

Wyoming Division of Banking
Uniform Consumer Credit Code
Licensing Money Transmitters
Rules & Regulations
Effective July 21, 2003

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CHAPTER 1 – GENERAL MATTERS AND DEFINITIONS

Section 1. Authority; Scope.

(a) Generally, these Regulations are promulgated pursuant to W.S. 40-22-129(a) and pursuant to the Wyoming Administrative Procedure Act and the Wyoming Administrative Regulation Review Act. Some Chapters are also promulgated pursuant to other, more specific statutory authority, as specified in such Chapters.

(b) This Chapter provides for matters that apply generally to money transmission and supplies general information that is basic and common to the balance of these Regulations.

Section 2. Definitions.

(a) When used in the Wyoming Money Transmitters Act and these Regulations, the following terms have the indicated meanings:

(i) “Change in control,” for the purposes of filing for a new license, means a transfer that results in one (1) or more persons owning or controlling fifty percent (50%) or more of the controlling equity interests of the licensee, unless such person(s) owned or controlled fifty percent (50%) or more of such controlling equity interests as of the date of the most recent filed application. Any change in the form of the business entity constitutes a change in control.

(ii) “Department” means the Department of Audit created under W.S. 9-2-2003(a), which is one of the principal administrative operating units of the state government.

(iii) “Division counsel” means the person or persons, if any, assigned or otherwise designated by the Attorney General to provide legal advice, counsel and/or representation to the Commissioner.

(iv) “Hearing” means the public hearing held by the Commissioner on an application under Chapter 6 or on a suspension or revocation under Chapter 7.

(v) “Qualified foreign attorney” means a person

(A) Who has been admitted to practice before the highest court of any state;

(B) Who has associated with a Wyoming attorney for purposes of representing a client before the Commissioner; and

(C) Who is accompanied by the associated Wyoming attorney in, at and throughout all proceedings, whether formal or informal, before the Commissioner.

(vi) “Regulations” means these Rules and Regulations of the Commissioner.

(vii) “Unsafe or unsound manner” can result from either action or lack of action by management to include but is not limited to the following considerations by the Commissioner;

(A) Failure to provide adequate supervision and direction over authorized delegates;

(B) Failure to keep accurate books and records;

(C) Failure to account properly for transactions;

(D) Failure to make payment upon outstanding payment instruments;

(E) Operating without adequate liquidity;

(F) Operating without adequate internal controls; or

(G) Failure to comply with federal reporting laws.

(viii) “Wyoming Administrative Procedure Act” means as defined by W.S. 16-3-101.

(ix) “Wyoming Administrative Regulation Review Act” means as defined by W.S. 28-9-101.

(x) “Wyoming attorney” means a person who has been admitted to practice as an attorney and counselor at law in all courts of the State of Wyoming and who is an active member of the Wyoming State Bar.

(xi) “Wyoming Public Records Act” means as defined by W.S. 16-4-201.

(b) Excluding any terms that are otherwise defined in this or any other Chapter, the definitions set forth in W.S. 40-22-102 are incorporated into this Chapter by this reference.

Section 3. Service of Process; Delivery of Other Materials; Use of Overnight Couriers.

(a) Whenever any document or other material is required to be served on, filed with or otherwise delivered to the Commissioner, such service, filing or delivery shall be made upon him personally, or in the absence of the Commissioner, upon the acting Commissioner.

(b) Whenever any document or other material is required to be served on or otherwise delivered to a party in connection with proceedings before the Commissioner, such service or delivery shall be made:

(i) If such party is represented by counsel who has filed a notice of appearance in accordance with Section 2 of Chapter 5, then upon such counsel;

(ii) If such party is an entity or a group of individuals and is not represented by counsel, then upon the agent designated by such party for service of process; or

(iii) In all other circumstances, upon such party.

(c) Whenever any document or other material is required to be served on, filed with or otherwise delivered to any other person, such service, filing or delivery shall be made in any manner permitted under the Wyoming Rules of Civil Procedure for service of process.

(d) Unless expressly provided in the Wyoming Money Transmitters Act or these Regulations, any notice or other written communication may be delivered by certified mail or by any reputable, nationwide overnight courier service that obtains the signature of the person to whom delivery is made and that retains records of delivery.

Section 4. Public and Confidential Records.

(a) Pursuant to W.S. 40-22-117, W.S. 9-1-512 and W.S. 16-4-203(a)(i), reports issued by the Commissioner, materials relating to examinations and reports and other records required of a money transmitter are not public records and are not open for public inspection, subject to the exceptions provided in W.S. 16-4-203(a) and W.S. 40-22-117(b). In connection with proceedings under Chapters 5, 6 and 7, the information obtained by or provided to the Commissioner and/or the Division is confidential both because the Commissioner's future ability to obtain the information necessary to discharge his statutory duties in light of the public interest would be substantially and irretrievably impaired and because, given the nature of the information gained by the Commissioner, its public release would cause substantial harm to the competitive positions of the persons providing the information, of the applicant and of the proposed

institution.

(b) Upon written request to the Commissioner, any person may inspect public records possessed by the Division, subject to and only to the extent permitted under the Wyoming Public Records Act. Information that is not subject to public inspection under the Wyoming Public Records Act shall not be made available for public inspection.

(c) Inspection of public records shall take place in the Division's offices during regular business hours. Only the Commissioner or other Division employees may remove public records from the Division's offices. A person desiring photocopies of all or part of a public record shall make such request in writing and, as required by W.S. 16-4-204, shall pay the Division's then-prevailing charges for such copies and for the services of Division employees in complying with such request and supervising such compliance.

Section 5. Computation of Time.

In computing any time period prescribed by these Regulations, the day of the act or event from which the time period begins to run shall not be included. The last day of the period so computed shall be included, unless it is a legal holiday, in which event the period runs until the end of the next day which is not a legal holiday. When the period is less than eleven (11) days, legal holidays shall be excluded in the computation.

Section 6. Rules of Construction.

(a) Unless the content clearly indicates otherwise, this Chapter applies to all Chapters.

(b) To aid readability, these Regulations use the masculine gender when referring to individuals and use the neuter gender when referring to non-individuals. Words expressed using one gender include the other genders.

(c) Unless the context clearly indicates otherwise, these Regulations shall be construed by the following rules:

(i) Words and phrases shall be taken in their ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law or in the money transmitter industry shall be understood according to their technical import.

(ii) Reference to "the Wyoming Statutes" or the abbreviation "W.S." means the Wyoming Statutes as published from time to time and, pending reduction to published form and subject to applicable effective dates, all supplements, additions and other modifications enacted by the Legislature of the State of Wyoming. Reference to a named act or rule shall be treated correspondingly.

(iii) These rules shall be construed consistently with W.S. 8-1-103.

(d) Reference to a particular Section without indication of the Chapter in which it is found refers to the applicable Section in the same Chapter as the reference is found.

(e) Reference to a particular Chapter without indication of the body of regulations in which it is found refers to the applicable Chapter in these Regulations.

(f) Use of the term “includes” or “including” means that the list of items is not exhaustive but instead is illustrative.

(g) Reference to any particular rule (whether of practice, procedure or otherwise), section, code or act means such rule, section, code or act (whether statutory, regulatory or otherwise) as the same may be amended, re-codified, relocated or otherwise modified from time to time.

CHAPTER 2 – FEES, BONDS AND SECURITY

Section 1. Authority.

This chapter is promulgated in part pursuant to W.S. 40-22-109, Application fee, W.S. 40-22-111(a), Renewal of license and annual report, and W.S. 40-22-114(c), Changes in control of licensee.

Section 2. Application fee.

The Commissioner shall collect from every applicant a nonrefundable application fee in the sum of one thousand five hundred dollars (\$1,500.00).

Section 3. Annual renewal fee.

The Commissioner shall collect from every licensee an annual renewal fee in the sum of one thousand dollars (\$1,000.00) plus the sum of fifty dollars (\$50.00) for each authorized delegate, not to exceed a maximum aggregate renewal fee of six thousand dollars (\$6,000.00).

Section 4. Change in control.

Whenever there is a change in control pursuant to W.S. 40-22-114, a licensee shall submit an application for a new license including a fee in the sum of one thousand five hundred dollars (\$1,500.00).

Section 5. Determining surety bond or security amount.

The licensee shall submit annually with the renewal application, the appropriate bond or other security device required under W.S. 40-22-106 based on the amount of the licensee's outstanding payment obligations as of June 30th of the year in which an application for renewal is filed.

CHAPTER 5 – PRACTICE AND PROCEDURE

Section 1. Authority.

This Article is promulgated in part pursuant to W.S. 16-3-102(a)(i) (mandate to promulgate rules of practice and procedure).

Section 2. Representation before the Commissioner; Notice of Appearance.

(a) A person may represent itself, or may be represented either by a Wyoming attorney or by a qualified foreign attorney, in proceedings before the Commissioner.

(b) Each Wyoming attorney and each qualified foreign attorney shall file with the Commissioner a notice of appearance before representing a party in connection with a hearing under this Article. In the case of a qualified foreign attorney, the notice of appearance shall have no meaning or effect unless and until his associated Wyoming attorney shall have also filed with the Commissioner a notice of appearance. All notices of appearance shall set forth all facts necessary to determine that the attorney is either a Wyoming attorney or a qualified foreign attorney and is authorized to represent his client under this Section.

(c) Division counsel shall not be required to file a notice of appearance.

Section 3. Ex Parte Communication.

Unless required for the disposition of ex parte matters authorized by law, the Commissioner shall not consult directly or indirectly with any party regarding a submission, except as allowed under W.S. 16-3-111.

Section 4. Transcripts of Hearings.

(a) If a person desires a copy of those portions of the recording of a hearing that are available for public inspection, it shall request the same in writing. Such request shall be delivered to the Commissioner, along with a fee that the Commissioner shall determine on a case-by-case basis to recoup to the Division the total cost of services and materials necessary to make the copy, including any editing necessary to prevent the disclosure of protected material. Upon receipt of the request and the required fee, the Commissioner shall provide such copy to the requesting party as soon as practicable.

(b) If a party desires that a hearing be transcribed by court reporter, it must so inform the Commissioner and the presiding officer in writing and make the necessary arrangements and pay all associated costs related to the same. In each such case, the court reporter shall not record protected material nor any proceedings that the party providing the court reporter is not permitted to attend.

CHAPTER 6 – CONTESTED CASES

Section 1. Wyoming Administrative Procedure Act (WAPA).

The WAPA as defined by W.S. 16-3-115 is incorporated herein by reference.

Section 2. Wyoming Rules of Civil Procedure (WRCP).

The WRCP insofar as they are applicable and not inconsistent with the WAPA are incorporated herein by reference.

Section 3. Confidentiality.

(a) All matters and proceedings arising out of or related to an application or a suspension or revocation shall be confidential, except as otherwise provided in this Section.

(b) At the hearing, the hearing officer may adjourn the public portion of the hearing at any time to consider or receive any protected material in a session that is not open to the public. To the extent that information is disclosed at public portions of the hearing, such information shall not be confidential.

(c) The hearing officer's findings of fact and conclusions of law and report and recommendation to the Commissioner shall not be confidential and shall be available for public inspection under the Wyoming Public Records Act.

(d) After the Commissioner has rendered his final decision after the hearing, any written report of such decision shall not be confidential and shall be available for public inspection under the Wyoming Public Records Act.

Section 4. Appointment of Hearing Officer.

The Commissioner may appoint a hearing officer to preside at any proceeding before the Commissioner. The hearing officer shall be an employee of the Division of Banking or an employee of another agency designated by the Commissioner to act as presiding officer. As used in this Chapter "hearing officer" includes the Commissioner if presiding at a hearing allowed under these rules.

Section 5. Discovery and Depositions.

(a) Until ten (10) days before the hearing, discovery and the taking of depositions shall be available to the parties as provided in W.S. 16-3-107.

(b) The Commissioner is subject to the discovery provisions of this Section but neither the Commissioner nor any employee of the Division shall be required to disclose

protected material, nor shall any of them be compelled to testify or give a deposition. Discovery sought from any employee of the Division initially shall be by written application to the Commissioner. If the Commissioner refuses to allow discovery in whole or in part, the aggrieved party may apply to the district court for the district in which the hearing is to be conducted for an order directed to the appropriate person to compel discovery.

Section 6. Pre-hearing Conference; Agenda.

(a) At least five (5) days before the hearing, the hearing officer shall conduct a pre-hearing conference to consider the matters specified in subsection (d) of this Section. All parties shall attend the conference. The hearing officer may require each party to submit a memorandum to address the matters specified in subsection (d) of this Section. The conference may be conducted by telephone conference call or other suitable means by which all persons who are part of the conference may actively participate in the conference and can be heard by all other persons who are part of the conference.

(b) The Commissioner, after consultation with the hearing officer, may delegate the responsibility for conducting the pre-hearing conference to the deputy banking commissioner, to division counsel or to such other employee of the Division as he may deem appropriate.

(c) The hearing officer shall give each party at least five (5) days' notice of the date, time and place for the pre-hearing conference.

(d) The following matters shall be considered at the pre-hearing conference:

(i) The names and addresses of witnesses whom each party intends to call to testify at the hearing, together with a detailed summary of the testimony expected from each witness;

(ii) The documentary evidence each party intends to introduce at the hearing;

(iii) The number, description, and purpose of all demonstrative exhibits each party intends to use at the hearing;

(iv) Material facts, if any, of which the hearing officer will be requested to take official notice pursuant to W.S. 16-3-108(d);

(v) Stipulations of fact and documentary evidence to be admitted into the record;

(vi) Matters requiring consideration or submission to the hearing officer in executive session;

(vii) The length of time to be devoted to presentation of cases and delivery of opening and closing statements;

(viii) Any other matters that will simplify the issues or otherwise allow the hearing to be conducted more efficiently and quickly; and

(ix) A determination as to whether briefs are to be filed.

(e) At the hearing, the hearing officer shall admit into the record all facts, evidence and other matters to which the parties stipulated at the conference. The hearing officer also shall identify those matters of which he will take official notice.

(f) The hearing officer shall prepare an agenda that sets forth the order of business to come before him during the hearing, and the witnesses to be called, the documentary evidence to be introduced, and the exhibits to be used at the hearing. Before the hearing, the hearing officer shall provide a copy of the agenda to each party. The agenda will govern the order of business during the hearing unless modified by the hearing officer.

Section 7. Right to Appear at Hearing; Public Comment.

(a) Only parties may appear before the hearing officer at a hearing. Whether for himself or in a representative capacity, any individual may testify provided that he is called by a party or by the hearing officer.

(b) The hearing officer, in his discretion, may permit persons in attendance at the hearing to present oral comments at the conclusion of the hearing. The hearing officer and the parties may ask questions of any person who presents oral comments at the hearing.

Section 8. Open Hearing; Executive Session.

(a) The hearing shall be open to the public. If a person disrupts a hearing or otherwise prevents the orderly conduct of the hearing, the hearing officer shall remove the person from the hearing and continue in session, or he may recess the hearing.

(b) At any time during the hearing, the hearing officer may adjourn and reconvene in executive session to consider protected material. Executive sessions of the hearing shall not be open to the public.

Section 9. Order of Procedure.

(a) The hearing shall be conducted substantially as follows:

(i) The hearing officer shall call the hearing to order and call the case to be heard;

(ii) The hearing officer shall address any motions or preliminary matters to be heard, including introduction of exhibits, stipulated facts and evidence, and matters to be noticed officially by the hearing officer;

(iii) The hearing officer shall administer to all witnesses an oath or affirmation in substantially the manner prescribed in W.S. 1-12-114;

(iv) Each party may make an opening statement, in the same order as evidence is to be presented, as set forth in this Section;

(v) The applicant or licensee shall present its case;

(vi) The Division shall present its case;

(vii) All parties shall be accorded a reasonable amount of time to cross-examine witnesses presented by another party;

(viii) All parties may present rebuttal evidence, if any, in the order and within the time limits prescribed by the hearing officer; and

(ix) Each party may make a closing statement. Closing statements shall be made in the reverse order as cases were presented. The hearing officer shall determine the amount of time for each party to make its closing statement.

(b) The hearing officer may ask questions of any party or witness.

Section 10. Nature of Hearing; Presentation of Evidence.

(a) The purpose of the hearing is to obtain a full and true disclosure of all relevant and material facts so that the findings, decisions and orders of the hearing officer are rendered upon information as complete and trustworthy as is practicable. Hearings are not intended to be adversarial in nature.

(b) The taking of evidence shall be governed by W.S. 16-3-108. Documentary and other physical evidence submitted for the hearing officer's consideration shall be marked as exhibits. Upon such marking, such evidence shall become part of the record.

(c) The hearing officer shall exercise reasonable control over the manner and order of questioning witnesses and presenting other evidence so as to:

(i) Make more effective the ascertainment of the truth and a full and true disclosure of relevant and material facts;

(ii) Avoid needless consumption of time;

(iii) Avoid presentation of irrelevant, immaterial or unduly repetitious evidence;

(iv) Avoid the public disclosure of protected material;

(v) Protect the witness from harassment and undue embarrassment; and

(vi) Maintain an orderly and efficient hearing.

(d) Cross-examination shall be limited to the subject matter of the direct examination and matters relating to the credibility of the witness. The hearing officer may permit additional inquiry into matters on re-direct examination, if necessary.

(e) No relevant information shall be excluded solely because it is hearsay.

Section 11. Reopening of Hearing.

Upon reasonable notice to all parties, the hearing officer may reopen the hearing at any time prior to the issuance of his findings of fact, his conclusions of law and his decision and/or order relating to the hearing. To the extent possible, a reopened hearing shall be held in the same community and at the same location as the initial hearing.

Section 12. Records of Hearing and Executive Sessions.

(a) The record of the hearing shall include:

(i) All formal and 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 on the same; and

(iv) Any opinion, findings, conclusions, decision or order of the Commissioner.

(b) Portions of the record that contain evidence, testimony, deliberations or other matters presented in executive session shall be deemed to be matters described in W.S. 16-4-203(d) and in W.S. 9-1-512 and shall not be subject to public inspection.

Section 13. Recording of Hearings.

The hearing shall be recorded verbatim steno graphically, or by court reporter, videotape, audiotape or any other means of verbatim recording as may be determined by the hearing officer.

Section 14. Briefs.

Each party may file with the hearing officer a brief on issues relevant to the hearing. Briefs must be filed within five (5) days after the hearing. Each brief shall become a part of the record. A party who files a brief shall serve a copy on all other parties. A party may file only one (1) brief in connection with a hearing.

Section 15. Findings and Conclusions.

In any proceeding before the hearing officer:

(a) The parties have a right to submit proposed findings of fact and conclusions of law or a proposal for decision. The hearing officer shall set reasonable deadlines for submission of proposed findings of fact and conclusions of law.

(b) Proposed findings of fact submitted under this section must be supported by concise and explicit statements of underlying facts developed from the record with specific reference to where in the record the facts appear.

(c) The Commissioner may direct the hearing officer to write proposed findings of fact and conclusions of law. The Commissioner may also direct the hearing officer to write a recommended decision.

(d) All parties shall have an opportunity to file objections to proposed findings of fact and conclusions of law and orders submitted by any party or by the hearing officer.

(e) The hearing officer shall establish deadlines for the filing of proposed findings of fact and conclusions of law and orders.

(f) After the expiration of time for filing objections, the Commissioner shall consider the proposal for decision. The Commissioner may:

(i) Adopt the proposal for decision, in whole or in part;

(ii) Decline to adopt the proposal for decision, in whole or in part; or

(iii) Direct the hearing officer to give further consideration to the proceeding with or without reopening the hearing.

(g) Parties shall be given an opportunity to file exceptions, replies and briefs in the event a decision is remanded for further consideration.

(h) If on remand additional evidence is received which results in a substantial revision of the proposal for decision, a new proposal for decision shall be prepared unless the Commissioner, on remand, has heard the case or read the record. A new proposal for decision must be clearly labeled as such and all parties of record are entitled to file exceptions, replies and briefs.

Section 16. Unclaimed Exhibits.

Within sixty (60) days after the expiration of all periods within which an appeal of a final determination must be filed, the parties shall retrieve all exhibits. After that time, the Commissioner may dispose of any exhibits not so retrieved.

CHAPTER 7 – ORDERS AND PETITIONS

Section 1. Special Definitions.

(a) As used in this Chapter:

(i) “Appeal period” means the period of seven (7) days after the date on which an ordered person receives a notice of intent.

(ii) “Notice date” means the date on which the petitioner is served with a notice of intent, which shall conclusively be the date shown on the return receipt or other reliable report of service.

(iii) “Order” means any order issued by the Commissioner under the authority of the Wyoming Money Transmitters Act including a penalty order and a temporary order.

(iv) “Ordered person” means a person who or which is the subject of an order and upon whom or which the order is to operate directly.

(v) “Penalty order” means an order, or such portion of an order, that imposes a civil monetary penalty.

(vi) “Petition” means the request for hearing that a petitioner may file pursuant to W.S. 40-22-111(c) and W.S. 40-22-128.

(vii) “Petitioner” means a person who files a petition. A petitioner may be a an applicant for license, a license holder or an authorized delegate.

(viii) “Receipt date” means the date on which the Commissioner is served with a petition.

(ix) “Temporary order” means an order issued pursuant to W.S. 40-22-122.

Section 2. Issuance of Orders.

(a) The Commissioner is empowered to issue orders under the enforcement article. All orders shall be in writing.

(b) All orders shall be delivered to the ordered person;

(i) By certified mail, addressed to the last known address of the ordered person, as shown on the records of the Division, or

(ii) In the manner provided for service of process under the Wyoming Rules of Civil Procedure.

(c) Each order, other than a temporary cease and desist order, shall be accompanied by a notice of intent.

(d) Temporary orders and penalty orders shall be issued only upon principal actors.

Section 3. Content of Notices of Intent and Orders.

(a) A notice of intent shall include the following:

(i) The name and street mailing address of each ordered person.

(ii) If the ordered person is an officer or director of a financial institution or a holding company, the name and street mailing address of the financial institution or a holding company with which he is affiliated.

(iii) The effective date of the order, unless specified in the proposed order.

(iv) If the order includes a penalty order or is issued simultaneously with a penalty order, a statement as to the amount of the civil penalty for each proscribed activity and the total amount of the civil penalty to be assessed (which total may be expressed as a maximum amount that will accrue daily for so long as the proscribed activity continues).

(v) A statement of the grounds for issuing the order, including citation to the statute or rule involved, if any.

(vi) A statement of the facts in support of the allegations contained in the grounds for issuing the order.

(vii) A statement informing the ordered person that it has the right to a hearing on the order before the Board in accordance with the Board Regulations and these Regulations and that failure to request a hearing within the appeal period will result in the order becoming final.

(viii) A copy of the proposed order.

(b) An order shall include:

(i) The name of the ordered person, identified with reasonable particularity, such as by residence address, social security number or employment status.

(ii) A brief statement, explaining the basis for the issuance of the order.

(iii) If applicable, the effective date of the order, which may be immediately upon issuance.

(iv) In the case of a cease and desist order, a statement directing the actor to discontinue the proscribed activity, directing it to correct the effects of or the steps leading to the proscribed activity, or both.

(v) In the case of a removal order, a statement describing the proscribed activity that requires the removal of the actor.

(vi) In the case of a temporary order, the determination by the Commissioner that the proscribed activity described in the proposed order poses an immediate threat to the safety and soundness of the financial institution or to the interests of the depositors, creditors or shareholders of the financial institution.

(vii) In the case of a penalty order, the determination by the Commissioner:

(A) That the actor has engaged in a proscribed activity or that the actor violated or failed to comply fully with any provision of a lawful order, and

(B) As to his consideration of the factors listed in W.S. 13-10-207(c).

Section 4. Final Orders.

(a) A proposed order shall become effective upon the later to occur of

(i) The date specified in the order;

(ii) The date of the order, if no effective date is specified in the order;

(iii) The date on which the order is delivered to the ordered person, if no effective date is specified in the order and the order is undated.