Chapter 2, while other sections have been removed entirely as unnecessary.

Chapter 2, Uniform Rules for Contested Case Practice and Procedure, is a substantial rewrite. Chapter 2 is now significantly longer in order to provide uniform contested case rules for all state agencies' use pursuant to Senate Enrolled Act 47. The new version of Chapter 2 includes definitions, incorporations by reference to Wyoming Statutes and Wyoming Rules of Civil Procedure, and comprehensive instructions for contested case practice before OAH and other state agencies. The changes to Chapter 2 were drafted with the assistance of the Wyoming Attorney General's Office and input from 39 of the 68 state agencies, boards, and commissions which were given the opportunity to comment. The proposed changes will allow all other state agencies to adopt Chapter 2 and repeal their own rules for contested case procedure, creating consistency across state agencies and reducing the length and number of those agencies' administrative rules.

Chapter 3, Evidentiary Hearing and Decision, is repealed. Relevant provisions from that chapter have been incorporated into Chapter 2.

Chapter 4, Judicial Review, is repealed. Relevant provisions from that chapter have been incorporated into Chapter 2.

Chapter 5, Special Rules Relating to Workers' Compensation, is renumbered to Chapter 3. Section 3 has been replaced in its entirety. Pursuant to Wyoming Statute § 27-14-602(d) attorney's fees in workers' compensation cases shall be at an hourly rate established by the Director of OAH. The rate for attorney's fees has been increased from \$120.00 per hour to \$150.00 per hour as a result of a formal petition submitted by Representative Nicholas, informal requests by attorneys practicing workers' compensation law, and the Director's discretion. The rate has not been increased since 2008.

Chapter 6, Special Rules Relating to Drivers' Licenses, is renumbered to Chapter 4, and is reduced in length due to a change in the law.

Chapter 7, Special Rules Relating to Settlement or Alternative Dispute Resolution Services, has been renumbered to Chapter 5.

Appendix A was created to make it easier for the public to access statutes and rules referred to in Chapter 2.

Appendix B is a subpoena form required to be used by parties to a contested case hearing.



## *State of Wyoming* *Office of Administrative Hearings*

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### **Summary of Comments and Responses**

During the forty-five day comment period, the Wyoming Office of Administrative Hearings (OAH) received comments from eight agencies or entities, and no requests for public hearing. Concisely, the comments OAH received were as follows:

Generally, the comments received were positive and supportive of the proposed rules, especially concerning Chapter 2: the “Uniform Rules”.

A significant majority of the comments received urged OAH to modify or add language in the proposed Uniform Rules to add clarity to the rules, to achieve consistency across sections, and to correct grammar. OAH modified the proposed rules in response to the comments in some instances but the Attorney General’s office has determined those modifications to be unsubstantial and, therefore, not requiring an additional comment period.

Concerns were raised regarding specific timelines or deadlines specified in Chapter 2 of the proposed rules because those requirements may not apply universally to all agencies adopting the Uniform Rules. With the approval of the Attorney General’s office, those agencies were advised they may elect to “opt out” of adopting specific provisions of the Uniform Rules that conflict with their individual agency requirements and promulgate their own rules.

OAH also received comments urging the deletion of Chapter 2, Section 2(v) and (vi), and Section 19, specifically as those sections provide for dispositive motions and summary judgment proceedings. In accordance with the directives of the Wyoming Supreme Court, summary disposition is available in administrative hearings. After receiving input from several state agencies and the Attorney General’s office, OAH decided to retain those provisions in the Uniform Rules. Agencies who disagree with their inclusion may elect to “opt out” of adopting those specific provisions.

Finally, OAH received comments concerning Chapter 2’s incorporation by reference of some Wyoming Rules of Civil Procedure (WRCP), found in Section 2(a), as well as those Rules’ inclusion in Appendix A. The incorporation and reprinting of the WRCP was done with the advice of the Attorney General’s office, and is intended to provide Wyoming citizens greater access to the administrative hearing process. Additionally, OAH intends to host access to the Uniform Rules and the WRCP on its website in furtherance of that goal.

## **GENERAL PROVISIONS**

### **Chapter 1**

Section 1. Authority. These rules are promulgated by authority of Wyoming Statute §§ 16-3-102 and 9-2-2203.

Section 2. Construction. These rules are to be liberally construed to assure the unbiased, fair, expeditious, and impartial conduct of contested case proceedings before the Office of Administrative Hearings or any Board, Agency, or Commission that uses these Rules. Any procedural rule may be relaxed or modified by the presiding hearing examiner only in the interest of fairness or justice. In the absence of rule, the presiding hearing examiner may proceed in any manner consistent with the intent of these rules.

Section 3. Severability. If any portion of these rules is found to be invalid or unenforceable, the remainder shall remain in effect.

**GENERAL PROVISIONSGeneral Provisions and Definitions**

**Chapter 1**

Section 1. Authority. These rules ~~of practice and procedure~~ are promulgated by authority of ~~WYO. STAT. ANN. §§ Wyoming Statute §§~~ 16-3-102 and 9-2-2203.

~~Section 2. Purpose. These rules are intended to set forth clear and comprehensive procedures for the conduct of contested cases pursuant to the Wyoming Administrative Procedure Act, WYO. STAT. ANN. §§16-3-101 through 16-3-115.~~

~~Section 3. Citation. Citation to these rules shall be "Rules for Contested Case Practice and Procedure Before the Office of Administrative Hearings," or more simply "OAH Rules."~~

~~Section 4. Applicability. These rules shall apply to the conduct of administrative contested cases before the Office of Administrative Hearings, regardless of the identity of the particular agency whose action or inaction is being contested. These rules shall take precedence over all referring agency hearing rules and shall supersede all prior rules of the Office of Administrative Hearings. WYO. STAT. ANN. §§ 9-2-2202 and 9-2-2203.~~

Section 52. Construction. These rules are to be liberally construed to assure the unbiased, fair, expeditious, and impartial conduct of contested case proceedings before the Office of Administrative Hearings or any Board, Agency, or Commission that uses these Rules. Any procedural rule may be relaxed or modified by the presiding ~~officer~~ hearing examiner only in the interest of fairness or justice. In the absence of rule, the presiding ~~officer~~ hearing examiner may proceed in any manner consistent with the intent of these rules.

~~Section 6. General Course of Contested Case Proceedings. Unless otherwise provided by law, proceedings before the Office are governed by the contested case provisions of the Wyoming Administrative Procedure Act and, to the extent their application is not inconsistent with the particular administrative contested case proceeding, the Wyoming Rules of Civil Procedure and other court rules may be looked to for guidance.~~

~~Section 7. Definitions. In addition to those definitions found in WYO. STAT. ANN. § 16-3-101, the following terms are defined as follows:~~

~~(a) "Office" means the Office of Administrative Hearings created by WYO. STAT. ANN. § 9-2-2201; and~~

~~(b) "Referring agency" means any agency which, to the extent legally authorized, requests the Office to conduct the contested case, and includes those agencies which by law must utilize the Office to conduct the contested case. WYO. STAT. ANN. '9-2-2202.~~

Section 83. Severability. If any portion of these rules is found to be invalid or unenforceable, the remainder shall remain in effect.

# UNIFORM RULES FOR CONTESTED CASE PRACTICE AND PROCEDURE

## Chapter 2

**Section 1. Authority and Scope.** These rules are promulgated by authority of Wyoming Statute § 16-3-102(d). These rules shall govern all contested case proceedings before all agencies to the extent they are adopted, and shall be relied upon by hearing officers, adjudicative agencies, and parties in all contested cases before any agency. Agencies may develop forms not inconsistent with these rules.

### Section 2. Incorporation by Reference.

(a) The code, standard, rule, or regulation below is incorporated by reference and can be found at:

<http://www.courts.state.wy.us/WSC/CourtRule?RuleNumber=48>

(i) Rule 12(b)(6), Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on April 11, 1995;

(ii) Rule 24, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on February 11, 1971;

(iii) Rule 45, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on October 1, 2009;

(iv) Rule 52, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on July 1, 2000;

(v) Rule 56, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on October 11, 1964;

(vi) Rule 56.1, Wyoming Rules of Civil Procedure, adopted by the Wyoming Supreme Court and in effect on July 1, 2008;

(b) No later amendments to a code, standard, rule, or regulation listed in subsection (a) of this Section are incorporated by reference.

### Section 3. Definitions.

The following definitions shall apply to this Chapter:

(a) “Adjudicative agency” means an agency authorized to conduct and preside over its own contested cases.

(b) “Agency” means any authority, bureau, board, commission, department, division of the state, or other entities that are statutorily authorized to refer cases to the Office.

(c) “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.

(d) “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.

(e) “Hearing officer” means a hearing examiner from the Office, a presiding officer of any agency, an attorney who has been retained by an agency to preside over a contested case, an officer of any agency 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) “Hearing panel” means those members of an agency or adjudicative agency who are designated and authorized to make a final decision in a contested case.

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

(h) “Referring agency” means any agency which has referred a contested case for hearing before the Office or before another hearing officer.

(i) “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.

(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 any agency from establishing informal procedures for resolving a contested case or from establishing procedures which are intended to occur prior to an agency’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. If the parties choose to engage in mediation, they shall request mediation at least 30 days prior to hearing.

(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 Contested Case Proceedings.**

(a) A contested case shall be commenced by filing a timely request for a hearing of any agency action or inaction, or the filing of an application, petition, complaint or other document which, as a matter of law, entitles the petitioner, applicant, complainant, or respondent an opportunity to be heard.

(b) At the commencement of every contested case, an agency or hearing officer shall issue a notice of hearing including a statement of:

- (i) the time, place and nature of the hearing;
- (ii) the legal authority and jurisdiction under which the hearing is to be held;
- (iii) the particular sections of the statutes and rules involved; and

(iv) a short and plain statement of the matters asserted. If the agency or hearing officer is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved and, thereafter, upon application, a more definite and detailed statement shall be furnished.

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

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

- (i) the name of the referring 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 referring 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 an agency refers a contested case to a hearing officer other than the Office or when an adjudicative agency retains a contested case, the agency shall comply with any referral requirements of that hearing officer or adjudicative agency.

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

(a) Any agency 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 referring agency's request, the hearing officer may provide either a recommended or final decision.

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

(c) At any time while a contested case is pending, a hearing officer or hearing panel member 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 or hearing panel member shall not participate in the contested case.

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

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

(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 or shall excuse the hearing panel member(s).

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

(g) Subject to limitations imposed by the hearing officer, any party may be permitted to conduct a voir dire examination of a hearing panel.

### 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, which is set forth in its entirety in Appendix A, 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.

**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 or hearing panel member 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 or hearing panel member 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 referring agency or adjudicative agency, 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 referring agency or adjudicative agency 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 known address. If the referring agency or adjudicative agency permits filing and service by any electronic method, filing and service may be accomplished accordingly. Parties wishing to file by means other than those described in this Section shall obtain preapproval from the hearing officer.

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

(a) 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. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

(b) Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party by mail or by delivery to the agency for service, three days shall be added to the prescribed period.

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

(a) Unless these rules or an order of the hearing officer establish time limitations other than those contained herein, all motions except motions for enlargement of time and motions made during hearing, shall be served at least 10 days before the hearing on the motion. A party affected by the motion may serve a response, together with affidavits, if any, at least three days prior to the hearing on the motion or within 20 days after service of the motion, whichever is earlier. Unless the hearing officer permits service at some other time, the moving party may serve a reply, if any, at least one day prior to the hearing on the motion or within 15 days after service of the response, whichever is earlier. Unless the hearing officer otherwise orders, any party may serve supplemental memoranda or rebuttal affidavits at least one day prior to the hearing on the motion.

(b) A request for hearing may be served by the moving party or any party affected by the motion within 20 days after service of the motion. The hearing officer may determine such motion without a hearing.

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

(a) The hearing officer or adjudicative 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; and
- (iii) the name, address, telephone number, and signature of the person who prepared the document.

(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 referring 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.

(d) Continuances relating to mediation shall be made no later than 30 days prior to the date of the hearing, as referenced in Section 4(b) of this Chapter.

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

(a) The taking of depositions and discovery shall be in accordance with Wyoming Statute § 16-3-107(g), which is set forth in its entirety in Appendix A.

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

**Section 18. Subpoenas.** 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, which is set forth in its entirety in Appendix A. Parties may utilize the form subpoena at Appendix B to these Rules.

**Section 19. Summary Disposition.** Rules 12(b)(6), 52(c), 56.1, and 56, Wyoming Rules of Civil Procedure, which are set forth in their entirety in Appendix A, 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 referring agency, with a copy provided to the hearing officer or adjudicative agency;

(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. The hearing officer may allow cross-examination on matters not covered on direct examination.

(c) The hearing officer, the hearing panel, agency staff, or other persons delegated to do so by the hearing officer or hearing panel, 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.

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

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

(a) At the hearing officer's or hearing panel'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), which is set forth in its entirety in Appendix A, 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 or hearing panel may permit oral arguments upon the request of any party.

(c) The hearing officer or hearing panel 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 referring 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 referring agency and served on all parties.

Section 28. **Final Decision.**

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

Section 29. **Record of Proceeding.** The referring agency or adjudicative agency shall make appropriate arrangements to assure that a record of the proceeding is kept pursuant to Wyoming Statute § 16-3-107(o) and (p), which are set forth in their entirety in Appendix A. Copies of the transcript taken at any hearing may be obtained by any party, interested person, or entity from the court reporter taking the testimony at such fee as the reporter may charge.

## SPECIAL RULES RELATING TO WORKERS' COMPENSATION

### Chapter 3

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 fifty dollars (\$150.00);

(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 (e.g. deposition costs, expert witness fees, costs to obtain pertinent medical records, subpoena costs, telephone costs, postage, and fax charges). 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 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 presiding officer 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 presiding officer may refer a case to the Medical Commission for advice on specified medical issues. The Office 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.

## ~~Chapter 3~~

### ~~EVIDENTIARY HEARING AND DECISION~~

#### ~~Section 1. Evidence.~~

~~(a) — Generally, the taking of evidence at the evidentiary contested case hearing shall be governed by Wyo. Stat. Ann. § 16-3-108 and case law thereunder.~~

~~(b) — Evidence may be received in written form, yet if such written evidence would not be admissible under the Wyoming Rules of Evidence, all parties should be afforded a reasonable opportunity to confront and cross-examine the author of the written evidence. Generally, such a reasonable opportunity is afforded by giving all parties written notice of the intent to introduce and rely upon the written evidence a reasonable period of time prior to the scheduled evidentiary hearing.~~

~~(c) — Irrelevant, immaterial or unduly repetitious evidence shall be excluded.~~

~~(d) — Effect shall be given to the rules of privilege as recognized by Wyoming law.~~

~~(e) — Administrative notice may be taken of judicially cognizable facts, provided the parties are properly notified of any material facts noticed.~~

~~(f) — Unless otherwise provided by law, the party generally with the burden of proof will be the first to present evidence, all other parties being allowed to cross-examine in an orderly fashion. When that party rests, other parties will then be allowed to present their evidence, again allowing for orderly cross-examination. Rebuttal and surrebuttal evidence will be allowed only in the discretion of the presiding officer.~~

~~Section 2. Record of Proceedings. — The referring agency shall make appropriate arrangements to assure that a record of the proceeding is kept pursuant to Wyo. Stat. Ann. § 16-3-107.~~

~~Section 3. Briefs. — If a party desires to submit a written brief, a request shall be made to the presiding officer. If approved, a date shall be set by which such brief is due. Briefs should set forth the factual and legal position of the party and be filed and served on all parties to the contested case.~~

~~Section 4. Telephone Conferences. — At the discretion of the presiding officer, telephone conference calls may be used to conduct any hearing or other proceeding. At the discretion of the presiding officer, parties or their witnesses may be allowed to participate in hearings by telephone.~~

~~Section 5. **Recommended Decision.** In those instances where the Office makes a recommended decision, the presiding officer shall file the recommended decision with the referring agency and serve copies of the recommended decision on all parties to the contested case.~~

~~Section 6. **Final Decision.**~~

~~(a) — Any final decision entered by the Office shall be in writing, filed with the referring agency and served upon all parties to the contested case. A final decision entered by the referring agency rather than this Office, should be served upon the Office.~~

~~(b) — The final decision shall include findings of fact and conclusions of law on all material issues in the contested case. Final decisions may be in either order or decision letter form. When the Office requests that counsel draft a proposed final order, counsel may forward the original to the Office, concurrently serving copies of the proposed order on all other parties along with notice that any objections to the form of the proposed order must be made within ten (10) days.~~

~~(c) — Within ten (10) days of the date of the final decision, any party may file a motion for reconsideration or rehearing for any of the reasons identified in Rule 59(a), Wyoming Rules of Civil Procedure. The Office shall issue a written order in response to the motion.~~

~~(d) — Clerical mistakes in final decisions or other parts of the record may be corrected by the Office at any time, of its own initiative, or on the motion of any party and upon notice to all parties. During the pendency of judicial review, such mistakes may be corrected only with leave of the court having jurisdiction.~~

## SPECIAL RULES RELATING TO DRIVERS' LICENSES

### Chapter 4

Section 1. **General Construction.** These special rules relating to drivers' license 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. **Evidence.**

(a) In addition to other evidence properly received in all drivers' license contested cases, the presiding hearing examiner shall admit into evidence the Wyoming Department of Transportation's certified record prepared in accordance with Wyoming Statute § 31-7-120.

(b) For any contested case hearing concerning Implied Consent - Administrative Per Se suspension (Wyo. Stat. Ann. §§ 31-6-101 through -108), or Commercial Driver's License Implied Consent disqualification - blood alcohol concentration of four one-hundredths of one percent (0.04%) or more (Wyo. Stat. Ann. §31-7-307), the Wyoming Department of Transportation's certified record shall consist of:

- (i) The peace officer's signed statement of probable cause;
- (ii) The notice of suspension or disqualification;
- (iii) A copy of the temporary license, if issued;
- (iv) Documentation that chemical testing was conducted in compliance with the Wyoming Department of Health Chemical Testing Program including, but not limited to, the operational checklist for chemical breath tests, or other documentation sufficient to establish the result of chemical testing for blood or urine tests; and
- (v) All other evidence which is material to the matter.

(c) For those contested case hearings referenced in subsection (b) above, when the Wyoming Department of Transportation presents evidence establishing that the chemical testing was conducted using methods approved under Wyoming Statute § 31-6-105, it shall be presumed that the test result is accurate. This presumption may be rebutted by evidence establishing that the specific test result is inaccurate as a result of equipment malfunction or improper administration.

## **Chapter 4**

### **JUDICIAL REVIEW**

~~Section 1. **Judicial Review.** Unless otherwise provided by law, any party aggrieved or adversely affected by a final decision in a contested case is entitled to judicial review in the appropriate district court pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure.~~

**SPECIAL RULES RELATING TO SETTLEMENT  
OR ALTERNATIVE DISPUTE RESOLUTION SERVICES**

**Chapter 5**

Section 1. **Referrals to the Office of Administrative Hearings.** Any state agency may request the Office provide hearing services consisting of nonbinding settlement conferences or other alternative dispute resolution. Any such request shall be in writing and properly served by the agency on all parties to the particular matter, shall define the scope of the requested hearing services, and shall indicate that all parties agree to the limited assignment. Wyo. Stat. Ann. §§ 9-2-2202(b) and 16-3-112(b).

Section 2. **Conduct of Settlement Conferences.** Settlement conferences or other alternative dispute resolution conducted before the Office shall be in accordance with any appropriate procedures prescribed by the hearing examiner designated by the Office.

Section 3. **Reporting Results of Settlement Conferences.** No later than fifteen (15) days after the conclusion of settlement or other alternative dispute resolution proceedings before the Office, the hearing examiner shall notify the agency, in writing, and with proper notice to all parties, whether settlement appears to have resulted. The hearing examiner shall not disclose the terms of any settlement, but shall instead rely upon the parties properly submitting settlement documents to the other parties.

## SPECIAL RULES RELATING TO WORKERS' COMPENSATION

### Chapter 53

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 Chapters ~~12 through 4~~. 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 ~~of Workers' Safety and Compensation~~, 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 presiding officer may appoint an attorney to represent an employee or claimant and allow a reasonable fee upon entry of a final order. All requests for fees shall be in detail showing time spent and work performed and shall be verified. Attorney's fees allowed by the presiding officer shall be at an hourly rate of one hundred twenty dollars (\$120.00) per hour. Paralegal fees allowed by the presiding officer shall be at an hourly rate not to exceed forty dollars (\$40.00) per hour. Appointed attorneys shall be reimbursed for actual expenses reasonably incurred (e.g. deposition costs, expert witness fees, costs to obtain pertinent medical records, subpoena costs, telephone, postage and fax charges). If found compensable, copying costs shall be paid at no more than fifteen cents (15¢) per copy. If found to be reasonably incurred, attorney's travel time shall be paid at one-half the hourly rate for attorney's fees or sixty dollars (\$60.00) per hour. All requests for fees and costs shall be submitted within ninety (90) days of the final order unless good cause is otherwise shown.~~

~~(b) — Requests for fees and expenses of appointed attorneys shall include the attorney's certification that he has reviewed the fee statement and that it is true and correct. The request shall additionally indicate the source (that is, from the workers' compensation account, from amounts awarded to the employee or claimants, or from the employer) from which the fees and expenses have been proposed to be ordered paid. Requests shall be properly served on all parties or their attorneys.~~

~~(c) — No fee shall be awarded in any case in which the presiding officer determines the claim to be frivolous and without legal or factual justification.~~

(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 fifty dollars (\$150.00);

(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 (e.g. deposition costs, expert witness fees, costs to obtain pertinent medical records, subpoena costs, telephone costs, postage, and fax charges). 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 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 ~~Workers' Compensation~~ Medical Commission.**

(a) Upon agreement of all the parties to a case, the presiding officer 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 presiding officer may refer a case to the Medical Commission for advice on specified medical issues. The Office 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.

## SPECIAL RULES RELATING TO DRIVERS' LICENSES

### Chapter 4

Section 1. **General Construction.** These special rules relating to drivers' license 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. **Evidence.**

(a) In addition to other evidence properly received in all drivers' license contested cases, the presiding hearing examiner shall admit into evidence the Wyoming Department of Transportation's certified record prepared in accordance with Wyoming Statute § 31-7-120.

(b) For any contested case hearing concerning Implied Consent - Administrative Per Se suspension (Wyo. Stat. Ann. §§ 31-6-101 through -108), or Commercial Driver's License Implied Consent disqualification - blood alcohol concentration of four one-hundredths of one percent (0.04%) or more (Wyo. Stat. Ann. §31-7-307), the Wyoming Department of Transportation's certified record shall consist of:

- (i) The peace officer's signed statement of probable cause;
- (ii) The notice of suspension or disqualification;
- (iii) A copy of the temporary license, if issued;
- (iv) Documentation that chemical testing was conducted in compliance with the Wyoming Department of Health Chemical Testing Program including, but not limited to, the operational checklist for chemical breath tests, or other documentation sufficient to establish the result of chemical testing for blood or urine tests; and
- (v) All other evidence which is material to the matter.

(c) For those contested case hearings referenced in subsection (b) above, when the Wyoming Department of Transportation presents evidence establishing that the chemical testing was conducted using methods approved under Wyoming Statute § 31-6-105, it shall be presumed that the test result is accurate. This presumption may be rebutted by evidence establishing that the specific test result is inaccurate as a result of equipment malfunction or improper administration.

## SPECIAL RULES RELATING TO DRIVERS' LICENSES

### Chapter ~~64~~

Section 1. **General Construction.** These special rules relating to drivers' license contested case proceedings before the Office are intended to supplement the foregoing provisions of Chapters ~~1 through 42~~. To the extent that any difference exists, the special rule takes precedence over any foregoing provision.

#### Section 2. **Evidence.**

(a) In addition to other evidence properly received in all drivers' license contested cases, the presiding ~~officer~~ hearing examiner shall admit into evidence the Wyoming Department of Transportation's certified record prepared in accordance with Wyoming Statute § 31-7-120.

(b) For any contested case hearing concerning Implied Consent - Administrative Per Se suspension (Wyo. Stat. Ann. §§ 31-6-101 through ~~31-6-1087~~), or Commercial Driver's License Implied Consent disqualification - blood alcohol concentration of four one-hundredths of one percent (0.04%) or more (Wyo. Stat. Ann. § 31-7-307), the Wyoming Department of Transportation's certified record shall consist of:

- (i) The peace officer's signed statement of probable cause;
- (ii) The notice of suspension or disqualification;
- (iii) A copy of the temporary license, if issued;

(iv) The operational checklist or chemical test result provided by the Wyoming Chemical Testing Program, Division of Health and Medical Services; Documentation that chemical testing was conducted in compliance with the Wyoming Department of Health Chemical Testing Program including, but not limited to, the operational checklist for chemical breath tests, or other documentation sufficient to establish the result of chemical testing for blood or urine tests; and

~~(v) — A copy of the peace officer's certification, if applicable; and,~~

(vi) All other evidence which is material to the matter.

(c) For those contested case hearings referenced in subsection (b) above, when the Wyoming Department of Transportation presents evidence establishing that the chemical testing was conducted using methods approved under Wyoming Statute § 31-6-105, it shall be presumed that the test result is accurate. This presumption may be

rebutted by evidence establishing that the specific test result is inaccurate as a result of equipment malfunction or improper administration.

~~(d) For any contested case hearing concerning Implied Consent Refusal suspension (Wyo. Stat. Ann. §§ 31-6-101 through 31-6-107), or Implied Consent Refusal disqualification (Wyo. Stat. Ann. § 31-7-307), the Wyoming Department of Transportation's certified record shall consist of:~~

- ~~(i) The peace officer's signed statement of probable cause;~~
- ~~(ii) The notice of suspension or disqualification;~~
- ~~(iii) A copy of the temporary license, if issued; and,~~
- ~~(iv) All other evidence which is material to the matter.~~

**SPECIAL RULES RELATING TO SETTLEMENT  
OR ALTERNATIVE DISPUTE RESOLUTION SERVICES**

**Chapter 5**

Section 1. **Referrals to the Office of Administrative Hearings.** Any state agency may request the Office provide hearing services consisting of nonbinding settlement conferences or other alternative dispute resolution. Any such request shall be in writing and properly served by the agency on all parties to the particular matter, shall define the scope of the requested hearing services, and shall indicate that all parties agree to the limited assignment. Wyo. Stat. Ann. §§ 9-2-2202(b) and 16-3-112(b).

Section 2. **Conduct of Settlement Conferences.** Settlement conferences or other alternative dispute resolution conducted before the Office shall be in accordance with any appropriate procedures prescribed by the hearing examiner designated by the Office.

Section 3. **Reporting Results of Settlement Conferences.** No later than fifteen (15) days after the conclusion of settlement or other alternative dispute resolution proceedings before the Office, the hearing examiner shall notify the agency, in writing, and with proper notice to all parties, whether settlement appears to have resulted. The hearing examiner shall not disclose the terms of any settlement, but shall instead rely upon the parties properly submitting settlement documents to the other parties.

**SPECIAL RULES RELATING TO SETTLEMENT  
OR ALTERNATIVE DISPUTE RESOLUTION SERVICES**

**Chapter 75**

~~**SPECIAL RULES RELATING TO SETTLEMENT  
OR ALTERNATIVE DISPUTE RESOLUTION SERVICES**~~

Section 1. **Referrals to the Office of Administrative Hearings.** Any state agency may request the Office provide hearing services consisting of non-binding settlement conferences or other alternative dispute resolution. Any such request shall be in writing and properly served by the agency on all parties to the particular matter, shall define the scope of the requested hearing services, and shall indicate that all parties agree to the limited assignment. Wyo. Stat. Ann. §§ 9-2-2202(b) and 16-3-112(b).

Section 2. **Conduct of Settlement Conferences.** Settlement conferences or other alternative dispute resolution conducted before the Office shall be in accordance with any appropriate procedures prescribed by the ~~presiding officer~~ hearing examiner designated by the Office.

Section 3. **Reporting Results of Settlement Conferences.** No later than fifteen (15) days after the conclusion of settlement or other alternative dispute resolution proceedings before the Office, the ~~presiding officer~~ hearing examiner shall notify the agency, in writing, and with proper notice to all parties, whether settlement appears to have resulted. The ~~presiding officer~~ hearing examiner shall not disclose the terms of any settlement, but shall instead rely upon the parties properly submitting settlement documents to the other ~~agency parties~~.

**Appendix A**

**STATUTORY AND REGULATORY REFERENCES**

**Wyoming Statutes**

**§ 16-3-107. Contested cases; general procedure.**

....

(g) In all contested cases the taking of depositions and discovery shall be available to the parties in accordance with the provisions of Rules 26, 28 through 37 (excepting Rule 37(b)(1) and 37(b)(2)(D) therefrom) of the Wyoming Rules of Civil Procedure in effect on the date of the enactment of this act and any subsequent rule amendments thereto. All references therein to the “court” shall be deemed to refer to the appropriate “agency”; all references to the use of the subpoena power shall be references to subsection (c) of this section; all references to “trial” shall be deemed references to “hearing”; all references to “plaintiff” shall be deemed references to “a party”. If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the agency in which the action is pending, the refusal to obey the agency order shall be enforced in the same manner as is provided in subsection (c) of this section.

....

(o) The record in a contested case must include:

- (i) All formal or informal notices, pleadings, motions and intermediate rulings;
- (ii) Evidence received or considered including matters officially noticed;
- (iii) Questions and offers of proof, objections and rulings thereon;
- (iv) Any proposed findings and exceptions thereto;
- (v) Any opinion, findings, decision or order of the agency and any report by the officer presiding at the hearing.

....

(p) In all contested cases the proceeding including all testimony shall be reported verbatim stenographically or by any other appropriate means determined by the agency or the officer presiding at the hearing.

§ 16-3-113. License hearings.

....

(c) No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. A cancellation of a driver's license pursuant to W.S. 31-7-121(c) [repealed] shall not be valid until the department of transportation gives notice by mail to the licensee of the facts which warrant the intended action and provides the licensee with an opportunity to provide additional evidence or information with respect to the condition at issue within fifteen (15) days of the mailing of the notice. These proceedings shall be promptly instituted and determined.

**Wyoming Rules of Civil Procedure**

**Rule 12. Defenses and objections; when and how presented; by pleading or motion; motion for judgment on pleadings.**

....

(b) *How presented.* – Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

**Rule 24. Intervention; notification of claim of unconstitutionality.**

(a) *Intervention of right.* – Upon timely application anyone shall be permitted to intervene in an action:

(1) When a statute confers an unconditional right to intervene; or

(2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) *Permissive intervention.* – Upon timely application anyone may be permitted to intervene in an action:

(1) When a statute confers a conditional right to intervene; or

(2) When an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental official or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) *Procedure.* – A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

(d) *Constitutionality of state statute.* – When the constitutionality of a Wyoming statute is drawn in question in any action to which the state or an officer, agency, or employee thereof is not a party, the party raising the constitutional issue shall serve the attorney general with a copy of the pleading or motion raising the issue.

**Rule 45. Subpoena.**

(a) *Form; issuance.* –

(1) Every subpoena shall:

(A) State the name of the court from which it issued; and

(B) State the title of the action, the name of the court in which it is pending, and its civil action number; and

(C) Command each person to whom it is directed to attend and give testimony, or to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) Set forth the text of subdivisions (c), (d) and (e) of this rule. A command to produce evidence or to permit inspection, copying, testing, or sampling may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(2) A subpoena must issue as follows:

(A) For attendance at a trial or hearing, from the court for the district in which the action is pending;

(B) For attendance at a deposition, from the court in which the action is pending, stating the method for recording the testimony; and

(C) For production, inspection, copying, testing, or sampling, if separate from a subpoena commanding a person's attendance, from the court for the district where the production or inspection is to be made.

(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of

(A) a court in which the attorney is authorized to practice; or

(B) a court for a district in which a deposition or production is compelled by the subpoena, if the deposition or production pertains to an action pending in a court in which the attorney is authorized to practice.

(b) *Service; place of attendance; notice before service.* –

(1) A subpoena may be served by the sheriff, by a deputy sheriff, or by any other person who is not a party and is not a minor, at any place within the State of Wyoming. Service of a subpoena upon a person named therein shall be made by

delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. The party subpoenaing any witness residing in a county other than that in which the action is pending shall pay to such witness, after the hearing or trial, the statutory per diem allowance for state employees for each day or part thereof necessarily spent by such witness in traveling to and from the court and in attendance at the hearing or trial. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party.

(2) Proof of service when necessary shall be made by filing with the clerk of the court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(3) A subpoena for trial or hearing may require the person subpoenaed to appear at the trial or hearing irrespective of the person's place of residence, place of employment, or where such person regularly transacts business in person.

(4) A person commanded by subpoena to appear at a deposition may be required to attend only in the county wherein that person resides or is employed or regularly transacts business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the state may be required to attend only in the county wherein that nonresident is served with a subpoena or at such other convenient place as is fixed by an order of court.

(c) *Protection of persons subject to subpoenas.* –

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)

(A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within

14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises - or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

**(3)**

**(A)** On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

**(i)** fails to allow reasonable time for compliance;

**(ii)** requires a person who is not a party or an officer of a party to travel outside that person's county of residence or employment or a county where that person regularly transacts business in person except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

**(iii)** requires disclosure of privileged or other protected matter and no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B)** If a subpoena

**(i)** requires disclosure of a trade secret or other confidential research, development, or commercial information, or

**(ii)** requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

**(iii)** requires a person who is not a party or an officer of a party to incur substantial expense to travel to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d)** *Duties in responding to subpoena.* –

**(1)**

**(A)** A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

**(B)** If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

**(C)** A person responding to a subpoena need not produce the same electronically stored information in more than one form.

**(D)** A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2)**

**(A)** When information or material subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* – Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(a).

**Rule 52. Findings by the court; judgment on partial findings.**

....

(c) *Judgment on partial findings.* – If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. The party against whom entry of such a judgment is considered shall be entitled to no special inference as a consequence of such consideration, and the court may weigh the evidence and resolve conflicts. Such a judgment shall be supported by findings as provided in subdivision (a) of this rule.

**Rule 56. Summary judgment.**

(a) *For claimant.* – A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party’s favor upon all or any part thereof.

(b) *For defending party.* – A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or

without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) *Motion and proceedings thereon.* – Unless the court otherwise orders, the motion and any response and other papers relating thereto shall be served pursuant to Rule 6(c). The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) *Case not fully adjudicated on motion.* – If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) *Form of affidavits; further testimony; defense required.* – Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) *When affidavits are unavailable.* – Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) *Affidavits made in bad faith.* – Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay the other party the amount of the reasonable expenses which the

filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

**Rule 56.1. Summary judgment – Required statement of material facts.** Upon any motion for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure, in addition to the materials supporting the motion, there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried.

In addition to the materials opposing a motion for summary judgment, there shall be annexed a separate, short and concise statement of material facts as to which it is contended that there exists a genuine issue to be tried.

Such statements shall include pinpoint citations to the specific portions of the record and materials relied upon in support of the parties' position.

**Appendix B**

**SUBPOENA**

**To: Name** \_\_\_\_\_  
**Address** \_\_\_\_\_  
**City, State, Zip** \_\_\_\_\_

YOU ARE HEREBY REQUIRED to appear as a witness at a hearing before the Office of Administrative Hearings for the \_\_\_\_\_ to be held at \_\_\_\_\_ o'clock \_\_\_\_m., on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at the \_\_\_\_\_.

THIS YOU ARE NOT TO OMIT UNDER PENALTY OF LAW.

In accordance with Rule 45 of the Wyoming Rules of Civil Procedure (LexisNexis 2013), be advised:

.....

(c) *Protection of persons subject to subpoenas.* –

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.  
(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises – or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.
- (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:
  - (i) fails to allow reasonable time for compliance;
  - (ii) requires a person who is not a party or an officer of a party to travel outside that person's

county of residence or employment or a county where that person regularly transacts business in person except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B)** If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d)** *Duties in responding to subpoena.* –

- (1)** **(A)** A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
  - (B)** If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.
  - (C)** A person responding to a subpoena need not produce the same electronically stored information in more than one form.
  - (D)** A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.
- (2)** **(A)** When information or material subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (B)** If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

**(e)** *Contempt.* –

Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when

a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

DONE this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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