



## Notice of Intent to Adopt Rules

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

Revised June 2020

<b><u>1. General Information</u></b>			
a. Agency/Board Name*			
b. Agency/Board Address		c. City	d. Zip Code
e. Name of Agency Liaison		f. Agency Liaison Telephone Number	
g. Agency Liaison Email Address			
h. Date of Public Notice		i. Comment Period End Date	
j. Public Comment URL or Email Address:			
k. Program			
Amended Program Name (if applicable):			
* <input type="checkbox"/> 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.			
<b><u>2. Legislative Enactment</u></b> 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 regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?			
<input type="checkbox"/> No. <input type="checkbox"/> Yes. If the rules are new, please provide the Legislative Chapter Numbers and Years Enacted (e.g. 2015 Session Laws Chapter 154):			
<b><u>3. Rule Type and Information</u></b> 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 Repealed	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 (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 Repealed	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 Repealed	
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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 Repealed	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 Comments and Hearing Information**

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

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons may present their views on the rulemaking action?

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

At the following URL: \_\_\_\_\_

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

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

At the following URL: \_\_\_\_\_

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

**5. Federal Law Requirements**

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

Applicable Federal Law or Regulation Citation:
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Indicate one (1):

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

The proposed rules exceed minimum federal requirements.

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

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

At the following URL: \_\_\_\_\_

**6. State Statutory Requirements**

a. Indicate one (1):

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

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

b.  The Agency has completed a takings assessment as required by W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

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

At the following URL: \_\_\_\_\_

**7. Additional APA Provisions**

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

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

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

\_\_\_\_\_ (Provide chapter numbers)

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

\_\_\_\_\_ (Provide chapter numbers)

b. Checklist

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

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

**8. Authorization**

a. I certify that the foregoing information is correct.

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

## **STATEMENT OF PRINCIPAL REASONS**

SSBCI – Venture Capital Programs – 06/27/2022

The purpose of the SSBCI - Venture Capital Program Rules is to provide clarity around Wyoming's use of the State Small Business Credit Initiative (SSBCI) allocation, pursuant to the American Rescue Plan Act of 2021 (ARPA), which reauthorized and amended the Small Business Jobs Act of 2010 (SBJA), which provides for the making of equity or venture capital investments to eligible applicants. These venture capital equity investments will be made to both funds that support Wyoming entrepreneurs and directly to Wyoming entrepreneurs through direct co-investment. The rules establish eligibility, a method of application, review and recommendation, terms and conditions, and reporting requirements.

These draft rules were reviewed and approved by the Wyoming Business Council Board of Directors at a Special Board Meeting on June 22, 2022.

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

## **Chapter 1**

### **Venture Capital Programs**

**Section 1. Authority.** These rules are adopted by the Wyoming Business Council pursuant to the American Rescue Plan Act of 2021 (ARPA), which reauthorized and amended the Small Business Jobs Act of 2010 (SBJA). Rulemaking for this program is the responsibility of the Wyoming Business Council as authorized by W.S. 9-12-104(a)(iv) and W.S. 9-1-216.

**Section 2. Purpose.** These rules are promulgated for the purpose of providing a structure for disbursement of State Small Business Credit Initiative (SSBCI) Venture Capital Funds through the Wyoming Business Council.

**Section 3. Definitions.**

(a) As used in this program:

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

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

(iii) “SSBCI” means State Small Business Credit Initiative.

(iv) “SSBCI Committee” is a five-person Committee consisting of two

Wyoming Business Council Board members; board co-chair and investments committee chair, as well as three members of the Council staff; investments director and two other based on areas of expertise.

(v) “Committee Review Threshold” means any investment above two million dollars (\$2,000,000).

(vi) “Venture Capital Fund” means any entity that meets the capital fund definition in 17 C.F.R. § 275.203(I)-1.

(vii) “Employees” as defined by 12 CFR §121.106

**Section 4. Eligible Applicants.**

(a) To be eligible for investment by the Wyoming Venture Fund, a new or existing Venture Capital Fund must:

(i) Be independently owned and operated; and

(ii) Agree to make the overwhelming majority of investments in Wyoming companies that are headquartered in Wyoming, and have less than 200 employees, and are committed to remain in Wyoming or relocate to Wyoming for at least 1 year after the investment closes; and

(iii) Agree to target early-stage investments with a round size of less than \$5,000,000; and

(iv) Be headquartered in Wyoming, have its principal operations in Wyoming, have at least sixty percent (60%) of its employees employed in Wyoming, or has committed in writing to make investments with SSBCI dollars in Wyoming; and

(v) Be in good standing with the Wyoming Secretary of State or the equivalent in its home state if not a Wyoming Venture Capital Fund.

(b) To be eligible for investment by the Wyoming Venture Direct, Co-Investment Fund, a business must:

(i) Be independently owned and operated;

(ii) Be headquartered in Wyoming, have its principal operations in Wyoming, have at least sixty percent (60%) of equity owned by residents of Wyoming, have at least sixty percent (60%) of its employees employed in Wyoming, or have committed in writing to move to Wyoming and fulfill one of the other conditions of Section 4. (b)(ii) as a condition of the investment;

(iii) Be seeking institutional investment or growth capital funding;

(iv) Have a lead investor or other investment fund with committed funds as well as a term sheet defined and be willing to share current diligence;

- (v) Have strong growth potential;
- (vi) Provide evidence acceptable to the council of its intent to remain in

Wyoming for at least 1 year after receipt of investment;

- (vii) Have 200 employees or less; and
- (viii) Be in good standing with the Wyoming Secretary of State.

**Section 5. Application Process.**

(a) Wyoming Venture Fund Application.

(i) The Council shall provide a “Wyoming Venture Fund” application online that includes a requirement to provide information relevant for funding decisions, including but not limited to:

(A) Information that establishes the application’s eligibility under Section 4(a) of this chapter;

(B) The applicant’s number of full-time, part-time, and contract employees;

(C) The applicant’s funding history, organizational documents, operating agreement, financial statements, bylaws, investment thesis, or other relevant documentation;

(D) The amount of applicant’s funding request and total fund target;

(E) All information necessary for the Wyoming State Auditor’s Office to set up the applicant as a vendor in its vendor payment system, including electronic funds transfer documents; and

(F) Any other information necessary to determine the adequacy of the applicant’s funding request.

(b) Wyoming Venture Direct - Co-Investment Application.

(i) The Council shall provide a “Wyoming Venture Direct” application online that includes a requirement to provide information relevant for funding decisions, including but not limited to:

(A) Information that establishes the application’s eligibility under Section 4(b) of this chapter;

(B) The applicant’s number of full-time, part-time, and contract employees;

(C) The applicant’s organizational documents, operating agreement, financial statements, bylaws, business plan, capitalization table, or other relevant documentation regarding the company or any owner exceeding 25% ownership;

(D) The amount of the applicant’s funding request, funding series, and total round size;

(E) All information necessary for the Wyoming State Auditor’s Office to set up the applicant as a vendor in its vendor payment system, including electronic funds transfer documents; and

(F) Any other information necessary to determine the adequacy of the applicant’s requested funding.

**Section 6. Review and Recommendation.**

(a) Applications are reviewed on a rolling basis until funds have been expended. Applications shall be reviewed in the following manner:

(i) Council staff shall review applications and make a determination of eligibility and completeness with consideration to Section 4 of this Chapter of these Rules.



Additional review will be completed by Council staff to ensure compliance with all SSBCI guidance and regulations.

(ii) Upon successful review of (i) above, each applicant shall be asked to pitch their fund or investment to Council staff and the Investments Director or the SSBCI Committee dependent upon the request size in relation to the Committee Review Threshold.

(b) Applications will be recommended in the following manner:

(i) Council staff shall document and present their findings and analysis from applications that are less than the Committee Review Threshold to the Investments Director for final approval or denial.

(ii) Council staff findings and analysis from applications greater than or equal to the Committee Review Threshold will be documented and presented to the SSBCI Committee for final approval or denial.

(c) In the event an application is denied, Council staff shall disclose to the applicant the reasons for not approving the request and any remedial actions the applicant may take in order for the application to be reconsidered.

**Section 7. Terms and Conditions.** In addition to the terms set forth in other Sections of this Chapter of these Rules, the following terms and conditions apply to all applications for and investments of funds made under this Chapter:

(a) Each applicant shall agree to comply with U.S. Department of Treasury SSBCI Capital program guidelines;

(b) The maximum contribution from the Council shall be five million dollars (\$5,000,000) for any investment, fund or direct co-investment;

(c) The direct co-investment round size maximum from the Council shall be twenty million dollars (\$20,000,000); and

(d) The Council's contribution shall not be, at any time, more than forty-nine percent (49%) of any fund or investment.

**Section 8. Reporting requirements; audit compliance.**

(a) Each applicant agrees to provide quarterly and annual reports to the Council to comply with state and federal laws and regulations.

(i) Reports may include but are not limited to:

(A) Certifications from the businesses;

(B) Terms and performance of individual investment(s);

(C) Private financing leveraged to date;

(D) Total portfolio performance; and

(E) Any other report required by council staff.

(ii) Failure to provide to the Council on the date specified by the Council any required reports shall result in future funding being held until the applicant provides those reports to the Council.

(b) Council staff may conduct and contract random audits of applicants receiving SSBCI funds under this section to ensure awarded funds are expended in compliance with state and federal law. By accepting an award under this Chapter, the applicant agrees to assist and provide the information requested by the auditors.

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