



RULEMAKING

The best powerpoint presentation you will ever experience.

Disclaimer

- The Attorney General's Office represents the Wyoming Department of Agriculture and the Wyoming Board of Agriculture. Through that role, the Attorney General's Office may be called upon to provide legal advice to conservation districts on issues of general interest, as requested by the Director of the Department of Agriculture.
- As a result, at the request of the Director of the Department of Agriculture, this presentation is intended to provide general information geared towards conservation districts.

Wyoming Rulemaking Law

Wyoming Administrative Procedure Act

- Wyoming Statutes §§ 16-3-101 through 16-3-115
- Governs the rulemaking process in Wyoming

What is a Rule??

- Rule “means each agency statement of general applicability that implements, interprets and prescribes law, policy or ordinance of cities and towns, or describes the organization, procedures, or practice requirements of any agency.”
- Includes the amendment or repeal of a prior rule

What is NOT a Rule??

- Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public
- Rulings issued pursuant to Wyoming Statute § 16-3-106 (petition for promulgation)
- Intra-agency memoranda
- Agency decisions and findings in contested cases
- Rules concerning the use of public roads or facilities which are indicated to the public by means of signs and signals
- Ordinances of cities and towns
- Designations under Wyoming Statute § 9-2-1022(h)(i) (designating divisions of agency for reduction in force)
- A general permit (defined as a DEQ permit)

Why do we care what a Rule is?

BECAUSE!

Rules and regulations adopted pursuant to statutory authority and properly promulgated have the force and effect of law. *Distad v. Cuban*, 633 P.2d 167 (Wyo. 1981).

AKA – if it's not a law, then the State cannot enforce it.

Authority

Authority: Before an agency can promulgate rules, they must have authority to do so.

- Generally found in the individual agency authorizing statutes.

General Requirements for Agencies

- Must have rules setting forth the nature and requirements of all formal and informal procedures in connection with contested cases.
- Must make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions.

Notice

- 16-3-103 states that an agency shall “give at least forty-five (45) days notice of its intended action.”
- Notice must go to all persons making a timely request, the attorney general, and the county clerk.

Notice of Intent

- Shall include:
 - Time, place, and manner by which interested persons may comment on a proposed rule
 - Description of the subjects and issues of proposed rule
 - If amendment or repeal – citation to the rule being amended or repealed
 - If new rules – statement identifying new rules and citation of the statute authorizing adoption
 - Place where interested person may obtain copy of proposed rules
 - If proposed rule is required by federal law or regulation include citations and a statement of whether it meets or exceeds minimum federal requirements.
 - Statement of whether a rule meets or exceeds substantive state law requirements
 - Statement of compliance with W.S. 9-5-304 requiring an evaluation regarding constitutional takings

Statement of Principal Reasons

- 16-3-103 also requires a concise statement of the principal reasons for adoption of the rule.
- Brought about by *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979).
- Statement shall include a brief explanation of the substance or terms of the rule and the basis and purpose of the rule.

Comment Period

- Wyo. Stat. Ann. 16-3-103 requires at least a 45 day comment period.
- Must afford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing.
- Must fully consider all written and oral submissions respecting a proposed rule.
 - Do not need to respond in writing (although nice)
 - Must respond in writing if someone questions the validity of whether it's required by federal law and whether it exceeds federal law
- Upon adoption of rule, if requested, must issue a concise statement of principal reasons for overruling considerations urged against adoption of the rule. (30 day timeframe)

Public Hearing

- Public hearing is required if requested during the comment period by:

1. 25 persons
2. Governmental subdivision
3. Association having not less than 25 members

- Hearing must be conducted after the 45 day comment period.

After Comment Period

- After the comment period there are three possibilities for how to proceed:
 - 1. No substantive changes necessary to the rule, or all changes are minor, agency may adopt rule and move forward.
 - 2. Substantive changes necessary to the rule, but they do not exceed the scope of notice for the original comment period. Agency can adopt rule and proceed.
 - 3. Substantive changes necessary to the rule, but the changes exceed the scope of notice for the original comment period. Agency must put the rule out for comment again, and start back over at the 45 day comment period.

Adoption

- If the agency makes no substantive changes, or only makes substantive changes that are a logical outgrowth, then it can formally adopt the rules.

Official Filing

- File with the clerk of court in your county.
- Once filing occurs, the rule becomes law.
- Must note upon the rule a citation of the authority by which it was adopted.
- County clerk shall keep a permanent register of the rules open to public inspection. Can reasonably charge for copies.

Emergency Rules

Similar to regular rulemaking with a few distinctions.

1. Rules expire after 120 days! (aka you better start the regular rulemaking process at the same time as you start emergency rulemaking).
2. You actually need an emergency to do emergency rulemaking.
3. With emergency rulemaking, you essentially skip down to the formal adoption step and proceed from there. Skipping the notice of intent to adopt and the comment period.

Incorporation by Reference

- An agency may incorporate, by reference in its rules and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation that has been adopted by an agency of the United States or of this state, another state or by a nationally recognized organization or association, provided:
 - The agency determines that incorporation of the full text in agency rules would be cumbersome or inefficient given the length or nature of the rules;
 - The reference in the rules of the incorporating agency fully identifies the incorporated matter by location, date and otherwise, and states that the rule does not include any later amendments or edition of the incorporated matter;
 - The agency, organization or association originally issuing the incorporated matter makes copies of it readily available to the public;
 - The incorporating agency maintains and makes available for public inspection a copy of the incorporated matter at cost from the agency and the rules of the incorporating agency state where the incorporated matter is available on the internet; and
 - The incorporating agency otherwise complies with all procedural requirements under this act and the rules of the registrar of state agency rules governing the promulgation and filing of the agency rules.