



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* Office of State Lands and Investments/Board of Land Commissioners			
b. Agency/Board Address 122 West 25th Street, Herschler Building, Suite W103		c. City Cheyenne	d. Zip Code 82002
e. Name of Agency Liaison Jason Crowder		f. Agency Liaison Telephone Number 307-777-3428	
g. Agency Liaison Email Address jason.crowder@wyo.gov		h. Adoption Date 8-5-2021	
i. Program Board of Land Commissioners			
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.			
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?			
<input checked="" 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):			
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: 4	Chapter Name: Grazing and Agricultural Leasing	<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 Repealed	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 Repealed	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 Repealed	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):			
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

It is necessary to adopt amendments to Chapter 4 of the Board of Land Commissioners' Rules and Regulations as regular rules to facilitate leasing of vacant state trust land for grazing and agricultural purposes. Pursuant to Board Action within Walk-In Board Matter 2 and Walk-In Board Matter 3, April 9, 2020, the Board directed the Office of State Lands and Investments to restart the vacant land leasing process after the Board adopts rules addressing the leasing of vacant land and the application of the vacant land "preference" contained in Wyo. Stat. Ann. § 36-5-105(b). These rules will allow the Board of Land Commissioners to lease vacant land for grazing and agricultural purposes while complying with the Board's directive and state law.

The rules are based on the Office of State Lands and Investments' historical interpretation of Wyo. Stat. Ann. § 36-5-105 with slight adjustments based on the amendments to the proposed regular rules approved by the Board at its October 1, 2020 meeting and the informative discussion related to Senate File-0114, SEA No. 0054, during the General Session of the Sixty-Sixth Legislature of the State of Wyoming. Specifically, the rules codify that the preference in subsection (b) applies when OSLI receives conflicting applications to lease vacant land and at least one applicant is entitled to a preference under Wyo. Stat. Ann. § 36-5-105(b). When conflicting applications are received and one party is entitled to a preference, then all conflicting applicants are entitled to submit a final bid, unless the party who qualifies for the preference is the high bidder. This process ensures that the preference is applied in all vacant land leasing situations first, but the ultimate result will be awarded to the highest bidder or in a manner that inures to the greatest benefit of the state land trust beneficiaries. If conflicting applications are received but no applicant is entitled to the preference, the rules require the Director to consider the rental offered and other attributes that inure to the greatest benefit of the state land trust beneficiaries when issuing a Director's Decision.



WYOMING STOCK GROWERS ASSOCIATION

Guardian of Wyoming's Cow Country since 1872

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Region IV Vice President- Brad Mead, *Jackson*

Executive Vice President- Jim Magagna, *Cheyenne*

July 26, 2021

Office of State Lands and Investments

Herschler Building

Cheyenne, WY 82002

RE: Chapter 4, Grazing and Agricultural Leasing--Proposed Amendments

Dear OSLL:

The Wyoming Stock Growers Association appreciates this opportunity to submit formal comments on your proposed amendments to Chapter 4 rules. We commend you for striving to provide badly needed clarification to the rule for leasing of vacant lands. At the same time, WSGA believes that the proposed rule changes fail to meet this need in several significant aspects as outlined below. In part this failure can be attributed to the lack of clarity in the language of W.S. 36-5-105.

Section 6 (c) (1)

The language in subsections (A) and (B) would indicate that bona fide residence or authority to transact business in the state are preference criteria to be considered by the Board. This is implied by the wording of W.S. 36-5-105 (b). However, under the requirement of W.S. 36-5-101, these factors are not preferences, but rather are basic qualifications that must be met for eligibility to lease state lands even in the absence of a conflicting bid. They should not be considered as granting a preference.

Similarly, the statutory language would seem to imply that "having actual and necessary use for the land" is a preference. This interpretation is inconsistent with the legislative intent when this language was added to the statutes in 2007. Under W.S. 36-5-105 the legislature established that a conflicting application submitted on renewal of an existing lease is only considered valid if that applicant "has actual and necessary use for the land and available forage". These provisions were inserted to thwart effort by anti-grazing interests to acquire grazing leases and must be protected in the rules for all leases .

Section 6 (c) (ii)

While WSGA supports broad discretion for the Board of Land Commissioners in the exercise of their duties as trustees, we cannot support granting the Director the undefined authority to consider "(C) Attributes of the applicants that inure to the greatest benefit of the state land trust beneficiaries". This language would justify consideration of factors totally unrelated to the statutory requirements and the capability to properly meet the terms and conditions of the lease. This comment would also apply to subsection (iii) (C).

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Section 6 (c) (iii)

The language in this subsection is both unclear and inequitable to those who qualify under the preference. WSGA urges the following language: "If more than one applicant qualified under the provisions of W.S. 36-5-101 and W.S. 36-5-105 (b) further qualifies for the preference and no one of those applicants is the high bidder, the Director shall provide an opportunity for these qualified applicants to submit a new round of sealed bids with the highest bid received in the original round of applications being set as the minimum bid. This process shall be repeated until a successful applicant has been determined. If only one applicant qualifies for the preference as determined by the Director in Subsection (c) (i) above, that applicant shall be provided the opportunity to match the highest bid received to become the successful applicant."

Other Comments

WSGA is aware of situations where Temporary Use Permits (TUP) have been used to authorize grazing on state trust lands for multiple years. In at least one instance this was done without any prior notice to another applicant who was attempting to obtain the lease on vacant land. This practice seems inconsistent with the language in the Board's Chapter 14 Rules that *states, "Section 3. Temporary Uses The Board may issue permits for the following temporary uses of state land, however, uses which are more appropriately authorized under other Board authorizations shall not be authorized under this chapter."* Grazing and agricultural use is not included in the list that follows this statement. Should the OSL feel that there is adequate reason to allow the issuance of a TUP for grazing on vacant lands, WSGA request that language be inserted into Chapter 4, Section 6 requiring that, before a TUP is issued, notice requirements comparable to those provided for in subsection (b) shall be provided as well as an opportunity for submitting conflicting applications for the TUP.

Thank you for your consideration of our comments. Please contact us if you wish to discuss these further.

Sincerely,



Jim Magagna

Executive Vice President

Recommendation of Changes after Comment Period

Draft

Chapter 4 – Grazing and Agricultural Leasing

Comment:

Section 6 (c) (1) The language in subsections (A) and (B) would indicate that bona fide residence or authority to transact business in the state are preference criteria to be considered by the Board. This is implied by the wording of W.S. 36-5-105 (b). However, under the requirement of W.S. 36-5-101, these factors are not preferences, but rather are basic qualifications that must be met for eligibility to lease state lands even in the absence of a conflicting bid. They should not be considered as granting a preference.

Recommendation:

The language within the draft rule follows the language of Wyoming Statute § 36-5-105(b) as it is currently written. The Office of State Lands and Investments (OSLI) does not recommend any changes.

Comment:

Similarly, the statutory language would seem to imply that “having actual and necessary use for the land” is a preference. This interpretation is inconsistent with the legislative intent when this language was added to the statutes in 2007. Under W.S. 36-5-105 the legislature established that a conflicting application submitted on renewal of an existing lease is only considered valid if that applicant “has actual and necessary use for the land and available forage”. These provisions were inserted to thwart effort by anti-grazing interests to acquire grazing leases and must be protected in the rules for all leases.

Recommendation:

The only statutory citation of the phrase “having actual and necessary use for the land” is found within Wyoming Statute § 36-5-105(b), in which the subsection solely speaks to the leasing of vacant lands. Wyoming Statute § 36-5-105(c) and Wyoming Statute § 36-5-108 speak to renewal of existing grazing and agricultural lease and do not contain this phrase. OSLI does not recommend any changes.

Comment:

Section 6 (c) (ii) While WSGA supports broad discretion for the Board of Land Commissioners in the exercise of their duties as trustees, we cannot support granting the Director the undefined authority to consider “(C) Attributes of the applicants that inure to the greatest benefit of the state land trust beneficiaries”. This language would justify consideration of factors totally unrelated to the statutory requirements and the capability to properly meet the terms and conditions of the lease. This comment would also apply to subsection (iii) (C).

Recommendation:

In exercising the fiduciary duty of the office, OSLI anticipates there to other attributes other than monetary attributes solely that may promote one applicant over another. When rendering a Director’s Decision conditionally awarding a grazing and agricultural lease, the Director must weigh all attributes that would inure to the greatest benefit of the State land trust beneficiaries. Further, the Director’s Decision only conditionally awards the lease based on the considerations noted within the draft rules. The Board of Land Commissioners (Board) must ultimately determine the winning applicant by either ratifying the Director’s Decision or rejecting it. OSLI does not recommend any changes.

Comment:

Section 6 (c) (iii) The language in this subsection is both unclear and inequitable to those who qualify under the preference. WSGA urges the following language: "If more than one applicant qualified under the provisions of W.S. 36-5-101 and W.S. 36-5-105 (b) further qualifies for the preference and no one of those applicants is the high bidder, the Director shall provide an opportunity for these qualified applicants to submit a new round of sealed bids with the highest bid received in the original round of applications being set as the minimum bid. This process shall be repeated until a successful applicant has been determined. If only one applicant qualifies for the preference as determined by the Director in Subsection (c) (i) above, that applicant shall be provided the opportunity to match the highest bid received to become the successful applicant."

Recommendation:

When conflicting applications are received and one party is entitled to a preference, then all conflicting applicants are entitled to submit a final bid, unless the party who qualifies for the preference is the high bidder. This process ensures that the preference is applied in all vacant land leasing situations first, but the ultimate result will be awarded to the highest bidder or in a manner that inures to the greatest benefit of the state land trust beneficiaries. If conflicting applications are received but no applicant is entitled to the preference, the rules require the Director to consider the rental offered and other attributes that inure to the greatest benefit of the state land trust beneficiaries when issuing a Director's Decision. OSLI does not recommend any changes.

Comment:

*WSGA is aware of situations where Temporary Use Permits (TUP) have been used to authorize grazing on state trust lands for multiple years. In at least one instance this was done without any prior notice to another applicant who was attempting to obtain the lease on vacant land. This practice seems inconsistent with the language in the Board's Chapter 14 Rules that states, "**Section 3. Temporary Uses** The Board may issue permits for the following temporary uses of state land, however, uses which are more appropriately authorized under other Board authorizations shall not be authorized under this chapter." Grazing and agricultural use is not included in the list that follows this statement. Should the OSL feel that there is adequate reason to allow the issuance of a TUP for grazing on vacant lands, WSGA request that language be inserted into Chapter 4, Section 6 requiring that, before a TUP is issued, notice requirements comparable to those provided for in subsection (b) shall be provided as well as an opportunity for submitting conflicting applications for the TUP.*

Recommendation:

The Board's practice of issuing Temporary Use Permits for grazing activities is intended to address short term grazing activities for forage reduction, fire mitigation, livestock trailing, and to temporarily assist existing grazing operations. The issuance of a Temporary Use Permit does not grant the permittee a preferred right to renew and is not viewed by the Board as a replacement to issuing a grazing and agricultural lease. OSLI does not recommend any changes.

Chapter 4

Grazing and Agricultural Leasing

Section 1. Authority. This chapter is promulgated under the authority of Wyoming Statute 36-2-107.

Section 2. Definitions. As used in this chapter:

(a) “AUM” means an “animal-unit-month,” which is equivalent to the quantity of forage necessary to sustain one cow and one calf for one month.

(b) “Board” means the Board of Land Commissioners.

(c) “Director” means the Director of the Office of State Lands and Investments.

(d) “Office” means the Office of State Lands and Investments.

(e) “Parity Ratio” means a measure of price received for agricultural products divided by the parity index. The parity ratio is an indication of the per unit purchasing power of agricultural commodities generally in terms of the goods and services currently bought by agriculturalists, in relation to purchasing power of agricultural products in the 1910 - 1914 base period.

(f) “Surface impact payment” means money paid by a user of state lands in compensation for potential negative impacts to the fee simple or leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface.

(g) “Vacant land” means land not currently subject to a grazing and agricultural lease from the Board.

Section 3. Lease Purposes. The Board may lease suitable state land for the grazing of livestock, production of crops, or other agricultural purposes under the provisions of this chapter.

Section 4. Term of Leases. Leases for grazing or agricultural purposes shall be for a term of ten years, unless a shorter term is designated in special circumstances by the Board.

Section 5. Applications.

(a) Forms. All applications to lease lands for grazing or agricultural purposes shall be made on forms furnished by the Office. Application forms must be completed in full. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application.

(b) Signature. If an application is signed by a party other than the lessee, the legal instrument authorizing such signature, e.g., power of attorney, letters of administration, letters testamentary, final decree of distribution, etc., together with the required filing fee must accompany the application.

(c) Filing Periods.

(i) All applications to renew a lease of grazing and agricultural lands under outstanding leases must be filed in the Office not earlier than one hundred twenty (120) days prior to and not later than thirty (30) days prior to the expiration date of the existing lease. Any

conflicting lease application to lease grazing and agricultural lands under any existing lease shall be filed in the Office not earlier than one hundred twenty (120) days prior to, and not later than ninety (90) days prior to the expiration date of the existing lease. Upon receipt of a conflicting lease application the Office shall notify the current lessee that a conflicting lease application has been received and shall provide the current lessee not less than thirty (30) days from receipt of notice to file a lease renewal application. If an expiration date falls on a Saturday, Sunday or legal holiday, applications shall be accepted on the following workday. At least 120 days prior to the expiration of a lease, the Office shall mail a lease application form to the lessee or his authorized agent at the address on file in the Office.

(ii) Specific filing periods for particular tracts of vacant land will be established pursuant to Section 6 below.

(d) Conflicting applications. If two or more applications to lease the same land for grazing and agricultural purposes are filed within the filing periods established in subsection (c) of this section, they shall be considered to be in conflict and shall be handled under the provisions of W.S. 36-3-102, 36-5-105, and 36-5-108 and Chapter 1 of these rules.

Section 6. Vacant Land.

(a) The Office may offer vacant land for lease, and shall do so recognizing its fiduciary duty to the state land trust beneficiaries and in a manner as shall inure to the greatest benefit of the state land trust beneficiaries.

(b) Specific filing periods for particular tracts of vacant land will be established by advertisement. Multiple applications received during an advertised filing period shall be considered “conflicting applications” under the provisions of subsection (c) of this section.

(c) Conflicting applications. If two (2) or more applications to lease the same vacant land for grazing and agricultural purposes are filed within the filing periods established in subsection (b) of this section, they shall be considered to be in conflict and shall be handled under the provisions of W.S. 36-3-102, 36-5-105, and 36-5-108 and Chapter 1 of these rules.

(i) In the event the Office receives conflicting applications, the Director shall determine if any applicant qualifies for the preference as described within W.S. 36-5-105(b) by determining whether the applicant meets all of the following requirements:

(A) Is the applicant a bona fide resident citizen of the state of Wyoming qualified under the provisions of W.S. 36-5-101 or a legal entity authorized to transact business in the state of Wyoming;

(B) Whether the applicant has actual and necessary use for the land;

(C) Whether the applicant is the owner, lessee or lawful occupant of adjoining lands; and

(D) Whether the applicant offers to pay an annual rental at not less than fair market value.

(ii) In the event there is not an applicant that qualifies for the preference as determined within Subsection (c)(i), the Director shall consider the following when issuing the Director’s Decision:

(A) Qualifications of the applicants under the provisions of W.S. 36-5-101,

(B) Rental offered, and

(C) Attributes of the applicants that inure to the greatest benefit of the state land trust beneficiaries.

(iii) In the event one (1) or more applicants qualify for the preference as determined by the Director in Subsection (c)(i) above, and one (1) applicant qualified for the preference is not the high bidder, the Director shall request a final bid from all of the conflicting applicants in a manner as directed by the Director by either additional sealed bid or via live auction to determine the successful applicant prior to issuing a Director's Decision. If only one (1) applicant qualifies for the preference as determined by the Director in Subsection (c)(i) above and that applicant is the high bidder, the Director shall consider the following when issuing the Director's Decision:

- (A) Qualifications of the applicants under the provisions of W.S. 36-5-101,
- (B) Rental offered,
- (C) Attributes of the applicants that inure to the greatest benefit of the state land trust beneficiaries, and
- (D) The applicant's qualification for a preference under Subsection (c)(i).

(iv) Any applicant may appeal the Director's Decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision of the Board awarding a grazing and agricultural lease shall constitute final agency action.

Section 7. Rentals for Non-Conflicted Leases.

(a) The annual rental for all non-conflicted leases shall be the amount bid by the applicant, if accepted by the Board. In no event shall the annual rental be less than the minimum rate established in subsection (b) of this section.

(b) The minimum annual rental shall be:

(i) For grazing land, as established by formula as follows:

(a) Private land lease rate on a per AUM basis, averaged for the five years preceding the current year, as estimated by the Wyoming Agricultural Statistics Service; times the five year weighted average "parity ratio" for beef cattle per cwt. as established by the National Agricultural Statistics Service as an adjustment for changing resource conditions, market demand and industry viability; less 20% to reflect contributions made by the lessee.

(ii) For hay and dry cropland, the average production shall be converted to AUM's and assessed at the rate established in paragraph (i) of this subsection.

(iii) Rental for irrigated cropland shall be based on fair market value for the same or similar use of the land, less the value of lessee's interest in the irrigation system and improvements, as determined by an economic analysis.

(c) All leases are subject to change upon reappraisal or reclassification of the land, or a change in the minimum annual rental as provided for in subsection (b) of this section.

(d) Upon notice provided not less than thirty (30) days prior to the anniversary date of a lease, all rentals accruing to the state, except those for the first year, shall become due and payable at the Office on the anniversary date of the lease. If the rent is not paid on the anniversary date, the Director shall notify the lessee or his authorized agent by certified mail that the lease will be canceled if the rent and a late fee equal to ten percent (10%) of the annual rental is not received within thirty (30) days following the date of the notice. If the lease is canceled, the Director shall as soon as possible, thereafter, advertise the lands in the county where located, as vacant and subject to lease.

Section 8. Rentals for Conflicted Leases.

(a) In no event shall the annual rental be less than the minimum rate established in Section 7(b).

(b) The maximum rental that may be accepted shall not be more than 120% of the maximum fair market value as determined by the board based on the previous year's values for the State, District or County, whichever is most localized and available, as determined by the National Agricultural Statistics Service utilizing:

(i) The private land lease rate per AUM for Wyoming grazing leases; or

(ii) The private land irrigated or nonirrigated cropland lease rate, as applicable, for Wyoming cropland leases on irrigated or nonirrigated cropland; and

(iii) A downward adjustment of 20 percent to reasonably reflect lessee contributions typically provided as a part of a private land grazing lease rate or a private cropland lease rate, as applicable.

(c) The maximum rental bid shall constitute the annual rental for the entire term of the lease unless the minimum annual rental exceeds the conflict bid.

(d) All leases are subject to change upon reappraisal or reclassification of the land,

(e) Upon notice provided not less than thirty (30) days prior to the anniversary date of a lease, all rentals accruing to the state, except those for the first year, shall become due and payable at the Office on the anniversary date of the lease. If the rent is not paid on the anniversary date, the Director shall notify the lessee or his authorized agent by certified mail that the lease will be canceled if the rent and a late fee equal to ten percent (10%) of the annual rental is not received within thirty (30) days following the date of the notice. If the lease is canceled, the Director shall, thereafter, advertise the lands in the county where located, as vacant and subject to lease.

Section 9. Assignments.

(a) Any grazing or agricultural lease assigned without the approval of the Director is subject to cancellation. Lessees shall request approval of assignments, pursuant to W.S. 36-5-105(d), on a form provided by the Office.

(b) If a request for approval of an assignment is signed by a party other than the lessee, the legal instrument authorizing such signature must accompany the request.

Section 10. Subleases and Other Contracts.

(a) Any grazing and agricultural lease is subject to cancellation if the lessee subleases the leased premises or enters into any contract or agreement of any kind concerning the leased premises, except "price support and production adjustment" contracts of the Farm Service Agency, without the approval of the Director. Lessees shall request approval of subleases or other contracts, pursuant to W.S. 36-5-105(d), by submitting a copy of the sublease or other agreement to the Office. In no event shall lands be subleased unless one-half (1/2) of the excess rental is paid to the State.

(b) If the annual rental under a sublease agreement is a share of production, the lessee shall report annual production to the Office on a form furnished by the Office. The Office shall calculate the additional rental due.

Section 11. Security Interests in Leases. Whenever a security interest in a leasehold is created or released, the secured party shall notify the Office on a form provided by the Office.

Section 12. Improvements.

(a) Lessees of state land shall have the right to construct or make improvements upon the land in an amount not to exceed \$2,000.00 per section for each separate improvement, without first obtaining permission.

(b) Lessees shall request permission, on a form provided by the Office, prior to construction of any improvement valued in excess of \$2,000.00 per section for each separate improvement.

(c) The Director shall have authority to grant permission to construct improvements in excess of \$2,000.00 per section for each separate improvement for fencing, water development, livestock handling facilities and range enhancements. However, any improvement, regardless of value, which will restrict existing public access or alter existing authorized use(s) of the lands must be approved by the Board.

(d) Any other improvement in excess of \$2,000.00 per section for each separate improvement shall be applied for under a special use lease in accordance with Wyoming Statute 36-5-114 and Chapter 5 of Board rules.

(e) Any applicant applying to lease state lands upon which there are improvements of any kind belonging to another shall, before receiving the lease, pay to the Director for the use and benefit of the owner or maker of any improvements at the time of the execution of the lease, the contributory value of improvements or the owner of the improvements shall have the right to remove the improvements in a manner which minimizes injury to the land; provided, that the improvements be removed within a period of one hundred twenty (120) days from the expiration of the lease or final Board decision in a related contested case proceeding. Should the owner of the improvements elect to remove the improvements, the owner must notify the Director in writing within thirty (30) days from the expiration of the lease or final Board decision in a related contested case proceeding. For the purposes of this section "contributory value" means the increased value of the property after the lessee's improvements are considered.

Section 13. Cancellation. The Office shall investigate any allegation of fraud, deceit, or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants. When grounds for cancellation exist under W.S. 36-5-113 or the terms and provisions of the lease, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 9, of these rules.

Section 14. Weed and Pest Control. Lessee is required to work in cooperation with the Office to make every reasonable effort to control noxious weeds and pests. Lessee may work in conjunction with County Weed and Pest Control Districts to develop projects to be submitted to the Office for reimbursement pursuant to Chapter 28 of these rules.

Section 15. Surface Impact Payments.

(a) Anyone desiring to enter upon the leased premises shall contact the lessee prior to entry, unless otherwise provided in subsection (c) of this section.

(b) For all entries, the lessee may negotiate a surface impact payment provided that any payment is consistent with payments for impacts to adjacent lands. By separate checks or money orders, the payor shall remit the lessee's share of the surface impact payment directly to the lessee and the Board's share of the surface impact payment directly to the Office, in accordance with the following schedule:

(i) For the first five thousand dollars (\$5,000), the lessee's share shall be forty percent (40%), and the Board's share shall be sixty percent (60%).

(ii) For that portion of a payment exceeding five thousand dollars (\$5,000), through ten thousand dollars (\$10,000), the lessee's share shall be thirty percent (30%), and the Board's share shall be seventy percent (70%).

(iii) For that portion of a payment exceeding ten thousand dollars (\$10,000), the lessee's share shall be twenty percent (20%), and the Board's share shall be eighty percent (80%).

(iv) For annual payments, the lessee's share shall be twenty percent (20%), and the Board's share shall be eighty percent (80%). For purposes of this section, "annual payments" means any portion of a surface impact payment remitted subsequent to the initial remittance on periodic basis, regardless of the length of the period.

(c) The following shall not be subject to the requirements of this section:

(i) The Board and its representatives when entering for purposes of management or administration of state lands.

(ii) Members of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to the provisions of Chapter 13 of these rules.

(iii) Applicants for, or holders of, an easement issued under Chapter 3 of the Board's rules.

(iv) Applicants for, or holders of, a temporary use permit issued under Chapter 14 of the Board's rules.

(d) If the person desiring entry upon state lands is unable to reach an agreement with a lessee regarding a surface impact payment after having negotiated with the lessee in good faith for a period of ninety (90) days, the person desiring entry and/or the lessee may submit evidence to the Office to establish the surface impact payment.

(i) The evidence and any information the Director deems relevant will be analyzed by the Director, whereupon, the Director will enter an order establishing the surface impact payment and recommend the decision to the Board for final approval.

(ii) Either party may appeal the Director's decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision of the Board establishing the surface impact payment shall constitute final agency action.

(iii) The person desiring entry may immediately enter the state lands while negotiations with the lessee are proceeding, upon providing the Office with a deposit for the surface impact payment in an amount determined by the Office. When the Director enters an order establishing the surface impact payment, the Office shall forward the lessee's share of the surface impact payment to the lessee and return any excess money on deposit to the petitioner, without interest.

(iv) The costs of the contested case hearing, including hiring a hearing officer, shall be paid in equal shares by the person desiring entry and the lessee.

~~RULES AND REGULATIONS~~
~~BOARD OF LAND COMMISSIONERS~~

Chapter 4

Grazing and Agricultural Leasing

Section 1. Authority. This chapter is promulgated under the authority of Wyoming Statute: 36-2-107.

Section 2. Definitions. As used in this chapter:

(a) “AUM” means an “animal-unit-month,” which is equivalent to the quantity of forage necessary to sustain one cow and one calf for one month.

(b) “Board” means the Board of Land Commissioners.

(c) “Director” means the Director of the Office of State Lands and Investments.

(d) “Office” means the Office of State Lands and Investments.

(e) “Parity Ratio” means a measure of price received for agricultural products divided by the parity index. The parity ratio is an indication of the per unit purchasing power of agricultural commodities generally in terms of the goods and services currently bought by agriculturalists, in relation to purchasing power of agricultural products in the 1910 - 1914 base period.

(f) “Surface impact payment” means money paid by a user of state lands in compensation for potential negative impacts to the fee simple or leasehold estate, including, but not limited to, destruction of forage, disruption of grazing, agricultural, or commercial operations, nuisance, inconvenience, and for incidental use of the land surface.

(g) “Vacant land” means land not currently subject to a grazing and agricultural lease from the Board.

Section 3. Lease Purposes. The Board may lease suitable state land for the grazing of livestock, production of crops, or other agricultural purposes under the provisions of this chapter.

Section 4. Term of Leases. Leases for grazing or agricultural purposes shall be for a term of ten years, unless a shorter term is designated in special circumstances by the Board.

Section 5. Applications.

(a) Forms. All applications to lease lands for grazing or agricultural purposes shall be made on forms furnished by the Office. Application forms must be completed in full. Any false or incomplete statement willfully made that materially affects the application will be considered as fraud, deceit, or misrepresentation and shall be cause for the rejection of the application.

(b) Signature. If an application is signed by a party other than the lessee, the legal instrument authorizing such signature, e.g., power of attorney, letters of administration, letters testamentary, final decree of distribution, etc., together with the required filing fee must accompany the application.

(c) Filing periods

(i) All applications to renew a lease of grazing and agricultural lands under outstanding leases must be filed in the Office not earlier than one hundred twenty (120) days prior to and not later than thirty (30) days prior to the expiration date of the existing lease. Any conflicting lease application to lease grazing and agricultural lands under any existing lease shall be filed in the Office not earlier than one hundred twenty (120) days prior to, and not later than ninety (90) days prior to the expiration date of the existing lease. Upon receipt of a conflicting lease application the Office shall notify the current lessee that a conflicting lease application has been received and shall provide the current lessee not less than thirty (30) days from receipt of notice to file a lease renewal application. If an expiration date falls on a Saturday, Sunday or legal holiday, applications shall be accepted on the following workday. At least 120 days prior to the expiration of a lease, the Office shall mail a lease application form to the lessee or his authorized agent at the address on file in the Office.

(ii) Specific filing periods for particular tracts of vacant land will be established pursuant to Section 6 below, ~~by advertisement. Multiple applications received during an advertised filing period shall be considered "conflicting applications" under the provisions of subsection (d) of this section.~~

(d) Conflicting applications. If two or more applications to lease the same land for grazing and agricultural purposes are filed within the filing periods established in subsection (c) of this section, they shall be considered to be in conflict and shall be handled under the provisions of W.S. 36-3-102, 36-5-105, and 36-5-108 and Chapter 1 of these rules.

Section 6. Vacant Land.

(a) The Office may offer vacant land for lease, and shall do so recognizing its fiduciary duty to the state land trust beneficiaries and in a manner as shall inure to the greatest benefit of the state land trust beneficiaries.

(b) Specific filing periods for particular tracts of vacant land will be established by advertisement. Multiple applications received during an advertised filing period shall be considered "conflicting applications" under the provisions of subsection (c) of this section.

(c) Conflicting applications. If two (2) or more applications to lease the same vacant land for grazing and agricultural purposes are filed within the filing periods established in subsection (b) of this section, they shall be considered to be in conflict and shall be handled under the provisions of W.S. 36-3-102, 36-5-105, and 36-5-108 and Chapter 1 of these rules.

(i) In the event the Office receives conflicting applications, the Director shall determine if any applicant qualifies for the preference as described within W.S. 36-5-105(b) by determining whether the applicant meets all of the following requirements:

(A) Is the applicant a bona fide resident citizen of the state of Wyoming qualified under the provisions of W.S. 36-5-101 or a legal entity authorized to transact business in the state of Wyoming;

(B) Whether the applicant has actual and necessary use for the land;

(C) Whether the applicant is the owner, lessee or lawful occupant of adjoining lands; and

(D) Whether the applicant offers to pay an annual rental at not less than fair market value.

(ii) In the event there is not an applicant that qualifies for the preference as determined within Subsection (c)(i), the Director shall consider the following when issuing the Director' Decision:

- 101, (A) Qualifications of the applicants under the provisions of W.S. 36-5-
(B) Rental offered, and
(C) Attributes of the applicants that inure to the greatest benefit of the state land trust beneficiaries.

(iii) In the event one (1) or more applicants qualify for the preference as determined by the Director in Subsection (c)(i) above, and one (1) applicant qualified for the preference is not the high bidder, the Director shall request a final bid from all of the conflicting applicants in a manner as directed by the Director by either additional sealed bid or via live auction to determine the successful applicant prior to issuing a Director's Decision. If only one (1) applicant qualifies for the preference as determined by the Director in Subsection (c)(i) above and that applicant is the high bidder, the Director shall consider the following when issuing the Director's Decision:

- 101, (A) Qualifications of the applicants under the provisions of W.S. 36-5-
(B) Rental offered,
(C) Attributes of the applicants that inure to the greatest benefit of the state land trust beneficiaries, and
(D) The applicant's qualification for a preference under Subsection (c)(i).

(iv) Any applicant may appeal the Director's Decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision of the Board awarding a grazing and agricultural lease shall constitute final agency action.

Section 76. Rentals for Non-Conflicted Leases.

(a) The annual rental for all non-conflicted leases shall be the amount bid by the applicant, if accepted by the Board. In no event shall the annual rental be less than the minimum rate established in subsection (b) of this section.

(b) The minimum annual rental shall be:

(i) For grazing land, as established by formula as follows:

(a) Private land lease rate on a per AUM basis, averaged for the five years preceding the current year, as estimated by the Wyoming Agricultural Statistics Service; times the five year weighted average "parity ratio" for beef cattle per cwt. as established by the National Agricultural Statistics Service as an adjustment for changing resource conditions, market demand and industry viability; less 20% to reflect contributions made by the lessee.

(ii) For hay and dry cropland, the average production shall be converted to AUM's and assessed at the rate established in paragraph (i) of this subsection.

(iii) Rental for irrigated cropland shall be based on fair market value for the same or similar use of the land, less the value of lessee's interest in the irrigation system and improvements, as determined by an economic analysis.

(c) All leases are subject to change upon reappraisal or reclassification of the land, or a change in the minimum annual rental as provided for in subsection (b) of this section.

(d) Upon notice provided not less than thirty (30) days prior to the anniversary date of a lease, all rentals accruing to the state, except those for the first year, shall become due and payable at the Office on the anniversary date of the lease. If the rent is not paid on the

anniversary date, the Director shall notify the lessee or his authorized agent by certified mail that the lease will be canceled if the rent and a late fee equal to ten percent (10%) of the annual rental is not received within thirty (30) days following the date of the notice. If the lease is canceled, the Director shall as soon as possible, thereafter, advertise the lands in the county where located, as vacant and subject to lease.

Section 87. Rentals for Conflicted Leases.

(a) In no event shall the annual rental be less than the minimum rate established in Section 76(b).

(b) The maximum rental that may be accepted shall not be more than 120% of the maximum fair market value as determined by the board based on the previous year's values for the State, District or County, whichever is most localized and available, as determined by the National Agricultural Statistics Service utilizing:

(i) The private land lease rate per AUM for Wyoming grazing leases; or

(ii) The private land irrigated or nonirrigated cropland lease rate, as applicable, for Wyoming cropland leases on irrigated or nonirrigated cropland; and

(iii) A downward adjustment of 20 percent to reasonably reflect lessee contributions typically provided as a part of a private land grazing lease rate or a private cropland lease rate, as applicable.

(c) The maximum rental bid shall constitute the annual rental for the entire term of the lease unless the minimum annual rental exceeds the conflict bid.

(d) All leases are subject to change upon reappraisal or reclassification of the land,

(e) Upon notice provided not less than thirty (30) days prior to the anniversary date of a lease, all rentals accruing to the state, except those for the first year, shall become due and payable at the Office on the anniversary date of the lease. If the rent is not paid on the anniversary date, the Director shall notify the lessee or his authorized agent by certified mail that the lease will be canceled if the rent and a late fee equal to ten percent (10%) of the annual rental is not received within thirty (30) days following the date of the notice. If the lease is canceled, the Director shall, thereafter, advertise the lands in the county where located, as vacant and subject to lease.

Section 98. Assignments.

(a) Any grazing or agricultural lease assigned without the approval of the Director is subject to cancellation. Lessees shall request approval of assignments, pursuant to W.S. 36-5-105(d), on a form provided by the Office.

(b) If a request for approval of an assignment is signed by a party other than the lessee, the legal instrument authorizing such signature must accompany the request.

Section 109. Subleases and Other Contracts.

(a) Any grazing and agricultural lease is subject to cancellation if the lessee subleases the leased premises or enters into any contract or agreement of any kind concerning the leased premises, except "price support and production adjustment" contracts of the Farm Service Agency, without the approval of the Director. Lessees shall request approval of subleases or other contracts, pursuant to W.S. 36-5-105(d), by submitting a copy of the sublease or other agreement to the Office. In no event shall lands be subleased unless one-half (1/2) of the excess rental is paid to the State.

(b) If the annual rental under a sublease agreement is a share of production, the lessee shall report annual production to the Office on a form furnished by the Office. The Office shall calculate the additional rental due.

Section 110. Security Interests in Leases. Whenever a security interest in a leasehold is created or released, the secured party shall notify the Office on a form provided by the Office.

Section 121. Improvements.

(a) Lessees of state land shall have the right to construct or make improvements upon the land in an amount not to exceed \$2,000.00 per section for each separate improvement, without first obtaining permission.

(b) Lessees shall request permission, on a form provided by the Office, prior to construction of any improvement valued in excess of \$2,000.00 per section for each separate improvement.

(c) The Director shall have authority to grant permission to construct improvements in excess of \$2,000.00 per section for each separate improvement for fencing, water development, livestock handling facilities and range enhancements. However, any improvement, regardless of value, which will restrict existing public access or alter existing authorized use(s) of the lands must be approved by the Board.

(d) Any other improvement in excess of \$2,000.00 per section for each separate improvement shall be applied for under a special use lease in accordance with Wyoming Statute 36-5-114 and Chapter 5 of Board rules.

(e) Any applicant applying to lease state lands upon which there are improvements of any kind belonging to another shall, before receiving the lease, pay to the Director for the use and benefit of the owner or maker of any improvements at the time of the execution of the lease, the contributory value of improvements or the owner of the improvements shall have the right to remove the improvements in a manner which minimizes injury to the land; provided, that the improvements be removed within a period of one hundred twenty (120) days from the expiration of the lease or final Board decision in a related contested case proceeding. Should the owner of the improvements elect to remove the improvements, the owner must notify the Director in writing within thirty (30) days from the expiration of the lease or final Board decision in a related contested case proceeding. For the purposes of this section "contributory value" means the increased value of the property after the lessee's improvements are considered.

Section 132. Cancellation. The Office shall investigate any allegation of fraud, deceit, or misrepresentation in the procurement of leases and shall monitor all leases for violations of lease covenants. When grounds for cancellation exist under W.S. 36-5-113 or the terms and provisions of the lease, the Director shall request that the Board cancel leases under the procedure at Chapter 1, Section 9, of these rules.

Section 143. Weed and Pest Control. Lessee is required to work in cooperation with the Office to make every reasonable effort to control noxious weeds and pests. Lessee may work in conjunction with County Weed and Pest Control Districts to develop projects to be submitted to the Office for reimbursement pursuant to Chapter 28 of these rules.

Section 154. Surface Impact Payments.

(a) Anyone desiring to enter upon the leased premises shall contact the lessee prior to entry, unless otherwise provided in subsection (c) of this section.

(b) For all entries, the lessee may negotiate a surface impact payment provided that any payment is consistent with payments for impacts to adjacent lands. By separate checks or money orders, the payor shall remit the lessee's share of the surface impact payment directly to

the lessee and the Board's share of the surface impact payment directly to the Office, in accordance with the following schedule:

(i) For the first five thousand dollars (\$5,000), the lessee's share shall be forty percent (40%), and the Board's share shall be sixty percent (60%).

(ii) For that portion of a payment exceeding five thousand dollars (\$5,000), through ten thousand dollars (\$10,000), the lessee's share shall be thirty percent (30%), and the Board's share shall be seventy percent (70%).

(iii) For that portion of a payment exceeding ten thousand dollars (\$10,000), the lessee's share shall be twenty percent (20%), and the Board's share shall be eighty percent (80%).

(iv) For annual payments, the lessee's share shall be twenty percent (20%), and the Board's share shall be eighty percent (80%). For purposes of this section, "annual payments" means any portion of a surface impact payment remitted subsequent to the initial remittance on periodic basis, regardless of the length of the period.

(c) The following shall not be subject to the requirements of this section:

(i) The Board and its representatives when entering for purposes of management or administration of state lands.

(ii) Members of the public when entering for purposes of hunting and fishing and casual recreational use pursuant to the provisions of Chapter 13 of these rules.

(iii) Applicants for, or holders of, an easement issued under Chapter 3 of the Board's rules.

(iv) Applicants for, or holders of, a temporary use permit issued under Chapter 14 of the Board's rules.

(d) If the person desiring entry upon state lands is unable to reach an agreement with a lessee regarding a surface impact payment after having negotiated with the lessee in good faith for a period of ninety (90) days, the person desiring entry and/or the lessee may submit evidence to the Office to establish the surface impact payment.

(i) The evidence and any information the Director deems relevant will be analyzed by the Director, whereupon, the Director will enter an order establishing the surface impact payment and recommend the decision to the Board for final approval.

(ii) Either party may appeal the Director's decision. The petition shall be treated as a contested case pursuant to W.S. 16-3-107 et seq. A hearing officer shall preside over the contested case hearing and make a recommended decision. The decision of the Board establishing the surface impact payment shall constitute final agency action.

(iii) The person desiring entry may immediately enter the state lands while negotiations with the lessee are proceeding, upon providing the Office with a deposit for the surface impact payment in an amount determined by the Office. When the Director enters an order establishing the surface impact payment, the Office shall forward the lessee's share of the surface impact payment to the lessee and return any excess money on deposit to the petitioner, without interest.

(iv) The costs of the contested case hearing, including hiring a hearing officer, shall be paid in equal shares by the person desiring entry and the lessee.