

Wyoming Administrative Rules

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Land Commissioners, Board of

Chapter 24: Leasing of Metallic & Non-metallic Rocks & Minerals

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RULES AND REGULATIONS
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BOARD OF LAND COMMISSIONERS

Chapter 24

Leasing of Metallic & Non-metallic Rocks & Minerals

Section 1. Authority.

This chapter is adopted pursuant to the authority granted in W.S. 36-6-101(b).

Section 2. Definitions.

(a) “Beneficiaries” means the common schools and those state institutions designated by Congress as beneficiaries of lands granted to the State of Wyoming.

(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) “Mineral” means coal, trona/sodium, metallic & non-metallic rocks & minerals and associated minerals, clays, stones of various sorts, salts, and any and all substances formed by nature in or as rocks of the earth and recognized in law, geology, or by the courts as minerals.

(f) “State Lands” means all lands under the jurisdiction of the Board of Land Commissioners in which the Board owns some or all of the mineral estate.

Section 3. General Provisions.

(a) The Board may, without prior notice, withdraw specific lands from leasing for metallic & non-metallic rocks & minerals when it appears reasonably necessary to protect the economic or environmental interests of the beneficiaries. Any party desiring to lease lands for metallic & non-metallic rocks & minerals which have been withdrawn may request that a withdrawal be rescinded in whole or in part.

(b) The Board may condition the issuance of any metallic & non-metallic rocks & minerals lease upon specific stipulations for the protection of the public, the environment, the waters of the state, historical, archeological or paleontological materials, the wildlife resources, or any of the subsurface or surface resources of the state.

(c) The Board may deny a metallic & non-metallic rocks & minerals lease to any person or legal entity which has failed to comply with any rules of the Board or any terms and conditions of any lease or other agreement with the Board.

(d) The Board may refuse to issue a metallic & non-metallic rocks & minerals lease or approve an assignment of an interest in an existing metallic & non-metallic rocks & minerals lease if issuing the lease or approving the assignment will diminish the interest of the beneficiaries.

(e) On lands in which the state owns less than the entire interest in the metallic & non-metallic rocks & minerals estate, a lease will be issued by the Board covering the state's interest independent of the other co-owners.

(f) An application may be filed for a lease on lands not shown by the records of the Office to be owned by the state. The applicant must submit evidence through the Office to the Wyoming Attorney General showing that it is probable that the lands applied for, or any interest therein, have escheated to the State of Wyoming. Such applicant shall coordinate with and pay for all costs for the Office and the Attorney General pursuant to the filing of a petition under W.S. 9-5-203 seeking title for the state. After receiving a court order vesting title in the state, the applicant shall have the right to lease the escheated lands under the Board's current form of lease without bidding thereon at auction. If the lands are not found to have escheated to the state, applicant will not be entitled to any lease or cost reimbursement.

(g) Discovery of historical, archaeological, or paleontological deposits on state lands during the course of development shall be reported to the Office by the lessee prior to further disturbance, and operations may only re-commence as authorized by the Director. The Director shall notify the lessee regarding mitigation within five (5) working days after receiving the report.

Section 4. Qualified Lessee.

To be qualified to receive or hold any interest in a state lease, corporations, limited partnerships, and limited liability companies must be authorized to transact business in the State of Wyoming by the Secretary of State, and general partnerships shall provide the Office with a copy of their partnership papers.

Section 5. Leasing Procedures.

(a) Metallic & non-metallic rocks & minerals shall be available for lease to the first qualified applicant filing an application. Applications may be filed with the Office during the regular hours of any business day. The Office shall note the date of filing on all applications. Applications filed on the same day, whether presented by personal delivery or received through any mail service, shall be considered as filed simultaneously.

(b) Each application must be accompanied by the required filing fee as established by the Board in Chapter 17 of the Board's rules. The filing fee will not be refunded on any application. An application under this section must also be accompanied by a remittance for the advance rental for the first year, at the rental per acre specified in Section 6 of this chapter.

(c) If two or more applications for the same interests in metallic & non-metallic rocks & minerals are filed simultaneously, the applications are in conflict.

(i) An application which is in conflict as to only a part of the lands applied for, shall be processed as to the lands not in conflict in the same manner as a separate application for such lands.

(ii) The priority of applications which are in conflict as to all or any part of the lands applied for shall, as to the lands in conflict, be determined by sealed bid between the applicants in conflict.

(d) When an application is rejected in its entirety, advance rentals paid by the applicant will be refunded. When rejected in part, the unused portion of the advance rental payment will be refunded.

(e) An application for a metallic & non-metallic rocks & minerals lease may be withdrawn, in whole or in part, at any time prior to issuance of lease. The advance rental and all fees transmitted with the application applicable to the portion of the application withdrawn, will be forfeited for failure to fulfill the obligations of the lease offer. However, if a withdrawal was for the purpose of removing a conflict, rentals applicable to the portion withdrawn will be refunded if a lease for the portion withdrawn is issued to another applicant.

(f) If the Board determines that any state metallic & non-metallic rocks & minerals lands should be offered for lease by competitive bidding, it shall enter an order setting a time and place for the sale, describing each tract to be offered, setting the terms of the leases to be issued, the terms and conditions of sale, the procedure to be followed in conducting the sale, and any other necessary information. Notice of sale shall be given in such form and manner as the Board shall direct.

Section 6. Rentals.

(a) The annual rental payments on all metallic & non-metallic rocks & minerals leases shall be:

(i) One dollar (\$1) per acre for the first through the fifth years;

(ii) Two dollars (\$2) per acre for the sixth through tenth years of the primary lease term and for any renewal year within a second ten (10) year term.

(iii) Three dollars (\$3) per acre for each year for renewals for a third ten (10) year term; and

(iv) Four dollars (\$4) per acre for each year for renewals for a fourth ten (10) year term.

(b) Failure to pay rentals on or before the lease anniversary date shall result in termination of the lease. Termination of a lease shall not relieve the lessee of any obligation incurred under the lease other than the obligation to pay rental or penalty.

(c) After initial submission of the increased annual rental required by the lease upon the discovery of metallic & non-metallic rocks & minerals in paying quantities, lessees are exempt from submission of subsequent annual creditable lease annual rentals for so long as annual royalties paid meet or exceed the required annual rental amount. The annual rental shall be held for a credit on annual

royalty in any year the annual royalty does not equal the required annual rental (minimum royalty) amount. Any credit amount used in making up the difference in royalty paid and the minimum lease royalty due must be paid within thirty (30) days following the next lease anniversary date to continue the lease. The Office shall notify lessees of any minimum royalty amount due after the lease anniversary for which a shortfall occurs.

Section 7. Royalties.

(a) Royalties for metallic & non-metallic rocks & minerals shall be based on the terms of the particular lease agreement, subject to all state royalty statutes and rules, and shall be based on the total consideration received for state production. The following royalty rates shall apply, unless a different rate is specifically authorized by the Board:

Sales Value per Ton	Royalty Percentage
\$ 00.01 to \$ 50.00	5%
\$ 50.01 to \$100.00	7%
\$100.01 to \$150.00	9%
\$150.01 and up	10%

but in no case will royalty be less than fifty cents (\$0.50)/ton

(b) After a metallic & non-metallic rocks & minerals lease becomes an operating lease, the Board may reduce the royalty payable to the state, as to all or any of the lands or formations covered by the lease, if it determines that such a reduction is necessary to allow the lessee to undertake additional operations or to continue to operate with a reasonable expectation that the operations will be profitable. Such a reduction in the royalty payable to the state shall in all cases be conditioned upon the cancellation of all cost-free interests. The Board may also impose other conditions to the reduction in royalty.

Section 8. Lease Term.

(a) Metallic & non-metallic rocks & minerals leases shall be for a primary term of ten (10) years.

(b) The term of a metallic & non-metallic rocks & minerals lease may be extended beyond its primary term only as provided by law, by these rules, or by a specific lease provision.

Section 9. General Assignment Requirements.

(a) Pursuant to W.S. 36-6-101(c), the Director shall approve or disapprove any assignment or transfer of a lease or an interest therein. Assignments shall be submitted for approval in duplicate on the form provided by the Office. If an assignment transfers an interest in more than one lease, an extra duly executed copy of the assignment or a photostatic copy of the original assignment shall be furnished for each lease in which an interest is transferred. The required filing fee must be paid for each separate lease in which an interest is assigned.

(b) The Director shall approve an assignment which has been properly executed and appears to comply with the law and this chapter, unless he determines that:

Approval would interfere with the development of the metallic & non-metallic rocks & minerals;

- (ii) The assignable lease is delinquent in rental or royalty payment status;
- (iii) Existing bonding is insufficient to cover lease premises activities;
- (iv) Conditions exist that would otherwise be detrimental to the interests of the beneficiaries;
- (v) The assignee is not a qualified lessee as provided in Section 4 of this chapter; or
- (vi) The number of persons holding undivided interest in a lease exceed two (2) in number, unless a designation of agent or a power of attorney executed by all lessees is filed with the Office which designates one of the lessees as agent or attorney to receive all notices, pay all rentals, and is authorized to represent the lessees with the same effect as though the agent or attorney was the sole lessee. For the purposes of this paragraph, owners of overriding royalties, production payments or other cost-free interests are not considered lessees, but owners of carried working interest, net profit owners, and other persons who may be required to bear a share of the cost out of their share of the production are considered lessees.

(c) If the Director disapproves an assignment, he shall advise the assignee by letter of his decision, the reason for disapproval, and when possible, advise what action is necessary to secure approval.

(d) An assignment or transfer of a lease or any interest therein, including overriding royalties and other cost-free interests created out of the leasehold estate, must be in writing and executed and acknowledged in accordance with the requirements of the law applicable to conveyances of interest in real estate. The instrument must clearly set forth the serial number of the lease, accurately describe the lands affected, the interest being conveyed as a percentage of total leasehold, and be free of any ambiguity.

Section 10. Partial Assignments.

(a) Subject to the requirements of this chapter, a lessee may assign or transfer all or part of his interest in the released acreage as to either a divided or undivided interest therein, including cost-free interest such as overriding royalties and production payments.

(b) The Director shall approve assignments or reservations of an overriding royalty subject to the condition that the overriding royalty or a portion thereof may be cancelled or suspended by the Board if it finds that it creates a burden upon the lease which prevents or unreasonably interferes with development.

(c) Assignment of a divided interest, i.e., an assignment of the full leasehold or working interest in a lease as to all interest in all deposits, formations, or depths below a separate tract of the lands subject to the lease or as to one or more separate deposits, formations, or depths below all or a

part of the land subject to the lease, segregates the assigned interest from the retained interest and creates new lease obligations as to the lands and the deposits, formations, or depths assigned.

(i) The rights and obligations of the lessees under the retained portion and the assigned portion of the original lease are separate and distinct as though two (2) separate leases, one (1) covering only the retained interest and the other the assigned interest, had originally been issued on the effective date of the original lease.

(ii) The Director may disapprove any assignment which has the effect of creating separate lease obligations covering the retained and the assigned interest even though it purports to assign less than all of the leasehold or working interest, unless both assignor and assignee agree to accept the separate obligations.

(d) Upon assignment as to only a part of the lease acreage, including assignment as to separate deposits, formations, or depths, the Office may issue a reissue lease with a new serial number covering the assigned lands for the unexpired primary term. In lieu of issuing a reissue lease, the Office may note the assignment upon its records with all lands covered by the original lease maintained under the original serial number, and with each separate tract or interest resulting from an assignment designated by a letter suffix to the original serial number. Each assignee holding a lease on a separate tract or interest may be required to furnish a bond under Section 12 of this chapter.

Section 11. Surface Integrity and Minimum Reclamation.

(a) Lessees shall use care and proper safeguards to prevent pollution of the soil or any water, including underground aquifers, by virtue of lessee's or lessee's designee's operation on state lands and shall capture and dispose of any operation's pollutants not permitted under Wyoming Department of Environmental Quality regulation, resulting from lessee's or lessee's designee's operations, and shall be responsible for any and all damages caused thereby related to lessee's operations.

(b) Upon completion of operations on state lands, all related disturbances on state lands must be reclaimed to leave the land in as near as practicable to the original condition of the land prior to operations. All topsoil must be salvaged before an area is disturbed by roads, buildings or other related activities. The salvaged topsoil must be stockpiled in such a way to protect it from wind and water erosion. If no topsoil exists for use in reclamation, with the Director's written approval, a cover soil that has been amended to sustain vegetation may be applied. If lessees can demonstrate that stripping and stockpiling of topsoil as precursor to their activities will be more detrimental to the topsoil as relates to reclamation, the Director may waive this requirement.

(c) New roads shall cross all drainages at right angles with culverts installed in a manner to avoid constricting the flow of surface water. All drainage or creek crossings must be constructed of erosion resistant material and constructed in a manner to prevent degradation of waters of the state from eroded sediment. No pits or impoundments shall remain after operations and reclamation activities, unless they have developed into viable wetlands as that term is defined by current federal regulation or if the pits or impoundments could potentially be of use to the state or to the surface lessee. All reclaimed areas must have slopes as approved by the Director and in conformance with existing State of Wyoming laws, rules, and regulations governing reclamation.

- (d) All reclaimed areas must be reseeded, where possible, with an approved seed mixture.

Section 12. Bonds.

(a) A lessee is not required to post a bond until actual operations, including exploration activities, are to be commenced on the leased lands. Before commencing actual operations, the lessee shall advise the Office and outline in detail the nature of the operations proposed. Operations shall not commence until an adequate bond has been furnished and approved.

(b) The bond shall be in an amount found by the Director sufficient to protect and indemnify the State of Wyoming and shall be in the form approved by the Wyoming Attorney General. Two (2) executed copies of the bond must be submitted to the Office. The bond shall bind the principal and its surety for:

(i) The payment of all moneys, rents, and royalties accruing to the Board;

(ii) Full compliance with all applicable statutes and terms and conditions of the Board's leases and rules and regulations;

(iii) Reclamation of the surface; and

(iv) For the payment of all disturbances to the surface and improvements thereon.

(c) The bond shall be one of the following:

(i) A corporate surety bond executed by the lessee and by a surety authorized to do business in the state;

(ii) A cash bond;

(iii) A certified cashier's check made payable to the Office of State Lands and Investments;

(iv) A certificate of deposit in the name of the Office of State Lands and Investments;

(v) Non-revocable letters of credit; or

(vi) AAA-rated debentures of sufficient market value to meet bonding minimums with a signed stock power made out to the Office of State Lands and Investments.

(d) In lieu of individual lease bonds, the lessee may request and the Director may allow the lessee to file a corporate surety bond in the sum of not less than one hundred thousand dollars (\$100,000) covering all of the lessee's state leases.

(e) The furnishing of a bond as required by the Wyoming Department of Environmental Quality or some other agency having jurisdiction over the proposed operation shall not relieve the lessee of the duty to furnish bond as required by this section, but such fact shall be taken into account by

the Director in determining a waiver of the bonding requirement or the amount of the bond to be required.

(f) The lessee shall promptly advise the Office of any change in operations. The Office may at any time reduce or increase the amount of the bond as conditions may require.

Section 13. Relinquishment.

(a) A metallic & non-metallic rocks & minerals lease or any divided interest therein may be relinquished by the record title holder to the Board in the following manner:

(i) If no operations have been conducted under the lease and no surface disturbance or damage has occurred on the land to be relinquished, the lessee shall file with the Office a written statement on a form provided by the Office that he wishes to relinquish the lease or interest. The relinquishment shall become effective on the date and hour of receipt by the Office or at some later date if specified.

(ii) If operations have been conducted under the lease or surface disturbance or damage has occurred on land proposed to be relinquished, the lessee shall file with the Office a statement on a form provided by the Office that he wishes to relinquish the lease or interest. Relinquishment shall not become effective until the land shall have been placed in acceptable condition and the Department of Environmental Quality or such other agency as may have jurisdiction has certified that the lands have been adequately reclaimed or restored before the relinquishment is effective.

(iii) Once a relinquishment on state lands becomes effective, the lease may not be reinstated. The lands shall be made available for lease as provided in Section 5 of this chapter.

Section 14. Royalty Reporting.

All lessees shall submit to the Office a completed monthly reporting statement on a form provided by the Office for each lease (Form M-3c). The lessee shall submit each lease statement within thirty (30) days of the last day of the month of sales for metallic & non-metallic rocks & minerals. The lessee shall attach to the M-3c statement copies of original arms-length sales transaction documents showing the quantity, quality, and value of products sold, including all lease volume sales through affiliate companies.

Section 15. Field Audits.

(a) The Wyoming Department of Audit, the Director, or the duly authorized representative of either shall have the right at reasonable times and intervals to audit the books and records of any metallic & non-metallic rocks & minerals or operator on state lands and to inspect the leased premises and conduct field audits for the purpose of determining compliance with this chapter or the terms of the lease.

(b) Any and all parties producing, selling, transporting, and purchasing state lands royalty interest shall retain their records for six (6) years from the date of sale reporting as due under this chapter for any production from or allocated to state lands for all periods ending after January 1, 2000.

(c) Absent state lessee or operator production sales reporting as required in this subsection, the state's metallic & non-metallic rocks & minerals lessee shall only sell or deliver any leased substance to any person who agrees:

(i) To file reports with the Office stating the price, quantity, origin, and disposition of all production purchased from a state lease; and

(ii) To allow an audit as provided for in this section.

Section 16. Cancellation for Default.

(a) If any metallic & non-metallic rocks & minerals lessee defaults in the performance or observance of any of this chapter or any of the terms, covenants, or conditions of the lease under which it is operating, the Board may serve notice of such failure or default either by personal service or by certified or registered mail upon the lessee, and if such failure or default continues for a period of thirty (30) days after the service of the notice, the Board may declare a forfeiture and cancel the lease, whereupon all rights and privileges obtained by the lessee under the lease shall terminate and the lessor may re-enter and take possession of the premises.

(b) This section shall not be construed to prevent the exercise by the Director or the Board of any other legal or equitable remedy which the state might otherwise have nor to relieve the lessee from any accrued obligation under the lease. Failure of the lessor to give notice of default in any particular case or waiver of a particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture or for the same default or cause if it continues or occurs at any other time.

Section 17. Multiple Use.

(a) The Board may issue separate leases for different minerals on the same tract of land. If all mineral leases under a tract of land are non-producing leases, each lessee has an equal right to conduct exploratory operations on the land, and each shall conduct such operations in a manner which does not prevent or unduly interfere with the operations of the other.

(b) The first lessee to commence actual production operations so that his lease becomes an operating lease shall have the right to continue operations without substantial interference from any other mineral lessee so long as the lease remains in effect. The lessee may not be deprived of this right in whole or in part without compensation equal to the value of the rights lost as per Subsection (d)(iii) of this section.

(c) If a lessee desires to commence operations on the same tract upon which one or more lessees are already conducting operations, and the lessees can agree that the operations can be conducted at the same time without materially reducing the amount or value of the resources which will be produced under each lease, and without unduly interfering with or raising the cost of operations of the prior lessee(s), unless he is adequately compensated therefor, the lessees may agree upon a plan of operations and assessment of costs under which the operations may be carried out concurrently. Any such agreement shall be submitted to and be subject to the approval of the Board.

(d) If, under the circumstances set out in Subsection (c) of this section, the lessees either agree that the operations cannot be carried out concurrently or cannot agree upon a plan of operations and assessment of costs, the Director may resolve the conflict.

(i) If the Director determines that the operations can be carried out concurrently without materially reducing the quantity or value of the metallic & non-metallic rocks & minerals which will be produced, and either that the costs of operation of any prior lessee(s) will not be increased significantly, or that if they are, such costs are capable of determination and if paid by the subsequent lessee will not constitute an unreasonable burden on the operation, he shall enter his decision approving a plan of operation and assessment of cost under which operations may be carried out concurrently.

(ii) If the Director determines that the proposed operations cannot be carried out concurrently and that the value which will be realized by the beneficiaries from the existing operation is such that the proposed operation should be deferred, he shall enter his decision deferring the development obligations under the lease of the proposing lessee. The lease will be placed in operating status and remain in effect subject to the requirement that annual rentals will be paid and to the condition that if development is deferred more than five (5) years, the lease may be amended to conform to the lease form in effect upon commencement of production operations for the class of subsurface resource to be produced.

(iii) If the Director determines that the proposed operations cannot be carried out concurrently and that the benefit which would be realized by the beneficiaries from initiating the proposed operation so far exceeds that which would be realized from the existing operation that it is clearly more beneficial to the beneficiaries that the existing operation be terminated or deferred and the proposed operation commenced, he shall enter his decision terminating the existing operation and allowing the commencement of the proposed operation, conditioned upon the payment by the lessee proposing the operation to the lessee whose operations are terminated of an amount equal to the value of the rights lost by that lessee determined in the same manner as if the right were being condemned in eminent domain proceedings.

(iv) A lease upon which operations are terminated as above provided shall, upon payment to the lessee of the value of the right lost, be assigned to the lessee making the payment, who shall be entitled to hold it subject to the same terms and conditions applicable to a lease upon which operations were deferred under Paragraph (ii) of this section.

(v) If the proposing lessee disagrees with the Director's or the Board's determination, he may refuse to commence the proposed operation. His refusal to do so shall not constitute a violation of the covenants for lease development, unless the amounts he would be required to pay to the prior lessee constitute such an insubstantial addition to the cost of operation that a reasonable, prudent lessee would assume them.