



Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised May 2018

1. General Information

a. Agency/Board Name*		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Agency Liaison		f. Agency Liaison Telephone Number
g. Agency Liaison Email Address		
h. Date of Public Notice		i. Comment Period End Date
j. Public Comment URL or Email Address:		
k. Program		

* By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

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 Chapter Numbers and Years Enacted
(eg: 2015 Session Laws Chapter 154):

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 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 Repealed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 Repealed
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 Repealed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 Repealed
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 Repealed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 Repealed
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 Repealed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 Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed

4. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
-------	-------	-------	-----------

b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

5. Federal Law Requirements

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements. No. Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
--

Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

6. State Statutory Requirements

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):

The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

Not Applicable.

7. Additional APA Provisions

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

_____ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

_____ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

8. Authorization

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

STATEMENT OF PRINCIPAL REASONS FOR ADOPTION OF RULES

Due to a recent review of the State Loan and Investment Board's Chapter 15 Abandoned Mine Land Funding for Public Facility Projects (AML) rules by staff and the Attorney General's Office, a complete repeal of the Chapter is necessary. The review concluded that the cited statutory authority for Chapter 15 does not provide the Board with the authority to promulgate rules related to the AML program administered by the Wyoming Department of Environmental Quality (DEQ). No additional SLIB rulemaking authority related to the AML Program exists.

Chapter 15
Abandoned Mine Land Funding for Public Facility Projects

REPEALED

**RULES AND REGULATIONS
STATE LOAN AND INVESTMENT BOARD**

**Chapter 15
Abandoned Mine Land Funding for Public Facility Projects**

REPEALED

~~Section 1. Authority.~~

~~This Chapter is adopted pursuant to W. S. 9-4-604 and Laws 1979, Chapter 160, Section 6 and Executive Order 1997-3.~~

~~Section 2. Definitions.~~

~~As used in this chapter:~~

~~(a) "Administrator" means the Administrator of the Abandoned Mine Land Division of the Department of Environmental Quality.~~

~~(b) "AML" means the Abandoned Mine Land Division of the Department of Environmental Quality.~~

~~(c) "Board" means the State Loan and Investment Board.~~

~~(d) "Director" means the Director of the Office of State Lands and Investments~~

~~(e) "Office" means the Office of State Lands and Investments.~~

~~(f) "In-kind contributions" means land, labor, materials, equipment, and services provided by the applicant, and used for project purposes valued at reasonable, actual cost.~~

~~(g) "Donations" means land, materials, and equipment, provided to the applicant by others, at no cost to the applicant, used for project purposes and valued at reasonable, actual cost.~~

~~(h) "Essential public services" means a public service facility or utility owned by the applicant and available for use by the general public including, but not limited to: water and sewer projects, street and road projects, solid waste disposal projects, public buildings, and health care facilities.~~

~~(i) "Match" means funds, land, labor, materials, equipment, and services provided by the applicant, and used for project purposes valued at reasonable, actual cost.~~

~~(j) "Special district" means hospital, fire protection, solid waste disposal, improvement and service, water and sewer districts, and school districts.~~

(k) An "emergency situation" means a direct and immediate threat to health, safety, or welfare.

~~Section 3. General Policy.~~

~~(a) The Board shall review public facility applications and make a recommendation to the Governor as to which project(s) represent a prudent use of available Abandoned Mine Land (AML) funds.~~

~~Section 4. Public Facility Eligibility For AML Funding.~~

~~(a) Public Facility Eligible Applicants. Only incorporated cities and towns, counties, special districts or joint powers boards who own or would own the facility or sponsor the activity shall be eligible to apply for funding under this chapter. If the applicant is a special district or joint powers board, it must be legally formed and approved prior to Public Facility application. Eligible applicants must have relied on the coal or mineral mining industries for a significant portion of their economic base prior to and since August 3, 1977, or for this same time period can demonstrate significant impact upon their tax revenues and services as a result of these industries.~~

~~(b) Eligible Coal and Mineral Industry Projects.~~

~~(i) The construction of specific public facilities which have a relationship to the coal or mineral industries.~~

~~(ii) Activities of public benefit which are related to impacts from the coal or mineral industries.~~

~~(c) Public Facility Eligible Project Costs. Applicants may seek funding for costs associated with the site evaluation, engineering and design, site preparation, construction, equipment purchase, furnishings, improvement, or replacement of essential public services.~~

~~(d) Public Facility Ineligible Project Costs. The following project costs shall be ineligible for reimbursement from AML grant funds:~~

~~(i) Costs for operating, administrative or routine maintenance purposes;~~

~~(ii) Costs for new sidewalks for street projects which are not replacing pre-existing sidewalks;~~

~~(iii) Costs for tap fees, sewer and water fees, and plant investment fees;~~

~~(iv) Engineering fees (design, inspection and contract administration costs) over 20% of project cost;~~

- (v) All non-cash costs except those defined as in-kind contributions or donations;
- (vi) Costs for preparation or presentation of public facility application(s) to any source of funding;
- (vii) Costs for transportation, meals and lodging incurred anywhere away from the site of the project;
- (viii) Costs for equipment and furnishings not permanently installed and solely dedicated to the operation of a facility;
- (ix) Legal fees;
- (x) Costs related to issuance of bonds;
- (xi) Costs for real property;
- (xii) Costs for project or facility signage;
- (xiii) Costs to establish and form special districts or joint powers boards;
- (xiv) Costs incurred prior to public facility award, Governor Certification and Office of Surface Mining approval;
- (xv) Costs for landscaping including, but not limited to, design and inspection, irrigation systems and materials, and additional costs for patterned, colored or other decorative sidewalks or concrete in excess of 6% of total project costs;
- (xvi) Costs for a contingency or extra work allowance;
- (xvii) Costs for stand-alone street chip and seal projects.

~~Section 5. Application Procedure.~~

- (a) ~~Applications. Separate applications shall be prepared for each project. Applicants shall submit three (3) copies of their completed application to the Office. The Office will forward the application to AML for review.~~
- (b) ~~Timing. The Board shall meet on the third Thursday of each July to consider applications for AML funding under this chapter. Applications for the July meeting must be received by the third Thursday of the preceding April.~~
- (c) ~~Renewal of Applications. Applications shall be retained by the Office and may be renewed only by a written request from the applicant received within the time period established in subsection (b) of this section. If applications are not renewed, they shall be destroyed by the Office.~~
- (d) ~~Information Required for All Applications. The following information shall be~~

provided in all applications:

- (i) Transmittal cover letter signed by a proper authority of the applicant;
- (ii) Documentation showing public support, including documentation of public notice and opportunity for citizen input;
- (iii) The amount requested and percentage split of total project costs;
- (iv) A full description of the proposed project, specifically including, but not limited to, a phase construction schedule, if applicable;
- (v) A detailed project budget delineating all costs of the proposed project and the method by which the project costs were estimated;
- (vi) The geographic area and population served directly and indirectly by the project and the percentage of the applicant's population directly served by the project;
- (vii) A description of other project funding sources, committed or pending, and the portion of the project cost expected to be funded from each source, including any future funding applications under this chapter. The applicant must submit a funding commitment from all project funding sources, including the applicant, to demonstrate commitment to the project;
- (viii) Information to demonstrate the eligibility of the project in accordance with the requirements for AML funding;
- (ix) Information to demonstrate the need and importance of the project with regards to the AML funding;
- (x) If the applicant is a special district, a copy of the resolution that shows formation of the special district and certification from the Board of County Commissioners that the special district currently exists;
- (xi) If the applicant is a joint powers board, a copy of the certificate of organization filed with the Secretary of State, and a copy of an executed joint powers agreement approved by the Attorney General;
- (xii) Applications shall be properly executed by the officers of the applicant. A copy of the resolution authorizing the filing of the application shall be attached;
- (xiii) A standard resolution on a form provided by the Office;
- (xiv) A map and photographs showing the project area, if applicable;
- (xv) A financial statement of the applicant, on a uniform "General Financial Information" form provided by the Office that includes, but is not limited to, the following

information:

- (A) Assessed valuation for the current and two preceding fiscal years;
 - (B) Total bonded and non-bonded indebtedness, including outstanding principal balance, interest rate, and remaining term;
 - (C) Total mills levied within the jurisdiction of the applicant for the current and two preceding years; and a breakdown of the mill levy for the current fiscal year;
 - (D) Sales and use tax imposed within the jurisdiction of the applicant;
 - (E) A summary of the applicant's total investments and cash balances for the two preceding fiscal years;
 - (F) The applicant's current water and sewer rates, tap fees, and an indication if water meters have been installed.
- (i) If an applicant submits multiple applications under this chapter for consideration at one meeting, a priority ranking of the multiple applications must be established by the applicant;
 - (ii) The names of any land developers or others whose business ventures will directly benefit in an amount equal to or in excess of 10% of the project cost and a showing whether funding or other assistance has been requested, received or pledged from these sources;
 - (iii) If the project is needed to meet a federal or state health and safety requirement, provide documentation of the specific requirement(s) and an explanation of how the project addresses the requirement(s);
 - (iv) Applications submitted by a special district, either standing alone or as a member of a joint powers board, shall provide a written review from the board of county commissioners in any county in which the special district or joint powers board is located. The board of county commissioners shall review: (A) the ability of the special district to fund the project through bonds, (B) whether the project is adverse to the needs, plans or general welfare of the county, (C) whether the special district has met county standards. If any part of the special district lies within five (5) miles of the corporate limits of any city or town, the special district's funding or loan application shall also receive a written review from the governing body of the city or town;
 - (v) Applications shall contain documentation that a public hearing has been held in accordance with footnote 4 of Enrolled Act No. 1 of the fifty-fourth legislature. Evidence of the public hearing shall consist of: (A) a copy of the notice of public hearing in a newspaper of general circulation in the affected locality published at least once a week for three consecutive weeks immediately preceding the hearing. Said notice should give details of who the applicant is, the project to be funded and the amount of funds requested. (B) A copy of the minutes of the public hearing reflecting the comments for or against and the number of commentors. (C) A copy of the affidavit of

publication from each newspaper in which the notice of public hearing was printed. In cases that it appears to the Director there is considerable public interest in the project, the Director shall request and the applicant shall provide a written summary of all comments received at the public hearing. In the case of an emergency funding application the hearing requirements must be met before any of the emergency funding award can be disbursed. In the event that this footnote is not continued or similar legislation enacted, this requirement shall be void for applications submitted for consideration under this chapter after the January 15, 1998 meeting.

(e) Preliminary Review. Within 45 working days of receipt of an application, the Office shall notify the applicant, in writing, if the application lacks any of the items required in subsection (d) of this section. The applicant shall have 10 working days to submit the required additional information.

(f) Incomplete Applications. Incomplete applications shall not be presented to the Board for consideration.

~~Section 6. Evaluation and Prioritization.~~

(a) The Board shall recommend rejection of projects that, in the judgement of the Board, have as their main purpose the benefit of a private business venture.

(b) Criteria. The Board shall evaluate and prioritize applications utilizing the following criteria:

(i) The project has a direct relationship to the State's coal and mineral industries;

(ii) The project provides significant benefit to the State's coal and mineral industries, or mitigates impacts resulting from these industries to local economies, basic public services, infrastructure, or the environment;

(iii) The cost of the project is commensurate with the benefits received by the industry, affected communities and state;

(iv) Funding from other sources is limited or unavailable, and local governments, state or federal agencies are unable to commit financial support considering their revenues and tax bases;

(v) There is a demonstrated need and urgency for funding this project prior to reclamation of abandoned non-coal mines.

~~Section 7. Board Consideration.~~

(a) The Board shall consider each application, allow for comments from the applicant, and establish the maximum amount of the project funding and the percent of eligible project costs that will be covered by the funding.

~~(b) At the July Board meeting, the Board shall not grant AML funds in excess of those identified as available for public facility projects by the Administrator. Any grant awards shall meet the requirements of Department of Environmental Quality, Abandoned Mine Land Program rules and regulations. Any grant awards for AML funding shall be made available in the second calendar year after the application year.~~

~~Section 8. Funding Disbursement and Administration.~~

~~(a) Fund Disbursement. Funding shall be disbursed to the applicant only as needed to discharge obligations incurred in accordance with eligible project costs.~~

~~(b) Fund Reversion.~~

~~(i) If AML in consultation with the Director determines that the project has not been commenced within two (2) years from date of initial funding approval, the funding will automatically expire, unless otherwise specified. Based upon information supplied by the applicant, AML in consultation with the Director may grant an extension of time in which to commence the project.~~

~~(ii) If AML in consultation with the Director determines that the project has not been completed within a reasonable time, AML and the Director shall notify the applicant in writing at least thirty (30) days prior to presenting the matter for Board review. The Board, upon review of the project circumstances, may recommend to the Governor termination or modification of the funding award.~~

~~(iii) If based upon a review of current information in the files of the Office it appears that the project is complete and the full amount of the funds has not been expended, the unused portion of the funds shall revert to AML.~~

~~Section 9. Funding Requirements.~~

~~(a) Projects with abandoned mine land funds shall receive financial support in accordance with federal grant requirements. All contract services shall be procured through an open and free competitive process, in accordance with W.S. 9-2-1027 et seq. and W.S. 9-2-1016. Expenditure of abandoned mine land funds shall be on a cost reimbursement basis for costs allowable under the grant and federal grant regulations. The AML may enter into agreements with local governments to facilitate project planning, implementation and coordination, provided that such agreements do not increase the costs of the project to the Program nor delegate the responsibility of the AML to fulfill its grant recipient duties and oversight functions.~~

~~Section 10. Audits and Inspections.~~

~~(a) AML may, at its expense, conduct an audit of the records of the applicant and inspect the construction and operation of the project.~~

~~Section 11. Rule Amendments.~~

~~(a) Amendments to these rules do not apply to applications filed after the effective date for phased construction projects which have already received partial funding under this chapter.~~