

Office of State Lands and Investments

Funding Wyoming Public Education

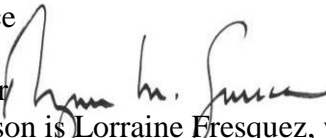
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Matthew H. Mead
Governor

Ryan M. Lance
Director

TO: The Honorable Matthew H. Mead, Governor
The Honorable Max Maxfield, Secretary of State
The Honorable Gregory A. Phillips, Attorney General
Legislative Services Office

FROM: Ryan M. Lance, Director 
(The agency contact person is Lorraine Fresquez, whose telephone number is 777-6629 and email address is lfresq@wyo.gov)

SUBJECT: Final Adoption Rules for the State Loan and Investment Board,
• Chapter 33, Energy Impacted County Roads Program Grants

DATE: August 11, 2011

Enclosed are the above-reference proposed rules (1 clean copy; 1 strike and underscored), Certification Page for Final Adoption, Statement of Principal Reasons and Summary of Comments. We have submitted an electronic copy to the Secretary of State's Office.

The public comment period on the proposed rules began May 9, 2011 and went through to June 23, 2011. No public hearings were required.

Should you or your staff have any questions regarding this information, please do not hesitate to contact this office.

Enclosures

/lsf

pc: OS LI files



Certification Page Regular and Emergency Rules

1. General Information

a. Agency/Board Name <i>See attached list for references</i>		
b. Agency/Board Address	c. Agency/Board City	d. Agency/Board Zip Code
e. Name of Contact Person	f. Contact Telephone Number	
g. Contact Email Address	h. Adoption Date:	
i. Program(s) <i>See attached list for references</i>		

2. Rule Type and Information

a. These rules are: <input type="checkbox"/> Emergency Rules <i>(After completing all of Section 2, proceed to Section 5 below)</i> <input type="checkbox"/> Regular Rules	
b. Choose all that apply: <input type="checkbox"/> New Rules* <input type="checkbox"/> Amended Rules <input type="checkbox"/> Repealed Rules	
<i>* "New" rules means the first set of regular rules to be promulgated by the Agency after the Legislature adopted a new statutory provision or significantly amended an existing statute.</i>	
If "New," provide the Enrolled Act number and year enacted:	
c. Provide the Chapter Number, and Short Title of Each Chapter being Created/Amended/Repealed <i>(if more than 5 chapters are being created/amended/repealed, please use the Additional Rule Information form and attach it to this certification)</i>	
Chapter Number:	Short Title:
Chapter Number:	Short Title:
Chapter Number:	Short Title:
Chapter Number:	Short Title:
Chapter Number:	Short Title:
d. <input type="checkbox"/> The Statement of Reasons is attached to this certification.	
e. If applicable, describe the emergency which requires promulgation of these rules without providing notice or an opportunity for a public hearing:	

3. State Government Notice of Intended Rulemaking

a. Date on which the Notice of Intent containing all of the information required by W.S. 16-3-103(a) was filed with the Secretary of State :
b. Date on which the Notice of Intent and proposed rules in strike and underscore format were provided to the Legislative Service Office :
c. Date on which the Notice of Intent and proposed rules in strike and underscore format were provided to the Attorney General :

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. ☐ Yes ☐ No ☐ N/A

b. A public hearing was held on the proposed rules. ☐ Yes ☐ No

If "Yes:"	Date:	Time:	City:	Location:

5. Final Filing of Rules

a. Date on which the Certification Page with original signatures and final rules were sent to the **Attorney General's Office** for the Governor's signature:

b. Date on which final rules were sent to the **Legislative Service Office**:

c. Date on which a PDF of the final rules was electronically sent to the **Secretary of State**:

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.

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	

Distribution List:

Attorney General

1. Statement of Reasons;
2. Original Certification Page;
3. Summary of Comments (regular rules);
4. Hard copy of rules: clean and strike/underscore; and
5. Memo to Governor documenting emergency (emergency rules).

LSO

1. Statement of Reasons;
2. Copy of Certification Page;
3. Summary of Comments (regular rules);
4. Hard copy of rules: clean and strike/underscore;
5. Electronic copy of rules: clean and strike/underscore; and
6. Memo to Governor documenting emergency (emergency rules).

SOS

1. PDF of clean copy of rules; and
2. Hard copy of Certification Page as delivered by the AG.

STATEMENT OF PRINCIPAL REASONS FOR ADOPTION OF RULES

Chapter 33 Rules are necessary for the timely administration of grant funding for the Energy Impacted County Road Program. [*Session Laws of Wyoming 2011, W.S. 9-16-101 through W.S. 9-16-103*]. The Rules specify the application procedure, the eligible costs, the evaluation criteria, as well as how grants will be administered and disbursed.

As the Energy Impacted County Road Program bill (SF 107) was making its way through the legislative process, there were early indications that some legislators were hopeful of quick funding action if the legislation passed. Specifically, bill co-sponsor Sen. Curt Meier (SD3) is quoted in a February 5, 2011 *Wyoming Tribune-Eagle Wyoming News.Com* article as saying, "The road damage is occurring today." He added, "We need to get the money out as soon as we can."

On March 3, 2011 OSLI staff received and responded to an inquiry from Goshen County Commissioner Jim Hudelson. Succinctly, Commissioner Hudelson sought information as to rulemaking and he made staff aware of a road damaged in Goshen County as a result of energy impacts. Accordingly, these rules are needed to allow the Board to begin distributing the funds to address already occurring energy impacts.

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

Chapter 33

Energy Impacted County Roads Program Grants

Section 1. Authority.

This chapter is adopted pursuant to W.S. 9-16-101 through W.S. 9-16-103 and Session Laws of Wyoming 2011, Chapter 191.

Section 2. Definitions.

As used in this chapter:

- (a) "Board" means the State Loan and Investment Board.
- (b) "Director" means the Director of the Office of State Lands and Investments.
- (c) "Office" means the Office of State Lands and Investments.
- (d) "Eligible project costs" means total project cost, less ineligible project costs.
- (e) "Energy development" means oil and gas development.
- (f) "Energy impacted counties" means counties that the Board determines to be impacted by energy development in the Niobrara or similar formations. Counties included in this definition are: Campbell, Converse, Goshen, Hot Springs, Laramie, Natrona, Niobrara, Park, Platte and Washakie. In awarding grants, the Board shall consider (1) whether the county's total proposed energy impacted road project(s) exceed fifteen percent (15%) of the average total annual county expenditures for its road and bridge maintenance and construction expenditures for the preceding five (5) years; (2) whether the county has demonstrated that it has pursued alternative methods of funding including cost sharing from private sources; and (3) that the grant funds will not supplant existing funding levels from traditional sources.

(g) Energy impacted county road means a county dedicated and maintained road serving a site or sites, on which energy development has occurred, which requires construction, reconstruction, rehabilitation or expansion as a result of energy development as determined by the Board.

(h) Road includes:

- (A) Bridges and culverts;
- (B) Rights of way; and
- (C) Purchase of land to complete a county road and bridge project.

Section 3. General Policy.

(a) The Board shall receive applications for program eligibility determination under the provisions of this chapter on an annual basis. After review of the applications, the Board shall as soon as practical notify the counties of its determination. Energy impacted counties shall remain eligible for grants under the program until the county no longer qualifies as determined by the Board.

(b) The Board shall award grants under the provisions of this chapter in such a manner and to such applicants as shall, in the judgment of the Board, inure to the greatest benefit of the citizens of the state and represent a prudent use of grant funds to address the impacts of energy development in the Niobrara and similar formations in the state.

Section 4. Maximum Grant Award Percentage.

No one county may be eligible to receive an amount in excess of forty percent (40%) of the total funds available at the beginning of the state's fiscal year, without unanimous approval of the Board.

Section 5. Grant Eligibility.

(a) Applicants. Energy impacted counties, as determined by the Board, shall be eligible to apply for grants under this chapter. Each application submitted to the Board under the program shall contain only one (1) proposed energy impacted county road project.

(b) Purposes. The Board may award grants for projects it deems necessary to mitigate the impacts of energy development. The Board may award grants to stockpile material for energy impacted county roads.

(c) Ineligible Project Costs. The following project costs shall be ineligible for reimbursement from grant funds and shall be ineligible to be counted toward the applicant's match:

(i) Costs to hire additional county employees.

(ii) Engineering fees, including design, inspection and contract administration costs, over twenty percent (20%) of project cost;

(iii) All non-cash costs except:

(A) Land, labor, materials, equipment, and services provided by the applicant, and used for project purposes, valued at reasonable, actual cost; and

(B) Land, labor, materials, equipment, and services provided to the applicant by others, at no cost to the applicant, used for project purposes and valued at reasonable, actual cost.

(iv) Costs for transportation, meals and lodging incurred anywhere away from the site of the project;

(v) Costs for preparation or presentation of grant or loan applications for any source of funding;

(vi) Costs incurred prior to grant award, except costs for architectural and engineering design or in emergency situations;

(vii) Costs for a contingency or extra work allowance in excess of 10% of estimated construction costs;

Section 6. Evaluation Criteria.

(a) Criteria. The Board shall evaluate applications utilizing one or more of the following criteria:

(i) The extent to which the applicant's total proposed energy impacted road projects exceed fifteen percent (15%) of the average total annual expenditures for road and bridge maintenance and construction expenditures for the preceding five (5) years.

(ii) The extent of funding committed to the project from all sources;

(iii) Whether the applicant has demonstrated that it has pursued alternative methods of funding including cost sharing from private sources;

(iv) Whether the applicant has funding for the project from other than state grants;

(v) Whether the project is appropriately sized in relation to the population to be served by the project;

(vi) The relative urgency of the project;

(vii) Whether the applicant is current on all its repayment obligations to the Board;

(viii) The extent to which the applicant is utilizing, or plans to utilize, available and qualified Wyoming based professional firms and contractors on the project;

(ix) The financial need of the applicant, as determined by the Board;

(x) The percentage of the applicant's population directly served by the project;

Section 7. Board Consideration.

The Board shall consider each application, allow for comments from the applicant and from the Director, and establish the maximum amount of the grant and the percent of eligible project costs that will be paid by the grant.

Section 8. Grant Disbursement and Administration.

(a) Grant Disbursement. Grant funds shall be disbursed to the applicant only as needed to discharge obligations incurred in accordance with the Board approved percentage split of eligible project costs. Requests for disbursements shall be made on a form supplied by the Office and supported by adequate proof that such obligations have been incurred for project purposes and are due and owing.

(b) The minimum grant disbursement shall be Five Hundred dollars (\$500.00) unless it is the final disbursement of grant funds for the project.

(c) Fund Reversion.

(i) If the Director determines that the project has not been commenced within one (1) year from the date the grant is approved, the grant will automatically expire. Based upon information supplied by the grantee, the Director may grant an extension of time in which to commence the project.

(ii) If the Director determines that the project has not been completed within a reasonable time, the Director shall notify the grantee in writing at least thirty (30) days prior to presenting the matter for Board review. The Board, upon review of the project circumstances, may terminate or modify the grant award.

(iii) If the Director determines that the project is complete, but the full amount of the grant has not been expended, the Office shall notify the grantee of this determination. Thirty (30) days following the notification, the unused portion of the grant or loan shall revert to uncommitted status.

Section 9. Audits and Inspections.

The Board may, at its expense, conduct an audit of the records of the applicant and inspect the construction and operation of the project.

SUMMARY OF COMMENTS

No comments were received.