



## Certification Page Regular and Emergency Rules

Revised September 2016

**Emergency Rules** (After completing all of Sections 1 through 3, proceed to Section 5 below)

**Regular Rules**

### 1. General Information

a. Agency/Board Name <b>Wyoming Business Council</b>		
b. Agency/Board Address <b>214 West 15th Street</b>	c. City <b>Cheyenne</b>	d. Zip Code <b>82001</b>
e. Name of Agency Liaison <b>Warren Appel</b>		f. Agency Liaison Telephone Number <b>(307) 777-2803</b>
g. Agency Liaison Email Address <b>warren.appel1@wyo.gov</b>		h. Adoption Date <b>10/2/18</b>
i. Program <b>Small Business Innovation Research Matching Program</b>		

### 2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No.  Yes. Please provide the Enrolled Act Numbers and Years Enacted: **Senate Enrolled Act 58 (2018)**

### 3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.

(Please use the Additional Rule Information form for more than 10 chapters and attach it to this certification)

Chapter Number:	Chapter Name:	<input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
<b>1</b>	<b>Small Business Innovation Research Matching Program</b>	<input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
		<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
		<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
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		<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
		<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
		<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed

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

a. Date on which the Proposed Rule Packet (consisting of the Notice of Intent as per W.S. 16-3-103(a), Statement of Principal Reasons, strike and underscore format and a clean copy of each chapter of rules were: **10/2/2018, 10/2/2018**

- approved as to form by the **Registrar of Rules**; and
- provided to the **Legislative Service Office** and **Attorney General**:

**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.  No.  Yes.  N/A

b. A public hearing was held on the proposed rules.  No.  Yes. Please complete the boxes below.

Date:	Time:	City:	Location:

c. If applicable, describe the **emergency** which requires promulgation of these rules without providing notice or an opportunity for a public hearing:

**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**: **10/2/2018**

b. Date on which final rules were approved as to form by the **Secretary of State** and sent to the **Legislative Service Office**: **10/2/2018**

c.  The Statement of Reasons is attached to this certification.

**6. Agency/Board Certification**

The undersigned certifies that the foregoing information is correct

Signature of Authorized Individual	
Printed Name of Signatory	for <b>Shawn Reese</b>
Signatory Title	<b>Chief Executive Officer</b>
Date of Signature	<b>10/2/2018</b>

**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	

## **Statement of Reasons**

### **Wyoming Business Council**

#### **Small Business Innovation Research Matching Program**

##### **Adoption of New Regular Rules: Chapter 1**

The Business Council is proposing to adopt regular rules to fulfill its statutory obligation to create new rules for the Small Business Innovation Research (SBIR) Matching Program under W.S. § 9-12-105(d). The proposed rules delineate the responsibility for making grant decisions to the Wyoming Business Council Board or Council Staff, as delegated by the Board. The rules establish the application process to receive grants under this program and include provisions that will ensure the State receives adequate consideration in exchange for an award of State money under the SBIR Program. The rules also require Attorney General's Office approval of all grant agreements signed under this program. Because it is important to get the SBIR Program up and running as soon as possible, the Business Council is using its statutory exemptions to expedite the adoption of these rules.

## **Chapter 1**

### **Small Business Innovation Research Matching Program**

**Section 1. Authority.** The Wyoming Business Council, pursuant to Wyoming Statute § 9-12-105(d), is required to promulgate such rules as are necessary to administer a Small Business Innovation Research (SBIR) program to match federal funds approved for Wyoming companies conducting research and development activity in the State.

**Section 2. Purpose.** These rules are promulgated for the purpose of establishing a regulatory framework for providing matching funding to small businesses headquartered in and organized under the laws of Wyoming that have received federal funds for the purpose of research and development.

#### **Section 3. Definitions.**

(a) As used in this chapter:

(i) “Council” means the Wyoming Business Council Board of Directors.

(ii) “Council Staff” the staff of the Wyoming Business Council assigned to administer the SBIR program.

(iii) “Applicant” means a Wyoming based company that applies for funding under the SBIR program.

(iv) “Awardee” means a business entity or individual who has been awarded funds under the SBIR program.

(v) “Phase I award” means an award where the federal government has made a grant under 15 U.S.C. § 638(e)(4)(A).

(vi) “Phase II award” means an award where the federal government has made a grant under 15 U.S.C. § 638(e)(4)(B)(i)–(iv).

#### **Section 4. Application requirements and program eligibility.**

(a) In addition to the statutory requirements under W.S. § 9-12-105(c), to be eligible, an applicant must:

(i) Have received an SBIR or Small Business Technology Transfer (STTR) Phase I or II award from a federal agency targeted at the development of qualified research or technologies on or after July 1, 2018;

(ii) Be a for-profit sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation registered with the Wyoming Secretary of State;

(iii) Agree to provide a report, as described in Section 4(e), describing in detail its efforts to and success in commercializing the service, product, concept, design or other marketable asset to be developed with the assistance of State funds;

(iv) Employ fifty (50) individuals or less;

(v) Produce or propose to produce a service, product, concept, design or any other marketable asset that relates to or fulfills one of the five Next Generation Engines identified in the ENDOW 20-Year Economic Diversification Strategy;

(vi) Provide a good faith declaration of intent to remain in Wyoming for three (3) years after commercialization of service, product, concept, design or other marketable asset to be developed with the assistance of State funds;

(vii) Certify that, to the extent practical, all of the research described in any proposal for Phase I or Phase II funding will be conducted in Wyoming; and

(viii) Commit to seeking additional nonstate investment funding investment funding, whether from federal or private sources.

(b) Awardees are limited to one (1) award per phase under this chapter per fiscal year (July 1 through June 30), for a maximum of two (2) SBIR awards per year, and four (4) SBIR awards over the life of the company.

#### **Section 5. Application process.**

(a) Application.

(i) The Council shall provide an SBIR application online that includes a requirement to provide information relevant for funding decisions, including but not limited to information that establishes the applicant's eligibility for SBIR funding.

(ii) Each applicant shall file its application for SBIR funds with the Council online at a website provided by the Council.

(b) Application process, procedure and approval. Applications are received on a rolling basis and will be reviewed in the month following the month of application submission in the following manner:

(i) Council Staff reviews to ensure accuracy, eligibility and completeness, and provides a recommendation based upon these rules and W.S. § 9-12-105(d).

(ii) The Council, or Council Staff as designated by the Council, has the sole discretion to make award decisions based upon these rules and W.S. § 9-12-105(d). The Council, or Council Staff as designated by the Council, may consult with subject matter experts for assistance and advice in making funding decisions.

(iii) Following the Council's decision, or the decision of Council Staff if so designated by the Council, requests for funding will be routed through the Governor or the Governor's designee for approval. The Council will thereafter submit the invoice for payment to the State Auditor's Office. Payments shall be made to awardees within forty-five (45) days after submission of the invoice per W.S. § 16-6-602 and shall follow the disbursement schedule provided in the startup: Wyoming Subaccount Allocation Plan and Supplemental Procedures adopted by the Council.

(c) Agreement template. In consultation with the Attorney General's Office, the Council shall prepare a template for all agreements between itself and potential awardees of SBIR funds and shall submit the template to the Attorney General's Office for approval. Following approval by the Attorney General's Office, the Council shall use this template for all such agreements, and shall not deviate from the template without approval from the Attorney General's Office. The Council shall, on an annual basis, resubmit the template to the Attorney General's Office for updates and approval.

(d) Award amounts, disbursement schedules, and annual allocations.

(i) Number of awards.

(A) The Council, in its sole discretion, may make up to twenty (20) Phase I awards per fiscal year.

(B) The Council, in its sole discretion, may make up to twenty (20) Phase II awards per fiscal year.

(C) The Council, in its sole discretion, may award up to five million dollars (\$5,000,000.00) in total SBIR awards per fiscal year.

(ii) Disbursement schedules and annual allocations to this program are detailed in the startup: Wyoming Subaccount Allocation Plan and Procedures adopted by the Council.

(e) Reporting.

(i) Awardees shall provide a report on or before July 1 of each year for two (2) years after an award is granted prior to commercialization, and for three (3) years after commercialization, for a maximum of five (5) years.

(ii) In addition to the elements required under Wyoming Statute § 9-12-105(d)(i)(E), the required annual report to the Council must address the awardee's:

(A) Development of the proposed service, product, concept, design or other marketable asset in sufficient detail to allow Council Staff to review the awardee's progress towards commercialization;

(B) Progress toward seeking and receiving additional funding, whether from State, federal or private sources;

(C) Plans for growth, market, commercialization and capitalization for the upcoming year;

(D) Proof of proper use of funds in the form of receipts or invoices;

(E) Suggestions for continuous improvement to State programs for startups ; and

(F) Maintenance of nexus in Wyoming that is substantial and continuous. To prove nexus, awardee must provide the following:

(I) Documentary evidence showing the majority of the awardee's employees work in Wyoming; and

(II) A multimedia narrative of the Wyoming lifestyle of its employees leveraging social media resources.

(iii) An awardee must provide material to the Council, or Council Staff as designated by the Council, as requested for purposes of promoting Wyoming's entrepreneurial ecosystem and lifestyle.

(f) Allowable use of funds; consequence for misuse of funds and repayment.

(i) Funds may be spent on materials or activities that facilitate development or commercialization of a company's service, product, concept, design or any other marketable asset. Any other use of State-provided SBIR funds is prohibited.

(ii) In addition to the repayment requirement under W.S. § 9-12-105(d)(iv), the Council may seek return of the disbursed funds if it at any time determines that an awardee has failed to submit any part of the required annual report, including disclosure of its efforts to seek additional nonstate investment funding; has made a prohibited use of the funds; or has breached the agreement between itself and the Council. In that instance, the grant recipient shall repay all funds provided under this chapter plus interest at the rate of four percent (4%) per annum compounded annually from the date the funds were granted. This provision is in addition to, and does not replace, any other potential cause of action the Council may have against the awardee based on its conduct.

**Section 6. Program administration.** The Council may designate Council Staff to approve applications and make award decisions. If the Council chooses to designate Council Staff with this responsibility, Council Staff shall make a quarterly report to the Council on the number of applications approved, the status of the approved applications, and the amount of funds distributed to awardees.

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