



**Certification Page
Regular and Emergency Rules
Revised July 2016**

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

Regular Rules

1. General Information		
a. Agency/Board Name Wyoming Department of Agriculture		
b. Agency/Board Address 2219 Carey Avenue	c. City Cheyenne	d. Zip Code 82002
e. Name of Contact Person Linda Stratton	f. Contact Telephone Number 307-777-6592	
g. Contact Email Address linda.stratton@wyo.gov	h. Adoption Date August 1, 2016	
i. Program General Agency, Board of Commission Rules		
2. Rule Type and Information: For each chapter listed, indicate if the rule is New, Amended, or Repealed.		
If "New," provide the Enrolled Act numbers and years enacted:		
c. Provide the Chapter Number, Short Title, and Rule Type of Each Chapter being Created/Amended/Repealed (Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification)		
Chapter Number: 23	Chapter Name: Wyoming Department of Agriculture Rules of Practice and Procedure for Contested Case Hearings	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
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:	June 7, 2016			
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:	June 7, 2016			
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:	June 7, 2016			
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. <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A				
b. A public hearing was held on the proposed rules. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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:	August 3, 2016			
b. Date on which final rules were sent to the Legislative Service Office:	August 3, 2016			
c. Date on which a PDF of the final rules was electronically sent to the Secretary of State:	August 3, 2016			
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	Doug Miyamoto			
Signatory Title	DIRECTOR, WYOMING DEPARTMENT OF AGRICULTURE			
Date of Signature	8-3-16			
7. Governor's Certification				
I have reviewed these rules and determined that they:				
<ol style="list-style-type: none"> 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 LSO_Rules@wyoleg.gov; clean and strike/underscore; and 6. Memo to Governor documenting emergency (for emergency rules only).

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



The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

STATEMENT OF PRINCIPAL REASONS

The Department of Agriculture intends to adopt rules amending Chapter 23 of the Wyoming Department of Agriculture's General Agency Rules. Chapter 23, the Department of Agriculture's contested case procedures, is inadequate for upcoming actions the Agency must undertake. The adoption of the Office of Administrative Hearings Uniform Rules for Contested Case Practice and Procedure will remedy this deficiency. Currently, Chapter 23 outlines the practice and procedure for contested case hearings with the Board of Agriculture as the body for conducting evidentiary hearings and making decisions. Incorporating the Uniform Rules for Contested Case Practice and Procedure will allow for uniform, consistent, and appropriate hearing procedures. This change is necessary to ensure that any establishment will be afforded the necessary fair process.

Incorporating the Office of Administrative Hearings Uniform Rules will also achieve the State's goal of reducing the quantity of rules and regulations, and having a consistent hearing process throughout State government.

Equal Opportunity in Employment and Services

BOARD MEMBERS

Jana Ginter, *District 1* • James Rogers, *District 2* • Shaun Sims, *District 3* • Amanda Hulet, *District 4* • Alison Lass, *District 5*
Bryan Brost, *District 6* • Kevin Schieffer, *District 7*

YOUTH BOARD MEMBERS

Kendall Roberts, *Southeast* • Richard Schlenker, *Northwest* • John Hansen, *Southwest* • Cameron Smith, *Northeast*

CHAPTER 23

WYOMING DEPARTMENT OF AGRICULTURE

RULES OF PRACTICE & PROCEDURE FOR CONTESTED CASE HEARINGS

Section 1. Authority. Pursuant to Wyo. Stat. Ann. § 16-3-102(a)(i), the following rules are hereby promulgated.

Section 2. Incorporation by Reference.

(a) The Wyoming Department of Agriculture determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules;

(b) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the effective date identified in subsection (d) of this section;

(c) The incorporated rules are maintained at 2219 Carey Ave., Cheyenne, WY 82002, and are available for public inspection and copying at cost at the same location.

(d) The following rules are incorporated by reference: Chapter 2 - Uniform Rules for Contested Case Practice and Procedure adopted by the Office of Administrative Hearings and effective on October 17, 2014, found at: <http://soswy.state.wy.us/Rules/RULES/9644.pdf>.

Section 3. Final Decision. At the request of the Director, the hearing officer shall make a recommended decision to the Director of the Wyoming Department of Agriculture. The Director of the Wyoming Department of Agriculture shall issue the final decision.

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~~WYOMING DEPARTMENT OF AGRICULTURE~~ ~~RULES OF PRACTICE & PROCEDURE FOR CONTESTED CASE HEARINGS~~

~~Section 1. Authority.~~

~~(a.) Pursuant to the authority in the director of the Wyoming department of agriculture by virtue of Title 11 Agriculture, Livestock and other Animals (Chapters 1 through 16), the Wyoming Food Code (Article 1), as well as the Wyoming Food Code Rules (Chapter 2, Section 18) and the Wyoming Administrative Procedure Act (W.S. 16-3-101 through 16-3-115), the following rules are hereby promulgated:~~

~~Section 2. Definitions.~~

~~(a.) Board: The Board of Agriculture established by W.S. 11-2-101 through 11-2-104 for the State of Wyoming.~~

~~(b.) Chairman: The Director of the Department of Agriculture.~~

~~(c.) Director: The duly appointed Director of the Department of Agriculture.~~

~~(d.) Proponent: The board, or any other person or party who initiates or requests any action or decision and may include complainant where applicable.~~

~~(e.) Contestant: Any person who will be aggrieved or adversely affected by a proposed action of the board or the director and who requests a hearing before the Board and may include the opponent or defendant where applicable.~~

~~(f.) Party: Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.~~

~~(g.) Person: Any individual, partnership, association or organized group of persons whether incorporated or not.~~

~~(h.) Rules of Civil Procedure: Those Wyoming Rules of Civil Procedure in effect at the time of the hearing.~~

~~(i.) Hearing Officer: The designated Hearing Officer who shall preside over the hearing.~~

Section 3. ~~Notice of Proposed Action by the Board.~~

~~(a.) The Board may initiate any action which may result in a contested case in accordance with the Wyoming Administrative Procedure Act by:~~

~~(i.) Giving written notice of proposed action either served personally or by certified mail, return receipt requested, to the person or persons who will be aggrieved or adversely affected thereby, or~~

~~(ii.) Causing the publication in proper form, of a copy of the notices,~~

~~(1.) Said publication to be made in three newspapers of general circulation in the state.~~

~~(2.) Said publication to appear at least once a week for three consecutive weeks prior to the commencement of the action, the last publication to appear at least five days prior to the action.~~

~~(b.) A notice of proposed action by the Board shall include a statement of:-~~

~~(i.) The nature of the proposed action.~~

~~(ii.) The particular rules, regulations, bylaws, and/or statutes which are involved.~~

~~(iii.) A short, plain statement of the matters asserted.~~

~~(iv.) The fact that a hearing may be requested within twenty days after the date of the mailing of the notice; and that if a hearing is not requested, the proposed action shall automatically take effect at the expiration of the twenty-day period.~~

~~(c.) If a person makes a request for a hearing pursuant to this section, the request contain the information required by Section 4b.~~

~~(d.) Upon receipt of a request for hearing, the Board shall give the person making the request written notice by certified mail, return receipt requested of the time, place and nature of the hearing as well as the legal authority under which the hearing is being held.~~

~~Section 4. Hearing Before the Board.~~

~~(a.) Any person aggrieved or adversely affected in fact by the Board's action or decision, or who will be aggrieved or adversely affected in fact by the recommendation, may within twenty days after the date of the mailing of the notice of the action or decision or recommendation, request a hearing before the Board.~~

~~(b.) The request for hearing shall be directed to and served upon the Hearing Officer of the Board or the Director of the Department of Agriculture and shall show:~~

~~(i.) A request for hearing before the Board.~~

~~(ii.) The decision, or recommendation upon which a hearing is requested.~~

~~(iii.) A statement in ordinary, but concise, language of the reason for requesting a hearing.~~

~~(iv.) The address of the person making the request and the name and address of his attorney, if any.~~

~~(c.) Upon receipt of a request for hearing, the Board shall give the person making the request written notice of:~~

~~(i.) The time, place and nature of the hearing.~~

~~(ii.) The legal authority under which the hearing is to be held.~~

~~(iii.) The particular rules, bylaws and/or statutes involved.~~

~~(iv.) A short and plain statement of the matters asserted.~~

~~(v.) The written notice shall be served by mail addressed to the person making the request or his attorney.~~

~~(d.) The hearing shall be conducted as a contested case hearing.~~

Section 5. Order of Procedure at Hearings.

~~(a.) As nearly as may be, hearings shall be conducted in accordance with the following order of procedure.~~

~~(b.) The Hearing Officer shall announce that the Board is open to transact business and call by docket number and title the case to be heard.~~

~~(c.) The proponent will be allowed an opening statement to briefly explain its position to the Board and outline the evidence it proposes to offer, together with the purpose thereof.~~

~~(d.) The contestant will be allowed an opening statement.~~

~~(e.) Any additional parties will be allowed an opening statement.~~

~~(f.) The proponent=s evidence will be heard. Witnesses may be cross examined by the contestant or his attorney, by members of the Board and the Hearing Officer. The proponent=s offered exhibits will be marked by letters of the alphabet, beginning with AA@.~~

~~(g.) The evidence of the contestant will be heard and exhibits of such will be marked with numbers, beginning with the number A1". The proponent or his attorney, each member of the Board, and the Hearing Officer, shall have the right to cross-examine all witnesses presented on behalf of the contestant.~~

~~(h.) Other parties may offer evidence.~~

~~(i.) The Hearing Officer may, in his discretion, allow evidence to be offered out of order, as herein prescribed.~~

~~(j.) Closing statements will be made in the following sequence:-~~

~~(i.) Proponent~~

~~(ii.) Contestant~~

~~(iii.) Proponent's rebuttal if the Hearing Officer feels it is necessary.-~~

~~(k.) The time for oral argument may be limited by the Hearing Officer.~~

~~(l.) The Hearing Officer may recess the hearing as required.~~

~~(m.) After all interested parties have been offered an opportunity to be heard, the Hearing Officer shall declare the evidence closed and excuse all witnesses.~~

~~(n.) The Hearing Officer may, at his discretion or the Board's request, allow or require parties to tender written briefs, and the time for filing such briefs shall be set by the Hearing Officer.~~

~~(o.) The Board may, at its discretion, appoint a designated Hearing Officer, who will preside as hearing officer during the course of such hearing; such designated Hearing Officer shall be an attorney licensed to practice law in the State of Wyoming.~~

~~(p.) The designated Hearing Officer shall, for purposes of that hearing, have all powers provided in W.S. 16-3-112(b).~~

~~(q.) The Hearing Officer may declare that the matter is taken under advisement and that the decision and order of the Board will be announced at a later date.~~

~~Section 6. **Applicable Rules of Civil Procedure.**~~

~~(a.) The Wyoming Rules of Civil Procedure shall apply in all hearings before the Board.~~

~~Section 7. **Attorneys.**~~

~~(a.) The filing of a pleading or other appearance by an attorney constitutes his appearance for the party for whom made. The Board must be notified in writing of his withdrawal from any matter. Any person appearing before the Board at a hearing in representative capacity shall be precluded from examining or cross examining any witness, unless such person shall be an attorney licensed to practice law in the State of Wyoming, or a non resident attorney associated with a Wyoming attorney.~~

~~Section 8. **Intervention.**~~

~~(a.) Any person interested in obtaining relief sought by a proponent or otherwise interested in the determination of a proceeding pending before the Board, may petition for leave to intervene in such proceeding prior to or at the time it is called for hearing, but not thereafter except for good cause shown. The petition shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and if affirmative relief is sought, the same should conform to the requirements for a formal complaint. Leave will not be granted except on allegations reasonable pertinent to the issue already presented and which do not unduly broaden them.~~

~~If leave is granted, the petitioner becomes an intervener and a party to the proceeding with the right to have notice of, and appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard on the argument of the case.~~

~~Section 9. **Transcripts.**~~

~~(a.) Oral proceedings or any part thereof shall be transcribed on request of any party upon payment of the cost thereof. In case of an appeal to the District Court, the party appealing shall secure and file a transcript of the testimony and other evidence offered at the time of the hearing with the Board, which transcripts shall be verified by the oath of the reporter or transcribed as true and correct transcripts of the testimony and other evidence in the hearing. The cost of making the transcript shall be paid by the party prosecuting such appeal. The complete record on appeal, including the transcript of testimony, shall be verified by the clerk.~~

~~Section 10. **Decision and Order.**~~

~~(a.) The Board shall make a written decision and order in all cases, which decisions shall contain findings of fact and conclusions of law based exclusively on the evidence admitted at the hearing and matters officially noticed. The decision and order of the Board shall be placed in the record of the case which shall be retained by the board.~~

~~Section 11. **Record.**~~

~~(a.) The record in all cases shall include-~~

~~(i.) All formal and informal notices~~

~~(ii.) Evidence received or considered including matters officially noticed—~~

~~(iii.) Questions and offers of proof, objections and rulings thereon.~~

~~(iv.) Any proposed findings and objections thereto.—~~

~~(v.) The decision and order of the Board.~~

Section 12. ~~Members of the Board Present.~~

~~(a.) No member of the Board shall vote upon a decision of the Board unless he shall have been present at the hearing or has read the transcript of the proceedings. A decision by a majority of the members of the Board voting shall be the decision of the Board.~~

Section 13. ~~Appeals.~~

~~(a.) Appeals from decisions of the Board are governed by the Wyoming Administrative Procedures Act and the Wyoming Rules of Appellate Procedure.~~

Section 14. ~~Transcript in Case of Appeal.~~

~~(a.) In case of an appeal to the District Court as above provided, the party appealing shall secure and file with the Court a transcript of the testimony and all other evidence offered at the hearing, which transcript must be verified by the oath of the reporter who took the testimony as a true and correct transcript of the testimony and other evidence in the case. The compensation of the reporter for making the transcript of the testimony and all other costs involved in such appeal shall be borne by the party prosecuting such appeal.~~