



# Certification Page

## Regular and Emergency Rules

Revised June 2020

**Emergency Rules** *(Complete Sections 1-3 and 5-6)*

**Regular Rules**

<b>1. General Information</b>			
a. Agency/Board Name* <b>Office of State Lands and Investments - 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. Adoption Date <b>June 1, 2023</b>	
i. Program <b>State Board of Land Commissioners</b>			
Amended Program Name <i>(if applicable)</i> :			
* <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 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"/> <b>No.</b> <input type="checkbox"/> <b>Yes.</b> 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. <i>Please use the "Additional Rule Information" form to identify additional rule chapters.</i>			
Chapter Number: <b>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 Repealed	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 <i>(if applicable)</i> :			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name <i>(if applicable)</i> :			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name <i>(if applicable)</i> :			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name <i>(if applicable)</i> :			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name <i>(if applicable)</i> :			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name <i>(if applicable)</i> :			

**4. Public Notice of Intended Rulemaking**

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice.  No.  Yes.  N/A

b. A public hearing was held on the proposed rules.  No.  Yes. Please complete the boxes below.

Date:	Time:	City:	Location:


**5. Checklist**

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

b.  For emergency rules, the Memorandum to the Governor documenting the emergency, which requires promulgation of these rules without providing notice or an opportunity for a public hearing, is attached to this Certification.

**6. Agency/Board Certification**

The undersigned certifies that the foregoing information is correct. By electronically submitting the emergency or regular rules into the Wyoming Administrative Rules System, the undersigned acknowledges that the Registrar of Rules will review the rules as to form and, if approved, the electronic filing system will electronically notify the Governor's Office, Attorney General's Office, and Legislative Service Office of the approval and electronically provide them with a copy of the complete rule packet on the date approved by the Registrar of Rules. The complete rules packet includes this signed certification page; the Statement of Principal Reasons or, if emergency rules, the Memorandum to the Governor documenting the emergency; and a strike and underscore copy and clean copy of each chapter of rules.

Signature of Authorized Individual	
Printed Name of Signatory	Jason Crowder
Signatory Title	Deputy Director
Date of Signature	June 1, 2023

**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	

# WYOMING OFFICE OF STATE LANDS AND INVESTMENTS

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Cheyenne, WY 82002  
Phone: 307-777-7331  
Fax: 307-777-3524  
slfmail@wyo.gov



MARK GORDON  
Governor

JENIFER E. SCOGGIN  
Director

DATE: June 1, 2023

TO: Governor Mark Gordon, Chairman  
State Board of Land Commissioners

FROM: Jenifer E Scoggin, Director  
Office of State Lands and Investments

(Note: The agency contact person is Jason Crowder, 777-3428 and jason.crowder@wyo.gov)

RE: Emergency Rules and Regulations  
Chapter 4 – Grazing and Agricultural Leasing  
State Board of Land Commissioners

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During the 2023 General Session, the Sixty-Seventh Legislature of the State of Wyoming passed House Enrolled Act No. 35 (State lands – use of land qualification requirements), House Enrolled Act No. 59 (State land leasing – improvements), House Enrolled Act No. 82 (State Lands – grazing of non-owned livestock), and House Enrolled Act No. 83 (State land lease deficiencies – cure process) (collectively “the Acts”). The Acts insert the following general changes to the grazing and agricultural leasing program:

- 1) A requirement that every applicant of a grazing and agricultural lease must have actual and necessary use of the land for the production of agricultural commodities in order to be qualified to lease state lands;
- 2) Amending the minimum improvement amount requiring Board approval from two thousand dollars (\$2,000.00) to four thousand dollars (\$4,000.00), and changing the valuation method from the “contributory value” to the “current market value,” as defined within House Enrolled Act No. 59;
- 3) Providing criteria in which a sublease does not need to be approved by the Director of the Office of State Lands and Investments (“OSLI”) when the lessee allows livestock it does not own to graze the state lands; and
- 4) Adjusting the date renewal applications are due, inserting a process for OS LI to notify a lessee of a missing or delinquent application, providing a maximum cure period to the lessee, adjusting the date rental payments are due and inserting a notice process to the

lessee of a missing or deficient payment.

The Acts are effective July 1, 2023, which is prior to completion of the regular rulemaking process. OSLI continually administers grazing and agricultural leases that will be impacted by the Acts. These emergency rules will allow OSLI to continue to administer these leases as the Board of Land Commissioners undergoes the regular rulemaking process, while complying with the Acts.

The attached proposed Chapter 4 emergency rules put in place the necessary administrative framework to conform with the Acts.

Enclosed is the emergency rulemaking packet for Chapter 4 – Grazing and Agricultural Leasing. Enclosures are:

1. Certification Page
2. Statement of Principal Reasons for Adoption
3. Copies of the Emergency Rules for Chapter 4 (1-clean; 1-strike underscore)

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

Enclosures

## STATEMENT OF PRINCIPAL REASONS FOR ADOPTION OF EMERGENCY RULES

It is necessary to adopt amendments to Chapter 4 of the Board of Land Commissioners' Rules and Regulations as emergency rules to incorporate changes to the leasing of state lands for the purpose of grazing and agricultural uses. Pursuant to House Enrolled Act No. 35 (State lands – use of land qualification requirements), House Enrolled Act No. 59 (State land leasing – improvements), House Enrolled Act No. 82 (State Lands – grazing of non-owned livestock), and House Enrolled Act No. 83 (State land lease deficiencies – cure process) of the Sixty-Seventh Legislature of the State of Wyoming (collectively “the Acts”), the Legislature enacted the Acts to become effective on July 1, 2023.

Additionally, the Acts insert the following general changes:

- 1) A requirement that every applicant of a grazing and agricultural lease must have actual and necessary use of the land for the production of agricultural commodities in order to be qualified to lease state lands;
- 2) Amending the minimum improvement amount requiring approval from the Board from two thousand dollars (\$2,000.00) to four thousand dollars (\$4,000.00), and changing the valuation method from the “contributory value” to the “current market value,” as defined within House Enrolled Act No. 59;
- 3) Providing criteria in which a sublease does not need to be approved by the Director of the Office of State Lands and Investments (“OSLI”) when the lessee allows livestock it does not own to graze the state lands; and
- 4) Adjusting the date renewal applications are due, inserting a process for OSLI to notify a lessee of a missing or delinquent application, providing a maximum cure period to the lessee, adjusting the date rental payments are due and inserting a notice process to the lessee of a missing or deficient payment.

OSLI continually administers grazing and agricultural leases that will be impacted by the Acts. These emergency rules will allow OSLI to continue to administer these leases as the Board of Land Commissioners undergoes the regular rule making process, while complying with the Acts.

## Chapter 4

### Grazing and Agricultural Leasing

#### **Emergency rules are in effect no longer than 120 days after filing with the Registrar of Rules**

**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) “Current Market Value” means the replacement value of the lessee’s improvement at the time of transition of the lease, after the remaining useful life of the improvement is considered.

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

(e) “Full Management Responsibility” means all duties, obligations and liabilities as if the livestock were owned by the lessee.

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

(g) “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.

(h) “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.

(i) “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.



(j) “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) **Qualifications.** No applicant shall be qualified to lease state lands for grazing and agricultural purposes without having actual and necessary use of the land for the production of agricultural commodities.

(c) **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.

(d) **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 sixty (60) days prior to the expiration date of the existing lease.

(ii) The Office shall provide notice by certified mail to all existing lessees of the expiration of their lease(s) not later than one hundred twenty (120) days prior to expiration of the lease.

(iii) The Office shall provide notice of a missing or deficient application for lease renewal to the lessee not later than forty (40) days before the expiration of the existing lease. The notice shall:

(A) Be made by certified mail unless the lessee can be reached in an equally effective alternative manner. Such alternative manner shall be documented by the Office;

(B) Identify the deficiencies in the application for lease renewal or provide notice that no application for renewal has been filed;

(C) Provide the lessee not less than thirty (30) days from receipt of the notice to file a lease renewal application or to remedy all deficiencies in the lessee's renewal application;

(D) Provide notice that the lessee's failure to submit a renewal application or to remedy all deficiencies in the lessee's renewal application before expiration of the lease may result in the leased lands becoming vacant.

(iv) 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 via certified mail 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 together with payment of the first year's rental that meets the highest bid offered by another qualified application as provided in W.S. 36-5-105(c). The Office shall issue deficient application notices not later than ten (10) days after the filing of a lease renewal application by an existing lessee pursuant to W.S. 36-5-104 (b).

(v) In the event of a conflicting lease application being filed, the Office shall provide notice of a deficient application for lease renewal to the lessee not later than ten (10) days after filing of a lease renewal application by an existing lessee. The notice shall:

(A) Be made by certified mail unless the lessee can be reached in an equally effective alternative manner. Such alternative manner shall be documented by the Office;

(B) Identify the deficiencies in the application for lease renewal;

(C) Provide the lessee not less than twenty (20) days from receipt of notice to remedy all deficiencies in the lessee's renewal application;

(D) Provide notice that the lessee's failure to remedy all deficiencies in the lessee's renewal application may result in rejection of the application.

(vi) If an expiration date falls on a Saturday, Sunday or legal holiday, applications shall be accepted on the following workday.

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



(e) 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 (d) 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 sixty (60) 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 Office shall again notify the lessee or the lessee's authorized agent by

certified mail that the lease may 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 certified 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) The grazing of livestock that are not owned by the lessee shall not be deemed to be a sublease, contract or agreement concerning the leased premises as defined in subsection (a) provided that:

(i) The ratio of owned to non-owned livestock grazed by the lessee does not exceed one to one (1:1) for more than two (2) years in any ten (10) year period;

(ii) The lessee provides documentation of the lessee's grazing of non-owned livestock to the Office; and

(iii) The lessee retains full management responsibility of the livestock that graze on the state lands.

(c) 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 \$4,000.00 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 \$4,000.00 per section for each separate improvement.

(c) The Director shall have authority to grant permission to construct improvements in excess of \$4,000.00 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 \$4,000.00 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 current market value of improvements unless a different value is agreed to between the owner of the improvements and the applicant. Alternatively, 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

#### **Emergency rules are in effect no longer than 120 days after filing with the Registrar of Rules**

**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) “Current Market Value” means the replacement value of the lessee’s improvement at the time of transition of the lease, after the remaining useful life of the improvement is considered.

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

(e) “Full Management Responsibility” means all duties, obligations and liabilities as if the livestock were owned by the lessee.

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

~~(e)~~(g) “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)~~(h) “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)~~(i) “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)~~(j) “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) Qualifications. No applicant shall be qualified to lease state lands for grazing and agricultural purposes without having actual and necessary use of the land for the production of agricultural commodities.

~~(b)~~(c) 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.

~~(e)~~(d) 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 sixty ~~thirty~~ (60 ~~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) The Office shall provide notice by certified mail to all existing lessees of the expiration of their lease(s) not later than one hundred twenty (120) days prior to expiration of the lease.

(iii) The Office shall provide notice of a missing or deficient application for lease renewal to the lessee not later than forty (40) days before the expiration of the existing lease. The notice shall:

(A) Be made by certified mail unless the lessee can be reached in an equally effective alternative manner. Such alternative manner shall be documented by the Office;

(B) Identify the deficiencies in the application for lease renewal or provide notice that no application for renewal has been filed;

(C) Provide the lessee not less than thirty (30) days from receipt of the notice to file a lease renewal application or to remedy all deficiencies in the lessee's renewal application;

(D) Provide notice that the lessee's failure to submit a renewal application or to remedy all deficiencies in the lessee's renewal application before expiration of the lease may result in the leased lands becoming vacant.

(iv) 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 via certified mail 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 together with payment of the first year's rental that meets the highest bid offered by another qualified application as provided in W.S. 36-5-105(c). The Office shall issue deficient application notices not later than ten (10) days after the filing of a lease renewal application by an existing lessee pursuant to W.S. 36-5-104 (b).

(v) In the event of a conflicting lease application being filed, the Office shall provide notice of a deficient application for lease renewal to the lessee not later than ten (10) days after filing of a lease renewal application by an existing lessee. The notice shall:

(A) Be made by certified mail unless the lessee can be reached in an equally effective alternative manner. Such alternative manner shall be documented by the Office;

(B) Identify the deficiencies in the application for lease renewal;

(C) Provide the lessee not less than twenty (20) days from receipt of notice to remedy all deficiencies in the lessee's renewal application;

(D) Provide notice that the lessee's failure to remedy all deficiencies in the lessee's renewal application may result in rejection of the application.

(vi) If an expiration date falls on a Saturday, Sunday or legal holiday, applications shall be accepted on the following workday.

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

~~(d)~~(e) 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 ~~(e)~~(d) 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, ~~and~~ 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)~~(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 ~~sixty thirty~~ (60 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-Office~~ shall again notify the lessee or the lessee's his authorized agent by certified mail that the lease may ~~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 certified 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) The grazing of livestock that are not owned by the lessee shall not be deemed to be a sublease, contract or agreement concerning the leased premises as defined in subsection (a) provided that:

(i) The ratio of owned to non-owned livestock grazed by the lessee does not exceed one to one (1:1) for more than two (2) years in any ten (10) year period;

(ii) The lessee provides documentation of the lessee's grazing of non-owned livestock to the Office; and

(iii) The lessee retains full management responsibility of the livestock that graze on the state lands.

(c) 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.

~~(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 \$4,000.00 ~~\$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 \$4,000.00 ~~\$2,000.00~~ per section for each separate improvement.

(c) The Director shall have authority to grant permission to construct improvements in excess of \$4,000.00 ~~\$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 \$4,000.00 ~~\$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~~ current market value of improvements unless a different value is agreed to between the owner of the improvements and the applicant. ~~or Alternatively,~~ 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.