



# 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 Repealed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 Repealed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 Repealed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 Repealed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> :		
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 Repealed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.

<i>Signature of Authorized Individual</i>	
<i>Printed Name of Signatory</i>	
<i>Signatory Title</i>	
<i>Date of Signature</i>	

**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.

<i>Governor's Signature</i>	
<i>Date of Signature</i>	

## **Statement of Reasons**

### **Wyoming Business Council**

### **Wyoming Broadband Development Grant Program**

### **Adoption of Amended Chapter 1 and New Chapter 2 Regular Rules**

The Wyoming Business Council is promulgating amendments to Chapter 1 – General Provisions and new Chapter 2 – Middle Mile Program as required by SF0076 (SEA 0065, 2021 Session). This legislation compels the WBC to define new terms, establish a challenge process, and establish application and funding procedures for the Middle Mile program.

The Wyoming Business Council is statutorily exempt from the Wyoming Administrative Procedures Act under W.S. § 9-12-103(g)(iii).

**Wyoming Business Council**

**Broadband Development Grant Program**

**Summary of Public Comment – July 19, 2021**

The Wyoming Business Council is statutorily exempt from the Wyoming Administrative Procedures Act under W.S. § 9-12-103(g)(iii). Accordingly, this rulemaking was not subject to a formal public comment period. These rules were adopted by unanimous action of the Wyoming Business Council Board of Directors at its July 12, 2021 public meeting.

## Chapter 1

### GENERAL PROVISIONS

**Section 1. Purpose.** These rules are adopted in order to implement Wyoming Statute 9-12-1501 et seq which provide for the making of grants to eligible applicants in order to promote the expansion of access to broadband service in unserved areas of the state.

**Section 2. Authority.** Authority for the promulgation of these rules is granted in W.S. 9-12-1501, W.S. 9-12-1508, W.S. 9-12-1503 and W.S. 9-12-1510.

**Section 3. Definitions.**

(a) "Eligible applicants" are public and private partnerships composed of those entities identified as eligible applicants per W.S. 9-12-1501(c) and governmental entities as specified under W.S. 9-12-1501(d).

(b) "Unserved area" means as defined by W.S. 9-12-1501(e).

(c) "Adequate consideration" means consideration that is fair and reasonable under the circumstances of the agreement because the reasonable value of the goods or services received in exchange for transferred property approximates the reasonable value of the property transferred.

(d) "Business corridor" means an area where multiple business are, or have undertaken permitting, construction or other substantial steps to be, located in proximity to each other such that the provision of broadband services at the speeds specified in W.S. 9-12-1501(b) is technologically and economically feasible.

(e) "Middle-mile" means as defined in W.S. 9-12-1501(h)(ii).

(f) "Last-mile" means as defined in W.S. 9-12-1501(h)(i).

(g) "Advisory Council" means the Wyoming Broadband Advisory Council.

(h) "Board" means as defined in W.S. 9-12-102(a)(i).

(i) "Council" means as defined in W.S. 9-12-102(a)(ii).

(j) "Staff" means the staff of the Wyoming Business Council.

(k) "Program" means the Wyoming Broadband Development Program.

(l) "State" means the State of Wyoming.

(m) "Speed test results" means the quantitative analysis of a broadband connection's upload and download speeds as measured in Megabits per second (Mbps), as well as the connection's latency as measured in milliseconds (ms).

(n) "Broadband Map" means the official broadband map developed and maintained by the Council for evaluation of broadband deployment in Wyoming.

(o) "FCC" means the Federal Communications Commission.

(p) "Challenge" means any challenge to an application submitted under this program made pursuant to W.S. 9-12-1504.

#### **Section 4. Challenge Process.**

(a) All challenges to any application submitted under this program shall be submitted in writing to the Broadband Manager or their designee by email or physical delivery and include all requisite information to receive consideration.

(b) The Broadband Manager or their designee shall acknowledge receipt of the challenge with the challenging party in writing with seven (7) business days.

(c) Challenges will be evaluated by the Council, who may seek additional information from the challenging party.

(i) Challenges may be dismissed by the Council in the event the challenging party fails to provide any requested information in a timely manner.

(d) Challenged applicants shall be contacted by the Council for additional information and be given an opportunity to respond.

(e) A determination on the challenge shall be communicated to the challenging party as well as the challenged applicant in writing as soon as practical, but not more than thirty (30) days from the date the challenge was acknowledged.

(f) Challenges shall either be upheld or dismissed.

(g) Challenges which are dismissed by the Council may, at the request of the challenging party, be heard in public session at the next public meeting of the Board of Directors.

(i) The challenging party shall be notified in writing of the date, time and place of the meeting at which the challenge will be heard. There shall be no distinction made between parties attending the meeting virtually or in-person.

(ii) In the event the challenging party does not present to offer testimony in support of their challenge, the Board may, at its sole and final discretion, summarily dismiss the challenge.

(iii) The Board shall have final discretion to uphold or reverse any challenge determination made by the Council, and all actions taken shall be recorded in the meeting minutes.

## Chapter 2

### MIDDLE MILE PROGRAM

**Section 1. Purpose.** These rules are adopted pursuant to W.S. 9-12-1510 et seq. which provide for the making of grants for middle mile projects meeting the requirements of 9-12-1510(a).

**Section 2. Authority.** Authority for the promulgation of these rules is granted in W.S. 9-12-1510.

**Section 3. Application process; application requirements.**

(a) An eligible applicant shall submit an application to the Council on a form prescribed by the Council. The Council shall be responsible for receiving and reviewing applications, entering into contracts, and authorizing the distribution of funds subject to approval by the Governor or their designee.

(b) On the Council's prescribed form, an eligible applicant shall provide the following information:

(i) A summary of the proposed project;

(ii) The location of the proposed project, including a shapefile depicting the location and boundaries of the proposed project area or, for a middle-mile project, a map depicting the location and endpoints;

(iii) The type and quantity of broadband infrastructure to be deployed for the project, including initial speeds to be achieved and initial price of the service to be provided;

(iv) Evidence demonstrating the applicant's experience and ability in building, operating and managing broadband service networks;

(v) Evidence regarding the unserved nature of the area where the project is to be located, which may include but is not limited to:

(A) Any broadband provider's response which asserts the unserved nature of the proposed project area;

(B) Data from Form 477 of the Federal Communications Commission;  
and

(C) Data from the Broadband Map.



(vi) The number of households and businesses passed as well as the percentage of households passed in relation to the most current number of households in the project area which shall have access to broadband service as a result of the project or whose broadband service shall be upgraded as a result of the project;

(vii) Acknowledgment by the governing body, and any partnering business entity/entities by a person with legal authority to bind the business entity, that funding may only be provided in accordance with a contract executed in conformance with W.S. 9-12-1501 through 1509, and which is subject to availability of, and approval for distribution of, funds.

(A) If the application is not submitted jointly with a business entity, an account of the request for proposals issued by the governmental entity applying and responses to the request, if any; and

(viii) Additional information as required by Staff from applicant to enable the Council to properly assess the application for funding. Staff may request an applicant modify an application based on current broadband access in the proposed project area prior to award of funding under this program.

(c) The Broadband Manager is available to assist applicants with the development of projects and the preparation of applications made under this Section.

(d) A governmental entity which qualifies as an eligible applicant under W.S. 9-12-1501(c)(ii) shall develop a request for proposals inviting business entities to participate in projects proposed for funding.

(e) At least thirty (30) days prior to the first day of the funding period for which applications may be submitted, the Council shall publish on its official website the specific criteria and quantitative weighting scheme or scoring system to be used by the Council in the evaluation and ranking of applications.

(f) Staff shall review each application to determine eligibility and completeness within fifteen (15) working days of receipt wherever practical.

(i) Otherwise-eligible applicants submitting incomplete applications shall be provided an opportunity to amend or correct the application and must do so within ten (10) working days of notice of any identified insufficiency or incompleteness. Applications which remain incomplete after this period shall not be considered further.

(g) Complete applications shall be forwarded by Staff to the Advisory Council for review with a recommendation to approve or deny the application.

(i) Staff shall prioritize proposed projects recommended to the Advisory Council on the basis of the actual scores resulting from the project evaluation. This score is not intended to be the only basis for a recommendation by Staff nor award decision by the Board.

The final recommendation and award decision on any proposed projects shall be at the discretion of the Board and the Governor or their designee.

(ii) The Advisory Council shall consider each complete application and shall refer the application to the Board with a recommendation of “fund as requested” or “do not fund.”

(h) Under extraordinary circumstances, the Advisory Council may recommend a project to the Board contingent on a waiver of these rules for that project if the Advisory Council determines such a waiver would be consistent with the purpose of the Program. The Board may, by majority vote, waive any requirement(s) in this Section. Any such waiver action shall be noted in the meeting minutes and shall be considered non-precedential and shall bind neither the Board nor the Advisory Council on future actions related to waivers.

**Section 4. Arbitration; marketing requirements.**

(a) Eligible applicants shall:

(i) Allow the Council to participate in arbitration related to reasonable rates in the event of unsuccessful negotiations between a funding recipient and another broadband provider for access to infrastructure; and

(ii) Provide to the Council upon request any marketing information based on current leases to assist the Council in determining reasonable rates for access to infrastructure for projects funded under this Program. Any information provided under this subparagraph shall be considered confidential information as set forth in Chapter 3 of these Rules and shall not be disclosed by the Council.

**Section 5. Funding Limitations.**

(a) Funding shall be provided on a reimbursement basis according to the terms set forth in a Contract or Grant Agreement.

(b) Funding shall otherwise be provided as described in W.S. 9-12-1510.

**Wyoming Broadband Development Grant Program  
Chapter 1**

**GENERAL PROVISIONS**

**Section 1. Purpose.** These rules are adopted in order to implement Wyoming- Statute- 9-12-1501 et seq which provide for the making of grants to eligible applicants in order to promote the expansion of access to broadband service in unserved areas of the state.

**Section 2. Authority.** Authority for the promulgation of these rules is granted in W.S. 9-12-1501, and W.S. 9-12-1508, W.S. 9-12-1503 and W.S. 9-12-1510.

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(b) “Unserved area” means as defined by W.S. 9-12-1501(e).

(c) “Adequate consideration” means the price stipulation within a contract that establishes equivalence in the exchange of value in the form of money, goods or services. Any exchange of value that is deemed not to be adequate could render the contract unenforceable. consideration that is fair and reasonable under the circumstances of the agreement because the reasonable value of the goods or services received in exchange for transferred property approximates the reasonable value of the property transferred.

(d) “Business corridor” means an area where multiple business are, or have undertaken permitting, construction or other substantial steps to be, located in proximity to each other such that the provision of broadband services at the speeds specified in W.S. 9-12-1501(b) is technologically and economically feasible.

(e) “Middle-mile” means as defined in W.S. 9-12-1501(h)(ii).

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**Section 2.** **Authority.** Authority for the promulgation of these rules is granted in W.S. 9-12-1510.

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(b) On the Council's prescribed form, an eligible applicant shall provide the following information:

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(A) Any broadband provider's response which asserts the unserved nature of the proposed project area;

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(vi) The number of households and businesses passed as well as the percentage of households passed in relation to the most current number of households in the project area which shall have access to broadband service as a result of the project or whose broadband service shall be upgraded as a result of the project;

(vii) Acknowledgment by the governing body, and any partnering business entity/entities by a person with legal authority to bind the business entity, that funding may only be provided in accordance with a contract executed in conformance with W.S. 9-12-1501 through 1509, and which is subject to availability of, and approval for distribution of, funds.

(A) If the application is not submitted jointly with a business entity, an account of the request for proposals issued by the governmental entity applying and responses to the request, if any; and

(viii) Additional information as required by Staff from applicant to enable the Council to properly assess the application for funding. Staff may request an applicant modify an application based on current broadband access in the proposed project area prior to award of funding under this program.

(c) The Broadband Manager is available to assist applicants with the development of projects and the preparation of applications made under this Section.

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(h) Under extraordinary circumstances, the Advisory Council may recommend a project to the Board contingent on a waiver of these rules for that project if the Advisory Council determines such a waiver would be consistent with the purpose of the Program. The Board may, by majority vote, waive any requirement(s) in this Section. Any such waiver action shall be noted in the meeting minutes and shall be considered non-precedential and shall bind neither the Board nor the Advisory Council on future actions related to waivers.

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