



# Notice of Intent to Adopt Rules

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

Revised June 2020

<b>1. General Information</b>			
a. Agency/Board Name* <b>Office of State Lands and Investments/State Board of Land Commissioners</b>			
b. Agency/Board Address <b>122 W 25th St. W103</b>		c. City <b>Cheyenne</b>	d. Zip Code <b>82002</b>
e. Name of Agency Liaison <b>Jason Crowder</b>		f. Agency Liaison Telephone Number <b>307-777-3428</b>	
g. Agency Liaison Email Address <b>jason.crowder@wyo.gov</b>			
h. Date of Public Notice <b>June 20, 2022</b>		i. Comment Period End Date <b>August 8, 2022</b>	
j. Public Comment URL or Email Address: <b>bonnie.smith2@wyo.gov</b>			
k. Program <b>State Board of Land Commissioners</b>			
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>2. Legislative Enactment</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 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):			
<b>3. Rule Type and Information</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: <b>Ch. 4</b>	Chapter Name: <b>Grazing and Agricultural Leasing</b>	<input type="checkbox"/> New	<input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended <input type="checkbox"/> Repealed
Amended Chapter Name (if applicable):			
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:
-------	-------	-------	-----------

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:
--

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.

Printed Name of Authorized Individual

Jason Crowder



Title of Authorized Individual

Deputy Director Office of State Lands and Investments

Date of Authorization

6/20/2022

## **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 House Enrolled Act No. 49 of the Sixty-Sixth Legislature of the State of Wyoming ("the Act"), the Legislature further defined the application of the vacant land "preference" contained in Wyo. Stat. Ann. § 36-5-105(b) and directed the leasing of vacant land to follow a process as detailed within the Act. These rules conform the vacant land leasing process to the requirements set forth in the Act.

## 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) “Preference” means the elevated position of an applicant to participate in the vacant land bidding process as described in subsection 6(d) of this chapter, above applicants who are not the owners, lessees or lawful occupants of adjoining lands in good standing with the Board.

~~(g)~~(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.

~~(h)~~(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) No applicant shall be qualified to lease vacant lands unless that applicant is qualified under the provisions of W.S. 36-5-101, has actual and necessary use for the land, has or can gain access to the land and offers to pay an annual rental at not less than fair market value, as determined by the economic analysis pursuant to W.S. 36-5-101(b), for the same or similar use of the land for a period of (10) years and who has not been found to have significantly violated any laws or regulations related to state lands.

~~(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:~~

~~(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:

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 (e)(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.

(d) Specific filing periods for particular tracts of vacant land will be established by advertisement. However, before accepting applications to lease vacant land, the Director shall provide notice on the Office's website, and directly to each adjoining private landowner as recorded within the real property records with the County Assessor's office.

(e) Preference shall be given to applicants who are the owners, lessees or lawful occupants of adjoining lands, unless the Board determines that the preference should not be recognized for good cause.

(i) In instances where one (1) applicant is eligible for the preference and a competing bidder is not, the applicant eligible for the preference may elect to meet the highest bid of the applicants not eligible for the preference.

(ii) When two (2) or more applicants are eligible for the preference, in determining to which applicant to award the lease, the Director shall request a final bid from the applicants eligible for the preference in a manner as directed by the Director to determine the successful applicant.

(iii) When two (2) or more applicants are eligible for the preference and one (1) or more applicants are not eligible for the preference, those applicants who are eligible for the preference may elect to match the highest bid. If two (2) or more applicants who are eligible for the preference elect to meet the highest bid, the lease shall be awarded pursuant to subsection 6(e)(ii) of this chapter.



(f) In the event the Office receives conflicting applications, the Director shall issue a Director's Decision conditionally awarding the lease pursuant to this subsection. Should the Director determine good cause exists not to recognize a preference under subsection (e) of this section, the Director shall include in the Director's Decision a statement describing the reasons not to recognize the preference.

(g) 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.

## 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) “Preference” means the elevated position of an applicant to participate in the vacant land bidding process as described in subsection 6(d) of this chapter, above applicants who are not the owners, lessees or lawful occupants of adjoining lands in good standing with the Board.

(g) “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.

(h) “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) No applicant shall be qualified to lease vacant lands unless that applicant is qualified under the provisions of W.S. 36-5-101, has actual and necessary use for the land, has or can gain access to the land and offers to pay an annual rental at not less than fair market value, as determined by the economic analysis pursuant to W.S. 36-5-101(b), for the same or similar use of the land for a period of (10) years and who has not been found to have significantly violated any laws or regulations related to state lands.

(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, 36-5-108 and Chapter 1 of these rules.

(d) Specific filing periods for particular tracts of vacant land will be established by advertisement. However, before accepting applications to lease vacant land, the Director shall provide notice on the Office's website, and directly to each adjoining private landowner as recorded within the real property records with the County Assessor's office.

(e) Preference shall be given to applicants who are the owners, lessees or lawful occupants of adjoining lands, unless the Board determines that the preference should not be recognized for good cause.

(i) In instances where one (1) applicant is eligible for the preference and a competing bidder is not, the applicant eligible for the preference may elect to meet the highest bid of the applicants not eligible for the preference.

(ii) When two (2) or more applicants are eligible for the preference, in determining to which applicant to award the lease, the Director shall request a final bid from the applicants eligible for the preference in a manner as directed by the Director to determine the successful applicant.

(iii) When two (2) or more applicants are eligible for the preference and one (1) or more applicants are not eligible for the preference, those applicants who are eligible for the preference may elect to match the highest bid. If two (2) or more applicants who are eligible for the preference elect to meet the highest bid, the lease shall be awarded pursuant to subsection 6(e)(ii) of this chapter.

(f) In the event the Office receives conflicting applications, the Director shall issue a Director's Decision conditionally awarding the lease pursuant to this subsection. Should the Director determine good cause exists not to recognize a preference under subsection (e) of this section, the Director shall include in the Director's Decision a statement describing the reasons not to recognize the preference.

(g) 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.