

## Wyo. Stat. § 16-3-103

Current through 2017 Legislative Session. Subject to revisions by LSO.

**Wyoming Statutes Annotated > Title 16 City, County, State and Local Powers > Chapter 3  
Administrative Procedure**

### **§ 16-3-103. Adoption, amendment and repeal of rules; notice; hearing; emergency rules; proceedings to contest; review and approval by governor.**

- (a) Prior to an agency's adoption, amendment or repeal of all rules other than interpretative rules or statements of general policy, the agency shall:
- (i) Give at least forty-five (45) days notice of its intended action. Notice shall be mailed to all persons making timely requests of the agency for advanced notice of its rulemaking proceedings and to the attorney general, the secretary of state's office as registrar of rules, and the legislative service office if a state agency. The agency shall submit a copy of the proposed rules, in a format conforming to any requirements prescribed pursuant to subsection (f) of this section, with the notice given to the legislative service office. The notice shall include:
    - (A) The time when, the place where and the manner in which interested persons may present their views on the intended action;
    - (B) A statement of the terms and substance of the proposed rule or a description of the subjects and issues involved;
    - (C) If an amendment or a repeal, the citation to the agency rule to be amended or repealed;
    - (D) If new rules, a statement that they are new rules and a citation of the statute which authorizes adoption of the rules;
    - (E) The place where an interested person may obtain a copy of the proposed rules in a format conforming to any requirements prescribed pursuant to subsection (f) of this section;
    - (F) If the agency asserts that all or a portion of a rule is proposed to be adopted, amended or repealed in order for the state to comply with federal law or regulatory requirements:
      - (I) A statement that the adoption, amendment or repeal of the rule is required by federal law or regulation together with citations to the applicable federal law or regulation; and
      - (II) A statement whether the proposed rule change meets minimum federal requirements or whether the proposed rule change exceeds minimum federal requirements.
    - (G) A statement whether the proposed rule change meets minimum substantive state statutory requirements or whether the proposed rule change exceeds minimum substantive state statutory requirements. If the rule change exceeds minimum substantive state statutory requirements, the agency shall include a statement explaining the reason why the rule exceeds minimum substantive statutory requirements;
    - (H) A statement that the agency has complied with the requirements of W.S. 9-5-304 and the location where an interested person may obtain a copy of the assessment used to evaluate the proposed rule pursuant to W.S. 9-5-304;
    - (J) A concise statement of the principal reasons for adoption of the rule. In compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324

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(Wyo. 1979), the statement shall include a brief explanation of the substance or terms of the rule and the basis and purpose of the rule;

- (K)** If a state agency is proposing a rule that differs from the uniform rules listed in subsection (j) of this section, a statement of the reasons for varying from the uniform rules.
- (ii)** Afford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing, provided this period shall consist of at least forty-five (45) days from the later of the dates specified under subparagraph (A) of this paragraph, and provided:
  - (A)** In the case of substantive rules, opportunity for oral hearing shall be granted if requested by twenty-five (25) persons, or by a governmental subdivision, or by an association having not less than twenty-five (25) members. No hearing under this subparagraph shall be conducted until at least forty-five (45) days after the later of:
    - (I)** The date notice of intended action is given under paragraph (i) of this subsection; or
    - (II)** The date notice is published if publication is required by subsection (e) of this section.
  - (B)** The agency shall consider fully all written and oral submissions respecting the proposed rule;
  - (C)** If prior to final adoption any person objects to the accuracy of a statement made by the agency pursuant to W.S. 16-3-103(a)(i)(F)(I) or (II), the agency shall:
    - (I)** Provide the objecting person with a written response explaining and substantiating the agency's position by reference to federal law or regulations; and
    - (II)** Include with the final rules submitted for review to the governor and legislative service office a concise statement of the objection and the agency's response.
  - (D)** Upon adoption of the rule, the agency, if requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for overruling the consideration urged against its adoption.
- (iii)** Comply with the requirements of W.S. 9-5-304.
- (b)** When an agency finds that an emergency requires the agency to proceed without notice or opportunity for hearing required by subsection (a) of this section, it may adopt emergency rules. An emergency rule is effective when filed. A state agency emergency rule shall bear the endorsement of the governor's concurrence on the finding of emergency before the registrar of rules accepts the rule for filing. The rule so adopted shall be effective for no longer than one hundred twenty (120) days but the adoption of an identical rule under W.S. 16-3-103(a) or of an emergency rule under this subsection is not precluded. In no case shall identical or substantially similar emergency rules be effective for a total period of more than two hundred forty (240) days. A local agency may proceed with the emergency rule when notice of the emergency is filed with the local registrar of rules.
- (c)** No rule is valid unless submitted, filed and adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two (2) years from the effective date of the rule.
- (d)** No state agency rule or any amendment, repeal, modification or revision of the rule may be filed with the registrar of rules unless the rule has been submitted to the governor for review and the governor has approved and signed the rule. Except in the case of emergency rules and rules adopted by the game and fish commission fixing general hunting or fishing regulations, season or bag limits or establishing hunting areas, the governor shall not approve any rule until the date of receipt of the legislative management council's recommendation under W.S. 28-9-106(a) or until forty (40) days after the rule is filed with the legislative service office pursuant to W.S. 28-9-103(b), whichever is sooner. During the process of approving rules, the governor may disapprove any portion of a rule not conforming to paragraphs (d)(i), (ii) or (iii) of this section by clearly indicating the portion of the rule disapproved and the basis for the disapproval. Only those portions of a rule approved by the governor shall be filed with the registrar of rules

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as provided by W.S. 16-3-104(a). Any portion of a rule disapproved by the governor shall be returned to the agency and shall be null and void and shall not be filed, implemented or enforced. The governor shall report his disapproval of any rule or portion thereof to the management council within fifteen (15) days. The governor shall not approve any rule or any amendment, repeal, modification or revision of the rule unless it:

- (i)** Is within the scope of the statutory authority delegated to the adopting agency;
  - (ii)** Appears to be within the scope of the legislative purpose of the statutory authority; and
  - (iii)** Has been adopted in compliance with the procedural requirements of this act. For the purposes of this subsection, an "agency" means any authority, bureau, board, commission, department, division, officer or employee of the state, excluding the state legislature and the judiciary.
- (e)** If a state agency created as a licensing or regulatory board or commission for any profession or occupation regulated under title 33 regularly publishes a newsletter, memorandum or other written or electronic communication which serves as a medium to provide information to members of the regulated profession or occupation, then in addition to the notice requirements of subsection (a) of this section, the agency shall publish within that medium the proposed rules in a format conforming to any requirements prescribed pursuant to subsection (f) of this section. If the agency determines publication in such manner is not practicable, it shall publish within the chosen medium at least once prior to taking final action to adopt, amend or repeal any rule notice of its intended rulemaking proceedings and make available the full text of all proposed changes in the format conforming to any requirements prescribed pursuant to subsection (f) of this section. This subsection shall not apply to emergency rules adopted pursuant to subsection (b) of this section.
- (f)** The state registrar of rules shall prescribe a format for state agencies to follow in preparing proposed amendments to existing rules which shall ensure that additions to and deletions from existing language are clearly indicated.
- (g)** Upon receipt of a notice of intended action from a state agency under paragraph (a)(i) of this section, the secretary of state's office shall maintain a file of these notices and make them available for public inspection during regular business hours. A notice shall remain in the file until the rules are adopted or until the agency determines not to take action to adopt the proposed rules. To the extent that resources enable the office to do so, the secretary of state's office shall make these notices available to the public electronically. The secretary of state may promulgate rules specifying the format of notices submitted by state agencies under this subsection. Compliance with this subsection shall not affect the validity of rules promulgated by state agencies.
- (h)** 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:
  - (i)** 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;
  - (ii)** 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 editions of the incorporated matter;
  - (iii)** The agency, organization or association originally issuing the incorporated matter makes copies of it readily available to the public;
  - (iv)** 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 as defined in W.S. 9-2-1035(a)(iii); and
  - (v)** 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 agency rules.

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- (j) Each state agency shall adopt as much of the uniform rules promulgated pursuant to the following provisions as is consistent with the specific and distinct requirements of the agency and state or federal law governing or applicable to the agency:
- (i) W.S. 16-3-102(d);
  - (ii) W.S. 16-4-204(e) .

## History

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Laws 1965, ch. 108, § 3; W.S. 1957, § 9-276.21; Laws 1977, ch. 190, § 2; W.S. 1977, § 9-4-103; Laws 1982, ch. 16, § 1; ch. 62, § 3; 1985, ch. 57, § 1; 1991, ch. 81, § 1; 1995, ch. 84, § 1; ch. 168, § 1; 1997, ch. 62, § 1; ch. 85, § 1; 2001, ch. 175, § 1; 2003, ch. 139, § 1; 2004, ch. 75, § 1; 2006, ch. 114, § 1; 2007, ch. 215, § 1; 2013, ch. 161, § 1; 2014, ch. 109, § 1; 2015, ch. 131, § 1.

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