



# 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>Office of State Lands and Investments/State Loan and Investment Board</b>		
b. Agency/Board Address <b>122 West 25th Street, Herschler Building, Suite W103</b>	c. City <b>Cheyenne</b>	d. Zip Code <b>82002</b>
e. Name of Agency Liaison <b>Beth Blackwell</b>	f. Agency Liaison Telephone Number <b>307-777-6373</b>	
g. Agency Liaison Email Address <b>elizabeth.blackwell@wyo.gov</b>	h. Adoption Date <b>8-5-2021</b>	
i. Program <b>Loan and Investment Board</b>		

Amended Program Name (if applicable):

\*  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): **2021 Session Laws Chapter 123**

**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: <b>14</b>	Chapter Name: <b>Fees for Administrative Services and Interest Rates</b>	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		
Chapter Number: <b>38</b>	Chapter Name: <b>Capital Construction Loans</b>	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):		

**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	Jenifer E. Scoggin
Signatory Title	Director, Office of State Lands and Investments
Date of Signature	8-9-2021

**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 PRINCIPAL REASONS FOR ADOPTION OF RULES**

The State Loan and Investment Board is amending Chapters 14 and 38 of its rules to implement changes to the Capital Construction Loan program created by legislation passed during the 2021 General Session of the Wyoming Legislature. (HEA0071/HB0188, amending W.S. § 16-1-111). The legislation authorizes loans to irrigation and water conservation districts through the Board's Capital Construction Loan program.

The proposed amendments to Chapter 14 define the interest rate for irrigation district loans in accordance with the new legislation. Additional changes provide clarifying language related to the newly established tiered interest rates for the Clean Water and Drinking Water State Revolving Loan programs. The language provides guidance for the instances when principal forgiveness is available, but insufficient to provide the full amount an entity may be eligible to receive.

The proposed amendments to Chapter 38 put in place the necessary administrative framework to add irrigation and water conservation districts to the Loan Program. Specifically, the rules expand program eligibility to include the newly eligible entities and to define eligible water project types and uses of funds. In addition to the amendments to address legislative changes, the proposed changes also amend the sections governing disbursements by eliminating the requirement for a direct deposit account and expanding the section governing refinancing to allow the Board more options to refinance troubled loans. Both of these changes are intended to better steward the State's financial resources and protect the Permanent Mineral Trust Fund.

# **Summary of Comments**

Chapter 14, Fees for Administrative Services and Interest Rates

NONE

# **Summary of Comments**

Chapter 38 – Capital Construction Loan Program

NONE

## Chapter 14

### Fees For Administrative Services and Interest Rates

#### Section 1. Authority.

This Chapter is promulgated under the authority of Wyoming Statute (W.S.) 11-34-103(a), W.S. 11-34-103(b), W.S. 11-34-121, W.S. 11-34-118, W.S. 16-1-109, W.S. 11-34-117(a), W.S. 11-34-117(b), W.S. 16-1-205(b)(i), W.S. 16-1-305(b)(i), W.S. 35-11-530(a), W.S. 35-11-528(e), W.S. 21-18-319(a), W.S. 16-1-111(a), and W.S. 16-1-111(d).

#### Section 2. Fees.

(a) The Board will collect fees for administrative services occurring from activities associated with its programs conducted in accordance with the following Board rules:

(i) Chapter 7 - Farm Loans:

(A) Application Fee - \$100.00

(B) A fee of 1% of the amount of the loan shall be paid by the borrower at closing.

(ii) Chapter 7 - Beginning Agricultural Producer Loans:

(A) Application Fee - \$100.00

(B) A fee of 1% of the amount of the loan shall be paid by the borrower at closing.

(b) The fee for reamortization of any loan will be 1% of the reamortized amount.

#### Section 3. Interest Rates.

(a) The Board will charge interest rates on all loans and amortized sales contracts associated with its programs conducted in accordance with the following Board rules:

(i) Chapter 2 - Joint Powers Act Loans:

(A) An interest rate not less than the average rate of return realized on all Permanent Mineral Trust Fund investments as determined by the State Treasurer for the five (5) calendar years immediately preceding the year in which the loan is made; no equity requirement.

(ii) Chapter 7 - Farm Loans:

- (A) 8% per annum for loans up to 50% of appraised value;
- (B) 9% per annum for loans up to 60% of appraised value.

(C) For “Beginning Agricultural Producer” loans, as defined in Chapter 7, Section 2(c), for the first ten (10) years of the loan the rate shall be the lower of 8% or the average yield on a ten (10) year U.S. Treasury Bond for the previous year, rounded to two (2) decimals, as of the date of loan closing. At the end of ten (10) years the interest rate shall be 8%. Loans to beginning agricultural producers shall not exceed 70% of value.

(D) Sales Contracts – Sales of lands acquired through farm loan foreclosure:

- (I) 8% per annum for contracts up to 50% of sale price;
- (II) 9% per annum for contracts up to 60% of sale price;
- (III) 10% per annum for contracts up to 70% of sale price.

(iii) Chapter 11 – Clean Water State Revolving Fund Loans:

(A) 0% per annum on Department of Environmental Quality Loans for corrective actions at leaking underground and aboveground storage tank sites, pursuant to W.S. 16-1-106(b); no equity requirement;

(B) 0% per annum for all eligible applicants that qualify Green Project Reserve funding as defined by Chapter 11 Rules and Regulations; no equity requirement;

(C) 2.5% per annum on loans when Principal Forgiveness is available; no equity requirement;

(D) If the full amount of Principal Forgiveness an eligible applicant qualifies for is not available, the entity may choose either the decreased amount of Principal Forgiveness available or a decreased interest rate, as detailed below. When Principal Forgiveness is not available, eligible applicants that would have qualified for Principal Forgiveness will qualify for a decreased interest rate as detailed below:

(I) Applicants eligible for 75% Principal Forgiveness are eligible for an interest rate of 0.75% per annum;

(II) Applicants eligible for 50% Principal Forgiveness are eligible for an interest rate of 1 % per annum;

(III) Applicants eligible for 25% Principal Forgiveness are eligible for an interest rate of 1.25% per annum;

(IV) Applicants not eligible for Principal Forgiveness are eligible for an interest rate of 1.75% per annum.

(E) Large Loan Interest Rate Incentive. For loans that are considered large, per the categories below, will qualify for the corresponding decreased interest rate.

(I) Loans in an amount between \$7.5 Million and \$9,999,999 qualify for an interest rate of 1.5% per annum;

(II) Loans in an amount between \$10 million and \$14,999,999 qualify for an interest rate of 1% per annum;

(III) Loans in an amount of \$15 million or more qualify for an interest of 0.5% per annum.

(iv) Chapter 16 – State Drinking Water Revolving Account:

(A) 0% per annum for all eligible applicants that qualify for Green Project Reserve funding as defined by Chapter 16 Rules and Regulations; no equity requirement;

(B) 2.5% per annum on loans when Principal Forgiveness is available loans; no equity requirement.

(C) If the full amount of Principal Forgiveness an eligible applicant qualifies for is not available, the entity may choose either the decreased amount of Principal Forgiveness available or a decreased interest rate, as detailed below. When Principal Forgiveness is not available, eligible applicants that would have qualified for Principal Forgiveness will qualify for a decreased interest rate as detailed below:

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(III) Applicants eligible for 25% Principal Forgiveness are eligible for an interest rate of 1.25% per annum.

(D) Applicants not eligible for Principal Forgiveness are eligible for an interest rate of 1.75% per annum;

(E) Large Loan Interest Rate Incentive. For loans that are considered large, per the categories below, will qualify for the corresponding decreased interest rate.

(I) Loans in an amount between \$5 million and \$7,499,999 qualify for an interest rate of 1.5% per annum;



(II) Loans in an amount between \$7.5 million and \$9,999,999 qualify for an interest rate of 1% per annum;

(III) Loans in an amount of \$10 million or more qualify for an interest of 0.5% per annum.

(v) Chapter 35 - Municipal Solid Waste Facilities Cease and Transfer Loan and Grant Program:

(A) Interest rates for loans may be at zero percent, up to an annual interest rate equal to the average prime interest rate as determined by W.S. 35-11-528(e). In no event, shall the interest rate exceed an annual interest rate equal to the average prime interest rate as determined by the state treasurer. Interest rates established under this section shall be adjusted on January 1 of each year.

(B) Interest rates shall be established in recognition of the repayment abilities and needs of the applicant eligible for loans under the program.

(vi) Chapter 37 – Student Dormitory Capital Construction Loans:

(A) Loans shall be at an interest rate of one percent (1%) plus seventy-five thousandths of one percent (0.075%) for each year of the loan term in excess of five (5) years.

(B) Refinanced loans under Chapter 37, shall be at the same rate specified under Subparagraph (A) of this Paragraph.

(vii) Chapter 38 – Capital Construction Loans:

(A) Loans to cities, towns and counties shall be at an interest rate of one percent (1%) plus seventy-five thousandths of one percent (0.075%) for each year of the loan term in excess of five (5) years.

(I) In the event of a prepayment of a loan, the interest rate shall be calculated at the actual loan period but no refund of interest payments shall be made to the borrower.

(B) Loans to irrigation districts and water conservation districts shall be at an interest rate of the greater of one percent (1%) plus seventy-five thousandths of one percent (0.075%) for each year of the loan term in excess of five (5) years or the current equivalent yield of a United States treasury security of the same duration of the loan, which may be adjusted every five (5) years.

(I) In the event of prepayment of a loan, the interest rate shall be calculated at the actual loan period, but no refund of interest payment shall be made to the borrowing entity.

(C) Refinanced loans under Chapter 38, shall be at the same rate specified under Subparagraphs (A) and (B) of this Paragraph.

## **Chapter 38**

### **Capital Construction Loans**

#### **Section 1. Authority.**

- (a) This Chapter is adopted pursuant to Wyoming Statute (W.S.) 16-1-111.

#### **Section 2. Definitions.**

In addition to the definitions in Chapter 1, as used in this Chapter:

(a) “Capital construction” means new construction, expansion, renovation, or replacement of an existing facility or facilities.

(b) “City” means any incorporated municipality having a population of four thousand (4,000) or more which has been declared a city or which has taken the necessary steps to be and has been proclaimed a city.

(c) “Infrastructure project” means a capital construction project which may lawfully be undertaken within the powers of the political subdivision.

(d) “Irrigation District” means an irrigation district under W.S. 41-7-201.

(e) “Political subdivision” means Wyoming cities, towns, counties, school districts, and community college districts.

(f) “Street and road projects” means the construction, maintenance or improvement of a public street, road or alley within a city, town, or county.

(g) “Town” means any incorporated municipality, not a city.

(h) “Water Conservancy Districts” means a district created under the Water Conservancy Act, W.S. 41-3-701 through -779.

#### **Section 3. General Policy.**

(a) Loans shall be made in such a manner and to such parties as shall, in the judgment of the Board, represent a prudent investment of state funds.

(b) The capital construction loan program is not intended to benefit investors or developers.

#### **Section 4. Eligible Applicants.**

- (a) Political subdivisions are eligible for loans for infrastructure projects. In order to

qualify for a loan, the political subdivision must be able to demonstrate the following:

(i) A commitment to adequately maintain the project for the duration of the loan; and,

(ii) All project costs will be funded at the time of receipt of the loan.

(b) Wyoming cities, towns, and counties are eligible for loans for street and road projects. In order to qualify for a loan, the city, town, or county must be able to demonstrate the following:

(i) A commitment to adequately maintain the project for the duration of the loan;

(ii) All project costs will be funded at the time of receipt of the loan;

(iii) All related infrastructure, including water and sewer is or will be in place at the time of receipt of the loan; and,

(iv) No outstanding loans exist under this Chapter for a street and road project.

(c) Wyoming Irrigation Districts and Water Conservancy Districts are eligible for loans for replacement or major maintenance projects of storage, diversion, transmission, and distribution systems. In order to qualify for a loan, the district must be able to demonstrate the following:

(i) The entity was legally formed and approved prior to submitting an application;

(ii) The applicant has applied to all other eligible grant or loan programs and has fully applied any awards or loans from those programs to the project;

(iii) A commitment to adequately maintain the project for the duration of the loan; and

(iv) All project costs will be funded at the time of receipt of the loan.

(d) Ownership of Project.

(i) For applicants qualifying under Subsections (a) and (b) of this Section, the applicant must own the project in its entirety.

(ii) For applicants qualifying under Subsection (c) of this Section, the applicant must either own the project in its entirety or hold a valid lease for all parts of the project that:

(A) Permits the applicant to perform the proposed work; and

(B) Is for an indefinite term or a term covering the useful life of the project.

(e) Applicants must be compliant with all applicable reporting requirements of the Wyoming Department of Audit and Wyoming Department of Revenue prior to the application being considered by the Board.

#### **Section 5. Eligible Purposes.**

(a) Loans may be made for infrastructure projects and street and road projects and may include costs associated with the following purposes:

- (i) Purchase of land, buildings, and improvements associated with capital construction;
- (ii) Renovation or upgrade of existing infrastructure; and/or
- (iii) Planning and construction.

#### **Section 6. Application Procedure.**

(a) Applications.

(i) Each applicant shall submit a written loan application on the form furnished by the Office. At a minimum, the application shall include:

(A) A signed resolution stating the amount of the loan being requested, name of project and repayment source(s), and agreeing to maintain the project for the life of the loan;

(B) A detailed project summary which includes a breakdown of total project costs, a project timeline and proposed repayment source(s);

(C) Commitment letters from all funding sources, if applicable;

(D) Engineer's Feasibility Statement;

(E) A formal maintenance plan documenting how the borrower will adequately maintain the project for the life of the loan.

(ii) Incomplete applications shall not be submitted to the Board for consideration.

(iii) Any false or misleading statements made by the applicant in an application shall be grounds for summary rejection of the application.

(iv) Timing. Loan applications must be received by the Office at least ninety (90) calendar days prior to any regularly scheduled meeting of the Board. Applicants must cure any defects in their application no later than forty-five (45) calendar days before any regularly scheduled meeting of the Board.

(b) Consideration.

(i) The Office shall conduct a preliminary review of all applications received. If the Office identifies issues with the application which would result in a negative recommendation to the Board, the Office shall notify the applicant within 30 days of receiving the application of the issue and the applicant shall have the opportunity to correct the application or withdraw the application. Applicants must cure any defects in their application no later than forty-five (45) calendar days before any regularly scheduled meeting of the Board.

(ii) All applications shall be reviewed by the Attorney General to certify the legality of the transaction and to determine if an election is required by law.

(iii) The following will be considered when reviewing applications:

(A) The project's contribution to health, safety and welfare of the citizens in the political subdivision as demonstrated by:

(I) The extent the project will protect the citizens from exposure to hazards that may result in adverse consequences;

(II) Achieving compliance with state and federal mandates; or

(III) Any other relevant information demonstrating the project's contribution to the health, safety and welfare of the citizens.

(B) The applicant's need for the project and financial need of the applicant in relation to the project; and,

(C) The applicant's ability to repay the loan.

### **Section 7. Loan Terms.**

(a) Interest rate. The interest rate for loans under this Chapter shall be pursuant to Chapter 14 of the rules established by the Board and a one-half of one percent (0.5%) origination fee shall be collected on the approved loan amount.

(b) Length. The term for each loan shall be set by the Board with due regard given to repayment ability and the security offered, but in no event shall the term be less than five (5) years or exceed twenty-five (25) years.

(c) Repayment. Payments shall be made in accordance with the agreed upon terms within the executed loan documents.

### **Section 8. Security.**

(a) Every loan shall be evidenced by a promissory note for the principal sum of the loan.

(b) Loans shall be adequately secured to the Board's satisfaction. Loans may be secured with:

(i) Pledge of the revenues from the project for which the loan was granted;

(ii) Pledge of other available revenues to the borrower;

(iii) A mortgage covering all or part of the project, or a pledge of the lease of the project;

(iv) An assignment of lease revenues; and/or

(v) Any other security deemed adequate to secure repayment of the loan.

(c) If an appraisal is required, the applicant shall be responsible for ensuring one is completed prior to submitting a loan application.

(i) Office staff shall review and approve the methodology used for valuation and the overall market value prior to loan closing.

### **Section 9. Disbursements.**

(a) Requests for disbursements shall be on a form provided by the Director and include supporting invoices establishing the eligibility of costs submitted for disbursement. Loan proceeds will only be disbursed for eligible project costs as set forth in this Chapter and within established guidelines following review by the Office.

(b) The Office shall inspect and verify any reports and records required by the Board and submitted by the borrower before proceeds shall be released.

### **Section 10. Ineligible Project Costs.**

(a) Costs for preparation or presentation of loan application;

- (b) Costs incurred prior to loan award, except costs incurred for architectural and engineering design, surveying and environmental review, if required;
- (c) Engineering fees, including design, inspection and contract administration costs, in excess of fifteen percent (15%) of project cost;
- (d) Markups by engineers/architects of sub-contractor and other outside charges;
- (e) Costs for transportation, meals, lodging and incidentals incurred offsite from the project or that exceed the current federal per diem reimbursement rate;
- (f) Costs associated with the borrower's own employees and equipment;
- (g) Costs for real property in excess of current fair market value and/or costs for an amount of real property in excess of that needed for project purposes;
- (h) Costs related to issuance of bonds;
- (i) Costs for furnishings;
- (j) Legal fees;
- (k) Costs for sidewalks that are owned or maintained by a private property owner; and
- (l) Costs for contingency or extra work allowance in excess of 10% of estimated construction costs.

**Section 11. Refinancing.**

- (a) If a borrower anticipates that it will be unable to make a required loan payment, the Board may refinance the loans, provided that:
  - (i) The borrower's inability to make payment is due to causes completely beyond its control and without the fault or negligence of the borrower;
  - (ii) The Board determines that refinancing is necessary for the better protection of the permanent mineral trust fund; and
  - (iii) The term of the refinanced loan does not exceed twenty-five (25) years from the date of refinancing.
- (b) If a borrower becomes delinquent on its required loan payment, the Board may refinance the loan, provided that:
  - (i) The Board determines that refinancing is necessary for the better protection



of the permanent mineral trust fund; and

(ii) The term of the refinanced loan does not exceed twenty-five (25) years from the date of refinancing.

(c) Interest rate. The interest rate for refinanced loans under this Chapter shall be pursuant to Chapter 14 of the rules as established by the Board.

(d) If the Board approves the refinancing of a loan, the borrower shall pay a refinancing fee prior to the execution of the loan amendment.

### **Section 12. Audits and Inspections.**

(a) On an annual basis, records of the borrower shall be, at a minimum, compiled by an independent accounting firm. The borrower shall provide the Office a Compilation, Review or Audited Financial Statement.

(b) The Board may, at its expense, conduct an independent audit of the borrower's records and inspect the construction and operation of the project.

## Chapter 14

### Fees For Administrative Services and Interest Rates

#### Section 1. Authority.

This Chapter is promulgated under the authority of Wyoming Statute (W.S.) 11-34-103(a), W.S. 11-34-103(b), W.S. 11-34-121, W.S. 11-34-118, W.S. 16-1-109, W.S. 11-34-117(a), W.S. 11-34-117(b), W.S. 16-1-205(b)(i), W.S. 16-1-305(b)(i), W.S. 35-11-530(a), W.S. 35-11-528(e), W.S. 21-18-319(a), ~~and~~ W.S. 16-1-111(a), and W.S. 16-1-111(d).

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(ii) Chapter 7 - Beginning Agricultural Producer Loans:

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(ii) Chapter 7 - Farm Loans:

- (A) 8% per annum for loans up to 50% of appraised value;
- (B) 9% per annum for loans up to 60% of appraised value.

(C) For “Beginning Agricultural Producer” loans, as defined in Chapter 7, Section 2(c), for the first ten (10) years of the loan the rate shall be the lower of 8% or the average yield on a ten (10) year U.S. Treasury Bond for the previous year, rounded to two (2) decimals, as of the date of loan closing. At the end of ten (10) years the interest rate shall be 8%. Loans to beginning agricultural producers shall not exceed 70% of value.

(D) Sales Contracts – Sales of lands acquired through farm loan foreclosure:

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(iii) Chapter 11 – Clean Water State Revolving Fund Loans:

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(B) 0% per annum for all eligible applicants that qualify Green Project Reserve funding as defined by Chapter 11 Rules and Regulations; no equity requirement;

(C) 2.5% per annum on loans when Principal Forgiveness is available; no equity requirement;

(D) If the full amount of Principal Forgiveness an eligible applicant qualifies for is not available, the entity may choose either the decreased amount of Principal Forgiveness available or a decreased interest rate, as detailed below. When ~~additional subsidies~~ Principal Forgiveness ~~are~~ is not available, eligible applicants that would have qualified for Principal Forgiveness will qualify for a decreased interest rate as detailed below:

(I) Applicants eligible for 75% Principal Forgiveness are eligible for an interest rate of 0.75% per annum;

(II) Applicants eligible for 50% Principal Forgiveness are eligible for an interest rate of 1 % per annum;

(III) Applicants eligible for 25% Principal Forgiveness are eligible for an interest rate of 1.25% per annum;

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(E) Large Loan Interest Rate Incentive. For loans that are considered large, per the categories below, will qualify for the corresponding decreased interest rate.

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(III) Loans in an amount of \$15 million or more qualify for an interest of 0.5% per annum.

(iv) Chapter 16 – State Drinking Water Revolving Account:

(A) 0% per annum for all eligible applicants that qualify for Green Project Reserve funding as defined by Chapter 146 Rules and Regulations; no equity requirement;

(B) 2.5% per annum on loans when Principal Forgiveness is available loans; no equity requirement.

(C) If the full amount of Principal Forgiveness an eligible applicant qualifies for is not available, the entity may choose either the decreased amount of Principal Forgiveness available or a decreased interest rate, as detailed below. When ~~additional subsidies~~ Principal Forgiveness ~~are~~ is not available, eligible applicants that would have qualified for Principal Forgiveness will qualify for a decreased interest rate as detailed below:

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(I) Loans in an amount between \$5 million and \$7,499,999 qualify for an interest rate of 1.5% per annum;

(II) Loans in an amount between \$7.5 million and \$9,999,999 qualify for an interest rate of 1% per annum;

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(v) Chapter 35 - Municipal Solid Waste Facilities Cease and Transfer Loan and Grant Program:

(A) Interest rates for loans may be at zero percent, up to an annual interest rate equal to the average prime interest rate as determined by W.S. 35-11-528(e). In no event, shall the interest rate exceed an annual interest rate equal to the average prime interest rate as determined by the state treasurer. Interest rates established under this section shall be adjusted on January 1 of each year.

(B) Interest rates shall be established in recognition of the repayment abilities and needs of the applicant eligible for loans under the program.

(vi) Chapter 37 – Student Dormitory Capital Construction Loans:

(A) Loans shall be at an interest rate of one percent (1%) plus seventy-five thousandths of one percent (0.075%) for each year of the loan term in excess of five (5) years.

(B) Refinanced loans under Chapter 387, shall be at the same rate specified under Subparagraph Section 4(ix)(A) of this Paragraph Chapter.

(vii) Chapter 38 – Capital Construction Loans:

(A) Loans to cities, towns and counties shall be at an interest rate of one percent (1%) plus seventy-five thousandths of one percent (0.075%) for each year of the loan term in excess of five (5) years.

(I) In the event of a prepayment of a loan, the interest rate shall be calculated at the actual loan period but no refund of interest payments shall be made to the borrower.

(B) Loans to irrigation districts and water conservancy districts shall be at an interest rate of the greater of one percent (1%) plus seventy-five thousandths of one percent (0.075%) for each year of the loan term in excess of five (5) years or the current equivalent yield of a United States treasury security of the same duration of the loan, which may be adjusted every five (5) years.

(I) In the event of prepayment of a loan, the interest rate shall be calculated at the actual loan period, but no refund of interest payment shall be made to the borrowing entity.

(C) Refinanced loans under Chapter 38, shall be at the same rate specified by Subparagraphs (A) and (B) of this Paragraph.

## **Chapter 38**

### **Capital Construction Loans**

#### **Section 1. Authority.**

- (a) This Chapter is adopted pursuant to Wyoming Statute (W.S.) 16-1-111.

#### **Section 2. Definitions.**

In addition to the definitions in Chapter 1, as used in this Chapter:

(a) “Capital construction” means new construction, expansion, renovation, or replacement of an existing facility or facilities.

(b) “City” means any incorporated municipality having a population of four thousand (4,000) or more which has been declared a city or which has taken the necessary steps to be and has been proclaimed a city.

~~(c) “DDA” means demand deposit account.~~

~~(d)~~ “Infrastructure project” means a capital construction project which may lawfully be undertaken within the powers of the political subdivision.

~~(e)~~ “Irrigation District” means an irrigation district under W.S. 41-7-201.

~~(f)~~ “Political subdivision” means Wyoming cities, towns, counties, school districts, and community college districts.

~~(g)~~ “Street and road projects” means the construction, maintenance or improvement of a public street, road or alley within a city, town, or county.

~~(h)~~ “Town” means any incorporated municipality, not a city.

(h) “Water Conservancy Districts” means a district created under the Water Conservancy Act, W.S. 41-3-701 through -779.

#### **Section 3. General Policy.**

(a) Loans shall be made in such a manner and to such parties as shall, in the judgment of the Board, represent a prudent investment of state funds.

(b) The capital construction loan program is not intended to benefit investors or developers.

#### **Section 4. Eligible Applicants.**

(a) Political subdivisions are eligible for loans for infrastructure projects. In order to qualify for a loan, the political subdivision must be able to demonstrate the following:

(i) A commitment to adequately maintain the project for the duration of the loan; and,

(ii) All project costs will be funded at the time of receipt of the loan.

(b) Wyoming cities, towns, and counties are eligible for loans for street and road projects. In order to qualify for a loan, the city, town, or county must be able to demonstrate the following:

(i) A commitment to adequately maintain the project for the duration of the loan;

(ii) All project costs will be funded at the time of receipt of the loan;

(iii) All related infrastructure, including water and sewer is or will be in place at the time of receipt of the loan; and,

(iv) No outstanding loans exist under this Chapter for a street and road project.

(c) Wyoming Irrigation Districts and Water Conservancy Districts are eligible for loans for replacement or major maintenance projects of storage, diversion, transmission, and distribution systems. In order to qualify for a loan, the district must be able to demonstrate the following:

(i) The entity was legally formed and approved prior to submitting an application;

(ii) The applicant has applied to all other eligible grant or loan programs and has fully applied any awards or loans from those programs to the project;

(iii) A commitment to adequately maintain the project for the duration of the loan; and

(iv) All project costs will be funded at the time of receipt of the loan.

~~(ed) Ownership of Project. All projects must be owned by the entity applying for the loan.~~

(i) For applicants qualifying under Subsections (a) and (b) of this Section, the applicant must own the project in its entirety.

(ii) For applicants qualifying under Subsection (c) of this Section, the applicant



must either own the project in its entirety or hold a valid lease for all parts of the project that:

(A) Permits the applicant to perform the proposed work; and

(B) Is for an indefinite term or a term covering the useful life of the project.

(de) Applicants must be compliant with all applicable reporting requirements of the Wyoming Department of Audit and Wyoming Department of Revenue prior to the application being considered by the Board.

### **Section 5. Eligible Purposes.**

(a) Loans may be made for infrastructure projects and street and road projects and may include costs associated with the following purposes:

- (i) Purchase of land, buildings, and improvements associated with capital construction;
- (ii) Renovation or upgrade of existing infrastructure; and/or
- (iii) Planning and construction.

### **Section 6. Application Procedure.**

(a) Applications.

(i) Each applicant shall submit a written loan application on the form furnished by the Office. At a minimum, the application shall include:

(A) A signed resolution stating the amount of the loan being requested, name of project and repayment source(s), and agreeing to maintain the project for the life of the loan;

(B) A detailed project summary which includes a breakdown of total project costs, a project timeline and proposed repayment source(s);

(C) Commitment letters from all funding sources, if applicable;

(D) Engineer's Feasibility Statement;

(E) A formal maintenance plan documenting how the borrower will adequately maintain the project for the life of the loan.

(ii) Incomplete applications shall not be submitted to the Board for consideration.

(iii) Any false or misleading statements made by the applicant in an application shall be grounds for summary rejection of the application.

(iv) Timing. Loan applications must be received by the Office at least ninety (90) calendar days prior to any regularly scheduled meeting of the Board. Applicants must cure any defects in their application no later than forty-five (45) calendar days before any regularly scheduled meeting of the Board.

(b) Consideration.

(i) The Office shall conduct a preliminary review of all applications received. If the Office identifies issues with the application which would result in a negative recommendation to the Board, the Office shall notify the applicant within 30 days of receiving the application of the issue and the applicant shall have the opportunity to correct the application or withdraw the application. Applicants must cure any defects in their application no later than forty-five (45) calendar days before any regularly scheduled meeting of the Board.

(ii) All applications shall be reviewed by the Attorney General to certify the legality of the transaction and to determine if an election is required by law.

(iii) The following will be considered when reviewing applications:

(A) The project's contribution to health, safety and welfare of the citizens in the political subdivision as demonstrated by:

(I) The extent the project will protect the citizens from exposure to hazards that may result in adverse consequences;

(II) Achieving compliance with state and federal mandates; or

(III) Any other relevant information demonstrating the project's contribution to the health, safety and welfare of the citizens.

(B) The applicant's need for the project and financial need of the applicant in relation to the project; and,

(C) The applicant's ability to repay the loan.

**Section 7. Loan Terms.**

(a) Interest rate. The interest rate for loans under this Chapter shall be pursuant to Chapter 14 of the rules established by the Board and a one-half of one percent (0.5%) origination fee shall be collected on the approved loan amount.

(b) Length. The term for each loan shall be set by the Board with due regard given to repayment ability and the security offered, but in no event shall the term be less than five (5) years or exceed twenty-five (25) years.

(c) Repayment.—~~Loans shall be payable in equal installments. Payments shall begin within one (1) year from the date of loan funds being deposited in the required DDA.~~ be made in accordance with the agreed upon terms within the executed loan documents.

### **Section 8. Security.**

(a) Every loan shall be evidenced by a promissory note for the principal sum of the loan.

(b) Loans shall be adequately secured to the Board's satisfaction. Loans may be secured with:

(i) Pledge of the revenues from the project for which the loan was granted;

(ii) Pledge of other available revenues to the borrower;

(iii) A mortgage covering all or part of the project, or a pledge of the lease of the project;

(iv) An assignment of lease revenues; and/or;

(v) Any other security deemed adequate to secure repayment of the loan.

(c) If an appraisal is required, the applicant shall be responsible for ensuring one is completed prior to submitting a loan application.

(i) Office staff shall review and approve the methodology used for valuation and the overall market value prior to loan closing.

### **Section 9. Disbursements.**

(a) ~~Upon closing, the loan proceeds shall be deposited in a DDA to be disbursed solely for the approved loan purpose. The borrower shall pay all costs associated with the DDA. Interest earned shall be credited to the borrower. Requests for disbursements shall be on a form provided by the Director and include supporting invoices establishing the eligibility of costs submitted for disbursement. Loan proceeds will only be disbursed for eligible project costs as set forth in this Chapter and within established guidelines following review by the Office.~~

~~(b) Borrower shall submit all requests for payment from the DDA on a form provided by the Office, with supporting documentation, as required by the Director.~~

~~(†) The Office shall inspect and verify any reports and records required by the Board and submitted by the borrower before proceeds shall be released from the DDA for payment.~~

**Section 10. Ineligible Project Costs.**

- (a) Costs for preparation or presentation of loan application;
- (b) Costs incurred prior to loan award, except costs incurred for architectural and engineering design, surveying and environmental review, if required;
- (c) Engineering fees, including design, inspection and contract administration costs, in excess of fifteen percent (15%) of project cost;
- (d) Markups by engineers/architects of sub-contractor and other outside charges;
- (e) Costs for transportation, meals, lodging and incidentals incurred offsite from the project or that exceed the current federal per diem reimbursement rate;
- (f) Costs associated with the borrower's own employees and equipment;
- (g) Costs for real property in excess of current fair market value and/or costs for an amount of real property in excess of that needed for project purposes;
- (h) Costs related to issuance of bonds;
- (i) Costs for furnishings;
- (j) Legal fees;
- (k) Costs for sidewalks that are owned or maintained by a private property owner; and,
- (l) Costs for contingency or extra work allowance in excess of 10% of estimated construction costs.

**Section 11. ~~Reporting Requirements.~~ Refinancing.**

~~(a) At least annually, more often if deemed necessary by the Office, the borrower shall provide the Office an account statement for the DDA used for holding the loan proceeds. If a borrower anticipates that it will be unable to make a required loan payment, the Board may refinance the loans, provided that:~~

- ~~(i) The borrower's inability to make payment is due to causes completely~~

beyond its control and without the fault or negligence of the borrower;

(ii) The Board determines that refinancing is necessary for the better protection of the permanent mineral trust fund; and

(iii) The term of the refinanced loan does not exceed twenty-five (25) years from the date of refinancing.

(b) If a borrower becomes delinquent on its required loan payment, the Board may refinance the loan, provided that:

(i) The Board determines that refinancing is necessary for the better protection of the permanent mineral trust fund; and

(ii) The term of the refinanced loan does not exceed twenty-five (25) years from the date of refinancing.

(c) Interest rate. The interest rate for refinanced loans under this Chapter shall be pursuant to Chapter 14 of the rules as established by the Board.

(d) If the Board approves the refinancing of a loan, the borrower shall pay a refinancing fee prior to the execution of the loan amendment.

## **Section 12. Audits and Inspections.**

(a) On an annual basis, records of the borrower shall be, at a minimum, compiled by an independent accounting firm. The borrower shall provide the Office a Compilation, Review or Audited Financial Statement.

(b) The Board may, at its expense, conduct an independent audit of the borrower's records and inspect the construction and operation of the project.