



Certification Page Regular and Emergency Rules

Revised June 2020

Emergency Rules *(Complete Sections 1-3 and 5-6)*

Regular Rules

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. Adoption Date
i. Program			
Amended Program Name <i>(if applicable)</i> :			

* 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 (non-emergency) 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 non-emergency or regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No. Yes. If the rules are new, please provide the Legislative Chapter Numbers and Years Enacted (e.g. 2015 Session Laws Chapter 154):

3. Rule Type and Information For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.

a. Provide the Chapter Number, Title* and Proposed Action for Each Chapter. *Please use the "Additional Rule Information" form to identify additional rule chapters.*

Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name <i>(if applicable)</i> :		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name <i>(if applicable)</i> :		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
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Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name <i>(if applicable)</i> :		

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:

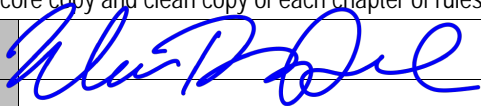
5. Checklist

a. For regular rules, the Statement of Principal Reasons is attached to this Certification 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

b. For emergency rules, the Memorandum to the Governor documenting the emergency, which requires promulgation of these rules without providing notice or an opportunity for a public hearing, is attached to this Certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct. By electronically submitting the emergency or regular rules into the Wyoming Administrative Rules System, the undersigned acknowledges that the Registrar of Rules will review the rules as to form and, if approved, the electronic filing system will electronically notify the Governor's Office, Attorney General's Office, and Legislative Service Office of the approval and electronically provide them with a copy of the complete rule packet on the date approved by the Registrar of Rules. The complete rules packet includes this signed certification page; the Statement of Principal Reasons or, if emergency rules, the Memorandum to the Governor documenting the emergency; and a strike and underscore copy and clean copy of each chapter of rules.

Signature of Authorized Individual	
Printed Name of Signatory	
Signatory Title	
Date of Signature	

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	

Wyoming Business Council

Statement of Principal Reasons

Rulemaking for Chapter 6 – Large Loan Project Program within the Economic Planning & Partnership Challenge Loan Program

May 13, 2021

The Wyoming Business Council is seeking to promulgate these rules under authority of, and as required by, W.S. § 9-12-308(m). This statute is the codification and further clarification of a program established under 2014 Session Laws, Chapter 46, Section 2.

These rules were adopted as “amended” rules by unanimous action of the Wyoming Business Council Board of Directors at its March 10, 2021 public meeting. While these rules are derived from and informed by the rules from the now-defunct program, this action constitutes new rulemaking. Accordingly, these rules were adopted as “new” rules by unanimous action of the Wyoming Business Council Board of Directors at its May 12, 2021 public meeting.

The WBC is statutorily exempt from the Wyoming Administrative Procedures Act under W.S. § 9-12-102(g)(iii).

Wyoming Business Council

Economic Planning & Partnership Challenge Loan Program – New Rules

Chapter 6

Summary of Public Comment

May 13, 2021

The Wyoming Business Council is statutorily exempt from the Wyoming Administrative Procedures Act under W.S. § 9-12-103(g)(iii). No formal public comments were solicited or accepted during the promulgation of these rules, nor public hearings held.

These Regular Rules were originally adopted as “amended” rules by unanimous action of the Wyoming Business Council Board of Directors at its March 2021 public meeting. This action was subsequently determined to be flawed inasmuch as the WBC had no existing rules for this program to amend.

This rulemaking comes as a result of legislative action to codify the Large Project Loan Program within the Economic Planning & Partnership Challenge Loan Program. This program – and its rules – previously existed within the Wyoming State Treasurer’s Office.

Accordingly, the adoption of these rules as “new” rules was affirmed by unanimous action of the Wyoming Business Council Board of Directors at its May 2021 public meeting.

Chapter 6

Large Project Loan Program

Section 1. Authority. The Wyoming Business Council promulgates these rules in accordance with the authority in W.S. 9-12-308(m).

Section 2. Purpose. These rules are intended to provide detailed procedures by which the applicants for large project loans or loan guarantees shall apply for such loans or loan guarantees.

Section 3. Definitions.

(a) As used in this program:

(i) “Applicant” means a proposed or existing enterprise which will employ people within the state, provide services in the state, use resources in the state and/or otherwise add economic value to goods, services, or resources within the state.

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

(iii) “Council Staff” means the staff at the Wyoming Business Council.

(iv) “Financial Records” means an applicant’s financial statements, balance sheets, income statements, tax returns, or any other financial records deemed necessary for review.

(v) “Land development loan” means an extension of credit for the purpose of improving unimproved real property prior to the erection of structures. The improvement of unimproved real property may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development.

(vi) “Loan Review Committee” means a Committee comprised of the Governor or his designee, the Treasurer or his designee, and a member of the Council who has expertise in banking or experience in the banking industry designated by the Chief Executive Officer of the Wyoming Business Council.

(vii) “Owners” means an individual/entity possessing an interest in the applicant’s business, at or more than twenty percent (20%) and/or a guaranteeing entity;

(viii) “Participant” means any Financial Institution(s) sharing a portion of the loan with the Wyoming Business Council through a participation agreement.

(ix) “Recipient” means a proposed or existing enterprise who has been awarded funds under the Large Project Loan Program.

Section 4. Materials Required for Review.

(a) Project application. Applicants seeking a loan or loan guarantee under this program must submit a project application in compliance with this Section to the Wyoming Business Council staff. This project application must contain the following comprehensive information:

(i) **Tab A** - A detailed overview of the applicant’s business entity, including identification of all principal management and owners.

(ii) **Tab B** - A detailed description of the project to be financed, including all costs to be funded and a specific explanation of how the project satisfies the criteria set forth in W.S. 9-12-308(f);

(iii) **Tab C** - A business plan accurately describing the existing business and its history, future business endeavors, and all characteristics of the project to be funded through the loan or the financing secured by the loan guarantee. The business plan must address, but should not be limited to, the following components:

(A) The total cost of the project, the amount of financing sought and what costs and expenses for the project will be covered by such financing;

(B) The source of applicant’s required private funds, as described in Section 7(h) of this Chapter, to be used in the completion of the project in an amount which is at least twenty-five percent (25%) of the total cost of the project.

(C) The collateral offered to secure the loan or the loan guarantee, including documentation establishing that the collateral is the property of the applicant and is unencumbered with any other financing or an indication that any such financing will be paid off with proceeds from the loan or the financing obtained in connection with the loan guarantee;

(D) The proposed term of financing, including loan amount, term of the loan, amortization, interest rate, and/or private bank participation; and

(E) Any other information reasonably necessary to inform the Wyoming Business Council staff about the project to be financed, the nature of which may vary depending upon the type of business and facilities at issue;

(iv) **Tab D** - A comprehensive chart and detailed description identifying all business entities related to the applicant, whether by contract or through

corporate affiliations;

(v) **Tab E** – The applicant’s financial records for five (5) years or the life of the applicant, whichever is less, including tax returns;

(vi) **Tab F** - A balance sheet and projected cash flow for the project for the anticipated term of the loan or loan guarantee evidencing the applicant’s ability to repay the loan or the financing guaranteed by the loan guarantee on or prior to maturity;

(vii) **Tab G** - Existing short-term and long-term financing for property associated with the project to be financed through the loan or loan guarantee;

(x) **Tab H** - Records concerning the environmental compliance with the applicable environmental regulations of facilities and underlying real property associated with the project and completion of an environmental questionnaire provided by the Wyoming Business Council staff with regards to such property which will serve as collateral. If the environmental questionnaire indicates any environmental problems with the property, then further due diligence may be required, such as a Phase 1 and possibly Phase 2 environmental report;

(xi) **Tab I** - Notice and identification of any threatened or pending litigation involving the anticipated project or property offered as collateral and/or the applicant (or such entity that will be the borrower) and any guarantor as provided in Section 7(j) below;

(xii) **Tab J** - Industry-specific information and documentation concerning the applicant's business activities within that industry, including without limitation, regulatory information related to the project to be undertaken; and

(xiii) **Tab K** - Any relevant ongoing or new information that arises any time after applicant’s initial submission of the above information which may influence or bear upon the review of the proposed loan or loan guarantee, including without limitation, new or altered financing arrangements, statutory, rule or regulatory changes which may impact applicant’s project or operations or the proposal thereof, or changes in ownership.

(b) Additional information. In addition to information in the project application, the Wyoming Business Council staff may ask for additional information necessary for the Wyoming Business Council staff to conduct its due diligence and review of the project. Applicants shall respond to such requests in a timely manner with complete and current information. Any documents, materials or information provided to the Wyoming Business Council staff in connection with its review of the loan or loan guarantee may be shared with any other State agency, including without limitation, the

Governor’s Office, the Wyoming State Treasurer’s Office, and the Wyoming Attorney General’s Office. Applicant shall also provide updated information pertinent to the comprehensive information required in Section 4(a)(i)–(xiii) of this Chapter should any of that information change at any point during the application process.

(c) Collateral. Based on the appraisals and information provided by the applicant for the collateral securing the loan or loan guarantee, the Wyoming Business Council staff shall determine if such collateral is adequate based on the requirements of W.S. 9-12-308. The Wyoming Business Council staff shall secure a first security interest in the entire project which is the subject of the financing and must approve any subsequent financing which is to exist at the time of closing or which applicant enters into after closing of the loan or loan guarantee. If the applicant shows good cause why the applicant cannot grant the State a first security interest in the entire project, then the applicant must propose substitute collateral which the Wyoming Business Council staff deems to be sufficient to repay the loan or loan guarantee in the case of a default and in which the Wyoming Business Council’s interest is before the interest of any and all other lenders in such substitute collateral (if such other lenders have been previously approved by the Wyoming Business Council as provided in Section 7(b) of this Chapter).

(d) Value of collateral. Loans or loan guarantees shall be adequately collateralized, such that the Wyoming Business Council staff may obtain appraisals to assess the value of existing facilities, collateral, and other real or personal property used as collateral.

(i) LTV Table

Loan Category	Loan-to-Value Limit (percent)
Raw Land	65
Land Development	75
Construction	75
Commercial, Multifamily, and other non-residential	80
1- to 4-family residential	85
Improved Property	85
Equipment	80

(e) Fee and Experts. The Wyoming Business Council shall charge the applicant a loan origination fee or loan guarantee fee in the amount of one percent (1%) of the total loan or guaranteed loan amount. This fee shall be used to pay for the costs of any experts hired by the Wyoming Business Council staff to aid in conducting the due diligence of the project, including, without limitation, appraisers, accountants, environmental engineers and attorneys. If the cost of such experts exceeds the amount of

the origination or guarantee fee, then the applicant shall pay any such excess costs. Regardless whether the applicant closes on the loan or loan guarantee, the applicant shall pay for, or reimburse the State for, all costs incurred by the Wyoming Business Council to review the project and the loan or loan guarantee and to conduct the due diligence necessary for such review, including, without limitation, the costs of such experts.

Section 5. Program Review and Approval Process; Due Diligence; Closing.

(a) Steps of process. The steps necessary to obtain approval of a loan or loan guarantee under the large project program are as follows:

(i) The applicant shall first submit five (5) copies of the complete project application to the Wyoming Business Council staff, including materials required by the Wyoming Business Council staff in addition to those items described in Section 4(a) of this Chapter for review.

(ii) After receiving an application, the Wyoming Business Council staff shall review the project application to ensure completeness under Section 4(a) of this Chapter. Once Wyoming Business Council staff ascertain that a submitted application is complete, the Wyoming Business Council staff shall deliver one (1) copy each of the project application to the Governor or his designee, to the State Treasurer or his designee and to the Wyoming Attorney General's Office. The remaining two (2) copies shall be retained at the Wyoming Business Council main office.

(iii) Wyoming Business Council staff shall next review the project application under the process set forth in W.S. 9-12-601 through W.S. 9-12-603. Within sixty (60) calendar days of receipt of a complete application the Wyoming Business Council staff and participants (if applicable) shall present the project, the proposed loan or loan guarantee, and its terms to the Loan Review Committee. The Loan Review Committee shall adopt a recommendation and may accept or deny the proposed loan or amend its terms in that recommendation.

(iv) The Wyoming Business Council staff shall provide electronic notice to all Wyoming financial institutions of the recommended loan terms and shall allow not less than fifteen (15) business days to respond with expressions of interest relating to participation. If multiple financial institutions express interest in participating in the proposed loan, council staff shall share proposed terms with the applicant. The applicant shall choose from the provided proposals, and Wyoming Business Council staff shall notify the interested financial institutions of the applicant's choice for participation.

(v) Following the favorable recommendation of the Loan Review Committee, the project shall be submitted to the Wyoming Business Council Board for a

vote to accept or reject that recommendation at the next scheduled Board meeting.

(vi) Upon the recommendation by the Wyoming Business Council Board, the Wyoming Business Council shall forward its recommendation to the Wyoming State Loan and Investment Board at the next available meeting for its final approval, or rejection, of the loan or loan guarantee.

(vii) If the Wyoming State Loan and Investment Board grants final approval of the application, the application shall return to the Wyoming Business Council staff to close the loan or loan guarantee in conjunction with participating financial institution(s), if applicable.

(b) Information review. Nothing in these rules shall be interpreted to prevent the Governor or his designee, the State Treasurer or his designee, the Wyoming Business Council, the Loan Review Committee or the Wyoming State Loan and Investment Board from evaluating or reviewing any and all other relevant information when that information is available.

(c) Final agency action is subject to judicial review of administrative action under Wyoming Statute Ann. 16-3-114 and Rule 12 of the Wyoming Rules of Appellate Procedure.

(d) Material change or new information. After the Wyoming State Loan and Investment Board's final approval of the loan or loan guarantee, the Wyoming Business Council staff may request from the applicant any materials or information the Wyoming Business Council staff deems necessary to close the loan or loan guarantee. If, after the Wyoming State Loan and Investment Board's final approval of the loan or loan guarantee, new information is revealed that the Wyoming Business Council staff reasonably determines should have been provided, or the Wyoming Business Council staff determines that previously provided material information is no longer accurate or sufficient, the Wyoming Business Council shall not allow the loan or loan guarantee to proceed to closing, and the applicant shall be required to reapply under Section 5(a) above if the applicant desires to proceed with the loan or loan guarantee.

(e) Attorney General's opinion. No loan or loan guarantee shall be made until Attorney General's Office provides a written opinion certifying the legality of the transaction and all documents connected therewith, including without limitation, the Financing Agreement and the Mortgage or any other document which creates a security interest in the applicant's property in favor of the Wyoming Business Council.

(f) Closing. The applicant is required to close the loan or loan guarantee with the Wyoming Business Council staff within twelve (12) months of the final approval of the Wyoming State Loan and Investment Board. The applicant may request an extension

of the closing deadline in writing and shall demonstrate good cause why the deadline should not apply and why a new deadline should be set. The Wyoming Business Council Board may agree to extend the closing deadline, but in no event shall the Wyoming Business Council provide an extension which would allow the loan or loan guarantee to close more than two (2) years after the final approval of the Wyoming State Loan and Investment Board without resubmitting the request for the loan or the loan guarantee. If greater than two (2) years has passed or would pass between the date of final approval and the closing, the applicant shall resubmit the application for approval.

Section 6. Determination of Eligibility.

(a) Eligible projects and expenses. Eligible projects shall consist of an applicant's prospectively planned and well-defined business endeavor, and the project shall have a set beginning and completion date. A loan or loan guarantee issued pursuant to this Chapter shall not be used to fund past business or past construction expenditures. Expenses eligible for reimbursement from loan proceeds following execution of applicable loan or loan guarantee documents shall relate back no earlier than the submission of the request for the loan or loan guarantee to the Wyoming Business Council staff. Financing issued under this Chapter shall not primarily serve as a refinance mechanism or otherwise serve to substitute the loan or loan guarantee for an applicant's current lenders.

(b) Examples of eligible projects. The following economic development projects, to the extent they otherwise satisfy the criteria set forth in W.S. 9-12-308 and these rules, may be eligible for large project fund financing:

- (i) Manufacturing, fabrication or other industrial production facilities;
- (ii) Agricultural development or food processing;
- (iii) Development of, or improved utilization of, natural resources;
- (iv) Research and development projects that will add economic value to goods, services or resources within or outside the State;
- (v) Destination facilities, other than retail or food service businesses;
- (vi) Product distribution and/or warehousing facilities;
- (vii) Transportation or freight facilities;
- (viii) Scientific testing including, but not limited to, medical, clinical or engineering testing services;

- (ix) Utilities;
- (x) Facilities associated with the management of waste; and
- (xi) Other activities that represent a new technology or type of economic enterprise.

(c) Large project. All loans and loan guarantees issued under this large project program must meet the requirements of a large project as described in W.S. 9-12-308(b). In addition, for a loan or loan guarantee to be eligible for the large project program, project costs must exceed \$5,000,000. If the character, scope or size of the project changes at any time after its approval by the Wyoming State Loan and Investment Board, the project shall be resubmitted for approval as revised or modified.

(d) Non-disclosed litigation or threats of litigation. A request for a loan or loan guarantee made under this Chapter shall be ineligible if pending litigation or threats of litigation are not disclosed with the project application or immediately thereafter.

(e) Twelve-Month deadline. A submission shall become ineligible for a loan or loan guarantee under this Chapter if the applicant is unable to close, or if the applicant is unable to obtain a written extension from the Wyoming Business Council Board, on all loan or loan guarantee documents with the Wyoming Business Council within the twelve (12) month closing deadline set forth in Section 5(f) of this Chapter.

Section 7. Risk Analysis.

(a) Interest rate. The interest rate for any loan under this program shall be consistent with Wall Street Journal Prime (WSJP) as of the date of the application with a floor of WSJP minus one percent (1%) and a ceiling of WSJP plus seven percent (7%). The interest rate shall be proposed by Wyoming Business Council staff to the loan review committee for approval, and State Land and Investment Board for approval, after considering applicable risk factors and the economic impact of the project.

(b) Subordinate financing. The loan or loan guarantee documents shall require that the State maintain a first priority lien on all collateral, and no collateral securing the loan or loan guarantee may be used to obtain subordinate financing without the written consent of the Wyoming Business Council.

(c) Insurance requirements. Insurance requirements shall vary based on the type of project which is the subject of the loan or loan guarantee but, at a minimum, general liability and property insurance shall be required in amounts and with terms that are acceptable to the Wyoming Business Council staff naming the State as a lien holder. At the discretion of the Wyoming Business Council staff, other types of insurance may be

required based on the type of project being financed and/or the property that serves as collateral for the loan or loan guarantee, such as business interruption, flood, earthquake, or other insurance class as applicable.

(d) Financial covenants. The Wyoming Business Council staff may require that the loan or loan guarantee documents include financial covenants with which the applicant must comply for the term of the loan or loan guarantee. Such covenants may include standards relating to debt service coverage, debt limitations, net worth, leverage, interest coverage or any other financial metrics determined by the Wyoming Business Council staff necessary to ensure the strength and performance of the applicant.

(e) Acceleration upon closure of Wyoming facility or applicant's relocation outside the State. The loan documents may provide that, if the applicant closes the facility or operation that is the subject of the loan or loan guarantee or relocate such facility or operation outside the State of Wyoming prior to maturity of the loan or the applicant's actions indicate that applicant intends to so close or relocate the facility or operation, the outstanding balance of the loan shall be immediately due and payable including all interest accrued to the date of such payment and any and all fees and expenses due and owing. If the State has guaranteed financing pursuant to this Chapter, the guarantee documents shall provide that the guarantee shall terminate immediately and irrevocably as of the decision to close, or relocate the facility or operation or the commencement of any actions indicating a future closure or relocation.

(f) Commencement of project. The loan documents shall require that the applicant commence construction of the project within one (1) year after closing of the loan or loan guarantee. If the applicant fails to commence construction within that time, the outstanding balance of the loan shall become immediately due and payable, including all interest accrued to the date of such payment and any and all fees and expenses due and owing. If the State has guaranteed financing pursuant to this Chapter, the guarantee documents shall provide that the guarantee shall terminate immediately and irrevocably after one (1) year if construction of the project has not commenced.

(g) Other covenants. The Wyoming Business Council staff may include terms in the documents for the loan or loan guarantee to protect the State's interest, such as:

- (i) Escrow accounts;
- (ii) Cash sweeps;
- (iii) Pledge rights;
- (iv) Corporate approval rights;

(v) Acceleration rights for facility closure, failure to meet job creation and tax base requirements and failure to continue to satisfy any requirements necessary to qualify for eligibility for the large project program; and

(vi) Other mechanisms the Wyoming Business Council staff deems appropriate.

(h) Private funds. Prior to closing a loan or loan guarantee, an applicant must certify to the Wyoming Business Council staff that the applicant has committed private funds from funding sources not provided by the state of Wyoming in an amount which is at least twenty-five percent (25%) of the total cost of the project and that such private funds may be spent on eligible project costs which may include, but are not limited to, buildings, equipment, and direct project infrastructure. The Wyoming Business Council staff may require additional information, documentation, escrow of funds, implementation of processes and procedures or any other reasonable materials or terms, to evidence this commitment of private funds.

(j) Guarantees by affiliates. The Wyoming Business Council staff may determine that, upon examination and review of applicant's due diligence materials and the proposed collateral for the loan or loan guarantee, additional collateral in the form of loan guarantees from affiliates of the applicant may be necessary to provide sufficient security to the State for repayment of the loan or loan guarantee.

Section 8. Post-closing.

(a) Subsequent requirements. The Wyoming Business Council staff shall continue to monitor the loan or loan guarantee after the closing. The documents shall contain periodic reporting and compliance requirements that the applicant shall be required to satisfy. Each recipient shall provide to the Wyoming Business Council staff an annual progress report updating the status of the project being financed by the loan or loan guarantee. These reporting and compliance requirements may additionally include, but are not limited to:

(i) An as-built survey;

(ii) Notification of other debt(s);

(iii) Annual financial statements;

(iv) Copies of tax returns;

(v) A report of the number and types of jobs created due to the project financed under this Chapter;

- (vi) Property valuation of the project for property tax purposes; and
- (vii) Notice of any regulatory violations.

(b) Subsequent disbursements. Loan proceeds will be disbursed only after project expenses have been incurred and/or documented. Each recipient shall provide a disbursement request to Wyoming Business Council staff prior to closing for loan proceeds to be disbursed at closing, and loan proceeds shall be disbursed only for expenses related to the project and incurred and/or documented after the date applicant first submitted the project to the Wyoming Business Council staff for preliminary recommendations. Any loan proceeds which are not disbursed on the day of closing will be held by the Wyoming Business Council until applicant submits a disbursement request and proof of eligible expenses as shall be provided in the loan documents and approved by the Wyoming Business Council staff.

Section 9. Confidentiality. Information and any other documentation submitted in support of a request for a loan or loan guarantee pursuant to the large project program, once submitted to a State agency or official, shall be governed by the Public Records Act, W.S. 16-4-201 through 205, as amended. Upon receipt of a request to disclose an application for a loan or loan guarantee or supporting information, the Wyoming Business Council shall make a determination as to whether the information must be disclosed pursuant to that Act. The Wyoming Business Council, before it makes said determination or discloses an applicant's information, shall inform the applicant of its determination. The applicant may be required to justify to the Wyoming Business Council why information submitted should be withheld under the Act or any other authority. Wyoming Business Council will not disclose said information if disclosure is likely to result in the impairment of the government's future ability to obtain necessary information and/or result in substantial harm to the competitive position of the recipient that provided the information to Wyoming Business Council.

Chapter 6

Large Project Loan Program

Section 1. Authority. The Wyoming Business Council promulgates these rules in accordance with the authority in W.S. 9-12-308(m).

Section 2. Purpose. These rules are intended to provide detailed procedures by which the applicants for large project loans or loan guarantees shall apply for such loans or loan guarantees.

Section 3. Definitions.

(a) As used in this program:

(i) “Applicant” means a proposed or existing enterprise which will employ people within the state, provide services in the state, use resources in the state and/or otherwise add economic value to goods, services, or resources within the state.

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Section 4. Materials Required for Review.

(a) Project application. Applicants seeking a loan or loan guarantee under this program must submit a project application in compliance with this Section to the Wyoming Business Council staff. This project application must contain the following comprehensive information:

(i) **Tab A** - A detailed overview of the applicant’s business entity, including identification of all principal management and owners.

(ii) **Tab B** - A detailed description of the project to be financed, including all costs to be funded and a specific explanation of how the project satisfies the criteria set forth in W.S. 9-12-308(f);

(iii) **Tab C** - A business plan accurately describing the existing business and its history, future business endeavors, and all characteristics of the project to be funded through the loan or the financing secured by the loan guarantee. The business plan must address, but should not be limited to, the following components:

(A) The total cost of the project, the amount of financing sought and what costs and expenses for the project will be covered by such financing;

(B) The source of applicant’s required private funds, as described in Section 7(h) of this Chapter, to be used in the completion of the project in an amount which is at least twenty-five percent (25%) of the total cost of the project.

(C) The collateral offered to secure the loan or the loan guarantee, including documentation establishing that the collateral is the property of the applicant and is unencumbered with any other financing or an indication that any such financing will be paid off with proceeds from the loan or the financing obtained in connection with the loan guarantee;

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(iv) **Tab D** - A comprehensive chart and detailed description identifying all business entities related to the applicant, whether by contract or through

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(x) **Tab H** - Records concerning the environmental compliance with the applicable environmental regulations of facilities and underlying real property associated with the project and completion of an environmental questionnaire provided by the Wyoming Business Council staff with regards to such property which will serve as collateral. If the environmental questionnaire indicates any environmental problems with the property, then further due diligence may be required, such as a Phase 1 and possibly Phase 2 environmental report;

(xi) **Tab I** - Notice and identification of any threatened or pending litigation involving the anticipated project or property offered as collateral and/or the applicant (or such entity that will be the borrower) and any guarantor as provided in Section 7(j) below;

(xii) **Tab J** - Industry-specific information and documentation concerning the applicant's business activities within that industry, including without limitation, regulatory information related to the project to be undertaken; and

(xiii) **Tab K** - Any relevant ongoing or new information that arises any time after applicant’s initial submission of the above information which may influence or bear upon the review of the proposed loan or loan guarantee, including without limitation, new or altered financing arrangements, statutory, rule or regulatory changes which may impact applicant’s project or operations or the proposal thereof, or changes in ownership.

(b) Additional information. In addition to information in the project application, the Wyoming Business Council staff may ask for additional information necessary for the Wyoming Business Council staff to conduct its due diligence and review of the project. Applicants shall respond to such requests in a timely manner with complete and current information. Any documents, materials or information provided to the Wyoming Business Council staff in connection with its review of the loan or loan guarantee may be shared with any other State agency, including without limitation, the

Governor’s Office, the Wyoming State Treasurer’s Office, and the Wyoming Attorney General’s Office. Applicant shall also provide updated information pertinent to the comprehensive information required in Section 4(a)(i)–(xiii) of this Chapter should any of that information change at any point during the application process.

(c) Collateral. Based on the appraisals and information provided by the applicant for the collateral securing the loan or loan guarantee, the Wyoming Business Council staff shall determine if such collateral is adequate based on the requirements of W.S. 9-12-308. The Wyoming Business Council staff shall secure a first security interest in the entire project which is the subject of the financing and must approve any subsequent financing which is to exist at the time of closing or which applicant enters into after closing of the loan or loan guarantee. If the applicant shows good cause why the applicant cannot grant the State a first security interest in the entire project, then the applicant must propose substitute collateral which the Wyoming Business Council staff deems to be sufficient to repay the loan or loan guarantee in the case of a default and in which the Wyoming Business Council’s interest is before the interest of any and all other lenders in such substitute collateral (if such other lenders have been previously approved by the Wyoming Business Council as provided in Section 7(b) of this Chapter).

(d) Value of collateral. Loans or loan guarantees shall be adequately collateralized, such that the Wyoming Business Council staff may obtain appraisals to assess the value of existing facilities, collateral, and other real or personal property used as collateral.

(i) LTV Table

<u>Loan Category</u>	<u>Loan-to-Value Limit (percent)</u>
<u>Raw Land</u>	<u>65</u>
<u>Land Development</u>	<u>75</u>
<u>Construction</u>	<u>75</u>
<u>Commercial, Multifamily, and other non-residential</u>	<u>80</u>
<u>1- to 4-family residential</u>	<u>85</u>
<u>Improved Property</u>	<u>85</u>
<u>Equipment</u>	<u>80</u>

(e) Fee and Experts. The Wyoming Business Council shall charge the applicant a loan origination fee or loan guarantee fee in the amount of one percent (1%) of the total loan or guaranteed loan amount. This fee shall be used to pay for the costs of any experts hired by the Wyoming Business Council staff to aid in conducting the due diligence of the project, including, without limitation, appraisers, accountants, environmental engineers and attorneys. If the cost of such experts exceeds the amount of

the origination or guarantee fee, then the applicant shall pay any such excess costs. Regardless whether the applicant closes on the loan or loan guarantee, the applicant shall pay for, or reimburse the State for, all costs incurred by the Wyoming Business Council to review the project and the loan or loan guarantee and to conduct the due diligence necessary for such review, including, without limitation, the costs of such experts.

Section 5. Program Review and Approval Process; Due Diligence; Closing.

(a) Steps of process. The steps necessary to obtain approval of a loan or loan guarantee under the large project program are as follows:

(i) The applicant shall first submit five (5) copies of the complete project application to the Wyoming Business Council staff, including materials required by the Wyoming Business Council staff in addition to those items described in Section 4(a) of this Chapter for review.

(ii) After receiving an application, the Wyoming Business Council staff shall review the project application to ensure completeness under Section 4(a) of this Chapter. Once Wyoming Business Council staff ascertain that a submitted application is complete, the Wyoming Business Council staff shall deliver one (1) copy each of the project application to the Governor or his designee, to the State Treasurer or his designee and to the Wyoming Attorney General's Office. The remaining two (2) copies shall be retained at the Wyoming Business Council main office.

(iii) Wyoming Business Council staff shall next review the project application under the process set forth in W.S. 9-12-601 through W.S. 9-12-603. Within sixty (60) calendar days of receipt of a complete application the Wyoming Business Council staff and participants (if applicable) shall present the project, the proposed loan or loan guarantee, and its terms to the Loan Review Committee. The Loan Review Committee shall adopt a recommendation and may accept or deny the proposed loan or amend its terms in that recommendation.

(iv) The Wyoming Business Council staff shall provide electronic notice to all Wyoming financial institutions of the recommended loan terms and shall allow not less than fifteen (15) business days to respond with expressions of interest relating to participation. If multiple financial institutions express interest in participating in the proposed loan, council staff shall share proposed terms with the applicant. The applicant shall choose from the provided proposals, and Wyoming Business Council staff shall notify the interested financial institutions of the applicant's choice for participation.

(v) Following the favorable recommendation of the Loan Review Committee, the project shall be submitted to the Wyoming Business Council Board for a

vote to accept or reject that recommendation at the next scheduled Board meeting.

(vi) Upon the recommendation by the Wyoming Business Council Board, the Wyoming Business Council shall forward its recommendation to the Wyoming State Loan and Investment Board at the next available meeting for its final approval, or rejection, of the loan or loan guarantee.

(vii) If the Wyoming State Loan and Investment Board grants final approval of the application, the application shall return to the Wyoming Business Council staff to close the loan or loan guarantee in conjunction with participating financial institution(s), if applicable.

(b) Information review. Nothing in these rules shall be interpreted to prevent the Governor or his designee, the State Treasurer or his designee, the Wyoming Business Council, the Loan Review Committee or the Wyoming State Loan and Investment Board from evaluating or reviewing any and all other relevant information when that information is available.

(c) Final agency action is subject to judicial review of administrative action under Wyoming Statute Ann. 16-3-114 and Rule 12 of the Wyoming Rules of Appellate Procedure.

(d) Material change or new information. After the Wyoming State Loan and Investment Board's final approval of the loan or loan guarantee, the Wyoming Business Council staff may request from the applicant any materials or information the Wyoming Business Council staff deems necessary to close the loan or loan guarantee. If, after the Wyoming State Loan and Investment Board's final approval of the loan or loan guarantee, new information is revealed that the Wyoming Business Council staff reasonably determines should have been provided, or the Wyoming Business Council staff determines that previously provided material information is no longer accurate or sufficient, the Wyoming Business Council shall not allow the loan or loan guarantee to proceed to closing, and the applicant shall be required to reapply under Section 5(a) above if the applicant desires to proceed with the loan or loan guarantee.

(e) Attorney General's opinion. No loan or loan guarantee shall be made until Attorney General's Office provides a written opinion certifying the legality of the transaction and all documents connected therewith, including without limitation, the Financing Agreement and the Mortgage or any other document which creates a security interest in the applicant's property in favor of the Wyoming Business Council.

(f) Closing. The applicant is required to close the loan or loan guarantee with the Wyoming Business Council staff within twelve (12) months of the final approval of the Wyoming State Loan and Investment Board. The applicant may request an extension

of the closing deadline in writing and shall demonstrate good cause why the deadline should not apply and why a new deadline should be set. The Wyoming Business Council Board may agree to extend the closing deadline, but in no event shall the Wyoming Business Council provide an extension which would allow the loan or loan guarantee to close more than two (2) years after the final approval of the Wyoming State Loan and Investment Board without resubmitting the request for the loan or the loan guarantee. If greater than two (2) years has passed or would pass between the date of final approval and the closing, the applicant shall resubmit the application for approval.

Section 6. Determination of Eligibility.

(a) Eligible projects and expenses. Eligible projects shall consist of an applicant's prospectively planned and well-defined business endeavor, and the project shall have a set beginning and completion date. A loan or loan guarantee issued pursuant to this Chapter shall not be used to fund past business or past construction expenditures. Expenses eligible for reimbursement from loan proceeds following execution of applicable loan or loan guarantee documents shall relate back no earlier than the submission of the request for the loan or loan guarantee to the Wyoming Business Council staff. Financing issued under this Chapter shall not primarily serve as a refinance mechanism or otherwise serve to substitute the loan or loan guarantee for an applicant's current lenders.

(b) Examples of eligible projects. The following economic development projects, to the extent they otherwise satisfy the criteria set forth in W.S. 9-12-308 and these rules, may be eligible for large project fund financing:

- (i) Manufacturing, fabrication or other industrial production facilities;
- (ii) Agricultural development or food processing;
- (iii) Development of, or improved utilization of, natural resources;
- (iv) Research and development projects that will add economic value to goods, services or resources within or outside the State;
- (v) Destination facilities, other than retail or food service businesses;
- (vi) Product distribution and/or warehousing facilities;
- (vii) Transportation or freight facilities;
- (viii) Scientific testing including, but not limited to, medical, clinical or engineering testing services;

(ix) Utilities;

(x) Facilities associated with the management of waste; and

(xi) Other activities that represent a new technology or type of economic enterprise.

(c) Large project. All loans and loan guarantees issued under this large project program must meet the requirements of a large project as described in W.S. 9-12-308(b). In addition, for a loan or loan guarantee to be eligible for the large project program, project costs must exceed \$5,000,000. If the character, scope or size of the project changes at any time after its approval by the Wyoming State Loan and Investment Board, the project shall be resubmitted for approval as revised or modified.

(d) Non-disclosed litigation or threats of litigation. A request for a loan or loan guarantee made under this Chapter shall be ineligible if pending litigation or threats of litigation are not disclosed with the project application or immediately thereafter.

(e) Twelve-Month deadline. A submission shall become ineligible for a loan or loan guarantee under this Chapter if the applicant is unable to close, or if the applicant is unable to obtain a written extension from the Wyoming Business Council Board, on all loan or loan guarantee documents with the Wyoming Business Council within the twelve (12) month closing deadline set forth in Section 5(f) of this Chapter.

Section 7. Risk Analysis.

(a) Interest rate. The interest rate for any loan under this program shall be consistent with Wall Street Journal Prime (WSJP) as of the date of the application with a floor of WSJP minus one percent (1%) and a ceiling of WSJP plus seven percent (7%). The interest rate shall be proposed by Wyoming Business Council staff to the loan review committee for approval, and State Land and Investment Board for approval, after considering applicable risk factors and the economic impact of the project.

(b) Subordinate financing. The loan or loan guarantee documents shall require that the State maintain a first priority lien on all collateral, and no collateral securing the loan or loan guarantee may be used to obtain subordinate financing without the written consent of the Wyoming Business Council.

(c) Insurance requirements. Insurance requirements shall vary based on the type of project which is the subject of the loan or loan guarantee but, at a minimum, general liability and property insurance shall be required in amounts and with terms that are acceptable to the Wyoming Business Council staff naming the State as a lien holder. At the discretion of the Wyoming Business Council staff, other types of insurance may be

required based on the type of project being financed and/or the property that serves as collateral for the loan or loan guarantee, such as business interruption, flood, earthquake, or other insurance class as applicable.

(d) Financial covenants. The Wyoming Business Council staff may require that the loan or loan guarantee documents include financial covenants with which the applicant must comply for the term of the loan or loan guarantee. Such covenants may include standards relating to debt service coverage, debt limitations, net worth, leverage, interest coverage or any other financial metrics determined by the Wyoming Business Council staff necessary to ensure the strength and performance of the applicant.

(e) Acceleration upon closure of Wyoming facility or applicant's relocation outside the State. The loan documents may provide that, if the applicant closes the facility or operation that is the subject of the loan or loan guarantee or relocate such facility or operation outside the State of Wyoming prior to maturity of the loan or the applicant's actions indicate that applicant intends to so close or relocate the facility or operation, the outstanding balance of the loan shall be immediately due and payable including all interest accrued to the date of such payment and any and all fees and expenses due and owing. If the State has guaranteed financing pursuant to this Chapter, the guarantee documents shall provide that the guarantee shall terminate immediately and irrevocably as of the decision to close, or relocate the facility or operation or the commencement of any actions indicating a future closure or relocation.

(f) Commencement of project. The loan documents shall require that the applicant commence construction of the project within one (1) year after closing of the loan or loan guarantee. If the applicant fails to commence construction within that time, the outstanding balance of the loan shall become immediately due and payable, including all interest accrued to the date of such payment and any and all fees and expenses due and owing. If the State has guaranteed financing pursuant to this Chapter, the guarantee documents shall provide that the guarantee shall terminate immediately and irrevocably after one (1) year if construction of the project has not commenced.

(g) Other covenants. The Wyoming Business Council staff may include terms in the documents for the loan or loan guarantee to protect the State's interest, such as:

- (i) Escrow accounts;
- (ii) Cash sweeps;
- (iii) Pledge rights;
- (iv) Corporate approval rights;

(v) Acceleration rights for facility closure, failure to meet job creation and tax base requirements and failure to continue to satisfy any requirements necessary to qualify for eligibility for the large project program; and

(vi) Other mechanisms the Wyoming Business Council staff deems appropriate.

(h) Private funds. Prior to closing a loan or loan guarantee, an applicant must certify to the Wyoming Business Council staff that the applicant has committed private funds from funding sources not provided by the state of Wyoming in an amount which is at least twenty-five percent (25%) of the total cost of the project and that such private funds may be spent on eligible project costs which may include, but are not limited to, buildings, equipment, and direct project infrastructure. The Wyoming Business Council staff may require additional information, documentation, escrow of funds, implementation of processes and procedures or any other reasonable materials or terms, to evidence this commitment of private funds.

(j) Guarantees by affiliates. The Wyoming Business Council staff may determine that, upon examination and review of applicant's due diligence materials and the proposed collateral for the loan or loan guarantee, additional collateral in the form of loan guarantees from affiliates of the applicant may be necessary to provide sufficient security to the State for repayment of the loan or loan guarantee.

Section 8. Post-closing.

(a) Subsequent requirements. The Wyoming Business Council staff shall continue to monitor the loan or loan guarantee after the closing. The documents shall contain periodic reporting and compliance requirements that the applicant shall be required to satisfy. Each recipient shall provide to the Wyoming Business Council staff an annual progress report updating the status of the project being financed by the loan or loan guarantee. These reporting and compliance requirements may additionally include, but are not limited to:

(i) An as-built survey;

(ii) Notification of other debt(s);

(iii) Annual financial statements;

(iv) Copies of tax returns;

(v) A report of the number and types of jobs created due to the project financed under this Chapter;

- (vi) Property valuation of the project for property tax purposes; and
- (vii) Notice of any regulatory violations.

(b) Subsequent disbursements. Loan proceeds will be disbursed only after project expenses have been incurred and/or documented. Each recipient shall provide a disbursement request to Wyoming Business Council staff prior to closing for loan proceeds to be disbursed at closing, and loan proceeds shall be disbursed only for expenses related to the project and incurred and/or documented after the date applicant first submitted the project to the Wyoming Business Council staff for preliminary recommendations. Any loan proceeds which are not disbursed on the day of closing will be held by the Wyoming Business Council until applicant submits a disbursement request and proof of eligible expenses as shall be provided in the loan documents and approved by the Wyoming Business Council staff.

Section 9. Confidentiality. Information and any other documentation submitted in support of a request for a loan or loan guarantee pursuant to the large project program, once submitted to a State agency or official, shall be governed by the Public Records Act, W.S. 16-4-201 through 205, as amended. Upon receipt of a request to disclose an application for a loan or loan guarantee or supporting information, the Wyoming Business Council shall make a determination as to whether the information must be disclosed pursuant to that Act. The Wyoming Business Council, before it makes said determination or discloses an applicant's information, shall inform the applicant of its determination. The applicant may be required to justify to the Wyoming Business Council why information submitted should be withheld under the Act or any other authority. Wyoming Business Council will not disclose said information if disclosure is likely to result in the impairment of the government's future ability to obtain necessary information and/or result in substantial harm to the competitive position of the recipient that provided the information to Wyoming Business Council.